

**Northern Ireland Human Rights Commission**

**Submission to the United Nations  
Committee on the Elimination of Racial Discrimination**

**Parallel Report on the 18<sup>th</sup> and 19<sup>th</sup> Periodic Reports  
of the United Kingdom under the International Convention on the  
Elimination of All Forms of Racial Discrimination**



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# INTRODUCTION

## The Northern Ireland Human Rights Commission

1. The Northern Ireland Human Rights Commission (the Commission) is the national human rights institution (NHRI) for Northern Ireland. It was created in 1999 by the United Kingdom Parliament through the Northern Ireland Act 1998, pursuant to the Belfast (Good Friday) Agreement of 1998.<sup>1</sup> The Commission is accredited with 'A' status by the International Co-ordinating Committee of National Institutions for the Protection and Promotion of Human Rights (the ICC).<sup>2</sup>
2. In all its work, the Commission bases its positions on the full range of international human rights standards, including treaty obligations in the United Nations (UN) and regional systems and standards developed by the human rights bodies. The Commission engages with the supervisory bodies for all major treaties, and the present parallel report is its second for an examination of the UK under the International Convention on the Elimination of all forms of Racial Discrimination (ICERD). At the outset, the Commission expresses its appreciation of the many recommendations by the Committee on the Elimination of Racial Discrimination (CERD) that States Parties should establish NHRIs subject to ICC accreditation.

## Constitutional framework for implementation

3. The Belfast (Good Friday) Agreement 1998 introduced major changes to the governance of Northern Ireland, designed to help resolve the long-running conflict over its constitutional status by, *inter alia*, providing a framework for the sharing of executive power between the two largest ethnic communities, the British unionist, mainly Protestant, majority and the Irish nationalist, mainly Catholic, minority. The Agreement followed multiparty negotiations,<sup>3</sup> and was endorsed by referendum and by treaty between the UK and Ireland.<sup>4</sup> Among the UK's commitments under the Agreement were: the incorporation of the European Convention on Human Rights (ECHR) into domestic law; a statutory duty on public authorities to promote equality of opportunity on grounds including race, religion and 'political opinion'; the establishment of the Human Rights Commission; the establishment of an Equality Commission; a strategy to tackle the problems of a divided society and promote social cohesion; commitments to strengthen anti-discrimination legislation, combat unemployment and eliminate the employment differential between the two largest ethnic groups; recognition of linguistic diversity and a number of specific commitments to the Irish language in the context of the UK's subsequent ratification of the Council of Europe European Charter for Regional or Minority Languages (ECRML). The Agreement also provided that the Human Rights Commission should advise on the scope

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<sup>1</sup> The Commission's powers were modified by the Justice and Security (Northern Ireland) Act 2007.

<sup>2</sup> The UK has two other 'A' accredited NHRIs: the Equality and Human Rights Commission, for Great Britain except in respect of matters devolved to Scotland; and the Scottish Human Rights Commission. The present parallel report is solely on behalf of the Northern Ireland Commission.

<sup>3</sup> Agreement reached at Multi-Party talks (Good Friday Agreement) done at Belfast on 10 April 1998.

<sup>4</sup> Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland done at Belfast on 10 April 1998 (also known as the UK-Ireland or British-Irish Agreement).

for a Bill of Rights for Northern Ireland, and committed the Irish government to reciprocating UK ratification of the Council of Europe Framework Convention for National Minorities. The British and Irish governments also affirmed that:

...whatever choice is freely exercised by a majority of the people of Northern Ireland, the power of the sovereign government with jurisdiction there shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos and aspirations of both communities...<sup>5</sup>

4. The 1998 Agreement led to the devolution of powers from the UK Parliament and government to the Northern Ireland Assembly (the unicameral regional legislature) and its Executive (the regional government). On assuming office, Members of the Legislative Assembly (MLAs) are required to designate themselves 'unionist', 'nationalist' or 'other'.<sup>6</sup> Positions in the Executive are allocated in proportion to party strengths in the Assembly,<sup>7</sup> and involve mandatory power sharing between unionists and the nationalists. A joint office consisting of a First Minister and deputy First Minister elected by 'parallel consent' (requiring a majority among unionists and among nationalists as well as an overall majority) leads the Executive Committee, consisting of Ministers appointed in approximate proportion to the strength of each party in the Assembly. Under a special procedure, if 30 or more MLAs sign a 'Petition of Concern' on any matter to be voted on by the Assembly, the vote will then require 'cross-community support' to pass.<sup>8</sup>
5. The Agreement and subsequent legislation also entrenched the consultative role of the government of the Republic of Ireland in Northern Ireland matters; made provision as to citizenship rights; and established a number of UK-Ireland (or 'East-West') and cross-border ('North-South') institutions to develop and implement common policy on matters of shared interest.
6. Although the Assembly and Executive have at times been suspended, the institutions were restored in May 2007 following the St Andrews Agreement 2006, a treaty between the UK and Ireland.<sup>9</sup> In the most recent Assembly election in May 2011, unionist parties took 56 seats, nationalists 43 and others<sup>10</sup> nine. Further elections are scheduled for 5 May 2011. The St Andrews Agreement 2006 also committed the UK government to establish a forum on the Bill of Rights, introduce an Irish Language Act and work to prepare for a single equality bill to be taken forward by the Northern Ireland Executive.

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<sup>5</sup> Article 1(v) British-Irish Agreement 1998.

<sup>6</sup> The Agreement provides text that can be drawn upon to provide definitions of political affiliation indicators defining the Irish nationalist minority as: "a substantial section of the people in Northern Ireland [who] share the legitimate wish of a majority of the people of the island of Ireland for a united Ireland"; the British unionist majority in Northern Ireland can be similarly defined as people who wish to maintain Northern Ireland as part of the United Kingdom through the Union with Great Britain; Constitutional issues 1(i-iii).

<sup>7</sup> Under the D'Hondt system (highest average method).

<sup>8</sup> Section 42, Northern Ireland Act 1998; 'cross-community support' defined as: (a) the support of a majority of the members voting, a majority of the designated Nationalists voting and a majority of the designated Unionists voting; or (b) the support of 60 per cent of the members voting, 40 per cent of the designated Nationalists voting and 40 per cent of the designated Unionists voting.

<sup>9</sup> Agreement at St Andrews (UK-Ireland) (St Andrews Agreement) done at St Andrews on 13 October 2006.

<sup>10</sup> 'Others' largely relates to MLAs of the cross-community Alliance party. No seats are reserved for minority representatives; all 108 seats are allocated using the Single Transferable Vote system of proportional representation in six-seat constituencies.

7. After the February 2010 Agreement at Hillsborough Castle between the largest political parties in Northern Ireland, the (British unionist) Democratic Unionist Party and (Irish nationalist) Sinn Féin, the UK devolved policing and justice powers to Northern Ireland in April 2010.<sup>11</sup> Other matters devolved to the Assembly include racial equality, housing, culture, education, employment, health and economic development. Under the 1998 Agreement, the UK Parliament and government retain jurisdiction over matters including taxation, treaties, citizenship, immigration policy and national security; the arrangements in place for allocating funding to the devolved administration mean that in social security, nominally devolved, Northern Ireland is in practical terms obliged to replicate most decisions made by the central government.
8. The Committee in its previous concluding observations commended the UK efforts to prepare a national action plan against racism (NAPAR), as had been anticipated following the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR). However, subsequent to this the UK decided not to introduce a NAPAR. Two key strategic policy documents, the *Racial Equality Strategy for Northern Ireland 2005-2010* and *A Shared Future - Policy and Strategic Framework for Good Relations in Northern Ireland*, were adopted for Northern Ireland by the UK government in 2005, during a lengthy period of suspension of the Northern Ireland Assembly. The aims of the Racial Equality Strategy, which was subsequently endorsed by the Assembly on 3 July 2007, were to tackle racial inequalities, eradicate racism and, along with *A Shared Future*, to initiate actions to promote good race relations. In 2010, the devolved administration issued a draft *Programme for Cohesion, Sharing and Integration* (CSI strategy) to replace *A Shared Future*. The aim of the CSI strategy is “to build a strong community where everyone, regardless of race, colour, religious or political opinion, age, gender, disability or sexual orientation can live, work and socialise in a context of fairness, equality, rights, responsibilities and respect”. While there is interaction between the two, CSI as the higher-level strategy provides for the retention of the Racial Equality Strategy whose aims will be refreshed and timescale extended.

### **The monitoring process**

9. The Commission has engaged extensively with United Nations’ and Council of Europe’s treaty monitoring processes, and is grateful for the opportunity to provide this parallel report to the Committee on the Elimination of Racial Discrimination. In addition to parallel reporting, and in accordance with its competencies as a NHRI, the Commission has worked to contribute appropriately to the preparation of UK treaty reports, in a manner consistent with the Principles relating to the Status of National Institutions (the Paris Principles). Accordingly the Commission, in November 2009, provided comments to the UK on a draft of its Monitoring Report. The Commission provides such advice from a wholly independent position and has no responsibility for the content of the state report.

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<sup>11</sup> Agreement at Hillsborough Castle (Hillsborough Agreement) 5 February 2010.

## ARTICLE 1(1): Definitions of discrimination

### Data collection and self-identification

10. In Northern Ireland, the most recent census from which data is available, held in 2001, relied in on a limited number of nine ethnicity categories largely relating to the UK Commonwealth (e.g. Pakistani, Black Caribbean) along with an ‘any other ethnic group’ category.<sup>12</sup> A Council of Europe treaty body raised concerns that the 2001 UK Census categories would not capture many persons from new migrant groups likely to identify under the “white” category and hence be indistinguishable from “white” members of the majority population.<sup>13</sup>
11. Under the above categories the 2001 Census recorded 0.85 per cent of the population in Northern Ireland (around 15,000 persons) as belonging to ethnic groups other than the ‘White’ category. This included an ‘Irish Traveller’ category (0.1 per cent, around 1,700 persons). The ‘Country of Birth’ criteria also recorded 26,659 (1.8 per cent) persons who were born outside of the UK and Ireland. The figures were contested by minority ethnic NGOs at the time as being an underestimate.<sup>14</sup> The minority ethnic population has increased substantially in the intervening period, particularly due to inward migration of migrant workers, from both outside Europe and, in greater numbers, from within the expanded European Union.
12. The divide between the two largest ethnic groups in Northern Ireland is often characterised on the basis of religion (Protestant/ Catholic) but it is manifest also in nationality (British/Irish). This was accepted by the British and Irish States in the Belfast (Good Friday) Agreement 1998. Despite this, religious belief is still often relied upon as the ethnic indicator for ‘community background’, although the category of ‘political opinion’ (British unionist/ Irish nationalist) is also used in anti-discrimination legislation. While like all ethnic boundaries ‘community background’ in Northern Ireland is not rigid and immutable, there are correlations and intersectionality between all of the above indicators of ethnicity (religion, political affiliation, national identity and citizenship). The 2001 Census relied on religion as an ethnic indicator of ‘community background’ and recorded 53 per cent of the population as Protestant, 44 per cent as Catholic and 3 per cent as ‘other’.
13. There have been positive developments in that additional questions were included in the 2011 census to capture citizenship and national identity.<sup>15</sup> This will provide alternative ethnic indicators for ‘community background’ in the British-Irish context and will also provide more reliable ethnicity data in relation to capturing other ethnic identities, in particular those of new migrant communities. Results from the 2011 census should be available around 2012, and have the potential to provide detailed data desegregated by ethnicity indicators on matters such as housing, employment and health status.

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<sup>12</sup> The full range of categories was: White; Chinese; Irish Traveller; Indian; Pakistani; Bangladeshi; Black Caribbean; Black African; Black Other; Of mixed ethnic group (if so, stating which groups); and Other ethnic group (stating which).

<sup>13</sup> Advisory Committee Framework Convention for National Minorities, Second Opinion on the UK, 6 June 2007 ACFC/OP/II(2007)003, paragraph 42.

<sup>14</sup> *A Racial Equality Strategy for Northern Ireland 2005–2010*, Office of the First and Deputy First Minister, July 2005, page 27.

<sup>15</sup> The Census Order (Northern Ireland) 2010, schedule 2.

## Self-identification

14. The Committee's General Recommendation VII provides that ethnic "identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned."<sup>16</sup> Within Northern Ireland the anti-discrimination framework provides authorisation to employers to allocate 'community background' when employees do not self-identify as Protestant or Catholic. A Council of Europe treaty body has also urged the UK to review regularly the authorisation, noting that in the particular circumstances of Northern Ireland such a policy should only be used in anonymised form for the purposes of combating discrimination.<sup>17</sup> The Commission has concurred with this position that such a mechanism is an important tool in combating discrimination in the context of Northern Ireland and should be retained for this purpose.
15. A similar practice of allocating ethnic identities has taken place with the census in relation to 'ethnicity' and 'community background'. The questionable reliability of using 'religious belief' as an ethnic indicator regardless of the actual personal religious belief of the individual is highlighted by 14 per cent of respondents who did not self-indicate a religion in the 2001 census.<sup>18</sup> As a similar situation had arisen in the 1991 census, respondents in the 2001 census who indicated that they did not regard themselves as belonging to any particular religion were directed to a question as to which religion they were brought up in. This was then used to determine Protestant or Catholic 'community background'. However, 44 per cent of persons directed to this question declined to answer and had a 'community background' imputed to them from other information provided on the form. 'Ethnicity' could also be assigned from other data on the form.<sup>19</sup>
16. Despite the introduction of the broader nationality and national identity ethnic indicators to determine 'community background', the Northern Ireland Statistics and Research Agency has indicated that it intends to continue its approach in determining and assigning religious identity for the purposes of 'community background'.<sup>20</sup>

*The Committee may wish to explore further the approach taken regarding self-identification in the Northern Ireland census.*

## Sectarianism in Northern Ireland

17. Sectarianism in Northern Ireland frequently continues to be treated as something other than a particular form of racism. As a consequence, in official policy terms it is often and problematically placed outside the well-developed framework of protections provided by ICERD, the Durban Programme of Action and other international and regional standards. The absence of progress in Northern Ireland on single equality legislation also results in

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<sup>16</sup> General Recommendation No. 08: Identification with a particular racial or ethnic group (Art.1, paragraphs.1 & 4) (adopted at thirty-eighth session, 22/08/1990).

<sup>17</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on the UK, adopted on 6 June 2007; ACFC/OP/II(2007)003, paragraph 49.

<sup>18</sup> See Key tables KS07a and KS07b, 2001 Census, Northern Ireland Statistics and Research Agency.

<sup>19</sup> Northern Ireland Statistics and Research Agency, *The Methodological Approach to the 2001 Census*, Appendix B, paragraphs 8-10.

<sup>20</sup> NISRA response to Executive Racial Equality Panel, 18 February 2011.

the maintenance of separate legislative regimes for sectarianism and other forms of racism with differentials in protection.<sup>21</sup>

18. As referenced above, the divide between the two largest ethnic groups in Northern Ireland is often characterised on the basis of religion (Protestant/Catholic) or political opinion (British unionist/ Irish nationalist), but it is manifest also in nationality (British/Irish). This was accepted by the British and Irish States in the Belfast (Good Friday) Agreement, with the adoption of a pluralist approach to British and Irish nationality, in terms of both citizenship and national identity. The Agreement states that the UK and Ireland:

... recognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland.
19. There are therefore clear correlations and ‘intersectionality’ between these indicators of ethnicity (religious and political affiliation, national identity and citizenship). This does not mean that sectarianism in Northern Ireland should not continue to be individually named and singled out just as other particular forms of racism are, for example, anti-Semitism or Islamophobia, nor does this imply that, like any ethnic divide, that the two largest communities are rigid and homogenous.
20. There remains, however, a popular characterisation of ‘sectarianism’ as Protestant-Catholic religious prejudice, political factionalism, or even ‘tribalism’, rather than as a form of racism as defined within the international human rights framework. This can be reflected in the conceptual framework of official policy, for example, the definition of ‘sectarian’ in the context of hate crimes reporting.<sup>22</sup>
21. It is the Commission’s view that policy presenting sectarianism as a concept entirely separate from racism problematically locates the phenomenon outside the well-developed discourse of commitments, analysis and practice reflected in international human rights law. This risks non-human rights compliant approaches, and non-application of the well-developed normative tools to challenge prejudice, promote tolerance and tackle discrimination found in international standards. In particular, it seriously limits the application of ICERD to Northern Ireland, and therefore obligations on the state to tackle sectarianism along with other forms of racism.
22. This is manifest in the Northern Ireland Executive’s draft Programme for Cohesion, Sharing and Integration (‘CSI strategy’) document which, in contrast to the parallel ‘racial

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<sup>21</sup> The Fair Employment and Treatment (Northern Ireland) Order 1998 (FETO; as amended) provides protection on grounds of ‘religious belief’ and ‘political opinion’, and the Race Relations (Northern Ireland) Order 1997 (RRO; as amended) provides protection on ‘racial grounds’ defined as ‘colour, race, nationality or ethnic or national origins’, but specifically exempts the grounds of ‘political opinion or religious belief’ (article 5). In relation to differentials there is, for example, a requirement on most employers to monitor the composition of their workforce under FETO, but not under the RRO.

<sup>22</sup> In relation to defining ‘sectarian’ for hate motivation, the Police Service of Northern Ireland (PSNI) (2010) *Annual Statistical Report No. 3: Hate Incidents and Crimes, April 2009–March 2010*, page 15 states: “The term ‘sectarian’, whilst not clearly defined, is a term almost exclusively used in Northern Ireland to describe incidents of bigoted dislike or hatred of members of a different religious or political group. It is broadly accepted that within the Northern Ireland context an individual or group must be perceived to be Catholic or Protestant, Nationalist or Unionist, or Loyalist or Republican” (‘Loyalist’ refers to loyalty to the British Crown and ‘Republican’ to Irish republicanism; the terms are subsets of unionist, and nationalist, respectively.)

equality strategy’ for numerically smaller ethnic groups, does not even make reference to human rights standards to which the UK is party.<sup>23</sup> Of particular relevance to ICERD is the treatment of discrimination, with one of the striking features of the draft CSI strategy document being the virtual absence of any reference to discrimination. The word ‘discrimination’ is only used once in the body of the document.<sup>24</sup> The Racial Equality Strategy uses the term ‘discrimination’ 45 times and explicitly includes the elimination of discrimination as its first ‘shared aim’.<sup>25</sup> By contrast, neither the legacy of sectarian discrimination nor its ongoing manifestations are dealt with by the draft CSI strategy.

23. The Commission has consistently advised that sectarianism in Northern Ireland should be treated as a ‘subset’ or particular manifestation of racism, manifest in ethnic indicators provided by Article 1(1) of ICERD (particularly national and ethnic origin) along with the intersectionality with religion as an ethnic indicator. The Commission notes the acceptance by the Committee that matters are within the frame of Article 1 when there is an ‘ethnic’ or other connection or element of intersectionality between racial and religious discrimination.<sup>26</sup> The Commission also notes the references and acceptance by the Committee of Islamophobia, anti-Semitism and discrimination against Sikhs as within the ambit of Article 1 where there is an overlap between religion and ethnicity.<sup>27</sup>

***The Committee is invited to state its view as to whether sectarian discrimination in Northern Ireland is within the scope of Article 1(1) of the Convention.***

***The Committee may also wish to urge the UK to ensure its legislative and policy framework in relation to sectarianism in Northern Ireland is underpinned by the standards, duties and actions in ICERD and the Durban Plan of Action.***

## **ARTICLE 1(2): Distinctions between citizens and non-citizens**

### **Legislative framework**

24. The Committee has set out, under General Recommendation 30, that ICERD requires differential treatment based on citizenship or immigration status to be proportionate and follow a legitimate aim in order for it not to be discriminatory.<sup>28</sup>

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<sup>23</sup> Namely, the Office of the First and deputy First Minister’s *Draft Programme for Cohesion, Sharing and Integration* (autumn 2010) and *Racial Equality Strategy 2005-10*, respectively.

<sup>24</sup> The one use of the word ‘discrimination’ in the body of the CSI document is in the statement: “we already have in place robust anti-discrimination and equality legislation”, paragraph 3.9.

<sup>25</sup> OFMdFM, *A Racial Equality Strategy for Northern Ireland 2005-2010*, page 8.

<sup>26</sup> An expert paper at a 2008 OHCHR seminar cites the following recent concluding observations stressing intersectionality include A/58/18: paragraph 539 (United Kingdom); A/60/18, paragraph 142 (Ireland); paragraph 246 (Georgia); paragraph 295 (Nigeria); paragraph 323 (Turkmenistan). Thornberry, Patrick “*Conference Paper 11, Expert Seminar on the Links between Articles 19 and 20 of the International Covenant on Civil and Political Rights “Freedom of Expression and Advocacy Of Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence” (Geneva, 2-3 October 2008).*

<sup>27</sup> The acceptance of the same groups as ethnic groups has also been long established under British anti-racial discrimination with the UK’s highest court, the House of Lords in *Mandla v Lee [1983]*, establishing that Sikhs were an ethnic group under section 3 of the Race Relations Act 1976.

<sup>28</sup> CERD General Recommendation No. 30, Discrimination against non-citizens, 1 October 2004, paragraph 4.

25. The Race Relations (Northern Ireland) Order 1997 (as amended) provides a level of protection against racial discrimination on grounds of nationality. The legislation does however contain a number of exemptions and limitations, not least under Article 40(2). This provides that discrimination on the basis of nationality, place of ordinary residence or length of residence in the UK (or UK region) will not be unlawful if it is in pursuance of a statutory provision or to comply with a requirement, arrangements or conditions made by a Minister or government department.
26. The Commission is concerned that the UK maintains a number of distinctions on citizenship and immigration status for which we have not seen an evidence base from the UK which meets the test set out in General Recommendation 30. The following section details four such areas, namely: access to social protection; access to publicly funded medical care; nationality requirements in the civil service; and the additional migrant tax.

### **Access to social protection**

27. The UK restricts the access to social protection (most social security benefits and homelessness assistance) for non-EEA nationals with temporary residency.<sup>29</sup> Since the previous periodic reports, the UK introduced transitional controls limiting access to social protection to nationals of most states that joined the European Union (EU) in 2004 and 2007.<sup>30</sup> In addition, rather than reform the system to provide some safety net for migrants, government legislated, under an ‘earned citizenship’ policy, to extend from five to up to ten years the length of time non-EEA migrant workers must spend before being eligible for permanent residency (and during which they are without access to social protection).<sup>31</sup>
28. In response to growing concerns about destitution, the Human Rights Commission conducted a formal investigation into homelessness among migrants with limited access to social protection. This found the legislation to be unduly restrictive and noted particular impacts on victims of exploitation, refugees, asylum seekers, victims of domestic violence, persons with ill health or disability and victims of racist intimidation.<sup>32</sup> There is therefore particular intersectionality in relation to the differential treatment on grounds of gender, disability and health status.
29. In relation to the ‘earned citizenship’ reforms, the UK, rather than detailing a case compatible with the test set out in General Recommendation 30, argued that migrants should ‘earn’ rights to social protection. The Commission regarded the ‘earned citizenship’ reforms, insofar as they restricted access to social protection, as also likely to be incompatible with ECHR Article 1 Protocol 1 (benefits as property) with Article 14 (non-discrimination). It therefore welcomed the UK government’s decision not to commence the ‘earned citizenship’ reforms as scheduled in July 2011, and to repeal them.<sup>33</sup> The ‘Workers Registration Scheme’ will also have to be discontinued on 1 May

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<sup>29</sup> EEA: European Economic Area; that is, the 27 European Union states plus Iceland, Liechtenstein and Norway. Those affected by this limitation are referred to as persons subject to immigration control with ‘No Recourse to Public Funds’.

<sup>30</sup> The ‘Workers Registration Scheme’ limited access to social protection to the nationals of eight countries which joined the European Union in May 2004 (and under the terms of accession has to be discontinued in May 2011), and the Worker Authorisation Scheme to nationals of Romania and Bulgaria in 2007.

<sup>31</sup> Under Part II of the Borders, Citizenship and Immigration Act 2009.

<sup>32</sup> Northern Ireland Human Rights Commission (2009) *No Home from Home: Homelessness for People with No or Limited Access to Public Funds*, NIHRC, Belfast.

<sup>33</sup> UK Border Agency Circular, Deputy Director (Permanent Migration) 11 November 2010.

2011, when seven years will have passed since the EU accession, the maximum period for derogation from the accession treaty. However, the problems caused by other restrictions on social protection relating to ‘No Recourse to Public Funds’ and the ‘Worker Authorisation Scheme’ remain. The UK government is maintaining the policy intention of ‘breaking the link’ between temporary and permanent residence for non-EEA migrants, which would also have the practical effect of restricting access to social protection.

***The Committee may wish to ask the UK how it justifies such distinctions on citizenship and migration status.***

30. NGOs and the Commission have called for the establishment of a migrant crisis fund to plug gaps in welfare provision. There have been a number of high profile incidents of destitution in Northern Ireland. This includes the case of a young Ukrainian woman on a work permit, ‘OS’, who lost her job and hence accommodation and legal status in December 2004. She ended up having to sleep rough, contracted frostbite and had to have both legs amputated from the knee, to considerable public outcry. On Christmas Eve 2009, a Polish man, ‘RK’, died of exposure during bitterly cold conditions, his body found behind a church in a Belfast suburb.<sup>34</sup> In 2010, statutory agencies also faced considerable barriers in supporting 110 Roma who had been intimidated from their homes in south Belfast, with support largely limited to assisting affected families and individuals to return to Romania.
31. The Commission welcomed the explicit recognition in the devolved administration’s draft CSI strategy that, while immigration and asylum legislation are matters reserved to the UK government, there are duties on the Northern Ireland Executive towards the migrant population in the jurisdiction.<sup>35</sup>
32. There must be urgent movement to address the needs of persons left destitute with ‘no recourse to public funds’ or due to transitional restrictions on EU migrant workers. While the Racial Equality Panel led by the Office of the First Minister and deputy First Minister (OFMdFM) has discussed the legal basis for a migrant ‘crisis fund’, to date no such fund has been put in place. In the meantime, there have been two incidents of homeless Polish migrants being jailed. A 29-year-old man was sentenced to six months’ imprisonment for squatting in an apartment during the freezing winter of 2010, and a 58-year-old man was jailed for a week when he was unable to pay a fine levied for begging.<sup>36</sup>

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<sup>34</sup> ‘Call for Migrants Crisis Fund’, *Belfast Telegraph*, 30 December 2009.

<sup>35</sup> The document specifically addressed the issue of destitution: ‘A key issue exists for those individuals who are here but have “no recourse to public funds”. Concerns about foreign nationals who “slip through the safety net” have been around for some time and these concerns are growing. Individuals working here legally may, through no fault of their own... find themselves destitute and in need of short-term or bridging support. Within the context of the UK legislation, we are determined to examine what support we can give to people who, through no fault of their own, fall into difficulty. In many of these cases, quick and early intervention could prevent the escalation of an incident or a family’s difficulties’, OFMdFM (2010) Draft Programme for Cohesion, Sharing and Integration, paragraph 1.14.

<sup>36</sup> ‘Homeless man jailed for Xmas squatting’, UTV News Online, 29 December 2010 (the sentence was reduced on appeal to three months, and was suspended); ‘Homeless man jailed for begging’, UTV News Online, 19 February 2011 [Accessed 4 March 2011].

*The Committee may wish to ask whether the Northern Ireland administration will maintain a migrant crisis fund to prevent destitution.*

### **Access to publicly funded medical care**

33. The Commission has recently completed research into the human rights compliance of the current criteria for entitlement to access publicly funded medical care based on residency status in Northern Ireland.<sup>37</sup> Medical services are funded through taxation, are generally free at the point of use in Northern Ireland, and are used by the vast majority of persons. However, with some exceptions, entitlement to the full range of publicly funded hospital services is restricted to those ‘ordinarily resident’ in Northern Ireland<sup>38</sup> and some categories of non-residents (‘visitors’), in a similar manner to elsewhere in the UK.
34. In relation to primary care services (General Practitioners, GPs), however, the situation is different to the rest of the UK. The health ministry (Department of Health, Social Services and Public Safety (DHSSPS)) has set out that its ongoing policy intention has been, outside immediately necessary treatment, to maintain a link between ‘ordinary residence’ and access to publicly funded GP services. The Commission has questioned both the proportionality and the legal certainty of this requirement, the latter given inconsistencies in the legal and policy framework. The stated aim of the policy is to restrict persons resident in the Republic of Ireland from registering with Northern Ireland GPs, although assurances are also given that EEA treaty rights will be respected. The impact of the restriction goes well beyond its aim as many persons who are living short term in Northern Ireland (but do not yet qualify as ordinarily resident) are also prevented from being included on a GP’s list.
35. The Commission has recommended that the DHSSPS review its position in relation to primary care with a view to revoking the policy link to ordinary residence, and allowing GP discretion. The Commission has argued that if a restriction is maintained the DHSSPS should produce an evidence base, beyond the anecdotal, to demonstrate whether there is sufficient substantiation to justify the policy rationale; the criteria for meeting the policy aim should be revised to ensure respect for the EEA rights of residents of the Republic of Ireland; and that other groups of persons living short term in Northern Ireland are not inadvertently caught by the measure.

*The Committee may wish to ask whether the Northern Ireland administration views the restrictions on primary care as proportionate.*

### **Civil Service nationality requirements**

36. The Commission notes the need to reform discriminatory civil service nationality requirements. These restrictions on ‘Crown employment’ date back to the 1700 Act of Settlement and the Aliens Restriction (Amendment) Act 1919, and mean that most civil service posts are largely reserved for British and UK Commonwealth citizens and persons exercising European treaty rights. There is a smaller set of ‘reserved’ or ‘public service’ civil service posts which are largely reserved for British citizens. In relation to this latter

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<sup>37</sup> Northern Ireland Human Rights Commission (January 2011) *Access Denied or Paying When you Shouldn’t? Access to Free Medical Care: Residency, Visitors and non-British/Irish Citizens*, NIHRC, Belfast.

<sup>38</sup> A common-law concept; *Shah* (1983) 1 All ER 226.

set of posts, there has been a long-standing issue in Northern Ireland: that in the context of the Belfast (Good Friday) Agreement these posts should be opened to Irish citizens.

37. There have been a number of commitments to reform these restrictions, notably in the St Andrews Agreement 2006.<sup>39</sup> Most recently, a government-supported amendment was inserted to the Constitutional Reform and Governance Bill in 2009. This was to repeal the restrictive legislation, including sections of the 1700 and 1919 Acts, and replace them with a new power for the Secretary of State to re-designate nationality requirements for reserved posts by statutory instrument.<sup>40</sup> However, much of this Bill, including these provisions, fell due to the UK General Election in 2010.

*The Committee may wish to ask the UK when it intends to reform Civil Service nationality requirements.*

### **Additional migrant tax**

38. Migrants are liable to pay full UK taxes, despite the aforementioned restrictions on the benefits and services some categories of migrants can receive. In addition to this, in 2009 the UK government legislated to introduce an additional tax on most non-European Economic Area (EEA) migrants.<sup>41</sup> In the present monitoring report the UK describes the measure as “a tax paid by migrants which is used to manage impacts on local services attributable to migration” which is to raise £35 million GBP per annum (approx €40m EUR, \$55m USD).<sup>42</sup> The additional tax was levied through a surcharge on visa applications. The monies raised, which were reported to Parliament to have been £50 million (€57m/\$80m) in the first year appear to have formed part of the general revenue stream for the Northern Ireland Executive. In Great Britain the funds were distributed to local projects through a ‘Migration Impacts Fund’ through the first year of operation; however this fund has now been abolished, and, therefore, without removal of the additional levy the revenue generated from the ‘migrant tax’ appears now to be either providing general government revenue or financing the migration system.<sup>43</sup>
39. During consultation, the UK indicated the purpose of the ‘migrant tax’ is to ‘help alleviate the transitional pressures we know that migration can bring’.<sup>44</sup> However, government recognised in the consultation document that migrants in fact have a positive influence on UK public finances.<sup>45</sup> It is difficult to see how ‘transitional pressure’ can be blamed on migrants accessing services to which they are entitled and for which they are already paying taxes. While the proposal is presented in the UK periodic report as part of its “efforts to promote tolerance and foster community cohesion” there is by contrast a risk that the UK is leaving itself open to accusations of scapegoating (non-EEA) migrants for problems that are in fact a product of inadequate and flexible planning by the State.

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<sup>39</sup> Annex B: “We will bring forward separate legislation before the end of 2006 to reform entry requirements to ensure access for EU nationals to posts in the Civil Service”.

<sup>40</sup> Clauses 21-23 of the Constitutional Reform and Governance Bill, as amended in Committee, Bill 68 of 2008-9.

<sup>41</sup> Introduced through the Immigration and Nationality (Fees) Regulations 2009 and subsequently 2010 Regulations.

<sup>42</sup> Periodic Report of the UK, CERD/C/GBR/18-19, paragraph 112.

<sup>43</sup> Official Report (Hansard) House of Lords 17 November 2010, Column 815-7; House of Commons 1 November 2010, Column 3-12.

<sup>44</sup> Home Office (February 2008) *The Path to Citizenship: Next Steps in Reforming the Immigration System*, paragraph 11b.

<sup>45</sup> As above, paragraph 186.

40. The Commission does not regard this distinction on migration status and nationality as proportionate to a legitimate aim, and questions its compatibility with other international standards.<sup>46</sup>

*The Committee may wish to ask the UK how the additional migrant tax is compatible with obligations under ICERD.*

## **ARTICLE 1(4): Special measures**

### **Police recruitment**

41. The UK government has recently decided to discontinue temporary special measures applied to recruitment to the Police Service of Northern Ireland (PSNI). The temporary provisions, using religion as an indicator of community background, were designed to redress under-representation of Irish Catholics and flowed from a recommendation of the Independent Commission on Policing for Northern Ireland, 1998-99 ('the Patten review') set up as a result to the Belfast (Good Friday) Agreement. Seeking to provide a police force more representative of the community in Northern Ireland, the measures provided for '50:50' recruitment of qualified Catholic and non-Catholic applicants to positions as police trainees and police support staff, as well as providing for the targeted recruitment of Catholic officers from other police forces.<sup>47</sup>
42. In respect of recruitment of trainee police officers, there is evidence of the effectiveness of the 50:50 recruitment process in increasing the proportion of Catholic applicants to a level approaching the 45 per cent in the overall workforce (averaging 37 per cent of applications in 2001-10), and in increasing the proportion of Catholics actually employed as police officers to 29.4 per cent (Protestant, 68.4 per cent; not determined, 2.2 per cent).<sup>48</sup> This compares with 8.3 per cent of Catholics in the predecessor police force, the Royal Ulster Constabulary, when the provisions were introduced. The policy assumption in Patten was that 30 per cent met the level, representing a 'tipping point' at which prospective recruits from the Catholic population would feel confident in the PSNI as an employer and that,

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<sup>46</sup> General Comment 19 ICESCR makes specific reference to social security and non-nationals, including migrant workers being able to either benefit from contributions they make or retrieve contributions on departure (paragraph 36). Other relevant standards include Article 6 ILO Convention C97 (Migration for Employment Convention (Revised), 1949) and Article 19(5) European Social Charter 1961; in relation to additional charges for dependents, the Convention on the Rights of the Child (rights are not dependent on immigration status or the economic contribution of parents); also see Article 48 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (although the UK is not party to this instrument).

<sup>47</sup> In the Police (Northern Ireland) Act 2000 ('the 2000 Act'), sections 44(5) to (7) and 46; article 40A of the Race Relations (Northern Ireland) Order 1997 (as amended); and article 71A of the Fair Employment and Treatment (Northern Ireland) Order 1998 (as amended). Additionally, s45 of the 2000 Act provides for the 'lateral entry' (targeted recruitment) of Catholic officers from other constabularies. The EU Council Directive 2000/78/EC of 27 November 2000 (establishing a general framework for equal treatment in employment and occupation) at the request of the UK makes an exception for the temporary special measures (Article 15(1)).

<sup>48</sup> As of 1 November 2010. Available: [www.psni.police.uk/index/updates/updates\\_statistics/updates\\_workforce\\_composition\\_figures.htm](http://www.psni.police.uk/index/updates/updates_statistics/updates_workforce_composition_figures.htm).

following this point, Catholic participation would continue to rise towards the proportion in the overall workforce in Northern Ireland.<sup>49</sup>

43. Among police support staff, the proportion of Catholics has only increased from 12 per cent in 1999 to 17.9 per cent (Protestant, 78.4 per cent; not determined, 3.6 per cent).<sup>50</sup> It would thus appear that the 50:50 measure has been effective in respect of regular officers, but ineffective or insufficiently effective in respect of civilian support staff. The UK in its consultation document proposing ending the special measures offers almost no explanation of the limited impact of the temporary provisions in changing the composition of the support staff; there is no discussion of whether the restriction to recruitment exercises involving six or more staff positions has impaired the effectiveness of the scheme; indeed, there is no account of the percentages of Catholic applicants or appointees to vacancies either by competition rounds (as is provided for the police) or on an annualised basis.
44. The Commission recommended that, rather than discontinuing 50:50 recruitment for support staff, the UK should have extended that measure and considered additional measures to accelerate progress towards fair participation rates. The Commission stressed the importance of ongoing monitoring to ensure that the composition of the police service is representative of society; temporary special measures should be reintroduced if the proportion of police officers from a Catholic community background shows signs of regression. The Commission noted the low representation of numerically small ethnic minority groups in the PSNI, accounting for only 0.46 per cent of police (32 officers) and 0.4 per cent of support staff, and urged that consideration be given to affirmative action measures that might increase the representation of ethnic minorities within the Service.

*In the context of the call for promotion of representation within the police under General Recommendation 31,<sup>51</sup> the Committee may wish to ask the UK to:*

- *closely monitor police composition with a view to reintroducing the special measures if there is regression;*
- *consider reintroducing the special measure for police support staff;*
- *consider special measures to increase the representation of numerically smaller ethnic minority groups.*

## **ARTICLE 2(1)(A)(C): States themselves shall not discriminate**

### **Immigration: ‘Ministerial Authorisations’**

45. Article 20C of the Race Relations (Northern Ireland) Order 1997<sup>52</sup> allows UK Border Agency (UKBA) officials to single out persons due to their nationality or ethnic origin when there is a ‘Ministerial Authorisation’. This provision was criticised by the Committee in previous concluding observations which urged reformulation or repeal,

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<sup>49</sup> The Patten Report described its 29-33 per cent target as “the range of ‘critical mass’... needed to ensure that a minority does not find itself submerged within a majority organisational culture”: Independent Commission for Policing in Northern Ireland (1999) *A New Beginning: Policing in Northern Ireland*, paragraph 14.10.

<sup>50</sup> As above.

<sup>51</sup> CERD A/60/18, General Recommendation 31 (2005) The prevention of racial discrimination in the administration and functioning of the criminal justice system, paragraph 5(d).

<sup>52</sup> As amended by the Race Relations Order (Amendment) Regulations (Northern Ireland) 2003.

describing the provision making it “lawful for immigration officers to ‘discriminate’ on the basis of nationality or ethnic origin provided that it is authorised by a minister” as “incompatible with the very principle of non-discrimination”.<sup>53</sup>

46. The UK Immigration Minister, Damien Green MP issued a Ministerial Authorisation under the Order which became operational in February 2011.<sup>54</sup> This permits immigration officers to, by reason of nationality, ‘subject the person to a more rigorous examination than other persons in the same circumstances’ when conducting border control checks and in decisions for Transit Visas, Entry Clearance, Leave to Enter and Removal Directions.<sup>55</sup>
47. The nationalities for which discrimination is permitted are on a list approved personally by the Minister. The Authorisation sets conditions to be met for a nationality to be included on the list but the criteria substantively relate back to other initial decisions made by immigration officials (for example, visa refusals or other adverse decisions relating to a particular nationality) which may in themselves contain bias.<sup>56</sup> The evidence base cannot be scrutinised as the UK has not published the list of nationalities nor will it provide a copy to the Commission, citing that publication could damage relations with other countries and the state’s ability to tackle organised crime.<sup>57</sup> Whilst both of these reasons are permitted exemptions to duties to release information under the Freedom of Information Act 2000, they are subject to a public interest test. The Commission sought release of the information on grounds of public interest but the UKBA, having reviewed its own decision, maintained its position. The Commission has therefore referred the refusal to the UK Information Commissioner’s Office for a decision.

***The Committee may wish to ask the UK for its justification for Ministerial Authorisations which permit discrimination on grounds of ethnic or national origin.***

### **Racial profiling**

48. The Committee’s General Recommendation 31 provides that “States parties should take the necessary steps to prevent questioning, arrests and searches which are in reality based solely on the physical appearance of a person, that person’s colour or features or membership of a racial or ethnic group, or any profiling which exposes him or her to greater suspicion”.<sup>58</sup>

### ***Internal immigration controls***

49. The Commission in 2009 published *Our Hidden Borders*, a report on its investigation into the use in Northern Ireland of the powers of detention of the UK Border Agency.<sup>59</sup> Since 2005, the Commission had become increasingly concerned about the way in which the

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<sup>53</sup> CERD/C/63/CO/11 (Concluding Observations) 10 December 2003, paragraph 16.

<sup>54</sup> Race Relations (Northern Ireland) (Transit Visa, Entry Clearance, Leave to Enter, Examination of Passengers and Removal Directions) Authorisation 2011 (in operation on 10 February 2011); a Ministerial Authorisation was also made for Great Britain under paragraph 17(4)(a) of schedule 3 of the Equality Act 2010.

<sup>55</sup> As above, paragraph 5(2)(b).

<sup>56</sup> As above, paragraphs 7 and 8.

<sup>57</sup> Correspondence with Commission, 5 April 2011.

<sup>58</sup> CERD A/60/18, General Recommendation 31, paragraph 20.

<sup>59</sup> Northern Ireland Human Rights Commission (2009) *Our Hidden Borders: The UK Border Agency’s Powers of Detention*, NIHRC, Belfast.

UKBA authorised deprivation of liberty in the context of immigration control in the jurisdiction, including the context of racial profiling.

50. In particular, the Commission had serious questions as to the legal basis and conduct of ‘Operation Gull’ – a form of internal immigration control at Northern Ireland ports and airports on passengers travelling within the UK and within the Common Travel Area with Ireland. ‘Operation Gull’ results in a considerable number of individuals being detained and later removed from the UK as ‘immigration offenders’. The investigators’ observation of ‘Operation Gull’ at Belfast City Airport and interviews with immigration detainees raised “serious concerns in relation to racial profiling”, and the report provides a number of accounts of persons who had been singled out on the basis of ethnicity.<sup>60</sup> Among the Commission’s recommendations following the investigation was that the “practice of singling out particular nationalities and people visibly from a minority ethnic background should be ceased immediately”.<sup>61</sup>
51. Despite this, ‘Operation Gull’ continues and the frequency of scheduled operations, and the number of people detained and removed, may even have increased since 2009. However, no detailed statistics or other information exists to enable further assessment. The report also referenced the lack of legal certainty as regards the powers deployed for examinations under ‘Operation Gull’. The UKBA has argued that examinations take place on a ‘voluntary basis’ rather than with recourse to the power of examination.<sup>62</sup>
52. The UKBA powers of examination (passport controls) cannot be exercised on internal journeys between the UK and Republic of Ireland by virtue of the Common Travel Area (CTA).<sup>63</sup> Section 1(3) of the Immigration Act 1971 provides that arrival or departure in the UK from elsewhere in the CTA cannot be subject to passport control.
53. In 2004, the Republic of Ireland introduced passport controls on persons entering the state across the border from Northern Ireland but exempted British and Irish citizens.<sup>64</sup> Reportedly, no guidance exists on how Immigration Gardaí (police) can decide whether someone is, or is not, a British or Irish citizen, and concerns have been raised of racial profiling in the mobile checkpoints implementing the policy.<sup>65</sup> Further to the recent examination of Ireland’s compliance with ICERD, the Committee expressed concern at the lack of legislation proscribing racial profiling by the Garda Síochána (police) citing reports of identity checks of non-Irish citizens having the potential to perpetuate the profiling of individuals on the basis of their race and colour.<sup>66</sup>
54. In 2009, the UK government sought to legislate to remove the law preventing passport controls within the CTA for persons entering the UK from the Republic of Ireland. In relation to the land border between Northern Ireland and the Republic this was planned with a view to “mirroring activity in the Republic of Ireland” to introduce mobile “*ad hoc*

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<sup>60</sup> As above, page 65.

<sup>61</sup> As above, page 89.

<sup>62</sup> See *Application for Judicial Review by Fyneface Boma Emmanson* [2008] NIQB 38, paragraph 39.

<sup>63</sup> The CTA was given full statutory recognition in the UK under the Immigration Act 1971 and Immigration (Control of Entry through the Republic of Ireland) Order 1972 (as amended). The CTA is not a bilateral treaty-based commitment, but is referenced in the EU Amsterdam treaty.

<sup>64</sup> Immigration Act 2004 (Republic of Ireland), Section 11.

<sup>65</sup> See: Migrant Rights Centre Ireland (2011) *Singled Out: Exploratory Study on Ethnic Profiling in Ireland and its Impact on Migrant Workers and their Families*, MRCI, page 11.

<sup>66</sup> CERD/C/IRL/CO/3-4 (Concluding Observations, Ireland 2011) paragraph 18.

immigration checks on vehicles to target non-CTA nationals” (that is, non- British or Irish citizens).<sup>67</sup> The reforms would not introduce ‘fixed’ document requirements for crossing the land border. The Commission raised concerns as to the risks of racial profiling in such checks with the question being, in the context of ethnic diversity, how those policing the land border were going to be able to decide who was or was not a British or Irish citizen.

55. The Home Office initially dismissed concerns by stating as fact that “Passengers will not be (and are never) targeted on the basis of racial profiling”.<sup>68</sup> However, this statement was made despite examples to the contrary in Northern Ireland air and sea ports<sup>69</sup> and a ruling by the UK’s highest court finding unlawful practices of racial profiling of Roma by UK immigration officers based at Prague Airport which had resulted in ‘striking’ differences in treatment, with the outcome of Roma being 400 times more likely than non-Roma to be refused permission.<sup>70</sup> The Commission’s concerns regarding racial profiling were referenced by legislators and the CTA reform clause was defeated in the UK Parliament and removed from what became the Borders, Citizenship and Immigration Act 2009. While the then UK government indicated that the CTA reforms would be pursued through an alternative legislative vehicle, the Commission has now received correspondence from the present UK Immigration Minister which confirms the discontinuation of the CTA legislative reforms.<sup>71</sup> There are of course, as referenced above, a number of existing in-country UK Border Agency practices of concern to the Commission, which the UKBA seeks to justify under existing powers and which the Minister indicates are to continue. There are also risks that powers to gather passenger data from carriers could also be used for forms of internal immigration control.

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<sup>67</sup> *Strengthening the Common Travel Area* consultation paper, UKBA, 24 July 2008, paragraph 2.6.

<sup>68</sup> Home Office, UKBA, *Final Impact Assessment of Common Travel Area (CTA) Reform*, 15 January 2009, page 13.

<sup>69</sup> For example, a column in the *Belfast Telegraph* newspaper (‘Why some deportations are a black and white issue’, 12 February 2009) detailed the case a Nigerian student resident in England, who had been visiting Belfast to attend a christening. He was awarded £20,000 for having been unlawfully detained at Belfast International Airport after being stopped by an immigration officer, taken and held in a detention centre in Scotland for nine days. He was quoted as saying, “I was conscious it was only black people who were being stopped. I was very uncomfortable about this”. The report referred to a number of other cases.

<sup>70</sup> *R v Immigration Officer at Prague Airport and another (Respondents) ex parte European Roma Rights Centre and others (Appellants)* [2004] UKHL 55. The case centred on immigration operations aimed at preventing asylum seekers travelling to the UK, in which officers subjected passengers from the Roma ethnicity to more intrusive and sceptical questioning than non-Roma, and set a much higher threshold for substantiating evidence. These practices were not pursued under a Ministerial Authorisation. The judgment noted that the Home Office made no attempt to guard against discrimination, nor had it sought to explain the ‘striking difference’ in treatment which resulted in Roma being 400 times more likely than non-Roma to be refused permission (paragraph 34). The court did not contest that it was indeed the case that there was a higher likelihood of Roma claiming asylum, given that they were a disadvantaged ethnic minority. However, the court reiterated that racial stereotyping was unacceptable, even if the stereotype had a basis, with Baroness Hale stating: ‘The whole point of the law is to require suppliers to treat each person as an individual, not as a member of a group. The individual should not be assumed to hold the characteristics which the supplier associates with the group, whether or not most members of the group do indeed have such characteristics, a process sometimes referred to as stereotyping. Even if, for example, most women are less strong than most men, it must not be assumed that the individual woman who has applied for the job does not have the strength to do it’ (paragraph 74). Baroness Hale further quoted from Laws LJ in the Court of Appeal, who stated: “it seems to me inescapable that the reality is that the officer treated the Roma less favourably because Roma are (for very well understood reasons) more likely to wish to seek asylum and thus, more likely to put forward a false claim to enter as a visitor. The officer has applied a stereotype; though one which may very likely be true. That is not permissible”; thus affirming that even in the extreme circumstance of there being a high likelihood of a member of a group engaging in particular behaviour, racial profiling was still unacceptable and unlawful.

<sup>71</sup> Correspondence from UK Immigration Minister Damien Green MP to Chief Commissioner, Professor Monica McWilliams, 3 December 2010.

***The Committee may wish to ask the UK for further information regarding ‘Operation Gull’ and safeguards to prevent racial profiling in immigration control.***

***Stop and search counter-terrorism powers***

56. The Commission has long been concerned that stop and search powers contained in section 44 of the Terrorism Act 2000 (TACT), allowing police to randomly search persons without a requirement for individual reasonable suspicion, could be exercised in an arbitrary and discriminatory manner.<sup>72</sup> In 2008, the UN Human Rights Committee voiced concern about the use of racial profiling in stop and search powers in the UK and urged a review of section 44.<sup>73</sup> In July 2010, the European Court of Human Rights gave its final judgment in *Gillan and Quinton v the UK* (App. no. 4158/05), finding that the power failed the legal certainty test under ECHR Article 8 (the right to respect for private life).
57. Following the final ruling of the Grand Chamber, the UK Home Secretary suspended use of section 44 in July 2010. In the quarter prior to suspension, 6,922 persons were stopped and searched under section 44 by the Police Service of Northern Ireland (PSNI). In addition, section 21 of the Justice and Security Act 2007 (JSA 2007), specific to Northern Ireland, contains a counter-terrorism power permitting police and the military to ‘stop and question’ persons without reasonable suspicion as to their identity and movements, along with, under section 24, a search power. The most recent quarterly PSNI statistics indicate that 5,535 persons were stopped and searched under the combined provisions of the JSA 2007.<sup>74</sup> On 11 February 2011, the Protection of Freedoms Bill was introduced into the UK Parliament. This provides for the repeal of section 44 powers under the Terrorism Act 2000. The bill would introduce a replacement power authorising stop and search, without individual suspicion, in a designated area where there is reasonable suspicion that an act of terrorism will take place. The powers have been introduced in an interim manner in the meantime.<sup>75</sup> The Bill would also amend JSA 2007 stop and search provisions in Northern Ireland.<sup>76</sup> The Commission remains concerned that there are presently insufficient safeguards in the bill to prevent the powers being exercised arbitrarily.
58. From April 2010, the Police Service of Northern Ireland has monitored stop and search on the basis of the 12 ‘ethnic group’ categories used in the Census, but discontinued disclosure of ethnicity information in its quarterly statistical reports. Prior to 2010, seven ethnic grounds were monitored and included in the reports. The categorisation can be undertaken by the police officer rather than self-identification by the individual who is stopped. No data is gathered on the grounds of ‘religious belief’ or ‘political opinion’.

***The Committee may wish to recommend further monitoring and publication of stop and search data, and safeguards against the targeting of persons on the basis of ethnicity.***

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<sup>72</sup> The s44 power could be exercised in a designated area where it is considered ‘expedient for the prevention of acts of terrorism’ and is intended only to be exercised to search for articles which could be used in connection with terrorism.

<sup>73</sup> CCPR/C/GBR/CO/6, 30 July 2008, Concluding Observations on UK, paragraph 29.

<sup>74</sup> Police Service of Northern Ireland (2011) *Stop and Search Statistics Quarter 3, 1 October-31 December 2010*.

<sup>75</sup> Under section 10 of the Human Rights Act 1998, the UK government may lay a remedial order following legislation being found incompatible with ECHR rights. To this end, the Terrorism Act 2000 (Remedial) Order 2011 (SI 2011/631) was made by the UK government on 17 March 2010.

<sup>76</sup> Clauses 58-62 and schedule 6 in Bill as introduced.

## **ARTICLE 2(1)(A)(D): States shall prohibit discrimination**

### **Single Equality Bill**

59. In the previous Concluding Observations the Committee recommended that the UK consider introducing a single comprehensive law consolidating primary and secondary legislation, to provide the comprehensive protection from all forms of racial discrimination required by Article 1 of ICERD.<sup>77</sup>
60. Provision was made to take forward a Single Equality Bill for Northern Ireland in the St Andrews Agreement 2006 between the UK and Ireland.<sup>78</sup> This could consolidate the variety of statutes that currently apply, with considerable inconsistencies, across the various protected categories. Legislative competence in such matters is largely devolved, but the Bill was not included in the Northern Ireland Executive's Programme for Government 2008-10. Consolidated equality legislation has now been put in place in Great Britain under the Equality Act 2010, but very few provisions of that Act apply in Northern Ireland and no progress has been made on single equality legislation for Northern Ireland. The Committee on Economic, Social and Cultural Rights has recommended that such comprehensive anti-discrimination legislation be introduced in Northern Ireland.<sup>79</sup>
61. When recently asked if they intended to introduce legislation similar to the Equality Act 2010, the Northern Ireland First and deputy First Ministers responded that they were currently considering the options for legislative reform.<sup>80</sup> Citing religious freedom, the largest political party in the Assembly – the Democratic Unionist Party – has opposed protections from discrimination on grounds of sexual orientation.<sup>81</sup> Therefore, there is now potential that any legislation to strengthen protections on other grounds may be introduced on specific grounds rather than as a single overarching bill.
62. The absence of single equality legislation leads to a number of weaknesses in the legislative framework. In addition to such legislation having the potential to strengthen protections, the existence of an array of laws rather than one coherent and upwardly harmonised Act could, among other matters, prevent redress for combined discrimination based on several protected grounds.
63. A further problem is that, apart from the duties on public authorities under the Human Rights Act 1998 (which incorporated the European Convention on Human Rights into domestic law), there is no direct protection on grounds of 'language' in anti-discrimination law. There is no direct protection against, for example, a private sector employer banning employees from using their minority language in private communication at work. The only recourse for victims is therefore claims of indirect discrimination on other grounds, such as racial group or 'community background'. Racial discrimination legislation can provide some indirect protection against discrimination or harassment for minority ethnic

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<sup>77</sup> CERD/C/63/CO/11, 10 December 2003 (Concluding Observations on UK) paragraph 15.

<sup>78</sup> "The Government believes in a Single Equality Bill and will work rapidly to make the necessary preparations so that legislation can be taken forward by an incoming Executive at an early date": St Andrews Agreement 2006, Annex B.

<sup>79</sup> E/C12/GBR/CO/5, 22 May 2009 (ICESCR Concluding Observations) paragraph 16.

<sup>80</sup> Northern Ireland Assembly, Written Answers (AQW 3035/11) 7 January 2011.

<sup>81</sup> See, for example: Assembly Motion 11 December 2006 calling on the UK to withdraw the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006.

languages. In the case of the Irish language as an indigenous minority language, establishing such indirect grounds is more complex. Under the St Andrews Agreement 2006, the UK government committed to introducing “an Irish Language Act reflecting on the experience of Wales and Ireland” but has yet to legislate to discharge the commitment, which could provide protection for the use of Irish in private and public. In 2009, the UN Committee on Economic, Social and Cultural Rights expressed concern that there was still no Irish Language Act in Northern Ireland, and recommended that the UK or the devolved administration adopt the legislation.<sup>82</sup>

***The Committee may wish to seek clarification as to how the UK intends to legislate to enhance protection in Northern Ireland against discrimination, including on grounds of language.***

### **Bill of Rights for Northern Ireland**

64. The Belfast (Good Friday) Agreement 1998 envisaged the development of a Bill of Rights for Northern Ireland, and the Human Rights Commission was tasked to advise on the scope for such an instrument. The Commission delivered its final advice on the scope for a Bill of Rights for Northern Ireland to the UK government on 10 December 2008. The advice recommended freestanding equality and non-discrimination provisions, the latter on protected grounds, which included those provided for under Article 1(1) of ICERD. Rights against racial and sectarian harassment were also recommended along with a duty on public authorities to “encourage a spirit of tolerance and dialogue, taking effective measures to promote mutual respect, understanding and co-operation among all persons living in Northern Ireland, irrespective of those persons’ race, ethnicity, language, religion or political opinion”.<sup>83</sup>
65. The UK government did not issue a consultation paper on taking the Bill of Rights forward until November 2009.<sup>84</sup> The Agreement had envisaged that any Bill of Rights for Northern Ireland was to be legislated for in the UK Parliament but, to date, no legislation has been proposed.

***The Committee may wish to ask the UK about progress on a Bill of Rights for Northern Ireland.***

### **Independent institutions**

66. The Belfast (Good Friday) Agreement led to the establishment of a number of independent institutions in Northern Ireland. This included the Commission – now accredited to the UN International Coordinating Committee with ‘A’ status as a National Human Rights Institution (NHRI). The merger of a number of predecessor bodies led to the establishment of the Equality Commission for Northern Ireland (the regional equality authority). Also established was the Office of the Police Ombudsman for Northern Ireland, dealing with complaints against the police.

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<sup>82</sup> As above, paragraph 37.

<sup>83</sup> Northern Ireland Human Rights Commission (2008) *A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland, 10 December 2008*, NIHRC, Belfast.

<sup>84</sup> Northern Ireland Office (November 2009) Consultation Paper, *A Bill Of Rights For Northern Ireland: Next Steps*.

67. The Committee will, of course, be aware that the global economic crisis has affected the resourcing of many NHRIs. The Commission itself is facing a real terms cut of 25 per cent from its 2010-11 budget which is being phased in cumulatively over a four-year period from 1 April 2011,<sup>85</sup> and the Equality Commission is facing a cumulative cut of over 10 per cent.
68. Unlike counterpart agencies in Great Britain, the expected extension of the remit of the Police Ombudsman in Northern Ireland to consider complaints against UKBA (immigration) officers has not yet taken place.

*The Committee may wish to ask the UK about the resourcing of independent institutions and when the powers of the Police Ombudsman will be amended to include complaints against immigration officers.*

## **ARTICLE 3: Prohibition of racial segregation**

### **Segregation in housing**

69. Under General Recommendation 19, the Committee “observes that while conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an unintended by-product of the actions of private persons...”. The Committee further noted that residential patterns can be influenced by group differences in income which can intersect with ethnicity. Consequently, the Committee invited States Parties to monitor all trends which can give rise to racial segregation, to work for the eradication of any negative consequences, and to describe any such action in their periodic reports.<sup>86</sup> The Committee has also stressed the need for policies and projects to avoid the segregation of Roma communities in housing.<sup>87</sup> In commenting on the right to housing, the Committee has emphasised the need for a balance between a proactive approach to preventing segregation (‘ghettoisation’) on the one hand, and the right to freedom of residence on the other.<sup>88</sup>
70. Both private and public housing in Northern Ireland remain heavily segregated between the two largest ethnic groups. Using religious belief as an indicator of ‘community background’ the 2001 census found 37 per cent of persons (44 per cent of Catholics and 30 per cent of Protestants) lived in areas where at least 90 per cent of other persons were from the same group. Research indicates that in relation to public housing *de facto* segregation

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<sup>85</sup> The Commission was made aware during 2010 that, from the start of the next financial year in April 2011, its budget of £1.7 million was to be reduced by some £77,000 per year, cumulatively for each of the following four years, i.e. a reduction of £300,000 or 18 per cent of its 2010-11 baseline in cash terms and 25 per cent in real terms.

<sup>86</sup> CERD A/50/18, General Recommendation No. 19, Racial segregation and apartheid (Art. 3) adopted 18/08/1995, paragraphs 3-4.

<sup>87</sup> CERD A/55/18, annex V. General Recommendation No. 27, Discrimination against Roma, adopted 16/08/2000, paragraph 30.

<sup>88</sup> CERD/C/DNK/CO/18-19 (Concluding Observations 2010, Denmark) paragraph 15.

accounts for over 90 per cent of housing stock.<sup>89</sup> Despite the peace process, the number of security barriers ('peacelines') separating areas increased from 37 in 2006 to 48 in 2010.<sup>90</sup> The Northern Ireland Executive has highlighted the correlation between deprivation and segregation, with 14 of 15 of the most deprived wards of Belfast being highly segregated.<sup>91</sup> Migrants and other minority ethnic groups often live in already otherwise segregated areas.

71. At present, the Cohesion, Sharing and Integration (CSI) strategy refers to "a three year pilot programme aimed at encouraging and supporting thirty shared neighbourhoods within existing estates" and initiatives to screen new-build public housing for 'shared potential'.<sup>92</sup> CSI does not however provide a clear strategy for tackling inequalities in housing. As recently as 2009, the UN Committee on Economic, Social and Cultural Rights singled out the situation of Catholic families in North Belfast in this context.<sup>93</sup> The Commission has also raised the housing conditions of migrant workers. The Northern Ireland Executive's CSI strategy does not make reference to inequalities in housing; shared housing is to be promoted seemingly without tackling underlying inequalities in housing provision.
72. Among the rights affirmed by the parties to the Belfast (Good Friday) Agreement was the "the right to freely choose one's place of residence", yet problems of racist and sectarian intimidation in some areas for long standing minorities and new arrivals alike persist. Between 2005 and 2010, there were over 400 requests for transfer within the public housing sector due to intimidation. In the same period, around 200 houses were purchased under the 'scheme for purchase of evacuated dwellings' at a cost of over £30 million (€34m/ \$49m).<sup>94</sup> This scheme involves, following the issuing of a police certificate, the purchase of houses owned by persons who have to leave their homes because they have been directly or specifically threatened or intimidated and as a result are at risk of serious injury or death.<sup>95</sup> It is not, at present, apparent from the statistical data how many of these cases relate to sectarian or otherwise racist intimidation. The Commission's investigation into migrant destitution found that racist attacks had formed the basis for a significant number of homelessness assistance applications made by migrants.<sup>96</sup> The issue of racial intimidation is further covered in commentary on Articles 4, 5(b) and 6, below.

***The Committee may wish to seek further information on initiatives to tackle residential segregation in Northern Ireland.***

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<sup>89</sup> See report of the Independent Commission on the Future for Housing in Northern Ireland, 2009; Shuttleworth and Lloyd (2007) *Mapping Segregation in Belfast Northern Ireland Housing Executive Estates* (Belfast: Northern Ireland Housing Executive).

<sup>90</sup> Office of the First Minister and deputy First Minister, Good Relations Indicators 2010.

<sup>91</sup> Draft Programme for Cohesion, Sharing and Integration, paragraph 3.27.

<sup>92</sup> See Draft Programme for Cohesion, Sharing and Integration paragraphs 3.28-9.

<sup>93</sup> E/C 12/GBR/CO/5 22 May 2009 (ICESCR Concluding Observations, UK) paragraph 29.

<sup>94</sup> Office of the First Minister and deputy First Minister, Good Relations Indicators 2010.

<sup>95</sup> The legislative basis for the scheme is under article 29 of the Housing (Northern Ireland) Order 1988.

<sup>96</sup> NIHRC, *No Home from Home*, page 132.

## ARTICLE 4: Prohibition of incitement

### Legislative framework in Northern Ireland

73. Northern Ireland is a small jurisdiction with a population of around 1.7 million. The magnitude of racial hatred as a social phenomenon is at least partially reflected in PSNI statistics which record 3,148 (victim-perceived) ‘hate incidents’<sup>97</sup> in the 2009-10 financial year, just over 2,000 of which were classified as crimes. Sectarian incidents, at 1,840, constituted the single largest number (1,264 crimes), with 1,038 other racist incidents (712 crimes).<sup>98</sup> Clearly, not all offences will be reported to police.

74. Despite this, the UK maintains an interpretive declaration to Article 4 of ICERD. The UK declared on signature in 1966 that it interprets Article 4 as requiring further legislative measures ‘only in so far as it may consider necessary’ for the attainment of the end specified in the ‘earlier part’ of Article 4 in light of UDHR and in particular ICERD provisions for freedom of expression and assembly. Despite previous criticism from the Committee that this restrictive interpretation is in conflict with the UK’s mandatory obligations under ICERD,<sup>99</sup> the UK stated in its most recent periodic report that it intends to maintain the interpretation. The UK sought to justify this as follows:

The United Kingdom has a long tradition of freedom of speech which allows individuals to hold and express views which may well be contrary to those of the majority of the population, and which many may find distasteful or even offensive. This may include material produced by avowedly racist groups and successive Governments have held the view that individuals have the right to express such views so long as they are not expressed violently or do not incite violence or hatred against others. The Government believes that it strikes the right balance between maintaining the right to freedom of speech and protecting individuals from violence and hatred.<sup>100</sup>

75. There are two main legislative provisions in Northern Ireland providing a level of protection against incitement to hatred: the Public Order (Northern Ireland) Order 1987 and the Criminal Justice (No. 2) (Northern Ireland) Order 2004. The effectiveness of the latter – commonly referred to as ‘hate crimes’ legislation and providing for increased sentencing – is considered in the commentary on Article 6 later in this report.

76. Part III of the 1987 public order legislation covers offences of stirring up hatred or arousing fear against a group of persons on grounds of religious belief, sexual orientation, disability, colour, race, nationality (including citizenship) or ethnic or national origins.<sup>101</sup>

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<sup>97</sup> The PSNI defines a hate incident as “Any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person, as being motivated by prejudice or hate”; a hate crime is an incident which is indictable or triable-either-way.

<sup>98</sup> Police Service of Northern Ireland, Annual Statistical Report: *Report No. 3 Hate Incidents and Crimes, 1<sup>st</sup> April 2009 – 31<sup>st</sup> March 2010*. The figure of 2,901 also includes 23 incidents on ‘faith/religion’ grounds, where intersectionality is likely to be with other indicators of ethnicity and also 175 homophobic, 58 disability and 14 transphobic incidents where there is also potentially intersectionality.

<sup>99</sup> “The Committee also reiterates its concern over the fact that the State Party continues to uphold its restrictive interpretation of the provisions of Article 4 of the Convention. It recalls that such interpretation is in conflict with the State Party’s obligations under Article 4(b) of the Convention and draws the State party’s attention to the Committee’s General Recommendation XV according to which the provisions of Article 4 are of a mandatory character...”, CERD/C/63/CO/11, 10 December 2003 (Concluding Observations, UK) paragraph 12.

<sup>100</sup> CERD/C/GBR/18-19 28 May 2010 (Periodic Report UK) paragraph 107.

<sup>101</sup> Sexual orientation and disability were added as grounds in 2004.

In the context of Northern Ireland no distinction is made between ‘religious belief’ and the other protected grounds. This contrasts with England and Wales where the Public Order Act 1986 (as amended by the Racial and Religious Hatred Act 2006) further qualifies protection against religious hatred.

77. Offences under the 1987 Order include (subject to qualification) threatening, abusive or insulting words or behaviour, or displaying written material which either intends to stir up hatred or arouse fear (on one of the above grounds), or which, having regard to all the circumstances, is likely to have that effect.<sup>102</sup> There are further similar offences of publishing or distributing written material; distributing, showing or playing a recording; broadcasting, including in a cable programme service; and possession of matter intended or likely to stir up hatred or arouse fear. Offences under Part III can on summary conviction (that is, conviction in a lower court) carry a prison term of up to six months and/or a fine, and on conviction on indictment (after trial in a Crown Court) up to seven years’ imprisonment and/or a fine.
78. There are difficulties in assessing how successful or otherwise the protections of Part III of the Order are in practice, and how high the threshold is for their deployment. The PSNI has not been able to indicate to the Commission how often charges have been brought under the legislation. The Public Prosecution Service was able to provide figures relating to 665 offences which prosecutors regarded as aggravated by hostility in the year 2009-10. In the case of only five persons the primary offence was of stirring up hatred or arousing fear under the 1987 Order. The Minister of Justice for Northern Ireland has recently indicated that he has no plans to review the 1987 Order.<sup>103</sup>
79. In one specific area, chanting at sports matches, a Justice Bill recently passed by the Northern Ireland Assembly criminalises chanting which is threatening, abusive or insulting on grounds of colour, race, nationality (including citizenship), ethnic or national origin, religious belief, sexual orientation or disability.<sup>104</sup>

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<sup>102</sup> Article 9: Use of words or behaviour or display of written material

(1) A person who, or displays any written material which is threatening, abusive or insulting, is guilty of an offence if—

(a) he intends thereby to stir up hatred or arouse fear; or

(b) having regard to all the circumstances hatred is likely to be stirred up or fear is likely to be aroused thereby.

(2) An offence under this Article may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the written material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling.

(3) In proceedings for an offence under this Article it is a defence for the accused to prove that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the written material displayed, would be heard or seen by a person outside that or any other dwelling.

(4) A person who is not shown to have intended to stir up hatred or arouse fear is not guilty of an offence under this Article if he did not intend his words or behaviour, or the written material, to be, and was not aware that it might be, threatening, abusive or insulting.

(5) This Article does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme included in a programme service.

<sup>103</sup> Minister of Justice, David Ford MLA, Official Report, Northern Ireland Assembly, written answer 22 October 2010 (AQW 1240/11).

<sup>104</sup> Clause 37, Justice Bill as amended at exceptional further consideration stage.

*The Committee may wish to ask the UK how legislation in Northern Ireland will be made to comply fully with the requirements of Article 4 ICERD.*

## **ARTICLE 5(A): Right to equal treatment before the courts**

### **Use of minority languages in legal proceedings**

80. The Northern Ireland Courts and Tribunal Service states that “Under the Administration of Justice (Language) Act (Ireland) 1737, languages other than English are not permitted to be used in courts, except where a party can’t speak or understand English”,<sup>105</sup> and has further interpreted the 1737 Act as requiring that “all court proceedings in Northern Ireland, including any documentation relating to those proceedings, must be in English, except where an individual does not speak or understand English”.<sup>106</sup>
81. In the context of Irish as an indigenous language with few if any speakers not also being fluent in English, the 1737 Act and its interpretation in policy therefore effectively prevent the use of the Irish language in the Courts. The Committee of Experts that monitors implementation of the European Charter for Regional and Minority Languages stated in 2010 that the 1737 Act constitutes an ‘unjustified distinction’ (i.e. is discriminatory) and does not comply with Article 7(2) of the Charter.<sup>107</sup> The continued existence of the 1737 Act is therefore at odds with a treaty commitment into which the UK has entered.
82. In relation to the Northern Ireland Courts and Tribunal Service’s interpretation of the legislation, it is notable that the 1737 Act can be read differently as preventing the use of a range of written documents in Court proceedings in languages other than English, but not preventing the use of *spoken* Irish in the Courts. Indeed, the Attorney General has now publicly stated that this is his own reading of the 1737 Act.<sup>108</sup>

*The Committee may wish to inquire as to the Northern Ireland administration’s interpretation of the 1737 Act and its intentions.*

## **ARTICLE 5(B): Security and protection against harm**

### **Violence by non-state actors**

83. The 2010 Criminal Justice Inspection report into hate crimes highlighted a number of recent ‘critical incidents’ in Northern Ireland:

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<sup>105</sup> Northern Ireland Courts and Tribunals Service (21 January 2011) *Consultation on the Provision of In-Court Interpretation Services: Summary of Responses and Way Forward*, paragraph 3.52.

<sup>106</sup> Northern Ireland Courts and Tribunals Service (February 2010) *Consultation on the Provision of In-Court Interpretation Services*.

<sup>107</sup> Council of Europe (21 April 2010) *Report of the Committee of Experts on the Charter (UK 3<sup>rd</sup> Monitoring Cycle)*, ECRML (2010)4, paragraphs 117-121.

<sup>108</sup> Report of Event, 3 December 2010. ‘Úsáid na Gaeilge sna Cúirteanna i dTÉ/ The Use of Irish in the Courts in the North of Ireland), POBAL, Belfast, 2011, page 9.

In the past 12 months there have been three critical incidents which projected a negative image of Northern Ireland on a world stage. They were: the intimidation of Polish and Eastern European residents in the ‘Village’ area of South Belfast following the behaviour of football supporters attending the Northern Ireland v Poland football match in Belfast; a sectarian murder in Coleraine; and the intimidation of Roma families in South Belfast and the exodus of some 100 Roma back to Romania.<sup>109</sup>

84. The Commission has commented that within the draft CSI strategy to combat racism and sectarianism there are no proposals for more proactive measures to monitor and address the existence and ideology of groups behind many such attacks, and other sectarian and racist intimidation. There is also the context of the involvement of illegal paramilitary groups, with evidence having emerged that orchestrated racist attacks have involved elements of Loyalist paramilitarism (Loyalist refers to loyalty to the British Crown). It is a matter of concern that this context is only intermittently referred to in official policy and strategy. The matter was referenced in statements by the Independent Monitoring Commission (IMC) set up by the British and Irish governments to monitor paramilitary ceasefires “with a view to promoting the transition to a peaceful society and stable and inclusive devolved government in Northern Ireland”.<sup>110</sup> In this context, in a report published by the UK Parliament, the IMC stated that an “important step would be for loyalist paramilitaries, including the UDA, to stop targeting (Irish) nationalists and members of ethnic minorities”.<sup>111</sup>

***The Committee may wish to ask the UK about specific steps taken to combat Loyalist paramilitary involvement in hate crimes.***

### ***Robert Hamill inquiry***

85. A judge-led inquiry into the conduct of the RUC (Royal Ulster Constabulary – the predecessor police force to the PSNI) in relation to the sectarian murder of Robert Hamill announced on 25 February 2011 the completion of its final report. Robert Hamill, a Catholic, who had been walking home following an evening with relatives, was attacked by a Loyalist crowd in Portadown, County Armagh in 1997. Mr Hamill subsequently died from his injuries. It is alleged that RUC officers present at the time could have prevented the attack and there are also allegations of RUC obstruction of the subsequent investigation.<sup>112</sup> The inquiry was established in 2004.
86. The publication of the inquiry’s final report has been delayed by the UK government following the decision by the Public Prosecution Service in light of a review of evidence,

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<sup>109</sup> Criminal Justice Inspectorate (2010) *Hate Crime: A Follow-up Inspection of the Management of Hate Crime by the Criminal Justice System in Northern Ireland*, page 3.

<sup>110</sup> Article 3 of the International Agreement (UK-Ireland, 2004) establishing the Independent Monitoring Commission; the IMC was abolished in April 2011.

<sup>111</sup> *Eighth Report of the Independent Monitoring Commission*, paragraphs 3.32-5. UDA refers to the Ulster Defence Association, an unlawful Loyalist paramilitary group.

<sup>112</sup> The Inquiry’s Terms of Reference were: “To inquire into the death of Robert Hamill with a view to determining whether any wrongful act or omission by or within the Royal Ulster Constabulary facilitated his death or obstructed the investigation of it, or whether the attempts were made to do so; whether such act or omission was intentional or negligent; and to make recommendations”.

including that given to the Hamill Tribunal, to instigate prosecutions against three persons relating to perverting the course of justice. The government has stated its intention to publish the report as soon as possible after the conclusion of legal proceedings.<sup>113</sup>

*Should further information become available in the timeframe, the Committee may wish to address this matter in its report.*

## **ARTICLE 5(E): Economic, social and cultural rights**

### **The Right to housing: Irish Travellers**

87. Serious and persistent disadvantage faces the Irish Traveller community in Northern Ireland in all walks of life, from health care and education to employment and housing. Among the Commission's present strategic priorities, it has been examining the accommodation needs of the Irish Traveller community.
88. In 2009, the UN Committee on Economic, Social and Cultural Rights raised concerns regarding the present situation of Travellers and urged the provision of sufficient, adequate and secure sites.<sup>114</sup> The UK has responded to similar concerns raised by the Council of Europe by stating that in Northern Ireland there was adequate funding for accommodation for Travellers, but it conceded that there were 'constraints' in obtaining the suitable sites needed. The UK argued that this problem was being actively addressed by the Department for Social Development (the relevant Northern Ireland ministry) and the Northern Ireland Housing Executive (the regional housing authority).<sup>115</sup>

### *Caravans legislation*

89. A positive development during the reporting timeframe has been the successful passage of the Caravans Act 2011 through the Northern Ireland Assembly. This Private Members Bill, introduced by John McCallister MLA, provides security of tenure for permanent caravan dwellers, and other protections for persons living in caravans on temporary sites.
90. While the original intention of the bill had been to protect permanent caravan dwellers in 'park home' sites (mainly non-Travellers living in caravans, often as retirement homes) and temporary dwellers on holiday sites, the bill was drafted and amended in such a way as to ensure that it would also afford protection to Travellers on serviced (permanent) sites and temporary (transit/halting) sites. The intention that the Act should cover Traveller sites was put on the record and secured by the drafting of the Bill. The Act provides permanent security of tenure, and related rights, to caravan dwellers on protected sites with tenancy entitlements of over 12 months, which the Northern Ireland Housing Executive confirmed includes all serviced Traveller sites. The situation of transit sites is different

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<sup>113</sup> Secretary of State for Northern Ireland, Owen Paterson MP, Written Ministerial Statement, 31 January 2011.

<sup>114</sup> E/C 12/GBR/CO/5, 22 May 2009, (ICESCR Concluding Observations, UK) paragraph 36.

<sup>115</sup> *Comments of the Government of the United Kingdom on the Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities* (26 October 2007), Council of Europe document GVT/COM/II(2007)003, page 14.

given the particular purpose, namely the facilitation of a nomadic lifestyle, and occupants of such sites are afforded similar protections as other temporary caravan dwellers.<sup>116</sup>

***Provision of adequate number of sites for Travellers***

91. The Northern Ireland Housing Executive is under a legal duty to provide such caravan sites as appear to be appropriate for the accommodation of caravans of members of the Irish Traveller community.<sup>117</sup> Duties to provide Traveller sites transferred to the Housing Executive on 1 December 2003; prior to this a power to provide sites had rested with local government.
92. The Commission considers that the Northern Ireland authorities have failed to discharge their legal duty to provide such caravan sites as appear to be appropriate for the Irish Traveller community. The Housing Executive itself carried out two needs assessments in 2002 and 2008, which showed a net shortfall between what the Executive considered to be appropriate provision of sites for Irish Travellers and actual site provision.<sup>118</sup> The Housing Executive's Traveller Accommodation Programme 2003-2008 failed to result in sufficient provision of Irish Traveller accommodation and, in its response to a report commissioned by the Equality Commission for Northern Ireland, the Housing Executive accepted that there had been an undersupply of Traveller-specific accommodation and delays in the development of sites.<sup>119</sup> The Human Rights Commission does not regard the Housing Executive's Traveller Accommodation Programme 2009-2014, which in large part carries forward unfulfilled proposals from the previous programme, as being capable of discharging the statutory duty of providing sufficient sites. The Housing Executive does not appear to have exercised, for example, its powers to acquire land for the purposes of site provision, nor has it proceeded with relevant planning applications in order to achieve sufficient sites. The Commission is therefore actively preparing a legal challenge against the Housing Executive for failing to discharge its duty to provide sites, and this will proceed unless the Housing Executive adopts a revised proposal with a timetabled schedule of work to provide sufficient Traveller-specific accommodation to meet need.

***The Committee may wish to press the UK on what steps it is taking in Northern Ireland to provide sufficient sites for Irish Travellers.***

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<sup>116</sup> The Commission also highlighted the potential for the Bill to fulfil, for Northern Ireland, obligations on the UK flowing from the European Court of Human Rights judgment in *Connors v UK* Application no 66746/01, 40 EHRR 9. In *Connors*, the lack of protection against eviction afforded to Traveller sites in England, which contrasted unfavourably with the levels of protection afforded to other tenants, was found to breach Article 8 of the ECHR. The UK is yet to satisfactorily discharge the measures that it needs to take to implement the judgment. In England and Wales legislation was introduced in 2008 to amend the definition of a "protected site" in the Mobile Homes Act 1983, to cover local authority Gypsy and Traveller sites. This provision was still awaiting commencement when the Committee of Ministers last examined the execution of the judgment. The Committee of Ministers will resume consideration at its 1108th meeting (March 2011).

<sup>117</sup> Under Article 28A of the Housing (Northern Ireland) Order 1981, as amended.

<sup>118</sup> Northern Ireland Housing Executive 2003-2008, 'Travellers' Accommodation: Needs Assessment in Northern Ireland'.

<sup>119</sup> NIHE (August 2009) Response to Equality Commission Consultation 'Outlining Minimum standards for Traveller Accommodation'.

## The right to education

93. At present in Northern Ireland, all schools by law must have a Christian ethos, and there only exists a parental right to ‘opt out’ from religious education and collective worship.<sup>120</sup> For persons who are in a minority religion in the school, have no religion, or otherwise do not wish to partake in doctrinal religious instruction and collective worship, the only recourse is parental opt-out, rather than a framework mandating the provision of adequate alternatives for those who do not share the religious ethos of a school.
94. Pluralistic religious education can be used as a vehicle through which to pursue policy to ‘eradicate prejudices and conceptions incompatible with freedom of religion or belief, and ensuring respect for and acceptance of pluralism and diversity in the field of religion or belief’.<sup>121</sup> The present basis of the core curriculum for religious education in Northern Ireland is Christian-centred, with minorities (if the opt-out is adequately explained) likely not to be in the classroom. An alternative approach has been put forward by the UN Special Rapporteur on Religion and Belief who urged governments to “pay specific attention to the contents of syllabuses on religious education, which ideally should aim to be all-embracing”.<sup>122</sup> Research into the present circumstances in Northern Ireland has concluded that pupils are often not even aware of their opt-out rights from doctrinal instruction. The research, on which the Commission advised, recommends that schools make every effort to provide alternative educational activities and that the core syllabus for religious education in Northern Ireland be redrafted.<sup>123</sup>
95. The Department of Education recently consulted on a new Community Relations, Equality and Diversity (CRED) policy. The Commission drew the Department’s attention to the above matters, which were not addressed in the draft policy.

***The Committee may wish to suggest that the Department of Education deals with religious education and pluralism in developing its Community Relations, Equality and Diversity policy.***

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<sup>120</sup> Education and Libraries (Northern Ireland) Order 1986 (as amended), SR 1986/594, article 21.

<sup>121</sup> The adoption of such a policy has been recommended by a UN conference on freedom of religion and non-discrimination; see Final Document, International Consultative Conference on School Education in relation to Freedom of Religion and Belief, Tolerance and Non-discrimination (Madrid, 23-25 November 2001). At the regional level see: Council of Europe Committee of Ministers Recommendation CM/Rec(2008)12 on the Dimension of religions and non-religious convictions within intercultural education (10 December 2008) and OSCE/ODIHR (2007) *Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools*, OSCE, Warsaw.

<sup>122</sup> UN General Assembly A/62/280 (20 August 2007) *Interim Report of the Special Rapporteur on freedom of religion or belief*, paragraph 78.

<sup>123</sup> Mawhinney, A. and others (September 2010) *Opting Out of Religious Education: The Views of Young People from Minority Belief Backgrounds*, Queen’s University Belfast; see also: Richardson, N. (2007) “Rights and Religious Education in a Plural Northern Ireland”, a paper presented at the Rights and Righteousness Conference on 1-2 November 2007, NIHRC, Belfast.

## ARTICLE 6: Judicial protection and remedies

### Effectiveness of ‘hate crimes’ legislation

96. The Criminal Justice (No. 2) (Northern Ireland) Order 2004, commonly referred to as ‘hate crimes’ legislation, allows the Courts to treat motivation by hostility on racial, religious, sexual orientation or disability grounds as an aggravating factor increasing the seriousness of the offence. This is hostility around the time of offence towards the victim due to their membership (or perceived membership) of a protected group, or when the offence was motivated wholly or partly by hostility on a protected ground.
97. As referenced above the PSNI (police) recorded 3,148 (victim-perceived)<sup>124</sup> hate incidents in the financial year 2009-10, just over 2,000 of which were classified as crimes. Sectarian incidents at 1,840 constituted the single largest number (1,264 crimes), with 1,038 other racist incidents (712 crimes).<sup>125</sup> Clearly, not all offences will be reported to police. The detection rate (that is, those that the police regard as ‘cleared up’) is around 16-17 per cent. The PSNI was unable to provide a breakdown indicating the ethnicity of victims of racist incidents. Figures were supplied for sectarian incidents but were unreliable as around two-thirds of the victim background data was categorised as ‘missing’. The PSNI also no longer publishes, nor can it supply, figures indicating a breakdown of the types of crimes to which the above figures relate.<sup>126</sup>
98. In the same year, 2009-10, prosecutors considered 655 persons who were allegedly involved in crimes considered to have been aggravated by racial or religious hostility. Of these, 156 did not pass the evidential test and no prosecution was pursued, 177 led to diversions (cautions, informed warnings or youth conference) and 332 defendants were prosecuted. The Public Prosecution Service was not able to provide a breakdown of ethnicity or ‘community background’ of victims. However, it was able to provide the Commission with a breakdown of the primary offence (the most serious charge in the particular case). These figures included 26 cases related to murder/attempted murder; 196 to physical assaults; 40 to sexual offences (including six to rape); 14 to arson (including petrol bombings); 69 to criminal damage; 206 to rioting and related disturbances, and 11 to harassment (defined under generic rather than discriminatory harassment legislation).<sup>127</sup>
99. Alarming, however, the most recent official statistics indicate that in the (calendar) year 2009, there was just one conviction recorded as attracting aggravated sentencing under the 2004 Order. For 2008, the figure was six and, from March-December 2007, four. Before this, figures were not even collated.<sup>128</sup> A 2010 follow-up report into hate crimes by

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<sup>124</sup> The PSNI defines a *hate incident* as “Any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person as being motivated by prejudice or hate”; a *hate crime* is an incident which is indictable or triable-either-way.

<sup>125</sup> Police Service of Northern Ireland, Annual Statistical Report: *Report No. 3: Hate Incidents and Crimes, 1<sup>st</sup> April 2009 – 31<sup>st</sup> March 2010*. The figure of 2,901 also includes 23 incidents on ‘faith/religion’ grounds, where intersectionality is likely to be with other indicators of ethnicity, as is potentially the case with some of the 175 homophobic, 58 disability and 14 transphobic incidents which were also recorded.

<sup>126</sup> Correspondence with PSNI Central Statistics Unit, October 2010.

<sup>127</sup> Data supplied by Public Prosecution Service on ‘Hate Crimes – Cases Considered by a PPS Prosecutor to have been Aggravated by Hostility Decisions Issued between 1/4/09 and 31/3/10 (Note: includes prosecutions, diversions and no prosecutions)’.

<sup>128</sup> Official Report, Northern Ireland Assembly, Written Answers, Minister for Justice David Ford MLA, 8 October 2010, AQW 710/11.

Criminal Justice Inspection Northern Ireland noted that while the PSNI had implemented recommendations aimed at the police force, other recommendations (hate crime strategy, improving the management information on recording and prosecution, in particular from the prosecution service to courts) had not been fully discharged.<sup>129</sup> Since then, the Public Prosecution Service has issued a Hate Crime Policy.<sup>130</sup>

100. While the Northern Ireland Executive's draft CSI strategy to tackle racism and sectarianism contains significant reference to the need to tackle hate crime, there is no critique of the capacity, capability or effectiveness of institutions of the state, such as the police and prosecution service, to do so. There are no proposals to take steps to build capacity and reform such institutions to ensure they are fit for purpose, notably in securing the successful prosecution of perpetrators of hate crimes, nor reference to ensuring implementation of the Criminal Justice Inspection recommendation.

*The Committee may wish to ask what steps the Northern Ireland administration intends to take to ensure more effective implementation of the 2004 'hate crimes' legislation, and the availability of more comprehensive PSNI data.*

## **ARTICLE 7: Combating prejudice, promoting tolerance and understanding**

### **Hostility faced by Irish Travellers**

101. A debate in the Northern Ireland Assembly in relation to a proposal to remove a requirement on the Northern Ireland Housing Executive to seek authorisation from local government (Councils) before providing a Traveller site in the Council district provides an evidence base as regards political attitudes to Travellers and their accommodation needs.
102. On the positive side, comments were made during the debate accepting and drawing attention to the poor track record of the UK on Travellers and the views of UN and Council of Europe Treaty bodies on the matter.<sup>131</sup> A number of members advocating for the proposal also spoke in support of Traveller rights, and drew attention to problematic attitudes within local authorities, with one legislator stating:
- ...many councils regard Travellers as burdensome, problematic and, in many cases, antisocial. In the past, I have listened to downright racist comments and speeches made by councillors in a number of councils, not least Belfast.<sup>132</sup>
103. The main argument used by opponents to the proposal, however, was that it would bypass local democracy and 'sensitivities':

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<sup>129</sup> Criminal Justice Inspectorate (July 2010) *Hate Crime: A Follow-up Inspection of the Management of Hate Crime by the Criminal Justice System in Northern Ireland*.

<sup>130</sup> Public Prosecution Service for Northern Ireland, Hate Crime Policy, December 2010.

<sup>131</sup> Official Report (*Hansard*) Northern Ireland Assembly, Consideration Stage: Caravans Bill, 25 January 2011, comments of John McCallister MLA and Anna Lo MLA, pages 273 and 275.

<sup>132</sup> As above, Fra McCann MLA, page 266.

There is great potential to exacerbate the community tensions that can arise, particularly if such a site were dropped into a community without appropriate consultation or respect for the views of local people... I declare an interest as a local councillor. The reason for my comments is that there would be great concern if such sites were placed in Larne, Carrickfergus or parts of Newtownabbey in my constituency, where there is no tradition of a Travelling community.<sup>133</sup>

104. On being challenged to visit Traveller sites, the same legislator, alluding to earlier remarks about a visit to a Traveller site, stated:

I can honestly say that I would not wish for such a [*Traveller*] site anywhere in my constituency: where skips [*waste containers*] are provided free by the council, but are not used; where rubbish is being spread around widely; and where socks were stolen — I will not go into detail, but they were used for something for which they were not meant to be used — from the garden of a women’s centre that tries to help disadvantaged members of the community, and desecration occurred at the side of the building. I can assure you that I do not want that anywhere in my constituency.<sup>134</sup>

*The Committee may wish to ask which steps the devolved administration in Northern Ireland intends to take to combat racism and hostility against Travellers.*

### **Strategic and legislative framework: ‘Good Relations’**

105. As alluded to earlier in this report, the draft Programme for Cohesion, Sharing and Integration (CSI strategy) is the high level Northern Ireland strategy whose intended remit has been described by the Minister as a strategy “designed to tackle racism and sectarianism”.<sup>135</sup> While there is some reference to tackling prejudice and the promotion tolerance and understanding, and hence linkage to the duties provided by Article 7 ICERD, the seemingly central underpinning concept of the programme is that of ‘good relations’ which is referenced some 70 times in the draft strategy. However, the document does not elaborate the definition or interpretation of the term ‘good relations’.<sup>136</sup> This could lead to a range of interpretations, including some not compatible with human rights and equality duties.
106. A ‘good relations duty’ is contained within section 75(2) of the Northern Ireland Act 1998. This sets out a duty on most public authorities in Northern Ireland, subordinate to the need to promote equality of opportunity, to “have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group”.<sup>137</sup> The term, ‘good relations’, is not defined in the legislation. A definition is found in the good relations duty in the Equality Act 2010, but this does not apply to Northern Ireland. Concurrent with duties under Article 7 ICERD in the Equality Act 2010, the duty to foster good relations (in Great Britain) involves:

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<sup>133</sup> As above, Roy Beggs MLA, page 273.

<sup>134</sup> As above, pages 277-8.

<sup>135</sup> Hansard, 27 September 2010, Junior Minister Robin Newton MLA, AQO 121/11.

<sup>136</sup> Under schedule 9(1)(b) of the Northern Ireland Act 1998 the Equality Commission has a statutory duty to provide guidance on the ‘good relations’ duty in Section 75(2) and it has produced several publications.

<sup>137</sup> A duty on district councils to promote good relations between persons of different racial groups is also contained within article 67 of the Race Relations (Northern Ireland) Order 1997.

...having due regard, in particular, to the need to... tackle prejudice, and... promote understanding.<sup>138</sup>

107. In Northern Ireland, the Commission has had cause to raise concerns regarding the misinterpretation of the existing good relations duty in a manner that has actually run contrary to human rights duties. This has been, in particular, in the context of Irish language initiatives facing ‘good relations’ challenges on grounds incorrectly considered as interference with the rights of non-Irish speakers. Council of Europe experts have also addressed interpretation of the good relations duty in this context.<sup>139</sup> A recent example is provided in relation to duties the UK has accepted regarding the promotion of the traditional and correct forms of place names in the Irish language.<sup>140</sup> The Northern Ireland ministry responsible for transport did recently produce proposals for bilingual road signs. However, following a ‘good relations’ assessment, the proposals were only for a small number of signs, with the policy decision set out as designed to “confine the use of bilingual traffic signing to discrete areas where there is confirmed overall support”. This is presented in the context that signage may have a “negative impact on good relations”.<sup>141</sup>
108. Despite the evidence base relating to differentials in Northern Ireland, there can still be an environment whereby raising the issue of sectarian discrimination and inequality between the two main communities can be characterised as ‘divisive’ and therefore ‘bad’ for ‘good relations’. Such an approach gives primacy to a particular interpretation of ‘good relations’ above the need to tackle inequality. Despite the statements in the draft CSI strategy that this will not be the approach taken, the programme itself does not appear to bear this out; indeed, it does not deal with sectarian discrimination, and redressing its outcomes appears to be outside the remit of the strategy.<sup>142</sup>

***The Committee may wish to urge the UK to ensure that the Northern Ireland administration interprets ‘good relations’ concurrent with the duties under Article 7 ICERD.***

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<sup>138</sup> Equality Act 2010, Section 149(5).

<sup>139</sup> Council of Europe (2010) Report of the Committee of Experts on the Charter (UK 3<sup>rd</sup> Monitoring Cycle) ECRML (21 April 2010)4, paragraph 123.

<sup>140</sup> In particular, under Article 10(2)(g) of the European Charter for Regional or Minority Languages.

<sup>141</sup> Department of Regional Development (2011) *Bilingual Traffic Signs: Draft Policy and Draft Equality Impact Assessment*, paragraphs 1.6 and 7.6.

<sup>142</sup> CSI proposes to adopt the *Shared Future* good relations indicators which do not deal with differentials in matters such as employment, poverty and housing.