



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Response to the European Commission
Consultation on the Racial Equality Directive
(Directive 2000/43/EC)**

11 April 2022

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Summary of Recommendations

The NIHRC recommends:

- 3.3** the Racial Equality Directive be amended to include legal protections against racial discrimination in situations of eviction, contact with administration, access to free, cultural and social events, situations involving the police or other control authorities, and the justice system.
- 4.15** there be stronger recognition of multiple discrimination and the provision of a mechanism for individuals to bring intersectional claims within the Racial Equality Directive, as a minimum standard.
- 5.11** the Racial Equality Directive be amended to make mandatory a duty on all public authorities to collect, analyse and monitor equality data.
- 6.13** in line with UN and Council of Europe standards and recommendations, the Racial Equality Directive be amended to include a recognition of sectarianism within the framing of racial discrimination
- 6.20** the EU Commission give further consideration to whether nationality should be a protected characteristic under the Racial Equality Directive, to maximise protection for every individual within each jurisdiction bound by the Directive.
- 6.29** the Racial Equality Directive be amended to recognise and include discrimination arising from the use of algorithmic and data-driven technology within Article 3 (Scope).
- 7.5** the Racial Equality Directive be amended to include a requirement that all jurisdictions to which the Directive applies take steps to strengthen, simplify and harmonise anti-discrimination protections across all protected categories.
- 7.6** the Racial Equality Directive be amended to include a specific acknowledgement of the significance of Protocol Article 2 and the keep pace obligations for racial equality in NI.
- 7.14** the Racial Equality Directive be amended to require jurisdictions

that are bound by the Directive to confront racial hate crime.

1.0 Introduction

- 1.1 The Northern Ireland Human Rights Commission (NIHRC) is one of three A-status National Human Rights Institutions in the United Kingdom (UK). Established in 1999, the NIHRC, pursuant to Section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI). The NIHRC's mandate extends to all matters relating to the protection and promotion of human rights in NI. The NIHRC is also mandated, under Section 78A(1) to monitor the implementation of Article 2(1) of the Protocol on Ireland/NI of the UK - European Union (EU) Withdrawal Agreement (the Protocol).
- 1.2 The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights, as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE) and United Nations (UN) systems. The relevant regional and international treaties in this context include:
- CoE European Social Charter 1961 (European Social Charter);¹
 - UN International Convention on the Elimination of All Forms of Racial Discrimination 1965 (UN CERD);²
 - UN International Covenant on Economic, Social and Cultural Rights 1966 (UN ICESCR);³
 - UN Convention on the Elimination of All Forms of Discrimination against Women 1981 (UN CEDAW);⁴
 - UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment 1987 (UN CAT);⁵
 - UN Convention on the Rights of the Child 1989 (UN CRC);⁶ and

¹ Ratified by the UK in 1962. The UK has signed, but not ratified, the updated European Social Charter 1991. However, by virtue of Article 18 of the Vienna Convention on the Law of Treaties, the UK is "obliged to refrain from acts which would defeat the object and purpose of" by signing the updated treaty.

² Ratified by the UK in 1969.

³ Ratified by the UK in 1976.

⁴ Ratified by the UK in 1986.

⁵ Ratified by the UK in 1988.

⁶ Ratified by the UK in 1991.

- CoE Framework Convention for the Protection of National Minorities 1995.⁷

1.3 In addition, there exists a body of 'soft law' developed by human rights bodies of the European Union, CoE and UN. These declarations and principles are non-binding but provide further guidance in respect of specific areas. The relevant standards in this context include, inter alia:

- UN ICESCR Committee Concluding Observations on the UK, 2009;⁸
- European Commission on Racial Intolerance Report on the UK, 2016;⁹
- UN CERD Committee Concluding Observations on the UK, 2016;¹⁰
- Advisory Committee on the Framework Convention for the Protection of National Minorities: Fourth Opinion on the UK, 2017;¹¹
- European Commission against Racism and Intolerance, Policy Recommendation No 7, 2017;¹²
- UN CRPD Committee Concluding Observations on the UK, 2017;¹³
- UN CAT Committee Concluding on the UK, 2019;¹⁴
- UN CEDAW Committee Concluding Observations on the UK, 2019;¹⁵
- UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2019;¹⁶ and

⁷ Ratified by the UK in 1998.

⁸ E/C.12/GBR/CO/5 'UN ICESCR Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI' 12 June 2009.

⁹ CRI(2016)38, 'European Commission on Racial Intolerance Report on the UK (Fifth Monitoring Cycle)' (ECRI, 2016).

¹⁰ CERD/C/GBR/CO/21-23, 'UN CERD Committee Concluding Observations on the Twenty-first to Twenty-third periodic Reports of the UK of Great Britain and NI', 26 August 2016.

¹¹ ACFC/OP/IV(2016)005 'Advisory Committee on the Framework Convention for the Protection of National Minorities: Fourth Opinion on the United Kingdom adopted on 25 May 2016' 27 February 2017.

¹² European Commission against Racism and Intolerance, 'Policy Recommendation No 7: National Legislation to Combat Racism and Racial Discrimination', 7 December 2017.

¹³ CRPD/C/GBR/CO/1, 'UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI', 3 October 2017.

¹⁴ CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and NI', 7 June 2019.

¹⁵ ACFC/OP/IV(2016)005 'Advisory Committee on the Framework Convention for the Protection of National Minorities: Fourth Opinion on the United Kingdom adopted on 25 May 2016' 27 February 2017.

¹⁶ A/HRC/41/54/Add.2, 'Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance: Visit to the United Kingdom of Great Britain and Northern Ireland', 27 May 2019.

- UN Special Rapporteur on Extreme Poverty and Human Rights.¹⁷

- 1.4 In accordance with its mandate to monitor the alignment of NI law with any enhancement to rights or safeguards under the Racial Equality Directive, the NIHRC welcomes this opportunity to submit advice for the “Addressing Possible Gaps in the Racial Equality Directive” consultation by the EU Commission.¹⁸ This report elaborates on our responses to Parts II and III of the consultation.
- 1.5 Section 2 sets out the contextual background of this submission. Section 3 elaborates on our response to Part II of the consultation on the scope of legal protection against discrimination based on racial or ethnic origin. Sections 4-7 of the submission then focuses on the question of what else is missing from current protections and is structured around specific themes of concern relevant to NI, namely: the concept of discrimination (Section 4), lack of robust equality data (Section 5), scope of discrimination (Section 6), and compliance (Section 7).
- 1.6 The NIHRC welcomes the opportunity for further engagement and is willing to provide any further advice which would assist the EU Commission in the identification of potential gaps in current protections and suitable measures to address them.

2.0 Context

- 2.1 Human rights and equality protections sit at the heart of the Belfast (Good Friday) Agreement and are central to the peace process in NI.¹⁹ The importance of protecting the 1998 Agreement was acknowledged in negotiations during the UK’s withdrawal from the EU. The commitment to safeguarding human rights and equality protections is reflected in the Protocol on Ireland/NI, which recognises that EU law has provided a ‘supporting framework’ for rights protection in the Belfast (Good Friday) Agreement.²⁰

¹⁷ A/74/493, ‘Report of the Special Rapporteur on extreme poverty and human rights on digital technology, social protection and human rights’, October 2019.

¹⁸ EU Commission, ‘[Addressing possible gaps in the Racial Equality Directive – Public Consultation](#)’, 17 January 2022.

¹⁹ Belfast (Good Friday) Agreement 1998.

²⁰ Preamble to the Ireland/Northern Ireland Protocol. The underpinning EU law for the rights, safeguards and equality of opportunity protections within scope of Protocol Article 2 include all the obligations the UK EU membership.

- 2.2 Article 2 of the Protocol (Protocol Article 2) requires the UK Government and NI Executive to ensure that there is no diminution of rights, safeguards and equality of opportunity as set out in the relevant chapter of the Belfast (Good Friday) Agreement 1998, as a result of the UK's withdrawal from the EU.
- 2.3 In the rights, safeguards and equality of opportunity chapter of the Belfast (Good Friday) Agreement, the parties affirmed their commitment to "the mutual respect, the civil rights and religious liberties of everyone in the community", including the right to equality of opportunity in all social and economic activity regardless of ethnicity.²¹
- 2.4 This commitment to ensure 'no diminution' is measured by and against the relevant EU standards on 31 December 2020. As such, the UK Government has committed to ensuring that there will be no diminution of protections as were contained in relevant underpinning EU law on this date.²²
- 2.5 Of particular relevance to this consultation, in addition to the UK government's non-diminution obligation, Protocol Article 13(3) provides that "where this Protocol makes reference to a Union act, that reference shall be read as referring to that Union act as amended or replaced". Therefore Protocol Article 2 includes a commitment by the UK Government that NI equality law must 'keep pace' or dynamically align with any EU law developments falling within the six EU Equality Directives listed in Annex 1 to the Protocol after 1 January 2021.²³ This includes the Racial Equality Directive.²⁴ This "keep pace" obligation means that if the minimum

²¹ Belfast (Good Friday) Agreement, 10 April 1998, Part 6 on Rights, Safeguards and Equality of Opportunity – Human Rights. These rights include, in particular: the right of free political thought; the right to freedom and expression of religion; the right to pursue democratically national and political aspirations; the right to seek constitutional change by peaceful and legitimate means; the right to freely choose one's place of residence; the right to equal opportunity in all social and economic activity regardless of class, creed, disability, gender or ethnicity; the right to freedom from sectarian harassment; and the right of women to full and equal political participation. The UK Government has also recognised in the non-exhaustive list of rights: the right of victims to remember as well as to contribute to a changed society; respect, understanding and tolerance in relation to linguistic diversity; and the need to ensure that symbols and emblems are used in a manner which promotes mutual respect rather than division (UK Government, 'UK Government commitment to no-diminution of rights, safeguards and equality of opportunity in Northern Ireland', (NIO, 2020), at para 13).

²² UK Government, 'UK Government commitment to no-diminution of rights, safeguards and equality of opportunity in Northern Ireland', (NIO, 2020), at para 13.

²³ Directive 2000/43/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000; Directive 2000/78/EC, 'EU Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000; Directive 2004/113/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment between Men and Women in the access to and supply of goods and Services', 13 December 2004; Directive 2006/54/EC, 'EU Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation', 5 July 2006; Directive 2010/41/EU, 'EU Parliament and EU Council Directive on the Application of the Principle of Equal Treatment between Men and Women Engaged in an Activity in a Self-employed Capacity', 7 July 2010; Directive 79/7/EEC, 'EU Council Directive on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security', 19 December 1978.

²⁴ Directive 2000/43/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000.

standards in the Annex 1 Directives are amended or replaced by the EU, the UK Government must ensure that domestic legislation in Northern Ireland reflects any enhancements in relevant protections.²⁵

- 2.6 The UK Government has confirmed its commitment to dynamically align with the Annex 1 equality directives to “provide a reassurance that, at the very least, the minimum standard of rights protection required by the listed directives will continue to be relevant in NI” and this will “ensure NI will not fall behind minimum European standards in anti-discrimination law”.²⁶
- 2.7 In line with Article 13(2) of the Protocol, “the provisions of this Protocol referring to Union law or to concepts or provisions thereof shall in their implementation and application be interpreted in conformity with the relevant case law of the Court of Justice of the European Union (CJEU)”. Therefore, the Annex 1 equality directives will continue to be informed by future CJEU rulings and, to the extent that such rulings evolve general principles of EU law, the EU Charter of Fundamental Rights and the relevant EU Treaty provisions, these will continue to have relevance in NI.²⁷
- 2.8 Furthermore, as well as any enhancements to the Annex 1 Directives, the EU should also inform the UK when it adopts a new act that falls within the scope of the Protocol.²⁸ This should be done via the Joint Committee established pursuant to Article 164 of the UK-EU Withdrawal Agreement, which, if requested by either the EU or the UK, can then hold an exchange of views on the implications of the new adopted act for the functioning of the Protocol.²⁹ As soon as reasonably practical after the EU has informed the UK, the Joint Committee will either a) add the adopted act to the relevant Protocol Annex or b) where agreement cannot be reached, examine all further possibilities to maintain the good functioning of this Protocol and take any decision necessary to this effect.³⁰

²⁵ Article 13(3), Ireland/Northern Ireland Protocol to the UK-EU Withdrawal Agreement.

²⁶ NI Office, ‘UK Government Commitment to “No Diminution of Rights, Safeguards and Equality of Opportunity” in Northern Ireland: What does it Mean and How will it be Implemented?’ (NIO, 2020), at para 12.

²⁷ Article 13(2) and 13(3), Ireland/Northern Ireland Protocol to the UK-EU Withdrawal Agreement; *Re Allister* [2021] NIQB 64, para 234.

²⁸ Article 15 of the Protocol provides for the establishment of a joint consultative working group on the implementation of this Protocol, which shall “serve as a forum for the exchange of information and mutual consultation” and which will carry out its functions under the supervision of the Specialised Committee on the Implementation of the Ireland/Northern Ireland Protocols.

²⁹ Article 13(4), Ireland/Northern Ireland Protocol to the UK-EU Withdrawal Agreement.

³⁰ Article 13(4)(a) and (b), Ireland/Northern Ireland Protocol to the UK-EU Withdrawal Agreement.

3.0 Further Elaboration on Part II of the Consultation

- 3.1 Part II of the EU Commission’s consultation on the Racial Equality Directive asked for opinions on further legal protections against racial discrimination in certain situations. These situations included eviction, contact with administration, access to free, cultural and social events, situations involving the police or other control authorities, and the justice system.
- 3.2 The NIHRC notes that under current NI legislation, a number of these situations are already protected. The Race Relations (NI) Order contains provisions protecting against eviction on racial grounds.³¹ Furthermore, the Order provides legal protection against racial discrimination when accessing goods, facilities, or services.³² However, gaps remain in relation to specific situations regarding contact with administration, involving police or other control authorities, and the justice system.³³
- 3.3 **The NIHRC recommends that the Racial Equality Directive be amended to include legal protections against racial discrimination in situations of eviction, contact with administration, access to free, cultural and social events, situations involving the police or other control authorities, and the justice system.**

4.0 Concept of Discrimination

Intersectional and Multiple Discrimination

- 4.1 The NIHRC recognises the EU Commission’s efforts to date in highlighting the importance of both intersectional and multiple discrimination.³⁴ In this context, intersectional discrimination is understood as discrimination “where several grounds operate and interact with each other at the same time in such a way that they are inseparable”.³⁵ Multiple discrimination is understood to be “any combination of discrimination on the grounds of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”³⁶

³¹ Article 22(3), Race Relations (NI) Order 1997.

³² Article 21, Race Relations (NI) Order 1997.

³³ Article 20B, Race Relations (NI) Order 1997.

³⁴ EU Commission, ‘[A Union of Equality: EU Anti-Racism Action Plan 2020-2025](#)’, COM, at 2. See also, commissioned research of the EU Commission: European network of legal experts in gender equality and non-discrimination, ‘[Intersectional discrimination in EU gender equality and non-discrimination law](#)’ EU Commission, May 2016.

³⁵ European Commission, ‘[Tackling Multiple Discrimination: Practices, Policies and Laws](#)’, September 2007, at 17.

³⁶ Ibid, at 9.

- 4.2 The Racial Equality Directive briefly mentions multiple discrimination with respect to women.³⁷ However, in the context of this consultation, the NIHRC believes that there is a need strengthen the requirement to recognise and address both intersectional and multiple discrimination within the Directive.
- 4.3 While the CJEU has acknowledged that discrimination may be based on 'several of the grounds protected under EU law', the Court stopped short of recognising intersectional discrimination in itself as a protected category, since it currently has no legal basis in either the Framework Equality Directive or the Racial Equality Directive.³⁸ Nevertheless in *CHEZ*, the court demonstrated the intersectional potential of the Racial Equality Directive, where it found discrimination on the basis of ethnic origin, socio-economic disadvantage, and location.³⁹
- 4.4 International human rights treaty bodies have raised concerns about the lack of incorporation of multiple and intersectional discrimination in the context of the UK and NI. In 2016, the UN CERD Committee recommended that the UK Government and NI Executive, "ensure that equality legislation...provide effective protection to victims of dual or multiple discrimination".⁴⁰
- 4.5 In 2017, the UN CRPD Committee recommended that the UK Government and NI Executive:

Explicitly incorporate in its national legislation protection from, in particular multiple and intersectional discrimination on the basis of gender, age, race, disability, migrant, refugee and/or other status, and provide appropriate compensation, and redress for victims, and sanctions proportional with the severity of the violation.⁴¹

- 4.6 In 2019, the UN CEDAW Committee recommended that the NI Executive, Review and amend the public sector equality duty in order to

³⁷ Recital 14, Directive 2000/43/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000.

³⁸ *David L. Parris*, C-443/15, 24 November 2016, at para 80.

³⁹ '*CHEZ Razpredelenie Bulgaria*' AD v *Komisia za zashtita ot diskriminatsia*, C-83/14, 16 July 2015.

⁴⁰ CERD/C/GBR/CO/21-23, '*UN CERD Committee Concluding Observations on the Twenty-first to Twenty-third periodic Reports of the UK of Great Britain and NI*', 26 August 2016, at para 8(b).

⁴¹ CRPD/C/GBR/CO/1, '*UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI*', 3 October 2017, at para 19.

address situations of intersectional forms of discrimination, such as discrimination faced by 'Black, Asian and Minority Ethnic' women, older women, women with disabilities, asylum-seeking and refugee women, and lesbian, bisexual, transgender women and intersex persons.⁴²

- 4.7 Current NI legislation does not provide for cases of intersectional discrimination. At present, each ground of discrimination must form its own case, meaning it has to be considered and ruled on separately.⁴³ The Equality Act 2010 which applies in England, Scotland and Wales, contains a limited dual discrimination provision. However, this has not been brought into force in those jurisdictions yet.⁴⁴
- 4.8 The Equality Commission for NI reports evidence of multiple discrimination in NI. Over a five-year period, from 2016-2021, they received 1878 hybrid new enquiries, which raised issues on two or more equality grounds. Of these hybrid enquiries, 439 had a race discrimination element.⁴⁵
- 4.9 The Race Relations (NI) Order 1997 governs discrimination protection on the grounds of race in NI.⁴⁶ The Order was amended in 2003 to reflect the provisions of the EU Racial Equality Directive, in particular the definition of harassment, determining occupational requirements, the burden of proof in proceedings and abolition of statutory provisions which are contrary to the principle of equal treatment.⁴⁷
- 4.10 The NI Executive Office, the devolved government department with overall responsibility for the running of the Executive, published its Racial Equality Strategy 2015-2025 which commits to reviewing the Race Relations (NI) Order. The terms of reference for the review include reference to the UN CERD Committee's recommendation on multiple discrimination.⁴⁸
- 4.11 As of October 2021, the NI Executive Office confirmed in correspondence with the NIHRC that a comparative study of protections offered by the Race Relations (NI) Order with laws in the rest of the UK and Ireland had been examined by the Departmental Solicitor's Office, which, among other

⁴² CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 14 March 2019, at para 15(c).

⁴³ Equality Commission for NI, 'Strengthening Protection against Racial Discrimination: Recommendations for Law Reform', (ECNI, 2014), at 38.

⁴⁴ Section 14, Equality Act 2010.

⁴⁵ Correspondence between NIHRC and ECNI, 4 February 2022.

⁴⁶ Race Relations (NI) Order 1997.

⁴⁷ Race Relations Order (Amendment) Regulations (NI) 2003.

⁴⁸ Eoin Mullan, Sinead Brown and Paul Roddy, 'Racial Equality Legislation Review' (TEO, 2018), at 7-8.

functions, advises on the powers and duties of all NI government departments and the drafting of statutory instruments.⁴⁹ The NIHRC understands that this study then formed part of the engagement with stakeholders and other administrations.⁵⁰

- 4.12 The NIHRC notes with concern that the consultation on legislation reform is unable to proceed due to the absence of the Executive.⁵¹ While the Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022 will allow the NI Assembly to continue for at least six months,⁵² allowing certain draft legislation to progress, the decision-making power of the NI Executive will remain curtailed. The NI Assembly election will take place on 5 May 2022.⁵³
- 4.13 The issue of intersectionality was considered by the Independent Review of Hate Crime Legislation in NI, which recommended that any new legislation should provide appropriate recognition of the importance of intersectionality and be reflected in the drafting of the statutory aggravations to existing offences.⁵⁴ The Department of Justice's response agreed that all protected groups should be treated equally and intersectionality between these groups should be recognised in legislation.⁵⁵ The Department's recent launch of a public consultation on Hate Crime legislation is currently running until the end of March 2022 and includes consideration of the importance of capturing the intersectional nature of hate crimes.⁵⁶
- 4.14 Given the inadequacies and delays described above at a domestic level, this review of the current gaps in the Racial Equality Directive provides a welcome opportunity to implement protections against intersectional and multiple discrimination in NI. Under Protocol Article 2, NI equality law must keep pace with any changes to the Directive.⁵⁷ As such, if any minimum standards on intersectional or multiple discrimination in the Directive are

⁴⁹ Department of Finance NI, '[Departmental Solicitor's Office](#)'.

⁵⁰ Email correspondence from The Executive Office to the NIHRC, October 2021.

⁵¹ The Executive Office meeting of the Racial Equality Subgroup, 16 February 2022.

⁵² Jayne McCormack, 'NI political crisis: MPs pass bill to help prevent future Stormont collapse' BBC News NI, 8 February 2022

⁵³ The Northern Ireland (Ministers, Elections and Petitions of Concern) Bill contains a provision stating that the Secretary of State cannot call an election for six weeks after the resignation of the First or Deputy First Minister. See also: Christopher Leebody, 'Northern Ireland Secretary Brandon Lewis rules out early Stormont election' Belfast Telegraph, 8 February 2022

⁵⁴ Independent Hate Crime Review Team, 'Hate Crime Legislation in NI Independent Review', (DoJ 2020), Recommendation 11.

⁵⁵ Ibid, at 5.

⁵⁶ Department of Justice, '[Consultation on Hate Crime Legislation in Northern Ireland](#)', (31 January 2022).

⁵⁷ Article 2(1) and Article 13(2), Protocol on Ireland/NI to the Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community 2020.

updated or replaced, the UK Government must ensure that domestic legislation in NI reflects these substantive enhancements in relevant protections.

- 4.15 **The NIHRC recommends there be stronger recognition of multiple discrimination and the provision of a mechanism for individuals to bring intersectional claims within the Racial Equality Directive, as a minimum standard.**

5.0 Robust Equality Data Collection and Monitoring

- 5.1 Accurate and accessible equality data are essential for evaluating the effectiveness of equality legislation, demonstrating the existence of discrimination and structural inequality, and contributing to evidence-based decision-making.⁵⁸ The NIHRC recognises the best practice efforts by the EU and the EU Commission, including the work of the Equality Data Subgroup of the EU High-Level Group on Non-Discrimination, Equality and Diversity.⁵⁹
- 5.2 However, aside from the requirement of equality bodies to conduct independent surveys, and publish reports,⁶⁰ there is currently no general requirement under the Racial Equality Directive for Member States to establish robust systems to collect, analyse or monitor disaggregated equality data or to report on these findings.⁶¹ While the Directive requires that Member States disseminate relevant information about the Directive to those concerned,⁶² and communicate information on the application of the Directive to the EU Commission,⁶³ it currently does not stipulate the level of depth necessary for a report.

⁵⁸ Fundamental Rights Agency, '[Equality in the EU: 20 Years on from the initial implementation of the Equality Directives](#)', Vienna 30 April 2019; Fundamental Rights Agency, '[The Racial Equality Directive: Applications and Challenges](#)', Vienna, 2012.

⁵⁹ Fundamental Rights Agency, '[Subgroup on Equality Data](#)', February 2019.

⁶⁰ Article 13(2), Directive 2000/43/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000.

⁶¹ While the Directive requires that Member States disseminate relevant information about the Directive to those concerned (Article 10) and communicate information on the application of the Directive to the Commission (Article 17(1)), it currently does not stipulate the level of depth necessary for the report.

⁶² Article 10, Directive 2000/43/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000.

⁶³ Article 17(1), Directive 2000/43/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000.

- 5.3 As the EU Commission's report on the application of the Racial Equality Directive details, the lack of equality data remains a concern across Member States, with particular room for improvement in relation to:
- the regularity and comparability of the data, the collection of data on complaints and on cases of discrimination (including on sanctions issued), the gathering of data disaggregated by racial or ethnic origin, the collection of data by private actors (including employers), and as regards cooperation among all those concerned.⁶⁴
- 5.4 In the context of NI in particular, the lack of sufficient equality data and monitoring has been noted by other international bodies. In 2016, the UN CERD Committee highlighted "the importance of collecting accurate and updated disaggregated data to develop effective policies to combat racial discrimination and to monitor the impact of measures taken".⁶⁵ The Committee recommended that the UK Government and NI Executive, "systematically collect and publish disaggregated data on the enjoyment of rights by members of ethnic minorities in all fields of life".⁶⁶
- 5.5 In 2016, the Advisory Committee on the Framework Convention for the Protection of National Minorities, specifically recommended that NI authorities prioritise "integrating the collection of disaggregated equality data on the situation of persons belonging to national and ethnic minorities into the practices of all relevant departments and agencies."⁶⁷
- 5.6 In 2018, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E Tendayi Achiume, visited NI. During her visit, the UN Special Rapporteur noted inconsistency in the data collected by government departments and the limitations in its scope, including a failure to account for the racial impact of immigration and counter terrorism law and policy.⁶⁸

⁶⁴ European Commission, Report on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('the Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('the Employment Equality Directive'), COM(2021) 139 final, Brussels 19 April 2021, at 16.

⁶⁵ CERD/C.GBR/CO/21-23 'UN CERD Committee Concluding observations on the twenty-first to twenty-third periodic reports of United Kingdom of Great Britain and Northern Ireland' 26 August 2016 at para14.

⁶⁶ Ibid.

⁶⁷ ACFC/OP/IV(2016)005 'Advisory Committee on the Framework Convention for the Protection of National Minorities: Fourth Opinion on the United Kingdom adopted on 25 May 2016' 27 February 2017, at para 50.

⁶⁸ A/HRC/41/54/Add.2, 'Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance: Visit to the United Kingdom of Great Britain and Northern Ireland', 27 May 2019, at para 74(f).

- 5.7 In 2021, the UK House of Commons NI Affairs Committee launched an inquiry into the experience of minority ethnic and migrant people in NI. The aim of the inquiry was to understand the challenges faced by minority ethnic and migrant people and potential improvements that the UK government could make.⁶⁹ In its submission to the inquiry, the NIHRC highlighted the need for effective data collection on racial equality and hate crime.⁷⁰ The Committee's report, published in March 2022, reiterated this concern and the Committee has urged the NI Executive Office to "implement wider monitoring as a matter of priority" once a new Executive is formed.⁷¹
- 5.8 In addition, the Equality Commission for NI has also called for robust equality data to ensure compliance with the equality and good relations duties established by the Northern Ireland Act 1998. In 2020, the Equality Commission for NI highlighted the lack of certain equality data in NI during the Covid-19 pandemic as a barrier to understanding the emergence or exacerbation of inequalities.⁷²
- 5.9 The NI Executive Office Racial Equality Strategy 2015-2025 commits to "examine where ethnic monitoring should be introduced and consult on proposals for implementation". In 2020, a study to determine the feasibility of introducing ethnic monitoring to the public sector in NI was completed, recommending that the Race Relations (NI) Order 1997 is amended to impose a duty on specified public authorities to collect data on racial equality and set racial equality objectives.⁷³
- 5.10 The NIHRC understands that while the proposals set out in the report have not yet been formally considered by Ministers, an interdepartmental working group, is being established, which will finalise the Guidance on Ethnic Monitoring.⁷⁴ The NIHRC welcomes this renewed commitment by the NI Executive Office; however, the delay in reaching this point is disappointing and the lack of reliable and consistent data collection across NI government departments remains a common theme. An obligation to undertake data collection and monitoring at an EU level would alleviate these concerns.

⁶⁹ NI Affairs Committee, '[Experience of minority ethnic and migrant people in Northern Ireland inquiry launched](#)', 19 April 2021.

⁷⁰ NIHRC, 'Submission to the NI Affairs Committee Inquiry into the experience of minority ethnic and migrant people in Northern Ireland', May 2021, at 14.

⁷¹ NI Affairs Committee, '[The experiences of minority ethnic and migrant people in NI](#)', 9 March 2022, at 8.

⁷² ECNI, '[Briefing note on the need for Equality Data](#)', November 2020.

⁷³ This would be analogous to sections 149 and 153 of the UK Equality Act 2010, which does not currently extend to NI.

⁷⁴ NIHRC meeting with The Executive Office, 1 February 2022.

- 5.11 **The NIHRC recommends that the Racial Equality Directive be amended to make mandatory a duty on all public authorities to collect, analyse and monitor equality data.**

6.0 Scope of Discrimination

Sectarianism

- 6.1 In its current form, the Racial Equality Directive does not explicitly include sectarianism under the umbrella of racial discrimination.⁷⁵ This represents a significant drawback in the NI context. NI continues to suffer from sectarian violence and discrimination, while sectarianism is still treated as something other than a particular form of racism. As a consequence, it is often (and problematically) placed outside the well-developed framework of protections against other forms of discrimination.
- 6.2 In 2020/21, 934 sectarian incidents and 674 sectarian crimes were recorded in NI.⁷⁶ This represents an increase from 888 recorded sectarian incidents and 639 recorded sectarian crimes in 2019/2020.⁷⁷ The level of sectarian incidents in 2020/21 represents the highest 12-month period recorded since the period January 2016 to December 2016.⁷⁸
- 6.3 Despite the above statistics, while there is a specific category to record sectarian incidents, sectarianism is not clearly defined in NI law. The Police Service of NI describes sectarian incidents as those motivated by:
- bigoted dislike or hatred of members of a different religious or political group. It is broadly accepted that within the Northern Ireland context an individual or group must be perceived to be Catholic or Protestant, Nationalist or Unionist, or Loyalist or Republican. However, sectarianism can also relate to other religious denominations.⁷⁹
- 6.4 Furthermore, sectarian offences are not included in the Criminal Justice (No 2) (NI) Order (2004) as attracting an enhanced sentence as

⁷⁵ Article 3(2), Directive 2000/43/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000.

⁷⁶ Police Service of NI, 'Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland: Update to 30 September 2021' (PSNI, 2021).

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ PSNI, '[Sectarian Incidents and Crimes Recorded by the Police in Northern Ireland 2005/06 to 2020/21](#)', (PSNI, 2021).

'aggravated by hostility'. An offence that has a sectarian motivation must therefore fall under race or religion, in order for the courts to be able to impose an enhanced sentence.

6.5 In its submission to the Independent Hate Crime Review Consultation for NI in 2020, the NIHRC recommended that any new hate crime law recognises the specific harm of sectarianism as particularly characteristic of hate crime under the umbrella of racism and racial discrimination.⁸⁰ The subsequent Hate Crime Review report recommended that a definition originating from a Scottish review on defining sectarianism in 2018 should be applied in NI. This definition demonstrates the intersectionality of sectarianism, and includes hostility based on perceived:

- a) Roman Catholic or Protestant denomination affiliation,
- b) British or Irish citizenship, nationality or national origins, or
- c) a combination of a and b.⁸¹

6.6 The NI Department of Justice has agreed in principle that there should be a definition in legislation and that use of the Scots law definition is worth monitoring closely.⁸² Public consultation on hate crime legislation and the definition of sectarianism is proceeding.⁸³ In response to that consultation the NIHRC observed the opportunity to future-proof the legislation to accommodate sectarianism if evidence emerges to show this is required.⁸⁴

6.7 At an international standards level, the NIHRC has previously raised concerns to the UN CERD Committee that the characterisation of the divide between the two largest ethnic groups in NI, which is often portrayed on the basis of religion (Protestant/Catholic), or political opinion (British Unionist/Irish Nationalist), also manifests in nationality (British/Irish). This was accepted by the UK Government and Government of Ireland in the Belfast (Good Friday) Agreement, with the adoption of a pluralist approach to British and Irish nationality, both in terms of citizenship and national identity. There are therefore clear correlations and intersectionality between these indicators of ethnicity (religious and political affiliation, national identity and citizenship) in relation to sectarianism in NI. This is

⁸⁰ NIHRC, 'Submission to Hate Crime Review Consultation', (NIHRC, 2020), at para 6.44.

⁸¹ Scottish Government, 'Final Report of the Working Group on Defining Sectarianism in Scots Law' (Scottish Government, 2018).

⁸² Department of Justice, 'Review of Hate Crime Legislation in Northern Ireland - Departmental Response', (DoJ, 2021), at 6-7.

⁸³ Department of Justice, 'Consultation on Hate Crime Legislation in Northern Ireland', (DoJ, 2022).

⁸⁴ NIHRC, 'Response to Public Consultation on Improving the Effectiveness of Hate Crime Legislation in NI' (NIHRC, 2022), at paras 3.1-3.6.

not to say sectarianism should not continue to be individually named nor, like any ethnic divide, that the two largest communities are rigid and homogenous. The location of sectarianism outside of the Convention limits protection against discrimination and obligations on the state to tackle sectarianism along with other forms of racism.⁸⁵

- 6.8 In its 2016 report, the UN CERD Committee reiterated its concern that measures to tackle racism and sectarianism in NI are kept outside the framework of protections against discrimination. It further invited the NI Executive to consider the standards, duties and actions prescribed by the Convention and the Durban Declaration and Programme of Action on intersectionality between ethnic origin, religion and other forms of discrimination, to underpin any measures to combat racism and sectarianism.⁸⁶
- 6.9 The Durban Declaration and Programme of Action recognises that:
racism, racial discrimination, xenophobia and related intolerance occur on the grounds of race, colour, descent or national or ethnic origin and that victims can suffer multiple of aggravated forms of discrimination based on other grounds.⁸⁷
- 6.10 In 2017, the Advisory Committee on the Framework Convention for the Protection of National Minorities also noted that treating sectarianism as a distinct issue rather than a form of racism is problematic as it then falls outside the scope of accepted anti-discrimination and human rights protection standards, adding that “the fact that there is no legal definition of sectarianism and that it is taken rather to indicate discriminatory attitudes and opposition between the two main political/religious communities has insulated the terms from the broader equality framework”.⁸⁸ The Advisory Committee found the lack of aggravated sentencing for sectarianism presented practical challenges and, “though sectarian crimes may be prosecuted through the notion of race, the high

⁸⁵ NIHRC, '[Submission to the Committee for the Elimination of all Forms of Racial Discrimination](#)', January 2011, at para 7.

⁸⁶ CERD/C/GBR/CO/21-23, 'UN Committee on the Elimination of Racial Discrimination Concluding Observations on the Twenty-first to Twenty-third Periodic Reports of UK of Great Britain and NI', 26 August 2016, at paras 36 and 37.

⁸⁷ United Nations, 'Durban Declaration and Programme of Action, adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and related Intolerance', 8 September 2001, at para 2.

⁸⁸ ACFC/OP/IV(2016)005, 'Advisory Committee on the Framework Convention for the Protection of National Minorities Fourth Opinion on the UK', 27 February 2017, at para 86.

threshold for evidence generally prevents this happening.”⁸⁹ Consequently, sectarian crime goes largely unreported.⁹⁰

- 6.11 The NIHRC believes that a route towards greater protection against sectarianism and acknowledgement of the complex interplay between ethnicity, nationality and sectarianism in NI lies in the recognition of sectarianism as a type of racial discrimination within the Racial Equality Directive.
- 6.12 This would allow for greater alignment with international standards and guidance on protecting against racial discrimination. In particular, the UN CERD definition incorporates “race, colour, descent, or national or ethnic origin.”⁹¹ Furthermore, the European Commission Against Racism and Intolerance further incorporates “language”, “religion” and “nationality” as potential grounds for discrimination,⁹² and expressly recognises nationality as an integral part of these standards, in addition to national origin.⁹³
- 6.13 **In line with UN and Council of Europe standards and recommendations the NIHRC recommends that the Racial Equality Directive be amended to include a recognition of sectarianism within the framing of racial discrimination.**

Nationality

- 6.14 Currently the Racial Equality Directive explicitly excludes:
- difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.⁹⁴
- 6.15 Therefore, while persons under immigration control are within the personal scope of the Directive, discrimination on the basis of nationality and the terms of their entry and residence are specifically excluded as grounds for

⁸⁹ Ibid, para 87.

⁹⁰ Ibid, para 86.

⁹¹ Article 1, UN Convention on the Elimination of All Forms of Racial Discrimination 1965.

⁹² European Commission against Racism and Intolerance, ‘Policy Recommendation No 7: National Legislation to Combat Racism and Racial Discrimination’, 7 December 2017, at para 1.

⁹³ European Commission against Racism and Intolerance, ‘Explanatory Memorandum to ECRI Policy Recommendation No 7: National Legislation to Combat Racism and Racial Discrimination’, 7 December 2017, at para 6.

⁹⁴ Recital 13 and Article 3(2) of the Directive; See also: *Jyske Finnans* ruling.

discrimination. Accordingly, this restriction represents a “significant lacuna” in rights protection for people born outside of EU/EEA territory.⁹⁵

- 6.17 The NIHRC notes that CJEU case law currently demonstrates divergent and contested approaches to the issue of nationality as grounds for racial discrimination. While it has found that racial or ethnic origin can be determined on the basis of diverse characteristics, including language, religion, origin, skin colour and nationality,⁹⁶ the court has also stressed that difference of treatment solely on the basis of a person’s country of birth is insufficient to support a claim of discrimination based on “ethnic origin”.⁹⁷ The latter approach has recently been upheld by the Court.⁹⁸
- 6.18 In the specific NI context, the Race Relations (NI) Order (1997) expressly includes colour, nationality, and ethnic or national origins as protected grounds.⁹⁹ However, immigration functions are explicitly excluded from the Order.¹⁰⁰
- 6.19 The NIHRC recognises that including nationality as a protected characteristic within the Racial Equality Directive touches upon the limits of EU competency and understands that any changes to the Directive on these grounds will have wide-ranging consequences. Nevertheless, given the inconsistencies of protection for non-EU/EEA nationals, migrants and stateless persons in terms of racial discrimination, and the need for greater alignment with international standards (see paragraph 6.12 above), it is essential to give further consideration to the inclusion of nationality within the material scope of the Directive.
- 6.20 **The NIHRC recommends that the EU Commission give further consideration to whether nationality should be a protected characteristic under the Racial Equality Directive, to maximise protection for every individual within each jurisdiction bound by the Directive.**

Data-driven Discrimination

- 6.21 Data-driven and algorithmic discrimination pose an increasing risk to

⁹⁵ Jan Wouters and Michal Ovádek, *The European Union and Human Rights: Analysis, Cases and Materials* (2021, Oxford University Press), at 433.

⁹⁶ ‘CHEZ Razpredelenie Bulgaria’ AD v Komisia za zashtita ot diskriminatsia, C-83/14, 16 July 2015, at para 46.

⁹⁷ Jyske Finans A/S v Ligebehandlingsnævnet, acting on behalf of Ismar Huskic, C-668/15, 6 April 2015, at para 18.

⁹⁸ Heiko Jonny Maniero v Studienstiftung des deutschen Volkes eV, C-457/17, 15 November 2018.

⁹⁹ Article 3(1) and Article 5(1), Race Relations (NI) Order (1997).

¹⁰⁰ Article 20B(4) and Article 20C, Race Relations (NI) Order (1997).

equality.¹⁰¹ Algorithms may have inbuilt biases that may be hard to detect and correct. This is particularly the case when individual variables in big data algorithms serve as 'proxies' for protected categories such as race.¹⁰²

- 6.22 Artificial Intelligence (AI) systems are now being used across many public services. This was recently highlighted by the former UN Special Rapporteur on extreme poverty and human rights, Philip Alston, who stressed his concerns that the use of digital technology in the welfare state disadvantages ethnic minority groups in the UK, after his visit in 2018.¹⁰³
- 6.23 In his 2019 report on the digital welfare state, Alston concluded to that automated systems were increasingly being used to, "automate, predict, identify, surveil, detect, target and punish".¹⁰⁴ Further, he noted that companies that were providing the public sector with these digital systems operated in "an almost human-rights free zone", with particular concern that the private sector was taking a leading role in creating the digital welfare state.¹⁰⁵
- 6.24 In a human rights analysis of racial discrimination and emerging digital technologies, the Special Rapporteur on contemporary forms of racism, E Tendayi Achiume, revealed that "emerging digital technologies exacerbate and compound existing inequities, many of which exist along racial, ethnic and national origin grounds".¹⁰⁶ For example, during the Covid-19 pandemic, the report identified, "disparate effects of the pandemic on marginalized racial and ethnic groups, either because these groups are excluded from the benefits of the new digital technology or because they are disproportionately affected by technology that rank and categorize minorities"¹⁰⁷
- 6.25 To give an example in the context of NI and the UK, the EU Settlement Scheme was set up to allow EU, EEA and Swiss citizens to continue living in the UK after the UK's exit from the European Union.¹⁰⁸ Applicants could

¹⁰¹ Raphaële Xenidis, 'Turning EU equality law to algorithmic discrimination: Three pathways to resilience', (2020) 27(6) *Maastricht Journal of European and Comparative Law*, 736-758.

¹⁰² Council of Europe, '[Algorithms and Human Rights](#)', DGI(2017)12, March 2018.

¹⁰³ A/HRC/41/39/Add.1, '[Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston on his visit to the United Kingdom of Great Britain and Northern Ireland, 5-16 November, 2018](#)', 23 April 2019, at 82.

¹⁰⁴ A/74/493, '[Report of the Special Rapporteur on extreme poverty and human rights on digital technology, social protection and human rights](#)', October 2019, at para 3.

¹⁰⁵ *Ibid*, at para 35.

¹⁰⁶ A/HRC/44/57, 'Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on Racial discrimination and emerging digital technologies: a human rights analysis', 18 June 2020, at para 4.

¹⁰⁷ *Ibid*, at para 5.

¹⁰⁸ Home Office, '[Apply to the EU Settlement Scheme \(settled and pre-settled status\)](#)'.

apply via an app for either of two immigration statuses; indefinite leave to remain (settled status) and limited leave to remain (pre-settled status). Although this was an initial clearing process, it is not yet known the full impact on vulnerable groups who were not able to provide the necessary proofs to fulfil the residency requirement digitally. The Guardian reported difficulties users had in getting their documents recognised by the app.¹⁰⁹ Further, there is the general problem of algorithmic bias and as the automated data checks are not retained by the Home Office, decisions can be difficult to understand let alone challenge.¹¹⁰

6.27 In August 2020, after a legal challenge brought by the Joint Council for the Welfare of Immigrants, the UK Home Office suspended the use of its 'visa streaming' algorithm which graded visa applications and discriminated against certain nationalities by grading them at a higher risk.¹¹¹ Despite this, there was no disclosure about what factors the algorithm was using to grade applications. This general opacity and lack of transparency continues to be an area of concern to the NIHRC as applicants are not able to obtain proper reasons for any refusal decision.

6.28 The NIHRC welcomes the EU Commission's work on algorithmic discrimination to date.¹¹² Nevertheless, while the EU Commission has recently stated that discrimination resulting from the use of artificial intelligence falls within the scope of Article 3 of the Racial Equality Directive, this is not explicitly referenced in the Directive itself.¹¹³ As research commissioned by the EU Commission has previously pointed out, "certainty...in the material scope of the Directive would be welcome..." in this regard.¹¹⁴

6.29 The NIHRC recommends that the Racial Equality Directive be amended to recognise and include discrimination arising from the use of algorithmic and data-driven technology within Article 3 (Scope).

¹⁰⁹ Amelia Gentleman, '[I've been here 50 years: the EU Citizens struggling for the right to stay in Britain](#)', *The Guardian*, 8 October 2019.

¹¹⁰ Public Law Project, '[Digital Immigration Status: A Monitoring Framework](#)', September 2020.

¹¹¹ The Joint Council for the Welfare of Immigrants, '[Press Release: We won! Home Office to stop using racist visa algorithm](#)'.

¹¹² European Commission, 'White Paper: On Artificial Intelligence – A European approach to excellence and trust.' COM(2020) 65 final. Brussels 19 February 2020

¹¹³ European Commission, 'Report on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('the Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('the Employment Equality Directive')', COM(2021) 139 final, Brussels 19 April 2021, at 18.

¹¹⁴ European Network of Legal Experts in Gender Equality and Non-Discrimination, '[Algorithmic discrimination in Europe: Challenges and opportunities for gender equality and non-discrimination law](#).' *European Commission*, 2020, at 60.

7.0 Compliance with the Directive

Harmonisation of Equality Legislation

- 7.1 In NI, discrimination is prohibited by a complex framework of legislation. Unlike other parts of the UK (which fall under the Equality Act 2010), there is currently no single legislative instrument to consolidate, clarify and enhance existing equality protections in NI.
- 7.2 In 2016, the UN ICESCR Committee stated its regret that no action had been taken on its earlier recommendation to extend “comprehensive anti-discrimination legislation” to NI.¹¹⁵ The European Commission against Racism and Intolerance also recommended that the NI Executive “consolidate equality legislation into a single comprehensive equality act, taking inspiration from the Equality Act 2010, and taking account of the recommendations of the ECRI”.¹¹⁶
- 7.3 In 2016, the Advisory Committee on the Framework Convention for the Protection of National Minorities stated that the current legislative framework in NI provided for “less protection against discrimination on grounds of colour and nationality than on grounds of race, ethnic or national origins may affect person belonging to national minorities in particular”.¹¹⁷ The Advisory Committee noted that the political climate prevented progress on unified equality legislation or reform of the current framework to close existing gaps.¹¹⁸ It further recommended that the NI Assembly should adopt robust and comprehensive single equality legislation or otherwise strengthen racial equality in NI, and harmonise protection across the UK”.¹¹⁹
- 7.4 Despite these recommendations, the NIHRC notes with concern that there have been few developments in this regard. In the absence of progress, NIHRC have reached out to the NI Executive Office. In this correspondence, the Executive Office advised that in the absence of agreement on a single Equality Bill, it is satisfied that the current equality

¹¹⁵ E/C.12/GBR/CO/5 'UN ICESCR Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI' 12 June 2009, at para 16.

¹¹⁶ CRI(2016)38, 'European Commission on Racial Intolerance Report on the UK (Fifth Monitoring Cycle)' (ECRI, 2016), at para 22.

¹¹⁷ ACFC/OP/IV(2016)005 'Advisory Committee on the Framework Convention for the Protection of National Minorities: Fourth Opinion on the United Kingdom adopted on 25 May 2016' 27 February 2017, at para 27.

¹¹⁸ Ibid.

¹¹⁹ ACFC/OP/IV(2016)005 'Advisory Committee on the Framework Convention for the Protection of National Minorities: Fourth Opinion on the United Kingdom adopted on 25 May 2016' 27 February 2017, at para 33.

framework protects against discrimination on a range of grounds, albeit with some exceptions.¹²⁰

- 7.5 The NIHRC recommends that the Racial Equality Directive be amended to include a requirement that all jurisdictions to which the Directive applies take steps to strengthen, simplify and harmonise anti-discrimination protections across all protected categories.**
- 7.6 The NIHRC recommends that the Racial Equality Directive be amended to include a specific acknowledgement of the significance of Protocol Article 2 and the keep pace obligations for racial equality in NI.**

Recognition of racist hate crime and legislative harmonisation

- 7.7 Hate crime is a severe expression of discrimination. At present, no specific offence of hate crime exists in NI. The NIHRC welcomes the work done by the EU Commission in this area so far, including the recent proposal to extend the list of EU crimes to hate crime.¹²¹ The NIHRC proposes that a recognition of racist hate crime in the Racial Equality Directive may also provide a more consistent approach to tackling this form of discrimination across Member States, and would provide a route for enhanced protections in NI equality law, due to the 'keep pace' obligations set out under Protocol Article 2.
- 7.8 Racist hate crime is a growing concern in NI. In 2020/21, there were 2,493 recorded incidents of hate and 1,757 recorded crimes.¹²² Incidents and crimes with a racist motivation showed the largest overall increase (353 incidents and 276 crimes).¹²³
- 7.9 International standards bodies have also registered the increasing need for racist hate crime protection in NI. In 2016, the UN CERD Committee recommended that the UK Government and NI Executive "investigate all reported acts of racist hate crimes... and provide effective remedies to

¹²⁰ Email correspondence from the Executive Office to the NI Human Rights Commission, 29 July 2020.

¹²¹ EU Commission, '[Hate Speech and Hate Crime – inclusion on list of EU Crimes](#)', 21 February 2021.

¹²² Police Service of NI, 'Incidents and Crimes with a Hate Motivation Recorded by the Policy in Northern Ireland: Update to 30 September 2021, (PSNI, 2021).

¹²³ Ibid.

victims".¹²⁴ In addition, the UK Government and NI Executive should "adopt concrete measures, in consultation with affected groups, to increase the reporting of racist hate crimes" as well as adopting measures to "combat racist hate speech and xenophobic political discourse, including on the Internet".¹²⁵ In 2019, the UN CAT Committee recommended that the UK Government and NI Executive "strengthen its efforts to investigate alleged hate crimes and prosecute perpetrators, including by improving hate crimes training for the police and improving their initial handling of hate crimes reports."¹²⁶

- 7.10 As mentioned above in paragraph 6.5, the Independent Hate Crime Review Team undertook a public consultation on reviewing hate crime legislation in NI.¹²⁷ Recommendations from this report included, amongst other issues, a clearer definition of what constituted hate crime, setting up a statutory restorative justice framework, and the consolidation of hate crime law into a singular piece of legislation.
- 7.11 In its response to the Hate Crime Review, the Department of Justice indicated that no recommendations had been wholly rejected at this stage.¹²⁸ The Department also initiated a public consultation (closing March 2022) for a consolidated Hate Crime Bill in the next NI Assembly mandate.¹²⁹
- 7.12 In its 2022 report on the experiences of ethnic minority and migrant experiences, the NI Affairs Committee also highlighted that NI law continues to lag behind the rest of the UK.¹³⁰ It recommended that in the absence of a functioning NI Executive, and the need to bring NI law up to speed as quickly as possible, Westminster should deliver on the consolidated legislation.
- 7.13 The NIHRC welcomes the NI Executive's commitment to addressing hate crimes, noting that addressing hate crime is a priority area in the Programme for Government.¹³¹ However, this commitment remains uncertain without a functioning Executive. A harmonised approach to hate

¹²⁴ CERD/C/GBR/CO/21-23, 'UN CERD Committee Concluding Observations on the Twenty-first to Twenty-third periodic Reports of the UK of Great Britain and NI', 26 August 2016, at para 16 (b).

¹²⁵ Ibid, at paras 16(c) and (d).

¹²⁶ CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and NI', 7 June 2019, at para 63.

¹²⁷ Independent Hate Crime Review Team, 'Hate Crime Legislation in NI: An Independent Review - Consultation Paper' (IHCRT, 2020).

¹²⁸ Department of Justice, 'Review of Hate Crime Legislation in Northern Ireland-Departmental Response', July 2021, at 3.

¹²⁹ Department of Justice, 'Consultation on Hate Crime Legislation in Northern Ireland', (31 January 2022)

¹³⁰ NI Affairs Committee, 'The experiences of minority ethnic and migrant people in NI', 9 March 2022, at 9.

¹³¹ NI Executive, 'Programme for Government: draft Outcomes Framework', 2021, at 26.

crime legislation and an obligation for Member States to tackle racist hate crime within the Racial Equality Directive would therefore ensure that this remains a key priority.

- 7.14 **The NIHRC recommends that the Racial Equality Directive be amended to require jurisdictions that are bound by the Directive to confront racial hate crime.**

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