



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

## **Submission to the Expert Panel on Educational Underachievement**

**November 2020**

## Table of Contents

<b>Summary of Recommendations .....</b>	<b>3</b>
<b>1.0 Introduction.....</b>	<b>8</b>
<b>2.0 Key Human Rights Standards.....</b>	<b>8</b>
<b>3.0 Educational Underachievement.....</b>	<b>11</b>
Children living in poverty .....	14
Multiple characteristics – Gender, religion and poverty .....	17
Expulsions and suspensions .....	18
Special Educational Needs.....	21
Educational needs of specific groups of children .....	25
Academic selection.....	27
Bullying in Schools .....	29
Additional considerations .....	32
<b>4.0 The Impact of COVID-19 .....</b>	<b>32</b>

## Summary of Recommendations

The Northern Ireland Human Rights Commission (NIHRC):

**3.6 recommends that a human rights based approach is adopted to assessments and monitoring of educational underachievement, which is founded on international human rights standards and the best interests of the child.**

**3.7 recommends that the principles of availability, accessibility, acceptability and adaptability are used as a means of approaching the issue of educational underachievement.**

**3.11 advises that a human rights based approach to educational underachievement will help address the need for early intervention to support children, and their families and carers. For example, a human rights based approach requires that early intervention extends to early childhood, before children enter formal education, an important step in preventing a cycle of underachievement taking hold.**

**3.22 recommends that a detailed human rights based evaluation is undertaken to understand why poorer children underperform compared to their peers from more affluent households, with a particular focus on the principles of availability, accessibility, acceptability and adaptability.**

**3.23 recommends that resources are put in place and appropriately directed to support children from lower socio-economic backgrounds, to fully realise their educational potential and to support their families to ensure that every child can fully enjoy the right to education. The allocation of resources should be guided by findings from the above proposed human rights based evaluation.**

**3.29 recommends that consideration is given to putting in place special measures to support underperforming cohorts of children, specifically children from lower socio-economic**

backgrounds, boys, particularly Protestant and 'other' boys, and children who do not attend grammar schools.

- 3.39** recommends that schools put in place additional support for children and young people most at risk of suspensions and exclusions to ensure such action is a last resort, including focusing on disciplinary options which help support children within the school. This includes ensuring that parents and children have a central role in shaping strategies to eliminate exclusions. It also includes giving particular consideration to addressing both formal and informal school exclusion, particularly in relation to racial and ethnic minority children.
- 3.54** recommends that a human rights based plan of action is developed in consultation with disabled children, their parents and carers, which identifies key measures to be implemented to ensure that every child has the supports they require to realise their right to education.
- 3.55** recommends that regular independent reviews of the effectiveness of the special educational needs system are carried out to ensure this system adequately supports children to realise their right to education.
- 3.56** recommends that immediate steps are taken to ensure that all children with special needs have timely access to a school placement.
- 3.57** recommends that effective remedial support is provided to all children with special educational needs that have been failed by the system up to now to ensure that they do not continue to be disadvantaged by past failings and will have the skills and support to avail of the same opportunities as children who will benefit from any reforms in the future.
- 3.64** recommends that the attainment gap between at risk groups, such as Traveller children, Roma children, children from migrant families and resettled refugee children, is monitored and

**appropriate supports are put in place to ensure all children can fully enjoy the right to education.**

- 3.73 recommends that a non-selective system of post-primary school admission is introduced in order to abolish unregulated post-primary selection in NI.**
- 3.74 recommends that the health and wellbeing of children undergoing the testing process is monitored and comprehensive support is in place to mitigate any harm.**
- 3.82 recommends that the Addressing Bullying in Schools (NI) Act 2016 is commenced without delay and that the Department of Education monitor levels of bullying in schools across all vulnerable groups and review protected categories within the 2016 Act.**
- 3.83 recommends that all schools put in place effective policies for addressing bullying and provide appropriate training to ensure that all staff, students and families understand this policy and ensure it is kept under review.**
- 3.84 recommends that all children and teachers are effectively trained on the safe use of information and communication technologies. Information should also be made available for the purpose of supporting families and guardians to understand and promote the safe use of information and communication technologies within the home. The Department of Education should work with the Department of Health and Department of Justice for the purpose of developing and implementing effective steps aimed at raising awareness among children on the severe effects that online bullying can have on their peers, and increase the involvement of social media outlets in the efforts to combat cyber-bullying.**
- 3.86 recommends that there is an overall investment in high quality teacher training that ensures every teacher in Northern Ireland is trained on how to prevent and address the most common issues that can lead to educational underachievement and to**

**identify cases when more specialised intervention is required and how to refer such cases.**

- 3.88 recommends a more linked up approach with the Education Authority NI's Youth Service and other such initiatives to ensure that funding allocation fully considers the reasons for educational underachievement and that funding provided for tackling this particular issue is efficiently and effectively directed.**
- 4.11 recommends that measures to control the COVID-19 pandemic are undertaken in a way to minimise harm to the education of children and focuses on ensuring that education is available, accessible, acceptable and adaptable. This includes ensuring minimal disruption and remedial provision for children in NI whose education has been affected by COVID-19, particularly children with special educational needs. This requires consideration of challenges that children may face due to disruption (such as access to equipment, access to internet, costs involved for increased time at home and reduction or suspension of special educational needs support) and taking effective steps to mitigate any negative impacts. This can include providing the necessary equipment, providing emergency funds to cover additional costs and putting programmes in place that ensure appropriate special educational needs support is provided within a home environment. It also includes ensuring mental health and wellbeing is included in the recovery curriculum and that this is supported by adequate long-term funding.**
- 4.12 recommends that special consideration is given to those children for whom 'home schooling' is difficult or impossible due to their circumstances and that consideration is given to prioritising education in a school environment for those children.**
- 4.13 The NIHRC recommends that in advance of any future school closures or implementation of blended learning that resources are put in place to ensure that all children have access to**

**appropriate technology and access to a stable and secure internet connection.**

## 1.0 Introduction

- 1.1 The Northern Ireland Human Rights Commission (the NIHRC), pursuant to Section 69(1) the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI). In accordance with this function, the NIHRC provides this submission to the Expert Panel on Educational Underachievement.
- 1.2 The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE) and United Nations (UN) systems. In addition to these treaty standards, there exists a body of 'soft law' developed by the human rights bodies of the CoE and UN. These declarations and principles are non-binding, but provide further guidance in respect of specific areas.
- 1.3 The NIHRC welcomes this opportunity to provide evidence to the Expert Panel on Educational Underachievement. This submission highlights relevant human rights standards and principles where they may be of assistance to the Expert Panel. It is intended as a complementary resource to the NIHRC's oral evidence scheduled for 3 December 2020.

## 2.0 Key Human Rights Standards

- 2.1 The right to education is recognised in Article 2 of Protocol 1 of the ECHR, which confirms that "no person shall be denied the right to education". This article also requires the state to respect right of parents to ensure education is in conformity with their own religious and philosophical convictions. The European Court of Human Rights (ECtHR) has noted that the right to education "is indispensable to the furtherance of human rights" and "a restrictive interpretation... would not be consistent with the aim or purpose of that provision".<sup>1</sup> Moreover, it covers access to primary, secondary and higher education.<sup>2</sup>
- 2.2 Article 14 of the ECHR guarantees that "the enjoyment of the rights and freedoms set forth in this Convention shall be secured without

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<sup>1</sup> *Leyla Şahin v Turkey* (2004) ECHR 299, at para 137.

<sup>2</sup> *Catan and Others v Moldova and Russia* (2012) ECHR 1827; *Cyprus v Turkey* (2001) ECHR 331, at para 278; *Leyla Şahin v Turkey* (2004) ECHR 299, at para 137.



discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status". The case law of the ECtHR has emphasised that States "enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment" and are "usually allowed a wide margin of appreciation when it comes to general measures of economic or social strategy".<sup>3</sup> The ECtHR has also recognised that:

education is an activity that is complex to organise and expensive to run, whereas the resources that the authorities can devote to it are necessarily finite.... However, the Court cannot overlook the fact that, unlike some other public services... education is a right that enjoys direct protection under the [ECHR].<sup>4</sup>

- 2.3 Article 13(1) of the UN International Covenant on Economic, Social and Cultural Rights (UN ICESCR) recognises the right to education and guarantees that "education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms". In addition, Article 13(1) commits Member States to ensuring that "education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace".
- 2.4 Article 13(2) UN ICESCR makes specific commitments to free compulsory primary education for everyone, accessible and available secondary education and higher education that is "equally accessible to all, on the basis of capacity". It further commits Member States to the "development of a system of schools at all levels" and to the continuous improvement of the "material conditions of teaching staff".
- 2.5 Article 2 UN ICESCR prohibits discrimination of any kind on grounds of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" in the realisation of the rights in the UN ICESCR. In General Comment No 13 the UN ICESCR Committee

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<sup>3</sup> *Ponomaryovi v Bulgaria* (2011) ECHR 972, at para 52.

<sup>4</sup> *Ibid*, at para 55.

clarified that this obligation applies immediately to all aspects of education and that special measures which “are intended to bring about de facto equality for men and women and for disadvantaged groups” are permitted.<sup>5</sup>

2.6 The UN ICESCR Committee affirms that, while education can be provided in different forms, it should include four “interrelated and essential features”.<sup>6</sup> These are that education is:

- Available – availability requires functioning educational institutions to be available in sufficient quantity and includes trained teachers receiving domestically competitive salaries, teaching materials, library and computer facilities and information technology.<sup>7</sup>
- Accessible – accessibility requires that everyone has access to education without discrimination, especially the most vulnerable groups.<sup>8</sup> In addition, education has to be “within safe physical reach” either by a “convenient geographic location” or “via modern technology”.<sup>9</sup> Education must also be affordable to all.<sup>10</sup>
- Acceptable – acceptability requires that “the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents”.<sup>11</sup>
- Adaptable – adaptability requires that education must be “flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings”.<sup>12</sup>

2.7 Article 5 of the UN Convention on the Elimination of Racial Discrimination (UN CERD) requires States to “prohibit and eliminate racial discrimination” and to “guarantee the right of everyone, without distinction as to race,

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<sup>5</sup> E/C.12/1999/10, ‘UN ICESCR Committee General Comment No 13: Right to Education’, 8 December 1999, at para 31-32.

<sup>6</sup> Ibid, at para 6.

<sup>7</sup> Ibid, at para 6(a).

<sup>8</sup> Ibid, at para 6(b)(i).

<sup>9</sup> Ibid, at para 6(b)(ii).

<sup>10</sup> Ibid, at para 6(b)(iii).

<sup>11</sup> Ibid, at para 6(c).

<sup>12</sup> Ibid, at para 6(d).

colour, or national or ethnic origin, to equality before the law and the enjoyment of... the right to education and training”.

- 2.8 Article 28 of the UN Convention on the Rights of the Child (UN CRC) recognises “the right of the child to education”. Article 29 UN CRC notes that this right should be directed to the “development of the child's personality, talents and mental and physical abilities to their fullest potential”. The UN CRC Committee has emphasised that right to education is not simply about access, but about content in that Article 29 UN CRC adds a “qualitative dimension which reflects the rights and inherent dignity of the child” and “insists upon the need for education to be child-centred, child-friendly and empowering”.<sup>13</sup>
- 2.9 Article 10 of the UN Convention on the Elimination of Discrimination against Women (UN CEDAW) requires States to “take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education” and ensure equality in “pre-school, general, technical, professional and higher technical education, as well as in all types of vocational education”.
- 2.10 Article 24 of the UN Convention on the Rights of People with Disabilities (UN CRPD) recognises the right of disabled people to education and requires states to ensure “an inclusive education system at all levels and lifelong learning”. In addition, States should ensure that disabled people can “access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live” and “are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others”. States are further required to ensure that disabled people “receive the support required, within the general education system, to facilitate their effective education”.

## **3.0 Educational Underachievement**

- 3.1 The right to education is recognised as an ‘empowerment right’.

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<sup>13</sup> CRC/GC/2001/1, ‘UN CRC Committee General Comment No 1: The Aims of Education’, 17 April 2001, at para 2-3.

- 3.2 The UN ICESCR Committee has stated that the right to education is both a “human right in itself and an indispensable means of realising other human rights”.<sup>14</sup> It further highlighted that “education is the primary vehicle by which economically and socially marginalised adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities”.<sup>15</sup>
- 3.3 The UN CEDAW Committee also highlighted the empowering quality of the right to education as it “enhances the enjoyment of other human rights and freedoms”, noting that it reduces poverty, facilitates gender equality and promotes peace.<sup>16</sup>
- 3.4 The UN CRPD Committee similarly notes that the right to education is “a means of realising other human rights” and the “primary means by which people with disabilities can lift themselves out of poverty, obtain the means to participate fully in their communities and be safeguarded from exploitation”.<sup>17</sup> In addition, ensuring the right to inclusive education requires a focus on:

full and effective participation, accessibility, attendance and achievement of all students, especially those who, for different reasons, are excluded or at risk of being marginalised. Inclusion involves access to and progress in high-quality formal and informal education without discrimination. Inclusion seeks to enable communities, systems and structures to combat discrimination, including harmful stereotypes, recognise diversity, promote participation and overcome barriers to learning and participation for all by focusing on the well-being and success of students with disabilities.<sup>18</sup>

- 3.5 The UN CRC requires that that the best interests of the child should be a primary consideration “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies”.<sup>19</sup> In an education setting,

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<sup>14</sup> E/C.12/1999/10, 'UN ICESCR Committee General Comment No 13: Right to Education', 8 December 1999, at para 1.

<sup>15</sup> Ibid.

<sup>16</sup> CEDAW/C/GC/36, 'UN CEDAW Committee General Recommendation No 36: Right of Girls and Women to Education' 27 November 2017, at para 8.

<sup>17</sup> CRPD/C/GC/4, 'UN CRPD Committee General Comment No 4: Right to Inclusive Education', 25 November 2016, at para 10.

<sup>18</sup> Ibid, at para 9.

<sup>19</sup> Article 3(1), UN Convention on the Rights of the Child 1989.

this means that it is in the best interests of the child to have “access to quality education, including early childhood education, non-formal or informal education and related activities, free of charge”.<sup>20</sup>

- 3.6 The NIHRC recommends that a human rights based approach is adopted to assessments and monitoring of educational underachievement, which is founded on international human rights standards and the best interests of the child.**
- 3.7 The NIHRC recommends that the principles of availability, accessibility, acceptability and adaptability are used as a means of approaching the issue of educational underachievement.**
- 3.8 In 2016, the UN CRC Committee welcomed the “gradual closing of inequality gaps in educational attainment” in Northern Ireland and across the UK, but was concerned that “substantial inequalities persist in educational attainment, particularly for boys, children living in poverty, Roma, Gypsy and Traveller children, children with disabilities, children in care and newcomer children”.<sup>21</sup>
- 3.9 In its General Comment No 7, the UN CRC Committee describes early childhood as a “critical period for realising children’s rights”.<sup>22</sup> In its 2016 Concluding Observations, the UN CRC Committee specifically recommended that the UK improved access to quality early childhood development services for children “in the most vulnerable situations”.<sup>23</sup>
- 3.10 The Department of Health’s Making Life Better Strategy aims to ensure that every child in Northern Ireland is given the best start and includes ensuring that children and young people are skilled for life as one of its long-term outcomes for achieving this. The strategy states that

evidence shows that children who start off well at school are more likely to achieve good qualifications that lead to a job with good income and social status, which in turn affects health and

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<sup>20</sup> CRC/C/GC/14, ‘UN CRC Committee General Comment No 14: The Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration’, 29 May 2013, at para 79.

<sup>21</sup> CRC/C/GBR/CO/5, ‘UN CRC Committee Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland’ 12 July 2016, at para 72(a).

<sup>22</sup> CRC/C/GC/7/Rev.1, ‘UN CRC Committee General Comment No 7: Implementing Child Rights in Early Childhood’, 20 September 2006, para 6.

<sup>23</sup> CRC/C/GBR/CO/5, ‘UN CRC Committee Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland’, 3 June 2016, at para 72(f).

quality of life. Conversely, children growing up in poorer families are less likely to do well at school and in later life outcomes, than those from more affluent backgrounds. As well as affecting educational underachievement, children who do not thrive at school are more likely to become disengaged, and try 'risky behaviour' such as smoking and drinking at an early age.<sup>24</sup>

**3.11 The NIHRC advises that a human rights based approach to educational underachievement will help address the need for early intervention to support children, and their families and carers. For example, a human rights based approach requires that early intervention extends to early childhood, before children enter formal education, an important step in preventing a cycle of underachievement taking hold.**

### **Children living in poverty**

3.12 The UN ICESCR Committee noted that certain groups are more affected by and at increased risk of poverty, including single parent families and families with children and urged the UK Government and NI Executive to "develop a comprehensive child poverty strategy and reinstate the targets and reporting duties on child poverty".<sup>25</sup>

3.13 The UN CRC Committee expressed serious concern that the "rate of child poverty remains high" and that it "affects children in Wales and Northern Ireland the most".<sup>26</sup> The UN Committee recommended that "clear accountability mechanisms for the eradication of child poverty" are established and that poverty reduction strategies and action plans ensure a "clear focus on the child" and specially called for the "production and implementation of child poverty reduction strategies in the devolved administrations".<sup>27</sup>

3.14 The UN CRC Committee also highlighted that "many children living in poverty, particularly boys, do not meet the expected level of language

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<sup>24</sup> Department of Health, 'Making Life Better – A Whole System Strategic Framework for Public Health 2013-2023' (DoH, 2014), at para 5.14.

<sup>25</sup> E/C.12/GBR/CO/6, 'UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI' 14 July 2016, at para 48.

<sup>26</sup> CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' 12 July 2016, at para 70(c).

<sup>27</sup> Ibid, at para 71(a)-71(b).

development at the preschool level, which has a negative impact on their primary education, hindering their development throughout their life”.<sup>28</sup>

- 3.15 In addition, the UN CRC Committee recommended that the UK Government and NI Executive “allocate sufficient human, technical and financial resources for the development and expansion of early childhood care and education, based on a comprehensive and holistic policy of early childhood development, with special attention to the children in the most vulnerable situations”.<sup>29</sup>
- 3.16 The long term trends indicate that children are at a higher risk of living in poverty than the population as a whole in both the relative and absolute measures.<sup>30</sup> In 2018/2019, an estimated 107,000 children were living in relative poverty representing 24 per cent of all children in Northern Ireland. This is an increase from 19 per cent in 2017/2018. Similarly, the numbers of children living in absolute poverty has risen from 16 per cent in 2017/2018 to 21 per cent in 2018/2019.<sup>31</sup> This is the first increase in absolute child poverty since 2013/14.<sup>32</sup>
- 3.17 The Child Poverty Strategy has been extended until May 2022 to “allow time for key stakeholders to be consulted on whether the anti-poverty strategy, which will include all age groups, is sufficient or whether in addition the development of a child poverty strategy is required”.<sup>33</sup> The Department for Communities has announced a timeline for the development of four social inclusion strategies including an Anti-Poverty Strategy.<sup>34</sup> This strategy is due to be completed by December 2021.
- 3.18 In 2019/2020, 96,686 pupils were entitled to free school meals across all schools in NI, which is a decrease of 2,456 pupils in 2018/2019.<sup>35</sup> Pupils entitled to free schools meals represent 28.4 per cent of the total school enrolment and uptake of free school meals was at 80.5 per cent of those entitled, which is 0.4 percentage points lower than in 2018/2019. Uptake of pupils entitled to school meals varies between schools, with primary

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<sup>28</sup> Ibid, at para 72(c).

<sup>29</sup> Ibid, at para 73(f)

<sup>30</sup> NI Statistics and Research Agency, ‘Households below average income: Northern Ireland 2018/19’ (DfC, 2020), at 6.

<sup>31</sup> Ibid.

<sup>32</sup> Department for Communities, ‘Poverty Bulletin: Northern Ireland 2018/19’ (DfC, 2020) at 3.

<sup>33</sup> Department for Communities, ‘Press Release: Minster announces extension to Child Poverty Strategy’, 11 September 2020.

<sup>34</sup> Department for Communities, ‘Social Inclusion Strategies’. Available at <https://www.communities-ni.gov.uk/articles/social-inclusion-strategies>

<sup>35</sup> Department of Education, ‘Statistical Bulletin – School Meals in NI 2019-2020’ (NISRA, 2020).

schools at the highest at 83.6 per cent and non-grammar secondary schools at the lowest (75.6 per cent).<sup>36</sup>

- 3.19 In 2005/2006, only 26.4 per cent of children entitled to free school meals achieved 5 or more A\*-C grade GCSEs (or equivalent), including English and Mathematics.<sup>37</sup> In 2018/2019, this had increased to 54.1 per cent of children entitled to free school meals. However, this is significantly lower than the 80.2 per cent of Year 12 pupils who are not entitled to free school meals achieving 5 or more A\*-C grade GCSEs (or equivalent), including English and Mathematics.<sup>38</sup>
- 3.20 In 2018/2019, the proportion of Year 12 pupils in non-grammar secondary schools achieving 5 or more A\*-C grade GCSEs (or equivalent) including English and Mathematics increased to 54.8 per cent from 52.4 per cent in 2017/2018. This compares to 94.3 per cent of Year 12 pupils in grammar schools in 2018/2019.<sup>39</sup>
- 3.21 In 2018/2019, 87.1 per cent of Year 12 free school meal entitled grammar school pupils achieved 5 or more A\*-C grade GCSEs (including equivalents) including English and Mathematics. This compared with just 44.0 per cent of non-grammar school pupils entitled to free school meals. This is a gap of 43.1 percentage points.<sup>40</sup> In 2018/19, 14.1 per cent of grammar school pupils were entitled to free school meals, compared with 39.2 per cent of non-grammar school pupils.<sup>41</sup>
- 3.22 **The NIHRC recommends that a detailed human rights based evaluation is undertaken to understand why poorer children underperform compared to their peers from more affluent households, with a particular focus on the principles of availability, accessibility, acceptability and adaptability.**
- 3.23 **The NIHRC recommends that resources are put in place and appropriately directed to support children from lower socio-economic backgrounds, to fully realise their educational potential**

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<sup>36</sup> Ibid.

<sup>37</sup> NI Assembly Hansard, 'Ministerial Statement: Minister for Education, Peter Weir MLA – Appointment of members of an Expert Panel to examine links between persistent educational under achievement and socio economic background', 28 July 2020.

<sup>38</sup> Department of Education, 'Year 12 and Year 14 Examination Performance at Post-Primary Schools in Northern Ireland 2018-19' (NISRA, 2019), at 12.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid, at 29.

<sup>41</sup> Ibid, at 12.



**and to support their families to ensure that every child can fully enjoy the right to education. The allocation of resources should be guided by findings from the above proposed human rights based evaluation.**

### **Multiple characteristics – Gender, religion and poverty**

- 3.24 Girls perform consistently better at GCSE or equivalent than boys. In 2018/2019, 77.1 per cent of girls in Year 12 achieved 5 or more A\*-C grade GCSEs (including equivalents) including English and Mathematics, compared with 68.5 per cent of boys. This is a gap of 8.6 percentage points.<sup>42</sup> This gender attainment gap increases in relation to children entitled to free school meals, where 58.9 per cent of girls achieved 5 or more A\*-C grade GCSEs (including equivalents) including English and Mathematics, which compares to 49 per cent of boys. A gap of 9.9 percentage points.<sup>43</sup>
- 3.25 An analysis of school leavers broken down by religious background and entitlement to free school meals shows that attainment of Protestant boys is substantially lower than that of Catholic boys.<sup>44</sup> Just 37.9 per cent of Protestant boys entitled to free school meals achieve to 5 or more A\*-C grade GCSEs (including equivalents) including English and Mathematics, compared to 46.7 per cent of Catholic boys. By comparison, this figure rises to 49 per cent for Protestant girls and to 59.4 per cent for Catholic girls. For boys classified as 'other', this figure is 40.7 per cent, but rises to 53.7 per cent for 'other' girls.
- 3.26 Where school leavers are not entitled to free school meals, the attainment levels are substantially higher across the board, but the attainment gap between girls and boys is maintained.<sup>45</sup> 'Other' boys have the lowest level of attainment with 71.3 per cent achieving 5 or more A\*-C grade GCSEs (including equivalents) including English and Mathematics, with Protestant boys only performing marginally better at 71.7 per cent.<sup>46</sup> Whereas for Catholic boys this figure raised to 76.7 per cent.<sup>47</sup> Similarly,

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<sup>42</sup> Ibid, at 26.

<sup>43</sup> Ibid.

<sup>44</sup> Department of Education, '2018/19 Statistical Bulletin - Qualifications and Destinations of Northern Ireland School Leavers 2018/19' (NISRA, 2020), at Table 8.

<sup>45</sup> Ibid, at Table 9.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

'Other' girls are the lowest performing female group with a figure of 79.6, with Protestant girls at 81.8 per cent and Catholic girls at 85.3 per cent.<sup>48</sup>

- 3.27 The figures highlight that where children are entitled to free school meals their levels of educational attainment are significantly lower than for those who are from economically better off households. This attainment gap is intensified for children in non-grammar secondary schools, where the percentage attaining 5 or more GCSEs is half that of their grammar school equivalents. This attainment gap is compounded by substantially higher numbers of free school meal entitled children in non-grammar secondary schools than in grammar schools.
- 3.28 When a gendered analysis is carried out, there are significantly higher rates of attainment for girls than for boys. Poorer children across the board perform significantly worse than their peers from more economically comfortable households, just 49 per cent free school meal entitled achieving 5 or more A\*-C grade GCSEs (including equivalents) including English and Mathematics, compared to 78.5 per cent.<sup>49</sup> When free school meal entitlement, religious background and gender is taken into account, we see that poorer Protestant boys have the lowest levels of attainment overall and that substantially less than 50 per cent of Catholic and other identifying boys and Protestant girls achieve 5 or more A\*-C grade GCSEs (including equivalents) including English and Mathematics.
- 3.29 **The NIHRC recommends that consideration is given to putting in place special measures to support underperforming cohorts of children, specifically children from lower socio-economic backgrounds, boys, particularly Protestant and 'other' boys, and children who do not attend grammar schools.**

### **Expulsions and suspensions**

- 3.30 The UN CRC Committee raised concerns about the continued use of exclusions from school and noted that "among children subject to permanent or temporary school exclusions, there is a disproportionate number of boys, Roma, Gypsy and Traveller children, children of

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<sup>48</sup> Ibid.

<sup>49</sup> Ibid, at Tables 8 and 9.

Caribbean descent, children living in poverty and children with disabilities".<sup>50</sup>

- 3.31 The UN CRC Committee was further concerned that disabled children, "in particular children with psychosocial disabilities and other 'special educational needs', are often subject to the practice of 'informal' exclusion or 'taught off-site' to control their behaviour".<sup>51</sup>
- 3.32 The UN CERD Committee has raised concerns at the "disproportionate rate of exclusions of pupils from Gypsy, Traveller, Roma or African Caribbean communities" and recommended that schools "collect qualitative and quantitative data on bullying and school exclusions on the grounds of race colour, descent, or national or ethnic origin, and to use the data to develop concrete strategies".<sup>52</sup>
- 3.33 The UN CRC Committee recommended that the practice of 'informal exclusions' was abolished and disciplinary measures of permanent or temporary exclusion are used only as a means of last resort.<sup>53</sup> Furthermore the UN CRC Committee recommended that the UK Government and NI Executive make efforts to "further reduce the number of exclusions by working closely with social workers and educational psychologists in school and using mediation and restorative justice".<sup>54</sup>
- 3.34 Following her visit to the UK in 2018, the Special Rapporteur on Racism, E Tendayi Achiume, expressed concern about the high levels of Traveller, Roma and minority ethnic children who faced formal and informal exclusions from school. The UN Special Rapporteur recommended that efforts made to close the attainment gaps "address both formal and informal school exclusion of racial and ethnic minority children and youth" and ensure that any review of these policies "gives racial and ethnic minority parents and children a central role in shaping strategies to eliminate exclusions".<sup>55</sup>

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<sup>50</sup> CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' 12 July 2016, at para 72(b).

<sup>51</sup> Ibid, at para 72(c).

<sup>52</sup> CERD/C/GBR/CO/21-23, 'UN CERD Committee Concluding Observations on the Twenty-first to Twenty-third Periodic Reports of UK', 26 August 2016, at para 35.

<sup>53</sup> CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' 12 July 2016, at para 73(b).

<sup>54</sup> Ibid.

<sup>55</sup> A/HRC/41/54/Add.2, 'Report of the UN Special Rapporteur on Racism, E Tendayi Achiume, on her Visit to the United Kingdom', 27 May 2020, at para 23 and 74(j)(ii).

3.35 The approach recommended by the UN Special Rapporteur is supported in a broader context by the Department of Health's Making Life Better Strategy, which states that:

reducing education inequalities involves understanding the interaction between the social influences on education, including family background, and the local community context, as well as the school context. Evidence on the most important factors influencing educational underachievement suggest that it is families that have the most influence rather than schools, and that closer links between schools, the family and the local community are needed.<sup>56</sup>

3.36 The number of children suspended from school has increased from 1.13 per cent in 2015/2016 to 1.5 per cent in 2018/2019.<sup>57</sup> Between July 2018 and June 2019, the total number of children suspended in NI schools was 4,549.<sup>58</sup> Boys have a much higher rate of suspension than girls, with 3,569 school aged boys suspended compared to 980 girls.<sup>59</sup> Children from minority ethnic backgrounds, including Traveller children are marginally more likely to be suspended at 1.6 per cent than their peers at 1.5 per cent.<sup>60</sup> In terms of the reasons for suspensions, 31.4 per cent were due to persistent infringements of school rules, 24.1 per cent for a physical attack on pupil and 20.7 per cent for verbal abuse of staff.<sup>61</sup>

3.37 In 2018/2019, 30 pupils were excluded from school in Northern Ireland.<sup>62</sup> This number has doubled since 2017/18 when 15 pupils were excluded. In 2018/2019, there were 11 pupils in Northern Ireland expelled for persistent infringements of relatively minor school rules.<sup>63</sup> It is recognised that "young people who attend school regularly are more likely to get the most they can out of their time at school, and therefore more likely to achieve their potential, and less likely to take part in anti-social or criminal behaviour".<sup>64</sup>

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<sup>56</sup> Department of Health, 'Making Life Better – A Whole System Strategic Framework for Public Health 2013-2023' (DoH, 2014), at para 5.15.

<sup>57</sup> Children and Young People's Strategic Partnership, 'How are Children and Young People in NI Doing? NI Outcome Monitoring Report with Trends 2012-2018/2019' (CYPSP, 2020), at 49.

<sup>58</sup> Ibid.

<sup>59</sup> Department of Education, 'Suspension and Expulsion Management Information 2018/2019' (DoE, 2020).

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> Children and Young People's Strategic Partnership, 'How are Children and Young People in NI doing? NI Outcome Monitoring Report with Trends 2012-2018/2019' (CYPSP, 2020), at 50.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid, at 49.

3.38 The NIHRC notes that school exclusions and suspensions have a negative impact on the educational attainment of children. The NIHRC further notes that the majority of school exclusions and suspensions are for relatively minor infringements of school rules. The NIHRC understands that the maintenance of school discipline is important for the enjoyment of the right to education of all children.

**3.39 The NIHRC recommends that schools put in place additional support for children and young people most at risk of suspensions and exclusions to ensure such action is a last resort, including focusing on disciplinary options which help support children within the school. This includes ensuring that parents and children have a central role in shaping strategies to eliminate exclusions. It also includes giving particular consideration to addressing both formal and informal school exclusion, particularly in relation to racial and ethnic minority children.**

### **Special Educational Needs**

3.40 Article 23 UN CRC recognises the “special needs of a disabled child” and that assistance shall be:

designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.<sup>65</sup>

3.41 Article 24(2)(c) UN CRPD requires that the relevant authorities ensure that “reasonable accommodation of individual’s requirements is provided” in fulfilling, protecting and respecting a person with disabilities right to education. Article 24(2)(d) UN CRPD states that disabled people should “receive the support required, within the general education system, to facilitate their effective education”.

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<sup>65</sup> Article 23, UN Convention on the Rights of the Child 1989.

3.42 The UN CRPD clarifies that reasonable accommodation means:

necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.<sup>66</sup>

3.43 The UN CRC Committee has emphasised the importance of inclusive education which “should be the goal of educating children with disabilities”.<sup>67</sup> In practice, inclusive education is “a set of values, principles and practices that seeks meaningful, effective, and quality education for all students, that does justice to the diversity of learning conditions and requirements not only of children with disabilities, but for all students”.<sup>68</sup>

3.44 In 2016, the UN CRC Committee noted that “many children with disabilities are still placed in special schools or special units in mainstream schools and many school buildings and facilities are not made fully accessible to children with disabilities”.<sup>69</sup> The UN CRC Committee recommended that the UK Government and NI Executive “adopt a human rights-based approach to disability, set up a comprehensive strategy for the inclusion of children with disabilities”.<sup>70</sup> The UN CRC Committee further recommended that the UK Government and NI Executive “set up comprehensive measures to further develop inclusive education, ensure that inclusive education is given priority over the placement of children in specialised institutions and classes and make mainstream schools fully accessible to children with disabilities”.<sup>71</sup>

3.45 In 2017, the UN CRPD Committee is concerned at the “persistence of a dual education system that segregated children with disabilities in special schools” and the fact that “the education system is not equipped to respond to the requirements for high-quality inclusive education”.<sup>72</sup> The

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<sup>66</sup> Article 2, UN Convention on the Rights of Persons with Disabilities 2006.

<sup>67</sup> CRC/C/GC/9, ‘UN CRC Committee General Comment No 9: Rights of Children with Disabilities’, 27 February 2007, at paras 66-67.

<sup>68</sup> Ibid.

<sup>69</sup> CRC/C/GBR/CO/5, ‘UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI’, 12 July 2016, at para 56(b).

<sup>70</sup> Ibid, at para 57.

<sup>71</sup> Ibid, at para 57(b).

<sup>72</sup> CRPD/C/GBR/CO/1, UN CRPD Committee Concluding Observations on the Initial Report of the United Kingdom of Great Britain and NI, 3 October 2017, at para 52(a) and (c).

UNCRPD Committee was particularly concerned about “reports of school authorities refusing to enrol a student with disabilities who is deemed to be ‘disruptive to other classmates’”.<sup>73</sup>

- 3.46 The UN CRPD Committee recommended that the UK Government and NI Executive “develop a comprehensive and coordinated legislative and policy framework for inclusive education and a timeframe to ensure that mainstream schools foster real inclusion of children with disabilities in the school environment”.<sup>74</sup> It further recommended that “teachers and all other professionals and persons in contact with children understand the concept of inclusion and are able to enhance inclusive education”.<sup>75</sup>
- 3.47 In addition, the UN CRPD Committee recommended that the UK Government and NI Executive collect and provide “sufficient, relevant data on the number of students both in inclusive and segregated education, disaggregated by impairment, age, sex and ethnic background, and on the outcome of the education, reflecting the capabilities of the students”.<sup>76</sup>
- 3.48 In evidence before the NI Assembly Committee for Education, the Education Authority NI noted that an internal audit of practice in special education had identified “significant shortcomings” in its statutory obligations on assessing and statementing children with special educational needs. This audit found that 85 per cent of students, representing over 1,000 children, did not complete the statementing process within the 26 week statutory period, with 250 children waiting more than 50 weeks for assessment.<sup>77</sup>
- 3.49 In March 2020, a report by the NI Commissioner for Children and Young People found that the special educational needs provision in schools is “under extreme pressure” and is “finding it difficult to respond to the scale of need and the complexity of issues that children are presenting”.<sup>78</sup> The report highlighted “the detrimental impacts for children with special educational needs in mainstream schools when their needs are not

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<sup>73</sup> Ibid, at para 52(c).

<sup>74</sup> Ibid, at para 53(a).

<sup>75</sup> Ibid, at para 53(a).

<sup>76</sup> Ibid, at para 53(c)(iii).

<sup>77</sup> NI Assembly Hansard, ‘Committee for Education: Special Educational Needs Assessment and Statementing Audit – Education Authority’, 4 March 2020.

<sup>78</sup> NI Commissioner for Children and Young People, ‘Too Little, Too Late - A Rights Based Review of Special Educational Needs Provision in Mainstream Schools – Main Report’ (NICCY, 2020), at 6.

identified and supported” and noted that “children’s academic progress is being hindered by the current special educational needs system”.<sup>79</sup> The report identified delays at all stages of the special educational needs process and that “a lack of early identification and intervention is a major failing of the current system”.<sup>80</sup>

- 3.50 In September 2020, the NI Audit Office noted that there had been an increase of 36 per cent in children with a statement of special educational needs in the past nine years.<sup>81</sup> The NI Audit Office recommended an urgent overhaul of the Special Educational Needs policies, processes and procedures and better monitoring and evaluation of the effectiveness of the support provided.<sup>82</sup> The NI Audit Office was further concerned about the robustness of the Education Authority NI’s processes and procedures in light of the number of successful appeals. The report underlined that “the number of cases conceded, and the number which are found in favour of the parent or carers when they do proceed to Tribunal, raises questions as to whether the processes and procedures followed by the Education Authority NI in relation to special educational needs are fit for purpose”.<sup>83</sup>
- 3.51 In addition, the NI Audit Office raised concerns about the financial sustainability of the current funding model and recommended a fundamental review of the effectiveness of special educational needs provision “to ensure the needs of children, with or without a statement, are met”.<sup>84</sup> Any assessment should include considering the “potential impact of directing more resources to support children without a statement, in an effort to maximise the effectiveness of early intervention measures”.<sup>85</sup>
- 3.52 The right to education is an empowerment right that facilitates the enjoyment of other rights. An effective system for identifying and supporting children with special educational needs is fundamental to ensuring that all children are able to fully enjoy all aspects of the right to education and achieve the highest level of their academic and personal potential.

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<sup>79</sup> Ibid, at 6-7

<sup>80</sup> Ibid, at 7.

<sup>81</sup> NI Audit Office, ‘Impact Review of Special Educational Needs’ (NIAO, 2020).

<sup>82</sup> Ibid, at 2-4.

<sup>83</sup> Ibid, at 3.

<sup>84</sup> Ibid.

<sup>85</sup> Ibid, at 4.



- 3.53 The Department of Education is currently consulting on special educational needs regulations and code of practice. However, these proposals are focused on future provision of special educational needs in Northern Ireland, they do not address the impact of past and current failings by the Education Authority NI and the effect that this has had on the education and future prospects of the children affected to date, including the need for remedial support.
- 3.54 **The NIHRC recommends that a human rights based plan of action is developed in consultation with disabled children, their parents and carers, which identifies key measures to be implemented to ensure that every child has the supports they require to realise their right to education.**
- 3.55 **The NIHRC recommends that regular independent reviews of the effectiveness of the special educational needs system are carried out to ensure this system adequately supports children to realise their right to education.**
- 3.56 **The NIHRC recommends that immediate steps are taken to ensure that all children with special needs have timely access to a school placement.**
- 3.57 **The NIHRC recommends that effective remedial support is provided to all children with special educational needs that have been failed by the system up to now to ensure that they do not continue to be disadvantaged by past failings and will have the skills and support to avail of the same opportunities as children who will benefit from any reforms in the future.**

### **Educational needs of specific groups of children**

- 3.58 In 2016, the UN CRC Committee raised concerns that “substantial inequalities persist in educational attainment, particularly for boys, children living in poverty, Roma, Gypsy and Traveller children, children with disabilities, children in care and newcomer children”.<sup>86</sup>

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<sup>86</sup> CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016.

- 3.59 In 2019, the UN Special Rapporteur on Racism, Ms E Tendayi Achiume, following to her visit to the UK noted that “race and ethnicity continue to have a significant impact on educational outcomes”. The UN Special Rapporteur noted that in particular the “circumstances confronting Gypsies, Roma and Travellers are especially dire”.<sup>87</sup>
- 3.60 The number of Irish Traveller children enrolled in school has steadily increased over the last decade from 866 in 2009/2010 to 1088 in 2019/2020.<sup>88</sup> Although it remains lower than for the average school population (94 per cent), the attendance rate of Irish Traveller children has also steadily increased, currently at 74 per cent, which is up from 64 per cent in 2009/2010.<sup>89</sup> Approximately three quarters (77 per cent) of Irish Traveller children receive free school meals.<sup>90</sup>
- 3.61 The attendance rate of Roma children has steadily increased over the last decade and school enrolment has increased significantly.<sup>91</sup> In 2019/20, 705 Roma children were enrolled in school.<sup>92</sup> This is a significant increase from 2009/10 when there were only 30 children.<sup>93</sup> Attendance rate of Roma children is 79 per cent, which although is lower than the average school population (94 per cent), has steadily increased from 2009/10 (70 per cent).<sup>94</sup> Approximately one half (46 per cent) of Roma children receive free school meals.<sup>95</sup> Civil society organisations report that “low levels of engagement with education and discrimination are endemic within all countries where Roma feature, including Northern Ireland” and highlight the need for a careful and collaborative approach to encouraging inclusion.<sup>96</sup>
- 3.62 In 2019/20, there were 17,391 children from migrant families enrolled in schools in Northern Ireland, equating to 5 per cent of total school enrolments.<sup>97</sup> In 2019, the Department of Education issued a public consultation, ‘Supporting Newcomer Pupils’.<sup>98</sup> The NIHRC welcomed the

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<sup>87</sup> A/HRC/41/54/Add.2, ‘Report of the UN Special Rapporteur on Racism, E Tendayi Achiume, on her Visit to the United Kingdom’, 27 May 2020, at para 26.

<sup>88</sup> NI Statics and Research Agency, ‘Irish Traveller and Roma Pupils in Education 2019/20’ (DoE, 2020).

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Geraldine Scullion, ‘Guesses at inclusion: Collaborative Service Provision with Roma Communities’ (SBRT, 2015).

<sup>97</sup> Department of Education, ‘Newcomer Pupils 2001/02 to 2019/20’ (DoE, 2020).

<sup>98</sup> Department of Education, Public Consultation: Supporting Newcomer Pupils’ (DoE, 2019).

proposal to develop a new strategy.<sup>99</sup> The NIHRC specifically recommend that good practice relating to Roma and Syrian Vulnerable Persons Resettlement, such as EANI Support/Liaison Officers, is extended to support all Newcomer pupils.

- 3.63 As of February 2020, 1815 Syrian refugees have been resettled in NI through the Vulnerable Persons Resettlement Scheme.<sup>100</sup> A report by Barnardos' noted that education has been a broadly positive experience for most of the children resettled under this scheme.<sup>101</sup> However, a number of recommendations are identified including language support for parents to assist their involvement in their children's education.
- 3.64 **The NIHRC recommends that the attainment gap between at risk groups, such as Traveller children, Roma children, children from migrant families and resettled refugee children, is monitored and appropriate supports are put in place to ensure all children can fully enjoy the right to education.**

### **Academic selection**

- 3.65 In 2016, the UN CRC Committee recommended that the NI Executive "abolish the practice of unregulated admission tests to post-primary education in NI".<sup>102</sup>
- 3.66 In commenting on this concluding observation, the Minister of Education Peter Weir MLA stated that "on the issue of selection, I have made it clear that I support the right of schools to select on the basis of academic ability".<sup>103</sup>
- 3.67 In 2017, Department of Education's policy group on promoting inclusion and prosperity for all young people highlighted that the education system in NI was, "reflective of a divided society in terms of religious background, social class, ethnicity and disability" and that this social division is "evident in the continuing existence of a selective and non-selective post-

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<sup>99</sup> NI Human Rights Commission, 'Response to Department of Education's consultation on Supporting Newcomer Children' (NIHRC, 2019).

<sup>100</sup> Department for Communities, 'Syrian Vulnerable Persons Relocation Scheme Briefing Document' (DfC, 2020).

<sup>101</sup> Arlene Robertston, 'A New Life for Me: Integration Experiences of Syrian Refugee Children and their Families' (Barnardo's, 2020).

<sup>102</sup> CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at para 72(a).

<sup>103</sup> Letter from Minister of Education to NI Human Rights Commission, 2016.

primary system".<sup>104</sup> This report found that academic selection at 11 years old was "widely accepted as a major contributory factor in concentrating lower achieving pupils often from socially and economically deprived areas into a small group of 11-16 schools" and that "this concentration of disadvantage in some schools further exacerbates the negative influences of academic selection".<sup>105</sup> However, the report fell short of recommending abolition of academic selection, instead it recommended that capital expenditure should prioritise development proposals for new post-primary schools "only when they propose 11-19, non-selective and normally co-educational establishments".<sup>106</sup>

3.68 In 2019, Participation and the Practice of Rights issued a report stating that unregulated post-primary academic selection is damaging children's mental health.<sup>107</sup> The report contains five recommendations including that individual schools prioritise mental health and wellbeing care and safeguarding procedures for children undertaking transfer tests, for the monitoring of mental health impacts of transfer testing on children in schools and publishing the information annually.<sup>108</sup>

3.69 In 2020, a report by the Centre for Educational Underachievement in Stranmillis University College noted that the effects of academic selection in NI have not been thoroughly examined since a study in 2000. This report highlighted that "the international evidence is clear that both horizontal (sorting of pupils into different educational tracks) and vertical (grade repetition) forms of stratification in education systems magnify inequalities".<sup>109</sup>

3.70 As noted above, in 2018/19, 14.1 per cent of grammar school pupils were entitled to free school meals, compared with 39.2 per cent of non-grammar school pupils.<sup>110</sup> In 2018/2019, just 44.0 per cent of non-grammar school pupils entitled to free school meals achieved 5 or more A\*-C grade GCSEs (including equivalents) including English and

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<sup>104</sup> Department of Education, 'Report of the Strategic Forum Working Group on Inclusion and Poverty – Recommendations to Secure Improved Outcomes from Education' (DoE, 2017), at 14.

<sup>105</sup> Ibid, at 6.

<sup>106</sup> Ibid, at 23.

<sup>107</sup> 'Academic selection damaging children's mental health', *Irish News*, 28 June 2019.

<sup>108</sup> Participation and Practice of Rights, 'Could Make or Break a Child: The State of Human Rights and Academic Selection in Northern Ireland' (PPR, 2019).

<sup>109</sup> Leanne Henderson, Jonathan Harris, Noel Purdy and Glenda Walsh, 'Educational Underachievement in NI: An Evidence Summary' (CREU, 2020), at 6.

<sup>110</sup> Department of Education, 'Year 12 and Year 14 Examination Performance at Post-Primary Schools in Northern Ireland 2018-19' (NISRA, 2019), at 12.

Mathematics. This compares to 87.1 per cent of Year 12 free school meal entitled grammar school pupils. This is a gap of 43.1 percentage points.<sup>111</sup>

- 3.71 Overall, in 2018/2019, the proportion of Year 12 pupils in non-grammar secondary schools achieving 5 or more A\*-C grade GCSEs (or equivalent) including English and Mathematics was 54.8 per cent. This is an attainment gap of 40 percentage points compared with Year 12 pupils in grammar schools, 94.3 per cent of whom achieved 5 or more A\*-C grade GCSEs (or equivalent) including English and Mathematics.<sup>112</sup>
- 3.72 The NIHRC advises that the continued existence of a two tier education system in NI has a negative impact on the academic attainment of children from lower socio-economic backgrounds and this is amplified as a result of the continued unregulated post-primary academic selection and the prevalence of privately funded tutoring.
- 3.73 **The NIHRC recommends that a non-selective system of post-primary school admission is introduced in order to abolish unregulated post-primary selection in NI.**
- 3.74 **The NIHRC recommends that the health and wellbeing of children undergoing the testing process is monitored and comprehensive support is in place to mitigate any harm.**

### **Bullying in Schools**

- 3.75 In 2016, the UN CRC Committee recommended that the UK Government and NI Executive:
- a) Intensify its efforts to tackle bullying and violence in schools, including through teaching human rights, building capacities of students and staff members to respect diversity at school, improving students' conflict resolution skills, conducting regular monitoring of incidences of bullying at school, and involving children in the initiatives and monitoring aimed at eliminating bullying;

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<sup>111</sup> Ibid, at 29.

<sup>112</sup> Ibid, at 12.

b) In the light of the recommendations resulting from the day of general discussion on digital media and children's rights, train children, teachers and families on the safe use of information and communication technologies, raise awareness among children on the severe effects that online bullying can have on their peers, and increase the involvement of social media outlets in the efforts to combat cyber-bullying.<sup>113</sup>

3.76 In 2016, the UN CERD Committee urged the UK Government and NI Executive to "strengthen its efforts to eliminate all racist bullying and harassment in the State Party's schools" and to "ensure that schools comply with their public sector equality duty under... Section 75 of the Northern Ireland Act 1998 to challenge racist bullying and to promote respect for diversity, including through the training of educational personnel".<sup>114</sup>

3.77 Following her visit to the UK in 2018, the UN Special Rapporteur on Racism, E Tendayi Achiume, noted that "parents of racial and ethnic minority children have highlighted racially motivated bullying in schools, and the accompanying failure of teachers to openly condemn such acts as unacceptable".<sup>115</sup>

3.78 The Addressing Bullying in Schools (NI) Act 2016 introduced a statutory definition of bullying and introduced duties around preventing bullying and recording bullying incidents for all grant-aided schools, however this act has not yet been commenced. The Education Authority NI has produced a range of materials aimed at schools and Board of Governors to inform them of the legislation and duties.<sup>116</sup>

3.79 There is evidence that specific groups of children in NI feel particularly affected by bullying. For example, of 532 lesbian, gay, bisexual and transgender post-primary pupils surveyed in 2016, 255 (48 per cent) had experienced bullying as a result of their sexual orientation or gender

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<sup>113</sup> CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and NI', 12 July 2016, at para 48(a) and 48(b).

<sup>114</sup> CERD/C/GBR/CO/21-23, 'UN CERD Committee Concluding Observations on the Twenty-first to Twenty-third Periodic Reports of UK', 26 August 2016, at para 35(a) and 35(b).

<sup>115</sup> A/HRC/41/54/Add.2, 'Report of the UN Special Rapporteur on Racism, E Tendayi Achiume, on her Visit to the United Kingdom', 27 May 2020, at para 26.

<sup>116</sup> Education Authority, 'Addressing Bullying in Schools'. Available at: <https://www.eani.org.uk/school-management/policies-and-guidance/addressing-bullying-in-schools-act-2016>

identity, with 287 (54 per cent) feeling unsupported by the school and 239 (45 per cent) stating that school was not a safe place to be.<sup>117</sup>

- 3.80 Parents of black and minority ethnic children in NI have raised concerns about the response of schools when children are experiencing racist bullying, noting that school authorities are defensive and lack the willingness to address this racist bullying head on, which can have devastating consequences for the children affected.<sup>118</sup>
- 3.81 Evidence demonstrates that bullying has a damaging impact on children's enjoyment of the right to education and impacts on the educational attainment. This is particularly stark for lesbian, gay, bisexual and transgender children, disabled children, black and minority ethnic children, including Traveller and Roma children.
- 3.82 **The NIHRC recommends that the Addressing Bullying in Schools (NI) Act 2016 is commenced without delay and that the Department of Education monitor levels of bullying in schools across all vulnerable groups and review protected categories within the 2016 Act.**
- 3.83 **The NIHRC recommends that all schools put in place effective policies for addressing bullying and provide appropriate training to ensure that all staff, students and families understand this policy and ensure it is kept under review.**
- 3.84 **The NIHRC recommends that all children and teachers are effectively trained on the safe use of information and communication technologies. Information should also be made available for the purpose of supporting families and guardians to understand and promote the safe use of information and communication technologies within the home. The Department of Education should work with the Department of Health and Department of Justice for the purpose of developing and implementing effective steps aimed at raising awareness among children on the severe effects that online bullying can have on**

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<sup>117</sup> Public and Corporate Economic Consultants, 'Department of Education: Post Primary School Experiences of 16-21 Year Olds' (PACEC, 2016), at 3.

<sup>118</sup> Human Rights Consortium, Equality Coalition and Transitional Justice Institute, 'COVID Conversations – Black Lives Matter: Protest and Pandemic', 20 August 2020.

**their peers, and increase the involvement of social media outlets in the efforts to combat cyber-bullying.**

### **Additional considerations**

- 3.85 During a review of public administration, the Curriculum Advisory Support Service, a central training unit for teachers was scrapped. As set out above, there are a number of areas identified as requiring teachers to be provided with specialised training, including regarding human rights, inclusion, mental health and restorative practices. However, the removal of the Curriculum Advisory Support Service appears to have created a lacuna in terms of broad, high quality training for all teachers.
- 3.86 **The NIHRC recommends that there is an overall investment in high quality teacher training that ensures every teacher in Northern Ireland is trained on how to prevent and address the most common issues that can lead to educational underachievement and to identify cases when more specialised intervention is required and how to refer such cases.**
- 3.87 The Education Authority NI's Youth Service manages and operates a range of funding programmes to support the delivery of Youth Work Practice and the Youth Work Curriculum, with the aim of improving outcomes for children and young people in Northern Ireland.
- 3.88 **The NIHRC recommends a more linked up approach with the Education Authority NI's Youth Service and other such initiatives to ensure that funding allocation fully considers the reasons for educational underachievement and that funding provided for tackling this particular issue is efficiently and effectively directed.**

## **4.0 The Impact of COVID-19**

- 4.1 The ECtHR has made clear that when dealing with the protection of public health, the right to education can be limited in the pursuit of a legitimate aim, such as public health. Relevant authorities are required to take appropriate measures to ensure a serious and infectious disease is contained, to avoid risk of onward infection and to protect the health of students and teachers. However, such measures must be proportionate and the authorities have an obligation to act diligently and swiftly and



ensure restrictive measures only continue for the period strictly necessary and are lifted as soon as the reason for their imposition has ceased.<sup>119</sup>

- 4.2 Article 4 UN ICESCR clarifies that States may only subject the rights in the UN ICESCR to “such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society”.
- 4.3 In April 2020, the UN ICESCR Committee noted that “the pandemic has profoundly negative impacts on the enjoyment of economic, social and cultural rights, especially the right to health of the most vulnerable groups in society” and noted that the States must take action to mitigate these impacts in way that is consistent with their obligations under the UN ICESCR.<sup>120</sup> The UN ICESCR Committee noted that in many States where schools, colleges and universities were closed that important efforts were being made to mitigate these impacts, including moving to online teaching and learning models. The UN ICESCR Committee noted that such mitigations “carry the risk of deepening educational inequalities between rich and poor learners owing to unequal access to affordable Internet services and equipment such as computers, smart phones and tablets”.<sup>121</sup> While schools, colleges and universities are closed as a result of the pandemic, states are required to implement measures “to expedite access to affordable Internet services and vital technical equipment for all students, particularly those in poorer communities and regions, so that they can benefit equally from online learning programmes”.<sup>122</sup>
- 4.4 The UN Special Rapporteur on the Right to Education, Koumbou Boly Barry, raised concerns about the pandemic leading to an “education crisis” and the “widening of inequalities in access to education as a consequence of the closure of educational institutions and the social and economic crisis resulting from the pandemic”.<sup>123</sup> While noting that for “those children who were already performing well and benefit from good physical, social, economic and psychological conditions at home” and who have the support of teachers and access to digital learning platforms, the

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<sup>119</sup> *Memlika v Greece* (2015) ECHR 855, at para 55.

<sup>120</sup> E/C.12/2020/1, ‘UN ICESCR Committee Statement on the Coronavirus Disease (COVID-19) Pandemic and Economic, Social and Cultural Rights’, 17 April 2020, at para 2.

<sup>121</sup> *Ibid*, at para 7.

<sup>122</sup> *Ibid*, at para 7.

<sup>123</sup> A/HRC/44/39, ‘Report of the UN Special Rapporteur on the Right to Education, Koumbou Boly Barry, on the Impact of the COVID-19 Crisis on the Right to Education; Concerns, Challenges and Opportunities’, 15 June 2020, at para 22.

impacts of the COVID-19 may be limited.<sup>124</sup> However, the UN Special Rapporteur noted that for other children and young people, the pandemic will be an “accelerant of inequalities” and that “school closures have been devastating, with significant long-term repercussions on their right to education and lost opportunities for their futures”.<sup>125</sup>

- 4.5 The UN Special Rapporteur noted, in particular, that poor quality housing, digital exclusion, economic precarity and hunger are impediments to accessing education and these have been amplified by the pandemic.<sup>126</sup> She also highlighted that disabled children were left behind when schools closed, with no or little alternative significant provision put in place.<sup>127</sup> The UN Special Rapporteur also highlighted that educational structures have a pivotal role in ensuring appropriate safeguards are in place for vulnerable children, noting that “when education is suspended, many other services are too”.<sup>128</sup> In addition, the UN Special Rapporteur highlighted the impact of austerity and budget cuts in public education systems which have “weakened their capacity to cope with the education crisis and to ensure protection for all”.<sup>129</sup>
- 4.6 In order to redress this legacy of inequalities, the UN Special Rapporteur recommended that “States should, as a matter of urgency, adopt special, targeted measures, including through international cooperation, to address and mitigate the impact of the pandemic on vulnerable groups, as well as communities and groups subject to structural discrimination and disadvantage.”<sup>130</sup>
- 4.7 The disruption to education caused by COVID-19 has prompted a call from the NI Commissioner for Children and Young People to urge selective post primary schools against using academic selection for admitting pupils for 2021/2022.<sup>131</sup> In June 2020, the Catholic Principals' Association called for transfer tests to be scrapped until 2021.<sup>132</sup>

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<sup>124</sup> Ibid, at para 24.

<sup>125</sup> Ibid, at para 25.

<sup>126</sup> Ibid.

<sup>127</sup> Ibid.

<sup>128</sup> Ibid, at para 31.

<sup>129</sup> Ibid.

<sup>130</sup> Ibid, at para 84(e)

<sup>131</sup> Grainne Connolly, ‘Schools urged to avoid transfer tests after lockdown’, *Q Radio*, 27 May 2020.

<sup>132</sup> John Toner, ‘Coronavirus: Catholic heads call for suspension of selection tests in Northern Ireland’, *Belfast Telegraph*, 15 June 2020.

4.8 A number of grammar schools have announced they will not use academic selection for their 2021 intake.<sup>133</sup> However, the Minister of Education maintains that there is no "viable alternative to put in its place".<sup>134</sup> In evidence before the Ad Hoc Committee on the COVID-19 Response, the Minister of Education stated:

undoubtedly, there are inequalities in society, and, where we can, we have to try to mitigate them... If we move to a situation in which academic selection is removed, we move to a scenario in which it is much more likely that we will see the development of people with the ability to pay to go to the best schools. There are undoubtedly concerns about whether there is a level playing field... The issue is whether we take steps that will create a system in which that playing field becomes more level or it becomes something that, if we remove academic selection, the advantage of money makes more uneven.<sup>135</sup>

4.9 As part of the Independent Mechanism for overseeing the implementation of the UN CRPD, the NIHRC, along with the Equality Commission NI, held roundtables on the impact of COVID-19. During those roundtables, participants noted that when the schools closed the impact on children with special educational needs was severe, as overnight services were stopped and schools were unable to provide support for families, who were left isolated and unsupported at home.<sup>136</sup>

4.10 The right to education must be available, accessible, acceptable and adaptable.<sup>137</sup> Where schools are closed or children and teachers are required to self-isolate, alternative educational provision must be instituted which includes the provision of accessible teaching materials and IT facilities for all children, including those who would otherwise not have access to the necessary technology. Education must be accessible to all children especially those in the most vulnerable situations and where it is not possible for children to attend school, then appropriate technology should be provided to ensure no child is excluded by reason of socio economic status, disability or other protected ground. Acceptability

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<sup>133</sup> 'Five grammar schools will not use academic selection', *ITV*, 29 May 2020.

<sup>134</sup> Robbie Meredith, 'Transfer tests: Education Minister rejects test suspension call', *BBC News*, 19 May 2020.

<sup>135</sup> NI Assembly Hansard, 'Ad Hoc Committee on the Covid-19 Response – Ministerial Statement: Education – Peter Weir MLA', 21 May 2020.

<sup>136</sup> UN CRPD Independent Mechanism for NI Roundtable with Civil Society Organisations, 24 June 2020.

<sup>137</sup> E/C.12/1999/10, 'UN ICESCR Committee General Comment No 13: Right to Education, 8 December 1999, at para 6.

requires that the provision of education be appropriate for each child's needs including appropriate educational provision and support for children with special educational needs. Adaptability requires that education must be flexible to adapt to the different needs of students within their diverse social and cultural settings and be suitable to move between the classroom setting to home schooling where necessary.<sup>138</sup>

- 4.11 The NIHRC recommends that measures to control the COVID-19 pandemic are undertaken in a way to minimise harm to the education of children and focuses on ensuring that education is available, accessible, acceptable and adaptable. This includes ensuring minimal disruption and remedial provision for children in NI whose education has been affected by COVID-19, particularly children with special educational needs. This requires consideration of challenges that children may face due to disruption (such as access to equipment, access to internet, costs involved for increased time at home and reduction or suspension of special educational needs support) and taking effective steps to mitigate any negative impacts. This can include providing the necessary equipment, providing emergency funds to cover additional costs and putting programmes in place that ensure appropriate special educational needs support is provided within a home environment. It also includes ensuring mental health and wellbeing is included in the recovery curriculum and that this is supported by adequate long-term funding.**
- 4.12 The NIHRC recommends that special consideration is given to those children for whom 'home schooling' is difficult or impossible due to their circumstances and that consideration is given to prioritising education in a school environment for those children.**
- 4.13 The NIHRC recommends that in advance of any future school closures or implementation of blended learning that resources are put in place to ensure that all children have access to appropriate technology and access to a stable and secure internet connection.**

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<sup>138</sup> Ibid.

# Contact Us

**For queries, please contact:**

[Hannah.Russell@nihrc.org](mailto:Hannah.Russell@nihrc.org)

[www.nihrc.org](http://www.nihrc.org) | [info@nihrc.org](mailto:info@nihrc.org) | +44 (0)28 9024 3987  
4th Floor, Alfred House, 19-21 Alfred Street, Belfast, BT2 8ED