
Summary

The NIHRC welcomes the publication of ‘A Sense of Belonging: Delivering Social Change through a Racial Equality Strategy for Northern Ireland 2014 - 2024’ (‘draft RES’). The NIHRC recommends to the OFMdFM however, that it would be more appropriate to develop the final RES as the ‘NAPAR’ (national action plan against racism) for NI in accordance with the direction of international human rights standards and to meet the need identified by treaty bodies for the implementation of an action-orientated plan (para 2.7).

The NIHRC recommends to the OFMdFM that it re-frame the draft RES into goals, objectives and actions. The NIHRC further recommends that the final RES makes clear the desired impacts (para 3.7).

The NIHRC recommends to the OFMdFM that in the final RES, the ‘scale of the challenge’ chapter comprehensively outlines the current situation using all available information, including relevant public authority and civil society reports in order to provide an accurate evidence base upon which the goals, objectives and actions will be based (para 3.10).

The NIHRC recommends to the OFMdFM that the final RES contains specific actions to ensure ethnic monitoring is consistently integrated into the practices of all relevant agencies (para 3.14).

The NIHRC recommends that the OFMdFM amend the draft RES so as to: (1) ensure the express articulation of all relevant international human rights laws and standards; and, (2) indicate how the legal obligations and outstanding concluding observations of the treaty bodies are being fulfilled (para 4.6).

The NIHRC recommends to the OFMdFM that the final RES, and in particular the Ministerial Foreword, demonstrates a ‘greater resolve and political will’ by the
NI Executive Ministers to eliminate racism and racial discrimination in NI (para 5.3).

The NIHRC recommends to the OFMdFM that the final RES include reporting arrangements to the OFMdFM Committee for the purposes of scrutinising the NI Executive’s implementation of the international human rights treaty obligations. The NIHRC suggests that these arrangements include a commitment by the OFMdFM to report annually to the Committee on progress towards implementing the final RES (para 6.5).

The NIHRC recommends to the OFMdFM that either the final RES is implemented for a five year period or that it commits to formal comprehensive reviews at fixed periodic intervals of no more than five years (para 6.9).

The NIHRC recommends to the OFMdFM that the final RES demonstrates that effective participation has taken place and that full consideration has been given to the collective message of the ‘common platform’ (para 7.4).

The NIHRC recommends to the OFMdFM that the final RES includes, in particular, the definition of racial discrimination under international human rights law, and further commits to considering the merits of defining racism within domestic law (para 8.4).

The NIHRC suggests that the OFMdFM may wish to use the first shared aim as the vision for the RES since it more accurately reflects the international human rights law in this area (para 9.4).

The NIHRC recommends to the OFMdFM that given the complexity of the various laws and unequal legal protections provided to different individuals and groups, it is paramount that the current equality provisions be simplified, harmonised and strengthened (para 9.8).

The NIHRC recommends to the OFMdFM that the final RES includes a commitment to examine the NI Act, Section 76 along with the Race Relations (NI) Order 1997 with a view to introducing legislative measures to fulfil the obligation to prohibit racial discrimination by any person, group or organisation (para 9.11).

The NIHRC recommends to the OFMdFM that the wording of the legal requirement to ‘have regard to the desirability’ to promote good relations is not fully in accordance with the obligation to take immediate and effective measures. The NIHRC therefore recommends that the final RES includes a commitment to strengthen the domestic legislation (para 10.8).

The NIHRC welcomes the acknowledgement of the importance of the ‘good relations’ duty but recommends to the OFMdFM that the prohibition on discrimination should be understood as a fundamental human right which coexists alongside, but must not be limited by the duty to promote mutual respect and understanding (para 10.13).
The NIHRC recommends to the OFMdFM that the proposed Equality and Good Relations Commission must be able to effectively carry out its functions. Any structural changes must be made with the express objective of increasing the protection and promotion of equality, non-discrimination, tolerance, mutual respect and understanding. There should be no retrogression from protections afforded by the existing structural arrangements of the ECNI and Community Relations Council (para 10.14).

The NIHRC recommends to the OFMdFM that the final RES recognises as a matter of priority the need for human rights based education as a measure to assist the population to strengthen the respect for human rights and freedoms and tackle any ignorance and lack of understanding that leads to unfounded fears of racial or other forms of difference (para 11.7).

The NIHRC recommends to the OFMdFM that the final RES expressly acknowledges cultural diversity generally as a source of societal enrichment in NI and commits to the promotion of programmes that will increase awareness of this fact (para 11.10).

The NIHRC recommends to the OFMdFM that the final RES should recognise the right to culture. It should expressly recognise that this includes the right of individuals from ethnic minority communities to participate in the cultural life of society and to enjoy their own culture. Such recognition could be expressed as an element of one of the 'shared aims’ or separately (para 12.8).

The NIHRC recommends to the OFMdFM that the final RES acknowledges the role of sport as a 'powerful tool’ to combat racism and racial discrimination and includes actions that accord with ECRI General Policy Recommendation 12 (para 13.4).

The NIHRC recommends that the OFMdFM acknowledges and commits to implement the recommendations addressed specifically to the NI Executive within the NIHRC 'Racist Hate Crime’ report (para 14.5).

The NIHRC further recommends to the OFMdFM that the final RES: (1) adopts a holistic approach to tackling racist hate crime based on the duties to prevent, prohibit, prosecute and protect; and (2) includes the specific targeted measures to address racist hate crimes as recommended by the NIHRC 'Racist Hate Crime’ report (para 14.6).

The NIHRC recommends to the OFMdFM that the final RES: (1) includes a commitment to amend domestic legislation to ensure it recognises multiple discrimination; and (2) in particular, outlines how it intends to address the recommendations of the CEDAW Committee (para 15.8).

The NIHRC recommends to the OFMdFM that the final RES must be cognisant of the NI Executive’s obligations under the established international human rights framework on Roma when directing actions applicable to Roma and Travellers
in NI. This should not negate an approach that is also sensitive to the particularities of Travellers in NI (para 16.3).

The NIHRC welcomes the chapter on immigration and recommends to the OFMdFM that in the final RES this section includes a specific commitment to introduce a ‘crisis fund’ to assist migrants facing destitution (para 17.5).

The NIHRC recommends to the OFMdFM that the final RES includes a commitment to expand the scope of positive action under domestic law and in doing so, the NI Executive should take cognisance of the international human rights standards on special measures (para 18.4).

1. Introduction

1.1. The Northern Ireland Human Rights Commission (‘NIHRC’) pursuant to Section 69(3) of the Northern Ireland Act 1998, is required to advise the NI Executive on ‘measures which ought to be taken to protect human rights’. In accordance with this function the following statutory advice is submitted to the Office of the First Minister and deputy First Minister (‘OFMdFM’) on its consultation ‘A Sense of Belonging: Delivering Social Change through a Racial Equality Strategy for Northern Ireland 2014 - 2024’ (‘draft RES’).

1.2. The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (‘CoE’) and United Nations (‘UN’) systems, along with relevant European Union (‘EU’) directives. The relevant international treaties in this context include, the:

- UN International Covenant on Civil and Political Rights (‘ICCPR’);¹
- UN International Covenant on Economic, Social and Cultural Rights (‘ICESCR’);²
- UN International Convention on the Elimination of all forms of Racial Discrimination (‘CERD’);³
- UN Convention on the Rights of the Child (‘CRC’);⁴
- UN Convention on the Elimination of all forms of Discrimination against Women (‘CEDAW’);⁵

¹ Ratified by the UK on 20 May 1976.
² Ratified by the UK on 20 May 1976.
³ Ratified by the UK on 7 March 1969.
⁴ Ratified by the UK on 16 December 1991.
• UN Convention on the Rights of Persons with Disabilities (‘CRPD’);  
• UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions;  
• CoE European Convention on Human Rights (‘ECHR’);  
• CoE Framework Convention for the Protection of National Minorities (‘FCNM’);  
• EU Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crime;  
• EU Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (‘EU Racial Equality Directive’).

1.3. The NI Executive is subject to the obligations contained within these international treaties by virtue of the UK Government’s ratification. In addition, the NI Act 1998, Section 26 (1) provides that ‘if the Secretary of State considers that any action proposed to be taken by a Minister or Northern Ireland department would be incompatible with any international obligations... he may by order direct that the proposed action shall not be taken.’

1.4. The NIHRC further recalls that the NI Act 1998, Section 24(1) states that ‘a Minister or Northern Ireland department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act – (a) is incompatible with any of the [ECHR] rights.’

1.5. In addition to these treaty standards there exists a body of ‘soft law’ developed by the UN, CoE, EU and human rights experts. These declarations and principles are non-binding but provide further guidance in respect of specific areas. The relevant standards in this context are:

• Durban Declaration and Programme of Action (‘DDPA’);  
• Durban Review Outcome document;  
• OHCHR ‘Developing National Action Plans against Racial Discrimination: A Practical Guide’ (‘OHCHR guidance’);  
• UN Declaration on a Culture of Peace;  
• UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;

---

5 Ratified by the UK on 7 April 1986.  
6 Ratified by the UK on 8 June 2009.  
7 Ratified by the UK on 7 December 2007.  
8 Ratified by the UK on 8 March 1951.  
9 Ratified by the UK on 15 January 1998.  
10 Transposition date 16 November 2015.  
11 Transposition date 19 July 2003.  
12 The DDPA was the outcome of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (‘WCAR’) held in Durban, South Africa between 31 August - 7 September 2001.  
13 The Durban Review Outcome document was the result of the Durban Review conference held in Geneva between 20-24 April 2009.  
UNESCO Declaration of Principles on Tolerance;\(^{17}\)
- Faro Declaration on the Council of Europe’s Strategy for Developing Intercultural Dialogue;\(^{18}\)
- CoE Recommendation (2006)8 on assistance to crime victims;\(^{19}\)
- CoE Recommendation (2005)9 on the protection of witnesses and collaborators of justice;\(^{20}\)
- ECRI General Policy Recommendation 1: on combating racism, xenophobia, anti-Semitism and intolerance;\(^{21}\)
- ECRI General Policy Recommendation No.3: on combating racism and intolerance against Roma/Gypsies;\(^{22}\)
- ECRI General Policy Recommendation 4: on national surveys on the experience and perception of discrimination and racism from the point of view of potential victims;\(^{23}\)
- ECRI General Policy Recommendation 7: on national legislation to combat racism and racial discrimination;\(^{24}\)
- ECRI General Policy Recommendation 11: on combating racism and racial discrimination in policing;\(^{25}\)
- ECRI General Policy Recommendation 12: on combating racism and racial discrimination in the field of sport;\(^{26}\)
- ECRI General Policy Recommendation No.13: Combating anti-Gypsyism and discrimination against Roma;\(^{27}\)
- ECRI General Policy Recommendation 14: on combating racism and racial discrimination in employment;\(^{28}\)
- EU Council Framework Decision 2008/913/JHA;\(^{29}\)
- OSCE Recommendations on Policing in Multi-Ethnic Societies;\(^{30}\) and,
- Fribourg Declaration on Cultural Rights;\(^{31}\) and,
- Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity.\(^{32}\)

---

\(^{16}\) UN Doc. A/RES/40/34 (29 November 1985).
\(^{17}\) Adopted on 16 November 1985 at the 28th session of the UNESCO General Conference.
\(^{18}\) Outcome of the closing conference of the 50\(^{th}\) Anniversary of the European Cultural Convention, held between 27-28 October 2005 in Faro, Portugal.
\(^{19}\) Adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers’ Deputies.
\(^{20}\) Adopted by the Committee of Ministers on 20 April 2005 at the 924th meeting of the Ministers’ Deputies.
\(^{21}\) Adopted on 4 October 1996.
\(^{22}\) Adopted on 6 March 1998.
\(^{23}\) Adopted on 6 March 1998.
\(^{24}\) Adopted on 13 December 2002.
\(^{25}\) Adopted on 29 June 2007.
\(^{26}\) Adopted on 19 March 2009.
\(^{27}\) Adopted on 24 June 2011.
\(^{28}\) Adopted on 22 June 2012.
\(^{29}\) The ability to issue new Framework Decisions has been abolished - See, Treaty of Lisbon amending the Treaty Establishing the European Union and the Treaty Establishing the European Community (13 December 2007), para 51. Pursuant to Article 10 of the Protocol on Transitional Provisions annexed to the EU treaties, the UK has opted out of this measure and it will cease to have effect from 1 December 2014. This is because the Treaty of Lisbon changed the jurisdiction of the ECJ in relation to pre-Lisbon crime and policing laws. However, the UK Government has stated that it meets all the requirements of the Framework Decision through existing domestic law. See, Answer to Parliament Questions, PQ Numbers: 172284; 172286; and, 172288, available at, <http://www.parliament.uk/documents/commons-committees/european-scrutiny/Annex-A.pdf>.
\(^{30}\) OSCE, Office of the High Commissioner on National Minorities, February 2006.
\(^{31}\) Produced by the Observatory of Diversity and Cultural Rights and edited by a working group of academics, adopted 7 May 2007.
2. National action plan against racism (NAPAR)

2.1. The NIHRC notes that the Durban Declaration and Programme of Action ('DDPA') urges States to 'establish and implement without delay national policies and action plans to combat racism, racial discrimination, xenophobia and related intolerance'. This was reaffirmed within the Durban Review Outcome document.

2.2. Further, in 2011, the Committee on the Elimination of Racial Discrimination ('CERD Committee') expressed that 'the absence of a race equality strategy [in the UK]... is a matter for concern'. The Committee recommended that the UK Government,

develop and adopt a detailed action plan, with targets and monitoring procedures, in consultation with minority and ethnic groups, for tackling race inequality as an integral part of the Equality Strategy, or separately provide an action plan for an effective race equality strategy.

2.3. The NIHRC notes however that the UK Equality Strategy has limited application in NI given the extent of devolution. The UK Equality Strategy itself notes that '[w]ithin this framework, responsibility for delivery of many public services which are important to achieving greater equality is devolved. ... The detailed actions in this strategy will therefore be delivered in a manner that is appropriate to the division of responsibilities across the United Kingdom.'

2.4. Earlier this year, in recognition of the emphasis upon adopting detailed and comprehensive action plans, the UN Office of the High Commissioner for Human Rights (OHCHR) published, 'Developing National Action Plans against Racial Discrimination: A Practical Guide' as a technical assistance tool for governments. The guide stipulates that all national action plans against racial discrimination should share seven characteristics, namely, that they be: (1) based on human rights standards; (2) comprehensive in scope; (3) a national undertaking; (4) action-orientated; (5) a public document; (6) a continuing process; and (7) cognisant of international good practice.

---

33 DDPA (Programme of Action), para 66.
34 Durban Review Outcome document, para 28.
35 UN Doc. CERD/C/GBR/CO/18-20, CERD Committee, 'Concluding observations on the UK' (14 September 2011), para 17.
36 Ibid.
39 Ibid., p 8 and chapter I.
2.5. The NIHRC notes that unlike its predecessor, the draft racial equality strategy (‘draft RES’) is not action orientated. It is intended to be ‘over-arching and high-level’ and to ‘establish a framework’ centred on six broad aims. The six aims are to be achieved through the actions detailed within a ‘programme of work’ to be developed after the RES is finalised by the departments working with the Racial Equality Panel.

2.6. The NIHRC notes that the draft RES states that it will ‘contribute to meeting the UK Government’s commitments to actions agreed [in the DDPA], including the development of a [NAPAR]’.

2.7 The NIHRC welcomes the publication of the draft RES. The NIHRC recommends to the OFMdFM however, that it would be more appropriate to develop the final RES as a NAPAR for NI in accordance with the direction of international human rights standards and to meet the need identified by treaty bodies for the implementation of an action-orientated plan.

3. Goals, objectives, actions and a baseline study

3.1. A clear, systemic and logical structure to a NAPAR is imperative when asking the public and in particular, ethnic minority communities, to accept and embrace it. The OHCHR guidance states that a NAPAR ‘needs to be composed of specific goals, objectives and actions or activities’.

3.2. The broadest objectives of a NAPAR can be described as goals. The goals are intended to provide a ‘useful orientation’ for those working on the plan and ‘guidance to the general public’.

3.3. Specific objectives should then be set out within a NAPAR which represent steps towards achieving the goal. They should be ‘precise, tangible, concrete and achievable within reasonable time frames’. The OHCHR guidance notes that,

[i]including objectives for rhetorical reasons is likely to undermine the whole planning process and, by diminishing the plan’s credibility, to render the achievement of other, more realistic objectives less likely.

---

42 Ibid., p 50.
43 Ibid., p 12.
45 Ibid.
46 Ibid., p 96.
47 Ibid.
3.4. The OHCHR further directs that each objective should then include a number of specific actions that the government commits to undertaking in order to achieve each objective. The OHCHR guidance proposes action-orientation rather than a plan that sets forth ‘vague claims and promises’.

3.5. Furthermore, in 2010, the ECRI report on the UK emphasised to the NI Executive that the RES should focus on outcomes in addition to structures and processes.

3.6. The draft RES states OFMdFM’s desire to ‘move away from plans with long lists of existing activities towards a smaller number of actions that can really make a difference’. The NIHRC agrees that it is not the quantity of actions that is important but rather their precise, achievable and credible nature directed towards tangible outcomes and impacts for members of ethnic minority communities in NI.

3.7. The NIHRC recommends to the OFMdFM that it re-frame the draft RES into goals, objectives and actions. The NIHRC further recommends that the final RES makes clear the desired impacts.

3.8. In order to develop goals, objectives and actions, it is important that a comprehensive and accurate baseline study that clearly describes the current situation of racial discrimination is first undertaken. The OHCHR guidance regards such a study as ‘key to demonstrating that racial discrimination is not only a matter of perception and that it can be measured’. It should, [i]dentify and make recommendations on high-priority groups in need of protection [and] gaps in programme coverage that need to be addressed.

The baseline study should investigate all areas of human rights and a participatory process at the grass-roots level for the assessment of needs is recommended.

3.9. The draft RES devotes chapter 2 to ascertaining the ‘scale of the challenge’ and recognises that ‘there has been a considerable amount of research since the previous RES was published’. The draft RES does not however reference the material other than the Joseph Rowntree Foundation study.

---

48 Ibid.  
49 Ibid., p 11.  
51 Draft RES, p 52.  
53 Ibid.  
54 Ibid., p 77.  
55 Draft RES, p 18.
3.10. The NIHRC recommends to the OFMdFM that in the final RES, the ‘scale of the challenge’ chapter comprehensively outlines the current situation using all available information, including relevant public authority and civil society reports in order to provide an accurate evidence base upon which the goals, objectives and actions will be based.

3.11. A critical part of an accurate assessment of the situation of racial discrimination within NI is data collection. In order to identify forms of racial discrimination which affect in particular certain groups, data that is characterised by for example, race or ethnicity, should also allow for disaggregation.

3.12. The NIHRC’s investigation report on ‘Racist Hate Crime: human rights and the criminal justice system in Northern Ireland’ found that the collection and disaggregation of data was ‘neither consistent nor sufficiently integrated into the practices of the criminal justice agencies’ and recommended that,

> criminal justice agencies should ensure that the collection and disaggregation of data is integrated consistently into the practices. There should be an effective approach to classifying the ethnicity and background of victims of racist hate crimes.

3.13. The NIHRC notes and welcomes that chapter 5 of the draft RES concerns ethnic monitoring and states that ‘Government departments and agencies will, as a matter of priority, examine where they should introduce ethnic monitoring and draw up proposals to do so’. It also states that ‘an important strand will be to collect disaggregated data to enable the measurement of the impact of actions on multiple discrimination and disadvantage.

3.14. The NIHRC recommends to the OFMdFM that the final RES contains specific actions to ensure ethnic monitoring is consistently integrated into the practices of all relevant agencies.

4. Human rights standards

---

59 Ibid., recommendation 6, p 105.
60 Draft RES, p 33.
61 Ibid., p 29.
4.1. A NAPAR ‘should incorporate a commitment to universal human rights standards … and set out how these standards will effectively be implemented’.  

4.2. The NIHRC welcomes that the draft RES states that it ‘will be underpinned by international human rights standards’ and notes the explicit references to the International Convention on the Elimination of all forms of Racial Discrimination (‘CERD’), European Convention on Human Rights (‘ECHR’), Framework Convention for the Protection of National Minorities (‘FCNM’) and the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance 2001 from which the DDPA emanates. The draft RES further states that,

[i]t will provide a framework for the Executive to meet its obligations under these instruments and to address the issues raised in the "concluding observations" issued by treaty bodies.  

4.3. The NIHRC notes however that the draft RES articulates the specific standards and guidance contained within these instruments on only three occasions, namely: the NAPAR commitment under the DDPA; the CERD Committee’s comments on the intersectionality of racism and sectarianism; and, the CERD Committee’s recommendation that either ‘a single equality law … be adopted in [NI] or that the Equality Act is extended to [NI]’. The NIHRC also notes that in the latter context, the draft RES does not state the NI Executive’s position on the concluding observation.

4.4. In other areas the draft RES expresses a commitment to human rights concepts but does not allude to the directing instruments. This occurs, for example, in relation to references on the ‘need to address multiple identity and multiple discrimination’ and ‘need to take “positive action” in certain circumstances’.

4.5. The NIHRC further notes that not all the relevant international human rights obligations are referenced within the draft RES. The NIHRC identifies these obligations throughout this advice and relevant laws and standards are listed in paragraphs 1.2 and 1.5.

4.6. The NIHRC recommends that the OFMdFM amend the draft RES so as to:

---

63 Draft RES, p 11-12.
64 Ibid., p 12.
65 Ibid., p 13.
66 Ibid., p 40.
67 Ibid., p 29.
68 Ibid., p 51. Although the NIHRC notes the reference to the EU Racial Equality Directive, no reference is made to the UN treaty provisions. For further discussion, see Sections 15 and 18 of this advice.
• ensure the express articulation of all relevant international human rights laws and standards; and,
• indicate how the legal obligations and outstanding concluding observations of the treaty bodies are being fulfilled.

5. Political leadership

5.1. The DDPA recognises that one of the main obstacles to overcoming racial discrimination and achieving racial equality is a lack of political will.\(^69\) In 2009, the Durban Review Outcome document emphasised the need for an even ‘greater resolve and political will’ to overcome such attitudes and experiences in ‘all parts of the world’.\(^70\)

5.2 Most recently, in 2014, the OHCHR chose to theme the International Day for Elimination of Racial Discrimination around the key role that leaders play in mobilising political will to combat racism and racial discrimination. UN Secretary General Ban Ki-moon called on,

all people, especially political, civic and religious leaders, to strongly condemn messages and ideas based on racism, racial superiority or hatred as well as those that incite racism, racial discrimination, xenophobia and related intolerance.\(^71\)

5.3. The draft RES acknowledges that the First Minister and deputy First Minister ‘together with their Ministerial colleagues ... have responsibility for driving forward work on the Strategy and its programme of work within the departments and agencies for which they have responsibility’.\(^72\) However, the NIHRC recommends to the OFMdFM that the final RES, and in particular the Ministerial Foreword, demonstrates a ‘greater resolve and political will’ by the NI Executive Ministers to eliminate racism and racial discrimination in NI.

6. Governance

6.1. The DDPA recognises that,

democracy, transparent, responsible, accountable and participatory governance responsive to the needs and aspirations of the people, and respect for human rights, fundamental freedoms and the rule of law are essential for the effective prevention and elimination of racism.\(^73\)

---

\(^69\) DDPA (Declaration), para 79.
\(^70\) Durban Review Outcome document, para 5.
\(^72\) Draft RES, p 46.
\(^73\) DDPA (Declaration), para 81.
6.2. The NI Executive is the forum for, among others: the discussion of, and agreement on issues which cut across the responsibilities of two or more Ministers’, and the response of the NI administration to external relationships. The OFMdFM ‘contribute[s] to and oversee[s] the co-ordination of [NI] Executive policies and programmes’.

6.3. The NIHRC considers that ‘external relationships’ includes overseeing the implementation of human rights laws and standards to which the UK is a signatory. This is in keeping with the role of OFMdFM’s Equality, Human Rights and Social Change Unit to ‘provide advice, support and challenge to [NI Civil Service] departments on the application of Human Rights and/or Section 75 responsibilities’.

6.4. The OFMdFM Committee has the responsibility of ‘advising and assisting the First Minister and deputy First Minister in the formulation of policy with respect to matters within their responsibilities’. The Committee ‘undertakes a scrutiny, policy development and consultation role with respect to the [OFMdFM] and plays a key role in the consideration and development of legislation’. As such, the NIHRC considers that the OFMdFM Committee has responsibility for overseeing the NI Executive’s function in the implementation of international treaty obligations.

6.5. The NIHRC recommends to the OFMdFM that the final RES include reporting arrangements to the OFMdFM Committee for the purposes of scrutinising the NI Executive’s implementation of the international human rights treaty obligations. The NIHRC suggests that these arrangements include a commitment by the OFMdFM to report annually to the Committee on progress towards implementing the final RES.

6.6. The OHCHR guidance specifies that the NAPAR should be subject to periodic review and that ‘it should be possible for the plan’s objectives to be revised or modified in the light of the monitoring process’.

6.7. Further, the NAPAR should set a timeframe for the plan as a whole that ‘allows enough time for the necessary administrative, resource, educational and infrastructure measures to be put in place’ but ‘not so long that a sense of continuity or overall perspective is difficult to maintain’. In addition, it is

---

74 Belfast Agreement, para 19.
75 Belfast Agreement, para 18.
78 NI Act 1998, Section 29(1) and NI Assembly, Standing Order 48.
81 Ibid., p 90.
desirable that there are specific target dates for the achievement of each of the activities.\textsuperscript{82} The OHCHR guidance suggests that a time period of five years, often chosen for economic plans, is reasonable for NAPARs.\textsuperscript{83}

6.8. The draft RES proposes a timeframe of ten years and states that progress will be reviewed ‘in line with successive Comprehensive Spending Reviews (i.e. every three or four years) … and towards the end of ten-year period’.\textsuperscript{84} The NIHRC notes that the previous RES was for five years and stated that ‘progress will be reviewed and reported on annually and a formal review will be held [after 3 years]’.\textsuperscript{85}

6.9. To ensure responsiveness to evolving need, the NIHRC recommends to the OFMdFM that either the final RES is implemented for a five year period or that it commits to formal comprehensive reviews at fixed periodic intervals of no more than five years.

7. Participation

7.1. The levels of ownership felt by the entire population is an important part of an effective NAPAR.\textsuperscript{86} The FCNM, Article 15, obliges the NI Executive to,

create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

7.2. The DDPA further specifies that action plans should be developed in consultation with civil society.\textsuperscript{87} Of particular importance is consultation with victims of racial discrimination.\textsuperscript{88}

7.3. The NIHRC therefore notes that on the 9 September 2014, over 20 statutory bodies and civil society organisations launched a ‘common platform’ document at Stormont calling for the final RES to include, among others: ‘a meaningful assessment of the scale of the challenge’; ‘a detailed robust action plan’; ‘a senior official designated in each department’; ‘a mechanism with a robust monitoring role’; ‘a framework to deal with … multiple identities’; ‘the NI Executive’s obligations under the international human rights’ treaties’; and ‘adequate funding’.\textsuperscript{89}

\textsuperscript{82} Ibid.
\textsuperscript{83} Ibid., p 91.
\textsuperscript{84} Draft RES, p 10.
\textsuperscript{87} DDPA (Programme of Action), para 191(a).
7.4. The NIHRC recommends to the OFMdFM that the final RES demonstrates that effective participation has taken place and that full consideration has been given to the collective message of the ‘common platform’.

8. Definitions: racial discrimination and racism

8.1. The NIHRC notes the absence of definitions for key concepts contained within the draft RES.

8.2. According to the OHCHR guidance, because the NAPAR ‘should start from the State’s clear commitment to preventing and countering racial discrimination... the concept of racial discrimination should be expressed with absolute clarity’. The CERD, Article 1 defines ‘racial discrimination’ to mean, any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

8.3. In 2011, the CERD Committee noted the inter-sectionality between racism and sectarianism, and requested the Government to inform it ‘of the results of its examination of the advisability of adopting such a holistic approach towards the fight against sectarianism and racism’. The NIHRC notes that the draft RES specifically acknowledges the link between the two concepts and that within the ‘Together: Building a United Community Strategy’, the OFMdFM has committed to ‘seek to find an appropriate consensus around a definition of sectarianism’. The NIHRC also notes however, the absence of a commitment to define the related concept of ‘racism’ within domestic law. At the international level, both the CoE and UN organs offer definitions; for example, the European Commission against Racism and Intolerance (‘ECRI’) General Policy Recommendation 7 states that, “racism” shall mean the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies

notes that the number of organisations signed up to the ‘Common Platform’ continues to grow and at the time of writing was in excess of 30.
91 UN Doc. CERD/C/GBR/CO/18-20, CERD Committee, ‘Concluding observations on the UK’ (14 September 2011), para 20.
92 Ibid.
93 Draft RES, p 13.
contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.95

8.4. **The NIHRC recommends to the OFMdFM that the final RES includes, in particular, the definition of racial discrimination under international human rights law, and further commits to considering the merits of defining racism within domestic law.**

9. **Equality and non-discrimination**

9.1. Non-discrimination, together with equality before the law and equal protection of the law, constitute a substantive right and core principle that runs throughout international human rights law. The CERD, Article 2(d), obliges the NI Executive to ‘prohibit and bring to an end, by all appropriate means ... racial discrimination by any persons, group or organization’. In addition, the International Court of Justice has held that the prohibition of racial discrimination constitutes an *erga omnes* obligation.96 This is an elevated status which means that, ‘all States can be held to have a legal interest in [its] protection’.97

9.2. Further, the CERD Committee has stated that substantive and de facto equality in the enjoyment and exercise of human rights is the aim to be achieved by the faithful implementation of the CERD.98 The FCNM, Article 4(2) requires the NI Executive to,

[a]dopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority.

9.3. The DDPA recognises that,

inequitable political, economic, cultural and social conditions can breed and foster racism, racial discrimination, xenophobia and related intolerance, which in turn exacerbate inequity. We believe that genuine equality of opportunity for all, in all spheres ... is fundamental for the eradication of racism, racial discrimination, xenophobia and related intolerance.99

---

97 Ibid., paras 33-34.
98 CERD Committee, General recommendation 32: the meaning and scope of special measures in the CERD (24 September 2009), para 6.
99 DDPA (Declaration), para 76
9.4. The NIHRC notes that the first shared aim of the draft RES is to ‘eliminate racism, racial inequality and unlawful racial discrimination and promote equality of opportunity in all aspects of economic, social, cultural, political and public life, for people of different ethnic backgrounds.’ Given the fundamental character of the first shared aim, the NIHRC suggests that the OFMdFM may wish to use the first shared aim as the vision for the RES since it more accurately reflects the international human rights law in this area.

9.5. On the legislative framework surrounding equality and non-discrimination in NI, a number of UN treaty bodies have expressed concerns as to the differential levels of protection between NI and the other UK jurisdictions with the event of the Equality Act (primarily applicable to GB) in 2010. Foreseeing the implementation of the legislation, the ICESCR Committee recommended in 2009 that the State ‘consider making such comprehensive anti-discrimination legislation applicable to NI’. Further in 2011, and as recognised within the draft RES, the CERD Committee recommended that ‘immediate steps [are taken] to ensure that a single equality law ... be adopted in [NI] or that the Equality Act is extended to [NI]’. The CERD Committee also recommended that ‘a Bill of rights be adopted in [NI]’. Most recently, the Committee on the Elimination of Discrimination against Women (‘CEDAW Committee’) noted that as a result of the inapplicability of the Equality Act 2010 in NI, women in NI ‘do not have the same remit of equality protections as compared to their counterparts in England’ and recommended that NI legislation is revised to ‘ensure that it affords protection to women on an equal footing with other women in the State parties’ administrations’.

9.6. In 2008, pursuant to its mandate under the Belfast (Good Friday) Agreement 1998, the NIHRC provided advice on a Bill of Rights for NI to the UK Government. The advice recommended freestanding equality and non-discrimination provisions, the latter on protected grounds, which included those provided for under CERD, Article 1(1) and reflective of Protocol 12 of the ECHR, which the UK has not ratified. The Agreement had envisaged that any Bill of Rights for NI was to be legislated for in the UK Parliament but, to date, there has been little political progress on the issue and no legislation has been proposed.

---

100 Draft RES, p 22.
101 UN Doc. E/C.12/GBR/CO/5, ICESCR Committee, ‘Concluding observations on the UK’ (12 June 2009), para 16.
102 UN Doc. CERD/C/GBR/CO/18-20, CERD Committee, ‘Concluding observations on the UK’ (14 September 2011), para 19.
103 Ibid.
104 UN Doc. CEDAW/C/GBR/CO/7, CEDAW Committee, ‘Concluding observations on the UK’ (30 July 2013), para 18.
105 Ibid., para 19.
107 See NIHRC, ‘Parallel Report on the 18th and 19th Periodic Reports of the United Kingdom under the International Convention on the Elimination of All Forms of Racial Discrimination’, para 65; NIHRC, ‘Submission to the UN Human Rights Committee on the United Kingdom’s Seventh Periodic Report on compliance with the
9.7. The draft RES recognises the ‘essential role’ that legislation can play in tackling inequalities and notes that the NI Assembly has called upon the First Minister and deputy First Minister to review the current race relations legislation.\textsuperscript{108} The draft RES includes a chapter on the legislative framework and recognises the ECNI view that the ‘legislation here does not provide the same level of protections as that provided in GB’ and their proposed amendments.\textsuperscript{109}

9.8. \textbf{The NIHRC recommends to the OFMdFM that given the complexity of the various laws and unequal legal protections provided to different individuals and groups, it is paramount that the current equality provisions be simplified, harmonised and strengthened.}

9.9. The NIHRC investigation report ‘Racist Hate Crime: Human rights and the criminal justice system in Northern Ireland’, noted that,

\begin{quote}
the Race Relations (NI) Order 1997 prohibits discrimination and harassment principally in the area of employment, but also includes, inter alia, education and the provision of goods, facilities and services... Both public and private sector organisations must adhere to the Race Relations Order. By contrast, the NI Act 1998, Section 76 only prohibits discrimination by public authorities and is limited to the grounds of religious belief or political opinion. In certain instances, individuals from minority ethnic communities would however be considered religious minorities and could therefore be captured by this provision. Furthermore, the NI Act 1998, Section 76, is wider in its application than the Race Relations Order, since it is not restricted to certain circumstances such as the provision of goods, facilities and services.\textsuperscript{110}
\end{quote}

9.10. Further, Section 76(1) of the NI Act 1998 includes a prohibition on public authorities when carrying out their functions to ‘aid or incite another person to discriminate’.

9.11. \textbf{The NIHRC further recommends to the OFMdFM that the final RES includes a commitment to examine the NI Act, Section 76 along with the Race Relations (NI) Order 1997 with a view to introducing legislative measures to fulfil the obligation to prohibit racial discrimination by any person, group or organisation.}

---

\textsuperscript{108} NI Assembly debate (26 May 2009); Draft RES, p 38.
\textsuperscript{109} Draft RES, p 38.
\textsuperscript{110} ‘Racist Hate Crime: Human rights and the criminal justice system in Northern Ireland’ (September 2013), p 39-40.
10. **Promoting understanding, tolerance, respect and cooperation**

10.1. The CERD, Article 7 requires the NI Executive to adopt,

immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups.\(^{111}\)

10.2. Similarly, the FCNM, Article 6, requires the NI Executive to take,

effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons’ ethnic, cultural, linguistic or religious identity.\(^{112}\)

10.3. The Advisory Committee on the FCNM has commented that regional strategies which focus on mutual accommodation rather than mutual respect and understanding would raise ‘serious concerns’.\(^{113}\) The Advisory Committee has stated that in NI ‘the concept of “good relations” [has] apparently [developed] to substitute the concept of intercultural dialogue and integration of society.’\(^{114}\)

10.4. The international human rights standards recognise the role of intercultural dialogue in strengthening democratic society, including in post conflict situations.\(^{115}\) The CoE Faro Declaration encourages:

intercultural dialogue on the basis of universal human rights, as a means of promoting awareness, understanding, reconciliation, tolerance and respect for the other, of preventing conflicts and of ensuring an integrated and cohesive society.\(^{116}\)

10.5. The UN Declaration on a Culture of Peace recognises peace as being:

a positive, dynamic participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation.\(^{117}\)

---

\(^{111}\) See also, ICESCR Committee, General Comment 20: non-discrimination in economic, social and cultural rights (2 July 2009), para 8.

\(^{112}\) See also, UNESCO Declaration of Principles on Tolerance, Article 1.3 states, ‘Tolerance … involves the rejection of dogmatism and absolutism and affirms the standards set out in international human rights instruments’.

\(^{113}\) Advisory Committee on the FCNM, ‘Third Opinion on the UK’ (adopted 30 June 2011), para 125.

\(^{114}\) Ibid., para 126.


\(^{116}\) Faro Declaration on the council of Europe’s Strategy for Developing Intercultural Dialogue (2005) DGIV/DC-FARO.

\(^{117}\) UN Declaration on a Culture of Peace, preamble.
10.6. Creating a culture of peace, therefore, requires:

[a]dherence to the principles of freedom, justice, democracy, tolerance, solidarity, cooperation, pluralism, cultural diversity, dialogue and understanding at all levels of society and among nations.\(^{118}\)

10.7. The NIHRC notes that Section 75(2) of the 1998 Act gives partial domestic force to this duty. Section 75(2) requires designated public authorities 'without prejudice' to their obligations under Section 75(1), to 'have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.'\(^{119}\) The Race Relations (NI) Order 1997, places a slightly stronger duty on local councils when it requires them to have 'due regard to the need to promote ... good relations between persons of different racial groups' when carrying out their functions.\(^{120}\)

10.8. The NIHRC recommends to the OFMdFM that the wording of the legal requirement to 'have regard to the desirability' to promote good relations is not fully in accordance with the obligation to take immediate and effective measures. The NIHRC therefore recommends that the final RES includes a commitment to strengthen the domestic legislation.

10.9. In addition, the FCNM, Article 22 has made clear that,

[n]othing in the [FCNM] shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any Contracting Party or under any other agreement to which it is a Party.

10.10. Similarly, the UNESCO Declaration of Principles on Tolerance, Article 1.2 states that 'in no circumstances can [the concept of tolerance] be used to justify infringements of [the universal human rights and fundamental freedoms]'.

10.11. In this regard the NIHRC emphasises the nature of the prohibition on discrimination as a fundamental human right in both the UN and CoE treaties ratified by the UK. For example, the ECHR has stated that,

it is as though [the Article 14 prohibition on discrimination] formed an integral part of each of the articles laying down rights and freedoms. No distinctions should be made in this respect according to the nature of these rights and freedoms and of their correlative obligations.\(^{121}\)

\(^{118}\) Ibid., Article 1.
\(^{119}\) NI Act, 1998, Section 75.
\(^{120}\) Race Relations (NI) Order, Article 67.
\(^{121}\) Case "relating to certain aspects of the laws on the use of languages in education in Belgium" (Merits), ECHR, Application no 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64 (23 July 1968), 'Interpretation adopted by the Court' para 9. At the UN level, see ICCPR, Article 26.
10.12. The draft RES notes the ECNI view that ‘we must ensure that Government is equally challenged in terms of its duties in promoting good relations’\(^{122}\) and states that, ‘[w]e believe the best way to do this is through an Equality and Good Relations Commission that will act as an independent, statutorily-based organisation that provides policy advice and a challenge to Government’.\(^{123}\)

10.13. The NIHRC welcomes the acknowledgement of the importance of the ‘good relations’ duty but recommends to the OFMdFM that the prohibition on discrimination should be understood as a fundamental human right which coexists alongside, but must not be limited by the duty to promote mutual respect and understanding.

10.14. The NIHRC also recommends to the OFMdFM that the proposed Equality and Good Relations Commission must be able to effectively carry out its functions. Any structural changes must be made with the express objective of increasing the protection and promotion of equality, non-discrimination, tolerance, mutual respect and understanding. There should be no retrogression from protections afforded by the existing structural arrangements of the ECNI and Community Relations Council.

11. Education

11.1. The draft RES recognises that the importance of access to education for ethnic minorities\(^{124}\) but does not recognise the fundamental role played by education of the population at large, and especially children in preventing racism.

11.2. In addition to the CERD, Article 7 requirement that ‘immediate and effective’ measures be taken to tackle prejudices in the field of education, the Convention on the Rights of the Child (‘CRC’), Article 29(1) obliges the NI Executive to educate the child in a manner that is directed towards,

(c) [t]he development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
(d) [t]he preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of

\(^{122}\) Draft RES, p 53.
\(^{123}\) Ibid., p 53-4.
\(^{124}\) Ibid., p 17, 19, 28, 61.
sexes, and friendship among all peoples, ethnic, national and
religious groups and persons of indigenous origin.125

11.3. The CRC Committee makes an explicit link between the objectives of
Article 29(1) and the struggle against racism in General Comment 1, noting that
education should be ‘one of the highest priorities’ in all such campaigns. 126
According to the Committee,

[r]acism and related phenomena thrive where there is ignorance,
unfounded fears of racial, ethnic, religious, cultural and linguistic or other
forms of difference, the exploitation of prejudices, or the teaching or
dissemination of distorted values. A reliable and enduring antidote to all of
these failings is the provision of education which promotes an
understanding and appreciation of the values reflected in article 29(1).127

11.4. The Committee further directs that the substance of such education
should focus on historical racism as manifested within particular communities,
and focusing upon the child’s own community to ensure that racism is not
perceived as something engaged in only by ‘others’.128

11.5. Similarly, the UNESCO Declaration of Principles on Tolerance, Article 4,
identifies that education is the ‘most effective means of preventing intolerance’
and provides that it should be seen as an ‘urgent imperative’ which aims at,
countering influences that lead to fear and exclusion of others, and should
help young people to develop capacities for independent judgment, critical
thinking and ethnical reasoning.129

11.6. Finally, concerning the population at large, the International Covenant on
Economic, Social and Cultural Rights (‘ICESCR’), Article 13 requires that
education is,
directed to the full development of the human personality and the sense
of its dignity, and shall strengthen the respect for human rights and
fundamental freedoms [and] that education shall enable all persons to
participate effectively in a free society, promote understanding, tolerance
and friendship among all nations and all racial, ethnic or religious groups,
and further the activities of the United Nations for the maintenance of
peace.

125 See also, ECRI General Policy Recommendation 1: on combating racism, xenophobia, anti-Semitism and
intolerance (4 October 1996), p 5.
126 CRC Committee, General Comment 1: The aims of education (17 April 2001), para 11. See also, DDPA
(Declaration), para 97.
127 Ibid.; See also, FCNM, Article 12(1), which states: ‘The Parties shall, where appropriate, take measures in
the fields of education and research to foster knowledge of the culture, history, language, language and
religion of their national minorities and of the majority’; See also, DDPA (Declaration), para 80.
128 Ibid.
129 UNESCO Declaration of Principles on Tolerance, Article 4.3.
11.7. The NIHRC recommends to the OFMdFM that the final RES recognises as a matter of priority the need for human rights based education as a measure to assist the population to strengthen the respect for human rights and freedoms and tackle any ignorance and lack of understanding that leads to unfounded fears of racial or other forms of difference.

11.8. The ICESCR Committee regards the protection of cultural diversity as an ‘ethical imperative, inseparable from respect for human dignity’.130 It is regarded as a source of societal enrichment and the ECRI calls upon Governments to increase awareness of this fact.131 In this regard the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Article 10, requires governments to,

encourage and promote understanding of the importance of the protection and promotion of the diversity of cultural expressions, inter alia, through educational and greater public awareness programmes.132

11.9. The NIHRC welcomes the acknowledgement within the draft RES that states, ‘we are aware of the positive economic contribution made by migrants - including refugees - in Northern Ireland’.133

11.10. The NIHRC further recommends to the OFMdFM that the final RES expressly acknowledges cultural diversity generally as a source of societal enrichment in NI and commits to the promotion of programmes that will increase awareness of this fact.

12. Culture

12.1. The draft RES asks the question as to whether there is a need for an additional shared aim concerning the right to maintain one’s cultural identity and suggests that ‘there are cultural practices that should not be encouraged e.g., female genital mutilation’.134

12.2. Both the ICESCR and the International Covenant on Civil and Political Rights (‘ICCPR’) accord to minorities a right to culture. ICESCR, Article 15(1)(a) requires Governments to respect, protect and fulfil the ‘right of everyone to take part in cultural life’. This right includes the right of minorities and persons belonging to minorities to take part in the cultural life of society, and also to

---

130 ICESCR Committee, General Comment 21: right of everyone to take part in cultural life (21 December 2009), para 40.
131 ECRI General Policy Recommendation 1, para 1. See also, HRC General Comment 23: on art. 27 (26 April 1994), para 9; ECRI General Policy Recommendation 14: on combating racism and racial discrimination in employment (22 June 2012), Section 5, para (d).
132 See also, DDPA (Declaration) para 97.
133 Draft RES, p 43.
134 Ibid., p 25.
conserve, promote and develop their own culture. Consequently, constructive integration programmes should occur with a view to preserving the distinctive character of the minority and recognising their ‘right to their cultural diversity, traditions, customs, religion, forms of education, languages, communication media and other manifestations of their cultural identity and membership’. Subject to the principle of progressive realisation, the obligation to ‘fulfil’ requires Government to take a wide range of positive measures, including financial measures, which would contribute to the realisation of this right. The ICESCR Committee’s General Comment 21 outlines a number of possible actions in this regard, for example, facilitating access to a rich and diversified range of cultural expressions, such as establishing and supporting public institutions and the necessary cultural infrastructure and taking appropriate measures or programmes to support minorities or other communities, including migrant communities, in their efforts to preserve their culture.

12.3. The ICCPR, Article 27 explicitly focuses on members of ethnic minority communities and stipulates that,

> [i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

12.4. The Human Rights Committee’s General Comment 23 identifies the scope of Article 27 as covering migrant workers and visitors with no requirement of citizenship, nationality or permanent residency; secondly it recognises that culture manifests itself in different forms; and, thirdly it emphasises that enjoyment of cultural rights ‘may require positive legal measures of protection and measures to ensure the effective participation of members of minorities in decisions which affect them’.

12.5. Further, the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions Articles 7 and 8 requires the NI Executive to endeavour to promote and protect, respectively, cultural expressions. According to the UNESCO Convention, Article 4, ‘cultural expressions’ are those expressions that result from the creativity of individuals, groups and societies, and that have cultural content.

---

135 ICESCR Committee, General Comment 21: right of everyone to take part in cultural life (21 December 2009), para 32.
136 Ibid., para 32 and 33.
137 Ibid., para 52.
138 Ibid., para 52.
139 HRC General Comment 23: on art. 27 (26 April 1994), para 5.1.
140 Ibid., para 7.
141 Ibid., para 7.
‘cultural content’ refers to the symbolic meaning, artistic dimension and cultural values that originate from or express cultural identities.

12.6. Regarding OFMdFM’s concern that certain cultural practices should not be encouraged, the NIHRC notes that: none of the rights protected under Article 27 may be exercised in a manner or to an extent inconsistent with other protected rights; that Article 15(1)(a) may be subject to necessary legal limitations for the purpose of promoting the general welfare in a democratic society; and that none of the rights contained within the UNESCO Convention shall be interpreted as modifying rights and obligations of the Parties under any other treaty to which they are a Party.\(^\text{142}\)

12.7. The NIHRC notes and welcomes that the fourth ‘shared aim’ of the draft RES is to ‘increase participation, representation and a sense of "belonging" of people from minority ethnic backgrounds in all aspects of public, political, economic, social and cultural life.’\(^\text{143}\)

12.8. **The NIHRC recommends to the OFMdFM that the final RES should recognise the right to culture.** It should expressly recognise that this includes the right of individuals from ethnic minority communities to participate in the cultural life of society and to enjoy their own culture. Such recognition could be expressed as an element of one of the ‘shared aims’ or separately.

13. **Sport**

13.1. The ECRI recognises the potential for sport to be a ‘powerful tool for promoting social cohesion and for transmitting important values, such as fair play, mutual respect and tolerance’, but that it can also be the environment in which the perversion of such values thrives.\(^\text{144}\) In the later context, the CERD Committee’s most recent general recommendation notes the manifestation of non-verbal expressions of racist hate speech through the use of images, symbols and behaviours in sporting events.\(^\text{145}\)

13.2. The ECRI’s General Policy Recommendation 12 provides a comprehensive list of suggested actions to combat racism in and through sport and frames these under three broad headings: (1) ensure equal opportunities in access to sport for all; (2) combat racism and racial discrimination in sport; and, (3) build a coalition against racism in sport. The Recommendation directs Governments to work cooperatively with the private sphere, such as by inviting sports

---

\(^{142}\) Ibid., para 8; ICESCR, Article 4; and UNESCO Convention, Article 20.

\(^{143}\) Draft RES, p 23.

\(^{144}\) ECRI, General Policy Recommendation 12: on combating racism and racial discrimination in the field of sport (19 March 2009), Explanatory Memorandum, para 3.

\(^{145}\) CERD Committee, General Recommendation 35: combating racist hate speech (26 September 2013), para 7.
federations and sports clubs to adopt diversity policies,\textsuperscript{146} and encouraging supporters’ organisations to adopt supporters’ charters, containing anti-racism clauses.\textsuperscript{147} In this regard, the OHCHR guidance notes that given the prohibition on discrimination applies both to public and private spheres, a comprehensive NAPAR should also be applicable to both.\textsuperscript{148}

13.3. The CERD Committee and the DDPA similarly encourage Governments to work with sporting associations to eradicate racism. For example, the DDPA urges Governments,

in cooperation with ... international and regional sports federations, to intensify the fight against racism in sport by, among other things, educating the youth of the world through sport practised without discrimination of any kind and in the Olympic spirit, which requires human understanding, tolerance, fair play and solidarity.\textsuperscript{149}

13.4. The draft RES does not reference sport outside of the Racial Equality indicators context. The NIHRC therefore recommends to the OFMdFM that the final RES acknowledges the role of sport as a ‘powerful tool’ to combat racism and racial discrimination and includes actions that accord with ECRI General Policy Recommendation 12.

14. Hate crime and hate speech

14.1. The second ‘shared aim’ of the draft RES is,

[t]o combat racism, and race hate crime and provide effective protection and redress against manifestations of racism and racist crime and to promote a victim-centred approach.

14.2. In September 2014, the NIHRC published the investigation report ‘Racist Hate Crime: human rights and the criminal justice system in Northern Ireland’ in which it presented an analysis of the international human rights laws and standards, within the framework of the four duties upon the NI Executive, namely that of prevention, prohibition, prosecution, and protection.\textsuperscript{150} These do not represent a hierarchy but should be understood to be overlapping, mutually dependent and reinforcing.

\textsuperscript{146} ECRI, General Policy Recommendation 12: on combating racism and racial discrimination in the field of sport (19 March 2009), para 4(a).
\textsuperscript{147} Ibid., para 13(a).
\textsuperscript{148} OHCHR guidance, p 10. See also, DDPA (Programme of Action), para 218; Durban Review Outcome document, para 128.
\textsuperscript{149} DDPA (Programme of Action), para 218. See also, CERD Committee, General Recommendation 35: combating racist hate speech (26 September 2013), para 43 and Durban Review Outcome document, para 128.
14.3. The duty to prevent is based upon the obligation on the NI Executive to take action to reduce, and ultimately eradicate the social conditions within which racism may exist and racist hate crimes are perpetuated.\textsuperscript{151} The duty to prohibit requires that domestic legislation is introduced that criminalises hate speech and racist violence, and proscribes racial discrimination.\textsuperscript{152} The duty to prosecute is based on the obligation upon the NI Executive to guarantee to victims an effective remedy, such as through an effective investigation that enables prosecution.\textsuperscript{153} Finally, the duty to protect requires the NI Executive to ensure that victims of racist hate crimes are safeguarded against repeat and secondary victimisation.\textsuperscript{154}

14.4. The recommendations within the investigation report had an extensive evidence base that included 139 interviews and 120 criminal justice agency files. In total, the report makes 29 recommendations.

14.5. The NIHRC recommends that the OFMdFM acknowledges and commits to implement the recommendations addressed specifically to the NI Executive within the NIHRC ‘Racist Hate Crime’ report.

14.6 The NIHRC further recommends to the OFMdFM that the final RES:

- adopts a holistic approach to tackling racist hate crime based on the duties to prevent, prohibit, prosecute and protect; and
- includes the specific targeted measures to address racist hate crimes as recommended by the NIHRC ‘Racist Hate Crime’ report.

15. Multiple discrimination and disadvantage

\textsuperscript{151} See, for example, ICCPR, Article 2; CERD, Articles 2(2) and 7; CRC, Article 29; UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Article 10; FCNM, Article 6; Fribourg Declaration on Cultural Rights, Articles 8 and 11; ECRi General Policy Recommendation 4: On national surveys on the experience and perception of discrimination and racism from the point of view of potential victims (6 March 1998); ECRi General Policy Recommendation 7: National legislation to combat racism and racial discrimination (13 December 2002); ECRi General Policy Recommendation 11: on combating racism and racial discrimination in policing (29 June 2007); OSCE Recommendations on Policing in Multi-Ethnic Societies; CERD Committee, General Recommendation 24: Reporting of persons belonging to different races, national/ethnic groups, or indigenous peoples (27 August 1999); and, DDPA (Programme of Action), para 92.

\textsuperscript{152} See, for example, ICCPR, Articles 26 and 20(2); CERD, Articles 2(d) and 4(a); CERD Committee, General Recommendation 15: Organised violence based on ethnic origin (23 March 1993), para 2; EU Council Framework Decision 2008/913/JHA, Articles 3 and 4; ECRi General Policy Recommendation 7: National legislation to combat racism and racial discrimination (13 December 2002); ECRi General Policy Recommendation 1: on combating racism, xenophobia, anti-Semitism and intolerance (4 October 1996); DDPA (Programme of Action), para 84.

\textsuperscript{153} See, for example, ECHR, Articles 2, 3, 8 and 14; CERD, Articles 2(1)(d) and 6; CERD Committee, General Recommendation 31: Prevention of racial discrimination in the administration and functioning of the criminal justice system (3 October 2005); ECRi General Policy Recommendation 1: on combating racism, xenophobia, anti-Semitism and intolerance (4 October 1996); EU Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crime, Article 10; and, UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (29 November 1985).

\textsuperscript{154} See for example, ECHR, Articles 2 and 3; UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (29 November 1985), paras 18-19; EU Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crime, Preamble para 62, Articles 3, 4, 6, 7, 8, 9, 18, 19, 20 and 22; CERD Committee, General Recommendation 31: Prevention of racial discrimination in the administration and functioning of the criminal justice system (3 October 2005); CoE Recommendation (2006)8 on assistance to crime victims (14 June 2006); and CoE Recommendation (2005)9 on the protection of witnesses and collaborators of justice (20 April 2005).
15.1. The NIHRC notes and welcomes that the draft RES recognises ‘that people’s identities are complex and that an individual’s identity may be made up of several factors such as gender, age, disability, ethnicity and sexual orientation’ and that there is a ‘need to address issues of multiple identity and multiple discrimination’.\textsuperscript{155}

15.2. International human rights standards identify that multiple discrimination is a common occurrence and an issue of concern. For example, the preamble to the Convention on the Rights of Persons with Disabilities (‘CRPD’) notes the State parties’,

\begin{center}
concern[] about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status.
\end{center}

15.3. Similarly, the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, Principle 2 recognises that,

\begin{center}
discrimination based on sexual orientation or gender identity may be, and commonly is, compounded by discrimination on other grounds including gender, race, age, religion, disability, health and economic status.
\end{center}

15.4. The NIHRC notes in particular, the plethora of comment within the international human rights standards concerning multiple discriminations faced by women and girls. The DDPA states that national policies and action plans should include gender based manifestations of racial discrimination.\textsuperscript{156} According to the CERD Committee ‘racial discrimination will often escape detection if there is no explicit recognition or acknowledgement of the different life experiences of women and men, in areas of both public and private life’.\textsuperscript{157}

15.5. In July 2013, the Committee on the Elimination of all forms of Discrimination against Women (‘CEDAW Committee’) expressed concerns on to the situation of ethnic minority women within the UK in five areas. The Committee called for:

\begin{footnotes}
\item[155] Draft RES, p 29.
\item[156] DDPA (Programme of Action), para 66.
\end{footnotes}
increased efforts to protect black and ethnic minority women, against all forms of violence, including domestic violence, such as continuing public awareness campaigns;\textsuperscript{158} 
continued specific and targeted measures to improve the representation of black and ethnic minority women in Parliament and the judiciary;\textsuperscript{159} 
the introduction of measures aimed at tackling the root causes of the over-representation of black and ethnic minority women in prison;\textsuperscript{160} 
targeted measures to facilitate the access of black and ethnic minority women to the labour market in order to alleviate their concentration in low-paid jobs;\textsuperscript{161} and, 
increased efforts to eliminate discrimination against ethnic minority women and improve access to social services, including health care, education and employment;\textsuperscript{162}

15.6. Furthermore, the CEDAW Committee devotes General Recommendation 26 to women migrant workers in low-paid jobs. According to the Recommendation, women migrant workers ‘often experience intersecting forms of discrimination, suffering not only sex and gender-based discrimination, but also xenophobia and racism’.\textsuperscript{163} The discrimination can manifest through, for example, unfavourable employment terms,\textsuperscript{164} greater risk of violence\textsuperscript{165} and health inequalities, especially concerning pregnancy.\textsuperscript{166} These vulnerabilities are exacerbated by an undocumented status.\textsuperscript{167}

15.7 Finally, the CEDAW Committee has expressed its ‘particular[] concern’ that the legislative framework in Northern Ireland does not provide for multiple discrimination.\textsuperscript{168}

15.8. The NIHRC recommends to the OFMdFM that the final RES:

- includes a commitment to amend domestic legislation to ensure it recognises multiple discrimination; and,
- in particular, outlines how it intends to address the recommendations of the CEDAW Committee.

16. Travellers and Roma

\textsuperscript{155} UN Doc. CEDAW/C/GBR/CO/7, CEDAW Committee, ‘Concluding observations on the UK’ (30 July 2013), para 35.
\textsuperscript{156} Ibid., para 43.
\textsuperscript{157} Ibid., para 55.
\textsuperscript{158} Ibid., para 59.
\textsuperscript{159} Ibid., para 61.
\textsuperscript{160} CEDAW Committee, General Recommendation 26; on women migrant workers (5 December 2008), para 14.
\textsuperscript{161} Ibid., para 15.
\textsuperscript{162} Ibid., para 20.
\textsuperscript{163} Ibid., para 17 and 18.
\textsuperscript{164} Ibid., para 22.
\textsuperscript{165} UN Doc. CEDAW/C/GBR/CO/7, CEDAW Committee, ‘Concluding observations on the UK’ (30 July 2013), para 18. See also ECNI, ‘Strengthening protection against racial discrimination: Proposals for law reform’ (August 2014), p 33-38.
16.1. The NIHRC notes the extensive comment around Roma and Travellers under the international human rights instruments\textsuperscript{169} and in particular that at the international level the term Roma can encompass Traveller communities. For example, the CoE uses the term ‘Roma’ to mean ‘Roma, Sinti, Kale and related groups in Europe, including Travellers and the Eastern groups (Dom and Lom), and covers the wide diversity of the groups concerned, including persons who identify themselves as “Gypsies”’.\textsuperscript{170}

16.2. In this regard, the NIHRC is mindful that some members of ethnic minority communities have stated dissatisfaction that Travellers in NI may be encompassed generally under the term ‘Roma’.\textsuperscript{171}

16.3. The draft RES recognises there are particular needs of ‘Irish Travellers’ and ‘Roma’ communities.\textsuperscript{172} The NIHRC recommends to the OFMdFM that the final RES must be cognisant of the NI Executive’s obligations under the established international human rights framework on Roma when directing actions applicable to Roma and Travellers in NI. This should not negate an approach that is also sensitive to the particularities of Travellers in NI.

17. Immigration

17.1 The NIHRC notes and welcomes that the NI Executive commits within chapter seven of the draft RES to ‘continuing to work towards an immigration policy that recognises and takes account of our different needs and concerns here’.\textsuperscript{173}

17.2. The ECHR, Article 3 obliges the NI Executive to ensure that ‘no one shall be subjected to … inhuman or degrading treatment or punishment’. In the case of Pretty v UK, the ECtHR stated that ‘treatment is inhuman or degrading if, to a seriously detrimental extent, it denies the most basic needs of any human being’.\textsuperscript{174}

17.3. The NIHRC has previously raised concerns about access to publicly funded medical care for persons with insecure immigration status.\textsuperscript{175} The NIHRC therefore welcomes the DHSSPS intention to amend the domestic legislation to ensure that ‘anybody who makes an application for asylum’ can access free


\textsuperscript{171} APG on ethnic minorities, Senate Chamber, Stormont (16 September 2014).

\textsuperscript{172} Draft RES, p 25.

\textsuperscript{173} Ibid., p 44.

\textsuperscript{174} (2002) 35 EHRR 1, para 52.

\textsuperscript{175} See, NIHRC research paper, ‘Access Denied - Or Paying When you Shouldn’t, Access to publicly funded medical care: residency, visitor and non-British/Irish citizens’ (January 2011).
primary and secondary health care and that this includes failed asylum seekers.\textsuperscript{176}

17.4. Further, in 2012, the OFMdFM made available a pilot crisis fund to assist migrants, asylum seekers and refugees living in NI. In early 2014, there were reports that OFMdFM intended to formally introduce the fund with an OFMdFM spokesperson stating,

\begin{quote}

in line with recommendations, from an evaluation of the Minority Ethnic Development Fund, agreement has been reached in principle for the introduction of a 'crisis fund’. The department is currently considering operational details of the fund including eligibility and governance arrangements. It is hoped that the fund will be up and running by the start of the new financial year (2014-15).\textsuperscript{177}
\end{quote}

At the time of writing however, a crisis fund for migrants does not exist.

17.5. The NIHRC welcomes the chapter on immigration and recommends to the OFMdFM that in the final RES this section includes a specific commitment to introduce a ‘crisis fund’ to assist migrants facing destitution.

18. Positive action

18.1 In addition to the permanent positive obligations upon Governments that are inherent to the human rights (often expressed in the legal obligations to 'fulfil' or 'ensure'), the CERD, Article 2(2) further provides that the NI Executive shall, where the circumstances warrant, adopt temporary and proportionate 'special and concrete measures' for the purpose of guaranteeing to disadvantaged groups the full and equal enjoyment of human rights and fundamental freedoms.\textsuperscript{178} Such measures should be designed on the basis of need; the appraisals of need should be made on the basis of 'accurate data, disaggregated by race, colour, descent and ethnic or national origin and incorporating a gender perspective, on the socio-economic and cultural status and conditions of the various groups in the population'.\textsuperscript{179} The CERD, Article 1(4) makes clear that actions of this kind do not constitute discrimination.

\begin{flushleft}
\textsuperscript{176} See, NI Assembly (Hansard), Committee for Health, Social Services and Public Safety (17 September 2014), (DHSSPS witnesses).
\textsuperscript{178} See also, CERD, Article 1(4) and CERD Committee, General recommendation 32: the meaning and scope of special measures in the CERD (24 September 2009), para 11.
\textsuperscript{179} CERD Committee, General recommendation 32: the meaning and scope of special measures in the CERD (24 September 2009), para 17.
\end{flushleft}
18.2. The ECRI General Policy Recommendation 14 calls on Governments to ‘make full use of the provision for positive action’ in the field of employment and suggests within the Explanatory Memorandum that actions could include:

- the development of programmes that build employability skills such as apprenticeships and traineeships for vulnerable groups;
- the provision of adult education in areas where disadvantaged groups live including vocational training and qualifications for higher skilled sectors;
- targeted scholarships and research fellowships for higher education;
- free access to language and literacy training;
- ensuring equal access to new technologies, or training programmes (with provision for child care) targeted at women from vulnerable groups.\textsuperscript{180}

18.3. The NIHRC notes that draft RES uses the corresponding concept of ‘positive action’ under the EU Racial Equality Directive, Article 5\textsuperscript{181} and recognises that the NI Executive will need to take such action in certain circumstances to ‘prevent or compensate for disadvantage suffered by a group of persons of a particular racial or ethnic origin for social or economic reasons or for reasons to do with past or present discrimination’.\textsuperscript{182} The draft RES further notes that ‘positive action is not the same as positive discrimination’.\textsuperscript{183}

18.4 The NIHRC notes that the concept of ‘special measures’ under international human rights law is broader than the permissible positive actions under domestic law.\textsuperscript{184} The NIHRC is aware of the ECNI recommendation that the scope of positive action under domestic law should be expanded.\textsuperscript{185} The NIHRC recommends to the OFMdFM that the final RES includes a commitment to introduce this legislative change and in doing so, the NI Executive should also take cognisance of the international human rights standards on special measures.

October 2014

\textsuperscript{180} ECRI General Policy Recommendation 14: on combating racism and racial discrimination in employment (22 June 2012), Explanatory Memorandum, paragraph 7.
\textsuperscript{182} Draft RES, p 23 and 66.
\textsuperscript{183} Ibid., p 66.
\textsuperscript{185} Ibid.