

Education
Family Life and Alternative
Care
Civil Rights
Health and Culture
Leisure, Policy and Welfare
Justice
Protection
Juvenile

2:

GENERAL MEASURES OF IMPLEMENTATION

2.1 Introduction

While subsequent chapters will assess the degree to which a series of specific rights contained within the Convention are implemented and effectively realised within Northern Ireland, this introductory chapter considers the implementation of the Convention as a whole and the recognition afforded its four general principles. The current status of the Convention in domestic law is explored, as are the means by which, and extent to which, the government has sought to establish effective mechanisms for its implementation, in line with the recommendations of the Committee. The chapter concludes with a series of priority action areas that must be addressed if children's rights are to be more effectively realised in future.

2.2 Requirements of the Convention

"States must see their role as fulfilling clear legal obligations to each and every child. Implementation of the human rights of children must not be seen as a charitable process, bestowing favours on children"
(CRC 2003b:para 11).

The UK Government ratified the UNCRC in December 1991, subject to a number of declarations and reservations.⁶ The Convention subsequently came into force within the UK on 15 January 1992.

The UNCRC provides a set of rights (civil, political, economic, social and cultural) that State parties⁷ should afford to all children

under the age of 18⁸ within their jurisdiction. These include the right to education, protection from violence, family life and care, health and welfare, play and leisure and civil liberties and freedoms. The Convention also includes four general principles – contained within articles 2, 3, 6 and 12 – which should underpin and inform the application of all other articles within it. These are as follows:

- non-discrimination (article 2)
- the best interests of the child (article 3)
- the right to life and maximum survival and development (article 6)
- respect for the views of the child (article 12).

Articles 4, 42 and 44(6) of the UNCRC specifically address State parties' obligations in relation to the implementation of the Convention. The obligations contained therein are qualified and expanded upon in General Comment Number 5 issued in 2003 by the United Nations Committee on the Rights of the Child (CRC), the body tasked with responsibility for oversight of the implementation of the Convention. It begins:

"When a State ratifies the Convention on the Rights of the Child it takes on obligations under international law to implement it. Implementation is the process whereby States Parties take action to ensure the realization of all rights in the Convention for all children in their jurisdiction... Ensuring that all domestic legislation is fully compatible with the Convention and that the Convention's principles and provisions can be directly applied and appropriately enforced is fundamental" (CRC 2003b:para 1/2).

6. The government has recently announced that it plans to withdraw its remaining reservations under article 22 and 37(c) although, at the time of writing, this had not yet occurred.

7. Those who have ratified the Convention.

8. The Convention does not set a starting point for childhood, thereby avoiding "taking a position on abortion and other pre-birth issues, which would have threatened the Convention's universal acceptance" (UNICEF 2007:2).



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Article 4 places a proactive requirement on States to introduce measures (legislative, administrative or otherwise) that will contribute to the effective realisation of the Convention within their jurisdiction. The inclusion of the caveat 'to the maximum extent of their available resources', in relation to the realisation of economic, social and cultural rights, has been the subject of some concern in relation to its potential for exploitation by those who have more resources than political will to implement.

The Committee observes that though this introduction of the concept of 'progressive realisation' *"reflects a realistic acceptance that lack of resources – financial and other resources – can hamper the full implementation of economic, social and cultural rights in some States"* it in no way represents an excuse for inaction where lack of resources is not an insurmountable barrier. The onus is firmly on States to demonstrate that they have implemented the minimum standards contained within the Convention to the maximum extent possible and, where necessary, having availed of external support (CRC 2003b:para 7).

Article 42 places an additional obligation on States to make 'widely known', to children and adults alike, the principles and the provisions of the Convention, while article 44(6) places a further onus on States to ensure broad dissemination of the progress reports (periodic reports) they are required to submit to the Committee every five years.⁹

9. The first report post ratification is due within two years; thereafter after five years.

The UK has submitted periodic reports to the Committee on three occasions to date. Its initial report was submitted in 1994 and its second report followed in 1999. Its third and fourth periodic reports were consequently submitted as one consolidated report in 2007. Following examination of these reports, the Committee issued 'Concluding Observations' on its examinations of the United Kingdom of Great Britain and Northern Ireland (hereafter referred to as the UK) in 1995, 2002 and, most recently, in October 2008.

In the context of devolution, it is important to note that the obligations placed on the UK, as signatory to the Convention, extend beyond Westminster to the devolved administrations in Scotland, Wales and Northern Ireland. Devolution was restored to the NI Assembly on 8 May 2007, following the election of a 4-party Executive of 12 Ministers.¹⁰ As with other devolved administrations, there are a number of matters that do not fall within the competency of the NI Assembly. The Assembly cannot, for example, legislate on the presently 'reserved' matter of policing or justice or on the 'excepted' matter of nationality, immigration and asylum.¹¹

Responsibility for the effective realisation of children's rights, and the incorporation of its provisions and principles within domestic law, therefore falls to both the UK Parliament and the NI Assembly. Commenting on this in its most recent Concluding Observations on the UK, the Committee notes that:

10. www.northernireland.gov.uk [accessed October 2008].

11. Reserved matters are those which may be transferred to the NI Assembly at a future date; excepted matters are those which Westminster retains indefinitely.

"...the State party functions with devolved government arrangements and that this system makes it difficult to have a single body coordinating implementation of the Convention... Nonetheless, the Committee remains concerned at the lack of a body mandated to coordinate and evaluate a comprehensive and effective implementation of the Convention throughout the State party, including at local level...the State party – in addition to ensuring that each of the jurisdictions has a well resourced and functioning coordinating body – could allocate responsibility for the coordination and evaluation of the Convention across the State party to a single, high-profile, mechanism" (CRC 2008:para 12/13).

2.3 Incorporation in Domestic Law

Although the UK Government ratified the UNCRC over 15 years ago, the Convention has not yet been incorporated into domestic law in any of the jurisdictions. This is in spite of the guidance issued within General Comment Number 5, that identifies incorporation as an effective mechanism for implementation of the Convention, and the Committee's explicit reference to this issue in both its 2002 and 2008 Concluding Observations on the UK:

"States Parties need to ensure, by all appropriate means, that the provisions of the Convention are given legal effect within their domestic legal systems...The Committee welcomes the incorporation of the Convention into domestic law, which is the traditional approach to the implementation of international human rights instruments in some but not all States.

Incorporation should mean that the provisions of the Convention can be directly invoked before the courts and applied by national authorities and that the Convention will prevail where there is a conflict with domestic legislation or common practice" (CRC 2003b:para 19).

"While noting the entry into force of the Human Rights Act 1998, which incorporates the rights enshrined in the European Convention on Human Rights into domestic law, the Committee is concerned that the provisions and principles of the Convention on the Rights of the Child – which are much broader than those contained in the European Convention – have not yet been incorporated into domestic law, nor is there any formal process to ensure that new legislation fully complies with the Convention... The Committee encourages the State party to incorporate into domestic law the rights, principles and provisions of the Convention in order to ensure that all legislation complies with the Convention and that the provisions and principles of the Convention are widely applied in legal and administrative proceedings" (CRC 2002a:para 8/9).

Six years on, the Committee's recommendations in relation to incorporation remain unaddressed. This is in breach of the State party's article 4 obligation to 'undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention'.



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Commenting on this in its Concluding Observations on the State party's most recent periodic report the Committee "notes with regret" that its 2002 recommendations in relation to the incorporation of the provisions and principles of the Convention into domestic law have not been implemented (CRC 2008:para 6):

"The Committee appreciates the State party's efforts to harmonize its legislation with the Convention...However, the Committee remains concerned that the principles of the Convention are not duly taken into account in all pieces of legislation throughout the country and that the State party has not incorporated the Convention into domestic law nor has ensured the compliance of all legislation affecting children with it" (CRC 2008:para 10).

In the continued absence of incorporation, though they may serve as useful reference points for them, the provisions and principles of the UNCRC cannot be directly invoked before the national courts. This being the case, the European Convention on Human Rights (ECHR), made domestically justiciable through the Human Rights Act 1998, remains the only human rights instrument that can be directly invoked to protect a child or young person's human rights within the national jurisdiction.

2.4 Human Rights Act 1998

The Human Rights Act 1998 incorporates the provisions of the ECHR into domestic law in both NI and the rest of the UK. As the Northern Ireland Human Rights Commission (NIHRC) explains:

*"The changes are positive and welcome. For the first time considering every citizen's human rights has become a central part of our law. Specific rights belonging to all of us have to be respected, protected and promoted by government and others. These rights include what you may say, what you believe in, how you are educated, how you lead your private life and even your mental and physical health. And, crucially, you are able to go to a court in Northern Ireland to enforce these rights if necessary. The Human Rights Act (HRA) brought the UK into line with almost every other European state and many other countries worldwide, by having our fundamental rights defined and guaranteed in writing and by law. This is part of modern democracy's concept of citizenship. We, the citizens, need to develop a sense of human rights and the balance they provide between the interests of each individual and the common good of society."*¹²

Although the Human Rights Act is not child-specific, children are afforded the rights contained within it to the same degree as adults. All public authorities are subject to the provisions of the Human Rights Act and should any individual believe the rights afforded them under it have been violated by a public authority, they have the right to seek a remedy at a tribunal or court.

The incorporation of the ECHR into domestic law offers a potential template for the incorporation of the UNCRC. The fact that, where there is a conflict between domestic law and the relevant provisions of the ECHR (as incorporated in the

¹² www.nihrc.org/index.php?page=res_details&category_id=13 [accessed August 2008].

Human Rights Act), the latter will prevail, is akin to the Committee's recommendation that the UNCRC should prevail where there is a conflict with domestic law. The Section 16 requirement of the Human Rights Act that all legislation be assessed for compatibility with the ECHR, and the concurrent development of assessment tools, also offers a good template for the incorporation of the UNCRC to domestic law. This is explored further in section 2.10.

2.5 A Bill of Rights for Northern Ireland

A commitment was made 10 years ago, in the Belfast Agreement, to develop a Bill of Rights for Northern Ireland. A number of developments have taken place in recent years in relation to this, including a (second) public consultation in 2004 and the establishment of a Bill of Rights Forum in 2006. The role of the Forum is defined on its website thus:

*"Flowing from the commitments made within the 1998 Belfast (Good Friday) Agreement and the St Andrews Agreement in October 2006, the Forum was established to formulate recommendations to the Northern Ireland Human Rights Commission as it fulfils its statutory duty in providing advice to the Secretary of State on a future Bill of Rights for Northern Ireland."*¹³

Membership of the Forum comprised representatives from the community/voluntary sector, the business sector, trade unions, church and political parties. A number of organisations, including NICCY, the Equality Commission

Northern Ireland (ECNI) and the NIHRC had observer status.

The Forum established seven working groups to examine particular areas of human rights. One of these focused on children, young people and women; however, this group was subsequently reformed to allow for a specific working group on issues relating to children and young people.

The Children's Working Group submitted its final report to the overarching Forum in January 2008, after having made amendments to its initial draft report following consultation via email (to 200 groups and individuals) and a posting on the Northern Ireland Council for Voluntary Action (NICVA) news (Bill of Rights Forum Children and Young People's Working Group 2008). The final report recommended that children's rights be mainstreamed throughout the Bill of Rights, in addition to having a dedicated child-specific chapter. It also contained the Working Group's suggested text for this child-specific chapter.

The suggested preambular clause emphasises the fact that international standards should be viewed as a minimum level of protection (Bill of Rights Forum Children and Young People's Working Group 2008). This does not reduce the importance of the UNCRC as a benchmark against which the implementation of children's rights everywhere can be measured, but rather highlights the risk of minimum standards being interpreted as the end goal.

13. www.billofrightsforum.org [accessed August 2008].



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The Bill of Rights Forum delivered its overall recommendations to the NIHRC in a final report, in March 2008 (BORF 2008). The NIHRC will consider these recommendations, together with other considerations outlined in the Forum's methodological briefing document, and submit its advice on the possible content of a Bill of Rights for Northern Ireland to the Secretary of State on 10 December 2008. At the time of writing, the content of this was not yet known.

If appropriately developed, the Bill of Rights offers a potentially effective mechanism for the implementation of the UNCRC within NI. As the Committee notes in its 2008 Concluding Observations on the UK State party report:

"The Committee recommends that the State party could take the opportunity given in this regard by the development of a Bill of Rights in Northern Ireland...and incorporate into them the principles and provisions of the Convention, e.g. by having a special section in these Bills devoted to child rights" (CRC 2008:para 11).

The necessity for, and potential offered by, a Bill of Rights was also noted by many professionals who participated in this review, however, several linked their welcome of a Bill of Rights to the caveat that it be accompanied by effective translation into practice:

"Children's rights will not be fully realised in Northern Ireland until there is a bill of rights setting out the specific minimum guaranteed standards that are acceptable."

"We hope the rights and protections, as set out in the UNCRC, will be incorporated in this Bill of Rights."

"The problem is that writing a bill of rights for all children is never going to be specific enough to deal with issues that we have identified. Even if the rights are put into law tomorrow it's not going to help. It is the interpretation of whoever is providing the services."

The Bill of Rights is, by far, the most likely avenue by which children's rights could become justiciably applicable in the current political climate, but there remain several difficulties and challenges that must be negotiated for this to become a reality. If these can be overcome, and the UNCRC can be fully incorporated into domestic law, the prospects for effective realisation of the rights contained within the Convention improve significantly.

2.6 Other Means of Implementation

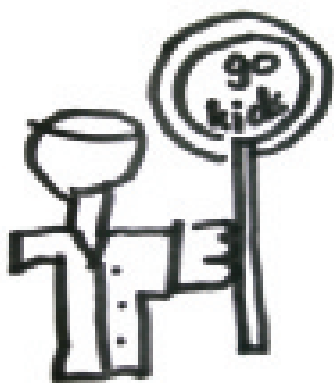
Further to the incorporation of the UNCRC within domestic law, the Committee on the Rights of the Child has identified a number of other key strategies/actions that are integral to effective implementation of the Convention. These include:

- a comprehensive national strategy for children
- mechanisms for achieving effective cooperation
- making children visible in budgets
- monitoring and data collection
- cooperation and communication with civil society
- dissemination, awareness raising and training
- independent national human rights institutions (CRC 2003b).

The application of each of these within NI is explored in turn below.

2.7 A Comprehensive National Strategy for Children

"If Government as a whole and at all levels is to promote and respect the rights of the child, it needs to work on the basis of a unifying, comprehensive and rights-based national strategy, rooted in the Convention" (CRC 2003b:para 28).



A welcome development that has followed since the 2002 Concluding Observations is the introduction of an overarching governmental strategy for children and young people within NI. This Ten Year Strategy, launched in June 2006, is entitled 'Our Children and Young People – Our Pledge' (OFMDFM 2006c).

The Ten Year Strategy was produced by the Office of the First and Deputy First Minister (OFMDFM) following consultation on a draft version entitled 'Making it r wrld 2'. The strategy establishes six high level outcomes that all children and young people in NI should be able to enjoy. According to these outcomes, all children and young people should be:

- healthy
- enjoying, learning and achieving
- living in safety with stability
- experiencing economic and environmental wellbeing
- contributing positively to community and society
- living in a society which respects their rights.

Presenting these six outcomes diagrammatically, the strategy places the sixth outcome – 'living in a society which respects their rights' – at the centre of all others, noting that *"the outcome linked to the respect for rights is central to the outcomes framework"* and that *"a child living in a society which respects the rights of the child should achieve in the other five outcome areas"* (OFMDFM 2006c:8/9).

Whilst the recognition afforded to children's rights within the strategy is to be welcomed, there has been general disappointment within the children's sector that the final strategy has not provided the vehicle for full implementation of the UNCRC within NI, as had been envisaged at earlier stages of the consultation process. McMahon and Keenan (2008:40) observe:

"Making it r wrld 2...reflected a UNCRC ethos throughout. Unfortunately the subsequently published Ten Year Strategy failed to be quite as robust in ensuring the essential overarching authority of the UNCRC within all government departments. Although the government states in its Northern Ireland input to the United Kingdom report to the United Nations Committee on the Rights of the Child (2007) that it considers that the final Strategy was 'strengthened considerably



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through the consideration of comments on earlier drafts, received from children and young people and from NGOs', there is widespread belief within the children's sector that the Strategy is less rights based than its predecessor draft Strategy."

Professionals who participated in this review were also critical of the status afforded children's rights in the final strategy document and the potential for effective translation of this into practice:

"I think we would very much welcome the ten year children's strategy, and like everyone in children's sector, we were delighted that we had six outcomes coming out of this, building on the five from every child matters. The sixth outcome is around building a society that respects children's rights. Now while that outcome is there and we very much welcome that, we want to see it underpinning all the other work in relation to achieving all of the outcomes, health, education etc...I think there is some way to go to actually see this being worked out and becoming an underpinning of future strategies and action plans."

"While the inclusion of a high level strategic children's rights outcome in the 10 year Strategy is extremely welcome there is real concern that there is no evidence of this focus on rights being mainstreamed throughout the strategy document and action plan."

Further to the 6 high level outcomes outlined above, the strategy identifies 11 underpinning values and 8 supporting themes as key to its successful progression. The latter of these

includes: the need to adopt a 'whole-child' approach to service planning and delivery; promotion of partnership working; developing a culture where the views of children are routinely sought in matters which impact upon their lives and driving towards a culture which respects and progresses the rights of the child.

Each of the six high level outcomes is also accompanied by a set of indicators that will be used to measure the success of the strategy. Baseline data has been collated and the indicators included in the strategy outline the expected direction of change.

The indicators contained within the strategy are generic in nature. While they show the expected direction of change, they do not set specific time-bound targets for delivery, noting that these will be addressed in an accompanying action plan.

The action plan for the implementation of the strategy of 2007/08 followed in March 2007. Although published by OFMDFM, this is a cross-departmental plan that sets out what each government department will do to deliver on the aims of the Ten Year Strategy.

The action plan sets out a range of actions under each of the six high level outcomes, detailing sub-actions, timescales, indicators for progress and delivery partners. The content and implementation of the action plan have been subject to much criticism by those advocating on behalf of children and young people, in terms of both the nature and the strategic context of the proposed actions and the failure to deliver these within the timescale of the original plan:

"Despite stating that the Strategy would be the key mechanism for charting progress on this commitment [respecting and progressing children's rights] critical omissions from the Strategy and Action Plan 2007–2008 were mechanisms to ensure compliance by all government departments with children's rights standards" (SC/CLC 2008:9).

"However it is disappointing and of concern that the strategy and action planning to date have not delivered a joined-up, co-ordinated approach across government to planning and delivering services to meet the rights and needs of children and young people... All in all the action plan was a collection of government action and activity that was mostly all ongoing or imminent, there was no sense of the government departments collectively understanding what the outcomes meant for children and young people and what contribution they could make to developing innovative action and activity to deliver the outcomes" (CiNI 2008:8/9).

Concern has also been expressed in relation to the absence of a child rights framework within the action plan, an omission that has served to compound existing concerns around the intended status of the sixth high level outcome of the strategy, 'living in a society which respects their rights'.

Many of the professionals who participated in this review were also highly critical of, and expressed their disappointment in, the action plan emanating from the Ten Year Strategy. They highlighted a perception amongst many external parties that the plan constituted a repackaging

of existing commitments and actions, rather than a proactive response to effectively implementing the aims of the Ten Year Strategy:

"You could say that the 10 year strategy for children has an element of a rights based approach. But if you look at the action plan, I was bitterly disappointed by the content. All of the work that had gone into allegedly developing a long term vision for children and young people, the first action plan it looks as if they just asked departments, what were you doing anyway? And it is really so awful."

They also highlighted serious concerns regarding the financial commitment government was making to the implementation of the strategy and the accompanying action plan:

"It does not look like the government are putting the resources behind the 10 year strategy to implement."

"It is all very well having the 10 year strategy, but are there going to be the resources to implement this?"

While the money committed to date is to be welcomed, it is imperative that the government further resource the commitments made in the Ten Year Strategy and accompanying action plan, if children and young people are to enjoy the anticipated benefits.

The Committee on the Rights of the Child has clearly commented on the necessity of adequate financial commitment in relation to the effective implementation of any national strategy in General Comment Number 5 which states:



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"To give the strategy authority, it will need to be endorsed at the highest level of government. Also, it needs to be linked to national development planning and included in national budgeting; otherwise, the strategy may remain marginalized outside key decision-making processes" (CRC 2003b:para 31).

It has also reiterated this point in its 2008 Concluding Observations in which it calls on the State party to ensure adequate budget allocations for the full implementation of national children's strategies (CRC 2008).

As illustrated in the above quotation, the Committee has clearly highlighted the importance of high level endorsement and cooperative governmental working if a national strategy for children and young people is to be effective. The content of both the Ten Year Strategy and the accompanying action plan clearly indicate the cross-departmental nature of the objectives. However, both NICCY and children's sector Non-Governmental Organisations (NGOs) have expressed concern as to how OFMDFM can effectively hold other Ministers and their departments to account for the delivery of strategies and services outlined in the Ten Year Strategy.

Although the Junior Ministers and the Ministerial Sub-Committee on Children and Young People have a vital role to play in this (see below), a statutory duty to cooperate (as introduced to England under the Children Act 2004) is required to ensure that both they, and their government departments, are working together in commissioning services for children and

young people and delivering on actions arising from the strategy. As Children in Northern Ireland (CiNI) (2008:7) observe:

"We believe that a statutory duty to co-operate and work together to promote and safeguard children's rights would bring the required level of transparency and accountability to the delivery of the Strategy which is currently absent. The statutory duty must transcend all levels and layers of government functioning, this is, it must be implemented at the top and underpin the operation of the Ministerial Sub-Committee on Children and Young People and it must flow through the Regional Strategy Planning and Review Group and its Regional Action Plan and into Local Strategy Planning and Review mechanisms and Local Area Action Plans."

A further key aspect to the effective implementation of the Ten Year Strategy is the role of the implementation groups. To expand, the strategy proposed that four groups are to be established to monitor its implementation. The strategy planning and review group is made up of statutory, voluntary and community sector representatives along with departmental officials to oversee the development of the strategy and advise on the action plan. The work of this group is to be supported by the parents' advisory group, a practitioners group and a research and information group.

Children's sector organisations, in their responses to the drafting of the new action plan, have been highly critical of the failure of OFMDFM to fully convene these implementation groups. The first action plan has completed

its lifespan without these groups having any input. It is imperative that these groups become immediately effective and appropriately facilitated to influence and input into the delivery of the strategy objectives.

The second action plan has not yet been released at the time of writing. It is imperative that this plan address the shortcomings of its predecessor through utilisation of a child rights framework, incorporation of outcome-led SMART (specific, measurable, achievable, realistic, time-bound) objectives, clear accountability structures for the delivery of the actions and adequate ring-fenced monies for the delivery of all commitments therein. Key to this is the production of a comprehensive monitoring report on the progress and effectiveness of the first action plan; though such a report is noted to be currently in progress it was not yet publicly available at the time of writing. As the Committee on the Rights of the Child concludes:

“The strategy must not be simply a list of good intentions; it must include a description of a sustainable process for realizing the rights of children throughout the State; it must go beyond statements of policy and principle, to set real and achievable targets in relation to the full range of economic, social and cultural and civil and political rights for all children...The strategy will inevitably set priorities, but it must not neglect or dilute in any way the detailed obligations which States parties have accepted under the Convention. The strategy needs to be adequately resourced, in human and financial terms...Developing a strategy is not a one-off task. Once drafted the strategy will need to be

widely disseminated...the strategy will need to include arrangements for monitoring and continuous review, for regular updating and for periodic reports to parliament and to the public” (CRC 2003b:para 32/33).

“The State party [must] ensure adequate budget allocations and follow-up and evaluation mechanisms for the full implementation of the plans of action to regularly assess progress achieved and identify possible deficiencies” (CRC 2008:para 15).

Although the Ten Year Strategy has failed to deliver on incorporation of the UNCRC, it does still offer a mechanism (albeit a less judicially enforceable mechanism) through which to pursue the effective realisation of children’s rights in NI if the requirements of the CRC are adhered to. The inclusion of the high level outcome ‘living in a society that respects their rights’ in the strategy is a welcome advantage over its counterpart in England that, if accompanied by appropriate actions and the necessary political will to realise the aspiration of this commitment, offers potential for the more effective realisation of children and young people’s rights.

2.8 Mechanisms for Achieving Effective Cooperation

As highlighted above, the Committee on the Rights of the Child emphasises the importance of ensuring ‘appropriate mechanisms for achieving effective cooperation’ within government are in place, including high level commitment to, and effective promotion of, a cooperative rights-based approach to meeting children and young people’s needs.



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Under direct rule, there was a ministerial portfolio for children and young people. The Children's Minister established a Ministerial Sub-Group on children, which allowed for inter-departmental discussions and planning on children's issues. In addition, the Children and Young People Funding Package (CYPFP), which had been established under the Northern Ireland Executive prior to suspension of the Assembly, allowed for the integrated development of services that spanned the responsibility of different government departments.

With the restoration of the NI Assembly in 2007, the brief for children's issues now rests with two Junior Ministers under the auspices of OFMDFM. Irrespective of the practical outworkings of this, the demotion of this portfolio to Junior Minister level does not send out a positive signal in terms of the importance afforded to the needs of children and young people in NI.

As outlined below, the CYPFP has now come to an end, with no indications that anything similar will be introduced to fill the gap that has been left. One of the key shortcomings associated with this change is that the new system does not easily facilitate the development of inter-departmental initiatives, as each department now bids and allocates its own funding for its own specific area of responsibility. This is in clear conflict with the principles of inter-departmental working espoused within a child rights approach and does nothing to facilitate effective delivery of the overarching cross-departmental aims of the Ten Year Strategy. It is therefore hoped that the outcomes of the Department of Finance and Personnel

(DFP) Review of the Northern Ireland Budget Process, due to report in late 2008, will offer potential opportunities to redress this, given the inclusion of exploring 'scope for greater cross-departmental cooperation in the funding of services' in their terms of reference (DFP 2008).

Though good practice examples of inter-agency cross-sectoral working exist at local level, facilitated through Children and Young People's Committees, this is not necessarily the case at higher levels. The absence of joined up government was identified by many professionals who participated in this review as a barrier in realising children's rights in NI. Participants emphasised the need for partnership working between agencies from both the voluntary and statutory sector and government departments providing children's services. Many also commented on the negative effect that the absence of collaboration between government departments has on the development of children's policy and strategy to date.

While we have overcome the democratic deficit imposed by direct rule from Westminster, the Northern Ireland Executive has yet to achieve a cohesive joined up approach to the regional development of policy and services for children and young people. One of the main concerns from professionals in the review was the lack of cross-departmental planning:

"We are concerned that the single strand approach to developing strategies may be perpetuating a 'silo approach' to strategic planning rather than integrated cross departmental strategies."

“Government have many policy documents, written by different departments, and it depends on who has written the document as to whether that policy is fulfilled in a particular department. However if it is across the government, this does not always happen, as each department have their own priorities and children’s rights may not be one of them.”

The implications of this move to more individualised development of strategies and funding applications increases the risk of children and young people’s needs being ‘lost in the cracks’. Children’s needs cannot be met by a silo approach to government, as the complexities and inter-connected nature of their lives make it difficult to holistically meet needs within one element of a delineated system.

Greater coordination and collaboration are the key to improving children’s rights in NI. For the future of service provision and planning for children and young people, it is imperative that a holistic integrated approach is taken with cross-departmental support and responsibility. As highlighted above, the development of a new action plan for the implementation of the Ten Year Strategy for children and young people is an opportunity to embed cross-departmental cooperation into the structures for planning and delivering services.

Two welcome developments, which significantly increase the potential for effective cross-departmental working if effectively utilised, are the re-establishment of the lapsed Ministerial Sub-Committee on Children and Young People and the introduction of senior-level, dedicated champions for children and young people in

each department (Children’s Champions). The Ministerial Sub-Committee is jointly chaired by the two Junior Ministers and all departmental Ministers are members. The Committee first met in March 2008. Commenting after the first meeting, Junior Minister Gerry Kelly stated on behalf of the Committee:

*“As champions for children and young people we are fully committed to securing and prioritising their rights. We now have an opportunity to do just that through this cross-departmental approach. With this in mind we have decided to take forward the idea that each Department identifies a dedicated champion for children and young people at senior level. We must remember that it is the responsibility of all of us to work together to ensure our children’s needs are being met and to strive to achieve transparency through the sharing of information across the sector.”*¹⁴

While the re-establishment of this Committee is a very welcome development, it is, as yet, too early to judge its effectiveness. It is imperative that the forum the Sub-Committee provides be effectively utilised to address ‘priority cross-cutting issues in a joined up way’ as per the commitment made by Junior Minister Kelly in March 2008. The identification of priority work areas by the Committee that span a number of different departments is a positive start, but to date there has been a lack of clarity over the specific focus of these areas, their relationship to the Ten Year Strategy and how they will be progressed and, indeed, the basis on which they were determined.

¹⁴. Downloadable from ‘March 2008 new releases’ at www.northernireland.gov.uk [accessed August 2008].



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The role of Children's Champions must also be further progressed, with each individual given the portfolio, resources (via a dedicated children's budget) and authority required to bring about significant change and ensure the needs of children and young people are prioritised within their departments.

It is also vital that Committee members work in partnership with one another, both within and beyond the confines of the Sub-Committee, and that they actively progress cross-departmental working in order to ensure that children and young people's needs achieve, and retain, primacy of status over departmental budgets or strategies. This is particularly crucial in the changing landscape of the Review of Public Administration (RPA) which, if implemented correctly, offers an unprecedented opportunity to embed structures of accountability and quality assurance across the fields of health, education and local government.

Members of the Committee, together with the newly appointed Children's Champions, also have a key role to play in promoting recognition of their UNCRC obligations within their department, in particular, the four general principles of the Convention (non-discrimination, best interests, survival and development, and the right of children to be involved in decisions that impact their lives). They also have a key role to play in translating the findings of the Committee's 2008 Concluding Observations (outlined throughout this report) into outcome driven time-bound actions. The Children's Rights Impact Assessment Tool (CRIA) (explored in section 2.10) is an effective mechanism by

which to ensure these obligations are adequately being met.

The Review of Public Administration offers a further potentially effective mechanism for improving co-operative working across departments and agencies and embedding a more rights-based approach to service planning and delivery across public services structures. RPA represents the most comprehensive review of public services constituted within NI in recent history, encompassing *"almost 150 bodies, including the 26 district councils, the Health Boards and Trusts, the five Education and Library Boards, and about 100 other organisations"*.¹⁵ The process of review was launched by the Northern Ireland Executive in June 2002, and progressed under direct rule following the suspension of devolution in the autumn of that year.

The outcome of the review was released in two parts, with an announcement on the future of local government, education and health and social services structures in November 2005 and decisions on the remaining bodies following in March 2006. Further changes were subsequently announced in June 2008, in relation to health and social care, following a further consultation on revised proposals between February and May of that year.

¹⁵ www.rpani.gov.uk/index/rpa-reviewresearch-decisions/background.htm [accessed September 2008].

Some of the key reforms introduced include:

- reducing the number of local councils from 26 to 11, by 2011
- increased powers for local councils, to include a statutory responsibility for community planning
- development of a new Education and Skills Authority (ESA), with responsibility for the operational delivery of education services: responsibility for policy and strategy will remain with the Department of Education (DE)
- establishment of a new Health and Social Care (HSC) Board, to replace the four existing Health and Social Services Boards
- reducing the number of Health and Social Services Trusts from 19 to 6 (5 new integrated Health and Social Care Trusts, plus the Ambulance Service Trust)
- reducing the number of 'quangos' from 81 to 54 (DHSSPS 2008).

While the more streamlined and cohesive approach to service planning and delivery offered by RPA is to be welcomed, it is important to acknowledge the impact that uncertainty around the roll out of the reforms, and what this will mean for individuals and agencies affected by them, has had on service delivery in the short term.

As highlighted above, the scope of RPA, and the root and branch reform emanating from it, offers an unprecedented opportunity for reviewing existing modes of operation and introducing new forms of governance and practice that are more akin to a child rights approach to service development and provision.

Such developments will not however occur as an accidental byproduct of reform; concerted and targeted efforts are required in order to ensure that new structures and modes of operation are embedded in a child rights-framework.

2.9 Making Children Visible in Budgets

"In its reporting guidelines and in the consideration of States parties' reports, the Committee has paid much attention to the identification and analysis of resources for children in national and other budgets. No state can tell whether it is fulfilling children's economic, social and cultural rights 'to the maximum extent of...available resources', as it is required to do under article 3, unless it can identify the proportion of national and other budgets allocated to the social sector and, within that, to children, both directly and indirectly... The Committee needs to know what steps are being taken at all levels of Government to ensure that economic and social planning and decision-making and budgetary decisions are made with the best interests of the children as a primary consideration and that children, including in particular marginalized and disadvantaged groups of children, are protected from the adverse effects of economic policies or financial downturns" (CRC 2003b:para 51).

In its 2002 Concluding Observations on the UK State party, the Committee on the Rights of the Child recommended that to ensure compliance with article 4:

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"...the State Party undertake an analysis of all sectoral and total budgets across the State Party and in the devolved administrations in order to show the proportion spent on children, identify priorities and allocate resources to the "maximum extent of...available resources"" (CRC 2002a:para 11).

No such comprehensive analysis has been undertaken to date. As the UK Commissioners note in their 2008 joint report to the CRC: *"this recommendation has been inconsistently acted upon and where analysis has been carried out it has not always been at the instigation of Government"*. The Commissioners further note that a particular difficulty lies in identifying comparable expenditure figures across the four UK jurisdictions, given categorical differences in recording mechanisms (UK Children's Commissioners 2008:10).

Recent research commissioned by NICCY, DFP and OFMDFM reveals that, despite the fact that children constitute 27.3% of NI's population, only 14.1% of the person and social service budget is spent on children's services. Furthermore, NI has the lowest spend per child on children's services of all regions in the UK, with Scotland spending on average 44% more per child (ERINI/IFS 2007).

Table 2.1: Children's Services UK Expenditure Comparisons (per child)

Region	Expenditure per child	% Difference
Northern Ireland	£287	n/a
England	£402	+29%
Wales	£429.10	+33%
Scotland	£513	+44%

Source: ERINI/IFS (2007)

As highlighted previously, the dedicated CYPFP has now come to an end and been mainstreamed into the budgets of individual departments. Each department must now bid for funding to establish new initiatives or maintain those that have been delivering services for children and young people under the auspices of the children and young people's package. A serious concern exists in relation to the potential for funding for children's services to be negatively impacted by this change, given the failure to ring-fence necessary monies and the cross-departmental nature of many of the services they require. It is difficult to see how this can be interpreted as being in the best interests of children.

In the absence of a dedicated children's funding package, the Programme for Government (PfG) budget is now the primary source of funding for children's services. It is concerning to note that this budget was drafted, without reference to the findings of the 2007 research mentioned above, particularly given the status of DFP and OFMDFM as co-commissioners of the research.

Participants in this review noted significant concerns in relation to the increasing marginalisation of children and young people's needs within funding decisions, citing that lack of resources and under-investment in children's services were key barriers to the effective fulfilment of children's rights:

"They change the law but they don't resource. In some ways policy/legislation might be moving the right way, if you don't resource that afterwards you might as well not put the legislation in. All you are doing is setting

people up to fail because you don't resource the changes that need to follow the practice that needs to follow behind the legislation."

"You can have very good proactive policies but at the end of the day it comes down to funding."

"You can write the most beautiful piece of policy and it can be wonderful but there needs to be resources, there needs to be time and there needs to be awareness raised to make it effective."

Professional participants in this review also felt that, more frequently than not, decisions regarding the funding of services were resource-led rather than rights-based: *"decisions about whether services should be provided are often resource led, certainly not rights based"*.

These perspectives were reiterated by the UK Children's Commissioners (2008:10) in their report to the CRC in which they note that *"the allocation of resources is not dependent on assessed need, is not transparent, is often of a short term nature, and its impact on outcomes is not always evaluated"*.

A further barrier to the effective fulfilment of children's rights through service provision relates to the practice of short-term funding which conspires against the development of longer-term strategic planning.

Professionals from the community and voluntary sectors who participated in this review expressed concern that some projects that were making significant differences in the lives of

children and young people were being forced to close because short-term funding had not been continued. The recent threat to afterschool clubs is a clear example of this and illustrates the vulnerability that these schemes face:

"You do a piece of work and it is funded for a year and that runs out, then you try to secure more funding. You do need money to run a really good project that is going to make a lot of difference to a lot of people."

"We had a good project that ran for 5 or 6 years, and it was a network of specifically trained child minders to care and offer support to families, and funding ran out."

Greater transparency is required in relation to the principles governing funding decisions; in particular, in relation to the consideration given to the best interests of the child and other rights-based concerns. Further information is required to comprehensively and accurately assess to what extent the government is currently implementing the rights of the Convention to the maximum extent possible within its existing resources (both financial and otherwise):

"Government in Northern Ireland has repeatedly claimed that it is not possible to provide a breakdown of expenditure on children. When requested, some individual government departments have been able to provide figures in relation to the percentage of an overall budget spent on children. However, at present it is not possible to obtain figures for spend on all children and young people by each department, let alone on specific groups. Serious difficulties

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also exist in tracking budgets, as funding is not ring fenced and there are discrepancies between the intended target for monies and where they are actually spent” (SC/CLC 2008:8).

The onus is firmly placed on the government to provide this data and justify its resourcing decisions to the CRC. Responding to its ability to fulfil this obligation in its input to the UK report, the NI Government itself acknowledges:

“While we have been able to provide some of the relevant information, it has become clear that some important data is not collected in a way that supports full disaggregation. We are aware that this has implications in relation to providing the clearest evidence of our compliance with the Convention and in working towards developing child rights indicators...There are many separate funding streams allocated and managed by [different] bodies and while budgets for children can be identified in several policy areas, some key areas (eg Health) do not separate spending on children from their generic budgets.” (OFMDFM 2007b:17)

Responding to this inability to provide the required data in the UK State report, and the continued existence of budgetary concerns, the Committee notes with concern that:

“The lack of consistent budgetary analysis and child rights impact assessment makes it difficult to identify how much expenditure is allocated to children across the State party and whether this serves to effectively implement policies and legislation affecting them...The Committee recommends that the State party, in

accordance with article 4 of the Convention, allocate the maximum extent of available resources for the implementation of children’s rights, with a special focus on eradicating poverty and reduc[ing] inequalities across all jurisdictions...Child rights impact assessment should be regularly conducted to evaluate how the allocation of budget is proportionate to the realization of policy developments and the implementation of legislation” (CRC 2008:para 18).

2.10 Monitoring and Data Collection

“Ensuring that the best interests of a child are a primary consideration in all actions concerning children (art. 3(1)), and that all the provisions of the Convention are respected in legislation and policy development and delivery at all levels of government demands a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation). This process needs to be built into government at all levels and as early as possible in the development of policy” (CRC 2003b:para 45).

As highlighted above, child impact assessments and evaluations are key to the effective implementation of the Convention within domestic jurisdictions. These are not currently utilised at strategic level within NI as they should be. As one professional who participated in this review observed:

“There is no common, agreed framework operating across all strands of government to ensure that policy/legislation is child rights proofed.”

NICCY has developed a CRIA tool, for child-rights proofing proposed and existing policies and initiatives. This tool is based on a template developed by the Office of the Scotland’s Commissioner for Children and Young People (SCCYP) that has been amended for application within NI. NICCY have been calling on government to adopt use of the CRIA tool in the early stages of policy development to identify any potential rights breaches and/or ways in which the proposed development will enhance children’s enjoyment of their rights. Use of such a template has been supported by a number of voluntary sector organisations, including many who participated in this review:

“What we would like to see is all primary, secondary legislation, right across all policy and legislation, being actually, child rights impact assessed, to ensure that things like article 12 [and other] UNCRC principles are mainstreamed into policies.”

Use of the CRIA tool would go a long way towards embedding children’s rights considerations into all policies and legislation and to ensuring that any proposed developments are compliant with the requirements of the UNCRC:

“Collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the

realization of rights, is an essential part of implementation” (CRC 2003b:para 48).

As highlighted in the above quote from the Committee, the collection of comprehensive disaggregated data on children and young people is a vital element of monitoring the extent to which rights are being honoured and effectively implemented within national jurisdiction. In the 2002 Concluding Observations, the Committee recommended that the UK:

“Establish a nationwide system whereby disaggregated data are collected on all persons under 18 years for all areas covered by the Convention, including the most vulnerable groups, and that these data are used to assess progress and design policies to implement the Convention” (CRC 2002a:para 19).

Such a system does not yet exist. McMahon and Keenan (2008:45) reflect on the implications of this:

“The method of data collection and collation continues to provide difficulties in all areas concerning children and young people. The variety of subject matters, parameters, timescales, age ranges, presentation and quality of data does not lend itself to providing a comprehensive overview of the state of children’s lives in Northern Ireland. Since the 2004 report published by NICCY, little has changed in relation to data collection and collation. There are widespread gaps in data collection and research across all areas, but most notably as regards: children with a disability; children with



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mental health issues; causes and wider impact of youth suicide; ethnic minority children; asylum seeking children; lesbian, gay and bisexual young people; the “post conflict” scenario and its impact on children and young people; hate crime against children and young people; issues underpinning youth crime; experiences of family life; the totality of the experiences of young people as they progress within the criminal justice system. These areas are all representative of the areas identified while sourcing material for this report, but do not represent all areas where data is lacking or absent.”

As highlighted in the above quotation, there is a particular absence of data on many of the most vulnerable groups of children and young people in NI. This is in spite of specific guidance from the Committee that particular attention should be paid to collating information on these groups. The implications of inadequate knowledge and understanding of the needs of these different groups are explored in greater depth throughout the remainder of this report.

Collection and collation of data is not simply an end in itself. It is imperative that *“data collected are evaluated and used to assess progress in implementation, to identify problems and to inform all policy development for children”* (CRC 2003b:para 48). It is also imperative that the outcomes of data collection be publicly available. The Committee has strongly commended State parties who go beyond their obligation to report to the Committee and publish regular reports on the state of children’s rights within their jurisdictions (CRC 2003b). It promoted development of such reports within

the four UK jurisdictions in its 2002 Concluding Observations:

“The Committee encourages the development of regular reports in England, Northern Ireland, Scotland and Wales and for the whole State party and the promotion of wide public and parliamentary debate on them in the United Kingdom and Scottish Parliaments and in the National Assemblies for Northern Ireland and Wales” (CRC 2002a:para 19).

The NI Government has not yet shown any commitment to producing any form of regular report on the state of implementation of the UNCRC beyond that required in the form of periodic reports to the CRC. The Ten Year Strategy does not establish any pledge on the part of the Executive to report on implementation progress, though as highlighted previously, it is understood that a progress report is in development.

2.11 Cooperation and Communication with Civil Society

Recognising that *“responsibilities to respect and ensure the rights of children extend in practice beyond the State and State-controlled services and institutions to include children, parents and wider families, other adults, and non-State services and organizations”*, the Committee places an obligation on States to engage all sectors of society, including children, in the promotion and protection of children’s rights (CRC 2003b:para 56).

General Comment Number 5 specifically references the need for State parties to work with and engage NGOs in the process of implementation. While positive working relationships between government and the voluntary and community sectors is essential, it is imperative that government does not neglect its duties under the UNCRC, by relying on services provided by these groups, without providing them with appropriate provision and support.

The degree to which the State has attempted to engage civil society in the implementation of children's rights has increased somewhat in recent years, through more frequent use of consultation processes on key legislative and strategic documents. Unfortunately, however, the degree to which this has moved beyond a token exercise, driven by statutory requirements, to an interactive dialogue that facilitates effective civil engagement in decision making processes is generally limited. As highlighted throughout this report, significant potential remains for the greater development of civic engagement in dialogue about how to best implement the rights of the UNCRC within NI. The Committee commends this to the UK State party in its 2008 Concluding Observations, recommending *"that the State party encourage the active and systematic involvement of civil society, including NGOs and associations of children, in the promotion and implementation of children's rights, including, inter alia, their participation in the planning stage of policies and cooperation projects, as well as in the follow-up to the concluding observations of the Committee and the preparation of the next periodic report"* (CRC 2008:para 23).

2.12 Dissemination, Awareness Raising and Training

Article 42 of the UNCRC addresses State parties' obligations to ensure that everyone is aware of the Convention's principles and provisions and what they mean for children and young people. It is not just children and young people who need to know their rights; adults must also become aware of the rights guaranteed by the Convention if they are to be effectively upheld. Article 44(6) places a further obligation on State parties to make their periodic reports available to everyone within their territory.

Each time the UK periodically reports to the CRC, it must specifically describe the measures it has taken to implement article 42 and 44(6) to the maximum extent of its available resources. In its 2002 Concluding Observations on the UK's second periodic report, the Committee stressed its concern that most children were not aware of the rights contained in the Convention (CRC 2002a). Referring back to the Concluding Observations on the UK's first periodic report, the Committee recommended that the State party:

- *"Substantially expand dissemination of information on the Convention and its implementation among children and parents, civil society and all sectors and levels of government, including initiatives to reach vulnerable groups;*
- *Develop systematic and ongoing training programmes on human rights, including children's rights, for all professional groups*

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working for and with children (e.g. judges, lawyers, law enforcement officials, civil servants, local government officials, personnel working in institutions and places of detention for children, teachers and health personnel)” (CRC 2002a:para 21).

Although the establishment of a Commissioner for Children and Young People, whose remit includes promotion of the UNCRC, has been a very welcome development that has helped increase awareness of the UNCRC, there remains a clear need for government to further invest in awareness raising in relation to the rights of the Convention.

The need for further awareness raising is clearly illustrated by the results of the Northern Ireland Young Life and Times (YLT) survey 2007 that demonstrates that 70% of young people surveyed had never heard of the UNCRC. Almost half of those surveyed knew that they had rights as children and young people, but they did not know anything about those rights (ARK 2007). This is an alarming indictment on the government’s delivery of its article 42 obligations to date.

The general consensus among professionals who participated in this review was that knowledge of rights varied significantly amongst different groups and that much scope remained for progression in this field:

“On a small level children are becoming more aware of certain rights, but it needs to be more widespread.”

Although participants in this review felt that some children and young people are very knowledgeable about their rights, the general consensus was that many more remain either unaware of their existence or uninformed about how this relates to them. This was noted to be particularly true of many marginalised groups, including Traveller children and young people and those from other ethnic minorities.

The introduction of the subject of Citizenship in schools has been highlighted by many of the parents and professionals who participated in this review as a positive development in terms of increasing children and young people’s awareness of their rights:

“Some of the schools in Derry are working with UNICEF and are looking at the UNCRC and are working towards accreditation” (professional).

“It is clear that work is on going in many schools across Northern Ireland to educate their pupils on children’s rights” (professional).

“My children are all in the enriched curriculum up in a school in Derry, and definitely they know their rights. It is something that they do in the curriculum, and it is great” (parent).

Welcome as this is, it is not, as the Committee highlights, enough in and of itself – it must be accompanied by an experience of rights: *“Human rights education should provide information on the content of human rights treaties. But children should also learn about human rights by seeing human rights standards implemented in practice, whether at home,*

in school, or within the community. Human rights education should be a comprehensive, life-long process and start with the reflection of human rights values in the daily life and experiences of children” (CRC 2001:para 15).

Professionals who participated in this review, who worked directly with children or young people, were asked to estimate how good an understanding of rights the children they worked with had. Responses were mixed, with some feeling the children they worked with were very knowledgeable of their rights and others feeling they knew very little. Most felt that awareness of children’s rights amongst parents was particularly low, across the board.

Professionals who worked with ethnic minority children and young people were all in agreement that these children do not have an awareness of their rights:

“The children we would come in contact with would have very little knowledge about their rights and a lot of their needs.”

“The children and young people that I interact with have absolutely no idea about the UNCRC, so the outreach work that I do is all based on that.”

Regarding awareness of rights amongst disabled children and young people, one professional commented:

“While some children and young people can grasp the concept of rights issues, others because of the nature of their medical condition

or disability, need a more simplified explanation which should be available to help them understand and participate in the planning and development of their services.”

Another professional who worked with vulnerable young people commented that while young people may not be aware of their rights, they know when they have been wronged:

“I work with very vulnerable young people who are too busy trying to survive to give a damn about rights.”

While acknowledging that awareness is increasing amongst many groups, and welcoming this development, some professionals commented that children are not always aware of what to do when their rights are infringed or who can support their rights:

“Children are still unaware of their rights and if they are aware there is inadequate support to help them enforce their rights.”

“There is not enough information or knowledge for children and young people about how they can defend or assert their rights; they’re still very much dependent on the willingness of agencies and government and on organisations promoting rights for them.”

“Information isn’t widely available on rights for children and young people.”



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A lack of awareness of children's rights and the UNCRC was viewed by many professionals who participated in this review as one of the key barriers to the effective realisation of children's rights in NI:

"The profile of children's rights is very restricted to specialised units/groupings and I wouldn't say it is well understood by the general population."

There were varying levels of awareness of children's rights among professionals themselves, with those working within organisations that provide services directly to children and young people having a greater understanding of the UNCRC than those who do not. Some professionals also commented, however, that the training they had received focused more on their rights when working with a child, than the rights of the child themselves:

"When you're working with young people your training is more around you being aware of your rights with the child."

An alarmingly high number of professionals working with children and young people who NICCY interacted with in the course of this review had an obvious misunderstanding of children's rights. Expression of the opinion that rights should not be automatically afforded to children and young people, but rather be dependent on them fulfilling their civic responsibilities, was not unusual particularly amongst those working in the front line with children and young people:

"Young people have to be aware that they do have rights, but also that they have responsibilities to society and other citizens."

"They do have a lot of knowledge about their rights but it's about balancing that with the sort of responsibilities that come with it."

Though acceptance of civic responsibilities is clearly important and to be encouraged, positioning it as a prerequisite to accessing rights is both inappropriate and in direct conflict with the spirit of the Convention.

The findings of this review have clearly indicated a need for further training in the field of children's rights, particularly amongst those who work with, and for, children and young people in any direct capacity (teachers, social workers and health staff, to name but a few). The Committee has provided detailed guidance as to what such training should encompass:

"The Committee recommends that all efforts to provide training on the rights of the child be practical, systematic and integrated into regular professional training in order to maximize its impact and sustainability. Human rights training should use participatory methods, and equip professionals with skills and attitudes that enable them to interact with children and young people in a manner that respects their rights, dignity and self-respect" (CRC 1999:para 291 (l)).

The NI Government cites a list of training initiatives that have taken place in the last number of years, in its input to the UK's third and fourth periodic report to the CRC. These

include the training of Youth Justice Agency (YJA) staff, Head Teachers and Principals, the Police Service of Northern Ireland (PSNI) and the Judiciary (OFMDFM 2007b). While these are welcome developments, there remains a need for mandated, statutorily funded, children's rights training for all professionals working with children and young people and all those involved in the development of policy or practice that may impact upon their lives. As the Committee advises:

"The Committee emphasizes States' obligation to develop training and capacity-building for all those involved in the implementation process – government officials, parliamentarians and members of the judiciary – and for all those working with and for children... Training needs to be systematic and ongoing – initial training and re-training. The purpose of training is to emphasize the status of the child as a holder of human rights, to increase knowledge and understanding of the Convention and to encourage active respect for all its provisions" (CRC 2003b:para 53).

While acknowledging the developments that have taken place in recent years in relation to "efforts to train professionals on the principles and provisions of international human rights instruments, including the Convention", the Committee has expressed continued concern in its latest Concluding Observations at the absence of "systematic awareness raising of the Convention and that the level of knowledge about it among children, parents or professionals working with children is low" (CRC 2008:para 20). The Committee calls on the State party to:

"...further strengthen its efforts, to ensure that all of the provisions of the Convention are widely known and understood by adults and children alike, inter alia by including the Convention in its statutory national curriculum and ensure that its principles and values are integrated into the structures and practice of all schools. It also recommends the reinforcement of adequate and systematic training of all professional groups working for and with children, in particular law enforcement officials, immigration officers, media, teachers, health personnel, social workers and personnel of childcare institutions" (CRC 2008:para 21).

2.13 Independent National Human Rights Institutions

The Committee on the Rights of the Child has clearly emphasised its wish that every State should have an independent National Human Rights Institution (NHRI) that can promote and protect the rights of children and young people within the State. General Comment Number 2, issued by the Committee in 2002, provides detailed commentary on the anticipated role of such bodies:

"NHRIs should be accorded such powers as are necessary to enable them to discharge their mandate effectively, including the power to hear any person and obtain any information and document necessary for assessing the situations falling within their competence. These powers should include the promotion and protection of the rights of all children under the jurisdiction of the State Party in relation not only to the State but to all relevant public and private entities" (CRC 2002b:para 9).



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Independence is fundamental to the effectiveness of an NHRI. General Comment Number 2 emphasises that all NHRIs should be established in compliance with the Paris Principles; a set of minimum standards governing the constitution and activities of NHRIs, adopted by the UN General Assembly in 2003.

The establishment of two NHRIs in Northern Ireland, the NIHRC and NICCY, is a very welcome development that offers great potential for the furtherance of children's rights.

The NIHRC has a more generic remit than NICCY, with the latter having a particular remit for children under the age of 18, or under 21 years if disabled or care experienced. As highlighted in chapter 1, NICCY is a non-departmental public body, funded by and reporting to OFMDFM. The powers and duties of the Commissioner are set out in The Commissioner for Children and Young People (NI) Order 2003. Though the Commissioner is afforded a relative degree of independence and autonomy, the receipt of direct funding from, and the requirement to give account of itself to, a government department is an issue that significantly undermines its potential effectiveness and prevents compliance with the Paris Principles. This limiting restriction on NICCY's powers has been raised in two recent reviews of the Office of the Commissioner for Children and Young People (Fitzpatrick 2006; OFMDFM 2007d):

"It is difficult to imagine how the Commissioner could perform his functions in relation to any controversy concerning OFMDFM (or arguably

other government Departments) when this key government Department has substantial control over the Commissioner's policy making and priorities. Even if many of the more intrusive powers are never invoked, the fact that they are set out in the Management Statement leaves the Commissioner open to informal pressures which might restrict his autonomy" (Fitzpatrick 2006:49).

"Given that OFMDFM has to give approval for the detail of the Commissioner's financial expenditure, its intrusion into the Commissioner's autonomy is substantial. It ought to be sufficient that the Commissioner negotiated an annual budget over every three year period, sets down broad parameters within which he proposes to spend it (particularly in terms of staff resources) and informs OFMDFM of his Corporate Plan and Business Plans. However, greater control of the Commissioner's expenditure than that, however laudable in terms of public accountability, is inappropriate in relation to a human rights institution and particularly one whose functions are almost exclusively directed at public sector authorities" (Fitzpatrick 2006:3).

A further restriction on the Commissioner's powers is that of the failure of the Office to be awarded 'victim status', which would enable it to proceed with a legal action under the Human Rights Act. This has meant that NICCY has had great difficulty in seeking to challenge legislation on the basis of it constituting a general violation of children's rights. The contribution NICCY could make to the effective protection of the rights of children and young people in NI could be significantly increased if NICCY was given

'victim status', on a par with that of the NIHRC. Where NICCY is able to instigate legal action, the fact that this must be financed out of its existing annual budget which may already be allocated to other work, serves as a further barrier to its effective fulfilment of this role. Funding arrangements for NICCY should therefore be amended to reflect the fact that the organisation may need to take urgent legal action and may require additional funding to do so, beyond that anticipated at the start of any given financial year.

In spite of the unnecessary curtailments currently placed on NICCY's powers, many of the professionals who participated in this review cited the establishment of a Commissioner for Children and Young People as having contributed to an improvement in children's rights:

"Since the establishment of the commission (NICCY) things have improved and children's rights are more talked about."

"With a growing awareness of the role of the children's commissioner's office, policy/legislation is more and more being informed by a child's rights perspective."

If the Committee's recent recommendation that the Commissioner's Office be afforded increased independence to ensure compliance with the Paris Principles (CRC 2008) and the other curtailments on NICCY's powers were addressed, this would provide NICCY with a more effective medium for independently monitoring and encouraging compliance with the implementation of the Convention.

2.14 Implementation of the General Principles

While it is essential to ensure that articles 2, 3, 6 and 12 are implemented as individual free-standing rights, the provisions contained within these articles are also fundamental to the implementation of every other right within the Convention, all of which should be viewed in light of them. The sections that follow below present an overview of the degree to which the four general principles have been implemented within NI and the issues, obstacles and barriers related to their effective realisation. The detail of the application of the four principles in different areas of children's lives is explored in greater depth throughout the remainder of the report; hence the discussion presented here is largely generic in nature.

2.15 Implementation of Article 2

The principle of non-discrimination contained in article 2(1) of the Convention places an obligation on State parties *"to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind"* (CRC 2003b:para 12). The article sets out a list of grounds on which such discrimination is prohibited, including the race, sex, language, religion, ethnic or social origin, political opinion or disability of either the child or their parent/legal guardian. The list concludes with the phrase 'other status', thereby allowing for recognition of other forms of discrimination not specifically cited within the Convention.

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Beyond its obligation to implement the rights contained within the Convention to all children without discrimination, article 2(2) establishes a further obligation on State parties to proactively ensure that children do not experience any other form of discrimination in their lives, requiring them to take 'all appropriate measures' to ensure that children are protected from any form of discrimination or punishment on the basis of the 'status, activities, opinions or beliefs of their parents, legal guardians or family members'.

The Convention does not offer a definitive definition of discrimination; however, the definition set forth by the Human Rights Committee (HRC) in its commentary on the International Covenant on Civil and Political Rights (ICCPR), is widely referenced as a helpful starting point. According to this definition, discrimination can be understood to be:

"...any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms" (HRC 1989:para 7).

This review found examples of discrimination in terms of the provision of rights to different groups of children and young people by the State party, as per article 2(1) of the Convention, and also gaps in the State's efforts to protect children from discrimination emanating from the actions of others, as per article 2(2).

With regard to the former, Section 75 (s75) of the Northern Ireland Act (NIA) places a duty on all designated public authorities to pay due regard to the need to promote equality of opportunity in relation to age, disability, gender, marital status, race, religion, political opinion, sexual orientation and caring responsibilities. While the existence of such legislative obligations is to be welcomed, some concern has been expressed as to their comprehensiveness and effectiveness in relation to the protection of rights:

"Equality legislation isn't about rights, it is about what is statutorily prohibited and what is statutorily permitted, which is not about rights, or inherent human rights about respecting people rights. It is about what any given government or parliament decide what is permissible or prohibited at any given time."

"I think we have got a very mechanistic method of using section 75 and the equality provisions, and it has become very much a tick box process. It isn't joined up."

A review of the effectiveness of s75 completed by the Equality Commission (ECNI) in 2007 noted that it had made a positive contribution to children and young people's lives, through

drawing attention to the inequalities they experience in accessing services and generally raising awareness of age as an equality issue. However, while the review noted increased consultation on the part of public authorities generally, as a result of s75, it noted that this rarely extended to children and young people (ECNI 2007). Commenting on this, the authors of this element of the review noted that *“advocates have drawn attention to the lack of targeted involvement of young people in policy development which directly affects them whether it is policy relating to education or criminal justice as in the contentious Anti-Social Behaviour Orders (ASBOs)”* (Reeves Associates 2007:119).

Subsequent chapters of this report clearly illustrate how certain groups of children and young people continue to be disadvantaged in terms of their enjoyment of the Convention rights, despite the existence of s75 obligations on public authorities. This issue has also been raised by the Committee in both its 2002 and 2008 Concluding Observations on the UK State party, in which it notes concern at the limited access of particular groups of children to particular rights, including the limited rights of children deprived of their liberty to education, the limited rights of ethnic minority children and Lesbian Gay Bisexual Transgender (LGBT) youth to adequate healthcare and the limited access that disabled children enjoy to play and leisure. These, and many more examples, are explored in greater depth throughout this report, with discriminations associated with civil liberties and personal protections explored in chapter 3, those related to family life and alternative care

in chapter 4, and those related to health and welfare in chapter 5. Chapter 6 incorporates consideration of such discriminations in education, while chapters 7 and 8 consider those within play and leisure and juvenile justice respectively.

In terms of the State’s efforts to protect children and young people from discrimination emanating from the action of others, there have been a number of positive developments in recent years including increased legislative protection on the grounds of gender, race and disability. Concern has, however, been expressed as regards the broad exceptions contained within some of these pieces of legislation, such as the Equality (Sexual Orientation) Regulations (NI) 2006, and the potential for continued discrimination created by such exceptions.

As recognised in the NI NGO report to the Committee, the protection afforded to children and young people is also limited by the *“hierarchy of protection”* within NI equality law, in which discrimination on the grounds of age receives least protection (SC/CLC 2008:12). It is further limited by the piecemeal and fragmented nature of anti-discrimination and equality legislation within NI and the absence of a harmonised Single Equality Bill.

It is hoped that the development of a Single Equality Bill, previously committed to by the NI Executive but not yet actioned, will be progressed without delay in order to harmonise existing anti-discrimination and equality legislation. It is imperative that the Bill impose positive obligations to ensure equality of

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opportunity for all and provide comprehensive protection against discrimination on all grounds, including that of age (SC/CLC 2008; OFMDFM 2007b).

The findings of this review reveal that children and young people continue to experience discrimination on the basis of their age, most obviously in respect of the increasing demonisation of youth within the public sphere and the consequent frequent application of negative stereotypes. The Committee has raised this as an issue of particular concern within its 2008 Concluding Observations noting concern *“at the general climate of intolerance and negative public attitudes towards children, especially adolescents, which appears to exist in the State party, including in the media, and may be often the underlying cause of further infringements of their rights”* (CRC 2008:para 24).¹⁶

Beyond the discrimination generally experienced by children and young people on the basis of their age, specific groups experience additional forms of discrimination on the basis of other factors. There is clear overlap between the groups of children and young people who are experiencing particular difficulties in relation to State implementation of their UNCRC rights and those experiencing other forms of discrimination within their lives. LGBT and ethnic minority children and young people, for example, are reported to be particularly at risk of discriminatory motivated verbal and physical attacks. They also experience continued social exclusion, as do other groups

of vulnerable children, including those who are homeless, those living in poverty and those with disabilities. The Committee notes with concern in its most recent Concluding Observations that:

“In practice certain groups of children, such as: Roma and Irish Travellers’ children; migrant, asylum-seeking and refugee children; lesbian, bisexual, gay, and transgender children (LGBT) and children belonging to minority groups continue to experience discrimination and social stigmatization” (CRC 2008:para 24).

Recognising the various forms of discrimination experienced by children and young people, both on the basis of age and other socio-economic factors, the Committee calls on the State party to:

- take urgent measures to address the intolerance and inappropriate characterisation of children, especially adolescents, within the society, including the media
- strengthen its awareness raising and other preventive activities against discrimination and, if necessary, take affirmative action for the benefit of vulnerable groups of children
- take all necessary measures to ensure that cases of discrimination against children in all sectors of society are effectively addressed including with disciplinary, administrative or, if necessary, penal sanctions (CRC 2008:para 25).¹⁷

¹⁷ These issues are considered further throughout the report, but particularly within the latter half of chapter 3 (protection) and chapter 5 (health and welfare).

¹⁶ This issue is considered in further detail in chapter 3, section 3.3.

While the developments in relation to equality legislation are to be welcomed, their remit does not extend sufficiently wide. As recognised by the Committee in its 2008 Concluding Observations, the continued levels of discrimination experienced by both young people generally, and the multiple levels of disadvantage experienced by specific groups of children and young people, clearly illustrate the need for a more concerted effort on the part of both government and civil society to ensure effective implementation of article 2 within NI. As the Committee explains in General Comment Number 5, there are many different levels of response required: active identification of individuals and groups of children for whom additional efforts are required in order to ensure the effective realisation of their rights, the collation and disaggregation of data that enables identification of patterns of discrimination, legislative change, administrative and resource allocation and educative measures to bring about attitude change (CRC 2003b).

2.16 Implementation of Article 3

Article 3(1) of the Convention places an obligation on State parties to ensure that the best interests of the child is a primary consideration in all actions concerning them, 'whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies'. Article 3(2) places an accompanying duty on States to ensure each child 'such care and protection as is necessary for his or her wellbeing', taking into account the rights and duties of those directly responsible for them, and is as such very closely

related to article 6 explored below. Article 3(3) places a further obligation on State parties to ensure that the 'institutions, services and facilities responsible for the care or protection of children' conform to minimum standards as established by competent authorities. Commenting on the application of this provision, the most recent edition of the Implementation Handbook on the Convention observes:

"Implementation of article 3(3) requires a comprehensive review of the legislative framework applying to all such institutions and services, whether run directly by the State, or by voluntary and private bodies. The review needs to cover all services – care, including foster care, and day care, health, education, penal institutions and so on. Consistent standards should be applied to all, with adequate independent inspection and monitoring" (UNICEF 2007:41).

When article 3 is discussed as a general principle of the Convention, attention is primarily focused on the 'best interests' principle contained therein, the effective implementation of which *"requires active measures throughout Government, parliament and the judiciary"* (CRC 2003b:para 12).

The Committee on the Rights of the Child has further explained that:

"Every legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children's rights and interests are or will be affected by their decisions and actions – by, for



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example a proposed or existing law or policy or administrative action or court decision, including those which are not directly concerned with children, but indirectly affect children” (CRC 2003b:para 12).

The concept of ‘best interests’ is also open to variable interpretation, which can result in conflict between providers and recipients of services, policy makers and lobbyists and parents and children. The interpretation of the ‘best interests’ principle can also come into conflict with the application of children’s article 12 right to express their views and have these taken into consideration when a child’s view on what is best for them is different to that of others involved in decision making processes. It must also be borne in mind that what constitutes being in the best interests of one child, may not be in the best interests of another. Commenting on this, the Implementation Handbook offers the following insights:

“The ‘best interests of the child’ are not written on tablets of stone. They will vary from child to child. Parents may have quite different views on what are a particular child’s best interests; professionals, too, may not agree with each other about what is best. The child’s rights under the Convention are therefore helpful in making the concept less subjective. Any breach of these rights (including failure to respect children’s evolving capacities) is likely to be contrary to the child’s best interest” (UNICEF 2007:232/233).

“Interpretations of the best interests of children or use of the principle cannot trump or override any of the other individual rights guaranteed by other articles in the Convention” (UNICEF 2007:35).

The NI Government input to the UK State report notes of its article 3 obligations that *“in developing new policy and legislation, we seek to ensure compatibility with these principles”*. The report outlines a number of areas in which it believes the best interests of the child is currently a primary consideration – legislation relating to looked after children (LAC) and those leaving care and those involved in the criminal justice system – but the legislative provisions to which they refer pertain to the ‘welfare’ of the child, as opposed to the wider rights-based concept of their ‘best interests’. Acknowledging the different term used in legislation, the report explains that *“we prefer the term welfare of the child to the term best interests as it is better defined and understood in law” (OFMDFM 2007b:23)*. Commenting on this, the NI NGO report to the Committee observes:

“Despite the engagement of NGOs and statutory bodies, legislators in Northern Ireland and Westminster have consistently failed to ensure that legislation likely to impact on children is based on the principle that the best interest of the child is the primary consideration, with the exception in Northern Ireland of The Commissioner for Children and Young People (NI) Order 2003. Generally legislation continues to operate the welfare rather than the best interests standard. The principle of the best interest of the child is not currently incorporated into youth justice, policing, mental health, education or immigration legislation” (SC/CLC 2008:16).

Such concerns have been reiterated by the Committee in its most recent Concluding Observations on the UK State party, in which

it notes that article 3 is not *“reflected as a primary consideration in all legislative and policy matters affecting children, especially in the area of juvenile justice, immigration and freedom of movement and peaceful assembly”*. The Committee consequently calls upon the State party to *“take all appropriate measures to ensure that the principle of the best interests of the child, in accordance with article 3 of the Convention, is adequately integrated in all legislation and policies which have an impact on children”* (CRC 2008:para 26).

The degree to which the best interests principle is currently applied as a primary consideration in policy, legislation and service provision pertaining to children and young people is explored throughout the various sections of this report, as are potential opportunities for progressing this.

2.17 Implementation of Article 6

Article 6 of the Convention recognises every child’s inherent right to life and the duty on States to ‘ensure to the maximum extent possible the survival and development of the child’. According to the 1997 Manual on Human Rights Reporting, measures taken by States to implement article 6 may include measures designed to protect life (infant mortality, nutrition and hygiene for example) and those designed to prevent deprivation of life (the prohibition of death penalty for example) (cited in UNICEF 2007).

Commenting on the application of the concept of development in article 6(2), the Committee has noted that State parties should interpret the term *“in its broadest sense as a holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological and social development”* (CRC 2003b:para 12). This refers to both the development of the child in preparation for adulthood and the provision of optimal development opportunities in childhood and adolescence (UNICEF 2007).

Article 6 is closely related to, and cannot be delivered in the absence of, the provisions contained within many other articles of the Convention, including, but not limited to, article 3(2) (care and protection necessary for wellbeing), article 19 (protection from all forms of violence while in the care of parents or others responsible for their care), article 24 (standards of health and healthcare), article 27 (adequate standard of living) and article 37(a) (torture, cruel, inhuman or degrading treatment or punishment). The degree to which it is currently fulfilled is therefore explored at various stages throughout this report, when consideration is given to each of these rights.

Generally speaking, however, the findings of this review reveal that while there have been positive developments in recent years in some aspects of the implementation of children and young people’s article 6 right, there are other areas where further progress is clearly required including those of community safety, road safety, use of police technologies and abuse and neglect (explored in chapter 3) and rates of infant mortality, suicide and poverty (explored in chapter 5).

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As per the discussion in section 2.15 above, many of these risks and dangers are disproportionately experienced by specific groups of particularly vulnerable children and young people, including disabled children, those from ethnic minorities (including refugee and asylum seeking children), those living in poverty, those in alternative care and LGBT youth.

The Committee has called upon the State party to *“use all available resources to protect children’s rights to life, including by reviewing the effectiveness of preventive measures”* (CRC 2008:para 29). It is imperative that this recommendation be implemented without delay if children’s article 6 rights are to be adequately protected.

2.18 Implementation of Article 12

Article 12(1) places an obligation on States to assure the child who is capable of forming their own views the right to express them freely in all matters affecting them. The views of the child should be given due weight in accordance with the child’s age and maturity. No age limits are placed on the intended application of article 12 and the Committee has been vocal in clarifying that the provisions of the article apply to both younger and older children (CRC 2005b).

Key to the effective realisation of article 12 is the provision of *“child friendly”* information to children and young people about their right to express their views and have these taken into consideration (CRC 2006c:para 40). This information about their general right to have their say must then be augmented by the

provision of additional relevant information at key decision making points to enable them to translate this right into a reality. This must also be in a format that is accessible and understandable to the child.



Considering the variable weight to be afforded children of different ages, UNICEF (2007:155) observes:

“In deciding how much weight to give a child’s views in a particular matter, the twin criteria of age and maturity must be considered. Age on its own is not the criterion; the Convention on the Rights of the Child rejects specific age barriers to the significant participation in decision-making. Maturity is undefined; it implies the ability to understand and assess the implications of the matter in question. This in turn places obligations on the decision makers to give the child sufficient information” (UNICEF 2007:155).

As with the other general principles, article 12 is closely linked to a number of other articles within the Convention including articles 13 and 14 (freedom of thought and expression), articles 9(2) and 21(a) (voice of the child in parental separation and adoption proceedings) and

article 40 (voice of the child in juvenile justice proceedings).

Though the right to express one's views and have this taken into consideration is applicable across all areas of children's lives, article 12(2) identifies the particular application of this right within judicial and administrative proceedings. UNICEF observes that this generic phrase *"covers a very wide range of court hearings and also formal decision-making affecting the child in, for example, education, health, planning, the environment and so on"* (UNICEF 2007:149).

The Ten Year Strategy for Children and Young People 2006–2016 contains an explicit commitment to the pursuit of greater implementation of article 12 within NI, stating that *"in accordance with the UN Convention on the Rights of the Child, we will be proactive in obtaining the views of children in matters of significance to them"* (OFMDFM 2006c:20). The first action plan that accompanied the strategy further states that all departments should consider the views of children and young people in the development of new policies that impact upon their age group, but the requirement to do so lacks any accompanying definitive timescales or measurable targets, nor is there a clear oversight role identified to coordinate or monitor progress in this regard. This is an omission that must be addressed in the impending second action plan.

The NI Government, in its input to the UK State, highlights a number of examples where it has achieved significant progress in relation to this commitment to further progress the implementation of children's article 12 rights.

These include the development of shadow youth councils in a number of different geographical areas and a commitment to the establishment of both a NI Network for Youth (*"established to strengthen the direct voice of young people in all relevant aspects of government provision"*) and a Participation Network (to work with government departments and agencies to develop their capacity to meaningfully engage with children and young people) (OFMDFM 2007b:26).

The Participation Network, hosted by CiNI, was established in 2007 with funding from OFMDFM to assist decision makers and policy makers to listen to the voice of, and engage directly with, children and young people. The Network provides free consultancy, advice services and training for public authorities. It also facilitates a network of agencies that work directly with children and young people, including marginalised groups and will signpost decision makers to the organisations that can best help them to facilitate direct engagement with children who may be affected by their policies. An interim independent evaluation of the Network found it to have successfully met its objectives in the first year of operation (Quiry 2008).

Progress is also being made in relation to the establishment of the NI Network for Youth.¹⁸ Following the establishment of a working group and the completion of a pre-consultation exercise in 2007, proposals for the development of the Network have been issued for public consultation between September and November 2008.

18. www.ycni.org/ycni_projects/NINFY/ninfy_introduction.html [accessed October 2008].



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The establishment of the Participation Network and the developments in relation to the establishment of the NI Network for Youth both represent welcome developments in relation to the government's commitment to giving life to children's article 12 right at a strategic level, but it is imperative that these initiatives be appropriately progressed, adequately resourced and given a due degree of influence in the development of future policies and strategies, if tokenism is to be avoided. It is also imperative that they are evaluated and reviewed on an ongoing basis to assess the impact that they are making in relation to the positive progression of article 12 and that children and young people be a key part of such reviews.

Guidance issued by the Equality Commission in 2008 entitled 'Let's talk, let's listen' provides a useful resource for public authorities consulting with children and young people under s75 of the Northern Ireland Act, highlighting that:

"Schedule 9 (4) (2) (b) of the 1998 Act gives your organization a duty to assess and consult on the likely effects of the policies you have put in place (or plan to put in place) to promote equality of opportunity. As a result, you must consult children and young people across the nine categories listed under Section 75 (1) to ask for their views on how a particular policy may affect them" (ECNI 2008:11).

The guidance explains to public authorities that consulting with children and young people involves providing "information which is clear, easy to understand and in an appropriate format", as well as recognising the "different needs children and young people have (for

example, children who do not speak English as their first language, children who have learning disabilities and so on)" (ECNI 2008:15). It is hoped that this guidance, together with the establishment of the Participation Network and the impending establishment of the NI Network for Youth, will result in more meaningful and effective participation of children and young people at strategic level.

While the developments noted here are a progressive step towards fulfilling the government's article 12 obligations, further efforts are required to embed real and meaningful participation structures through all areas of policy, law and service provision impacting upon children. As the NI NGO report to the Committee observes:

"Long-term core funding is required to resource effective participation structures and mechanisms at regional and local levels. Effective participation is based on involving all children and young people, including groups often excluded from decision making processes (such as young children, children and young people with disabilities and specific additional needs, so-called 'hard to reach' groups). This requires investment of time and resources to explore the most appropriate methods for involving individuals/groups and adequately support their involvement. Meaningful participation involves informing children about their rights, addressing the issues of concern to them, publicly acknowledging their views and contributions, and providing feedback about the impact of their suggestions on development of policies/practice. This requires strategic commitment to

participation across statutory, voluntary and community sectors, and a shared focus on fulfilment of children's rights" (SC/CLC 2008:20).

Don't have
a say.



As highlighted above, the effective implementation of article 12 requires participation of a wide range of children and young people, proactive determination of issues of relevance to them and feedback on what difference their participation has made. These elements have traditionally been lacking in efforts to consult with children and young people.

While the participation rights of all children and young people could benefit from improvement, there are a number of particular groups for which increased and better participation is particularly imperative:

"Concerning application of Article 12 in the context of judicial and administrative proceedings,

the particular groups whose rights in this context are more vulnerable to violation include: looked after children, children whose parents are separating/divorcing, children exposed to domestic violence, children with mental health problems and learning disabilities, children with special educational needs, children at risk of suspension and/or expulsion from school, children in conflict with the law and children as victims of crime. In Northern Ireland, the required mechanisms do not exist, are inaccessible and/or are insensitive to their needs" (SC/CRC 2008:20).

Particular shortcomings in relation to the implementation of article 12 have also been noted by the Committee in its most recent Concluding Observations in which it expresses specific concern around the "progress to enshrine article 12 in education law and policy" and the efforts made to "ensure the rights enshrined in article 12 to children with disabilities" (CRC 2008:para 32). The Committee calls on the government to "promote, facilitate and implement, in legislation as well as in practice, within the family, schools and the community as well as in institutions and in administrative and judicial proceedings, the principle of respect for the views of the child". It further calls on the government to support forums for children's participation and to collaborate further with civil society to increase opportunities for the meaningful participation of children (CRC 2008:para 32).

This report explores the degree to which children and young people have been facilitated to enjoy their article 12 right to have their say in decisions that affect them and have their



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views and opinions taken into account in a number of different areas of their lives. Chapter 4 explores the application of article 12 to the home environment and to the care of looked after children. Chapters 5 and 6 consider the degree to which children are able to exercise their article 12 right within the fields of health, welfare and education, while chapter 7 explores the degree to which children's voices are visible in planning and policy decisions that impact upon play.

2.19 Conclusion

While the Convention on the Rights of the Child has been ratified by the UK State party, the fact that it has not yet been incorporated into domestic legislation over 15 years later significantly limits the protection and opportunities it can offer children and young people within NI.

Though there have been a number of positive developments in recent years in relation to the general implementation of the Convention, including the introduction of the Ten Year Strategy and the appointment of departmental Children's Champions, significant potential remains for the more effective realisation of children's rights. Section 2.20 highlights a number of priority action areas that, while not an exhaustive list, would if addressed offer significant progression in terms of the requirements placed upon the State party, as signatory to the Convention.

2.20 Priority Action Areas

- The full incorporation of the United Nations Convention on the Rights of the Child into domestic legislation, to enable invocation of the Convention rights within national courts. The impending Bill of Rights offers a potentially effective medium for the progression of this.
- Adoption of a comprehensive rights-based framework in all future action plans for the implementation of the Ten Year Strategy, together with specific measurable time-bound targets, adequate ring-fenced funding for the delivery of these targets and clear structures of accountability and responsibility.
- Greater collaborative working across different government departments and greater integration of strategic initiatives and developments, to ensure most effective use of resources. Responsibility for ensuring this could be variably vested in the Ministerial Sub-Committee on Children and Young People and the recently appointed Children's Champions.
- Reallocation of the brief for children's issues to Ministerial level, rather than Junior Minister level, as is currently the case.
- Improved collection and monitoring of data, disaggregated according to a broad range of socio-economic factors (specifically those evidenced to be associated with particular vulnerability in relation to the enjoyment of

rights) in order to inform effective responses to recognised breaches of rights. This should include in-depth analysis of expenditure on children and young people across all government departments, building on that already gathered in NICCY, the Department of Finance and Personnel and the Office of the First Minister and Deputy First Minister's 2007 commissioned research.

- A renewed commitment to the provision of sustained ring-fenced funding for children and young people, following the recent lapse of the Children and Young People Funding Package.
- Application of a child rights impact assessment in all proposed budgetary, policy or legislative changes which may potentially impact upon children and young people and in subsequent evaluations of the impact of such developments.
- Further child rights training for front line professionals (teachers, social workers, judiciary, police etc) and greater awareness raising of children's rights amongst children and young people, their parents/carers and the general public.
- Legislative change in order to increase the independence of the Commissioner for Children and Young People and ensure compliance with internationally recognised minimum standards for National Human Rights Institutions (Paris Principles).