

**SUBMISSION TO THE UNITED NATIONS'
COMMITTEE ON THE RIGHTS OF THE CHILD**

**Shadow Report on the
Third and Fourth Periodic Reports of the
United Kingdom of
Great Britain and Northern Ireland**



**NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION**

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Northern Ireland Human Rights Commission
Temple Court, 39 North Street
Belfast BT1 1NA

Telephone: +44 (0)28 9024 3987
Textphone: +44 (0)28 9024 9066
SMS Text: +44 (0)7786 202075
Fax: +44 (0)28 9024 7844
Email: information@nihrc.org
Website: www.nihrc.org

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INTRODUCTION

About the Northern Ireland Human Rights Commission

1. The Northern Ireland Human Rights Commission is a statutory body established on 1 March 1999, as a result of the Belfast Agreement of 10 April 1998. The Commission is a national human rights institution independent of government. Since its creation by the United Kingdom Parliament in 1999, the Commission has engaged extensively with United Nations and regional treaty processes, and has submitted parallel reports under all UN human rights treaties to which the United Kingdom is party. The Commission sees as an important part of its work informing international treaty monitoring bodies of the state of human rights in Northern Ireland. The Commission is accredited with 'A' status by the International Co-ordinating Committee of National Human Rights Institutions, and is at present the only accredited NHRI in the UK.
2. The activities of the Commission include reviewing the adequacy and effectiveness in Northern Ireland of law and practice relating to human rights, advising on the compatibility of legislation and policy with human rights, and promoting understanding and awareness of human rights. We also assist individuals in legal proceedings where human rights issues arise, bring proceedings in our own name involving law or practice concerning the protection of human rights, and conduct research and investigations.

Context of this submission

1. The Commission welcomes this opportunity to report to the UN Committee on the current state of children's rights issues in Northern Ireland. The Commission is concerned at the failure of the UK Government to fully implement the recommendations of the UN Committee of 1995 and 2002. These concerns are documented in detail in the *Northern Ireland NGO Alternative Report* to the Committee by the

¹ This *NGO Alternative Report* followed extensive consultation with the NGO sector in Northern Ireland. It highlights in depth the broad range of children's rights issues in Northern Ireland and also provides information on the legacy of conflict, which impacts on all aspects of the lives of children and young people in Northern Ireland.

2. The Commission has undertaken significant work in a number of areas related to the protection of children's rights and relevant to several of the Committee's recommendations to the UK Government in 1995 and in 2002. The Commission's report to the Committee shall focus on these areas, which will include:
 - policing measures, in particular PSNI proposals to introduce the Taser X26 device
 - corporal punishment
 - issues relating to asylum and immigration
 - the administration of the youth justice system
 - the Justice (NI) Act 2002
 - indeterminate sentences
 - Test purchase powers / entrapment
 - Anti-Social Behaviour Orders (ASBOs)
 - counter-terrorism measures, and
 - the treatment of children in detention.

3. In May 2007, devolution was restored to the Northern Ireland Assembly and Executive. This means that some matters are devolved to the Northern Ireland Assembly while others are either 'reserved' or 'excepted' for the responsibility of the UK Government at Westminster. While there are ongoing plans for policing and criminal justice to become the responsibility of the Northern Ireland Assembly, it remains at present a 'reserved' matter. Therefore, responsibility for policing and justice rests with the Secretary of State for Northern Ireland at Westminster, via the Northern Ireland Office. Immigration and asylum are 'excepted' matters and, consequently, will not be devolved to the Northern Ireland Assembly. The main concerns and questions in this report are directed to the state party, although the relevant duty bearer may be either the UK Government or the Northern Ireland Assembly and Executive.

¹ *Northern Ireland NGO Alternative Report: Submission to the United Nations Committee on the Rights of the Child for Consideration During the Committee's Scrutiny of the UK Government Report*, Children's Law Centre and Save the Children, Belfast, 2008.

A brief overview of the state of children's rights in Northern Ireland

1. Since the Government was last examined by the Committee in 2002, there continues to be significant change in Northern Ireland following on from the signing of the Belfast Agreement in 1998. In particular, the St. Andrew's Agreement of October 2006 led to the successful restoration of devolution in May 2007, following a period of suspension since October 2002. As such, there continue to be important developments that have the potential to impact positively on the lives of children and young people in Northern Ireland. These developments include:
 - the creation of Children and Young Person's Strategy overseen by the Children and Young Persons Unit within the Office of First Minister and Deputy First Minister (OFMDFM)
 - the establishment of the Northern Ireland Commissioner for Children and Young People (NICCY); NICCY is an independent body created by the Commissioner for Children and Young People (NI) Order 2003
 - in July 2007, the repeal of a number of the provisions in Part VII of the Terrorism Act 2000 containing emergency powers that applied only to Northern Ireland
 - the establishment of an independent Bill of Rights Forum, made up of representatives from political parties and civil society, to inform the Northern Ireland Human Rights Commission on the scope and content of a Bill of Rights for Northern Ireland; the Forum made its final report and recommendations to the Commission on 31 March 2008;² the Commission will consider this report before making its recommendations to the UK Government on 10 December 2008.

2. Although it is important to note these developments, the potential for these and other measures to impact positively on the lives of children and young people in Northern Ireland is significantly reduced due to the fact that the state party has not made efforts to incorporate the principles of the Convention into domestic law. This failure means that the Convention does not fully inform policy and practice relating to children and young people. The Commission is of the view that this is a central failure on the part of the state party, the

² *Final Report: Recommendations to the Northern Ireland Human Rights Commission on a Bill of Rights for Northern Ireland*, Bill of Rights Forum, Belfast, 2008.

nature of which is demonstrated by the issues and concerns highlighted in this report.

3. In addition, the Commission would wish to highlight its disappointment at the failure of the state party to fully implement the recommendations of the UN Committee of 1995 and 2002 and its refusal to remove the UK reservations under Articles 22 and 37(c) of the Convention.

Questions

1. The Committee may wish to ask the state party why they have failed to incorporate the principles of the Convention into domestic law.

2. The Committee may wish to ask the state party what children's rights impact assessments it undertakes when developing law, policy and practice. The state party should also be asked why a number of recent legislative initiatives have fundamentally contravened the UK's obligations under the Convention.

3. The Committee may wish to ask the state party why it has failed to fully implement its recommendations from 1995 and 2002.

The Commission's investigations into the rights of children in custody

1. The Commission has devoted a large amount of work to protecting the rights of children in custody. This work has been carried out primarily through its investigations into the care of children in the juvenile justice centre, and in its work regarding the treatment of women and girls in prison. In terms of setting the context for this work, it is important to note that a lack of clarity regarding the Commission's powers to request documents and to enter places of detention meant that, at times, access to documents³ and to the Hydebank Wood Women's Prison⁴ was denied. In spite of these difficulties, the Commission continued to pursue and make a significant impact on the protection of children's rights in custody in Northern Ireland. Since August 2007, the Commission's investigative powers now include the power to

³ Kilkelly U, Moore L and Convery U, *In Our Care: Promoting the Rights of Children in Custody*, NIHR, Belfast, 2002, pp 15-16.

⁴ Scraton P and Moore L, *The Prison Within: The Imprisonment of Women at Hydebank Wood 2004- 06*, NIHR, Belfast, 2007, p 14.

request documentation and to access certain places of detention.⁵

2. In March 2002, the Commission published *In Our Care: Promoting the Rights of Children in Custody*.⁶ The investigation focused on the care of children aged 10-16 years in the juvenile justice centre in Northern Ireland. Its remit was to assess the extent to which the youth justice system was protecting the rights of children in custody. The report made 170 recommendations critical of many aspects of children's treatment. In September 2006, the Commission published a follow-up report, *Still in our Care*, to assess the extent to which the 170 earlier recommendations had been implemented.⁷ In this report, the Commission welcomed a number of developments including legislative measures that emphasise restorative approaches and diversion from the criminal justice system.⁸ Nevertheless, the report highlighted serious concerns and made some 107 further recommendations. The following is an overview of some of the main points emerging from *Still in Our Care*:

- The investigation found that the detention of children with adults is a practice that still persists in Northern Ireland.
- It also found a lack of information about the detention of children in Hydebank Wood YOC and Hydebank Wood Women's Prison. The detention of children in prison is a practice that is still not openly monitored by the Northern Ireland Office or the Youth Justice Agency.
- The Commission's earlier recommendation to transfer the responsibility for health and education for children in detention to the relevant government departments (Department of Health, Social Services and Public Safety and the Department of Education) had not been implemented.
- The issue of children and young people entering custody from care continued to raise serious concerns.
- Court ordered remands and police remands under the Police and Criminal Evidence (NI) Order 1989 (PACE remands) continued to make up the overwhelming majority of admissions to the juvenile justice centre.

⁵ Sections 15 and 16 of the Justice and Security (NI) Act 2007. This change came about as a result of legal action and extensive lobbying by the Commission.

⁶ *Ibid*, Kilkelly *et al*, 2002.

⁷ Convery U and Moore L, *Still in our Care: Protecting Children's Rights in Custody in Northern Ireland*, NIHRC, Belfast, 2006.

⁸ In particular, provisions for youth conferencing contained in Part 4 of the Justice (NI) Act 2002.

- Staff reported that assessment and work with children and young people on remand was problematic, because work relating to alleged offending could not take place unless the young person had been sentenced. Lengthy periods on remand meant that there was a limited opportunity to participate in meaningful activity prior to release.
 - The effectiveness of programmes for rehabilitation and reintegration had not been independently reviewed.
3. In addition to the investigation into the care of children in the juvenile justice centre, the Commission's investigative work on the treatment of women and girls in prison is significant. This highlights concerns for girls under the age of 18 where legislation still permits their detention in Hydebank Wood Women's Prison.⁹ In relation to girls under the age of 18, the Commission recommended a "last-resort" unit for young women with an age specific regime.¹⁰ Although at the time of the fieldwork for the investigation from December 2005 to March 2006, there were no girls under the age of 18 years in Hydebank Wood, the Prison Service indicated that eight 'female juveniles' were held there during 2006.¹¹ At present, the Prison Service has stated that two 17-year-old girls are being accommodated in the prison.¹²
4. The investigation into Hydebank Wood Women's Prison also considers the arrangements for the children of mothers in prison. Among other matters, this reveals that on visiting the prison, children are sniffed by a 'drugs dog' and that the visiting area does not include toilet facilities for children.¹³ In terms of contact with children, it was noted that while mothers can make telephone calls, children cannot phone into the prison to talk to their mother.¹⁴ The Commission made a number of recommendations regarding mothers and children in prison including community based alternatives to custody for mothers of young children¹⁵ and family friendly policies

⁹ Scraton P and Moore L, *The Prison Within: The Imprisonment of Women at Hydebank Wood 2004- 06*, NIHRC, Belfast, 2007.

¹⁰ *Ibid*, p 102, Recommendation 40.

¹¹ *Ibid*, p 100.

¹² Northern Ireland Prison Service, *Strategy for the Management of Women Offenders: Stakeholders Consultation Event 28 April – 1 May 2008* at Hillsborough Castle, Belfast.

¹³ *Ibid*, p 110.

¹⁴ *Ibid*, p 111.

¹⁵ *Ibid*, p 112, Recommendation 41.

and visiting arrangements, which should include private family visits.¹⁶

5. The Commission would wish to highlight that, at present, the Prison Service is consulting on a 'Strategy for the Management of Women Offenders'. This is a positive development on the part of the Northern Ireland Prison Service. The Commission welcomes the invitation from the Prison Service to take part in this consultation and will participate with a view to ensuring that its recommendations are addressed. However, the current consultation for a women's strategy must not mean that in the interim the rights of girls in prison are not met.

Question

4. It would be very helpful if the Committee could consider the main findings of the Commission's follow-up investigation into the treatment of children in the juvenile justice centre, and the relevant findings from the investigation into the treatment of women in prison, as outlined above. The Committee may wish to ask the state party why it has not implemented all of the recommendations.

The Commission's investigation into immigration services and the power to detain

1. In Northern Ireland, since January 2006, immigration detainees and some asylum seekers have been transported to detention facilities in Scotland and England, with the majority transported to Dungavel detention facility in Scotland. The decision to transport immigration detainees out of Northern Ireland was taken without any form of public consultation. Prior to this decision, the Commission had announced its plans to investigate UK immigration services in Northern Ireland. In June 2006, the Commission visited Dungavel detention centre and, on return, the Chief Commissioner issued a press release to stress the serious human rights concerns for persons transported out of Northern Ireland: "... there is a clear lack of transparency and no publicly available information on such basic questions as the number of individuals who have been transported from this jurisdiction

¹⁶ *Ibid*, p 112, Recommendation 45.

to Dungavel, the number seeking asylum and whether any children have been removed and detained".¹⁷

2. At present, the Commission is in the process of completing its investigation into UK immigration services.¹⁸ The investigation focuses on human rights concerns relating to the current arrangements including the ways in which families with children are affected. The investigation aims to identify, among other matters, the extent to which the human rights of asylum and immigration applicants are met throughout the application process. While the investigation is not yet complete, the Commission would wish to raise the following concerns:

- There is a lack of information about the number of people subject to immigration and/or asylum laws in Northern Ireland. At present, the Home Office does not provide aggregated data relating specifically to Northern Ireland.
- It follows that there is a dearth of information about the numbers of children in Northern Ireland, whether unaccompanied or with families, who are subject to asylum and immigration laws.
- Likewise, there is a lack of clarity, at least in so far as information in the public domain, about the numbers of people, including families with children, transported from Northern Ireland to Dungavel or elsewhere in Scotland or England.
- The practice of detaining people subject to immigration and/or asylum laws by the UK Border Agency suggests that the UK is not detaining children as a last resort as required by Article 37(b) of the Convention.
- The UK Border Agency does not apply the 'best interests' principle to decisions regarding unaccompanied asylum seeking children. This has serious implications for the protection of children's rights throughout the asylum process.
- While the UK Border Agency has published a consultation on a Code of Practice for children, there is

¹⁷ As outlined in Scraton P and Moore L, *The Prison Within: The Imprisonment of Women at Hydebank Wood 2004- 06*, NIHRC, Belfast, 2007, p 96.

¹⁸ The Commission's investigation into UK immigration services, in particular, the power to detain, is due for completion later this year. The Commission hopes to be in a better position to provide the Committee with information on its findings in advance of the UK's examination in September.

no reference in the code to the 'best interests' principle or, indeed, to any notion of children's rights.¹⁹

- There remain serious concerns about the UK Government's approach to age disputes in relation to unaccompanied asylum seeking children.

¹⁹ UK Border Agency, *The Border and Immigration Agency Code of Practice for keeping Children Safe from Harm: Consultation*, Home Office, London, 2008.

MAIN SUBMISSION

I. General principles: definition of the child (Article 1)

Age of criminal responsibility

1. The age of criminal responsibility remains at 10 years of age, despite the Committee's statement in General Comment Number 10 that a minimum age of criminal responsibility below the age of 12 years is not internationally acceptable.

Administration of justice

2. The Justice (NI) Act 2002 brings 17-year-olds within the remit of the youth justice system in Northern Ireland. Nevertheless, there are still circumstances where children as young as 15 years are accommodated in Prison Service custody with adults.

Unaccompanied asylum seeking children

3. At present, the UK Borders Agency guidance in relation to age disputes for unaccompanied asylum seekers provides that in disputed age cases, the applicant is not treated as a child unless it is established that they are below 18 years of age.²⁰ The Commission is of the view that this risks serious breach of the rights of unaccompanied asylum seeking children. In addition, there are serious concerns about the manner of age assessments, including provision to use intrusive measures such as X-rays.²¹

Questions

1. The Committee may wish to ask the state party why the age of criminal responsibility remains at 10 years of age despite previous Committee recommendations that this is too low.

²⁰ UK Borders Agency, *Disputed Age Cases*, Home Office, London, available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/disputedagecases.pdf?view=Binary> [accessed 29 April 2008].

²¹ Dorling K, 'Seeking Change: Reforms to the Protection of Unaccompanied Asylum Seeking Children', *Childright* 245, 2008, pp 14-17.

2. The Committee may wish to ask the state party why it is still possible for children to be detained in Prison Service custody with adults.

3. The Committee may wish to ask the state party how its approach to age disputes and its policy on the treatment of unaccompanied asylum seeking children pending age assessment is compatible with Article 1 CRC.

II. Civil rights and freedoms (Article 6 and Article 37(a))

The Taser X26 Device

1. In January 2008, the Police Service Northern Ireland (PSNI) commenced a trial of the Taser X26 device and in March 2008, in line with its duties under section 75 of the Northern Ireland Act 1998, the PSNI published its initial Equality Impact Assessment of the proposals to introduce Taser. The Commission recognises that the PSNI should be equipped with alternatives to firearms and also recognises the need to protect the lives and safety of police officers when faced with incidents where there is a threat to life or security of the person. The Commission also understands that the proposals to introduce the Taser device in Northern Ireland are intended as a less lethal alternative to more lethal options such as firearms. Nevertheless, the Commission is concerned that the proposals to introduce Taser are not in accordance with international human rights standards.
2. In particular, while the Commission has grave concerns about the use of the Taser device in all cases, it is particularly alarmed that current PSNI proposals do not prohibit use of the Taser device against children. At present, research shows that children and persons of small stature may be at greater risk of harm due to the cardiac effects of the Taser device. However, equally disturbing is the fact that there are proposals to introduce Taser in Northern Ireland despite the opinion of UN Committee Against Torture (CAT) that the Taser X26 device can constitute inhuman and degrading treatment and, in extreme cases, torture. In its concluding observations to Portugal, the UN Committee referred to the purchase of the Taser X26 device stating:

The Committee is concerned that the use of these weapons causes severe pain constituting a form of torture, and that in

some cases it may even cause death, as recent developments have shown.²²

3. In addition to these serious concerns, there is a dearth of knowledge about the potential for psychological trauma during or following the use of the Taser device. The Commission is of the view that this is a crucial line of inquiry *before* the introduction of any new policing weaponry, but that it is particularly important bearing in mind the trauma and distress associated with past events and the aftermath of the conflict in Northern Ireland.

Questions

1. The Committee may wish to ask the state party how the proposals to introduce the Taser X26 device are compatible with Article 37(a) of the Convention when the UN Committee Against Torture has expressed its concern that the Taser X26 can amount to inhuman and degrading treatment and, in extreme cases, torture.

2. The Committee may wish to ask why the state party has not prohibited use of the Taser device on children and young people when evidence suggests that children are at potentially greater risk from the cardiac effects of the Taser device, risking violation of Article 6 of the Convention.

Physical punishment of children

1. The Committee's concluding observations from the second periodic examination deeply regretted the retention by the UK of the defence of reasonable chastisement and called on the UK to urgently remove the defence.²³ The Committee was clear that what were then proposals by the UK, to limit the defence would still not be compatible with its obligations under the Convention.²⁴
2. In spite of these clear statements from the Committee, the limitation of the defence of reasonable chastisement was, nonetheless, pursued by the UK and was introduced in Northern Ireland in 2006 by way of Article 2 of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order

²² Paragraph 14, Committee Against Torture, *Conclusions and Recommendations of the Committee Against Torture: Portugal*, 39th Session, 2-23 November 2007, 2008, CAT/C/PRT/CO/4.

²³ Committee on the Rights of the Child, CRC/C/GC/8, General Comment No. 8, *The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment*, 2006, paras 36 and 37.

²⁴ *Ibid*, para 37.

2006.²⁵ The Northern Ireland Human Rights Commission strongly advised the state party to remove the defence in its entirety in order to comply with its Convention obligations and those under other human rights treaties.

3. Paragraph 31 of the Committee's General Comment Number 8, on Protection from Corporal Punishment, makes it very clear that the UK's current position is incompatible with the Convention:

The Committee emphasises that the Convention requires the removal of any provisions... that allow some degree of violence against children (e.g. "reasonable" or "moderate" chastisement or correction) in their homes/families or in any other setting.

4. The Northern Ireland Commissioner for Children and Young People (NICCY) challenged the introduction of the limited defence of reasonable chastisement by way of judicial review in the High Court in Northern Ireland. In a judgement of 21 December 2007, the application was rejected.²⁶ The decision has now been appealed to the Northern Ireland Court of Appeal and a date for hearing is imminent. NICCY continues to assert that the current law is in breach of Articles 19 and 37(a) of the UNCRC, and Articles 3, 8 and 14 of the European Convention on Human Rights. The Human Rights Commission shares this view and has expressed it forcefully to Government.

Question

1. The Committee may wish to ask the state party why it has failed to remove the defence of reasonable chastisement in clear contravention of the Convention, Committee General Comment Number 8 and the Concluding Observations of the second periodic examination. Retention of the partial defence is also contrary to the advice given to the state party by the Northern Ireland Commissioner for Children and Young People and the Northern Ireland Human Rights Commission.

²⁵ Article 2 of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006 provides a list of those offences which will no longer give rise to a defence of reasonable chastisement. The defence will, however, still be available on a charge of common assault under section 42 of the Offences Against the Person Act 1861. It also precludes the use of the defence in a claim for civil damages where the harm caused amounted to actual bodily harm.

²⁶ Judgment in the Matter of An Application for Judicial Review by the Northern Ireland Commissioner for Children and Young People of Decisions made by Peter Hain, the Secretary of State, and David Hanson, the Minister of State [2007] NIQB 115.

III. Special Protection Measures (Articles 22, 37(a)-(d) and 40)

Asylum-seeking/refugee children

1. Although the UK Border Agency has sought views on whether or not the UK should withdraw its reservation to Article 22,²⁷ this reservation remains. It allows the UK to apply immigration law without regard to the rights of children and young people as contained in the Convention. Given the universality of children's rights, it is unacceptable that children are excluded from the protections of the Convention on the basis of immigration status. In General Comment Number 6, the Committee makes clear that Convention rights must be "... available to all children – including asylum-seeking, refugee and migrant children – irrespective of their nationality, immigration status or statelessness".²⁸ The continuance of this reservation means that there is a serious lack of protection for children's rights in all aspects of immigration law and procedures in Northern Ireland.
2. The Commission notes that the UK Border Agency consultation on a Code of practice for Keeping Children Safe from Harm does not include the 'best interests' principle or any reference to children's rights.²⁹
3. There is a lack of transparency due to the continued failure of the Home Office to provide publicly available information on the numbers of people in Northern Ireland, including families with children, who are subject to immigration and asylum laws. In addition, the lack of information on the numbers of people transported from Northern Ireland to Dungavel detention facility in Scotland means that it is impossible to monitor the impact of this situation on children.

²⁷ See Question 16 of the UK Border Agency 'Pro Forma Responses' in the UK Border Agency, *The Border and Immigration Agency Code of Practice for keeping Children Safe from Harm: Consultation*, Home Office, London, 2008.

²⁸ Committee on the Rights of the Child, *General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 2005, CRC/GC/2005/6, para 12.

²⁹ UK Border Agency, *The Border and Immigration Agency Code of Practice for keeping Children Safe from Harm: Consultation*, Home Office, London, 2008.

Questions

- 1. The Committee may wish to ask the state party why the reservation under Article 22 of the Convention continues and why there is a continued refusal to apply the provisions of the Convention to refugee and asylum seeking children (including children who are unaccompanied and those who are here with family).**
- 2. The Committee may wish to ask the state party why the UK Border Agency proposed Codes of Practice for children do not refer to the 'best interests' principle or to any notion of children's rights.**
- 3. The Committee may wish to ask the state party why the Home Office refuses to provide publicly available information on the numbers of people, in particular children, who are subject to immigration laws in Northern Ireland.**
- 4. The Committee may wish to ask the state party why it refuses to publish information on the numbers of people, and in particular the numbers of children, transported from Northern Ireland to Dungavel detention centre.**

Administration of juvenile justice

The Justice (NI) Act 2002

1. Part 4 of the Justice (NI) Act 2002 introduces a number of amendments to the youth justice system in Northern Ireland. The Commission is of the view that new diversionary measures and court orders based on restorative philosophies are in principle welcome. However, as noted by the Commission, initially in *In Our Care* and, later, in *Still in Our Care*, the 2002 Act represents yet another piecemeal amendment to the administration of youth justice in Northern Ireland.³⁰ While it includes a new overriding aim for the youth justice system, namely to protect the public by preventing offending by children,³¹ it does not incorporate the 'best interests' principle or the principle of the child's right to participate. This is a concern in any event, but made all the more serious by the fact that the new diversionary and youth conferencing provisions rely heavily on restorative philosophies, which in turn depend on the principles of informed consent and voluntary participation.

³⁰ *Ibid*, p 20, and *Ibid*, p 18.

³¹ Section 53 of the Justice (NI) Act 2002.

2. Further concerns relating to the administration of youth justice, some of which are referred to in other sections of this submission, include:

- failure to increase the age of criminal responsibility, which remains at 10 years of age
- failure to prohibit the use of Prison Service custody in all cases for children under the age of 18 years of age, and
- restrictions on the power to remand 17-year-olds to the juvenile justice centre meaning that they can still be remanded to Prison Service custody.

Questions

1. The Committee may wish to ask the state party why the Justice (NI) Act 2002 fails to include the 'best interests' principle and the principle of the child's right to participate.

2. The Committee may wish to ask the state party why the age of criminal responsibility is 10 years of age.

3. The Committee may wish to ask the state party why legislation continues to permit children under the age of 18 years of age to be held, whether on remand or under sentence, in Prison Service custody.

Indeterminate sentences

1. The Commission is concerned about the concept of indeterminate sentences because they would appear to be punishing people for what they might do, as well as what they already have done. The Criminal Justice (Northern Ireland) Order 2008 extends the situations in which indeterminate sentences can be given in Northern Ireland.
2. Where an offender has been assessed as dangerous and has been convicted of a serious sexual or violent offence with a maximum penalty of ten years or more, the court can impose one of a range of sentences which include an indeterminate custodial sentence. The Commission is particularly concerned that such sentences can be given to children. The concluding observations adopted by the UN Committee on the Rights of the Child, after examination of the UK's second periodic report in 2002, recommended that the UK should "Ensure the detention of children is used as a measure of last resort and for the shortest appropriate period of time."³² In addition, the Commission notes the development of case law in England highlighting serious concern about the manner in which

³² *Ibid*, para 62(e).

indeterminate sentences have been applied to children.³³ In particular, the Court of Appeal has held that a presumption of 'dangerousness' based on a person's criminal record is inappropriate for children and young people because it fails to account for the developing nature of the child.³⁴

3. The Commission would also note that despite recommendations from children's rights organisations in Northern Ireland, the Justice (NI) Act 2002 did not remove the indeterminate sentence for children convicted of grave offences, detention at the pleasure of the Secretary of State, which is still contained in Article 45 of the Criminal Justice (Children) (NI) Order 1998.

Questions

1. The Committee may wish to ask the state party how applying indeterminate sentences to children can meet the requirements of Article 37(b) of the Convention, which requires that children be detained as a measure of last resort and for the shortest possible time.

2. The Committee may wish to ask the state party why it continually refuses to remove Article 45 of the Criminal Justice Children (NI) Order 1998, which is clearly contrary to Article 37(b) of the Convention.

Test purchase power/entrapment

1. The Criminal Justice (Northern Ireland) Order 2008 provides for a "test purchase power", which inserts a new power into existing licensing law. The test purchase power allows police officers to identify bars and off licences selling alcohol to minors and to then "set up" the commission of an offence by arranging for a minor to purchase alcohol. The Commission does not consider it to be in the best interests of any child to be used to promote the commission of a criminal offence in an entrapment situation.
2. The Commission has grave concerns about the test purchase power and the extent to which it contravenes several of the state's obligations under the Convention, namely Article 3,³⁵

³³ R v B [2007] All ER (D) 401.

³⁴ Section 229 of the Criminal Justice Act 2003 provides for a presumption of 'dangerousness' for the purpose of giving an indeterminate sentence if the person is 18 years or over and if they have a criminal record consisting of one or more offences specified in the legislation. In practice, this presumption had in some instances been applied to those under 18 years of age (*Ibid*, R v B [2007]).

³⁵ In all actions concerning children, the best interests of the child shall be a primary consideration (Article 3).

Article 16³⁶ and Article 36.³⁷ The Commission's concern is that it will be the vulnerable child who is known to the police and approached and asked to purchase alcohol under the test purchase power in order to avoid a criminal prosecution or perhaps an Anti-Social Behaviour Order. The Commission is very concerned about the risks to the safety and welfare of the child who does assist the police in the entrapment of a licensee. It is not difficult to see how the child's involvement might well lead to threats of, or risk of, physical violence either from those who have been charged as a result of their involvement, or from those in the community who may become aware of the child's assistance to the police.

Question

1. The Committee may wish to ask the state party how the use of a child to entrap the commission of an offence of sale of alcohol to a minor can be compliant with Article 3, Article 16 and Article 36 of the Convention.

Anti-Social Behaviour Orders (ASBOs)

1. ASBOs were introduced in Northern Ireland in 2004, by way of the Anti Social Behaviour (Northern Ireland) Order 2004. The police, Housing Executive and local councils can apply to the court for a civil anti-social behaviour order, breach of which constitutes a criminal offence. The orders can ban people from certain activities and from entering particular areas, and clearly may constitute a breach of Article 15 and the rights to freedom of association and to freedom of peaceful assembly.
2. The only criteria the judge need consider is whether the person behaved in a manner that "caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself".³⁸ Breach of the civil order is a criminal offence punishable by up to five years imprisonment. Not only do ASBOs apply equally to children from the age of 10 years but, indeed, they have been sought disproportionately against children. For these children, breach of such an order can result in a custodial sentence for acts which are not in themselves illegal.

³⁶ No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation (Article 16).

³⁷ States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare (Article 36).

³⁸ Article 3, Anti Social Behaviour (Northern Ireland) Order 2004.

3. The Commission has a long record of opposition to ASBOs, dating back to their introduction into Northern Ireland in 2004, and has expressed its concerns to Government with some considerable force. Unfortunately, the Commission's concerns regarding ASBOs have been ignored by Government. Our main concerns are:

- the degree of discretion for the "relevant authorities", that is, the police, housing authorities and local councils, seeking an ASBO in defining anti-social behaviour and deciding when to seek such an order
- Orders are sought in the ordinary courts and not in a youth court and, consequently, there are no automatic reporting restrictions³⁹
- an integral part of the order procedure involves the publication of its conditions and an invitation to those in the locality to inform the authorities of any breach thereof⁴⁰
- hearsay evidence is admissible⁴¹
- children as young as 10 years of age can be made the subject of one of these orders⁴²
- the minimum duration of the ASBO is two years and its maximum duration is indefinite⁴³
- Orders covering areas as large as England and Wales can be made⁴⁴
- the rights to education and home life can be affected by an exclusion from a particular area⁴⁵
- other children of the family may also have to relocate home and school, and/or may be victimised because of their association with the affected child,⁴⁶ and
- where an ASBO is made alongside a custodial sentence for criminal conviction, the effect is one of release on licence following the period in custody, with the risk of a return to custody for any breach of the conditions of the order, even when the behaviour would not normally attract a custodial sentence and may not even constitute a crime.

³⁹ UNCRC Arts. 6(1), 16, 19, 40(1), 40(2)(vii), 40(3) and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) Rules 8.1 and 8.2).

⁴⁰ UNCRC Arts 6(1) and 19.

⁴¹ UNCRC Art 40(2)(b)(i) and (ii).

⁴² UNCRC Art 40(1) and Beijing Rules 4.1.

⁴³ Beijing Rules 5.1.

⁴⁴ *Ibid.*

⁴⁵ UNCRC Arts 16(1) and 28.

⁴⁶ UNCRC Arts 2(2), 3 and 19.

4. Despite the significant concerns expressed about ASBOs and their lack of compliance with the UNCRC by this Commission and others since 2004, the Government recently **extended** its powers in relation to obtaining interim or emergency ASBOs. Under the Criminal Justice (Northern Ireland) Order 2008, emergency or interim orders (already provided for in legislation) can now be obtained without notice to the individual concerned. This extension of the powers to obtain interim orders on an *ex parte* basis merely serves to exacerbate the Commission's existing concerns regarding the granting of ASBOs.
5. ASBO proceedings blur the division between civil and criminal law. The odds are very heavily stacked against the person against whom the order is sought. Without an opportunity to present arguments at an interim hearing, the likelihood of an inappropriate ASBO being granted is greatly increased. Breach of an interim order carries the same penalties as breach of a full order.
6. The UK, in failing to mandate reporting restrictions in relation to ASBOs, has completely disregarded one of the recommendations of the Committee in the concluding observations of the second periodic report, namely that the state party: "Ensure that the privacy of all children in conflict with the law is fully protected in line with article 40(2)(b)(vii) of the Convention".⁴⁷
7. The Commission is very concerned that the state party's position in relation to ASBOs indicates a fundamental failure to observe its obligations regarding the best interests of the child under Article 3, and to uphold the requirements of Article 40 the UNCRC in relation to treatment of a child involved in the administration of juvenile justice.

Questions

1. The Committee may wish to ask the state party why children as young as 10 years can be imprisoned for breach of a civil order even when the actions in question are not illegal.

2. The Committee may wish to ask why reporting restrictions are not required for children in ASBO court proceedings and why anti-social behaviour cannot, where the actions merit, be dealt with by way of prosecution under the criminal law.

⁴⁷ *Ibid*, para 62(d).

Counter-terrorism measures

1. Since the Committee last examined the UK in 2002, there has been a significant increase in the counter terrorism powers available to the state. There has been a move away from an approach which involved the annual renewal of temporary or emergency powers (albeit such “temporary” powers were repeatedly renewed from 1973 onwards) principally aimed at acts arising out of the Northern Ireland conflict, to one whereby exceptional powers have been made permanently available in a series of counter terrorism bills.
2. Indicative of this trend is the Counter Terrorism Bill 2008 currently before the UK Parliament. The Commission has concerns regarding the compatibility of many proposals in the Bill with the UK’s obligations under international human rights law. For the Committee’s purposes, we have highlighted just two proposals from the Bill: 1) pre-charge detention and 2) notification requirements, which, in our view, demonstrate the fundamental failure of the state party to ensure that all legislation, policy and practice is informed by, and is compliant with the UNCRC as required by Article 4. Of particular concern to the Committee, is the fact that all the exceptional powers in the Bill, as is the case with existing counter terrorism laws, apply equally to children from the age of 10 years.
3. ***Pre-charge detention:*** The Commission is extremely disappointed that the Bill proposes a new ‘reserve power’ to extend the pre-charge detention period to 42 days. With its current 28-day pre-charge detention, the UK already has the longest period of pre-charge detention of any European country or any common law country. Since 2000, the limit has already been increased twice from seven days to 14 days in 2003,⁴⁸ and from 14 days to 28 days, in 2006.⁴⁹
4. The Commission is disappointed that the UK Government, in the current Bill, appears to have ignored the lessons of Northern Ireland by introducing measures in 2008 that, at best, proved ineffective and, at worst, counter productive over the decades of conflict here.
5. The Commission believes that pre-charge detention for any period beyond 28 days raises serious concerns for the protection of the right to liberty enshrined in Article 37 of the

⁴⁸ The Criminal Justice Act 2003.

⁴⁹ The Terrorism Act 2006.

UNCRC and, in particular, the rights to protection in Article 40(2)(b)(ii).⁵⁰

6. The Bill proposes that the accused person and/or their representative can be excluded from the hearing for further pre-charge detention beyond the current 28 days. The Commission remains concerned that any attempt to exclude the accused person and their legal representative seriously restricts the right to a fair hearing within Article 40(2)(b) of the UNCRC. However, this is particularly the case where the outcome of the hearing may be that the accused person is detained beyond 28 days.
7. **Notification requirements:** The Bill, if passed, will apply strict notification requirements to both adults and children who receive a custodial sentence of one year or more for a terrorist offence. The notification requirements are quite onerous, requiring a person to notify at a police station their name, any other names they use, where they live, any other address they stay at for five days or more, and the details of any foreign travel they intend to undertake that will last for more than five days. A breach of these requirements would be a criminal offence punishable by up to five years in prison.⁵¹
8. The proposals are extremely onerous and questions arise as to whether or not they represent a proportionate and legitimate restriction on the right to privacy contained in Article 16 of the UNCRC, as well as Article 13 (right to freedom of expression) and Article 15 (rights to freedom of association and of peaceful assembly). The Commission notes paragraph 15 of the Committee's General Comment Number. 10, which states: *"The Committee reminds States Parties that, pursuant to article 40(1) CRC, reintegration requires that no actions may be taken that can hamper the child's full participation in his/her community, such as stigmatization, social isolation ..."*.⁵² The Commission considers that the proposals for notification in the Counter Terrorism Bill are potentially harmful and contrary to the well-being and bests interests of the child. They are also against the ethos of reintegration as emphasised by the Committee.

⁵⁰ The right to be informed promptly of the reasons for arrest and the charge against one.

⁵¹ Part 4, clauses 44 to 50 of the Counter Terrorism Bill 2008.

⁵² Committee on the Rights of the Child, *General Comment No. 10 (2007): Children's Rights in Juvenile Justice*, 2007, CRC/C/GC/10, para 15.

9. The Commission is of the view that whether or not the Counter Terrorism Bill, and particularly the proposal for 42-day pre-charge detention, is passed by Parliament, the fact that such powers are being sought by the state party in the face of huge opposition is an indicator, in the Commission's view, of a fundamental disregard of the UK's obligations under the UNCRC.

Question

1. The Committee may wish to ask the state party how the detention, without charge, of children for up to six weeks could be compliant with the requirements of Article 37 and 40(2)(b) and how making a child subject to stringent notification requirements, potentially for an indefinite period, could be compatible with Article 40(1).

Children deprived of their liberty

1. ***Detention with adults:*** The UK has not withdrawn its reservation to article 37(c) of the Convention. In Northern Ireland, legislative measures continue to allow children as young as 15 years of age to be detained in Prison Service custody with adults. While Article 37(c) envisages that children are not held with adults unless this is in their best interests, the UK Government's reservation permits this if "there is a lack of suitable accommodation or adequate facilities". This means that children may be detained with adults for reasons relating to availability, contrary to the Committee's clear position that this should not occur for "the convenience of State Parties".⁵³
2. New Article 96 of the Criminal Justice (Northern Ireland) Order 2008 (the 2008 Order) states that a judge can commit a person who is 17 years of age to custody in the juvenile justice centre "... if the court has been notified by the Secretary of State that there is no suitable accommodation for that child available in the young offenders' centre". The Commission understands, from a reading of parliamentary debates, that the intention behind this provision is to ensure that 17-year-old girls are no longer detained in Prison Service Custody, there being no young offenders' centre for girls in Northern Ireland.⁵⁴ The Commission is of the view that, if Article 96 does indeed keep 17-year-old girls out of Prison

⁵³ Committee on the Rights of the Child, *General Comment No. 10 (2007): Children's Rights in Juvenile Justice*, 2007, CRC/C/GC/10, para 28(c).

⁵⁴ Baroness Harris of Richmond, House of Lords, Hansard, 29 April 2008 at Column 202 and Lord Laird at Column 207.

Service custody, then in this respect, it is a positive and welcome development.

3. However, the Commission is concerned that there is a level of uncertainty about how Article 96 will work in practice. It does not explicitly prevent detention of all children in Prison Service custody with adults and instead suggests that this is prohibited only if there is a notification from the Secretary of State that there is no suitable accommodation in a young offenders' centre. The Commission would question whether or not it is appropriate that the detention of children with adults should depend on a notification of suitability. Also, given that there is already a young offenders' centre for males in Northern Ireland, the Commission is concerned that the new provisions will not reduce the incidence of boys under the age of 18 detained in Prison Service custody. Therefore, the Commission is concerned that, in practice, Article 96 of the Criminal Justice (NI) Order 2008 will not prevent the detention of children with adults unless in their best interests, as is required by Article 37(c) of the Convention.
4. Even with Article 96 of the 2008 Order, the Commission understands that, in the absence of a notification from the Secretary of State indicating that there is no suitable accommodation in a young offenders' centre, detention of children alongside adults may still occur in the following circumstances:
 - The courts cannot sentence 17-year-olds to the juvenile justice centre if they will reach 18 years of age during their sentence and have received a custodial sentence within the last two years.⁵⁵
 - Young people can be remanded to the juvenile justice centre only if they are under 17 years and six months and have not received a custodial sentence in the previous two years.⁵⁶
 - Article 13 of the Criminal Justice (Children) (NI) Order 1998 provides that children as young as 15 years may be remanded to a young offenders' centre if they are believed to be at risk of harming themselves or others.⁵⁷

⁵⁵ Article 39 (3B) of the Criminal Justice (Children) (NI) Order 1998 as inserted by Article 96(4) of the Criminal Justice (NI) Order 2008.

⁵⁶ Article 13 (1BB) of the Criminal Justice (Children) (NI) Order 1998 as inserted by Article 96 of the Criminal Justice (NI) Order 2008 and Paragraph 69(3) to Schedule 12 of the Justice (NI) Act 2002.

⁵⁷ Article 13(3) (1A) of the Criminal Justice (Children) (NI) Order as inserted by Paragraph 69(3) of Schedule 12 of the Justice (NI) Act 2002.

- If management at the JJC considers that a child cannot safely be held there, they may make recommendations to court to request that the child is moved to Hydebank Wood Young Offenders' Centre.
5. The Commission remains of the view that the practice of detaining children with adults unless in their best interests, is contrary to article 37(c) of the Convention. Furthermore, in the follow-up investigation, *Still in Our Care*, the Commission found that there was a lack of publicly available information about this practice in Northern Ireland. In *Still in Our Care*, the Commission recommended that: "Legislation should be revised to prohibit the detention of children in prison. In the interim, government should closely monitor the use of Prison Service custody for children ... and should place this information in the public domain".⁵⁸ The remand, sentencing and transfer of children to Hydebank Wood Young Offenders' Centre and Hydebank Wood Women's Prison are situations that are still not openly monitored by the Northern Ireland Office and the Youth Justice Agency.

Questions

1. The Committee may wish to ask the state party why it has not removed the reservation to Article 37(c) of the Convention and why it is still possible to detain children with adults in Prison Service custody in violation of Article 37(c).

2. The Committee may wish to ask the state party if the practical impact of Article 96 of the Criminal Justice (NI) Order 2008 will be to keep girls and boys, who are under the age of 18, out of Prison Service custody and it may also wish to ask the state party if it is of the view that Article 96 of the 2008 Order meets the requirements of Article 37(c) of the Convention.

3. The Committee may wish to ask how the state party monitors the detention of children in Prison Service custody (whether by transfer, remand, or sentence) and why this information is not publicly available.

6. ***Girls in prison:*** In addition to the concerns about children detained in prison, there are further concerns for girls in prison that arise due to the particular structure of the prison estate in Northern Ireland. Therefore, if boys under the age of 18 years are placed in Prison Service custody they are held in the Hydebank Wood young offenders' centre in Belfast.

⁵⁸ *Ibid*, p 27, Recommendation 6.

This caters for males who are aged 17 to 21 years of age on the date of sentencing. In general, males under the age of 18 years are accommodated on a separate landing although education and work are mixed. In contrast, there is no female young offenders' centre and only one adult prison for females. As noted above, the Commission understands that Article 96 of the Criminal Justice (NI) Order 2008 will prevent courts from making an order committing girls under the age of 18 to prison if there is a notification from the Home Secretary that there is no suitable accommodation in a young offenders' centre. This means that girls less than 18 years of age should not be sentenced to Hydebank Wood Women's Prison and, in so far as this is the case, it is to be welcomed. However, the Commission would question if in practice Article 96 will in all cases prevent the detention of girls in Prison Service custody.

7. During the Commission's investigation into the circumstances for children in custody, juvenile justice centre managers agreed that girls should not be held in Hydebank Wood Women's Prison.⁵⁹ Although there were no girls under 18 years of age in Prison Service custody during the fieldwork for the Commission's investigation into the treatment of women in prison, there are at present two females under the age of 18 years held at Hydebank Wood Prison.⁶⁰

Question

4. The Committee may wish to ask the state party if, in all circumstances, it is no longer possible for girls under the age of 18 years to be held in Hydebank Wood Women's Prison.

8. **Remand:** During the research for *Still in Our Care*, the Commission found that the proportion of children admitted on remand from court was still disproportionately high compared to numbers actually sentenced. Based on figures from the Youth Justice Agency Annual report, court ordered remand continues to make up 55 per cent of initial admissions to the JJC.⁶¹ In comparison, committal on sentence is low at 42 out of 436 initial admissions in 2005-2006 or 10 per cent.⁶² This finding is particularly worrying in light of *Still in Our Care*,

⁵⁹ *Ibid*, p 24.

⁶⁰ Northern Ireland Prison Service (2008) *Strategy for the Management of Women Offenders: Stakeholders Consultation Event 28 April – 1 May 2008* at Hillsborough Castle, Belfast.

⁶¹ There were 237 admissions on remand for April 2006 to March 2007 out of a total of 436 admissions (Youth Justice Agency, *Annual Report and Accounts 2006-2007*, Youth Justice Agency of Northern Ireland, Belfast, 2007, p 48).

⁶² *Ibid*, p 48.

where staff indicated specific problems in assessment and work with children and young people on remand.⁶³ In addition, *Still in Our Care* reiterated serious concerns held by the Commission and the Criminal Justice Inspectorate Northern Ireland (CJINI) about the high levels of children on remand who do not go on to serve a custodial sentence.⁶⁴ *Still in Our Care* revealed that in 2005, only 14 per cent of children on remand went on to serve a juvenile justice centre order. This suggests that courts are not detaining children as a last resort as required by Article 37(b) of the Convention.

Questions

5. The Committee may wish to ask the state party why the numbers of children admitted to the juvenile justice centre on remand are still disproportionately high compared to the numbers admitted on sentence.

6. The Committee may wish to ask the state party what measures they are pursuing to reduce the numbers of children on remand, to reduce the amount of time spent in custody on remand and also what they are doing to monitor the over-use of remand, that is, the numbers of children placed on remand who do not go on to serve a custodial sentence.

9. **Admission rates:** At present, figures for admission to the juvenile justice centre are reported in the Youth Justice Agency Annual Report.⁶⁵ This shows an overall 7.65 per cent increase in initial admissions to the juvenile justice centre from 2003-04 to 2006-07, from 405 to 436.⁶⁶ It is important to establish if this rise in admissions to the juvenile justice centre is related to the new intake of 17-year-olds or due to an overall increase in admissions. In addition, the Commission notes that there is a lack of information generally about children and young people detained in the juvenile justice centre. At present, there is no publicly available information on the numbers of children admitted to the juvenile justice centre by age, gender, or religion.

⁶³ *Ibid*, p 97.

⁶⁴ *Ibid*, p 32. See also CJINI, *CJINI Inspection of the Juvenile Justice Centre*, Criminal Justice Inspectorate Northern Ireland, 2004.

⁶⁵ *Ibid*.

⁶⁶ Youth Justice Agency, *Annual Report and Accounts 2005–2006*, Youth Justice Agency of Northern Ireland, Belfast, 2006, p 29; and Youth Justice Agency, *Annual Report and Accounts 2006–2007*, Youth Justice Agency of Northern Ireland, Belfast, 2007, p 48.

Questions

7. The Committee may wish to ask the state party if the increase in admission figures for the juvenile justice centre, reflected in the Youth Justice Agency's 2005-2006 annual report, is due to the new intake of 17-year-olds, or if it is due to an overall increase in admissions.

8. The Committee may wish to ask the state party to publish more detailed publicly available information on admissions to the juvenile justice centre, including a breakdown of age, gender and other items such as religion.

10. **Transparency:** There are several bodies, including the Commission, with jurisdiction to visit and/or inspect places of detention in Northern Ireland. This is a welcome development, in so far as these bodies can undertake thorough inspections and produce detailed research and inspection reports. However, the Commission finds that there is a lack of regular information in the public domain about the care of children in custody. It is difficult to monitor conditions for children in custody based on infrequent, albeit detailed, reports. The Commission is of the view that in order to keep track of ongoing developments, there must be regular monthly bulletins relating to children in custody in addition to a guarantee from the state party to publish at least one annual independent inspection report.

Question

9. The Committee may wish to ask the state party to provide more regular monitoring and publicly available information about the conditions for children in custody, as well as a more detailed and independent annual inspection report.

11. **Juvenile justice centre rules and gender specific strategies:** In *Still in Our Care*, the Commission stated that proposals for revised juvenile justice centre rules must be published for consultation. While a draft version of the juvenile justice centre rules was published for consultation in 2007 and the Commission made its response, a final version of the Rules has not been published.⁶⁷ In addition, during the investigations in the juvenile justice centre and later in Hydebank Wood Women's Prison, the Commission found that there was a serious lack of gender-specific policies for women

⁶⁷ Northern Ireland Human Rights Commission, *Proposals for the juvenile justice centre (Northern Ireland) Rules 2007 and the juvenile justice centre Order (Supervision) Rules (Northern Ireland) 2007: Response of the NIHRC*, Belfast, 2007.

in prison and for girls, who can now be held in mixed residency accommodation in the new Woodlands juvenile justice centre. Although the Prison Service is consulting on a 'Strategy for the Management of Women Offenders' and this must be recognised as a positive development, as far as the Commission is aware, there are no gender-specific policies at present for the prison or the juvenile justice centre.

Question

10. The Committee may wish to ask the state party why the revised juvenile justice centre rules have not been published and why there is no published gender-specific policy for either the juvenile justice centre or Hydebank Wood Women's Prison.

12. **Education:** Despite the Committee's recommendation in 2002, and the recommendations made by the Commission following its investigation into the care of children in custody in Northern Ireland, the responsibility for educational provision in the juvenile justice centre remains with the Northern Ireland Office and the Youth Justice Agency. The Commission is of the view that education must be transferred to the Department of Education in Northern Ireland so that children in custody have equal rights to access education.
13. **Healthcare:** In addition, the Commission is aware that while responsibility for health care within the Prison Service was transferred to the Department of Health, Social Services and Public Safety (DHSSPS) on 1 April 2008, there is an absence of similar planning for health care provision in the juvenile justice centre. The Commission is disappointed that despite the recommendations from the investigations, *In Our Care* and *Still in Our Care*, responsibility for health care in the juvenile justice centre has not been transferred from the Northern Ireland Office to the Department of Health.⁶⁸

Question

11. The Committee may wish to ask the state party why responsibility for education and health care within the juvenile justice centre has not been transferred to the relevant government departments.

14. **Evaluation of programmes:** There is a need to evaluate and monitor the effectiveness of programmes in custody. While assessing recidivism, evaluations must also take account of the 'best interests' principle and the right of the child to

⁶⁸ *Ibid*, p 115, Recommendation 85.

express his or her views and have their views taken into account.

Question

12. The Committee may wish to ask the state party why programmes in custody have not been regularly evaluated to assess effectiveness and compliance with the Convention.

15. **Care to custody:** As with the initial investigation into the treatment of children in custody, *Still in Our care* found that there was a disproportionate representation of children entering custody from care.⁶⁹ The Commission was informed that 'pathways from care to custody' was a concern being monitored and researched by the Northern Ireland Office and the Youth Justice Agency. However, to date, as far as the Commission is aware, this information has not been published. The Commission is of the view that this is a matter requiring urgent and ongoing attention.
16. The Commission welcomes an amendment contained in Article 99 of the Criminal Justice (NI) Order 2008, which removes the provision for a care order under the Children (NI) Order 1995 made in respect of a child to lapse for the period they are subject to a juvenile justice centre order. The Commission considers this a positive development, as it ensures that children remain entitled to support under the welfare provisions of the Children (NI) Order 1995 throughout their time in custody.

Question

13. The Committee may wish to ask the state party what progress it has made on monitoring the admission of children from care into custody and whether or not information on the admission of children from care to custody will be regularly published.

17. **Children of mothers in prison:** The investigation into Hydebank Wood Women's Prison revealed a number of serious human rights concerns for the children of mothers held in prison. The investigation found that when children visit the prison, due to security checks, they are sniffed by a 'drugs dog'.⁷⁰ In addition, the visiting area did not include toilet facilities for children and mothers were not permitted to accompany their children to get refreshments from a nearby

⁶⁹ *Ibid*, p 34-36.

⁷⁰ *Ibid*, p 110.

vending machine.⁷¹ In terms of contact with children, while mothers can make telephone calls, there are no arrangements to allow the children to phone into the prison to talk to their mother.⁷²

18. The Commission is of the view that there must be family friendly policies and visiting arrangements, which should include private family visits. This is in line with Article 5 (parental guidance in the exercise of the child's Convention rights) and Article 10 (the right to maintain personal relations and direct contact with parents) of the Convention.⁷³ In addition, the Commission has recommended that there must be suitable community-based alternatives to custody for mothers of young children.⁷⁴ This is especially so in light of recent research from the Prison Reform Trust showing that only five per cent of children of mothers in prison in the UK remain in the family home once their mother is detained in prison.⁷⁵

Question

14. The Committee may wish to ask what measures the state party has put in place to address the needs of children of mothers in prison.

⁷¹ *Ibid*, p 110.

⁷² *Ibid*, p 111.

⁷³ *Ibid*, p 112, Recommendation 45.

⁷⁴ *Ibid*, p 112, Recommendation 41.

⁷⁵ Prison Reform Trust, *Bromley Briefings Prison Factfile December 2007*, Prison Reform Trust, London, 2007, p 16.

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

1. The Commission welcomes the UK Government's ratification of the Optional Protocol to the Convention on the involvement of children in armed conflict. Nevertheless, the Commission would question whether or not the UK's declaration, permitting children under the age of 18 years to take part in direct hostilities in certain defined circumstances, is necessary and whether it is in keeping with Article 1 of the Optional Protocol and Article 3 of the Convention (best interests of the Child).

Question

- 1. The Committee may wish to ask the state party why it has been necessary to enter a declaration to the Optional Protocol on the Involvement of Children in Armed Conflict, permitting children as young as 16 years to take part in direct hostilities in certain defined circumstances.**

LIST OF KEY QUESTIONS WHICH THE COMMISSION HAS RAISED WITHIN THIS SUBMISSION

Context for the submission

1. The Committee may wish to ask the state party why they have failed to incorporate the principles of the Convention into domestic law.
2. The Committee may wish to ask the state party what children's rights impact assessments it undertakes when developing law, policy and practice. The state party should also be asked why a number of recent legislative initiatives have fundamentally contravened the UK's obligations under the Convention.
3. The Committee may wish to ask the state party why it has failed to fully implement the Committee's recommendations from 1995 and 2002.
4. It would be very helpful if the Committee could consider the main findings of the Commission's follow-up investigation into the treatment of children in the juvenile justice centre, and the relevant findings from the investigation into the treatment of women in prison, as outlined above. The Committee may wish to ask the state party why it has not implemented all of the recommendations.

Main Submission

I. General principles: definition of the child (Article 1)

1. The Committee may wish to ask the state party why the age of criminal responsibility remains at 10 years of age despite previous Committee recommendations that this is too low.
2. The Committee may wish to ask the state party why it is still possible for children to be detained in Prison Service custody with adults.
3. The Committee may wish to ask the state party how its approach to age disputes and its policy on the treatment of unaccompanied asylum seeking children pending age assessment is compatible with Article 1 CRC.

II. Civil rights and freedoms (Article 6 and Article 37(a))

The Taser X26 device

1. The Committee may wish to ask the state party how the proposals to introduce the Taser X26 device are compatible with Article 37(a) of the Convention when the UN Committee Against Torture has expressed its concern that the Taser X26 can amount to inhuman and degrading treatment and, in extreme cases, torture.
2. The Committee may wish to ask why the state party has not prohibited use of the Taser device on children and young people when evidence suggests that children are at potentially greater risk from the cardiac effects of the Taser device, risking violation of Article 6 of the Convention.

Physical punishment of children

1. The Committee may wish to ask the state party why it has failed to remove the defence of reasonable chastisement in clear contravention of the Convention, Committee General Comment Number 8 and the Concluding Observations of the second periodic examination. Retention of the partial defence is also contrary to the advice given to the state party by the Northern Ireland Commissioner for Children and Young People and the Northern Ireland Human Rights Commission.

III. Special protection measures (Articles 22, 37 and 40)

Asylum seeking/refugee children

1. The Committee may wish to ask the state party why the reservation under Article 22 of the Convention continues and why there is a continued refusal to apply the provisions of the Convention to refugee and asylum seeking children (including children who are unaccompanied and those who are here with family).
2. The Committee may wish to ask the state party why the UK Border Agency proposed Codes of Practice for children do not refer to the 'best interests' principle or to any notion of children's rights.
3. The Committee may wish to ask the state party why the Home Office refuses to provide publicly available information on the numbers of people, in particular children, who are subject to immigration laws in Northern Ireland.
4. The Committee may wish to ask the state party why it refuses to publish information on the numbers of people, and in particular the

numbers of children, transported from Northern Ireland to Dungavel detention centre.

Administration of juvenile justice

The Justice (NI) Act 2002

1. The Committee may wish to ask the state party why the Justice (NI) Act 2002 fails to include the 'best interests' principle and, the principle of the child's right to participate.

2. The Committee may wish to ask the state party why the age of criminal responsibility is 10 years of age.

3. The Committee may wish to ask the state party why legislation continues to permit children under the age of 18 years of age to be held, whether on remand or under sentence, in Prison Service custody.

Indeterminate sentences

1. The Committee may wish to ask the state party how applying indeterminate sentences to children can meet the requirements of Article 37(b) of the Convention, which requires that children be detained as a measure of last resort and for the shortest possible time.

2. The Committee may wish to ask the state party why it continually refuses to remove Article 45 of the Criminal Justice Children (NI) Order 1998, which is clearly contrary to Article 37(b) of the Convention.

Test Purchase Power/Entrapment

1. The Committee may wish to ask the state party how the use of a child to entrap the commission of an offence of sale of alcohol to a minor can be compliant with Article 3, Article 16 and Article 36 of the Convention.

Anti-Social Behaviour Orders

1. The Committee may wish to ask the state party why children as young as 10 years can be imprisoned for breach of a civil order even when the actions in question are not illegal.

2. The Committee may wish to ask why reporting restrictions are not required for children in ASBO court proceedings and why anti-social behaviour cannot, where the actions merit, be dealt with by way of prosecution under the criminal law.

Counter-terrorism measures

1. The Committee may wish to ask the state party how the detention, without charge, of children for up to six weeks could be compliant with the requirements of Article 37 and 40(2)(b) and how making a child subject to stringent notification requirements, potentially for an indefinite period, could be compatible with Article 40(1).

Children deprived of their liberty

1. The Committee may wish to ask the state party why it has not removed the reservation to Article 37(c) of the Convention and why it is still possible to detain children with adults in Prison Service custody in violation of Article 37(c).

2. The Committee may wish to ask the state party if the practical impact of Article 96 of the Criminal Justice (NI) Order 2008 will be to keep girls and boys, who are under the age of 18, out of Prison Service custody and it may also wish to ask the state party if it is of the view that Article 96 of the 2008 Order meets the requirements of Article 37(c) of the Convention.

3. The Committee may wish to ask how the state party monitors the detention of children in Prison Service custody (whether by transfer, remand, or sentence) and why this information is not publicly available.

4. The Committee may wish to ask the state party if, in all circumstances, it is no longer possible for girls under the age of 18 years to be held in Hydebank Wood Women's Prison.

5. The Committee may wish to ask the state party why the numbers of children admitted to the juvenile justice centre on remand are still disproportionately high compared to the numbers admitted on sentence.

6. The Committee may wish to ask the state party what measures they are pursuing to reduce the numbers of children on remand, to reduce the amount of time spent in custody on remand and also what they are doing to monitor the over-use of remand, that is, the numbers of children placed on remand who do not go on to serve a custodial sentence.

7. The Committee may wish to ask the state party if the increase in admission figures for the juvenile justice centre, reflected in the Youth Justice Agency's 2005-2006 annual report, is due to the new intake of 17-year-olds, or if it is due to an overall increase in admissions.

8. The Committee may wish to ask the state party to publish more detailed publicly available information on admissions to the juvenile justice centre, including a breakdown of age, gender and other items such as religion.

9. The Committee may wish to ask the state party to provide more regular monitoring and publicly available information about the conditions for children in custody, as well as a more detailed and independent annual inspection report.

10. The Committee may wish to ask the state party why the revised juvenile justice centre rules have not been published and why there is no published gender-specific policy for either the juvenile justice centre or Hydebank Wood Women's Prison.

11. The Committee may wish to ask the state party why responsibility for education and health care within the juvenile justice centre has not been transferred to the relevant government departments.

12. The Committee may wish to ask the state party why programmes in custody have not been regularly evaluated to assess effectiveness and compliance with the Convention.

13. The Committee may wish to ask the state party what progress it has made on monitoring the admission of children from care into custody and whether or not information on the admission of children from care to custody will be regularly published.

14. The Committee may wish to ask what measures the state party has put in place to address the needs of children of mothers in prison.

Optional protocol on the involvement of children in armed conflict

1. The Committee may wish to ask the state party why it has been necessary to enter a declaration to the Optional Protocol on the Involvement of Children in Armed Conflict, permitting children as young as 16 years to take part in direct hostilities in certain defined circumstances.