



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

The Committee for the Office of the First Minister and deputy First Minister inquiry on Building a United Community

Summary

Introduction

The NIHRC advises the Committee:

(para 10) to consider the following relevant documents published by the NIHRC:

The Derry/Londonderry report on Upholding the Human Rights to Culture in Post Conflict Societies¹;

Parades and Protests in Northern Ireland²

The Display of Flags, Symbols and Emblems in Northern Ireland³; and,

'Dealing with Northern Ireland's Past: Towards a Transitional Justice Approach'⁴

(para 16) examine the mechanisms put in place by the OFMdfM, other NI Executive departments and public authorities to ensure the effective participation of rights holders in the processes of implementing T: BUC.

(para 20) that human rights should not have been reduced to 'principles' within T: BUC, they are binding legal obligations on the basis of which the NI Executive has corresponding duties. This should be addressed by the OFMdfM and the legality of human rights expressly acknowledged in any future legislation.

¹ http://www.nihrc.org/uploads/publications/culture_report_final.pdf

² http://www.nihrc.org/uploads/publications/110720_NIHRC_Parades_and_Protests_in_NI_REPORT_cover_inners_Single_Col_V3_LOW.pdf

³ http://www.nihrc.org/uploads/publications/104020_NIHRC_The_Display_of_Flags_Single_Column_V7_Final_Low_Res.pdf

⁴ http://www.nihrc.org/uploads/publications/NIHRC_Transitional_Justice_Report.pdf

(para 26) that T: BUC affords insufficient attention to the framework established by human rights law. Appropriate consideration of the relevant treaties and related soft law should therefore be evidenced by the OFMdfM, other NI Executive departments and public authorities responsible for the development and implementation of T: BUC.

(para 37) that the working definition of sectarianism in T: BUC conflates 'attitudes', with actions such as 'threatening, abusive or insulting behaviour'. It does not make clear that such actions may be prohibited by domestic law and subject to criminal sanctions. The Committee should seek to have this confusion addressed, taking into consideration the NI Executive's duty to prohibit sectarianism in accordance with human rights standards.

(para 43) that T: BUC does not sufficiently engage with the recommendations of the ICERD committee, nor does it reflect appropriately the definition of racism provided by the ECRI. The Committee should seek an assurance from the OFMdfM that this deficiency will be addressed.

(para 44) that any future legislation should ensure that a definition of sectarianism in domestic law is premised upon the ECRI definition of racism.

(para 54) to consider the relationship between the domestic concept of good relations and the framework of intercultural dialogue set out by the CoE and UN human rights treaty bodies. The Committee should recommend that the OFMdfM restate its position, acknowledging that T: BUC sits within this internationally accepted framework.

(para 55) that the OFMdfM, other NI Executive departments and public authorities responsible for the implementation of T: BUC should develop policies and programme for delivery that adopt the framework of intercultural dialogue and recognise its relation to the domestic concept of good relations.

(para 62) that the wording of the legal requirement to 'have regard to the desirability' to promote good relations is not fully in accordance with the obligation to take 'immediate and effective measures'.

(para 63) to recommend that domestic legislation be amended and strengthened to comply with human rights laws and standards. As a minimum, all public authorities should be required to take 'immediate and effective measures' to promote good relations.

(para 69) to recommend broadening the scope of application required by Section 75(2) of the Northern Ireland Act 1998.

(para 70) to recommend that the domestic duty to promote good relations be extended to six additional protected characteristics: age; disability; gender reassignment; pregnancy and maternity; sex; and sexual orientation.

(para 74) to assure itself that the proposed Equality and Good Relations Commission will be able to, and can, effectively carry out its functions. Any structural changes must be made with the express objective of increasing the protection and promotion of equality, non-discrimination, tolerance, mutual respect and understanding. There should be no retrogression from protections afforded by the existing structural arrangements of the ECNI and Community Relations Council.



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Introduction

1. The Northern Ireland Human Rights Commission (NIHRC) pursuant to Section 69 (1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of Human Rights.⁵ In accordance with this function the following statutory advice is submitted to Committee for the Office of the First Minister and deputy First Minister (OFMdfM) on its inquiry into 'Building a United Community.'
2. The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE) and United Nations (UN) systems. The relevant international treaties in this context include:
 - the CoE European Convention on Human Rights, 1950 (ECHR)⁶;
 - the CoE Framework Convention for the Protection of National Minorities (FCNM)⁷;
 - the International Covenant on Civil and Political Rights (ICCPR)⁸;
 - the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)⁹;
 - The International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁰;
 - the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)¹¹;

⁵ Northern Ireland Act 1998, Section 69(1).

⁶ Ratified by the UK in 1951.

⁷ Ratified by the UK in 1998.

⁸ Ratified by the UK in 1976.

⁹ Ratified by the UK in 1969.

¹⁰ Ratified by the UK in 1976.

- the UN Convention on the Rights of the Child (CRC)¹²;
 - the UN Convention on the Rights of Persons with Disabilities (CRPD)¹³;
 - the UN Educational, Scientific and Cultural Organisation (UNESCO) Convention on the Protection and Promotion of the Diversity of Cultural Expressions.¹⁴
3. The Northern Ireland Executive (NI Executive) is subject to the obligations contained within these international treaties by virtue of the United Kingdom (UK) Government's ratification. In addition, the Northern Ireland Act 1998, section 26 (1) provides that 'if the Secretary of State considers that any action proposed to be taken by a Minister or Northern Ireland department would be incompatible with any international obligations... he may by order direct that the proposed action shall not be taken.'
 4. The NIHRC further recalls that the Northern Ireland Act 1998, section 24(1) states that 'a Minister or Northern Ireland department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act – (a) is incompatible with any of the Convention rights'.
 5. In addition to these treaty standards there exists a body of 'soft law' developed by the human rights bodies of the UN and CoE. These declarations and principles are non-binding but provide further guidance in respect of specific areas. The relevant standards in this context are:
 - UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;
 - UN Durban Declaration and Programme of Action;
 - UN Human Rights Council Resolution 16/18 on combatting intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief;
 - UNESCO Declaration of Principles on Tolerance;
 - CoE Recommendation No. R(97)20 of the Committee of Ministers to Member States on "Hate Speech";
 - CoE European Commission against Racism and Intolerance (ECRI) General Policy Recommendation 1 on Combatting Racism, Xenophobia, Antisemitism and Intolerance;
 - CoE ECRI General Policy Recommendation 2 on Specialised Bodies to Combat Racism, Xenophobia, Antisemitism and Intolerance at the National Level;

¹¹ Ratified by the UK in 1986.

¹² Ratified by the UK in 1991

¹³ Ratified by the UK in 2009

¹⁴ Ratified by the UK in 2007

- CoE ECRI General Policy Recommendation 7 on National Legislation to Combat Racism and Racial Discrimination;
 - Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity 2007¹⁵
 - Fribourg Declaration on Cultural Rights.
6. The NIHRC notes the terms of reference for the Committee's inquiry. In particular, it recognises the stated purpose 'to inform the Executive's approach in the actions it takes to tackle sectarianism, racism and other forms of intolerance; and to make recommendations in order to support and enhance policy in uniting communities and community integration, including how communities are involved in decision making'. The NIHRC also recognises that the OFMdfM strategy 'Together: Building a United Community' (T: BUC) is the principal means through which the NI Executive seeks to address the issues under consideration by the Committee.
 7. The publication of T: BUC was welcomed by the NIHRC as a policy initiative aimed at improving community relations and the wider aim of building a united and shared society.¹⁶ The promotion of a respectful and tolerant society is a human rights obligation. A strategy that seeks to deliver this outcome requires careful consideration in the context of a post conflict society, but where some continue to advocate and use violence undermining the rule of law, and where continuing community divisions limit respect, protection and the fulfilment of human rights.
 8. T: BUC recognised that 'more work needs to be done to resolve the challenging legacy of our past and... committed to showing political leadership.' The strategy led to the establishment of an 'All-Party Group, with an independent chair to consider parades and protests; flags, symbols and emblems and related matters; and the past.'¹⁷
 9. The work of the All-Party Group has not resulted in an agreement and matters remain to be addressed. However, the NIHRC did provide advice to the Group and **the Committee's attention is therefore drawn to the following relevant documents:**

¹⁵ The Principles were developed and unanimously adopted by a distinguished group of human rights experts, from diverse regions and backgrounds, including judges, academics, a former UN High Commissioner for Human Rights, UN Special Procedures, members of treaty bodies, NGOs and others.

¹⁶ <http://www.nihrc.org/news/detail/chief-commissioner-responds-to-the-united-community-strategy>

¹⁷ <http://www.ofmdfmi.gov.uk/together-building-a-united-community-strategy.pdf> para. 1.48

'The Derry/Londonderry report on Upholding the Human Rights to Culture in Post Conflict Societies'¹⁸;
'Parades and Protests in Northern Ireland'¹⁹;
'The Display of Flags, Symbols and Emblems in Northern Ireland'²⁰; and,
'Dealing with Northern Ireland's Past: Towards a Transitional Justice Approach'²¹

Participation

10. Previous draft strategies – A Shared Future²² and the Programme for Cohesion, Sharing and Integration²³ – were the subject of public consultations. In the Foreword to T: BUC the First Minister and deputy First Minister state: 'In developing this Strategy we have listened carefully to the wide range of detailed views provided in response to the earlier consultations on our approach to good relations.'²⁴
11. The NIHRC recalls that the participation of rights holders is a core principle of human rights law and is recognised as a substantive right in many ratified treaties, including, inter alia, the CEDAW, Article 7, the CRC, Article 12, the FCNM, Article 15 and the UNCRPD, Article 19.
12. In the specific context of a post-conflict society and programmes aimed at peace building and reconciliation, the NIHRC notes that the experience accumulated by the UN highlights the importance of inclusivity. The UN Secretary General has stated that a:

successful peacebuilding process must be transformative and create space for a wider set of actors — including, but not limited to, representatives of women, young people, victims and marginalized communities; community and religious leaders; civil society actors... to participate in public decision-making on all aspects of post-conflict governance and recovery.²⁵
13. T:BUC contains public policy objectives which require the participation of rights holders to ensure their success. In 'recognition of the expertise and experience that resides within our community,'

¹⁸ http://www.nihrc.org/uploads/publications/culture_report_final.pdf

¹⁹ http://www.nihrc.org/uploads/publications/110720_NIHRC_Parades_and_Protests_in_NI_REPORT_cover_inners_Single_Col_V3_LOW.pdf

²⁰ http://www.nihrc.org/uploads/publications/104020_NIHRC_The_Display_of_Flags_Single_Column_V7_Final_Low_Res.pdf

²¹ http://www.nihrc.org/uploads/publications/NIHRC_Transitional_Justice_Report.pdf

²² <http://www.ofmdfmi.gov.uk/asharedfuturepolicy2005.pdf>

²³ http://www.ofmdfmi.gov.uk/reformatted_final_print_version_csi_-_26.07.10.pdf

²⁴ <http://www.ofmdfmi.gov.uk/together-building-a-united-community-strategy.pdf> p. 1.

²⁵ <http://www.un.org/en/peacebuilding/pbso/pdf/SG%20report%20PB%202012.pdf>

the OFMdfM has committed to ensuring that the mechanisms for implementing the strategy' will also enable the participation of practitioners and groups at a local level.²⁶

14. The NIHRC recalls the ICCPR, Article 25, that

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives

15. The NIHRC therefore welcomes the Committee's inquiry as a mechanism to assist in the fulfilment of the positive obligation to enable the participation of rights holders in a dialogue surrounding T: BUC.

16. The NIHRC advises that the Committee examine the mechanisms put in place by the OFMdfM, other NI Executive departments and public authorities to ensure the effective participation of rights holders in the processes of implementing T: BUC.

Human rights as an 'underpinning principle'

17. The NIHRC notes that T: BUC outlines a vision of 'a united community, based on equality of opportunity, the desirability of good relations and reconciliation - one which is strengthened by its diversity, where cultural expression is celebrated and embraced and where everyone can live, learn, work and socialise together, free from prejudice, hate and intolerance.'²⁷

18. 'Rights'²⁸ are identified as one of eleven 'principles' that will underpin the implementation of the Strategy and drive forward actions.

19. The OFMdfM is the lead department with responsibility for co-ordinating the application and monitoring of the NI Executive's compliance with human rights treaties. The NIHRC recognises the potential role of the Committee in scrutinising this aspect of devolved government.

20. The NIHRC advises the Committee that the categorisation of human rights as a principle should not diminish their status as

²⁶ <http://www.ofmdfmi.gov.uk/together-building-a-united-community-strategy.pdf>
para. 1.14

²⁷ *ibid*, p.3.

²⁸ *Ibid*, p.4.

binding legal obligations on the basis of which the NI Executive has corresponding duties. This issue should be addressed by the OFMdfM and the legality of human rights expressly acknowledged in any future legislation and implementation initiatives.

21. The NIHRC notes the limited references to human rights within T: BUC. The CRPD²⁹ is mentioned in cross referencing the NI Executive Strategy to improve the lives of disabled people – 2012 to 2015. Similarly, the CRC³⁰ is mentioned in cross referencing the NI Executive Ten Year Strategy for Children and Young People 2006 – 2016.
22. Noting the T: BUC vision and, in particular, the commitment to 'equality of opportunity', the NIHRC recalls the ICCPR, Article 26, which states 'all persons are equal before the law and are entitled without any discrimination to the equal protection of the law'. This is an autonomous human right that,

prohibits discrimination in law or in fact in any field regulated and protected by public authorities [and] is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof.³¹
23. Noting the T: BUC vision, and the commitment to good relations and reconciliation, the NIHRC recalls the FCNM, Article 6, which requires the NI Executive to take,

effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory.
24. The Advisory Committee on the FCNM has commented that regional strategies which focus on mutual accommodation rather than mutual respect and understanding would raise 'serious concerns'.³² The Advisory Committee has stated that in Northern Ireland 'the concept of 'good relations' [has] apparently [developed] to substitute the concept of intercultural dialogue and integration of society.'³³

²⁹ *ibid*, para. 1.33

³⁰ *ibid*, para. 2.31

³¹ UN Human Rights Committee, General Comment 18: Non-discrimination, para 12.

³² Advisory Committee on the FCNM, 'Third Opinion on the UK' (adopted 30 June 2011), para 125.

³³ *Ibid.*, para 126.

25. The NIHRC notes that Section 75(2) of the Northern Ireland Act 1998 gives partial domestic force to the duty contained in the FCNM, Article 6.
26. The framework established by international human rights law sets the standards which domestic laws, policies and actions must meet to ensure respect for the human rights of all individuals. **The NIHRC advises the Committee that T: BUC affords insufficient attention to the framework established by human rights law. Appropriate consideration of the relevant treaties and related soft law should therefore be evidenced by the OFMdfM, other NI Executive departments and public authorities responsible for the development and implementation of T: BUC.**

Sectarianism

27. The NIHRC notes that the Committee's inquiry will explore 'perspectives on sectarianism, division and good relations.' It further notes that for the purposes of T: BUC 'sectarianism is defined as: threatening, abusive or insulting behaviour or attitudes towards a person by reason of that person's religious belief or political opinion; or to an individual as a member of such a group.'³⁴ In relation to the proposed draft legislation, the OFMdfM has committed to 'seek to find an appropriate consensus around a definition of sectarianism'.³⁵
28. The NIHRC observes that the T: BUC working definition of sectarianism includes both 'attitudes' and 'behaviours'. The latter may be prohibited in domestic law and in some circumstances subject to criminal prosecutions, including heightened sentencing under the Criminal Justice (No.2) (Northern Ireland) Order 2004 (the 2004 Order) for perpetrators of offences that have been aggravated by hostility.
29. T: BUC only recognises the fundamental relationship between sectarianism and criminal law legislation at one point by way of the Justice Act (NI) 2011. This is in specific regard to countering negative behaviours within a sporting context.³⁶
30. The ICCPR, Article 20(2) states;

³⁴ <http://www.ofmdfmi.gov.uk/together-building-a-united-community-strategy.pdf>
para. 1.36

³⁵ *ibid.*

³⁶ *ibid.*, para 5.28 The 2011 Act whilst using the term sectarianism does not provide a definition.

any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

31. The UN Human Rights Committee has confirmed that this requires domestic legislation, and that this form of restricting freedom of expression is compatible with Article 19.³⁷

32. The ICERD requires that positive measures be taken to eliminate incitement to, or acts of, discrimination. Article 4 requires the NI Executive to;

(a) declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

33. The Rabat Plan of Action (RPA) on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence followed a series of expert workshops organised by the Office of the UN High Commission for Human Rights. Implementation of the RPA is required under the UN Human Rights Council resolution 16/18 on 'Combatting intolerance, negative stereotyping and stigmatisation of, and discrimination, incitement to violence, and violence against persons based on religion or belief'.

34. The RPA recommends that the domestic legal framework on incitement should be guided by the ICCPR, Article 20, and that robust definitions of key terms should be included.³⁸

³⁷ UN Human Rights Committee, *General Comment 11: Prohibition of propaganda for war and inciting national, racial or religious hatred* (1983) at paras 1-2; UN Human Rights Committee, *General Comment 34: Freedom of Expression* (2011) CCPR/C/GC/34, at para 51

³⁸ Rabat Plan of Action (2012) Recommendation 2, page 4

35. The RPA also recognises that a legislative response is not the only answer to challenging hate speech, recommending complementary policy initiatives 'with a view to creating and strengthening a culture of peace, tolerance and mutual respect.'³⁹

36. The NIHRC notes that there is no express prohibition similar to Article 4 of ICERD, within the ECHR. However, the ECt.HR has recognised when considering Article 10, freedom of expression, that;

as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance), provided that any 'formalities', 'conditions', 'restrictions' or 'penalties' imposed are proportionate to the legitimate aim pursued.⁴⁰

37. The NIHRC advises the Committee that the working definition of sectarianism in T: BUC conflates 'attitudes', with actions such as 'threatening, abusive or insulting behaviour'. It does not make clear that such actions may be prohibited by domestic law and subject to criminal sanctions. The Committee should seek to have this confusion addressed, taking into consideration the NI Executive's duty to prohibit sectarianism in accordance with human rights standards.

38. The NIHRC recalls that during its examination of the UK in 2008 the ICERD Committee recognised efforts to combat sectarianism in Northern Ireland, but indicated concern that the situation 'is kept entirely outside the framework of protections against discrimination provided by the Convention and the Durban Programme of Action.'⁴¹ The Committee invited the UK Government, including the NI Executive, to

examine whether the legislative and policy framework for dealing with the situation in Northern Ireland could not benefit by being underpinned by the standards, duties and actions prescribed by the Convention and the Durban Declaration and Programme of Action.⁴²

³⁹ Rabat Plan of Action (2012) at para 24

⁴⁰ *Gunduz v. Turkey* (2005) 41 EHRR 5, at para 40

⁴¹ UN Doc ICERD/C/GBR/18-20, para 20.

<http://www2.ohchr.org/english/bodies/ICERD/docs/ICERD.C.GBR.CO.18-20.pdf>

⁴² *ibid*

39. Similarly, the CoE Advisory Committee on the FCNM found, when considering the previous proposed Programme for Cohesion, Sharing and Integration⁴³, that the approach

to treat sectarianism as a distinct issue rather than as a form of racism problematic, as it allows sectarianism to fall outside the scope of accepted anti-discrimination and human rights protection standards.⁴⁴

40. In its 2011 concluding observations on the UK the ICERD Committee recommended that the State party:

examine whether the legislative and policy framework for dealing with the situation in Northern Ireland could not benefit by being underpinned by the standards, duties and actions prescribed by the Convention and the Durban Declaration and Programme of Action on inter-sectionality between ethnic origin, religion and other forms of discrimination.

41. The Durban Declaration and Programme of Action (DDPA) is a comprehensive framework for combating racial discrimination and related intolerances.⁴⁵ The DDPA was adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001.⁴⁶

The Declaration recognises that;

Racism, racial discrimination, xenophobia and related intolerance occur on the grounds of race, colour, descent or national or ethnic origin and that victims can suffer multiple of aggravated forms of discrimination based on other grounds.⁴⁷

42. The NIHRC recalls that the ICERD does not provide a definition of racism. However, the CoE European Commission Against Racism and Intolerance (ECRI) has defined racism as follows:

racism shall mean the belief that a ground such as race, colour, language, religion, nationality or national or ethnic

⁴³ http://www.ofmdfmi.gov.uk/reformatted_final_print_version_csi_-_26.07.10.pdf

⁴⁴ Third Opinion on the United Kingdom adopted on 30 June 2011, para 126.

http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/PDF_3rd_OP_UK_en.pdf

⁴⁵ United Nations, *Durban Declaration and Programme of Action, adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and related Intolerance*, 8 September 2001

⁴⁶ United Nations, *Durban Declaration and Programme of Action, adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and related Intolerance*, 8 September 2001

⁴⁷ Durban Declaration (2001) at para 2

origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.⁴⁸

43. **The NIHRC advises the Committee that T: BUC does not sufficiently engage with the recommendations of the ICERD Committee, nor does it reflect appropriately the definition of racism provided by the ECRI. The Committee should seek an assurance from the OFMdfM that this deficiency will be addressed.**

44. **In addition, the NIHRC advises the Committee that any future legislation should ensure that a definition of sectarianism in domestic law is premised upon the ECRI definition of racism.**

Good relations

45. The NIHRC notes that the Committee's inquiry seeks 'views on what good relations means'.

46. There is no statutory definition of 'good relations' in NI law. However, the NIHRC is cognisant of the working definition published by the Equality Commission Northern Ireland (ECNI):

the growth of relations and structures for Northern Ireland that acknowledge the religious, political and racial context of this society, and that seek to promote respect, equity and trust, and embrace diversity in all its forms.⁴⁹

47. The UN General Assembly, through the adoption of the Global Agenda for Dialogue among Civilizations Resolution, has recognised that dialogue among rights holders enhances mutual understanding and respect and underpins the objective of promotion and protection of human rights and fundamental freedoms and enrichment of common understanding of human rights.⁵⁰

48. Recalling the value of dialogue, the UN Human Rights Council adopted Resolution 6/37 on the Elimination of all forms of intolerance

⁴⁸ Council of Europe CRI(2003)8 ECRI General Policy Recommendation No. 7 On National Legislation To Combat racism And Racial Discrimination Adopted On 13 December 2002.

⁴⁹ Section 75 of the Northern Ireland Act 1998: A guide for Public Authorities, p. 86. <http://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/S75GuideforPublicAuthoritiesApril2010.pdf>

⁵⁰ UN General Assembly, Global Agenda for Dialogue by the General Assembly, A/RES/56/6, 21 November 2001, Article 3

and of discrimination based on religion or belief.⁵¹ The Resolution emphasises:

that promoting tolerance and acceptance by the public of and its respect for diversity and combating all forms of intolerance and of discrimination based on religion and belief are substantial elements in creating an environment conducive to the full enjoyment by all of the right to freedom of thought, conscience and religion, as enshrined in article 18 of the International Covenant on Civil and Political Rights.⁵²

49. The CoE Faro Declaration encourages:

intercultural dialogue on the basis of universal human rights, as a means of promoting awareness, understanding, reconciliation, tolerance and respect for the other, of preventing conflicts and of ensuring an integrated and cohesive society.⁵³

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

a positive, dynamic participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation.⁵⁴

51. Creating a culture of peace, therefore, requires:

Adherence to the principles of freedom, justice, democracy, tolerance, solidarity, cooperation, pluralism, cultural diversity, dialogue and understanding at all levels of society and among nations.⁵¹

52. The CoE has also recognised the role of intercultural dialogue in strengthening democratic society, including in post conflict situations.⁵⁵

53. The Advisory Committee on the FCNM, as noted previously, has stated that in Northern Ireland 'the concept of "good relations" [has]

⁵¹ See also Commission on Human Rights resolution 2003/54, Elimination of all forms of religious intolerance

⁵² UN Human Rights Council, Resolution 6/37: Elimination of all forms of intolerance and of discrimination based on religion or belief, 14 December 2007, para 8

⁵³ Faro Declaration on the council of Europe's Strategy for Developing Intercultural Dialogue (2005) DGIV/DC-FARO

⁵⁴ UN Declaration on a Culture of Peace, preamble

⁵⁵ Council of Europe, 'White Paper on Intercultural Dialogue Living together as equals in dignity' (2008) p.17 (Paper adopted by the Committee of Ministers)

apparently [developed] to substitute the concept of intercultural dialogue and integration of society.⁵⁶

54. The NIHRC considers that T: BUC does not engage with the comments of the FCNM. **The NIHRC advises the Committee to therefore consider the relationship between the domestic concept of good relations and the framework of intercultural dialogue set out by the CoE and UN human rights treaty bodies. The Committee should recommend that the OFMdFM restate its position, acknowledging that T: BUC sits within this internationally accepted framework.**
55. **The NIHRC further advises the Committee, that the OFMdFM, other NI Executive departments and public authorities responsible for the implementation of T: BUC should develop policies and programmes for delivery that adopt the framework of intercultural dialogue and recognise its relation to the domestic concept of good relations.**
56. The NIHRC recalls that the Northern Ireland Act 1998, Section 75(2) requires designated public authorities 'without prejudice' to their obligations under Section 75(1), to 'have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.'⁵⁷ Specifically, the Race Relations (Northern Ireland) Order 1997, requires local councils to ensure that 'various functions are carried out with due regard to the need the need to promote', inter alia, 'good relations between persons of different racial groups'.⁵⁸
57. Human rights laws and standards impose a duty on the NI Executive and public authorities to refrain from violating the rights of individuals in the first instance. However, there is also a positive obligation to take measures to prevent private persons or entities from committing acts that impair the enjoyment of the human rights of others.⁵⁹ Such preventive measures are of both a legislative and operational nature.
58. The FCNM, Article 6 states

The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all

⁵⁶ Advisory Committee on the FCNM, 'Third Opinion on the UK' (adopted 30 June 2011), para 125.

⁵⁷ Northern Ireland Act, 1998, Section 75.

⁵⁸ Race Relations (Northern Ireland) Order, Section 67.

⁵⁹ ICCPR, Article 2.

persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.

59. The ICERD, Article 7, requires the adoption of immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups.
60. The CRC, Article 29 confirms that education shall be directed to:(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin
61. The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Article 10, has similarly asked that governments educate the population at large by requiring that they: encourage and promote understanding of the importance of the protection and promotion of the diversity of cultural expressions, inter alia, through educational and greater public awareness programmes.
62. The NIHRC notes that the Northern Ireland Act 1998, Section 75 (2) broadly corresponds with the relevant human rights laws and standards. However, **the NIHRC advises the Committee that the wording of the legal requirement to 'have regard to the desirability' to promote good relations is not fully in accordance with the obligation to take 'immediate and effective measures'.**
63. **The NIHRC further advises the Committee to recommend that domestic legislation be amended and strengthened to comply with human rights laws and standards. As a minimum, all public authorities should be required to take 'immediate and effective measures' to promote good relations.**
64. The scope of the domestic good relations duty in Northern Ireland is restricted to three protected characteristics: 'religious belief, political opinion or racial group'. Elsewhere in the UK, however, the Equality Act 2010, Section 149(1) requires public authorities to 'foster good relations between persons who share a relevant protected

characteristic and persons who do not share it'⁶⁰ This is a broader scope of application than Section 75 and encompasses eight protected characteristics: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.⁶¹

65. With respect to gender under the CEDAW, Article 5, the NI Executive must take steps to modify:

the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women

66. Furthermore, the CEDAW Committee has recognised the link between gender-based violence and 'traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles.'⁶²

67. The UNCRPD, Article 8, requires the adoption of:

immediate, effective and appropriate measures: (a) to raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities; (b) to combat stereotypes, prejudices... relating to persons with disabilities, including those based on sex and age, in all areas of life

68. The Yogyakarta Principles, referring to gender reassignment and sexual orientation, recommend taking all appropriate measures to eliminate stereotypes and prejudices regarding sexual orientation and gender identity that impact on the ability to enjoy both civil and political⁶³ and socio-economic rights.⁶⁴

The ICERD, Article 7, requires the promotion of understanding, tolerance and friendship among nations and racial or ethnical groups.

69. The NIHRC notes the good relations duty in England and Wales and the scope of application required by the Equality Act 2010, section 149(1), in addition to the positive obligations required by human rights

⁶⁰ The Equality Act 2010, Section 149.

⁶¹ Ibid, Section 149(7)

⁶² General Recommendation No. 19 (11th session, 1992) Violence against women

⁶³ Principle 5

⁶⁴ Principle 17

laws and standards. **The NIHRC advises that the Committee recommend broadening the scope of application required by Section 75(2) of the Northern Ireland Act 1998.**

70. **The NIHRC further advises the Committee to recommend that the domestic duty to promote good relations be extended to six additional protected characteristics: age; disability; gender reassignment; pregnancy and maternity; sex; and sexual orientation.**

Equality and Good Relations Commission

71. The NIHRC notes that the UN Committee on Economic, Social and Cultural Rights' (ICESCR Committee), General Comment 20, states that 'national legislation ... should provide for mechanisms and institutions that effectively address the individual and structural nature of the harm caused by discrimination in the field of economic, social and cultural rights' and that 'domestic legal guarantees of equality and non-discrimination should be interpreted by these institutions in ways which facilitate and promote the full protection of economic, social and cultural rights'.⁶⁵
72. The NIHRC further notes that the ECRI General Policy Recommendation 7 advises that public authorities should be obliged to promote equality and prevent discrimination when carrying out their functions.⁶⁶ The Explanatory Memorandum states that the promotion of equality could be achieved by placing public authorities, under the obligation to create and implement 'equality programmes' ... The domestic law should provide for the regular assessment of the equality programmes, the monitoring of their effects, as well as for effective implementation mechanisms and the possibility for legal enforcement of these programmes, notably through the national specialised body.⁶⁷
73. International human rights laws and standards do not require the establishment of an institution with responsibility for the promotion of good relations or intercultural dialogue and integration. However, they do for the purposes of monitoring and the legal enforcement of equality and non-discrimination laws. The NIHRC recognises the established domestic equality authority in Northern Ireland, the ECNI

⁶⁵ ICESCR Committee, General Comment 20: Non-discrimination in economic, social and cultural rights, para 40.

⁶⁶ ECRI General Policy Recommendation 7, para 8.

⁶⁷ An example of an equality programme is the nomination of a contact person for dealing with issues of racial discrimination and harassment or the organisation of staff training courses on discrimination. See ECRI General Policy Recommendation 7, Explanatory Memorandum, para 27. See further CoE ECRI General Policy Recommendation 2 on Specialised Bodies to Combat Racism, Xenophobia, Antisemitism and Intolerance at the National Level

and the Community Relations Council, both of which are sponsored by the OFMdfM.

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