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children's law centre

Children's Rights Change
Children's Lives

**SUBMISSION TO THE AD-HOC COMMITTEE ON A BILL OF RIGHTS
BY THE CHILDREN'S LAW CENTRE**

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ABOUT THE CHILDREN'S LAW CENTRE

1. The Children's Law Centre is an independent charitable organisation established in September 1997 which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and every child can achieve their full potential.
2. The Children's Law Centre is founded on the principles enshrined in the United Nations Convention on the Rights of the Child, in particular:
 - a. Children shall not be discriminated against and shall have equal access to protection.
 - b. All decisions taken which affect children's lives should be taken in the child's best interests.
 - c. Children have the right to have their voices heard in all matters concerning them.
3. The Children's Law Centre offers training on children's rights, we undertake research and make submissions on law, policy and practice affecting children and young people. We operate a legal advice/ information/representation service. We have a dedicated free phone legal advice line for children and young people called CHALKY and provide legal information through a young person's online platform known as 'REE' and provide legal advice to young people via Live Chat. We also undertake strategic litigation to vindicate children's rights.
4. The Children's Law Centre is grateful for the opportunity to make this submission to the Ad Hoc Committee on a Bill of Rights Human Rights.

INTRODUCTION

4. It should be the desire of every person in Northern Ireland to build a society in which all children can properly participate, where they are valued, their rights are respected and guaranteed without discrimination and where every child can achieve their full potential. There is no valid reason why that should not be the goal. Accordingly, any Bill of Rights should recognise that and reflect it. If a Bill of Rights is advanced that does not reflect that goal then not only will it fail its primary task, but it will fail the people of Northern Ireland. It would also be contrary to the Good Friday Agreement¹, paragraph 5 that requires safeguards: *"to provide that key decisions and legislation are proofed to ensure that they do not infringe the ECHR and any Bill of Rights for Northern Ireland"*.

¹ Strand One, paragraph 5 and Strand Three in relation to *"rights, safeguards and equality of opportunity"*

5. The Children's Law Centre unashamedly places the rights of children at the very heart of any proposed Bill of Rights. To date, the rights of children in Northern Ireland have received limited protection. There is no overarching recognition of what rights they should have. A Bill of Rights proposals should both mainstream children's rights and contain a dedicated children's rights provision with child specific rights. This is in line with the approach adopted by international human rights law, which includes instruments that deal exclusively with children's rights and general human rights treaties that contain specific children's rights provisions.
6. A Bill of Rights should reflect that children need protection. They need to be recognised as a group. Children are not 'mini-adults'. Individually and collectively children have needs distinct from and in addition to adults. A recognition of this needs to be included in a Bill of Rights.
7. The rights that children currently have face erosion. Northern Ireland is going through a period of substantial development. It will continue to go through that period for some time. This is due to the twin impact of Brexit and Covid-19. Further, Northern Ireland continues to mature as a society as it distances itself from the Troubles. A Bill of Rights that clearly and unequivocally sets out the values that are of critical importance to Northern Ireland should be developed. Such a list of rights will be a touchstone, both constitutionally and psychologically. As such it needs to recognise the rights of children and include them clearly and unequivocally.

THE AD-HOC COMMITTEE'S TERMS OF REFERENCE

8. As the Ad-Hoc Committee will be well aware, its terms of reference are "*to consider the creation of a Bill of Rights as set out in paragraph 28 of Part 2 of the New Decade, New Approach document*" ("NDNA"). That paragraph states that the Committee shall: "*consider the creation of a Bill of Rights that is faithful to the stated intention of the 1998 Agreement in that it contains rights supplementary to those contained in the European Convention on Human Rights (which are currently applicable) and "that reflect the particular circumstances of Northern Ireland"; as well as reflecting the principles of mutual respect for the identity and ethos of both communities and parity of esteem.*"
9. The Ad-Hoc Committee's terms of reference therefore require it to consider rights supplementary to those contained in the European Convention on Human Rights ("ECHR"). The CLC considers that it is, therefore, essential to appreciate that in order to prevent the erosion of rights the Bill of Rights is to constitute not only the ECHR but also these 'supplemental rights'.

THE APPROACH OF THIS SUBMISSION

10. The structure of this submission is:

- a. Issue One: Identifying the core rights that are not contained in the ECHR but which should be established in a Northern Ireland Bill of Rights from the perspective of children;
- b. Issue Two: The particular circumstances of children in Northern Ireland and how the UNCRC can benefit those children;
- c. Issue Three: Risks to children’s rights, including those posed by:
 - i. Brexit;
 - ii. post Covid-19 socio-economic impacts; and
 - iii. the ongoing ‘Independent Review of Administrative Law’;
- d. Issue Four: the uncertain position of the domestic impact of the ECHR due to the ongoing ‘Independent Human Rights Act Review’.

ISSUE ONE: CORE RIGHTS THAT COULD BE INCLUDED IN THE BILL OF RIGHTS

11. The terms of reference require the Ad-Hoc Committee to consider rights that are additional to those in the ECHR. The rights contained in the ECHR that are enforceable domestically as a result of the Human Rights Act 1998 are set out in Appendix A to this submission.
12. The Children’s Law Centre is very clear that any Bill of Rights should build upon the Human Rights Act 1998, particularly with regards to children and young people, and not diminish it in anyway. It is striking that in the ECHR there is no specific reference to children, except a reference in Article 5 that “*No one shall be deprived of his liberty save... the **detention of a minor**² by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority...in accordance with a procedure prescribed by law*”.
13. The Children’s Law Centre believes that a Bill of Rights should contain rights specific to children. This would include both mainstream children’s rights and dedicated provisions with child specific rights. This is in line with the approach adopted by international human rights law and general human rights treaties.
14. The UK government ratified the United Nations Convention on the Rights of the Child (“UNCRC”) as far back as 16 December 1991 and any Bill of Rights proposals for Northern Ireland must build on and increase the children’s rights protections already afforded by the UNCRC. It should not be left to courts to use the UNCRC as ‘interpretative’, which is the current height of the application of the UNCRC in law. The Children’s Law Centre highlights that in the Good Friday Agreement it was set out that when the Northern Ireland Human Rights Commission advises on the Bill of Rights they should be “*drawing as appropriate on international instruments and experience*”. The UNCRC would be an ‘appropriate international instrument’. It is also an instrument that the

² All emphasis is added save where it appears to the contrary

United Kingdom has, by ratifying the treaty, accepted that those standards should apply.

THE UNCRC

15. The UNCRC is celebrated as the most complete statement on children's rights ever produced, containing civil, political, socio-economic and cultural rights and is the most widely-ratified international human rights treaty in history. The UNCRC are the **minimum** standards signed up to by all but one country.
16. It is well known that the UNCRC contains general principles, including:
 - a. the right to enjoy all rights without discrimination (Art 2);
 - b. the requirement that the best interests of the child is a primary consideration in all matters concerning the child (Art 3);
 - c. the right of the child to life, survival and development (Art 6); and
 - d. the right of the child to be heard and have his/her views taken into account in all decisions concerning him/her (Art 12).
17. In addition, the UNCRC contains a number of important standards including:
 - a. the child's right to protection from all forms of harm (Art 19);
 - b. the right to health and health care (Art 24);
 - c. the right to an adequate standard of living (Art 27);
 - d. the right to education (Arts 28 and 29); and
 - e. the right to alternative care where the family is unable to provide for the child (Art 20).
18. Further, the rights of children with disabilities are recognised (Art 23) along with those of refugee children (Art 23) and those in conflict with the law (Art 37 and 40).
19. The UNCRC, therefore, provides a blueprint for the treatment of children which the UK government has already ratified, and it continues to inform domestic law and policy concerning children across the world.
20. In addition to the binding standards set down in the UNCRC, the Committee on the Rights of the Child ("CRC"), the expert international body with responsibility for monitoring its implementation, has laid down standards as to the application of the UNCRC with respect to the rights of the child:
 - a. in early childhood (Comment No 7, 2005);
 - b. in juvenile justice (General Comment No 10, 2007);
 - c. with respect to adolescent health (General Comment No 4, 2003), HIV/AIDs (General Comment No 3, 2003);
 - d. on corporal punishment (General Comment No 8, 2006) and
 - e. on the rights of children with disabilities (General Comment No 9, 2006) and
 - f. on the aims of education (General Comment No 1, 2003).

21. In addition, the Committee has set down in General Comment No 5 the obligations of states with respect to the measures necessary to implement the UNCRC.
22. Arising out of its long experience working exclusively with the law relating to children and their rights, commencing prior to the Belfast/Good Friday Agreement, the Children's Law Centre is of the view that the UNCRC should be adopted into the Bill of Rights to represent the rights of children. As set out above, this is the most comprehensive, considered and effective protection of the rights of children. It is entirely appropriate that the Northern Ireland Bill of Rights should incorporate these rights so that Northern Ireland's children can rely upon the effective and efficient protections to be contained in it.
23. If the UNCRC is brought into the Bill of Rights then it will be a force to improve outcomes for all children and young people in Northern Ireland. The UNCRC is the pre-eminent provider of children's rights in the world. Experience from across the globe has gone into forming and honing the UNCRC. It is therefore the proper starting point for children's rights.

RELATIONSHIP BETWEEN THE BILL OF RIGHTS AND THE PROGRAMME FOR GOVERNMENT

24. The Ad-Hoc Committee may be assisted with an interpretation of the particular circumstances of Northern Ireland by considering the Programme for Government.
25. The Children's Law Centre notes that in the NDNA document the parties agreed to publish, within two weeks of the restoration of the institutions, the fuller details of an agreed Programme for Government. Sadly, no such Programme has been published so it is necessary to rely upon the Programme set out in the NDNA document. That Programme includes the following elements:
 - a. Ending para-militarism, including ending the harm done by para-militarism;
 - b. Health and social care, including a greater focus on mental health;
 - c. Education, including delivering long term improvements in the quality, equity and sustainability of the education system where the educational experience and outcomes for children and young people are the most important factors;
 - d. Housing, including a focus on ensuring every household has access to a good quality, affordable and sustainable home that is appropriate for its needs;
 - e. Creating good jobs and protecting workers rights, given how this contributes to better health and wellbeing by tackling inequalities and combating poverty.

26. There is significant overlap between the Programme for Government and the UNCRC. This reinforces that the Bill of Rights should include the UNCRC because it will provide a touchstone for any decision taken to address the particular circumstances and issues that Northern Ireland faces.

ISSUE TWO: THE PARTICULAR CIRCUMSTANCES OF CHILDREN NORTHERN IRELAND AND HOW THE UNCRC CAN BENEFIT THOSE CHILDREN

27. As MLAs, members of the Ad-Hoc Committee will be well acquainted with the issues that face children in Northern Ireland. The members will not only receive information by way of briefings and meetings but the real plight of children in Northern Ireland will be brought home by the correspondence that each MLA receives and the casework that it generates in relation to their own constituencies.
28. The Children's Law Centre therefore wishes to contextualise how the various issues that the UNCRC addresses encapsulate the particular circumstances of Northern Ireland. All of the following information is about Northern Ireland. It is about how children live and develop in Northern Ireland and their day-to-day experiences. The information indisputably represents the particular circumstances of Northern Ireland.
29. The information set out below is not intended to be a fulsome exposition of all the issues facing children in Northern Ireland. Instead, it provides a brief outline of some of the core issues that affect children. The purpose is to demonstrate the fundamental need to protect children's rights in the Bill of Rights.

GENERAL PRINCIPLES

Non-discrimination

30. In Northern Ireland proposed legislation on age discrimination, which excluded children aged under 16 years of age, did not progress while the Assembly was suspended and has not been reintroduced. Children are therefore not protected from discrimination on the grounds of age and do not have any effective remedy against such discrimination. This is despite the fact that children in Northern Ireland continue to experience discrimination and stigmatisation. Data consistently shows that, for children living in poverty, inequality affects their education, housing, social environment and health outcomes. There is a widening gap between the health of children from affluent and deprived backgrounds, with mental health, overweight/obesity and dental decay indicators demonstrating worse outcomes for children from deprived backgrounds. There is also a widening gap in their educational attainment.
31. It cannot be considered acceptable for a child to be left behind or discriminated against. It should be a base right that each and every child should have the opportunity to reach their full potential.
32. The UNCRC addresses this issue through Article 2. That Article provides:

“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.”

33. The basis of that Article would ensure that all issues of discrimination would be contrary to the Bill of Rights. It is also supplemented by Article 30:

“In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.”

CIVIL RIGHTS AND FREEDOMS

Nationality

34. Plainly, issues of nationality abound in Northern Ireland. However, groups other than the traditionally referenced Unionist and Nationalist groups face issues based on their nationality.
35. There can be no excuse or justification for infringing a child’s rights due to their nationality. Yet this is frequently the case in Northern Ireland for the most marginalised groups.
36. The Roma community is *“routinely subjected to verbal and physical abuse and faces multiple discrimination, from barriers in accessing schools, housing and healthcare to restricted employment opportunities”*. Organisations working with Traveller children in Northern Ireland have highlighted on-going failures to protect their rights to health, education, an adequate standard of living and protection from violence. Travellers are the ethnic minority experiencing the poorest outcomes in relation to poverty, with high rates of unemployment and educational underachievement. The Northern Ireland Housing Executive acknowledges that *“Irish Travellers are **amongst the most disadvantaged and marginalised people living in Northern Ireland** and can face multiple deprivations in relation to health and well-being, housing, education, racism, mortality and discrimination”*. An organisation working with families who are migrants and children from minority ethnic communities has noted that bilingual children are often actively discouraged or prohibited from using their mother tongue in school and youth work settings as well as inadequate

protection from actual or threatened violence within and outside the home environment.

37. Although asylum matters remain under the remit of the UK Home Office, education, housing and health are all devolved. A 2019 survey of 70 asylum seekers in Belfast found that 88% of the asylum-seeking parents who responded could not afford basic food, clothing and expenditure such as transport, recreational activities and school trips. They reported feeling that an inability to fully participate in school and community life had a harmful effect on their children. The school uniform grant administered by the Education Authority was insufficient. Over one third indicated that they had been forced to change their child's school as a result of being relocated to different accommodation by the Home Office, causing disruption to the child's routine and relationships, and impeding integration. These families were forced to pay for the child's new school uniform as the uniform grant is only available once a year. In addition, fear of enforced relocation prevented children and their families from settling. Three quarters of parents reported that they experienced anxiety, isolation and depression or felt they could not cope with daily activities. In research with Syrian refugee children, they identified language barriers, shyness, racism and not feeling a sense of acceptance in their local communities as barriers to cross-cultural friendships and social participation.
38. The UNCRC addresses this issue in Article 8. That provides that "*States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.*"

Freedom of thought, conscience and religion

39. LGBT children and young people experience prejudice and discrimination in relation to their sexual orientation and/or gender identity. In a 2016 survey of LGBT young people in Northern Ireland, 73% of respondents reported that they had personal experience of verbal abuse as a result of their sexual orientation/gender identity and 22% reported physical abuse. In questions concerning life at home, 50% had experienced homophobic or transphobic attitudes from family members, compelling 26% to find accommodation elsewhere. In addition to negative responses in school, LGBT young people experienced homophobic attitudes displayed by staff and young people, as well as the privileging of heterosexual relationships, in youth work organisations.
40. Children whose personal sense of gender identity differs from the physical presentation of their bodies face severe emotional and psychological challenges which may begin in infancy and deepen as they reach puberty. Failure to understand their experience has a profound impact on all aspects of their lives. The key issues and challenges faced by transgender children in school include binary-gender classification and language/use of names. Transgender people report high levels of experienced prejudice and harassment.

41. Compulsory worship continues in Northern Ireland schools. Unlike in England and Wales, there is no legal requirement that school worship has a distinctly Christian character. But, given the ‘faith-informed’ nature of the Northern Ireland education system (including the faith-based composition of Boards of Governors), this is invariably how the law is understood. By treating Christian worship as the default, the current system favours one faith perspective over other religious and non-religious beliefs, presupposing that children will participate in religious activities unless their parents opt them out. This not only undermines the freedom of conscience of pupils and families who are not aware of the right to withdraw, but also indirectly requires those who do exercise this option to reveal information about what they believe in a way that could breach their right to privacy.
42. Article 14 of the UNCRC requires that:

*“1. States Parties shall respect the **right of the child to freedom of thought, conscience and religion.***

*2. States Parties shall respect the **rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.**”*

VIOLENCE AGAINST CHILDREN

43. The rates of children on the child protection register in Northern Ireland remain higher than in other UK jurisdictions. In Northern Ireland it is approximately 25% higher than in Wales and England and over double the rate in Scotland. The numbers in Northern Ireland are increasing, which indicates that strategies to prevent child neglect and abuse are not working. According to quarterly child protection statistics, 2,323 children were on the child protection register at the end of June 2020 (compared with 2,134 at the same time last year).
44. Vulnerable children require targeted support to ensure they have a healthy and happy childhood.

Sexual exploitation and abuse

45. There are serious concerns about current arrangements and practices regarding the prevention and detection of, and responses to, child sexual abuse. The majority of reported sexual offences continue to be committed against children. According to PSNI statistics for 2018/19, 3,547 sexual offences were reported and 2,041 (or around 60%) of these were against children under 18. This number is probably lower than it should be because research shows that under-reporting remains prevalent.
46. Online child sexual abuse has increased in scale and complexity. Children are groomed and coerced into sending self-generated imagery, and child abuse imagery is freely shared. Police data suggests that over 10,000 online child sex crimes were recorded across the UK in 2019/20. In Northern Ireland during this

period, 13% of police recorded sexual crime against children had an online element.

47. Article 19 of the UNCRC requires:

“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”

48. Further, Article 34:

“States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;*
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;*
- (c) The exploitative use of children in pornographic performances and materials.”*

FAMILY ENVIRONMENT AND ALTERNATIVE CARE

Family environment

49. In Northern Ireland, 16 and 17 year olds facing homelessness are supposed to be assessed under the UNOCINI (“Understanding the Needs of Children in Northern Ireland”) framework and the Regional Good Practice Guidance on Meeting the Accommodation Needs of Homeless 16-21 year olds. However, key issues include failure to assess young people in a timely manner and use of unregulated placements such as Bed and Breakfast or hostel accommodation. In addition to the inappropriateness of these placements, the type of supports available often do not meet the complex care and health needs of young people placed in such facilities.

50. In recent cases concerning the extent to which the duties of Health and Social Care Trusts to provide accommodation to a ‘Looked After Child’ and to a ‘child

in need' are satisfied by the provision of Bed and Breakfast accommodation the High Court noted that Northern Ireland legislation, unlike legislation in England and Wales, has not been amended to provide that a local authority has a duty to provide 'sufficient accommodation for looked after children' and considered the sufficiency duty is "*undoubtedly a matter worthy of debate in Northern Ireland when the availability of services and accommodation for children is under the spotlight*". The chair of the RQIA Board (which is responsible for inspecting and monitoring children's care homes and accommodation) has also drawn attention to the practice of placing children in unregulated accommodation, informing the Board that this "*problematic situation*" was "*verging on crisis*".

51. In addition, measures required to reduce homelessness and progressively guarantee all children stable access to adequate housing have not been addressed. The Department for Communities reported that, in the first six months of 2020, 2,899 children were classed as statutorily homeless, 25% of whom were aged 0-2 years. Children and young people have articulated the impacts of living in temporary accommodation, overcrowded conditions, hostels, of sofa surfing and homelessness, on their physical and mental health as well as their ability to learn, socialise and play. Analysis of Northern Ireland Housing Executive data indicates that the number of households facing homelessness and housing stress is increasing, as is the number of children in these households. At the end of December 2019, figures indicated that there were at least 20,021 children under the age of 18 years in households on the social housing waiting list (an increase of 5% since March 2018); at least 15,445 under-18s in households in housing stress (an increase of 13% since March 2018); and at least 13,122 under-18s in households with Full Duty Applicant homeless status (an increase of 15% since March 2018).

52. Article 27 of the UNCRC requires:

*"1. States Parties recognize the **right of every child to a standard of living adequate** for the child's physical, mental, spiritual, moral and social development.*

...

*3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to **assist parents** and others responsible for the child to implement this right and shall **in case of need provide material assistance and support programmes**, particularly with regard to nutrition, clothing and housing.*

53. Northern Ireland remains the only UK jurisdiction without a Childcare Strategy with legislative underpinning to provide childcare services to all who need them. It has been five years since a draft Childcare Strategy was produced for consultation and a new Strategy, which reflects changes in provision of family support and is fit for purpose, is long overdue. The 2019 Northern Ireland Childcare Survey with parents and childcare providers found that: the average cost of a full-time childcare place is £166 per week/£8,632 per year, which equates to 35% of the median household income before housing costs; 41% of parents (50% of lone parents) are using means other than their income - such

as savings, loans and/or credit cards - to pay their childcare bill; 50% of parents (63% of lone parents) report spending more than 20% of their income on childcare, with more than 1 in 10 lone parent households spending over half their income on childcare. The majority of parents consider there is a lack of sufficient, affordable childcare in their area. Families struggle to afford the childcare they need, with many experiencing financial hardship as a result. Lone parents experience greater challenges in accessing and affording necessary childcare, leaving families financially insecure and at risk of, or experiencing, in-work poverty. The current childcare infrastructure can present a barrier to getting into work and career progression, particularly for women who have caring responsibilities.

54. Article 18 of the UNCRC provides for the 'right to benefit from childcare' as follows:

*“3. States Parties shall take all appropriate measures to ensure that children of working parents have **the right to benefit from child-care services and facilities** for which they are eligible.”*

Children deprived of a family environment

55. Northern Ireland legislation and regulations concerning adoption and foster care remain outdated. Current legislation is over 30 years old. Foster care in Northern Ireland is still governed by 1996 regulations.
56. Lack of participation in the planning and review of their care has been reported by many children who do not feel comfortable attending review meetings, particularly younger children who are often either not included or not invited to attend. According to Department of Health statistics, only 57% of children in care for 12 months or longer were invited to attend their latest statutory review during 2017/18. The majority attended with only 12% who either did not attend or did not provide their views. Of the 43% who were not invited to attend, this was reportedly because 79% were considered too young to understand and fully participate in the process and 3% who could not engage due to the level of their disability. For organisations working with care experienced children, key areas where children's voices need to be more consistently encouraged, included and listened to are: about their placements, during their reviews, at the end of placement reviews, about their relationships with social care staff and the services they receive. This clearly demonstrates the need for children to have a right to have their voice heard when decisions are being taken about them. Clearly the vast majority of children want to be involved in decisions that are made about them.
57. Article 12 of the UNCRC reads as follows:

“States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the

child, the views of the child being given due weight in accordance with the age and maturity of the child.

*For this purpose, the child shall in particular be **provided the opportunity to be heard in any judicial and administrative proceedings affecting the child**, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”*

58. That Article would address the issue of children not being allowed to have their voice heard at a time when they are at their most vulnerable and powerless. It can be of significant benefit to a child’s personal identity to allow them to have a voice at that time.

59. Article 20 requires:

*“A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, **shall be entitled to special protection and assistance provided by the State.***

States Parties shall in accordance with their national laws ensure alternative care for such a child.

Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.”

Children of detained parents

60. Northern Ireland is the only jurisdiction in the UK that does not offer a specialist psychiatric in-patient Mother and Baby Unit. The deficiency is well recognised. A report published in October 2017 stated that the Health Minister was committed to reforming hospital and community services and achieving parity of esteem between physical and mental health services, including proposals for a specialised Mother and Baby Unit. However, nothing was done and a progress report published in January 2018 was silent on the topic of perinatal services and proposals for a MBU. On 9 April 2019 all political parties in Northern Ireland co-signed a ‘Consensus Statement’ urgently requesting “*the commitment of investment and ring-fencing of funds required to ensure women, babies, families and communities get the care and support they need and deserve*”. To date no MBU has been established, requiring new born and other babies to be separated from their mothers.

61. Article 9 of UNCRC states:

*“States Parties **shall ensure that a child shall not be separated from his or her parents against their will**, except when competent authorities subject to judicial review determine, in accordance with applicable law and*

*procedures, that **such separation is necessary for the best interests of the child**. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.*

In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned."

62. Article 9 therefore provides a comprehensive set of rights for a child who is separated from their parents. It provides a balanced and sensitive approach to the needs of the child and the wider needs of society. Again, no child should suffer because they are separated from their parents through no fault of their own. A child should only be separated if it is in their best interests.

Children in detention

63. The Criminal Justice (Children) (Northern Ireland) Order 1998 stipulates that a child should only be remanded in custody (awaiting trial or sentence) for public protection or if the alleged offence is serious. Inappropriate use of remand is a long-standing issue in Northern Ireland, particularly as the majority of those on remand are subsequently bailed and do not go on to serve a custodial sentence. The Northern Ireland Human Rights Commission Annual Statement 2019 cited this as an issue requiring urgent attention. Yet, in 2019/20, the proportion of those remanded in custody remained almost a third (32%): 95 of the 298 admissions to the Northern Ireland's Juvenile Justice Centre ("JJC"). Very few children in the JJC are actually sentenced to custody – in 2019/20, just 6 (2%) of the 298 admissions were sentence admissions. While the JJC sometimes holds children charged with/convicted of grave crimes, all 15 in custody during the most recent inspection in November 2017 "*were charged with low level offences of dishonesty and behavioural matters. Only a few were known to the PSNI as prolific offenders, but several had breached conditions of their bail or probation orders*".

64. Children are therefore being inappropriately detained in the JJC due to lack of alternative accommodation. A high proportion are admitted under Article 39 of the Police and Criminal Evidence (NI) Order 1989 (“PACE”), which was amended in 1998 to include the JJC as a ‘place of safety’ after arrest. Previous inspections have noted that these placements are used to remove disruptive children from care homes; in the absence of alternative accommodation “*when they presented chronic social problems*”; and because there was no alternative accommodation available. The most recent inspection, conducted in November 2017, noted that “*half of the children admitted to the JJC on PACE were released within 48 hours. Many only remained in the JJC for a matter of hours, which **suggested custody was not used as a last resort**, but because there was no alternative accommodation available at the time of their court appearance*”, with “*a clear pattern of increased PACE admissions at weekends*”. In addition to having implications for staff deployment, the Inspectorate repeated previously noted negative consequences including: “*possible diversionary disposals being bypassed; disruption to the JJC regime; the deterrent value of the JJC being lost; and the personal **impact on a child, which could be significant***”. Despite the JJC routinely challenging police officers when they enquired about a PACE admission to ensure more appropriate placements had been explored, and an inter-agency group reviewing the operation of PACE procedures and bail conditions for children, the Inspectorate stated: “*it is highly unlikely that the PACE problem will ever be completely eradicated **unless legislation is changed***”.
65. It is clear from the available data that Looked After Children are over-represented in custody. In 2019/20, 154 of the 298 admissions to the JJC (52%) were Looked After Children - 49 of the 126 individual children in custody during the year (30 were subject to a Care Order, 19 were voluntary accommodated). Contact with the justice system for young people in residential care has been an issue of particular concern. Young people in care highlight differences in the response of care home staff to their behaviour compared with the response of parents to similar behaviour on the part of children living at home. Many state that parents would not call the police if a young person hit their sibling or broke furniture deliberately - the young person would be told off, and there would be consequences, but the police would not be called. This suggests a clear difference in the behaviour of the ‘corporate parent’. Young people in care want to see a different approach to challenging behaviour, and for staff in children’s homes to be trained to manage these behaviours with more honest, transparent and respectful approaches. A criminal justice disposal, whether a prosecution or a diversion, should not be regarded as an automatic response to offending behaviour by a looked after child. The 2011 Youth Justice Review recommended that “*looked after children should no longer be placed in custody, either through PACE, on remand or sentenced, where this would not have been an outcome for children in the general population*”. However, latest figures demonstrate that the proportion of admissions to the JJC who were ‘looked after’ increased from 36% in 2015/16 to 52% in 2019/20.
66. There is also an over-representation of Catholics in custody. The Criminal Justice Inspectorate noted in 2018: “*It is concerning that, as well as the actual number of Catholic children admitted, their proportionate representation had*

increased steadily in recent years: from 57% in 2013-14 to 76% in 2016-17". During 2019/20, of the 126 individuals in custody 67% self-identified as Catholic; 13% as Protestant; 2% had other religions and 6% had no religious belief.

67. Alongside the right against discrimination, the UNCRC provides at Article 25 that:

"States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement"

68. Article 37 is of critical relevance:

"States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."

69. Article 40 also requires proper protections for a child who is involved with the criminal justice centre while balancing the need for society to deal with offenders:

"1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental

freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

- (i) To be presumed innocent until proven guilty according to law;*
- (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;*
- (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;*
- (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;*
- (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;*
- (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;*
- (vii) To have his or her privacy fully respected at all stages of the proceedings.*

*3. States Parties shall **seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children** alleged as, accused of, or recognized as having infringed the penal law, and, in particular:*

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”

DISABILITY, BASIC HEALTH AND WELFARE

Children with disabilities

70. Disabled children experience differential adverse treatment in access to health, social care and education. This has only been highlighted and exacerbated during responses to the Covid-19 pandemic.
71. Further, disabled children do not access their rights on an equal basis to their non-disabled peers. These inequalities have been highlighted and exacerbated during the response to the Covid-19 pandemic, with differential adverse treatment being experienced by disabled children in access to health, social care and education. Resources have been diverted away from disabled children. This detrimentally impacts their ability to make life choices or be heard in critical decisions affecting them.
72. Children with disabilities do not have the same access to play. Whilst some progress has been observed at local authority level, many disabled children are denied their right to play due to a lack of suitable play opportunities and/or attitudinal barriers. A survey undertaken in 2019 with 424 Northern Ireland families of children with a disability found that, in over half, the child was unable to play as often as they would like. The most significant issues identified by families included: lack of inclusive play equipment; lack of appropriate toilet/changing facilities; the travel distance required to access inclusive play opportunities; and the negative attitudes of other play park users.
73. Article 23 UNCRC requires:
- “1. States Parties recognize that a **mentally or physically disabled child should enjoy a full and decent life**, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.*
- 2. States Parties recognize the **right of the disabled child to special care** and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child’s condition and to the circumstances of the parents or others caring for the child.*
- 3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and 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.

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries."

Mental health

74. In 1999 the Chief Medical Officer estimated that more than 20% of young people in Northern Ireland are suffering "*significant mental health problems*" by their 18th birthday. On 19 October 2020 the BBC reported³ that a survey commissioned by the Health and Social Care Board found:
- a. anxiety and depression is 25% more common in children and young people in Northern Ireland compared to other parts of the UK;
 - b. one in eight children and young people in Northern Ireland experience emotional difficulties. This is approximately 50% higher than in England;
 - c. one in eight meet the criteria for common mood and anxiety disorders;
 - d. one in 20 young people aged between 11 and 19 display symptoms of post-traumatic stress disorder (PTSD) or complex PTSD;
 - e. one in 10 young people aged 11-19 years old have self-harmed;
 - f. about one in eight have thought about or attempted suicide. 6.6% of the more than 3000 surveyed had made a plan to commit suicide and 3.5% had made an attempt to commit suicide.
75. Researchers found wide range of child, family and socio-economic factors, including exposure to family trauma, adversity, poor health and disability, special educational needs, household in receipt of social security benefits and parental mental health were associated with the increased levels of depression and anxiety disorders.
76. Organisations working with young people have reported an increase in the numbers requiring crisis intervention support as well as mental health support, both in emergency and non-emergency situations, where they have been

³ <https://www.bbc.co.uk/news/uk-northern-ireland-54601580>

unable to access vital services. In 2018, the Northern Ireland Commissioner for Children and Young People published a comprehensive review of mental health services and support for children, which highlighted a range of issues regarding access to timely and effective mental health support. The system was demonstrably under significant pressure, finding it difficult to respond to the scale of need and complexity of issues presented by children and young people in a context of chronic under-investment and historical patterns of funding allocation not based on known mental health needs. This affects the availability, accessibility and quality of services provided. Although 27% of children and young people identify as having had mental health issues, the Child and Mental Health Service (“CAMHS”) budget in Northern Ireland is only about 9% of the total mental health budget. The rate of admissions to CAMHS is 40 per 100,000 children aged 0-18 years, the second highest rate in the UK.

77. There is no dedicated in-patient facility for children with drug and alcohol issues in Northern Ireland. The Regional Adolescent CAMHS inpatient unit (a hospital with a capacity of 33 beds, including 2 intensive care beds) is not permitted to treat young people with drug and alcohol related issues unless they have a diagnosable mental health condition.
78. Finally, children with learning disabilities and co-occurring mental health needs are delayed discharge patients - medically fit to leave, they remain in a children’s in-patient facility for 12-17 year olds, sometimes for years. The concern is not only that children are detained in an unsuitable setting when they should be discharged to appropriate accommodation, but also that detention may persist until they are no longer children without clear transition arrangements for them as young adults. There is a lack of appropriate accommodation throughout Northern Ireland for children who require support and management due to their mental health or disability. Although policies may exist, they remain aspirational and are not translated into actual action and change. This ignores the fact that the children’s rights involved are absolute in nature and the absence of such action and change imposes real suffering and/or long term disadvantage.
79. In communities where paramilitaries continue to have influence, young people whose alleged ‘anti-social’ behaviour has brought them to the attention of paramilitaries often feel pressured not to speak out or seek help, while worrying that they may still be under threat. Some of those who have received threats or been physically assaulted by paramilitaries report feeling angry, living in constant fear, not leaving their home, and being suicidal. Paramilitary attacks are obviously traumatic for children who are victims and/or witnesses.
80. Article 24 UNCRC states:

*“1. States Parties recognize the right of the child to the enjoyment of the **highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.** States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.*

2. States Parties shall pursue **full implementation of this right** and, in particular, shall take appropriate measures:

- (a) To diminish infant and child mortality;
- (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- (c) To combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
- (d) To ensure appropriate pre-natal and post-natal health care for mothers;
- (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
- (f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.”

Standard of living

- 81. Children continue to experience discrimination and stigmatisation. Children living in poverty experience poorer education, housing, social environment and health outcomes. There is a widening gap between the health of children from affluent and deprived backgrounds. For example, mental health, overweight/obesity and dental decay indicators demonstrate worse outcomes for children from deprived backgrounds.
- 82. The eradication of child poverty has not been addressed. In Northern Ireland, despite targets set in the Child Poverty Act 2010 to eradicate child poverty by 2020, and a now outdated Child Poverty Strategy 2016-2019, numbers of children living in poverty remain unacceptably high. With a 5% rise compared with the previous year, 24% of children (107,000) were living in relative income poverty and 21% in absolute poverty during 2018/19 according to Department for Communities data published in May 2020. Regressive welfare reforms (which disproportionately affect large families and lone parents), have led to unprecedented levels of Universal Credit declarations, the proliferation of food banks, and a 122% rise in the number of food parcels given to children.

83. Article 27 UNCRC strikes a good balance. It places the primary obligation on the parent and those with parental responsibility for the child. It is only where those individuals cannot meet those needs that the State is under an obligation to ensure the child has an adequate standard of living.

*“1. States Parties recognize the **right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.***

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.”

EDUCATION, LEISURE AND CULTURAL ACTIVITIES

Education

84. In terms of educational attainment, data for 2017/18 demonstrated:
- a. children who had been in care continuously for 12 months or longer when compared to children who had not been in care for that period were:
 - i. four and a half times more likely to experience Special Education Needs;
 - ii. were significantly less likely to achieve higher than a C grade at GCSE;
 - iii. were around five times more likely to be suspended from school;
85. Further, care leavers aged 16-18 years were fifty times more likely to leave school without any qualifications.
86. For Traveller children, inequalities span their lifetime. In terms of education, they are more likely to be excluded from school, have lower school attendance, be the victim of bullying, and leave without qualifications. Roma children

generally have limited pre-school experience and many do not speak English when they first attend school. However, they have reported that too much emphasis is placed on learning English at the expense of other subjects, with children being discouraged from speaking their own language in school. Some consider that negative assumptions are made about the ability of Roma children, who are treated differently and given easier work. Many stop attending post-primary school before the school leaving age and few go on to Further Education.

87. Care experienced children and young people have highlighted how negative experiences of mainstream education are exacerbated by learning difficulties not being identified, problems experienced while they are in care not being understood by teachers, a restrictive learning environment and negative adult/child relationships in schools where challenging behaviour may lead to suspension or expulsion.
88. A particular issue is provision for children who may not receive education at school for a period of time, particularly where they may already be disadvantaged by having special educational needs. Such children may, as a result of their condition, be unable to attend school on an unpredictable (albeit frequent) basis. According to guidance issued by the Department of Education in September 2014 for the minimum requirements in relation to Article 86, pupils had an entitlement to the full provision of their SEN to be delivered over 22 hours. However, the practice was for 5 hours per week, to be commenced after 20 days of absence. This is so irrespective of whether the child has a statement of Special Educational Needs (“SEN”) imposing an absolute duty on the authority to provide the specified services. Those occasions were unpredictable, as was her period of absence. There is therefore a concern, noted by the Northern Ireland Commissioner for Children and Young People in a 2017 Educational Inequalities and Inclusion Position Paper, over the adequacy of education for children who cannot attend school due to illness, mental health issues, suspension or expulsion.
89. This extends to a lack of support for children and young people with health needs, who are being taken out of school to attend appointments or are unable to participate in wider school curriculum activities; missing out on education and socialisation with peers due to their health needs. The State of Child Health 2020 report noted that children with long term conditions are more likely to develop mental health problems and may have poorer education outcomes. It is therefore important that these children remain in education as much as possible, with health services working together to co-ordinate care appointments in a ‘one stop shop’ model (particularly where a number of specialists are involved), and those subject to a Health Care Plan are managed appropriately within the context of the Department of Education’s New School Day Guidance regarding re-opening of schools during the covid-19 pandemic.
90. Deafness is not a learning disability, yet deaf children are at risk of falling a whole grade behind their hearing friends. Research shows that every category of deafness, including mild hearing loss, has a negative effect on educational attainment. According to Department of Education data from 2017/18, only 48%

of deaf school leavers obtained 5+ GCSEs at grades A*-C2 including English and Maths, compared to 71% of the total school population: an attainment gap of 23%. In 2014/15 this gap was 18%, so the situation has worsened in the intervening years. The majority (91%) of deaf children are born to hearing parents, most with no experience of deafness. 78% of deaf children in Northern Ireland attend mainstream schools where they may be the only deaf child. When early identification of deafness is followed quickly by high quality specialist intervention, deaf children can achieve the same outcomes as other children. A key intervention is the Teacher of the Deaf service, providing specialist support for families in the early years and helping to ensure that deaf learners in school have full access to the curriculum. Without this support, deaf children are more likely to struggle at school, experience mental ill health and have fewer employment opportunities. However, a 2019 report by the Consortium for Research into Deaf Education on educational staffing and service provision for deaf children found that the number of qualified Teachers of the Deaf in employment fell by 11% over the past year and has fallen by 28% since an initial survey in 2011.

91. The number of children with SEN who require specialist provision is increasing each year. There are not enough specialist placements available to accommodate these children and their needs. While some children with SEN can attend mainstream schools, this is not an appropriate placement for all (especially given the current lack of inclusive provision). Between October 2019 and September 2020, 242 SEN placement issues were raised on the advice line of the Children's Law Centre. Increasing numbers of children with SEN, alongside more parents and children being aware of their rights, has led to an increase in the number of parents and schools applying for statutory assessments and seeking statements of SEN. However, the Education Authority does not have the capacity to cope with this increased demand. A constant backlog causes further distress to the child and their family as they are unable to access the help they need for long periods of time. The Education Authority timeframe for carrying out a statutory assessment should be 26 weeks maximum. But the process has been subject to extensive delays, with further delays being caused by inadequate statements being produced and parents having to apply for appeals/tribunals. Out of 1,861 education-related queries to the advice line of the Children's Law Centre over the last year, 598 were regarding statements of SEN. These long-term systemic failures, due to chronic underfunding of Children's Services as well as operational deficiencies, have created barriers to inclusion and resulted in reduced access to education for children with SEN and disabilities. The system is predominantly based on resource-centred, rather than child-centred, decision making. These concerns were clearly illustrated in a 2020 review by the Northern Ireland Commissioner for Children and Young People of SEN provision in mainstream schools, 'Too little, too late: A rights based review of Special Educational Needs provision in Mainstream Schools'.
92. Refugee and asylum seeking children often experience severe disruption to their learning, which continues as they resettle in a new country. They also experience many Adverse Childhood Experiences - widely recognised as having potentially harmful and long-term impacts, including on educational

outcomes. Research conducted with Syrian refugee children and their families outlines some of the challenges they face. It highlights that schools are often poorly equipped to meet the specific needs of refugee students, who may arrive with substantial gaps in their knowledge due to interrupted or no previous experience of education. Although they value education, children with limited or negative experiences of school in transition countries (including physical punishment or racial discrimination) may be understandably apprehensive. Some worry about being unable to make friends or communicate their needs to teachers due to language barriers. A number of factors can impact upon a child's engagement with education, including the time of year they arrive and their educational needs. In particular, placements in Special Schools can take longer to secure, especially if a child has complex medical needs. The research found that support for refugee children varies considerably, particularly when addressing language barriers - while some schools have specialist programmes or bi-lingual units, provision in others may involve little more than one hour of additional English classes a week. Differing approaches to support and placement of refugee children result in a postcode lottery in terms of their educational experiences. Illustrating difficulties for older young people, a young man was initially informed that he was not eligible for a student loan or grant due to his asylum seeking status.

93. Education is addressed in Articles 28 and 29 of UNCRC:

“Article 28

*1. States Parties recognize the **right of the child to education**, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:*

- (a) Make primary education compulsory and available free to all;*
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;*
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;*
- (d) Make educational and vocational information and guidance available and accessible to all children;*
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.*

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching

methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;*
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;*
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;*
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;*
- (e) The development of respect for the natural environment.*

2. No part of the present article or Article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State."

LEGACY AND CONFLICT

- 94. The legacy of the Troubles is unequivocally part of the circumstances of Northern Ireland. It is a significant and destructive problem that casts a shadow over many aspects of a child's life. The impact of the Troubles on children and young people is very real, even though they were not alive during the Troubles.
- 95. As a society transitioning from conflict, a number of specific circumstances pertain in Northern Ireland which have an impact on the safety of children and young people. Threats, intimidation, exiling and physical attacks against young people accused of 'anti-social behaviour' by paramilitary organisations continue, particularly in economically deprived areas associated with high levels of conflict-related violence. Lack of disaggregated data collection and monitoring means that the real extent of this issue is under-estimated. PSNI statistics for the year January to December 2019 show that there were 67 recorded casualties of 'paramilitary-style' assaults, of which 5 were aged under 18 years. An additional issue is Loyalist paramilitary involvement in racist violence and intimidation. During consultations, young people in both Republican and Loyalist communities have confirmed reports of activity by non-state forces, with recruitment to paramilitary organisations often occurring through coercion or in lieu of drug debts. Research with 16-25 year olds in three

different locations found that the most marginalised young people, with complex lives and unaddressed needs, are at most risk of paramilitary violence and exploitation. In addition to young people actually being assaulted, the media has highlighted the trauma experienced by other children who witness paramilitary style attacks. Some individuals and families are also excluded from their communities as a result of paramilitary intimidation.

96. The casework of organisations working with young people indicates that conditions exacerbated by the use of drugs and alcohol are becoming increasingly severe. Many young people targeted in the communities where paramilitaries retain power are either drug users or low level drug dealers. Rather than ridding communities of drugs, young people have argued that paramilitary threats and attacks can lead to increased drug and alcohol use to help them cope with their fear. High numbers of young people in the relatively recent past have been victims of paramilitary punishment beatings or shootings. Between 1988 and 2002 496 young people under the age of 20 received punishment beatings while 388 were shot. Despite the establishment of permanent ceasefires by almost all armed groups punishment beatings and shootings have continued to occur. PSNI statistics indicate that between 1999 and 2009 there were 1,958 victims of 'paramilitary-style' shootings and assaults; it is highly probable that a significant percentage of these victims were young people. In 2019-2020 33 young people presented as being directly under threat from paramilitaries while 237 children in 183 families presented as under threat during the same period. Further, research has shown that *"violence has remained a part of everyday life for children and young people living in communities defined by uncertainty, unease and the continued presence of paramilitaries or dissidents"*. Many of the young people interviewed reported being exposed to sectarian violence, community violence, rioting against the police and paramilitary style threats and punishments.
97. There has been an increase in 'community threats' during covid-19 pandemic with young people particularly vulnerable to this increase in community hostility. Social isolation in their homes has already left them at greater exposure to the 'toxic trio' of addiction, mental health and domestic abuse, with 'outside' often being their only safe place. Organisations working on these issues have seen an increase in referrals from individuals facing extreme pressure from criminal/paramilitary gangs to repay outstanding drug debts. As drug revenue has slowed during the covid-19 pandemic, they have focused on reclaiming that debt. This has had a significant impact on people who are facing exclusion and violence as they are unable to meet the demands for payment and fall into 'debt bondage' in which people spiral into increased involvement in criminality/paramilitary activity to pay off ever increasing debt.
98. The Children's Law Centre would also echo the words of the Northern Ireland Commissioner for Children and Young People in a written briefing to the Ad-Hoc Committee:

"While children and young people in Northern Ireland today have been born and grown up in a time of relative peace and stability, the impact of the 'Troubles' is still heavily felt. Segregation and community division continue

*to impact on daily life for many children and young. **Research clearly shows increased levels of child poverty, mental ill health, educational and health inequalities in the areas that have suffered most as a result of the Northern Ireland conflict.** To sustain a stable and more peaceful future requires cognisance to be taken of the reality of children’s lives and the impact of the legacy of the conflict on young people growing up in Northern Ireland today.*

...

*Young people coerced into ‘gang or paramilitary culture’, involved or perceived to be involved in crime or anti-social behaviour, continue to be assaulted and excluded from their communities...**coercion and violence remains a common feature in many of our communities, adversely impacting on children and young people’s lives and life outcomes.***

The trauma experienced by children who are victims or witnesses of paramilitary style attacks is significant...

99. The political, social, economic and cultural context of children’s lives graphically illustrates how the conflict and its legacy continues to cast a dark shadow over children and young people’s lives today.

100. Article 19 of the UNCRC requires that,

“1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and as appropriate, for judicial involvement.”

ISSUE THREE: RISKS TO CHILDREN’S RIGHTS

THE IMPACT OF BREXIT

101. As Sir John Gillen said in his evidence, the Ad-Hoc “Committee has received an array of evidence on the effect of Brexit in Northern Ireland”. The real difficulty that the Ad-Hoc Committee faces is that the actual effect is unknown. All that can be said with certainty about the impact of Brexit to date is that the impact has not been entirely positive for Northern Ireland.

102. A set of rights belonging to children has already been lost. The EU Charter of Fundamental Rights was excluded from EU law that was included as domestic law post-Brexit. The Charter provided important provisions, including rights of children. Article 24 was titled "*The rights of the child*" and provided:

"1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests."

103. The Children's Law Centre cannot identify what was objectionable about that Article and why it should not be incorporated into domestic law. Accordingly, its position is that it should be included in the Bill of Rights.
104. What cannot be known is what the future holds for issues that were previously addressed by the EU. The majority of EU law remains in place but it is not known what approach will be taken in future. As the approach to the Charter of Fundamental Rights demonstrates, it is entirely possible, if not likely, that rights that previously existed will be eroded.
105. There would be a benefit to Northern Irish society if the Bill of Rights could provide a set of guiding principles that would be applied when the Assembly or Westminster considers issues that have been, or would have been, addressed by the EU. The Bill of Rights would amount to an exercise in self-determination. It would require all decision-making bodies to apply rights that have been identified by those in Northern Ireland as of critical importance as Northern Ireland forges its position in relation to the rest of the United Kingdom, Ireland, the EU and the rest of the world.

JUDICIAL REVIEW

106. The terms of reference of the Independent Review of Administrative Law, which was established by the Westminster Government, shows that Westminster is considering a full "*root and branch*" review of judicial review. One of the questions that will be considered is whether it is the right approach to consider whether an unlawful exercise of power should be treated the same way as a situation where the decision-maker did not have the power to take that decision. The review therefore opens up the possibility that an individual affected by an unlawful exercise of power by a public body may not be able to effectively challenge that unlawful act or may not have an effective remedy to that unlawful act.

107. There are countless ways in which an unlawful act can have an impact upon children. Members of the Committee will have seen numerous complaints about such acts from their constituents covering a very broad range of issues. It is therefore not possible to delineate the circumstances in which these issues may arise.
108. What the Ad-Hoc Committee must therefore ensure is that any breach of a Bill of Rights can be effectively challenged and remedied. A right is not a right if it is not enforceable. It is a mirage. The Bill of Rights should therefore include a specific and tailored mechanism outlining how a decision that affects those rights can be challenged by someone affected. That approach will not weaken the position of any public body to make decisions. If the Bill of Rights enshrines core values then it is appropriate that any decision that infringes upon one of those values should be subject to review. It would reflect the importance of the rights contained in the Bill of Rights if that Bill includes a mechanism by which decisions said to affect those rights can be challenged.
109. For example, the Bill of Rights could establish a distinct constitutional court which deals with Bill of Rights issues. This would have important symbolism for everybody, including children, in relation to how the Bill of Rights is viewed and how it is approached. However, it should not be forgotten that the Ad-Hoc Committee is not tasked with providing the solution to the Bill of Rights question. The Committee is required to “*consider the creation of a Bill of Rights*”. The specifics of the enforcement mechanism will be refined and tested throughout any legislative process. What is required is that the Committee recognise the need for a Bill of Rights specific challenge/enforcement mechanism.

POST COVID-19 SOCIO-ECONOMIC IMPACTS

110. Between 2016 and 2018 the Northern Ireland economy stagnated from the combined effects of the political vacuum and Brexit. With the added impact of Covid-19, and heightened concern over the future UK/EU trading relationship agreement, the Northern Ireland economy entered into recession in the last quarter of 2019. The UK economy similarly entered into recession in the second quarter of 2020. This is significant for Northern Ireland as its economy is dependent on Westminster for economic support once EU support ends.
111. The risk that the contraction of public funds presents to rights is plain. When public money is limited then difficult choices have to be taken. The Children’s Law Centre does not seek to dictate how those funds should be spent. However, a Bill of Rights would provide an important guide to where the spending focus should be. Again, the Bill of Rights will set out the core values in Northern Ireland. Funding should be focused on addressing those core values. The Bill of Rights will therefore provide a lighthouse in how funding decisions should be approached by the Executive moving forward.

ISSUE FOUR: THE POSITION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

112. There is an ongoing Independent Review of the Human Rights Act 1998. That Act is a protected enactment under the devolution settlements and the review is not considering the scope of the substantive rights scheduled to the Human Rights Act. The review will consider:
- a. the relationship between domestic courts and the European Court of Human Rights; and
 - b. the impact of the HRA on the relationship between the judiciary, the executive and the legislature, including whether the Human Rights Act unduly interferes with Parliament's intentions.
113. The potential impact of the current review is therefore not to the substance of the rights but how those rights can be enforced. As a result, the Ad-Hoc Committee should strongly consider how a Northern Ireland Bill of Rights can be enforced. If the Bill of Rights does not provide sufficient means of enforcement, then it would amount to lip service to the importance of those rights.
108. For the avoidance of any doubt, the creation of a Northern Ireland Bill of Rights cannot be said to reduce sovereignty. It would be a Bill of Rights for Northern Ireland representing the core rights and values important to Northern Ireland informed by people in Northern Ireland and enforced by the Northern Irish Courts. Further, those core rights and values should be at the heart of every decision that the Assembly takes. A Bill of Rights therefore does not reduce the ability of Stormont to take decisions in the best interests of Northern Ireland but instead promotes that ability.

CONCLUSION

109. Based on evidence from over 23 years of working to protect and promote the rights of all children in Northern Ireland but especially the most vulnerable it is, in CLC's opinion, indisputable that the current Northern Ireland legislative framework does not provide sufficient protection of or mechanisms to vindicate children's rights. The particular circumstances of the lives of children in NI as outlined persist despite best efforts of MLAs and organisations, including CLC, to inform and assist systemic change required to ensure all children enjoy the equality of opportunity to realise their full potential and live full and happy lives. Noting referrals from MLAs to CLC's advice services the individual and systemic challenges are well known to members of the Committee.
110. In including these rights, the Committee should be reassured that the rights CLC are advocating to be included in a Bill of Rights for Northern Ireland, including the UNCRC and the EU Charter of Fundamental Rights are well recognised and accepted widely; and in respect of the UNCRC are the minimum international standard.

111. The inclusion of these protections would provide a framework which would guard against a repetition of the type of erosion of children's rights we have witnessed over the last year when decisions were taken in response to pressures without full consideration of the impact on our most vulnerable and disadvantaged children with consequential devastating impacts on children and their families.
112. The children's rights protections in the NI Bill of Rights will assist and help inform decisions MLAs take about children's lives and provide them with a touchstone to enable them to make the best possible policy and legislative decisions on behalf of their child constituents and their families. They will assist MLAs to make decisions which will ensure Looked After Children are not discriminated in their life chances; it will help them to ensure children with SEN are able to access education without discrimination and it will provide them with a framework to enable them to put in place CAMHS to help the significant and growing numbers of child constituents who have mental health needs.
113. Children's rights protections of the type proposed would also remedy a flawed system of protecting and enforcing children's rights, whereby children's rights routinely have to be protected and vindicated on a case-by-case basis and in some instances through recourse to the courts. This is a time consuming, expensive and haphazard approach that favours those who can 'shout the loudest', are socio-economically advantaged and/or those who have access to help. Critically and as the Committee will know from their constituency work this approach does damage to children and their families who are forced to 'wait and see'.
114. Members of the Committee are in a unique and privileged position to significantly inform the creation of a Bill of Rights which will not only change the lives of the most vulnerable constituents but also create a framework for decision making which will guarantee that a child born next year will be able to realise their potential without discrimination, including to sit in the seats you now occupy, if that is their aspiration.

Appendix A – rights contained in the ECHR

- Article 2 - Right to life
- Article 3 - Prohibition of torture
- Article 4 - Prohibition of slavery and forced labour
- Article 5 - Right to liberty and security
- Article 6 - Right to a fair trial
- Article 7 - No punishment without law
- Article 8 - Right to respect for private and family life
- Article 9 - Freedom of thought, conscience and religion
- Article 10 - Freedom of expression
- Article 11 - Freedom of assembly and association
- Article 12 - Right to marry
- Article 14 - Prohibition of discrimination
- Article 16 - Restrictions on political activity of aliens
- Article 17 - Prohibition of abuse of rights
- Article 1 of the First Protocol - Protection of property
- Article 2 of the First Protocol - Right to education
- Article 3 of the First Protocol - Right to free elections
- Article 1 of the Thirteenth Protocol - Abolition of the death penalty