

Submission by NIHRC to the UN Human Rights Council's Universal Periodic Review of the UK

1. The NIHRC submission is structured in line with guidelines for relevant stakeholders.

Constitutional framework for implementation (2nd cycle:110.32,110.44)*

2. The Belfast (Good Friday) Agreement mandated the NIHRC to consult and advise on a Bill of Rights for Northern Ireland, which it did in 2008.¹ Whilst there is considerable support within civil society for a NI Bill of Rights there is a lack of political consensus around a NI Bill of Rights.² Several UN bodies have encouraged dialogue amongst NI political parties to “expedite the adoption” of a NI Bill of Rights.³ The NIHRC notes that responsibility for implementing a NI Bill of Rights remains with the UK Government.

3. The UK Government has set out plans to repeal the Human Rights Act 1998 and replace it with a British Bill of Rights.⁴ The NIHRC opposes any reduction in the current legal protections of human rights in the UK.

Treaty ratification and interpretation (1st cycle:12,15,21,22,23,24,26; 2nd cycle: 110.1,110.4,110.5,110.6,110.8,110.10,110.11,110.12,110.14,110.15,110.16,110.17,110.18,110.20,110.21,110.22,110.23,110.24,110.26,110.30,110.31,110.34,110.32,110.39,110.103)

4. The NIHRC is concerned that the continuing reservations to ICESCR mean that the Convention's social, economic and cultural rights continue to be regarded as largely non-justiciable. The NIHRC believes the UK should establish a National Action Plan on human rights, with a focus on the implementation of the ICESCR.

5. The NIHRC recommends that the UK sign and ratify the International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of all Persons from Enforced Disappearance.⁵

6. The NIHRC recommends that the UK remove its interpretative declaration to the OP-CRC-AC, Article 1. The NIHRC believes that children under 18 should not take direct part in hostilities under any circumstances.⁶

7. The NIHRC recommends that the UK remove its interpretative declaration to the CERD, Article 4.⁷ The NIHRC believes this inhibits clarity as to the types of prohibited speech.

8. The NIHRC welcomes the removal of the reservation to CRPD, Article 12(4)⁸ and notes continuing reservations to Articles 24(2)(a) and (b)⁹ and Article 27.¹⁰

* 1st cycle recommendations as numbered in UN Doc. A/HRC/8/25, ‘Universal Periodic Review, Report of the Working Group on the Universal Periodic Review of the United Kingdom’ (23 May 2008). 2nd cycle recommendations as numbered in UN Doc. A/HRC/21/9, ‘Report of the Working Group on the Universal Periodic Review: United Kingdom’ (6 July 2012). Solid underlined numbers denote the recommendations accepted by the UK. Partially underlined numbers denote the recommendations accepted in part by the UK.

9. It remains the case that the UK does not accept the right of individual petition concerning ICCPR, ICESCR, CAT,¹¹ CERD¹² and most recently CRC. The NIHRC urges the UK to ratify the OP-ICCPR, OP-ICESCR and OP-CRC-COM, and issue the required declarations under Article 22 of CAT and Article 14 of CERD. The NIHRC further recommends that the UK commit to raising awareness of the availability of the right of individual petition for nationals under OP-CEDAW¹³ and OP-CRPD.¹⁴

National human rights institutions (2nd cycle:110.36,110.37)

10. The NIHRC is concerned at the reduction in its cash budget from £1,702,000 in 2009/10 to £1,149,000 in 2016/17, with an annual decrease by £25,000 each year until 2019-20.¹⁵ The UN Human Rights Committee has recommended that budget reduction should not inhibit the NIHRC from carrying out all of its current functions independently of Government.¹⁶ Where the reduced budget impacts on the discharge of its functions, the NIHRC will immediately bring this to the attention of the Westminster Parliament.

Co-operation with treaty bodies (2nd cycle:110.46)

11. The NIHRC is concerned at the NI Executive's lack of engagement with treaty bodies on a number of occasions, for example the non-participation in the examination process for ICESCR in 2009 and 2016.¹⁷ It also failed to engage with the 2nd cycle of the Universal Periodic Review in 2012.

Transitional justice (1st cycle:12)

12. On 23 December 2014 the Stormont House Agreement was reached.¹⁸ The Agreement proposed, inter alia, the establishment of a single independent investigatory body, the Historical Investigations Unit (HIU), to carry out investigations into over 1200 conflict related deaths. The UK Government has indicated that an additional £150 million of funding will be provided to fund the HIU and other bodies.¹⁹

13. Political agreement around the establishment of the HIU and other institutions envisaged by the Stormont House Agreement has not been reached.²⁰ As reported by the Committee of Ministers of the Council of Europe 'the major obstacle is the proposed national security veto on disclosure of information to the victim's families at the conclusion of an HIU investigation'.²¹ Some 21 months after the Stormont House Agreement was reached a plan for implementation of mechanisms relating to the investigation of conflict related deaths is not in place. In November 2015 the United Nations Special Rapporteur on transitional justice visited NI and expressed concern that: "almost twenty years since the signature of the Belfast Agreement, efforts to deal with the past in NI have not been comprehensive in any of the four pillars of a transitional justice policy".²² In January 2016 the Council of Europe Commissioner for Human Rights urged: 'The UK Government and other parties concerned to return to negotiations on mechanisms for dealing with the past'.²³ Whilst acknowledging ongoing discussions the NIHRC has raised concerns regarding the lack of implementation of the transitional justice elements of the Agreement with the UN CAT Committee.²⁴

14. In early 2016 the Lord Chief Justice of NI ordered a review of the state of readiness of 53 outstanding inquests into conflict related deaths and met with families setting out plans to address all outstanding inquests within a five year period.²⁵ The LCJ set out that his plans were contingent upon the establishment of an appropriately resourced support unit.²⁶ The

Department of Justice prepared a funding request seeking to draw down funds from the allocated £150 million. As this proposal has not received the approval of the NI Executive the UK Government has not released the necessary funds.²⁷ The NIHRC recommends that independent, impartial, prompt and effective investigations are conducted into all conflict related deaths in NI with a view to identifying, prosecuting and punishing perpetrators of human rights violations and abuses.

Equality and non-discrimination (1st cycle: 15; 2nd cycle:110.39,110.40,110.42,110.49,110.50,110.51,110.52,110.53,110.103)

15. A commitment in 2006 to introduce a single legislative instrument consolidating and enhancing equality protections in NI has not been fulfilled.²⁸ The NIHRC recommends the current equality provisions be simplified, harmonised and strengthened without delay in line with UN recommendations.²⁹

16. The NIHRC notes that the UNHRC welcomed legislation introducing same sex marriage in England and Wales.³⁰ The NIHRC advises that similar legislation has not been introduced in NI.³¹ Cases are before the courts seeking to extend these provisions to NI.³²

Education (1st cycle:15; 2nd cycle:110.103,110.106)

17. The NIHRC welcomes the enactment of the Shared Education Act 2015.³³ The NIHRC recommends that shared education initiatives be rolled out across NI and also that concrete measures are introduced to increase the availability of integrated schools.³⁴

Children and criminal justice (1st cycle: 2, 7, 9; 2nd cycle:110.81,110.87,110.94,110.95)

18. The NIHRC notes with concern the high number of children held in pre-trial detention in NI.³⁵ The UNHRC in 2015 called for the NI Executive to ensure “that suitable bail packages are available to child defendants in Northern Ireland”.³⁶ In May 2016 the UNCRC Committee called for legislative reform to enshrine “the statutory principle that detention should be used as a measure of last resort ... and ensure that detention is not used discriminatorily against certain groups of children”.³⁷ The Department of Justice has accepted that children are detained in circumstances where it is not a measure of last resort. ³⁸ The NIHRC recommends the prohibition of children being held in pre-trial detention unless it is absolutely necessary and the development of suitable bail arrangements.

19. The age of criminal responsibility in NI is ten years old.³⁹ The Review of Youth Justice (2011) recommended that the: minimum age of criminal responsibility in NI should be raised to 12 with immediate effect. The UN CRC Committee and other UN Committees have made similar recommendations.⁴⁰ The NIHRC recommends an increase in the minimum age of criminal responsibility to at least 12.

Persons with Disabilities

20. The NI Executive Disability Strategy is in place until March 2017.⁴¹ This Strategy has been heavily criticised by disability organisations and the NIHRC recommends that a successor strategy be developed modelled upon the CRPD.⁴²

Mental Capacity

21. In 2016 the NI Assembly passed the Mental Capacity (NI) Act 2016.⁴³ The Act is one of the first legal frameworks which fuse mental capacity and health law and is informed by the UNCRPD, Article 12.⁴⁴ The NIHRC recommends that the commencement of the Act should be a priority for the NI Executive and appropriate resources should be allocated.⁴⁵

Violence against children (1st cycle:3, 4, 5; 2nd cycle:110.51,110.69,110.70,110.71, 110.78, 110.79,110.80)

22. The Law Reform (Miscellaneous Provisions) (NI) Order 2006 continues to allow for a defence of reasonable chastisement of a child to a charge of common assault tried summarily. In 2016 the UN CRC recommended that the UK ‘Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as “reasonable chastisement”...[and]... Strengthen its efforts to promote positive and non-violent forms of discipline and respect for children’s equal right to human dignity’.⁴⁶

Child Marriage

23. The Marriage (NI) Order 2003 permits the marriage of a child aged 16 or 17 years with the consent of their parents or legal guardians. In NI, 68 children were married in 2015 of these 49 were girls and 19 were boys.⁴⁷ In May 2016 the UNCRC recommended that “the [UK] raise the minimum age of marriage to 18 years”.⁴⁸ The NIHRC recommends the prohibition of child marriage in NI.⁴⁹

Anti-terrorism measures (1st cycle: 6, 9; 2nd cycle:110.81,110.82,110.83,110.121)

24. In 2014 the UK Parliament enacted legislation empowering the Home Secretary to restrict re-entry and deprive the citizenship of individuals who have engaged in conduct “seriously prejudicial” to the UK’s vital interests.⁵⁰ The Independent Reviewer of Terrorism Legislation has raised concerns regarding the breadth of the deprivation power and the UNHRC recommended a review of the new powers to ensure consistency with “the principles of legality, necessity and proportionality”.⁵¹

25. Of the 149 persons arrested in NI under the Terrorism Act 2000 in 2015/16, 18 were charged. ⁵² This represents 12% of those arrested. The UNHRC has raised concerns regarding the low proportion of persons arrested who are subsequently charged under the 2000 Act and recommended a review of the exercise of the arrest power.⁵³

26. An individual who has been wrongfully imprisoned in GB for any offence or in NI for an offence related to an excepted matter such as terrorism must now prove his or her innocence of a crime in order to obtain compensation for a miscarriage of justice.⁵⁴ The UNHRC recommended a review of the new test.⁵⁵ The NIHRC recommends that the UK take forward the recommendations of the UNHRC.

Right to housing

27. The NIHRC notes the continuing barriers and inequalities in access to adequate and culturally appropriate accommodation for members of the traveling communities.⁵⁶ The NIHRC recommends the removal of any unnecessarily burdensome procedural obstacle to obtaining planning permission for traveller accommodation and repeal of the Unauthorised Encampments (NI) Order 2005, which adversely affects members of the traveling communities by exposing them to criminal prosecution.⁵⁷

Right to social security and adequate standard of living

28. The NIHRC is concerned about the adverse impact of some social security reforms on disadvantaged and marginalised individuals, and recommends a reversal of cuts in social security benefits introduced in the Northern Ireland (Welfare Reform) Act 2015 and a review of the use of sanctions.⁵⁸ The NIHRC notes that specific mitigation provisions were introduced in NI to address some of the reductions.⁵⁹

29. The number of individuals living in poverty in NI has increased since the 2nd cycle.⁶⁰ The NIHRC has called for adoption of an anti-poverty strategy in NI in accordance with the Northern Ireland Act 1998.⁶¹

Right to health

30. In 2015, the NIHRC published a seminal report into emergency healthcare in NI after extensive engagement with patients, staff and health officials.⁶² The NIHRC recommended a human rights based approach into the delivery of emergency healthcare, including to persons experiencing mental health crisis.⁶³

31. Since 2012, NI continues to have the highest suicide rate in the UK, per head of population.⁶⁴ The NIHRC is concerned at the inadequacy of mental health provision in NI.⁶⁵ The NIHRC recommends that the development of a revised suicide and self-harm prevention strategy for NI be expedited.

Gender-based violence (1st cycle:1; 2nd cycle:110.40,110.51,110.52,110.69,110.70,110.71)

32. The NIHRC recommends that the UK ratify the Istanbul Convention on combating domestic violence.⁶⁶

33. Domestic abuse and sexual violence remain high in NI.⁶⁷ The NIHRC welcomes the introduction of domestic violence protection notices and the launch of the Stopping Domestic and Sexual Violence and Abuse Strategy 2013-2020.⁶⁸

34. The NIHRC notes that ‘domestic violence specialist courts’ were piloted from 2011 and recently implemented in Derry/Londonderry.⁶⁹ The NIHRC recommends that these be introduced in strategic locations across NI.⁷⁰

Combating human trafficking (2nd cycle:110.72,110.74,110.75,110.76)

35. The NIHRC welcomes the UK Human Trafficking Strategy and the efforts of the UK Government and NI Executive in increasing awareness and identifying victims of human trafficking.⁷¹ The NIHRC notes the CEDAW Committee’s concern that there is no comprehensive national framework to combat trafficking in women and girls.⁷² The NIHRC

is concerned at the low number of prosecutions for human trafficking offences and recommends that measures be introduced across the criminal justice system to ensure perpetrators are punished.⁷³

36. The NIHRC welcomes the enactment in NI of the Human Trafficking and Exploitation Act 2015 and the Human Trafficking Strategy which is currently out for consultation.⁷⁴ The Commission recommends that regulations requiring the appointment of independent guardians for children are introduced as soon as possible.⁷⁵

Termination of pregnancy (2nd cycle:110.77)

37. The NIHRC has concerns about the current restrictive conditions for termination of pregnancy in NI and the associated criminal penalties for their breach. The NIHRC notes that the CRC Committee has recommended that abortion be decriminalised in NI.⁷⁶

38. The NIHRC brought a legal challenge in December 2014 arguing that NI law is incompatible with Articles 3, 8 and 14 ECHR and calling for termination of pregnancy to be permitted in circumstances of rape, incest and serious malformation of the foetus including fatal foetal abnormality. This would be in addition to the existing grounds of being necessary to preserve the life of a woman, including where there is a risk of a serious and adverse effect on her physical or mental health which is either long term or permanent.⁷⁷ The court ruled that NI law was incompatible with Article 8 in respect of fatal foetal abnormality and sexual crime as ‘the mother’s inability to access an abortion in those circumstances constitutes a gross interference with her personal autonomy’.⁷⁸ This decision is currently under appeal and judgment is expected in autumn 2016.

Hate crime and hate speech (1st cycle: 20; 2nd cycle:110.107,110.53,110.59,110.60, 110.61,110.90,110.91)

39. The Council of Europe Human Rights Commissioner has warned that political leaders’ statements in the UK regarding foreign nationals are often manipulated, or distorted, by media and extreme, racist political organisations.⁷⁹ It also continues to be an issue in some aspects of public discourse on the internet.⁸⁰ The NIHRC recommends the effective enforcement of existing legal and policy frameworks combating hate crimes.⁸¹

40. The NIHRC is further concerned that criminal justice agencies in NI do not collect and disaggregate data based on race and community background.⁸² The NIHRC recommends this issue be addressed.

EU Referendum

41. The NIHRC notes the UK’s decision to withdraw from the EU following the referendum in June 2016. The NIHRC recommends that withdrawal from the EU should not diminish existing human rights protections, particularly social, economic and cultural rights protections derived from the EU Charter of Fundamental Rights or rights protections contained in EU directives.

Immigration detention (1st cycle:2, 9; 2nd cycle:110.81,110.96,110.107,110.108,110.110, 110.111,110.112,110.113,110.114,110.115)

42. The NIHRC welcomed the opening of a short-term holding facility for immigration detainees in NI at Larne House in July 2011.⁸³

43. The NIHRC further recommends that the effectiveness of inspections and oversight at Larne House be improved, inter alia through the development of short term holding centre rules including provision for identification of victims of torture and human trafficking.⁸⁴

Sustainable development goals (SDGs)

44. The NIHRC recommends the alignment of the UK Government's human rights objectives with the 17 SDGs adopted by the UN in September 2015.⁸⁵ This will require cross-departmental efforts toward domestic implementation as well as establishing effective evaluation and monitoring mechanisms.

Defamation

45. In 2012 the UNHRC raised concerns that the "practical application of the law of libel [in the UK] has served to discourage critical media reporting", following this recommendation defamation law in England & Wales was reformed.⁸⁶ An independent review of the law in NI concluded in June 2016 and a formal response from the NI Executive is awaited.⁸⁷ In addition reforms to abolish the common law offence of blasphemy have occurred in England & Wales but not in NI.⁸⁸ The Commission considers proposals for reform of the law of defamation and to ensure the abolition blasphemy laws are required.

¹ NIHRC, A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland, 10 December 2008

² NIO, A Bill of Rights for Northern Ireland: Next Steps, November 2009; Minister of State Hugo Swire MP, Written Ministerial Statement to Parliament, 16 December 2010; Westminster Hall, Tuesday 16 July 2013, Column 190WH Bill of Rights (NI). See, Human Rights Consortium, 'Now, more than ever, we need a strong and inclusive Bill of Rights for Northern Ireland', 16 August 2016,

<http://www.humanrightsconsortium.org/now-ever-need-strong-inclusive-bill-rights-northern-ireland/>.

³ NIHRC, '2013 Annual Statement: Human Rights in NI', December 2013, p. 49; NIHRC, Submission to the United Nations Human Rights Committee on the Seventh Periodic Report of the UK on compliance with the International Covenant on Civil and Political Rights, 29 May 2015, p. 3; CERD Committee, '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; UN Human Rights Committee, 'Concluding observations on seventh periodic report of the UK', CCPR/C/GBR/CO/7, 17 August 2015, para 5; CESCR Committee, '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, paras 9-10. The UN Committee on the Rights of the Child has made a specific recommendation that any Bill of Rights for Northern Ireland should have a section "devoted to child rights", see CRC Committee, 'Concluding observations: United Kingdom of Great Britain and Northern Ireland', CRC/C/GBR/CO/4, 20 October 2008, para 11

⁴ Queen's Speech, 26 May 2016: "This Bill will support and reinforce Britain's long-standing commitment to human rights and restore common sense to the way human rights law is applied. It will include: Measures to reform and modernise the UK human rights framework. Protections against abuse of the system and misuse of human rights laws". Significant media attention on the Human Rights Act has fuelled negative public perception of human rights in the UK. See, for example, David Cameron, 'Why I'm determined to scrap the Human Rights Act', June 15 2015, <http://www.sunnation.co.uk/david-cameron-why-im-determined-to-scrap-the-human-rights-act/>; Daily Mail, 'Europe's War on British Justice', 11 January 2012; Daily Telegraph, 'Human Rights Act has helped 28 terrorists to stay in UK', 31 January 2015. Moreover, the CESCR Committee has noted the low levels of awareness of some human rights, notably economic, social and cultural rights, see CESCR Committee,

‘Concluding observations of the Committee on Economic, Social and Cultural Rights: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories’, E/C.12/GBR/CO/5, 12 June 2009, para. 15. Finally, the UK Parliament’s Foreign Affairs Committee has raised concerns that the UK Government has deprioritised and defunded its human rights work overseas, see Foreign Affairs Select Committee, ‘The FCO’s administration and funding of its human rights work overseas’, HC 860, 5 April 2016. It is therefore incumbent upon the UK Government to counter this trend and support a culture of human rights which guides society.

⁵ See CESCR Committee, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, E/C.12/GBR/CO/6, 14 July 2016, para. 70.

⁶ The declaration attached to the OP-CRC-AC reads,

‘The United Kingdom of Great Britain and Northern Ireland will take all feasible measures to ensure that members of its armed forces who have not attained the age of 18 years do not take a direct part in hostilities. The United Kingdom understands that article 1 of the Optional Protocol would not exclude the deployment of members of its armed forces under the age of 18 to take a direct part in hostilities where: -

- a) There is a genuine military need to deploy their unit or ship to an area in which hostilities are taking place; and
- b) By reason of the nature and urgency of the situation: -
 - i) It is not practicable to withdraw such persons before deployment; or
 - ii) To do so would undermine mission and/or the safety of other personnel’.

⁷ The interpretative declaration states, ‘[T]he United Kingdom wishes to state its understanding of certain articles in the Convention. It interprets article 4 as requiring a party to the Convention to adopt further legislative measures in the fields covered by sub-paragraphs (a), (b) and (c) of that article only in so far as it may consider with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention (in particular the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association) that some legislative addition to or variation of existing law and practice in those fields is necessary for the attainment of the end specified in the earlier part of article 4’. See also, CERD Committee, ‘Concluding observations on the UK’, UN Doc. CERD/C/GBR/CO/18-20, 1 September 2011, para. 11.

⁸ Removed on 21 December 2011.

⁹ Reservation states, ‘The United Kingdom reserves the right for disabled children to be educated outside their local community where more appropriate education provision is available elsewhere. Nevertheless, parents of disabled children have the same opportunity as other parents to state a preference for the school at which they wish their child to be educated’. A further declaration to CRPD, Articles 24(2)(a) and (b) states, ‘The United Kingdom Government is committed to continuing to develop an inclusive system where parents of disabled children have increasing access to mainstream schools and staff, which have the capacity to meet the needs of disabled children. The General Education System in the United Kingdom includes mainstream, and special schools, which the UK Government understands is allowed under the Convention’.

¹⁰ Reservation states, ‘The United Kingdom accepts the provisions of the Convention, subject to the understanding that none of its obligations relating to equal treatment in employment and occupation, shall apply to the admission into or service in any of the naval, military or air forces of the Crown’.

¹¹ CAT, Article 22 requires the State Party to issue a declaration recognising the competence of the Committee to receive individual communications.

¹² CERD, Article 14 requires the State Party to issue a declaration recognising the competence of the Committee to receive individual communications.

¹³ The UK accepted the right in regard to OP-CEDAW as a ‘pilot’ scheme on 17 December 2004 which entered into force on 17 March 2005. However, the State made limited effort to raise awareness concerning the availability of the mechanism. The Ministry of Justice commissioned a review which was published in October 2008. Though the review concluded that the mechanism had done little to advance women’s rights, the NIHR notes that Professor Murdoch began his conclusions with the undoubted ‘important symbolic value’ of a commitment to human rights achieved by recognition of the individual complaint mechanism and the NIHR believes this trumps the current lack of petitions (two admissible cases have been directed at the UK with seventeen opinions issued in total), especially given that no significant financial burden was found to exist upon the UK (quoted in the report as £4000 per petition). The evaluation report was conducted by Professor Jim Murdoch of the University of Glasgow, School of Law and published in October 2008. It is available on the Ministry of Justice website at, <http://webarchive.nationalarchives.gov.uk/20110322191207/http://www.justice.gov.uk/publications/docs/un-optional-protocol-women.pdf>.

¹⁴ The UK ratified the OP-CRPD on 7 August 2009.

¹⁵ This reduction is significantly less than the 40% cuts applied to some other government departments.

¹⁶ Human Rights Committee, ‘Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland’, CCPR/C/GBR/CO/7, August 2015, para. 7.

¹⁷ CESCR Committee, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, E/C.12/GBR/CO/6, 14 July 2016, para. 2.

¹⁸ NI Office ‘Stormont House Agreement’ 23 December 2014

¹⁹ The Secretary of State for Northern Ireland (Mrs Theresa Villiers) Stormont House Agreement House of Commons Hansard Script 07 January 2015 Volume 590

²⁰ NIO ‘A Fresh Start: The Stormont House Agreement and Implementation Plan’ 17th November 2015 p. 6 In his foreword to the Implementation Plan the Minister for Foreign Affairs and Trade states, ‘While important progress was made on taking forward aspects of the Stormont House Agreement dealing with the legacy of the past, it did not prove possible to resolve all of the key issues within the timescale of this negotiation. Nevertheless, the two Governments will persist in our efforts to secure an agreed basis for the establishment of the institutions dealing with the past envisaged in the Stormont House Agreement’.

²¹ DH-DD(2016)430 13/04/2016

²² Pablo de Greiff carried out a visit to the UK to assess the initiatives undertaken to deal with the legacies of the violations and abuses that took place during the conflict. The Rapporteur expressed concern about the failure to implement aspects of the Agreement relating to the investigation of conflict related deaths, he highlighted: Victims, some of whom have waited more than 40 years to see their rights violations redressed, are once again asked to wait longer. The credibility of institutions will continue to suffer. See Pablo de Greiff ‘Preliminary observations and recommendations by the Special Rapporteur on his visit to the United Kingdom of Great Britain and Northern Ireland’ London, 18 November 2015
<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16778&LangID=E>

²³ ‘The UK Government and other parties concerned to return to negotiations on mechanisms for dealing with the past’ in the Stormont House Agreement, including setting up the Historical Investigations Unit, as soon as possible. Disagreements over the national security veto concerning disclosure of information need to be resolved’. Commission for Human Rights: Press Release: UK: Forthcoming reforms to human rights law must not weaken protection 22/01/2016 https://www.coe.int/en/web/commissioner/view/-/asset_publisher/ugj3i6qSEkhZ/content/uk-forthcoming-reforms-to-human-rights-law-must-not-weaken-protection?_101_INSTANCE_ugj3i6qSEkhZ_languageId=en_GB

²⁴ Northern Ireland Human Rights Commission submission to the UN Committee against Torture 57 Session on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland on compliance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment January 2016 para 3.2.6

²⁵ CM-Public DH-DD(2016)430 14/04/2016 1259 meeting (7-9 June 2016) (DH) - Updated action plan (13/04/2016) - Communication from the United Kingdom concerning the McKerr group of cases against the United Kingdom (Application No. 28883/95)

²⁶ BBC News NI ‘Legacy inquests: Judge calls for ‘urgent action’ 5 September 2016

²⁷ CM-Public DH-DD(2016)430 14/04/2016 1259 meeting (7-9 June 2016) (DH) - Updated action plan (13/04/2016) - Communication from the United Kingdom concerning the McKerr group of cases against the United Kingdom (Application No. 28883/95)

²⁸ St. Andrew’s Agreement 2006, 13 October 2006, Annex B: ‘The Government will continue to actively promote the advancement of human rights, equality and mutual respect. In the pursuit of which we commit to the following: [...] The Government believes in a Single Equality Bill and will work rapidly to make the necessary preparations so that legislation can be taken forward by an incoming Executive at an early date’.

²⁹ CERD Committee, ‘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; CEDAW Committee, ‘Concluding observations on the United Kingdom’, CEDAW/C/GBR/CO/7, 26 July 2013, para. 18; CESCR Committee, ‘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. 23.

³⁰ See the Marriage (Same Sex Couples) Act 2013 and the Marriage and Civil Partnership (Scotland) Act 2014; UN Human Rights Committee ‘Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland’ Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192, para 3(f)

³¹ AQO 82/16-21, tabled by Mr Máirtín Ó Muilleoir MLA, 20 June 2016

³² BBC News NI ‘NI same-sex marriage ban ‘corrosive’, court hears’ 3 December 2015

³³ The NI School Census reported that in 2014/15, 7 percent of pupils in NI attended an integrated school whilst 3 percent of pupils in NI received shared education, see DENI, Integrated Education; Department of Education, ‘NI Schools Census, Table 5: Religion of pupils by school type and management type, 2015/16 Nursery, Primary, Post Primary and Special Schools’.

³⁴ NIHRC, ‘Submission to the UN Committee on Economic, Social and Cultural Rights, 58th session on the sixth periodic report of the United Kingdom’s compliance with ICESCR’, April 2016, p. 69; CRC/C/GBR/CO/5 3 June 2016.

³⁵ In 2015 the National Preventative Mechanism designated under the Optional Protocol to the UN Convention against Torture published a report of an announced inspection of Woodlands Juvenile Justice Centre. It recorded that only 9 percent of children imprisoned at Woodlands in 2013-14 were there as a result of being sentenced following a conviction. Of the remainder, 47 percent were formally remanded to custody and 44 percent related to proceedings under the Police and Criminal Evidence (NI) Order 1989 (PACE). During 2014/15 there were 233 PACE admissions to Woodlands JJC involving 130 individual children. The National Preventative Mechanism found that the rate of PACE admissions to Woodlands JJC has almost trebled between 2008–9 and 2013–14 and has described this as ‘disproportionately high’.

³⁶ Human Rights Committee ‘Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland’ July 2015 para 23 (c)

³⁷ CRC/C/GBR/CO/5 3 June 2016; UN General Assembly resolution 40/33, ‘UN Standard Minimum Rules for the Administration of Juvenile Justice (‘the Beijing Rules’), UN doc. A/RES/40/33, 29 November 1985, rule 5.1; UN General Assembly resolution 45/113, ‘United Nations Rules for the Protection of Juveniles Deprived of their Liberty (‘the Havana Rules’), UN doc. A/RES/45/113, 14 December 1990, para 1

³⁸ NI Assembly ‘Children in the Justice System: Scoping Study Ministerial Statements – in the Northern Ireland Assembly at 12:00 pm on 14th March 2016.

A Review of the Youth Justice System in Northern Ireland, 2011 Recommendation 29. See <http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/report-of-the-review-of-the-youth-justice-system-in-ni.pdf>

³⁹ The Review of Youth Justice (2011) recommended that the minimum age of criminal responsibility in Northern Ireland should be raised to 12 with immediate effect, and that following a period of review of no more than three years, consideration should be given to raising the age to 14. 2.7.3 The Minister of Justice has publicly stated his support for increasing the age of criminal responsibility to twelve but has not brought any legislative proposals before the NI Assembly due to a lack of consensus on this matter.

⁴⁰ Committee on the Rights of the Child ‘Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland’ 3 June 2016 Para 79

⁴¹ NI Executive ‘A Strategy to improve the lives of people with disabilities 2012 – 2015’ Annual Report (June, 2015)

⁴² Proposed structures to oversee implementation of the Strategy have not been put in place. Disability Strategy: Update. Oral Answers to Questions — Office of the First Minister and deputy First Minister – in the Northern Ireland Assembly at 2:00 pm on 7th December 2015. <http://www.theyworkforyou.com/ni/?id=2015-12-07.4.7>. A new strategy is under consideration and the NIHRC has emphasised the need for a robust strategy framed around the UNCRPD with provision for the participation of persons with disabilities. See further Disability Action ‘Briefing Paper: Broken Promises - the Northern Ireland Disability Strategy’

⁴³ Mental Capacity Act (Northern Ireland) 2016 c. 18

⁴⁴ See Alex Ruck Keene ‘Throwing down the gauntlet – the mental capacity revolution in Northern Ireland’ 3 July 2016 <http://www.mentalcapacitylawandpolicy.org.uk/>. The Act has been commended for its emphasis upon supported decision making. Essex Autonomy Project ‘Towards Compliance with CRPD Art. 12 in Capacity/Incapacity Legislation across the UK’ 7 June 2016 available at: <http://autonomy.essex.ac.uk/eap-three-jurisdictions-report>

⁴⁵ A plan for implementation of the Act has not yet been published and a review of the capacity law relating to those under the age of 16 is yet to commence.

⁴⁶ Committee on the Rights of the Child ‘Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland’ 3 June 2016 para 40; Human Rights Committee ‘Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland’ July 2015 para 20

⁴⁷ These figures were provided by NISRA upon request from the Commission.

⁴⁸ Committee on the Rights of the Child ‘Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland’ 3 June 2016 para 19

⁴⁹ Northern Ireland Human Rights Commission submission to the UN Committee on the Rights of the Child 72nd Session on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland on compliance with the UN Convention on the Rights of the Child April 2016

⁵⁰ The Home Secretary is empowered to deprive a naturalised British citizen of their citizenship if they have engaged in conduct “seriously prejudicial” to the UK’s vital interests and certain safeguards are complied with. The Home Secretary must have 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. A Temporary Exclusion Order may

be issued where the Home Secretary reasonably suspects that the individual is, or has been, involved in terrorism-related activity outside the UK. The Home Secretary must make an application to the court for permission to impose a TEO. This application can only be rejected if it is fundamentally flawed.

⁵¹ David Anderson QC ‘Citizenship Removal resulting in statelessness: First Report of the Independent Reviewer on the Operation of the Power to Remove Citizenship Obtained by Naturalisation from Persons who have other Citizenship’ April 2015 available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/518120/David_Anderson_QC_-_CITIZENSHIP_REMOVAL__web_.pdf UN Human Rights Committee ‘Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland’ Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192. para 15

⁵² Police Service of Northern Ireland ‘Police Recorded Security Situation Statistics: Annual Report covering the period’ 1st April 2015 – 31st March 2016

⁵³ “Undertake a review of the exercise of arrest powers under section 41 of the Terrorism Act 2000 to ensure that the principles of necessity and proportionality are strictly observed when using such powers”.

⁵⁴ The Anti-social Behaviour, Crime and Policing Act 2014 makes amendments to section 133 of the Criminal Justice Act 1988

⁵⁵ With a view to ensuring compliance with the right to compensation as protected by ICCPR Article 14(6). UN Human Rights Committee ‘Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland’ Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192. para 22(b)

⁵⁶ Analysis conducted by the NI Housing Executive showed a gross need for 18 units of grouped accommodation, 28 serviced pitches, two transit site pitches, 51 units of social housing and 13 units of other accommodation forms, see NIHE, Traveller Accommodation Needs Assessment 2014, March 2015, p 24. For UN recommendations, see CERD Committee, ‘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, paras 27-28; CESCR Committee, ‘Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland’, E/C.12/GBT/CO/6, 24 June 2016, paras 49-50. See also, NIHRC, Parallel Report to the Advisory Committee for the Framework Convention on National Minorities on the Third Monitoring Report of the United Kingdom, February 2011.

⁵⁷ NIHRC, ‘Submission by the Northern Ireland Human Rights Commission to the Advisory Committee on the Framework Convention for the Protection of National Minorities’, May 2007, para 7. The 2005 Order provides a power for police officers to direct a person to leave land and remove any vehicle or other property on that land. It also provides an offence and power of seizure for non-compliance with a direction. The CESCR Committee has called for the repeal of the 2005 Order, see CESCR Committee, ‘Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland’, E/C.12/GBT/CO/6, 24 June 2016, para 50(d)

⁵⁸ The Northern Ireland (Welfare Reform) Act 2015 was introduced in November 2015 amended provision for ESA, freezing of working age and household benefits, a household benefit cap and changes to Universal Credit. The Welfare Reform and Work Act 2016 provides for the freezing of Child Benefit and tax credits for four years and a less generous means testing arrangement. Under section 12 of the 2015 Act, the maximum entitlement to child tax credit (CTC) would be restricted to two children only for families who become responsible for a child or children or qualifying young person(s) born on or after 6 April 2017. The changes will take effect from the 2017/18 tax year. The CESCR Committee has recently expressed concern at the adverse impact of social security cuts to vulnerable groups and individuals, see CESCR Committee, ‘Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland’, E/C.12/GBT/CO/6, 24 June 2016, paras 40-42. The NIHRC refers to comments made by the CESCR Chair in 2012 outlining the strong presumption against retrogression in the right to social security and that such measures should be temporary, necessary, proportionate and non-discriminatory.

⁵⁹ Executive Office, Welfare Reform Mitigations Working Group Report, January 2016.

⁶⁰ Department for Communities, Northern Ireland Poverty Bulletin 2014/15, 28 June 2016, p. 1.

⁶¹ Northern Ireland Act 1998, section 28E: “(1) The Executive Committee shall adopt a strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on objective need. (2) The Executive Committee – (a) must keep under review the strategy; and (b) may from time to time adopt a new strategy or revise the strategy”. CESCR Committee, ‘Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland’, E/C.12/GBT/CO/6, 24 June 2016, para 48.

⁶² The NIHRC report reiterated the obligations upon the NI Executive regarding accessibility, good governance and patient participation in healthcare decisions, see NIHRC, Human Rights Inquiry: Emergency Health Care, May 2015.

⁶³ BHSCT, Public Authority Statutory Equality and Good Relations Duties Annual Progress Report 2014-15, p 19

⁶⁴ Office of National Statistics Suicides in the United Kingdom: 2014 Registrations. In 2015 the provisional figures provided by the Registrar General for deaths by suicide, self-inflicted injury and events of undermined events are as follows: Quarter 1 -72 deaths caused by suicide; Quarter 2- 87 deaths; Q 3-87 deaths; and Quarter 4-72 deaths. See Registrar General Quarterly Tables

⁶⁵ BBC News NI FASA closure: Father fears lives will be lost if charity closes (10 March 2016).

⁶⁶ CEDAW Committee, ‘Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland’, CEDAW/C/GBR/CO/7, 30 July 2013, para. 34.

⁶⁷ The year 2015/16 saw the highest recorded level of domestic abuse crimes in Northern Ireland since 2004/05 (14,073 crimes), an increase of 5.4 per cent from the previous year, see PSNI, Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland: Quarterly Update to 31 March 2016, 12 May 2016, p. 2. Updated figures covering trends from 2004-2016 are to be published in August 2016.

⁶⁹ DOJ, ‘Stopping Domestic and Sexual Violence and Abuse in Northern Ireland 2013-2020’, December 2013, para. 4.120, <https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/dsva-strategy.pdf>.

⁷⁰ See, Justice Act (NI) 2015. The Department of Justice recently finished consulting 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 enabling individuals to find out about a partner’s previously violent behaviour, see NI Department of Justice, Domestic Abuse Offence and Domestic Violence Disclosure Scheme – A Consultation, February 2016.

⁷¹ Home Office, ‘Human Trafficking: The Government’s Strategy’, July 2011, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97845/human-trafficking-strategy.pdf.

⁷² The UK National Referral Mechanism which identifies victims of human trafficking or modern slavery identified 53 potential victims in 2015, up from 45 referrals in 2014, see NCA, ‘National Referral Mechanism Statistics – End of Year Summary 2015’, 11 February 2016, p. 20. The CEDAW Committee has expressed concern at the lack of a national framework, see CEDAW Committee ‘Concluding observations on the United Kingdom’, CEDAW/C/GBR/CO/7, 26 July 2013, paras 39-41.

⁷³ PSNI, ‘Police recorded crime statistics, 1998/99 – 2014/15’, August 2015, Table 2.2, https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/police-recorded-crime-statistics/documents/police_recorded_crime_in_northern_ireland_1998-99_to_2014-15.pdf.

⁷⁴ The UN Human Rights Committee have also welcomed this legislation, see UN Human Rights Committee, ‘Concluding observations on seventh periodic report of the UK’, CCPR/C/GBR/CO/7, 17 August 2015, para 3(a) and (c); see NI Assembly ‘Legislative Consent Motion: Modern Slavery Bill’, 8 December 2014 which implemented aspects of the Modern Slavery Act 2014 in NI including enforcement powers in relation to ships, the establishment of an Independent Anti-Slavery Commissioner and transparency in supply chains. The first UK Independent Anti-Slavery Commissioner was appointed in November 2014 and his first annual strategic plan published in October 2015. See, Department of Justice, ‘Draft Northern Ireland Human Trafficking and Modern Slavery Strategy 2016/17’, 1 July 2016.

⁷⁵ Section 21, Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015; Committee for Health, Social Services and Public Safety, Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardian Regulations) Northern Ireland (2016), 9 March 2016.

⁷⁶ The CRC Committee has recommended that the state ‘[d]ecriminalize abortion in Northern Ireland in all circumstances and review its legislation with a view to ensuring girls’ access to safe abortion and post-abortion care services. The views of the child should always be heard and respected in abortion decisions’, see CRC Committee, ‘Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland’, CRC/C/GBR/CO/5, 12 July 2016, para. 65(c).

⁷⁷ ECHR, Article 3: ‘Prohibition of torture. No one shall be subjected to torture or to inhuman or degrading treatment or punishment’; Article 8: ‘Right to respect for private and family life. 1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others’; Article 14: ‘Prohibition of discrimination. The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, as association with a national minority, property, birth or other status’.

⁷⁸ The Northern Ireland Human Rights Commission’s Application [2015] NIQB 96 para 160

-
- ⁷⁹ Council of Europe Human Rights Commissioner, ‘Memorandum on the human rights of asylum seekers and immigrants in the United Kingdom’, CommDH (2016) 17, 22 March 2016, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2911315&SecMode=1&DocId=2370960&Usage=2>. Daily Telegraph, ‘Social media is driving the rise of hate crime, but it can also stop it’, 12 October 2015, <http://www.telegraph.co.uk/news/uknews/crime/11925950/Social-media-is-driving-the-rise-of-hate-crime-but-it-can-also-stop-it.html>.
- ⁸⁰ Daily Telegraph, ‘Social media is driving the rise of hate crime, but it can also stop it’, 12 October 2015, <http://www.telegraph.co.uk/news/uknews/crime/11925950/Social-media-is-driving-the-rise-of-hate-crime-but-it-can-also-stop-it.html>.
- ⁸¹ UN Human Rights Committee, ‘Concluding observations on seventh periodic report of the UK’, CCPR/C/GBR/CO/7, 17 August 2015, para 10. In 2015/16, the PSNI recorded 1,221 racist incidents, a decrease of 10% on the previous year. Racist crimes were down by 7.3% since the previous year, see PSNI, Statistical Press Notice, May 2016, p 2
- ⁸² OFMDFM, ‘Racial Equality Strategy 2015-2025’, p. 51; NIHRC, ‘Racist Hate Crime: Human Rights and the Criminal Justice System in Northern Ireland’, September 2013, p. 35; CERD Committee, General recommendation No. 35: Combating racist hate speech’ (2013), para. 38.
- ⁸³ UN Human Rights Committee ‘Consideration of reports submitted by States Parties under article 40 of the Covenant: Concluding observations on the United Kingdom of Great Britain and Northern Ireland’, CCPR/C/GBR/CO/6, 30 July 2008, para xx
- ⁸⁴ HM Chief Inspector of Prisons ‘Report on an unannounced inspection of the short-term holding facility at: Lame House’, November 2011, paras 1.45-1.46; Policing Board NI ‘Human Rights Annual Report 2012’, p 133; Review into the Welfare in Detention of Vulnerable Persons A report to the Home Office by Stephen Shaw Presented to Parliament by the Secretary of State for Home Department by Command of Her Majesty January 2016 Cm 9186 Recommendation 7. See also, CAT Committee ‘Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland’, CAT/C/GBR/CO/5, 24 June 2013, para. 30; see UN Human Rights Committee, ‘Concluding observations on seventh periodic report of the UK’, CCPR/C/GBR/CO/7, 17 August 2015, para. 21.
- ⁸⁵ UN General Assembly resolution 70/1, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, 21 October 2015. The UK Parliament’s International Development Committee has noted that the UK Government will need to “devise a coordinated and coherent response” to fulfil its promises to achieve SDGs by 2030, see International Development Committee, ‘UK implementation of the Sustainable Development Goals’, HC 103, 8 June 2016.
- ⁸⁶ UN Human Rights Committee ‘Concluding observations on sixth periodic report submitted by the UK’ (30 July 2008) CCPR/C/GBR/CO/6 The Defamation Act 2013, to some extent, addressed the UN Human Rights Committee’s recommendation. However the territorial extent of this Act does not include Northern Ireland.
- ⁸⁷ Dr Andrew Scott, ‘Reform of Defamation Law in Northern Ireland: Recommendations to the Department of Finance’ Department of Law, London School of Economics and Political Science June 2016 <https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/report-on-defamation-law.pdf>
- ⁸⁸ In its 2008 report on the UK the UN Human Rights Committee welcomed the introduction of the Criminal Justice and Immigration Act 2008 abolishing the common law offence of blasphemy in England and Wales. During the passage of the 2008 Act the House of Lords debated extending the Act to include NI. The Lords noted that blasphemy was part of the common law of Ireland but that it was unclear if the common law precedent survived the disestablishment of the Church of Ireland by the Irish Church Act 1869. Furthermore the Lords noted that there was no reported blasphemy prosecution in the period between 1855 and the creation of the independent state of Ireland and that the offence had not been prosecuted since the establishment of NI. See further House of Lords ‘Religious Offences in England and Wales - First Report’ HL Paper 95 -1 10 April 2003 see appendix 5