

State of the Rule of Law in Europe in 2022

Reports from National
Human Rights Institutions

Northern Ireland



Northern Ireland

Northern Ireland Human Rights Commission (NIHRC)

Impact of 2021 rule of law reporting

Follow-up initiatives by the Institution

In partnership with the Equality Commission for Northern Ireland, the Northern Ireland Human Rights Commission (NIHRC) has commenced an awareness raising campaign on equality and human rights after Brexit. The NIHRC is engaging at community and stakeholder level as well as monitoring new legislation and commissioning research. The NIHRC is engaging with individuals on a range of issues they have contacted us about, including pet passports, delayed EU Settled Status applications, and access to kosher and halal food. (1)

The NIHRC continues to receive and monitor all legislation introduced into the Northern Ireland's Assembly (NI Assembly), including those regulations relating to the COVID pandemic. The NIHRC has provided specific advice on COVID related regulations, for example, to the Department of Health and the Health Committee. (2) The NIHRC also continues to provide advice and guidance to the public on this issue, with a high volume of queries coming through our advice clinic each week. To address some of these concerns, the NIHRC has produced fact sheets for the general public, which are available on our website or on request, of key issues such as mandatory vaccination and the domestic COVID certification scheme. Since the last rule of law report, the NIHRC has recommended that there is a public inquiry into the handling of COVID-19 within Northern Ireland, either by full inclusion in the UK-wide inquiry or that those areas within the competence of the devolved administration will be subject to an independent process that is human rights compliant. (3)

References

- (1) NI Human Rights Commission and Equality Commission, 'Press Release: Get in touch: Protecting Equality and Your Human Rights After Brexit', 17 January 2022: <https://nihrc.org/news/detail/protecting-equality-and-your-human-rights-after-brexit>

- (2) NI Human Rights Commission, Correspondence to the Minister for Health on the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2021 (Amendment No. 19) Regulations (Northern Ireland) 2021, November 2021.
- (3) NI Human Rights Commission, 'Annual Statement 2021', December 2021, at p. 91: <https://nihrc.org/publication/detail/annual-statement-2021>

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

In October 2021, the Sub-Committee on Accreditation (SCA) decided that further consideration of the re-accreditation application of the Northern Ireland Human Rights Commission would be deferred to the second session of 2022 (1).

The SCA provided an initial report of areas of concerns in October 2021 that it intends to consider further in October 2022. Within this initial report, the SCA acknowledged and commended the work the NIHRC has undertaken to promote and protect human rights, despite its challenging financial situation. However, it noted some items with concern.

The SCA regarded the current and prospective funding position, as described by the NIHRC, as very serious and time sensitive and strongly recommended that an improved sustainable position is reached within the deferral period. It encouraged the NIHRC to secure urgent agreement with the State to an independent review of its core funding and to agree to a sustainable funding position, so that it can fulfil its mandate with certainty into the future. Additionally, the SCA recommended open engagement between the NHRI and the State to ensure all budgetary issues are resolved quickly, appropriately and in a sustainable manner.

Further, the SCA noted with concern that budget allocation to the NIHRC is subject to the United Kingdom Government expenditure priorities, and that this has the potential to impact the NHRI's effectiveness and functional independence. The SCA encouraged the NIHRC to advocate for appropriate modifications to applicable administrative procedures to ensure that its functional independence and financial autonomy are guaranteed.

Additionally, the SCA encouraged the NIHRC to advocate for pluralism, including greater gender balance and minority representation in its composition and staffing.

Finally, the SCA encouraged the NHRI to continue to access all places of deprivation of liberty, including without prior notice. It encouraged the NIHRC to effectively monitor, investigate, and report on the human rights situation in a timely manner, and to undertake

systematic follow-up activities and advocate for the consideration and implementation of its findings and recommendations to ensure the protection of those detained.

The SCA is considering these issues further in October 2022.

References

- (1) https://www.ohchr.org/sites/default/files/2021-12/SCA-Report-October-2021_E.pdf

Regulatory framework

The NIHRC is established under statute, the Northern Ireland Act 1998. The institution has the mandate to contribute to access to justice for individuals, including through strategic litigation before courts, providing legal assistance to individuals as well as awareness-raising. The NIHRC has a statutory mandate to promote understanding and awareness of the importance of human rights in Northern Ireland. Moreover, the NIHRC advises the Northern Ireland Assembly whether a Bill is compatible with human rights and may also conduct investigations as it considers necessary or expedient.

In accordance with Section 69(C)(1) of the Northern Ireland Act for the purposes of an investigation, a person authorized in writing by the NIHRC may enter a specified place of detention in Northern Ireland on one or more occasions during a specified period. The SCA has encouraged the NIHRC to continue to advocate for being able to conduct 'unannounced' visits as this limits opportunities for detaining authorities to hide or obscure human rights violations and facilitates greater scrutiny.

The NIHRC, however, does not operate as National Preventive Mechanism.

References

- (1) 'GANHRI Sub-Committee on Accreditation Report', October 2021, at p.30:
https://www.ohchr.org/sites/default/files/2021-12/SCA-Report-October-2021_E.pdf

Enabling and safe space

The NIHRC has raised significant concerns with the SCA in respect of planned cuts to its core budget, which will impact on its ability to carry out core functions over the next three financial years. As mentioned above, the SCA reviewed the NIHRC's status in October 2021, deferred further consideration until 2022. The SCA highlighted the serious and time sensitive funding position, recommending "an improved and sustainable position is reached within this deferral period".

The NIHRC has also called for an independent review of the organisation, as the last was conducted in 2001. The SCA has encouraged the NIHRC to secure urgent agreement to

this Review and/or any other means to advocate for an appropriate and adequate level of funding to effectively carry out its mandate.

Nonetheless, it is worth noting that the relevant state authorities have good awareness of the NHRI's mandate, independence and its role. Moreover, the NIHRC has adequate access to information and to policy makers and is involved in all stages of legislation and policy making with human rights implications. The NIHRC is provided with copies of all legislation introduced into the NI Assembly by the Speakers Office. Individual elected representatives also often seek advice in respect of private members Bills. The NIHRC is required to provide advice to the Secretary of State for NI and the NI Assembly upon request. It has done so this year in respect of advice on the Severe Foetal Impairment Abortion Bill, following a motion in the NI Assembly. On the 8th March 2021, a motion was proposed that 'the Northern Ireland Human Rights Commission be asked to advise whether the Severe Foetal Impairment Abortion (Amendment) Bill is compatible with human rights.' [1] The NIHRC responded in April outlining the human rights implications of the proposed amendment. [2] The NIHRC may also provide advice to Assembly Committees and has done so recently in relation to the Period Products (Free Provision) Bill and the Domestic Abuse (Safe Leave) Bill. The NIHRC continues to offer advice to political parties and has recently responded to a request for advice in relation to the potential cessation of turbary rights.

Under section 78A(2) of the Northern Ireland Act 1998, as amended further to UK exit from the EU, the NIHRC must report to the Secretary of State for Northern Ireland and the Executive Office in Northern Ireland, on the implementation of Article 2(1) of the Ireland/Northern Ireland Protocol, which protects certain human rights and equality standards from diminution after Brexit. Under section 78(3), such a report may require the Secretary of State, or the Executive Office, to reply in writing to any recommendations contained in the report, explaining what steps have been taken or are planned in response to the recommendations. There is no other formal requirement for a state authorities' response to the NIHRC's recommendations.

When it comes to ensuring protection of the NHRI against threats, harassment and other forms of intimidation (including SLAPP actions), there are no specific measures established in law in respect of the Northern Ireland NHRI, the heads of the institution and staff members. This would be covered by the existing criminal and civil legal framework. However, this has not arisen as an issue in the NI context to date.

References

- (1) [Official Reports \(niassembly.gov.uk\)](https://niassembly.gov.uk)

- (2) [Publication - NIHRC Submission: Northern Ireland Committee on Health on the Severe Foetal Impairment Abortion \(Amendment\) Bill | Northern Ireland Human Rights Commission](#)

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

As mentioned previously, the NIHRC has raised significant concerns about its budget with the UK Government and also during its reaccreditation process in 2021. The NIHRC has also called for an independent review of the organisation, as the last was conducted in 2001. The NIHRC continues to liaise with the UK Government, and other domestic and international stakeholders, in respect of addressing concerns about its budget.

Otherwise, the NIHRC's mandate has developed substantially during this period, most recently with the addition of the dedicated mechanism function under Article 2(1) of the Ireland/ Northern Ireland Protocol to the EU Withdrawal Agreement. The NIHRC is mandated in accordance with Article 2(1) of the Protocol on Ireland/Northern Ireland of the UK-EU Withdrawal Agreement to oversee the UK Government's commitment on rights and equality in NI after EU withdrawal. The NIHRC has additional powers to provide advice to Government and to monitor, supervise, enforce and report on the ongoing implementation of this commitment, including powers to provide advice and assistance to individuals to bring legal proceedings and to bring, or intervene in, legal challenges in respect of Protocol Article 2.

NHRI's recommendations to national and regional authorities

The NIHRC recommends that the NI Office provides adequate and secure funding to enable it to fulfil its statutory functions, in line with its role as an A status institution under the UN Paris Principles. The NIHRC also recommends that, in determining what is necessary, the NI Office conducts an independent review of the organisation.

The NIHRC further recommends that it is granted powers to carry out 'unannounced' visits to places of detention as this limits opportunities for detaining authorities to hide or obscure human rights violations and facilitates greater scrutiny.

Human rights defenders and civil society space

In the last year's rule of law report, the Northern Ireland NHRI highlighted an apparent inconsistency in approach in the enforcement of COVID restrictions in relation to large gatherings. This was particularly in reference to the policing and distribution of fines at

Black Lives Matter protests in contrast to protests by the NI Cenotaph Protection Group which received no fines. There have been no similar reports in 2021.

There have also been advances in women's representation in public life, including through the appointment of Northern Ireland's first Lady Chief Justice as well as measures to increase the representation of disabled people. However, there are still a number of shortcomings in these areas as outlined below.

Access to and involvement of civil society actors in law and policy making

In 2016, the Executive Office Draft Executive Programme for Government 2016-2021 made a commitment to involve persons with disabilities in the setting up of a "central regional disability forum".(1) The Disability Strategy Expert Advisory Panel Report, published in March 2021 to assist with the development of the Disability Strategy, highlighted the commitment made by the Executive Office to develop a NI Disability Forum was yet to be delivered and recommended the Department for Communities and Disability Strategy to implement it. (2) The NIHRC has recommended the establishment of a Central Regional Disability Forum that is sufficiently resourced and consists of persons with disabilities and their representative organisations, without further delay.

Women, particularly minority women, remain under-represented in political life in NI. While there have been advances in women's representation, including through the appointment of Northern Ireland's first Lady Chief Justice,(3) the NIHRC remains concerned over the continued under-representation of women in public and political life. The NIHRC recommends effective steps are taken to ensure women's participation in public and political life is proportionate to population in Northern Ireland. (4)

Under its new mandate, NIHRC has worked with the Equality Commission for Northern Ireland to oversee the implementation of Article 2 of the Protocol on Ireland/Northern Ireland and identified an important role for civil society at a time of significant change resulting from the UK's withdrawal from the EU. The two Commissions encouraged government and the EU to ensure structured, transparent and meaningful civil society engagement on proposed policy and legislative developments, e.g. advising the House of Commons European Scrutiny Committee that "Northern Ireland voices should be heard, including those of equality and human rights organisations, on relevant bodies established under the UK-EU Trade and Co-operation Agreement, including the Domestic Advisory Group(s) and Civil Society Forum." (5)

References

- (1) NI Executive, 'Draft Programme for Government Framework 2016-21', (2016): <https://www.northernireland.gov.uk/sites/default/files/consultations/newnigov/draft-pfg-framework-2016-21.pdf>
- (2) Disability Strategy Expert Advisory Panel, 'Report and Recommendations' (March 2021), at p.16: <https://www.communities-ni.gov.uk/publications/report-disability-strategy-expert-advisory-panel>
- (3) 'Dame Siobhan Keegan: NI's first Lady Chief Justice sworn in', *BBC News*, 02 September 2021.
- (4) NI Human Rights Commission, 'Annual Statement 2022', December 2021, at p. 207.
- (5) NI Human Rights Commission and Equality Commission for Northern Ireland 'Response to Call for Evidence by the European Scrutiny Committee on the institutional framework of the UK-EU Trade and Co-operation Agreement, October 2021, at page 7.

Threats and attacks, including strategic litigation against public participation (SLAPPs)

In Northern Ireland paramilitary activity is having a particular impact on women within the affected communities, who live in fear of such groups. In practice, this intimidation (which can include threats to life) is preventing women from accessing funding, to engage with peace initiatives and to be empowered to participate in public and political life. (1)

References

- (1) Catherine Turner and Aisling Swaine, 'At the Nexus of Participation and Protection: Protection-Related Barriers to Women's Participation in Northern Ireland', *International Peace Institute*, June 2021.

NHRI's role in promoting and protecting civil society space and human rights defenders

As mentioned above, reflecting Article 33(3) of the UN CRPD and the UN CRPD Committee's General Comment No 7316, (1) the NIHRC and Equality Commission for NI have established a Disability Forum to provide a dedicated space to ensure persons with disabilities and their representative organisations are at the core of the Independent Mechanism's work in promoting, protecting and monitoring the implementation of the UN CRPD in Northern Ireland. In January 2021, membership for the Independent Mechanism NI Disability Forum was confirmed with 15 members from across the disability sector. The Disability Forum held its first meeting in March 2021 and continues to meet on a quarterly

basis. The Forum has discussed issues such as mainstreaming UN CRPD within the Disability Strategy and Programme for Government as well as planning for engagement with the UK examination by the UN CRPD Committee.

NIHRC has met on several occasions this year with the Human Rights Consortium, the Equality Coalition, the Northern Ireland Committee of the Irish Congress of Trade Unions, and other civil society groups, including co-hosting a cross-border stakeholder seminar, to raise awareness of and seek engagement on the UK's Protocol Article 2 commitment to no diminution of certain human rights and equality standards after Brexit.

References

- (1) CRPD/C/GC/7, 'UN CRPD Committee General Comment No 7: Participation of Persons with Disabilities, Including Children with Disabilities, Through their Representative Organisations, in the Implementation and Monitoring of the Convention', 9 November 2018: <https://digitallibrary.un.org/record/3899396?ln=en>

NHRI's recommendations to national and regional authorities

The NIHRC has recommended the establishment of a Central Regional Disability Forum that is sufficiently resourced and consists of persons with disabilities and their representative organisations, without further delay.

The NIHRC recommends effective steps are taken to ensure women's participation in public and political life is proportionate to NI's population.

The NIHRC recommends that Northern Ireland voices be heard, including those of equality and human rights organisations, on relevant bodies established under the UK-EU Trade and Co-operation Agreement, including the Domestic Advisory Group(s) and Civil Society Forum.

Checks and balances

The NIHRC is concerned that the issues outlined below undermine the UK government's obligations under international human rights law and weaken protections against unlawful acts by the State.

It is also concerned at the ongoing reform of the Human Rights Act, particularly given the underpinning of the ECHR within the Belfast (Good Friday) Agreement. This Agreement comprises of a Multi-Party Agreement between the UK Government, Government of Ireland and the parties in Northern Ireland, and a British-Irish Agreement between the UK Government and Government of Ireland. It was signed on 10 April 1998 and came into

force after a referendum on 2 December 1999. The Agreement underpins Northern Ireland's peace process, constitutional settlement, and political institutions.

In July 2020, the UK Government launched an Independent Review of Administrative Law. The review panel considered options for reform to the process of judicial review for the UK Government's consideration. (1) In September 2020, the panel sought evidence on the effectiveness of judicial review in enabling citizens to challenge the lawfulness of government action while also allowing the Executive and local authorities to carry on the business of government. (2)

In July 2021, the UK Government introduced the Judicial Review and Courts Bill 2021/2022 in response to the Independent Review of Administrative Law. (3) Part 1 of the Bill makes reforms to the law of Judicial Review throughout the UK, while Part 2 of the Bill covers a wide range of court and tribunal reforms. (4) The NIHRC is concerned that measures within the Bill will undermine the UK's international human rights obligations by denying an effective remedy to those affected by unlawful acts of government. The examples of such measures are prospective-only quashing orders which means that the unlawful action by the public authority is only treated as unlawful from the point of the court order, not retrospectively. Furthermore, the Bill seeks to remove the availability of judicial review of decisions of the Upper Tribunal. There is the risk that such a provision will provide a template to be used more broadly for the purposes of removing the ability to judicially review certain types of executive action, reduce legal accountability and prevent individuals who have been adversely affected from being able to secure an effective remedy. (5)

In 2017, the Report of the UN Working Group on the Universal Periodic Review recommended the UK Government ensure that there was no regression in rights and effective participation of all stakeholders in any process to amend the Human Rights Act and design a possible UK Bill of Rights. It also recommended that "in view of the process of leaving the EU, ensure that any new legislation aims at strengthening human rights in the entire jurisdiction of the country". (6)

Specific to Northern Ireland, the UN Working Group recommended that the UK Government "provide reassurance that any proposed British Bill of Rights would complement rather than replace the incorporation of the ECHR in NI law" and further stated "that a Bill of Rights for NI to reflect the particular circumstances of NI should be pursued to provide continuity, clarity and consensus on the legal framework for human rights there". (7)

In December 2021, The UK government announced that it plans to replace the Human Rights Act with a Bill of Rights. The Secretary of State for Justice announced a consultation

on the reform, to which the NIHRC will respond. The NIHRC is concerned that the UK Government's plan to replace the Human Rights Act with a Bill of Rights is unnecessary (8) and any reform must take full consideration to the Good Friday Agreement and the UK's commitment to non-diminution of rights as outlined in Article 2 of the NI Protocol of the EU Withdrawal Agreement. (9)

References

- (1) Gov.UK, 'Independent Review of Administrative Law':
<https://www.gov.uk/government/groups/independent-review-of-administrative-law>
- (2) Independent Review of Administrative Law Secretariat, 'Does Judicial Review Strike the Right Balance Between Enabling Citizens to Challenge the Lawfulness of Government Action and Allowing the Executive and Local Authorities to Carry on the Business of Government: Call for Evidence' (MoJ, 2020):
http://data.parliament.uk/DepositedPapers/Files/DEP2020-0524/IRAL_Call_for_Evidence_Parliament.pdf
- (3) Ministry of Justice, 'Judicial Review Reform Consultation: The Government Response', (MOJ, 2021): <https://www.gov.uk/government/consultations/judicial-review-reform>
- (4) Judicial Review and Courts Bill 2021/2022:
<https://bills.parliament.uk/publications/46269/documents/1754>
- (5) NI Human Rights Commission, Correspondence to the Public Bill Committee on the Judicial Review and Courts Bill, November 2021.
- (6) A/HRC/36/9, 'UN Working Group on the Universal Periodic Review, Report of the Working Group on the Universal Periodic Review - UK of Great Britain and NI', 14 July 2017, at para 134.76:
https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/9
- (7) A/HRC/36/9, 'UN Working Group on the Universal Periodic Review, Report of the Working Group on the Universal Periodic Review - UK of Great Britain and NI', 14 July 2017, at para 134.67:
https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/9
- (8) NI Human Rights Commission, 'NI Human Rights Chief Commissioner Responds to Proposed Replacement of the Human Rights Act', 14 December 2021:
<https://nihrc.org/news/detail/ni-human-rights-chief-commissioner-responds-to-proposed-replacement-of-the-human-rights-act>

- (9) NI Human Rights Commission, 'Submission to the Independent Human Rights Act Review Team's Call for Evidence', March 2021 at p.6:
<https://nihrc.org/publication/detail/submission-to-the-independent-human-rights-act-review-teams-call-for-evidence>

Trust amongst citizens and between citizens and the public administration

The NIHRC does not have a position in respect of levels of trust in the public administration. However, recent statistics show that while 83% of people report trusting the Civil Service a great deal or tending to trust the Civil Service, only 30% of people reported the same level of trust in the Northern Ireland Assembly. (1)

References

- (1) Public Awareness of and Trust in Official Statistics, Northern Ireland 2020, *Northern Ireland Statistics and Research Agency*, 27 October 2021:
[https://www.nisra.gov.uk/news/public-awareness-and-trust-official-statistics-northern-ireland-2020 - ~:~:text=The%20Public%20Awareness%20of%20and,90%25%20in%20the%202020%20survey.](https://www.nisra.gov.uk/news/public-awareness-and-trust-official-statistics-northern-ireland-2020-~:~:text=The%20Public%20Awareness%20of%20and,90%25%20in%20the%202020%20survey.)

NHRIs as part of the system of checks and balances

The NIHRC frequently utilises its legal powers in order to challenge both the action and inaction of government departments to ensure human rights compliance. The impact of the proposed budget cuts to the NIHRC core budget is likely to have an impact on the continuing ability of the NIHRC to initiate litigation.

Last year, the NIHRC brought a successful judicial review challenge to the Secretary of State for Northern Ireland, the NI Executive, and, the Department of Health for Northern Ireland. The challenge was in respect of the failure to commission and fund abortion services in Northern Ireland. (1) In parallel to this challenge, the NIHRC was granted leave to intervene in a separate legal challenge to abortion services in Northern Ireland by the Society for the Protection of Unborn Children. (2)

The NIHRC had further success in supporting an individual applicant in Judicial Review proceedings to challenge the law which prevents convictions ever becoming spent, if the sentence was for more than 30 months imprisonment. (3) The NI High Court held that the "failure to provide a mechanism by which the applicant can apply to have his conviction considered to be spent, irrespective of the passage of time and his personal circumstances" to be a breach of Article 8 ECHR. (4)

- (6) NI Human Rights Commission / Equality Commission for Northern Ireland
'Submission on the Modern Slavery and Human Trafficking and Electronic Travel
Authorisation provisions in the Nationality and Borders Bill', January 2022:
<https://nihrc.org/publication/detail/joint-nihrc-ecni-briefing-paper-on-the-modern-slavery-and-human-trafficking-and-electronic-travel-authorisation-provisions-in-the-nationality-and-borders-bill>

NHRI's recommendations to national and regional authorities

The NIHRC calls on the UK Government to listen to the people of Northern Ireland before reaching any final decision in the relation to the proposed reform of the Human Rights Act.

Functioning of the justice system

In July 2021, the UK government proposed to bring an immediate end to criminal investigations into Troubles-related offences and remove the prospect of prosecutions. The Troubles was a period of conflict in Northern Ireland which lasted from around 1968-1998. This proposal was widely condemned by the Council of Europe, a number of UN Special Rapporteurs and civil society organisations

In July 2021, a Command paper was published by the Secretary of State for NI setting out a proposal to "bring an immediate end to criminal investigations into Troubles-related offences and remove the prospect of prosecutions" through the application of a statute of limitations. (1) The NIHRC continues to advise that a statute of limitations restricting the investigation and prosecution of alleged unlawful killings and serious injuries which is determined by the identity of the suspect is incompatible with Articles 2 and 3 ECHR. In August 2021, UN experts voiced concern at a proposed blanket impunity to address the legacy of 'the Troubles' in NI. UN Special Rapporteurs Fabián Salvioli (on the promotion of truth, justice, reparation and guarantees of non-recurrence) and Morris Tidball-Binz (on extrajudicial, summary or arbitrary executions) expressed 'grave concern that the plan outlined in July's statement forecloses the pursuit of justice and accountability for the serious human rights violations committed during the troubles...' (2) In September 2021, the Commissioner for Human Rights Commissioner of the Council of Europe also expressed her concerns at the new proposals which may "bring the United Kingdom into conflict with its international obligations". (3)

On the 17 May 2022, the UK Government introduced the Northern Ireland Troubles (Legacy and Reconciliation) Bill to UK Parliament. The Bill proposes creating an Independent Commission for Reconciliation and Information Recovery capable of offering

conditional immunity from prosecution to perpetrators who co-operate with its inquiries. (4) The NIHRC is concerned that the Bill is substantially flawed and incompatible with Article 2 of the European Convention on Human Rights. (5)

Moreover, on 25 February 2021, the Lord Chancellor and Secretary of State for Justice made a Written Ministerial Statement to the UK Parliament to announce the establishment of the statutory review of the 'closed material procedure' provisions in the Justice and Security Act 2013. [4] Closed material procedure allows the state in litigation to disclose material which is sensitive to national security in closed procedures to the judge. It involves appointing a Special Advocate to represent the other party's interests, without having to disclose the material to the other party, the other party's legal counsel or the public. The Review is being carried out by Sir Duncan Ouseley. A call for evidence to inform the Review was published in April 2021. (5) The NIHRC responded to this call in May 2021, highlighting how the issue of closed material procedures and the relationship to dealing with the past in Northern Ireland remains important. (6) The reviewer is currently considering the submissions received and it is anticipated that his report will be laid in Parliament in early 2022. The NIHRC advised that the UK Government limits the use of closed material procedures in cases involving serious human rights violations and at least ensures the removal of obstacles to ensuring accountability. This must not compromise the right of victims to a fair trial and an effective remedy.

Lastly, the Justice and Security (NI) Act 2007 makes provision for non-jury trials in Northern Ireland. A non-jury trial under the Justice and Security (Northern Ireland) Act 2007 can take place when the Director of Public Prosecutions for Northern Ireland issues a certificate for a specific case, in relation to a trial on indictment (tried in the Crown Court). The decision for issuing a certificate is based on a two-stage test set out in Section 1, subsections (3) to (6), of the Justice and Security (Northern Ireland) Act 2007 and relates to cases involving membership or activity carried out on behalf of a 'proscribed organisation' and cases involving political/religious hostility. The provisions relating to non-jury trials are temporary and must be renewed every two years by way of an order approved in both Houses of Parliament. The relevant provisions have been extended on seven occasions since their establishment in 2007. In 2021, the Secretary of State for NI, noting that the UK Government continued to assess the threat level from NI related terrorism in NI to be severe, once again extended the provisions until 31 July 2023. (7)

Prior to the extension, the Secretary of State for NI, Brandon Lewis, held a public consultation seeking views on the extension. (8) In response, the NIHRC again raised concerns about the lack of clarity around the conditions whereby the use of non-jury trials will be discontinued, leading to a danger that non-jury trials, initially introduced as

temporary measures in 2007 are becoming 'normalised' as a semi-permanent feature of NI's criminal justice system. The NIHRC has recommended that the NI Office takes practical measures to determine the conditions whereby the use of non-jury trials will be discontinued. Following a recommendation of the NIHRC, a working group has been established by the NI Office in order to explore possible practical measures to reduce the use of non-jury trials and examine when the provisions could be brought to an end. (9)

References

- (1) NI Office, 'Addressing the Legacy of Northern Ireland's Past' (NIO, 2021), at para 34.: <https://www.gov.uk/government/publications/addressing-the-legacy-of-northern-irelands-past>
- (2) OHCHR, 'Press release: UN experts voice concern at proposed blanket impunity to address legacy of "the Troubles" in Northern Ireland', 10 August 2021: <https://www.ohchr.org/en/press-releases/2021/08/uk-un-experts-voice-concern-proposed-blanket-impunity-address-legacy>
- (3) Correspondence from Council of Europe Commissioner for Human Rights to Brandon Lewis MP, 13 September 2021: <https://rm.coe.int/letter-to-rt-hon-brandon-lewis-mp-secretary-of-state-for-northern-irel/1680a3ceae>
- (4) Northern Ireland Troubles (Legacy and Reconciliation) Bill: <https://bills.parliament.uk/bills/3160>
- (5) NI Human Rights Commission, 'NI Human Rights Commission responds to proposed legislation on dealing with the past', 23 May 2022: <https://nihrc.org/news/detail/ni-human-rights-commission-responds-to-proposed-legislation-on-dealing-with-the-past>
- (6) Robert Buckland, 'Written Statement: Statutory review of the "closed material procedure" provisions in the Justice and Security Act 2013', Statement UIN HCWS803, 25 February 2021: <https://www.gov.uk/guidance/review-of-closed-material-procedure-in-the-justice-and-security-act-2013>
- (7) Ministry of Justice, 'Call for Evidence: Statutory review of the closed material procedure" provisions in the Justice and Security Act 2013', (MOJ, 2021): <https://www.gov.uk/guidance/review-of-closed-material-procedure-in-the-justice-and-security-act-2013>
- (8) NI Human Rights Commission, 'Response to the Ministry of Justice Review of the Closed Material Procedure in the Justice and Security Act 2013', (NIHRC, 2021).

(9) The Justice and Security (Northern Ireland) Act 2007 (Extension of Duration of Non-jury Trial Provisions) Order 2021:

<https://www.legislation.gov.uk/ukdsi/2021/9780348222791>

NI Office, 'Non-Jury Trials Justice and Security (Northern Ireland) Act 2007 - Public Consultation', (NIO, 2021). Available at: <https://www.gov.uk/government/news/non-jury-trials-justice-and-security-northern-ireland-act-2007>

'Non-Jury Trials Working Group Meeting', NI Office, 27 July 2021.

Role of the NHRI in contributing to the effective functioning of the justice system

The NIHRC continues to monitor developments in the above mentioned areas. Specific action include participation in the NI Office's working group on Non-Jury Trials, provision of advice on specific public consultations (as outlines above) and engaging with international and domestic partners in respect of ongoing human rights concerns.

NHRI's recommendations to national and regional authorities

The NIHRC continues to advise that a statute of limitations restricting the investigation and prosecution of alleged unlawful killings and serious injuries which is determined by the identity of the suspect is incompatible with Articles 2 and 3 ECHR.

The NIHRC advises that the UK Government limits the use of closed material procedures in cases involving serious human rights violations and at least ensures the removal of obstacles to ensuring accountability.

The NIHRC recommends that the NI Office takes practical measures to determine the conditions whereby the use of non-jury trials will be discontinued.

Media freedom, pluralism and safety of journalists

Threats towards journalists remain an ongoing issue in Northern Ireland.

For example, last year, journalist Patricia Devlin received a number of online threats including threats made towards her young son and graffiti featuring the crosshair of a gun next to her name. In September 2021, her complaint that the Police Service of NI had failed to properly investigate the complaints or to provide protection was upheld. (1)

In April 2021, a Belfast Telegraph photographer, Kevin Scott was attacked whilst covering unrest in an interface area of Belfast. (2)

References

- (1) Allan Preston, 'Journalist Patricia Devlin's police complaint upheld by Ombudsman over failure to properly investigate threats' *Belfast Telegraph*, 10 September 2021. Available at: [Journalist Patricia Devlin's police complaint upheld by Ombudsman over failure to properly investigate threats - BelfastTelegraph.co.uk](https://www.belfasttelegraph.co.uk/news/ireland/journalist-patricia-devlin-s-police-complaint-upheld-by-ombudsman-over-failure-to-properly-investigate-threats-1.4611111)

Gillian Halliday, 'Belfast Telegraph photographer attacked during disorder at interface area in west Belfast', *Belfast Telegraph*, 07 April 2021. Available at: [Northern Ireland riots: Belfast Telegraph photographer attacked during disorder at interface area in west Belfast - BelfastTelegraph.co.uk](https://www.belfasttelegraph.co.uk/news/ireland/northern-ireland-riots-belfast-telegraph-photographer-attacked-during-disorder-at-interface-area-in-west-belfast-1.4581111)

- (2) NI Human Rights Commission, 'Annual Statement 2021', December 2021, at p. 202. Available at: [Publication - Annual Statement 2021 | Northern Ireland Human Rights Commission \(nihrc.org\)](https://www.nihrc.org/publication/annual-statement-2021)

Role of the NHRI in promoting and safeguarding an enabling environment for media and freedom of expression

As reported on previously, the NIHRC continues to monitor media freedom and the safety of journalists. In its 2021 Annual Statement, the NIHRC continued to recommend that any limitation of journalists' freedom of expression must be human rights compliant. Information allegedly establishing the involvement of State agents in non-human rights compliant conduct should not be arbitrarily withheld from the public and journalists and human rights defenders should not face intimidation or reprisals for disclosing such information. The NIHRC further recommended that the Department of Justice ensures the right to a fair trial and right to an effective remedy for journalists facing allegations are fulfilled, respected and protected. (1)

References

- (1) NI Human Rights Commission, 'Annual Statement 2022', December 2021, at p. 202: <https://nihrc.org/publication/detail/annual-statement-2021>

NHRI's recommendations to national and regional authorities

The NIHRC continues to recommend that journalists have effective protection to report on issues of public importance.

The NIHRC recommends that any limitation of journalists' freedom of expression must be human rights compliant.

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

Emergency regimes and related measures

Legislative restrictions relating to the Covid-19 pandemic continue to be extended on a regular basis. This is the case, for example, in relation to face coverings (1) and limitations on gatherings. (2) The NIHRC continues to monitor these developments, but is concerned about the speed at which measures are introduced, and the possibility of temporary measures becoming permanent. The NIHRC recommends that there is a public inquiry into the handling of COVID-19 within NI, either by full inclusion in the UK-wide inquiry or that those areas within the competence of the devolved administration will be subject to an independent process that is human rights compliant. (3)

In addition, new regulations are being introduced on the basis of public health concerns. For example, in November 2021, The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2021 (Amendment No. 19) Regulations (Northern Ireland) 2021, were laid before the Northern Ireland Assembly by emergency procedure, with no notice or time for meaningful scrutiny. The Regulations introduced mandatory COVID status certification for entrance into licensed hospitality, entertainment venues and large events. The NIHRC had sought access to the Regulations and the Department of Health's Human Rights Impact Assessment in order to inform its views on the Regulations, which were the subject of public concern. The NIHRC provided advice to the Minister, recommending that any future regulations are accompanied by a detailed and complete Human Rights Impact Assessment and allow sufficient time for scrutiny.

There have also been delays to a number of major court cases, including two murder trials and a conflict related shooting case, which have been adjourned due to concerns about the rapid spread of the Omicron variant of COVID. (4)

The NIHRC acknowledges the ever-evolving nature of the pandemic and the need for the NI Assembly to take action in a timely manner and has been encouraged by the development of human rights impact assessments in respect of some emergency regulations. The NIHRC continues to advocate for regular review of emergency measures and for proper legislative scrutiny by both the Northern Ireland Assembly and relevant Committees. The NIHRC recommends that there is a public inquiry into the handling of COVID-19 within NI, either by full inclusion in the UK-wide inquiry or that those areas within the competence of the devolved administration will be subject to an independent process that is human rights compliant.

References

- (1) The Health Protection (Coronavirus, Wearing of Face Coverings) (Amendment) (No.8) Regulations (Northern Ireland) 2021 which amend The Health Protection (Coronavirus, Wearing of Face Coverings) Regulations (Northern Ireland) 2020: <https://www.legislation.gov.uk/nisr/2020/151/contents>
- (2) The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2021: <https://www.health-ni.gov.uk/publications/health-protection-coronavirus-restrictions-regulations-northern-ireland-2021>
- (3) NI Human Rights Commission, 'Annual Statement 2022', December 2021, at p. 91: <https://nihrc.org/publication/detail/annual-statement-2021>
- (4) 'Covid-19: Judges are forced to adjourn major cases', *BBC News*, 10 January 2022.: <https://www.bbc.co.uk/news/uk-northern-ireland-59944156>

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

The NIHRC is concerned at the risk of temporary measures implemented to address the risk of COVID 19 becoming long-term or permanent. The NIHRC continues to advocate for regular review of emergency measures and for proper legislative scrutiny by both the Northern Ireland Assembly and relevant Committees. The NIHRC has raised concerns at the lack of information on the human rights basis for decision making and that restrictions may have a disproportionate impact on already marginalised groups and exacerbate social exclusion.

For example, in June 2021 the NIHRC provided advice to the Minister for Health in respect of the human rights impact assessment accompanying travel restrictions, highlighting the importance of a human rights based approach and detailed consideration of the impact of enforced isolation periods on particular grounds such as children, individuals with specific needs and persons with disabilities. (1)

Similarly, in November 2021 the regulations in relation to mandatory COVID status certification were laid before the NI Assembly by emergency procedure. The NIHRC raised concerns about the potential negative impact on those impacted by digital exclusion due to the reliance on technology as well as potential challenges for people experiencing homelessness or those going through the asylum process. (2)

References

- (1) NI Human Rights Commission, Correspondence to the Minister for Health on the Health Protection (Coronavirus, International Travel) Regulations (Northern Ireland) 2021, June 2021.
- (2) NI Human Rights Commission, Correspondence to the Minister for Health on the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2021 (Amendment No. 19) Regulations (Northern Ireland) 2021, November 2021.

Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context

The NIHRC continues to provide advice to government on COVID restrictions by advising on the relevant human rights framework to ensure that any restrictions are necessary, proportionate and temporary. The NIHRC also advocates for a participatory process that allows meaningful engagement with those impacted by any restrictions including those from vulnerable and marginalised groups.

In August 2021, the NI Executive published its COVID-19 recovery plan 'Building Forward: Consolidated COVID-19 Recovery Plan'. (1) It brings together a number of recovery actions that will be delivered over a 24-month period which includes tackling inequalities as a recovery accelerator. In its response to the draft plan, the NIHRC highlighted how our assessment of the reforms to the social security system in NI since 2010 found that they infringe the right to social security in several key aspects, and that reforms have had a disproportionately negative impact on some of the most vulnerable groups in NI, including households where members have disabilities.(2) In response to the draft consolidated COVID-19 recovery plan, the NIHRC recommended that the recommendations outlined in our Impact Assessment are revisited by the NI Executive and considered in the context of the ongoing pandemic and recovery. The NIHRC has also recently published further research on 'The Impact of Public Spending Changes in Northern Ireland' (3) and 'The Impact of Covid-19 on Public Services in Northern Ireland'. (4)

We continue to offer advice to the public, a significant proportion of this has related to concerns about restrictions including the wearing of mask, vaccinations and access to care homes/hospitals for visitation. We have produced fact sheets for our website of key issues such as mandatory vaccination and the Covid certification scheme.

References

- (1) The Executive Office, 'Building Forward: Consolidated COVID-19 Recovery Plan' (TEO, 2021): <https://www.executiveoffice-ni.gov.uk/topics/making-government-work/building-forward-consolidated-covid-19-recovery-plan>
- (2) NI Human Rights Commission, 'Cumulative Impact Assessment of Tax and Social Security Reforms', (NIHRC, 2019): <https://nihrc.org/publication/detail/cumulative-impact-assessment-of-tax-and-social-security-reforms-in-northern>
- (3) Howard Reed (Landman Economics) and Jonathan Portes (Aubergine Analysis and Kings College London), 'The Impact of Public Spending Changes in Northern Ireland, November 2021: <https://nihrc.org/publication/detail/full-report-the-impact-of-public-spending-changes-in-northern-ireland>
- (4) Howard Reed (Landman Economics) and Jonathan Portes (Aubergine Analysis and Kings College London), 'The Impact of Covid-19 on Public Services in Northern Ireland, November 2021: <https://nihrc.org/publication/detail/report-the-impact-of-covid-19-on-public-services-in-northern-ireland>

Efforts by state authorities to mitigate challenges

A number of financial supports were introduced in Northern Ireland during the course of the pandemic. These included the Coronavirus Job Retention Scheme (furlough) scheme, a Self-Employment Income Support Scheme to support businesses impacted by COVID 19 and a £100 spend local voucher for all Northern Ireland residents over the age of 18 to spend within local businesses.(1) These have all been met with some degree of criticism.

The UK government increased social security payments by £20 per week during the pandemic, bringing this to an end in October 2021. The leaders of the devolved institutions (Northern Ireland, Scotland and Wales) wrote jointly to the UK Government highlighting the impact on child poverty, poverty levels and the financial health and wellbeing of people. (2)

References

- (1) Department for the Economy Briefing: <https://www.nicva.org/article/df-e-briefing-on-the-high-street-100-voucher-scheme>
- (2) 'Universal credit: Devolved governments join calls to keep £20 top-up', BBC News, 30 August 2021: <https://www.bbc.co.uk/news/uk-58384578>

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

Due to new restrictions announced in December 2021, the NIHRC staff continues to work remotely. All in person meetings and events have been moved online. The NIHRC continues to operate all of its functions, delivering advice to the public by telephone or video conferencing and hosting meetings online.

NHRI's recommendations to national and regional authorities

The NIHRC recommends that there is a public inquiry into the handling of COVID-19 within NI, either by full inclusion in the UK-wide inquiry or that those areas within the competence of the devolved administration will be subject to an independent process that is human rights compliant.

The NIHRC continues to recommend that emergency measures are reviewed on a regular basis.