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Examen Periódico Universal

Información presentada por la Comisión de Derechos Humanos de Irlanda del Norte*

Nota de la Secretaría

La Secretaría del Consejo de Derechos Humanos transmite adjunta la comunicación presentada por la Comisión de Derechos Humanos de Irlanda del Norte**, que se reproduce a continuación de conformidad con el artículo 7 b) del reglamento que figura en el anexo de la resolución 5/1 del Consejo, según el cual la participación de las instituciones nacionales de derechos humanos se basará en las disposiciones y prácticas convenidas por la Comisión de Derechos Humanos, incluida la resolución 2005/74, de 20 de abril de 2005.

* La institución nacional de derechos humanos tiene la acreditación de la categoría "A" ante el Comité Internacional de Coordinación de las Instituciones Nacionales para la Promoción y la Protección de los Derechos Humanos.

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Anexo

[Inglés únicamente]

Submission by the Northern Ireland Human Rights Commission on the Universal Periodic Review of the United Kingdom

Mid-term report

1. 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 Principles¹ 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.

Introduction

2. The NIHRC wishes to highlight three general areas affecting the implementation of human rights standards in NI. First, the NIHRC advises that the NI Executive has failed to submit information to human rights treaty bodies on a number of occasions.² The UK Government should take steps to ensure that the NI Executive assumes a greater degree of responsibility for the implementation of treaties.

3. The NIHRC is aware that political discourse and media coverage has often fueled a negative perception of human rights and that public confidence has been diminishing. It is important therefore that the UK Government and the NI Executive take steps to counter this trend and support a culture of human rights.

4. There is a need to increase the pace of transitional justice in post-conflict NI. The NIHRC believes that, as identified by the First Minister and deputy First Minister, it is now vital that progress is made on contentious issues such as flags, parades, and dealing with the past.³

¹ UN GA Resolution 48/134 (4 March 1994).

² For example, UN Doc. CCPR/C/GBR/7, ‘7th Periodic Report of the UK’ to the Human Rights Committee (29 April 2013), para 12 states, ‘Despite requests from the UK Government, the devolved administration in Northern Ireland has been unable to agree a contribution to this Report reflecting the views and actions of the Northern Ireland Executive relating to those Articles for which they have policy responsibility under the devolution settlement’.

³ See, NIHRC, Press Statement ‘Chief Commissioner Responds to the ‘United Community Strategy’’ (24 May 2013), available at, <<http://www.nihrc.org/news/detail/chief-commissioner-responds-to-the-united-community-strategy>>. An All Party Panel was established in 2013 under the chairmanship of Dr. Richard Haass. In December 2013, draft proposals were presented to the political parties but no agreement was obtained, see, <<http://www.bbc.co.uk/news/uk-northern-ireland-25429676>>. The following reports were submitted by the NIHRC: NIHRC, ‘Parades and Protests in Northern Ireland’ (November 2013), available at, <<http://www.nihrc.org/publications/parades-and-protests-in-northern-ireland>>; NIHRC, ‘The Display of Flags, Symbols and Emblems in Northern Ireland’ (September 2013), available at, <<http://www.nihrc.org/Publication/detail/the-display-of-flags-symbols-and-emblems-in-northern-ireland1>>.

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

5. The Bill of Rights Commission did not reach a unanimous conclusion as to whether the Human Rights Act 1998 should be replaced by a UK Bill of Rights.⁴ The NIHRC opposes any reduction in the current legal protections of human rights in the UK.

6. The NIHRC notes that a Bill of Rights for NI has not yet been implemented. This action was a commitment of the Belfast (Good Friday) Agreement and has been called for by a number of UN bodies.⁵ The NIHRC further notes a legislative time line has not been established.

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

7. The NIHRC is concerned that social, economic and cultural rights continue to be regarded as largely non-justiciable. The NIHRC believes the UK should establish a National Action Plan on human rights, with a focus on the implementation of the ICESCR.⁶ The NIHRC also notes the continuing reservations to ICESCR.⁷

8. The NIHRC recommends that the UK sign and ratify the International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families⁸ and the International Convention for the Protection of all Persons from Enforced Disappearance.

9. The NIHRC recommends that the UK remove its interpretative declaration to the OP-CRC-AC, art. 1.⁹ The NIHRC believes that children under 18 should not take direct part in hostilities under any circumstances.

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

⁴ The UK Commission on a Bill of Rights was established by the UK Government on 18 March 2011. The final report was published on 18 December 2012 and is available at < <http://www.justice.gov.uk/about/cbr>>.

⁵ For example, UN Doc. CERD/C/GBR/CO/18, CERD Committee, 'Concluding observations on the UK' (14 September 2011), para 19; UN Doc. E/C.12/GBR/CO/5, ICESCR Committee, 'Concluding observations on the UK' (22 May 2009), para 10.

⁶ See, Vienna Declaration and Plan of Action 1993.

⁷ UN Doc. E/C.12/GBR/CO/5, ICESCR Committee 'Concluding observations on the UK' (12 June 2009), para 40 states, 'The Committee recommends that the State party give serious consideration to withdrawing its reservations to articles 1, 2, 6, 7, 9 and 10 of the Covenant, especially those that have become obsolete.' (Nb. The reservation to ICESCR, art. 7 states, 'the Government of the United Kingdom declare that they must reserve the right to postpone the application of sub-paragraph (a) (i) of article 7 of the Covenant in so far as it concerns the provision of equal pay to men and women for equal work, since, while they fully accept this principle and are pledged to work towards its complete application at the earliest possible time, the problems of implementation are such that complete application cannot be guaranteed at present'.)

⁸ See, CRC Committee recommendation, UN Doc. CRC/C/GBR/CO/4, CRC Committee, 'Concluding observations on the UK' (20 October 2008), para 81.

⁹ The declaration attached to art. 1 of the OP-CRC-AC reads, 'The United Kingdom of Great Britain and Northern Ireland will take all feasible measures to ensure that members of its armed forces who have not attained the age of 18 years do not take a direct part in hostilities. The United Kingdom understands that article 1 of the Optional Protocol would not exclude

10. The NIHRC recommends that the UK remove its interpretative declaration to the CERD, art. 4.¹⁰ The NIHRC believes this inhibits clarity as to the types of prohibited speech.

11. The NIHRC welcomes the removal of the reservation to CRPD, art. 12(4)¹¹ and notes continuing reservations, to arts. 24(2)(a) & (b)¹² and art. 27.¹³

12. It remains the case that the UK does not accept the right of individual petition concerning ICCPR,¹⁴ ICESCR,¹⁵ CAT,¹⁶ CERD¹⁷ and most recently CRC.¹⁸ The NIHRC urges the UK to ratify the OP-ICCPR, OP-ICESCR and OP-CRC-COM, and issue the required declarations under art. 22 of CAT and art. 14 of CERD. The NIHRC further recommends that the UK commit to raising awareness of the availability of the right of individual petition for nationals under OP-CEDAW¹⁹ and OP-CRPD²⁰.

the deployment of members of its armed forces under the age of 18 to take a direct part in hostilities where: -a) there is a genuine military need to deploy their unit or ship to an area in which hostilities are taking place; and b) by reason of the nature and urgency of the situation:- i) it is not practicable to withdraw such persons before deployment; or ii) to do so would undermine the operational effectiveness of their ship or unit, and thereby put at risk the successful completion of the military mission and/or the safety of other personnel.'

¹⁰ The interpretative declaration states, '[T]he United Kingdom wishes to state its understanding of certain articles in the Convention. It interprets article 4 as requiring a party to the Convention to adopt further legislative measures in the fields covered by sub-paragraphs (a), (b) and (c) of that article only in so far as it may consider with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention (in particular the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association) that some legislative addition to or variation of existing law and practice in those fields is necessary for the attainment of the end specified in the earlier part of article 4.' See also, UN Doc. CERD/C/GBR/CO/18-20, CERD Committee, 'Concluding observations on the UK' (1 September 2011), paragraph 11.

¹¹ Removed on 21 December 2011.

¹² Reservation states, 'The United Kingdom reserves the right for disabled children to be educated outside their local community where more appropriate education provision is available elsewhere. Nevertheless, parents of disabled children have the same opportunity as other parents to state a preference for the school at which they wish their child to be educated.' A further declaration to CRPD, arts. 24(2)(a) & (b), 'The United Kingdom Government is committed to continuing to develop an inclusive system where parents of disabled children have increasing access to mainstream schools and staff, which have the capacity to meet the needs of disabled children. The General Education System in the United Kingdom includes mainstream, and special schools, which the UK Government understands is allowed under the Convention.'

¹³ Reservation states, 'The United Kingdom accepts the provisions of the Convention, subject to the understanding that none of its obligations relating to equal treatment in employment and occupation, shall apply to the admission into or service in any of the naval, military or air forces of the Crown.'

¹⁴ OP-ICCPR.

¹⁵ OP-ICESCR.

¹⁶ CAT art.22 requires the State Party to issue a declaration recognising the competence of the Committee to receive individual communications.

¹⁷ CERD art.14 requires the State Party to issue a declaration recognising the competence of the Committee to receive individual communications.

¹⁸ OP-CRC-COM.

¹⁹ The UK accepted the right in regard to OP-CEDAW as a 'pilot' scheme on 17 December 2004 which entered into force on 17 March 2005. However, the State made limited effort to raise awareness concerning the availability of the mechanism. The Ministry of Justice commissioned a review which was published in October 2008. Though the review concluded that the mechanism had done little to advance women's rights, the NIHRC notes that Professor Murdoch began his conclusions with the undoubted 'important symbolic value' of a commitment to human rights achieved by recognition of the individual complaint mechanism and the NIHRC believes this trumps the current lack of petitions

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

13. The NIHRC is concerned that the UK Government has reduced its financial support by 25% over the last 4 years. It is currently proposing an additional reduction of 11.15% in 2015. The NIHRC is concerned that the resultant size and budget may affect its ability to operate in full accordance with the Paris Principles.²¹

14. In 2013, a legislative amendment was introduced permitting the Secretary of State for NI's responsibilities relating to the NIHRC to be transferred to the devolved institutions.²² The NIHRC notes that any such transfer should not inhibit the Commission from carrying out all of its current functions independently of Government.²³

Transitional justice (1st cycle: [12](#))

15. The NIHRC notes the concerns raised over the effectiveness of the mechanisms established in NI to investigate conflict related deaths, including the Historical Enquiries Team,²⁴ the Police Ombudsman,²⁵ and the NI coronial process.²⁶ In line with the CAT

(two admissible cases have been directed at the UK with seventeen opinions issued in total), especially given that no significant financial burden was found to exist upon the UK (quoted in the report as £4000 per petition). The evaluation report was conducted by Professor Jim Murdoch of the University of Glasgow, School of Law and published in October 2008. It is available on the Ministry of Justice website at <http://webarchive.nationalarchives.gov.uk/+/http://www.justice.gov.uk/publications/un-optional-protocol-women.htm>.

²⁰ The UK ratified the OP-CRPD on 7 August 2009.

²¹ See, NIHRC oral statement to the HRC, 26th session, (delivered 19 June 2014); Joint UK NHRI oral statement to HRC, 27th session, (scheduled 19 September 2014).

²² Before such a transfer can take place, a report is to be provided to the Westminster Parliament on any potential implications for the independence and status of the NIHRC. See, Northern Ireland (Miscellaneous Provisions) Act 2014, sec. 11.

²³ See, NIHRC, 'Submission to NI Affairs Committee inquiry into the Government's draft Northern Ireland (Miscellaneous Provisions) Bill' (Feb 2013), available at, <http://www.nihrc.org/documents/advice-to-government/2013/Submission%20to%20NI%20Affairs%20Committee%20inquiry%20into%20the%20Government%20-26%20Feb%202013.pdf>.

²⁴ The Historical Enquiries Team (HET) is part of the PSNI. Between 2005 and 2010 it had an investigative capability and secured one conviction for murder. Since 2010, it has been a review body and now refers all evidential opportunities to Serious Crime Branch of the PSNI for investigation. A 2013 report by HM Inspectorate of Constabulary (HMIC) stated, 'HET's approach to state involvement cases is inconsistent with the UK's obligations under Article 2 ECHR [right to life]. The inconsistency in the way that state involvement and non-state involvement cases are dealt with undermines the effectiveness of the review process in Article 2 terms. In addition, the deployment of former RUC [Royal Ulster Constabulary] and PSNI officers in state involvement easily gives rise to the view that the process lacks independence.' See, HMIC, 'Inspection of the Police Service of Northern Ireland Historical Enquiries Team' (3 July 2013), p 101, available at, <http://www.hmic.gov.uk/media/inspection-of-the-police-service-of-northern-ireland-historical-enquiries-team-20130703.pdf>. See also, The Irish Times, 'Investigation into unsolved NI murders 'set up to fail' (7 August 2014), available at, <http://www.irishtimes.com/news/crime-and-law/investigation-into-unsolved-ni-murders-set-up-to-fail-1.1890569>.

²⁵ A 2011 review into the Police Ombudsman's investigations of historic cases identified 'an inconsistent investigation process, a varied approach to communication with stakeholders and differences in quality assurance'. See, CJINI 'An inspection into the independence of the Office of the Police Ombudsman for Northern Ireland' (September 2011), p v, available at, <http://www.cjini.org/CJINI/files/fe/fee7c8c8-4e16-4492-ba70-fefbaf39427f.pdf>. Investigations by the Police Ombudsman into historic cases recently recommenced and are still under review.

²⁶ The ECtHR found in 2013 that the 'carrying out of investigations, including the holding of inquests, into killings by the security forces in Northern Ireland has been marked by major delay'. See,

Committee, the NIHRC recommends a comprehensive framework for transitional justice in NI should be developed.²⁷

16. The UK Government has noted that within ‘Northern Ireland UN [Security Council Resolution] 1325 is widely acknowledged as an important international commitment to women’s equality and empowerment particularly as regards women’s access to politics, public life and decision-making.’²⁸ In line with the CEDAW Committee, the NIHRC recommends that 1325 is effectively implemented in NI.²⁹

17. The NIHRC remains concerned about the independence of any inquiry conducted under the Inquiries Act 2005 due to the unprecedented subordination of the process to the control of government ministers.³⁰

McCaughey and others v the United Kingdom, ECtHR, Application no. 43098/09 (16 July 2013), para 144.

²⁷ UN Doc. CAT/C/GBR/CO/5, CAT, ‘Concluding observations on the 5th periodic report of the United Kingdom’ (24 June 2013), para 23 states, ‘The Committee recommends that the State party develop a comprehensive framework for transitional justice in Northern Ireland and ensure that prompt, thorough and independent investigations are conducted to establish the truth and identify, prosecute and punish perpetrators. In this context, the Committee is of the view that such a comprehensive approach, including the conduct of a public inquiry into the death of Patrick Finucane, would send a strong signal of its commitment to address past human rights violations impartially and transparently.’ In May 2014, the UK Govt. submitted follow-up information to the CAT Committee which stated, ‘The UK Government is committed to the full investigation of all deaths by lethal force that occurred during the ‘Troubles’ (the period from 1968 until the conclusion of the Belfast Agreement in 1998). There are a number of ways in which this will continue to be taken forward, including through inquests, investigations by the Office of the Police Ombudsman for Northern Ireland (OPONI) and the Historical Enquiries Team (the HET), independent reviews and, where appropriate, public inquiries.’ Available, at, <http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/GBR/INT_CAT_FCO_GBR_15304_E.pdf>.

See also, NIHRC, ‘Dealing with Northern Ireland’s Past: Towards a Transitional Justice Approach’ (31 July 2013), para 53.

²⁸ Questionnaire to Governments on the Implementation of the Beijing Declaration and Platform for Action (1995) and the Outcome of the Twenty-Third Special Session of the General Assembly (2000), United Kingdom Response (May 2009), available at, <<http://www.unecce.org/fileadmin/DAM/Gender/documents/Beijing+15/UK.pdf>>, p 14.

²⁹ UN Doc. CEDAW/C/GBR/CO/7, CEDAW Committee, ‘Concluding observations on the UK’, (30 July 2013), para 42-43; and, UN Doc. CEDAW/C/UK/CO/6, CEDAW Committee, ‘Concluding observations on the UK’, (July 10, 2008), para 285. (Nb. NIHRC, ‘A Bill of Rights for NI: Advice to the Secretary of State for NI’ (NIHRC: Belfast, 2008) identified a number of areas in NI where post-conflict rights realisation could benefit from a more gender-sensitive approach based upon the particular circumstances of NI post-conflict, these included health rights, work rights, rights to be free from violence and democratic rights.)

³⁰ For example, the Inquiries Act 2005, sec. 13, states that, ‘(1)The Minister may at any time, by notice to the chairman, suspend an inquiry for such period as appears to him to be necessary to allow for—

(a) the completion of any other investigation relating to any of the matters to which the inquiry relates, or

(b) the determination of any civil or criminal proceedings (including proceedings before a disciplinary tribunal) arising out of any of those matters.’

The power to suspend the inquiry would be the case even though actions of the NI Executive may, more often than not, be the very subject of investigation. The NIHRC notes however that there is unlikely to be any further inquiries into conflict related deaths in NI. See, for example, NI Office, press release, ‘Decision on Ballymurphy independent review panel’ (29 April 2014), available at, <<https://www.gov.uk/government/news/decision-on-ballymurphy-independent-review-panel>>. An inquiry under the Inquiries Act 2005 can only be initiated by the UK Government.

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

18. The Equality Act 2010 does not apply to NI. The NI Executive has no plans to introduce a single equality bill, but intends to update the legislative framework.³¹ The NIHRC recommends the current equality provisions are simplified, harmonised and strengthened without delay.

19. The NIHRC has continued concerns in relation to access to public funds for migrants with insecure immigration status in NI. A particular problem in this area is access to housing for migrant victims of domestic violence and free access to primary health care for certain vulnerable groups.³²

20. Generally, women hold only one fifth of elected positions in NI.³³ The NIHRC notes that existence of legislation permitting political parties to take positive measures to reduce inequality between men and women elected to Parliament.³⁴ The CEDAW Committee recommended in 2013 that the UK, ‘take concrete targeted measures to improve the representation of women in Parliament and the judiciary.’³⁵

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

21. The NIHRC recommends that education provision for children held in detention in NI be transferred from the Youth Justice Agency NI to the Department of Education NI. The NIHRC notes that the Minister for Justice NI and the Minister for Education NI have agreed that responsibility for the education of child offenders should be transferred to the DENI but the reallocation of this responsibility has not yet occurred. This would ensure children in detention have access to the full education curriculum.³⁶

See also, NIHRC ‘Submission to the UN Human Rights Council on the UK’s 7th Periodic Report on compliance with ICCPR’ (2014), p 12-13.

³¹ See, UN Doc. CEDAW/C/GBR/Q/7/Add.1, CEDAW, ‘Reply of the UK to the List of Issues’ (5 February 2013), para 17. This position is despite the St Andrew’s Agreement 2006 stating that, ‘The Government believes in a Single Equality Bill and will work rapidly to make the necessary preparations so that legislation can be taken forward by an incoming Executive at an early date.’

³² See, NIHRC, ‘Response to the DHSSPS consultation on the consolidation and updating of the Provision of Health to Persons not Ordinarily Resident Regulations (NI) 2005’ (April, 2013), available at, <<http://www.nihrc.org/Publication/detail/response-to-the-consolidation-and-updating-of-the-provision-of-health->>. See also NIHRC, ‘No Home From Home: Homelessness for People with No or Limited Access to Public Funds’ (Belfast, 2009).

³³ September 2013 statistics show that women represent 19% of members of the NI legislative assembly (MLAs) and 22% of NI Members of the Westminster Parliament (MPs). See, Department of Finance and Personnel for NI (DFPNI), ‘Women in Northern Ireland’ (September 2013). Available at, <http://www.detini.gov.uk/women_in_northern_ireland_september_2013.pdf?rev=0>. On 22 May 2014, elections were held in NI for the newly structured local councils (after a reform of local government in NI) and the European Parliament.

³⁴The Sex Discrimination (Northern Ireland) Order 1976, sec. 43A (inserted by the Sex Discrimination (Election Candidates) Act 2002).

³⁵UN Doc. CEDAW/C/GBR/CO/7, CEDAW Committee, ‘Concluding observations on the UK’, (30 July 2013), para 43.

³⁶ A cross-departmental working group has been established in NI to develop an options paper for delivering on this commitment which is to be completed in 2014. In the rest of the UK the Home Office Youth Crime Action Plan (2008) reallocated responsibility for delivery of education to children in detention from the prison service to the Department for Children, Schools and Families. The Minister for Justice NI and the Minister for Education NI have agreed that responsibility for the education of child offenders should be transferred to the Department of Education but the reallocation of this responsibility has not yet occurred. Such a recommendation is bolstered by the report of Special Rapporteur on the right to education, see UN Doc. A/HRC/11/8, Vernor Muñoz, ‘The Right

22. The NIHRC notes the CRC recommendation that the UK ‘invest considerable additional resources’ to achieve a truly inclusive education for disadvantaged groups.³⁷ The NIHRC notes that there has been no new resource allocation towards the Traveller Education Support Service (TESS).³⁸

23. The NIHRC notes that the DENI commenced a review of special educational needs and inclusion commenced in August 2009 and that updated legislation is still awaited.³⁹

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

24. The NIHRC recommends that the age of criminal responsibility in NI is raised to at least 12 years in line with repeated CRC Committee recommendations⁴⁰ and the Human Rights Committee comment that a ‘State party cannot absolve itself from its obligations under the [ICCPR, art. 24] regarding persons under the age of 18 notwithstanding that they have reached the age of majority under domestic law’.⁴¹

25. The NIHRC notes that there is an overuse of remand in custody for children in NI due to a serious gap in suitable bail packages.⁴² In accordance with CRC, art. 37(b), the NIHRC advises that children should be held in custody only where absolutely necessary.⁴³ The NIHRC further recommends that the legislative provision permitting children on

to Education of Persons in Detention’ (2 April 2009). See also, UN Doc. CRC/C/GBR/CO/4, CRC Committee ‘Concluding observations on the UK’ (20 October 2008), para 78.

³⁷ UN Doc. CRC/C/GBR/CO/4UN, CRC Committee, ‘Concluding observations on the UK’ (20 October 2008), para 67 (b).

³⁸ See, NIHRC, ‘Response to the public consultation on the draft traveller child in education action framework’, (January 2013), available at, <<http://www.nihrc.org/Publication/detail/nihrc-response-to-traveller-education-action-framework>>.

³⁹ See, DENI consultation, ‘Every School a Good School – The Way Forward for Special Educational Needs and Inclusion’, (Aug 2009 - Jan 2010). On 16 May 2012, the Minister presented a policy paper to the NI Assembly, Committee for Education. See generally on the review process, <http://www.deni.gov.uk/index/support-and-development-2/special_educational_needs_pg/review_of_special_educational_needs_and_inclusion.htm>. See also, NIHRC, ‘Redress within the special educational needs system and the requirements of international human rights law’ (June 2012), available at, <<http://www.nihrc.org/Publication/detail/redress-within-the-sen-system-and-ihrl>>.

⁴⁰ CRC Committee, General Comment 10: Children’s rights in juvenile justice (25 April 2007), para 32. See, also UN Doc. CRC/C/GBR/CO/4, CRC Committee ‘Concluding observations on the UK’ (20 October 2008), para 78; UN Doc. CRC/C/15/Add.188 ‘Concluding observations on the UK’ (9 October 2002); UN Doc. CRC/C/15/Add.34 ‘Concluding observations on the UK’ (15 February 1995).

⁴¹ UN Human Rights Committee, General Comment 17: Article 24 (Rights of the child), (7 April 1989), para 4.

⁴² See, DOJNI ‘Review of the Youth Justice System in NI’ (September 2011), para 3.6.2, available at, <<http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/report-of-the-review-of-the-youth-justice-system-in-ni.pdf>>. See also, NIHRC ‘Custodial Arrangements for Children in NI’ (January 2014), paras 43-45, available at, <<http://www.nihrc.org/documents/advice-to-government/2013/Custodial%20Arrangements%20for%20Children%20Consultation%20January%202014.pdf>>.

⁴³ NIHRC, ‘Response on the DOJNI consultation on the NI Law Commission Report on Bail in Criminal Proceedings’ (2013), paras 18-22, available at, <<http://www.nihrc.org/Publication/detail/response-on-the-department-of-justice-consultation-on-the-northern-ireland->>.

remand in NI to be held in custody for the purposes of gathering information on the child be repealed.⁴⁴

26. In accordance with CRC, art. 37(c), the NIHRC advises that the legislative provision, which allows a 15 -17 year old offender to be detained in the young offenders centre if considered likely to injure him or herself or others, should be repealed.⁴⁵

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

27. The NIHRC notes the absence of a comprehensive UK strategy on violence against children and the CRC Committee recommendation on the introduction of a national plan of action and strategy for implementation of the OP-CRC-SC.⁴⁶

28. The defence of reasonable chastisement continues to permit private corporal punishment of children in NI,⁴⁷ violating CRC arts.19 and 37(a). Further, the CAT Committee calls for the repeal of the defence.⁴⁸

29. The NIHRC recommends that sexual offences legislation in NI be amended to ensure that the burden of proof concerning the perpetrator's knowledge of a child victim's age does not lie with the prosecution in line with CRC and CEDAW Committee recommendations.⁴⁹ The NIHRC notes that the Home Secretary has recently stated that 'the Government has no plans to reverse the burden of proof onto the defendant in such circumstances'.⁵⁰

30. The NIHRC notes the recent CRC Committee comments that devolution should not lead to discrimination in protections for children and that the remit of the UK Child Exploitation and Online Protection Centre, a command of the National Crime Agency (NCA), be extended to NI.⁵¹ The NIHRC also notes that some political parties in NI have

⁴⁴ See, Criminal Justice (Children) (NI) Order 1998, art. 31. See also, NIHRC 'Custodial Arrangements for Children in NI' (January 2014), paras 39-42.

⁴⁵ See, Criminal Justice (Children) (NI) Order 1998, art. 13. See also, NIHRC 'Custodial Arrangements for Children in NI' (January 2014), paras 28 -35.

⁴⁶ See, UN Doc. CRC/C/OPSC/GBR/CO/1, CRC Committee, 'Concluding observations on the UK' (8 July 2014), para 14; and UN Doc. CRC/C/GB/CO/4, CRC Committee, 'Concluding observations on the UK' (20 October 2008), para 50.

⁴⁷ The Law Reform (Miscellaneous Provisions) (NI) Order 2006 amended NI law to ensure that 'battery of a child cannot be justified on the ground that it constituted reasonable punishment'.

⁴⁸ UN Doc. CAT/C/GBR/CO/5, CAT Committee, 'Concluding observations on the UK' (24 June 2013), para 29.

⁴⁹ See, UN Doc. CRC/C/OPSC/GBR/CO/1, CRC Committee, 'Concluding observations on the UK' (8 July 2014), paras 12 and 29; and UN Doc. CEDAW/C/GBR/CO/7, CEDAW Committee, 'Concluding observations on the UK' (30 July 2013), para 41. The relevant legislation in NI is the Sexual Offences (NI) Order 2008. For the detail see, NIHRC, 'Submission regarding the List of Issues concerning the Initial Report of the United Kingdom of Great Britain and Northern Ireland on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography' (July 2013), p 4-6, available at, <http://www.nihrc.org/Publication/detail/list-of-issues-concerning-the-initial-report-of-the-uk-ni-on-the-optio>.

⁵⁰ Letter from the Rt. Hon. Theresa May MP to the NIHRC and EHRC (7 August 2014).

⁵¹ UN Doc. CRC/C/OPSC/GBR/CO/1, CRC Committee 'Concluding observations on the UK' (8 July 2014), para 26. See also, BBC News, 'NCA would help police tackle human trafficking says David Ford' (19 August 2014), available at, <http://www.bbc.co.uk/news/uk-northern-ireland-28858905>. See, also Minister for Justice NI response to questions: NI Assembly AQW 19056/11-15 (29 January 2013), AQW19072/11-15 (6 March 2013) and AQW 22998/11-15, (13 May 2013).

raised concerns at the absence of legal mechanisms to ensure NCA accountability to the local policing oversight structure, principally the NI policing Board.⁵²

31. In 2013, a historical institutional abuse (HIA) inquiry was established to investigate experiences of the abuse of children in residential institutions in NI between 1922 and 1995. The NIHRC notes the CAT Committee's regret that the inquiry does not extend to survivors of clerical abuse.⁵³

32. Furthermore, the NIHRC notes that three individuals were prosecuted and convicted in 1981 for abuses at Kincora Boys' Home in NI and that concerns remain that investigations in the past may have been frustrated by MI5 and key information excluded.⁵⁴ The NIHRC notes that the HIA inquiry 'does not have sufficient powers' to investigate issues relating to the Army or MI5.⁵⁵ The NIHRC therefore requests that the UK consider extending the recently announced UK independent inquiry into child sexual abuse to include Kincora.⁵⁶

Violence against women (1st cycle: 1; 2nd cycle: 110.40, 110.51, 110.52, 110.69, 110.70, 110.71)

33. Domestic abuse and sexual violence remains high in NI.⁵⁷ Women constitute the majority of domestic abuse victims.⁵⁸ The NIHRC believes that the forthcoming 'Stopping domestic and sexual violence and abuse strategy for NI' needs to recognise the gendered nature of domestic abuse and sexual violence and tackle the underlying issues that give rise to such violence.⁵⁹

⁵² NI Assembly, Official Report (Hansard) (4 February 2013), Vol 81, No 5 p 61, available at, <<http://www.niassembly.gov.uk/Documents/Official-Reports/Plenary/2012-13/Microsoft%20Word%20-%20@@@aims-hansard-20130204210834577.pdf>>.

⁵³ UN Doc. CAT/C/GBR/CO/5, CAT Committee, 'Concluding observations on the UK' (24 June 2013), para 24. The Inquiry does not extend to private settings.

⁵⁴ See, BBC News, 'Kincora abuse investigation stopped by MI5 says ex-army officer' (1 August 2014), available at, <<http://www.bbc.co.uk/news/uk-northern-ireland-28597343>>.

⁵⁵ Mr Justice Hart, Chair of HIA Inquiry. See, Newsletter, 'Pressure builds for Kincora claims to be investigated by Westminster' (19 July 2014). It appears therefore that the HIA Inquiry underway in NI would not be in a position to fulfil the State's obligations in relation to Kincora and the victims of crimes committed there.

⁵⁶ See, Letter from NIHRC to Rt. Hon. Theresa May MP (11 August 2014). See also, The Independent, 'Theresa May announces details of independent inquiry into paedophile network claims', (7 July 2014).

⁵⁷ The number of recorded domestic abuse incidents in NI in 2004/05 was 20,959 rising to 27,628 in 2013/14. The number of recorded domestic abuse crimes in NI in 2004/5 was 9,656 rising to 12,720 in 2013/14. See, PSNI, 'Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in NI 2004/5 to 2013/14' (3 July 2014), available at, <http://www.psnipolice.uk/index/updates/updates_domestic_and_hate_motivation_statistics.htm#domestic_abuse_and_hate_motivation_statistics_2004/05_to_2010/11>.

The number of recorded sexual offences in NI in 2004/5 was 1,650 rising to 2,234 in 2013/14. See, PSNI, 'Trends in Police Recorded Crime in NI 1998/99 to 2013/14' (3 July 2014), available at, <http://www.psnipolice.uk/update_crime_statistics>.

⁵⁸ In 2013/14, of the 12,720 domestic abuse crimes: 7,265 victims were female 18+; 2,823 victims were male 18+; 1,568 victims were children; there was 14 victims of unknown age and gender; and 1,050 crimes were state-based offences. Nb. Breaches of non-molestation orders are considered as state-based offences and are therefore not disaggregated by gender. See, PSNI, 'Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in NI 2004/5 to 2013/14' (3 July 2014). A breakdown of sexual violence statistics by gender was not available at the time of writing.

⁵⁹ The joint DOJNI/DHSSPSNI 'Stopping Domestic and Sexual Violence and Abuse Strategy 2013-2020' consultation ended in April 2014. It is anticipated that the strategy will be published early in 2015.

34. The NIHRC welcomes the establishment of a Sexual Assault Referral Centre in NI.⁶⁰ However, NI still lacks ‘domestic violence protection notices’ and ‘domestic violence specialist courts’ which exist in other areas of the UK.⁶¹

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

35. The NIHRC welcomes recent efforts to improve the legislative framework on human trafficking throughout the UK and the introduction of legislation into the NI Assembly.⁶² The NIHRC advises that the domestic offences should be harmonised with the international standards.⁶³

36. The NIHRC is concerned in particular about instances of internal trafficking of girls who are in the care of the State in NI.⁶⁴ The NIHRC recommends that an independent guardian for child victims be established in statute in NI.⁶⁵

⁶⁰ ‘The Rowan’ in Antrim is the first sexual assault referral centre (SARC) in NI and opened in June 2013.

⁶¹ Domestic violence protection notices (DVPNs) allow the police to prevent the suspected perpetrator from entering the victim’s residence for a set period of time. The current legislation provides for non-molestation orders and occupation orders, both of which must be applied for at the Magistrates’ Court. These procedures require legal assistance and may not always provide adequate and timely protection for victims. The CJINI recommended the introduction of DVPNs in 2010 but the DOJNI has not yet decided on whether to introduce them. See, CJINI, ‘Domestic Violence and Abuse: A follow-up review of inspection recommendations’ (October 2013), p 9. Available at, <<http://www.cjini.org/TheInspections/Inspection-Reports/Latest-Publications.aspx?did=1272>>.

⁶² The Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill is currently at the consideration stage of the NI Assembly and applies to NI. The Modern Slavery Bill is at the Commons Committee stage of the Westminster Parliament and in its current form applies to England and Wales.

⁶³ See, NIHRC, ‘Advice to the Committee for Justice on the ‘Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill’’ (October 2013), para 6 - 15, available at, <<http://www.nihrc.org/Publication/detail/advice-to-the-committee-for-justice-on-the-human-trafficking-and-exploitation>>. See also the concerns raised by the Westminster Parliament’s ‘Draft Modern Slavery Bill Joint Committee’ (8 April 2014), paras 28-29, available at, <<http://www.publications.parliament.uk/pa/jt201314/jtselect/jt slavery/166/16602.htm>>. In the UK Government response to the Committee (p 6), the Home Secretary, stated that the ‘current law covers all forms of trafficking conduct required to be criminalised by ... international obligations’ and ‘has considered and agreed that the Modern Slavery Bill does provide an opportunity to more explicitly reference the concepts in international definitions on the face of the legislation and specific provision is included in the Bill to that effect’, available at, <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/318771/CM8889_Draft_ModernSlaveryBill.pdf>.

⁶⁴ See reports in, Barnardo’s, ‘Not a world away: The sexual exploitation of children and young people in Northern Ireland’ (October 2011), p 50, available at, <http://www.barnardos.org.uk/13932_not_a_world_away_full_report.pdf>. At present, there are two major reviews being conducted into the issue of child sexual exploitation (CSE) in NI: in September 2013, the DHSSPSNI Minister initiated a thematic review by the Safeguarding Board for NI in relation to 22 young people known to the police who are alleged victims of CSE in NI and is due to report in Easter 2015; in December 2013, CJINI, RQIA, and ETI initiated a joint Independent Inquiry into CSE in NI. See, <<http://www.safeguardingni.org/thematic-review-child-sexual-exploitation>> and <http://www.rqia.org.uk/cseinquiry/terms_of_reference.cfm>. In addition, the PSNI are running ‘Operation Owl’ to investigate the 22 young people known to them who were alleged victims of CSE. See also, NIHRC, ‘Submission to the Independent Inquiry into Child Sexual Exploitation’ (March 2014), available at, <<http://www.nihrc.org/Publication/detail/submission-to-the-independent-inquiry-into-child-sexual-exploitation>>.

⁶⁵ Such a provision currently exists in the draft Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill, Clause 12. The NI Assembly Committee for Justice has indicated that

Termination of pregnancy (2nd cycle: 110.77)

37. The NIHRC recommends that legislation should be introduced to ensure the availability of termination of pregnancy services in circumstances of rape, incest, and serious malformation of the foetus in line with the CEDAW Committee recommendation.⁶⁶

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

38. There are high levels of hate incidents and crimes in NI⁶⁷ but low levels of conviction for crimes ‘aggravated by hostility’.⁶⁸ In 2013, the NIHRC published the findings of an investigation into ‘Racist Hate Crimes’ in NI.⁶⁹ The NIHRC recommends that measures are taken to strengthen legislation and to ensure the effective enforcement of the ‘aggravated by hostility’ and hate speech legislation.⁷⁰

39. Recent remarks of the First Minister for NI caused distress among Muslims in particular.⁷¹ The NIHRC notes the Minister’s apology⁷² and stresses the importance of political leadership in combating negative attitudes.⁷³

it will support this clause of the Bill, see Committee for Justice ‘Report on the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill (NIA 26/11-15)’, para 359, available at, <<http://www.niassembly.gov.uk/Assembly-Business/Committees/Justice/Reports/Report-on-the-Human-Trafficking-and-Exploitation-Further-Provisions-and-Support-for-Victims-Bill-NIA-2611-15/>>. See also, NIHRC, ‘Advice to the Committee for Justice on the ‘Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill’’ (October 2013), para 71 - 78.

⁶⁶ UN Doc. CEDAW/C/GBR/CO/7, CEDAW Committee, ‘Concluding observations on the UK’, (30 July 2013), para 51 states, ‘The State party should ensure that legal abortion ... [covers] ... circumstances such as ... cases of rape, incest and serious malformation of the foetus. The DHSSPSNI consulted on draft guidelines in 2013, but confirmed that guidance ‘cannot change the law.’ (See, NI Assembly Committee for Health, Social Services and Public Safety, Termination of Pregnancy Guidance: DHSSPSNI Briefing (29 January 2014)). The DOJNI has stated its intention to initiate a consultation on updating the laws governing abortion. (see, Meeting and correspondence between the NIHRC and DOJNI, 18 December 2013 and 25 January 2014.) At the time of writing, no proposals have been published. It is anticipated that the DOJNI will consult in the Autumn 2014, see, <<http://www.bbc.co.uk/news/uk-northern-ireland-2883136>>.

⁶⁷ In 2013/14, the PSNI recorded 2,700 hate incidents and 1,922 hate crimes in NI. See, PSNI, ‘Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland: Quarterly Update to 31 March 2014’ (8 May 2014), table 1, available at, <http://www.psnipolice.uk/quarterly_hate_motivations_bulletin_apr-mar_13_14.pdf>.

⁶⁸ The Criminal Justice (No.2) (NI) Order 2004 requires that crimes ‘aggravated by hostility’ receive an enhanced sentence. The NICTS statistics recorded that between April 2007 and January 2012, five racially aggravated crimes received an enhanced sentence. In 2011/12 alone, PSNI statistics recorded 458 racist crimes. See, NIHRC, ‘Racist Hate Crime: Human Rights and the Criminal Justice System in NI’ (September 2013), p 13-14, available at, <<http://www.nihrc.org/Publication/detail/racist-hate-crime-human-rights-and-the-criminal-justice-system-in-nor>>.

⁶⁹ NIHRC, ‘Racist Hate Crime: Human Rights and the Criminal Justice System in NI’ (September 2013).

⁷⁰ NIHRC, ‘Racist Hate Crime: Human Rights and the Criminal Justice System in NI’ (September 2013), p 44-53, 105-106.

⁷¹ See, The Irish News (28 May 2014). See also, BBC News, ‘Peter Robinson backs Pastor James McConnell over Islamic remarks’ (28 May 2014), <<http://www.bbc.co.uk/news/uk-northern-ireland-27605185>>.

⁷² The First Minister clarified his comments in a subsequent television interview and apologised, available at, <<http://www.bbc.co.uk/news/uk-northern-ireland-27622074>>; The Guardian, ‘Northern Ireland’s Peter Robinson apologises for Muslim comments’ (3 June 2014), available at, <<http://www.theguardian.com/politics/2014/jun/03/peter-robinson-northern-ireland-muslims-apology-preacher>>.

⁷³ ‘Ban Ki Moon Condemns Ideas Based on Racism’ (21 March 2014).

Conditions of detention (1st cycle: 9; 2nd cycle: 110.81, 110.87, 110.89, 110.96)

40. In 2011, the NI Prison Review Team expressed concerns about the ‘efficacy of the procedures and support mechanisms for those at risk of suicide’⁷⁴ and in 2013 the CAT Committee recommended that the Government ‘step up’ efforts to prevent violence and self-harm in detention.⁷⁵

41. In line with comments of the CEDAW Committee,⁷⁶ the NIHRC has consistently identified the need to address the high numbers imprisoned for fine default.⁷⁷ The NIHRC notes efforts to create alternative methods for dealing with fine default and has advised that Supervised Activity Orders be prioritised.⁷⁸

42. Women offenders in NI continue to be co-located with young male offenders at Hydebank Wood. The NIHRC notes that the Minister for Justice has stated that, ‘I remain committed to having a separate prison for women. However, that will not happen in the near future.’⁷⁹ The NIHRC is concerned that a new separate custodial facility for women

⁷⁴ See, The Prison Review Team, ‘Review of the Northern Ireland Prison Service: Conditions, management and oversight of all prisons’ (October 2011), p 36, available at, <http://cain.ulst.ac.uk/issues/prison/docs/2011-10-24_Owers.pdf> .

⁷⁵ UN Doc. CAT/C/GBR/CO/5, CAT Committee, ‘Concluding observations on the UK’ (24 June 2013), para 31.

⁷⁶ See, UN Doc. CEDAW/C/UK/CO/6, ‘Concluding observations on the UK’ (10 July 2008), para 266-7. Further, the NI Review Team also stated that the rising prison population reflects ‘a continuing failure to get to grips with long-standing population drivers, such as ... remand prisoners and fine defaulters’. See, The Prison Review Team, ‘Review of the Northern Ireland Prison Service: Conditions, management and oversight of all prisons’ (October 2011), p 6.

⁷⁷ For example, the Commission highlighted the issue within its 2012 and 2013 Annual Statements and raised the matter to the CAT Committee and CEDAW Committee during the 2013 examinations. Most recently, see, NIHRC, ‘Response to the Department of Justice consultation on Fine Collection and Enforcement in NI’ (June 2014), available at, <<http://www.nihrc.org/Publication/detail/fine-collection-and-enforcement-in-northern-ireland>>. Generally, the DOJNI has piloted the use of supervised activity orders as an alternative to imprisonment for fine default under two pilot schemes. See, ‘Justice Minister David Ford has today launched a pilot scheme providing a better way to deal with fine default’, (4 January 2012), available at: <<http://www.dojni.gov.uk/ford-launches-pilot-scheme-to-tackle-fine-default>>. ‘Ford launches second pilot scheme to tackle fine default Justice Minister David Ford has today launched a second pilot scheme to provide a better way to deal with fine default’, (15 October 2012), available at: <http://www.northernireland.gov.uk/print/news-doj-15102012-ford-launches-second?WT.mc_id=rss-news>. The DOJNI further consulted on fine collection and enforcement in June 2014.

⁷⁸ See, DOJNI ‘Consultation on Fine Collection and Enforcement in NI’ (June 2014). See also, NIHRC, ‘Response to the DOJNI consultation on Fine Collection and Enforcement in NI’ (June 2014), para25, available at, <http://www.nihrc.org/uploads/publications/NIHRC_Fine_Collection_and_Enforcement_in_NI_response.pdf>.

⁷⁹ See, NI Assembly Official Report (Hansard) (21 October 2013), Ministerial Statement: Prison Reform: Owers Report, where the Minister stated, ‘I wish to put on record that I remain committed to having a separate prison for women. However, that will not happen in the near future. To address that, a four-stage approach will take place, which will deliver positive change for female prisoners. The first stage is the development of Ash House, which will deliver an enriched regime, freer movement and greater access to services. The second will be to couple that with the development of our ‘prisons inspire’ concept in Alderwood House. The third phase will see residential units also being developed. All of that will be subject to the normal planning processes. The final stage will be the development of a new women’s prison, and I anticipate high-level plans for that by the end of the year.’

prisoners is constructed without further delay in line with CAT and CEDAW Committee recommendations.⁸⁰

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

43. The NIHRC is concerned at the adequacy of mechanisms to ensure that victims of human trafficking and torture held at Larne House, a short-term holding facility specifically for immigration detainees in NI, are identified.⁸¹ In line with the CAT Committee recommendation, Detention Centre Rules, such as Rule 35 which contains guidance for medical practitioners on identification of torture victims, should apply to Larne House.⁸²

44. A lack of oversight of a detention site leads to an increased likelihood of ill-treatment. In this regard, the NIHRC notes concerns expressed by HM Inspectorate of Prisons and the Policing Board NI on the effectiveness of the inspection and oversight regime at Larne House.⁸³

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

45. The NIHRC recommends the publication of ethnicity related data concerning the use of stop and search and stop and question powers in NI to address concerns that racial profiling is used in the exercise of these powers throughout the UK generally.⁸⁴ Further, the NIHRC notes that in 2013 the Policing Board NI recommended that the PSNI should ‘as

⁸⁰ UN Doc. CAT/C/GBR/CO/5, CAT Committee, ‘Concluding observations on the UK’ (24 June 2013), para 32; UN Doc. CEDAW/C/UK/CO/6, CEDAW Committee, ‘Concluding observations on the UK’ (10 July 2008), para 267. The NI Prison Review Team described the women’s prison facility as ‘wholly unsuitable: because [of] its design, its mixed population of short sentenced, remanded, mentally ill and long sentenced women, and its co-location with young [male] adults’. See, The Prison Review Team, ‘Review of the Northern Ireland Prison Service: Conditions, management and oversight of all prisons’ (October 2011), p 69. In March 2013, the Minister for Justice committed to establishing a new separate custodial facility for women offenders and reiterated this in October 2013 after an unannounced inspection by the National Preventative Mechanism under OP-CAT.

⁸¹ See, HM Chief Inspector of Prisons, ‘Report on an unannounced inspection of the short-term holding facility at: Larne House’ (November 2011), para 1.45

⁸² UN Doc. CAT/C/GBR/CO/5, CAT Committee, ‘Concluding observations on the UK’ (24 June 2013), para 30.

⁸³ In 2011, HM Inspectorate of Prisons noted that ‘UK Border Agency (UKBA) monitoring of the facility was irregular at one visit every two to four weeks’ and recommended that the ‘UKBA should attend the facility regularly’. See, HM Chief Inspector of Prisons, ‘Report on an unannounced inspection of the short-term holding facility at: Larne House’ (November 2011), para 1.46. In 2012, the Policing Board NI expressed concern at the ‘lack of arrangements in place to ensure that [Larne House] was visited on a routine basis by lay visitors’. See, Policing Board NI, ‘Human Rights Annual Report 2012’, p 133. The NIHRC notes that the Independent Monitoring Board (IMB) at Glasgow, Scotland has been given oversight responsibility for Larne House. The NIHRC recalls that an IMB for NI operates as part of the UK National Preventative Mechanism under OP-CAT.

⁸⁴ UN. Doc. CCPR/C/GBR/CO/6, Human Rights Committee, ‘Concluding observations on the UK’ (30 July 2008), para 29. From 2010, the PSNI has monitored stop and question/search powers on the basis of 12 ethnic categories but does not disclose the ethnicity information in its quarterly reports. From April 2013 to March 2014, 1,491 persons have been stopped and questioned under the Justice and Security (NI) Act 2007, Sec 21 and 5,412 persons have been stopped and searched under Sec 24/Schedule 3 of the same Act. See, PSNI ‘Stop and Search Statistics, 1 April 2013 - 31 March 2014’ (PSNI: Belfast, 2014), available at, <http://www.psnipolice.uk/2013-14_fy_stop_and_search_report_internet_.pdf>.

soon as reasonably practicable ... consider how to include within its recording form the community background of all persons stopped and searched'.⁸⁵

46. The NIHRC notes concerns that the Terrorism Act 2000 does not make provision for persons arrested under sec. 41 to be released on bail and that the matter is currently before the ECtHR (European Court of Human Rights).⁸⁶

47. The NIHRC is concerned that the 'TPIM's legislation provides for the use of closed hearings using the special advocate procedure.⁸⁷ In light of fair trial requirements, the NIHRC urges the UK to make a decisive shift away from these practices in both a terrorism⁸⁸ and non-terrorism context.⁸⁹

⁸⁵ Policing Board NI, 'Human rights thematic review on the use of police powers to stop and search and stop and question under the Terrorism Act 2000 and the Justice and Security (NI) Act 2007', (October 2013), p 87, available at, <http://www.nipolicingboard.org.uk/stop_and_search_thematic_review__final_draft__15_october_2013.pdf>.

⁸⁶ Both the Joint Committee on Human Rights and the Independent Reviewer of Terrorism have expressed the view that bail should be available in terrorism cases. See, JCHR Counter-Terrorism Policy and Human Rights: Bringing Human Rights Back In HL Paper 86 HC 111, March 2010, para 88; David Anderson Q.C. Independent Reviewer of Terrorism Legislation 'Report of the Independent Reviewer of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006', p 88 - 89. An application, in the names of Duffy and Magee has been lodged with the ECHR (applications nos. 29062/12 and 26289/12) challenging the unavailability of bail to terrorist suspects held on pre-charge detention and the process for obtaining warrants for further detention. At the time of writing the case not been considered by the ECtHR.

⁸⁷ See, Terrorism Prevention and Investigation Measures Act 2011, Schedule 4.

⁸⁸ The Explanatory notes on the Terrorism Prevention and Investigation Measures Act 2011, para 114 state, 'Subsequent to the *MB & AF* judgment, the Law Lords handed down a further judgment (*Secretary of State for the Home Department v AF and others [2009] UKHL 28 ("AF (No. 3)")*) on the compatibility of control order proceedings in Article 6, which took into account the (then) recent ECtHR decision in *A & Others v United Kingdom [2009] ECHR 301*. In brief, the *AF (No. 3)* judgment held that, in relation to the control order proceedings before the Law Lords, the controlled person must be given sufficient information about the allegations against him or her to enable him or her to give effective instructions to the special advocate in relation to those allegations. The disclosure obligations required by the judgment in *AF (No. 3)* will be applied as appropriate by the courts in TPIM proceedings.'

⁸⁹ See, Justice and Security Act 2013, Part 2 for the use of the 'closed material procedure' in civil cases.

48. The Terrorism Act 2000, Schedule 8, permits a delay in the right of access to a lawyer for a maximum of 48 hours.⁹⁰ In 2008, the UN Human Rights Committee found that ‘the UK ha[d] failed to justify this power’ and considered that the ‘right to have access to a lawyer during the period immediately following arrest constitutes a fundamental safeguard against ill-treatment’.⁹¹ The NIHRC recommends that as a minimum, the UK reduce the time-frame for delay from a maximum of 48 hours to that of 36 hours to ensure terrorism legislation is brought in line with non-terrorism legislation.⁹²

⁹⁰ Under the Terrorism Act 2000, Schedule 8, paragraph 8, delay in accessing a lawyer may take place if the consequences are: ‘(a)interference with or harm to evidence of a serious arrestable offence; (b)interference with or physical injury to any person; (c)the alerting of persons who are suspected of having committed a serious arrestable offence but who have not been arrested for it; (d)the hindering of the recovery of property obtained as a result of a serious arrestable offence or in respect of which a forfeiture order could be made under sec. 23; (e)interference with the gathering of information about the commission, preparation or instigation of acts of terrorism; (f)the alerting of a person and thereby making it more difficult to prevent an act of terrorism; and (g)the alerting of a person and thereby making it more difficult to secure a person’s apprehension, prosecution or conviction in connection with the commission, preparation or instigation of an act of terrorism.’

⁹¹ UN. Doc. CCPR/C/GBR/CO/6, Human Rights Committee, ‘Concluding observations on the UK’ (30 July 2008), para 19. The Committee noted that the power had apparently been rarely used in England, Wales & NI in the years just preceding the report.

⁹² In a non-terrorism context in NI the relevant legislation is the Police and Criminal Evidence (NI) Order 1989, art. 59. Such an approach would be in keeping with the case law of the ECtHR on ECHR, art. 6. For example, the ECtHR has stated, ‘...the Court finds that in order for the right to a fair trial to remain sufficiently ‘practical and effective’. Art. 6 § 1 requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction – whatever its justification – must not unduly prejudice the rights of the accused under Art. 6. The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction’. See, *Salduz v Turkey*, ECtHR, Appl. No. 36391/02, (17 November 2008), para 55.