Advice to the Office of the First Minister and Deputy First Minister on the recommendations made to the UK during the second cycle of the Universal Periodic Review

1. In accordance with Section 69 (3) of the Northern Ireland Act 1998, the Northern Ireland Human Rights Commission (‘the Commission’) advises the Northern Ireland Executive (‘the Executive’) of legislative and other measures which ought to be taken to protect human rights. In accordance with this statutory function and the opportunity afforded by the Office of the First Minister and Deputy First Minister (OFMDFM), the following advice is submitted on the recommendations made to the United Kingdom (UK) during the second cycle of the United Nations (UN) Human Rights Council's Universal Periodic Review (UPR) held in Geneva on 24th May 2012.

2. This advice is provided in advance of the Human Rights Council Plenary session and the formal adoption of the recommendations which will occur in September 2012. It identifies recommendations made during the second cycle of the UPR as well as noting any corresponding first cycle recommendations that have been accepted by the UK Government, and which are within the devolved responsibilities of the Executive. It draws on the comments made by the Commission in its role as an ‘A’ status National Human Rights Institution to the UN Office of the High

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1 Email correspondence from OFMDFM Officials to UPR stakeholder groups, received 18 July 2012.
Commissioner for Human Rights in November 2011\(^4\) and identifies the main issues to include:

- Protections for women
- Ethnic profiling
- Prison overcrowding
- Juvenile offenders
- Corporal punishment
- Age of criminal responsibility
- Education
- Termination of pregnancy
- Migrants
- Hate crime
- Equality
- Trafficking in human beings

### Protections for women

#### 2nd Cycle Recommendations

**Continue efforts in the promotion of women's rights.**  
(Indonesia, 110.40)

**Give priority attention to the questions of gender equality and discrimination against women.**  
(Uzbekistan 110.52)

**Consider incorporating the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, otherwise known as the "Bangkok Rules" as part of its policy on the treatment of women prisoners.**  
(Thailand 110.88)

**Continue efforts to combat discrimination on any ground and violence against women and girls**  
(Cuba 110.51.).

3. The Commission has conducted two investigations on the issue of women in prison in NI and as a consequence continues to

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\(^4\) Submission by the Northern Ireland Human Rights Commission (NIHRC) to the UN Human Rights Council's Universal Periodic Review of the United Kingdom' NIHRC (November 2011).
highlight the absence of a women's prison facility and gender-appropriate services in NI. The Commission advises that the Executive take further steps towards the establishment of separate women's facilities in order to meet its international obligations as called for by the UN Committee on Convention the Elimination of Discrimination Against Women ('CEDAW Committee').

4. The Commission notes action by the NI Minister for Justice regarding the practice of imprisonment for non-payment of fines and the introduction of a pilot project to introduce Supervised Activity Orders. The Commission advises that imprisonment for non-payment of fines has been a concern of the CEDAW Committee since 1999 due to its disproportionate impact upon women. Unless speedy progress is now made to move past the piloting phase and to reduce the imprisonment of women for non-payment of fines, it is highly likely that the CEDAW Committee will raise the matter as a human rights concern for a third successive time during the UK examination in July 2013. Furthermore, this practice raises concerns regarding Article 11 of the UN International Covenant on Civil and Political Rights ('ICCPR') and Article 1 of Protocol 4 of the European Convention on Human Rights.

5. NI still lacks domestic violence specialist courts which exist in other areas of the UK. The piloting of domestic violence specialist courts is underway in Derry/ Londonderry. However,
this pilot does not provide as comprehensive a service as such courts do in other parts of the UK, focusing mainly on hearing listings structure as opposed to offering holistic support for victims. The Commission calls for parity to ensure non-discrimination.

Ethnic profiling

2nd Cycle Recommendations

**Take further steps to address ethnic profiling in practice** (Greece 110.54).

**Revise the policies that involve racial and ethnic profiling such as “stop and search” practice** (Brazil 110.55).

**Investigate allegations that stop and search orders disproportionately fall on persons belonging to ethnic, religious and other minorities and introduce adequate safeguards in this regard** (Austria 110.56.).

**That the law enforcement authorities put an end to stop and search practices based on religious and ethnic profiling** (Pakistan 110.57).

6. The Commission has previously expressed concern about the lack of safeguards contained in the Justice and Security (NI) Act 2007 which grants stop and search and stop and question powers to the PSNI.¹ While the Commission notes that the UK Parliament introduced this legislation, it advises that the Executive is responsible for its day-to-day implementation in NI. The Commission advises that the Executive and the UK Government work together on this matter of overlapping responsibility so as to ensure that legislation, policy and practice comply with international human rights standards.

7. The Commission also advises that the Executive initiate further monitoring and publication of ethnicity related data to address concerns that racial profiling is used in the exercise of stop and

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¹ NIHRC, ‘Protection of Freedoms Bill: Written Evidence to the House of Commons Committee Stage’ (March 2011).
search powers throughout the UK generally. This would assist the Executive in fulfilling the UN Human Rights Committee direction that it ‘should ensure that stop and search powers are exercised in a non-discriminatory manner’.

**Prison overcrowding**

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<th>1st Cycle Recommendations</th>
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<tr>
<td>To elaborate a national programme to combat the problem of overcrowding of prisons (Russian Federation 13).</td>
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<tr>
<td>Take measures to reduce prison overcrowding and improve conditions for detainees (Russian Federation 110.86).</td>
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<tr>
<td>Take concrete steps to further reduce overcrowding of prisons... (Austria 110.87).</td>
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8. The NI prison population continues to grow and exceed capacity. The Commission notes the construction of a 120-bed accommodation block at Maghaberry and advises that this be progressed without delay to ensure the dignity of the prisoner in accordance with Article 10 of the ICCPR.

**Juvenile offenders**

10 From 2010, the Police Service of Northern Ireland has monitored stop and question/search powers on the basis of 12 ethnic categories but does not disclose the ethnicity information in its quarterly reports. Between 1 April 2011 and 31 March 2012: 10,843 persons were stopped and searched under JSA sec 24; 1,635 persons were stopped and questioned under JSA sec 21; and, 1,792 persons were stopped under JSA sec 24 and questioned under JSA sec 21. See, Police Service of Northern Ireland Stop and Search Statistics Quarter 4, 2011/12 (PSNI: Belfast, 2012).


12 On the week ending 3 August 2012, the prison population in NI was 1776, compared to 1676 at the same time the previous year. Combined capacity for the three NI prison facilities is 1775, meaning most recent statistics show that the service is exceeding capacity. See NIPS Situation Reports, 3 August 2012, Available at, http://www DOJNI GOV UK/index ni-prison-service/nips-situation-reports/situation-reports 2012/nips-august 2012.htm. Such figures do not adhere to Government’s commitment to reduce overcrowding.
2nd Cycle Recommendations

**Take concrete steps to** further reduce overcrowding of prisons, including through the **increased application of alternative sentencing for juvenile offenders** (Austria 110.87).

... *[R]*efrain from the practice of keeping children in **custody** (Belarus 110.94).

9. The Commission is concerned that Article 13 of the Criminal Justice (Children) (NI) Order 1998, allows for a 15-17 year old offender considered likely to injure himself or others to be detained in Hydebank Wood. Detention of a child in an adult prison, regardless of whether separate living quarters are provided, raises concerns under the Article 3 UN Convention on the Rights of the Child (‘CRC’), best interests of the child principle. The UN Committee on the Rights of the Child (‘CRC Committee’) has stated that ‘children differ from adults in their physical and psychological development, and their emotional and educational needs... These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children.’ The Commission notes the commitment of the NI Minister for Justice that all offenders under the age of 18 will be transferred to Woodlands Juvenile Justice Centre by 1 November 2012 and advises that this should be carried out without exception.

10. As highlighted in the UK’s Mid-Term Report, the rehabilitative-focused ‘Youth Conference Order’ has increased in use over recent years. The Commission welcomes such diversionary developments and urges that the Youth Justice System in NI

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13 Following the withdrawal of the reservation to Article 37(c) CRC in December 2008, implementation of the Criminal Justice (NI) Order 2008 has failed to entirely prevent the detention of children alongside adult men in Hydebank Wood Young Offenders Centre.

14 UN Committee on the Rights of the Child in General Comment No. 10 (25 April 2007) UN Doc. CRC/C/GC/10 paragraph 10. Other International Standards such as the UN Standard Minimum Rules for the Administration of Juvenile Justice 1995 (The—Beijing Rules’) also suggest such practice is unsuitable.


further incorporates meaningful commitment to the overarching Article 3 CRC principle of the best interest of the child and the CRC Committee's General Comment No. 10.

Corporal punishment

1st Cycle Recommendations

To consider further measures in order to address the problem of violence against children, including corporal punishment (Italy 3).

To reconsider its position about the continued legality of corporal punishment against children (Sweden 4).

2nd Cycle Recommendations

Reconsider its position about the continued legality of corporal punishment of children (Sweden 110.78)

Take measures to ensure the freedom of children from physical punishment in accordance with the Convention on the Rights of the Child (Norway 110.79).

Introduce a ban on all corporal punishment of children as recommended by the CRC and other treaty bodies (Finland 110.80).

11. The Commission advises that a comprehensive UK strategy to address the issue of violence against children is still absent.\textsuperscript{17} On the issue of corporal punishment the defense of reasonable chastisement continues to permit private corporal punishment of children in NI,\textsuperscript{18} violating Articles 19 and 37(a) CRC and the CRC Committee's General Comment No. 8.

Age of criminal responsibility

2nd Cycle Recommendations

\textsuperscript{17} Such a strategy was also called for by the Committee on the Rights of the Child, see the Concluding Observations of the Committee on the Rights of the Child on the United Kingdom of Great Britain and Northern Ireland (20 October 2008) UN Doc. CRC/C/GB/CO/4 at paragraph 50.

\textsuperscript{18} This is despite restrictions made by the Law Reform (Miscellaneous Provisions) (NI) Order 2006.
Consider the possibility of raising the minimum criminal age ... (Belarus 110.94).

Consider the possibility of raising the age of criminal responsibility for minors (Chile 110.95).

12. The Commission strongly advises that the minimum age for criminal responsibility in NI be raised. The current age of criminal responsibility which is 10 years old in NI, England and Wales is too low and has frequently been identified as a matter of concern by the CRC Committee.19

Education

2nd Cycle Recommendations

Adopt a strategy so that children of vulnerable groups are not excluded from the education system (Costa Rica 110.106).

13. In keeping with the Committee on the Elimination of Racial Discrimination 2011 recommendation,20 the Commission welcomes the Taskforce on Traveller Education Report21 but advises that the NI Department of Education introduce the ‘action plan’22 without delay to assist with ensuring equality of achievement and non-discrimination between children from the Travelling Community and other children in NI.23

19 This stands in disappointing comparison to other democratic states. The Committee on the Rights of the Child has stated that any limit below 12 is unacceptable. In its Concluding Observations to the UK in 1995, 2002 and 2008 the Committee recommended that the minimum age of criminal responsibility in the UK is raised to between 14 and 16 years. The Council of Europe’s Commissioner for Human Rights made a similar recommendation following his visit to the UK in 2008 – Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visits to the United Kingdom (5-8 February and 31 March – 2 April 2008) (Commissioner for Human Rights: Strasbourg, 2008).


23 In 2009, 52.5% of traveller children attending school in NI were on the special educational needs register compared to 17.8% of the population as a whole. See NI Department of Education, Equality
14. Notwithstanding the fact that diversionary measures are the most appropriate method of dealing with the majority of juvenile offenders, the Commission is concerned that children in detention may not have access to the full educational curriculum. The NI Department of Justice Youth Justice Agency is responsible for the education of children in detention in NI as opposed to the NI Department for Education. This raises concerns that children in detention may not be offered an education of the same standard as their non-detained peers and would therefore conflict with the CRC Committee's determination that the Article 3 best interests of the child principle includes a criminal justice system which focuses on the rehabilitation of the child offender.²⁴

**Termination of pregnancy**

### 2nd Cycle Recommendations

**Ensure by legislative and other measures that women in Northern Ireland are entitled to safe and legal abortion on equal basis with women living in other parts of the United Kingdom** (Finland 110.77).

15. The Commission reiterates its recommendation that the Executive respond to direction from the CEDAW Committee to consult widely on the issue of termination of pregnancy in NI.²⁵

**Migrants**

### 1st Cycle Recommendations

²⁴ UN Committee on the Rights of the Child, General Comment No. 10, UN Doc. CRC/C/GC/10 (25 April 2007) at paragraph 10.

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To protect the children and families of migrants and refugees (Algeria, Ecuador 21)

2nd Cycle Recommendations

Strengthen governmental measures to guarantee the effective implementation of the human rights of migrants in accordance with the existing international instruments in this area (Paraguay 110.108)

Strengthen national and local policies and measures to protect migrants, especially foreign workers (Vietnam 110.110).

16. As a result of a Commission investigation in 2009, the Commission is concerned about discrimination in relation to access to public funds in NI for migrants. A particular problem in this area is access to housing for migrant victims of domestic violence, engaging the right to an adequate standard of living under Article 11(1) of UN International Covenant on Economic, Social and Cultural Rights. The Commission urges the UK Government and NI Executive to rectify these issues, including granting access to emergency financial assistance, to uphold the rights of victims.

Hate crime

2nd Cycle Recommendations

Implement ECRI’s recommendation to continue to monitor hate crimes and to work with the community to increase understanding of the impact of such offences, and to pursue efforts to improve the police gathering of evidence of racist motivations (Turkey 110.60)

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26 NIHRC, No Home From Home: Homelessness for People with No or Limited Access to Public Funds (NIHRC: Belfast, 2009).
27 Victims of domestic violence with insecure immigration status are often forced to choose between facing destitution or remaining in an abusive relationship. Organisations that do provide accommodation to such women currently do so at a financial loss in a time of steady cuts in budgets and funding. See Women's Aid Federation NI, Women with no or limited recourse to public funds: A Report of Findings (NIWAF: Belfast, 2007). The NIHRC also notes that the lack of an integrated national strategy for homelessness in NI also affects victims of domestic violence regarding art. 11 ICESCR. This is also an issue that is relevant to NIHRC’s concern regarding the UK and accession to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
Take more effective measures to ensure that the perpetrators of acts of discrimination, hate crimes and xenophobia are adequately deterred and sanctioned (Malaysia 110.90)

Strengthen data collection and maintain disaggregated data to better understand the scale and severity of hate crimes towards women, immigrants, religious minorities, persons with disabilities, and children (United States of America 110.91)

17. The Commission is supportive of these recommendations and is currently undertaking an investigation into racial hate crime in NI. Recommendations will be made to the Executive in due course.

Equality

1st Cycle Recommendations

To enhance the programmes aimed at addressing socio-economic inequalities, from a human rights perspective in fulfilment of its obligations under the International Covenant on Economic, Social and Cultural Rights. (Egypt 14)

2nd Cycle Recommendations

Develop appropriate policies and targeted measures in ensuring genuine equality in accordance with the recommendation of the Committee on Economic, Social and Cultural Rights (Uzbekistan 110.39.)

Review national legislation to ensure equality and non-discrimination (Egypt 110.49.)

Continue stepping up its efforts in tackling discrimination and inequality for all its citizens (Indonesia 110.50)
Strengthen measures aimed at reducing serious inequalities in access to health, education and employment, which still exist despite the adoption of the Equality Act (Spain 110.102)

18. The UK Parliament's Single Equality Act 2010 does not apply to NI and the commitment in the St Andrew’s Agreement 2006 to a Single Equality Bill for NI has not been implemented. As a consequence, equality protections in NI are not as comprehensive as those of other UK jurisdictions. The Commission recommends that the Executive and the UK Government ensure parity.

**Trafficking in human beings**

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<tr>
<td><strong>Increase efforts to combat trafficking in persons, particularly to protect women and children</strong> (Spain 110.72.)</td>
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<tr>
<td><strong>Continue making progress in applying the strategy on trafficking in persons adopted in July 2011</strong> (Colombia 110.73)</td>
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<tr>
<td><strong>Implement the EU Directive on trafficking in human beings by April 2013</strong> ... (Australia 110.74)</td>
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<tr>
<td><strong>Standardize anti-trafficking responses across the UK insofar as possible given the devolution of law enforcement powers, and appoint a rapporteur in each devolved authority to make critical assessments and improve the UK's overall anti-trafficking response</strong> (United States of America 110.75)</td>
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19. The Commission notes the introduction into the Assembly of the Criminal Justice Bill and welcomes the expansion of jurisdiction it affords to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 to bring the Executive into compliance with EU Directive 2011/36/EU. The EU Directive along with the UN and Council
of Europe standards\textsuperscript{28} identify the need for a comprehensive and proactive approach to the issue of trafficking. The Commission advises that the Executive continues to ensure that eradicating crimes of this nature remains a priority.

\textbf{August 2012}

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\textsuperscript{28} See the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organised Crime and the Council of Europe Convention on Action Against Trafficking in Human Beings.