

## Northern Ireland 2024

### Information from: Northern Ireland Human Rights Commission

## Follow-up to last year's rule of law recommendations

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### NHRI's follow-up actions supporting implementation of regional actors' recommendations

The Northern Ireland Human Rights Commission (hereinafter: NIHRC, the Commission) continues to engage with and promote human rights based monitoring, such as the CoE Committee of Ministers' [monitoring](#) of the McKerr Group of cases ([NI Human Rights Commission, 'Rule 9 Submission to the CoE Committee of Ministers in Relation to the Supervision of the Cases Concerning the Actions of the Security Forces in NI: Advice on NI Troubles \(Legacy and Reconciliation\) Bill \(NIHRC, 2022\)](#)), CoE Advisory Committee on the Framework Convention on the Protection of National Minorities' fifth [monitoring](#) cycle of the UK ([NI Human Rights Commission, 'Submission to the Advisory Committee on the Framework Convention for the Protection of National Minorities: Parallel Report to the Advisory Committee on the Fifth Monitoring Report of the UK' \(NIHRC, 2022\)](#)), CoE Committee of Experts of the European Charter for Regional or Minority Languages and the CoE Group of Experts on Action against Violence against Women and Domestic Violence.

The NIHRC also continues to publish its [annual statement](#) which provides an overview of the human rights landscape in NI and makes several recommendations on how human rights compliance can be improved, which are based on recommendations by regional and international monitoring [bodies](#). In addition, the NIHRC works with the Equality Commission for NI in respect of its oversight function of the UK Government's commitment to human rights and equality in the Ireland/NI Protocol to the UK-EU Withdrawal Agreement. (See: NI Human Rights Commission and Equality Commission for NI, 'Annual Report on the Implementation of Article 2 of the Windsor Framework' (NIHRC and ECNI, 2023).

A short-term measure has been implemented to ensure adequate funding for the Commission for the next six to twelve months. A further commitment is needed to secure its longer-term sustainability. The NIHRC will work with the UK Government to achieve that. The NIHRC wants to do the job it was set up to do, efficiently and effectively. It needs to reinforce its foundation - as an arrangement central to the Belfast (Good Friday) Agreement 1998 - and needs

to hold government and all public authorities to account. That requires courage and resilience, but also support.

### **Cooperation with monitoring mechanisms**

In 2022, the Commission provided written evidence to inform the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities' fifth cycle monitoring of the UK's implementation of the Framework Convention (See NI Human Rights Commission, 'Parallel Report to the Advisory Committee on the Fifth Monitoring Report of the United Kingdom' (NIHRC, 2022). In 2022, the CoE Advisory Committee also conducted a country-visit [meeting](#) during which it consulted the Commission, government officials, parliamentarians, representatives of minorities, civil society organisations and other relevant bodies across the UK, including Northern Ireland (hereafter "NI"). In May 2023, the CoE Advisory Committee published its adopted opinion (CoE Advisory Committee on the Framework Convention for the Protection of National Minorities, 'Fifth Opinion on the UK', 8 December 2022). In July 2023, the CoE Committee of Ministers adopted a resolution, which contains recommendations on the UK's implementation on the Framework Convention (CM/ResCMN(2023)7, 'CoE Committee of Ministers Resolution on the Implementation of the CoE Framework Convention for the Protection of National Minorities by the UK', 12 July 2023). In August 2023, the UK Government's comments on the CoE Advisory Committee's report were published (CoE, 'Comments of the Government of the UK on the Fifth Opinion of the Advisory Committee on the Implementation of the CoE Framework Convention for the Protection of National Minorities by the UK' (CoE, 2023)). In its response the UK Government reiterated its commitment to fulfil the provisions in New Decade, New Approach relating to identity and language. The UK Government also reiterated its commitment to update the UK Parliament every six months on the implementation of the Identity and Language (Northern Ireland) Act 2022, and most recently did so on 6 June 2023.

### **Follow-up to the CoE European Commission Against Racism and Intolerance's recommendations**

In May 2023, the Commission provided written evidence to the CoE European Commission Against Racism and Intolerance to inform its sixth cycle monitoring of the UK (NI Human Rights Commission, 'Submission to the CoE European Commission Against Racism and Intolerance: [Parallel Report](#) for the Sixth Cycle in Monitoring the UK' (NIHRC, 2023)). In November 2023, the CoE European Commission visited the UK, including NI, and met with several stakeholders, including the Commission.

### **CoE Group of Experts on Action against Violence Against Women and Domestic Violence**

In December 2023, the Commission provided written evidence to the CoE

Group of Experts on Action against Violence Against Women and Domestic Violence as part of its first monitoring cycle of the UK's compliance with the Istanbul Convention (NI Human Rights Commission, 'Submission to the CoE Group of Experts on Action against Violence against Women and Domestic Violence - Parallel Report for the Baseline Report in Monitoring the United Kingdom' (NIHRC, 2023)). The CoE Group of Experts conducted an in-country visit to the UK, including NI, in January 2024. A report of the CoE Group of Experts' findings and recommendations is to follow thereafter.

### **CoE Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse**

In December 2023, the Commission provided written evidence to the CoE Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse as part of its thematic monitoring round on the protection of children against sexual exploitation and sexual abuse in the circle of trust (Letter from the NI Human Rights Commission to the Secretariat of the CoE Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse on the thematic monitoring round on the protection of children against sexual exploitation and sexual abuse in the circle of trust, 6 December 2023).

### **Council of Europe High Commissioner for Human Rights**

The Council of Europe High Commissioner for Human Rights, reflecting [advice](#) provided by the NIHRC, [highlighted](#) concerns regarding the Illegal Migration Act 2023 and regarding the Safety of Rwanda (Asylum and Immigration) Bill. In addition, the Council of Europe High Commissioner has continued to raised concerns regarding the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (Letter from CoE Commissioner for Human Rights, Dunja Mijatovic, to Secretary of State for NI, Brandon Lewis MP, 13 September 2021).

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### **State authorities' follow-up to NHRI's recommendations regarding rule of law**

Following concerns by the Democratic Unionist Party about the operation of post-Brexit trading arrangements between NI and the rest of the UK, it

withdrew from the NI Executive. NI was without a fully functioning NI Executive and NI Assembly between February 2022 and February 2024. This is the second suspension period in recent years, with a previous suspension running from January 2017 until January 2020. Between February and October 2022, the NI Ministers continued in a caretaking capacity. In October 2022, as experienced during the previous suspension, responsibility for managing devolved issues moved to the Head of the Civil Service and Departmental Permanent Secretaries. Since February 2022, no new policies or legislation have been able to progress. In the absence of elected ministers, government departments were unable to make major policy decisions or introduce legislation. Following political agreement between the UK and the EU to provide for additional scrutiny by the NI Assembly in respect of the trade arrangements in the original Ireland/NI Protocol to the UK-EU Withdrawal Agreement, it was renamed the Windsor Framework in March 2023 (UK Government and EU Commission, '[Windsor Political Declaration](#)' by the European Commission and the Government of the United Kingdom', 27 February 2023; [Decision No 1/2023 of the Joint Committee](#) established by the agreement on the withdrawal of the United Kingdom Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023, laying down arrangements relating to the Windsor Framework). In January 2024, the UK published a command paper which provided further assurances on the operation of the UK Internal Market. (NI Office, 'Safeguarding the Union', (NIO, 2024). In February 2024, the NI Assembly and Executive were reestablished.

In terms of the UK Parliament, the Government confirmed that Bill of Rights Bill, which sought to reform the Human Rights Act 1998 would not progress and that it would instead seek to reform the UK's human rights framework through a piecemeal approach, such as the now Illegal Migration Act 2023 and the now NI Troubles (Legacy and Reconciliation) Act 2023. (See: UK Parliament Hansard, 'House of Commons Oral Question: Topical Questions – Justice – Alex Chalk MP, Secretary of State for Justice – Vol 735, Col 145', 27 June 2023. The Commission has raised additional concerns with the compatibility of these proposed pieces of legislation with human rights law and Windsor Framework Article 2. (See: NI Human Rights Commission, 'Submission to the House of Lords on the Illegal Migration Bill' (NIHRC, 2023); NI Human Rights Commission, 'Advice on NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); NI Human Rights Commission, 'Supplementary Briefing: UK Government's Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2023); NI Human Rights Commission, 'Supplementary Briefing: UK Government's Additional Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2023).

## Northern Ireland 2024

## Information from: Northern Ireland Human Rights Commission

# Independence, effectiveness and establishment of NHRIs

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## International accreditation status and SCA recommendations

The Northern Ireland Human Rights Commission (NIHRC) was last [re-accredited with A-status in October 2023](#).

The SCA recommended that the NIHRC continue its engagement with relevant national authorities, in line with their public commitment, to ensure an adequate and appropriate level of funding as well as long term financial sustainability to enable it to carry out the full breadth of its mandate in an efficient and effective manner.

Furthermore, the SCA reiterated its previous recommendation that the NIHRC advocate for appropriate modifications to applicable administrative procedures to ensure that its functional independence and financial autonomy are guaranteed.

The SCA recommended that the NHRI continue to advocate for pluralism, including minority representation, in its composition and staffing.

Finally, the SCA encouraged the NIHRC 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 places of deprivation of liberty 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.

## Follow-up to SCA Recommendations and relevant developments

In 2021, when considering whether the Commission should retain its accreditation as an 'A status' national human rights institution, the Sub-Committee on Accreditation identified funding, financial autonomy, diversity and pluralism, and the inability to visit places of deprivation of liberty without notice as areas of concern. The Sub-Committee on Accreditation sought for these areas to be "improved" and for the Commission to be placed in a "sustainable position". (See: Email correspondence between the Global Alliance

of National Human Rights Institutions Sub-Committee on Accreditation and the NI Human Rights Commission, 2 November 2021.)

## **Independent review of the NHRI**

In 2022, the NI Office commissioned an independent review of the Commission. To enable time for the outcome of the independent review to be considered, the Sub-Committee on Accreditation decided to defer its decision on the Commission's reaccreditation. However, in March 2023, the Sub-Committee on Accreditation confirmed that it had made its final deferral.

In September 2023, the independent review's report and the response by the UK Government were published. The UK Government accepted most of the independent review's recommendations, including a recommendation a comprehensive review of the Commission be conducted to determine the appropriate level of funding. (See: Simon Routh-Jones, 'Independent Review of the NI Human Rights Commission' (UK Gov, 2022); NI Office, 'UK Government Response to the Independent Review of the NI Human Rights Commission 2022' (NIO, 2023).

In October 2023, the Sub-Committee on Accreditation decided that the Commission should retain its 'A-status'. (See: Letter from the Global Alliance of National Human Rights Institutions Sub-Committee on Accreditation to the NI Human Rights Commission, 1 November 2023). Consequently, the Commission has retained its voting rights at the Global Alliance of National Human Rights Institutions and has speaking rights at the UN Human Rights Council. The Commission continues to engage with the comprehensive budget review.

## **Adequate Funding**

Last year, the NHRI reported on the risk to its 'A' status accreditation before the United Nations, which resulted from a protracted and critical reduction in its resources. The Commission also advised that there would be a potential breach of Article 2(2) if for this reason its 'A status' was not confirmed on review. (See: Letter from NIHRC to Brandon Lewis MP, Secretary of State for NI, 17 November 2021.) The long-term under-funding of the Commission and its obvious impact upon its ability to function was recognised in an independent review report, published earlier this year. That report made a number of recommendations to ensure the future of the Commission's operational independence (see: Simon Routh-Jones, 'Independent Review of the NI Human Rights Commission' (UK Gov, 2022)).

## **Regulatory framework**

As set out in the [2023 report](#), the NIHRC remains unable to visit places of deprivation of liberty without advance notice. There have been no changes to the regulatory framework in the last year.

## **NHRI enabling and safe environment**

The relevant State authorities have good awareness of the NHRI's mandate, independent and its role. However, NI has been without a fully functioning NI Executive and NI Assembly since February 2022 and no new policies, legislation or funding have been able to progress, including addressing recommendations of the NIHRC, and this remained the case until the NI Executive and NI Assembly were reinstated in February 2024.

Prior to February 2022, the NIHRC had adequate access to information and to policy makers and was involved in all stages of legislation and policy making with human rights implications issued by the devolved institutions. The NIHRC was also provided with copies of all legislation introduced into the NI Assembly by the Speakers' Office. Individual elected representatives also sought advice in respect of private members Bills for the NI Assembly. Between February 2022 and February 2024, the NIHRC continued to have a good working relationship with civil servants and Permanent Secretaries.

In 2023, the NIHRC provided evidence to the House of Lords on the then Illegal Migration Bill; NI Troubles (Legacy and Reconciliation) Bill; and the Retained EU Law (Revocation and Reform) Bill.

Concerns expressed in 2023 remain.

In 2023, the NIHRC intervened in a legal challenge brought by victims to the NI Troubles (Legacy and Reconciliation) Act 2023. The Commission remain remains gravely concerned that the legislation is not compliant with the ECHR and Windsor Framework Article 2. In February 2024, the High Court in Belfast found that the immunity provisions in the Act are not compliance with the ECHR and Windsor Framework Article 2.

In 2023, the NIHRC continued to raise concerns about the now Retained EU Law (Revocation and Reform) Act 2023. In June 2023, the Secretary of State for Business and Trade stated that the then Retained EU Law (Revocation and Reform) Bill did not disturb section 7A of the EU Withdrawal Act 2018 which gives effect to Windsor Framework Article 2 in UK law. However the letter also stated that "domestic law giving effect to Article 2 rights may be affected by the abolition of retained EU interpretive effects and that it may be necessary to restate a number of instruments within scope of Windsor Framework Article 2 "to codify any required effects". The Commission is concerned that this approach creates confusion and incomplete codification. Commission considers that section 7A of the EU Withdrawal Act 2018 requires that relevant EU measures, be read in keeping with EU interpretive requirements and that related domestic provisions should be interpreted in a manner that ensures no diminution of standards, contrary to Windsor Framework Article 2.

In July 2023 the NIHRC, along with ECNI, submitted our Annual Report on the implementation of Windsor Framework Article 2 to the Secretary of State and the NI Executive Office. In accordance with Section 78(4) of the NI Act 1998, the Commission requested a written response to the recommendations in the report explaining what steps had been taken or were planned in response. As of March 2023, no response has been received.

## **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 National Human Rights Institution under the UN Paris Principles.
- the NI Office ensures there is adequate and sustained resourcing of the NIHRC, and the Equality Commission for NI, to fulfil their responsibilities as part of the dedicated mechanism framework to oversee the implementation of Article 2 of the Ireland/NI Protocol to the UK-EU Withdrawal Agreement. The Protocol on Ireland/Northern Ireland to the UK-EU Withdrawal Agreement 2020 is now known as the Windsor Framework. As this report relates to 2022, all references to the Protocol remain unchanged and should read as relating to the Windsor Framework/Protocol on Ireland/Northern Ireland. (See Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework).
- it is granted powers to carry out 'unannounced' visits to places of detention as it limits opportunities for detaining authorities to hide or obscure human rights violations and facilitates greater scrutiny.

## **Northern Ireland 2024**

### **Information from: Northern Ireland Human Rights Commission**

## **Democracy - checks and balances, disinformation, and other topics**

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## Separation of powers

### Safety of Rwanda (Asylum and Immigration) Act

In April 2024 the Safety of Rwanda Bill received royal assent. In the NHRI's advice on the Safety of Rwanda (Asylum and Immigration) Bill, the Commission raised concerns that Clause 2 seeks to declare conclusively that Rwanda is safe and remove any challenge on that point. (See: NI Human Rights Commission, 'Advice on the Safety of Rwanda (Asylum and Immigration) Bill' (NIHRC 2024). The courts would be excluded from assessing compliance with the so-called safeguards in practice. In other words, there will be no ability to challenge the safeguards in the treaty and their sufficiency in an individual case or to challenge even a flagrant breach of those safeguards in practice. In so doing, the Bill not only interferes with the right to an effective remedy under Article 13 of the European Convention on Human Rights (ECHR) but undermines in a critical way the role of the judiciary within the UK's constitutional order.

Clause 2(5) would appear to be in conflict with Section 7A of the EU (Withdrawal) Act 2018 which gives domestic effect to Article 4 of the UK-EU Withdrawal Agreement and incorporates all rights, obligations, and remedies arising under the UK-EU Withdrawal Agreement into UK law. Section 7A(3) also provides for the primacy of this incorporation over "every enactment". Court judgments have held that Windsor Framework Article 2 has direct effect, meaning individuals can assert their rights before domestic courts. (See, for example, In the Matter of an Application by SPUC Pro-Life Ltd for Judicial Review [2022] NIQB 9; Angsom's (Aman) Application [2023] NIKB 102); Re NIHRC [2024] NIKB 35. The NIHRC advised that to the extent that clause 2(5) limits the ability of an individual to seek redress for a potential diminution of Windsor Framework Article 2, it is in breach of Article 4 of the UK-EU Withdrawal Agreement.

Clause 3 of the Bill seeks to disapply sections 2, 3 and 6 to 9 of the Human Rights Act 1998. Section 2 of the Human Rights Act 1998 requires domestic courts to "take into account" jurisprudence from the European Court of Human Rights (ECtHR). Section 3 of the 1998 Act requires courts and public authorities to interpret all UK legislation "so far as it is possible to do so" in an ECHR-compliant way. By disapplying these sections, clause 3 seeks to prevent UK courts from hearing a challenge to a government decision to treat Rwanda as safe on the basis of non-compliance with the ECHR.

Sections 6 to 9 of the Human Rights Act 1998 require public authorities to act compatibly with ECHR rights and provide individuals whose rights have been violated the right to bring proceedings and obtain remedies in domestic courts. The disapplication of these sections suggests a willingness to empower public authorities to act in ways that may breach the UK's human rights obligations. Moreover, clause 3 seeks to inhibit direct access to domestic courts for individuals wishing to challenge a decision to treat Rwanda as safe and limits

the ability of individuals to secure a domestic remedy for a breach of their ECHR rights.

Under the ECHR, where an individual has an “arguable complaint” that their removal to a third country would expose them to treatment contrary to Articles 2 and 3, they are entitled to an effective remedy at the domestic level in accordance with Article 13. (See: *M.S.S. v Belgium and Greece* (2011) ECHR 1124). While this is acknowledged within the ECHR Memorandum (which sets out the Government’s view on compliance of the Bill with the ECHR), the UK government concludes that the power to make a declaration of incompatibility under section 4 of the Human Rights Act 1998 is sufficient to satisfy the right to an effective remedy. (See: UK Government, ‘Safety of Rwanda (Asylum and Immigration) Bill – European Convention on Human Rights Memorandum’, (2023) at para 21). However, importantly, the ECtHR has held that a declaration of incompatibility alone does not constitute an effective remedy such that must be exhausted before an application can be made to the ECtHR. The ECtHR noted, “Although a declaration of incompatibility could be sought, there is no obligation following the making of such a declaration for the Government to amend the legislation and no entitlement to damages arises”. (See: *Burden and Burden v UK* (2006) ECHR 1064; *M.M. v UK* (2012) ECHR 1906). Therefore, the NIHRC continues to have grave concerns that the Bill will deny access to justice for violations of ECHR rights in the domestic courts. The ability to issue a declaration of incompatibility will not remediate the fact that clause 2 of the Bill contravenes the UK’s duty to assess the practical effectiveness of Rwanda’s asylum procedures under ECHR Articles 2 and 3, while clause 3 prevents judicial scrutiny of whether a person’s ECHR rights are infringed as a result.

The Commission advised that refugees and asylum seekers are protected by Windsor Framework Article 2 and that rights particular to refugees and asylum-seekers are within the scope of the Rights, Safeguards and Equality of Opportunity chapter of the Belfast (Good Friday) Agreement by virtue, in particular, of the commitment to civil rights and to incorporate the ECHR into domestic law. (See: *Angesom’s (Aman) Application* [2023] NIKB 102 at para. 107: “The applicant and respondent both agree that the rights, safeguards and equality of opportunity enshrined in the relevant part of the GFA do not exclude asylum seekers.” Confirmed in *re NIHRC* [2024] NIKB 35, at para 68.) NIHRC advised that, as a result of Windsor Framework Article 2, the following measures of EU law, which were binding on the UK before EU withdrawal, continue to set standards for human rights protection below which the law in NI should not fall:

- the EU Temporary Protection Directive (see: Directive 2001/55/EC ‘Council Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons’, 20 July 2001.),

- the original EU Asylum Reception Directive (See: Directive 2003/9/EC, 'Council Directive laying down minimum standards for the reception of asylum seekers', 27 January 2003),
- the EU Qualification Directive (See: Directive 2004/83/EC 'Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted', 29 April 2004),
- the EU Asylum Procedures Directive (See: Directive 2005/85/EC, 'Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status', 1 December 2005), and
- the Dublin Convention and successor Regulations, the latest of which is Regulation (EU) No 604/2013 known as the Dublin III Regulation. (See: Regulation 604/2013/EU 'Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)', 26 June 2013.

## **The process for preparing and enacting laws**

The NI Assembly and NI Executive was restored in February 2024 the Commission continues to engage with the secretariat to the NI Assembly to ensure standing orders governing the preparation and enactment of laws provide adequate checks and balances.

### **Retained EU Law (Revocation and Reform) Act 2023**

The NIHRC is concerned about the extent of delegated powers in the Retained EU Law (Revocation and Reform) Act 2023 and the need to ensure robust democratic scrutiny of policy change impacting human rights and equality. Effective parliamentary scrutiny of changes to Retained EU / assimilated law requires that consideration of Windsor Framework Article 2 is incorporated into guidance, training, policy development and engagement and then reflected in bill documentation. The Commission recommends that when making any change to Retained EU / assimilated law, the relevant UK or NI Minister confirms that an assessment for compliance with the commitment in Article 2 has been undertaken and that there is no diminution of the rights, safeguards and equality of opportunity as set out in the relevant part of the Belfast (Good Friday) Agreement as a result of the UK leaving the EU.

The Commission considers that section 7A EUWA requires that relevant EU measures, be read in keeping with EU interpretive requirements and that related domestic provisions should be interpreted in a manner that ensures no diminution of standards, contrary to Windsor Framework Article 2.

Parliamentary correspondence suggests the government may have a different view of the interaction between these provisions and Windsor Framework Article 2. In June 2023, the Secretary of State for Business and Trade stated that Windsor Framework Article 2 “does not itself apply EU law, and so domestic law giving effect to Article 2 rights may be affected by the abolition of retained EU interpretive effects”. (See: [here](#) and [here](#)). The Commission recommends that, consistent with principles of transparency and openness, government publishes guidance on the methodology, scope and approach to be taken by Departments in respect of the proposed codification of interpretative effects on a case-by-case basis, specifically in the context of meeting its Windsor Framework Article 2 commitments. In order to increase accessibility and clarity of the statute book, and increase accountability, transparency and openness, the Commission recommends that government takes steps to ensure that any changes to the Retained EU / assimilated law in Northern Ireland relating to equality and human rights are made clear and easily accessible, including to those whose rights are affected. The Commission further recommends that the UK Government reviews and evaluates, within a reasonable timeframe, the proposed codification process in respect of EU interpretive effects in Northern Ireland and publishes that evaluation.

In June 2023, the Secretary of State for Business and Trade stated that the then Retained EU Law (Revocation and Reform) Bill did not disturb section 7A of the EU Withdrawal Act 2018 which gives effect to Windsor Framework Article 2 in UK law. However, the letter also stated that “domestic law giving effect to Article 2 rights may be affected by the abolition of retained EU interpretive effects and that it may be necessary to restate a number of instruments within the scope of Windsor Framework Article 2 “to codify any required effects”. (See: [Letter](#) from the Secretary of State for Business and Trade, Kemi Badenoch MP, to the House of Lords Sub-Committee on the Ireland/NI Protocol, 16 June 2023.) The Commission is concerned that this approach creates confusion and incomplete codification. Commission considers that section 7A of the EU Withdrawal Act 2018 requires that relevant EU measures, be read in keeping with EU interpretive requirements and that related domestic provisions should be interpreted in a manner that ensures no diminution of standards, contrary to Windsor Framework Article 2.

In July 2023 the NIHRC, along with the Equality Commission for Northern Ireland, submitted its Annual Report on the implementation of Windsor Framework Article 2 to the Secretary of State and the NI Executive Office (see: Equality Commission for NI and NI Human Right Commission, ‘[Annual Report of the Equality Commission for NI and NI Human Right Commission on the implementation of article 2 of the Windsor Framework 2022-2023](#)’. (ECNI and NIHRC, 2023)). In accordance with Section 78(4) of the NI Act 1998, the Commission requested a written response to the recommendations in the report explaining what steps had been taken or were planned in response. As of March 2023, no response has been received.

## **NI Troubles (Legacy and Reconciliation) Bill**

In 2023, the NIHRC intervened in a legal challenge brought by victims to the NI Troubles (Legacy and Reconciliation) Act 2023. The NIHRC remains gravely concerned that the legislation is not compliant with the ECHR and Windsor Framework Article 2. (See: House of Commons NI Affairs Committee, 'Oral Evidence: Addressing the Legacy of NI's Past - The UK Government's New Proposals', 7 June 2022; NI Human Rights Commission, 'Legislative Scrutiny: NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); NI Human Rights Commission, 'Rule 9 Submission to the CoE Committee of Ministers in relation to the Supervision of the Cases Concerning the Actions of the Security Forces in NI: Advice on NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); NI Human Rights Commission, 'Advice on NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); Letter from the NI Human Rights Commission to Lord Jay, Chair of the House of Lords Sub-Committee on the Ireland/Northern Ireland Protocol, 30 January 2023; NI Human Rights Commission, 'Supplementary Briefing: UK Government's Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2023).

In February 2024, the High Court in Belfast found that the immunity provisions in the Act are not in compliance with the ECHR and Windsor Framework Article 2. (See: *Re Dillon* [2024] NIKB 11).

## **Enabling environment for civil society and human rights defenders**

The NIHRC has commissioned research into disinformation and to its impact on informed public debate. The research will consider the impact of disinformation on public discourse.

## **NHRI's recommendations to national and regional authorities**

The NIHRC considers that effective participation secures the robustness of systems of checks and balances and recommends that:

- A Central Regional Disability Forum is promptly established. This Forum should be sufficiently resourced on a long-term basis and consist of persons with disabilities and their representative organisations.
- effective steps are taken to ensure women's participation in public and political life is proportionate to NI's population. This includes ensuring that all existing and future gender equality strategies and policies, including the Gender Equality Strategy for NI, identify and address effectively the barriers hindering women's participation in public and political life.

- both the NI Executive and UK Government ensure effective and regular engagement with civil society, including human rights and equality groups and that the supervisory bodies established under the UK-EU Withdrawal Agreement and the UK-EU Trade and Cooperation Agreement establish formal structures for open, transparent and regular engagement with equality and human rights stakeholders in NI.

## Northern Ireland 2024

### Information from: Northern Ireland Human Rights Commission

## Securitisation's impact on the rule of law and human rights

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### NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation

The Commission regularly engages with independent monitors of counter terrorism powers. In addition, the Commission has highlighted concerns regarding the broad definition of terrorism contained in UK law, the low threshold for arrest for terrorism offences and the need for effective monitoring in its submission to the UN Human Rights Committee (see: NI Human Rights Commission, '[Submission](#) to the UN Human Rights Committee on the United Kingdom's Eighth Periodic Report on Compliance with the International Covenant on Civil and Political Rights' (NIHRC, 2024)).

### NHRI's recommendations to national and regional authorities

- The UK Government should conduct a review of the broad definition of terrorism contained in UK law.
- The UK Government should only utilise the power to withhold notice of a decision to deprive a person of British citizenship when it is absolutely necessary.
- The Commission recommends that the UK Government repeals the NI Troubles (Legacy and Reconciliation) Act 2023 and introduces revised legislation that is human rights compliant, victim-centred, does not restrict the investigation and prosecution of alleged unlawful killings

and serious injuries, is compatible with Articles 2 (right to life) and 3 (freedom from torture) of the ECHR and compliant with the EU Victims' Directive and Windsor Framework Article 2.

## Northern Ireland 2024

### Information from: Northern Ireland Human Rights Commission

## Implementation of European Courts' judgments

### McKerr Group v UK

[The NIHRC reports that specific to NI, the ECtHR's McKerr](#) group of [cases](#) continue to await execution by the UK Government and are being actively monitored by the CoE Committee of Ministers. The McKerr group of cases concern the adequacy of investigations into deaths in the 1980s and 1990s in Northern Ireland. In September 2023, commenting on the NI Troubles (Legacy and Reconciliation) Act 2023, the CoE Committee of Ministers noted that “a number of issues relating to independence disclosure and the initiation of reviews remain uncertain”. The Committee of Ministers: “urged the authorities therefore to provide additional information on the planned practical and other measures to ensure that these issues are fully addressed, including: to ensure the independence of the Independent Commission on Reconciliation and Information Recovery appointment process; to further strengthen in practice the procedural safeguards for victims and their families; to develop clear disclosure protocols with all relevant authorities to the Independent Commission on Reconciliation and Information Recovery; and to ensure referral to the Independent Commission on Reconciliation and Information Recovery of all cases that might engage Articles 2 and 3 of the ECHR”. (See: CM/Del/Dec(2023)1475/H46-44, ‘CoE Committee of Ministers McKerr Group v UK (Application No 28883/95)’, 21 September 2023, at para 9.)

The Committee of Ministers underlined “again the importance for the success of any new investigative body, particularly if aimed at achieving truth and reconciliation, of gaining the confidence of victims, families of victims and potential witnesses”. The Committee of Ministers acknowledged “the steps taken by the authorities in an attempt to engage with victims and stakeholders” since the 2023 Act was introduced to Parliament, but “noted with deep regret nevertheless that despite those efforts, support for the Independent Reconciliation and Information Recovery remains minimal”.

Consequently, the Committee of Ministers “strongly encouraged the authorities to take all necessary additional measures to garner public trust and the confidence of victims, their families and all stakeholders”. (See: CM/Del/Dec(2023)1475/H46-44, ‘CoE Committee of Ministers McKerr Group v UK (Application No 28883/95)’, 21 September 2023, at para 11.)

The Committee of Ministers also reiterated its: “serious concern about the proposed conditional immunity scheme which risks breaching obligations under Article 2 of the ECHR to prosecute and punish serious grave breaches of human rights, and seriously undermining the Independent Commission on Reconciliation and Information Recovery’s capacity to carry out effective investigations within the meaning of Article 2 of the ECHR”.

The Committee of Ministers continued that it “deeply regretted therefore the authorities’ decision not to support the House of Lords’ amendment to remove the scheme from the [then NI Troubles (Legacy and Reconciliation)] Bill and its subsequent rejection”. The Committee of Ministers “strongly urged the authorities to consider repealing the immunity provisions”. (See: CM/Del/Dec(2023)1475/H46-44, ‘CoE Committee of Ministers McKerr Group v UK (Application No 28883/95)’, 21 September 2023, at para 12). The Committee of Ministers has sent a letter to the UK authorities raising its concerns and will re-examine the issue by June 2024 at the latest. (See: CM/Del/Dec(2023)1475/H46-44, ‘CoE Committee of Ministers McKerr Group v UK (Application No 28883/95)’, 21 September 2023, at paras 13 and 14).

In 2022 and 2023, the CoE Commissioner for Human Rights, Dunja Mijatović, echoed the CoE Ministers’ concerns. In June 2023, the Commissioner for Human Rights emphasised that the now NI Troubles (Legacy and Reconciliation) Act 2023 “ignores the many warnings that this legislation would violate the UK’s international obligations and put victims’ rights at risk”. (See: CoE Commissioner for Human Rights, ‘Press Release: UK – Adopting NI Legacy Bill will undermine justice for victims, truth seeking and reconciliation’, 20 June 2023.) In 2022, the Commissioner for Human Rights, emphasising that “any further steps on legacy must place the rights and needs of victims at its heart”, urged: “the UK Government to return to previously agreed principles in the Stormont House Agreement, and to use these principles as a basis to set out an approach to legacy cases that can carry the support of a considerable portion of society in NI, that provides for ECHR-compliant investigations into killings and other serious human rights violations during the Troubles, and that prevents impunity for such violations. This approach must be brought forward promptly to ensure that truth-finding and justice are no longer delayed.” (See: [CommDH\(2022\)27](#), ‘CoE Commissioner for Human Rights, Dunja Mijatovic: Report Following Visit to UK From 27 June to 1 July 2022’, 18 November 2022, at 37-40.)

## NHRI's actions to support the implementation of European Courts' judgments

- [Rule 9 Submission](#) to the Council of Europe Committee of Ministers in Relation to the Supervision of the Execution of Judgments and of Terms of Friendly Settlement: [Gaughran v. the United Kingdom](#) Application No. 45245/15
- [Rule 9 Submission](#) to the Council of Europe Committee of Ministers in Relation to the Supervision of the Execution of Judgements in relation to the McKerr group of cases.

## NHRI's recommendations to national and regional authorities

- Regular reporting by government to UK Parliament and NI Assembly

## Northern Ireland 2024

### Information from: Northern Ireland Human Rights Commission

## Other challenges to the rule of law and human rights

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- See earlier discussion on the [Safety of Rwanda Bill](#), [Illegal Migration Act](#) and NI Troubles and Legacy Act 2023.
- See earlier discussion on the [Safety of Rwanda Bill](#), [Illegal Migration Act](#) and NI Troubles and Legacy Act 2023. See also 'Red Issues' in the [NIHRC Annual Statement](#).

