



## **Evidence to the Joint Committee on Human Rights**

# **Inquiry into the implementation of the right of disabled people to independent living as guaranteed by Article 19, UN Convention on the Rights of Persons with Disabilities**

### **Introduction**

1. Under Article 33(2) of the United Nations Convention on the Rights of Persons with Disabilities (Convention), the UK Government designated the four equality and human rights commissions to make up the UK's Independent Mechanism. In Northern Ireland, the Independent Mechanism is represented by the Equality Commission for Northern Ireland (ECNI)<sup>1</sup> and the Northern Ireland Human Rights Commission (NIHRC)<sup>2</sup>, hereafter referred to as the Independent Mechanism for Northern Ireland.
2. The Independent Mechanism for Northern Ireland is the 'independent' element within the framework, established by the State Party, under Article 33(2). The Independent Mechanism for Northern Ireland has clearly defined and separate roles and responsibilities, from those of the State Party and civil society, to promote, protect and monitor implementation of the Convention in Northern Ireland<sup>3</sup>.
3. The evidence provided will address all four broad areas outlined by the Committee from the perspective of the Independent Mechanism for Northern Ireland. The evidence draws upon, and reflects, the statutory remits of both the NIHRC and the ECNI.

### **The Right to Independent Living**

#### **Northern Ireland Executive Policy on Disability**

4. As the Committee will be aware, no regional strategy similar to the Independent Living Strategy currently exists in Northern Ireland. However, in June 2004 the Northern Ireland Executive established the Promoting Social Inclusion (PSI) Disability Working Group to identify the barriers to employment, education, transport, housing, access to

information and lifelong learning for disabled children and adults, and to make recommendations on how these might be removed taking account of wider policy development.

5. The PSI Working Group delivered a comprehensive report to the Northern Ireland Executive in December 2009. Two chapters of the report focused on different aspects of independent living:
  - The principles of choice and control, which primarily relates to individual budgets and the promotion of Direct Payments; and
  - Independent living, in respect of housing, transport and participation in leisure and cultural activities.
6. The report recommended that the Northern Ireland Executive undertake a review of independent living and place it at the centre of its focus on disability issues.
7. The Independent Mechanism for Northern Ireland acknowledges the extensive work that was carried out in producing the PSI Report, welcomes its references to the Convention, and is supportive of the 20 recommendations made in respect to independent living.
8. The Independent Mechanism has worked closely with the Office of the First Minister and deputy First Minister (OFMdFM). However, we are concerned that the PSI Report took five years to complete and although published in December 2009 it is still awaiting a formal response from Northern Ireland Executive.
9. The Independent Mechanism for Northern Ireland is also concerned that the PSI report is referred to as the basis for the implementation of Convention in Northern Ireland. However, the report does not cover all the rights contained in the Convention. In addition, as time has passed the statistics on which this work is based are becoming outdated. The Northern Ireland Executive will need to carry out a review of Independent Living and update disability statistics.
10. The Committee has asked if the right to independent living should continue to form the basis for Government policy on disability in the UK. If the recommendations within the PSI Report are finalised, it appears likely that it will inform the disability, and independent living, policy of the Northern Ireland Executive.

### **Legislative Reform**

11. The ECNI has been calling for urgent legislative reform of the disability equality legislation in Northern Ireland; particularly in light of developments in Great Britain where the introduction of the Equality Act 2010 has meant that disabled people in Northern Ireland now have less protection against discrimination and harassment than disabled people in Great Britain<sup>4</sup>.
12. Whilst the ECNI endorses many of the changes to the equality legislation affecting disabled people introduced in Great Britain by the Equality Act 2010, as these changes are in line with our previous recommendations for legislative reform, in certain areas it feels that the

Equality Act 2010 has not gone far enough in ensuring effective protection for disabled people.

13. One recommendation the ECNI has made for legislative reform of the Disability Discrimination Act 1995, which was addressed in the Equality Act 2010, and is specifically relevant to the progressive realization of rights within Article 19 of the Convention, is that landlords and managers are required to make disability-related adjustments to the physical features of the common parts of let residential premises, where it is reasonable to do so and when requested by a disabled tenant or occupier<sup>5</sup>. Such additional protection for disabled people in Northern Ireland will reduce the risk of disabled people being isolated in their own homes, when a simple alteration, such as a handrail or ramp, would enable the disabled person to access the common parts of their home.

### **Impact of Funding on the Right to Independent Living**

14. In February 2011 the Northern Ireland Executive Departments issued separate spending plans for consultation. The NIHRC responded to several of these plans, including those of the Department of Health, Social Services and Public Safety (DHSSPS). The NIHRC had concerns in relation to the potential implications of budget cuts, notably in terms of reduced service levels, no new patients on high cost drugs, extended waiting lists and restricted access to community care. The NIHRC was also concerned about the impact of budgetary cuts on policy initiatives addressed in recent and current consultations, including:
  - implementation of the Bamford Review of mental health and mental capacity legislation<sup>6</sup>;
  - Speech, Language and Communication Therapy Action Plan (November 2010)<sup>7</sup>;
  - Service Framework for Mental Health and Wellbeing (March 2011)<sup>8</sup>;
  - Physical and Sensory Disability Strategy (April 2011)<sup>9</sup>.
15. The NIHRC is aware of recent problems in Northern Ireland with needs assessments and provision of services to the carers of disabled children, and an ongoing delay in the long-stay patient Resettlement Programme from learning disability hospitals such as Muckamore Abbey. Northern Ireland lags behind the rest of the UK in resettling people with learning disabilities in order for them to live independently in the community. We would refer the Committee to the October 2009 report from the Northern Ireland Audit Office on the 'Resettlement of long-stay patients from learning disability hospitals'. This report records that as of 31 March 2009, 256 patients remained in long-stay hospitals in Northern Ireland. The Department set a target in 1997 that all patients in long-stay learning disability hospitals would be resettled

by 2002. However, that target has been revised repeatedly and is now set for 2013. It is highly likely that budget cuts in the area of health and social services will again hinder the resettlement programme. The NIHRC is aware that judgement is currently awaited on judicial review proceedings heard on 29<sup>th</sup> March and 8<sup>th</sup> April 2011 in the High Court in Belfast to challenge the delayed discharge of patients from Muckamore Abbey Hospital.

16. While the Independent Mechanism for Northern Ireland appreciates the importance of a robust stewardship of public finances, we are concerned about the impact of the reforms to Disability Living Allowance (DLA) on the human rights of disabled people in Northern Ireland. In particular, the Committee should note the ongoing challenges faced by Northern Ireland, related to the past conflict and high levels of poverty, with proportionally more people in receipt of DLA benefit in Northern Ireland than elsewhere in the United Kingdom. The Department of Social Development estimates that over 184,500 people in Northern Ireland receive DLA. The proportion of working age people in receipt of DLA in Northern Ireland is approximately twice the level in Great Britain - 10.3 per cent of the Northern Ireland population<sup>10</sup>. The NIHRC has noted during the consultation process, on the June 2010 UK budget that one of the central aims of the reform of DLA was to reduce the cost of the benefit by 20%. Reform of the DLA system therefore could result in many thousands of disabled people in Northern Ireland losing entitlement to this benefit or receiving reduced support. Since DLA aids disabled people's personal mobility, helps them to lead an independent life in the community and for some helps achieve an adequate standard of living, withdrawal of the benefit is likely to result in regression, rather than the progressive realisation of their human rights.
17. It is clear that budget cuts will impact on the government's ability to implement some economic, social and cultural rights related to Article 19, particularly if community care is restricted. In some cases there may be a regression of rights for disabled people.
18. Article 19 is unique in that the formulation of a right to independent living has never appeared in any previous human right treaty; however many of its attributes stem from the application to the disability context of traditional economic, social and cultural (ESC) rights. As such, reference has to be made to Article 4(2) of the Convention, which relates to the progressive realisation of ESC rights. States must show that they are taking concrete measures within the maximum of available resources, with a view to achieving progressively the full realisation of Article 19. There must be no regression of rights. The UK Concluding Observations of the Committee on Economic, Social and Cultural Rights issued in June 2009 highlighted concerns about discrimination against persons with disabilities in relation to ESC rights, in the areas of health, housing and employment, as well as noting high levels of inequality and poverty in Northern Ireland and the need to improve data collection in order to monitor progression of ESC rights.

19. At the same time, it should be noted that Article 19 also relates to traditional civil and political rights that must be realised without delay. The principles of equality and non-discrimination run throughout the entire Convention, and as such elements of Article 19 in relation to these principles should be met by the State immediately; for example, non-discrimination with regards to access by disabled people to community services. In sum, it would not be appropriate to frame the question of how to implement Article 19 by solely focusing on socio-economic issues.

### **Health and Social Care**

20. Access to proper health and social care is critical for ensuring an independent quality of life for disabled people. The Bamford Review of Mental Health and Learning Disability Services has concluded that there is clear evidence of inequalities in investment in this area compared with other regions in the UK. An ECNI investigation has also identified that people with learning disabilities face serious challenges such as poor communication from healthcare staff, a lack of understanding of their health needs, and a lack of user friendly written information in accessible formats<sup>11</sup>.

### **Transport**

21. Access to affordable and inclusive transport facilitates disabled people's access to health, educational and employment opportunities and contributes to their independence and quality of life, including their involvement in the community and in general day to day social activities<sup>12</sup>. The provision of affordable and inclusive transport not only progressively realises the rights within Article 19 but also other Convention articles.
22. Over the last five years there has been considerable progress in respect to the provision of accessible and inclusive transport in Northern Ireland. For example, the removal of the transport exemption from the protections of DDA legislation and investment in accessible public transport and infrastructure. The ECNI recommends that other measures are assessed to enhance the independence of disabled people, for example:
- The provision of affordable accessible transport, with the equalisation of the concessionary fares scheme to apply to all disabled people regardless of how they acquired their disability.
  - The benefits of the concessionary fare scheme to apply to all bus routes, participation in the scheme should not be restricted by geography.
  - Better provision of written accessible information.

## **Participation and Consultation**

### **Focal Point Action**

23. Under Article 33(1) the designated focal point for Northern Ireland is the Office of the First Minister and Deputy First Minister (OFMdfM). The Independent Mechanism for Northern Ireland has sought regular meetings with OFMdfM to discuss the Executive's plans to implement the Convention. The Independent Mechanism for Northern Ireland has discussed with the Focal Point the issue of participation and consultation and possible approaches to addressing the particular requirements of the Convention under Article 4(3) and Article 33(3). One such suggestion was the reconstituting of the PSI working group, or some similar arrangement facilitated by OFMdfM. The Independent Mechanism for Northern Ireland notes that OFMdfM has undertaken some engagement with disabled people in respect to the development of its contribution to the State Party report. However, to date the Independent Mechanism for Northern Ireland is not aware of any other formal engagement arrangements between OFMdfM and disabled people in relation to ongoing work on the Convention.

### **Public Sector Duties**

24. The Convention contains provisions for the close consultation and active involvement of disabled people, and their representative organisations, in decision making, and policy formulation (Article 4(3)) and for promotion of effective and full participation in the conduct of public affairs (Article 29). The effective implementation of public sector disability duties<sup>13</sup>, under the Disability Discrimination Act 1995 (as amended), together with the public sector duties under Section 75<sup>14</sup> of the Northern Ireland Act 1998, enables government and public authorities to meet the provisions as outlined within the aforementioned and other articles.
25. The ECNI research has noted several good practice examples of consultation and direct engagement with disabled people on a range of policy initiatives associated with the development of Disability Action Plans (under DDA (as amended)), the implementation Article 4(3) under the Convention, and on subject specific matters such as the Accessible Transport Strategy.
26. However, an independent evaluation on the implementation of the public sector disability duties for the ECNI has highlighted that public authorities need to do much more to effect meaningful engagement with disabled people to uphold their right to influence and direct regional and local government mainstream policy.

### **Future Work of the Independent Mechanism**

27. The Independent Mechanism for Northern Ireland will continue to engage with the Focal Point and remind OFMdfM of the obligations under the Convention in relation to Articles 4(3), and 33(3).
28. Furthermore, the Independent Mechanism for Northern Ireland is taking forward engagement with Government departments, and decision

makers, to promote the effective implementation of the public sector duties to further assist the realisation of rights held within the Convention.

## **Monitoring the effective implementation of the Convention**

### **Independent Mechanism for Northern Ireland Activities**

29. Under Article 33(2) the task of the UK Independent Mechanism is to “promote, protect and monitor implementation of the present Convention”. As previously noted, the Independent Mechanism in Northern Ireland is jointly represented by ECNI and NIHRC. The Convention is not prescriptive in the functions which the various elements of the framework should carry out, although there are a number of sources of guidance from the United Nations which have assisted the Independent Mechanism for Northern Ireland in determining the type of activities it should undertake.
30. In this regard, the NIHRC and ECNI have promoted and protected implementation of the Convention by:
  - responding to consultations using the Convention;
  - producing publications and factsheets promoting the Convention;
  - promoting the Convention on our respective websites;
  - commissioning a legal analysis to identify legislative gaps;
  - commissioning an expert paper on the compliance of government policy and practice in the implementation of Convention; and
  - holding a Platform Event (1 December 2010) to promote the Convention and the role of the Independent Mechanism.
31. The Platform Event contributed significantly to the Independent Mechanism for Northern Ireland’s engagement with disabled people to monitor and gather information for its contribution to the parallel report to be submitted to the UN Committee on the Rights of Persons with Disabilities, in accordance with Article 33(3). We are currently undertaking a series of engagement / information gathering sessions on Article 28 ‘adequate standard of living and social protection’, and associated articles that may influence the realisation of the article, for our engagement with disabled people.
32. The Independent Mechanism for Northern Ireland has additional focused engagement with the disability sector planned for Autumn 2011. Furthermore, much of the work carried out so far by the Commissions will provide information for the Independent Mechanism for Northern Ireland’s monitoring report, such as commissioning of the legal analysis and the expert paper on policy and practice compliance. As previously noted, the Independent Mechanism for Northern Ireland has met regularly with the Focal Point for our jurisdiction, OFMdFM, to discuss progress made on implementation of the Convention.

33. In order to effectively monitor and measure the implementation of Convention rights, the Government, the Independent Mechanism for Northern Ireland and civil society require robust data and statistics. The United Nations Committee on the Rights of Persons with Disabilities, which oversees the implementation of the Convention, has produced guidelines for the State on how it should prepare reports to be examined by the Committee. In relation to Article 19, the Committee asks for evidence of the existence of available independent living schemes, in-house support services and the degree of accessibility for disabled people to community services. This information will require up-to-date statistics. DHSSPS has recently noted:

“It has already been identified that there are particular difficulties with data within health and social care in terms of quantifying the overall response to need because of the variability in definition and comprehensiveness of information. There is, in fact, very little official disability-specific data available to health and social care planners...”<sup>15</sup>

34. The 2011 Census should yield more up-to-date information, but it is unlikely to be available for this monitoring round.
35. Under Article 31, the Convention outlines that it is the State Party’s responsibility to undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The UK Independent Mechanism, including the Independent Mechanism for Northern Ireland, does not formulate or implement policies to give effect to the Convention. Therefore, the four Commissions in performing the role of UK Independent Mechanism do not have the responsibility for, or capacity to, undertaking those tasks associated with Article 31, such as primary data collection, that are envisaged in the Convention as falling to the State.
36. The Northern Ireland Human Rights Commission has repeatedly drawn attention to the fact that, although some limited funding has been provided for specific pieces of work on the Convention by the Office for Disability Issues (ODI), no additional core funding has been made available to it for this new and important area of work. This is in marked contrast to some other national human rights institutions, such as those in New Zealand and Germany, which have received substantial dedicated funding for their work on the Convention.

## **Concluding Remarks**

37. The Independent Mechanism for Northern Ireland, while of course supporting implementation of the right to independent living, views all human rights as being indivisible, interdependent and interconnected and would prefer that the national and regional authorities use the implementation of the Convention as a whole to form the basis of their response to disability issues in the UK. Article 19 does not stand alone: it is closely linked to other rights contained in the Convention,



concerning work, education, rehabilitation, personal mobility and the right to an adequate standard of living and social protection, participation, accessibility and access to information. Independent living is a key concept but does not cover the full range of Convention rights. The State has committed to respect, protect and fulfil all the rights contained in the Convention and should place full implementation of the Convention at the centre of its legislation and policy making.



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<sup>1</sup> The Equality Commission for Northern Ireland ('the Commission') is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age. The Commission's remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 (Section 75) and the disability duties under the Disability Discrimination Act 1995.

<sup>2</sup> The Northern Ireland Human Rights Commission (the Commission) is the national human rights institution (NHRI) for Northern Ireland. It was created in 1999 under the Northern Ireland Act 1998, pursuant to the Belfast (Good Friday) Agreement of 1998. The Commission is accredited with 'A' status by the UN International Co-ordinating Committee of NHRIs. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights, and advising on whether a Bill is compatible with human rights. In all of that work, the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies.

<sup>3</sup> United Nation Convention on the Rights of Persons with Disabilities. Convention on the Rights of Persons with Disabilities (CRPD) Joint Committee. Independent Mechanism for Northern Ireland: Roles & Responsibilities within the Framework of Article 33  
[http://www.equalityni.org/archive/pdf/CRPD4\\_2aFrameworkPaper.pdf](http://www.equalityni.org/archive/pdf/CRPD4_2aFrameworkPaper.pdf)

<sup>4</sup> Equality Commission for Northern Ireland (February 2009) *Proposals for legislative reform*.  
[http://www.equalityni.org/archive/pdf/Priorities\\_for\\_legislative\\_reform0602091.pdf](http://www.equalityni.org/archive/pdf/Priorities_for_legislative_reform0602091.pdf)

<sup>5</sup> The introduction of such a duty would require landlords to make alterations to the physical features of common parts, such as installing a stair lift, handrail, or ramp. The duty to make the alteration to the common parts will only apply where the disabled person is placed at a substantial disadvantage compared to non-disabled persons. In addition, landlords will only be required to make adjustments, where it is 'reasonable' for them to do so. Importantly, the costs and any reasonable maintenance costs of the alterations will be borne by the disabled tenant. The Equality Commission's detailed recommendations for legislative reform of the DDA 1995 and other equality legislation is available at:  
[http://www.equalityni.org/archive/pdf/Priorities\\_for\\_legislative\\_reform0602091.pdf](http://www.equalityni.org/archive/pdf/Priorities_for_legislative_reform0602091.pdf)

<sup>6</sup> The Bamford Review of Mental Health and Learning Disability (Northern Ireland) (February 2007) *A Comprehensive Legislative Framework. Consultation Report*  
[http://www.dhsspsni.gov.uk/comprehensive\\_legislative\\_framework.pdf](http://www.dhsspsni.gov.uk/comprehensive_legislative_framework.pdf)

<sup>7</sup> DHSSPSNI (March 2011) *Speech, Language and Communication Therapy Action Plan: Improving Services for Children and Young People 2011/12 – 2012/13*  
[http://www.dhsspsni.gov.uk/speech\\_language\\_and\\_communication\\_therapy\\_action\\_plan\\_-\\_march\\_2011.pdf](http://www.dhsspsni.gov.uk/speech_language_and_communication_therapy_action_plan_-_march_2011.pdf)

<sup>8</sup> DHSSPSNI, *Service Framework for Mental Health and Wellbeing*  
[http://www.dhsspsni.gov.uk/service\\_framework\\_for\\_mental\\_health\\_and\\_wellbeing\\_-\\_consultation\\_version.pdf](http://www.dhsspsni.gov.uk/service_framework_for_mental_health_and_wellbeing_-_consultation_version.pdf)

<sup>9</sup> DHSSPSNI, *Consultation on Draft Physical and Sensory Disability Strategy and Action Plan 2011-2015* [http://www.dhsspsni.gov.uk/disability\\_strategy\\_draft\\_version\\_1\\_-\\_december\\_2010-3.pdf](http://www.dhsspsni.gov.uk/disability_strategy_draft_version_1_-_december_2010-3.pdf)

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<sup>10</sup> Disability Living Allowance Statistics – Summary of Statistics (August 2010) Department for Social Development. [http://www.dsdni.gov.uk/dla\\_publication\\_august\\_10.xls](http://www.dsdni.gov.uk/dla_publication_august_10.xls)

<sup>11</sup> ECNI, *Section 75 Formal Investigation into the Accessibility of Health Information for People with a Learning Disability 2006-2008.*, Belfast. Research available at: [www.equalityni.org/archive/tempdocs/LiteratureRev\(f\)l.doc](http://www.equalityni.org/archive/tempdocs/LiteratureRev(f)l.doc)

<sup>12</sup> The PSI Working Group Report on Disability highlighted for example that employment rates for disabled people are very low. In 2009, the employment rate for people with a disability of working age was 31%, less than half that for people without a disability (75%). This low level of employment has persisted over time. The report also acknowledged those other important relationships to affordable inclusive transport - access to services, opportunities and correlation to level social and economic activity etc. The Department of Regional Development acknowledges that access to transport is of particular importance in rural areas where the 2008 Living Cost and Food Survey found that rural families spend 15% of household expenditure on transport.

<sup>13</sup> The Disability Discrimination (Northern Ireland) Order 2006 inserted section 49A and 49B into the Disability Discrimination Act 1995 to create the disability duties. These sections came into effect on 1 January 2007. Under Section 49A, public authorities when carrying out their functions must have due regard to the need to: promote positive attitudes towards disabled persons; and encourage the participation of disabled persons in public life. A Guide to the 'disability duties' is available at: <http://www.equalityni.org/archive/pdf/ECNIDisPlan.pdf>

<sup>14</sup> Section 75 of the Northern Ireland Act 1998 places significant duties on public authorities regarding how they carry out their functions and deal with the general public. These duties relate to the promotion of equality of opportunity on a number of equality grounds including disability. These duties on public authorities include the production and review of Equality Schemes, conducting equality impact assessments and including consultation as an integral part of the policy-making process. Detailed explanation and Guide available at: <http://www.equalityni.org/archive/pdf/S75GuideforPublicAuthoritiesApril2010.pdf>

<sup>15</sup> DHSSPS (January 2011) *Consultation on Draft Physical and Sensory Disability Strategy and Action Plan 2011-2015*, p29.