

**Children's Law Centre and Save the Children  
Northern Ireland**

**Submission to the United Nations Committee on the Rights of the Child  
for consideration during the Committee's scrutiny of the UK Government's report**

**February 2002**

**The Children's Law Centre is an NGO that was established in 1997. It aims to help young people, their parents and professionals work with and understand the domestic and international laws which affect children. The Children's Law Centre is based at Philip House, 123-137 York St, Belfast, BT15 1AB. Telephone 0044 28 90245704. Fax 0044 28 90245679. E Mail [paddy.kelly@childrenslawcentre.org](mailto:paddy.kelly@childrenslawcentre.org)**

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**This submission can be read in conjunction with the Getting it Right? report previously submitted to the Committee.**

**For further information about this document contact Paddy Kelly at the Children's Law Centre or Sheri Chamberlain at Save the Children.**

## Endorsement

We the undersigned non-governmental organisations believe that this account of the implementation of the United Nations Convention on the Rights of the Child accurately reflects the realities of children and young people's lives in Northern Ireland today.

Barr & Co, Solicitors  
Belfast Traveller Education Development Group  
Belfast Travellers Support Group  
Centre for Child Care Research, QUB  
Child Care Northern Ireland  
Childline Northern Ireland  
Committee on the Administration of Justice  
Community Youth Work Department, University of Ulster  
Council for the Homeless Northern Ireland  
Craigavon Travellers Support Committee  
Crawford, Scally & Co, Solicitors  
E J Lavery, & Co, Solicitors  
First Key Northern Ireland  
Foyle Newpin  
Gingerbread NI  
Greater Shankill Alternatives  
Greater Twinbrook & Poleglass Community Forum  
Housing Rights Service  
Include Youth  
Irish Congress of Trade Unions  
John Ross & Son, Solicitors  
Law Centre (NI)  
Lower Falls Newstart Project  
McCann & McCann, Solicitors  
McGrady Collins, Solicitors  
Mencap in Northern Ireland  
National Association of Head Teachers (Northern Ireland)  
National Deaf Children's Society  
Newpin in Northern Ireland  
Newstart Education Project  
NIPPA - the Early Years Organisation  
Northern Ireland Anti-Poverty Network  
Northern Ireland Association of Citizen Advice Bureaux  
Northern Ireland Council for Ethnic Minorities

Northern Ireland Council for Integrated Education  
Northern Ireland Hospice - Children's Service  
Northern Ireland Volunteer Development Agency  
Northern Ireland Women's Aid Federation  
Northern Ireland Youth Forum  
Northern Visions  
NSPCC - Northern Ireland Region  
One World Centre for Northern Ireland  
Parents Advice Centre  
Playboard  
Rafferty & Boyle, Solicitors  
Royal College of Nursing  
Rural Community Network  
Russell's Solicitors  
School of Social Work, Queen's University, Belfast  
Simon Community Northern Ireland  
Tara Counselling and Personal Development Centre  
The Institute for Conflict Research  
The Pathways Project  
Traveller Movement (Northern Ireland)  
UNISON  
Upper Andersonstown Community Forum  
Voice of Young People in Care  
West Belfast Parent Youth Support Group  
Wheelworks, Voluntary Service Belfast  
Women's Support Network  
YouthAction NI

## Introduction

As a discrete jurisdiction within the UK, Northern Ireland is unique in that it is the only jurisdiction emerging from conflict. The impact of this conflict has been recognised by many both at home and further afield. Children and young people have been acknowledged as being particularly affected by the violence here:

**"...the participants ( to the agreement) recognise that young people from areas affected by the Troubles face particular difficulties" (Belfast Agreement, 1998:18).**

International experts in conflict transformation have drawn comparisons between Northern Ireland and other areas of the world such as Palestine/Israel and South Africa. Special Representatives for Children and Armed Conflict from the United Nations have visited the area three times.

In his report to the Secretary General, Olara Otunu, having visited Northern Ireland in June 2000 stated that

**"children's concerns must remain priority concerns throughout the building of peace and the voices of young people should be heard through peace processes ...Children's rights should be incorporated into the new Northern Ireland Bill of Rights...emergency legislation that provides for the detention of very young children should be reviewed and police should receive training in children's rights and protection"(UN 2000:13-14).**

Since the government last reported in 1994 Northern Ireland has seen significant political changes, which have impacted on the lives of children here. However, while the peace negotiations culminated in the Belfast Agreement in 1998, the Northern Ireland Act 1998 and the establishment of the Northern Ireland Assembly, it is still the case that the process of building a peaceful, just and stable society is not yet complete.

Since the Belfast Agreement and devolution of most, but not all<sup>1</sup>, power to the locally elected Northern Ireland Assembly and Executive there have been a number of positive developments in terms of legislation and structures:

- The Northern Ireland Act 1998, under which the NI Assembly and Executive are established, includes Section 75, which introduced an Equality Duty to Northern Ireland. There is a Human Rights Unit and a Children's Unit within the Office of First and Deputy First Minister.
- Human Rights Act 1998, incorporated the ECHR into domestic legislation
- 1999 - Establishment of the Human Rights Commission, as agreed in the Belfast Agreement, which is currently drafting a Bill of Rights for Northern Ireland<sup>2</sup>.
- 1999 - Establishment of the Equality Commission, merging the Fair Employment Commission, the Equal Opportunities Commission, the Race Relations Commission and the Northern Ireland Disability Council.
- 1999 - Commission on Policing established by the Northern Ireland Office under the Belfast Agreement and, in 2001, the Royal Ulster Constabulary replaced by the Police Service for Northern Ireland.
- 2001 - A Consultation by the Human Rights Unit in the Office of the First and Deputy First Minister of the Northern Ireland Assembly on a Children's Commissioner for Northern Ireland.
- 2001 - A Consultation by the Office of Law Reform, Department of Finance and Personnel in the Northern Ireland Assembly, on the Physical Punishment of Children in the Home (following A V UK in the European Court of Human Rights).
- 2001 - Criminal Justice Review published for consultation as a result of the Belfast Agreement.

<sup>1</sup> Powers not devolved to the NI Assembly include fiscal policy, social security, criminal justice and international development.

<sup>2</sup>The NIHRC does not however, have powers of subpoena or discovery and so is limited in its ability to promote and protect children's rights as statutory bodies can and have refused to cooperate with its investigations.

- 2001 - Draft Criminal Justice Bill published by the Northern Ireland Office

Despite this wave of human rights and equality legislation and activity, children and young people have remained a very low priority for our newly devolved government and indeed for Government at Westminster, who retain responsibility for non-devolved matters. When faced with a 'blank sheet' in terms of establishing a devolved government, the elected representatives to the NI Assembly failed to establish a Minister for Children, thereby making NI the only jurisdiction on the two islands without such a minister. Some opposition has been expressed by some MLAs to a ban on physical punishment in the home and in independent schools.

In addition, it is very disappointing to note that since the last report to the UN Committee, very little progress has been made in implementing the recommendations of the Committee by Westminster. In fact there are several areas where the Committee's recommendations have been **totally ignored** by Westminster government. In terms of Northern Ireland, we would like to draw the attention of the Committee to some key areas of concern - criminal justice and the criminal justice review, emergency legislation, use of plastic bullets, race relations legislation (particularly in relation to Travellers) and support for different types of second level education. Some of these areas have been devolved to the NI Assembly while others remain the responsibility of Westminster.

The comments and data below are jurisdictionally specific to Northern Ireland. We have specified whether the responsibility for these issues lies with the UK government at Westminster or the NI Assembly or both<sup>3</sup>.

## **I GENERAL MEASURES OF IMPLEMENTATION (Articles 4, 42 and 44, paragraph 6 of the Convention)**

### **Implementation of Rights - Article 4**

Legislation in a number of areas in Northern Ireland still contravenes the rights recognised in the Convention. The UK government and Northern Ireland Assembly have not availed of legislative opportunities to rectify the situation. The following are just some examples:

1. Legislation such as the Children (NI) Order 1995 has **not** resulted in harmonising the law in relation to all children under 18.
2. Emergency Legislation still applies to children.
3. Plastic bullets are still being used by the police and British Army in circumstances that put children in grave danger. A new plastic bullet has been introduced which according to the government's own research is potentially more dangerous.
4. The Criminal Justice (Children) (NI) Order 1998 currently operating regards 17 year olds in the criminal justice system as adults.
5. Some young women under 18 years in the criminal justice system are remanded in custody in an adult prison.
6. Despite the introduction of the Race Relations (NI) Order 1997 and the Equality provisions of the Northern Ireland Act 1998, Traveller children and child members of other ethnic groups continue to experience discrimination in relation to education, health, social services and housing.

Issues 1-5 are discussed in Section VIII B (p23) while item 6 is further outlined in Sections VI (p15), VII (p18) and VIII D (p27).

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<sup>3</sup> Reference numbers and letters of each section refer to the UN Committee's reporting format

## Implementation and Entry into Force - Article 42

Government has not offered training to adults or children on the Convention nor has there been an education and awareness campaign by government. Research shows that very few adults (36%) really know what the Convention is about and almost no children/young people (75%) have heard of it (NI Life and Times Survey, 1998). This includes professionals working in the area of children's rights. Any training received by organisations is given by NGOs such as the Children's Law Centre and Save the Children.

In relation to training on the Convention, many social workers and youth workers cover the basic elements of it in their initial training. However, this component may be included at the discretion of the University - it is not included in any prescribed syllabus. As yet most teachers and law students do not undertake any training on the Convention and are not fully aware of its provisions.

## Article 44, paragraph 6

The Department of Health in London co-ordinated the compiling of the government's report. In Northern Ireland this function was carried out by the Department of Health and Social Services (DHSS - renamed the Dept of Health, Social Services and Public Safety in 1999, post-devolution). Although a half-day 'consultation' meeting was held with NGOs on the government's draft report, this was not really a consultation as NGOs did not see the redrafted document. The time scale allotted to this consultation was too short and the fact that people do not really know what the Convention is means that they were unable to fully participate in a dialogue with government about it.

Discussions by NGOs with senior officials from various government departments and public bodies revealed that very little consultation occurred *within* departments in respect of the compiling of the government's report. Indeed most of the officials who manage ongoing, everyday contact with young people/children were totally unaware that government was preparing its second report for the UN. There was no evidence from the government's report that children and young people had been consulted by them when compiling their report.

In terms of content, the government's report contains short sections on each jurisdiction within the UK, but most of the report also has information from each jurisdiction interspersed throughout. This layout is quite confusing, as it is not clear from the government's report when comments are made generally which jurisdictions they refer to or if they refer to all 4 jurisdictions. Topics are not linked to general principles, e.g. how is Best Interest demonstrated in Education, Criminal Justice etc.

In terms of Northern Ireland, the information is provided without being placed in any context. It is assumed that young people's lives in Northern Ireland are identical to those of young people in England, Scotland and Wales. There is no recognition that Northern Ireland is emerging from over three decades of conflict, nor of the changing political structures that are being put in place here.

In relation to monitoring progress vis a vis children's rights in the UK, there is a general lack of investment by Westminster or devolved governments in relation to any of the reporting mechanisms to the UN. This lack of investment was particularly marked in the compilation of the UK's End of Decade National Report to the UN for UNGASS.

## **Section II DEFINITION OF THE CHILD (Article I)**

### **Age of Criminal Responsibility**

In Northern Ireland the age of criminal responsibility remains at 10 years. This issue is further discussed in Section VIII B (p24). Under the Criminal Justice (NI) Order 1998 the doctrine of *doli incapax*, which placed a duty on the prosecution to show clear evidence that a child knew what s/he was doing was seriously wrong, was abolished. Prior to this children between the ages of 10-14 were assumed by the courts to be incapable of moral judgements -i.e. that they did not know the difference between right and wrong.

### **Administration of Justice**

Under the Criminal Justice (Children) (NI) Order, 1998 young people within the criminal justice system (only in Northern Ireland) aged 17 are considered adults. This issue is further discussed in Section VIII B (p24).

Emergency Legislation applies to children as young as 10 years.

## **Section III GENERAL PRINCIPLES**

### **A. Non-Discrimination - Article 2**

Despite the introduction of the Race Relations (NI) Order 1997 and the Equality provisions of the Northern Ireland Act 1998, discrimination on the basis of ethnicity continues to be a major issue in Northern Ireland. Discrimination is discussed further in this section under Section III C Survival & Development (p9) as well as Sections VI Basic Health & Welfare (P15), VII Education (P18) and VIII D Indigenous and Ethnic Groups (p27).

The Disability Discrimination Act was introduced in 1995 to Northern Ireland. However, most of its provisions relate to employment and the provision of goods and services. It does not include education, health, justice or care. Unlike the Children Act 1989 in Britain, the Children (NI) Order 1995 does include children with disabilities within its remit. However, despite defining children with disabilities as children 'in need' discrimination remains an issue, especially in education where Education and Library Boards almost always insist that a child with a disability must attend a Special Needs School regardless of his/her wishes or those of his/her parent. This is further discussed in Section VII Education (p18).

In terms of criminal justice, both Juvenile Justice Centres in Northern Ireland are located in predominantly Protestant areas, despite the fact that the majority (54%) of their residents are Catholic (NIO, 2001). Some young people detained in these centres report having been subjected to verbal sectarian abuse by other residents (NI Human Rights Commission, 2002).

### **B. Best Interests of the Child - Article 3**

The Children (NI) Order 1995 gives prominence to the general principles of the Convention including the child's best interests. However, while much training was provided for professionals during the introduction of the Order, the emphasis tended not to be on the child's best interests but rather on issues such as child protection and parental responsibilities. The positive messages and the wider concepts about giving due weight to

the child's opinion encompassed by best interest were less to the fore. Further, the recent draft Criminal Justice Bill has reverted to child welfare as opposed to best interests and /or children's rights.

The responsibility for the introduction of the Order including training was given solely to the then Department of Health and Social Services (DHSS, now DHSSPS). Other departments such as the Department of Education in Northern Ireland (then DENI, now DE) only had a *discretionary* duty to provide training. There are no DE directives provided regarding implementation of the Order. Consequently, it has not had the same impact on education professionals as it has on Health and Social Services staff.

The Order did however, lead to the establishment of the Northern Ireland Guardian Ad Litem Agency, which has a role in ensuring that the child's best interests are represented in public law cases. Evidence from solicitors suggests that although the service is effective in making the voice of the young person heard "often Social Services have been slow to recognise the changing culture and are not at ease with the role children now play" (personal communication to the Children's Law Centre, cited in CLC & SCF, 1999:20).

The Children (NI) Order 1995 emphasises increased inter-agency co-operation in order to realise the best interests of the child. However, because the Order was introduced at nil-cost true inter-agency partnership has not occurred. Health and Social Services do not always respond in a way that is consistent with the child's best interests and sometimes openly resent referrals and challenges from NGOs.

The position of 16 and 17 year olds illustrates this well. Unless a young person who is 16 or 17 has been 'through' the care system it is almost impossible for him/her to be considered a 'child in need'. Young people in this age group who cannot live at home are therefore having to approach NGOs for help with accommodation. The number of 16 and 17 year olds becoming homeless is increasing each year yet they are ineligible for public sector housing because of the age discriminatory allocation process operated by the Northern Ireland Housing Executive, although legally they can become tenants under the Housing (NI) Order 1988.

Although Health and Social Services Trusts may decide that it is in a child's best interests to be adopted there is a significant delay in Northern Ireland in doing so. This issue is further discussed Section V (H) (p15).

### **Justice**

In relation to justice issues it is not in the best interests of children, potentially as young as 10 years, to send them to a secure unit (i.e. Lisnevin Juvenile Justice Centre) for assessment, nor is it in their best interests that they are remanded in custody for lengthy periods while the courts decide their future. It is not in a child's best interests to use solitary confinement as is currently the case within at least one secure unit.

Child protection procedures within Juvenile Justice Centres have been a matter of concern for some time now (SSI, 1997a, 1997b and 1997c). Despite some changes in these procedures and practices it is still the case that the manner in which child protection issues are perceived and investigated is not in keeping with the best interests principle (NI Human Rights Commission, 2002).

Courts in which young people appear on criminal charges are not obliged to take into consideration the child's best interests, but simply the 'welfare' of the child.

### **Education**

It is not in a child's best interests to be excluded from school. Currently legislation allows a young person to be suspended for<sup>4</sup> up to 45 days per year – 9 school weeks. There is no appeals procedure for suspensions so this action cannot be challenged.

### **C. The Right to Life, Survival and Development - Article 6**

In Northern Ireland children's right to life, survival and development is threatened on an everyday basis because of poverty, poor planning of housing areas and because of the still unresolved conflict issues. Often these issues are combined in areas which suffer the greatest deprivation and each of the issues compounds the other.

Despite the cease-fire situation in Northern Ireland sectarianism continues to threaten the life, survival and development of children and young people in the region. Some areas, such as interface areas<sup>5</sup>, still experience high levels of community tension. People living in these areas are also more likely to be living in poverty and have less life chances than people in general in Northern Ireland. For instance, 69% of the population earn less than £5,000 per year as compared with an average of 45% for the whole region and almost one third (31%) are unemployed as compared with 14% generally (Centre for Policy Research, 1994).

The connections between poverty and ill-health have already have been well made. Mortality rates for children are 30% higher amongst those living in the most deprived areas than in general and it is estimated that 37% of children in Northern Ireland live in poverty (SCF, 1995). Furthermore, average incomes in Northern Ireland remain below those in the UK and households in Northern Ireland are more dependent on social security benefits than those in the UK as a whole (HMSO, 2000)

Children's right to survival is threatened everyday as few have safe places to play. There is no jurisdictional play policy and although some local councils are currently developing play policies, these are only at pilot stage and it still remains that the majority of councils do not have a play policy. More worryingly, the draft planning policy issued from the NI Assembly's Department of the Environment (Shaping Our Future) made no mention of the child's right to play (DOE, 1997).

The situation of the Travelling community remains, at best, unchanged since the last report and at worst it has deteriorated. The conditions of the Traveller's sites have been likened to that of developing countries by Sandra Mason, Chair of the UNCRC in 1999 and Thomas Hammenberg, vice Chair of the UNCRC in 1995, yet the United Kingdom is one of the G8 nations. Statistics indicate that a Traveller child under 10 years is 10 times more likely to die than a child from the settled community in Northern Ireland and only 1% are aged over 65 years compared with 12% of the general population (cited in Noonan, 1994). The issue of ill health and Travellers is further explored in Section VII Basic Healthcare and Welfare (p15).

### **D. Respect for the Views of the Child - Article 12**

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<sup>4</sup> An expulsion is a permanent exclusion from school while a suspension is a temporarily exclusion.

<sup>5</sup> An interface area is a common boundary between a predominantly Protestant area and a predominantly Catholic area (Belfast Interface Project, 1998).

A number of measures to promote the child's opinion have been introduced since the last report.

Section 75 of the Northern Ireland Act 1998 (known as the equality duty) requires all public bodies to consult with a number of different categories of people with regard to their Equality Duty - people of different ages, and consequently children, is one of these categories.

The Children (NI) Order 1995 enshrines the necessity to give due weight to the views of the child and the Northern Ireland Guardian Ad Litem Agency has been established.

However, while such policies and legislation have been introduced, the reality is that some of them do not translate that effectively into practice. For instance, those responsible for the implementation of the Equality Duty in public bodies have had little or no training in consulting with children and young people nor do they hold such expertise within their bodies. There seems to be little recognition of the fact that particularly vulnerable groups of young people, such as the homeless, those in the care or justice systems and those with disabilities require particular consultation processes and it seems unlikely that there will be meaningful consultation with such groups. NGOs such as the Children's Law Centre and Save the Children have had considerable demands placed on them to provide guidance and inputs into seminars for such bodies - without any resources being provided by government for such work.

In relation to the Children (NI) Order 1995, more emphasis is now placed on young people attending case conferences/reviews but this does not mean that they fully understand what is being asked of them or that their opinions will be given due weight. Solicitors acknowledge that the Guardians Ad Litem have enabled children to be independently represented in public law cases. While this power is in the legislation in relation to private family law cases, it is rarely used and children are rarely afforded independent representation in private family law cases.

The Children (NI) Order 1995 has made very little impact in education in terms of hearing the voice of the child. The majority of schools do not have school councils and, for those that do, the power that the student councils have within a school is questionable (NIYF, 1999).

In relation to exclusions, children's opinions can only be voiced if his/her *parent(s)* appeal an *expulsion*. There is no right of appeal for the child him or herself. However, even this appeals procedure is fraught with difficulty as it is highly unlikely that a school would welcome back a student who won an appeal. In other words the appeals procedure does not work for young people. Also, it is only the *expulsion procedure* that can be appealed, not the grounds for expulsion.

Recently one local authority (Fermanagh District Council) established a youth council, which was elected by peers. This is to shadow the adult council. At the moment it is too early to say how effective this is, but it is certainly a welcome development in local democracy.

## **Section IV CIVIL RIGHTS AND FREEDOMS (Articles 7,8,13-17 and 37 [a])**

### **F. Protection of Privacy - Article 16**

Under Emergency Legislation children and young people can be stopped and searched by the police and army. This can happen on the street which is not a private space. These powers are discussed further in Section VIII B - Administration of Juvenile Justice (p24).

Social Services Inspectors have highlighted the lack of privacy for young people detained in Juvenile Justice Centres due to viewing panels in the door of the young people's cells, the requirement for young people in one Juvenile Justice Centre (Lisnevin) to remove clothing, shower and be searched while naked when being admitted or readmitted following a court appearance (SSI, 1997c):

**“All the boy’s property is removed and placed in a labelled bag. He is asked to remove his clothes which are sent for washing and, after being made to take a shower, he is searched before being allowed to put on pyjamas and slippers. After being given bedding and uniform clothing the young person then walks through the unit to the medical wing where he is examined by a nurse before going to his allocated room (ibid).**

**The inspectors consider much of the admission process is unnecessarily institutional and undignified. They would question the need for boys to have their clothing removed and the requirement for each boy to have a shower on arrival although both could be offered (ibid).**

**The inspector identified some features which were not regarded as desirable. These included the provision of viewing panels in each of the bedroom doors. The provision of such panels is intrusive and considered to breach the basic right of young people to have a degree of privacy, when, for example, they are getting changed” (ibid).**

Within schools children are required to take showers and change for Physical Education, often in open changing rooms and while teachers are in attendance. Young people also claim that teachers will not accept the explanation for absences given by parents, for instance, they want to know all of the details of a doctor’s appointment. Sometimes children who are in care are identified as such by teachers to his/her classmates. This happens despite the child's wish for their background to remain private. It is not unusual for ancillary staff in a school to know details of pupils’ suspension/expulsion.

### **G. Access to Appropriate Information - Article 17**

Young people feel that they do not get useful information when trying to choose subjects at school or during career guidance. Sex education also tends to be very unsatisfactory with a very disjointed approach being taken to the subject. Young people feel that they are not given information in a way that helps them make an informed choice, rather it tends to be couched in moral terms of ‘right’ and ‘wrong’.

Some young women, having been refused emergency contraception by their doctor, are also refused information on where they can get such treatment. Young people in contact with medical and health care staff often feel that they are not told all of the information they need. Some say that their parents, rather than they themselves, get the information while others feel that the selective dissemination of information is aimed at getting the young person to opt for surgery or some other treatment.

Staff in Social Security and NIHE (Northern Ireland Housing Executive) offices can be very 'off hand' with young people, not explaining forms to them, not allowing them to bring a key worker or other adult with them to interviews for welfare payments etc.

Young people within the justice system appear to be unclear as to their current status. Some people do not know who their probation officer is, they do not know what kind of order they are 'serving' or the duration of such an order. Young people rarely understand what is happening in court due to the speed with which events occur, the fact that it is often difficult to hear what is being said and the fact that the language used is incomprehensible to the young person (CLC & SCF, 1999).

## **H. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment - Article 37 (a)**

Under the law in Northern Ireland parents can use the defence of reasonable chastisement if they administer physical punishment to their children. In the year ended March 31, 2000 there were 293 children on the child protection register of the DHSSPS because of physical abuse alone. When physical abuse is combined with other forms of abuse this figure rises to 436 (NSPCC, 2001).

Following a case before the ECtHR (A v UK 1998) the UK government accepted that the present law which allows for the reasonable chastisement of children failed to adequately safeguard them. The government decided to have a consultation process in each jurisdiction regarding this matter. In Northern Ireland the process is being undertaken by the Office of Law Reform, Department of Finance and Personnel, part of the devolved government. Proposals for legislative change will be brought forward during 2002, although legislation is unlikely to be on the statute books before 2003. If the Northern Ireland Assembly is to satisfy its obligations under the UNCRC, the ECHR and Section 75 of the Northern Ireland Act 1998, it is our view that they have no alternative than to remove the defence of reasonable chastisement. However, indications from some NI Assembly debates on the physical punishment of children in the home raise serious concerns that this may not actually happen.

Corporal punishment has been abolished in schools in Northern Ireland since the introduction of the Education (Corporal Punishment) (NI) Order 1987. However, this legislation does not apply to independent schools which, under common law, may still use corporal punishment (so long as it is not 'inhuman' or 'degrading') as a means of 'disciplining' pupils. Northern Ireland is the only part of the UK where this is still permitted (see also Section V (J) p14). The Minister for Education in Northern Ireland has stated he will abolish the physical punishment of children in schools at the earliest legislative opportunity, but this has yet to happen.

In some schools pupils readily identify incidences where they are subjected to degrading and humiliating comments and behaviour, e.g. being made to repeat incorrect answers, having poor writing or spelling displayed to their peers and generally being made fun of by teachers. While the majority of teachers may not use physical punishments, their behaviour in other ways can be very damaging on a child's self-esteem.

Some young people in secure accommodation<sup>6</sup> have been placed in separation units where they can spend days on their own. This treatment is normally used for young people who are

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<sup>6</sup> Secure accommodation is accommodation from which a child cannot freely enter and leave - i.e. they are locked in. A child may be placed in secure accommodation for either justice or care purposes. Separation units are used in both custodial and care secure accommodation settings.

regarded as being disruptive or unruly. However, the use of such mechanisms has been criticised by SSI:

“One aspect of the Fox Lodge unit <sup>7</sup> which appears to the inspectors undesirable was the room known as the ‘D Room’, a bare, unfurnished, cell like room which is used as an isolation room when young people’s behaviour in the unit is such that they need to be separated for the other residents for a period. It is recognised there are times when it is appropriate to separate young people, whose behaviour is disruptive, from the other residents in order to allow them to calm down or to prevent misbehaviour spreading. Nevertheless, the inspectors consider that separation is more effectively achieved by taking the young person to their room. Such a response often requires additional staff but it is much more humane than resorting to locking the young person in a cell-like room” (SSI, 1997c).

## **V FAMILY ENVIRONMENT AND ALTERNATIVE CARE** (Articles 5; 18, paragraphs 1-2; 9-11; 19-21; 25; 27; paragraphs 4 and 39)

### **A. Parental Guidance - Article 5**

The Children (NI) Order 1995 reinforces the role of the parents as the primary carers of a child. It acknowledges that children are best cared for in a family environment and should only be removed from this environment in extreme circumstances. However, there has been little work undertaken by Health and Social Services Trusts in relation to parental education to assist them in this role. Most of the parenting courses that are run in Northern Ireland are carried out by NGOs, many of whom receive little or no funding from government.

With the introduction of the Northern Ireland Curriculum in 1990 GCSE Childcare was removed from the education curriculum, thereby undermining the importance of parenting as something which young people need preparation for.

None of the government departments in Northern Ireland has lead responsibility for the provision, quantity or quality of parental support education. Consequently, there is no consistency between or quality control of parenting programmes which are offered by either statutory or voluntary bodies.

### **B. Parental Responsibilities - Article 18, paragraphs 1-2**

The Children (NI) Order 1995 also reinforced parental responsibilities. However, the comments made above under parental guidance also apply here.

### **C. Separation from Parents - Article 9**

The Children Order (NI) Order 1995 makes provision for residence and contact between parents and children.

However, children of prisoners may not be able to maintain contact to a level, which is required for them to sustain a meaningful parent-child relationship. There is very little recognition of the needs of children of prisoners. Visiting areas in Northern Ireland jails are not child-friendly and there is considerable stress involved in the process of visiting. Often the prisoner and his/her partner have a lot of issues to discuss and there is little room to

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<sup>7</sup> A unit within Lisnevin Juvenile Justice Centre used to hold young people in isolation from their peers.

focus on the child. Unlike some prisons in England there are, as yet, no facilities available for child only visits.

All of the Juvenile Justice Centres in Northern Ireland are located in the east of the jurisdiction. Consequently, children and young people from other parts of Northern Ireland are not likely to have regular visits from parents.

#### **D Family Reunification - Article 10**

Upon release from prison, the majority of children have an opportunity to re-establish their relationship with their parent – except in the case of sex offenders. Ex-prisoners who were convicted of sex offences are rarely able to return to their home to live. Many have to live several miles away. Consequently visits by their children are more likely to be occasional rather than regular as such visits have to be supervised with resource implications for Health and Social Services Staff. In such cases the child's right to maintain contact with his/her absent parent must be balanced with the child's best interests.

#### **H. Adoption - Article 21**

The issue of obtaining freeing orders for adoption is problematic in Northern Ireland, taking longer than it does in any of the other jurisdictions within the UK. The average length of time a child spends in care before a freeing order is obtained is over 4 years in Northern Ireland. In England a full adoption order is generally made within 3.5 years. This delay, as mentioned previously, is not in the child's best interests (Kelly and McSherry, 2002).

Social Services Inspectorate are currently inspecting adoption services in Northern Ireland, but the results of this inspection are yet to be made public.

#### **I. Periodic Review of Placement - Article 25**

Although reviews of placements are mentioned by the Children (NI) Order 1995 (paragraph 45), the order does not specify how often reviews should take place – this is left to the discretion of the individual Health and Social Services Trust.

#### **J. Abuse and Neglect - Article 19, including physical and psychological recovery and social reintegration - Article 39**

As stated earlier, family law in Northern Ireland does not currently prohibit the use of 'reasonable chastisement' of a child by parents. While this is currently under review there is no guarantee that the law will be changed so that children will be afforded the same protection from physical abuse as adults.

The Children (NI) Order 1995 places a statutory obligation on professional workers to report, and on a Trust to investigate, allegations of abuse where there are suspicions that a child is or has suffered 'significant harm'. A 'Protocol for Joint Investigation by Social Workers and Police Officers of Alleged and Suspected Cases of Child Abuse' has been established between the police and social services so that a child does not have to be interviewed twice about the same incident. In addition, the police have established special Child Abuse and Rape Enquiry (CARE) Units to deal with child abuse and sexual offence cases.

If there is sufficient concern about a child's safety his/her name will be placed on the Child Protection Register, following a case conference. In the year ended March 31, 2000 there were almost 1500 children on the child protection register in Northern Ireland (NSPCC, 2001).

Despite the establishment of the joint protocol serious concerns have been raised about the manner in which this is operated in relation to allegations of abuse in the Juvenile Justice Centres and it has been pointed out that the NIO's child protection policy and procedures have not been updated to take account of the Criminal Justice Children (NI) Order 1998 (NI Human Rights Commission, 2002).

In the Juvenile Justice Centres the use of what is in effect solitary confinement has been an issue of concern for some time now (SSI, 1997c, NI Human Rights Commission, 2002).

In terms of psychological recovery, mental health services for children and young people in Northern Ireland are completely inadequate. This is further discussed in Section VI (B) Basic Health Care and Welfare (p16).

## **VI BASIC HEALTH AND WELFARE** (Articles 6; 18, paragraph 3; 23; 24; 26; 27; paragraphs 1-3)

### **A. Disabled Children - Article 23**

Unlike the Children Act in England and Wales, the Children (NI) Order 1995 recognises a disabled child as being a child first and places the disability in the background. Children with disabilities are defined by the legislation as being children in need and each Northern Ireland Health and Social Services Trust is required to keep a register of disabled children which is designed to help plan and monitor services. It is not compulsory for parents to place their children on this register.

The Disability Discrimination Act was introduced in 1995. This mainly covers employment issues and the provision of goods and services. It has had little or no impact on the lives of children living with disabilities and is not seen by social workers as a useful piece of legislation in terms of promoting equality for young people with disabilities.

Section 75 of the Northern Ireland Act 1998 places an equality duty on public authorities to both young people (under the age category) and those with disabilities. However, it is still too early to say if this legislation is impacting in a positive way in children's lives and there are some concerns in respect of the limitation of enforcement provisions attached to Section 75.

Under the Education (NI) Order 1996 each Education and Library Board in Northern Ireland must make special educational provision for pupils who have been assessed as having special educational needs. Special needs education is required when the child's needs cannot reasonably be met within the resources of a mainstream school. However, parents can opt to have their child educated in mainstream schools so long as this is compatible with his/her needs *and* the 'efficient use of resources' (Education (NI) Order, 1996). While an individual school may agree to admit a child with a disability, the ultimate decision lies with the Education and Library Board and is often made on the basis on the 'efficient use of resources' as opposed to the child's best interests or wishes.

Many parents feel that they have no option but to send their child to a special needs school. Often this means travelling some distance from their home or boarding, especially for rural young people who are unlikely to live near a special needs school. Children and young

people may attend the same school from nursery to the age of 19 without having much contact with non-disabled peers outside of this setting. It appears that the concept of best interest does not apply in this case. It would be better to have children educated with their peers than having to travel, perhaps board, and grow up not knowing any other children from their locality.

Parents and young people have raised concerns about the quality of teaching and the low expectations of teaching staff in special schools. There is a perception among staff that children with disabilities do not have the same ambitions and right to attain their full potential as other children do (SCF, 2000; Geraghty et al, 1997).

Young deaf people (who do not necessarily see themselves as disabled) also testify to the lower expectation levels among teachers in both mainstream and specialist schools for the deaf in Northern Ireland (NIDYA, 2001).

## **B. Health and Health Services - Article 24**

In Northern Ireland there is differential access to health services depending on where one lives and/or one's ethnicity. For instance, although the jurisdiction has more hospitals per capita than any other part of the UK, almost all of the acute services are located in the east, around Belfast. This immediately discriminates against children living in rural areas, especially in the west of the jurisdiction.

Within urban environments the location of a health centre may mean that it is inaccessible to some. The interface factor often means that members of 'one' community cannot use a facility because it is located within the 'other' community.

Despite the number of hospitals Northern Ireland also continues to have high levels of heart disease (DHSS, 1997) and a growing problem with asthma (SCF, 1995). Mortality rates for children are 30% higher amongst children living in the most deprived areas than those in general (ibid). One third of young single mothers indicated that their physical and mental health was only fair, poor or very poor (Gingerbread NI, 1997).

Up to 30% of young people are thought to be affected by mental health problems at some point in their childhood. Yet mental health services for children and young people are completely inadequate with only 6 beds available in Northern Ireland specifically for children and young people. This means that often vulnerable and disturbed children with mental health needs are accommodated along with disturbed adults in psychiatric hospitals. During 1994/95 233 young people were discharged from adult psychiatric wards in Northern Ireland (SSI, 1997d).

Indicators developed for the UNGASS in relation to children living in industrialised nations are heading in the wrong direction in Northern Ireland: more young people are smoking, consuming alcohol, experimenting with drugs and participating in other risk taking behaviours (NISRA, 1998; HPANI, 2000).

Ethnic groups within Northern Ireland are discriminated against in relation to access to health services. Members of the Chinese community often have to rely on personal interpreters to translate to and from the medical staff in hospitals. Sometimes children have to act as interpreters (Mann-Kler, 1997). Although members of this community attend their own doctors, they are less likely to attend dentists and other allied services.

The life expectancy of Travellers in Northern Ireland is 20% below the rest of the population. A Traveller child under the age of 10 is 10 times more likely to die than a child from the

settled population. Traveller children also have higher rates of hospitalisation than children in the general population (Noonan, 1994). The conditions that the Travelling community are forced to live in are appalling and must be seen to contribute to the ill health of the children from this community. As Sandra Mason, then Chairperson of the UN Committee on the Rights of the Child stated:

**"I was in fact quite appalled to find in Britain on the eve of the twenty-first century there are people living in such squalid conditions, conditions one expects to find only in third world countries. For some, clean drinking water and basic sanitation are not available and thus endangering the health of the children living in these communities" (Sandra Mason, then Chairperson of the UN Committee on the Rights of the Child, speaking in Belfast, September 1998).**

There is no evidence to suggest that the living conditions of Travellers have improved since 1998.

It appears that lower standards are accepted by statutory bodies in relation to the Travellers. For instance, Health and Social Services did not comply with their own regulations when examining a portacabin for use as a playschool. They were willing to grant it a licence even though there were no toilets or running water supply in it (personal communication to CLC from a Traveller Support Group in Belfast, 1998). It seems the health and safety of a Traveller child is of less importance than any other child.

Poverty also has an impact on ill health. Unskilled manual workers are 2.5 times more likely to die before reaching retirement age (Belfast Healthy Cities, 1998). It is estimated that 37% of children in Northern Ireland live in poverty and mortality rates for children are 30% higher amongst children living in the most deprived areas than those in general (SCF, 1995). Recent statistics reveal that child poverty is not just in a small number of isolated households. Rather there are large concentrations of children living in neighbourhoods where the majority of children are living in families that are poor (NISRA, 2001).

Little health education occurs in schools. Youth centres may provide some health education programmes but most young people receive information from peers, in the school playground or on the street. Often this is actually misinformation.

### **C. Social Security and Child Care Services and Facilities - Articles 26 and 18, paragraph 3**

In March 1997 the UK government introduced the Working Families Tax Credit. The professed aim of this measure was to alleviate the poverty experienced by those worst off. However, these measures benefited those in the middle incomes the most - these people are not the most in need. So those living in poverty who are not in paid employment have really seen little or no change at all (Observer Newspaper, 11.3.2001).

The U.K. Social Security System has traditionally made it difficult for 16 and 17 year-olds to claim benefits with complicated conditions of entitlement. While these rules have been relaxed, the experience of young people has changed little. It can be very difficult for 16 and 17 year-olds to get claims of the ground, very often Social Security staff are ill informed about entitlement among this age group, with cases of young people who have a clear entitlement being sent away from Social Security offices, without even a claim form, all too common. This group of benefit claimants can also face extensive delays in dealing with claims as investigations are made into circumstances.

There is very little government funding for children-and-young-people-specific independent advice services in respect of legal issues including entitlement to benefits.

Under the Children Order (NI) 1995 all childminders and people providing day care for children are required to register with a Health and Social Services Trust. Registered childminders are subject to once yearly checks by HSST staff. However, a number of individual and activities are exempt from requiring to register. These include family members, nannies, uniformed organisations, religious organisations and recreational activity organisations. In addition to this the DHSS commissioned 'Our Duty to Care', which provided guidelines for the recruitment, selection and training of staff and volunteers who work with children (ChildCare NI, 1995). The remit and use of the PECS (Pre-Employment Consultancy Service) to 'vet' potential staff/volunteers was also extended. However, staff or volunteers or childminders who give false names may evade these safeguards and in addition there are some exceptions for particular groups such as those mentioned above.

While child protection procedures in Northern Ireland are currently under review, it is unlikely that the forthcoming Protection of Children Act will improve the situation as one of the proposals is to only include *government* childcare organisations and exclude NGOs from the need to register and check potential staff and volunteers (DHSSPS, 2001b).

#### **D. Standard of Living - Article 27, paragraphs 1-3**

Northern Ireland households in general survive on less money than those in Britain. Recent statistics indicate that the differential between average incomes is £83 per week with 73% of the population of Northern Ireland earning less than £450 per week (i.e. just above the average income threshold for the UK) as compared to 62% of the UK as a whole. Living costs in Northern Ireland are more than any other part of the UK with fuel being one-third more expensive. Households in Northern Ireland are more likely to be dependent on social security payments and less likely to have access to investments, pensions or salaries (HMSO, 2000).

This picture is further complicated by the impact of the conflict in Northern Ireland. Fay et al found a significant correlation between the level of deprivation and the number of Troubles-related deaths with areas of very high deprivation also indicating high numbers of deaths (Fay et al, 1997).

In particular and relative to the rest of Northern Ireland, interface areas demonstrate much higher levels of poverty and disadvantage: over two-thirds (69%) of the community earned less than £5,000 per year as compared to the Northern Ireland average of 45%; 31% of those living in interface areas are unemployed compared to a regional average of 14%; only 2% are educated to A Level (i.e. pre-university) standard as opposed to a regional trend of 12% and only 1% have a university degree compared with 12% of the population generally (Centre for Policy Research, 1994).

### **VII EDUCATION, LEISURE AND CULTURAL ACTIVITIES (Articles 28, 29 and 31)**

#### **A. Education including Vocational Training and Guidance - Article 28**

The Children (NI) Order 1995 replaced Training School Orders with Education Supervision Orders as means to ensuring the realisation of the child's right to education. This development is welcome.

Discrimination in respect of a child's rights to education occurs on the basis of race, class and ability.

Children of ethnic groups are disadvantaged when the child does not speak English as his/her first language as the 'business' of the school is conducted solely in English, with the exception of Irish medium education. Despite the introduction of the Race Relations (NI) Order in 1997 there has been no recognition by the DE that English is not the first language of many Chinese children (the largest ethnic minority group in NI) and there is no universal provision for or recognition of those needs throughout Northern Ireland. Recent research shows that the majority of teachers have had no training at all in meeting the needs of children from ethnic groups (Commission for Racial Equality for Northern Ireland, 1999).

92% of Traveller children in Northern Ireland have not attained any GCSEs<sup>8</sup> (PSI, 2001). Traveller children in west Belfast are accommodated in a recently specially established primary school, segregated from other children, despite the fact that segregation on the basis of race is illegal under the Race Relations (NI) Order 1997. A report into one school attended solely by Travellers highlighted issues such as the tolerance of lower attendance levels, lower attainment levels and lower standards of facilities by education authorities (DENI, 1998). Yet there appears to be a lack of concern on behalf of government in relation to these issues (PSI<sup>9</sup> Working Group on Travellers, 2001).

The quality and experience of career and vocational guidance varies enormously throughout Northern Ireland. Some pupils' experience a well structured, continuous programme but the majority do not. Often the guidance is ad hoc, lacking in structure, not very meaningful for the young people and does not link subject choice with career choice or options (CLC & SCF, 1999).

Some Education and Library Boards are 'experimenting' with new initiatives to reduce school absenteeism and drop out rates. These programmes (known as EOTAS - Education Other Than At School projects) appear to be having at least some success. However, some of these projects are being funded from the EU Special Support Programme for Peace and Reconciliation – i.e. this is additional money and it is uncertain what the future of such projects will be following the termination of the SSPPR. In order that the lessons learned from such projects are utilised to their full potential this funding must be mainstreamed.

Children in custody do not receive an adequate, high quality educational experience. Education within Juvenile Justice Centres is controlled by the Northern Ireland Office, not the Department of Education and consequently, does not, follow the Northern Ireland curriculum. Young people constantly state that education within JJs in no way reflects school in the 'outside world' (CLC & SCF, 1999). Young people who are held in custody are automatically removed from the roll of their original school and are not guaranteed to be able to automatically return to that school upon release. In addition, there is no provision for accredited vocational training for young people over the compulsory school age of 16 as the Dept for Employment and Learning which is responsible, in educational terms, for those aged 16+ has no input into the Juvenile Justice Centres (NI Human Rights Commission, 2002).

Although corporal punishment was abolished in 1987 in Northern Ireland's schools, private schools are exempt from this ruling and some continue to physically punish children with canes, which is permitted under common law. Northern Ireland is the only part of the UK

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<sup>8</sup> GCSE - General Certificate in Secondary Education - the basic minimum qualification required for employment or further study.

<sup>9</sup> PSI - Promoting Social Inclusion - UK government's policy response to tackling social exclusion. Travellers were one of four priority areas for the initial phase of the PSI programme.

where this still happens. It is acknowledged that this is currently under review by the Department of Education but there is no guarantee that the law will be changed and indeed there is very strong opposition to any such change from some quarters.

Other means of disciplining children in school are not consistent with the spirit of the Convention. For instance, some teachers deliberately use humiliation and embarrassment as means of 'controlling' children. Young people themselves, highlight instances when this occurs e.g. having poor spelling or writing displayed to their classmates, being made to repeat incorrect answers, being shouted at or receiving sarcastic remarks. Unfortunately, as such behaviour is not prohibited, there is very little pupils can do in seeking redress (CLC & SCF, 1999).

Very few schools have any mechanism where the pupils can have their views heard. Some schools have student councils but their ability to influence the procedures of the school, including discipline, is questionable (NIYF, 1999). As mentioned earlier there is no appeals procedure for suspensions and the right to appeal an expulsion lies only with the parents of a child, not with the child him or herself.

While Irish Medium and Integrated education have, since devolution, received more government support in terms of allocation for capital grants, ongoing funding is only agreed following fulfilment of strict criteria (communication to CLC from Gaeloiliuint, 1999 and NICIE 2002).

Also, indirectly government has discriminated against these schools because under new regulations free bus passes<sup>10</sup> are only given to children if they attend the school nearest them. Not everyone lives near an Irish Medium or Integrated school and for rural children in particular this stipulation is discriminatory.

Because of the introduction of tuition fees in universities, access to higher education in Northern Ireland does not occur solely on the basis of academic ability, but on ability to pay. Each student must pay at least £1000 tuition fees each year. This, coupled with the cuts in grants and the gradual phasing in of student loans, is likely to act as a deterrent to those from less affluent backgrounds from attending third level education.

## **B. Aims of Education - Article 29**

Northern Ireland's educational system is very academic. At second level education there is a two-tier system in operation with children who are deemed more academically able (using the results of an academic selection test, the Transfer Test) gaining admission to grammar schools and everyone else attending secondary schools. Following a review of second level education and the transfer procedure, the Department of Education may now abolish the Transfer Test, although it is unlikely to be for another 2-3 years.

Statistics indicate that those who attend secondary (as opposed to grammar) schools are more likely to leave without the basic minimum requirements for employment. In the year 1999/2000 over two-thirds of pupils leaving secondary schools had not attained 5 GCSE's at grades A-C and the proportion of those leaving without any formal qualifications at all was almost 7 times more in secondary schools than it was in grammar schools (DE, 2001). A system that not only allows this to happen, but that in many ways facilitates this, cannot be said to be upholding children's rights.

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<sup>10</sup> Children living more than 3 miles from a school are entitled to free transport to and from school.

The introduction of the Northern Ireland curriculum brought changes in the curriculum and emphasised subjects, which were felt to match the demands of a changing industrial world. However, in promoting subjects such as science, technology and languages others like childcare have been dropped.

Children and young people now undergo tests at various Key Stages (KS)<sup>11</sup>. Due to the requirement to test children at KS2 (age 11), children in Northern Ireland who also undertake the Transfer Test are actually tested twice, unlike their peers in the rest of the UK. Administering these tests takes up a lot of time for teachers and considerable space on the timetable.

The cumulative effect of all of this is that the education system in Northern Ireland has become increasingly academic in focus and is not, therefore, consistent with the aims as enshrined in the Convention.

### **C. Leisure, recreation and cultural activities - Article 31**

Under Article 37 of Education and Libraries (NI) Order, 1985 each of the five Education and Library Boards has responsibility for “the provision for its area of adequate facilities for recreational, social, physical, cultural and youth service activities” for those aged 4-25 years. However, there has never been any attempt to define what is meant by 'adequate' and there is no guarantee of consistency across board areas. What appears to be clear however, is that rural areas are less likely to have large numbers of young people attending any youth clubs and are therefore immediately disadvantaged as certain minimum numbers are required before support will be given.

The Youth Service<sup>12</sup> has had a curriculum for its service delivery since 1987. This has recently been reviewed but has not resulted in any significant change in the service.

While the Youth Service targets those aged 4-25 in its policy, the reality is that most of the facilities available are only suitable for those aged over 10 years. There is little play equipment in youth centres and most of the facilities (e.g. toilets) are not made to the scale of children's worlds. Indeed the value of play work with children appears to be ignored as play workers' qualifications are not recognised by the governing body of youth work in Northern Ireland.

There is no jurisdictional play policy in Northern Ireland. However, six local councils are working in co-operation with an NGO, Playboard, to develop play policies. This programme is however, at an early stage of development and it is still too early to make an assessment of the impact of the programme.

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<sup>11</sup> Key Stage 1 means that the educational testing of children starts at age 7-8 years.

<sup>12</sup> The Youth Service is a mixture of both statutory organisations and NGOs involved in the informal education of children and young people in Northern Ireland.

## **VIII SPECIAL PROTECTION MEASURES (Articles 22, 38, 39, 40, 37 (b)-(d), 32-36)**

### **A. Children in situations of emergency**

#### **1. Refugee Children - Article 22**

With respect to refugee children the UK government has derogated from Article 22 and Article 7 of the UNCRC. Under the British Nationality Act 1981 children born in Northern Ireland to non-British citizens are not afforded British citizenship whereas in the Republic of Ireland all children born in the jurisdiction are automatically afforded Irish citizenship.

#### **2. Children in armed conflicts - Article 38, including physical and psychological recovery and social reintegration - Article 39**

The impact of the conflict in Northern Ireland has been recognised by many both at home and further afield. Children and young people have been acknowledged as being particularly affected by the violence here:

**"...the participants ( to the agreement) recognise that young people from areas affected by the Troubles face particular difficulties" (Belfast Agreement, 1998:18).**

International experts in conflict transformation have drawn comparisons between Northern Ireland and other areas of the world such as Palestine/Israel and South Africa. Special Representatives for Children and Armed Conflict from the United Nations have visited the area three times.

In his report to the Secretary General, Olara Otunu, having visited Northern Ireland in June 2000 stated that

**"children's concerns must remain priority concerns throughout the building of peace and the voices of young people should be heard through peace processes...Children's rights should be incorporated into the new Northern Ireland Bill of Rights...emergency legislation that provides for the detention of very young children should be reviewed and police should receive training in children's rights and protection"(UN 2000:13-14).**

Since the government last reported in 1994 Northern Ireland has seen significant political changes, which have impacted on the lives of children here. However, while the peace negotiations culminated in the Belfast Agreement in 1998, it is still the case that the process of building a peaceful, just and stable society is not yet complete.

Despite the statement made in the Belfast Agreement about children, there has been very little mention of the effects of 30 years of violence on children.

The Special Representative of the UN for Children and Armed Conflict, Olara Otunu has urged the government to provide more support for families directly affected by the violence:

**"The Government need to provide more support for families and parents affected by violence, living in segregated environments and hampered in their own ability to build bridges with neighbouring communities. Educators and other members of civil society working to encourage cross-community links need to be given adequate and sustained support" (UN, 2000:14).**

## **B. Children involved with the system of administration of juvenile justice**

### **1. The administration of juvenile justice - Article 40**

The administration of juvenile justice in Northern Ireland contravenes the UNCRC in a number of ways:

Under the Children and Young Person's Act (NI) 1968 the age of criminal responsibility is set at 10 years. There has not, therefore, been any change since the government's first report to the Committee. This is currently under review as part of the Criminal Justice Review. Early indications are that the Justice (NI) Bill, the legislative response to the Criminal Justice Review, does **not** contain proposals to raise the age of criminal responsibility. **The Committee's recommendations have, in this instance, been totally ignored.**

Further, we are deeply concerned that the proposed new Justice (NI) Order coming from the Belfast Agreement's Criminal Justice Review does not incorporate the best interest principle in respect of children.

Under the Criminal Justice (Children) (Northern Ireland) Order, 1998 young people aged 17 are considered adults in the criminal justice system. This means that they are held in custody with adult offenders. In addition, young men aged 15 and 16 years can be sent to a Young Offenders Centre (as opposed to a Juvenile Justice Centre) if they are considered a danger to themselves or others. The practice, under the above legislation, means that all boys/young men over the age of 14<sup>13</sup> are being sent to Lisnevin, a secure Juvenile Justice Centre, which has been condemned by Social Services Inspectorate as unsuitable for young people (SSI, 1997c). See also Sections IV F Privacy (p11) and H - Inhuman and Degrading Treatment (p12). St Patrick's Juvenile Justice Centre, which was based in west Belfast closed in 2000.

Under the legislation mentioned above civil servants, not members of the judiciary, make decisions about where children will 'serve' their time in the criminal justice system. While initially this meant that there was an assessment process and panel in place to make these decisions, this panel and process have now been abolished by the NIO. In reality all male children (save for the very young) serve their sentences in Lisnevin JJC. The Social Services Inspectorate (SSI) has condemned both this building and some of the practices within it in 1997:

**"Lisnevin...is a combination of single and two storey, flat roofed buildings enclosed by a perimeter security fence. The surrounding high wire fence, the fact that access to the unit is via a series of electronically controlled and locked doors and the presence of closed circuit TV to monitor movements around the entrance to the buildings all combine to give an initial impression of a very secure institution. This first impression is reinforced by the accommodation inside, where, for example, the children sleep in rooms with steel doors and narrow windows, which create a depressing prison-like aura. The building was in fact designed as a category C prison...(t)he present premises were not, therefore, built to house a training school and despite a number of modifications over the years it is, in many respects, not suitable as a centre for children and young people whose ages can range from 10 to 17 years" (SSI, 1997c).**

**"Lisnevin, physically is a dehumanising penal institution...The inspectors consider that the current Lisnevin building is essentially unsuitable for the purpose for which it is currently being used and that it falls far short of meeting the standard set for the living environment...Careful consideration requires to be given as to whether premises originally designed as a prison can ever be modified to provide the sort of environment needed for children and young people" (ibid).**

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<sup>13</sup> Those aged 13 or under tend to be sent to Rathgael JJC

**“The physical conditions on tier one are the most basic with bedrooms, most of which are completely unfurnished with the exception of mattresses on the floor. The boys on tier one have earlier bedtimes (9.30pm). They have the last choice of evening activities and eat at the first sitting which reduces their prospects of second helpings at meal times” (ibid).**

While it was announced by the Northern Ireland Office in 1998 that Lisnevin would close, no progress has been made in this regard. Apart from the concerns mentioned by SSI there is no acknowledgement of the isolated geographical location of Lisnevin, the lack of public transport and the fact that it is located in a predominantly Protestant community (when the majority - 54% - of residents in JJs are Catholic), which may present security issues for some young people and/or visiting relatives.

Some young women continue to be held in HMP Maghaberry an adult prison even though this practice has been condemned by the Chief Inspector of Prisons (Home Office, 1997). The lack of action in this area is unacceptable.

Despite the peace process the Prevention of Terrorism (Temporary Provisions) Act 1989 and the Northern Ireland (Emergency Provisions) Act 1996 (EPA) means that young people's rights enshrined in the Police and Criminal Evidence (NI) Order 1989 (PACE) are over-written. Under Emergency legislation a child as young as 10 years can be detained, without charge, for seven days, access to a solicitor may be withheld for up to 48 hours, there is no right to have a solicitor present during interview and neither is the child entitled to be accompanied by an appropriate adult (guidelines suggest that an appropriate adult does accompany the child, but these guidelines are not legally enforceable). These powers have already been shown to be in contravention of the provisions of the ECHR which government has chosen to derogate from.

**Not only has the government again ignored the recommendations of the Committee but the recent Anti-Terrorism, Crime and Security Bill 2001 and the Terrorism Act, 2000 extend the above powers and are also in contravention of the provisions of the UNCRC as well as other international standards because children can be held without charge for long periods of time and they only have an absolute right to consult their solicitor after 48 hours. The main difference is that with the new legislation the power to extend detention must be sought from the courts as opposed to the Secretary of State.**

Contact with the police is the first step in young people's experience of the juvenile justice system. Policing in Northern Ireland has been very problematic in the past. Many young people do not have positive experiences of or attitudes towards the police. The police in turn often do not have positive attitudes towards young people, either ignoring them and thereby leaving them vulnerable or harassing them. While a new police service has been established in Northern Ireland, it remains to be seen whether or not this new service will gain the confidence of the public. In terms of protecting children and young people, there is still a need for the police to understand young people, to have a knowledge of children's rights and to be able to communicate effectively with them. As yet there is no evidence that the training of police officers adequately reflects this need.

The police and army in Northern Ireland continue to use plastic bullets and have introduced a new and, according to government research, a more dangerous plastic bullet, despite concerns being raised at both national and international levels. Security personnel are trained to use such bullets so that they strike their (adult) 'targets' on the lower part of their bodies. However, for children and young people, because they are smaller in stature, this potentially means the head and abdominal areas. Consequently, such a measure is more dangerous to children than adults. Plastic and rubber bullets have killed children in the past.

The power to use plastic bullets elsewhere in the UK has been extended to all police forces, something that is of great concern.

## **2. Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings - Article 37 (b) – (d)**

It would appear that detention is not being used as a measure of last resort in Northern Ireland. Although the Criminal Justice (Children) (NI) Order 1998 reiterated the spirit of Article 40 of the UNCRC, recent statistics from the NIO indicate that custody is not being used as a measure of last resort and is not restricted to only the most serious and persistent offenders (NIO, 2001). During 2000 only 15% of those admitted to Juvenile Justice Centres went on to serve a custodial sentence (ibid). Secure remands which subsequently resulted in bail or community options have been criticised by the SSI (1997c).

Some of the practices within custodial settings are not in keeping with the Convention. For instance, using solitary confinement and processes for investigation regarding allegations of abuse and assault or lack of knowledge on behalf of the staff with regard to child protection (SSI, 1997a; 1997b, 1997c, Northern Ireland Human Rights Commission, 2002).

## **4. Physical and psychological recovery and social reintegration of the child - Article 39**

It is acknowledged that restorative justice programmes have been established in some parts of Northern Ireland, some of which are part-funded through government sources. These projects aim to act as positive community alternatives to threats and punishment beatings from non-state forces. However, as they have not long been established it is still too early to make an assessment of their effectiveness.

### **C. Children in situations of exploitation, including physical and psychological recovery and social reintegration.**

#### **1. Economic exploitation of children, including child labour - Article 32**

The employment of children is governed by Part XII of the Children (NI) Order, 1995. The main points of this section are -

- no child under 13 years can be employed at all.
- no child who is at school can work before 7am or after 7pm or more than two hours on a school day.
- no child should be employed in street trading or any occupation that is likely to be injurious to his/her health or education.

It appears from various studies that government is not enforcing this legislation in relation to the employment of children. For instance, children do work before 7am and after 7pm and for more than two hours on a school day. In fact in one study 18% of respondents indicated that felt tired during school because of their paid work (SCF, 1999).

The views of children should be incorporated into any further review of child employment legislation. In particular, new laws regarding child employment should be sensitive to the realities of children's working lives and the changing working environment.

Approximately one quarter of young people who work have also experienced an accident at work (SCF, 1999) while there are two or three deaths every year among children under 16 due to accidents on farms (Pinkerton, 1997).

Young people tend to be paid less than their adult colleagues even if they are doing the same work. Although a minimum wage was introduced by the government, it only relates to those aged 18 and over. Children are therefore not protected by this legislation.

## **2. Drug Abuse - Article 33**

In 1996 the DHSS issued a policy statement on drug misuse in Northern Ireland which aims to 'reduce the acceptability and availability of drugs to young people and to reduce the health risks and other harm resulting from drug misuse'. This led to the establishment of regional drug abuse task forces involving statutory and voluntary sectors.

These strategies emphasise the need for prevention, education and treatment in order to protect young people from becoming involved in taking illicit drugs and treating those who have. As yet there has been little government support in terms of funding and statistics from the Northern Ireland Health Promotion Agency indicate that "there has been little change in the use of illicit drugs among school children", with almost half

(45%) of 15 year olds being offered drugs (NIHPA, 2002). Information from the same source also indicates that the number of drugs related deaths and the number of those arrested for drug related offences is also on the increase in the jurisdiction (ibid).

## **3. Sexual exploitation and sexual abuse - Article 34**

Police statistics reveal that in the year 2000/01 there were 734 sexual offences against children under the age of 17 in Northern Ireland, including 86 rapes and 476 indecent assaults (DHSSPS, 2001a). In 1999/2000 there were almost 300 children on the children protection register as a result of sexual abuse (NSPCC, 2001).

The Children (NI) Order, 1995 placed an obligation on all bodies working with children and young people to undertake child protection training. Much of this training focuses on the symptoms of abuse and outlines the appropriate actions to be taken.

While there is no documentary evidence proving that young people in Northern Ireland are engaged in selling sex, anecdotal evidence presented to the CLC suggests that there are a number of young people, both female and male, involved in prostitution in Belfast. It has been recognised by workers in both voluntary and statutory bodies that children in or leaving care are particularly at risk of becoming involved in this activity. With the peace process came greater affluence and there is anecdotal evidence of significant 'cross-border trade' in relation to young people's involvement in the selling of sex (Include Youth/SEBHSST Out of the Shadows Conference, 26.4.2001; University of Ulster Annual Youth Work Conference, 2000).

However, young people involved in selling sex are not treated as vulnerable young people who are at risk of significant harm. Rather, they are criminalised for prostitution. Legislation regarding prostitution in Northern Ireland dates back to the 19<sup>th</sup> Century and unlike England and Wales kerb crawling<sup>14</sup> is not an offence in Northern Ireland and carries no sanction. The

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<sup>14</sup> Kerb crawling occurs when a man solicits from a motor vehicle - Sexual Offences Act, 1985 Section 1.

law, therefore, regarding prostitution does not take account of the vulnerability and powerlessness of young people engaged in this activity.

#### **D. Children belonging to a minority or an indigenous group - Article 30**

The Race Relations (NI) Order was introduced to Northern Ireland in 1997. This legislation prohibits racial discrimination in employment, education and in service provision. It also established the commission for Racial Equality for Northern Ireland, which later became part of the Equality Commission.

The Race Relations (NI) Order 1997 in Northern Ireland differs from the Race Relations Act 1976 in England and Wales, in that it specifically includes Travellers.

Despite the introduction of such legislation recent research indicates racist attitudes are twice as prevalent as sectarian ones, with negative attitudes being particularly strong against Travellers (Connolly and Keenan, 2000).

The Race Relations (NI) Order 1997 sees segregation on racial grounds as being 'less favourable treatment', amounting to direct discrimination. However, as previously stated in the section of Education Traveller children in West Belfast are accommodated in a school that is attended *only* by Travellers.

The comments in relation to the low levels of educational attainment, low life expectancy and living conditions of Travellers also stand here.

The comments made relating to the Chinese Community in relation to health and education also apply here.

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