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Письменное представление Комиссии по правам человека Северной Ирландии*

Записка секретариата

Секретариат Совета по правам человека настоящим препровождает сообщение, представленное Комиссией по правам человека Северной Ирландии** и воспроизводимое ниже в соответствии с правилом 7 b) правил процедуры, содержащихся в приложении к резолюции 5/1 Совета, согласно которому участие национальных правозащитных учреждений основывается на процедурах и практике, согласованных Комиссией по правам человека, включая резолюцию 2005/74 от 20 апреля 2005 года.

* Национальное правозащитное учреждение с аккредитационным статусом категории «А», присвоенным Глобальным альянсом национальных правозащитных учреждений.

** Воспроизводится в приложении в полученном виде только на том языке, на котором оно было представлено.

Annex

Northern Ireland Human Rights Commission: mid-term report on the Human Rights Council's Universal Periodic Review of the United Kingdom

The Northern Ireland Human Rights Commission (NIHRC) is a statutory public body established in 1999 to promote and protect human rights. In accordance with the Paris Principles, the NIHRC reviews the adequacy and effectiveness of measures undertaken by the United Kingdom (UK) Government and Northern Ireland (NI) Executive to promote and protect human rights, specifically within NI. The NIHRC is one of the three 'A' status National Human Rights Institutions in the UK.

In response to the Universal Periodic Review (UPR) 3rd cycle recommendations, the UK Government reiterated its full commitment to the UPR process, volunteering to publish an update report by May 2018[1] and a mid-term report by May this year. The mid-term report is now overdue.

This report is the NIHRC's independent assessment on the UK's progress on meeting the Universal Periodic Review (UPR) recommendations in England, Wales and Scotland at the mid-point of the 3rd UPR cycle.[1]

In advance of the UPR 3rd cycle, the NIHRC made a submission to the UN Human Rights Council, which addressed a number of different topics. In this submission, the NIHRC wishes to focus on four issues that are particularly urgent: 1) the NIHRC's ability to act in accordance with the Paris Principle; 2) the UK leaving the EU; 3) termination of pregnancy; and 4) dealing with the past.

The NI Assembly and Executive collapsed in January 2017 and remains in suspension. To date, political talks have failed to re-establish the NI Executive. In the absence of elected ministers, government departments have been run by civil servants who are unable to make major policy decisions or introduce legislation. The head of the NI Civil Service, David Sterling, has spoken of the "slow decay and stagnation" in public services.[2] The Chief Commissioner of the NIHRC Les Allamby has warned of the "stark implications of the political impasse… with ongoing violations of human rights needing immediate remedy".[3]

Leaving the EU and rights protections

3rd cycle:	134.67 N	134.68 N	134.69 N	134.70 N	134.71 N	134.72 N
	134.73 N	134.74 N	134.75 N	134.76 N	134.77 N	134.78 N

The UK is scheduled to leave the European Union on 31 October 2019. The prospect of a no-deal exit appears increasingly likely.

[1] 1st cycle recommendations as numbered in UN Doc. A/HRC/8/25, 'Universal Periodic Review, Report of the Working Group on the Universal Periodic Review of the United Kingdom' (23 May 2008). 2nd cycle recommendations as numbered in UN Doc, A/HRC/21/9, 'Report of the Working Group on the Universal Periodic Review of the United Kingdom ' (6 July 2012). 3rd cycle recommendations as numbered in UN Doc. A/HRC/36/9, 'Report of the Working Group on the Universal Periodic Review of the United Kingdom' (14 July 2017). Recommendations marked "A" have been accepted by the UK; recommendations marked "N" have been noted by the UK; recommendations marked "R" have been rejected by the UK.

The EU-UK joint political statement of December 2017 included a commitment to ensure no diminution of rights caused by the UK leaving the European Union. The joint political statement also agreed to protect the Belfast (Good Friday) Agreement 1998.[4]

The no diminution of rights commitment was enshrined in the Protocol on Ireland and Northern Ireland contained in the Draft Withdrawal Agreement published in 2018.[5] This commitment was limited to the rights, safeguards and equality of opportunity section in the Good Friday (Belfast) Agreement 1998, including with regards to EU law on non-discrimination.[6] The Protocol included a commitment to implement the commencement through "dedicated mechanisms", the details of which have yet to be confirmed. In addition, the Protocol also sets out six EU law directives where the non-diminution commitment would be put into effect. Moreover, the commitment would in practice have encompassed other EU law directives.

The NIHRC recommends that the UK Government gives statutory effect to the principle of non-diminution in primary legislation. This would apply in all circumstances, including in a no-deal exit from the EU.

Termination of pregnancy

2nd cycle:	110.77 R			
3rd cycle:	134.170 N	134.171 N	134.172 N	134.173 N

The NIHRC has serious concerns about the restrictive conditions for terminations of pregnancy in NI and the associated criminal penalties for their breach.

Disparity exists in the UK regarding access to termination of pregnancy in NI. Women in NI also face intimidation when attempting to access family planning services. The UN Committee on the Elimination of Discrimination against Women's Inquiry of 2017 (UN CEDAW Inquiry) found these disparities sufficiently grave to constitute a violation of the rights of women in NI.[7]

The NIHRC initiated legal proceedings against the Department of Justice in December 2014 to challenge the restrictive conditions. The case was heard by the UK Supreme Court, with judgement delivered in 2018. A majority of the Supreme Court judges recognised that the law on termination of pregnancy in NI is incompatible with Article 8 ECHR, as it does not provide access to abortion services to women and girls in situations of rape, incest and fatal foetal abnormality. However, the Supreme Court did not make a declaration of incompatibility, as it held that the NIHRC did not have the standing to take the case without a victim.[8]

In July 2019, the NI (Executive Formation, etc.) Act 2019 was enacted. The 2019 Act's primary function is to extend the period for the formation of a new Executive in NI. The Act also clarifies that NI Executive departments can exercise their functions in the absence of NI Ministers, if they are satisfied that it is in the public interest to do so and they have regard to guidance published by the Secretary of State NI.[9]

A substantive amendment to the Act was secured in relation to the termination of pregnancy. The provision requires the Secretary of State NI to ensure the adoption of recommendations issued by the UN CEDAW Inquiry, if the NI Executive is not restored by 21 October 2019. The UN CEDAW Committee recommends that abortion is legalised in cases including where there is a risk to a woman's physical or mental health or in cases of rape and incest or severe foetal impairment and recommends the repeal of existing criminal penalties. The 2019 Act provides that any changes to the law to implement the UN CEDAW Committee's recommendations must be introduced by 31 March 2020.[10]

The NIHRC recommends that legislation is introduced by either Westminster or the NI Assembly to end the criminalisation of women and girls in NI, if they seek a termination of pregnancy. In line with international human rights standards, the NIHRC recommends 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.

Dealing with the past

1st cycle:	12 A	
2nd cycle:	110.92 R	
3rd cycle:	134.156 N	134.157 N

In December 2014, the Stormont House Agreement was concluded between the main NI political parties and the UK and Irish Governments.[11] The Stormont House Agreement proposed, inter alia, the establishment of a single independent investigatory body, the Historical Investigations Unit, to carry out investigations into over 1,200 conflict-related deaths. The Stormont House Agreement also proposed the establishment of an Independent Commission on Information Retrieval, an Implementation and Reconciliation Group, an Oral History Archive and a pension for severely physically injured victims. The UK Government indicated that an additional £150 million of funding would be provided to fund the Historical Investigations Unit and other bodies.[12]

Political agreement around the establishment of the Historical Investigations Unit and other institutions envisaged by the Stormont House Agreement has still not been reached and the enabling legislation remains in draft form.[13] The NIHRC has advised that the provisions contained in the draft legislation are not fully human rights compliant in law and practice.
In March 2019, the Council of Europe Committee of Ministers reiterated their "serious concerns about the delay in the establishment of the Historical Investigations Unit and other legacy institutions". The Committee of Ministers stated that "notwithstanding the complexity of the broader political picture, it is imperative that a way forward is found to enable effective investigations to be conducted".[14]

The NIHRC recommends that the UK enact, without further delay, human-rights compliant legislation to establish the Historical Investigations Unit and other institutions envisaged by the Stormont House Agreement.

In 2019, the UN Committee against Torture recommended that the UK Government:

> ensure that effective and independent investigations are conducted into outstanding allegations of torture, ill-treatment and conflict related killings to establish the truth and identify, prosecute and punish the perpetrators, including with respect to the killing of Patrick Finucane, following a recent decision by the Supreme Court that the State party has not carried out an effective investigation concerning this case.[15]

The UN Committee against Torture's recommendation echoed a recommendation issued by the UN Human Rights Committee in 2015[16] and the 2018 judgement of the UK Supreme Court.[17]

The NIHRC reiterates the need to ensure independent, impartial, prompt and effective investigations into deaths during the conflict in NI. These must be conducted with a view to identifying, prosecuting and punishing the perpetrators of human rights violations and abuses, and providing appropriate remedies for their victims. In particular, the NIHRC recommends that an Article 2 ECHR (right to life) compliant inquiry is conducted into the death of Patrick Finucane, in line with the judgment of the UK Supreme Court.

National human rights institutions

2nd cycle:	110.36 A
3rd cycle:	134.55 A

NIHRC budget

The NIHRC is concerned at the reduction of its cash budget from £1,702,000 in 2009/10 to £1,142,500 in 2019/20. The UN Human Rights Committee has recommended that budget reduction should not inhibit the NIHRC from carrying out all its functions independently of Government.[18] The Global Alliance of National Human Rights Institutions has echoed this position, highlighting the need for the NI Office to provide an appropriate level of funding for NIHRC, so that it can continue to carry out its mandate effectively in accordance with the UN Paris Principles.[19]

NIHRC powers

In 2018, the UK Supreme Court ruled that the NIHRC does not have the relevant standing to bring a legal challenge to primary legislation without a victim.[20] This seriously impacts on the NIHRC's ability to act in accordance with the UN Paris Principles.
The House of Commons Women and Equalities Committee describes the current situation, whereby the NIHRC is unable to act without a victim as a "serious error".[21]
The Women and Equalities Committee goes on to state:

> **the situation of a woman or girl who became pregnant as a result of rape or incest having to pursue a court case highlights precisely why it should not depend on an individual victim to take a case to court. This issue of the NIHRC's standing needs rectifying urgently so that victims do not have to take a case.**[22]

The NIHRC is seeking an amendment to its statutory powers to restore its ability to take cases in its own name. In November 2018, the Secretary of State NI informed the NIHRC that the UK Government recognised the importance of the NIHRC retaining its 'A status' accreditation. Accordingly, the Secretary of State NI confirmed that the UK Government is committed to rectifying the matter by introducing legislation, before the end of 2019 to ensure that it has the legal mandate to bring cases in its own name before the UK domestic courts.[23]
The NIHRC recommends that the UK Government introduces legislation without further delay, which enables the NIHRC to bring a legal challenge to primary legislation without a victim.

Notes

1 UK Government, 'The United Kingdom of Great Britain and Northern Ireland Update to the Universal Periodic Review' (UK Gov, 2018).
2 'David Sterling: No ministers could become new normal', *BBC News,* 13 February 2019.
3 NI Human Rights Commission, 'The 2018 Annual Statement, Human Rights in Northern Ireland' (NIHRC, 2018), at 8.
4 European Commission and UK Government, 'Joint Report from the Negotiators of the European Union and the UK Government on Progress during Phase 1 of the Negotiations under Article 50 TEU on the UK's Orderly Withdrawal from the European Union', 8 December 2017, at paras 42-56.
5 TF50(2018) 55 Commission to EU 27, 'Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community', 14 November 2018.
6 Article 4(1), Protocol on Ireland and Northern Ireland of the Draft Withdrawal Agreement.
7 CEDAW/C/OP.8/GBR/1, 'Report of the Inquiry Concerning the UK of Great Britain and NI under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women', 19 July 2017.

[8] In the matter of an application by the NI Human Rights Commission for Judicial Review (NI) Reference by the Court of Appeal in NI pursuant to Paragraph 33 of Schedule 10 to the NI Act 1998 (Abortion) [2018] UKSC 27.

[9] 'Explanatory Notes to Northern Ireland (Executive Formation, etc.) Act 2019', at para 2. The Act extends the provisions of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 as amended.

[10] Northern Ireland (Executive Formation, etc.) Act 2019, section 9.

[11] NI Office, 'Stormont House Agreement', 23 December 2014.

[12] Hansard, 'The Secretary of State for Northern Ireland (Mrs Theresa Viliers) Stormont House Agreement: Volume 590', 7 January 2015.

[13] Draft Northern Ireland (Stormont House Agreement) Bill.

[14] CM/Notes/1340/H46-30, 'Council of Europe Committee of Ministers: McKerr Group v the United Kingdom – Supervision of the Execution of the European Court's Judgments', 14 March 2019, at para. 4.

[15] CAT/C/GBR/CO/6, 'UN Committee against Torture, Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 7 June 2019, at para 41(d).

[16] 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).

[17] In the matter of an application by Geraldine Finucane for Judicial Review (NI) [2017] UKSC58.

T he United Kingdom of Great Britain and Northern Ireland', August 2015, para. 7.

[19] Global Alliance of National Human Rights Institutions, 'Sub Committee on Accreditation Report' (GANHRI, 2016), at para 3.8.

[20] In the matter of an application by the NI Human Rights Commission for Judicial Review (NI) Reference by the Court of Appeal in NI pursuant to Paragraph 33 of Schedule 10 to the NI Act 1998 (Abortion) [2018] UKSC 27, at para 73.

[21] House of Commons Women and Equalities Committee, 'HC 2595 10th Special Report - Abortion Law in Northern Ireland: Government Response to the Committee's Eighth Report of Session 2017–19' (WEC, 2019), at 4.

[22] House of Commons Women and Equalities Committee, 'HC 2595 10th Special Report - Abortion Law in Northern Ireland: Government Response to the Committee's Eighth Report of Session 2017–19' (WEC, 2019), at 4.

[23] Letter from Secretary of State NI Karen Bradley to NI Human Rights Commission, 13 November 2018; House of Commons Women and Equalities Committee, 'HC 2595 10th Special Report - Abortion Law in Northern Ireland: Government Response to the Committee's Eighth Report of Session 2017–19' (WEC, 2019), at 4.