



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Submission to the United Nations Committee against Torture

**Parallel Report to the Sixth Periodic Report
Submitted by the United Kingdom of Great
Britain and Northern Ireland**

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1.0 Introduction

- 1.1 The Northern Ireland Human Rights Commission (the 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) the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights. The NIHRC's mandate extends to all matters relating to the protection and promotion of human rights in Northern Ireland (NI), including within the competence of the NI Assembly and the Westminster Parliament. This submission considers the protection of human rights in NI in the context of the Convention against Torture (UN CAT).
- 1.2 A number of issues, raised in this submission, have not been able to progress or be resolved due to the lack of a NI Executive/ Assembly since January 2017. The Secretary of State for NI and senior civil servants have been powerless to intervene.
- 1.3 **The Committee may wish to recognise, in line with Article 27 the Vienna Convention on the Law of Treaties, that the absence of devolved institutions is not a basis for a State party failing to meet its international treaty obligations.**

2.0 Incorporation of UNCAT (Arts. 1 and 4)

Lack of Incorporation

- 2.1 The UK is a dualist State. It ratified the UN CAT in 1988, but has not incorporated this international treaty into domestic law and has not indicated any plans to do so. However, there is precedent for this – the Human Rights Act 1998 incorporates the European Convention on Human Rights 1950 into domestic law.
- 2.2 A number of NI civil servants that the NIHRC spoke to believed that the implied incorporation of the UN CAT into legislation, policies and practices in NI was sufficient, and did not recognise the need for direct incorporation of the UN CAT within NI laws and practices.

- 2.3 There is a need for greater awareness raising of UN CAT and there has been a lack of effective consultation by the UK Government and NI Executive when drafting the UK Reply to the List of Issues.¹ There is a lack of accessible information on UN CAT.²
- 2.4 There is a lack of disaggregated UN CAT-related data.³
- 2.5 In its 2013 concluding observations, the UN CAT Committee recommended:
- that the State party incorporate all the provisions of the Convention against Torture in its legislation, and raise awareness of its provisions among members of the judiciary and the public at large.⁴
- 2.6 **The Committee may wish to once again recommend that the State party directly incorporate all UN CAT provisions into domestic laws and policies, and ensure that these are effectively implemented.**
- 2.7 **The Committee may wish to recommend that the State party effectively consult with civil society and ensure that NI is fully represented in the UK's reporting to the UN CAT Committee, in particular with respect to implementation of recommendations.**

Brexit

- 2.8 Protections provided by European Union (EU) law may be removed from domestic law post-Brexit, this includes protections concerning freedom from gender-based discrimination. Article 4 of the Protocol

¹ Roundtable discussions with NI women's policy groups and NI women's community groups, October 2017, November 2017, February 2018 and March 2018; Roundtable discussions with civil society representatives, November 2018.

² Roundtable discussions with NI women's policy groups and NI women's community groups, October 2017, November 2017, February 2018 and March 2018; Roundtable discussions with civil society representatives, November 2018.

³ Roundtable discussions with NI women's policy groups and NI women's community groups, October 2017, November 2017, February 2018 and March 2018; Roundtable discussions with civil society representatives, November 2018; Meeting between Department of Justice officials and NI Human Rights Commission, 29 November 2018.

⁴ CAT/C/GBR/CO/5, 'UN CAT Committee Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI', 24 June 2013, at para 7.

on Ireland/Ni enshrined the UK's commitment to no diminution of rights but confined it to the Rights, Safeguards and Equality of Opportunity section of the Belfast (Good Friday) Agreement 1998. It also makes reference to an Annex of EU law to be retained in NI and to the implementation of the Article via 'dedicated mechanisms'. The EU laws identified in the Annex include equal treatment directives concerning employment, self-employment, social security and access to goods and services. They do not refer to gendered violence, victims' directive or parental leave.

2.9 Article 4 further sets out the UK commitment to "facilitate the related work" of bodies including the NIHRC, the Joint Committee of the Commission and Irish Human Rights and Equality Commission, and the Equality Commission NI. In November 2018, the NIHRC agreed in principle to form part of the dedicated mechanism, provided by Article 4 of the Protocol, which provides for monitoring, supervision, advice, reporting and enforcement of the non-diminution commitment.

2.10 **The Committee may wish to recommend that the State party ensure that there is no regression in the level of protection offered by UK law to victims of gender-based discrimination and the equal treatment of both genders arising as a result of Brexit.**

3.0 Legislative, Administrative & Judicial Measures (Article 2)

3.1 In July 2017, the NI Human Rights Consortium reported that 84 per cent of the NI population believe the Human Rights Act is good for NI.⁵

3.2 In 2017, the NIHRC raised the issue of reform of the Human Rights Act 1998 during the Universal Periodic Review process. In its report to the UN Human Rights Council as part of process the UK Government stated that it:

⁵ NI Human Rights Consortium, 'Attitudes to Human Rights in NI: Polling Data' (NI Human Rights Consortium, 2017), at 11.

remains committed to reforming the domestic human rights framework. We will consider further the Bill of Rights once we know the arrangements for the EU exit and consult fully on our proposals in the full knowledge of the new constitutional landscape that will create.⁶

- 3.3 In July 2017, during its oral submissions to the UN Working Group, the UK Government stated that it had no plans to withdraw from the European Convention on Human Rights. In July 2018, the UK Government provided an update on implementation of the UN Working Group's recommendations. In its update, the UK Government stated its:

position on the domestic human rights framework has not substantively changed since August 2017. The UK has a longstanding tradition of ensuring our rights and liberties are protected domestically and of fulfilling our international human rights obligations. Our commitment to human rights pre-dates the UK membership of the EU, and the decision to leave does not change this commitment. There are no plans to withdraw from the European Convention on Human Rights. The UK Government will consider further the human rights legal framework when the process of leaving the EU concludes.⁷

- 3.4 On 24 January 2017, David Nuttall MP asked a Parliamentary Question namely:

our manifesto commitment to replace the Human Rights Act remains on the Government's agenda, but does my right hon. and learned friend agree that leaving the EU and freeing the UK from the bonds of the charter of fundamental rights must be their top priority?⁸

- 3.5 The then Minister of State for the Ministry of Justice replied:

⁶ Ministry of Justice, 'Universal Periodic Review, UK, British Overseas Territories and Crown Dependencies, National Report' (MoJ, 2017), at 6.

⁷ UN Universal Periodic Review, 'UK of Great Britain and NI: Update', 26 July 2018.

⁸ Hansard, 'Human Rights Act 1998, Oral Answers to Questions — Justice — in the House of Commons', 24 January 2017.

I do agree with that. I think it important for us to sort out the EU side of matters, and the exit from the EU, before we return to that subject.⁹

3.6 The NIHRC opposes any reduction in the current legal protections of human rights in the UK. Establishing a Bill of Rights, or other similar statute, for the UK, or any of its constituent parts, which seeks to repeal the Human Rights Act 1998, in part or whole, risks being regressive.

3.7 In its 2013 concluding observations, the UN CAT Committee recommended:

the State party should ensure that public statements or legislative changes, such as the establishment of a [UK] Bill of Rights, do not erode the level of constitutional protection afforded to the prohibition of torture, cruel, inhuman or degrading treatment or punishment currently provided by the Human Rights Act.¹⁰

3.8 The Committee may wish to re-recommend that the State party recognise the Human Rights Act 1998 as a constitutional statute and ensure any reform does not lead to regression and builds on the Act as part of further progress in the promotion and protection of human rights.

Bill of Rights for Northern Ireland

3.9 As required by the Belfast (Good Friday) Agreement and the NI Act 1998, the NIHRC provided advice to the UK Government on a Bill of Rights for NI in 2008. On receipt of its advice, the NI Office sought views from the public by way of a public consultation.¹¹

3.10 In December 2010, the then Minister of State within the NI Office reported that there was:

⁹ Hansard, 'Human Rights Act 1998, Oral Answers to Questions — Justice – in the House of Commons', 24 January 2017.

¹⁰ CAT/C/GBR/CO/5, 'UN CAT Committee Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI', 24 June 2013, at para 8.

¹¹ NI Office, 'Consultation Paper: A Bill of Rights for NI: Next Steps' (NIO, 2009).

considerable support from human rights and community groups for a wide-ranging Bill of Rights along the lines of that recommended by the NI Human Rights Commission.¹²

3.11 Since 2010, it has been consistently stated by Government ministers that there has been a lack of political consensus around a Bill of Rights for NI.¹³ The NIHRC has repeatedly reported on the absence of any significant development to progress a Bill of Rights for NI.

3.12 The development of a Bill of Rights for NI has been considered as part of ongoing discussions to restore the NI Assembly and in discussions concerning Brexit.¹⁴ These discussions have been informed by a draft model Bill of Rights for NI based on the NIHRC's advice.¹⁵ The NIHRC is of the view that the lack of a Bill of Rights for NI was "the missing piece in the jigsaw of the implementation of the agreement".¹⁶

3.13 In January 2018, at a meeting of the North-South Joint Committee with the Tánaiste, the NIHRC raised concerns that:

the potential loss of the Fundamental Charter of EU Rights alongside the continuing absence of a Bill of Rights for NI means human rights protections could be heading in the wrong direction.¹⁷

3.14 A discussion paper commissioned by the NIHRC and the Irish Human Rights and Equality Commission identified that the EU-UK Report on Phase 1 of Negotiations specifically states that there is to be no diminution of rights in NI. The discussion paper found that a Bill of Rights for NI:

¹² Minister of State Hugo Swire MP, 'Written Ministerial Statement to Parliament', 16 December 2010.

¹³ 'Column 190WH Bill of Rights (NI)', Westminster Hall, 16 July 2003.

¹⁴ Laura Hughes and Kate McCann, 'Powersharing talks in NI could continue into next week', *The Telegraph*, 3 July 2017.

¹⁵ Colin Harvey and Anne Smyth, 'Good Friday Agreement at 20: The Return of the Bill of Rights?' (QPOL, 2018).

¹⁶ Colm Kelpie, 'UK could breach Good Friday Agreement with U-turn over human rights, says Flanagan', *Irish Independent*, 14 February 2017.

¹⁷ NI Human Rights Commission, 'Press Release: North-South Joint Committee to Focus on Human Rights and Equality Impacts of Brexit with Tánaiste', 22 January 2018.

would ensure that para 53 is fully implemented... [and recommended that] the UK and Irish Governments should revisit the NI Human Rights Commission's draft proposals on a Bill of Rights for NI as way of preventing a diminution of rights in the Brexit process.¹⁸

- 3.15 The commitment in the EU-UK report on Phase 1, to no diminution, was diluted in scope from the December 2017 report to the Draft Withdrawal Agreement issued in March 2018. The non-diminution commitment currently refers to the rights, safeguards and equality of opportunity section of the Belfast (Good Friday) Agreement 1998, rather than the whole of the Agreement, in the December 2017 report.
- 3.16 The NIHRC has also raised the importance of retaining the Fundamental Charter of EU Rights as a 'Convention plus' approach, at least until a Bill of Rights for NI is in place. This would provide some reassurance of retaining an equivalency of rights across the island of Ireland as envisaged in the Belfast (Good Friday) Agreement.
- 3.17 **The Committee may wish to recommend that the State party take effective steps to meet its commitment to implement a Bill of Rights for Northern Ireland, take a leadership role in proactively working towards developing a consensus among the political parties on a Bill of Rights for Northern Ireland and, in the interim, retain the EU Charter of Fundamental Rights.**

Closed Material Proceedings

- 3.18 The Justice and Security Act 2013 makes provision for closed material proceedings in civil cases allowing for the introduction of sensitive security evidence to proceedings involving the UK Government, without disclosure to the claimant.¹⁹ The Secretary of State is required to report annually on the use of these powers.²⁰ The most recent report, for the period June 2017 to June 2018,

¹⁸ Colin Murray *et al*, 'Discussion Paper on Brexit' (IHREC and NIHRC, 2018), at vii and xii.

¹⁹ Section 6 Justice and Security Act 2013.

²⁰ Section 12, Justice and Security Act 2013.

indicates that there were 13 applications for a declaration that a closed material procedure application may be made in proceedings and five declarations made by the court.²¹ Of these, two applications were from NI.²² No further information on the reasons for the granting or refusal of an application is included in the report.

3.19 The UN Human Rights Committee has also raised concerns regarding the 2013 Act and recommended that the UK Government:

ensure that any restrictions or limitation to fair trial guarantees on the basis of national security grounds, including the use of closed material procedures, are fully compliant with its obligations under the Covenant, particularly that the use of closed material procedures in cases involving serious human rights violations do not create obstacles to the establishing of State responsibility and accountability as well as compromise the right of victims to a fair trial and an effective remedy.²³

3.20 The legislation also requires a review of the operation of closed material procedures over the first five-year period.²⁴ The NIHRC is unaware if this has taken place.

3.21 The draft NI (Stormont House Agreement) Bill, which the NI Office consulted on throughout 2018, provides that in circumstances where the Secretary of State for NI seeks to prevent the disclosure of information on national security grounds within a family report appeal proceedings are to proceed as closed material proceedings.²⁵ The NIHRC has raised concerns about the use of such proceedings and that the discretion of the Secretary of State to prevent disclosure of information within a family report should be used sparingly.²⁶ The NIHRC also recommended a number of additional procedural safeguards be used to enhance the confidence of the family members of victims.

3.22 The Lord Chief Justice of England and Wales and the Senior President of Tribunals published a practice direction in January 2019

²¹ Ministry of Justice, 'Report on use of closed material procedure (from 25 June 2017 to 24 June 2018)' (MoJ, 2018) pp. 4-5.

²² Ministry of Justice, 'Report on use of closed material procedure (from 25 June 2017 to 24 June 2018)' (MoJ, 2018) p.9.

²³ CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI', 17 August 2015, at para 22.

²⁴ Section 13(1), Justice and Security Act 2013.

²⁵ NI Office, 'Consultation Paper: Addressing the Legacy of NI's Past' (NIO, 2018), at 37-38.

²⁶ NI Human Rights Commission, 'Submission to NIO's Consultation on Addressing the Legacy of NI's Past' (NIHRC, 2018).

relating to the creation of a library for closed judgments.²⁷ It is not clear that there is any equivalent in NI, or if relevant lawyers and judges in NI would have access to this library.

3.23 The Committee may wish to recommend that the State party ensures its use of closed material procedures in cases involving serious human rights violations is used sparingly and therefore does not create obstacles to ensuring accountability for human rights violations and does not compromise the right of victims to a fair trial and an effective remedy.

3.24 The Committee may wish to recommend that the State party ensure that a comprehensive review of the operation of closed material procedures is conducted and effective steps are taken to address any issues raised as a result.

3.25 The Committee may wish to recommend that the State party take effective steps to ensure a comprehensive library for closed judgments is available and accessible to legal teams and judges in Northern Ireland.

Non-jury Trials

3.26 The Justice and Security (NI) Act 2007 makes provision for non-jury trials in NI in situations where there is a risk that the administration of justice might be impaired if the trial were to be conducted with a jury.²⁸ These provisions are temporary and are subject to renewal every two years by way of an order approved in both Houses of Parliament. The relevant provisions have been extended on five occasions since their establishment in 2007, due to the continuing threat level from NI related terrorism in NI, being assessed as severe.²⁹

3.27 The Secretary of State has recently conducted a public consultation on a further extension from 2019 onwards, and the results of this are awaited.³⁰

²⁷ LCK and SPT, 'Practice Direction: Closed Judgments' (Jan 2019).

²⁸ Section 1, Justice and Security Act 2007.

²⁹ The Justice and Security (Northern Ireland) Act 2007 (Extension of duration of non-jury trial provisions) Order 2017 extended provision until 31 July 2019.

³⁰ NI Office, 'Consultation Paper: Non-jury Trials, Justice and Security Act (NI) 2007' (NIO, 2018).

- 3.28 The NIHRC has consistently advised the NI Office that, in line with the Committee's previous recommendation, that it should consider the development of alternative juror protection measures, to provide an alternative to a non-jury trial.³¹ The NIHRC has raised concerns about the normalisation of temporary measures in the NI criminal justice system and the lesser degree of parliamentary scrutiny afforded to the process of biennial review.³²
- 3.29 The Independent Reviewer of the Justice and Security (NI) Act 2007 noted that, in 2016, there were 19 certificates issued an increase on the previous year.³³ Regarding the effectiveness of the current procedures, he stated:
- juror protection measures are less likely to be effective in NI than in England and Wales. Nevertheless, it should not be an assumption in each case that they will never be appropriate as an alternative to a non-jury trial.³⁴
- 3.30 The report also notes that the Director of Public Prosecutions does in practice; consider juror protection measures before issuing a certificate.³⁵ The Independent Reviewer recommends that the PSNI and PPS should continue to consider alternative juror protection measures, such as change of venue, screening or sequestering the jury, and that a record of such considerations is placed in the public domain.³⁶
- 3.31 The Independent Reviewer also recommended that before issuing a non-jury trial certificate the Public Prosecution Service should:
- notify the defendant that they are minded to issue a certificate, specifying the condition or conditions and any other material which is in the public domain, and invite representations within a specified period.³⁷

³¹ Correspondence from the Chief Commissioner of NI Human Rights Commission to the Secretary of State for NI, January 2017; Correspondence from the Chief Commission of NI Human Rights Commission to the NIO, February 2019.

³² Correspondence from the Chief Commission of NI Human Rights Commission to the NIO, February 2019, p.2.

³³ Independent Reviewer of Justice and Security, 'The Tenth Annual Report of the Independent Reviewer of Justice and Security (NI) Act 2007 from 1 August 2016 – 31 July 2017' (NIO, 2018), para 17.4.

³⁴ Independent Reviewer of Justice and Security, 'The Tenth Annual Report of the Independent Reviewer of Justice and Security (NI) Act 2007 from 1 August 2016 – 31 July 2017' (NIO, 2018), para 23.2.

³⁵ Independent Reviewer of Justice and Security, 'The Tenth Annual Report of the Independent Reviewer of Justice and Security (NI) Act 2007 from 1 August 2016 – 31 July 2017 (April 2018), para 19.3.

³⁶ Independent Reviewer of Justice and Security, 'The Tenth Annual Report of the Independent Reviewer of Justice and Security (NI) Act 2007 from 1 August 2016 – 31 July 2017' (NIO, 2018), para 23.2.

³⁷ Ibid, para 23.3.

3.32 The Criminal Justice Act 2003 also provides for a non-jury trial where there is a likelihood of jury tampering.³⁸ Unlike the provisions under the Justice and Security Act 2007, there is a statutory requirement to consider all juror protection mechanisms. The Independent Reviewer notes, “although the [Director of Public Prosecutions] routinely considers juror protection measures in forming his view on whether a NJT certificate should be granted, they are invariably considered inappropriate in Northern Ireland as an alternative to a NJT.”³⁹ It is considered by the PPS that the higher test under the 2003 Act would only ever be met in the most exceptional of circumstances in NI.⁴⁰

3.33 In 2013, the Committee further recommended that the UK Government takes “due consideration of principles of necessity and proportionality” when deciding on the renewal of non-jury trial provisions.⁴¹ Cognisant of the Committee’s position, the NIHRC has recommended that the Justice and Security Act 2007 be revised to include a necessity provision.⁴² Such revision could mirror that which exists under section 44 of the Criminal Justice Act 2003. Section 44 requires the satisfaction of two criterion. First there must be evidence of a “real and present danger” of jury tampering, and second, “notwithstanding any steps ... which might reasonably be taken to prevent jury tampering, the likelihood that it would take place would be so substantial as to make it necessary in the interests of justice for the trial to be conducted without a jury”.⁴³

3.34 In its report to the 2017 consultation, the NIO acknowledged that placing a necessity condition “on a statutory footing may introduce great clarity and assurance for those affected.”⁴⁴ As such, the NIO committed to “explore this possibility after July 2017”. Unfortunately, however, the current consultation document makes no further reference to this issue.

³⁸ Section 44, Criminal Justice Act 2003.

³⁹ Seymour, D, ‘Report of the Independent Reviewer of the Justice and Security (NI) Act 2007: Tenth Report: 1 August 2016- July 2017’ (April 2018) para 20.9.

⁴⁰ Seymour, D, ‘Report of the Independent Reviewer of the Justice and Security (NI) Act 2007: Tenth Report: 1 August 2016- July 2017’ (April 2018) para 22.12.

⁴¹ CAT/C/GBR/CO/5, ‘UN Committee against Torture, Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI’ (6 May 2013), para 13.

⁴² Commission response dated 24 January 2017 to the previous NIO consultation on the renewal of the non-jury trial provisions (2016).

⁴³ Section 44, Criminal Justice Act 2003.

⁴⁴ Northern Ireland Office, ‘Consultation response paper: outcome of the public consultation on non-jury trial provisions in Justice & Security Act (Northern Ireland) Act 2007 (June 2017), para 4.12.

- 3.35 In July 2018, former soldier, Dennis Hutchings was given leave to appeal to the UK Supreme Court against a decision by the Belfast Crown Court to try him by way of a non-jury trial.⁴⁵ Mr Hutchings is charged with attempted murder in connection with the fatal shooting of John Pat Cunningham near Benburb, County Tyrone in 1974. The UK Supreme Court's hearing took place on 14 March 2019 and judgment is awaited.
- 3.36 **The Committee may wish to recommend that the State Party review the Justice and Security Act 2007 and consider the insertion of a necessity condition for determining whether a non-jury trial will take place.**

Statute of Limitations

- 3.37 In April 2017, the Defence Select Committee issued a report on investigation into fatalities in NI involving British military personnel, in the Report the Committee recommended:
- the enactment of a statute of limitations, covering all Troubles-related incidents, up to the signing of the 1998 Belfast Agreement, which involved former members of the Armed Forces.⁴⁶
- 3.38 In 2017, the NIHRC advised the NI Office that a statute of limitation restricting the prosecution of State actors would amount to an amnesty. If such an amnesty excused acts constituting gross human rights violations and abuses (including the right to life and the prohibition on torture or other cruel, inhuman or degrading treatment or punishment), this would be incompatible with human rights law.⁴⁷
- 3.39 In November 2017, Richard Benyon MP introduced a Private Members' Bill, the Armed Forces (Statute of Limitations) Bill, which would create statutory limitations on court proceedings against current and former members of the armed forces for certain alleged

⁴⁵ UK Supreme Court, 'Permission to Appeal results – End of June and July 2018' (UKSC, 2018) p.3.

⁴⁶ House of Commons Defence Select Committee, 'Investigations into Fatalities in NI involving British Military Personnel: Seventh Report of Session 2016–17', HC 1064, 26 April 2017.

⁴⁷ NI Human Rights Commission, 'Advice on the House of Common's Defence Committee Report on Investigations in Fatalities in NI involving British Military Personnel' (NIHRC, 2017), at para 34.

offences committed during military operations or similar circumstances.⁴⁸ The Bill awaits its second reading.

3.40 In June 2018, the Prime Minister, in response to a parliamentary question on investigations into conflict related deaths commented “the [UK] Government is committed to ensuring that all outstanding deaths in NI should be investigated in ways that are fair, balanced and proportionate”.⁴⁹

3.41 In the ongoing consultation by the NI Office, in relation to addressing the past, there are no references to a statute of limitations.⁵⁰

3.42 In July 2018, Gavin Williamson MP, Secretary of State for Defence announced that a dedicated team within the Ministry of Defence had been established to consider whether serving and former personnel are receiving adequate legal protection and certainty.⁵¹ The UK Defence Secretary is expected to bring forward legislation to protect Army veterans for prosecution by introducing a statutory presumption against prosecution if the offence took place more than 10 years ago.⁵² The UK Prime Minister, in response to a parliamentary question, confirmed that the Ministry of Justice is “looking at what more can be done to ensure that service personnel are not unfairly pursued through the courts, including considering legislation”.⁵³

3.43 In a press interview, the Secretary of State for defence indicated that the new proposals would not come in time for those being investigated in connection with ‘Bloody Sunday’.⁵⁴ Further details of the proposed legislation are awaited. The Public Prosecution Service has now issued decisions regarding 19 individuals reported for a range of offences relating to ‘Bloody Sunday’, including murder, attempted murder and wounding committed on 30 January 1972.

⁴⁸ ‘Armed Forces (Statute of Limitations) Bill 2017-19’. Available at: <https://services.parliament.uk/bills/2017-19/armedforcesstatuteoflimitations.html>.

⁴⁹ Hansard, ‘Terrorism: NI, Prime Minister Written Question’, 15 June 2018.

⁵⁰ NI Office, ‘Addressing the Legacy of NI’s Past: Consultation Paper’ (NIO, 2018).NIO,

⁵¹ Hansard, ‘Armed Forces Veterans: Historic Allegations Oral Answers to Questions — Defence – in the House of Commons’, 9 July 2018.

⁵² Caroline Wheeler and Richard Kerbaj, ‘Minister seeks 10-year limit on prosecutions of soldiers’ *The Sunday Times*, 3 March 2019.

⁵³ Hansard, ‘Prime Ministers Questions – oral answers – in the House of Commons’, 6 March 2019.

⁵⁴ ‘New protections for soldiers won’t include Bloody Sunday killings says defence secretary’ *Belfast Telegraph*, 9 March 2019.

The Director of Public Prosecutions has announced that one former soldier will be prosecuted for the murders of James Wray and William McKinney and for the attempted murders of Joseph Friel, Michael Quinn, Joe Mahon and Patrick O'Donnell.⁵⁵

3.44 The Committee may wish to recommend to the State party that a statute of limitation restricting the prosecution of State actors would amount to an amnesty. If such an amnesty excused acts constituting gross human rights violations and abuses (including the right to life and the prohibition on torture or other cruel, inhuman or degrading treatment or punishment), this would be incompatible with human rights law.

3.45 The Committee may wish to ask the State party for further information in respect of proposals to protect veterans from prosecution. The Committee may wish to ask that this is subject to a one year follow up.

Domestic and Sexual Violence

Statistics

3.46 Statistics collated by the Police Service NI record that domestic violence has increased significantly since 2004/05 when the data series began. There were 30,595 domestic abuse incidents recorded between 1 July 2017 and 30 June 2018. This was a 4.8 per cent increase over the previous year. There were 15,049 domestic abuse crimes recorded between 1 July 2017 and 30 June 2018. This is an 8.6 per cent increase on the crimes recorded the previous year.⁵⁶ These domestic abuse incidents and crimes figures represent the highest 12-month period recorded since such statistics were first collated. The Department of Justice has highlighted that this equates to over 80 domestic violence and abuse incidents every day in NI and that approximately five people are killed each year in NI by a partner, ex-partner or close family member. The Department

⁵⁵ PPSNI, 'Press Release: Bloody Sunday prosecution decisions' 14 March 2019.

⁵⁶ Police Service NI, 'Domestic Abuse Incidents and Crimes Recorded by the Police in NI: Update to 30 June 2018' (PSNI, 2018).

stressed that domestic violence and abuse in NI remains significantly under-reported.⁵⁷

3.47 State figures on domestic violence in NI are not disaggregated, however “about 90% of reported cases are perpetrated by men against women. It is estimated that one in four women will suffer domestic violence at some point”.⁵⁸

3.48 The Public Prosecution Service NI (PPS) reports an increase in the number of files involving a sexual offence during 2017/2018, an increase of 21 per cent from 2016/2017. Files received involving an offence of rape rose by 34.2 per cent over the same period, and of files involving other sexual offences, rose by 15.3 per cent.⁵⁹

Year	Rape	Other sexual offences	All sexual offences
2016/17	395	917	1312
2017/18	530	1057	1587

Source: PPS⁶⁰

3.49 The number of decisions issued by the PPS in respect of suspects in case involving a sexual offence, shown in the table below, increased by 43.5 per cent in 2016/2017. Of the 1,212 no prosecution decisions issued during 2017/2018, 97 per cent did not pass the evidential test. The remaining 3 per cent did not pass the public interest test.

Type of decision	Number of decisions	
	2016/17	2017/18
Prosecution	363	351
Diversion	36	32
No prosecution	688	1212

⁵⁷ Department of Justice, 'Press Release: Over 80 domestic violence and abuse incidents every day in NI - working together we can help stop it', 4 July 2018.

⁵⁸ Women's Aid NI, 'Domestic Violence – Frequently Asked Questions'. Available at: <https://www.womensaidni.org/domestic-violence/frequently-asked-questions/#2>.

⁵⁹ Public Prosecution Service for NI, 'Statistical Bulletin: Cases Involving Sexual Offences 2017/18 – 1 April 2017 to 31 March 2018' (PPS, 2018).

⁶⁰ Public Prosecution Service for NI, 'Statistical Bulletin: Cases Involving Sexual Offences 2017/18 – 1 April 2017 to 31 March 2018' (PPS, 2018).

All decisions	1151	1652
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Source: PPS⁶¹

3.50 In 2017/2018, the conviction rate for at least one sexual offence in the Crown Court was 56.7 per cent, a decrease from the previous year. In the Magistrates' and Youth Courts, there was a slight decrease in the number of defendants, with a 55.3 per cent conviction rate, of at least one sexual offence. This represents a slight increase from the previous year.

Crown Court	2016/17	2017/18
Total defendants	267	224
Convicted of at least one sexual offence (including rape)	15	9
Convicted of at least one sexual offence (excluding rape)	165	118
Conviction rate (at least one sexual offence)	67.4%	56.7%

Source: PPS⁶²

Magistrates/Youth courts	2016/17	2017/18
Total defendants	148	141
Convicted of at least one sexual offence	80	78
Conviction rate (at least one sexual offence)	54.1%	55.3%

Source: PPS⁶³

3.51 The Committee may wish to recommend that the State party improve disaggregation of domestic and sexual violence data to assist determining the effectiveness of the law in Northern Ireland.

⁶¹ Public Prosecution Service for NI, 'Statistical Bulletin: Cases Involving Sexual Offences 2017/18 – 1 April 2017 to 31 March 2018' (PPS, 2018).

⁶² Ibid.

⁶³ Ibid.

Laws and policies

3.52 In early 2016, the Department of Justice consulted on whether there should be a specific offence that captured patterns of coercive and controlling behaviour.⁶⁴ Following this consultation the Department of Justice began preparing a Domestic Abuse Bill, which it continues to develop.⁶⁵ This Bill aims to provide for a new domestic abuse offence capturing patterns of psychological abuse, violence, and/or coercion of a partner, ex-partner or close family member. It also includes a statutory aggravation of domestic abuse, which may attract enhanced sentencing for other offences. This Bill cannot progress without a functioning devolved government.

3.53 The Stopping Domestic and Sexual Violence and Abuse in NI Strategy was published in March 2016, with a commitment to publish an annual action plan.⁶⁶ In August 2018, the Departments of Health and Justice jointly published the third action plan under the strategy, which covers 2018-19.⁶⁷ The Strategy and its actions plans are gender-neutral.

3.54 The Committee may wish to recommend that the State party take effective steps to promptly introduce legislation to criminalise coercive and controlling behaviour in an intimate relationship in Northern Ireland.

3.55 The Committee may wish to recommend that the State party ensure the Stopping Domestic and Sexual Violence and Abuse in Northern Ireland strategy is effectively implemented, including adopting a gender-sensitive approach that recognises that women and girls are considerably more likely to experience violence.

⁶⁴ Department of Justice, 'Domestic Abuse Offence and Domestic Violence Disclosure Scheme' (DoJ, 2016).

⁶⁵ Permanent Secretary of Department of Justice, 'COR-1076-2017: Letter from Department of Justice to NI Human Rights Commission, 22 September 2017.

⁶⁶ Department of Health, Social Services and Public Safety and Department of Justice, 'Stopping Domestic and Sexual Violence and Abuse in NI: A Seven Year Strategy' (DHSSPS and DoJ, 2016).

⁶⁷ Department of Health and Department of Justice, 'Stopping Domestic and Sexual Violence and Abuse Strategy: Draft Year 3 Action Plan' (DoH and DoJ, 2018).

Protection initiatives

- 3.56 In March 2018, the Department of Justice established a Domestic Violence Disclosure Scheme in NI.⁶⁸ This scheme allows a victim or a third party known to a potential victim who may have concerns, to apply to the police for information on a partner. The Scheme aims to help ensure the safety of victims, allowing them to make an informed choice about whether they would wish to continue in their relationship. Between April and September 2018, there were 180 applications to the scheme.⁶⁹
- 3.57 The Department of Justice launched a pilot Domestic Violence Perpetrators' Programme in Derry/Londonderry during March 2018.⁷⁰ This pilot is expected to run for nine months, involving a maximum of 30 perpetrators. It adopts a problem solving justice approach, aimed at changing behaviours of convicted offenders. The pilot is to be subject to monthly judicial monitoring.
- 3.58 The Department of Justice is developing a local Domestic Homicide Review Model, to be applied where a person has died as a result of domestic violence.⁷¹ The Model will seek out and share opportunities for learning, identify what worked well and inform the development of practice to improve services. This is with a view to preventing domestic violence and abuse and domestic homicide happening in the future. In 2018, a consultation of the proposed model was conducted.⁷² The Department of Justice has committed to implementing this mechanism in the 2018-19 Domestic and Sexual Violence and Abuse Action Plan. Recruitment of a Chair and associated establishment of a panel for this purpose is due to take place in early 2019.⁷³
- 3.59 The Department of Justice plans to introduce Domestic Violence Protection Notices and Domestic Violence Protection Orders.⁷⁴ A Protection Notice is an emergency non-molestation and eviction

⁶⁸ Department of Justice, 'Domestic Violence and Abuse Disclosure Scheme NI Guidance' (DoJ, 2018).

⁶⁹ Correspondence from the Department of Justice to the NI Human Rights Commission, 27 November 2018.

⁷⁰ 'NI pilot scheme launched to change behaviour of domestic violence offenders and help victims', *Belfast Telegraph*, 22 March 2018.

⁷¹ Letter from Department of Justice to NI Human Rights Commission, 22 September 2017.

⁷² Department of Justice, 'Domestic Homicide Reviews – Consultation' (DoJ, 2018).

⁷³ Correspondence from the Department of Justice to the NI Human Rights Commission, 27 November 2018.

⁷⁴ Letter from Department of Justice to NI Human Rights Commission, 22 September 2017.

notice, which can be issued to a perpetrator by the police when attending a domestic abuse incident. It is effective from the point of issue, and can be issued without the victim's consent. Within 48 hours of a Protection Notice being served, the police can apply to the Magistrates' Court for a Protection Order. This can prevent the perpetrator from returning to a residence and from having contact with the victim for up to 28 days. The introduction of the Notices and Orders will require legislative change, which is not possible without a functioning devolved government.

3.60 The 2018-19 Domestic and Sexual Violence and Abuse Action Plan sets out that consideration should be given to how relationships and sexuality education curriculum resources can support teachers in addressing domestic and sexual violence and abuse.⁷⁵

3.61 A Magistrates' Court pilot scheme was launched in Derry/Londonderry in November 2011. This provided for special listing arrangements for domestic violence cases, whereby domestic violence cases were clustered and heard by one judge on specifically designated days. This enabled the relevant agencies, including the support services, to concentrate their efforts and resources into those days in order to provide moral and practical support to victims. For example, under this arrangement, court staff provide victims with separate entrances and waiting areas, the Public Prosecution Service provides a specially trained prosecutor and Women's Aid or Victim Support NI liaise to mentor and support women. In September 2016, the then Minister for Justice indicated that the arrangements for the pilot scheme should be enhanced, before further consideration is given to rolling out the model across other areas of NI.⁷⁶ There are currently no plans to expand this scheme across NI.

3.62 The 2018-19 Domestic and Sexual Violence and Abuse Action Plan sets out as a key action the commencement of a Crown Court Observers' study to gather information on victims' and witnesses' experience of the court in sexual offence cases.

⁷⁵ Department of Health and Department of Justice, 'Stopping Domestic and Sexual Violence and Abuse Strategy: Draft Year 3 Action Plan' (DoH and DoJ, 2018).

⁷⁶ AQO 268/16/21, 'Question from Mr McAleer to Minister of Justice on Domestic Violence: Court Listings', 20 September 2016.

- 3.63 In 2018, an independent review was commenced into how the NI criminal justice system handles cases of serious sexual assault. The review is being conducted by Sir John Gillen and examines how the NI criminal justice system handles cases of serious sexual assault, including support for victims and witnesses, anonymity for defendants and measures to ensure the anonymity of victims amongst others.⁷⁷ The preliminary report was subject to public consultation in November 2018, with the final report due to be published shortly.⁷⁸
- 3.64 In November 2018, the Criminal Justice Inspection NI published its report on a thematic inspection of the handling of sexual violence and abuse cases by the criminal justice system in NI. The report highlighted that avoidable delays in the criminal justice process for such cases remains an issue that requires addressing.⁷⁹
- 3.65 The Department of Justice launched a dedicated mixed-media promotional campaign in March 2018. This three year targeted campaign will run until the end of March 2020 and will be re-launched at those times of the year when domestic violence and abuse is considered more prevalent – summer and Christmas. This media campaign works in tandem with the messaging of the Police Service NI ‘Walking on Egg Shell’s annual Christmas media campaign, which also seeks to encourage reporting of domestic violence and abuse incidents.⁸⁰
- 3.66 The Committee may wish to recommend that the State party take effective steps to ensure that existing and future mechanisms for tackling domestic and sexual violence are effectively implemented in a human rights compliant and gender-sensitive manner within Northern Ireland.**
- 3.67 The Committee may wish to recommend that the State party take effective steps to promptly implement the recommendations of the Gillen Review and Criminal Justice**

⁷⁷ Department of Justice, ‘Review of arrangements to deliver justice in serious sexual offence cases: Terms of Reference’. Available at: <https://www.justice-ni.gov.uk/publications/review-arrangements-deliver-justice-serious-sexual-offence-cases-terms-reference>

⁷⁸ Meeting between Department of Justice and NI Human Rights Commission, 23 October 2018.

⁷⁹ Criminal Justice Inspection NI, ‘Without Witness Public Protection Inspection I: A Thematic Inspection of the Handling of Sexual Violence and Abuse Cases by the Criminal Justice System in NI’ (CJINI, 2018).

⁸⁰ Correspondence from the Department of Justice to the NI Human Rights Commission, 27 November 2018.

Inspection NI's report on handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland.

Victim support

3.68 The Supporting People Programme provides 13 refuges throughout NI (with a total funding of over £4.6 million per year). The Department of Health, Department of Justice and Department of Communities collectively fund a 24-hour Domestic and Sexual Violence Helpline. These Departments also fund the Rowan Sexual Assault Referral Centre for NI, which offers support to for those who have experienced sexual violence and abuse.⁸¹ Furthermore, a variety of places throughout NI, including all police stations are designated as 'Safe Places'. This is an initiative, which provides support in a range of settings for people requiring information on domestic violence.⁸²

3.69 There is no specific 'rape crisis service' at present in NI. However, Victim Support NI has a number of Independent Sexual Violence Advocates who provide one-to-one support for victims of sexual crime going through a criminal investigation, trial or considering reporting to the police.⁸³

3.70 Belfast Area Domestic and Sexual Violence and Abuse Partnership aims to improve services and support for all victims of domestic and sexual violence and abuse. This Partnership brings together specialised agencies, organisations, groups and individuals. It has faced funding cuts and has a limited geographical remit.⁸⁴ The Department of Justice is developing a streamlined Advocacy Support Service across NI.⁸⁵ This will standardise the level of support to be made available, and respond to the needs of both

⁸¹ HM Government, 'UN Periodic Review - UK of Great Britain and NI Update' (HM Government, 2018), at para 15.

⁸² Police Service NI, 'Safe Place Campaign'. Available at: <https://www.psni.police.uk/crime/domestic-abuse/safe-place-campaign/>

⁸³ Victim Support NI, 'Sexual violence: ISVA Service'. Available at: <http://www.victimsupportni.com/help-for-victims/sexual-violence/>.

⁸⁴ Roundtable discussions with NI women's policy groups and NI women's community groups, October 2017, November 2017, February 2018 and March 2018.

⁸⁵ Letter from Department of Justice to NI Human Rights Commission, 22 September 2017.

male and female victims of sexual violence and abuse and domestic violence and abuse.

- 3.71 The 2018-19 Domestic and Sexual Violence and Abuse Action Plan includes the development of policy proposals for a Sanctuary Scheme for victims of domestic abuse.⁸⁶
- 3.72 Civil society representatives have reported a lack of training for front of house staff (receptionists, call handlers, security) on how to support victims of domestic violence.⁸⁷
- 3.73 The 'no recourse to public funds' rule prevents persons with insecure immigration status from accessing benefits, such as refuge support. The Destitute Domestic Violence concession was introduced on 1 April 2012. This concession aims to help non-nationals who are victims of domestic violence and on a spousal visa to leave their partner safely and secure their immigration status in the UK. The concession offers those who meet the eligibility criteria temporary leave for three months, enabling them to apply for access to public funds. During this three-month period, the person should make a separate application for indefinite leave to remain under the Domestic Violence rule.⁸⁸ There are strict eligibility criteria for the concession and so there are some groups, such as EEA women, who may not benefit. The issuing of concessions can also be subject to delays.⁸⁹
- 3.74 The Committee may wish to recommend that the State party take effective steps to ensure that specialised, gender-specific and accessible support and refuge places are sufficiently funded and promptly available for all victims of domestic violence in Northern Ireland.**
- 3.75 The Committee may wish to recommend that the State party ensure domestic violence concessions for non-EU women within Northern Ireland are accessed promptly.**

⁸⁶ Department of Health and Department of Justice, 'Stopping Domestic and Sexual Violence and Abuse Strategy: Draft Year 3 Action Plan' (DoH and DoJ, 2018).

⁸⁷ Roundtable discussion with civil society representatives, November 2018.

⁸⁸ No Recourse to Public Funds Network, 'The Destitution Domestic Violence (DDV) Concession' (NRP Network, 2013).

⁸⁹ Nisan Zerai Kesete, 'Destitution Domestic Violence Concession - Monitoring Research Report' (Unbound Philanthropy, 2013), at 37.

3.76 The Committee may wish to recommend that the State party adequately support Belfast Area Domestic and Sexual Violence and Abuse Partnership and extend this initiative throughout Northern Ireland.

3.77 The Committee may wish to recommend that the State party ensure all staff and officials are effectively trained and qualified to work with victims of abuse in Northern Ireland.

Istanbul Convention

3.78 The UK Government has signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention). In August 2017, the UK Government, in its response to a recommendation received during the Universal Periodic Review process stated:

the UK remains committed to ratifying the Istanbul Convention. In most respects, the measures already in place in the UK to protect women and girls from violence comply with or go further than the Convention requires. In order to be compliant with Article 44 of the Convention, the UK must take extra-territorial jurisdiction over certain offences if committed abroad by UK nationals. The UK Government will introduce the extra-territorial jurisdiction measures necessary for compliance for England and Wales as part of the forthcoming Domestic Abuse Bill.⁹⁰

3.79 The Preventing and Combating Violence against Women and Domestic Violence (Ratification of Convention) Act 2017 requires the Secretary of State to establish a timeframe for the ratification of the Istanbul Convention⁹¹ and to annually report on progress.⁹² The second report was published on 30 October 2018.⁹³

⁹⁰ Ministry of Justice, 'Universal Periodic Review, UK, British Overseas Territories and Crown Dependencies, National Report' (MoJ, 2017), at Recommendation 134.43.

⁹¹ UK Parliament, 'Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017' (UK Parliament, 2017), at Section 1.

⁹² *Ibid*, at Section 2.

⁹³ Parliamentary Business, 'Ratification of the Council of Europe Convention on Combating Violence against Women and Domestic Violence (Istanbul Convention) – 2018 Report and Progress: Written Statement – HCWS1048', 30 October 2018.

3.80 New legislation is required to extend extra-territorial jurisdiction so that certain offences committed by British citizens can be prosecuted in UK courts, regardless of where they take place in the world. There are still a number of offences, including rape of an over 18 year old and sexual assault where extra-territorial jurisdiction does not yet apply. This is to be addressed in England and Wales via the proposed Domestic Abuse Bill. As these are devolved matters, additional legislation is required in NI and Scotland. The Department of Justice NI is working on developing a Domestic Abuse Bill that will cover similar issues, but this Bill cannot progress without a devolved government.⁹⁴

3.81 The Committee may wish to recommend that the State party effectively address the specific extra-territorial issues preventing the Istanbul Convention's ratification.

3.82 The Committee may wish to recommend that the State party ensure prompt ratification and effective implementation of the Istanbul Convention by extending the key provisions of the Domestic Abuse Bill to Northern Ireland, in the absence of devolution.

Stalking

3.83 There is no criminal offence of stalking in NI. In November 2016, the NI Assembly's Committee for Justice reviewed and consulted on introducing specific stalking legislation in NI. The aim of the review was:

to assess whether the current legislation in place in NI to deal with stalking is appropriate and effective, identify

⁹⁴ New legislation is required to extend extra-territorial jurisdiction so that certain offences committed by British citizens can be prosecuted in UK courts, regardless of where they take place in the world. There are still a number of offences, including rape of an over 18 and sexual assault where extra-territorial jurisdiction does not yet apply. This is to be addressed in England and Wales via the proposed Domestic Abuse Bill. As these are devolved matters, additional legislation is required in NI and Scotland. This has been addressed in Scotland under the Domestic Abuse (Scotland) Act 2018. The Department of Justice is working on developing a Domestic Abuse Bill that will cover similar issues, but this Bill cannot progress without a devolved government. Under Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017, Section 1, the UK Government must set a timeframe for ratifying the Istanbul Convention. See CEDAW/C/GBR/8, 'Eighth Periodic Report Submitted by the UK of Great Britain and NI under Article 18 of the Convention, due in 2017', 17 November 2017, at para 190; Gov.UK, 'Press Release: New measures to allow ratification of Istanbul Convention', 29 June 2017.

any gaps and consider the need for and potential benefits of introducing specific stalking legislation.⁹⁵

3.84 The Committee was unable to report to the NI Assembly before its dissolution in January 2017 and there can be no progress without functioning devolved institutions. In the interim, the Attorney General NI issued guidance in April 2018 providing a definition of stalking with the aim of assisting criminal justice organisations in NI exercising:

their respective functions diligently in order to prevent, investigate and prosecute acts of stalking and domestic abuse.⁹⁶

3.85 Data on the prevalence of stalking is lacking.⁹⁷ This is affected by the lack of a statutory definition of 'stalking' in NI. The Protection from Harassment (NI) Order 1997 deals with the criminal offence of harassment. Stalking in NI is generally dealt with under this legislation.⁹⁸

3.86 Stalking Protection orders are unavailable. These Orders are being introduced to England and Wales, which aim to improve the safety of all stalking victims by giving police the authority to address the danger that perpetrators pose while they gather more evidence. Civil society representatives in NI have expressed support for the introduction of Stalking Protection Orders to NI.⁹⁹

⁹⁵ NI Assembly, 'Review of the Need for Stalking Legislation in NI'. Available at: <http://www.niassembly.gov.uk/assembly-business/committees/2016-2017/justice/inquiries--reviews/review-of-the-need-for-stalking-legislation-in-northern-ireland/>

⁹⁶ Attorney General NI, 'No 13 Human Rights Guidance for the Police Service of NI, the Public Prosecution Service, the Probation Board for NI and the NI Courts and Tribunals Service: Domestic Abuse and Stalking' (AGNI, 2018).

⁹⁷ RaISE, 'Paper 19/17, NIAR 462-16 - Briefing Paper: Incidence and Prevalence of Stalking in NI' (RaISE, 2017), at 15; NI Assembly, 'Review of the Need for Stalking Legislation in NI'. Available at: <http://www.niassembly.gov.uk/assembly-business/committees/2016-2017/justice/inquiries--reviews/review-of-the-need-for-stalking-legislation-in-northern-ireland/>; Attorney General NI, 'No 13 Human Rights Guidance for the Police Service of NI, the Public Prosecution Service, the Probation Board for NI and the NI Courts and Tribunals Service: Domestic Abuse and Stalking' (AGNI, 2018).

⁹⁸ RaISE, 'Paper 19/17, NIAR 462-16 - Briefing Paper: Incidence and Prevalence of Stalking in NI' (RaISE, 2017), at 15; NI Assembly, 'Review of the Need for Stalking Legislation in NI'. Available at: <http://www.niassembly.gov.uk/assembly-business/committees/2016-2017/justice/inquiries--reviews/review-of-the-need-for-stalking-legislation-in-northern-ireland/>; Attorney General NI, 'No 13 Human Rights Guidance for the Police Service of NI, the Public Prosecution Service, the Probation Board for NI and the NI Courts and Tribunals Service: Domestic Abuse and Stalking' (AGNI, 2018).

⁹⁹ Meeting with civil society representatives, 30 November 2018; Department of Justice, 'Consultation: Stalking – A Serious Concern' (DoJ, 2018).

- 3.87 Support for victims of stalking in NI is lacking. In England and Wales, the Hampshire Stalking Clinic has been highlighted as an example of good practice. This clinic aims to improve responses to stalking across the criminal justice system and the health sector through rehabilitative treatment for stalkers, in a bid to make victims of stalking safer. The clinic is a forum for identification, referral, consultation, case formation and risk assessment of stalking cases. It has a multi-agency panel that reviews high-risk stalking cases within the Hampshire area using the stalking risk profile assessment process.¹⁰⁰
- 3.88 The Committee may wish to recommend that the State party take prompt steps to introduce legislation to prohibit all forms of stalking in Northern Ireland.**
- 3.89 The Committee may wish to recommend that the State party take effective steps to protect and support victims of all forms of stalking in Northern Ireland. This could for example include introducing the Hampshire Stalking Clinic model to Northern Ireland.**
- 3.90 The Committee may wish to recommend that the State party take effective steps to gather, disaggregate and effectively monitor data on all forms of stalking in Northern Ireland.**

Modern Slavery and Human Trafficking

- 3.91 The National Referral Mechanism is a framework operated by the National Crime Agency for identifying victims of human trafficking or modern slavery and ensuring they receive the appropriate support. Between April 2017 and March 2018, 36 potential victims of human trafficking were referred from NI. This figure included 17 adult males and 19 adult females. Recorded exploitation includes labour exploitation, domestic servitude and sexual exploitation.¹⁰¹ Recently published figures in the press, show that there were 52

¹⁰⁰ Meeting with civil society representatives, 30 November 2018; Police and Crime Commissioner, 'Press Release: Stalking Clinic highlighted as best practice by HMIC', 5 July 2017.

¹⁰¹ Police Service NI, 'Annual Report and Accounts for the Year Ended 31 March 2018' (PSNI, 2018), at 30.

referrals to the National Referral Mechanism in 2018, 20 of which were regarding sexual exploitation.¹⁰²

3.92 Between April 2017 and March 2018, the Police Service NI's Modern Slavery and Human Trafficking Unit made eight arrests, conducted 22 searches under warrant and carried out 59 safeguarding visits/non-warrant operations for labour and sexual exploitation. Over the same period, six persons were charged with modern slavery and human trafficking offences and/or related offences, and two persons were reported to the Public Prosecutions Service NI for human trafficking related offences.¹⁰³ In 2018, five persons were prosecuted and two convicted for trafficking in persons to NI for sexual exploitation.¹⁰⁴ Those convicted received a custodial sentence and a Slavery and Trafficking Prevention Order.¹⁰⁵

3.93 The Police Service NI saw a potential upsurge in cases of modern slavery, with 33 victims identified in the first six months of 2018, compared to 36 in the whole of 2017.¹⁰⁶ During that same period, the Department of Justice's contracted support providers, Migrant Help and Women's Aid, supported 18 potential adult victims (three male and 15 female).¹⁰⁷ The Police Service NI highlighted that the actual number of people in NI affected by modern slavery is unknown, as it often goes unreported and undetected within the community.¹⁰⁸

3.94 The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015 places a requirement on the Department of Justice to produce an annual strategy to address offences related to slavery, servitude and forced or compulsory labour and human trafficking.

3.95 In July 2018, the Department of Justice issued a consultation paper on a draft NI Modern Slavery Strategy 2018-2019.¹⁰⁹ In its response to the strategy, the NIHRC raised a concern that the

¹⁰² 'Six children saved from sex slavery in NI' BBC News, 20 March 2019.

¹⁰³ HM Government, '2018 UK Annual Report on Modern Slavery' (HM Government, 2018), para 2.34.

¹⁰⁴ HM Government, '2018 UK Annual Report on Modern Slavery' (HM Government, 2018), Tables 28 and 29.

¹⁰⁵ Correspondence from the Department of Justice to the NI Human Rights Commission, 27 November 2018.

¹⁰⁶ 'Potential upsurge in modern slavery in NI', *ITV News*, 18 October 2018.

¹⁰⁷ HM Government, '2018 UK Annual Report on Modern Slavery' (HM Government, 2018), para 2.125.

¹⁰⁸ 'Potential upsurge in modern slavery in NI', *ITV News*, 18 October 2018.

¹⁰⁹ Department of Justice, 'Draft NI Modern Slavery Strategy 2018-2019: Consultation Document' (DoJ, 2018).

consultation exercise on the strategy would conclude six months into the financial year in which the strategy purports to operate.¹¹⁰ The NIHRC's also highlighted that there was no reference to working with the Department of Health to address the health of victims of sexual exploitation. The NIHRC recommended that the strategy take into consideration the impact of Brexit on modern slavery, particularly: the vulnerability of those individuals uncertain of settled status who may be at increased risk of exploitation, and the potential loss of the European arrest warrant. The NIHRC also recommended that the strategy include a commitment to ensure businesses fulfil their human rights obligations, including those within the Modern Slavery Act, including the production of a slavery and human trafficking statement. The Department plans to publish the strategy in December 2018, but this is subject to Ministerial approval, which is inhibited by the suspension of the NI Executive.

- 3.96 In December 2016, the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardian) Regulations (NI) 2016 came into operation.¹¹¹ The Regulations make provision for the appointment of independent guardians to assist, represent and support children who are believed to be victims of trafficking. The draft strategy makes provision for the roll out of an Independent Guardian service to assist, represent and support separated or trafficked children and victims of modern slavery.
- 3.97 On 1 January 2018, Barnardos was awarded the contract for delivery of an Independent Guardian service for three years, with the possibility of two 12-month extensions. Following a three-month lead in period to appoint staff and to develop relevant operational procedures, the Independent Guardian Service became fully operational on 1 April 2018. The Health and Social Care Board, which is responsible for monitoring this contract, receives written quarterly monitoring information from the provider and carries out a formal contract monitoring visit and examination of the service on a yearly basis. In addition, the Health and Social Care Board will subject the service to an independent evaluation commencing in

¹¹⁰ NIHRC, 'Northern Ireland Modern Slavery Strategy 2018/19' (NIHRC, 2018).

¹¹¹ Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardian) Regulations (NI) 2016.

Year 2 and reported on mid-point of Year 3. The Department of Health is committed to undertaking a review of the service after a period of three years to determine whether it is meeting the needs of young people who are separated, at risk of trafficking or victims of trafficking or modern slavery. This review will specifically consider whether those young people would be better served by opening the role of guardian to other professionals, in addition to qualified social workers.¹¹² Up until September 2018, the service worked with over 30 children and young people who are separated, at risk of trafficking or victims of trafficking or modern slavery.¹¹³

3.98 NI's Modern Slavery Awareness campaign was launched on Anti-Slavery Day in October 2017. Opportunities to promote anti-slavery messages and awareness take place regularly across a range of key sectors and through various media, and a successful workshop took place in January 2018 with all regional organisations with first responder duties, to improve identification of possible victims of modern slavery for referral to the UK's National Referral Mechanism. A more strategic approach to training and awareness is planned and a dedicated resource has been prioritised to develop a regional, multi-agency Training Needs Analysis and Training Plan for NI, with work commencing in June 2018.¹¹⁴

3.99 A leaflet for the homeless sector in NI has been produced that sets out the common signs and indicators, and signposts the Modern Slavery Helpline, Police Service NI contact numbers, and support providers' contact details.¹¹⁵

3.100 Non-European victims of trafficking are typically granted 'Discretionary Leave to Remain', which provides a one year residence permit. This permit is renewable and can lead to settlement. This permit also has no restriction on public funds and the victim is able to access social security benefits. A residence permit is not required for European Economic Area (EEA) citizens under immigration law and therefore a resident permit is not granted to such citizens. This makes it difficult for EEA victims of

¹¹² Email correspondence from Department of Health to NI Human Rights Commission, 26 September 2018.

¹¹³ Email correspondence from Department of Health to NI Human Rights Commission, 25 September 2018.

¹¹⁴ HM Government, 'UN Periodic Review - UK of Great Britain and NI Update' (HM Government, 2018), at para 47.

¹¹⁵ HM Government, '2018 UK Annual Report on Modern Slavery' (HM Government, 2018), at para. 2.73.

modern slavery to access social security benefits. Due to the nature of their arrival in the UK, the lack of legal documentation and the psychological impact of their exploitation, an EEA victim of trafficking may not be able to satisfy the 'Right to Reside' test, the 'Habitual Residence' test and the 'Genuine Prospects of Work' test.¹¹⁶

3.101 The Committee may wish to recommend that the State party take effective steps to address the root causes of modern slavery and human trafficking and to ensure existing laws and policies are effectively implemented in Northern Ireland.

3.102 The Committee may wish to recommend that the State party take effective steps to ensure specialised, accessible support for victims of modern slavery and human trafficking in Northern Ireland is sufficiently and promptly available when required, and properly funded, including equal access to social security benefits.

3.103 The Committee may wish to recommend that the State party ensure all staff in contact with victims of modern slavery and human trafficking are effectively trained and qualified to work with victims in Northern Ireland.

Burden of Proof

3.104 The Department of Justice has identified a number of offences against children, under the Sexual Offences (Northern Ireland) Order 2008, whereby an offence is not committed if the defendant reasonably believes the child was 16 or over/ 18 or over. These include:

- Sexual offences against under 16s (Articles 16-22A of the 2008 Order);
- Abuse of position of trust offences against under 18s (Articles 23-26 of the 2008 Order);
- Familial sexual offences against under 18s (Articles 32-33 of the 2008 Order); and

¹¹⁶ Law Centre (NI), 'Access to Benefits for Victims of Modern Slavery' (Law Centre (NI), 2017), at paras 6-8.

- Offences against children under 18 though prostitution and pornography (Articles 37-40 of the 2008 Order).¹¹⁷

3.105 Therefore, the burden of proof is placed upon the prosecution to prove, beyond all reasonable doubt, that the defendant's belief of the age of the child was not unreasonable. For example, under Article 37, it is an offence in NI to pay for the sexual services of a child under 18 years of age. The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015, Section 6(1)(d) requires that an offence of human trafficking or exploitation committed against a child must be treated as an aggravating factor. However, the Sexual Offences (NI) Order 2008, Article 37(1) places the burden of proof on the prosecution to prove that a purchaser did not reasonably believe a child paid for sexual services was an adult. This provision, which continues to be enforceable, states:

a person (A) commits an offence if he intentionally obtains for himself the sexual services of another person (B), before obtaining those services, he has made or promised payment for those services to B or a third person, or knows that another person has made or promised such a payment, and either B is under 18, and A does not reasonably believe that B is 18 or over, or B is under 13.

3.106 The Department of Justice is "aware of the concern" raised "in relation to the burden of proof in cases involving sexual offences against minors".¹¹⁸ The Department is "currently undertaking a review of the law to child sexual offences. Proposals emerging from this review will be subject to public consultation".¹¹⁹ In February 2019, the Department of Justice launched a public consultation inviting views on current laws that protect children from sexual exploitation and proposed measures to strengthen laws in Northern Ireland.¹²⁰ The consultation period closes in April 2019. The

¹¹⁷ Department of Justice, 'Review of the Law on Child Sexual Exploitation: Consultation on policy proposals' (DOJ, 2019), para 4.19.

¹¹⁸ COR-0021-2018, 'Permanent Secretary of Department of Justice: Letter from Department of Justice to NI Human Rights Commission', 15 March 2018; Meeting between Department of Justice officials and NI Human Rights Commission, 29 November 2018.

¹¹⁹ Ibid.

¹²⁰ Department of Justice, 'Review of the Law on Child Sexual Exploitation: Consultation on Policy Proposals' (DoJ, 2019).

Department of Justice is constrained in the steps that it can take following the consultation because any change to the legal framework requires a functioning Northern Ireland Executive and Assembly.

3.107 In June 2018, the UK ratified the Council of Europe Convention on the Protection of Children and Young People against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention). In October 2018, the Lanzarote Convention entered into force in the UK. The UK's ratification of the Lanzarote Convention underscores the need for the reform of 2008 Order and the introduction of specific measures to ensure the Convention is implemented.

3.108 **The Committee may wish to recommend that the State party take effective steps to reverse the burden of proof to protect child victims of sexual offences.**

3.109 **The Committee may wish to recommend that the State party take effective steps to ensure that the Lanzarote Convention is effectively implemented in practice.**

UN Security Council Resolution 1325

3.110 NI is a society in transition, which requires specific mechanisms under Resolution 1325, to ensure women can effectively participate in the peace building and political processes. The United Kingdom (UK) Government has stated "there are no plans to integrate provisions relating to the implementation of the UNSCR 1325 in NI into the UK National Action Plan".¹²¹

3.111 A draft NI (Stormont House Agreement) Bill was consulted on in 2018. The draft Bill included provision for a Historical Investigation's Unit, Independent Commission of Information Retrieval, Oral History Archive, Implementation and Reconciliation Group and clarifications on prisoner releases. The consultation paper on the draft Bill did not refer to the UNSCR 1325. The NIHRC broadly welcomed the draft legislation, but raised concerns that the

¹²¹ CEDAW/C/GBR/8, 'Eighth Periodic Report Submitted by the United Kingdom of Great Britain and NI under Article 18 of the Convention, Due in 2017', 18 December 2017, para 75.

provisions contained within the draft Bill were not fully human rights compliant in law and practice.¹²²

3.112 In particular, the NIHRC raised concerns about the remit, resourcing, independence and use of closed material proceedings regarding the Historical Investigations Unit. The NIHRC recommended further consideration of the remits and operations of the Independent Commission of Information Retrieval, Oral History Archive and Implementation and Reconciliation Group.¹²³

3.113 The Legacy Gender Integration Group, an informal network of individuals with gender expertise from civil society and academia, has developed the Gender Principles for Dealing with the Legacy of the Past in NI. These principles provide guidance on how to embed a gendered lens and sustained inclusion of women on dealing with the past in NI.¹²⁴

3.114 **The Committee may wish to recommend that the State party ensure and effectively monitors the effective participation of Northern Ireland women in peace building and political processes, including effectively implementing the UN Security Council Resolution 1325, the Legacy Gender Integration Group’s gender principles and the Stormont House Agreement.**

4.0 Refugees, Asylum Seekers & Extradition (Art 3)

Racial profiling

4.1 The use of racial profiling has been raised in the context of Brexit. The Parliamentary Under-Secretary (Northern Ireland Office), Lord Duncan, has stated:

I am very happy to reinforce the clear statement that there can be no racial profiling at a border, whether it be

¹²² NI Human Rights Commission, 'Submission to NIO's Consultation on Addressing the Legacy of NI's Past' (NIHRC, 2018).

¹²³ NI Human Rights Commission, 'Submission to NIO's Consultation on Addressing the Legacy of NI's Past' (NIHRC, 2018).

¹²⁴ Legacy Gender Integration Group, 'Gender Principles for Dealing with the Legacy of the Past' (LGIG, 2015).

routine, quixotic or even accidental. That cannot be the policy or the direction; there cannot be even a hint of that going on at the border...

There will be no checks whatever for journeys across the land border between Ireland and Northern Ireland, nor between Northern Ireland and Great Britain. As I said earlier, this includes any aspect of what those checks might look like or be interpreted to look like. That is not what will be happening.¹²⁵

- 4.2 However, concerns have been raised that racial profiling has been occurring on domestic routes between Northern Ireland and Great Britain in the wake of the referendum on whether the UK should leave or remain in the EU. For example, Jules Gnezekora alleges he was singled out four times in queues on one journey by ferry to and from Scotland to Northern Ireland because he is black.¹²⁶ There have also been reports of racial profiling on public transport between Northern Ireland and Ireland.¹²⁷ Further concerns have been raised that such checks will become more common post-Brexit.
- 4.3 **The Committee may wish to recommend that the State party ensure measures are in place to prohibit racial profiling in immigration checks in the UK, including along the border between NI and Ireland.**
- 4.4 **The Committee may wish to recommend that the State party ensure that its immigration policies and practices, including those adopted in advance and following the UK's exit from the EU, protect EU and non-EU migrants, including women, from racial and ethnic discrimination.**
- 4.5 Civil society representatives have raised concerns with the NIHRC that a lack of advance, accessible information available on what documentation is required to travel between Northern Ireland and

¹²⁵ Hansard, 'European Union (Withdrawal) Bill – Volume 790, Column 1609', 23 April 2018.

¹²⁶ Lisa O'Carroll, 'Black lawyer accuses Northern Ireland immigration of racial profiling', *The Guardian*, 11 June 2018; Committee on the Administration of Justice, 'EU Withdrawal Bill, Clause 13 – New Border Arrangements' (CAJ, 2018).

¹²⁷ Roundtable discussions with civil society representatives, November 2018.

Ireland is leading to individuals entering NI without realising they have crossed the border into a separate jurisdiction, which they have no right to enter. As a result, circumstances have arisen whereby individuals have been placed in immigration detention in NI as a result of a misunderstanding of their immigration status which could potentially have been avoided if appropriate and accessible information was provided to the individual prior to their entering the UK.

- 4.6 The Committee may wish to recommend that the State party ensure that, before entering the UK, individuals' resident in neighbouring jurisdictions, in particular Ireland, are provided with accessible information with respect to their right to travel to the UK**

5.0 Interrogation, Custody Laws & Practices (Art 11)

Prisons

Population

- 5.1** There are three prisons in NI – Maghaberry (Category A and B male prisoners), Magilligan (Category C male prisoners), Hydebank Wood (young male and female prisoners). The Ash house block within Hydebank Wood College (prison for males aged 18-21) accommodates NI's women prisoners. There has been no progress on the commitment to build a separate women's facility. The Department of Justice has publically committed to this project, but has not secured capital funding. Plans are being processed to physically split the Hydebank Wood facility. It is unclear if this is an interim or permanent plan.¹²⁸
- 5.2** Prisons in NI can accommodate a total of 1,903 prisoners.¹²⁹ The figures for the average daily prison population is set out in the table

¹²⁸ Permanent Secretary of Department of Justice, 'COR-1076-2017: Letter from Department of Justice to NIHRC', 22 September 2017; Meeting between Department of Justice officials and NI Human Rights Commission, 29 November 2018.

¹²⁹ World Prison Brief, 'United Kingdom: NI'. Available at: <http://www.prisonstudies.org/country/united-kingdom-northern-ireland>

below. In terms of the trends for adult males, the average adult male population has been falling year on year over the last three years. The majority of this decrease can be attributed to the decrease in the adult male sentence population, decreasing from 1,332 during 2014/2015 to 1,022 during 2017/2018.¹³⁰

Average adult population	2014/15	2015/16	2016/17	2017/18
Women	65	53	54	57
Men	1734	1539	1418	1382

*these figures include both prisoners on remand and those sentenced.

5.3 In September 2018, there were 41 sentenced adult female, 20 unsentenced adult female, two young offender women sentenced and two young offender female unsentenced prisoners in NI. The average sentence length for adult females was 4.89 years and 0.65 years for young females. The average time on remand was 86.25 days for adult females and 22.5 days for young females. These figures are better than for males. By comparison, there were 911 sentenced adult males, 356 unsentenced adult males, 33 young offender males sentenced and 58 young male unsentenced offenders in NI. Depending on the facility, the average sentence length for adult males ranged from 3.5 to 6.29 years and 3.63 years for young males. The average time on remand was 120.52 days for adult males and 128.34 days for young males.¹³¹

5.4 The figures for imprisonment for fine default are set out in the table below. The relatively low numbers recorded in 2014/2015 are reflective of a judicial review that found the practice of issuing an arrest warrant or money warrant automatically, which led to immediate imprisonment, for anyone who did not pay a fine was unlawful.¹³² Over this period, the courts in Northern Ireland withdrew all outstanding money warrants pending enactment of amended legislation to address the issue.¹³³ The amended

¹³⁰ Correspondence from the Department of Justice to the NI Human Rights Commission, 27 November 2018.

¹³¹ NI Prison Service, 'Analysis of NIPS Prison Population from 01/07/2017 to 30/09/2018' (DoJ, 2018).

¹³² *Maye (George) and McHugh's (Paul) Applications and in the Matter of an Application for Judicial Review of Decisions made by the Northern Ireland Courts and Tribunal Service* [2013] NIQB 39.

¹³³ Claire Savage, '£7.5m owed in fines in Northern Ireland after landmark case', *BBC News*, 12 April 2013.

legislation requires that fine defaulters are brought before a Magistrates' Court and not automatically sent to prison.¹³⁴

Imprisonment for fine default	2014/15	2015/16	2016/17	2017/18
Women	21	55	68	58
Men	203	440	585	552

Source: DOJ¹³⁵

5.5 Part 1 of the Justice Act (NI) 2016 offers alternative forms of enforcement for fine defaulters other than prison, including supervised activity orders. The data is currently unavailable for assessing whether this provision is beneficial in reducing the number imprisoned for fine defaulting.¹³⁶

5.6 The Committee may wish to recommend that the State party end imprisonment for fine default.

5.7 The Committee may wish to recommend that the State party resources the development of a separate female custodial facility in Northern Ireland.

Conditions of detention

5.8 The NI Prisoner Ombudsman received 1,953 complaints from prisoners between April 2017-March 2018, which marked a 55 per cent decrease from the previous year. 167 of complaints received were submitted by integrated prisoners, with 1,786 complaints received from separated prisoners¹³⁷ on Roe 3 and 4 landings at Maghaberry Prison.¹³⁸ The NI Prisoner Ombudsman made 134 recommendations for improvement in response to prisoners' complaints. As of September 2018, 76 per cent of these recommendations had been accepted by the NI Prison Service, with

¹³⁴ The Magistrates' Courts (Amendment) Rules (Northern Ireland) 2014.

¹³⁵ Department of Justice, 'Analytical Services Group: The NI Prison Population 2017/18' (DoJ, 2018), at Appendix I, Table 7.

¹³⁶ Department of Justice, 'Analytical Services Group: The NI Prison Population 2017/18' (DoJ, 2018), at Appendix I, Table 7.

¹³⁷ Paramilitary prisons living in separate houses within the main prison.

¹³⁸ Prisoner Ombudsman NI, 'Annual Report 2017-18' (PONI, 2018), at 14.

nine per cent having been rejected, and 15 per cent awaiting a decision.¹³⁹

- 5.9 The Criminal Justice Inspection for NI conducted an unannounced inspection of Maghaberry Prison in April 2018, reporting in November 2018. It noted that living conditions were good and identified some areas undergoing modernisations; however, it further noted that the older buildings ('square houses') were "claustrophobic, unhygienic and extremely uncomfortable".¹⁴⁰ The report recommended that:

The prison should explore the continuing negative perceptions of Maghaberry held by many prisoners and groups there, and in particular, work to increase prisoner confidence in staff and important processes like the complaints system.¹⁴¹

- 5.10 The Committee may wish to recommend that the State party promptly and effectively implements the recommendations of the Northern Ireland Prison Ombudsman and the Criminal Justice Inspection NI concerning conditions of detention.**

Mental health care in prisons

- 5.11 In October 2016, the Criminal Justice Inspection NI published a largely positive report concerning its inspection of Ash House (women's block). However, the report stated:

most women felt safe most of the time, but many complained to us about the lack of staff on landings, a few women with problematic behaviour and the prevalence of drugs, which they felt were much more available than previously and led to bullying and intimidation. Work to address problems with drugs and the diversion of prescribed medications remained inadequate and in our view, a matter to be prioritised.¹⁴²

¹³⁹ Prisoner Ombudsman NI, 'Annual Report 2017-18' (PONI, 2018), at 15.

¹⁴⁰ CJINI, 'Report on an Unannounced Inspection of Maghaberry Prison (9-19 April)' (CJINI, 2018) para 2.10.

¹⁴¹ CJINI, 'Report on an Unannounced Inspection of Maghaberry Prison (9-19 April)' (CJINI, 2018) recommendation 5.6, p.56.

¹⁴² Criminal Justice Inspection NI, 'Report on an Unannounced Inspection of Ash House Women's Prison Hydebank Wood (9-19) May 2016' (CJINI, 2016), at 6.

5.12 In December 2017, the Criminal Justice Inspection NI published a largely positive report concerning its inspection of Magilligan prison. However, the report raised concerns that:

more prisoners than at the last inspection reported feeling unsafe, or being victimised. The reasons for this were complex, but included the prevalence of illicit drugs, levels of vulnerability in the population and the welcome but challenging integration within the regime of men convicted of sexual offences. We found evidence of the under-reporting of bullying, and the 'Safer at Magilligan' (SAM) process, which aimed to manage these issues, was not yet fully effective. While day-to-day care for the most vulnerable men held was good, there were still frailties in the Supporting Prisoners at Risk (SPAR) process and overuse of anti-ligature clothing.¹⁴³

5.13 In August 2018, the Regional Quality Improvement Authority published its audit of forensic mental health and learning disability services in October 2018. The report found:

information collected regarding the location within the NI Prison Service from which patients were accepted for admission to Shannon Clinic Regional Secure Unit, over the seven year period from 2010 to 2016, showed a significant proportion coming from the Care and Supervision Unit, following closure of the residential healthcare facility in 2013. The residential healthcare facility, 'healthcare wing', was a high support landing where acutely mentally unwell prisoners could be located and it had 24 hour coverage by general and mental health staff. From 2014-2016, of the total of 31 patients accepted from the NI Prison Service there were 10 referrals accepted from the Care and Supervision Unit to Shannon Clinic Regional Secure Unit compared to none of

¹⁴³ Criminal Justice Inspection NI, 'Report on an Unannounced Inspection of Magilligan Prison (12-22 June 2017)' (CJINI, 2017), at 6.

the 50 referrals accepted from the NI Prison Service between 2010 and 2013.¹⁴⁴

5.14 The Regional Quality Improvement Authority acknowledged that:

the placement of mentally ill people within conditions of segregation such as within the Care and Supervision Unit can be detrimental to their mental wellbeing and is not in keeping with the principle of equivalence of care between prison and the wider community. It has also been shown by forensic services in Dublin that the use of seclusion can be reduced by providing a high support unit within a prison.¹⁴⁵

5.15 It recommended, "the Prison Health Commissioning Team should in partnership with NI Prison Service/South Eastern Health and Social Care Trust re-assess the need for a residential healthcare facility within Maghaberry prison".¹⁴⁶

5.16 Commenting on the report, Dr Adrian East from the Royal College of Psychiatrists in NI, stated:

the audit presents clear evidence that, in the absence of such a facility, some mentally disordered offenders are being managed in the Care and Supervision Unit in conditions of segregation... Segregating mentally disordered prisoners from the general prison population is harmful to their mental health... Any such segregation must be for the shortest period of time possible and closely monitored... We believe that the residential prison healthcare facility should be re-opened.¹⁴⁷

5.17 In November 2018, the Criminal Justice Inspectorate for NI published the report of its most recent unannounced visit to

¹⁴⁴ The Regulation and Quality Improvement Authority, 'Baseline Audit of Forensic Mental Health and Learning Disability Services – Adult Services' (RQIA, 2018), at 32.

¹⁴⁵ The Regulation and Quality Improvement Authority, 'Baseline Audit of Forensic Mental Health and Learning Disability Services – Adult Services' (RQIA, 2018), at 32.

¹⁴⁶ The Regulation and Quality Improvement Authority, 'Baseline Audit of Forensic Mental Health and Learning Disability Services – Adult Services' (RQIA, 2018), at 35.

¹⁴⁷ Claire Smyth, 'Call for re-opening of residential healthcare facility at Maghaberry Prison', *the Detail*, 30 October 2018.

Maghaberry Prison. It stated that in its survey, 66% of prisoners said they had a mental health problem, but only 24% received assistance.¹⁴⁸ It recommended that:

Patients with mental health needs should receive stepped care within agreed pathways, and care plans should be regularly reviewed and overseen at effective multi-disciplinary team meetings.¹⁴⁹

5.18 In 2017 and 2018, the NIHRC visited each of the prisons in NI. During these visits concerns were raised with the NIHRC that mental health provision in NI prisons was under-staffed. It was reported that this is due to a lack of interest from qualified professionals in the available roles. It was also reported that this leads to an over-reliance on agency staff.¹⁵⁰

5.19 **The Committee may wish to recommend that the State party promptly and effectively implement the recommendations of the Northern Ireland Prison Ombudsman and the Criminal Justice Inspection NI concerning mental health care in prisons.**

5.20 **The Committee may wish to recommend that the State party re-assess the need for a residential healthcare facility within Maghaberry prison.**

5.21 **The Committee may wish to recommend that the State party take effective steps to ensure mental health services in Northern Ireland prisons are effectively staffed long-term.**

Prisoner violence

5.22 During 2017/2018, there were 55 prisoner assaults on prison staff and 100 prisoner assaults on other prisoners. Such assaults have been decreasing since 2015. During 2015/2016, there were 95 prisoner assaults on prison staff and 221 prisoner assaults on other

¹⁴⁸ CJINI, 'Report on an Unannounced Inspection of Maghaberry Prison (9-19 April)' (CJINI, 2018) para 2.61.

¹⁴⁹ CJINI, 'Report on an Unannounced Inspection of Maghaberry Prison (9-19 April)' (CJINI, 2018) recommendation 5.11.

¹⁵⁰ NI Human Rights Commission visit to Magilligan, November 2017; NI Human Rights Commission visit to Maghaberry, August 2018; NI Human Rights visit to Hydebank Wood, November 2018.

prisoners. During 2016/2017, this decreased to 73 prisoner assaults on prison staff and 122 prisoner assaults on other prisoners.

- 5.23 The NI Prison Service has a range of measures in place, which contribute to violence reduction. Operational and physical security measures – including staff supervision, the use of CCTV and Body Worn Video Camera - are used as preventative measures against violence in prisons. NI Prison Service also employs effective population management techniques, including arrangements to manage potential 'enemies' in prison, cell sharing risk assessments, specific locations for prisoners who may be more vulnerable because of their offence. Prisoners who are involved in a violent incident, bullying or anti-social behaviour will be considered for prison disciplinary action, and in serious incidents referred to the police. NI Prison Service is also introducing restorative practice in establishments.
- 5.24 Prisoners are also supported to address their behaviour in prison and post-release through sentence planning, offending behaviour programmes and through a range of rehabilitative and pastoral support mechanisms. These include mental health referrals and support, addictions support, safer custody case conferencing and access to chaplaincy services.
- 5.25 The abuse of substances, both illicit and prescribed, can be a significant contributing factor to violence in prisons. NIPS is committed to reducing the access to and demand for drugs. This is based around a three-strand approach – to restrict supply, to reduce demand and to assist recovery. A range of measures are in place to prevent illicit drugs coming into prison, these include the use of prisoner drug testing, passive drugs dogs, and visitor/staff searches. The NI Prison Service has placed increased emphasis on preventing trafficking by prisoners returning from any form of temporary release. The Prison Service also continues to work closely with colleagues in other agencies including the South Eastern Health and Social Care Trust to minimise the misuse of drugs and to educate and support those prisoners who have addiction issues.

- 5.26 The Committee may wish to recommend that the State party effectively monitors and develops measures in Northern Ireland prisons aimed at reducing prisoner violence, including ensuring such measures are human rights compliant.**
- 5.27 The Committee may wish to recommend that the State party take effective steps to ensure that prison officers and prisoners that are victims of violence in prisons are effectively supported and effective steps are taken to protect them from future violence.**

Deaths in custody

- 5.28** Between January 2007 and September 2018, 50 prisoners have died in NI's prisons. The NI Prison Ombudsman confirmed 27 were self-inflicted, 21 were deaths by natural causes and two cannot be easily classified.¹⁵¹ The Department of Justice reports that approximately 49 per cent of prisoners in NI have a history of self-harm or suicidal thoughts or attempts.¹⁵²
- 5.29** During the period April 2017 to March 2018, the NI Prisoner Ombudsman commenced investigations into three deaths in custody. One involved a prisoner at Magilligan Prison and two involved prisoners at Maghaberry Prison. The deaths occurred in May, August and September 2017. Two of the deaths appeared to be self-inflicted, whilst the third person appeared to die from natural causes. The NI Prisoner Ombudsman made nine recommendations for improvement in the two death in custody reports that were published; these included two recommendations for the NI Prison Service and seven recommendations for the South Eastern Health and Social Care Trust.¹⁵³ All recommendations were accepted, with implementation pending.
- 5.30** Since November 2014, 195 recommendations have been made in 13 death in custody reports by the Prison Ombudsman. Of these

¹⁵¹ Claire Smyth, 'Call for independent inquiry after 206 prisoner deaths in 12 years', *The Detail*, 27 September 2018.

¹⁵² Correspondence from the Department of Justice to the NI Human Rights Commission, 27 November 2018.

¹⁵³ Prisoner Ombudsman NI, 'Annual Report 2017-18' (PONI, 2018), at 21.

173 were accepted by the NI Prison Service and South Eastern Health and Social Care Trust, including 42 recommendations that had been previously made and accepted.¹⁵⁴ Commenting on this, the Chief Inspector of the Criminal Justice Inspection NI who was then the acting Prisoner Ombudsman NI¹⁵⁵, Mr Brendan McGuigan, stated:

I acknowledge that the NI Prison Service and South Eastern Health and Social Care Trust have demonstrated their willingness to work to improve prisoner safety by accepting the recommendations made as a result of death in custody investigations. However, it is a matter of concern that recommendations which have been accepted have not been implemented and on many occasions, recommendations have been repeated. This is an issue which my predecessor Tom McGonigle raised with the then Ministers of Justice and Health in November 2014.¹⁵⁶

5.31 Particular concerns have previously been raised in relation to Maghaberry prison. In November 2015, a report on an independent inspection of Maghaberry Prison revealed that significant failures in local leadership combined with an ineffective relationship within senior management of the NI Prison Service contributed to the prison becoming unsafe and unstable for prisoners and staff.¹⁵⁷ Subsequent reports have identified a number of improvements. However, on 22 August 2017, a report of an unannounced inspection of Maghaberry prison recorded:

there were major shortcomings in the care and support provided to the most vulnerable men in the population of Maghaberry and we were not confident that lessons were being learned from previous self-inflicted deaths in custody. There had been 11 self-inflicted deaths at the prison since 2012 and three in 2016. The death in custody action plan was not being effectively reviewed to

¹⁵⁴ Claire Smyth, 'Call for independent inquiry after 206 prisoner deaths in 12 years', *The Detail*, 27 September 2018.

¹⁵⁵ A new Prisoner Ombudsman, Dr Lesley Carroll, took office on 1 March 2019.

¹⁵⁶ Claire Smyth, 'Call for independent inquiry after 206 prisoner deaths in 12 years', *The Detail*, 27 September 2018.

¹⁵⁷ Criminal Justice Inspection NI, 'Report on an Unannounced Inspection of Maghaberry Prison 11–22 May 2015' (CJINI, 2015).

drive improvements; minutes of the strategic safer custody meeting did not reflect meaningful discussions about the issues it raised; it was not clear what action had been taken and when; some actions were blank, some contradictory and it was not clear that all the recommendations had been clearly understood. This was a very concerning picture.¹⁵⁸

5.32 In April 2018, the Criminal Justice Inspection NI conducted an unannounced inspection of Maghaberry Prison. The report on this inspection, which was published in November 2018, concluded that a number of improvements had taken place within Maghaberry, but:

care planning required improvement, not just to keep prisoners safe but to focus on helping them solve their problems. Families needed more involvement in this process. There were too few Listeners to provide cover for all the men who needed support. A number of Listeners were in training for the role.¹⁵⁹

5.33 In August 2017, the NI Prison Service and South Eastern Health and Social Care Trust introduced a joint Suicide and Self-harm Risk Management Strategy. A revised approach to supporting people at risk of suicide and self-harm in custody has been developed and is undergoing testing across the NI Prison Service. The SPAR Evolution, is person centred and will be supported by enhanced IT provision, which will see the introduction of mobile technology that is also under development. It is due to go live in March 2019.¹⁶⁰

5.34 The Departments of Justice and Health have conducted a review of health care in prisons, which has long been completed but not yet published due to the lack of Ministers in post.

5.35 The Committee may wish to recommend that the State party take effective steps to prevent deaths in custody in Northern

¹⁵⁸ National Preventative Mechanism, 'Report of an Unannounced Visit to Maghaberry Prison 3-4 April 2017: To Review Progress against the Nine Inspection Recommendations Made in 2015' (NPM, 2017), at 11.

¹⁵⁹ Criminal Justice Inspection NI, 'Report on an Unannounced Inspection of Maghaberry Prison (9-19 April 2018) by the Chief Inspector of Criminal Justice in NI; Her Majesty's Chief Inspector of Prisons; the Regulation and Quality Improvement Authority; and the Education and closed Inspectorate' (CJINI, 2018), at Executive Summary.

¹⁶⁰ Correspondence from the Department of Justice to the NI Human Rights Commission, 27 November 2018.

Ireland prisons, including promptly and effectively implementing and monitoring the recommendations of the NI Prisoner Ombudsman and Criminal Justice Inspection NI.

5.36 The Committee may wish to recommend that the State party ensure the publication of the joint Review of Healthcare in Prisons.

Rehabilitation and resettlement

5.37 Rehabilitation of prisoners in NI remains an issue. Under the Prison Reform Programme launched by the Department of Justice NI in 2011, there have been “substantial steps in enhancing resettlement, rehabilitation and desistance provision”. This has included increased cooperation and engagement between the NI Prison Service and outside agencies, which has led to a number of initiatives focused on mentoring, wellbeing, employment, rehabilitation and desistance. However, there are a number of ongoing hindering factors. These include insufficient resources available to invest in new strategies and fund rehabilitative and desistance work and inadequate management of those with severe and enduring mental health problems, personality disorders and those held in separated conditions.¹⁶¹ Hydebank Wood also has two prisoner development units available within an annex to the prison, one for young males and one for females, that enables prisoners assessed as suitable to have the opportunity to reintegrate into society.¹⁶²

5.38 In September 2018, of 911 sentenced adult male prisoners, 95 were serving sentences of six months or less and of 41 sentenced adult female prisoners, eight were serving sentences of six months or less.¹⁶³ The Department of Justice has acknowledged that:

the actual time served by offenders on short prison sentences provides little opportunity to address offending behaviour. Community sentences, where many offenders are under probation for a prolonged period, provide more

¹⁶¹ Michelle Butler, ‘The NI Prison Reform Programme: Progress Made and Challenges Remaining’ (Knowledge Exchange Seminar Series, 2017).

¹⁶² Correspondence from the Department of Justice to the NI Human Rights Commission, 27 November 2018.

¹⁶³ Department of Justice, ‘Analysis of NIPS Prison Population from 01/07/2017 to 30/09/2018’ (DoJ, 2018).

opportunities to assist the offender to overcome the difficulties that lead the offender to reoffend.¹⁶⁴

5.39 In 2018, the Department of Justice published statistics on reoffending rates for those convicted of criminal offences in 2015/16, which demonstrated that 40.8 per cent of persons released from custody reoffended within one year of release,¹⁶⁵ which is an increase from 38.2 per cent in the previous year.¹⁶⁶ Of those who received a supervised community disposal 35.2 per cent reoffended within one year of completion,¹⁶⁷ which was a rise from 34.7 per cent in the previous year.¹⁶⁸

5.40 In 2016, the Department of Justice announced a review of sentencing to consider:

the legislative framework for certain categories of crime, the setting of tariffs for murder, the arrangements for unduly lenient sentences and the effectiveness of the current sentencing guidelines mechanism to enhance public confidence, consistency and transparency in sentencing.¹⁶⁹

5.41 A pilot of an Enhanced Combination Order has been developed in Northern Ireland. This Order offers the courts the option of issuing a community sentence as an alternative to a prison sentence of 12 months or less. The community sentence requires the individual to do unpaid work, victim-focused work, have a psychological assessment and to take part in programmes.¹⁷⁰ The Order aims “to divert offenders from short-term custodial sentences by offering judges a more intensive community order with a focus on rehabilitation, reparation, restorative practice and desistance”.¹⁷¹ It is indicated that the Orders cost £9,000 per annum, which the

¹⁶⁴ Department of Justice, 'Consultation on a Review of Community Sentences' (DoJ, 2011).

¹⁶⁵ Department of Justice, 'Adult and Youth Reoffending in NI (2015/16 Cohort)' (DoJ, 2018), at i.

¹⁶⁶ Department of Justice, 'Analytical Services Group: Adult and Youth Reoffending in NI (2013/14 Cohort), Research and Statistical Bulletin 23/2016' (DoJ, 2016), at 11.

¹⁶⁷ Department of Justice, 'Adult and Youth Reoffending in NI (2015/16 Cohort)' (DoJ, 2018), at i.

¹⁶⁸ Department of Justice, 'Analytical Services Group: Adult and Youth Reoffending in NI (2013/14 Cohort), Research and Statistical Bulletin 23/2016' (DoJ, 2016), at 11.

¹⁶⁹ Department of Justice, 'Press Release: Justice Minister announces sentencing review', 9 June 2016.

¹⁷⁰ NI Direct, 'Enhanced Combination Orders'. Available at: <https://www.nidirect.gov.uk/articles/enhanced-combination-orders>

¹⁷¹ Probation Board NI, 'Evaluation of the Enhanced Combination Order Pilot' (PBNI, 2017).

(then) Chairman of the Probation Board NI, Vilma Patterson, believes to be “providing value for money and better outcomes in comparison to short prison sentences”.¹⁷² The Probation Board NI’s evaluation report of the pilot recorded that there was a 40 per cent reduction in the reoffending rate for those who completed the Order and that the number of prison sentences of 12 months or less awarded by courts involved in the pilot decreased by 10.5 per cent, suggesting that the Enhanced Combination Order was impacting on prison numbers.¹⁷³ The Department of Justice continues to promote the Enhanced Combination Order as part of its approach to problem solving justice.¹⁷⁴

5.42 The Committee may wish to recommend that the State party effectively address the persistent barriers to prisoners’ rehabilitation and resettlement.

5.43 The Committee may wish to recommend that the State party introduce measures to ensure the wider use of non-custodial measures as an alternative to imprisonment, in particular as an alternative to short-term custodial sentences. This includes continuing to utilise and monitor Enhanced Combination Orders in Northern Ireland.

Detention of Asylum Seekers and Migrants

5.44 NI only has a single short-term holding facility for asylum seekers and migrants. Larne House is NI’s immigration removal centre. It holds up to 19 men and women. The Home Office can hold detainees in Larne House for up to five days, seven days if removal directions have been set. Detainees arrive from Drumkeen House (short-term holding facility) in Belfast, police stations, prisons or directly from enforcement operations in the community. On departure, detainees are often transferred to immigration removal

¹⁷² Probation Board NI, ‘Press Release: Evaluation shows reduction in reoffending and decrease in prison numbers’, 4 December 2017.

¹⁷³ Probation Board NI, ‘Evaluation of the Enhanced Combination Order Pilot’ (PBNI, 2017).

¹⁷⁴ NI Direct, ‘Background to Problem Solving Justice’. Available at: <https://www.nidirect.gov.uk/articles/background-problem-solving-justice>

centres in Great Britain, removed from the UK or released into the community.¹⁷⁵

- 5.45 Three rooms, on a single corridor, are designated for women detainees. This corridor is not separate from the rest of the facility and men can walk through to go to the dining room. Women can lock the doors to their rooms, which can be overridden by staff in the event of an emergency. Concerns were raised that women were not able to lock their doors if they were under close observation (e.g. if it was believed they were a threat to themselves).¹⁷⁶
- 5.46 Communal areas are shared by men and women and there is no option for a gender-specific communal area.¹⁷⁷
- 5.47 Concerns have been raised with the NIHRC that asylum seekers on the island of Ireland can be subject to lengthy and unnecessary detention when crossing the border.¹⁷⁸ A typical scenario explained to the NIHRC was where an asylum seeker travels from Ireland to NI, is detained in NI and transferred to elsewhere in the UK, before being sent back to the country of entry, Ireland. It has been reported that delays on an asylum decision can exacerbate the issue. It has also been reported that some asylum seekers can be placed in a position where they are denied asylum, but cannot be returned to their home country.¹⁷⁹
- 5.48 As there is currently no time limit to immigration detention in the United Kingdom, there is the possibility that those removed from Northern Ireland to long-term detention centres in the rest of the United Kingdom may be subject to indefinite detention. In February 2019, the Joint Committee on Human Rights published a report

¹⁷⁵ HM Chief Inspector of Prisons, 'Report on an Unannounced Inspection of the Short-Term Holding Facility at Larne House' (NIPS, 2016), at Overview and para 1.12; Meeting between Larne House Visitors Group and NI Human Rights Commission, 11 April 2018.

¹⁷⁶ HM Chief Inspector of Prisons, 'Report on an Unannounced Inspection of the Short-Term Holding Facility at Larne House' (NIPS, 2016), at Overview and para 1.12; Meeting between Larne House Visitors Group and NI Human Rights Commission, 11 April 2018.

¹⁷⁷ HM Chief Inspector of Prisons, 'Report on an Unannounced Inspection of the Short-Term Holding Facility at Larne House' (NIPS, 2016), at Overview and para 1.12; Meeting between Larne House Visitors Group and NI Human Rights Commission, 11 April 2018.

¹⁷⁸ Meeting between Larne House Visitors Group and NI Human Rights Commission, 11 April 2018; Roundtable discussions with NI women's policy groups and NI women's community groups, October 2017, November 2017, February 2018 and March 2018; Roundtable discussions with civil society representatives, November 2018.

¹⁷⁹ Meeting between Larne House Visitors Group and NI Human Rights Commission, 11 April 2018; Roundtable discussions with NI women's policy groups and NI women's community groups, October 2017, November 2017, February 2018 and March 2018; Roundtable discussions with civil society representatives, November 2018.

proposing major reforms to immigration detention. During evidence gathering for the report, former detainees described the indeterminate nature of detention and uncertainty associated with it as “mental torture”.¹⁸⁰ Her Majesty’s Inspectorate of Prisons and the Independent Monitoring Boards also stated that “when speaking to detainees during inspections or visits, the indeterminate nature of immigration detention is a key cause of distress and anxiety”.¹⁸¹

5.49 To put an end to indefinite immigration detention in the UK, an express provision setting a time limit is required. Such a provision is being considered for inclusion in the Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2017-19, which is being debated at Westminster.¹⁸² The amendment reflects the Joint Committee on Human Rights proposal that a 28-day time limit is introduced.¹⁸³ The NIHRC supports this approach and the inclusion of the proposed clause within the Immigration and Social Security Co-ordination (EU Withdrawal) Bill. The NIHRC has specifically called for:

where all other alternatives have been explored and considered unsuitable and detention is considered necessary, the maximum cumulative period for detention should be 28 days. The only exception to the 28-day limit should be that in exceptional circumstances – for example, when there are no barriers to removal and the detainee is seeking unreasonably to frustrate the removal process – the period of 28 days could be extended by a further period of up to 28 days on the decision of a judge. The decision on whether the 28-day period should be extended should be a judicial one, to be considered on application from the Home Office.¹⁸⁴

5.50 In March 2019, the Home Affairs Select Committee published its report on Immigration detention. In the report, it recognises the -. It concludes:

¹⁸⁰ House of Commons and House of Lords Joint Select Committee on Human Rights, ‘Immigration Detention: Sixteenth Report of Session 2017-19’ (HC, 2019), at paras 2, 64.

¹⁸¹ House of Commons and House of Lords Joint Select Committee on Human Rights, ‘Immigration Detention: Sixteenth Report of Session 2017-19’ (HC, 2019), at para 64.

¹⁸² Parliament UK, ‘Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2017-19’. Available at: <https://services.parliament.uk/bills/2017-19/immigrationandsocialsecuritycoordinationeuwithdrawal.html>

¹⁸³ House of Commons and House of Lords Joint Select Committee on Human Rights, ‘Immigration Detention: Sixteenth Report of Session 2017-19’ (HC, 2019), at 3.

¹⁸⁴ NI Human Rights Commission, ‘Immigration and Social Security Co-ordination (EU Withdrawal) Bill: Submission to Public Bill Committee’ (NIHRC, 2019), at para 34.

In line with the Joint Committee on Human Rights, we urge the Government to bring an end to indefinite immigration detention and to implement a maximum 28-day time limit with immediate effect. We strongly believe that 28 days would be a reasonable statutory immigration detention time limit to enforce, given that the Home Office's own Enforcement Instructions and Guidance stipulate that detention should only be maintained when removal is imminent (i.e. within 28 days (four weeks)).¹⁸⁵

5.51 Concerns have also been raised with the NIHRC by the NI Prison Service that immigration detainees are being detained within NI's prison system. A reported scenario is where an illegal immigrant that has been imprisoned for committing a crime and recommended for deportation (has been served with an IS91) continues to be detained after their sentence is served. Another reported scenario is where illegal immigrants recommended for deportation are detained within prisons in NI without having committed a crime. In both scenarios, the affected detainee remains detained within prison until they are processed by the Home Office, which can take an undetermined period.

5.52 There has been a significant increase in the number of days prisoners in NI are spending on IS91 detention. Statistics from the NI Prison Service that in 2014-2015 it was 217 days, in 2015-2016 it was 382 days, in 2016-2017 it was 1,129 days and in 2017-2018 it was 2,414 days.¹⁸⁶ It was also reported that the affected detainees are not provided with adequate translation services, it is unclear the assistance available to the affected detainees or how to access it, and there is a lack of transparency around the process in place or not in place to deal with such detainees.¹⁸⁷ The NI Prison Service has raised its concerns with the Home Office, but there has been a lack of response.¹⁸⁸

5.53 The Immigration Detention Centre Rules make provision for the regulation and management of detention centres.¹⁸⁹ The Rules

¹⁸⁵ House of Commons Home Affairs Committee, 'Immigration Detention' (HC, 2019) para 22.

¹⁸⁶ Correspondence from Department of Justice to NI Human Rights Commission, 4 March 2019.

¹⁸⁷ Meeting between Department of Justice officials and NI Human Rights Commission, 29 November 2018.

¹⁸⁸ Meeting between Department of Justice officials and NI Human Rights Commission, 29 November 2018.

¹⁸⁹ The Detention Centre Rules 2001.

provide for matters such as the welfare and health care of immigration detainees. Rule 35(3) of the Detention Centre Rules places an obligation on a medical practitioner to report to the manager of the Centre any detained person who he/she is concerned may have been the victim of torture.

5.54 The Detention Centre Rules do not apply to Larne House, due to its classification as a short term holding facility. In January 2016, a review of the welfare of immigration detainees by Stephen Shaw, the former Prisoner and Probation Ombudsman for England and Wales, noted the absence of rules governing short term holding centres.¹⁹⁰ It recommended that a discussion draft of the short term holding centre rules be published as a matter of urgency. Following this review in March 2018, the Secretary of State for the Home Department laid the Short-term Holding Facility Rules 2018 before Parliament and these became law on 2 July 2018.

5.55 The Rules provide “where a health care professional has concerns that a detained person may have been a victim of torture this must be reported to the manager”.¹⁹¹ The Rules are to be reviewed following one year of their operation.¹⁹²

5.56 Concerns have been raised by civil society representatives that there is a lack of training of Larne House staff, which is inhibiting effective implementation of the rules.¹⁹³ This was also a finding of the HM Chief Inspector of Prisons, which reported that:

detainee custody officers [at Larne House] were not aware of any Mitie safeguarding adults policy or the national referral mechanism to identify and support victims of trafficking. We were told that if the detainee custody officers identified detainees who were at risk of harm due to specific vulnerabilities, this would be reported immediately to the Home Office.¹⁹⁴

¹⁹⁰ Stephen Shaw, ‘Review into the Welfare in Detention of Vulnerable Persons’ (Home Office, 2016), at Recommendation 21.

¹⁹¹ Short-term Holding Facility Rules 2018.

¹⁹² Department of Justice, ‘Explanatory Memorandum to the Short Term Holding Centre Rules’ (DoJ, 2018), at para 12.1.

¹⁹³ Roundtable discussions with civil society representatives, November 2018; Meeting between civil society representatives, 11 April 2018.

¹⁹⁴ HM Chief Inspector of Prisons, ‘Report on an Unannounced Inspection of the Short-term Holding Facility at Larne House’ (HMIP, 2018), at para 1.8.

- 5.57 Further concerns have been raised that the private company that manages the facility employs the nurse in Larne House, which may be inhibiting the independence of health assessments within the facility.¹⁹⁵
- 5.58 **The Committee may wish to recommend that the State party ensure that women immigration detainees in Northern Ireland are safe and have the option of gender-specific communal areas.**
- 5.59 **The Committee may wish to recommend that the State party ensure that immigration detainees in Northern Ireland are not unlawfully detained within prison, and that their asylum applications are promptly and effectively processed.**
- 5.60 **The Committee may wish to recommend that the State party review and streamline procedures for returning asylum seekers directly to Ireland, to limit the time in detention.**
- 5.61 **The Committee may wish to recommend that the State party promptly legislate to end indefinite detention and ensures that this is effectively implemented.**
- 5.62 **The Committee may wish to recommend that the State party ensure that immigration detainees in Northern Ireland are effectively supported through the asylum seeking process, including ensuring that reasonable accommodations are available and accessible, and that the process is transparent.**
- 5.63 **The Committee may wish to recommend that the State party ensure effective implementation of the Short-term Holding Facility Rules 2018, including comprehensive training of all staff in Larne House on identifying and reporting torture, and the local services and safeguarding services available.**

¹⁹⁵ Roundtable discussions with civil society representatives, November 2018; Meeting between civil society representatives, 11 April 2018.

5.64 The Committee may wish to recommend that the State party ensure the independence of health care professionals dealing with detained asylum seekers.

Mental Health and Children

5.65 The Mental Capacity (NI) Act 2016, once commenced, will introduce a presumption of capacity for individuals over the age of 16 only.¹⁹⁶ For those under 16 years, the Department for Health had committed to review how the current legal framework, principally the Children (NI) Order 1995, reflects the emerging capacity of children in a health and welfare context. However during the second stage debate on the Mental Capacity Bill, the then Minister for Health stated that there are “simply no available resources and arguably no time to undertake such a wide-ranging project at this moment.”¹⁹⁷

5.66 In 2016, the UNCRC Committee raised concern that, “children under the age of 16 years are excluded from the protection ... under the Mental Capacity Act (2016) in NI, including with regard to medical treatment without consent.”¹⁹⁸

5.67 The NIHRC is aware that this has not commenced, as the direction of the review would have to be approved by a Minister.¹⁹⁹

5.68 The Committee may wish to recommend that the State Party review the current legislation to ensure that the best interests and the views of the child are taken into account in cases of mental health treatment of children below the age of 16, in particular with regard to hospitalisation and treatment without consent.

5.69 The NI Commissioner for Children and Young People (NICCY) conducted a review of mental health services and support for children and young people in NI, reporting in September 2018.²⁰⁰ The review identified that the system was, “under significant pressure, finding it difficult to respond to the scale of need, and the complexity of issues children and young people are presenting. It is

¹⁹⁶ Section 1, Mental Capacity (NI) Act 2016.

¹⁹⁷ NI Assembly, ‘Official Report’, 16 June 2015.

¹⁹⁸ CRC/C/GBR/CO/5, ‘UN Committee on the Rights of the Child Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI’, 12 July 2016, at para 60(g).

¹⁹⁹ Meeting between Department of Health officials and NI Human Rights Commission, 21 January 2019.

²⁰⁰ NICCY, ‘Still Waiting: a Rights Based Review of Mental Health Services and Support for Children and Young People in Northern Ireland’ (NICCY, 2018).

clear that the core budget for children and young people’s mental health services has not changed significantly enough to meet its ambitions for system reform. It also found chronic under-investment, historical patterns of funding allocations which are not based on known mental health needs, and a very mixed experience from young people on the availability, accessibility and quality of services provided.”²⁰¹

- 5.70 The review identified that there is no regional specialist service model for young people with a learning disability, meaning that they are often accessing mental health or learning disability support services, and that this separation results in a lack of professionals with expertise in working with children who have both a learning disability and mental health problem.²⁰²
- 5.71 The review also identified a high proportion of admissions on the basis of detention, “highlighting the potentially inappropriate use of detention as a way of permitting staff to use restrictive practice”.²⁰³
- 5.72 The Committee may wish to recommend that the State party ensure the implementation of recommendations made by the NI Commissioner for Children and Young People regarding mental health services for children.**

Age of Criminal Responsibility

- 5.73 There has been no change in the age of criminal responsibility, which remains at ten years old, since the last concluding observations of the Committee. The NIHRC has consistently advised that the Department of Justice should introduce legislation to raise the age to at least 12, in line with international standards.
- 5.74 In correspondence to the NIHRC in 2016, the then Minister of Justice indicated that due to a lack of cross party support any increase in the age of criminal responsibility was unlikely. Since the collapse of the NI Assembly in January 2017, there has been no progress in this area.

²⁰¹ NICCY, ‘Still Waiting: a Rights Based Review of Mental Health Services and Support for Children and Young People in Northern Ireland’ (NICCY, 2018) p.7.

²⁰² NICCY, ‘Still Waiting: a Rights Based Review of Mental Health Services and Support for Children and Young People in Northern Ireland’ (NICCY, 2018) p.14.

²⁰³ NICCY, ‘Still Waiting: a Rights Based Review of Mental Health Services and Support for Children and Young People in Northern Ireland’ (NICCY, 2018) p. 14.

5.75 In its response to recommendations on this issue during the third UPR cycle, the UK Government confirmed the absence of sufficient political support in NI.²⁰⁴ It further stated, “the progressive youth justice system in Northern Ireland, underpinned by restorative justice principles, has meant that very few children under the age of 12 enter the formal criminal justice system.”²⁰⁵

5.76 A review of the youth justice system in 2010/11 by the Department of Justice recommended:

the minimum age should be increased to 12 forthwith and, following a period of review and preparation, perhaps to 14, which has some historical and current significance for criminal law in NI.²⁰⁶

5.77 The NIHRC is aware that the UN Committee on the Rights of the Child is currently reviewing its general comment on children’s rights in juvenile justice and has sought comments on the issue of the minimum age of criminal responsibility.

5.78 The Committee may wish to reaffirm to the State party the requirement to raise the minimum age of criminal responsibility to at least twelve, in line with international human rights standards, and to take account of any recommendations of the forthcoming UNCRC General Comment.

Psychiatric Hospitals

Detention

5.79 Official statistics show that for the period 2017-18, there were 1,010 compulsory admissions under the Mental Health (NI) Order

²⁰⁴ Ministry of Justice, ‘United Kingdom, British Overseas Territories and Crown Dependencies: Annex to the response to the recommendations received on 4 May 2017’ (21 September 2017) p.90.

²⁰⁵ Ministry of Justice, ‘United Kingdom, British Overseas Territories and Crown Dependencies: Annex to the response to the recommendations received on 4 May 2017’ (21 September 2017) p.90.

²⁰⁶ Department of Justice NI, ‘A Review of the Youth Justice System in NI’ (DOJ, 2011), para 107.

1986, of which 32 were under the age of 18.²⁰⁷ The Mental Illness and Learning Disability Census²⁰⁸ shows that the majority of inpatient stays (compulsory and voluntary) were 0-6 months; however, there were 11 individuals with a stay of 10-20 years and five individuals with a stay of 20-30 years.²⁰⁹

5.80 In respect of patients with a learning disability, there were 65 compulsory admissions in the period 2017-18, of which seven were under the age of 18.²¹⁰ The Census shows that of the 113 resident inpatients, six individuals length of stay was between 20-30 years, and eight individuals had been inpatients exceeding 30 years.²¹¹

5.81 Separate to detention on mental health grounds²¹², the NIHRC has been advised that in 2017 there were 24 deprivations of liberty authorised by the NI High Court.²¹³ There is currently no statutory framework for the authorisation of a deprivation of liberty in NI, compared to Great Britain, which has a dedicated Court of Protection. The Department of Health NI issued interim guidance on deprivation of liberty safeguards in 2010, following the European Court of Human Rights judgment *HL v the United Kingdom*²¹⁴, which confirms that until new legislation is enacted, it is unlawful to arrange of provide care of treatment in a way that amounts to a deprivation of liberty.²¹⁵

5.82 Legal action against a healthcare trust in 2014, confirmed that any deprivation of liberty must be authorised by the High Court to ensure adequate safeguards for the individual.²¹⁶ Officials envisage that there will be a substantial increase in the number of persons with an authorised deprivation of liberty under this new framework.²¹⁷

²⁰⁷ Department of Health NI, 'Hospital Statistics: Mental Health and Learning Disability 2017/18' (DoH, 2018) Tables 1.4 and 1.5.

²⁰⁸ The Census is carried out annually and is a snapshot of the resident population on 17 February each year.

²⁰⁹ Department of Health NI, 'Hospital Statistics: Mental Health and Learning Disability 2017/18' (DoH, 2018) Table 1.2.

²¹⁰ Department of Health NI, 'Hospital Statistics: Mental Health and Learning Disability 2017/18' (DoH, 2018) Table 2.4.

²¹¹ Department of Health NI, 'Hospital Statistics: Mental Health and Learning Disability 2017/18' (DoH, 2018) Table 2.2.

²¹² Deprivation of liberty on the grounds of mental health falls under the Mental Health (NI) Order 1986.

²¹³ Meeting between Department of Health officials and NI Human Rights Commission, 21 January 2019.

²¹⁴ *H.L. v the United Kingdom*, Application no.45508/99, 5 October 2004.

²¹⁵ Department of Health NI, 'Deprivation of Liberty Safeguards (DOLS) – Interim Guidance' (DoH, 2010) para 19.

²¹⁶ Awaiting written judgment.

²¹⁷ Meeting between Department of Health officials and NI Human Rights Commission, 21 January 2019.

5.83 The Mental Capacity (NI) Act 2016 intends to create a formal statutory framework but the legislation has not been commenced and while some work on implementation has begun, this cannot progress in the absence of Ministers.

Resettlement

5.84 The issue of the resettlement of individuals in long-term care remains ongoing in NI. The Bamford Review of Mental Health and Learning Disability recommended in 2005, that all people with a learning disability should be relocated to the community by 2011.²¹⁸

5.85 The Permanent Secretary of the Department of Health has indicated that he “expects the resettlement process to be completed by the end of 2019”.²¹⁹ The NIHRC understands that 13 individuals, with complex needs, are still to be resettled.²²⁰

5.86 The Committee may wish to recommend to the State party that the process of resettlement of individuals in long-term care is effectively resourced in order to be completed within the proposed timescale.

Use of Restraints in Healthcare Setting

5.87 There is no current statutory definition of restraint, although this is proposed by the yet to be commenced Mental Capacity (NI) Act 2016.

5.88 No formal statistics are kept by the Department of Health NI or the Regulation and Quality Improvement Authority on the use of restraint in the health and social care sector.

5.89 The Committee may wish to recommend to the State party that a statutory definition of restraint is promptly developed.

²¹⁸ Bamford, D. ‘Equal Lives, Review of Policy and Services for People with a Learning Disability in Northern Ireland’ (DoH, 2005) p.130, recommendation 27.

²¹⁹ Department of Health NI, ‘Press Release: Permanent Secretary apologises to Muckamore families’, 17 December 2018.

²²⁰ Information provided by Department of Health, by email of 18.02.19.

5.90 The Committee may wish to recommend to the State party that data on the use of restraint in the health and social care sector is effectively gathered, disaggregated and evaluated.

6.0 Investigations (Articles 12 and 13)

Investigations into Conflict-related Deaths in Northern Ireland

- 6.1** On 23 December 2014, the Stormont House Agreement was reached.²²¹ The Agreement sets out a structure for the effective investigation of conflict related deaths. This included the Historical Inquiries Unit, which is to take forward investigations into outstanding Troubles-related deaths.²²²
- 6.2** The UK Government has stated that specific measures of the financial package to NI will include up to £150m over 5 years to help fund the bodies to deal with the past, including the Historical Inquiries Unit.²²³
- 6.3** In May 2018, the NI Office launched a consultation entitled addressing the Legacy of NI's Past, seeking views on draft legislation to establish the various legacy bodies proposed within the Stormont House Agreement.²²⁴ The NIHRC broadly welcomed the draft legislation, but raised that the provisions contained within the draft Bill were not fully human rights compliant in law and practice. In particular, the NIHRC raised concerns about the remit, resourcing, independence and use of closed material proceedings regarding the Historical Investigations Unit.²²⁵
- 6.4** Alongside the outstanding investigations into deaths under Article 2, to be undertaken by the proposed Historical Investigations Unit, there are 28 cases where individuals have died at the scene of a conflict-related incident, but are not recorded as conflict-related

²²¹ NI Office, 'Stormont House Agreement', 23 December 2014.

²²² NI Office, 'Stormont House Agreement', 23 December 2014, at para 30.

²²³ NI Office, 'Stormont House Agreement, Financial Annex', 23 December 2014, at 1. The Stormont House Agreement includes a further broad financial commitment to all sections covered within the Agreement. It is stated within the Financial Annex that: 'the total value of the Government's package is additional spending power of almost £2 billion'.

²²⁴ NI Office, 'Addressing the Legacy of NI's Past: Consultation Paper' (NIO, 2018).

²²⁵ NI Human Rights Commission, 'Submission to NIO's Consultation on Addressing the Legacy of NI's Past' (NIHRC, 2018).

deaths.²²⁶ These cases include individuals that died of shock-related injuries, for example a heart attack, when exposed to scenarios such as arriving at a scene where a relative had been shot, being within the vicinity of a bomb attack, or raids and missile attacks on their home.²²⁷ Consequently, these cases are not recognised as potentially falling within the remit of the Stormont House Agreement and its proposed remedies.

- 6.5 The Committee may wish to recommend that the State party amend the draft Stormont House Agreement Bill to ensure that the Historical Inquiries Unit is fully compliant with human rights law and practice.**
- 6.6 The Committee may wish to recommend that the State party recognise cases where individuals have died at the scene of a conflict-related incident as within the scope of the Stormont House Agreement.**

Inquests into Conflict-related Deaths in Northern Ireland

- 6.7** There remain a number of outstanding conflict-related inquests in NI, with regard to which the UN Human Rights Committee recommended that the UK Government and the NI Executive, “ensure that the Legacy Investigation Branch [of the Police Service NI] and the NI Coroner’s Court are adequately resourced and are well-positioned to effectively review outstanding legacy cases.”²²⁸
- 6.8** In 2016, the Lord Chief Justice indicated, “the existing Coroners Service is not adequately resourced to carry the weight of these cases and so we will need to establish a new, dedicated legacy inquest unit as a matter of urgency.” He made clear that his plans for addressing legacy inquests were contingent on the necessary resources being allocated to allow for the creation of a specialist Legacy Inquest Unit, to support the Coroner’s Service.²²⁹ This unit would be established within the NI Courts Service, with the full

²²⁶ Noel McAdam, ‘New push to recognise tragic cases of ‘forgotten dead’ of the Troubles’, *Belfast Telegraph*, 18 July 2017; Roundtable discussion with civil society representatives, January 2019.

²²⁷ Noel McAdam, ‘New push to recognise tragic cases of ‘forgotten dead’ of the Troubles’, *Belfast Telegraph*, 18 July 2017; Roundtable discussion with civil society representatives, January 2019.

²²⁸ CCPR/C/GBR/CO/7, ‘UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI’, 17 August 2015, at para 11(b).

²²⁹ ‘Legacy inquests in NI “can be dealt with in five years”’, *BBC News*, 12 February 2016.

cooperation of relevant State agencies, including the Police Service NI and Ministry of Defence.

- 6.9 Following a review of the state of readiness of 52 outstanding inquests relating to 93 deaths, at the initiative of the Lord Chief Justice, the Department of Justice prepared a funding request seeking to draw down funds from the allocated £150 million.
- 6.10 In a legal challenge regarding the failure to put in place adequate funding to prevent further delays, the NI High Court held that “there is systemic delay in the coronial system in respect of the determination of the legacy inquests”.²³⁰ It further held, “[t]he approach of the [former First Minister] and the Secretary of State has been infected by the legally erroneous view that dealing with the question of the provision of additional funds to deal with the systemic problems in respect of legacy inquests should await the outcome of an overall package in respect of all legacy issues. Their approach has been infected by the erroneous legal view that there is a permissible linkage between the issues.”²³¹
- 6.11 The Lord Chief Justice has continued to highlight the limited progress in dealing with the outstanding legal inquests.²³² Most recently, in June 2018, the Lord Chief Justice stressed that, “the important matter now is to address the issue of resources and ensure we moved as quickly as possible to provide a resolution on the remaining cases.”²³³
- 6.12 The Lord Chief Justice's views are supported by the UN Special Rapporteur on Truth who, following a mission to the UK in 2017, comments on the proposals as, “a wisely designed strategy to maximise the truth-telling potential of inquests for individual cases, and illustrating the structural dimensions of violations, deserves strong support”.²³⁴

²³⁰ *In the matter of an Application by Brigid Hughes for Judicial Review* [2018] NIQB 30, p.35, para 1.

²³¹ *In the matter of an Application by Brigid Hughes for Judicial Review* [2018] NIQB 30, p.35, para 9.

²³² ‘Top judge Sir Declan Morgan criticises legacy progress’, *BBC News*, 5 September 2017.

²³³ ‘Lack of resources to hold legacy inquests must be addressed’, *Belfast Telegraph*, 11 June 2018.

²³⁴ A/HRC/34/62/Add.1, ‘Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his mission to the UK of Great Britain and NI’, 17 November 2016, para 28.

6.13 The NI High Court has also stated, “the delay in dealing with this inquest and other legacy inquests arises from the lack of resources to fund a timely and efficient system to manage and run the statutory inquests having regard to their nature, likely length and complexity.”²³⁵

6.14 In the NIO consultation, published in May 2018, on addressing the past in NI, the UK government supports the proposals of the Lord Chief Justice for reform²³⁶ but does not make any proposals for resolving the issue of funding.

6.15 In respect of its oversight of the McKerr group of cases, the Committee of Ministers’,

strongly encouraged [the UK] to accelerate their consideration of further ways and means in this regard and to take all necessary measures without any further delay so that the legacy inquest system is properly resourced and reformed in accordance with the Lord Chief Justice of Northern Ireland’s proposals in order that legacy inquests, including those pending for the individual applicants in these cases, can be concluded within a reasonable timeframe.²³⁷

6.16 The Department of Justice NI announced on 28 February 2019 that a new Legacy Inquest Unit will be established within the Coroner’s Service under the remit of the Lord Chief Justice.²³⁸ The Permanent Secretary of the Department of Justice NI identified the estimated cost would be £55million over six years, and that the budget for 2019-20 was confirmed.²³⁹

6.17 The Committee may wish to recommend that the State party, in the absence of a NI Executive, put in place continuing funding for the Legacy Inquest Unit.

²³⁵ *In the Matter of an Application by Brigid Hughes for Judicial Review* [2018] NIQB 30, para 12.

²³⁶ NIO, Consultation Paper: Addressing the Legacy of Northern Ireland’s Past (May 2018) p.20.

²³⁷ Committee of Ministers, 1318 meeting (DH) June 2018 - H46-30 McKerr group v. the United Kingdom (Application No. 28883/95) CM/Del/Dec(2018)1318/H46-30 (7 June 2018) para 6.

²³⁸ Department of Justice NI, ‘Press Release: DOJ announces legacy inquest reform’ 28 February 2019.

²³⁹ Department of Justice NI, ‘Press Release: DOJ announces legacy inquest reform’ 28 February 2019.

Patrick Finucane

- 6.18 Since the previous recommendations of the Committee, the Finucane family has continued their legal action against the NI Secretary of State's decision to instruct Sir Desmond de Silva to carry out a review of evidence rather than a public inquiry. An appeal to the NI Court of Appeal in 2017 was unsuccessful.
- 6.19 The UK Supreme Court ('UKSC'), in June 2018, has considered whether the failure to establish a public inquiry into the death of Patrick Finucane is compatible with Article 2 ECHR and whether Mrs Finucane had a substantive legitimate expectation that such would be established.
- 6.20 The judgment was delivered on 27 February 2019. The UKSC unanimously made a declaration that there has not been an article 2 compliant inquiry into the death of Patrick Finucane.²⁴⁰ The Court identified the lack of ability of Sir Desmond to compel the attendance of witnesses or cross-examine witnesses on the veracity of their evidence as limitations of the De Silva review.²⁴¹
- 6.21 The UKSC did not order a public inquiry, noting that "it is for the state to decide, in light of the incapacity of Sir Desmond de Silva's review and the inquiries which preceded it to meet the procedural requirement of article 2, what form of investigation, if indeed any is now feasible, is required in order to meet that requirement".²⁴²
- 6.22 This issue has also been the subject of a recommendation by the UN Human Rights Committee, in 2015, that the State Party "consider launching an official inquiry into the murder of Pat Finucane".²⁴³
- 6.23 The Committee may wish to reaffirm its recommendation for the State party to conduct of a public inquiry into the death of Patrick Finucane in line with the judgment of the UK Supreme Court.**

²⁴⁰ *In the matter of an application by Geraldine Finucane for Judicial Review (NI)* [2019] UKSC 7, para 153.

²⁴¹ *In the matter of an application by Geraldine Finucane for Judicial Review (NI)* [2019] UKSC 7, para 134.

²⁴² *In the matter of an application by Geraldine Finucane for Judicial Review (NI)* [2019] UKSC 7, para 153.

²⁴³ CCPR/C/GBR/CO/7/21192, 'UN Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland', 17 August 2015, para 8.

Enforced Disappearances

- 6.24 There are 17 known cases of enforced disappearances in NI, which are linked to the NI conflict.²⁴⁴ Of those 17, 14 have been recovered and three remain missing.²⁴⁵
- 6.25 The NI (Location of Victims' Remains) Act 1999 facilitates passing information through the Independent Commission for the Location of Victims' Remains. The information passed to the NIHRC is inadmissible in any criminal proceedings and is to only to be used to locate the disappeared.²⁴⁶
- 6.26 **The Committee may wish to recommend that the State party take effective steps to ensure the bodies of all known cases of enforced disappearances are recovered and the families of the disappeared are effectively supported.**
- 6.27 **The Committee may wish to recommend that the State party ensure all known cases of enforced disappearances are effectively investigated.**

Use of Torture, Inhuman and Degrading Treatment in Northern Ireland

- 6.28 Following allegations made in a television documentary in June 2014, the Irish Government requested a revision of the European Court of Human Right's original judgment in *Ireland v the United Kingdom*.²⁴⁷ This was based on archived documentation suggesting that expert evidence on behalf of the UK Government had misled the European Commission about the effects of the ill-treatment. In addition that the UK Government had withheld key information about interrogation methods.
- 6.29 The Grand Chamber of the ECt.HR dismissed the request for revision, as it doubted the documentation submitted contained sufficient prima facie evidence of new facts and that it did not have

²⁴⁴ The Disappeared of NI, 'Home'. Available at: <http://thedisappearedni.co.uk/index.php>

²⁴⁵ The Disappeared of NI, 'Still Missing'. Available at: <http://thedisappearedni.co.uk/index.php/missing>; The Disappeared of NI, 'Found'. Available at: <http://thedisappearedni.co.uk/index.php/people-found>

²⁴⁶ Section 4, NI (Location of Victims' Remains) Act 1999.

²⁴⁷ *Ireland v the United Kingdom*, Application no 5310/71 (18 January 1978).

a decisive influence on the Courts findings in the original judgment.²⁴⁸

6.30 A related domestic case regarding the investigation of the use of the five techniques remains ongoing, following a decision of the High Court in October 2017.²⁴⁹ In December 2017, an application to leapfrog the appeal directly to the UK Supreme Court was refused²⁵⁰ and the matter awaits judgment from the NI Court of Appeal.

6.31 The Committee may wish to recommend that the State Party ensure that all known cases of torture, inhuman or degrading treatment are effectively investigated.

Investigations of Torture, Inhuman and Degrading Treatment during Northern Ireland Conflict

6.32 The NIO consultation on addressing the past, including draft legislation for the establishment of investigative mechanisms, does not cover circumstances in which the victims of human rights abuses and violations were not killed, despite the acknowledgment of outstanding incidents beyond the scope of Article 2 ECHR.²⁵¹ The NIHRC has advised of the non-derogable nature of the prohibition on torture, inhuman and degrading treatment and that an effective, official investigation is required in respect of all serious human rights violations or abuses.²⁵² The NIHRC recognises that an additional mechanism to those proposed in the draft Bill, may be required to discharge this obligation.²⁵³

6.33 The UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and guarantees of non-repetition has recognised that the focus on death investigations means, "persons physically or psychologically injured as a result of life threatening attacks, torture or ill-treatment, including sexual violence, are excluded from historical investigations. The majority of violations and abuses

²⁴⁸ *Ireland v. the United Kingdom*, Application no. 5310/71 (revision) (10 September 2018) paras 136-7.

²⁴⁹ *McKenna's (Mary) Application* [2017] NIQB 96 (27 October 2017).

²⁵⁰ *McGuigan's (Francis) Application* [2017] NIQB 132 (21 December 2017), para 9.

²⁵¹ NIO, Stormont House Agreement (23 December 2014) para 55.

²⁵² NIHRC, Submission to NIO's Consultation on Addressing the Legacy of Northern Ireland's Past (August 2018) paras 2.7-2.22.

²⁵³ NIHRC, Submission to NIO's Consultation on Addressing the Legacy of Northern Ireland's Past (August 2018) para 2.24.

relating to the Troubles therefore remain largely unaddressed.”²⁵⁴
He further comments, “these cases deserve urgent attention, as victims have a right to comprehensive redress and because some of them are in situations of extreme vulnerability.”²⁵⁵

- 6.34 Civil society representatives raise particular instances of waterboarding during the 1970s, which have not been effectively investigated by the UK government.²⁵⁶
- 6.35 While the NIHRC recognises that the new proposed institutions need not deal with all conflict related investigations, concerns remain that there is no current mechanism or procedure for the investigation of allegations of torture, inhuman and degrading treatment.
- 6.36 The NIHRC is aware that the Police Service of NI are not investigating non-fatal conflict related crimes, which would include allegations of torture, inhuman or degrading treatment.
- 6.37 **The Committee may wish to recommend that the State Party ensure the effective investigation of all other serious violations or abuses of human rights, meeting the threshold under the prohibition on torture, cruel, inhuman or degrading treatment or punishment, are carried out expeditiously.**

Historical Institutional Abuse Inquiry

- 6.38 On 8 July 2016, the Historical Institutional Abuse Inquiry concluded the programme of hearings, which began in January 2014. The Inquiry report made broad ranging recommendations, including for the erection of a memorial, the establishment of a Commission for Survivors of Institutional Abuse and that a compensation scheme should be established. In addition, the Inquiry recommended the establishment of a publicly funded compensation scheme, to be administered by a Redress Board to make determinations relating to

²⁵⁴ A/HRC/34/62/Add.1, 'Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff on his Mission to the UK of Great Britain and NI', 17 November 2016, at para 39.

²⁵⁵ A/HRC/34/62/Add.1, 'Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff on his Mission to the UK of Great Britain and NI', 17 November 2016, at para 18.

²⁵⁶ Roundtable discussion with civil society representatives, November 2018.

compensation for persons who have suffered abuse in the form of sexual, physical or emotional abuse, or neglect or unacceptable practices, between 1922 and 1995; and were resident in a residential institution in NI.

6.39 The NI Executive did not issue a formal substantive response to the Inquiry Report, prior to the suspension of the NI Assembly. When officially closing the inquiry on 30 June 2017, Sir Anthony Hart, the Chairman of the Historical Institutional Abuse Inquiry, encouraged the Secretary of State NI:

because of the wide welcome for, and support of the Report, expressed in the previous Assembly on 23 January, and the clear undertaking by the Prime Minister to the House of Commons on 8 February that the findings of the report will be “taken into account and acted upon” I feel justified in urging you to put in hand the necessary steps to implement the recommendations of the Inquiry in full as a matter of urgency and without delay.²⁵⁷

6.40 Victims reported lack of support during and after the Inquiry, including lack of adequate legal advice and access to documents during Inquiry. Victims spoke of the alleged abusers’ legal teams having access to documents two weeks in advance and victims’ legal teams only receiving access on the relevant day of evidence.²⁵⁸

6.41 During engagement with the Commission, victims and survivors with experience of the Historical Institutional Abuse Inquiry highlighted the importance of ensuring all staff who interact with victims and survivors of abuse receive appropriate, specialised training.²⁵⁹ Victims reported that there was a need for an effective care package, in addition to compensation. Victims felt the only support they were provided with were room facilities to host meetings. Victims felt there was a lack of expert support in facilitating meetings and that victims were left to support each

²⁵⁷ Historical Institutional Abuse Inquiry, ‘Press Release: HIA Inquiry comes to an end and the Chairman urges the Secretary of State to implement the recommendations of its Report’, 30 June 2017.

²⁵⁸ Roundtable discussion with civil society representatives, November 2018.

²⁵⁹ Meeting with civil society representatives, 30 November 2018; Roundtable discussion with civil society representatives, November 2018.

other. Victims reported that when requesting more specialised support they were referred to the generalised service, Advice NI.²⁶⁰

- 6.42 In August 2017, a request from victims for the then Secretary of State NI, James Brokenshire, to exercise powers within the NI Act 1998 to make an interim compensation payment to victims of institutional abuse was turned down.²⁶¹ In March 2018, in response to a Parliamentary Question relating to the Historical Institutional Abuse Inquiry, Shailesh Vara, the then Parliamentary Under-Secretary in the NI Office, stated “the report was commissioned by the devolved government, and how to respond to its recommendations should properly be for a devolved government to decide”.²⁶² In the absence of a functioning Executive, the Head of the Civil Service has directed the Executive Office to develop draft legislation in respect of a Redress board and a Commissioner of Survivors of Institutional Childhood Abuse, which will be subject to public consultation.²⁶³
- 6.43 In April 2018, leave for judicial review was granted by the NI High Court, in a case arguing that the Secretary of State NI retains a residual power to set up a scheme in the absence of a restoration of the devolved executive and seeks to compel the Secretary of State NI to act on the recommendations of the Hart Inquiry.²⁶⁴ At the time of writing, the case is adjourned.²⁶⁵
- 6.44 The Historical Institutional Abuse Inquiry’s remit does not extend to adult residents of Magdalene laundry type institutions or those abused in private settings. In February 2016, the then NI Executive agreed to establish an inter-departmental Working Group to take forward work on Mother and Baby Homes and Magdalene Laundries and historical clerical child abuse which fell outside the Historical Institutional Abuse Inquiry.²⁶⁶ In March 2018, Norah Gibbons (the

²⁶⁰ Roundtable discussion with civil society representatives, November 2018.

²⁶¹ ‘Brokenshire criticised on historical abuse compensation’, *BBC News*, 18 August 2017.

²⁶² Parliament Business, ‘Historical Institutional Abuse Inquiry: Written Question – 131709’, 16 March 2018.

²⁶³ NI Direct, ‘Historical Institutional Abuse’. Available at: <https://www.nidirect.gov.uk/articles/historical-institutional-abuse>

²⁶⁴ ‘Victims of institutional abuse take legal action against NI Secretary of State in absence of Stormont Executive’, *Belfast Telegraph*, 6 July 2018.

²⁶⁵ ‘Legal challenge over compensation for historical abuse survivors put back until November’, *Irish News*, 10 September 2018.

²⁶⁶ Department of Health, ‘Mother and Baby Homes - Magdalene Laundries’. Available at: <https://www.health-ni.gov.uk/articles/mbh-ml>

Independent Chair of the Working Group) resigned due to health issues. In February 2019, work was ongoing to appoint a new independent Chair.²⁶⁷

- 6.45 In January 2018, the Department of Health commissioned research to be carried out on Mother and Baby Homes and Magdalene Laundries in NI to examine the operation of the homes and laundries between 1922 and 1999.²⁶⁸ This research commenced in June 2018 and is due to take 12 months. The researchers will examine archive records held by the state, churches and relevant voluntary organisations with the primary task of preparing a detailed report on the day-to-day operation and practices within NI's mother and baby homes and Magdalene laundries. The report's finding will inform future deliberations about a possible public inquiry on this subject.²⁶⁹ During its engagement with civil society, the NIHRC was made aware that victims felt they were not effectively consulted on the establishment of the Working Group and the commissioned research.²⁷⁰
- 6.46 Regarding historical abuse in the home, victims of crimes committed before 1 July 1988 are not entitled to criminal injuries compensation, if they were living together with the assailant as members of the same family at the time of the crime.²⁷¹ In July 2018, the Court of Appeal of England and Wales found that the application of the equivalent scheme in England in an individual case was in violation of Article 14 ECHR, in conjunction with Article 1 of Protocol 1, ECHR.²⁷² The UK Government has subsequently announced plans to abolish the rule.²⁷³ In May 2018, the NI Court of Appeal heard a case, which argued that the application of the rule was in violation of Article 14 ECHR, in conjunction with Article 1, Protocol 1 ECHR. Judgment is awaited, at the time of writing.

²⁶⁷ Email from Department of Justice officials to NI Human Rights Commission, 18 December 2018; Department of Health, 'Mother and Baby Homes – Magdalene Laundries'. Available at: <https://www.health-ni.gov.uk/articles/mbh-ml>

²⁶⁸ Department of Health, 'Press Release: Research to start on mother and baby homes and Magdalene Laundries in NI', 11 January 2018.

²⁶⁹ Queen's University Belfast, 'Press Release: Queen's and UU to Examine the History of Mother and Baby Homes in NI', 4 June 2018; Meeting with a representative of Birth Mothers and their Children for Justice NI, 13 February 2018.

²⁷⁰ Meeting with a representative of Birth Mothers and their Children for Justice NI, 13 February 2018.

²⁷¹ Department of Justice, 'NI Criminal Injuries Compensation Scheme 2009' (DoJ, 2009), at paragraph 7(c).

²⁷² *JT v. First-Tier Tribunal* [2018] EWCA Civ 1735.

²⁷³ 'Same-roof' bar on compensation to be lifted to help abuse victims', *The Guardian*, 9 September 2018.

- 6.47 The Committee may wish to recommend that the State party develop and publish a plan to ensure full and effective implementation of the Historical Institutional Abuse Inquiry's Report recommendations, in particular those relating to compensation for victims.**
- 6.48 The Committee may wish to recommend that the State party take effective steps to ensure the victims of historical abuses outside the remit of the Historical Institutional Abuse Inquiry have an effective remedy, including access to thorough and effective independent investigations that offer effective redress (including compensation) and are subject to public scrutiny and meaningful victim participation.**
- 6.49 The Committee may wish to recommend that the State party ensure all staff employed by future historical abuse inquiries (including panels, legal teams, receptionists, security) are appropriately trained and equipped to work with victims of abuse.**
- 6.50 The Committee may wish to recommend that the State party ensure victims of historical abuse in Northern Ireland have sufficient access to specialised support and are provided with prompt, expert guidance when requested.**

Abuse in health and social care settings

Dunmurry Manor Care Home

- 6.51** In June 2018, the Commissioner for Older People NI published a report of its investigation into Dunmurry Manor care home, following concerns of the standard of care and safety for residents with dementia.
- 6.52** The Commissioner for Older People stated:

the investigation findings are deeply concerning and reflect an environment of poor care and treatment,

serious safeguarding issues and medicines management issues, compounded by a failure of responsible bodies to act quickly and comprehensively. Evidence of physical and sexual assaults on female residents, residents leaving the home unnoticed and multiple instances of inhuman and degrading treatment were witnessed and reported. Despite Dunmurry Manor being regulated against care home standards within a regime of regulation and inspection, harm still occurred. It became clear as the investigation progressed that none of the organisations involved were aware of the full scale of the issues being experienced by residents in the home.²⁷⁴

- 6.53 The Commissioner for Older People made a number of findings and recommendations relating to safeguarding and human rights. In responding to the report the Regulation Quality and Improvement Authority, stated that they, “did not agree with some of the Commissioner’s conclusions.”²⁷⁵
- 6.54 Following the report, the Department of Health NI announced a series of actions in order to address standards and public confidence. These include: an independent review of actions by the health and social care system in relation to failings at Dunmurry Manor;²⁷⁶ a scoping review on options for additional sanctions for private sector care providers responsible for serious failings; an audit of safeguarding investigations in relation to care homes in the independent sector; and, a public campaign to build awareness of how to raise concerns and complaints.²⁷⁷
- 6.55 The Care Inspectorate, the scrutiny body for social care in Scotland, was commissioned to conduct an independent rapid investigation into the regulatory response to issues at Dunmurry Manor care home by the Regulation and Quality Improvement Authority. In October 2018, the Care Inspectorate published its report, which

²⁷⁴ Commissioner for Older People NI, ‘Home Truths: A Report on the Commissioner’s Investigation into Dunmurry Manor Care Home’ (COPNI, 2018)

²⁷⁵ Marie-Louise Connolly and Richard Morgan, ‘Dunmurry Manor: RQIA accused of failing home residents’, *BBC News*, 14 June 2018.

²⁷⁶ Department of Health, ‘Press Release: Department commissions independent review of actions around Dunmurry Manor Care Home’, 16 July 2018.

²⁷⁷ Department of Health, ‘Press Release: Department of Health details series of measures on care home standards, Department of Health’, 27 June 2018.

found that, “the Regulation and Quality Improvement Authority regulated Dunmurry Manor care home in accordance with the policies and procedures in place at the time”.²⁷⁸

- 6.56 The report did recommend that the Regulation and Quality Improvement Authority implement measures to ensure that residents, relatives and staff are kept informed and receive assurance throughout the enforcement process, and that consideration should be given to the extent to which dementia care and the outcomes for people with dementia is covered by legislation.²⁷⁹
- 6.57 A Department of Health NI follow up review into Care at Dunmurry Manor Care Home is ongoing, which will look at the decisions made by the relevant Health and Social Care bodies and the care home itself and the frameworks within which those decisions were made. The review is expected to complete and report by the end of June 2019.²⁸⁰ The PSNI are also conducting an investigation into allegations of mistreatment at the Care Home over the period June 2014 to July 2017.²⁸¹
- 6.58 A number of the findings and recommendations contained in the report mirror those made by the NIHRC in its 2012 investigation, *In Defence of Dignity*, which looked at the rights of older people in nursing homes.²⁸² The NIHRC continues to highlight the need to ensure the criminal law framework is sufficiently robust to protect individuals reliant on others for their health and social care needs.
- 6.59 **The Committee may wish to recommend the State party ensure that the criminal law is sufficient to provide robust protection to those individuals reliant on others for their health and social care needs. In particular ensuring the introduction of a free standing offence where an individual, who has the care of another individual by virtue of being a**

²⁷⁸ Care Inspectorate, ‘Rapid Investigation into the Regulatory Response to Issues at Dunmurry Manor Care Home by the Regulation and Quality Improvement Authority’ (DoH, 2018), at 9.

²⁷⁹ Care Inspectorate, ‘Rapid Investigation into the Regulatory Response to Issues at Dunmurry Manor Care Home by the Regulation and Quality Improvement Authority’ (DoH, 2018), at 8.

²⁸⁰ Information provided by DoH, by email of 18 February 2019.

²⁸¹ Marie-Louise Connelly, ‘Dunmurry Manor: Care home families contacted by police’, *BBC News*, 19 March 2019.

²⁸² NI Human Rights Commission, ‘In Defence of Dignity: The Human Rights of Older People in Nursing Homes’ (NIHRC, 2012), at 68-73.

care worker, ill-treats or wilfully neglects that individual as is the case elsewhere in the UK.

6.60 The Committee may wish to seek an update from the State party once its Follow-up Review has been completed.

6.61 The Committee may wish to recommend that the State party ensure that the Care Inspectorate's recommendations are implemented without delay.

Muckamore Abbey Hospital

6.62 In July 2018, allegations of physical and mental abuse at Muckamore Abbey Hospital, which provides inpatient care for people with severe learning disabilities, became public. Concerns have also been raised about deprivations of liberty in relation to the use of a seclusion room at the hospital.

6.63 The Belfast Health and Social Care Trust initiated a serious adverse incident investigation, the report of which remains confidential. The Department of Health NI has indicated, "action is urgently needed by the HSC system as a whole in response to the recommendations of the Serious Adverse Incident (SAI) review."²⁸³

6.64 The NIHRC understands that there are ongoing investigations by the Police Service of NI in relation to allegations of physical and mental abuse. The Belfast Health and Social Care Trust is also conducting an investigation, through which 19 staff members have now been suspended.²⁸⁴

6.65 The Department for Health is considering a proposal to introduce adult safeguarding legislation in Northern Ireland,²⁸⁵ the Permanent Secretary also stating publically that, "any new legislative proposals will have to take account of lessons learned in other jurisdictions,

²⁸³ Department of Health NI, 'Press Release: Permanent Secretary apologises to Muckamore families', 17 December 2018.

²⁸⁴ 'Muckamore: Health chief Richard Pengelly 'shocked and appalled'', *BBC News*, 16 Jan 2019.

²⁸⁵ Meeting between Department of Health officials and NI Human Rights Commission, 21 January 2019.

and would be subject to a full public consultation and ministerial approval.”²⁸⁶

6.66 The Committee may wish to seek further information from the State party in relation to progress on this issue.

Measures to prevent ill-treatment

6.67 The Mental Capacity (NI) Act 2016, once commenced, will create an offence to ill-treat, or wilfully neglect a person who lacks capacity.²⁸⁷ In addition, the Act includes a statutory definition of restraint.²⁸⁸

6.68 The Department of Health NI is developing Codes of Practice and Regulations required prior to the commencement of the Act. However, the commencement and implementation of the legislation is dependent on a Minister being in post.

6.69 The NIHRC notes that the Criminal Justice and Courts Act 2015 created two new offences in England and Wales, following the identification of a lacuna in the law. The Department of Health (GB) considered, “a situation could arise where two patients, one with full capacity and one without, are being subjected to the same type of conduct, by the same person with the same intent, but a prosecution for ill-treatment or wilful neglect could only be brought in respect of the patient without capacity. Clearly, this is a situation we would want to avoid.”²⁸⁹ The NIHRC has advised that the present mental capacity legislation should be amended to include similar additional protections for users of health and social care services.²⁹⁰

6.70 The NIHRC is also aware that the Department of Health is considering adult safeguarding legislation, but similarly, progression of this will require the approval of a Minister.²⁹¹

6.71 The Committee may wish to recommend that the State party ensure that measures are introduced in NI to safeguard those reliant on others for their care and to ensure the

²⁸⁶ Department of Health NI, ‘Press Release: Permanent Secretary apologises to Muckamore families’, 17 December 2018

²⁸⁷ Section 267, Mental Capacity (NI) Act 2016.

²⁸⁸ Section 12, Mental Capacity (NI) Act 2016.

²⁸⁹ Department of Health, ‘New offence of ill-treatment or wilful neglect Consultation document’ (DH, February 2014) para 15.

²⁹⁰ NIHRC ‘Submission to the Ad Hoc Committee on the Mental Capacity (NI) Bill’ (2015) p. 34.

²⁹¹ Meeting between Department of Health officials and NI Human Rights Commission, 21 January 2019.

prosecution of those who degrade or mistreat those reliant upon their care.

7.0 Remedy (Article 14)

Reparation for conflict-related injuries

- 7.1 The Stormont House Agreement 2014 included a commitment to take steps to ensure access to high quality services for victims and survivors of the conflict; including a comprehensive mental trauma service, seeking an acceptable way forward on the proposal for a pension for severely physically injured victims and advocate-counsellor assistance.²⁹²
- 7.2 The Regional Trauma Network is in the process of being established and is due to commence work in May 2019.²⁹³ The NIHRC understands that the first phase of the programme will be for victims of the conflict but that the scope of the service is intended to widen to cover all persons in need to such therapeutic intervention.²⁹⁴
- 7.3 The network is partly funded by the Special EU Programmes Body Peace IV programme, and the continuation of the project will be dependent on funding.²⁹⁵
- 7.4 The Commissioner for Victims and Survivors spoke recently on these issues, indicating:

we cannot forget that there are also people who are severely physically and psychologically injured still waiting on a pension to alleviate financial pressures in their latter years of life, people who need access to specialised mental health services through the Regional Trauma Network which at the moment isn't adequately funded to deal with the level of need, and

²⁹² Stormont House Agreement, 23 December 2014, at paras 26-29.

²⁹³ Meeting between Department of Health officials and NI Human Rights Commission, 21 January 2019.

²⁹⁴ Meeting between Department of Health officials and NI Human Rights Commission, 21 January 2019.

²⁹⁵ Meeting between Department of Health officials and NI Human Rights Commission, 21 January 2019.

appropriate advocacy support to act as the interface with other agencies designed to meet victims' needs.²⁹⁶

- 7.5 The Committee may wish to recommend that the implementation of a comprehensive regional trauma network is realised without any further delay, that it is effectively resourced and that those funds are ring-fenced to enable this service to meet the needs of victims to give effect to the State obligations to provide rehabilitation, as a form of effective remedy.**
- 7.6 The commitment to progressing a pension for physically injured victims of the conflict under the Stormont House Agreement was not included within the recent NIO consultation on addressing the past. The NIHRC understands that the Secretary of State for NI has sought further advice on the pension for both physically and psychologically injured victims from the Commissioner for Victims and Survivors.
- 7.7 While the NIHRC has welcomed the proposal for a pension for severely injured victims, it has recognised that alternative measures may be required for those who fall outside this, including those with psychological injuries.
- 7.8 The Committee may wish to recommend that the proposal of a pension for those severely physically injured victims is implemented without any further delay. The Committee may also wish to recommend that the State party ensure that those with psychological injuries receive adequate support and reparation.**

²⁹⁶ Commissioner for Victims and Survivors, 'Press Release: UK and Irish Government Cooperation Key to Delivering Successful Legacy Institutions For all Victims and Survivors', 11 March 2019.

8.0 Cruel, Inhuman or Degrading Treatment (Art 16)

Physical Punishment of Children

- 8.1 In July 2016, the UN CRC Committee again recommended an abolition of corporal punishment of children in the UK, recommending that the UK Government and NI Executive:
- (a) Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as 'reasonable chastisement';
 - (b) Ensure that corporal punishment is explicitly prohibited in all schools and educational institutions and all other institutions and forms of alternative care;
 - (c) Strengthen its efforts to promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to eliminating the general acceptance of the use of corporal punishment in child-rearing.²⁹⁷
- 8.2 The Law Reform (Miscellaneous Provisions) (NI) Order 2006 continues to allow for a defence of reasonable punishment of a child, and provides that this is a defence to a charge of common assault tried summarily. The NIHRC understands that there is currently no intention to review or remedy this issue in the absence of the NI Executive.²⁹⁸
- 8.3 In 2017, the NIHRC highlighted the UN CRC Committee's recommendation to the Department of Justice, who indicated that statistics are not currently collated on the number of cases in which the defence of reasonable chastisement is successfully pleaded.²⁹⁹ In 2018, the NIHRC has met with the Public Prosecution Service to seek to address the absence of statistics and has written to the

²⁹⁷ CRC/C/GBR/CO/5, 'UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at para 40.

²⁹⁸ Meeting between Department of Justice officials and NI Human Rights Commission, 29 November 2018.

²⁹⁹ Correspondence to Mr Nick Perry, Permanent Secretary, Department of Justice from NI Human Rights Commission, September 2017.

Department of Justice to raise the issue with the Permanent Secretary.³⁰⁰

- 8.4 The Committee may wish to recommend that the Department of Justice repeal the defence of reasonable chastisement of a child and devise and implement a strategy to effectively promote positive and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, with a view to eliminating the use of physical punishment in child-rearing.**

Child, Early and Forced Marriage

- 8.5** The Marriage (NI) Order 2003, which is a responsibility of the Department of Finance, permits the marriage of a child aged 16 or 17 years with the consent of their parents or legal guardians or the courts. In 2017, 52 children in NI (40 girls and 12 boys) were married.³⁰¹ There are no statistics on the number of reported or prosecuted forced marriages in NI.
- 8.6 The Committee may wish to recommend that the State party introduce legislation to repeal all legal provisions permitting the marriage of children in Northern Ireland and increase the minimum age for marriage to 18 years, for both girls and boys.**

Gender recognition

- 8.7** Under the Gender Recognition Act 2004, for a transgender person’s acquired gender to be legally recognised in the United Kingdom, an application must be submitted to a Gender Recognition Panel. The Gender Recognition Panel will then assess whether the application is successful, leading to the issuance of a Gender Recognition Certificate. Currently, the Gender Recognition Panel process for the whole of the United Kingdom is centralised, based in England.

³⁰⁰ Correspondence to Mr Nick Perry, Permanent Secretary, Department of Justice from NI Human Rights Commission, 15 March 2018.

³⁰¹ Correspondence between NI Statistics and Research Agency and NI Human Rights Commission, 9 November 2018.

Consultations on possible amendments to the gender recognition process have been conducted in England, Wales and Scotland, but not Northern Ireland.³⁰² There are concerns that any change to the process for the rest of the United Kingdom, without making provision to accommodate applicants from Northern Ireland seeking gender recognition, could in effect deny transgender individuals in Northern Ireland from accessing a legal gender recognition process.

- 8.8** Eligibility criteria for a Gender Recognition Certificate requires an applicant is over 18, diagnosed with gender dysphoria and has lived in the acquired gender for more than two years and intends to do so permanently. Those engaging with the gender recognition process have found it not to be accessible in practice, for applicants in Northern Ireland.³⁰³ The process is reported to be “bureaucratic, stressful, intrusive and demeaning”.³⁰⁴ This is for a number of reasons. There are significant waiting lists for the application and transitioning process in Northern Ireland. The assessment for eligibility can take between six and 18 months and the waiting list for an initial appointment to start the transition process with the Brackenburn Clinic is two years.³⁰⁵
- 8.9** There are costs attached to the application process. In December 2018, the application fee for a Gender Recognition Certificate was £140. Assistance may be available to individuals on certain benefits or a low income.³⁰⁶ Transgender representatives reported to the NIHRC that the application cost alone can be a barrier,³⁰⁷ but there is an additional issue in Northern Ireland. Applicants should be able

³⁰² Scottish Government, ‘Review of the Gender Recognition Act 2004: A Consultation’ (Scottish Government, 2017); Gender Equalities Office, ‘Reform of the Gender Recognition Act – Government Consultation’ (GEO, 2018).

³⁰³ NI Direct, ‘Gender Recognition’. Available at: <https://www.nidirect.gov.uk/articles/gender-recognition>; Focus: The Identity Trust, ‘Response to the Government’s Consultation on the Reform of the Gender Recognition Act 2004’ (Focus, 2018), at para 3.1; Roundtable discussion with civil society representatives, November 2018; Gov.UK, ‘Reform of the Gender Recognition Act 2004’. Available at: <https://www.gov.uk/government/consultations/reform-of-the-gender-recognition-act-2004>

³⁰⁴ NI Direct, ‘Gender Recognition’. Available at: <https://www.nidirect.gov.uk/articles/gender-recognition>; Focus: The Identity Trust, ‘Response to the Government’s Consultation on the Reform of the Gender Recognition Act 2004’ (Focus, 2018), at para 3.1; Roundtable discussion with civil society representatives, November 2018; Gov.UK, ‘Reform of the Gender Recognition Act 2004’. Available at: <https://www.gov.uk/government/consultations/reform-of-the-gender-recognition-act-2004>

³⁰⁵ Belfast Health and Social Care Trust, ‘Brackenburn Clinic About Services’. Available at: <http://www.belfasttrust.hscni.net/BrackenburnClinic.htm>

³⁰⁶ NI Direct, ‘Gender Recognition’. Available at: <https://www.nidirect.gov.uk/articles/gender-recognition>

³⁰⁷ NI Direct, ‘Gender Recognition’. Available at: <https://www.nidirect.gov.uk/articles/gender-recognition>; Focus: The Identity Trust, ‘Response to the Government’s Consultation on the Reform of the Gender Recognition Act 2004’ (Focus, 2018), at para 3.1; Roundtable discussion with civil society representatives, November 2018; Gov.UK, ‘Reform of the Gender Recognition Act 2004’. Available at: <https://www.gov.uk/government/consultations/reform-of-the-gender-recognition-act-2004>

to obtain the required medical report on the National Health Service, but it was reported that generally doctors in Northern Ireland refuse to provide the required medical report to prove gender dysphoria due to their own personal beliefs. The one known doctor in Northern Ireland that would provide the required medical report on the National Health Service has not been able to do so since 2018 due to time constraints. As a result, individuals must pay privately to receive the required report, which costs £4,000.³⁰⁸

- 8.10 Transgender representatives reported to the NIHRC that the clothing of applicants contribute to a panel's decision. For example, if a transgender woman wears male clothing at any point during the assessment period this is used as evidence to show that they have not lived in the acquired gender for more than two years. This is not only adopting a stereotypical gendered approach to clothing, but is also placing individuals at risk of harassment, particularly, when they are forced to wear male or female clothing too early in the process and before they are ready.³⁰⁹
- 8.11 Transgender representatives consider the informed consent model to be more appropriate, than the mental health model that is currently used in the United Kingdom. The informed consent model places the decision regarding treatment choice with the patient alone, following appropriate education and advisement about the treatment in question.³¹⁰
- 8.12 Transgender representatives reported to the NIHRC that the Gender Identity Service does not provide reasonable adjustments for transgender persons with mental health issues or learning disabilities.³¹¹
- 8.13 Unlike the rest of the United Kingdom, transgender applicants in Northern Ireland must be unmarried and not in a civil partnership.³¹² All applicants who are married or in a civil partnership and who wish to end their relationship can choose to apply for an interim Gender Recognition Certificate, which they can

³⁰⁸ Roundtable discussion with civil society representatives, November 2018.

³⁰⁹ Roundtable discussion with civil society representatives, November 2018.

³¹⁰ Roundtable discussion with civil society representatives, November 2018.

³¹¹ Roundtable discussion with civil society representatives, November 2018.

³¹² NI Direct, 'Gender Recognition'. Available at: <https://www.nidirect.gov.uk/articles/gender-recognition>

use to annul or dissolve their existing legal relationship. Yet those that wish to remain married or in a civil partnership are unable to do so because same-sex marriage is not recognised in Northern Ireland and heterosexual civil partnerships are not available in the United Kingdom and there are no plans to introduce this in NI.

- 8.14 Transgender civil society representatives highlighted that barriers in the process can affect mental health, and cause poverty, homelessness and trauma.
- 8.15 Transgender civil society representatives also raised to the NIHRC that if transgender children are not provided with hormone blockers early that it can lead to them being forced into major surgery in adulthood. It was reported that hormone blockers are provided for children in Northern Ireland that are deemed not ready for puberty, but are not provided for transgender children.³¹³
- 8.16 **The Committee may wish to recommend to the State party that effective steps are taken to ensure that any change to the gender recognition process within the United Kingdom does not in effect deny transgender individuals in Northern Ireland from accessing a legal gender recognition process.**
- 8.17 **The Committee may wish to recommend to the State party that the gender recognition process in Northern Ireland is amended to reflect the informed consent model.**
- 8.18 **The Committee may wish to recommend to the State party that effective steps are taken to ensure the gender recognition process is affordable, respectful and accessible, including effectively training staff.**
- 8.19 **The Committee may wish to recommend to the State party that effective steps are taken to support transgender children and that the best interests of the child are paramount.**

³¹³ Roundtable discussion with civil society representatives, November 2018.

Intersex Genital Mutilation

- 8.20 Civil society representatives have raised concerns about the issue of non-consensual medical intervention for intersex children.³¹⁴
- 8.21 The NIHRC is not aware of any NI policy in relation to this area. The UK Government Equalities Office is currently conducting a consultation on 'Variations in Sex Characteristics'; however, the consultation document recognises that some of its content relates to matters devolved to NI.³¹⁵
- 8.22 It is unclear if any data exists in relation to the number of children in NI who would be classed as intersex or those undergoing surgery or medical treatment regarding disorders of sexual differentiation/development.³¹⁶
- 8.23 The Committee on the Rights of the Child has recommended that the State party ensure that "no one is subjected to unnecessary medical or surgical treatment during infancy or childhood".³¹⁷ The Committee on the Rights of Persons with Disabilities has recommended, "repeal all types of legislation, regulations and practices allowing any form of forced intervention or surgery, and ensure that the right to free, prior and informed consent to treatment is upheld".³¹⁸
- 8.24 The Committee may wish to recommend that the State party take all necessary measures to protect the right of intersex children to autonomy and bodily integrity and that all medical interventions have informed consent.**

Hate Crime

- 8.25 Police Service NI statistics show 2,367 recorded incidents of hate and 1,429 crimes with a motivation of hate, for the period July 2017

³¹⁴ Roundtable discussion with civil society representatives, November 2018.

³¹⁵ Government Equalities Office, 'Variations in Sex Characteristics: A Call for Evidence' (GEO, 2019).

³¹⁶ Roundtable discussion with civil society representatives, November 2018.

³¹⁷ CRC/C/GBR/CO/5, 'UNCRC, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland', 12 July 2016, para 47.

³¹⁸ CRPD/C/GBR/CO/1, 'UN CRPD, Concluding observation on the initial report of the United Kingdom of Great Britain and Northern Ireland', 3 October 2017, para 41.

to June 2018.³¹⁹ The number of hate incidents fell across racist, homophobic, sectarian and faith/religion based hate, and the number of crimes fell across sectarian, disability, faith/religion and transphobic hate crime as compared to the previous 12 months.³²⁰

8.26 In December 2017, the Criminal Justice Inspection NI published a report on the criminal justice system's response to hate crime in NI. The Criminal Justice Inspection recommended that the:

Department of Justice should as soon as possible conduct a review of the existing legislative response to hate crime to provide clarity. Any review should include consideration of the statutory aggravated offences model that already exists in England and Wales.³²¹

8.27 In response to the report, the Department of Justice intends to undertake a judge-led review of hate crime legislation to consider whether existing hate crime law represents the most effective approach for the justice system to deal with criminal conduct motivated by hatred. The review will, inter alia, consider if the current enhanced sentence approach is the most appropriate to take, and determine if there is an evidential basis to support the introduction of statutory aggravated offences. The NIHRC is aware that the Department of Justice is currently developing a terms of reference for the review.³²²

8.28 The Committee may wish to recommend that the State Party amend legislation to ensure that all forms of hate crime, including in particular sectarian and transphobic hate crime, can be subject to an enhanced sentence under the Criminal Justice (No.2) Order 2004.

8.29 The Committee may wish to recommend that the State party ensure that the review of hate crime legislation is carried out expeditiously and that it considers the current gaps in the

³¹⁹ Police Service NI, 'Incidents and Crimes with a Hate Motivation Recorded by the Police in NI' (PSNI, 2018), at 4.

³²⁰ Police Service NI, 'Incidents and Crimes with a Hate Motivation Recorded by the Police in NI' (PSNI, 2018), at 4.

³²¹ Criminal Justice Inspection NI, 'Hate Crime an Inspection of the Criminal Justice System's Response to Hate Crime in NI' (CJINI, 2017).

³²² Meeting between Department of Justice officials and NI Human Rights Commission, 29 November 2018.

2004 Order, in particular regarding sectarian and transphobic hate crime.

- 8.30 The Committee may wish to recommend that the State party prioritise actions that prevent, prohibit and prosecute hate crimes and to take all necessary measures to protect victims.**

Race

- 8.31** In the period July 2017 to June 2018, there were 1,045 incidents and 647 crimes recorded where there was a racist motivation.³²³ Racist incidents fell slightly compared with the previous 12 months, down by three from 1,048; racist crimes showed an increase of 11, up from 636 in the previous 12 month period.³²⁴
- 8.32** In a decrease from the previous year, the PPS issued 111 decisions in 2017/8 in respect of race hate crimes 'aggravated by hostility', of which 78 led to a prosecution or diversion.³²⁵ This led to two convictions in the Crown Court³²⁶ and 55 convictions at the Magistrates and Youth Courts.³²⁷
- 8.33** In June 2017, the NI Policing Board published its Human Rights Thematic Review on Policing Race Hate Crime. The Review examined to what extent the Police Service NI are complying with the Human Rights Act 1998 when dealing with and for those from minority racial groups.³²⁸ It focused on how the Police Service NI identify, record and investigate race hate crime; how victims are encouraged to report incidents; and how they are supported. It provides a detailed account of the domestic and international legal framework and standards relating to hate crime. After examining current police policy, the Review found the "application of policy in practice occasionally falls below that dictated by policy."³²⁹
- 8.34** The NI Policing Board made fourteen recommendations. The Policing Board was not legally constituted between January 2017 and

³²³ Police Service NI, 'Incidents and Crimes with a Hate Motivation Recorded by the Police in NI' (PSNI, 2018), at 6.

³²⁴ Ibid.

³²⁵ PPSNI, 'Statistical Bulletin: Cases Involving Hate Crime 2017/18', 23 August 2018, p.18, table 7.

³²⁶ PPSNI, 'Statistical Bulletin: Cases Involving Hate Crime 2017/18', 23 August 2018, p.20, table 9.

³²⁷ PPSNI, 'Statistical Bulletin: Cases Involving Hate Crime 2017/18', 23 August 2018, p.21, table 10.

³²⁸ Policing Board NI, 'Human Rights Thematic Review: Policing Race Hate Crime' (Policing Board NI, 2017).

³²⁹ Ibid, at 63.

December 2018 due to the suspension of the devolved institutions. As a result, formal monitoring of the implementation of the recommendations contained within the report has not been taken forward. Following the enactment of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018, the Policing Board is now able to operate again.

Faith/ religion

- 8.35 In 2017/18, there were 90 faith/religion incidents records; 38 of these identified and recorded one or more crime.³³⁰ This marks the highest number of incidents in the prior nine years.³³¹ The data is not disaggregated by religion type; however, information from the Department of Justice indicated that in 2017, there were seven crimes recorded as anti-Semitic and two as anti-Islam.³³²
- 8.36 The PPS issued 106 decisions in respect of religious hate crimes 'aggravated by hostility', of which 74 led to a prosecution or diversion.³³³ This led to two convictions in the Crown Court³³⁴ and 44 convictions in the Magistrates' and Youth Courts.³³⁵

Sectarian

- 8.37 Separate to race and religion, the Police Service NI has reported 834 sectarian incidents³³⁶ and 522 sectarian crimes between July 2017 and June 2018.³³⁷ This marks a decrease on the previous year, with 105 fewer incidents and 147 fewer crimes recorded.³³⁸ Recorded sectarian incidents have been falling since a peak in

³³⁰ PSNI, 'Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2017/18', 31 October 2018, p.30, figure 5.1.

³³¹ PSNI, 'Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2017/18', 31 October 2018, p.30, figure 5.1.

³³² Meeting between Department of Justice officials and NI Human Rights Commission, 29 November 2018.

³³³ PPSNI, 'Statistical Bulletin: Cases Involving Hate Crime 2017/18', 23 August 2018, p.18, table 7.

³³⁴ PPSNI, 'Statistical Bulletin: Cases Involving Hate Crime 2017/18', 23 August 2018, p.20, table 9.

³³⁵ PPSNI, 'Statistical Bulletin: Cases Involving Hate Crime 2017/18', 23 August 2018, p.21, table 10.

³³⁶ PSNI, 'Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2017/18', 31 October 2018, p.24, para 1. There is no statutory definition but the PSNI considers that "is a term almost exclusively used in Northern Ireland to describe incidents of 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, for example, Sunni and Shi'ite in Islam."

³³⁷ Police Service NI, 'Incidents and Crimes with a Hate Motivation Recorded by the Police in NI' (PSNI, 2018), at 4.

³³⁸ Ibid.

2009/10, with this year witnessing the lowest level of incidents and crimes since then.³³⁹ Nonetheless, the continuance of sectarian violence raises significant human rights concerns, including individuals subjected to torture, inhuman and degrading treatment; individuals forced from their homes and denied the right to choose their place of residence; and individuals denied the right to express their culture.

8.38 In 2017/18, the Public Prosecution Service NI received 83 files from the Police Service NI in relation to sectarian hate crime; 56 of which proceeded to prosecution.³⁴⁰ There is no category of 'sectarian' under the Criminal Justice (No. 2) (NI) Order 2004, meaning that sentences cannot be considered as 'aggravated by hostility' and therefore attract an enhanced sentence.

Transphobic

8.39 In 2017/18, there were 38 transphobic incidents recorded, 17 of these incidents recorded one or more crime.³⁴¹ The number of recorded incidents has almost doubled on the previous year.³⁴²

8.40 Civil society organisations have reported concerns about levels of reporting, in particular in relation to sexual or intra-familial violence. They report that barriers remain to reporting, including adequate responses from the police and limited police outreach.³⁴³

8.41 Again, there is no statutory protection under the 2004 Order for transphobic hate crime and so there is no prosecution data in respect of this category.³⁴⁴

³³⁹ PSNI, 'Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2017/18', 31 October 2018, p.24, table 4.1.

³⁴⁰ Public Prosecution Service NI, 'Statistical Bulletin: Cases Involving Hate Crime 2017/18' (PPSNI, 2018), at 11.

³⁴¹ PSNI, 'Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2017/18', 31 October 2018, p.35, figure 7.1.

³⁴² PSNI, 'Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2017/18', 31 October 2018, p.35, figure 7.1.

³⁴³ Roundtable discussion with civil society representatives, November 2018.

³⁴⁴ PPSNI, 'Statistical Bulletin: Cases Involving Hate Crime 2017/18', 23 August 2018, p.4.

Disability

8.42 During 2017/18, there were 101 disability incidents recorded, 47 of these recording one or more crime.³⁴⁵ The numbers of reports have been declining over the past four years.³⁴⁶

8.43 The PPS made five decisions in respect of disability hate crime,³⁴⁷ with one conviction in the Magistrates'/ Youth Courts. No further detail has been published due to the small numbers.³⁴⁸

8.44 The Commission may wish to recommend that the State party ensure the effective implementation of the Policing Board's recommendations on race hate crime and that effective steps are taken to address non-implementation.

8.45 The Committee may wish to recommend that the State party ensure that police staff coming into contact with transgender victims of hate crime receive appropriate training.

Termination of Pregnancy

8.46 Termination of pregnancy is only available in NI if it is necessary to preserve the life of the pregnant woman, including where there is a serious and adverse effect on her physical or mental health, which is either long term or permanent.³⁴⁹ Under the criminal law, the penalty for procuring or performing a termination is life imprisonment.³⁵⁰

8.47 The law in NI has been subject to criticism from a number of UN Treaty Bodies, including CEDAW³⁵¹, CESCR³⁵², CRC³⁵³ and the

³⁴⁵ PSNI, 'Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2017/18', 31 October 2018, p.32, figure 6.1.

³⁴⁶ PSNI, 'Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2017/18', 31 October 2018, p.32, figure 6.1.

³⁴⁷ PPSNI, 'Statistical Bulletin: Cases Involving Hate Crime 2017/18', 23 August 2018, p.18, table 7.

³⁴⁸ PPSNI, 'Statistical Bulletin: Cases Involving Hate Crime 2017/18', 23 August 2018, p.21, table 10.

³⁴⁹ *R v. Bourne* [1939] KB 687, at para 694.

³⁵⁰ Ss. 58-59, Offences against the Person Act 1861.

³⁵¹ CEDAW/C.GBR/CO/8, UN Committee on the Elimination of Discrimination against Women, Concluding Observations on the eighth periodic report of the UK of Great Britain and NI', 14 March 2019.

³⁵² E/C.12/GBR/CO/6, 'UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 14 July 2016.

³⁵³ CRC/C/GBR/CO/5, 'UN Committee on the Rights of the Child Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016.

Human Rights Committee.³⁵⁴ In 2018, CEDAW published their report on a confidential inquiry into the restrictive nature of the law in NI; finding that the UK Government is responsible for grave and systematic violations of the Convention by compelling women and girls to carry pregnancies to full term, subjecting them to severe physical and mental anguish.³⁵⁵ CEDAW recommended, inter alia, that the State Party adopt legislation to legalise termination of pregnancy on the grounds of rape, incest, severe (including fatal) foetal impairment and threat to the woman’s physical or mental health without conditionality.³⁵⁶

8.48 The UK government response was to be subject to the NI government reporting in further details, after the publication of the joint Department of Justice and Health review of Fatal Foetal Abnormality and the Decision of the UK Supreme Court in the NIHRC’s case.³⁵⁷

Statistics

8.49 Official statistics show that there are a decreasing number of lawful terminations carried out in NI.³⁵⁸

Year	Medical abortion	Termination of pregnancy
2007/08	76	47
2008/09	71	44
2009/10	64	36
2010/11	73	43
2011/12	56	35
2012/13	75	51
2013/14	25	23
2014/15	22	16
2015/16	30	16

³⁵⁴ CCPR/C/GBR/CO/7, 'UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI', 17 August 2015, para 17.

³⁵⁵ CEDAW/C/OP.8/GBR/1, 'CEDAW, Report of the Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women', 19 July 2017, para 83.

³⁵⁶ CEDAW/C/OP.8/GBR/1, 'CEDAW, Report of the Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women', 19 July 2017, para 85.

³⁵⁷ CEDAW/C/OP.8/GBR/2, 'Observations of the United Kingdom', 6 March 2018, para 34.

³⁵⁸ Department of Health NI, 'Northern Ireland Termination of Pregnancy Statistics 2016/17' (24 January 2018) Table 1, p.1.

2016/17	20	13
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Source: DH³⁵⁹

8.50 This also corresponds with the numbers travelling from NI to other parts of the UK to access a termination. In 2017, official statistics show that there were 919 terminations carried out in England and Wales on women from NI, the highest since 2011.³⁶⁰ The statistics also show that there was an increase in women from NI following the funding announcement on 29 June 2017.³⁶¹

NIHRC legal challenge

8.51 The NIHRC initiated a legal challenge in 2014, on the grounds that the NI criminal law is incompatible with Articles 3, 8 and 14 ECHR, in respect of pregnancies arising from rape, incest or a serious (including fatal) foetal abnormality. The UK Supreme Court gave judgment in June 2018 but was unable to issue a Declaration of Incompatibility, under the Human Rights Act 1998, due to its conclusions that the NIHRC did not have the requisite standing to bring the case.³⁶²

8.52 Notwithstanding this, the Court still proceeded to hand down legal opinion on the substantive issues. In particular, the President of the Court, Lady Hale noted that “if the court has reached a firm conclusion that the law is incompatible there is little reason not to say so, particularly where, as here, the UK has already been advised that the law is in breach of its international human rights obligations under another treaty.”³⁶³

8.53 A majority of the court identified that the law in NI is incompatible with the right to private and family life (Article 8 ECHR) in respect of the prohibition of termination in situations of rape, incest and fatal foetal abnormality.³⁶⁴ While, in the absence of a specific victim, only two of the seven judges would have found incompatibility on the

³⁵⁹ Department of Health NI, ‘Northern Ireland Termination of Pregnancy Statistics 2016/17’ (24 January 2018) Table 1, p.1.

³⁶⁰ Department of Health & Social Care, ‘Abortion Statistics, England and Wales: 2017’ (June 2018) para 257.

³⁶¹ Ibid, at para 2.59.

³⁶² *In the matter of an application by the Northern Ireland Human Rights Commission* [2018] UKSC 27, para 3.

³⁶³ *In the matter of an application by the Northern Ireland Human Rights Commission* [2018] UKSC 27, para 40.

³⁶⁴ *In the matter of an application by the Northern Ireland Human Rights Commission* [2018] UKSC 27, para 2.

grounds of Article 3 ECHR, the other justices recognised the possibility that the facts of an individual case may reach the threshold for a breach of the prohibition on torture, inhuman and degrading treatment.³⁶⁵

8.54 Despite not being able to make a declaration of incompatibility, Lord Mance described the current position as “untenable” and in need of “radical reconsideration”.³⁶⁶ He called on those responsible for ensuring ECHR compliance to consider:

whether and how to amend the law, in light of the ongoing suffering being caused by it as well as the likelihood that a victim of the existing law would have standing to pursue similar proceedings.³⁶⁷

8.55 The NIHRC understands that there are currently a number of cases before the courts, in which individual women have issued legal challenges regarding the prohibition on access to termination.

Legislative initiatives

8.56 In March 2016, the Department of Health in NI issued guidance for healthcare professionals in respect of termination of pregnancy.³⁶⁸ This sets out the present law but does not clarify the circumstances in which lawful terminations may be performed. This was also the view of the CEDAW Committee, in its Inquiry Report, which found the guidance had a chilling effect on healthcare professionals, as “it is unclear when an abortion performed under the physical or mental health grounds is legal. Consequently, they decline service provision to avoid criminal sanctions”.³⁶⁹ The UKSC also recognised the chilling effect “both on women who wish to obtain an abortion and doctors who might assist them”.³⁷⁰

³⁶⁵ *In the matter of an application by the Northern Ireland Human Rights Commission* [2018] UKSC 27, para 103.

³⁶⁶ *Ibid*, para 135.

³⁶⁷ *Ibid*, para 135.

³⁶⁸ Department of Health NI, ‘Guidance for health and social care professionals on termination of pregnancy in Northern Ireland’ (March 2016).

³⁶⁹ CEDAW/C/OP.8/GBR/1, ‘CEDAW, Report of the Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women’, 19 July 2017, para 67.

³⁷⁰ *In the matter of an application by the Northern Ireland Human Rights Commission* [2018] UKSC 27, para 326.

8.57 Also in March 2016, the (then) Justice and Health Ministers jointly established an inter-departmental working group to make recommendations on how the issue of fatal foetal abnormalities could be addressed. The Working Group report was completed in October 2016 and finally published in April 2018. It details evidence from clinicians, including four Royal Colleges, highlighting the medical risks for women and girls with a diagnosis of a fatal foetal abnormality and the “increased risk of harmful physical and mental health outcomes for women who travelled to other jurisdictions.”³⁷¹

8.58 The report highlights gaps in health care including that “health professionals working with the PHA[Public Health Agency] have identified a number of scenarios where they consider that their duty of care is compromised and the existing law and guidance is insufficiently clear.”³⁷²

8.59 The Working Group concluded that the evidence:

strongly suggested that there was a fundamental need to adjust abortion law [and proposed three options for legislative change].³⁷³

8.60 In June 2017, the UK Supreme Court gave judgment in a case that considered whether National Health Service England should make provision for women from NI to undergo a termination of pregnancy free of charge. The Supreme Court, by a three to two majority, held that the decision of the Secretary of State for Health, not to provide termination free of charge, struck a fair balance between the appellants’ rights and the interests of the UK community as a whole. However, in June 2017, the UK Minister for Women and Equalities announced that the Government Equalities Office would provide funding for women and girls who wished to access services in England³⁷⁴ with further financial support offered for travel and the creation of a centralised booking service.³⁷⁵

³⁷¹ Department of Health and Department of Justice NI, ‘Report of the Working Group on Fatal Foetal Abnormality’ (DoH and DoJ 2016) para 4.11.

³⁷² Department of Health and Department of Justice NI, ‘Report of the Working Group on Fatal Foetal Abnormality’ (DoH and DoJ 2016) para 5.5.

³⁷³ Department of Health and Department of Justice NI, ‘Report of the Working Group on Fatal Foetal Abnormality’ (DoH and DoJ 2016) para 5.51.

³⁷⁴ Open letter from Minister Justice Greening, 29 June 2017.

³⁷⁵ Hansard, 23 October 2017, Vol 630, HCWS192.

8.61 While the pathway to accessing services in England is operational, there is a lack of awareness of the process. The Government and Equalities Office has not publicised the pathway, nor has the Department of Health NI. In meeting officials in September 2018, the NIHRC was advised that legal advice was being sought in relation to the provision of an information leaflet detailing the pathway. No further progress has been made on this issue at the time of writing. Health professionals remain concerned about whether they can provide women and girls with information about access to termination of pregnancy services in other jurisdictions.

8.62 The CEDAW Committee, in its Inquiry report, concluded that women and girls in NI “are frustrated in their efforts to access the information and services necessary to enjoy their sexual and reproductive health and rights. In the context of a restrictive abortion regime, this leaves women without options to determine the number and spacing of their children.”³⁷⁶

8.63 On 20 September 2018, the Women and Equalities Committee of the House of Commons announced an inquiry into abortion law in NI. The Chair of the Committee, Maria Miller MP, stated:

the Women and Equalities Select Committee has decided to hold a formal Inquiry into abortion law in NI following renewed concerns raised by [UN] CEDAW Committee about restricted access and the UK Supreme Court ruling in June. The committee is seeking evidence from the people of NI and organisations involved to inform this Inquiry.³⁷⁷

8.64 The Inquiry issued a call for both written and oral evidence on the views of the public and professionals on the law; the experiences of women affected by the law; and the responsibilities of the UK Government under its international obligations. The NIHRC has produced written submissions for the inquiry and oral evidence.³⁷⁸

³⁷⁶ CEDAW/C/OP.8/GBR/1, ‘CEDAW, Report of the Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women’, 19 July 2017, para 47.

³⁷⁷ Women and Equalities Committee, ‘Press Release: New inquiry – Abortion law in NI’, 20 September 2018.

³⁷⁸ NIHRC, ‘Response to the Women and Equalities Committee Inquiry into Abortion Law in Northern Ireland’ (Nov 2018); NIHRC, ‘Supplementary Information Paper to the Women and Equalities Committee Inquiry into Abortion Law in Northern Ireland’ (January 2019).

The NIHRC understands that the Inquiry report will be available in or around May 2019.

- 8.65 The British-Irish Parliamentary Assembly has restarted its inquiry into the cross-jurisdictional implications of abortion policy in British-Irish Parliamentary Assembly's jurisdictions, commenced in 2017 and paused due to the Irish referendum. A hearing of the Committee took place in October 2018 in Belfast, at which the NIHRC gave oral evidence. A report is due to be published in spring 2019.
- 8.66 In October 2018, Diana Johnson MP brought forward a Ten Minute Rule Bill to decriminalise consensual terminations in England, Wales and NI. The second reading of the Bill is awaited.
- 8.67 During the expedited passage of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018, an amendment relating to equal rights was passed. This now requires the Secretary of State for NI to issue guidance to NI Departments in relation to the incompatibility of the continued enforcement of ss. 58-89 of the Offences against the Person Act 1861.³⁷⁹ The Secretary of State has issued her first quarterly guidance under section 4, in which recognised that no declaration of incompatibility has been made by the courts and that the assessment of whether they are acting within the law is a matter for health professionals.³⁸⁰
- 8.68 Ireland passed the Health (Regulation of Termination of Pregnancy) Act 2018, with services commencing in January 2018. The Irish Minister for Health confirmed that women from NI will be able to access termination of pregnancy services in Ireland, when the new regime is introduced.³⁸¹
- 8.69 The NI Assembly and Executive remain suspended, with no indication of a resolution being reached. Despite UK Parliament debates on the issue, where parliamentarians from Great Britain declared support for the law to be changed, the UK Government

³⁷⁹ Section 4, Northern Ireland (Executive Formation and Exercise of Functions) Act 2018.

³⁸⁰ NIO, 'Guidance issued under section 4 of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018' (NIO, 2018) para 8.

³⁸¹ Seanin Graham, 'Landmark move to allow Northern Ireland women access to abortion services in Republic confirmed.' *The Irish News*, 9 August 2018.

views it as a devolved matter and has no plans to take any action.³⁸² In response to a written question submitted by Lady Sylvia Hermon MP in June 2018, the Secretary of State outlined:

abortion is a devolved matter in NI. I am aware of the many strongly held views across all sides of the debate on this extremely sensitive issue. My priority is to secure the restoration of devolved government in NI, so that locally elected, democratically accountable politicians can consider changes to NI's abortion law, and the people of NI can contribute to the discussions and debate.³⁸³

8.70 The Committee may wish to recommend that the State party ensure that women and girls have access to termination of pregnancy in at least circumstances of a threat to physical or mental health, serious foetal abnormality, rape or incest. In addition, women and girls should have access to appropriate aftercare services.

8.71 The Committee may wish to recommend that the current guidance from the Department of Health is reviewed to ensure that it provides sufficient direction for healthcare professionals to provide termination of pregnancy within the present legal framework.

8.72 The Committee may wish to recommend that appropriate information is provided to women and girls in NI in respect of their options relating to sexual and reproductive health. This includes the current pathway available in the rest of the UK to access a lawful termination of pregnancy.

Prosecutions

8.73 The threat of criminal sanction is a real one in NI, with a number of prosecutions in previous years.³⁸⁴ In one particular case involving the prosecution of a mother, accused of procuring abortion pills for

³⁸² UK Parliament, 'Emergency Debate: Sections of the Offences against the Persons Act', 5 June 2018; Stella Creasy MP, 'Urgent Question on Supreme Court Ruling: Abortion in NI', House of Commons Hansard, Column 453, Volume 642, 7 June 2018; Baroness Suttie, 'Abortion: NI: Written Question - HL8740', 18 June 2018.

³⁸³ Parliament Business, 'Abortion: NI: Written question - 150603', 6 June 2018.

³⁸⁴ Ashleigh McDonald, 'Northern Ireland woman who bought abortion pills given suspended prison sentence' *Belfast Telegraph*, 4 April 2016; 'Man and woman cautioned over abortion pills', *BBC News*, 18 January 2017.

her 15-year-old daughter, the NI Divisional Court granted leave for a judicial review.³⁸⁵ The case was heard by the Divisional Court in November 2018 and judgment is awaited.

8.74 The Committee may wish to recommend that the State party ensure the introduction of legislation to end the criminalisation of women and girls in NI if they seek a termination of pregnancy.

Intimidation at family planning clinics

8.75 In 2017, the NIHRC conducted a number of engagement events in preparation for its submission to the UN CEDAW Committee. During these events, a number of civil society organisations raised that women attempting to access services are being intimidated outside the NI Family Planning Clinic and requested that a buffer zone was implemented to protect those attempting to access such services.³⁸⁶ The Green Party's Claire Bailey MLA has also raised this issue with MPs at the House of Commons.³⁸⁷

8.76 The Committee may wish to recommend that effective steps are taken by the State party to ensure that NI women can access family planning services without intimidation, including imposing a buffer zone outside the relevant clinics.

Paramilitary Threats

8.77 During 1 December 2017 and 30 November 2018, there was one security related death compared to two in the previous 12 months. There were 20 casualties of paramilitary style shootings, compared to 26 in the previous 12 months. All 20 casualties were 18 years old or above. There were 51 casualties of paramilitary style assaults, compared to 75 in the previous 12 months. Of the 51 casualties, one was under 18 years old. The number of bombing incidents more than halved compared to the previous year (17 compared to 32).

³⁸⁵ Amelia Gentleman, 'Woman who bought abortion pills for daughter can challenge prosecution', *The Guardian*, 26 January 2017.

³⁸⁶ NI Human Rights Commission, 'Submission to the UN CEDAW Committee: Parallel Report to the Eighth Periodic Report Submitted by the UK of Great Britain and NI' (NIHRC, 2018), at 15.

³⁸⁷ Allan Preston, 'Family planning clinic visitor 'ran on to road to flee' anti-abortion rally', *Belfast Telegraph*, 17 November 2017.

There were 41 shooting incidents compared to 58 in the previous year.³⁸⁸ Statistics are not published on arrests and prosecutions for paramilitary style attacks.³⁸⁹

8.78 There is a “distinct lack of legitimate leadership within many NI communities which is filled by paramilitary groups”.³⁹⁰ There is also “endemic paramilitary ‘bullying’ and intimidation at the level of the community”.³⁹¹ This is reflected in the continued paramilitary-style punishment shootings and beatings in NI.³⁹² In February 2017, a senior officer reported that the Police Service NI deals with a paramilitary threat every day in Belfast, including death threats against children.³⁹³ There have also been reports of similar threats, particularly against children, in Derry/Londonderry.³⁹⁴ There are no available statistics available on the number of threats made or reported. The Chief Constable of the Police Service NI has revealed that families were often providing their children with alcohol or painkillers prior to being taken to an ‘appointment’ for a punishment-style attack.³⁹⁵

8.79 The NIHRC’s engagement with women’s groups and civil society representatives indicated that for women, paramilitary intimidation means women’s community groups feel unable to access funding and to engage with particular peacebuilding initiatives. During this engagement, it was highlighted that there is a historical and ongoing fear of paramilitaries (including paramilitaries from within their own communities) that is causing women to feel threatened, which is preventing the empowerment of women in NI. It was raised that women feel displaced by paramilitaries taking leadership roles. It was reported that this is closely linked to drug feuds and domestic violence.³⁹⁶

³⁸⁸ Police Service NI, ‘Police Recorded Security Situation Statistics: 1 December 2017 to 30 November 2018’ (PSNI, 2018), para 1.

³⁸⁹ Correspondence from the Department of Justice to the NI Human Rights Commission, 27 November 2018.

³⁹⁰ Claire Pierson and Katy Radford, ‘Peacebuilding and the Women’s Sector in NI: An Overview of Reports and Programmes (Institute for Conflict Research, 2016), at 31.

³⁹¹ Caroline Walsh, ‘Consortium for the Regional Support for Women in Disadvantaged and Rural Areas: Policy Prioritisation for Disadvantaged Women – Women’s Perspectives’ (Women’s Support Network, 2017), at 34.

³⁹² Henry McDonald, ‘NI “punishment” attacks rise 60% in four years’, *The Guardian*, 12 March 2018.

³⁹³ ‘PSNI deal with paramilitary threat every day in Belfast, reveals senior cop’, *Belfast Telegraph*, 28 February 2017.

³⁹⁴ Brendan McDaid, ‘Paramilitary threats to children “obscene”’, *Derry Journal*, 30 November 2018.

³⁹⁵ Henry McDonald, ‘Northern Ireland ‘punishment’ attacks rise 60% in four years’ *The Guardian* (12 March 2018).

³⁹⁶ Roundtable discussions with NI women’s policy groups and NI women’s community groups, October 2017, November 2017, February 2018 and March 2018.

8.80 The NIHRC notes that the NI Executive and UK Government each committed £25 million between 2016 and 2021 to tackle paramilitarism.³⁹⁷ A Tackling Paramilitarism Programme Board was set up in 2016 to set the strategic direction, make decisions on implementation, delivery and funding, and to monitor and report on progress. The Board is chaired by the Department of Justice, includes senior officials from the Executive Office and NI Office, and the Police Service NI attends in an advisory capacity.³⁹⁸ The Paramilitary Crime Taskforce was set up in September 2017 to protect communities by tackling all forms of criminality linked to paramilitarism. It is made up of officers from the Police Service NI, the National Crime Agency and HM Revenue and Customs.³⁹⁹ In October 2018, the Department of Justice commissioned TV, radio and cinema adverts, which aim to end paramilitary-style attacks in NI.⁴⁰⁰

8.81 The Committee may wish to recommend that the State party effectively monitors, and, where necessary effectively develops and expands, the steps taken to address paramilitary intimidation in Northern Ireland, particularly against children.

Deprivation of Citizenship

8.82 In 2014, the Westminster Parliament amended the British Nationality Act 1981, empowering the Home Secretary to deprive a naturalised British citizen of their citizenship if they have engaged in conduct “seriously prejudicial” to the UK’s vital interests, and the Home Secretary has reasonable grounds to believe the person is able, under the law of a country or territory outside the UK, to become a national of such a country or territory. The UK Government may exercise powers to deprive an individual of their

³⁹⁷ Department of Justice, ‘Executive Programme for Tackling Paramilitary Activity and Organised Crime’. Available at: <https://www.justice-ni.gov.uk/articles/executive-programme-tackling-paramilitary-activity-and-organised-crime>

³⁹⁸ Department of Justice, ‘Executive Programme for Tackling Paramilitary Activity and Organised Crime’. Available at: <https://www.justice-ni.gov.uk/articles/executive-programme-tackling-paramilitary-activity-and-organised-crime>

³⁹⁹ National Crime Agency, ‘Press Release: Paramilitary Crime Taskforce launched in NI’, 27 September 2017.

⁴⁰⁰ Emma Vardy, ‘Adverts bid to end paramilitary-style attacks in NI’, *BBC News*, 18 October 2018.

citizenship both when they are in the UK and when they are abroad.⁴⁰¹

8.83 In April 2016, the Independent Reviewer of Terrorism published a report into the operation of the power in the first 12 months.⁴⁰² The Independent Reviewer stated:

the power under review was not exercised during the period under review, and indeed had still not been exercised as of April 2016, when this report went to print. There is therefore no concrete action to review.⁴⁰³

8.84 The Independent Reviewer noted the breadth of the discretion afforded to the Home Secretary and the absence of a requirement to obtain judicial consent before exercise of the power,⁴⁰⁴ he stated:

the power under review is an unusually strong one in international terms. It extends further than the laws of most comparable countries in Europe, North America or Australasia... It remains to be seen whether the power will be used in future – or, if used, whether it will be of any practical benefit in the global fight against terrorism.⁴⁰⁵

8.85 The Counter Terrorism and Security Act 2015 makes provision for Temporary Exclusion Orders. These prohibit the return of an individual to the UK unless the return is in accordance with a permit to return.⁴⁰⁶ The Act makes provision for an individual subject to a Temporary Exclusion Order to be able to apply to the court for a statutory review of the Order on their return to the UK.⁴⁰⁷ The UK

⁴⁰¹ Melanie Gower, 'Deprivation of British Citizenship and withdrawal of passport facilities' (HoC, 2015).

⁴⁰² David Anderson QC, 'Independent Reviewer of Terrorism Legislation, 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' (Anderson, 2016).

⁴⁰³ David Anderson QC, 'Independent Reviewer of Terrorism Legislation, 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' (Anderson, 2016), at para 1.9.

⁴⁰⁴ David Anderson QC, 'Independent Reviewer of Terrorism Legislation, 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' (Anderson, 2016), at para 3.16.

⁴⁰⁵ David Anderson QC, 'Independent Reviewer of Terrorism Legislation, 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' (Anderson, 2016), at para 4.9.

⁴⁰⁶ Section 2(1)(a), Counter-Terrorism and Security Act 2015.

⁴⁰⁷ Section 10, Counter Terrorism and Security Act 2015.

Government has stated that “it is not possible to predict how many temporary exclusion orders will be served”.⁴⁰⁸

8.86 With respect to the use of temporary exclusion orders, the report confirmed, “since the power came into force in the second quarter of 2015, it has not been used”.⁴⁰⁹

8.87 During the passage of the Act, the NIHRC provided a briefing to a number of NI peers emphasising the need for appropriate judicial safeguards.⁴¹⁰

8.88 In February 2017, UK Government published the Transparency Report into the use of disruptive and investigatory powers, which included information relating to the use of deprivation of citizenship powers and the use of the temporary exclusion power. In this report, UK Government stated:

the [UK] Government considers removal of citizenship to be a serious step, one that is not taken lightly. This is reflected by the fact that the Home Secretary personally decides whether such action should be taken, where it is considered that it may be conducive to the public good to deprive an individual of citizenship. Between 1 January 2015 and 31 December 2015, five people were deprived of British citizenship on the basis that to do so was conducive to the public good.⁴¹¹

8.89 In April 2017, in response to a Parliamentary question on the use of deprivation of citizenship powers, the Minister for Immigration Robert Goodwill, stated:

except where someone has fraudulently obtained British citizenship, deprivation of citizenship is only pursued against dual nationals where the Home Secretary is satisfied that the statutory test that deprivation of

⁴⁰⁸ Home Office, ‘Impact Assessment: Counter-Terrorism and Security Act 2015 - Temporary Exclusion Orders – Royal Assent’, 11 February 2015, at Annex A.

⁴⁰⁹ Ibid, at 27.

⁴¹⁰ Correspondence dispatched from the Chief Commissioner to NI Members of the House of Lords, January 2015.

⁴¹¹ HM Government, ‘Transparency Report 2017: Disruptive and Investigatory Powers’ (HoC, 2017), at 26.

citizenship would be “conducive to the public good”, is met. To date, deprivation of citizenship on conducive grounds has been focused on protecting the UK from those involved in terrorism, unacceptable extremist behaviour, espionage or serious organised crime.⁴¹²

8.90 In July 2018, it was reported that two imprisoned suspected members of the Islamic State, who had reportedly had their British citizenship removed, were to be extradited from Syria to the United States of America, without the UK Government seeking an assurance that the individuals would not be sentenced to the death penalty.⁴¹³ In January 2019, the mother of one of the suspects applied to the High Court in England and Wales challenging the Home Office’s decision to provide mutual legal assistance to US prosecutors without seeking assurances from the United States of America that the two men would not face the death penalty. The High Court of England and Wales granted permission to apply for judicial review, but dismissed the claim.⁴¹⁴ It is possible that this case will be appealed to the UK Supreme Court.

8.91 The Committee may wish to recommend the State party, as a minimum, to introduce a requirement to ensure judicial scrutiny before exercising the power to deprive an individual of their UK citizenship.

Terrorism

Definition of terrorism

8.92 The present definition of terrorism used in the UK is contained in the Terrorism Act 2000, section 1. Under section 1 'terrorism' means the use or threat of action designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and the use or threat is made for the purpose of advancing a political, religious or ideological cause. Section 1 goes on to list a range of actions and provides that the

⁴¹² Hangars Script, 'British Nationality Home Office written question', 24 April 2017.

⁴¹³ Letter from the Chair of the Home Affairs Committee to Rt. Hon Sajid Javid MP Home Secretary, 24 July 2018.

⁴¹⁴ *Maha el Gizouli v Secretary of State for the Home Department* [2019] EWHC 60, at para 218.

definition includes actions committed outside of the UK. The Independent Reviewer of Terrorism has recommended that the definition of terrorism within UK law is reformed.⁴¹⁵

8.93 In June 2018, the UK Government introduced the Counter-Terrorism and Border Security Bill 2017-19 to the House of Commons. The Bill, inter alia, strengthens the legal framework addressing those who show support for proscribed organisations and makes provision enabling persons at ports and borders to be questioned for national security and other related purposes.⁴¹⁶ The NIHRC provided a briefing on the Bill to the Houses of Parliament setting out concerns that a number of clauses which proposed extending existing offences relating to the publication and viewing of material related to terrorism may represent a disproportionate interference to the right to private and family life and the right to freedom of expression.⁴¹⁷ The NIHRC also raised a concern relating to a proposed power to stop, question, search and detain people at ports and borders to determine whether they appear to be (or have been) engaged in 'hostile activity'. The NIHRC in particular highlighted that the term 'hostile activity' was not clearly defined in UK law raising concerns that the power may be used arbitrarily.

8.94 In October 2018, the Joint Committee on Human Rights published its second scrutiny report on the Counter-Terrorism and Border Security Bill 2017-19, in which it has suggested a number of amendments. The Joint Committee remains concerned the Bill, by taking the criminal law further into private spaces, is legislating "close to the line on rights compliance".⁴¹⁸ The Joint Committee remains particularly concerned by the introduction of the new clause establishing a designated area offence, which was introduced at the Report Stage in the House of Commons. In light of the limited opportunity for scrutiny in the House of Commons, the Joint Committee urged the House of Lords to give particular consideration to the necessity and proportionality of the new clause.⁴¹⁹ The

⁴¹⁵ NI Human Rights Commission, 'Submission to the UN Human Rights Committee on the UK's Seventh Periodic Report on compliance with the International Covenant on Civil and Political Rights' (NIHRC, 2015).

⁴¹⁶ Counter-Terrorism and Border Security Bill 2017-19.

⁴¹⁷ NI Human Rights Commission, 'Parliamentary Briefing Paper on Counter-Terrorism and Border Security Bill' (NIHRC, 2018).

⁴¹⁸ UK Joint Committee on Human Rights, '10 Clauses Government Must Change in Counter-Terrorism and Border Security Bill', 12 October 2018.

⁴¹⁹ Ibid.

Counter-Terrorism and Border Security Act 2019 received Royal Assent in February 2019.⁴²⁰

8.95 The Committee may wish to recommend that the State party conducts and publishes a review of the broad definition of terrorism, to ensure compliance with its human rights obligations.

8.96 The Committee may wish to recommend that the State party takes into account the suggested amendments of the Joint Committee on Human Rights and that effective steps are taken to ensure that implementation of the Counter-Terrorism and Border Security Bill 2019 is human rights compliant.

Powers of arrest under the Terrorism Act

8.97 Under the Terrorism Act 2000, section 41, a constable may arrest without a warrant a person whom he/she reasonably suspects to be a terrorist. Between 1 January and 31 December 2018, there were 148 persons arrested under section 41 of the Terrorism Act 2000, decreased from 171 during the previous 12 months. The number of persons subsequently charged between 1 January and 31 December 2018 was 15, representing an increase from 11 during the previous 12 months.⁴²¹ In his report on the operation of the Terrorism Acts in 2017, the (then) Independent Reviewer, Max Hill QC, raised concerns regarding the low charge rate and, in particular, highlighted that amongst the small proportion of suspects arrested under the 2000 Act who are charged, an even smaller proportion are actually charged under the Terrorism Act 2000.⁴²²

8.98 The Committee may wish to recommend that the State party conducts and publishes a review of the exercise of arrest powers under section 41 of the Terrorism Act 2000, to ensure compliance with its human rights obligations.

⁴²⁰ UK Parliament, 'Counter-Terrorism and Border Security Bill 2017-19'. Available at: <https://services.parliament.uk/bills/2017-19/counterterrorismmandbordersecurity.html>

⁴²¹ Police Service NI, 'Police Recorded Security Situation Statistics: 1 January 2018 to 31 December 2018' (PSNI, 2018), at 1.

⁴²² Max Hill QC, 'Independent Reviewer of Terrorism Legislation: The Operation of the Terrorism Acts 2000 and 2006, the Terrorism Prevention and Investigation Measures Act 2011, and the Terrorist Asset Freezing etc. Act 2010' (Home Office, 2018).

9.0 Individual Complaints to UN CAT Committee (Article 22)

- 9.1 The State Party has not made a declaration under Article 22 of the UN CAT to recognise the competence of the UN CAT Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the UN CAT. The State Party has not indicated any plans to reconsider this position.
- 9.2 In its 2013 concluding observations, the UN CAT Committee recommended, “that the State party reconsider its position and make the declarations envisaged under article 22 of the Convention, in order to recognize the competence of the Committee to receive and consider individual communications”.⁴²³
- 9.3 **The Committee may wish to re-recommend that the State party reconsiders its position and make a declaration under Article 22 of the UN CAT.**

⁴²³ CAT/C/GBR/CO/5, ‘UN CAT Committee, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI’, 24 June 2013, para 34.

Summary of recommendations

Chapter 1: Introduction

1.3 The Committee may wish to recognise, in line with Article 27 the Vienna Convention on the Law of Treaties, that the absence of devolved institutions is not a basis for a State party failing to meet its international treaty obligations.

Chapter 2: Incorporation of UNCAT

2.6 The Committee may wish to once again recommend that the State party directly incorporate all UN CAT provisions into domestic laws and policies, and ensure that these are effectively implemented.

2.7 The Committee may wish to recommend that the State party effectively consult with civil society and ensure that NI is fully represented in the UK's reporting to the UN CAT Committee, in particular with respect to implementation of recommendations.

2.10 The Committee may wish to recommend that the State party ensure that there is no regression in the level of protection offered by UK law to victims of gender-based discrimination and the equal treatment of both genders arising as a result of Brexit.

Chapter 3: Legislative, Administrative & Judicial Measures

3.8 The Committee may wish to re-recommend that the State party recognise the Human Rights Act 1998 as a constitutional statute and ensure any reform does not lead to regression and builds on the Act as part of further progress in the promotion and protection of human rights.

3.17 The Committee may wish to recommend that the State party take effective steps to meet its commitment to implement a Bill of Rights for Northern Ireland, take a leadership role in proactively working towards developing a consensus among the political parties on a Bill of Rights for Northern Ireland and, in the interim, retain the EU Charter of Fundamental Rights.

3.23 The Committee may wish to recommend that the State party ensures its use of closed material procedures in cases involving serious

human rights violations is used sparingly and therefore does not create obstacles to ensuring accountability for human rights violations and does not compromise the right of victims to a fair trial and an effective remedy.

3.24 The Committee may wish to recommend that the State party ensure that a comprehensive review of the operation of closed material procedures is conducted and effective steps are taken to address any issues raised as a result.

3.25 The Committee may wish to recommend that the State party take effective steps to ensure a comprehensive library for closed judgments is available and accessible to legal teams and judges in Northern Ireland.

3.36 The Committee may wish to recommend that the State Party review the Justice and Security Act 2007 and consider the insertion of a necessity condition for determining whether a non-jury trial will take place.

3.44 The Committee may wish to recommend to the State party that a statute of limitation restricting the prosecution of State actors would amount to an amnesty. If such an amnesty excused acts constituting gross human rights violations and abuses (including the right to life and the prohibition on torture or other cruel, inhuman or degrading treatment or punishment), this would be incompatible with human rights law.

3.45 The Committee may wish to ask the State party for further information in respect of proposals to protect veterans from prosecution. The Committee may wish to ask that this is subject to a one year follow up.

3.51 The Committee may wish to recommend that the State party improve disaggregation of domestic and sexual violence data to assist determining the effectiveness of the law in Northern Ireland.

3.54 The Committee may wish to recommend that the State party take effective steps to promptly introduce legislation to criminalise coercive and controlling behaviour in an intimate relationship in Northern Ireland.

3.55 The Committee may wish to recommend that the State party ensure the Stopping Domestic and Sexual Violence and Abuse in Northern Ireland strategy is effectively implemented, including adopting a gender-sensitive approach that recognises that women and girls are considerably more likely to experience violence.

3.66 The Committee may wish to recommend that the State party take effective steps to ensure that existing and future mechanisms for tackling domestic and sexual violence are effectively implemented in a human rights compliant and gender-sensitive manner within Northern Ireland.

3.67 The Committee may wish to recommend that the State party take effective steps to promptly implement the recommendations of the Gillen Review and Criminal Justice Inspection NI's report on handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland.

3.74 The Committee may wish to recommend that the State party take effective steps to ensure that specialised, gender-specific and accessible support and refuge places are sufficiently funded and promptly available for all victims of domestic violence in Northern Ireland.

3.75 The Committee may wish to recommend that the State party ensure domestic violence concessions for non-EU women within Northern Ireland are accessed promptly.

3.76 The Committee may wish to recommend that the State party adequately support Belfast Area Domestic and Sexual Violence and Abuse Partnership and extend this initiative throughout Northern Ireland.

3.77 The Committee may wish to recommend that the State party ensure all staff and officials are effectively trained and qualified to work with victims of abuse in Northern Ireland.

3.81 The Committee may wish to recommend that the State party effectively address the specific extra-territorial issues preventing the Istanbul Convention's ratification.

3.82 The Committee may wish to recommend that the State party ensure prompt ratification and effective implementation of the Istanbul Convention by extending the key provisions of the Domestic Abuse Bill to Northern Ireland, in the absence of devolution.

3.88 The Committee may wish to recommend that the State party take prompt steps to introduce legislation to prohibit all forms of stalking in Northern Ireland.

3.89 The Committee may wish to recommend that the State party take effective steps to protect and support victims of all forms of stalking in Northern Ireland. This could for example include introducing the Hampshire Stalking Clinic model to Northern Ireland.

3.90 The Committee may wish to recommend that the State party take effective steps to gather, disaggregate and effectively monitor data on all forms of stalking in Northern Ireland.

3.101 The Committee may wish to recommend that the State party take effective steps to address the root causes of modern slavery and human trafficking and to ensure existing laws and policies are effectively implemented in Northern Ireland.

3.102 The Committee may wish to recommend that the State party take effective steps to ensure specialised, accessible support for victims of modern slavery and human trafficking in Northern Ireland is sufficiently and promptly available when required, and properly funded, including equal access to social security benefits.

3.103 The Committee may wish to recommend that the State party ensure all staff in contact with victims of modern slavery and human trafficking are effectively trained and qualified to work with victims in Northern Ireland.

3.108 The Committee may wish to recommend that the State party take effective steps to reverse the burden of proof to protect child victims of sexual offences.

3.109 The Committee may wish to recommend that the State party take effective steps to ensure that the Lanzarote Convention is effectively implemented in practice.

3.114 The Committee may wish to recommend that the State party ensure and effectively monitors the effective participation of Northern Ireland women in peace building and political processes, including effectively implementing the UN Security Council Resolution 1325, the Legacy Gender Integration Group's gender principles and the Stormont House Agreement.

Chapter 4: Refugees, Asylum Seekers & Extradition

4.3 The Committee may wish to recommend that the State party ensure measures are in place to prohibit racial profiling in immigration checks in the UK, including along the border between NI and Ireland.

4.4 The Committee may wish to recommend that the State party ensure that its immigration policies and practices, including those adopted in advance and following the UK's exit from the EU, protect EU and non-EU migrants, including women, from racial and ethnic discrimination.

4.6 The Committee may wish to recommend that the State party ensure that, before entering the UK, individuals' resident in neighbouring jurisdictions, in particular Ireland, are provided with accessible information with respect to their right to travel to the UK

Chapter 5: Interrogation, Custody Laws & Practices

5.6 The Committee may wish to recommend that the State party end imprisonment for fine default.

5.7 The Committee may wish to recommend that the State party resources the development of a separate female custodial facility in Northern Ireland.

5.10 The Committee may wish to recommend that the State party promptly and effectively implements the recommendations of the Northern Ireland Prison Ombudsman and the Criminal Justice Inspection NI concerning conditions of detention.

5.19 The Committee may wish to recommend that the State party promptly and effectively implement the recommendations of the Northern Ireland Prison Ombudsman and the Criminal Justice Inspection NI concerning mental health care in prisons.

5.20 The Committee may wish to recommend that the State party re-assess the need for a residential healthcare facility within Maghaberry prison.

5.21 The Committee may wish to recommend that the State party take effective steps to ensure mental health services in Northern Ireland prisons are effectively staffed long-term.

5.26 The Committee may wish to recommend that the State party effectively monitors and develops measures in Northern Ireland prisons aimed at reducing prisoner violence, including ensuring such measures are human rights compliant.

5.27 The Committee may wish to recommend that the State party take effective steps to ensure that prison officers and prisoners that are victims of violence in prisons are effectively supported and effective steps are taken to protect them from future violence.

5.35 The Committee may wish to recommend that the State party take effective steps to prevent deaths in custody in Northern Ireland prisons, including promptly and effectively implementing and monitoring the recommendations of the NI Prisoner Ombudsman and Criminal Justice Inspection NI.

5.36 The Committee may wish to recommend that the State party ensure the publication of the joint Review of Healthcare in Prisons.

5.42 The Committee may wish to recommend that the State party effectively address the persistent barriers to prisoners' rehabilitation and resettlement.

5.43 The Committee may wish to recommend that the State party introduce measures to ensure the wider use of non-custodial measures as an alternative to imprisonment, in particular as an alternative to short-term custodial sentences. This includes continuing to utilise and monitor Enhanced Combination Orders in Northern Ireland.

5.58 The Committee may wish to recommend that the State party ensure that women immigration detainees in Northern Ireland are safe and have the option of gender-specific communal areas.

5.59 The Committee may wish to recommend that the State party ensure that immigration detainees in Northern Ireland are not unlawfully detained within prison, and that their asylum applications are promptly and effectively processed.

5.60 The Committee may wish to recommend that the State party review and streamline procedures for returning asylum seekers directly to Ireland, to limit the time in detention.

5.61 The Committee may wish to recommend that the State party promptly legislate to end indefinite detention and ensures that this is effectively implemented.

5.62 The Committee may wish to recommend that the State party ensure that immigration detainees in Northern Ireland are effectively supported through the asylum seeking process, including ensuring that reasonable accommodations are available and accessible, and that the process is transparent.

5.63 The Committee may wish to recommend that the State party ensure effective implementation of the Short-term Holding Facility Rules 2018, including comprehensive training of all staff in Larne House on identifying and reporting torture, and the local services and safeguarding services available.

5.64 The Committee may wish to recommend that the State party ensure the independence of health care professionals dealing with detained asylum seekers.

5.68 The Committee may wish to recommend that the State Party review the current legislation to ensure that the best interests and the views of the child are taken into account in cases of mental health treatment of children below the age of 16, in particular with regard to hospitalisation and treatment without consent.

5.72 The Committee may wish to recommend that the State party ensure the implementation of recommendations made by the NI Commissioner

for Children and Young People regarding mental health services for children.

5.78 The Committee may wish to reaffirm to the State party the requirement to raise the minimum age of criminal responsibility to at least twelve, in line with international human rights standards, and to take account of any recommendations of the forthcoming UNCRC General Comment.

5.86 The Committee may wish to recommend to the State party that the process of resettlement of individuals in long-term care is effectively resourced in order to be completed within the proposed timescale.

5.89 The Committee may wish to recommend to the State party that a statutory definition of restraint is promptly developed.

5.90 The Committee may wish to recommend to the State party that data on the use of restraint in the health and social care sector is effectively gathered, disaggregated and evaluated.

Chapter 6: Investigations

6.5 The Committee may wish to recommend that the State party amend the draft Stormont House Agreement Bill to ensure that the Historical Inquiries Unit is fully compliant with human rights law and practice.

6.6 The Committee may wish to recommend that the State party recognise cases where individuals have died at the scene of a conflict-related incident as within the scope of the Stormont House Agreement.

6.17 The Committee may wish to recommend that the State party, in the absence of a NI Executive, put in place continuing funding for the Legacy Inquest Unit.

6.23 The Committee may wish to reaffirm its recommendation for the State party to conduct of a public inquiry into the death of Patrick Finucane in line with the judgment of the UK Supreme Court.

6.26 The Committee may wish to recommend that the State party take effective steps to ensure the bodies of all known cases of enforced disappearances are recovered and the families of the disappeared are effectively supported.

6.27 The Committee may wish to recommend that the State party ensure all known cases of enforced disappearances are effectively investigated.

6.31 The Committee may wish to recommend that the State Party ensure that all known cases of torture, inhuman or degrading treatment are effectively investigated.

6.37 The Committee may wish to recommend that the State Party ensure the effective investigation of all other serious violations or abuses of human rights, meeting the threshold under the prohibition on torture, cruel, inhuman or degrading treatment or punishment, are carried out expeditiously.

6.47 The Committee may wish to recommend that the State party develop and publish a plan to ensure full and effective implementation of the Historical Institutional Abuse Inquiry's Report recommendations, in particular those relating to compensation for victims.

6.48 The Committee may wish to recommend that the State party take effective steps to ensure the victims of historical abuses outside the remit of the Historical Institutional Abuse Inquiry have an effective remedy, including access to thorough and effective independent investigations that offer effective redress (including compensation) and are subject to public scrutiny and meaningful victim participation.

6.49 The Committee may wish to recommend that the State party ensure all staff employed by future historical abuse inquiries (including panels, legal teams, receptionists, security) are appropriately trained and equipped to work with victims of abuse.

6.50 The Committee may wish to recommend that the State party ensure victims of historical abuse in Northern Ireland have sufficient access to specialised support and are provided with prompt, expert guidance when requested.

6.59 The Committee may wish to recommend the State party ensure that the criminal law is sufficient to provide robust protection to those individuals reliant on others for their health and social care needs. In particular ensuring the introduction of a free standing offence where an individual, who has the care of another individual by virtue of being a care worker, ill-treats or wilfully neglects that individual as is the case elsewhere in the UK.

6.60 The Committee may wish to seek an update from the State party once its Follow-up Review has been completed.

6.61 The Committee may wish to recommend that the State party ensure that the Care Inspectorate's recommendations are implemented without delay.

6.66 The Committee may wish to seek further information from the State party in relation to progress on this issue.

6.71 The Committee may wish to recommend that the State party ensure that measures are introduced in NI to safeguard those reliant on others for their care and to ensure the prosecution of those who degrade or mistreat those reliant upon their care.

Chapter 7: Remedy

7.5 The Committee may wish to recommend that the implementation of a comprehensive regional trauma network is realised without any further delay, that it is effectively resourced and that those funds are ring-fenced to enable this service to meet the needs of victims to give effect to the State obligations to provide rehabilitation, as a form of effective remedy.

7.8 The Committee may wish to recommend that the proposal of a pension for those severely physically injured victims is implemented without any further delay. The Committee may also wish to recommend that the State party ensure that those with psychological injuries receive adequate support and reparation.

Chapter 8: Cruel, Inhuman or Degrading Treatment

8.4 The Committee may wish to recommend that the Department of Justice repeal the defence of reasonable chastisement of a child and devise and implement a strategy to effectively promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to eliminating the use of physical punishment in child-rearing.

8.6 The Committee may wish to recommend that the State party introduce legislation to repeal all legal provisions permitting the marriage of children in Northern Ireland and increase the minimum age for marriage to 18 years, for both girls and boys.

8.16 The Committee may wish to recommend to the State party that effective steps are taken to ensure that any change to the gender recognition process within the United Kingdom does not in effect deny transgender individuals in Northern Ireland from accessing a legal gender recognition process.

8.17 The Committee may wish to recommend to the State party that the gender recognition process in Northern Ireland is amended to reflect the informed consent model.

8.18 The Committee may wish to recommend to the State party that effective steps are taken to ensure the gender recognition process is affordable, respectful and accessible, including effectively training staff.

8.19 The Committee may wish to recommend to the State party that effective steps are taken to support transgender children and that the best interests of the child are paramount.

8.24 The Committee may wish to recommend that the State party take all necessary measures to protect the right of intersex children to autonomy and bodily integrity and that all medical interventions have informed consent.

8.28 The Committee may wish to recommend that the State Party amend legislation to ensure that all forms of hate crime, including in particular sectarian and transphobic hate crime, can be subject to an enhanced sentence under the Criminal Justice (No.2) Order 2004.

8.29 The Committee may wish to recommend that the State party ensure that the review of hate crime legislation is carried out expeditiously and that it considers the current gaps in the 2004 Order, in particular regarding sectarian and transphobic hate crime.

8.30 The Committee may wish to recommend that the State party prioritise actions that prevent, prohibit and prosecute hate crimes and to take all necessary measures to protect victims.

8.44 The Commission may wish to recommend that the State party ensure the effective implementation of the Policing Board's recommendations on race hate crime and that effective steps are taken to address non-implementation.

8.45 The Committee may wish to recommend that the State party ensure that police staff coming into contact with victims of transgender hate crime receive appropriate training.

8.70 The Committee may wish to recommend that the State party ensure that women and girls have access to termination of pregnancy in at least circumstances of a threat to physical or mental health, serious foetal abnormality, rape or incest. In addition, women and girls should have access to appropriate aftercare services.

8.71 The Committee may wish to recommend that the current guidance from the Department of Health is reviewed to ensure that it provides sufficient direction for healthcare professionals to provide termination of pregnancy within the present legal framework.

8.72 The Committee may wish to recommend that appropriate information is provided to women and girls in NI in respect of their

options relating to sexual and reproductive health. This includes the current pathway available in the rest of the UK to access a lawful termination of pregnancy.

8.74 The Committee may wish to recommend that the State party ensure the introduction of legislation to end the criminalisation of women and girls in NI if they seek a termination of pregnancy.

8.76 The Committee may wish to recommend that effective steps are taken by the State party to ensure that NI women can access family planning services without intimidation, including imposing a buffer zone outside the relevant clinics.

8.81 The Committee may wish to recommend that the State party effectively monitors, and, where necessary effectively develops and expands, the steps taken to address paramilitary intimidation in Northern Ireland, particularly against children.

8.91 The Committee may wish to recommend the State party, as a minimum, to introduce a requirement to ensure judicial scrutiny before exercising the power to deprive an individual of their UK citizenship.

8.95 The Committee may wish to recommend that the State party conducts and publishes a review of the broad definition of terrorism, to ensure compliance with its human rights obligations.

8.96 The Committee may wish to recommend that the State party takes into account the suggested amendments of the Joint Committee on Human Rights and that effective steps are taken to ensure that implementation of the Counter-Terrorism and Border Security Bill 2019 is human rights compliant.

8.98 The Committee may wish to recommend that the State party conducts and publishes a review of the exercise of arrest powers under section 41 of the Terrorism Act 2000, to ensure compliance with its human rights obligations.

Chapter 9: Individual Complaints to the UNCAT Committee

9.3 The Committee may wish to re-recommend that the State party reconsiders its position and make a declaration under Article 22 of the UN CAT.

Contact Us

www.nihrc.org | info@nihrc.org | +44 (0)28 9024 3987
Temple Court, 39 North Street, Belfast, BT1NA

