

Briefing to the NI Assembly Ad-Hoc Committee on the Bill of Rights for Northern Ireland

June 2020



Introduction

The Commissioner for Children and Young People (NICCY) was created in accordance with 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland. Under Articles 7(2) and (3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. NICCY also has a mandate under Article 8, to make representations or recommendations to any Body or Person relating to the rights and best interests of Children and Young Persons. The Commissioner's remit includes children and young people from birth up to 18 years, and 21 years, if the young person has a disability or has experience of being in the care of the State.

In carrying out her functions, the Commissioner must have regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner's role in monitoring implementation of the UNCRC includes monitoring and advising Government, providing reports to the UN Committee on the Rights of the Child during its examination of the UK Government's periodic report, scrutinising delivery against its Concluding Observations and providing biennial 'Statement on Children's Rights' reports to the Northern Ireland Executive.¹

The Commissioner welcomes this opportunity to present evidence to the Ad Hoc Committee on the Bill of Rights. This is an important mechanism to support Northern Ireland's transition from conflict. It is vital that children's rights form a core element, given the manner in which the conflict impacted on the lives of children at the time, and indeed continues to do so today. There should be no further delay in a Bill of Rights for NI with a meaningful set of rights outcomes.

Children's Rights within a Bill of Rights

NICCY has engaged with the process of developing a Bill of Rights since 2004, clarifying the importance of such protections for children and young people in order to meet the UK's obligation to fulfil the rights as outlined in the UNCRC and to address the particular circumstances of Northern Ireland with respect to children and young people.

The NIHRC's first report on the Bill of Rights produced in 2001 considered three possible approaches to the protection of children's rights in the proposed Bill of Rights:

1. The direct incorporation of the provisions of the Convention on the Rights of the Child (CRC);
2. The inclusion in the Bill of separately formulated rights reflecting those in the CRC but providing a higher level of protection on some issues; and
3. A combination of the approaches in (1) and (2).

¹ The next 'Statement on Children's Rights' Report will be issued in November 2020.

After extensive consultation and engagement, the subsequent advice provided to the Secretary of State by the Northern Ireland Human Rights Commission in 2008 did not propose to incorporate the UNCRC as a whole, but instead a child rights clause with a limited number of areas, as well as mainstreaming of provisions relevant to children.²

NICCY and the Children's Law Centre commissioned Professor Ursula Kilkelly, to undertake a legal analysis of NIHRC's advice.³ This included a review of both the methodology and content, and concluded that the paper clearly outlines that whilst the NIHRC's inclusion of a separate provision for children was to be welcomed, she questioned the methodology that was used which resulted in gaps in protections for children in significant areas such as family life and children living in alternative care. Professor Kilkelly concluded the NIHRC's advice fell short of meeting the government's obligations to implement the UNCRC in Northern Ireland:

“Overall, then it is clear that when compared with minimum international standards set out in both the ECHR and the CRC, the proposals for the Bill of Rights in their current form are inadequate to ensure robust and clear protection for children's rights in a range of areas.”⁴

Whilst the first Commissioner for Children broadly supported the NIHRC's position, it falls short of incorporation of the UNCRC into domestic legislation and therefore is not the position of this Commissioner – particularly given the current context so many years later.

In considering the relevance of the European Convention on Human Rights (ECHR) on the drafting of the Bill of Rights Professor Kilkelly outlined the importance of the ECHR being incorporated into domestic legislation through the Human Rights Act (1998) as well as specific reference made in the Belfast/Good Friday Agreement. She states that:

“While the [NI Human Rights] Commission's function is to set out what rights are needed in addition to those in the ECHR, it is important that many of the rights that children may be said to enjoy under that Convention are set out in case-law rather than in the Convention itself. Making explicit provision for their protection in the Bill of Rights is thus important to ensure that those rights are securely protected.”⁵

In its response to the NIHRC proposals, however, the Northern Ireland Office did not propose any new rights for children, stating that they went beyond the remit of reflecting “the particular circumstances of Northern Ireland.”⁶

NICCY then⁷ and now strongly believes that when all of the evidence is considered it is apparent that today's children and young people are profoundly affected by the ‘particular circumstances’ of Northern Ireland and their rights must be protected within this context.

² Northern Ireland Human Rights Commission (2008) Bill of Rights for Northern Ireland: Advice to Secretary of State, Belfast: NIHRC p.51.

³ Kilkelly, U., Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland (2008): a Children's Rights Analysis

⁴ Ibid,

⁵ Ibid, p5.

⁶ Northern Ireland Office (2009) A Bill of Rights for Northern Ireland: Next Steps. Belfast: Northern Ireland Office, p.62.

⁷ NICCY (2010), Response to NIO on a Bill of Rights for Northern Ireland, (Belfast: NICCY). <https://www.niccy.org/media/2161/niccy-response-to-nio-on-a-bill-of-rights-for-northern-ireland-march-2010.pdf>

In making the case that the Northern Ireland Bill of Rights must fully incorporate the UNCRC, it is therefore important to consider how Northern Ireland's particular circumstances have impacted on the realisation of children's rights.

Children's Rights and Northern Ireland's 'particular circumstances'

Evidence has been provided throughout the process of considering a Bill of Rights that the circumstances of Northern Ireland demand very strong provision for children in order to ensure that the existing needs of children and young people are met and their rights protected into the future.⁸ It provides an opportunity to recognise the unique circumstances of children and young people in Northern Ireland most notably as a result of the conflict and to put in place a framework of rights to address this.

While children and young people in Northern Ireland today have been born and grown up in a time of relative peace and stability, the impact of the 'Troubles' is still heavily felt. Segregation and community division continue to impact on daily life for many children and young people. Research clearly shows increased levels of child poverty, mental ill health, educational and health inequalities in the areas that have suffered most as a result of the Northern Ireland conflict. To sustain a stable and more peaceful future requires cognisance to be taken of the reality of children's lives and the impact of the legacy of the conflict on young people growing up in Northern Ireland today.

In view of this, one of NICCY's priority areas of work is on the 'Legacy of the Conflict', advising Government on addressing the way in which the 'particular circumstances of Northern Ireland' continue to impact on children and young people. Moreover, we have supported young people to engage with the Committee on the Rights of the Child to develop recommendations to protect 'Children as Human Rights Defenders' in divided societies.

Young people coerced into 'gang or paramilitary culture', involved or perceived to be involved in crime or anti-social behaviour, continue to be assaulted and excluded from their communities. While NICCY welcomes the significant progress that has been made, coercion and violence remains a common feature in many of our communities, adversely impacting on children and young people's lives and life outcomes.

The trauma experienced by children who are victims or witnesses of paramilitary style attacks is significant.¹⁰ A report using figures obtained from the Northern Ireland Housing Executive (NIHE) showed that between 2012-2015 there were almost 1,300 cases of paramilitary intimidation which forced people out of their homes.¹¹ This accounts for 70% of cases of intimidation from public housing over this period. This does not take into account incidents of forced paramilitary intimidation from other types of accommodation including private housing.

⁸ See for example, Tomlinson, M. (2012) War, peace and suicide: The case of Northern Ireland *International Sociology*, 27, pp.464-48; Bell, John, (2012), 'What about listening to us?' *The views of young people at Belfast interfaces, in Shared Space: A research journal on peace, conflict and community relations in Northern Ireland*, Volume 15, pages 33-46, Belfast: Northern Ireland Community Relations Council (CRC). McGrellis, S. (2011) *Growing Up in Northern Ireland*, York: Joseph Rowntree Foundation; Leonard, M. (2007) 'Trapped in Space? Children's Accounts of Risky Environments', *Children and Society*, 21(6), pp432-445.; Leitch, R and Kilpatrick, R (1999) *Inside the gate: schools and the troubles*. Belfast: Save the Children Fund; Smyth, M., Fay, M.T., Brough, J. and Hamilton, J. (2004), *The Impact of Conflict on Children in Northern Ireland*. Belfast: ICR.

⁹ <https://www.niccy.org/about-us/childrens-rights/un-day-of-general-discussion/submission>

¹⁰ www.belfasttelegraph.co.uk/news/northern-ireland/teenager-shot-in-legs-surrendered-to-armed-attackers-when-he-heard-his-terrified-little-sister-cry-31003876.html

¹¹ Paramilitaries in Northern Ireland Forcing Hundreds from their Homes Each Year, Steven McCaffery, The Detail, 25th June 2015, <http://www.thedetail.tv/articles/paramilitaries-in-northern-ireland-forcing-hundreds-from-their-homes-each-year>

Segregation is part of daily life in accessing essential services, with segregated living significantly affecting how children and young people live their lives.¹² In Belfast, for example, a high proportion of public housing is segregated into Protestant or Catholic areas.¹³ In education, 93% of children in schools which are identified as Protestant or Catholic, with only 7% of children attending integrated schools.¹⁴ There is a stark correlation between the areas most impacted upon by the conflict and those most economically and socially deprived with the highest levels of child poverty in Northern Ireland in the Foyle (34%), West Belfast (34%) and North Belfast (33%) constituencies.¹⁵

It is also well recognised and documented that factors associated with the conflict impact severely on child and adolescent mental health in Northern Ireland, yet there continues to be minimal recognition of the longer-term consequences of trans-generational trauma or of the impact on children of living in deeply-divided, sectarian communities.¹⁶ Research has found that of those in Northern Ireland suffering poor mental health, 15% of these are as a direct result of the Northern Ireland conflict.¹⁷ It also revealed the ongoing impact of trans-generational trauma and highlighted that children continue to suffer the consequences of poor mental health associated with conflict trauma and living under the ongoing threat of paramilitaries.

Educational opportunities and attainment are vital to securing lifetime opportunities. Failing to achieve in education places children at a substantial disadvantage. The most socio economically deprived areas in Northern Ireland are those which have suffered worst as a result of the Northern Ireland conflict. Research has found that differentials in educational performance lie to a degree of 80% or more, outside schools.¹⁸ It found that systemic educational improvement will require comprehensive, long-term responses to inequality. The inequalities facing children before they enter school tend to be less well publicised. We expect schools to increase achievement for all students, regardless of their lived circumstances. However, we must accept that inequalities in education cannot be addressed through education alone. The policy context in Northern Ireland provides significant opportunities to address the issues which perpetuate disadvantage and inequalities per se on a cross-Departmental and cross-agency basis, not least in addressing the legacy of the past, which is still so pervasive in the lives of many children and young people.

The Fresh Start Panel¹⁹ report clearly identifies the need to address systemic issues making specific recommendations in the areas of economic deprivation, housing and education as well as the importance of addressing “paramilitary” activity. It recognises that the “Troubles” are deeply embedded in NI society and it is impossible to differentiate between the two. This applies to children as much as to adults. NICCY continues to monitor the implementation of the NI Executive Action Plan²⁰ on ‘Tackling Paramilitarism’ in response to the ‘Fresh Start’ Panel’s recommendation.

¹² Hargie, A. O'Donnell, and C. McMullan Constructions of Social Exclusion Among Young People From Interface Areas of Northern Ireland, Youth Society, (2011).

¹³ Ibid. This 2011 report found that 98% of public housing was situated in single identity areas.

¹⁴ www.deni.gov.uk/index/85-schools/10-types_of_school-nischools_pg/16-schools-integratedschools_pg.htm

¹⁵ <http://www.endchildpoverty.org.uk/poverty-in-your-area-2018/>

¹⁶ A Vision for a Comprehensive Child and Adolescent Mental Health Service – The Bamford Review November 2005.

¹⁷ Prepared for the Commission for Victims and Survivors by Ulster University, (2015), “Towards A Better Future: The Trans-generational Impact of the Troubles on Mental Health”

¹⁸ 15 “A Call to Action Educational Disadvantage and the Protestant Working Class”, Issued by Dawn Purvis MLA and the Working Group on Educational disadvantage and the Protestant working class, March 2011.

¹⁹ <https://www.northernireland.gov.uk/publications/fresh-start-panel-report-disbandment-paramilitary-groups-northern-ireland>

²⁰ <https://www.justice-ni.gov.uk/articles/executive-programme-tackling-paramilitary-activity-and-organised-crime>

Children's Rights Obligations

The UN Convention on the Rights of the Child is celebrated as the most *complete* statement on children's rights ever produced, containing civil, political, socio-economic and cultural rights and is the *most* widely-ratified international human rights treaty in history. The UK Government signed the UNCRC in 1990 and ratified it in 1991. Article 4 outlines the commitment made by governments in implementing the Convention:

“States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation”²¹

The Committee on the Rights of the Child has highlighted incorporation as a key means of implementation within State Parties. Each time the Committee has examined the periodic reports of the UK State Party on the implementation of the UNCRC, it has expressed concern that the Convention has not yet been incorporated in the UK and emphasised that this must be rectified. The Concluding Observations of the Committee in 2016 linked the incorporation of the UNCRC to the Bill of Rights in Northern Ireland in the following recommendation:

“The Committee recommends that the State party: (a) Expedite bringing its domestic legislation, at the national and devolved levels as well as in the Overseas Territories and the Crown Dependencies, in line with the Convention in order to ensure that the principles and provisions of the Convention are directly applicable and justiciable under domestic law. (b) Expedite the enactment of a Bill of Rights for Northern Ireland, agreed under the Good Friday Agreement.”²²

Importance of Incorporation in Realising Children's Rights

A 2012 report by Lundy, Kilkelly, Byrne and Kang commissioned by UNICEF UK highlighted that the act of incorporating the UNCRC was significant in and of itself.²³ The very process of incorporation raises awareness of and a respect for, children's rights and the UNCRC in Government and civil society.²⁴

Incorporating the UNCRC into domestic law will make it a key tool to improve outcomes for all children and young people in Northern Ireland. While incorporation does provide opportunities for strategic litigation, its main value is in the message it conveys about the status of children and the knock on effects for implementation of children's rights principles into domestic law and policy.²⁵

Since the publication of this report, the Children's Services Co-operation Act (Northern Ireland) 2015 has passed into law. This is a significant legislative development which aims to improve the well-being of children and young people in a manner which realises their rights. The obligations under the Act should inform all of the work which Government Departments and Agencies undertake to improve

²¹ UN Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989

²² Concluding Observations 2016, CRC/C/GBR/CO/5

²³ Lundy, L., Kilkelly, U., Byrne, B. and Kang, J. (2012), note 11. https://downloads.unicef.org.uk/wp-content/uploads/2012/11/UNICEFUK_2012CRCImplementationreport-FINAL-PDF-version.pdf?_ga=2.94655516.1498201406.1591785531-1292063134.1579258446

²⁴ Ibid

²⁵ Ibid

the lives of children and young people in Northern Ireland. The Act places a statutory obligation on Government to adopt a Children and Young People's Strategy. This is in line with the Committee on the Rights of the Child's General Comment No. 5 on the General Measures of Implementation of the UNCRC which obliges State Parties to produce a 'national action plan for children'. It places further obligations on Departments / Agencies to co-operate with each other in order to contribute to the improvement of outcomes for children and young people.

While the Children's Services Co-operation Act (Northern Ireland) 2015 is a very welcome development in establishing statutory responsibility for agencies to work together to deliver more effectively on children's wellbeing and rights, it does not deliver full incorporation of the UNCRC. Moreover, there have been considerable delays in its implementation, largely due to the lack of a Northern Ireland Executive for 3 years and delays in publishing and implementing a Children's and Young People's Strategy.

Developments in other jurisdictions

The Commissioner is disappointed to note that children in Northern Ireland may now in fact be enjoying fewer protections than their peers in the rest of the UK in light of the recent children's rights developments in Scotland and Wales. This is in the context of the particular circumstances of NI as a society emerging from prolonged conflict. We note that Professor Hoffman has provided evidence to the Committee on the Rights of Children and Young Persons Wales Measure 2011, the primary legislation requiring Welsh Ministers to have due regard to UNCRC and its Optional Protocols when exercising any of their functions. This was a very significant development in relation to a Government in the UK making clear commitments in legislation to realise and protect children's rights. Professor Hoffman's work in monitoring the manner in which the 'measure' been implemented, along with the outcomes in relation to children's rights is worthy of the Committee's attention.

More recently, the Scottish Government has made a commitment to go further, and to incorporate the UN Convention on the Rights of the Child into legislation through an Act of the Scottish Parliament. Given this legislation is on course to be delivered in the current Parliamentary session, it will be informative for the Ad Hoc Committee to observe how this proceeds in parallel to developing its own recommendations for Northern Ireland utilising opportunities presenting in the Bill of Rights to afford children here the same protections.

Children's Rights and the UK exit from the EU

We note that the Committee is tasked to consider the implications of the UK exiting the EU when developing its proposals for a Northern Ireland Bill of Rights. Following the 2016 referendum, NICCY developed a participatory project with the Ombudsman for Children's Office in the Republic of Ireland, led by a cross border steering group of 22 young people. They developed and led an engagement event in Newry in November 2017, involving around 120 young people, exploring how Brexit could affect children and young people in Northern Ireland and the Republic of Ireland, and providing key decision-makers in attendance with the opportunity of hearing directly from the young people of their concerns. These were collated into a report, providing an overview of the key issues raised by the young people, and a number of recommendations for political representatives to guide the negotiations and implementation plans in relation to Brexit. While there have been many developments in the Brexit process, the concerns of the young people remain highly relevant, including in relation to the considerations as to how a Bill of Rights should address Northern Ireland's 'particular circumstances'.

'It's our Brexit Too': Key calls from children and young people

1. Brexit will have particular, profound implications for people in Ireland, North and South, and these should be given special consideration during the negotiation process;
2. Brexit will impact on children and young people more than any other group, as we will have to live with the implications for longest. So talk to us about it and listen to our views;
3. We have come too far from the violence and divisions of the past. We don't want to see regression to a hard border and conflict;
4. Protect all aspects of the Good Friday Agreement throughout the Brexit process and protect the right of young people in Northern Ireland to consider ourselves British, Irish or both;
5. Promote diversity and prevent deepening divisions, particularly in relation to hostility towards migrants;
6. Ensure that the EU/UK border on the island of Ireland is a soft border. Protect our freedom of movement across the border;
7. We are very concerned that Brexit could limit our opportunities in the future for work, travel and study. Protect these opportunities and support us to avail of potential new opportunities through Brexit;
8. Maintain equivalence of standards and cooperative agreements across the island of Ireland in relation to key areas such as health care, education, policing, safety and child protection.
9. Allow children, young people and their families to continue to access services and facilities on either side of border, for example in relation to health, education, sports and cultural activities. The UK government should also commit to continuing membership of the EEA to ensure retention of the EHIC card; and
10. The money that the UK government previously paid to the EU should be used to fund improved health services and compensate for the loss of EU funding previously provided to Northern Ireland.

Since the publication of the Young People's report, NICCY has continued to assess the impact of decision-making in relation to the UK exit from the EU, and in July 2018 published a position paper on the potential impact on Children in Northern Ireland.²⁶

This set out a number of areas where the UK Government should act to protect the rights, best interests and outcomes for children in Northern Ireland post 'Brexit'.

NICCY's position paper outlined that the UK Government and any future NI Assembly must make arrangements to ensure there are no differences to the rights, opportunities and benefits between young people who identify as Irish and young people who identify as British or indeed both, as is their right to under the Belfast/Good Friday Agreement.

²⁶ NICCY, (2018), 'UK Withdrawal from the EU 'Brexit' - An overview of the potential impact on Children in Northern Ireland'.

<https://www.niccy.org/publications/2018/august/23/uk-withdrawal-from-the-eu-an-overview-of-the-potential-impact-on-children-in-northern-ireland/>

Moreover, as the EU Charter of Fundamental Rights will no longer apply, the obligation on Governments to adhere to children's rights standards when implementing relevant laws will also be removed. This increases the impetus on the Northern Ireland Assembly to incorporate the United Nations Convention on the Rights of the Child into domestic law i.e. the Bill of Rights, to counteract this loss of protections.

The paper also outlined threats to children's rights from the UK's exit from the EU in relation to their freedom of movement, the delivery of services across the border, child poverty and child protection. There are approximately 80 EU instruments which entitle children to protection and welfare including from trafficking, abduction, exploitation and product safety. The land border inevitably exposes vulnerabilities to child abductions, child exploitation, children going missing, and/or being trafficked to, and through, Northern Ireland. Moreover, NICCY has been made aware of many EU/EEA nationals facing anxiety, uncertainty and increasing prejudice and racism. It has also been informed that some newcomer children are disengaging from education and other services as they believe they will be deported following Brexit.

It is imperative that Northern Ireland takes the opportunity afforded by the Bill of Rights to protect children and young people from the negative effects of 'Brexit'.

Covid-19

The advent of the Covid-19 pandemic has thrown into sharp relief, the necessity to have robust rights protection mechanisms in place. In times of crisis it is even more important that we work to protect the rights of our children and young people. As we emerge from what may be the first phase of this pandemic, we are gaining a better understanding of the experiences of children, young people and their families. This includes for example:

- Concerns regarding the decrease in child protection referrals at a time when at some stages there was a 50% increase in domestic violence calls to the PSNI;
- Families of children with a disability who have expressed feelings of being abandoned by the State; and
- The impact on a child's right to education.

Conclusion

26 years on from the ceasefires and 22 years after the Belfast/Good Friday Agreement and despite not having lived through the Conflict, the impact of the 'Troubles' in Northern Ireland on children and young people is still heavily felt. Segregation, community division and socio economic deprivation continue as stated earlier, to be part of daily life for many children and young people in Northern Ireland as is the transgenerational legacy of the conflict which impacts significantly on their lives.

There has been insufficient focus in the formal Northern Ireland peace process to date on the impact of conflict on children and young people. Agreement on a NI Bill of Rights provides an opportunity to remedy this.

While the Commissioner reiterates that the Children's Services Co-operation Act 2015 has gone some way to requiring more co-operation between agencies in delivering on children's well-being, as outlined in the UNCRC, it falls short of what is required to protect and promote children's rights and therefore improve their lives and life outcomes.

Once it is accepted that the "particular circumstances of Northern Ireland" impact the lives of every child in Northern Ireland, then it is logical to conclude that the UNCRC with its established status should then be the standard that the Bill of Rights sets for children and young people. Our children deserve nothing less.

Therefore the Commissioner strongly recommends that the Northern Ireland Bill of Rights must include full incorporation of the United Nations Convention of the Rights of the Child.

NICCY can provide further information on any of the issues presented and will continue to work with Ministers, MLAs, Departmental Officials, NGOs and other Stakeholders to promote and safeguard the rights and best interests of all children in Northern Ireland.

For further information:

Email: info@niccy.org

Phone: 028 9031 1616

Web: www.niccy.org

Twitter: [nichildcom](https://twitter.com/nichildcom)