

Northern Ireland

Northern Ireland Human Rights Commission

Accreditation status and SCA recommendations

The Northern Ireland NHRI was [reaccredited](#) with A status in May 2016. First, the SCA noted the NHRI's concerns on the limitation of its mandate with regards to its monitoring and investigative functions. Second, the SCA encouraged the NHRI to continue advocating for the formalization of an open, broad and transparent selection and appointment process, the appointment of full-time members with an appropriate term of office, as well as the explicit power to table and promote action on reports directly in the legislature.

The NHRI has been [placed in the agenda](#) for reaccreditation in SCA Session of October 2021.

Impact of 2020 rule of law reporting

Follow-up initiatives by the Institution

The Northern Ireland Human Rights Commission (NIHRC) has, since the previous rule of law report, provided further advice to the Secretary of State for Northern Ireland (NI) in respect of the operation of non-jury trials in NI and the prospect of the continuation of temporary legislation, which has now been extended on six occasions.[1] There have been further incidents of threats against journalists in the previous year, with several instances of threats against investigative journalists working for the BBC and Sunday World newspaper, and investigating organised crime. In February 2021, the NIHRC made a public statement condemning the threats [2] and has also written to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan. The NIHRC continues to monitor COVID-19 restrictions.

References

- [1] NIHRC, Letter to the Secretary of State for NI in response to the consultation on Non-Jury Trials: Justice and Security (NI) Act 2007
- [2] NIHRC, Human Rights Commission condemns threats to journalists (17 February 2021) available at: <https://www.nihrc.org/news/detail/human-rights-commission-condemns-threats-to-journalists>

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

There have been no changes to the NIHRC's grounding legislation since the 2020 report. However, as a consequence of the EU (Withdrawal Agreement) Act 2020[1], the UK Government committed to ensuring that particular rights in Northern Ireland (under the Belfast (Good Friday) Agreement 1998)[2] will continue to be upheld following Brexit. In accordance with this, a NIHRC's additional mandate has come into force on 1 January 2021: together with the Equality Commission for Northern Ireland, the NIHRC will act as the 'Dedicated Mechanism' under the Ireland/Northern Ireland Protocol of the EU and UK Government Withdrawal Agreement to ensure the compliance of the UK Government with their commitments. In particular the new powers include:

- Monitoring how the commitment is implemented;
- Reporting on its implementation to the Secretary of State for Northern Ireland and The Executive Office;
- Advising the Secretary of State and the Executive Committee of the Northern Ireland Assembly of legislative and other measures that must be taken to implement the commitment;
- Advising the Northern Ireland Assembly (or a committee of the Assembly) whether a Bill is compatible with the commitment;
- Promoting understanding and awareness of how important the commitment is;
- Powers to bring, or intervene in, legal proceedings in respect of an alleged breach (or potential future breach) of the commitment; and
- Powers to assist individuals in relevant legal proceedings.

References

- [1] EU (Withdrawal Agreement) Act 2020. Available at: <https://www.legislation.gov.uk/ukpga/2020/1/contents/enacted>
- [2] Belfast (Good Friday) Agreement 1998. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf

Enabling space

In respect of the legislative process, the NIHRC receives a copy of every Bill that is introduced to the NI Assembly to enable consideration of whether advice on human rights compliance under our statutory functions, is required. The NIHRC often receives requests for advice on proposed law and policy directly from Ministers, departmental officials and standing Committees of the NI Assembly. Most recently issues that the NIHRC has responded to include: restrictive practices in schools, biometric data retention and the implications of the proposed UK legislation on data extraction. The NI Assembly can also refer a matter to the NIHRC for advice, which most recently occurred in February 2021 in respect of proposed changes to abortion law. The NIHRC engages with all government departments through regular meetings, membership of reference/advisory groups and through formal written advice and responses to public consultations. The NIHRC regularly provides oral and written briefings to Committees, both at the NI Assembly, UK and Irish Parliaments, on a range of issues such as a Bill of Rights for Northern Ireland, citizenship, and the ongoing review of human rights legislation in the UK.

The NIHRC engages with all relevant statutory bodies and civil society organisations working on the promotion and protection of human rights. This is done through a series of regular meetings, collaborative working and specific engagement on issues of joint concern. This includes a relationship with the Equality Commission for NI, the domestic equality authority, with which the NIHRC shares the UNCRPD mandate and operates as the Dedicated Mechanism in respect of the non-diminution of rights post Brexit. The NIHRC also cooperates closely with the other UK NHRIs and the Irish Human Rights and Equality Commission.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

Due to the UK COVID-19 restrictions, the NIHRC office remains closed and all staff are working from home. This has meant that all events, visits and meetings have moved online, where possible. Engagement with government departments, the NI Assembly and UK Westminster Parliament continues, albeit virtually. The NIHRC has sought to ensure continuing access for individuals seeking advice on human rights matters.

The NIHRC has continued its negotiations with the UK Government in respect of enhancing its core budget to be able to carry out its statutory functions. Indeed the NIHRC has faced regular budget cuts over the past decade. These negotiations led to an increased budget of £1,689,885 for the year 2021/22. The NIHRC has also received a budget of £838,000 for its role as part of the Dedicated Mechanism, under the EU (Withdrawal Agreement) Act 2020. However, despite this,

the NIHRC has since been informed that it may face further budget cuts in light of the UK government spending review.

The NIHRC will be engaging in the reaccreditation process with the SCA in 2021, with a view to retaining its A status.

Human rights defenders and civil society space

In May and June 2020, there were a series of anti-racism protests in NI in response to the global 'Black Lives Matter' movement.[1] At that time, the existing iteration of the Health Protection (Coronavirus, Restrictions) (NI) Regulations, which are aimed at preventing the spread of COVID-19, prohibited gatherings in public spaces of more than two people with limited exceptions. The regulations also provided the Police Service NI with the powers to restrict freedom of movement and protests for this purpose. The Police Service NI issued a number of fines to 'Black Lives Matter' protestors under these regulations.

However, subsequent protests by the NI Cenotaph Protection Group reportedly took place without fines being issued. The Police Ombudsman NI investigated the use of police powers in relation to large public gatherings during this period, reporting in December 2020. It found that there was no evidence of human rights considerations in the decision making process.[2] In November 2020, the Policing Board NI, in its review of the Police Service NI's response to COVID-19, acknowledged that there was an "apparent inconsistency in approach to the enforcement of all large gatherings of people during April, May and June 2020".[3]

The Policing Board NI recommended that the Police Service NI should report to the Board on any lessons learnt; hold discussions with organisers "to ensure peaceful protests are facilitated and that both sides understand the positive obligations of the police and the key role of the organisers"; create an Independent Advisory Group on protests; and hold a seminar with key stakeholders, including the NIHRC, to assist "with ensuring a consistent approach to all protests".

Civil society raised concerns over both the inconsistency in police approach to the protests, and an excessive use of police powers in some cases.

References

- [1] 'Coronavirus: Anti-racism rallies in Belfast and Londonderry', BBC News, 6 June 2020.
- [2] Police Ombudsman NI, 'An Investigation into Police Policy and Practice of Protests in NI' (22 December 2020) at 9.4. Available at: <https://www.policeombudsman.org/PONI/files/85/858a4b0b-9b99-4921-b947-5fae248ba683.pdf>
- [3] Policing Board NI, 'Report on the Thematic Review of the Policing Response to COVID-19' (PBNI, 2020), at 56

Checks and balances

The NIHRC initiated judicial review proceedings in 2020 against the UK Government in respect of election law in NI, which required the publication of the home address for candidates standing in local elections. The NIHRC argued that this was in breach of Article 8 ECHR, putting victims of domestic violence, or those concerned about their safety, at risk by requiring the publication of their home address. The Secretary of State for NI introduced The Local Elections (NI)(Amendment) Order 2020, which came into force in July 2020, removing the requirement to publish a home address.[1]

The NIHRC continues to advise in respect of the proposed arrangements for dealing with the legacy of the past in NI, including mechanisms for investigating deaths during the conflict. In March 2020, the UK Government announced a new approach to addressing the legacy of the past - indicating a significant roll back on previous commitments. The NIHRC has written to the Secretary of State for NI in respect of its concerns and also engaged with the NI Affairs Committee which initiated an inquiry into legacy proposals.[2]

The NIHRC has also intervened as a third party, in the matter of *Gribben v the United Kingdom*, before the European Court of Human Rights. This case relates to the death of Martin McCaughey in 1990. The family continue to argue, despite a previous ECtHR judgment, that the recent coronial investigation was not Article 2 ECHR compliant. The NIHRC has previously made a joint intervention with the Equality and Human Rights Commission (GB) in earlier litigation. A hearing is awaited.

The Committee of Ministers, in March 2021, reopened their supervision of the *Finucane v UK* case, following a UK Supreme Court judgment that there has not been an Article 2 ECHR compliant investigation into the death.[3] The NIHRC has made Rule 9 submissions to the Committee of Ministers in respect of the supervision of the *McKerr v UK* group of cases and *Finucane v UK*, highlighting the lack of progress in addressing the outstanding investigations. [4]

The NIHRC has also responded to a consultation looking at a review of human rights legislation in the UK. The NIHRC has, together with the other UK NHRIs, provided oral evidence to the Joint Committee on Human Rights in this respect.[5].

The NIHRC has exercised its legal powers to ensure judicial oversight in a number of occasions over the past year, including initiating own motion litigation, intervention before the ECtHR and *amicus curiae* submissions before the domestic courts. The NIHRC :

- initiated judicial review proceedings against the NI Secretary of State, Minister for Health and NI Executive in respect of failures to commission and fund abortion healthcare services in NI. This case was heard in May 2021 and judgment is awaited.
- initiated judicial review proceedings against the Department of Justice NI, challenging rehabilitation of offenders legislation, arguing that the failure to provide a review mechanism to challenge the lifetime disclosure of convictions of sentences over 30 months is in breach of article 8 ECHR. This case was heard in May 2021 and judgment is awaited.
- intervened, by way of written submissions, before the ECtHR in the matter of *Gribben v UK* on the issue of Article 2 compliance of coronial investigations.
- provided written submissions in a mental health matter before the NI High Court, considering the application of Article 5 ECHR in respect of discharge from mental health detention.

References

- [1] NIHRC, Annual Statement 2020. Available at: <https://www.nihrc.org/publication/detail/annual-statement-2020>
- [2] NIHRC, Human Rights Commission secures settlement for Mairia Cahill from the Northern Ireland Office (Jan 2021) Available at: <https://www.nihrc.org/news/detail/human-rights-commission-secures-settlement-for-mairia-cahill-from-the-northern-ireland-office>

- [3] In the Matter of an Application by Geraldine Finucane for Judicial Review (NI) [2019] UKSC 7.
- [4] NIHRC, Submission to the Committee of Ministers in Relation to the Supervision of the Cases Concerning the Actions of the Security Forces in Northern Ireland (May 2020). Available at: <https://nihrc.org/publication/detail/submission-to-the-committee-of-ministers-in-relation-to-the-supervision-of-the-cases-concerning-the-actions-of-the-security-forces-in-northern-ireland>
- [5] NIHRC, Submission to the Independent Review of the Human Rights Act (March 2021). Available at: <https://www.nihrc.org//Publication/detail/submission-independent-human-rights-act-review-teams-call-for-evidence>

Functioning of the justice system

There have been a number of reviews by the UK government in respect of administrative law and the Human Rights Act. The review of administrative law consultation has reported and a second consultation (following the report of the first review) was been launched in March 2021.[1]

In March 2021, the NIHRC has contributed to the consultation to the Independent Review of the Human Rights Act by way of a written submission,[2] The NIHRC also provided a written response to the Joint Committee on Human Rights, and provided oral evidence alongside the other UK NHRIs.[3] The NIHRC recommended that the current approach of the legislation to judicial dialogue, the interpretation of ECtHR jurisprudence and the margin of appreciation should remain. The NIHRC did not recommend any changes to the provisions dealing with remedy, derogation or secondary legislation. We recommended that it should apply to public authorities in overseas territories.

References

- [1] <https://www.gov.uk/government/consultations/judicial-review-reform>
- [2] NIHRC, Submission to the Independent Review of the Human Rights Act (March 2021) Available at: <https://www.nihrc.org/publication/detail/submission-independent-human-rights-act-review-teams-call-for-evidence>
- [3] JCHR, Oral Evidence Session (10 March 2021) <https://committees.parliament.uk/event/3911/formal-meeting-oral-evidence-session/>

Media pluralism and freedom of expression

As reported on last year, the NIHRC continues to highlight concerns about death threats made to journalists in NI, whose work includes investigating organised crime and paramilitarism. Threats, in the form of graffiti, appeared in a number of areas in February 2021 and the Police Service of NI has also warned of threats made to the BBC Panorama team following its investigation into a suspected crime boss. This echoes the murder of journalist Martin O'Hagan in 2001 and Lyra McKee in 2019. The NIHRC has raised its concerns with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan.

The NIHRC has planned further work in this area in the coming year.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

On 25 March 2020, the Coronavirus Act 2020 was enacted, introducing new **emergency powers** to help contain and cope with COVID-19. These powers have a time limit of two years and can only be used where necessary to deal with the COVID-19 public health crisis. It is possible that some of the powers set out in the Act may never be applied. In terms of holding the UK Government to account in its use of these powers, the Coronavirus Act is to be reviewed by UK Parliament after six months and the Secretary of State must provide a report on the powers that are used every two months. Supporting legislation was enacted by the NI Assembly, which

provides the detail of how certain aspects of the Coronavirus Act 2020 apply in NI. From 15 May 2020, the NI Executive had been gradually taking steps, including enacting amended versions of the original legislation, to ease the restrictions in place since 28 March 2020. In September 2020, the NI Executive started implementing some localised restrictions for set periods, guided by medical advice. In October 2020, increased restrictions were expanded across the whole of NI for set periods. The tightening and loosening of restrictions is subject to constant review by the NI Executive, guided by the Department of Health and medical advice. This approach is due to continue into 2021.

The NIHRC has engaged with the Department of Health on a number of specific issues arising from the extension of restrictions due to COVID-19. For example, it has provided advice to the Minister for Health in respect of a human rights impact assessment on managed quarantine; and to the Committee for Health in respect of the impact of restrictions to children and young people resulting in a decision not to extend the relevant regulations. Most recently, the NIHRC has been meeting with officials on proposals to introduce vaccination certification or passports.

There have been a number of inquiries at Westminster that have considered the UK Government's response to COVID-19. The House of Commons and House of Lords Joint Committee on Human Rights considered the UK Government's response from a human rights perspective. The House of Commons Women and Equalities Committee considered the UK Government's response from the perspective of protected characteristics and a sub-inquiry focusing on the impact on persons with disabilities. The House of Commons Treasury Committee considered the UK Government's tax measures after COVID-19. The NIHRC provided written evidence to each of these inquiries.[1]

In June 2020, the NIHRC and Equality Commission NI as the UN CRPD Independent Mechanism in NI jointly hosted two roundtables with key stakeholders on issues facing **persons with disabilities** in NI due to COVID-19. The issues raised during these roundtables informed the UN CRPD Independent Mechanism in NI's submission to the UK House of Commons Women and Equalities Committee's sub-inquiry into the unequal impact of COVID-19 on disability and access to services. [2]

The statistical updates provided by the Department of Health indicate around half of COVID-19 related deaths to date involved **care home residents**, either in the care home or in hospitals. Indications are that the high numbers of deaths within care homes may be linked to the slow introduction of testing within such settings, discharging patients to care homes without those individuals being tested for COVID-19, the late arrival of Personal Protective Equipment, the delay in including care home deaths in COVID-19 statistics to enable an understanding of the issue, and the relative under funding and general neglect of the care home sector. In May 2020, these

concerns were highlighted in a joint statement by the NIHRC and Commissioner for Older People NI.[3] The NIHRC also raised these issues with the House of Commons and House of Lords Joint Committee on Human Rights and House of Commons Women and Equalities Committee in response to their inquiries into the UK Government's response to COVID-19.[4]

There have been particular delays across the functioning of the **justice system** as a consequence of COVID-19 and court closures. The NIHRC has raised the particular issue of delay at the Office of the Fair Employment and Industrial Tribunals with the Minister for Economy, highlighting the importance of access to justice in respect of employment matters and the particular vulnerabilities of those applicants in employment and discrimination cases.

Civil society has raised concerns over both the inconsistency in the use of **police powers in protests** that took place in 2020, and an excessive use of police powers in some cases (more information in 'Human rights defenders and civic space' section).

References

- [1] NI Human Rights Commission, 'Response to the Women and Equalities Committee Inquiry into the Government's Response to COVID-19: Human Rights Implications' (NIHRC, 2020); 'Women and Equalities Committee's Inquiry into the Unequal Impact of COVID-19: Disability and Access to Services' (NIHRC, 2020)
- NIHRC, 'Response to the Treasury Committee Inquiry into Tax after Coronavirus' (September 2020)
- [2] UN CRPD Independent Mechanism of NI, 'Submission to Women and Equalities Committee's Inquiry into the Unequal Impact of COVID-19: Disability and Access to Services' (NIHRC and ECNI, 2020).
- NI Human Rights Commission, 'Women and Equalities Committee's Inquiry into the Unequal Impact of COVID-19: Disability and Access to Services' (NIHRC, 2020).
- [3] NI Human Rights Commission, 'Press Release: Joint Statement from Chief Commissioner and Commissioner for Older People on COVID-19', 6 May 2020.

- [4] NI Human Rights Commission, 'Response to Joint Committee on Human Rights Inquiry into the Government's Response to COVID-19: Human Rights Implications' (NIHRC, 2020).
- NI Human Rights Commission, 'Response to the Women and Equalities Committee Inquiry into the Government's Response to COVID-19: Human Rights Implications' (NIHRC, 2020); 'Women and Equalities Committee's Inquiry into the Unequal Impact of COVID-19: Disability and Access to Services' (NIHRC, 2020)

Most important challenges due to COVID-19 for the NHRI's functioning

In line with Government requirements due to the COVID-19 pandemic, and to ensure the safety of staff and the wider public, the NIHRC has had to close its physical offices. The NIHRC is continuing to operate remotely through email, phone and online facilities. The general public is able to continue to contact the NIHRC for human rights advice, via email and phone, and the litigation function is ongoing, albeit impacted by delays in the court process.

The NIHRC is able to continue to advise government and engage with its stakeholders through conference facilities, email and, on the rare occasion, in socially distanced meetings (for example providing oral evidence to NI Assembly Committees).

The NIHRC has managed to maintain its monitoring capacity and to deliver its services without much disruption. The area most affected by the restrictions are the institutions' public events, which have all been cancelled for the foreseeable future. The NIHRC continues to host replacement events through online platforms, where appropriate. The NIHRC also continues to keep the public informed of its activities through its website and social media.

The NIHRC does not operate as the NPM.

