

## **Northern Ireland Commissioner for Children and Young People (NICCY)**

### **Submission to Universal Periodic Review (Third Cycle) of the United Kingdom of Great Britain and Northern Ireland.**

**Submission date: 22 September 2016**  
**For review in the 27<sup>th</sup> Session, April - May 2017.**

Equality House,  
7-9 Shaftesbury Square,  
Belfast BT4 3DU

[www.niccy.org](http://www.niccy.org)  
00 4428 9031 1616  
[Gillian@niccy.org](mailto:Gillian@niccy.org)

## Introduction

The office of the Commissioner for Children and Young People (NICCY) was created in accordance with 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003) with the principal aim to 'safeguard and promote the rights and best interests of children and young people'. In determining how to exercise the Commissioner's functions under the Order, in relation to any particular child or young person, the Commissioner's paramount consideration is for the rights of the child or young person. In exercising the functions under this Order, the Commissioner also has regard for the importance of the role of parents in the upbringing and development of their children and for any relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC). The current Commissioner is Koulla Yiasouma.

There are a total of four Children's Commissioners appointed in the UK, each with the role of addressing child rights violations in their respective jurisdiction: England, Northern Ireland, Scotland and Wales. In 2015 the four Commissioners published a shadow report as part of the UN Committee on the Rights of the Child's (CommRC) examination of the fifth periodic report of the United Kingdom and Great Britain.<sup>1</sup> In addition to hosting Task Force visits, and attending the Pre-sessional meeting with the Committee, the Commissioners also provided additional written evidence, including a full set of recommendations to the Committee,<sup>2</sup> prior to the examination in May 2016.

This submission draws on the evidence provided in these two papers and also the CommRC's Concluding Observations following examination of the UK Government's fifth periodic report. The UPR process is a timely opportunity to inquire about the UK State Party's plans to implement the relevant CommRC Concluding Observations.

Although this submission makes reference in several places to the situation facing children across the UK, its primary focus is the realisation of the rights of children in Northern Ireland. While the armed conflict may formally be consigned to the history books it continues to affect the lives of many in NI, particularly children and young people. For example, in the last 8 years, official statistics indicate that there have been 22 paramilitary-related murders and 787 paramilitary style attacks with over 3,800 people forced from their homes. Moreover, we know that that a great deal of conflict related violence and intimidation remains unreported. It is difficult to quantify how many children and young people are either directly or indirectly impacted by these incidents but have regular reports of children being threatened and assaulted including by appointment.

## Right or area: 2.1. Acceptance of international norms

(110.2). Consider an early ratification of the newest international human right instrument - the third Optional Protocol to the Convention on the Rights of the Child on a communication procedure (Slovakia)

(110.17). Protect the children and families of migrants and refugees, and accede to the ICRMW (Morocco)

The four UK Children's Commissioners have consistently recommended that the UK government ratifies the third Optional Protocol to the Convention on the Rights of the Child (UNCRC) on a communication procedure. This was included in our report to the UN Committee on the Rights of the Child's (CommRC) examination of the UK State party earlier this year.<sup>3</sup> The Committee has subsequently included the following recommendation in its *Concluding Observations* in June 2016:

*'The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.'*<sup>4</sup>

In addition, the CommRC recommended that other international human rights instruments should be ratified, including:

- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their families,
- The International Convention for the Protection of All Persons from Enforced Disappearance,
- The Optional Protocol to ICESCR, and
- The Optional Protocol to ICCPR

*This also addresses questions 110.4, 110.7 and 110.8 in 'Right or area 2.2 Reservations.'*

## Right or area: 5.2. Institutions and policies

(110.36). Adopt measures necessary to ensure the independence of the Commissioners in accordance with the Paris Principles (Costa Rica)

The UK Children's Commissioners 2015 report to the CommRC referred to constraints on their ability to carry out our remits by institutional arrangements,<sup>5</sup> notably due to the Children's Commissioner for England (CCE), the Children's Commissioner for Wales (CCfW) and the Northern Ireland Commissioner for Children and Young People (NICCY) being sponsored by government departments rather than being directly accountable to the legislatures and recommended:

'The State Party and the devolved governments should fully and expressly incorporate the Convention and its Protocols in their legislation.'<sup>6</sup>

The Commissioners' report also raised concerns in relation to a lack of response from the Northern Ireland Executive to two reviews of NICCY's legislation:

'In Northern Ireland there have been two reviews of the Commissioner's legislation (2006, 2013) and both recommended that, to be Paris Principles compliant NICCY should be independent of government and report to the Northern Ireland Assembly rather than a government department. Moreover, these reports identified critical constraints in the NICCY legislation that impact on the ability of the Commissioner to fully exercise her legal powers. The NI Executive has not implemented any of these recommendations or required changes. Further, NICCY's budget was cut by 23% between 2007-8 and 2013-14 with further cuts announced for 15-16 onwards.'

'The NI Executive should consider the 2006 and 2013 reports on the NI Commissioner for Children and Young People and amend the legislation accordingly.'<sup>7</sup>

The CommRC concurred with these points and made the following recommendation:

'With reference to the Committee's general comment No 2 (2003) on general measures of implementation, the Committee recommends that the State party further strengthen(s) the independence of established Children's Commissioners, in line with the Paris Principles, and enable them, inter alia, to receive and investigate complaints from or on behalf of children concerning violations of their rights.'<sup>8</sup>

## Right or area: 8. Non-discrimination

(110.39). Develop appropriate policies and targeted measures in ensuring genuine equality in accordance with the recommendation of the Committee on Economic, Social and Cultural Rights (Uzbekistan)

(110.49). Review national legislation to ensure equality and non-discrimination (Egypt)

(110.50). Continue stepping up its efforts in tackling discrimination and inequality for all its citizens (Indonesia)

(110.106). Adopt a strategy so that children of vulnerable groups are not excluded from the education system (Costa Rica)

The Commissioners addressed this issue in two key respects in the 2015 report to the CommRC. Firstly, we reported on the fact that children are not fully protected in UK law from discrimination in the enjoyment of their rights either due to their status as children or due to their parent/ legal guardian's membership of a particular group or status. Indeed, despite planning to introduce age discrimination legislation in relation to goods, facilities and services, the Northern Ireland Executive has stated that this will apply only to persons aged 16 or over.<sup>9</sup>

A second focus was on the negative stereotyping of young people across the UK:

'Older children are also impacted significantly throughout the UK by negative stereotyping. This was one of four critical priorities agreed by the UK Government and devolved governments in response to the 2008 Concluding Observations on which they would work together.; it has been repeatedly raised by children with the Children's Commissioner. (...) Despite this, it is the view of the Commissioners that this recommendation has been largely ignored.'<sup>10</sup>

The report recommended that:

'The State Party and devolved governments should provide equal legislative protection for children against age discrimination and remove all exemptions relating to children under their equality legislation unless these can be objectively justified. (...)

The State Party and devolved government should take action adequately to address the negative stereotyping of older children.<sup>11</sup>

The Committee supported the Commissioners' assertions and recommended that the State party 'consider the possibility of expanding legislation to provide protection of all children under 18 years of age against discrimination on the grounds of their age'.<sup>12</sup> In addition it recalled 'its previous recommendation that the State party take urgent measures to address the "intolerance of childhood" and general negative public attitude towards children, especially adolescents, within society, including in the media.'<sup>13</sup>

### Right or area: 12.7. Prohibition of slavery, trafficking

(110.72). Increase efforts to combat trafficking in persons, particularly to protect women and children (Spain).

The Commissioners' 2015 report to the CommRC provided evidence on developments in combating trafficking of children:

'Legislation has been brought forward across the UK to address the phenomenon of human trafficking, including the Trafficking and Exploitation (Scotland) Bill, the Modern Slavery Act 2015 and Human Trafficking and Exploitation (Further Provisions and Support for Victims) Act 2015 in Northern Ireland.

The NI legislation provides greater support for victims of human trafficking and exploitation and meets obligations set out in the Council of Europe Convention on Action against Trafficking in Human Beings. Of particular significance is the provision of an independent guardian with legal powers for all separated children subject to immigration control. The new Independent Guardian will contribute to a plan to safeguard and promote the future welfare of the child and assist in establishing contact with members of the child's family, where the child so wishes and it is in the child's best interests. It is intended that the provision will be in operation by the end of 2015 though regulations for the Act are yet to be introduced.'<sup>14</sup>

'Statutory independent guardians for all unaccompanied and separated children should be established throughout the state party.'<sup>15</sup>

The CommRC concurred with this and recommended:

‘With reference to its general comment No 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, the Committee recommends that the State party: (...) establish statutory independent guardians for all unaccompanied and separated children throughout the state party.’<sup>16</sup>

### **Right or area: 21. Economic, social and cultural rights - general measures of implementation**

110.103. Guarantee the enjoyment of economic, social and cultural rights, particularly in health, education and adequate housing (Cuba)

The Commissioners provided a significant amount of evidence in relation to children’s enjoyment of their economic, social and cultural rights, including in relation to health, education and adequate housing.<sup>17</sup> It is not possible to include this all in this submission, but additional information is provided in Appendix 1. In brief, the progressive realisation of these rights has been severely impacted by the UK State party’s policy of austerity, as outlined in the Commissioners’ 2015 report:

‘The Commissioners are very concerned that, due to budget cuts, statutory services are only focussing on delivery of their statutory duties. In practice, this means that funding is being withdrawn from many critical preventative and early intervention services that play an important role in the lives of vulnerable children.

The UK and devolved governments should routinely carry out child rights-based analyses of both budget and economic decision-making and processes and outcomes. Information on public finances should be made accessible and understandable, to enable scrutiny and wider engagement of civil society, including children.

As a matter of priority, the UK State Party should maximise the amount of resources available to protect children, especially those most in need, from the impacts of economic recession and austerity measures. The State Party and devolved governments should ensure that arrangements are in place to clearly set out how

resources are allocated to progressing children's rights and the eradication of child poverty.

All national and sub-national public spending and other resource decision-making must be carried out so as to prioritise the needs, rights and best interests of children, with a particular emphasis on children experiencing or at risk of poverty or social exclusion.<sup>18</sup>

### Right or area: 22.1. Right to an adequate standard of living - general

110.41 Set out a clear pathway to meet the goal of ending child poverty in the UK by 2020 as stated in the Coalition's programme for government (Norway).

110.42. Continue efforts in enhancing the welfare of all segments of society and protect their rights (Nepal).

110.101 Provide more resources for reforming the welfare system in order to make it better able to tackle poverty and worklessness, and reduce negative impact on social vulnerable groups (Viet Nam)

The Commissioners provided a significant amount of evidence in relation to the UK State Party's actions to address child poverty.<sup>19</sup> It is not possible to include this all in this submission, but in summary, the UK State Party has abandoned its commitment to end child poverty by 2020, and has removed the statutory duty placed on itself and the devolved institutions to deliver child poverty strategies towards this goal. In addition, The UK State party has made significant changes to the social security system, and the Commissioners provided evidence in this regard in their 'List of Issues' report:<sup>20</sup>

'The State party report on the List of Issues states that the changes to welfare payments aim to 'create a fairer system which incentivises work, reduces poverty and protects the most vulnerable'. In doing this, it has protected spending on some groups, particularly elderly people, and in doing so has been successful in reducing levels of pensioner poverty. However, it has failed to provide the same protections to children, to the point where the most recent projections suggest that absolute child poverty will rise from 15.1% in 2015-16 to 18.3% in 2020-21, and relative child poverty from 17.8% in 2015-16 to 25.7% in 2020-21.<sup>61</sup> The majority of these rises can be explained by a



sharp increase in poverty among families with three or more children. Household income inequality is also expected to increase with the 90:10 ratio (i.e. the ratio of income at the 90th percentile of the household income distribution to income at the 10th percentile) projected to increase from 3.8 to 4.2.<sup>21</sup>

A key feature of the changes to the social security system has been the introduction of stricter conditionality and sanctions. Sanctions are used much more frequently than in the past, with more than 290,000 issued in 2013, over double the level issued by programmes before 2010.<sup>22</sup> Their severity has also increased and conditionality is now applied to previously exempt groups such as lone parents and disabled people. Children's right to an adequate standard of living is not a key consideration in applying sanctions and conditionality as they are considered 'third parties', despite being directly affected by severe cuts to their household income. It is disappointing to note that the State party has not provided figures on the use of food banks to feed children, as this is a clear indication of the extreme hardship many families, and children, are facing.'

The CommRC made a number of recommendations in relation to children's standard of living, including:

'The Committee draws the attention of the State party to the Sustainable Development Goal 1, Target 1.2, on poverty reduction and urges the State party to:

- (a) Set up clear accountability mechanisms for the eradication of child poverty, including by re-establishing concrete targets with a set timeframe and measurable indicators, and continue regular monitoring and reporting on child poverty reduction in all parts of the State party;
- (b) Ensure clear focus on the child in the State party's poverty reduction strategies and action plans, including in the new "Life Chances Strategy", and support production and implementation of child poverty reduction strategies in devolved administrations;
- (c) Conduct a comprehensive assessment of the cumulative impact of the full range of social security and tax credit reforms introduced between 2010 and 2016 on children, including children with disabilities and children belonging to ethnic

minority groups;

(d) Where necessary, revise the mentioned reforms in order to fully respect the right of the child to have his or her best interests taken as a primary consideration, taking into account the different impact of the reform on different groups of children, particularly those in vulnerable situations...<sup>23</sup>

### Right or area: 30.1 Children: definition, general principles, protection

110.9. Incorporate fully, as a matter of urgency, the principles and provisions of the CRC into domestic law.

110.10. Take all measures necessary to fully implement the CRC (France)

The Commissioners' 2015 report to the CommRC provided evidence in relation to the incorporation of the UNCRC into domestic law:

'The UNCRC is not incorporated into domestic law in the United Kingdom. However, in Scotland and Wales there has been some progress towards incorporation since 2008. (...) While these are positive developments, they fall well short of incorporation of the Convention and they have not been mirrored in England or Northern Ireland.

In Northern Ireland there has been little progress since 2008. Few policies or pieces of legislation refer to the UNCRC, and only a very limited number of Child Rights Impact Assessments have been conducted. However, the development of a new Children's Strategy from 2016, alongside child rights indicators, offers the opportunity to consider incorporation of the UNCRC and implementation of the general measures. (...)

The Children's Commissioners are concerned at the lack of political commitment by the UK Government to domestic guarantees for human rights. The current UK government pledged commitment in their manifesto to repeal the Human Rights Act 1998 (HRA) which incorporates the European Convention on Human Rights into UK law, and replace it with a British Bill of Rights which, we believe, would be very likely to substantially dilute the protection that the HRA provides for children's rights in the UK. In Northern Ireland the Bill of Rights process, which is a key element of the 1998

peace agreement, has stalled, and there is no clarity on how this commitment will be implemented in the future.<sup>24</sup>

Our 'Recommendations' report published in May 2016 included the following:

'The UK and devolved governments should fully incorporate the CRC and its Protocols into their legislation. As an immediate and interim step, a statutory duty must be placed on all public bodies to have due regard to the CRC in planning and delivering services for children and young people. Governments should also work towards the incorporation of other Conventions, such as the UNCRPD, CEDAW and ICESCR, given their impact on children and young people.

There should be no diminution of children's rights protection in UK law. Any changes to human rights legislation in the UK must be underpinned by the following principles:

- all the protections in the Human Rights Act must be retained;
- any new British Bill of Rights should build upon, rather than reduce, the protection of the fundamental rights of all children in the jurisdiction without discrimination, it should also provide effective judicial remedies including through the European Court of Human Rights;
- the UK Government should ensure that any new proposals are developed through a consultative and democratic process in which children's Article 12 rights are fully respected.

The UK Government should meet the commitment in the 'Belfast/Good Friday' Peace Agreement 1998 to introduce a Bill of Rights for Northern Ireland which reflects the particular circumstances of Northern Ireland, incorporating relevant provisions of the CRC.<sup>25</sup>

The CommRC also reflected on these issues in its Concluding Observations, which contained the following recommendations:

'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.

### Right or area: 30.2 Children: family environment and alternative care

110.78 Reconsider its position about the continued legality of corporal punishment of children (Sweden).

110.79 Take measures to ensure the freedom of children from physical punishment in accordance with the Convention on the Rights of the Child (Norway).

110.80 Introduce a ban on all corporal punishment of children as recommended by the CRC and other treaty bodies (Finland).

This was addressed in the UK Children's Commissioners' 2015 report to the CommRC:

'Corporal punishment remains legal as a matter of domestic law in the UK in the family environment.(...) In Northern Ireland there are no plans to repeal Article 2 of the Law Reform (Miscellaneous Provisions) (NI) Order 2006 which provides for a defence of reasonable chastisement of a child to a charge of assault. Despite previous commitments in principle to legislate for children to be provided with equal protection from harm the Welsh Government has failed to introduce such a measure.

The State Party and the devolved governments should immediately prohibit all corporal punishment in the family and in all other institutions and forms of alternative care, including through the repeal of legal defences, and actively promote positive and non-violent forms of childrearing and behaviour management.<sup>26</sup>

The CommRC supported this recommendation in its Concluding Observations:

'With reference to its general comment No. 8 and its previous recommendations, the Committee urges the State party, in all devolved administrations, Overseas Territories and Crown Dependencies, to:

- (a) Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as “reasonable chastisement”;
- (b) Ensure that corporal punishment is explicitly prohibited in all schools and educational institutions and all other institutions and forms of alternative care;
- (c) Strengthen its efforts to promote positive and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, with a view to eliminating the general acceptance of the use of corporal punishment in child-rearing.<sup>27</sup>

### Right or area: 30.4 Juvenile Justice

110.94 Consider the possibility of raising the minimum criminal age and refrain from the practice of keeping children in custody (Belarus)

110.95 Consider the possibility of raising the age of criminal responsibility for minors (Chile)

The extremely low minimum age of criminal responsibility across the UK was raised by the Children’s Commissioners in our report:

‘The minimum age of criminal responsibility (MACR) remains very low across the United Kingdom, despite the Committee’s recommendations in its Concluding Observations of 1995, 2002 and 2008, and the statement in General Comment No 10 (para 32). In England, Wales and Northern Ireland the MACR is unchanged at 10, in Scotland it remains at 8 (...). The low age of MACR represents an infringement of Articles 37 and 40 UNCRC as it exposes children to a system that is inappropriate for their age and development.

The State Party should as a matter of urgency implement the Committee’s 2008 recommendation that it ‘[r]aise the minimum age of criminal responsibility in accordance with the Committee’s general comment No. 10, and notably its paragraphs 32 and 33’.<sup>28</sup>

## Right or area: 30.5. Children in armed conflicts

110.6 Consider withdrawing its declaration to Article 1 of the Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict, and raise the armed forces minimum recruitment age to 18 (Slovenia)

The UK Children's Commissioners have expressed support for the withdrawal of the UK State Party's declaration to Article 1 of the Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict, and have recommended that the armed forces minimum recruitment age should be raised to 18. The UN Committee on the Rights of the Child has also made a number of recommendations to the UK government on this issue, including that the State party 'consider(s) reviewing its position and raise the minimum age for recruitment into the armed forces to 18 years in order to promote the protection of children through an overall higher legal standard.'<sup>29</sup>

## Appendix 1: Assessment of children's enjoyment of economic, social and cultural rights, particularly in relation to health, education and adequate housing

### Child and adolescent mental health

The Commissioners' 2015 report to the CommRC provided the following evidence in relation to child and adolescent mental health in Northern Ireland:

'In 2008, the Committee's Concluding Observations recommended that 'additional resources and improved capacities be employed to meet the needs of children with mental health problems throughout the country, with particular attention to those at greater risk, including children deprived of parental care, children affected by conflict, those living in poverty and those in conflict with the law'.

Historically, Northern Ireland has been estimated as having a 25% higher rate of overall mental illness prevalence than England, possibly due to the legacy of the conflict, and transgenerational trauma.<sup>62</sup> In 2012, the five-year average rates of suicide in Northern Ireland were 4 times higher than England and Wales for 15–19 year olds and 17 times more for 10–14 year olds.<sup>30</sup> However, in 2013–14, only 7.8% of the total planned mental health expenditure was allocated to child and adolescent mental health services in Northern Ireland.<sup>31</sup> Recent austerity measures are likely to affect the already inadequate financing and investment in all tiers of Northern Ireland CAMHS.<sup>65</sup><sup>32</sup>

There are particular concerns for children who commit or are at risk of committing serious crime, and those with a history of prior abuse and neglect including CSA. Children who offend are in need of specialist teams providing intensive intervention for them, their parents/carers, and for staff in youth justice settings. However, there is a lack of CAMHS provision for this group (...). Children who have been sexually abused should be offered early intervention via CAMHS to decrease their trajectory into adult services. Services are struggling due to increased referrals and few staff which can result in some children being placed at increased mental health risk when earlier intervention could have prevented this.

Cuts to universal, preventative services and to youth service provision, will result in a

greater need for more significant CAMHS interventions. (...) Epidemiological evidence from Northern Ireland suggests that 20% of children will develop significant mental health problems.<sup>33</sup> Service providers across the State Party report an increase in the complexity and severity of problems amongst children and young people seeking support.<sup>34</sup>

The State Party and devolved administrations should invest the required level of funding in child and adolescent mental health services to meet the needs of children in need of such support, with particular attention to those at greatest risk, including disabled children, children deprived of parental care, children affected by conflict, trauma, abuse and neglect, those living in poverty and those in conflict with the law.

The State Party should invest in universal preventative and early intervention children's services, to prevent an increase in mental ill health among children.

Children with mental health needs are frequently being cared for in non-specialist settings. (...) Of serious concern is the continued use of adult psychiatric wards for children. (...) Children with mental health problems also continue to be inappropriately detained in police cells, and in Northern Ireland in the Juvenile Justice Centre. In England the Government has recently announced (May 2015) that it would be made unlawful to detain mentally ill children in police cells as a 'place of safety'. Age appropriate 24-hour community based services are needed for children to replace the use of police cells across the State Party. Careful consideration should be given to the potential risk that a decline in the use of police cells could have on an increase in the use of adult mental health wards.

Children with mental health needs should only be admitted onto adult mental health wards in exceptional circumstances. The State Party and devolved governments should be recording and monitoring such incidents to identify the required action, including the appropriate level of investment in age-appropriate inpatient services.

Children with mental health needs should not be held in police custody or pre-charge in youth justice custody. The State Party and devolved governments should legislate to prevent this and should simultaneously prioritise the urgent funding of timely assessments and age appropriate, 24 hour community-based services to replace the use of police custody.<sup>35</sup>



In the Commissioners response to the Committee's List of Issues in April 2016, a further point was raised in relation to CAMHS in Northern Ireland:

'The NI Government and the UK Government must address the trans-generational impact of the legacy of the conflict on children's mental health, including the impact of ongoing violence and intimidation, and ensure that affected children and their families have access to specialist support and services.'<sup>36</sup>

The CommRC provided detailed recommendations on child and adolescent mental health in its Concluding Observations:

The Committee recommends that the State party:

- (a) Regularly collect comprehensive data on child mental health, disaggregated across the life course of the child, with due attention to children in vulnerable situations, and covering key underlying determinants;
- (b) Rigorously invest in child and adolescent mental health services and develop strategies at national and devolved levels, with clear time frames, targets, measureable indicators, effective monitoring mechanisms and sufficient human, technical and financial resources. Such strategy should include measures to ensure availability, accessibility, acceptability, quality and stability of such services, with particular attention to children at greater risk, including children living in poverty, children in care and children in contact with the criminal justice system;
- (c) Expedite the prohibition of placement of children with mental health needs in adult psychiatric wards or police stations, while ensuring provision of age-appropriate mental health services and facilities;
- (d) Support and develop therapeutic community-based services for children with mental health conditions;
- (e) Review current legislation on mental health to ensure that the best interests and the views of the child are taken duly into account in cases of mental health treatment of children below the age of 16, in particular with regard to hospitalization

and treatment without consent.<sup>37</sup>

## Education

The Commissioners' 2015 report to the CommRC provided evidence in relation to a number of areas relating to education, including school exclusions, bullying, human rights education, relationships and sexuality education and segregated education and academic selection in Northern Ireland:

### School exclusions

'In Northern Ireland, NICCY is concerned at the use of 'informal exclusions' to manage children with a diagnosis of ASD or ADHD or with behavioural issues out of school wherein their parent or carer is asked to take them home early from school and bring them back the next day. Generally these exclusions are not recorded on the child's records as an exclusion and don't follow the formal procedures around suspensions.

### Recommendations

The State Party should:

- Use the disciplinary measure of permanent or temporary exclusion as a means of last resort only, and ensure that 'informal' and illegal exclusions do not occur. Mediation, restorative justice and input from professionals including educational psychologists and social workers should be used to reduce exclusions.
- Ensure that children who are able to express their views have the right to appeal, with legal advice and assistance and where appropriate representation provided for those without means, against their exclusion as well as the right, in particular for those in alternative care, to appeal to special educational needs tribunals.
- Ensure that alternative educational provision for excluded pupils begins promptly after exclusion and is of a high quality.<sup>38</sup>

### Bullying

'Bullying within education provision remains a serious and widespread problem across the State Party and is damaging children's successful engagement in learning. (...) Since the last examination of the UK by the Committee, cyber-bullying has been identified as an important emerging children's rights issue. (...) E-safety is being championed by a variety of charities and agencies who have identified it as essential.<sup>39</sup> (...) Surveys report high levels of cyber bullying experienced by children in the UK. A

2011 survey in Northern Ireland found that 15.5% of pupils in Year 6 and 17% of pupils in Year 9 have experienced cyber bullying in the last two months.<sup>40</sup> (...)

The Department of Education in Northern Ireland recently issued a consultation which is seeking to address bullying in schools by bringing forward legislation which will, amongst other things provide a legal definition of bullying. This will ‘encompass all forms of cyber-bullying between pupils occurring whilst they are ‘under the care, control or lawful authority’ of the school. While this is a positive step, challenges remain in relation to identifying occurrences, encouraging pupils to report these and determining precisely where the responsibility lies with regard to intervention. The Northern Ireland Executive has established an E-Safety Forum with the key aim of keeping children safe when they are in the digital world. However it has not yet implemented a cross-departmental e-safety strategy.

#### Recommendations

The UK State party and devolved governments should intensify their efforts to tackle bullying and violence in schools, including through teaching human rights, peace and tolerance and strengthen children’s participation in all matters of school, classroom and learning which affects them.

The UK State Party and devolved governments should ensure that digital competence and online safety is reinforced across the school curriculum as a whole.’<sup>41</sup>

#### Relationships and sexuality education

‘Children should be equipped with the knowledge and skills to protect themselves from sexual abuse and exploitation and to support the development of healthy sexual relationships as they approach adulthood. Younger children may not have the words to describe abuse or understand that it is wrong. Relationships and sexuality education is an effective means of building resilience of children and young people, ensuring that they have the knowledge to understand exploitation and know how to access help and advice. It is also important in helping children understand their own and others’ sexual orientation and to address discrimination and bullying against LGBT children. Despite this, across the UK schools are not obliged to provide teaching on relationships and sexuality. (...)

### Recommendation

Relationships and sexuality education must be provided by trained practitioners in every educational setting for all children, using a standard curriculum. This must be part of a holistic/whole-school approach that includes internet safety, abuse within the family, all forms of bullying and harassment, child protection and the getting and giving of consent.<sup>42</sup>

### Segregated education and academic selection

'In the 2008 Concluding Observations, the UN Committee recommended that the State Party take measures to address the segregation of education in Northern Ireland and to abolish academic selection i.e. the 11+ transfer test and ensure that all children are included in admission arrangements in post-primary schools. In 2015, the majority of pupils continue to attend schools which are regarded as being in the Protestant 'controlled' sector or the Catholic 'maintained' sector. Only 7 per cent of pupils attend integrated schools.<sup>112</sup><sup>43</sup>

In recent years, the Department of Education has focused on promoting shared education, which means that pupils continue to attend their own schools but are given the opportunity to participate in joint classes and activities with pupils from other types of schools. The Department recently launched a shared education bill seeking to provide a statutory definition of shared education and a power to encourage and facilitate shared education.<sup>44</sup> Moreover, considerable funding has been provided to develop new shared education campuses.

However, there are concerns about the quality of some shared education initiatives, the opportunity for all pupils to be involved and the sustainability of shared education. Ultimately, while shared education may facilitate more collaboration between schools, the overwhelming majority of pupils in Northern Ireland continue to attend 'separate' schools.

### Recommendation

The NI Executive should actively support, promote and develop a fully integrated education system. The provision of shared education should be carefully monitored and evaluated to ensure that it is delivered appropriately and that it fulfils its objectives. Direct engagement with children should be an integral component of this evaluation.

Two thirds of 10 and 11 year old pupils in Northern Ireland still sit a form of the transfer tests which will determine which post-primary school they will then attend. Two separate tests are in place: one used mainly by 'Catholic' grammar schools and a second by state (non-denominational) grammar schools. Despite opposition from the Department of Education to the tests, there does not appear to be any plans to end their use, although within the last 12 months some Catholic grammar schools have indicated they will no longer use academic selection as part of their entrance criteria.

#### Recommendation

The NI Executive must end the use of academic selection and replace it with a system that ends educational inequalities. Such a system can only be achieved through the full engagement of the whole of society, particularly children and their parents.<sup>45</sup>

### Adequate housing

The Commissioners provided the following evidence on adequate housing in their 2015 report to the CommRC:

'In her visit to the UK in 2013, the UN Special Rapporteur on the right to adequate housing summarised the effects of the housing market, provision and welfare changes on lower-income families.<sup>46</sup> Rising private rental costs (particularly in London), inadequate investment in social housing and welfare changes have led to the increased use of inappropriate bed and breakfast accommodation for families. (...)

#### Recommendation

The UK State Party should urgently address the need for adequate housing for lower-income families and end the use of inappropriate bed-and-breakfast style accommodation for families with children.<sup>47</sup>

## End notes

<sup>1</sup> CCfW, NICCY, CCE, SCCYP, (2015), Report of the UK Children's Commissioners to the UN Committee on the Rights of the Child Examination of the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland.

<sup>2</sup> CCfW, NICCY, CCE, SCCYP, (2015), UK Children's Commissioners' Recommendations May 2016 to the UN Committee on the Rights of the Child Examination of the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland.

<sup>3</sup> CCfW, NICCY, CCE, SCCYP, (2015), Report of the UK Children's Commissioners to the UN Committee on the Rights of the Child Examination of the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland.

<sup>4</sup> UN Committee on the Rights of the Child (2016) : UK State Party examination Concluding Observations 2016 paragraph 87.

<sup>5</sup> CCfW, NICCY, CCE, SCCYP, (2015) *Op cit*

<sup>6</sup> *Ibid* p 5

<sup>7</sup> *Ibid*.

<sup>8</sup> UN Committee on the Rights of the Child (2016), *Op Cit* para 15(a)

<sup>9</sup> CCfW, NICCY, CCE, SCCYP, (2015) *Op cit* p9.

<sup>10</sup> *Ibid*

<sup>11</sup> *Ibid* p10.

<sup>12</sup> UN Committee on the Rights of the Child (2016), *Op Cit* paras 22-3.

<sup>13</sup> *Ibid*

<sup>14</sup> CCfW, NICCY, CCE, SCCYP, (2015) *Op cit* pp17-8. It should be noted, that the regulations to establish the Guardianship service in Northern Ireland have not yet been passed, and the legislative requirements for this service to be in place by November 2015 have been breached.

<sup>15</sup> *Ibid*

<sup>16</sup> UN Committee on the Rights of the Child (2016), *Op Cit* para 77(b)..

<sup>17</sup> See for example: CCfW, NICCY, CCE, SCCYP, (2015) *Op cit* pp25-28, 33-34, 36-41.

<sup>18</sup> CCfW, NICCY, CCE, SCCYP, (2015) *Op cit* p6

<sup>19</sup> See for example: CCfW, NICCY, CCE, SCCYP, (2015) *Op cit* pp25-28, 33-34, 36-41.

<sup>20</sup> CCfW, NICCY, CCE, SCCYP, (2016), UK Children's Commissioners' response to the Replies of the United Kingdom of Great Britain and Northern Ireland to the List of Issues of the UN Committee on the Rights of the Child, p18.

<sup>21</sup> Browne, J., and Hood, A., (2016), 'Living Standards, Poverty and Inequality in the UK: 2015-16 to 2020-21', [London: Institute for Fiscal Studies].

<sup>22</sup> Watts, B. Et al, (2014), 'Welfare Sanctions and Conditionality in the UK', (York: JRF), p5.

<sup>23</sup> UN Committee on the Rights of the Child (2016), *Op Cit* para 70

<sup>24</sup> CCfW, NICCY, CCE, SCCYP, (2015) *Op cit* pp3-4

<sup>25</sup> Ref rec report: p5.

<sup>26</sup> CCfW, NICCY, CCE, SCCYP, (2015) *Op cit* pp18-19

<sup>27</sup> UN Committee on the Rights of the Child (2016), *Op Cit* para 40

<sup>28</sup> CCfW, NICCY, CCE, SCCYP, (2015) *Op cit* p42.

<sup>29</sup> UN Committee on the Rights of the Child (2016), *Op Cit* para 84

---

<sup>30</sup> Safeguarding Board for Northern Ireland (2014) *Annual Report for the Period 31 March 2014*. Available at <http://www.safeguardingni.org/sites/default/files/sites/default/files/imce/Annual%20report%20v2.0.pdf>

<sup>31</sup> See [http://www.mediafire.com/view/m7ut7demwwk2qz9/Age\\_GFS\\_Press\\_Release.docx](http://www.mediafire.com/view/m7ut7demwwk2qz9/Age_GFS_Press_Release.docx)

<sup>32</sup> Details at <http://www.dhsspsni.gov.uk/showconsultations?txtid=75128>

<sup>33</sup> See [http://www.rqia.org.uk/publications/rqia\\_reviews/rqia\\_reviews\\_2010.cfm](http://www.rqia.org.uk/publications/rqia_reviews/rqia_reviews_2010.cfm)

<sup>34</sup> NSPCC, Childline Review What's affected children in April 2013-March 2014, 2014

<sup>35</sup> CCfW, NICCY, CCE, SCCYP, (2015) *Op cit* pp25-28.

<sup>36</sup> CCfW, NICCY, CCE, SCCYP, (2016), UK Children's Commissioners' response to the Replies of the United Kingdom of Great Britain and Northern Ireland to the List of Issues of the UN Committee on the Rights of the Child..

<sup>37</sup> UN Committee on the Rights of the Child (2016), *Op Cit* para 60.

<sup>38</sup> CCfW, NICCY, CCE, SCCYP, (2015) *Op cit* p37

<sup>39</sup> See: <http://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/bullying-and-cyberbullying/>

<sup>40</sup> Details at: [http://www.deni.gov.uk/no\\_56\\_appendices\\_final\\_2011.pdf](http://www.deni.gov.uk/no_56_appendices_final_2011.pdf)

<sup>41</sup> CCfW, NICCY, CCE, SCCYP, (2015) *Op cit* p39-40

<sup>42</sup> CCfW, NICCY, CCE, SCCYP, (2015) *Op cit* p41

<sup>43</sup> Details at: [http://www.deni.gov.uk/index/85-schools/10-types\\_of\\_school-nischools\\_pg/16-schools-integratedschools\\_pg.htm](http://www.deni.gov.uk/index/85-schools/10-types_of_school-nischools_pg/16-schools-integratedschools_pg.htm)

<sup>44</sup> DE (2014) *Sharing Works: A Policy for Shared Education*. Bangor: DE

<sup>45</sup> CCfW, NICCY, CCE, SCCYP, (2015) *Op cit* p37-39

<sup>46</sup> Details at: <http://www.ohchr.org/EN/Issues/Housing/Pages/CountryVisits.aspx>

<sup>47</sup> CCfW, NICCY, CCE, SCCYP, (2015) *Op cit* p33.