

**Submission to the UN Committee on the Rights of  
the Child on the  
United Kingdom's Fifth Periodic Report on  
compliance with the UN Convention on the Rights  
of the Child.**

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NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

Northern Ireland Human Rights Commission  
Temple Court, 39 North Street  
Belfast BT1 1NA  
Tel: (028) 9024 3987  
Fax: (028) 9024 7844  
Textphone: (028) 9024 9066  
SMS Text: 07786 202075  
Email: [information@nihrc.org](mailto:information@nihrc.org)

## **Executive Summary**

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

With respect to the UK's Fifth Periodic Report on compliance with the UN Convention on the Rights of the Child, the UN Committee on the Rights of the Child may wish to ask the State party:

- When it intends to ratify the Third Optional Protocol on a Communication Procedure? Why it has not made more significant efforts to incorporate the principles of the Convention into domestic law in Northern Ireland.
- To take immediate action to increase the minimum age of criminal responsibility and ensure that this is extended throughout its jurisdiction.
- What legislative measures it will introduce to ensure that children under 16 are not discriminated against on the basis of age when accessing goods, facilities and services?
- To reconsider its refusal to implement the 2008 recommendation to put an end to the use of all harmful devices on children, in light of the fact that Northern Ireland remains the only part of the UK where AEPs are used in public order situations including where children are present.
- To take immediate and effective action to address the issue of paramilitary style attacks on children in Northern Ireland through measures relating to both transitional justice and child protection.
- To review the practice of publicly releasing images of children wanted for questioning by the police in any circumstances, particularly in light of the prevalence of paramilitary style attacks by non-state actors in Northern Ireland. Noting the UK Supreme Court judgment on this issue, the Committee may wish to ask the State party for further information about the protection children from potential harm by non-state actors in such circumstances.
- To implement the recommendation to prohibit corporal punishment in the family without further delay and to extend this throughout its jurisdiction.
- What measures will be taken to ensure the availability of appropriate placements for children in care based on the child's best interests?
- What measures will be taken to ensure that social work services are sufficiently resourced to effectively support children, including improvements in monitoring, planning and investment?
- To undertake an independent review of family justice in Northern Ireland, as has already taken place in England and Wales, and to

consider adopting measures that have been introduced elsewhere in the United Kingdom to reduce delay in care proceedings.

- When it intends to publish a renewed child poverty strategy for NI?
- What measures will be taken to address the disproportionate growth of child poverty in Northern Ireland compared to the UK generally?
- How the potential for further regression in child poverty targets through the potential implementation of welfare reform will be mitigated in Northern Ireland?
- To ensure that the criminal law on abortion in Northern Ireland is amended so as to remove restrictions on safe access to terminations in circumstances of serious malformation of the foetus, rape and incest which are relevant to the protection of the highest attainable standard of health for children and adolescents.
- To outline how it will ensure the implementation of the 2008 recommendation to meet the needs of children with mental health problems in Northern Ireland. The Committee may further wish to ask the State party what measures it will undertake to ensure that a legal framework governing decisions regarding mental capacity for children under 16 will be developed.
- How it will ensure that the proposed changes to the Special Educational Needs and Disability framework will not lead to any retrogression in access to individualised support for children with SEN and disabilities towards their enjoyment of the right to education?
- What measures they will take to ensure that the introduction of appeal rights for children in Northern Ireland will be made effective as quickly as possible?
- What measures have been put in place to monitor the impact of the Traveller Education Action Framework on the right to education, including the effectiveness of the Traveller Education Support Service?
- What action it has taken to review Schedule 13 of the Education and Libraries Order with a view to supporting the attendance in school of Traveller children?
- What measures it will take to effectively “put an end to the two-tier culture in Northern Ireland...and ensure that all children are included in admission arrangements in post-primary schools”?
- What action it will take to review the schools planning policy in Northern Ireland so as to increase access to integrated schools in order to “meet the demand of a significant number of parents”?
- What mechanisms it will put in place to evaluate the effectiveness of recent developments in shared education in Northern Ireland?
- To create a legislative duty on the Department of Education to encourage and facilitate shared education.
- What specific measures have been taken since the publication of the Child Sexual Exploitation Inquiry in November 2014 to implement the recommendations? In particular the Committee may wish to ask

the State party when it intends to amend the Sexual Offences (NI) Order 2008 in order to provide adequate protection from sexual exploitation to children aged 13 to 18 years?

- To provide information on the resources applied to implementing the Budapest Convention and present a timeframe for ratification of the Lanzarote Convention.
- What measures it will undertake to fulfil the statutory commitments to protecting children in the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act in Northern Ireland and to demonstrate how it intends to provide adequate resources to support the implementation of these measures?
- What actions have been taken to institute prompt, independent and thorough investigations and ensure that all victims of historical institutional child abuse in Northern Ireland have access to redress and are able to obtain compensation? In particular the Committee may wish to ask the State party how it will ensure that the victims of abuse in Kincora Boys' home will have access to redress through a body with powers to compel evidence from the security services?
- How it will ensure that legislative reforms regarding the offence of ill-treatment or wilful neglect in health and social care settings will provide equal protection for children under 16 years old and those over 16 with capacity?
- How it will address the overuse of remand for children in Northern Ireland and expedite the Committee's 2008 recommendation to ensure that "detention is used as a measure of last resort"<sup>1</sup>?
- What measures are being taken to ensure a suitable range of bail packages are in place for child defendants, particularly in the case of looked after children?
- When will the law of bail in Northern Ireland be reformed and what proposals will it contain in relation to children specifically?
- To expedite the implementation of its 2008 recommendation to "provide for a statutory right to education for all children deprived of their liberty"<sup>2</sup> in Northern Ireland and provide a timeframe for implementation.
- To expedite the implementation of its commitment to amend the Criminal Justice (Children) (NI) Order 1998 removing the legal basis for the imprisonment of children with adults at Hydebank Wood and to provide a timeframe for implementation
- What measures it will take to prevent homelessness among families with children and to provide assurance that temporary accommodation for homeless children is suitable, is in their best interests and does not put their health or safety at risk?

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<sup>1</sup> UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 78

<sup>2</sup> UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 78

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## **Introduction**

1. The Northern Ireland Human Rights Commission (the NIHRC) is a statutory public body established in 1999 to promote and protect human rights. In accordance with the Paris Principles<sup>3</sup> the NIHRC reviews the adequacy and effectiveness of measures undertaken by the UK Government and Northern Ireland Executive to promote and protect human rights, specifically within Northern Ireland.
2. The NIHRC is one of the three A status National Human Rights Institutions in the United Kingdom (UK). The NIHRC's mandate extends to all matters relating to the protection and promotion of human rights in Northern Ireland, both matters within the competence of the Northern Ireland Assembly and those within the competence of the Westminster Parliament. This submission relates to the protection of human rights in Northern Ireland.
3. As part of the NIHRC's engagement with the United Nations and Council of Europe treaty monitoring processes, it presents this submission regarding the UK's Fifth Periodic Report on compliance with the United Nations Convention on the Rights of the Child (the Convention) to the UN Committee on the Rights of the Child (the Committee) 72nd Session.
4. The NIHRC is concerned at the absence of key information about Northern Ireland in the State party's report to the Committee. References to the situation in Northern Ireland are generally broad and lacking in detail. Despite a number of specific recommendations made in the Committee's 2008 Concluding Observations in reference to Northern Ireland, there are very few updates on these recommendations included in the State party's report. The NIHRC's report addresses gaps in the State report on issues particular to Northern Ireland including the fact that Northern Ireland is the only part of the UK where Attenuating Energy Projectiles are used in public order policing, the absence of a current child poverty strategy in Northern Ireland and the disproportionate growth of child poverty compared to the rest of the UK, the continuation of academic selection in Northern Ireland school admissions, the failure to transfer statutory duty for educating children in detention to the education authorities in Northern Ireland, and legislative inconsistencies with the rest of the UK in relation to protection from sexual exploitation<sup>4</sup>, detention of children with adults and access to abortion.

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<sup>3</sup> <http://www2.ohchr.org/english/law/parisprinciples.htm>

<sup>4</sup> For example, the protection of children aged 13 – 18 under the Sexual Offences (NI) Order 2008 from a range of offences where the burden of proof allows the defendant to claim they reasonably believed the victim to be above 18 years.

## **General measures of implementation**

- Ratification and incorporation of the Convention
- 5. Whilst the State party has ratified the Convention without reservations and ratified the First and Second Optional Protocols, the NIHRC notes that the State party has failed to ratify the Third Optional Protocol on a Communication Procedure.
- 6. The Committee's recommendation in its 2008 Concluding Observations regarding the need to bring domestic legislation into line with the Convention has not been significantly progressed. Research undertaken by the Northern Ireland Commissioner for Children and Young People (NICCY) suggests that whilst there is an increase in the amount of policy and legislation that references articles in the Convention or attempts to reflect the principles of the Convention, practice is inconsistent and Child Rights Impact Assessments are rarely used in the development of policy.<sup>5</sup> Although the advice to government on a Bill of Rights for Northern Ireland delivered by the NIHRC in 2008 recommended a number of provisions for the protection of children's rights drawn from the articles in the Convention, it has not been possible to secure political support in Northern Ireland for the introduction of a Bill of Rights.<sup>6</sup>
- 7. **The Committee may wish to ask the State party when it intends to ratify the Third Optional Protocol on a Communication Procedure. The Committee may also wish to ask the State party why it has not made more significant efforts to incorporate the principles of the Convention into domestic law in Northern Ireland.**

## **General principles**

- Age of criminal responsibility
- 8. The age of criminal responsibility remains at 10 years old in Northern Ireland, as in England and Wales, despite the Committee's recommendations on three separate occasions that the State Party increase the minimum age of criminal responsibility. Whilst it remains at 8 in Scotland, the Criminal Justice and Licensing (Scotland) Act 2010 renders any prosecution of a child under 12

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<sup>5</sup> 'Barriers to Effective Government Delivery for Children and Young People in Northern Ireland', Byrne, B. and Lundy, L. (2011), NICCY, p.67 - 68.

<sup>6</sup> See <http://www.nihrc.org/uploads/publications/bill-of-rights-for-northern-ireland-advice-to-secretary-state-2008.pdf>

incompetent.<sup>7</sup> The NIHRC has repeatedly advised the Northern Ireland Executive that the minimum age of criminal responsibility should be raised to at least 12 in line with international human rights standards as expressed in the Committee's General Comment Number 10 which states that a minimum age of criminal responsibility below the age of 12 is not acceptable.

9. The Review of Youth Justice (2011) recommended that, "[t]he minimum age of criminal responsibility in Northern Ireland should be raised to 12 with immediate effect, and that following a period of review of no more than three years, consideration should be given to raising the age to 14."<sup>8</sup> The Minister of Justice for Northern Ireland has publicly stated his support for increasing the age of criminal responsibility to 12 but does not intend to bring any legislative proposals before the Northern Ireland Assembly due to a lack of consensus amongst the political parties on this matter.<sup>9</sup>

10. **The Committee may wish to ask the State party, including its devolved administrations, to take immediate action to increase the minimum age of criminal responsibility and ensure that this is extended throughout its jurisdiction.**

- Non-discrimination

11. Throughout the UK there is inconsistency in the extent to which children are protected from discrimination due to their age, or status as children. Of particular concern in Northern Ireland is the announcement in February 2015 from the Office of the First and Deputy First Minister (OFMDFM) that proposed legislation to protect against age discrimination in accessing goods, facilities and services will exclude children under 16.<sup>10</sup> This has drawn considerable criticism from children's NGOs, the Equality Commission and NICCY. OFMDFM Ministers have stated that the decision to exclude under 16 was made on the basis of seeking to advance legislation as quickly as possible with the aim of eventually extending age discrimination protection to children under 16. They have described the proposals as "a work in progress" and highlighted that by including 16 and 17 year olds this will provide better protection for children than that which exists in England, Wales and Scotland under the Equality Act 2010 which only applies to those aged 18

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<sup>7</sup> Criminal Justice and Licensing (Scotland) Act 2010, s. 52

<sup>8</sup> A Review of the Youth Justice System in Northern Ireland, 2011 Recommendation 29. See <http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/report-of-the-review-of-the-youth-justice-system-in-ni.pdf>

<sup>9</sup> Belfast Telegraph 'Call to raise criminal age limit' 12 February 2015

<sup>10</sup> Committee for the Office of the First Minister and deputy First Minister OFFICIAL REPORT (Hansard) Age Discrimination Legislation: OFMDFM Junior Ministers and Officials 15 April 2015 See: <http://data.niassembly.gov.uk/HansardXml/committee-13160.pdf>

and over.<sup>11</sup> In its 2008 Concluding Observations the Committee recommended that the State party “ensure full protection against discrimination on any grounds”.<sup>12</sup>

**12. The Committee may wish to ask the State party what legislative measures it will introduce to ensure that children under 16 are not discriminated against on the basis of age when accessing goods, facilities and services.**

- Use of Taser guns and Attenuating Energy Projectiles (AEPs)

13. Since the Committee made a recommendation in its 2008 Concluding Observations that the State party should “put an end to the use of all harmful devices on children”<sup>13</sup> the UK government, as noted in the State report to the Committee, believes that “it is impractical to implement it while Taser is in use for other age groups and officers’ first priority must be to defend members of the public or themselves”.<sup>14</sup> Figures obtained from the PSNI by the Children’s Law Centre suggest that a Taser gun has been discharged against one child since 2008.<sup>15</sup> Although AEPs are authorised for use by police services throughout the United Kingdom, Northern Ireland continues to be the only part of the United Kingdom where AEPs are used in public order policing or crowd control.<sup>16</sup> Their use in this context carries the additional risk of AEPs being used against children. The PSNI has discharged AEPs in public order situations on 222 occasions since 2008,<sup>17</sup> with reported incidents of children having been injured.<sup>18</sup>

**14. In light of the fact that Northern Ireland remains the only part of the UK where AEPs are used in public order situations including where children are present, the Committee may**

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<sup>11</sup> Ibid. page. 4

<sup>12</sup> UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 25

<sup>13</sup> UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 31

<sup>14</sup> The Fifth Periodic Report to the UN Committee on the Rights of the Child United Kingdom (2014) page 56, para 33

<sup>15</sup> Northern Ireland NGO Alternative Report Submission to the United Nations Committee on the Rights of the Child for Consideration During the Committee’s Examination of the United Kingdom of Great Britain and Northern Ireland Government Report (May 2014) Children’s Law Centre and Save the Children Northern Ireland, June 2015, page 60 para. 10

<sup>16</sup> Association of Chief Police Officers / College of Policing briefing paper on National Water Cannon Asset, 8<sup>th</sup> January 2014, page 2; “Attenuated Energy Projectiles (AEP) are authorised for use in the UK but have never been discharged in a public order environment outside of Northern Ireland.”

<sup>17</sup> For example, ‘Use of Force Statistics: 1<sup>st</sup> April 2014 to 31<sup>st</sup> March 2015’ 26<sup>th</sup> June 2015, Police Service of Northern Ireland, p.4.

<sup>18</sup> The Irish News, 17<sup>th</sup> August 2009, ‘International rights adviser to examine riot baton round use’ Allison Morris; See also <http://www.u.tv/News/Teen-stable-after-west-Belfast-riots/69baf1c3-6924-4001-b7bd-c06a9e82b292>

**wish to ask the State party to reconsider its refusal to implement the 2008 recommendation to put an end to the use of all harmful devices on children.**

- Paramilitary style attacks

15. In 2014 the NIHRC reported to the Committee against Torture that the ongoing activities of paramilitary organisations in Northern Ireland continue to result in casualties and deaths. Figures obtained from the PSNI by the Children’s Law Centre demonstrate that violence from paramilitary organisations is also directed at children.

“In relation to shootings and assaults by non-state forces against children, 12 children were recorded as victims of paramilitary style shootings between 2009 and 2014, with 5 children recorded as victims in 2009. Twenty-seven children were recorded as being victims of paramilitary style assaults over the same period, with 13 children recorded as victims in 2009.”<sup>19</sup>

16. Research also suggests that these figures reflect problems of under-reporting since fear of paramilitary violence and self-reported experiences of attacks on children are much higher.<sup>20</sup> Media reports have also highlighted the trauma experienced by children present to witness paramilitary style attacks although no official figures are available to capture the extent of these incidents.<sup>21</sup>

17. The Guidance Note of the Secretary General on the United Nations Approach to Transitional Justice stresses the need for State parties to adopt a “child-sensitive approach” which should seek to “strengthen the protective environment for children in their families and communities.”<sup>22</sup> However, none of the current policy relating to transitional justice contains any targeted objectives aimed at addressing paramilitary style attacks on children.

- 18. The Committee may wish to condemn the ongoing attacks carried out by paramilitary organisations and ask the State**

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<sup>19</sup> Northern Ireland NGO Alternative Report Submission to the United Nations Committee on the Rights of the Child for Consideration During the Committee’s Examination of the United Kingdom of Great Britain and Northern Ireland Government Report (May 2014) Children’s Law Centre and Save the Children Northern Ireland, June 2015, page 61 para. 12

<sup>20</sup> McAlister, S., Scraton, P. and Haydon, D. (2009) ‘Childhood in Transition: Experiencing Marginalisation and Conflict in Northern Ireland, Belfast: QUB/ Save the Children/ Princes Trust; Harland, K. (2011) ‘Violent Youth Culture in Northern Ireland: Young Men, Violence and the Challenges of Peacebuilding’, *Youth and Society*, Vol 43, No. 2, p414 - 432

<sup>21</sup> “Teenager shot in legs 'surrendered' to armed attackers when he heard his terrified little sister cry” See <http://www.belfasttelegraph.co.uk/news/northern-ireland/teenager-shot-in-legs-surrendered-to-armed-attackers-when-he-heard-his-terrified-little-sister-cry-31003876.html>

<sup>22</sup> See [http://www.unrol.org/files/TJ\\_Guidance\\_Note\\_March\\_2010FINAL.pdf](http://www.unrol.org/files/TJ_Guidance_Note_March_2010FINAL.pdf)

**party to take immediate and effective action to address the issue of paramilitary style attacks on children in Northern Ireland through measures relating to both transitional justice and child protection.**

### **Civil rights and freedoms**

- Privacy: 'naming and shaming'
19. The Committee expressed concern in its 2008 Concluding Observations that "the State party has not taken sufficient measures to protect children...from negative media representation and public "naming and shaming"."<sup>23</sup> The Committee recommended that the State party should "[e]nsure, both in legislation and in practice, that children are protected against unlawful or arbitrary interference with their privacy".<sup>24</sup>
20. In July 2010, the Police Service of Northern Ireland (PSNI) has released images to the media and on leaflets distributed in the community of children it would like to question, mainly as part of an investigation into rioting and antisocial behaviour called 'Operation Exposure'. This practice has been challenged in the courts by a child who was 14 years old at the time his image was released to the media. His claim that it violated his Article 8 right to privacy under the ECHR was recently dismissed by the UK Supreme Court, stating that it represented a proportionate interference justified by the circumstances of the case.<sup>25</sup> The Divisional Court in its initial judgment found that Operation Exposure was not a 'name and shame' policy.<sup>26</sup>
21. However, there has been significant criticism of Operation Exposure and its potential impact on children's privacy and safety. Children's NGOs have drawn attention to threat posed to children by non-state actors involved in paramilitary style attacks as a response to alleged anti-social behaviour and expressed concern that Operation Exposure serves to "identify children to non-state forces with an interest in 'anti-social behaviour' and non-state policing which will have potentially grave implications for the child's safety including a threat to their right to life."<sup>27</sup>

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<sup>23</sup> UNCR Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 36

<sup>24</sup> Ibid, para 37

<sup>25</sup> The matter of an application by JR38 for judicial review, UKSC 2013/0181; See <https://www.supremecourt.uk/cases/docs/uksc-2013-0181-judgment.pdf>

<sup>26</sup> See: [https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/SummaryJudgments/Documents/j\\_sj\\_210313/j\\_sj\\_In-re-JR38\\_210313.html](https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/SummaryJudgments/Documents/j_sj_210313/j_sj_In-re-JR38_210313.html)

<sup>27</sup> Children's Law Centre, Response to the Independent Youth Justice Review Team's Review of Youth Justice in Northern Ireland, March 2011 pg.73 <http://www.dojni.gov.uk/index/publications/publication-categories/pubs->

22. The Northern Ireland Policing Board's (NIPB) Human Rights Thematic Review on Children and Young People considered the issue of the best interests of the child and recommended in 2011 that;

"PSNI policy should be amended to include the following guidance. Police officers should never release images or other details of any person under the age of 18 years into the public domain save where the release is necessary for the purpose of protecting the general public or the young person from serious injury and only after all reasonable methods have been tried and failed. Each and every decision to release a single image or other detail into the public domain must be justified. In each case before the decision is taken the PSNI should conduct a detailed risk assessment and consult with all relevant individuals and agencies. A record of the risk assessment and consultation must be recorded."<sup>28</sup>

23. The PSNI has accepted the recommendation in full and updated its Guidance on the Release of Images of Suspects and Defendants to reflect this.<sup>29</sup> The NIPB's Human Rights and Professional Standards Committee has requested "reassurance that it has been translated into binding PSNI policy and thereafter implemented in practice."<sup>30</sup>

24. **The Committee may wish to ask the State party to review the practice of publicly releasing images of children wanted for questioning by the police in any circumstances, particularly in light of the prevalence of paramilitary style attacks by non-state actors in Northern Ireland. Noting the UK Supreme Court judgment on this issue, the Committee may wish to ask the State party for further information about the protection children from potential harm by non-state actors in such circumstances.**

- Corporal punishment

25. In spite of the Committee's 2008 recommendation that the State party should "prohibit as a matter of priority all corporal punishment

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[criminal-justice/youth-justice-review/children-s-law-centre---written-evidence.pdf](#) ; Northern Ireland NGO Alternative Report Submission to the United Nations Committee on the Rights of the Child for Consideration During the Committee's Examination of the United Kingdom of Great Britain and Northern Ireland Government Report (May 2014) Children's Law Centre and Save the Children Northern Ireland, June 2015, page 17

<sup>28</sup> Human Rights Thematic Review Children and Young People. Northern Ireland Policing Board. January 2011 page 52

<sup>29</sup> Human Rights Thematic Review: Policing with Children and Young People – Update on PSNI implementation of recommendations, Northern Ireland Policing Board, November 2013, page 23

<sup>30</sup> Ibid.

in the family, including through the repeal of all legal defences”,<sup>31</sup> the law in Northern Ireland, as in the rest of the United Kingdom, remains unchanged. The State party has emphasised in the State report its belief that “parents should not be criminalised for giving a mild smack”<sup>32</sup> and Article 2 of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006 remains in force. This provides for the defence of reasonable punishment in respect of a charge of common assault tried summarily.

26. **The Committee may wish to ask the State party, including its devolved administrations, to implement the recommendation to prohibit corporal punishment in the family without further delay and to extend this throughout its jurisdiction.**

### **Family environment and alternative care**

- Best interests of the child: Alternative care arrangements

27. In its 2008 Concluding Observations, the Committee noted concern at the level of instability in alternative care arrangements for children in the United Kingdom with, “too frequent moves between places for children in alternative care.”<sup>33</sup> The NIHRC is due to publish a research report in August 2015 entitled ‘Alternative Care and Children’s Rights in Northern Ireland’. This report highlights the following shortcomings in the protection of the best interests of the child in decisions regarding alternative care, in particular in the context of suitable and stable care placements.
- A shortage of foster carers can sometimes mean that matching is restricted, resulting in a less suitable foster placement for children,<sup>34</sup> including in the context of emergency foster placements.<sup>35</sup> The Regulation and Quality Improvement Authority has indicated that a wider pool of foster families is required.<sup>36</sup>
  - A Judge, approving an application to arrange a care placement outside of Northern Ireland for a child requiring urgent specialised and intense intervention, noted in 2014 that there “is no available

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<sup>31</sup> UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 42

<sup>32</sup> The Fifth Periodic Report to the UN Committee on the Rights of the Child United Kingdom, page 21

<sup>33</sup> UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 44

<sup>34</sup> RQIA, *Review of Statutory Fostering Services: Overview Report*, December 2013, p. 19. “Each foster care panel chair indicated that they try to ensure the needs of children are met by placing children with foster carers who have the competence and skills required to meet their needs. However, a shortage of carers can sometimes mean that matching is restricted, resulting in a less suitable placement.”

<sup>35</sup> BBC News Northern Ireland, *Special-needs boy lived in elderly home over lack of foster carers*, 20 Jan 2014. Available at: <http://www.bbc.co.uk/news/uk-northern-ireland-25812807>. See also, RQIA, *Review of Statutory Fostering Services: Overview Report*, December 2013.

<sup>36</sup> RQIA, *Review of Statutory Fostering Services: Overview Report*, December 2013, p. 29.

specialised foster placement in Northern Ireland and placing her in a children's home would not help her."<sup>37</sup>

- Some children are facing placement moves due to financial pressure within Trusts, for example, moving from private foster placements, to Trusts' foster placements.<sup>38</sup>
- Of the looked after children who had placement moves in the year 2013-2014; 47.1% had three or more placement moves.<sup>39</sup>
- At 31 March 2014 a total of 39 children were deemed to be in an inappropriate placement given their assessed needs.<sup>40</sup>
- During 2013/2014 11 children were accommodated for three months or more in an adult setting: residential care home, nursing home, or private hospital.<sup>41</sup>
- Almost half (48.5%) of participants in a 2013 survey by Voices of Young People in Care (VOYPIC) reported having four or more social workers since they came into care.<sup>42</sup>

28. Despite a legislative requirement in the Children (NI) Order to avoid delay in making determinations about a child's care arrangements due to the fact that delay is "likely to prejudice the welfare of the child"<sup>43</sup>, the NIHRC is aware of ongoing problems of delay in public law cases.<sup>44</sup> Furthermore, evidence suggests that there is greater delay in Northern Ireland compared to other parts of the United Kingdom with court cases here taking an average of 55 weeks while the average for England is 51 weeks.<sup>45</sup>

29. In recognition of concerns regarding delay and the family justice system in England and Wales the Westminster government commissioned an independent panel to review the family justice system in that jurisdiction in 2010.<sup>46</sup> Many of the Family Justice Review (Norgrove) Report's recommendations were accepted<sup>47</sup> and legislation has been introduced which seeks to address a number of

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<sup>37</sup> *In the matter of S (arranging for a child in care to live outside Northern Ireland)* [2014] NIFam 7, paras. 44-45.

<sup>38</sup> RQIA, *Review of Statutory Fostering Services: Overview Report*, December 2013, page 58.

<sup>39</sup> *Ibid*, page 32.

<sup>40</sup> HSCB, *Delegated Statutory Functions Statistical Report*, 2014, page 34. There were a total of 66 homeless children, 16-17 years of age, at 31 March 2014, page 12.

<sup>41</sup> HSCB, *Delegated Statutory Functions Statistical Report*, 2014, page 26

<sup>42</sup> *Ibid*, page 20.

<sup>43</sup> Children (Northern Ireland) Order (1995), Art. 3(2)

<sup>44</sup> *Access to Justice Review Northern Ireland*, August 2011, available at:

[http://ico.org.uk/~media/documents/consultation\\_responses/Access\\_to\\_Justice\\_Review\\_FINAL\\_REPORT.ashx](http://ico.org.uk/~media/documents/consultation_responses/Access_to_Justice_Review_FINAL_REPORT.ashx), para 2.16.

<sup>45</sup> RQIA, *Independent Review of the Governance Arrangements of the Northern Ireland Guardian Ad Litem Agency*, 2013. See also NIGALA, *Care Order proceedings in Northern Ireland; A Snapshot Study in May 2012*, 2012, page 42.

<sup>46</sup> Family Justice Review: Final Report, November 2011, available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217343/family-justice-review-final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217343/family-justice-review-final-report.pdf).

<sup>47</sup> Ministry of Justice, *Family Justice Review: Government Response*, June 2012. Available at:

<https://www.gov.uk/government/publications/family-justice-review-government-response>

issues, including problems of delay.<sup>48</sup> Despite difficulties regarding delay in Northern Ireland no similar independent review has been undertaken, although the Access to Justice Review Northern Ireland in 2011 recommended that “the time is right for a fundamental review of family justice in Northern Ireland.”<sup>49</sup> The Department of Justice (DOJ) and the Department of Health Social Services and Public Safety have undertaken “work scoping a review of the operation of the family justice system” and have adopted “a staged approach to reform.”<sup>50</sup>

30. Reforms that are introduced in Northern Ireland should learn lessons from the approach which has been adopted in England, including considering a commitment to a ‘cap’ or time limit for care proceedings, except in certain cases.<sup>51</sup> In the context of any time limit that may be introduced, adequate flexibility should be allowed for an extension in cases where this would be in the best interests of the child, for example, allowing for some interventions which are shown to be effective that take longer than the prescribed period.<sup>52</sup>
31. **The Committee may wish to ask the State party:**
- **What measures will be taken to ensure the availability of appropriate placements for children in care based on the child’s best interests?**
  - **What measures will be taken to ensure that social work services are sufficiently resourced to effectively support children, including improvements in monitoring, planning and investment?**
  - **To undertake an independent review of family justice in Northern Ireland, as has already taken place in England and Wales, and to consider adopting measures that have been introduced elsewhere in the United Kingdom to reduce delay in care proceedings.**

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<sup>48</sup> Children and Families Act 2012-2013 and 2013-2014.

<sup>49</sup> *Access to Justice Review Northern Ireland*, August 2011, available at:

[http://ico.org.uk/~media/documents/consultation\\_responses/Access\\_to\\_Justice\\_Review\\_FINAL\\_REPORT.ashx](http://ico.org.uk/~media/documents/consultation_responses/Access_to_Justice_Review_FINAL_REPORT.ashx), para 5.92.

<sup>50</sup> Northern Ireland Assembly, AQW 29304/11-15, Tabled 10/12/2013.

<sup>51</sup> *Access to Justice Review Northern Ireland*, August 2011, available at:

[http://ico.org.uk/~media/documents/consultation\\_responses/Access\\_to\\_Justice\\_Review\\_FINAL\\_REPORT.ashx](http://ico.org.uk/~media/documents/consultation_responses/Access_to_Justice_Review_FINAL_REPORT.ashx), para 5.92: “While we do not believe that proposals in England and Wales are invariably applicable in Northern Ireland, there are similarities between our systems and there would be advantage in a review here at least being informed by the outcome of the Norgrove review.”

<sup>52</sup> Child Protection All Party Parliamentary Group, *Making Care Proceedings Better for Children: A report by the Child Protection All Party Parliamentary Group*, 2013, pp. 11-13.

## **Basic health and welfare**

- Child poverty and the impact of welfare reform
32. The Child Poverty Act 2010 (the Act), which was enacted on 25 March 2010 at Westminster, placed a statutory obligation on the Northern Ireland Executive to develop a child poverty strategy and report on progress. As noted in the State party's report, the Northern Ireland Executive produced a three year child poverty strategy in 2011 and OFMDFM produced three annual progress reports, in line with their obligation under the Act.<sup>53</sup> OFMDFM has also partnered with children's NGOs through the Child Poverty Advisory Group to develop a child poverty outcomes framework.<sup>54</sup> This tool is being introduced to all Northern Ireland Executive departments and will be used to improve accountability for child poverty impacts by promoting an outcomes based methodology rather than merely reporting on actions taken. It will be used for the first time in the 2014/15 annual report which has not yet been published.<sup>55</sup>
33. Since the first child poverty strategy expired in 2014, OFMDFM published for consultation a draft strategy called Delivering Social Change for Children and Young People in January 2014. This encompassed both child poverty targets and a policy framework for the promotion of children's rights. However, following concerns raised during the consultation process, OFMDFM decided to produce a separate child poverty strategy for 2014 - 2017 which has yet to be published and is now considerably overdue.<sup>56</sup> The absence of a child poverty strategy is further exacerbated by the failure of the Northern Ireland Executive to adopt a "strategy to tackle poverty, social exclusion and patterns of deprivation on the basis of objective need," something which is required by the Northern Ireland (St Andrews Agreement) Act 2006.<sup>57</sup> The judgment in a judicial review brought by the NGO the Committee for the Administration of Justice found that the existing documents and initiatives presented by the Northern Ireland Executive did not constitute a strategy for the purposes of the legislative requirement and noted that the Northern Ireland Executive had failed to adopt an agreed definition of "objective need".<sup>58</sup>

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<sup>53</sup> See <http://www.ofmdfmi.gov.uk/child-poverty>

<sup>54</sup> See <http://www.ncb.org.uk/media/1076520/child-poverty-outcomes-framework-september-2013.pdf>

<sup>55</sup> See <http://data.niassembly.gov.uk/HansardXml/committee-11491.pdf>

<sup>56</sup> See <http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2014/ofmdfm/9814.pdf>

<sup>57</sup> CAJ wins anti-poverty strategy legal challenge, 30 June 2015 See <http://www.caj.org.uk/contents/1324>

<sup>58</sup> Summary of Judgement, 30 June 2015 See [https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/SummaryJudgments/Documents/Court%20finds%20executive%20committee%20failed%20to%20adopt%20strategy%20on%20poverty%20and%20social%20exclusion/j\\_j\\_Summary%20of%20judgment%20-](https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/SummaryJudgments/Documents/Court%20finds%20executive%20committee%20failed%20to%20adopt%20strategy%20on%20poverty%20and%20social%20exclusion/j_j_Summary%20of%20judgment%20-)

34. In the meantime, research suggests that child poverty in Northern Ireland is likely to increase in the coming years and will do so at a disproportionate rate to the rest of the UK.<sup>59</sup> A report by the Institute of Fiscal Studies commissioned by OFMDFM and published in May 2013, calculated projections for changes in child poverty rates from 2010 – 2020 which suggest both relative and absolute income poverty will increase to 30% and 33% respectively compared to 24% and 27% across the UK generally. The report warns that the impact of tax and benefit reforms in the coming years may result in even larger increases in poverty rates in Northern Ireland.<sup>60</sup>
35. The NIHRC has advised the Northern Ireland Executive throughout the consideration of the Welfare Reform Bill of the potential impact on children’s rights including the threat of increased poverty or destitution should the sanctions regime be implemented in a way that is unreasonable for parents who cannot access affordable childcare. It is concerning that the period of benefit sanction is to be increased under arrangements proposed in the Northern Ireland Welfare Reform Bill. Moreover, the current arrangements for hardship grant payments where sanctions have been applied will be replaced by a loan scheme. In advising the Northern Ireland Executive regarding the administration of social security payments, the NIHRC has highlighted the obligations in articles 26 and 27 of the Convention to protect the right of the child to an adequate standard of living and to social security by ensuring that “benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child.”<sup>61</sup> The NIHRC has also advised the Northern Ireland Executive of its obligations under the International Covenant on Economic, Social and Cultural Rights, noting the guidance issued by the Committee for Economic, Social and Cultural Rights in 2012 regarding the application of austerity measures by States parties during periods of recession.<sup>62</sup>
36. The UK government announced its intention on 1 July 2015 to repeal the Child Poverty Act and replace it with new legislation that will use a range of measures to define child poverty beyond the current measure of children living in households with 60% of

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<http://www.niccy.org/media/1396/niccy-reponse-to-child-poverty-strategy-2014-17-consultation-may-2014.pdf>

<sup>59</sup> See <http://www.niccy.org/media/1396/niccy-reponse-to-child-poverty-strategy-2014-17-consultation-may-2014.pdf>

<sup>60</sup> Child and Working Age Poverty in Northern Ireland 2010-2020, Institute of Fiscal Studies, May 2013. See: <http://www.ifs.org.uk/comms/r78.pdf>

<sup>61</sup> See: <http://www.nihrc.org/Publication/detail/ad-hoc-committee-on-welfare-reform-bill>

<sup>62</sup> See <http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf>

median income.<sup>63</sup> Whilst the State party has expressed the intention to “strengthen” their understanding of child poverty in order to tackle it more effectively, many anti-poverty groups and children’s NGOs have described the proposed changes as presenting an ideological move away from addressing the core issues associated with low income.<sup>64</sup>

37. Furthermore the UK treasury announced in the summer Budget the intention to limit financial support available to families with children on low incomes as follows:

“The Budget will therefore limit support provided to families through tax credits to 2 children, so that any subsequent children born after April 2017 will not be eligible for further support. An equivalent change will be made in Housing Benefit to ensure consistency between both benefits. This will also apply in Universal Credit to families who make a new claim from April 2017.”<sup>65</sup>

38. This proposal has drawn criticism from children’s organisations who have characterised it as being “effectively a two child policy for the poorest families”<sup>66</sup>, and removing essential support from families in most financial need. It is unclear how such changes would be implemented in Northern Ireland given the lack of political agreement on welfare reform in the Northern Ireland Assembly. However, any such policy would have to be subject to an impact assessment that takes into account the fact that families in Northern Ireland are generally larger than in the rest of the UK.<sup>67</sup>

39. **The Committee may wish to ask the State party:**

- **When it intends to publish a renewed child poverty strategy for NI?**
- **What measures will be taken to address the disproportionate growth of child poverty in Northern Ireland compared to the UK generally?**
- **How the potential for further regression in child poverty targets through the potential implementation of welfare reform will be mitigated in Northern Ireland?**

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<sup>63</sup> See <https://www.gov.uk/government/news/government-to-strengthen-child-poverty-measure>

<sup>64</sup> For example, see comments by the Child Poverty Action Group, Gingerbread and the Child Poverty and Social Mobility Commission <http://www.theguardian.com/society/2015/jul/01/tories-redefined-child-poverty-no-longer-finances>

<sup>65</sup> See <https://www.gov.uk/government/publications/summer-budget-2015/summer-budget-2015>, para 3.4

<sup>66</sup> The Children’s Society, ‘Children in poverty being left to carry budget’s burden’ 8<sup>th</sup> July 2015, available at <http://www.childrensociety.org.uk/news-and-blogs/press-releases/children-in-poverty-being-left-to-carry-budget%E2%80%99s-burden>

<sup>67</sup> See <http://www.ons.gov.uk/ons/rel/family-demography/families-and-households/2013/stb-families.html?format=print>

- Termination of pregnancy

40. In 2014 the NIHRC initiated judicial proceedings against the Department of Justice regarding the criminal law on abortion in Northern Ireland. As the legislation differs to that in the rest of the UK, in Northern Ireland termination of pregnancy is currently available only if it is necessary to preserve the life of a woman where there is a risk of a serious and adverse effect on her physical or mental health which is either long term or permanent.
41. It is unlawful to perform a termination of pregnancy unless on these grounds. The punishment is life imprisonment for anyone who unlawfully performs a termination. In terms of 'preserving the life of the pregnant woman' a doctor must be of the opinion on reasonable grounds and with adequate knowledge that the probable consequence of the continuance of the pregnancy will be to make a woman a "physical or mental wreck".<sup>68</sup>
42. The lack of safe access to abortion in Northern Ireland has been raised with the State party by the UN Committee on Economic, Social and Cultural Rights<sup>69</sup> and the UN Committee on the Elimination of Discrimination against Women and is highlighted in the General Comments and jurisprudence of the UN Human Rights Committee.<sup>70</sup> The Committee on the Elimination of Discrimination against Women confirmed the requirement that access to termination of pregnancy be made available in Northern Ireland in circumstances of serious malformation of the foetus, rape or incest in its 2013 Concluding Observations.<sup>71</sup> From November 2013 the NIHRC repeatedly advised the Department of Justice that the existing legal framework violates the human rights of women and girls. In October 2014 the Department of Justice launched a public consultation on proposals to amend the criminal law on abortion to allow for termination of pregnancy in cases of lethal foetal abnormality and sought views on sexual crime. In the NIHRC's view, the consultation published by the Department of Justice did not commit to making the changes that were necessary to comply with international human rights law. The consultation addressed cases of lethal foetal abnormality and did not deal with serious malformation of foetus. The consultation only sought public opinion on cases of sexual crime including rape and incest without putting forward proposals to change the law. Moreover, in its response to

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<sup>68</sup> See *R vs Bourne*, 1939: providing a defence for the termination of a pregnancy which is illegal under the Infant Life (Preservation) Act, 1929, and Offences Against the Person Act 1861 section 58

<sup>69</sup> See <http://www.justice.gov.uk/downloads/human-rights/cescr-concludingobservations.pdf>

<sup>70</sup> General comment No. 28, para. 11; see also CCPR/C/79/Add.92 para. 11, CCPR/C/79/Add.72 para. 15 and CCPR/CO.70/ARG, para. 14; *K.N.L.H. v Peru* CCPR/C/85/D/1153/2003 Rev. 1, 14 August 2006

<sup>71</sup> CEDAW / C/GBR/CO/7/ 26 July 2013

the completion of the public consultation the Minister for Justice has stated he does not intend to bring forward any legislative proposals to provide access to abortion for victims of sexual crimes or in cases of serious malformation of the foetus.<sup>72</sup>

43. The NIHRC notes that the Committee has included safe access to abortion and post-abortion care in its General Comments on securing the right to health for children and adolescents.<sup>73</sup> The Committee has also expressed concerns regarding restrictions on access to safe abortion in other States parties in its concluding observations.<sup>74</sup> For example, addressing Palau, where abortion was “illegal except on medical grounds” the Committee expressed “concern regarding the best interests of child victims of rape and/or incest in this regard.”<sup>75</sup> The Committee has called for abortion legislation to be amended or reviewed to make abortion available in certain circumstances,<sup>76</sup> for example where the pregnancy is a result of rape or sexual violence,<sup>77</sup> incest or intra-family sexual violence.
44. **The Committee may wish to ask the State party to ensure that the criminal law on abortion in Northern Ireland is amended so as to remove restrictions on safe access to terminations in circumstances of serious malformation of the foetus, rape and incest which are relevant to the protection of the highest attainable standard of health for children and adolescents.**
- Mental health
45. In its 2008 Concluding Observations the Committee instructed the State party to employ “additional resources and improved capacities”<sup>78</sup> to meet the needs of children with mental health problems. The children’s NGOs in their alternative report to the

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<sup>72</sup> See <http://www.dojni.gov.uk/index/media-centre/substantial-support-for-changing-legislation-on-abortion-ford.htm>

<sup>73</sup> General Comment No. 15: Article 24 (on the right of the child to the enjoyment of the highest attainable standard of health), 2013 and General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child, 2003

<sup>74</sup> See for example, CRC/C/LBR/CO/2-4 (CRC, 2012), paras 66-67; CRC/C/ARG/CO/3-4 (CRC, 2010), paras 58-59; CRC/C/BFA/CO/3-4 (CRC, 2010), paras 56-57.

<sup>75</sup> CRC/C/15/Add.149 (CRC, 2001), paras. 46-47.

<sup>76</sup> See for example, CRC/C/NGA/CO/3-4 (CRC, 2010), paras. 61-62; CRC/C/KOR/CO/3-4 (CRC, 2012), paras. 10-11; CRC/C/NAM/CO/2-3 (CRC, 2012), paras. 57-58; CRC/C/MLT/CO/2 (CRC, 2013), paras 49-50; CRC/C/MAR/CO/3-4 (CRC, 2014), paras 56-57.

<sup>77</sup> See for example, CRC/C/AND/CO/2 (CRC, 2012), paras. 41-42; CRC/C/CRI/CO/4 (CRC, 2011), para 64; CRC/C/NIC/CO/4 (CRC, 2010), paras 64-65; CRC/C/15/Add.149 (CRC, 2001), paras. 46-47; CRC/C/COK/CO/1 (CRC, 2012), paras 49-50; CRC/C/VEN/CO/3-5 (CRC, 2014), paras. 56-57.

<sup>78</sup> UNCR Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 57

Committee have set out evidence of the Northern Ireland Executive's failure to implement this recommendation. For example;

"In NI in 2013/14, £19.4m was allocated to Child and Adolescent Mental Health Services, equating to 7.8% of the total mental health expenditure for that period, despite children representing nearly a quarter of NI's population."<sup>79</sup>

46. The report goes on to outline the limited services for children and the consequences of this under-provision including children travelling out of Northern Ireland for treatment and children being admitted to adult psychiatric wards.<sup>80</sup>
47. The NIHRC recently completed a human rights inquiry into emergency healthcare in Northern Ireland during which the Royal Belfast Hospital for Sick Children identified a significant increase in children and adolescents presenting for emergency healthcare in mental health crisis as the upper age limit of their services has increased to 14 with another increase to 16 likely in the near future. They expressed a need for both medical and nursing staff to obtain additional training in this area.<sup>81</sup>
48. The Department of Health, Social Services and Public Safety and the Department of Justice are currently engaged on a joint consultation on new mental capacity and mental health legislation.<sup>82</sup> The NIHRC is advising on the Mental Capacity Bill's compliance with the Convention and have raised a number of issues regarding children's rights including the application of the best interest principle within the proposed legislation, the participation of children in decision-making and the need to respect the evolving capacities of children. The NIHRC has also highlighted the limited scope of the proposed legislation with regard to children as it only applies to those aged 16 and over. It is noted that a separate project considering the legal framework governing capacity in children under 16 was to be undertaken. However it is now understood that due to resources this project will no longer go ahead.
49. **The Committee may wish to ask the State party to outline how it will ensure the implementation of the 2008 recommendation to meet the needs of children with mental**

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<sup>79</sup> Northern Ireland NGO Alternative Report Submission to the United Nations Committee on the Rights of the Child for Consideration During the Committee's Examination of the United Kingdom of Great Britain and Northern Ireland Government Report (May 2014) Children's Law Centre and Save the Children Northern Ireland, June 2015, page 26

<sup>80</sup> Ibid, pages 26-27

<sup>81</sup> NIHRC, Human Rights Inquiry Emergency Healthcare, 2015, page 71

<sup>82</sup> See [http://www.dhsspsni.gov.uk/mental\\_capacity\\_bill\\_consultation\\_paper.pdf](http://www.dhsspsni.gov.uk/mental_capacity_bill_consultation_paper.pdf)

**health problems in Northern Ireland. The Committee may further wish to ask the State party what measures it will undertake to ensure that a legal framework governing decisions regarding mental capacity for children under 16 will be developed.**

### **Education, leisure and cultural activities**

- SEN review and legislation
50. The Department of Education initiated a review of the Special Educational Needs (SEN) and Inclusion Framework in 2010. This review included the publication of a consultation document entitled "Every School a Good School: The Way Forward for Special Educational Needs and Inclusion" which generated a high level of response to some of the Department of Education's proposed changes. Some proposals raised concerns amongst parents, children's NGOs and disabled persons' organisations that there would be a reduction in legally enforceable rights to individualised support and that fewer children would meet the criteria for the provision of a package of support.
51. The Department of Education published a set of revised policy proposals in May 2012 and the Minister stated his intention to bring legislative proposals before the Assembly in order to implement changes to the SEN framework. Work on the Special Educational Needs and Disability Bill (the Bill) experienced significant delay but was eventually introduced to the Assembly in March 2015. The Bill does not address the areas of concern raised during the consultation as these will be dealt with in statutory regulations and a revised statutory Code of Practice which have yet to be released. The NIHRC has advised that the Department of Education should ensure that "there will be no retrogression in the level of SEN provision as a result of this Bill and subordinate legislation."<sup>83</sup> Since the majority of the detail of how individualised support will be delivered to children with SEN and disabilities is to be contained within the regulations and Code of Practice, the NIHRC has also recommended that the statutory rules must be approved by the Assembly before becoming law so as to provide full scrutiny of the human rights implications of the revised SEN and inclusion framework as a whole before the Code of Practice can come into effect. The NIHRC is also mindful of the fact that the proposed changes to the provision of educational support for children with SEN and disabilities comes in the midst of further reductions

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<sup>83</sup> NIHRC, Response to the consultation on the SEND Bill (2015) para. 27; See [http://www.nihrc.org/uploads/publications/NIHRC\\_response\\_to\\_the\\_Consultation\\_on\\_the\\_SEND\\_Bill.pdf](http://www.nihrc.org/uploads/publications/NIHRC_response_to_the_Consultation_on_the_SEND_Bill.pdf)

proposed to education spending under the Budget Bill currently before the Northern Ireland Assembly.<sup>84</sup>

52. Included within the Bill are a number of provisions intended to increase the participation rights of children, in accordance with article 12 of the Convention and the Committee's recommendation in 2008 that the State party should "[e]nsure that children who are able to express their views have ...the right, in particular for those in alternative care, to appeal to special educational needs tribunals."<sup>85</sup> As has already been implemented in England and Wales, the Department of Education proposes to introduce the right to request a statutory assessment, to appeal a SEN tribunal or to make a disability discrimination claim for all children over the age of 16. The Bill also creates a power enabling the Department of Education to establish a pilot scheme through which children under 16 can exercise their appeal rights. The pilot could be established at any time in the 10 years following the Bill's passing and the legislation would also enable follow up arrangements to be made once the pilot has been completed.
53. The NIHRC has advised that since it is now 7 years since the Committee made its recommendation on children's appeal rights in special educational needs tribunals, "an additional period of up to 10 years is not an appropriate length of time to allow for the establishment of the pilot scheme. In the event that the initiation of the pilot scheme could take 10 years from the date of the bill receiving Royal Assent, this could result in a total delay of 17 years in the implementation of the UN Committee's 2008 recommendation."<sup>86</sup> The NIHRC has also advised that the Northern Ireland Assembly scrutinise the statutory regulations for the pilot scheme, which have yet to be introduced, as these will govern how determinations will be made regarding a child's capacity to exercise their right to appeal and how children will be supported in order to effectively access this appeal mechanism.
54. **The Committee may wish to ask the State party how it will ensure that the proposed changes to the Special Educational Needs and Disability framework will not lead to any retrogression in access to individualised support for children with SEN and disabilities towards their enjoyment of the right to education.**

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<sup>84</sup> See <http://data.niassembly.gov.uk/HansardXml/plenary-22-06-2015.pdf>

<sup>85</sup> UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 67

<sup>86</sup> Ibid, para 46

55. **The Committee may also wish to ask the State party what measures they will take to ensure that the introduction of appeal rights for children in Northern Ireland will be made effective as quickly as possible.**
- Traveller children in education
56. The NIHRC recalls the Committee's concern in its 2008 Concluding Observations regarding persistent inequalities with regard to school achievement for certain groups of children, including Travellers. Since then the Department of Education has taken steps to improve access to the right to an effective education for Traveller children as a "marginalised" or "school-distant" group.<sup>87</sup>
57. The Department of Education established a Traveller Education Taskforce (the Taskforce) in 2008 which was a cross-sectoral body tasked with assisting the Department of Education to develop an action plan on Traveller education. The terms of reference included a commitment to "ensure that recommendations for improvements are underpinned by the Convention on the Rights of the Child (UNCRC) and other relevant equality and human rights legislation."<sup>88</sup> The Taskforce report published in December 2011 recommended a broad range of measures, including legislative, to improve engagement with Traveller families and promote attendance, attainment and inclusion of Traveller children in education.
58. The Department of Education's response to the Taskforce recommendations came in November 2013 when it published the Traveller Child in Education Action Framework. Central to the Department of Education's response was the establishment of the Traveller Education Support Service (TESS) which was identified as the vehicle by which many of the Taskforce recommendations would be implemented. The TESS has produced two annual delivery plans setting targets for the provision of "advice, guidance and focused support to schools and to parents and pupils from the Traveller community"<sup>89</sup>.
59. The NIHRC has asked the Department of Education to provide more information on how the work of the TESS will be monitored to assess the impact on the right to education for traveller children. The NIHRC has also requested an update on an outstanding recommendation of the Taskforce requiring legislative change which the Department of Education has committed to examine. This is the

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<sup>87</sup> Ibid, para 67

<sup>88</sup> See [http://www.deni.gov.uk/taskforce\\_on\\_traveller\\_education\\_-\\_terms\\_of\\_reference.pdf](http://www.deni.gov.uk/taskforce_on_traveller_education_-_terms_of_reference.pdf)

<sup>89</sup> See <http://www.selb.org/schools/traveller-education-support-service/>

'100 day rule' in Schedule 13 of the Education and Libraries (Northern Ireland) Order 1986 which creates a school attendance exemption where a child's parents are travelling for occupational reasons.

60. **The Committee may wish to ask the State party:**
- **What measures have been put in place to monitor the impact of the Traveller Education Action Framework on the right to education, including the effectiveness of the TESS?**
  - **What action it has taken to review Schedule 13 of the Education and Libraries Order with a view to supporting the attendance in school of Traveller children?**

- Academic selection

61. Since the Committee's recommendation in its 2008 Concluding Observations that the 11+ transfer test should be abolished in Northern Ireland, the Department of Education did so and the last official transfer test took place in November 2008. However, due to a lack of consensus within the Northern Ireland Executive the Minister of Education was unable to bring forward proposals for a non-selective system of school admission. The Department of Education has declined to issue regulations allowing selection on ability or to authorise a central transfer procedure but has issued guidance for schools in 2009 under the powers provided for in the Education Order (NI) 1997. This guidance recommend that schools refrain from using academic selection but acknowledged that schools were only legally obliged to "have regard"<sup>90</sup> to the guidance. As a result of the lack of a legislative framework for school admissions, an informal system of academic testing which is not regulated by the Department of Education, has emerged with most grammar schools continuing to use entrance exam results as the primary determinant for admission to school. Two different exams, both provided by private companies, are commonly used with many children completing both sets of tests.<sup>91</sup>

62. The use of privately funded tutoring is extremely prevalent and is connected to the evidence that continues to point towards the fact that children from poor socio-economic backgrounds do not do as well.<sup>92</sup> The action taken by Department of Education has therefore failed to "put an end to the two-tier culture"<sup>93</sup> in line with the

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<sup>90</sup> See: [http://www.deni.gov.uk/final\\_transfer\\_2010\\_guidance\\_25\\_june\\_2009.pdf](http://www.deni.gov.uk/final_transfer_2010_guidance_25_june_2009.pdf)

<sup>91</sup> See: <http://www.gub.ac.uk/research-centres/CentreforChildrensRights/filestore/Filetoupload,485594,en.pdf>

<sup>92</sup> 'What do we know? Educational Opportunities and Outcomes'. Available at: [www.ark.ac.uk/publications/books/fio/10\\_fio-education.pdf](http://www.ark.ac.uk/publications/books/fio/10_fio-education.pdf)

<sup>93</sup> UNCR Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 67

Committee's recommendation. Moreover, there is significant concern that the current practice of two sets of private tests puts undue stress on children and is not always a good determinant of ability. In research conducted by the Commissioner for Children and Young People (NICCY), children raised a variety of concerns in relation to the uncertainty of sitting unregulated tests and the unsettling process of taking tests on Saturday mornings in unfamiliar school settings.<sup>94</sup> The NIHRC notes the absence of any update on this issue in the State party's report, despite the Committee's clear recommendation in 2008.

**63. In line with its 2008 recommendation, the Committee may wish to ask the State party what measures it will take to effectively "put an end to the two-tier culture in Northern Ireland...and ensure that all children are included in admission arrangements in post-primary schools."<sup>95</sup>**

- Segregation of education

*Integrated Education*

64. In its 2008 concluding observations the Committee expressed concern regarding "the problem of segregation of education"<sup>96</sup> in Northern Ireland and recommended that the State party take measures to address this. In 2002 the Committee noted that only 4% of schools were integrated and recommended that the State party, "[i]ncrease the budget for and take appropriate measures and incentives to facilitate the establishment of additional integrated schools in Northern Ireland to meet the demand of a significant number of parents".<sup>97</sup> The Committee on Economic, Social and Cultural Rights also recommended in 2002 that the State party "consider appropriate measures in Northern Ireland to facilitate the establishment of additional integrated schools in areas where a significant number of parents have indicated their desire to have their children enrolled in such schools."<sup>98</sup>

65. In 2014/15 7% of pupils in Northern Ireland attended an integrated school<sup>99</sup> with the most common approach to achieving integrated

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<sup>94</sup> NICCY (2010) Talking Transfer, Belfast: NICCY; see also Ark update available at:

<sup>95</sup> UNCR Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 67

<sup>96</sup> Ibid, para 66

<sup>97</sup> UNCR Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/15/Add.188, 2002, para 48.

<sup>98</sup> UN Committee on Economic, Social and Cultural Rights, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, E/C.12/1/Add.79, 2002, para 42

<sup>99</sup> See [http://www.deni.gov.uk/index/schools-and-infrastructure-2/schools-management/10-types\\_of\\_school-nischools\\_pg/16-schools-integratedschools\\_pg.htm](http://www.deni.gov.uk/index/schools-and-infrastructure-2/schools-management/10-types_of_school-nischools_pg/16-schools-integratedschools_pg.htm)

status now being the transformation of existing schools. There have been no new integrated schools established since 2008. In examining the relatively slow growth of integrated schooling despite the statutory obligation on the Department of Education to “encourage and facilitate the development of integrated education”<sup>100</sup> the impact of the Department of Education’s planning policy has been highlighted as potentially creating barriers to the growth of integrated education. In a judicial review case in 2013, an integrated school argued that the Department of Education’s ‘area-based’ approach to planning, which restricts growth for schools located near schools in other sectors that are struggling to fill all their available places, denied them the opportunity to expand in order to meet the high demand from parents for integrated places. The judgment found that the Department of Education must reconcile the need to strategically plan for the most appropriate growth of the schools’ estate as a whole with their obligation under Article 64 of the Education Reform Order to facilitate the growth of the integrated sector:

“Using an analytical tool to plan for an area is of course acceptable and necessary, however the inflexibility of the projections used will have the effect of making it difficult to accommodate the A64 duty in future day to day decisions. The department need to be alive to the A64 duty at all levels, including the strategic level.”<sup>101</sup>

66. The Northern Ireland Assembly Education Committee has more recently criticised the Department of Education’s application of a ‘needs model’ of analysis in its planning policy as it assumes no growth in the integrated sector. The Education Committee recommended that the Department of Education “should accept the shortcomings of the Needs Model and revise it so as to recognise the increasingly diverse school population and changes to traditional designations and so as to promote increased mixing in schools.”<sup>102</sup>
67. **The Committee may wish to ask the State party what action it will take to review the schools planning policy in Northern Ireland so as to increase access to integrated schools in**

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<sup>100</sup> Education Reform Order (NI) 1989, art. 64

<sup>101</sup> See [http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2014/%5B2014%5D%20NIQB%2069/j\\_j\\_TRE9202Final.htm](http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2014/%5B2014%5D%20NIQB%2069/j_j_TRE9202Final.htm)

<sup>102</sup> Northern Ireland Assembly Committee for Education Position Paper: Area Based Planning, 1 June 2015 See: <http://www.niassembly.gov.uk/assembly-business/committees/education/reports/position-paper-area-planning/>

**order to “meet the demand of a significant number of parents”.<sup>103</sup>**

### *Shared Education*

68. In recent years, the Northern Ireland Executive has also pursued a commitment to shared education as an approach to addressing segregation in education. Shared education encompasses a continuum of practice from children attending classes in other schools, to shared campuses and even shared management. It aims to provide opportunities for children from different community backgrounds to learn together. The School of Education at Queen’s University Belfast began piloting shared education programmes in 2007, providing opportunities for schools to build partnerships across sectors in order to deliver curricular activities in a collaborative way.<sup>104</sup> The Northern Ireland Executive’s 2011-2015 Programme for Government contained four key commitments to shared education, the most ambitious of which was to “[e]nsure that all children have the opportunity to participate in shared education programmes by 2015”.<sup>105</sup>
69. While this has not been fully achieved for all children in Northern Ireland, the Department of Education did commission a report from an independent Ministerial Advisory Group on Advancing Shared Education which was published in April 2013. The Minister welcomed all 20 of the report’s recommendations, accepting some in full and deferring others for further debate by the Northern Ireland Assembly.<sup>106</sup> The report highlighted the need for significant financial investment to support the delivery of shared education programmes by teachers and youth workers and in the schools estate to enable schools to share facilities. As noted in the State party’s report, the Northern Ireland Executive’s Together: Building a United Community Strategy published in May 2013 contains a further commitment to shared education with a concrete target of establishing 10 new shared education campuses within 5 years.<sup>107</sup> This led to the development of the Shared Education Campuses Programme, jointly funded by OFMDFM, Department of Education and the Atlantic Philanthropies Fund, which has now undertaken two rounds of applications from interested schools.<sup>108</sup>

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<sup>103</sup> UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/15/Add.188, 2002, para 48.

<sup>104</sup> See <http://www.schoolsworkingtogether.co.uk/about.html>

<sup>105</sup> Northern Ireland Executive Programme for Government 2011-15, page 51; See

<http://www.northernireland.gov.uk/pfg-2011-2015-final-report.pdf>

<sup>106</sup> See [http://www.deni.gov.uk/advancing\\_shared\\_education\\_-\\_22\\_october\\_2013\\_docx.pdf](http://www.deni.gov.uk/advancing_shared_education_-_22_october_2013_docx.pdf)

<sup>107</sup> See <http://www.ofmdfmi.gov.uk/together-building-a-united-community-strategy.pdf>

<sup>108</sup> See <http://www.deni.gov.uk/shared-education-campuses-programme.htm>

70. Furthermore, the Department of Education has recently published for consultation a draft policy entitled 'Sharing Works: A Policy for Shared Education' and accompanying draft bill. The legislation seeks to define shared education and introduce an enabling power for the Department of Education and other relevant authorities to encourage and facilitate shared education. The Sharing Works policy expands on the definition of shared education to illustrate what sharing would look like in practice, sets out the underpinning principles and identifies key actions for delivery. The NIHRC advised the Department of Education on the need to include the Convention in the legislative requirements section of the policy, with particular focus on paragraph (d) of article 29 which obligates the State party to ensure that education is aimed towards, "the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin".
71. The NIHRC has welcomed the proposed legislative changes and will engage further on these when the Shared Education Bill is introduced to the Northern Ireland Assembly. Whilst a statutory definition of shared education and power to encourage it has the potential to contribute to reducing segregation in education, the scope of the definition and the need for a statutory duty rather than a power may yet present barriers to the success of this measure. Additionally, there remains some criticism of the emphasis placed on shared education by the Department of Education from academics and education professionals who argue that this model does not actively promote integration and can lead to the maintenance of segregation of children even within shared facilities.
72. **The Committee may wish to ask the State party what mechanisms it will put in place to evaluate the effectiveness of recent developments in shared education in Northern Ireland.**
73. **In line with its 2008 recommendation to "address segregation of education in NI",<sup>109</sup> the Committee may also wish to ask the State party to create a legislative duty on the Department of Education to encourage and facilitate shared education.**

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<sup>109</sup> UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/15/Add.188, 2002, para 67

## **Special protection measures**

### **- Child sexual exploitation**

74. In 2013 the issue of child sexual exploitation (CSE) became a priority concern for the Northern Ireland Executive following revelations about the extent of exploitation during an investigation by the PSNI. This investigation focused on 22 children, most of whom were in the care of social services, and suggested that many more may currently be at risk of sexual exploitation.<sup>110</sup> As noted in the State party's report,<sup>111</sup> the Minister for Health, Social Services and Public Safety instituted a thematic review of these cases with the aim of identifying key learning points and opportunities for improvement for the agencies involved.<sup>112</sup> At the same time the Minister announced an independent, expert-led inquiry (the Inquiry) jointly commissioned with the Minister for Justice. The Inquiry had the following terms of reference:

- seek to establish the nature of CSE in Northern Ireland and a measure of the extent to which it occurs;
- examine the effectiveness of current cross sectoral child safeguarding and protection arrangements and measures to prevent and tackle CSE;
- make recommendations on the future actions required to prevent and tackle CSE and who should be responsible for these actions; and
- report the findings of the Inquiry within one year of its commencement.

75. The NIHRC notes the Committee's recommendation in its 2008 Concluding Observations that the State party "intensify its efforts to collect data on the extent of sexual exploitation and abuse of children, essential to prepare adequate responses to and to combat these phenomena".<sup>113</sup> In this regard, the publication of the Inquiry report in November 2014 provided an overview of the nature and extent of CSE in Northern Ireland, whilst acknowledging the difficulties with defining CSE and uncovering hidden victims. The evidence received by the Inquiry did not suggest that Northern Ireland is experiencing the type of organised exploitation seen in other part of the United Kingdom in recent years. It did however raise concerns that some perpetrators of exploitation were individuals connected to paramilitary organisations which therefore

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<sup>110</sup> Northern Ireland Policing Board, Human Rights Annual Report 2013, page 11

<sup>111</sup> The Fifth Periodic Report to the UN Committee on the Rights of the Child United Kingdom, page 51

<sup>112</sup> See: <http://safeguardingni.org/thematic-review-child-sexual-exploitation>

<sup>113</sup> UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 74

engendered fear in victims and made it much harder for them to come forward. This finding also resonates with recent claims from adult victims of childhood sexual abuse by members of paramilitary organisations that these organisations acted to hide abuse from the authorities, moved perpetrators of the abuse to other areas and forced victims to participate in 'kangaroo courts' when dealing with allegations of sexual abuse against their members.<sup>114</sup> The findings of an independent review into the handling of three such cases by the Public Prosecution Service has led to a public apology by the Director of Public Prosecutions after it found serious failures around strategic planning; management of the cases and in communication and consultation with victims and witnesses.<sup>115</sup>

76. The CSE Inquiry report makes 17 key recommendations and 60 supporting recommendations for improvement in combating CSE, outlining measures for improved inter-agency working, education and awareness raising, training for professionals, funding of preventative services, engagement with communities, support for victims of CSE and the development of a regional strategy to combat CSE.
77. The recommendations also cover the need for legislative reform in a number of areas, including a gap in protection under the Sexual Offences (NI) Order 2008 previously highlighted by the Committee in its 2014 recommendation to the State party following the examination under the Optional Protocol to the Convention on the Rights of the Child on the sale of Children, Child prostitution and Child Pornography (OPSC). The Committee noted in its Concluding Observations that this legislation means that for a number of serious sexual offences against children aged between 13 and 18 years, "the defendant may claim that he/she believed the victim to be above 18 years" thus requiring the prosecution to prove that the defendant did not reasonably believe this. The Committee recommended that the State party ensure that such legislation "includes a provision that for child victims, the burden of proof would be reversed". The NIHRC has continued to engage with the Department of Justice on this issue and whilst it has received assurances that the Minister is committed to reviewing this legislation, no action has yet been taken to implement this recommendation of the Committee and the CSE Inquiry.

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<sup>114</sup> See <http://www.bbc.co.uk/news/uk-northern-ireland-29631344>; See also 'At least 60 people were abused by Provos, claims Mairia Cahill' Belfast Telegraph, 12 March 2015

<sup>115</sup> See 'Starmer report: Mairia Cahill and other alleged IRA rape victims 'let down' by PPS' Belfast Telegraph, 22 May 2015

78. **The Committee may wish to ask the State party what specific measures have been taken since the publication of the CSE Inquiry in November 2014 to implement the recommendations. In particular the Committee may wish to ask the State party when it intends to amend the Sexual Offences (NI) Order 2008 in order to provide adequate protection from sexual exploitation to children aged 13 to 18 years.**

- Preventing abuse and exploitation

79. In its 2013 submission to the Committee on the OPSC, the NIHRC reported that the State party had established a National Crime Agency (NCA) with responsibilities, inter alia, for preventing the sexual exploitation of children. At that point the Northern Ireland Assembly had not passed a motion of legislative consent to permit the NCA to operate in Northern Ireland with respect to matters within its competence.<sup>116</sup> The Committee recommended in its Concluding Observations on the matter that the State party should ensure that "mechanisms, such as the Child Exploitation and Online Protection Centre are extended to Northern Ireland to ensure the full implementation of the Optional Protocol throughout the State party's jurisdiction."<sup>117</sup>

80. Following the introduction of a range of accountability mechanisms to be applied to the NCA, the Northern Ireland Assembly voted to extend the powers of the NCA to Northern Ireland through the Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015.<sup>118</sup> The NCA, including the Child Exploitation and Online Protection Centre, became operational in Northern Ireland under this legislation on 20 May 2015.

81. **The committee may wish to welcome the decision of the Northern Ireland Assembly to extend the powers of the National Crime Agency to Northern Ireland, allowing the Child Exploitation and Online Protection Centre to be fully operational through the State party's jurisdiction.**

82. The NIHRC notes that the UK government has ratified the Council of Europe Convention on Cybercrime (Budapest Convention) which requires states to criminalise the production, distribution,

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<sup>116</sup> Official Report (Hansard) Monday 4 February 2013 Volume 81, No 5 pg 61 available at <http://www.niassembly.gov.uk/Documents/Official-Reports/Plenary/2012-13/Microsoft%20Word%20-%20@@aims-hansard-20130204210834577.pdf>

<sup>117</sup> CRC/C/OPSC/GBR/CO/1 23 June 2014 para 26

<sup>118</sup> Official Report (Hansard) Tuesday 3 February 2015 See <http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2015/02/03&docID=221589>

procurement and possession of child sex abuse images.<sup>119</sup> However, the UK government has not ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention).<sup>120</sup> This Convention requires states to take preventative measures such as education, public-awareness raising, information sharing and vetting, in addition to expanding on the legislative measures outlined in the Budapest Convention.

**83. The Committee may wish to ask the State party to provide information on the resources applied to implementing the Budapest Convention and present a timeframe for ratification of the Lanzarote Convention.**

- Human Trafficking

84. Following the examination of the UK under the OPSC in June 2014 the Modern Slavery Act has come into force in the UK with limited application in Northern Ireland and the Northern Ireland Assembly passed the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act 2015 (the Act). This legislation supports the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, as recommended by the Committee in 2008. It defines certain offences connected to trafficking and various forms of exploitation and creates obligations to take measures to prevent and combat human trafficking and to provide support to victims.

85. The Act requires courts, for the purposes of sentencing, to consider an offence committed against a child as an aggravating factor. It also includes a provision to ensure that an independent guardian with legal powers is appointed for all separated children subject to immigration control, something which the Northern Ireland Commissioner for Children and Young People has worked extensively to secure.<sup>121</sup> The NIHRC also welcomed the inclusion of a defence for all child victims of trafficking that ensures they will not be prosecuted for any offence connected to an "act that was done as a direct consequence of the person being, or having been, a victim of [slavery, servitude and forced or compulsory labour] or of relevant exploitation".<sup>122</sup>

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<sup>119</sup> Council of Europe Convention on Cybercrime, Budapest, 23.XI.2001, Article 9

<sup>120</sup> Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Lanzarote, 25.X.2007

<sup>121</sup> See <http://www.niccy.org/media/1325/niccy-guardianship-main-report-feb-14.pdf>

<sup>122</sup> Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, Section 22 Article 6

86. These legislative developments are set against evidence that suggests there are considerable challenges in properly identifying child victims of trafficking with an estimate from the Department of Justice that two thirds of victims are not currently being identified through the National Referral Mechanism.<sup>123</sup> Research by Barnardos and the NSPCC has highlighted the problem of the lack of awareness amongst professionals in all agencies dealing with separated children, recommending that;

“Professionals who come into contact with separated/trafficked children in Northern Ireland should be trained to understand and effectively respond to their needs. Awareness-raising, embedding knowledge and building professionals’ confidence about the issue of separated children, and child trafficking in particular, is vital for effective safeguarding.”<sup>124</sup>

**87. The Committee may wish to ask the State party what measures it will undertake to fulfil the statutory commitments to protecting children in the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act in Northern Ireland and to demonstrate how it intends to provide adequate resources to support the implementation of these measures.**

- Historical Institutional Abuse Inquiry

88. In 2013 the Historical Institutional Abuse (HIA) Inquiry was established to investigate the experiences of abuse of children in residential institutions (other than schools) in Northern Ireland between 1922 and 1995.<sup>125</sup> The Committee against Torture in its 2013 report regretfully noted that clerical abuse survivors who were abused in private settings were not included within the scope of the inquiry.<sup>126</sup> There has been some discussion concerning other categories of abuse victims in Northern Ireland not included.<sup>127</sup> However there are no plans in place to either extend the existing inquiry or to establish separate inquiries.

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<sup>123</sup> Simon Rogers of DOJ Protection and Organised Crime Division giving evidence in Westminster Q1004 evidence session HC [1019], Tuesday 4 March 2014

<sup>124</sup> ‘Separated children and child trafficking in Northern Ireland’ Barnardo’s Northern Ireland, NSPCC, September 2011, page 6

<sup>125</sup> Terms of reference available at <http://www.hiainquiry.org/index/documentation/terms-of-reference.htm>

<sup>126</sup> CAT, Concluding Observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013), para 24.

<sup>127</sup> Official Report (Hansard) Monday 4 February 2013 Volume 81, No 5 pg 61 available at <http://www.niassembly.gov.uk/Documents/Official-Reports/Plenary/2012-13/Microsoft%20Word%20-%20@aims-hansard-20130204210834577.pdf>

89. During 2014 the Chair of the HIA Inquiry, Mr Justice Hart, raised concerns regarding its ability to fully investigate issues relating to the alleged knowledge and involvement of security services personnel in child abuse that took place at Kincora Boys' Home as it does not have the powers to compel evidence from these agencies.<sup>128</sup> In July, the Home Secretary separately announced the establishment of an inquiry for England and Wales into allegations that evidence of the sexual abuse of children was suppressed by people in positions of power, the Child Sex Abuse Inquiry.<sup>129</sup> The NIHRC wrote to the Home Secretary highlighting Mr Justice Hart's statement on Kincora Boys' Home advising that the UK may not have fulfilled its human rights obligations. It requested that consideration be given in this regard to the scope of the Child Sex Abuse Inquiry.<sup>130</sup> In October 2014 the Secretary of State for Northern Ireland announced that the terms of reference for the Child Sex Abuse Inquiry would not be amended to include Kincora Boys' Home. However, the Secretary of State indicated that the ability of the HIA Inquiry to investigate allegations relating to Kincora Boys' Home would be addressed.<sup>131</sup> Mr Justice Hart welcomed the statement from the Secretary of State, commenting:

"We are satisfied that the assurance of full co-operation by all Government Departments and agencies, and the satisfactory resolution by HM Government of the other issues the Inquiry has raised with it, will provide our HIA Inquiry with the ability and financial resources to carry out an effective and thorough investigation into all the Kincora allegations. However, should it become apparent during our work that it is necessary to have powers under the Inquiries Act 2005 then we will ask OFMDFM and HM Government to confer such powers on our Inquiry."<sup>132</sup>

90. However, despite this statement from the HIA Inquiry chair, the limited powers of the HIA Inquiry to compel evidence continue to be a cause for concern for many victims. In June 2015 a victim of abuse in Kincora Boys' Home was granted leave to judicially review the decision not to examine Kincora within an independent inquiry

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<sup>128</sup> BBC News Northern Ireland 'Colin Wallace: Any Kincora inquiry 'must have full access' 20 July 2014 <http://www.bbc.co.uk/news/uk-northern-ireland-28390411>

<sup>129</sup> See: <https://childsexualabuseinquiry.independent.gov.uk/>

<sup>130</sup> Correspondence from NIHRC Interim Chair John Corey to Home Secretary Rt. Hon Theresa May MP June 2014

<sup>131</sup> The Rt Hon Theresa Villiers MP Written statement to Parliament 'Kincora Boys' Home: HM Government co-operation with the Historical Institutional Abuse Inquiry' October 2014

<sup>132</sup> Historical Institutional Abuse 21 October 2014 <http://www.hiainquiry.org/index/latest-news.htm>

with power to compel witnesses and the security services to hand over documents.<sup>133</sup>

91. **The Committee may wish to ask the State Party what actions have been taken to institute prompt, independent and thorough investigations and ensure that all victims of historical institutional child abuse in Northern Ireland have access to redress and are able to obtain compensation. In particular the Committee may wish to ask the State party how it will ensure that the victims of abuse in Kincora Boys' home will have access to redress through a body with powers to compel evidence from the security services.**

- Abuse in health and social care settings

92. The Department of Health, Social Services and Public Safety and the Department of Justice have jointly published a draft Mental Capacity Bill (the Bill) which contains a proposal to introduce a criminal offence of ill-treatment or wilful neglect of an over 16 year old who lacks mental capacity in Northern Ireland.<sup>134</sup> The NIHRC submitted to the public consultation on the Bill advising that the proposed criminal offence of ill-treatment or wilful neglect was unduly limited in scope as it would not protect children under 16 or over 16 year olds who have capacity.<sup>135</sup> The NIHRC noted that the Department of Health in England & Wales is proposing to introduce a new general offence of ill-treatment or wilful neglect to apply in all health and social care settings.<sup>136</sup> The offence is being proposed as the Department considers a gap exists in the law in England & Wales, the consultation document states:

"It is entirely possible that 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."<sup>137</sup>

93. To avoid a similar gap developing in Northern Ireland the NIHRC recommended that a new offence of wilful or reckless neglect or mistreatment of any individual, regardless of age or capacity, in a

<sup>133</sup> See <http://www.bbc.co.uk/news/uk-northern-ireland-32961423>

<sup>134</sup> Department of Health Social Services and Public Safety Northern Ireland 'Draft Mental Capacity Bill (NI): Consultation Document' May 2014

<sup>135</sup> NIHRC 'Submission to DHSSPS/DoJ Consultation on Draft Mental Capacity Bill (NI)' September 2014

<sup>136</sup> See proposals in England & Wales by Department of Health 'New offence of ill-treatment or wilful neglect Consultation document' February 2014

<sup>137</sup> Ibid., para 15

health and social care setting should be introduced.<sup>138</sup> This offence should apply in both public and private health and social care settings. Reforms to the criminal law should be underpinned by robust standards governing health and social care settings, in particular residential homes.

94. **The Committee may wish to ask the State party how it will ensure that legislative reforms regarding the offence of ill-treatment or wilful neglect in health and social care settings will provide equal protection for children under 16 years old and those over 16 with capacity.**

- Children on remand

95. The NIHRC notes that the State party report notes that “[i]n Northern Ireland very few children are sentenced to custody” but does not address the fact that a high percentage of child suspects in Northern Ireland continue to be held on remand, most of whom will not go on to serve a custodial sentence.<sup>139</sup> Figures reported by the Youth Justice Agency show that in 2013/14 only 9% of transactions in the Juvenile Justice Centre were sentence transactions with the remainder being related to remand and detentions under the Police and Criminal Evidence (Northern Ireland) Order 1989.<sup>140</sup> In addition to the established grounds for pre-trial detention, a child who has been arrested may be remanded in a prison when it is deemed to be in their best interests.<sup>141</sup> The 2011 Youth Justice Review found that the overuse of remand in custody resulted from a “serious gap in the provision of suitable bail packages to the court at an early stage that would ensure that young defendants can be safely and securely bailed to reside in the community”.<sup>142</sup>

96. The Northern Ireland Law Commission’s report on bail in criminal proceedings identified that “the issue of accommodation and the possibility of children (particularly ‘looked after children’) being placed on remand for accommodation reasons emerged as a central concern.”<sup>143</sup> The Youth Justice Review also noted that a number of care homes refuse to have young people back if they have offences against the home or a member of its staff, or where they are

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<sup>138</sup> See proposals in England & Wales by Department of Health ‘New offence of ill-treatment or wilful neglect Consultation document’ February 2014

<sup>139</sup> DOJ, ‘Review of the Youth Justice System in NI’, 2011, para 3.6.2

<sup>140</sup> DOJ ‘Youth Justice Agency Annual Workload Statistics 2013/14’, 2014, page5

<sup>141</sup> Police and Criminal Evidence (NI) Order 1989, Article 39(1)(b)(ii), (6), (8)

<sup>142</sup> DoJ, ‘Review of the Youth Justice System in NI’, 2011, para 3.6.2

<sup>143</sup> Northern Ireland Law Commission, *Report: Bail in Criminal Proceedings*, NILC 14 (2012), 2012, Para. 6.18, p. 106.

considered unruly. The review stated that “these are not sufficient grounds for remanding a child to custody.”<sup>144</sup>

97. The NIHRC has advised the Department of Justice that a child should be held in custody only when absolutely necessary and that suitable arrangements should be developed to accommodate child defendants who are on bail.<sup>145</sup> The Department of Justice has subsequently consulted on reform of bail law, including the Northern Ireland Law Commission’s suggestion that legislation should restrict the courts’ discretion to remand a defendant in custody and prohibit the detention of children and young people on the grounds of a lack of suitable accommodation where a child or young person can be granted bail.<sup>146</sup> However, no legislative proposals have been brought before the Northern Ireland Assembly on this matter.
98. **The Committee may wish to ask the State Party:**
- **How it will address the overuse of remand for children in Northern Ireland and expedite the Committee’s 2008 recommendation to ensure that “detention is used as a measure of last resort”?**<sup>147</sup>
  - **What measures are being taken to ensure a suitable range of bail packages are in place for child defendants, particularly in the case of looked after children?**
  - **When will the law of bail in Northern Ireland be reformed and what proposals will it contain in relation to children specifically?**
- Education of children in custody
99. In 2008 the Committee expressed concern that children in custody in the UK did not have a statutory right to education. In Northern Ireland responsibility for the provision of education to children in custody remains with the Youth Justice Agency Northern Ireland and not the Department of Education. Elsewhere in 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, in compliance with the recommendations of the Committee’s last two

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<sup>144</sup> A Review of the Youth Justice System in Northern Ireland, 2011. Available at: <http://www.dojni.gov.uk/youth-justice-review>, p. 57.

<sup>145</sup> NIHRC, ‘Response on the Department of Justice Consultation on the Northern Ireland Law Commission Report on Bail in Criminal Proceedings’, 2013.

<sup>146</sup> DOJ, ‘Consultation on Northern Ireland Law Commission Report on Bail in Criminal Proceedings’, 1 July 2013, available at: <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/consultation-on-ni-law-commission-report-on-bail-in-criminal-proceedings-july-2013.pdf>

<sup>147</sup> UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 78

examinations of the UK.<sup>148</sup> In Northern Ireland the Minister of Justice and the Minister of Education have expressed agreement that responsibility for the education of child offenders should be transferred to the Department of Education. A cross-departmental working group was established to develop an options paper for delivering on this commitment which was to be completed in early 2014. The NIHRC welcomed this development but notes that the Committee's recommendation has still not been implemented. The NIHRC has also raised this issue with the Human Rights Council during the UK's UPR mid-term review.<sup>149</sup>

**100. The Committee may wish to ask the State Party to expedite the implementation of its 2008 recommendation to "provide for a statutory right to education for all children deprived of their liberty"<sup>150</sup> in Northern Ireland and provide a timeframe for implementation.**

- Detention of children with adults

101. The Minister for Justice has indicated that the practice of detaining children at Hydebank Wood Young Offenders Centre, which accommodates offenders up to 21 years of age, ceased in November 2012.<sup>151</sup> However, the Criminal Justice (Children) (NI) Order 1998, continues to make provision for a 15-17 year old offender, considered likely to injure him or herself or others to be detained there. The Department of Justice has indicated the intention to amend the 1998 Order removing the legal basis for the imprisonment of children at Hydebank Wood. This commitment has not been implemented; the Minister indicated in November 2014 that the introduction of proposed legislation will be paused and the matter will be re-examined as part of a broader review of youth sentencing.<sup>152</sup> This scoping study has yet to begin and the Minister has stated that actions arising from the study are unlikely to be implemented before the end of the current Assembly mandate in March 2016.<sup>153</sup> The NIHRC has continued to advise that the

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<sup>148</sup> See Professor Laura Lundy, Ms Lesley Emerson, Dr Katrina Lloyd, Dr Bronagh Byrne and Mr Jamie Yohanis 'Education Reform in NI A Human Rights Review (NIHRC, Belfast, 2013) Chapter 3

<sup>149</sup> Submission by the NIHRC to the UN Human Rights Council's Universal Periodic Review of the United Kingdom, Mid-term Report September 2014 para 21

<sup>150</sup> UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 78

<sup>151</sup> Official Report (Hansard) Ministerial Statement before the Assembly, 19 May 2015 See:

<http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2015/05/19&docID=234654>

<sup>152</sup> DoJ 'Sentencing arrangements for children will be reviewed – Ford' 17 November 2014 See:

<http://www.dojni.gov.uk/sentencing-arrangements-for-children-will-be-reviewed-ford>

<sup>153</sup> "Actual changes, if they require legislative change, are unlikely before the next mandate, but I had given a commitment to report by the end of this mandate" in Official Report (Hansard) Ministerial Statement before the Assembly, 19 May 2015 See:

<http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2015/05/19&docID=234654>

provision should be repealed immediately to ensure the practice of detaining children at Hydebank Wood cannot resume.

**102. The Committee may wish to ask the State Party to expedite the implementation of its commitment to amend the Criminal Justice (Children) (NI) Order 1998 removing the legal basis for the imprisonment of children with adults at Hydebank Wood and to provide a timeframe for implementation.**

- Homeless children: temporary accommodation

103. Legislation in both England and Scotland has established a ban on local authorities placing homeless families with children in Bed and Breakfast (B&B) style temporary accommodation. Such arrangements have been found to be inappropriate for children and the use of B&B accommodation has been banned save in exceptional circumstances and for limited periods of time; 6 weeks in England and 14 days in Scotland. No such ban exists in Northern Ireland. With housing policy currently under review, an opportunity exists in Northern Ireland to consider measures to prevent homelessness for children as well as to ensure that temporary accommodation provisions adequately protect their best interests.

**104. The Committee may wish to ask the State party what measures it will take to prevent homelessness among families with children and to provide assurance that temporary accommodation for homeless children is suitable, is in their best interests and does not put their health or safety at risk.**