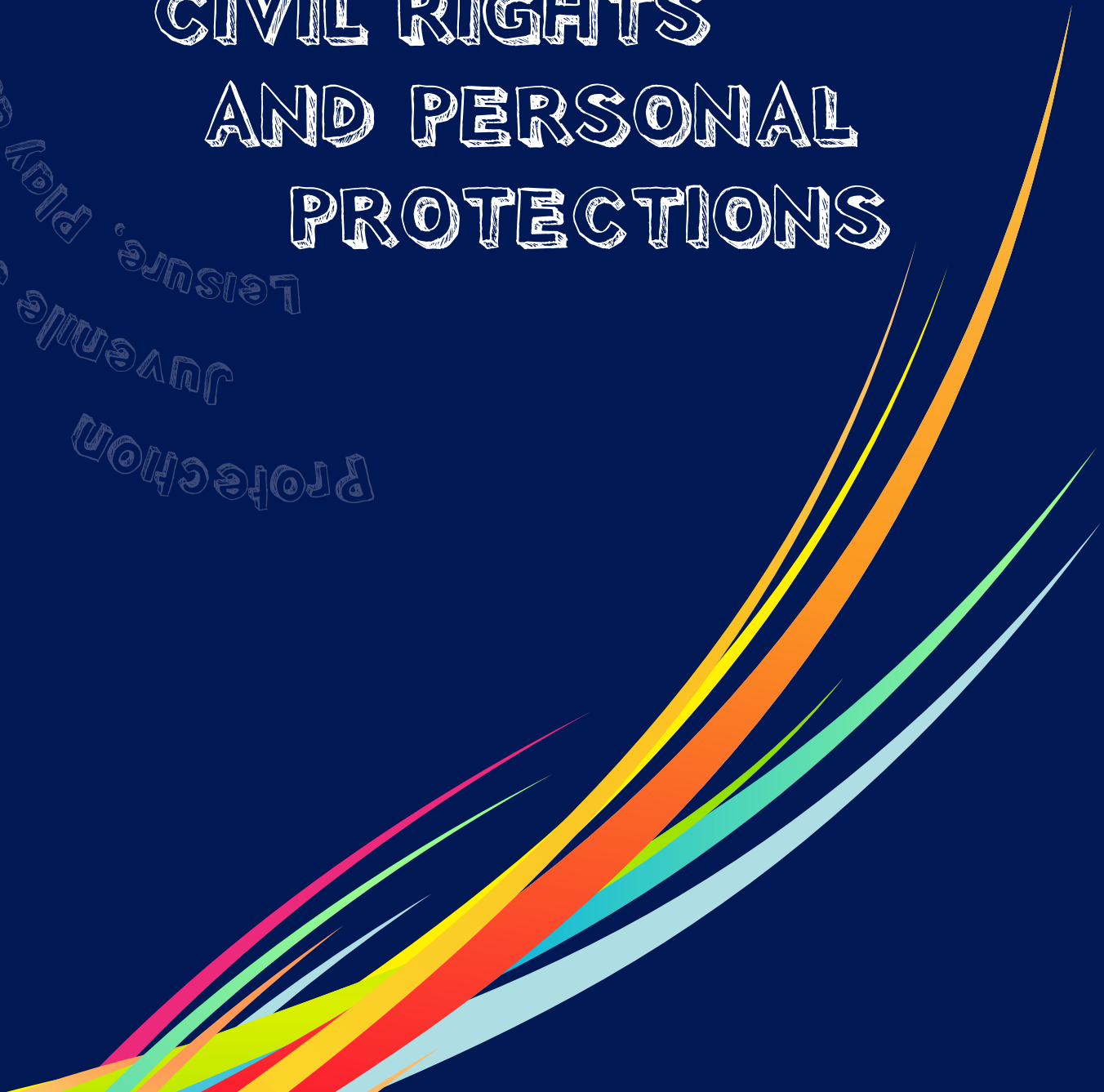


Education
Family Life and Alternative
Family Welfare Civil Rights
Health and Culture
Leisure, Play and Culture
Justice
Juvenile
Protection

3:

CIVIL RIGHTS AND PERSONAL PROTECTIONS



3.1 Introduction

This chapter incorporates both civil rights and freedoms and further consideration of the right to life, survival and development, presented with regard to other protection oriented rights. A number of the issues presented within this chapter have the potential to be categorised in a number of different ways. As such, their incorporation in one category should not be seen to exclude their relevance to others.

The chapter begins with an introduction to civil rights and freedoms and an exploration of the degree to which these rights – both personal freedoms and protection from torture, cruel, inhuman or degrading treatment or punishment – are currently being realised within NI. It proceeds with consideration of the impact of police technologies (which can simultaneously impact upon both children and young people’s civil rights and freedoms and their right to life, survival and development) before presenting a more detailed introduction to a rights-based approach to the protection and promotion of life in its widest sense. The chapter proceeds with an exploration of the protection of children within both the home and wider society, before concluding with a specific look at the special measures of protection afforded to asylum seeking and refugee children and those at risk of commercial sexual exploitation.¹⁹

3.2 A Rights-based Approach to Civil Rights and Freedoms

The Committee on the Rights of the Child, in its reporting guidelines to State parties, identifies articles 7, 8, 13 to 17 and 37(a) of the Convention, as the key articles relating to children’s civil rights and freedoms (CRC 1994a). Together these articles address issues of identity, freedom of thought and association, access to knowledge, the right to privacy and protection from torture or other cruel, inhuman or degrading treatment:

- Articles 7 and 8 consider a child’s right to identity. Article 7 covers their right to a name and nationality and, wherever possible, to be known and cared for by their parents. Article 8 addresses the issue of preservation and, where necessary, re-establishment of identity.
- Article 13, closely associated with article 12 (the right to express one’s views and have them taken seriously), stipulates that all children and young people should have the right to freedom of expression and the freedom to seek, receive and impart information and ideas of all kinds.
- Article 14 provides for the right to freedom of thought, conscience and religion.
- Article 15 provides for freedom of association and peaceful assembly.
- Article 16 protects the child’s right to privacy.
- Article 17 provides for a right to access appropriate information, with a particular focus on the role of the mass media in relation to this.

¹⁹. The special protection measures afforded to young people in conflict with the law are explored in chapter 8.



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- Article 37(a) protects children from torture or other cruel, inhuman or degrading treatment or punishment and, in doing so, reiterates that the absolute prohibition on this behaviour contained within the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights applies equally to children, as it does to adults.

These articles do not exist in a vacuum. They should be interpreted in light of all other articles within the UNCRC and, in particular, the four general principles of the Convention: non-discrimination; best interests; life survival and development; and the right to be heard. They should also be interpreted in light of subsequent commentary by the Committee and other United Nations (UN) bodies, in particular:

- General Comment Number 8 on the 'Right to Protection from Corporal Punishment and other Cruel or Degrading Forms of Punishment'
- General Comment Number 9 on 'Children with Disabilities'
- General Comment Number 10 on 'Children's Rights in Juvenile Justice'
- the UN Secretary General's Study on Violence against Children
- the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)
- the UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).

3.3 Personal Freedoms

As subsequently illustrated throughout this report, there are many areas where children and young people are still not able to fully enjoy their article 13 and 17 rights to seek, receive and impart information and ideas of all kinds. The same can also be said of their article 16 right to privacy and their article 15 right to freedom of association and peaceful assembly.

Children and young people who participated in this review were frequently vocal about the situations in which they felt they were not kept informed and/or had no opportunity to express their views and ideas; whether this be in the family home (chapter 4), in the school setting (chapter 6) or in civil society more generally (chapter 2).

Information about issues that impact or interest them is frequently not readily accessible to children and young people whether due to formal/informal censorship of information, adoption of inappropriate language in portraying information or reliance on more traditional mediums of communication that are less frequently utilised by children and young people. Furthermore, while there has been some observable progress in recent years, there are still many situations and circumstances where children and young people are not able to freely express their views and ideas. This was a source of great frustration for the children and young people who participated in this review, most of whom were very willing to engage in information exchange when given appropriate

opportunities. A particular issue raised in relation to this was the disjuncture between decision makers and children and young people and the absence of appropriate avenues for addressing this and facilitating children and young people's strategic influence, as previously explored in chapter 2.

At the other end of the continuum, participants in this review expressed concern about the lack of privacy afforded to children and young people in certain aspects of their lives. This was particularly contentious in relation to children in care and custody and young people wishing to access confidential health or support services. Recognising the necessity of balancing the right to privacy with the protection and best interests of the child, it is imperative that further efforts are invested in finding a rights compliant resolution to these potentially conflicting demands.

A number of recent developments, including the introduction of Anti-social Behaviour Orders (ASBOs) and Mosquito devices, have combined to make children and young people's access to public space, while in groups, inherently problematic. As noted by the Committee in its 2008 Concluding Observations, this has consequently negatively impacted upon children and young people's ability to enjoy their article 15 right to freedom of association and peaceful assembly: *"The Committee is concerned at the restriction imposed on the freedom of movement and peaceful assembly of children by the anti-social behaviour orders (ASBOs) as well as by the use of the so-called "mosquito devices" and the introduction of the concept of "dispersed*

zones". *The Committee recommends that the State party reconsider the ASBOs as well as other measures such as the mosquito device insofar as they may violate the rights of children to freedom of movement and peaceful assembly, the enjoyment of which is essential for children's development and may only [be] subject to very limited restrictions as enshrined in article 15 of the Convention"* (CRC 2008:para 34/35). As explored in section 3.3.2 below, these developments have been fuelled by an increasingly negative portrayal of young people in the media, political circles and society at large, all of which were raised as issues of serious concern by participants in this review.

3.3.1 Anti-social Behaviour Orders

ASBOs were introduced to NI under the Anti-social Behaviour (Northern Ireland) Order 2004. Article 3 of the legislation allows relevant authorities (district councils, the Northern Ireland Housing Executive (NIHE) and the Chief Constable) to apply for an ASBO in respect to any person aged 10 or over if it appears that they have acted in an anti-social manner (defined as 'a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself') and an order is deemed necessary to protect people from further anti-social acts.

If, on application, it is proved that both these conditions are fulfilled, a magistrates' court may issue an ASBO containing spatial exclusions or other prohibitions on the actions of an individual. A minimum duration of two years is established in legislation; no maximum duration



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is established. Interim orders may also be made prior to the determination of an application if this is deemed appropriate by the court, and under the Criminal Justice (NI) Order 2008, these can now be obtained without notice to the individual concerned.

The introduction of ASBOs to NI was unsuccessfully judicially challenged by the Northern Ireland Commissioner for Children and Young People in 2004. Applying for the judicial review, NICCY stated:

"We believe that the views of children and young people have not been fully taken into consideration...If children as young as 10 are expected to understand an anti social behaviour order, they should also be consulted on their introduction".²⁰

Irrespective of the outcome of the judicial review, there remain a number of different aspects of the use of ASBOs that are cause for grave concern. Not least of these are the low behavioural thresholds applied to the issuing of an order, the potential for criminalisation in the case of breached orders, the disproportionate use of orders with children and young people in other jurisdictions and the minimum duration applied to orders.

To expand, the definition of anti-social behaviour applied to ASBOs (as outlined above) is both vague and subjective and therefore open to a variety of interpretations and applications. Furthermore, because ASBOs are civil orders,

there is a lower burden of proof applied, with hearsay and professional evidence admissible in hearings. As the NIHRC (2008a:24) observe, *"the odds are very heavily stacked against the person against whom the order is sought"*. This is particularly the case in relation to interim orders where *"without an opportunity to present arguments at an interim hearing, the likelihood of an inappropriate ASBO being granted is greatly increased"*. This is in spite of the fact that *"breach of an interim order carries the same penalties as breach of a full order"*.

The relative ease with which orders can be obtained is particularly concerning in light of the fact that, if approved, orders are granted for a minimum of two years (with no maximum duration set in legislation). It is also particularly concerning in light of the fact that, although ASBOs are civil orders, breach of an order is considered a criminal offence:

"There is a distinct blurring of the civil and criminal law. If an ASBO is granted and subsequently breached, a child can receive a custodial sentence – despite the fact that anti-social behaviour is not criminal, they have not had the protections of the criminal justice system and they have been denied the right to a fair trial" (SC/CLC 2008:46).

This blurring of civil and criminal law with respect to ASBOs was highlighted as an issue of concern by the Committee in its 2008 Concluding Observations:

20. www.niccy.org/article.aspx?menuid=283 [accessed August 2008].

“The Committee is concerned at the application to children of the Anti-Social Behaviour Orders (ASBOs), which are civil orders posing restrictions on children’s gathering, which may convert into criminal offences in case of their breach. The Committee is further concerned at the ease of issuing such orders, the broad range of prohibited behaviour and the fact that the breach of an order is a criminal offence with potentially serious consequences...[and]...that ASBOs, instead of being a measure in the best interests of children, may in practice contribute to their entry into contact with the criminal justice system” (CRC 2008:para 79).

This potential for criminalisation is particularly pertinent in light of the disproportionate use, and breach, of ASBOs amongst children and young people in other jurisdictions where they have been in operation for longer. It is also particularly pertinent in light of the fact that the inappropriate, prohibitive and punitive conditions attached to ASBOs make it difficult for many children to abide by them. In many cases breach, and the consequent potential for criminalisation, is virtually inevitable, yet only Scotland has introduced the protection that children under 16 cannot be detained for breaching an ASBO (Donoghue 2007).

The possibility of detention as a result of breach of a civil order is in clear contradiction with a children’s rights approach, which advocates pursuit of non-custodial options wherever possible and use of detention as a very last resort. As the Committee reiterated in both its 2002 and 2008 Concluding Observations on the UK, the State should encourage the use of

alternative measures to deprivation of liberty, ensuring that detention of children is used as a measure of last resort and for the shortest appropriate period of time (CRC 2002; 2008).

The behavioural and spatial restrictions that can be contained within an order can also prevent children and young people enjoying their other UNCRC rights, including access to education, freedom of association and the right to play and leisure.

The absence of automatic reporting restrictions in relation to children and young people is a further weakness in the system that sits in clear contradiction with children and young people’s right to privacy, as outlined in articles 16 and 40 of the UNCRC. It also sits in contradiction with the Committee’s comments in the 2002 Concluding Observations on the UK, that it should *“ensure that the privacy of all children in conflict with the law is fully protected in line with article 40(2) (b) (vii) of the Convention”* (CRC 2002a:17).

The administration of ASBOs within civil law denies potential recipients the additional protections afforded to them within the youth justice system, including that of anonymity. This absence of mandatory reporting restrictions can leave children and young people both at risk within their local communities and vulnerable to a hostile media, who frequently seek to demonise and make examples of the young:

“Concerns relating to child protection have been raised since the three named bodies which can apply for an ASBO have the power



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to challenge an application for imposition of reporting restrictions and make a young person's personal information public. Known as 'naming and shaming' this would be particularly dangerous given the influence of non-state forces in Northern Ireland and past connotations with 'anti-social behaviour'" (SC/CLC 2008:46/47).

The failure of the State party to take "sufficient measures to protect children, notably those subject to ASBOs, from negative media representation and public 'naming and shaming'," despite its recommendations in relation to this in 2002, has been highlighted as a matter of ongoing concern by the Committee in its 2008 Concluding Recommendations. It consequently calls upon the State to "intensify its efforts, in cooperation with the media, to respect the privacy of children in the media, especially by avoiding messages publicly exposing them to shame, which is against the best interests of the child" (CRC 2008:para 36/37).

Although much of the debate around the use of ASBOs has centred on their direct application to children and young people, it is important to note the indirect consequences that their application to any individual can have on children and young people. Even if an order is applied to an adult within the family, this can result in the family having to relocate and/or family members being victimised because of their association with the person in question.

It is difficult to source detailed information about the nature and frequency of ASBOs within NI. However, evidence from the NIHRC to the Ad Hoc Committee on the draft Criminal Justice

(NI) Order in January 2008 stated that 62 ASBOs have been issued within NI since their introduction in 2004 (NIHRC 2008c). Twenty were issued to under 18 year olds between August 2004 and May 2007, 19 by the PSNI and 1 by the NIHE (SC/CLC 2008).

While relatively low usage of ASBOs to date is to be welcomed, the continued potential for their use remains in breach of the UNCRC and must be urgently redressed. Both the United Nations Human Rights Committee (HRC), in its 2008 Concluding Observations on the UK's implementation of the ICCPR, and the Committee on the Rights of the Child in its 2008 Concluding Observations have called upon the government to reconsider its position on ASBOs:

"The State Party should review its legislation on anti-social behaviour orders, including the definition of anti-social behaviour, in order to ensure that it complies with the provisions of the Covenant...ensure that young children are not detained as a result of breaching the conditions of their ASBOs and that the privacy rights of children and adults subject to ASBOs are respected" (HRC 2008:para 20).

"The Committee recommends that the State party conduct an independent review on the ASBOs with a view to abolishing their application to children" (CRC 2008:para 80).

ASBOs do not address the underlying problems that contribute to anti-social behaviour, nor do they engage the child or young person in any restorative or rehabilitative practices. The weak evidential base required, the blurring of the civil

and criminal law and the potential application to children as young as 10 are matters of grave concern, as is evidence to suggest that most children subject to them are from disadvantaged backgrounds (CRC 2008). As McMahon and Keenan (2008:103) conclude, *"the very existence of ASBOs in relation to children represents a serious infringement on their human rights"*; one that must be urgently redressed.

3.3.2 The Demonisation of Youth

Recent years have witnessed an increasingly negative portrayal of youth – in the media, political circles and society at large – which together have negatively impacted upon children's ability to enjoy the rights afforded them by the UNCRC within the realm of the public domain. Children and young people, parents/carers and professionals alike who participated in this review highlighted this as an area of serious concern, noting the current negative conceptualisation of youth as a barrier to the effective realisation of children's rights.

While acknowledging that some children and young people do engage in problematic and anti-social behaviour, and recognising this as a problem that must be addressed, participants in this review highlighted the injustice of judging all young people on the basis of the negative behaviour of a minority:

"You're a teenager, you're a hood...you get labelled – cos you're a teenager, you'll cause trouble" (young person).

"Cos of your age, you could be the most innocent person in the world, but you get the blame" (young person).

"You're obviously a thug cos you're under 18" (young person).

"Just because you're young, people think you're doing wrong" (young person).

"Age doesn't determine the kind of person you are" (young person).

"Some adults think all kids are vandals – which we are not" (young person).

"People need to realise that not every teenager is trying to cause trouble" (young person).

"They think if one kid's bad, they're all bad" (parent).





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"There's a lot of prejudice against younger people" (professional).

The increasingly problematic conceptualisation of youth can mean that young people who wish to proactively engage in civil society encounter prejudicial attitudes and negative stereotypes when attempting to do so. Specific issues which children and young people highlighted as particularly problematic in this regard included socialising together in public space and accessing shops and public amenities.

Young Consumers

In response to concerns raised with the Commissioner by children and young people over the preceding year, NICCY's youth panel undertook to investigate the experiences of young people as 'young consumers' in the autumn of 2006. A total of 455 children and young people and 92 adults shared their views on how young people are treated in retail environments as part of this work, with the majority (74% of young people and 75% of adults) concluding that shop staff treated young people more negatively than adults (NICCY 2006b). Such views were reiterated again by young people who participated in this review:

"In shops we're always treated like we're all thieves – just cos we're under 18."

"You get followed around [in shops], cos of your age."

Key differences noted by individuals who participated in NICCY's Young Consumers work included a greater suspicion of young

people (manifested in staff following young people around in retail outlets) and disrespectful attitudes towards young people on the part of retail and security staff. Negative experiences appeared to be exacerbated when young people were in groups. The key reason identified as contributing to such negative behaviour, mentioned by 63% of the young people and 57% of the adults who noted it, was that of 'negative stereotypical attitudes towards young people' amongst shop staff. This included a belief that all young people were 'up to no good' or 'out to cause trouble' (NICCY 2006b).

A particular issue of contention, raised in both this review and NICCY's 2006 Young Consumers work, was the application of differential rules to adults and children within retail environments. Particular issues highlighted within this include rules around baggage (school bags to be left outside), limits on the number of young people allowed in a shop together and rules relating to the wearing of baseball caps or 'hoodies' by young people (NICCY 2006b). These concerns were reiterated by the UK Children's Commissioners in their 2008 report to the Committee on the Rights of the Child:

"The signs in shop doors of "no school children" or "only two children at a time" are now common and largely go unnoticed by adults but impact on children's lives. They reinforce the negative stereotypes that are held about children in our society. Unfair treatment based on prejudice and negative stereotyping should be no more acceptable for children than any other members of society" (UK Children's Commissioners 2008:12).

While recognising the concerns giving rise to the introduction of such rules, their application to one age group and not another represents a clear form of age discrimination against young people.

Inhabiting Public Space

The other key issue of contention in relation to the consequences of the increasing demonisation of youth, raised by children and young people who participated in this review, was that of their ability to utilise public space without being labelled as trouble makers or considered a risk to the community.

This issue is further explored in chapter 7, in the context of children's right to play and leisure. However, it is important to note here the impact of the increasingly negative public reaction to young people socialising in public space on their personal freedoms and, in particular, their article 15 right to freedom of association and peaceful assembly. This is particularly pertinent in light of the absence of appropriate alternatives for young people in many communities. As the Committee observes in its 2008 Concluding Observations, *"the reduction in playgrounds [that has] occurred in recent years has the effect to push children into gathering in public open spaces, a behaviour that – however – may be seen as anti-social according to the ASBOs"* (CRC 2008:para 68). The inappropriateness of this was highlighted by several participants in this review:

"It is unacceptable that children may be described as behaving 'anti-socially' when 'hanging around' when no meaningful

consideration has been given to the reasons why children use the streets as meeting places – there is a real lack of age appropriate, young people friendly facilities and services that engage and stimulate young people" (professional).

Many young people who participated in this review recognised that their presence on the streets, particularly when in a crowd, was often perceived as threatening by others in the community, but highlighted that this was the only choice available to them, in the current climate of inadequate play and leisure provision for teenagers. Save the Children (2007:56) highlight the potentially dangerous implications of society's failure to accommodate young people socialising in public spaces, noting that the construction of young people hanging around in public spaces as a nuisance or threat, can result in them being moved on to the *"margins of communities"* that are *"less well-lit, less public and less safe"*.

A further worrying development in relation to young people's ability to freely inhabit public space is the introduction of Mosquito devices; ultrasonic devices which emit a very high pitched noise that can only be heard by those under 25. According to one retailer's website, these are designed to be *"the solution to the eternal problem of unwanted gatherings of youths and teenagers in shopping malls, around shops and anywhere else they are causing problems"*.²¹

21. www.compoundsecurity.co.uk/teenage_control_products.html [accessed September 2008].



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Although the use of Mosquito devices has been more of an issue in England to date, where 3,500 devices have been found to be in use, concerns exist that the government's failure to ban their use may have potentially negative implications for use within the rest of the UK, including NI.²²

This increasingly problematic conceptualisation, and isolation, of youth illustrated by these examples is in direct conflict with the spirit of the Convention and something that must be urgently redressed if children and young people in NI are to be allowed to develop as full and active citizens, as is their right under the UNCRC. An assumption of deviance, on the basis of age alone, represents a clear form of discrimination against young people that must be urgently addressed. This form of discrimination has been explicitly highlighted by the Committee in its 2008 Concluding Observations in which it notes concern at *"the general climate of intolerance and negative public attitudes towards children, especially adolescents"* and call upon the State party to take *"urgent measures to address the intolerance and inappropriate characterization"* of children and young people within the UK (CRC 2008:para 25).

3.3.3 DNA Retention

The PSNI currently has the power to routinely take DNA samples, without consent, from anyone aged 10 or over who is arrested in conjunction with a recordable offence. This was introduced under the Criminal Justice

(NI) Order 2004 by the Secretary of State for Northern Ireland, under direct rule, in order to bring NI's legislation in line with that of England and Wales. The rapid progress of this legislation through parliament (lasting only 10 days) has been strongly criticised from many quarters, including the Northern Ireland Affairs Committee, which highlighted the lack of consultation on the proposed amendments. Commenting on this, Genewatch UK (2007:5) concludes:

"It is hard to escape the conclusion that the Criminal Justice (Northern Ireland) Order 2004 – including its controversial provisions to take DNA and fingerprints on arrest for any recordable offence – was sped through the parliamentary process in the ten days between 24th March and 3rd April 2004 in order to avoid the promised consultation process."

Research by Quinn and Jackson (2003) reveals that over one third (36%) of young people detained and questioned by the police during the duration of their study had DNA samples taken. Although the authors note that the police did not always exercise their powers to fingerprint and take samples for DNA testing from young persons, recent statistics reveal that DNA is currently held on at least 3,065 under 18s in NI, 1,119 of whom have no convictions or cautions (SC/CLC 2008).

DNA samples taken in NI are analysed and stored by the Forensic Science Northern Ireland (FSNI) laboratory. Since 2005, they have also been exported to the national DNA database in England; with the costs of this borne by

22. www.11million.org.uk/youth/buzz_off_campaign/ [accessed October 2008].

the PSNI. Genewatch UK (2007) highlights a number of concerns regarding the privacy and rights of individuals whose DNA is held on these databases, including:

- the potential for unauthorised access, abuses and/or misuses and mistakes
- the creation of a permanent 'list of suspects' that may be made available to a wider range of organisations in the future
- use of this information for research projects (19 have been allowed since the year 2000)
- use of the data for 'familial searches' (trying to trace a suspect through their relatives).

Concerns about the retention of DNA were also raised by a few parents who participated in this review:

"Police were well prepared to deal with a young person. Polite and explained everything. The matter was eventually dropped, but feel uneasy that child's fingerprints and DNA kept on file. Should be destroyed. Wrong to criminalise young people."

The law states that all DNA samples taken on arrest may be permanently kept. Computerised DNA profiles and personal data may also be kept permanently on the NI DNA database, even if a person is never charged or is acquitted. The Northern Ireland Policing Board's 2007 Annual Report explains:

"The PSNI's policy is based on the statutory framework laid down in the Criminal Justice and Police Act 2001, the Criminal Justice Act 2003 and ACPO guidance. The Criminal

Justice and Police Act 2001 and Criminal Justice Act 2003 removed the requirement to destroy DNA samples and fingerprints relating to persons following acquittal at court or other discontinuance of a case and provided the police with an additional power to take DNA samples and fingerprints, without consent, from any person detained at a police station who has been arrested for an offence which carries a custodial sentence. This power applies even where an arrest results in no further action being taken against the individual. ACPO guidance sets out the procedure for removal of DNA samples and fingerprints from the Police National Computer and gives Chief Officers the discretion to authorise the deletion of such data 'owned' by them in exceptional circumstances" (NI Policing Board 2007a:49).

Although the situation in NI is in line with the situation in England and Wales, it differs substantially from that in Scotland where tighter restrictions apply to the retention of DNA, including a requirement to destroy samples no longer than three years after an unsuccessful criminal proceeding. The compatibility of the situation in England and Wales (on which NI is based) is currently before the European Court of Human Rights. At the time of writing, a decision was pending. The four UK Children's Commissioners, in their 2008 report to the CRC, have recommended that the Scottish approach to DNA retention be applied throughout the UK (UK Children's Commissioners 2008).



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According to Genewatch UK (2007:8):

"The Home Office has recognised that retaining samples is "one of the most sensitive issues to the wider public" and the Human Genetics Commission has concluded that the reasons given for them are "not compelling". Only temporary, not permanent, storage is necessary for quality assurance purposes and a new sample can always be taken from the suspect if a DNA profile requires checking or upgrading."

It further observes that:

"Although lack of information makes a proper assessment of the cost effectiveness impossible, it is unlikely that paying to store DNA samples permanently from everyone who is arrested for a recordable offence represents best value. Nor is the permanent retention of DNA profiles and samples, particularly from children, likely to inspire public confidence in policing in Northern Ireland" (Genewatch 2007:10).

It is difficult to see how the permanent retention of children and young people's DNA, particularly those who were acquitted or never charged, is in their best interests or in line with the rehabilitative principles contained within article 40 of the Convention. As the Nuffield Council on Bioethics (2007:xvii) notes, *"it may be argued that retaining bioinformation from young people is contrary to Article 40 of the UN Convention on the Rights of the Child, in that the Convention requires special attention to be given to the treatment of children by legal systems, to protect them from stigma, and that if they have offended, opportunities for rehabilitation should be maximised. The destruction of relevant*

criminal justice records and accompanying body samples could become one element in such a rehabilitative process."

The Committee on the Rights of the Child also highlighted its concern at the fact that *"data regarding children is kept in the national DNA database irrespective of whether the child is ultimately charged or found guilty"* in its 2008 Concluding Observations (CRC 2008:para 36), calling on the government to introduce stronger regulations for data protection in relation to both legislation and practice that may impact upon children and young people's right to privacy.

3.4 Torture, Cruel, Inhuman or Degrading Treatment or Punishment

3.4.1 Physical Punishment

The continued legality of the use of certain forms of physical punishment within the home is an issue of grave concern that is in breach of the State's UNCRC obligations, in particular article 37(a) that protects children from torture or other cruel, inhuman or degrading treatment or punishment and article 19 that places a duty on States to 'take all appropriate legislative, administrative, social and educational measures [both preventative and punitive] to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child'.

The articles of the Convention, together with subsequent commentary by the Committee on the spirit behind the text, unambiguously *"recognise*

the right of the child to respect for the child's human dignity and physical integrity and equal protection under the law" (CRC 2006a:para 2). It is the Committee's unequivocal position that no exceptions or exemptions should exist in law, with regard to the protection of children from physical assault. Specifically commenting on the application of article 19 to the issue of physical punishment, the Committee unambiguously states that the phrase "'all forms of physical or mental violence' does not leave room for any level of legalized violence against children". This includes "hitting (smacking, slapping, spanking) children with the hand or with an implement – a whip, stick, belt, shoe, wooden spoon etc" and "kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears...In the view of the Committee, corporal punishment is invariably degrading" (CRC 2006a:para 11–14). This being the case, it also contravenes article 37 of the Convention.

Specifically commenting on the continued existence of provisions that allow some degree of violence against children (eg 'reasonable' or 'moderate' chastisement or correction) in their homes/families or any other setting, the Committee states that adherence to the Convention demands the removal of any such provisions:

"In its examination of reports, the Committee has noted that in many States there are explicit legal provisions in criminal and/or civil (family) codes that provide parents and other carers with a defence or justification for using some degree of violence in "disciplining" children. For example, the defence of "lawful", "reasonable" or "moderate" chastisement or correction has formed part of English common law for centuries...At one time in many States the same defence was also available to justify the chastisement of wives by their husbands and slaves, servants and apprentices by their masters. The Committee emphasizes that the Convention requires the removal of any provisions (in statute or common - case law) that allow some degree of violence against children (e.g. "reasonable" or "moderate" chastisement or correction), in their homes/families or in any other setting" (CRC 2006a:para 31).

This commentary reiterates and reinforces the comments made by the Committee in the 1995 and 2002 Concluding Observations on the UK, in which it notes deep regret *"that the State party persists in retaining the defence of "reasonable chastisement" and has taken no significant action towards prohibiting all corporal punishment of children in the family.*





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The Committee is of the opinion that the Government's proposals to limit rather than to remove the "reasonable chastisement" defence do not comply with the principles and provisions of the Convention and the aforementioned recommendations, particularly since they constitute a serious violation of the dignity of the child" (CRC 2002a:para 36/37; CRC 1995).

The Committee urged the government in 2002 to adopt legislation throughout the UK that removes the reasonable chastisement defence and prohibits all forms of corporal punishment in the family. It further recommended that the State "promote positive, participatory and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, involving children and parents and all those who work with them and for them, and carry out public education programmes on the negative consequences of corporal punishment" (CRC 2002a:para 36–38).

This message has been clearly reiterated by the four UK Children's Commissioners in their 2006 joint statement on the use of physical punishment within the home:

"Children are the only people in the UK who can still be hit without consequence...Children have the same right as adults to respect for their human dignity and physical integrity and to equal protection under the law, in the home and everywhere else. There is no room for compromise, for attempting to define "acceptable" smacking. This has been confirmed by United Nations and Council of Europe human rights monitoring mechanisms, and by the

Westminster Parliamentary Joint Committee on Human Rights. The UK has been told repeatedly since 1995 that to comply with its human rights obligations, the reasonable punishment defence must be removed completely in all four countries of the UK.

We believe that condoning smacking gets in the way of progress. It confuses parents, inhibits child protection and undermines the promotion of positive forms of discipline. It conflicts with our governments' aspirations for children and our society. Research with young children across the four countries has shown how upsetting they find smacking and adult approval of it.

The European Network of Ombudspersons for Children adopted a position statement in 1991, urging all governments in Europe without delay to introduce legislation prohibiting all corporal punishment, and initiate or support education programmes in positive, non-violent forms of discipline. More than one third of Council of Europe member states have explicitly prohibited all corporal punishment, and others are committed to doing so in the near future. We know from colleagues across Europe that once governments grasp the nettle, reform their law and link reform with public education, attitudes quickly begin to change" (UK Children's Commissioners 2006).

Commenting again in 2008, the Committee once again expressed concern at the government's failure to adequately legislate against the use of physical punishment within the home:

"The Committee, while noting amendments to legislation in England, Wales, Scotland and Northern Ireland which restrict the application

of the defence of “reasonable chastisement”, is concerned that this defence has not been removed...The Committee is concerned at the failure of State party to explicitly prohibit all corporal punishment in the home and emphasises its view that the existence of any defence in cases of corporal punishment of children does not comply with the principles and provisions of the Convention, since it would suggest that some forms of corporal punishment are acceptable...The Committee...recommends that the State Party prohibit as a matter of priority all corporal punishment in the family, including through a repeal of all legal defences” (CRC 2008:para 40–42).

In spite of these calls for change from both the CRC and the UK Children’s Commissioners, the NI Government has not yet introduced a complete ban on the use of physical punishment within the home. Although article 2 of the Law Reform (Miscellaneous Provisions) Northern Ireland Order 2006 removed the defence of reasonable chastisement for more serious assaults, it has retained it for the offence of common assault tried summarily. The Explanatory Memorandum to the Order explains:

*“The restriction of the defence of reasonable chastisement was one of the options which were consulted on widely, following the judgment in A v UK. Whilst there was strong support for a complete ban and retaining the status quo, the Department has concluded that the restriction of the defence will offer additional protection to children and ensure the necessary compliance with the Convention.”*²³

Highlighting the dualistic approach of legislative change and positive parenting initiatives currently being pursued, the NI input to the 2008 State report to the CRC states:

“The direct rule government under the Secretary of State considered that Article 2, coupled with the ongoing work on positive parenting, offers the best prospect of securing real and significant change on the ground in terms of the use of alternative methods of discipline” (OFMDFM 2007b:29).

The government has indeed introduced a number of different positive parenting initiatives in recent years, including an information campaign, professional guidance, parental handbooks and the establishment of an inter-disciplinary group on positive parenting and these are generally to be welcomed. However, a review of existing literature by NICCY, the National Society for the Prevention of Cruelty to Children (NSPCC) and Barnardo’s NI (Bunting et al 2008) found that children, parents and professionals alike all identified a need for increased support services for parents. This was supported by findings of their own survey of 1,000 parents which found that two thirds of parents stated they could not recall receiving any advice on the alternatives to physical discipline. Those who had, tended to view the use of physical discipline more negatively.

These findings are particularly pertinent in light of accompanying survey findings that almost half of parents have used some form of physical discipline, with 3 out of 10 feeling in some way out of control when they

23. Available from www.opsi.gov.uk/si/em2006/uksiem_20061945_en.pdf [accessed August 2008].



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administered this discipline. This is in spite of the fact that the majority of parents did not think that physical discipline increases respect, teaches obedience or leads to the learning of acceptable behaviours. This, together with the fact that a substantial proportion of parents reported using physical discipline even though they considered it to be ineffective and to have potentially negative outcomes for their children, suggests that parents may be resorting to use of physical punishment in the absence of knowledge of/familiarity with other alternatives (Bunting et al 2008).

The findings of Bunting et al's work, together with the findings of this review, would strongly indicate that further investment is required in promotion of alternatives to physical violence within the home. The need for the promotion of positive parenting techniques, amongst both parents and professionals working in the field, was also raised by the Committee in its 2008 Concluding Observations, in which it calls upon the government to *"actively promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to raising public awareness of children's right to protection from all corporal punishment and to decreasing public acceptance of its use in child-rearing"* and *"provide parental education and professional training in positive child-rearing"* (CRC 2008:para 42).

While the promotion of positive parenting is clearly to be commended, it is imperative that any such initiatives are unambiguous in the message that physical punishment is not

acceptable under any circumstance. Mixed messages, such as that contained within DHSSPS' (2007e) guide to positive parenting – in one sentence, it is not your right to punish your child; in another, there is still a defence available if you do (when the harm is seen as minor) – may result in more confusion than clarity. As professionals in this review observed:

"Parents are likely to be confused by the current state of law on this area".

Furthermore, while positive parenting initiatives are indeed key to the protection of children and young people within the home, their existence does not offset the need for a full legislative ban on the use of violence within the home. As the law currently stands, children and young people have less protection under the law in this respect than their adult counterparts.

This being the case, NICCY has challenged the introduction of article 2 of the Law Reform (Miscellaneous Provisions) Northern Ireland Order by means of a Judicial Review in the High Court. Applying for the Judicial Review, NICCY asserted that article 2 (as it stands) is in breach of both articles 19 and 37(a) of the UNCRC and articles 3, 8 and 14 of the ECHR, as incorporated by the Human Rights Act. Following a judgment in December 2007 that rejected the application, the case is currently under appeal.

The majority of professionals who participated in this review supported NICCY's view that the current legal position, in terms of use of physical punishment within the home, provides inadequate safeguards for children and young people and

continues to be in breach of the provisions of the UNCRC. Indeed, this was one of the areas of children's rights identified by professionals as having progressed least in the last three or four years:

"I suppose we are more disappointed that there hasn't been any progress made in terms of physical punishment, which remains an outstanding and ongoing issue for us."

"Children still don't receive the same safeguards against violence and physical punishment as adults might expect and there's no current government intention to equalise the rule."

The children and young people who participated in this review were also strongly condemnatory of the use of physical punishment within the home, stating that it was both abusive and an ineffective means of punishment:

"Smacking is abuse – stop smacking."

"You don't always learn from being smacked."

"Children shouldn't be hit – at least not brutally."

"Make it against the law that you can slap your children as long as it doesn't leave a mark."

"Smacking isn't right because children follow the example of their parents."

Proponents of continued exemptions in law, with regard to the use of physical punishment within the home, often cite article 3 – 'the best interests of the child' – as part of their defence. This 'spare the rod, spoil the child'

defence argues that the use of physical means of discipline is necessary to educate a child in right and wrong and, therefore, ultimately in their 'best interests'. The CRC recognises the existence of this argument but does not in any way accept it, clarifying that *"interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence and the requirement to give due weight to the child's views; it cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity"* (CRC 2006a:para 26).

In emphasising the need for full protection under the law, the Committee further states:

"It is clear that the practice directly conflicts with the equal and inalienable rights of children to respect for their human dignity and physical integrity. The distinct nature of children, their initial dependent and developmental state, their unique human potential as well as their vulnerability, all demands the need for more, rather than less, legal and other protection from all forms of violence" (CRC 2006a:para 21).

The UN Committee on the Rights of the Child is not alone in its condemnation of the continued existence of legal exemptions with regard to the physical discipline of children within the home environment. The Council of Europe has also condemned such exemptions as a clear breach of children's rights and the principle of equal protection under the law. Calling for a Europe-wide ban on corporal punishment of children in 2004, the Parliamentary Assembly of the



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Council of Europe stated that:

"Any corporal punishment of children is in breach of their fundamental right to human dignity and physical integrity. The fact that such corporal punishment is still lawful in certain member states violates their equally fundamental right to the same legal protection as adults. The social and legal acceptance of corporal punishment of children must be ended" (Parliamentary Assembly of the Council of Europe 2004:Recommendation 1666).

The necessity of introducing a complete ban on the use of physical punishment within the home is also clearly reiterated by the United Nations Study on Violence against Children. Though recognising that eliminating and responding to violence against children is perhaps most challenging in the context of the family, considered by many to be the most 'private of spheres', the Study clearly states that *"children's rights to life, survival, development, dignity and physical integrity do not stop at the door of the family home, nor do States' obligations to ensure these rights for children"*.

The Study concludes:

"No violence against children is justifiable; all violence against children is preventable. Yet... in every region, in contradiction to human rights obligations and children's developmental needs, violence against children is socially approved and is frequently legal and State-authorized. [This] should mark a turning point – an end to adult justification of violence against children, whether accepted as "tradition" or disguised

as "discipline". There can be no compromise in challenging violence against children. Children's uniqueness – their potential and vulnerability, their dependence on adults – makes it imperative that they have more, not less, protection from violence" (UN Secretary General 2006:5).

As illustrated above, from a children's rights perspective, children have the right to be protected from all forms of physical force or violence, without exception, as is the right of every adult in the UK. Nonetheless, calls for an outright ban on the use of smacking and other forms of physical punishment within the traditionally private sphere of the home have caused concern amongst some sectors regarding a potential wave of prosecutions of parents and carers. The Committee is equally clear that this is not its intent in calling for an outright ban as it explains in General Comment Number 8:

"The principle of equal protection of children and adults from assault, including within the family, does not mean that all cases of corporal punishment of children by their parents that come to light should lead to prosecution of parents. The de minimis principle – that the law does not concern itself with trivial matters – ensures that minor assaults between adults only come to court in very exceptional circumstances; the same will be true of minor assaults of children... While all reports of violence against children should be appropriately investigated and their protection from significant harm assured, the aim should be to stop parents from using violent or other cruel or degrading punishments through supportive and educational, not punitive, interventions" (CRC 2006a:para 40).

Recently published research on the smacking debate in NI, jointly commissioned by NICCY, NSPCC and Barnardo's NI, recognises *"the complexity of parent-child interactions and the potential outcomes and the myriad of factors which can influence the disciplinary choices parents make"*, concluding that *"what is required is a multi-level approach which embraces a comprehensive positive parenting strategy linked with the legislative reform required in order for the UK to meet its obligations under the UNCRC"* (Bunting et al 2008:11).

3.4.2 Corporal Punishment

The issue of permitted use of corporal punishment in private schools and day care/childminding facilities within NI was raised by the Committee in its 2002 Concluding Observations. The prohibition of corporal punishment within schools has now been extended to include private school settings, however a gap still remains in relation to the regulation of childminding settings.

The NI Government UNCRC report states that *"the Department of Education will also be consulting with key stakeholders on introducing legislation that will prohibit the use of physical punishment by childminders"* (OFMDFM 2007b:29), however, at the time of writing, the use of physical punishment by childminders remains legal. This is a matter that requires urgent redress if the government is to take seriously the Committee's call to *"ensure that corporal punishment is explicitly prohibited in schools, all other institutions and forms of alternative care"* (CRC 2008:para 42).

3.4.3 Restraint

In both its 2002 and 2008 Concluding Observations, the CRC has highlighted the use of restraint and measures of control within prisons and residential institutions as a matter of grave concern. Reflecting on this, in 2002, the Committee urged the government to *"review the use of restraints and solitary confinement in custody, education, health and welfare institutions throughout the State party to ensure compliance with the Convention, in particular articles 37 and 25"* (CRC 2002a: para 33/34).

While noting improvements since 2002, in relation to the demotion of physical restraint and solitary confinement to measures of last resort, the Committee has expressed continued concern in 2008 that *"in practice, physical restraint on children is still used in places of deprivation of liberty"*, urging the State party to *"ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished"* (CRC 2008:para 38/39). The current situation in relation to the use of restraint in welfare and custodial institutions is explored in chapters 4 and 8 respectively.

3.5 Police Technologies

3.5.1 Taser

Taser is a type of electroshock gun or stun gun, used to subdue people by administering an electric shock. The PSNI decision to introduce



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Taser to its 'range of tactical options' has been, and continues to be, the subject of much debate and concern since their introduction was first proposed by the Chief Constable in 2005.

Taser was introduced to NI on a pilot basis in January 2008, in the absence of a full Equality Impact Assessment (EQIA). This was in spite of a Policing Board decision three months prior that Taser should not be introduced until a full EQIA had been completed. It was also in spite of an explicit recognition by the PSNI in its EQIA consultation document that *"there may be differential and potentially adverse impacts arising from the introduction of Taser in respect of: people of different racial group; men; pregnant women; people with a disability; and children and young people"* (PSNI 2008a:2).

The EQIA consultation followed between mid January and mid April 2008, and although publication of results was envisaged for June and then September 2008 this has not yet materialised at the time of writing.²⁴ In spite of this, Taser remains available for use by the PSNI, with 12 units purchased for *"operational deployment by specialist firearms officers in pre-planned operations and to support officers in dangerous and difficult situations"*.²⁵

The PSNI website states that *"once the EQIA is completed it will be carefully examined, and the pilot of Taser to Special Operations Branch and the operational procedure and guidance for Taser will be reviewed in light of any findings*

arising from the EQIA".²⁶ While the introduction of Taser prior to the completion of a full EQIA remains unacceptable, it is imperative that the PSNI honours this commitment to reviewing their use in light of the outcomes of the EQIA.

A number of different concerns have been raised in relation to the use of Taser, both generally and in relation to children and young people. Many of these concerns were presented to the Policing Board, in its Independent Human Rights Advisors June 2007 report which acknowledged that the full effects on children and young people or pregnant women are, as yet, unknown. Commenting on the limited evidence available, the advisors conclude that children are potentially at greater risk from the use of Taser, than the general population:

"The limited research available on the particular effects of Taser on children identifies two main sources of risk to children. First, a heightened risk of cardiac arrest resulting from ventricular fibrillation. Secondly, a greater risk of injury from the penetrative effects of Taser barbs" (NI Policing Board 2007b:18).

The PSNI has itself admitted that children may be more susceptible to the effects of Taser than other groups (due to their small stature) but states that it believes that any potentially adverse impact caused by this could be limited if Taser is used solely in situations *"where an officer honestly and reasonably believes that it is necessary in order to prevent a risk of death or serious injury"* (PSNI 2008a:4). Concern has, however,

24. The final EQIA has subsequently been released during the process of publication of this report on 6 November 2008.

25. www.psnipolice.uk/index/fast_facts/pg_faq_taser.htm [accessed August 2008].

26. www.psnipolice.uk/index/fast_facts/pg_faq_taser.htm [accessed August 2008].

been expressed in relation to the determination of what constitutes such a situation, and the onus placed on individual officers to determine this, and how the test of ‘reasonable force’, as outlined below, can be determined in any given situation.

The Human Rights Advisors to the Policing Board are unambiguous in their recommendation that Taser should be viewed as ‘potentially lethal’ weapons, whose use should be governed by the provisions of article 2 of the ECHR – reasonable force – which stipulates that the use of such force should be no more than is absolutely necessary to defend any person from unlawful violence, to effect an arrest or to quell a riot or insurrection (NI Policing Board 2007b).

Both the UN Human Rights Committee and the UN Committee against Torture have made observations about the use of Taser when considering the reports submitted to them by individual countries on a periodic basis. The UN Human Rights Committee’s 2006 report on the United States of America (USA), for example, stipulates that Taser should only be used in situations where *“greater or lethal force would otherwise have been justified”* and never used against *“vulnerable persons”* (cited in NICCY 2008e:3). The UN Committee against Torture has further commented that the Taser X26 device can constitute inhuman and degrading treatment and, in extreme cases, torture (NIHRC 2008b).

The Committee on the Rights of the Child has also expressed concern at the authorisation of Taser guns, and their potential use on children, in its 2008 Concluding Observations on the

UK, calling on the government to *“treat Taser guns as weapons subject to the applicable rules and restrictions and put an end to the use of all harmful devices on children”* (CRC 2008:para 30/31).

While the need for alternatives to firearms is recognised, it is vital that no such alternatives be introduced without a full EQIA and comprehensive assessment against a human rights and child rights framework. The potential use of Taser against children places in jeopardy their article 6 right to life, survival and development, their article 19 right to protection from all forms of violence and their article 37 right to be protected from torture and degrading treatment. It is also highly questionable whether it can be argued to be in the best interests of the child (article 3) or to have paid recognisance to the views of the child, as is their article 12 right. The use of Taser against children and young people may also breach various articles of the ECHR, including the article 2 right to life (and the positive obligation on police officers to protect this) and the provisions of article 3 which prohibit torture, cruel, inhuman and degrading treatment or punishment.

3.5.2 Plastic Baton Rounds/Plastic Bullets

“Since they were first used in Northern Ireland, rubber and plastic bullets have caused 17 deaths, and a large, though undetermined, number of injuries. Injuries documented as a result of plastic bullets include brain damage, loss of eyes, fractured jaws, multiple bone fractures, spinal injuries, and post-traumatic



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stress disorder. There has been a particularly high rate of injury of children. There is clearly a potential for injury caused by baton rounds to amount to inhuman and degrading treatment” (UK Joint Committee on Human Rights 2006:para 173).

Under consideration of the situation in the UK in relation to the article 6 right to life, the Committee noted in its 2002 Concluding Observations, that it was *“concerned at the continued use of plastic baton rounds as a means of riot control in Northern Ireland as it causes injuries to children and may jeopardize their lives”*. The Committee urged the State party *“to abolish the use of plastic baton rounds as a means of riot control”* (CRC 2002a:para 27/28).

Responding to this, in its contribution to the UK State party report to the CRC, OFMDFM states: *“The L21A1 baton round is no longer used operationally by police or military within the UK. Significant progress has been made in the development of less lethal technologies to replace it, and the operational introduction of the Attenuating Energy Projectile (AEP) which took place on 21 June 2005 to all police forces in the UK and the Army, was part of that process”* (OFMDFM 2007b:6).

The NI Government report also outlines a number of ‘protections’ that have been introduced in relation to the use of AEPs including:

- strict Association of Chief Police Officers (ACPO) guidelines for use

- reporting to the Policing Board each time an AEP is discharged – the circumstances of use are then investigated by the independent Police Ombudsman, who reports their findings to the Policing Board
- continued pursuit of other less lethal measures (OFMDFM 2007b).

While these ‘protections’ are certainly to be welcomed, they do not go far enough. Although the PSNI Code of Practice on the issue, deployment and use of AEPs in situations of serious public disorder (issued in June 2005 and revised in December 2006), states that *“every effort should be made to ensure that children or members of other vulnerable groups are not placed at risk by the firing of an AEP”*, recognising the particular relevance of this in *“public order situations where such persons may be amongst a crowd and be placed in danger should an AEP miss its intended target”*, AEPs continue to be available for use in such situations (PSNI 2006:Appendix A).

Following the deployment of AEPs in the summer of 2005, the UK Joint Committee on Human Rights observed in 2006 that NI was the only place within the UK where plastic bullets had been used as a means of crowd control. The Committee concluded that *“the use of AEPs in Northern Ireland raises clear human rights concerns in principle”*, recommending continued close scrutiny of conditions of use and the development of stricter operational guidelines (UK Joint Committee on Human Rights 2006:para 181).

The UN Human Rights Committee's 2008 Concluding Observations on the UK's implementation of the International Covenant on Civil and Political Rights also notes concern about the use of AEPs *"and emerging medical evidence that they may cause serious injuries"*, calling upon the government to *"closely monitor the use of Attenuating Energy Projectiles (AEPs) by police and army forces and consider banning such use if it is established that AEPs can cause serious injuries"* (HRC 2008:para 11). Similar concern was also expressed by the Committee on the Rights of the Child in its 2008 Concluding Observations which, while welcoming the abolition of plastic baton rounds as a means of riot control in NI, express concern that they were replaced by AEPs whose less harmful nature has not yet been proven (CRC 2008).

The NI NGO 2008 Alternative Report to the UNCRC considers the claims made by government that AEPs have been independently evaluated and are *"considerably less likely to cause serious injury in the event of impacting upon vulnerable areas of the body"*, and concludes that neither stands up to scrutiny. The report highlights the lack of independence of the evaluation and notes that the finding of the evaluation only concluded that *"the risk of an AEP impact to vulnerable areas such as the head and chest 'will not exceed' that of the L21A1"*, not that it was any lesser a risk (SC/CLC 2008:17). The report also introduces the findings of a NI based medical study that suggest AEPs have actually caused more harm than previously used plastic bullets. The study notes that over half of the injuries observed were to the face and upper body, despite PSNI

guidelines that AEPs should *"be aimed at the belt buckle, thus mitigating against any upper body hits"* (SC/CLC 2008:18).

Continued uncertainty as to the impact of AEPs on children and young people, and their continued availability for use in situations where children and young people may be present, raise serious concerns regarding the extent to which the government is actively protecting children and young people's rights within these situations. Though revised guidance, issued by the PSNI in December 2006, states that it *"takes cognisance of"* the provisions of the UNCRC in outlining acceptable use of AEPs, the body of the document offers no insights as to how the rights of the Convention, or subsequent commentary by the Committee, have influenced the content of the guidance or how it is 'cognisant' of the obligations contained within the UNCRC (PSNI 2006:Appendix A). If children and young people's rights (in particular articles 3, 6, 19 and 37) are to be adequately protected it is imperative that the PSNI undertakes a thorough child rights impact assessment on the use of AEPs and amends relevant protocols accordingly.

3.6 A Rights-based Approach to the Protection and Promotion of Life

The Convention on the Rights of the Child places a specific duty on States to provide all children with the protection and care necessary to ensure their wellbeing, development and survival. This includes protection from all forms of harm, whether intentional or accidental, in the home, in private or State institutions and the wider



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community. Though the totality of the Convention is concerned with the protection of children and the promotion of life, provisions of particular relevance include those contained within articles 3, 6, 19, 37(a) and 39.

Article 3 places a specific requirement on States to 'ensure the child such protection and care as is necessary for his or her wellbeing', while article 6 places a further requirement on States to 'ensure to the maximum extent possible the survival and development of the child'. Article 19 places an onus on States to take all appropriate measures to protect children from all forms of violence, abuse, neglect or exploitation when in the care of their parents or legal guardians, while article 37(a) addresses the wider context of cruel, inhuman or degrading treatment or punishment. Article 39 places a further requirement on States to promote the recovery and social reintegration of children who have been victims to the abuses outlined in other articles.

A number of other articles provide further protections for particularly vulnerable groups of children and young people, including article 22 that provides special protection measures for children seeking refugee status, article 39 that considers the particular rights of children in situations of armed conflict and articles 32 to 36 that outline the protections to be afforded children in relation to the threat of abduction and economic or commercial sexual exploitation.

As with all UNCRC provisions, these articles should be interpreted in light of the rest of the

Convention, with particular regard paid to the four general principles. The articles should also be interpreted in light of subsequent commentary by the Committee and commentary contained within other international treaties and conventions including:

- General Comment Number 8 on 'The Right of the Child to Protection from Corporal Punishment and Other Forms of Cruel or Degrading Forms of Punishment'
- the CRC 2001 Day of General Discussion on 'Violence against Children within the Family and in School'
- the CRC 2000 Day of General Discussion on 'State Violence against Children'
- the 2006 Report of the Independent Expert for the UN Study on Violence against Children
- the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse
- the European Convention on Human Rights.

3.7 Overview of the Protection of Children from Violence, Abuse and Neglect in NI

Risks in relation to the protection of children from violence, abuse and neglect within NI exist both within and outside of the familial environment. Risks within the familial home – domestic violence, physical, sexual and/or emotional abuse or neglect and the physical punishment of children – can be particularly difficult to identify and address, given the traditionally private nature of family life within NI. Recent years have, however, witnessed increased recognition of the importance of educating both children

and others about their right to physical integrity and protection within the family home and the illegality of domestic violence and other forms of neglect and abuse.²⁷

Outside of the home environment, children continue to face risks of violence or abuse not only from strangers, but also from their peers, adults in caring roles or other positions of responsibility and those exercising self appointed control within their communities. The increasing capacities and prevalence of technology, while a welcome development in many respects, also presents new risks for children and young people, including text bullying, safety in online communities and a potentially greater demand for child pornography. The sexual exploitation of children also continues to be an issue of serious concern, especially amongst the looked after population and other vulnerable groups, while the increasing availability of drugs and other illegal substances presents not only potential health risks but also increased vulnerability to other forms of exploitation as a result of diminished capacity.

Commenting in its 2002 Concluding Observations, the Committee expressed serious concern at the numbers of children across the UK experiencing violence, abuse or neglect in spite of the protections afforded them within the Convention:

"The Committee is deeply concerned that one or two children die every week as a result of violence and neglect in the home. It is also

concerned at the prevalence of violence, including sexual violence, throughout the State party against children within families, in schools, in institutions, in the care system and in detention. It also notes with deep concern the growing levels of child neglect" (CRC 2002a:para 39).

Commenting six years later, in its 2008 Concluding Observations, the Committee highlighted ongoing concern around the continued numbers of children and young people still not receiving adequate protection from the State. Though welcoming *"the efforts undertaken by the State party to tackle the problem of violence, abuse and neglect against children"*, the Committee stated that it *"remains alarmed at the still high prevalence of violence, abuse and neglect against children, including in the home, and at the lack of a comprehensive nationwide strategy in this regard"* (CRC 2008:para 50). The Committee has consequently called on the government to:

"...take all necessary measures for the implementation of the recommendations contained in the report of the independent expert of the United Nations study on violence against children...The State party should use these recommendations as a tool for action in partnership with civil society and in particular with the involvement of children, to ensure that every child is protected from all forms of physical, sexual and mental violence and to gain momentum for concrete, and where appropriate, time-bound actions to prevent and respond to such violence and abuse" (CRC 2008:para 43).

27. This has not unfortunately been extended to include adequate protection from physical punishment, as previously explored in section 3.4.1.



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Particular issues highlighted by the Committee in respect to this, both in 2002 and again in 2008, as requiring immediate redress include:

- the establishment of mechanisms for monitoring the number of cases and the extent of violence, sexual abuse, neglect, maltreatment or exploitation including within the family, in schools and in institutional or other care
- ensuring victims of violence, abuse, neglect and maltreatment are not victimised again during legal proceedings
- the provision of adequate accessible services for recovery, counselling and other forms of reintegration
- the complete prohibition of all corporal punishment within the family, to include the repeal of all existing legal defences (CRC 2008).

3.8 The Protection of Children within the Home

As highlighted previously, all children have the right to be protected from violence, harm and abuse within the home environment. The continued legality of physical punishment and the impact of this on children's right to protection within the home have already been explored earlier in this chapter. This section considers a number of other significant risks that children face within the home environment, the potential impact of these and the degree to which the State is adequately intervening when required.

3.8.1 Child Protection

All children have the right to be kept safe and protected from abuse and neglect. Both the UNCRC and NI legislation stipulate that where parents are unable or unwilling to provide this protection the State has a significant role to play. Primary responsibility for protecting children from abuse and neglect within NI is vested in the HSC Trusts, along with other public agencies such as the PSNI. When a child is believed to be at risk of experiencing significant harm, Trusts have a legal duty to assess the child's circumstances and to determine what supports, including measures to protect the child, may be necessary. If a child is deemed to be in need of protection a Trust must consider the appropriateness of an interagency child protection plan and, where a plan is deemed necessary, the child's name must be added to the child protection register.

Child protection statistics for NI show increasing numbers of children being placed on the child protection register over the last five years. According to the Department of Health, Social Services and Public Safety (DHSSPS) there were 1,805 children on the child protection register at the end of March 2007. This equates to 42 children per 10,000 under 18 population, a significantly higher proportion than that in Wales (36 per 10,000) or England and Scotland (25 per 10,000). The figure for 2007 also represents a 10% increase from the previous year and an increase of 21% since 2001/02 (DHSSPS 2007k).

The key reasons for registration on the child protection register are, in order of predominance, substance misuse (43%), domestic violence (23%), physical abuse (19%), carer's incapacity due to mental illness, physical illness or learning disability (12%) and sexual abuse (9%). Children can be exposed to more than one of these risks, hence the totality of these figures reaching over 100% (Devaney 2004).

A number of recent inspections and inquiries within NI have highlighted serious concerns about the comprehensiveness and effectiveness of existing structures and procedures for dealing with child protection concerns. The report of the Independent Inquiry Panel to the Western and Eastern Health and Social Services Boards on the deaths of a mother and daughter in 2005, for example, observed serious inadequacies in the operation of child protection protocols, highlighting both a lack of awareness around child protection/children in need issues amongst medical and therapeutic staff and a failure to report concerns in line with recommended practice. The report concluded that had appropriate referrals been made when threats to the child's safety became apparent, the child's death could have been prevented. It consequently recommended that child protection policies and procedures be reviewed and that consideration be given to making child protection training mandatory for all relevant staff and practitioners, including General Practitioners (GPs), counsellors and psychotherapists (WHSSB/EHSSB 2008).

The overview report of the Social Services Inspectorate (SSI)'s Inspection of Child Protection

Services in NI, published in December 2006, also highlighted significant concerns in relation to the operation of child protection procedures within NI. Though recognising pockets of good practice in parts of the system, the Inspection concluded that there were *"systemic failures in a number of Trusts in the discharge of statutory functions and lack of appropriate safeguards for children within fieldwork and residential settings"*. The report further concluded that *"there was clear evidence of repeated failures to undertake timely and appropriate assessments and to provide child protection intervention, resulting in children being left at risk both at home and in residential care"* (SSI 2006:6/7). Particular issues identified in the report include the need for:

- clear regional thresholds for access to services, consistent interpretation and implementation of policies, procedures and protocols and a uniform approach to assessment of need and risk analysis
- clearer leadership and accountability structures
- improved staff training, support and supervision
- more effective risk management
- better monitoring and auditing procedures
- more effective interagency working
- greater consultation and engagement with children, young people and their families (SSI 2006:7/8)
- the need for greater therapeutic support for children involved in the child protection process (SSI 2006:103).

In response to the findings and recommendations of the SSI Inspection, and other relevant inquiries and reports, a series of new initiatives have



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been developed, or are in the process of being developed, with the aim of ensuring that the arrangements for protecting children are more robustly and uniformly administered across NI. These welcome developments include new child protection standards, the development of the UNOCINI (Understanding the Needs of Children in Northern Ireland) Assessment Framework, the establishment of an independently chaired Regional Safeguarding Board, improved protocols for dealing with child deaths and a restructuring of community child protection teams to ensure that decisions in relation to the protection of children are made by sufficiently qualified and experienced practitioners.

New Standards for Child Protection Services

Considering the learning gleaned from the regional child protection inspection undertaken by SSI in 2006, DHSSPS has, in collaboration with relevant agencies, developed new standards for child protection services across NI. These standards, applicable to all public bodies, organisations, professionals and persons who provide statutory services to children, were issued in July 2008.

The recent introduction of the new standards prevents any evaluation of their effectiveness at this stage. It is, however, imperative that auditing and evaluation of their use be comprehensively incorporated into their implementation over the coming months and years and that they be augmented or revised as necessary in light of this learning.

Regional Safeguarding Board

Responsibility for child protection in NI has traditionally been the domain of four separate non-statutory Area Child Protection Committees but in January/February 2007 the government consulted on a proposal to transfer these responsibilities to a new statutory regional Safeguarding Board for Northern Ireland (SBNi). According to the NI Government report to the CRC:

"The SBNi will give a sharper focus to the current safeguarding remit of ACPCs and will strengthen current arrangements by ensuring better co-ordination and accountability and a more co-ordinated focus on the safeguarding of children...The SBNi will adopt a consistent approach to safeguarding practice in and between all the key organisations. The Board will also have a responsibility to forge effective links with bodies outside Northern Ireland that impact on the lives and well being of children here" (OFMDFM 2007b:35/36).

The proposed arrangements for the SBNi mirror those adopted in England and Wales under the 2004 Children Act, but are customised to take account of the unique circumstances in NI, including the high level outcomes of the Children's Strategy and the impact of RPA. It is anticipated that the new Board will be independently chaired and draw membership from relevant organisations such as HSC Trusts, District Councils, Youth Justice, NSPCC and the judiciary and that it will be supported by Safeguarding Panels within each new HSC Trust. It is also anticipated that its remit will extend beyond that of traditional child protection

– as explained in the consultation document, *“safeguarding incorporates all preventable harm that impacts upon the lives of children. By definition, it includes the accidental as well as the non-accidental injury to children”* (DHSSPS 2007f:9).

A working group has been established to progress the establishment of the SBNI, but definite timescales and detailed proposals are not yet publicly available.

If appropriately implemented, the introduction of a regional Safeguarding Board offers a unique opportunity to develop a more strategic, comprehensive and consistent approach to safeguarding children and young people, the principle of which is a central tenet of the Convention. The legislative basis and operational structure of the new Board must however be robust, enabling it to pursue its safeguarding remit without unnecessary interference and giving it the power to hold other statutory bodies to account when they fail to deliver on their obligations or duties. It is also imperative that the work of the Board be grounded in a rights-based framework, with the four general principles of the Convention, particularly the best interests of the child, being the primary consideration in all decisions.

3.8.2 Parental Substance Misuse

There are estimated to be 40,000 children living with parents who misuse alcohol or drugs in NI. While not all will need to be protected, a significant proportion will require additional supports including a child protection plan. As

highlighted previously, 43% of children on the child protection register are there due to parental substance misuse; the corresponding figure for looked after children is 70% (Devaney 2004).

The Committee on the Rights of the Child has highlighted the need for States to provide particular assistance to children who are at risk of harm due to parental substance misuse. It notes:

“While very young children are only rarely likely to be substance abusers, they may require specialist health care if born to alcohol- or drug-addicted mothers, and protection where family members are abusers and they are at risk of exposure to drugs. They may also suffer adverse consequences of alcohol or drug abuse on family living standards and quality of care, as well as being at risk of early initiation into substance abuse” (CRC 2005b:para 36).

The New Strategic Direction for Drugs and Alcohol 2006–2011 (NSD) commits to developing a strategy on the ‘hidden harm’ of drugs and alcohol that will incorporate consideration of supporting children at risk from parental substance misuse, with a central theme being the need for children’s services and adult substance misuse services to work more closely together. This was being finalised at the time of writing.²⁸

3.8.3 Domestic Violence

“Children are very much the silent victims of domestic violence. They may witness it or be

28. This action plan, entitled ‘Regional Hidden Harm Action Plan’ has subsequently been released during the process of publication of this report on 8 November 2008.



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subject to it but often their voices are not heard. Local research indicates that at least 11,000 children here are living in violent homes. Their experiences can effect their emotional, psychological, physical and sexual development and the abuse can have long lasting consequences for them in childhood and in later life” (NIO 2005a:4).

Although domestic violence is not specifically referenced within the Convention, it clearly impacts upon a number of different rights, including that of the best interests of the child (article 3), the right to life, survival and development (article 6) and the right to protection within the home environment (article 19). The Committee has also specifically referenced it in both its 2002 and 2008 Concluding Observations.

Domestic violence encompasses a wide spectrum of controlling and abusive behaviours inflicted by one individual on another within the home environment. It can be psychological, physical, verbal, sexual, financial or emotional in nature and is frequently a combination of several of the above. The ‘Tackling Violence at Home: A Strategy for Tackling Domestic Violence and Abuse in Northern Ireland’ adopts the following definition: *“threatening behaviour, violence or abuse (psychological, physical, verbal, sexual, financial or emotional) inflicted on one person by another where they are or have been intimate partners or family members, irrespective of gender or sexual exploitation”* (NIO 2005a:10).

Domestic violence rarely occurs as a one-off incident; it is usually frequent and persistent,

often continuing over an extended period of time. Domestic violence occurs across all sectors of society, irrespective of social status, age, ethnicity, sexual orientation or occupation. Though the majority of reported victims are women, domestic violence also affects a significant number of males (NIO 2005a).

The traditionally private nature of violence within the home means that it can be difficult to accurately gauge the true levels of domestic violence. It is commonly accepted that reported figures greatly underestimate the extent of the problem, due to the numbers of unreported crimes, however the figures that are available indicate that:

- domestic violence accounts for one fifth of all recorded violent crime
- police attend over 400 domestic incidents each week
- five people are killed each year as a result of domestic violence
- one in five women and one in nine men will experience domestic violence during their lifetime
- 700 families have to be rehoused each year due to violence in the home
- at least 11,000 children are living with domestic violence on a daily basis (NIO 2005a)
- 19% of the ‘worst incidences’ of domestic violence were seen and/or heard by children (Carmichael 2007).

The 2005 Northern Ireland Crime Survey further found that 17% of female victims of domestic violence were subjected to threats

and/or force during their pregnancy, with 56% of these women reporting that the violence had first started during their pregnancy. A welcome development in relation to the incidence of domestic violence in pregnancy is the introduction of a routine enquiry in all maternity units which proactively asks all expectant mothers if they are experiencing, or at risk of experiencing, such violence (Carmichael 2007).

Though the definition of domestic violence included in the 2005 Tackling Violence at Home strategy includes recognition of both violence inflicted on, and witnessed by, children (NIO 2005a), there has historically been little recognition of the link between domestic violence and child protection. As Devaney (2008:443) observes, *"the fields of child protection and domestic violence have traditionally been estranged"*, with *"a systemic failure by public agencies to appreciate that the presence of domestic violence should be an indicator of the importance of assessing the needs of children to both support and protection when living in the same household as the victim"*. The recognition in the 2005 strategy that *"the wide adverse effects of living with domestic violence for children must be recognised as a child protection issue"* (NIO 2005a:9) has been a welcome development in this regard, but further practical outworking of this commitment is required.

The detrimental effects of exposure to domestic violence have become increasingly recognised in recent years. As illustrated in the following quotations, living with domestic violence can have both immediate and longer term repercussions for children's lives:

"Domestic violence is an abusive context for children and they may experience emotional or psychological damage and suffer physical harm as a result. Children feel deep hurt and confusion over the violence and may feel that they are to blame for what is happening. Young children may show signs of distress through bedwetting or disturbed sleep while older children can become withdrawn or exhibit problematic behaviour" (Bell and Healy n.d.:1).

"Children's exposure to domestic violence has consequences for the child's psychosocial development in both the short and long term as it permeates all aspects of family life for those directly and indirectly involved...research consistently shows that children living with domestic violence have much higher rates of depression and anxiety, trauma symptoms and behavioural and cognitive problems...In addition, there is now a clear evidence base that highlights that children who are living with domestic violence have a greater chance of experiencing physical or sexual abuse in their own right as a consequence of living with violence...there was a positive graded risk for self-reported alcohol misuse, illicit drug use, intravenous drug use and depressed affect as the frequency of witnessing domestic violence increased. Equally important through was the interaction between a number of adverse childhood experiences and poor physical and psychological health in adulthood" (Devaney 2008:444).

"The effects of living with domestic violence for children...are linked to poor educational attainment, social exclusion and to juvenile



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crime, substance misuse, mental health problems and homelessness from running away” (NIO 2005a:9).

Recent NI based research has identified two typical types of response from children affected by domestic violence; *“those who became quiet and withdrawn, and those who became loud and aggressive”* (Byrne and Taylor 2007:185). Such changes in behaviour are found to have a direct impact on a child’s self esteem, on their relationships with peers and on their academic achievement and attainment. Participants in Byrne and Taylor’s study of the educational attainment of children at risk of domestic violence identified the network of people around the child as instrumental to their resilience and coping strategies.

Byrne and Taylor’s study identifies gaps in the training of teachers and social workers, highlighting the need for regular multi agency training on a range of issues related to domestic violence including recognising signs and symptoms and how to deal with a child experiencing violence in the home (Byrne and Taylor 2007). This is a recommendation also forwarded by Healy and Bell (n.d.) in their report on the use of Barnardo’s Domestic Violence Risk Assessment. This was also an issue specifically commented on by the Committee in its 2008 Concluding Observations on the UK, in which they note the importance of professionals working with children (including teachers, social workers, medical professionals and the police) being aware of *“their obligation to report and take appropriate action in suspected cases of domestic violence affecting children”* (CRC 2008:para 51).

It is imperative that the needs of children be given paramount consideration in statutory responses to domestic violence. The introduction of the Tackling Violence at Home strategy in October 2005 has been a welcome development in both recognising and tackling the traditionally hidden and unacknowledged problem of violence within the home and in highlighting the impact this can have on children and young people. However, as highlighted below, the progress achieved since the introduction of the strategy has been less extensive than anticipated.

The introduction in 2007 of a new Public Prosecution Service (PPS) policy for prosecuting cases of domestic violence, which recognises the need to protect children in prosecutorial decisions, has been a further welcome development. The policy makes specific reference to taking into account the circumstances of children exposed to domestic violence when making a decision regarding prosecution, noting the need to ensure the safety of children in all decisions and the provision for special protection measures for any child who may be called to give evidence in court (PPS n.d.).

While recognising the work that has gone before in tackling domestic violence, the introduction to the 2005 strategy identified a need to *“raise the profile much further; to develop preventive work; to change attitudes; to make improvements in service provision; to develop education and training; and to improve co-operation and co-ordination among the range of policy-makers and service providers who have a role in addressing the problem”* (NIO 2005a:16).

Particular commitments made for children and young people living in violent homes include:

- services that protect them from the consequences of being exposed to domestic violence
- help, support and advocacy to ensure that they are not left to deal with their experiences alone
- information that the violence they have experienced is wrong, legally and morally
- opportunities to share their experiences with other children so as to reduce their isolation (NIO 2005a).

These specific commitments are accompanied by a more general aim of educating children and young people and the wider general public that domestic violence is wrong and unacceptable and to enable them to make informed choices. Key to this is the provision of education within school environments: however, concern exists that the commitments made in relation to this in the accompanying action plans have not yet been fully enacted by DE.

A further recognised shortcoming in relation to the government's strategic response to the issue of domestic violence within NI in recent years, that must be urgently addressed, is its failure to address the issue of data collection and monitoring. As an assessment of the work of NI Government departments in tackling violence against women, undertaken by End Violence Against Women (EVAW) in 2007, concluded:

"It is apparent that the Executive is hampered in its task of eradicating violence against women by the absence of NI-specific research and statistics. Attention to data collection, analysis and monitoring would make the extent of the problem visible, aid effective planning and allow policy-makers to appreciate how Northern Ireland compares with elsewhere" (EVAW 2007:3).

While the progress witnessed in recent years in terms of both the recognition of the impact of domestic violence on children and young people and initiatives introduced to address this is to be welcomed, it is imperative that the government further develop its response to this issue, investing adequate resources in both educative/preventive and rehabilitative measures if children are to be adequately protected within the home environment, as is their right under article 19 of the Convention.

3.9 Protection Outside the Home Environment

3.9.1 Identification and Management of Adults who Pose a Risk to Children

Following a number of high profile incidents and reports, the government has also implemented a number of important measures with regard to improving the protection of children and young people outside the family home through the introduction of new vetting and barring protocols and a new Sexual Offences Order.



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Vetting and Barring

The Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (POCVA) came into effect on 1 April 2005.²⁹ According to DHSSPS, this Order aimed 'to improve existing safeguards for children and vulnerable adults by preventing unsuitable people working with them in paid or voluntary positions'. The implementation of the 2003 Order required DHSSPS to maintain a list of individuals who are considered unsuitable to work with children in paid or unpaid regulated positions (the Disqualification from Working with Children (DWC) list) and placed a mandatory requirement on organisations to refer all individuals who 'have harmed, or placed at risk of harm, a child or a vulnerable adult' to DHSSPS for consideration of inclusion in this list.

Under POCVA, it became an offence for an individual on the DWC list to 'apply for, offer to do or accept' any work in a childcare position or for an individual or organisation to knowingly engage a listed individual in such work. POCVA placed a mandatory requirement on defined 'childcare organisations' to carry out checks against this list prior to offering an individual a childcare position, but did not extend this requirement to non-childcare organisations employing individuals in childcare positions. These organisations fell under a voluntary system of accreditation.³⁰

While the safeguards introduced under POCVA were to be welcomed, it was widely accepted that the failure to extend mandatory checks to all childcare positions, in all organisations, was a weakness in the system that continued to leave children and young people vulnerable to abuse.

The Safeguarding Vulnerable Groups (NI) Order 2007, which received royal assent in May 2007, seeks to address this, and other, shortcomings through the introduction of a more comprehensive vetting and barring system mirroring that established in England and Wales through the 2006 Safeguarding Vulnerable Groups Act. The provisions of the Order will be implemented through a series of secondary legislation, introduced throughout 2008, with the aim of the new Vetting and Barring Scheme becoming fully operational by 12 October 2009.

The key elements of the new scheme include:

- the establishment of an Independent Safeguarding Authority (ISA) that will make all decisions on the barring of individuals – this was previously the domain of either DHSSPS or DE
- integration of existing separate lists into one 'Barred List' of individuals barred from working with children (a parallel list will exist for those barred from working with vulnerable adults)
- the introduction of continuous monitoring for individuals on the barred lists
- a requirement for staff and volunteers working in specified positions to register with the ISA

29. With the exception of article 46 which commenced on 30 July 2007.

30. Information taken from www.dhsspsni.gov.uk/child_protection [accessed August 2008].

- a requirement on employers to check if individuals working in specified positions are registered with the ISA prior to employing them, by way of an online check.

The significant developments introduced in recent years in relation to vetting, both within NI and the rest of the UK, are to be welcomed in terms of their anticipated contribution to the more effective protection of children and young people. It is however important that they are not seen as cause for complacency as no system, particularly one in its infancy, can guarantee complete protection. This is particularly pertinent in light of increased migration patterns and the absence of a comprehensive international system for information exchange in relation to matters that would affect an individual's suitability for employment with children and young people within NI. It is also vital that adequate resources are made available to ensure that the delays in processing checks that have become apparent in the early days of Access NI do not continue.

Sexual Offences Order

The new Sexual Offences (Northern Ireland) Order 2008 was laid before Parliament on 30 April 2008 and consequently enacted on 9 July 2008. Although Part 1 and Articles 80 and 82 of the Order came into effect one week later, the other provisions of the Order are, as yet, still to come into operation.

The 2008 Order creates a more consolidated framework of sexual offences law in NI, while at the same time bringing the law in NI in line with that of England and Wales. The key implications of the Order in relation to the protection of children and young people are:

- if someone has sexual intercourse with a child under 13 the offence is automatically rape or assault – the legislation stipulates that a child under 13 does not, under any circumstances, have capacity to consent to any form of sexual activity
- offences of familial sexual abuse, or where an adult is in a position of trust, will protect young people up to 18
- offences involving abuse of young people in prostitution or pornography will likewise protect those up to 18
- offences relating to making, taking and possessing indecent images of children will be extended to apply to children up to 18 – however, this extension of the 1978 Order to now include children aged 16 and 17 years of age is contingent on a number of conditions, which if a defendant satisfies, will result in a not guilty verdict
- new preparatory offences (administering a substance with intent, trespass with intent etc)





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- ability to try offences that have occurred outside the UK
- stiffer penalties for underage sexual activity – increased from a maximum of 2 years for offences against 14–16 year olds to a maximum of 14 years for offences against any child under 16 (NIO 2008c:3).³¹

The Order also reduces the age of sexual consent to 16 and provides protections for those working in sexual health and counselling services for young people – this is considered further in chapter 5, section 5.6.7.

The codification of all sexual offences into one piece of legislation is a welcome development for protecting children and young people from sexual abuse or harm that brings NI closer to the comprehensive government response required by the Convention. It is however imperative that the new legislation be comprehensively implemented without delay and that it be effectively utilised to address the currently low level of successful criminal prosecutions.

3.9.2 Online Protection

Children and young people are increasingly using online mediums as part of their everyday lives; to access information, to communicate with their friends or, indeed, the wider online community.

A recent report by the Office of Communications (OFCOM) (2008) on UK children's media literacy found that "Northern Ireland has shown

the greatest increase in children's use of the internet since 2005 and now has the highest penetration level of all nations" (OFCOM 2008:62). OFCOM further reports that children in NI, aged 8 to 15 years, spend an average of 7.8 hours a week on the internet at home, with three quarters (73%) of 12–15 year olds across the UK now having a page or profile on a social networking site.³²

The internet offers many great opportunities for children and young people and is, in many ways, a positive thing. However it can also provide an attractive medium for predators seeking to abuse children and young people. Chat rooms, for example, can provide anonymised opportunities for predators to seek out victims or for children and young people to bully their peers.³³ The internet also provides an easily accessible medium for people wanting to market and/or access child pornography or benefit from the trafficking of children. Controlling material that children access and download from websites presents a further challenge for those tasked with their protection and care, as does the issue of personal material being made publicly available on social networking sites.

Many children and young people who participated in this review were acutely aware of the risks that the internet poses, however many older children felt that they could protect themselves from these risks:

"If bullied on Bebo we have to stop going on it and it means they can keep going on it but we can't."

31. Information also taken from www.nio.gov.uk/media-detail.htm?newsID=15165 [accessed August 2008].

32. The study reported a corresponding rate of 96% for NI, but this was based on a sample of only 86 young people.

33. The issue of bullying is addressed in chapter 6.

"I deleted my site to be safe, scared of someone meeting me."

"Everyone thinks Bebo is dangerous but it's not really if you're careful."

Professionals also raised concerns that the internet is posing new risks to the safety of children and young people, from both those in their peer group and from adults. Cyber bullying and the risks to children from internet chat rooms and social networking sites was raised as an emerging rights issue for children in NI by 17% of professionals who completed questionnaires as part of this review.

Some professionals were particularly concerned that the internet could be used to groom young people, making them vulnerable to sexual exploitation:

"Children and young people being more vulnerable as a result of internet and mobile phone technology. In terms of sexual exploitation this makes them even more vulnerable."

It was suggested that messaging services and chat rooms need to be better regulated and monitored to ensure adequate protection for young people who use them:

"A priority is the effective curtailment of inappropriate, and often unsolicited, websites, chat lines, messaging services etc which if left lightly regulated could potentially have serious consequences for our children and young people."

In light of these, and other, concerns, it is imperative that adequate online safeguards are put in place to minimise risk and ensure the protection of children and young people, as is their right under the UNCRC. A key difficulty in respect to this is the multitude of providers responsible for aspects of the online community and the fact that most of these providers operate within the private commercial market. While some providers have responded positively to calls to take action to minimise risks to children, and introduced safeguards to their sites, others have failed to do so, thereby continuing to expose children and young people to a myriad of unknown risks. A further difficulty is the fact that the internet does not conform to national boundaries and the consequent need for a comprehensive coordinated international effort to ensure adequate protection of children and young people when using the web.

The establishment of the Child Exploitation and Online Protection Centre (CEOP) in 2006, the provision of internet safety guidelines for schools and the new Sexual Offences Order outlined above have all been welcome developments in relation to the online protection of children, but more is required. This is an area to which government must commit further resources if it is to effectively minimise risk to children and young people, as is its duty under the Convention. Particular attention should be paid to preventative strategies; to ensuring adequate safeguards are in place in the online community and to ensuring children and young people and those who care for them are aware of the potential risks of the internet and how to stay safe when using it.

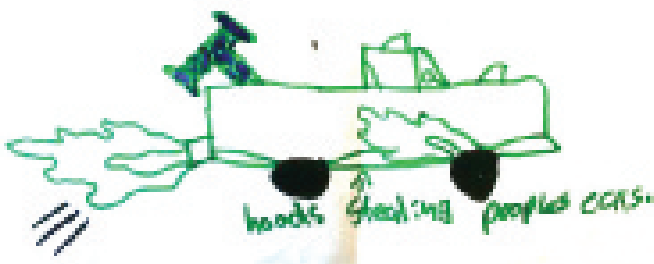
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3.9.3 Community Safety

The central coordinating unit for community safety in NI is the Community Safety Unit (CSU) of the NIO, established in 2003. The CSU has responsibility for policy formulation, partnership development and crime reduction. It is assisted by Community Safety Partnerships, in each council area, that fund local community safety and crime reduction projects. According to the CSU website, community safety involves:

*"...preventing, reducing or containing the social, environmental and intimidatory factors which affect people's right to live without fear of crime and which impact upon their quality of life. It includes preventative measures that contribute to crime reduction and tackle anti-social behaviour."*³⁴



While recognising that some improvements have been made in recent years in terms of community safety, via the work of the CSU and the pursuit of actions contained within its 2003 strategy 'Creating a Safer Northern Ireland through Partnership,' the findings of this and other reviews indicate that there is room for further improvement.

Children and young people who participated in this review stated that they do not always feel safe and protected in their local communities and other public spaces.³⁵ This mirrors the findings of other local research, including that completed with school leavers in the Derry City Council District area in 2005 that identified issues relating to safety as an area of significant concern to young people, particularly in relation to safety at night (Roche 2005).

Many parents who participated in this review also expressed concern about their children's safety, with two fifths of those who completed questionnaires answering 'no' to the question 'do you feel that your child/children are well enough protected from violence, danger and harm?':

"Each one of us do our best to protect them and warn them of the dangers surrounding them but nowadays how can you guarantee anything or anyone."

There are many different reasons why children and young people do not currently feel safe in their local communities, including threatening behaviour by other young people or adults (often associated with drug and alcohol misuse), ongoing sectarian violence and abuse and the continued influence of paramilitaries in certain sectors of society.

The increasing prevalence of knife culture was also raised as an issue of concern by some participants in this review which, given the

34. www.communitysafetyni.gov.uk [accessed September 2008].

35. Issues of safety in the local community are also explored in chapter 7 in relation to the right to play and leisure.

recent findings of the Young Persons' Behaviour and Attitudes Survey that 12% of pupils have carried a knife as a weapon (4% of whom have used it to injure someone; 18% of whom have used it to threaten someone) appears to be an increasingly valid concern (NISRA 2008a).

Fear of 'stranger danger' has also become more prevalent in recent years, with a number of high profile media cases, including the disappearance of Madeline McCann, which occurred immediately prior to the commencement of fieldwork for this review.

'Stranger Danger'

With all the media reporting of the Madeline McCann case occurring during the fieldwork period for this review, many of the younger children talked about the issue of 'stranger danger', telling stories of children who had been taken away from their families. They were very aware of the need to keep safe in this regard:

"Don't go with strangers."

"You should have protection against being kidnapped."

"If people say come in the car, say no and run away."

"Always let your mammy and daddy know where you are."

"We have a Protection card at our church. They give them to young people, saying don't talk to strangers and don't take sweets from them. They are very good."

Older young people also spoke a lot about the dangers associated with strangers, but the most frequent focus of this was on the dangers posed by sex offenders:

"[Need] protection over perverts and pedophiles."

"Watch out for paedos."

"Lock up perverts, paedos and rapists."

While this awareness of the need to protect oneself from strangers is certainly to be welcomed, it is imperative that the increasing focus on 'stranger danger' does not result in a complacency or neglect around the importance of protecting children from the potential dangers associated with adults they know, as has been previously explored earlier in this chapter.



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Intimidating Behaviour

Another focus of children and young people's concerns in relation to community safety was that of threatening/intimidating behaviour by others. Two particular groups were cited in reference to this: other, generally older, young people hanging around in groups; and people (young or otherwise) under the influence of alcohol, illegal drugs or other substances:

"These boys carry knives around so I'm scared to go out. One of them threatened me. I went out one night and they ran after me. Now I worry going to the shop. Once they even threw a metal bar at me."

"You get abuse shouted at you – everywhere – by other teenagers."

*"Drunk teenagers try and beat the crap out of you. It's really random because they are drunk."
"People shout stuff at people our age – make us feel uncomfortable and vulnerable – think they'll get away with – make you scared and think you won't tell anyone."*

It is imperative that where such abusive and threatening behaviour occurs, whether by young people or adults, this is effectively addressed, if (other) children and young people are to feel, and be, safe within their local communities.

Racism and Homophobia

Findings from both this, and other reviews, would indicate that young people's experiences of community safety vary according to both the communities and areas in which they live and their demographic identity, with certain groups of young people reporting feeling more at risk than others.

Two particular groups who reported feeling especially at risk within this review were those from ethnic minority groups and LGBT youth, who feared targeted attacks, fuelled by racism or homophobia. It would appear that these fears are not, alarmingly, without grounding, given the prevalence of homophobia and racism noted in recent studies on the subjects and the discriminatory comments NICCY staff heard repeated by some children and young people who participated in this review:

"Derry is the second worse city in UK for Gay bashing."

"There was an event with me recently, someone in my work said 'There's a lot of fags in here' I complained I don't think it's very fair – nothing was done – I was very annoyed about it because if it was racist, religion, something would have been done about it."



"Foreign children don't belong in this country, should not come over here in the first place – keep them over there."

"I was actually in the bru the other day and there was this Litho woman, and I think she was in lookin' DLA and I was like what?"

"Dangerous city too many drunk people about and too many racists. It's ok if you can handle yourself but not safe if you're vulnerable."

The particular vulnerability experienced by these young people, in terms of discrimination and stigmatisation, has been highlighted as a matter of concern by the Committee in its 2008 Concluding Observations on the UK:

"The Committee is concerned 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 (LBGT); children belonging to minority groups, continue to experience discrimination and social stigmatization" (CRC 2008:para 24).

The increasing vulnerability of migrant groups in relation to community safety has been noted by the Criminal Justice Inspection NI in their 2007 Inspection of the Management of Hate Crime in NI:

"Northern Ireland has had a tradition of discriminating on grounds of religion. But new divisions and lines of possible discrimination have opened up on recent years. Large numbers of migrant workers arriving in Northern Ireland in search of employment are settling; gay,

lesbian, bisexual and transgender people are more content to be seen as such; and increasing numbers of people are meeting the definition of disabled. To a worrying extent people in these minority groups are increasingly inheriting the 'scapegoat' role and being targeted by people who would previously have acted out their hatred on the other religious community" (CJI 2007a:3).

CJI (2007a) report a significant increase in the reporting of both racial and homophobic hate crime incidents over the last five years, with the numbers of homophobic incidents reported to the PSNI increasing from 185 in 2001/02 to 936 in 2005/06 and the numbers of reported racial incidents increasing from 40 to 220 in one year over the same period.

OFMDFM's Good Relations Indicators 2007 Update highlights that 4.4% of the young people surveyed had been a victim of assault because of their religion, race or skin colour, while 29% worried about being assaulted due to those reasons (OFMDFM 2007). A report by the Institute for Conflict Research (ICR) further reveals that ethnic minority young people in NI are particularly vulnerable to becoming the target of crimes due to multiple discrimination on the grounds of both their age and ethnicity:

"For some young people from minority ethnic communities, the discrimination they reported or feared appeared to be based on both their age and their ethnicity" (Radford et al 2006:79).

As with other forms of oppressive behaviours, issues relating to racism can be challenged



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positively within the education system, and although there are examples of some work being undertaken to address these issues, it is clear that further efforts must be made to ensure that sectarian attitudes and behaviours do not develop into further racist attitudes, behaviour and violence.

Sectarian Violence

Substantial evidence exists to suggest that children and young people continue to be directly impacted by the legacy of the troubles. The nature of this impact is multifaceted and includes exposure to sectarian comments, attitudes and behaviours, limitations on one's geographical movements, restrictions on what clothing one can wear in certain locations (including school uniforms) and direct sectarian violence. While all children and young people are impacted by these continued consequences of the troubles to some degree, some are more directly impacted than others as a result of the community in which they live or circles in which they move (Smyth 2004; Byrne et al 2005; Hansson 2005; Roche 2005; Jarman 2006).

Research undertaken with almost 2,500 young people in North Belfast, for example, found that 82% of participants had experienced violence and disorder within their local area, with the most commonly reported incidents (reported by 62% of respondents) being those of fighting between members of Catholic and Protestant communities (Byrne et al 2005). Two fifths of the young people who participated in Roche's (2005) research in the Derry City Council District Area similarly indicated that they had experienced sectarianism, with 61% stating that they felt a lot of sectarianism existed in the area.

Protestants
fighting
Catholics



Research by ICR suggests that young people are more likely to experience sectarian harassment and violence than older age groups (Jarman 2006), with sectarianism and segregation impacting most strongly on young males – *"sectarian attitudes appear more deeply entrenched among young males and young males were perceived as more of a threat and generally perceived to be more involved in and affected by violence and sectarian attacks"* (Hamilton et al 2008:9). The wearing of school uniforms, football tops and sportswear, which are perceived as identifying a young person's community background, can also leave children and young people particularly vulnerable to sectarian behaviour (Hamilton et al 2008).

Research commissioned by OFMDFM into the experiences and perspectives of 3 to 11 year olds revealed that even children this young have been impacted by living under the shadow of sectarian violence. For some young children,

living in areas of high sectarian tension, this has included direct experience of incidents of sectarian violence and community conflict (Connnolly and Healy 2004).

Jarman (2006:8) observes that young people can be particularly vulnerable to becoming involved in anti-social behaviour and community disorder in interface areas because *"of the lack of adult control and authority"* and because they *"use the spaces as a place to hang out with friends"*. The report highlights that the experiences of interface workers demonstrate a need for local residents to engage with the young people involved in interface disorder in order to make them aware of the implications of their actions, rather than just shouting at them or encouraging them to move away from the area. In this way young people can be viewed as *"part of the solution rather than seeing them simply as a problem"* (Jarman 2006:42). The report also highlights the importance of investment in diversionary work with children and young people to offer them alternatives to engagement in sectarian violence (Jarman 2006). Hansson (2005) similarly identifies the need for alternatives to anti-social behaviour and violence, while Byrne et al (2006) note the negative implications of an absence of 'shared space' where young people can go and feel safe irrespective of religious or community affiliation. This relationship between appropriate things to do and places to go and engagement in anti-social behaviour is further explored in chapter 7, as is the impact of sectarianism on children and young people's right to play.

Paramilitary Control

While the findings of this, and other, reviews indicate that many children and young people are now living in communities relatively free from the violence of the troubles, there is a significant minority of young people whose lives continue to be marked by fear and/or experience of paramilitary violence and control. As Hansson (2005:5) observes:

"Despite the peace process, violence remains an immediate experience (and memory) for many young people and the association of religious identification with the threat of violence is strong."

Hansson (2005) further notes that many children and young people in NI are vulnerable not only to becoming victims of paramilitary or sectarian violence, but also to becoming perpetrators of paramilitary violence. This reflects the findings of Smyth (2004) that suggested that children in NI were still being recruited to paramilitary groups in contravention of article 38 of the Convention. OFMDFM's 2007 Update Paper on Good Relations Indicators shows that 38% of young people surveyed worry about being threatened by paramilitaries, while 4.3% have been a victim of being threatened by paramilitaries (OFMDFM 2007e). Some young participants in this review, who lived in interface areas or areas of heightened community tension, talked at length about their continued experiences of paramilitary control within their communities. While noting changes in the last number of years in relation to the focus of paramilitary attention, young people in certain areas firmly

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believed that paramilitary control remained strong in their communities and that the threat of paramilitary violence was still very real:

"The paramilitaries beat people up if they've drugs."

"The paramilitaries deal the drugs then beat you up when you buy them."

"UDA sell drugs and UVF beat people for having them."

"Paramilitaries – giving drugs to young people, selling them, beating up the children & young people, getting thumbs and knees broken, getting blamed and punished for things you haven't done."

"They are disbanded but they still walk round the streets beatin people."

"Things have changed – used to be for God and Ulster, but now it's just for themselves."

"More control now...they control everything, who does what an all."

"Look at my ankles and my head, my two ankles were broken and my head was smashed in by them."

While the vast majority of young people who spoke of their experiences of paramilitaries did so in entirely negative terms, there were a small number of individuals who felt that the paramilitary presence in their community was positive in terms of the 'protection' and 'policing' it provided in the community:

"Paramilitaries make you feel safe – if someone targets your house you can go to them."

"The community watch treat you fairly...If you're doing something bad they take you into an alleyway and beat you up. This is a good thing as they are taking care of your street and community."

"Bring back punishment beatings as too many assholes in area who give you a hard time. If you hit them the peelers arrest you."



These opinions reflect those expressed by some of the young people who participated in Roche's (2005) study of the views of school leavers in the Derry City Council District Area, one third of whom felt that paramilitaries should be involved in punishing anti-social behaviour within local communities.³⁶ They also reflect Byrne et al's (2005) findings that 41% of young people living in North Belfast who participated in their research feel that paramilitary groups held the most authority in their communities (comparatively, 29% felt the police to hold most authority).

³⁶. A further third felt paramilitaries should not punish anti-social behaviour, whilst the remaining third were indecisive on the issue (Roche 2005).

The continued exertion of paramilitary control and influence within communities, and the use of violence as a means of 'policing', punishment and control, is in clear violation of the freedoms and protections afforded all children and young people within the Convention. The fact that paramilitaries are still viewed as the most effective means of ensuring community safety by a significant minority of young people is a matter of grave concern that illustrates the urgent need for the State to further develop alternative methods of 'community policing' that are deemed to be both acceptable and effective to the local community.

Improving Community Safety

The majority of participants in this review, who offered comment on the issue of community safety, expressed a desire for greater measures to ensure safety within local communities and the other places where children and young people socialised. Desired measures included an extension of neighbourhood watch schemes, better lighting, more CCTV and, in some instances, more police on the street:

"Community Watch is a good thing, they look after people from getting beaten up in alleyways."

"More police officers patrolling the streets at night and street lighting. It would make me feel safer in a big group of friends, but just because I'm with a lot of other teenagers people need to be aware that I am not looking to cause trouble."

The latter of these issues, policing of local communities, continues to be a contentious matter within NI.



While some young people who participated in this review welcomed an increased PSNI presence in their community, others did not, on the basis of negative opinions and/or prior negative experiences of the police by themselves or their friends and families. These opinions appeared to be informed, in variable part, by community affiliations or cultural identity and by views and/or experiences that the police were generally discriminatory against youth:

"As the police are Protestants they treat you unfairly because you are a Catholic, eg throw you in the back of a land."

"If the police were Catholic and locals then we would trust them."

"Most of the police are taigs."

"The police don't like our family because they know my dad's in jail. One called me a robber's son."

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"They falsely accused myself and my friends of harassment and didn't give us a fair chance to explain."

"The police dig graves for themselves – they say they are treated badly by young people, but they are not treating us the way we should be treated."

"PSNI just move you, we were listening to music just outside my house and we had to move somewhere else."

"Police stereotype young people."

"If you're in a hoodie, the peelers stop you and check you for drugs."

"Police don't listen to young people."

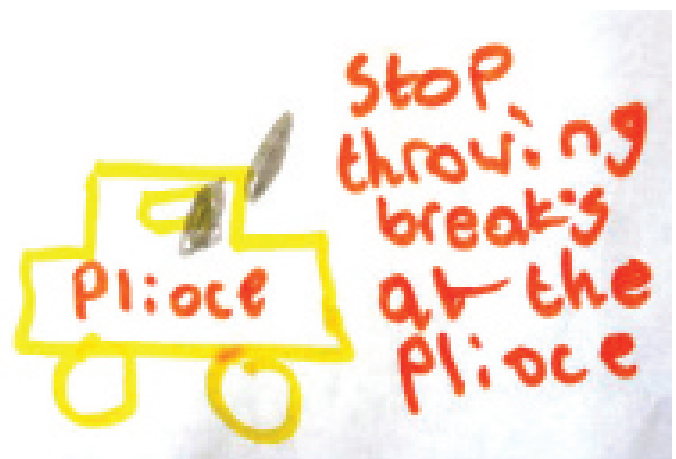
"Police tell you to move even through we aren't doing anything."

Children and young people who completed a questionnaire as part of this review were asked if they had ever been in trouble with the police, did they feel they were treated fairly in relation to this: 57% of those who responded felt they were not. Reasons given for this included being accused in the wrong and disrespectful attitudes on the part of the PSNI.

The views expressed within this review in relation to opinions of the PSNI reflect those of other local studies in recent years. Roche (2005) in her study of young school leavers, for example, found 68% of young people who had contact with the police to have deemed this to be

'improper', with three quarters of this subgroup describing their treatment as 'harassment'. Forms of contact reported in the study included being stopped and questioned (32%), being asked to move on (24%), being searched (18%) and having their names taken down in police notebooks (62%).

Research by Byrne et al (2005) similarly reports that only one quarter (23%) of almost 2,500 young people in North Belfast felt that the police provided a good service in their communities, with 65% stating that the police did not understand the issues or problems they faced. Over one third (36%) of respondents in Byrne et al's research reported experiencing verbal harassment by the police or being stopped and searched for no reason, while half reported personal experience of fighting with the police.



The findings of these studies confirm the need for further investment in the promotion of positive relationships between young people and the PSNI. A number of important initiatives have been introduced in recent years in an attempt to address this (Independent Youth Advisory

Groups, for example) and it is vital that these be continued and further developed if children and young people are to be kept safe in their local communities and wider society through the provision of effective policing. Progression of the new Community Safety Strategy, 'Together, Stronger, Safer' issued for consultation in October 2008, offers a potential medium for achieving this if appropriately targeted and resourced.

3.9.4 Road Safety

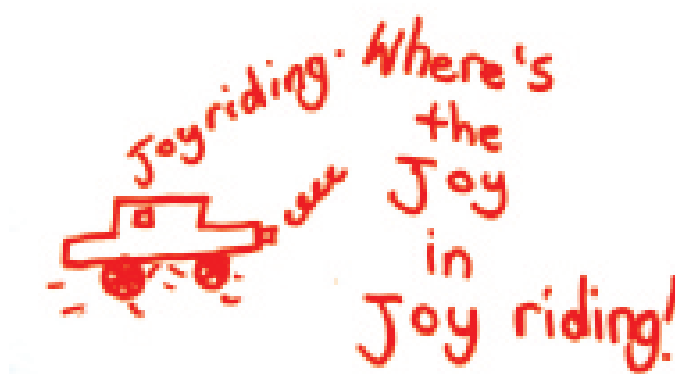
PSNI statistics for 2007/08 show that 11% of all road casualties were children under 16 years of age. This equates to 1,040 children, 931 of whom were slightly injured, 103 of whom were seriously injured and 6 of whom were killed. The majority (70%) were passengers in a vehicle at the time of the incident, however 21.4% were pedestrians and 7.4% were pedal cyclists (PSNI 2008b).

According to a study of social deprivation and childhood injuries in North and West Belfast, children living in areas of economic deprivation can be particularly susceptible to injuries on the roads. The authors of the study note a number of different potential contributory factors, including *"differential impact of road safety initiatives across the socioeconomic gradient, access to safe play areas, and differences in driver behaviour or alternatively, risk-taking behaviour by children"* (Silversides et al 2005:27).

The findings of the Young Persons' Behaviour and Attitudes Survey undertaken by the Northern Ireland Statistics and Research Agency (NISRA)

with almost 7,000 young people aged 11 to 16 in 2006/07, reveal a number of concerning behaviours on the part of young people with regard to their safety on, or near, roads. The survey reported that:

- 49% of participants use a mobile phone to text or make a call while crossing the road
- 31% run across the road without checking for traffic
- 53% carry on with friends while crossing the road
- 44% never wear bright coloured clothes while cycling or walking at night
- 55% never wear a cycle helmet (NISRA 2008a:5).



Though, as outlined below, there have been a number of positive developments in recent years in relation to road safety awareness amongst children and young people, these findings clearly indicate the need for further investment in, and exploration of, potentially more effective means of awareness raising and education.

Many of the children and young people who participated in this review also raised the risks facing children and young people as pedestrian

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or cyclist users of the roads as a matter of concern, though the focus was primarily on the behaviour of others rather than that of children and young people themselves. Particular issues raised included the speed of cars, inadequate dedicated crossing points and traffic calming measures, lack of pavements in rural areas and the prevalence of joyriding in certain areas:

"Too many teenagers driving fast in the town."

"Cars are flying."

"Not enough ramps in rural areas."

"I don't have any footpaths where I live. I walk on the side of the road."

"Where I live I have no zebra crossing or traffic lights and it is a really hard hill to walk up."

"I live near a main road I could be injured very easily."

"There are joyriders. Get speedbumps to stop the joyriders. Joyriders knock you down, and wake you up in the middle of the night."

As highlighted in chapter 7, these dangers are particularly pertinent for children and young people who, in the absence of appropriate places to play, do so in close vicinity to, or indeed on, roads. They also have direct implications for children and young people's travel to and from schools.

Research commissioned by NICCY, the Department of Regional Development (DRD)

and the General Consumer Council on 'Safer Journeys to School' reveals that just under one third (31%) of children and young people receive free travel to school (on public transport, ELB or other buses, taxis or via receipt of cycle or car allowances). All children with statements of special educational needs receive free transport, but access for other children is restricted according to the application of statutory walking distances.³⁷ The authors note that the operation of statutory walking distances in NI, greater than those in the rest of the UK, is a matter of both contention and concern, highlighting the safety implications of increased car use for those children who travel to school by pedestrian means. The authors further note safety issues for those in receipt of free transport on buses in terms of the operation of a '3 for 2 rule' (three children on seats designed for two) and an absence of seatbelts in most buses (Hine et al 2006).



37. Only available for transport to a child's nearest school and where the distance is greater than two miles for those aged under 11 or 3 miles for older children (Hine et al 2006).

The concerns raised by Hine et al are reiterated in the findings of NISRA's Young Persons' Behaviour and Attitudes Survey, in which one fifth of all pupils who travelled to and from school by bus reported that they felt unsafe doing so, because of overcrowding and passenger safety. One quarter of those who travelled by bus said they felt their safety was also at risk getting on and off buses, because they could get pushed onto the road by other children or get run over by the bus (NISRA 2008a).



Travel to and from school was also raised as an area of particular concern by participants in this review, who noted the particular dangers facing children and young people around school buildings due to traffic congestion at the start and end of the school day, and raised dissatisfaction with the operation of statutory walking distances:

"Fast cars on the way to school" (young person).

"Need lollipop ladies at schools, especially on main roads" (young person).

"You need more parking at primary schools – you see stepping out onto the road, you couldn't see anything – it was well dodgy" (young person).

"There is no statutory provision that the school must have in place to protect the children getting in and out of school" (professional).

"Children have no legal protection from traffic noise and pollution and from dangerous and heavy traffic around their homes, play areas and schools" (professional).

"Not fair that we have to pay to travel to school if live nearer than 3 miles" (young person).

"We were able to choose the school we considered would meet their needs best, but we have to pay for transport. Transport costs are very high and the school travel ticket is very limited to use" (parent).

Participants in this review noted road safety to be a particular concern for children and young people travelling to and from school in rural areas, in terms of the longer distances they have to travel on buses, the irregularity of transport provision and the longer distances they have to walk to access public transport, often on unpaved and badly lit roads.

The current strategic direction for road safety is that contained within the 2002–2012 Road Safety Strategy which sets targets for reducing the overall number of deaths and serious injuries on the roads by one third, and those of children by one half, over the lifetime of the strategy. The

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strategy establishes six strategic objectives, each of which is accompanied by a series of action measures aimed at delivering the overall targets:

- to educate children to behave safely when using the roads and to persuade drivers to take extra care when driving near children
- safety for pedestrians and other vulnerable road users
- better driver training, testing and licensing
- better driver behaviour
- safer roads infrastructure
- safer vehicles.



Responsibility for delivery of the various strands of the Road Safety Strategy rests with three main bodies: the Department of the Environment (DOE), DRD and the PSNI, however DE are also involved in the delivery of a number of school based initiatives. The strategy established a number of monitoring bodies and mechanisms to oversee its implementation, including a commitment to review progress at the end of the first three years. The final version of this progress report was produced in December 2006, with a further update produced in December 2007. These reports highlight a number of key developments in recent years including:

- road safety policy documents adopted by 90% of primary schools
- increased road safety awareness in schools: 130 primary schools are delivering 'Best Foot Forward' (alternatives to car transport to school) and 175 post-primary schools are timetabling Road Traffic Studies in 2007/08, with 77 of these offering a GCSE in Motor Vehicle and Road User Studies
- safer Routes to School scheme now in 122 schools, with 40 more schools to be recruited each year
- abolition of the use of the '3 for 2' rule on school buses
- the setting of a target for April 2009 for the abolition of standing on school buses
- an increase in the number of seat belted buses used on school services: 88% of all ELB buses are now fully seat belted
- development of a Code of Practice Manual for parties involved in home to school transport in each ELB
- development of a policy for dealing with vandalism, bullying and misbehaviour on school buses within each ELB
- additional media and publicity initiatives in relation to safety of children
- increased levels of seatbelt wearing in 2007 (95%) compared to 2006 (93%), with a particular increase noted amongst 5 to 9 year old back seat passengers (90% in 2007 compared to 84% in 2006) and young adults aged 14 to 29 (83% compared to 75%). 90% of 5 to 9 year olds and 92% of 10 to 13 year olds now wear back seat seatbelts
- the installation of traffic calming measures in 49 residential areas (DOE 2007).



The measures implemented in recent years in relation to the reduction of child fatalities and injuries from road traffic incidents, and the incorporation of preventative initiatives within this, are to be welcomed from a child rights perspective. There is, however, more that can be done to address the still unacceptably high levels of road casualties observed amongst children and young people. While the target of a 50% reduction in child road deaths by 2012 has already been met (PSNI 2008b), there remains scope to introduce a revised, more ambitious target that brings about further protection of life and avoidance of injury. The recent work of the Assembly Committee for the DOE on proposals for a new road safety strategy offers a potentially effective medium for the progression of this if the issues raised within the consultative process – including those of greater speed management, more dedicated walking and cycling routes, a review of school transport policies, lowering of drink driving limits and the introduction of Graduated Driving Licence schemes – are appropriately integrated into recommendations for a new strategy.

3.10 Special Protection Measures

3.10.1 Commercial Sexual Exploitation and Trafficking

Articles 34 to 36 of the UNCRC place a series of specific obligations on States in relation to the prevention of sexual exploitation, abduction and the sale and trafficking of children. Article 34 obliges States to protect children from all forms of sexual exploitation and abuse, including those of prostitution and pornography. Article 35 requires them to take 'all appropriate national, bilateral and multilateral measures' in order to prevent child abduction and the sale or trafficking of children, while article 36 encompasses all other forms of exploitation that could be deemed prejudicial to any aspect of the child's welfare.

Commercial Sexual Exploitation

The vulnerability of children and young people to commercial sexual exploitation is an issue that is causing increasing concern amongst professionals working in the field in NI in recent years, but to date little concrete evidence has been published as to the scale and nature of the problem. The SSI child protection inspection report acknowledges the particular vulnerability of some looked after children to sexual exploitation (SSI 2006), while the NI NGO report to the CRC observes, of UK research, that children and young people at particular risk of sexual exploitation include those who have experienced some form of abuse or neglect, those who are homeless or have run away from home and those who are disengaged from alternative care placements.



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The report observes the particular vulnerability of these children noting that:

"Most do not recognise their own exploitation and, by virtue of previous experiences, seek attention, 'love' and a sense of belonging which their abusers supply. They generally have limited, if any, experience of reliable supportive adults, distrust professionals, and are convinced that they are best served by leaving childhood and looking after their own interests. Some young people experiencing sexual exploitation are detained in secure accommodation, for their own protection. However, there is little evidence that this changes their lives and they perceive it to be a punitive response; reinforcing a sense of personal blame for the abuse they experience and reluctance to seek help in the future" (SC/CLC 2008:45).

A number of professionals who participated in this review also expressed concern in relation to current statutory responses to sexual exploitation:

"They [children] do not see the statutory authorities as doing much to protect them against what they are experiencing at the hands of abusers/exploiters."

"The law, in most cases, demands the complaint of a child before action can be taken on an alleged perpetrator. This is an unduly heavy responsibility on a child/young person who may not be in a position to complain for a variety of legitimate reasons."

An emerging issue raised by professionals in this review was an increase in the vulnerability

of children and young people *"as a result of the internet and mobile phone technology. In terms of sexual exploitation this makes them even more vulnerable. They can be groomed in this way and may be controlled in this way also."*

The Committee on the Rights of the Child has expressed concern about the continued vulnerability of children and young people to sexual exploitation in both its 2002 and 2008 Concluding Observations on the UK. Commenting in 2002 it called on the State to undertake a study on the scope, causes and background of child prostitution, to review legislation so as not to criminalise children who are sexually exploited and to ensure that adequate resources are allocated to policies and programmes aimed at tackling the issue. In spite of these calls to action in 2002, the NI NGO 2008 report to the Committee further observes that:

"There is no central source of information about the numbers of children and young people involved in sexual exploitation in Northern Ireland. Given denial about the existence of this issue, its hidden nature, and the chaotic lives of those involved, few young people access services directed at supporting them and addressing the issues they face" (SC/CLC 2008:46).

This failure to adequately progress its 2002 recommendations has been highlighted again by the Committee in its 2008 Concluding Observations, in which it calls on the State party to *"intensify its efforts to collect data on the extent of sexual exploitation and abuse*

of children". The Committee has also re-emphasised the importance of ensuring that child victims of sexual exploitation, including prostitution, are always considered as *"victims in need of recovery and reintegration and not as offenders"* (CRC 2008:para 74).

Child Trafficking

The issue of child trafficking has also recently come to the fore within NI with preliminary research on the issue of human trafficking being published in 2006. While recognising the preliminary nature of the work, the report of the study concludes that *"there does appear, from scratching the surface to be grounds for concern that trafficking is indeed happening in this jurisdiction – without recognition, either officially or in the non-governmental and community sector"*. The author notes this to be sufficient grounds to justify further investment of resources in understanding the issue of trafficking and responding appropriately to it (Dudley 2006:45).

It is recognised that the lack of NI based research on trafficking noted within Dudley's (2006) report, coupled with the fact that immigration is an excepted matter, create challenges for the development of an appropriate response to child trafficking within NI. Dudley's research does, however, identify a number of particular groups whose vulnerability to, and potential experiences of, trafficking require further attention. These include:

- women and girls who have been trafficked or smuggled into the country and now appeared to be subjected to exploitation, usually prostitution
- unaccompanied minors from other countries
- children and young people born in NI who are being systematically sexually exploited here and/or moved into other jurisdictions for the purposes of sexual exploitation (Dudley 2006).

As is the case with sexual exploitation, the limited research evidence available, together with anecdotal evidence from professionals working in the field, present an alarming picture in relation to the State's failure to both recognise and adequately address the issue of human trafficking to and from NI. According to Murray (2007), experts in the field have pointed to lack of resources on the part of the PSNI as to one reason why child trafficking is not being adequately addressed within NI. This is an issue that must be urgently redressed if the government is to be prepared to deal with the increasing risk of trafficking associated with freer migration across borders.

It is hoped that the Council of Europe Conventions on 'Action against Trafficking in Human Beings' and the 'Protection of Children Against Sexual Exploitation and Sexual Abuse', both of which have been recently signed by the UK, will offer an effective medium for progressing the protection of children and young people from commercial sexual exploitation and trafficking. Welcoming the signing of these Conventions, the Committee has now called upon the State to ratify both Conventions (CRC 2008).



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The Committee has also welcomed the adoption of a UK Plan on Tackling Human Trafficking in its 2008 Concluding Observations, but simultaneously expressed concern that *“the necessary resources to implement it are not being provided, including those needed to ensure the provision of high quality services and safe accommodation for trafficked children,”* calling upon the State party to redress this (CRC 2008:para 75).

Despite these commitments from the UK Government to take a stronger approach towards preventing the commercial exploitation of children and the frequently related matter of trafficking, it is clear that at a local level much more must be done. Action is required to translate high level commitments into meaningful protections for children and young people at risk. Professionals working with potentially vulnerable children, including those working with migrant and asylum seeking children, should be properly trained in order to identify suspected signs of exploitation and appropriate support services should be readily available where required. Further data collation and research are also required to identify the scale and nature of the problem and to inform the future roll out of both preventative and responsive services.

3.10.2 Asylum Seeking and Refugee Children

While the number of refugees and asylum seeking children and young people currently coming to NI is relatively small, the issues facing these children have been recognised to be an emerging area of concern and one that

is set to increase in coming years. The four UK Children’s Commissioners, in their 2008 report to the CRC, highlighted the *“serious breaches of rights”* experienced by children seeking asylum (UK Children’s Commissioners 2008:30), as did many professionals who participated in this review:

“I have noticed, working in the voluntary sector, there are an awful lot of asylum seekers, literally landing here with kids and having nowhere to go.”

“Needs of children of economic migrants and asylum seekers [are an issue of serious concern]. English, if not your first language, can cause barriers to communication, social interaction and integration: appropriate support and communication services are needed to respond to this vulnerable group.”

“Migrant children, asylum seekers, refugee children’s access to English as an additional language [are issues of serious concern]... these children are here so how are we going to support them, support teachers or other professionals who work with these children and their families so that their rights will be upheld.”

It is important to note that there have been a number of positive developments in recent years in relation to the rights of asylum seeking children, most notably the State party’s recent commitment in September 2008 to withdraw its reservation to article 22 which places an obligation on States to provide appropriate protection and humanitarian assistance

to all children seeking refugee status in accordance with applicable international or domestic standards and, where the family of an unaccompanied child can not be found, accord them the same protection as any other child deprived of their family environment. However, as explored below, in spite of such developments there remain a number of issues of serious concern in relation to the protection and promotion of the rights of asylum seekers and refugees.

A refugee is someone who has sought safety from fear of persecution (asylum) under the terms of the 1951 UN Convention Relating to the Status of Refugees and has been deemed to meet the applicable criteria. An asylum seeker is someone who has applied for asylum but is still waiting a decision on their application. As issues of immigration remain excepted matters under the Northern Ireland Act 1998, all such claims are dealt with by the Home Office, irrespective of which part of the UK an individual is residing in. The UK Commissioners note, in their recent report to the Committee, that the reservation of this matter “*can lead to tensions between legislation, policy and practice at devolved and non-devolved levels*” (UK Children’s Commissioners 2008:30).

If a claim for asylum is denied, individuals are generally refused permission to stay within the UK, however an individual may be granted discretionary leave, which is time limited permission to stay where the Home Office does not accept that refugee status or humanitarian protection is appropriate. This is reported to be the most frequent form of

leave given to unaccompanied asylum seeking children, generally given for 12 months or 3 years (dependent on the country of origin) or until the young person reaches 17.5 years (whichever is the shorter period).³⁸ Recognising the proportions of young people availing of discretionary leave, the four UK Commissioners have noted serious concern in relation to recent proposals to curtail its use (UK Children’s Commissioners 2008).

In terms of their experiences within the community, anecdotal evidence suggests that many refugees and asylum seekers experience multiple forms of discrimination and disadvantage within NI, including racial violence and discrimination. Asylum seekers face additional challenges, as while refugees are generally entitled to the same services as a citizen of the UK (OFMDFM 2007b), asylum seeking individuals and families are not. While they may be granted access to compulsory education and healthcare, they are not generally entitled to engage in paid employment, thereby relying on the ‘cash supports’ provided by the State, a reliance that has obvious consequences for the material wellbeing of their families. Furthermore, while they may qualify for housing support if they are ‘destitute’, they may be housed anywhere in the UK.³⁹

38. www.childrenslegalcentre.com/Refugee+and+Asylum+Seeking+Children/Advising/Advising/FAQ/glossary/DiscretionaryleaveDL.htm [accessed October 2008].

39. www.ukba.homeoffice.gov.uk/asylum/support [accessed October 2008].



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Asylum seeking children, both those who are unaccompanied and those with their families, experience much uncertainty and instability while waiting for their applications to be processed, not knowing if, and when, they will have to return to the country they have fled for fear of persecution. It is consequently difficult for children to establish roots in a community or circle of friends, a linkage which is integral to their personal development and wellbeing. Many are also dealing with traumatic experiences and circumstances from their past and this can also have significant impacts upon their health and wellbeing.

While anecdotal evidence from those working in the field highlights both the existence and impact of issues such as these, concern exists as to the lack of concrete information that is available in relation to the numbers of children and young people seeking asylum or refugee status in NI and the difficulties and challenges they face. As SC/CLC (2008:42) observe:

"It is difficult to source statistics about child refugees and unaccompanied minors in Northern Ireland, primarily because no single agency compiles this information. The British Home Office, which does collect data, does not break the data down by jurisdiction or by children who enter the country with families or alone."

The lack of data on children seeking asylum was an issue that was specifically addressed by the Committee in its 2008 Concluding Observations in which it calls on the UK to "provide disaggregated data in its next report on the number of children seeking asylum, including those whose age is disputed" (CRC 2008:para 70/71).

Other issues of concern raised by the Committee in relation to the experiences of asylum seeking children in its 2008 Concluding Observations include the fact that asylum seeking children continue to be detained, the lack of an independent oversight mechanism for assessing reception conditions for unaccompanied children who have to be returned and the legislative possibility of prosecution for children over the age of 10 who do not possess valid documentation upon entry to the UK (CRC 2008).

Detention of Asylum Seeking Children

The UK Children's Commissioners report to the CRC states that "*children and their families are being detained in significant numbers*", with 1,860 children in families detained using immigration powers in 2006. Commenting on this situation, the Commissioners state:

"We are very concerned at the duration of detention for children arising from both single and cumulative spells in detention. Contrary to international human rights standards, detention of children is often not used as a measure of last resort or for the shortest possible time and does not occur only in exceptional circumstances. There is no judicial oversight of decisions to detain children and their welfare is not adequately considered when decisions to detain or continue detention are made. Of particular concern is the prevalence of mental health problems exhibited in detained children and their inability to access mental and wider health services during detention" (UK Children's Commissioners 2008:31).

Noting that since 2004, 40–45% of all those claiming to be unaccompanied asylum seeking children within the UK have had their age disputed (between 2,000 and 2,500 children a year) the report continues:

“While it is Government policy not to detain unaccompanied asylum seeking children except in exceptional circumstances, concern remains that age-disputed applicants continue to be detained and removed without receiving an independent age assessment” (UK Children’s Commissioners 2008:31).

The detention of asylum seeking children undergoing age assessments was an issue of particular concern to the Committee who noted that such children may be kept in detention for weeks until an assessment is completed, calling upon the State to *“give the benefit of the doubt in age-disputed cases of unaccompanied minors seeking asylum, and seek experts guidance on how to determine age”*. Commenting on the detention of these and other asylum seeking children the Committee called on the State to *“intensify its efforts to ensure that detention of asylum-seeking and migrant children is always used as a measure of last resort and for the shortest appropriate period of time, in compliance with article 37 (b) of the Convention”* (CRC 2008:para 71).

It has been reported that immigration detainees, including some applicants for asylum, are no longer routinely held in prisons in NI, *“being stopped and held at their point of entry to Northern Ireland and then detained in police cells until they are sent to removal centres in Britain”*

instead (SC/CLC 2008:16). This situation has been criticised by the Chief Inspector of Prisons in her 2007 report on Dungavel House Immigration Removal Centre in Scotland, where many have subsequently been detained. The report notes that many individuals transported to Dungavel from NI have spent nights in police cells in NI prior to their transfer without any proper facilities. The report further notes a failure to transfer appropriate information in relation to individuals being moved to Dungavel from NI, including information relating to their asylum case or medical conditions (HM Chief Inspector of Prisons 2007).

Specifically considering the experiences of children detained at Dungavel, the report notes that the numbers of children detained had increased from 94 in 2005 to 122 in the 11 months to December 2006. The report further notes that while most children remained at the centre for less than 72 hours, 7 had been held for longer than a week (including 2 for 32 days) – the numbers of children being transferred from NI to the centre is not known. The report further notes inadequate child protection records within the centre, delayed social work assessments and *“no evidence that the child’s best interests played any part in initial decisions to detain, or that their detention was only authorised in exceptional cases”* (HM Chief Inspector of Prisons 2007:6).

Future Directions

Following consultation in 2007, a new strategy for improving the care of unaccompanied asylum seeking children (‘Better Outcomes: The Way Forward’) was produced by the Home Office Border and Immigration Agency (now the UK



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Border Agency) in January 2008. While it is still too early to assess the impact of the proposed changes, initial concern has been expressed that *“the rights gap between child citizens of the UK and the children seeking asylum is significantly widened by the proposals”* and that *“there is a clear drive to remove children whose asylum claims have failed or who have just obtained the age of majority at the earliest opportunity, with no mechanism for ascertaining whether this would be in their best interests or tracking their welfare after removal”* (UK Children’s Commissioners 2008:30).

The NI NGO report to the CRC also registers concern as to the proposed changes, noting that *“the main motivation for proposed changes would appear to be financial concerns and an intention to speed up the deportation process, rather than the welfare of the children involved”* (SC/CLC 2008:42). It is imperative that in progressing this new outcome of early return to the country of origin, the UK Border Agency ensures adequate protections are in place both in terms of decision making in relation to this and the care and protection of children being returned home. Account should be taken of the Committee’s call to consider the appointment of guardians for unaccompanied asylum seekers, to take measures to ensure that children are dealt with by specially trained staff and, when the return of children occurs, *“it happens with adequate safeguards, including an independent assessment of the conditions upon return, including family environment”* (CRC 2008:para 71).

It is imperative that the situation of both refugee and asylum seeking children be kept under

review and that the UK move towards a more rights compliant response to both marginalised and vulnerable groups. It is further imperative that the operational difficulties associated with the reservation of this matter be addressed to ensure that all children and young people receive the care and protection they require, being able to access this at a local level.

3.11 Conclusion

As highlighted throughout this chapter, there are many different ways in which children’s civil liberties are currently infringed within NI, including their right to peaceful assembly and their right to freedom from torture, cruel, inhuman and degrading treatment. Furthermore, although there have been some positive developments in recent years in relation to the protection of children and young people within NI, there continue to be numerous difficulties associated with the effective realisation of their right to ‘life, survival and development’ and other protection oriented rights, with some groups of children experiencing serious discrimination or disadvantage.

While not an exhaustive list, section 3.12 below highlights a number of priority action areas which, if effectively addressed, could offer significant progress in relation to the effective realisation of children’s rights to protection, development and personal freedom.

3.12 Priority Action Areas

- Recognition of the unfairly negative portrayal of 'youth' within the public domain and investment in initiatives that will help redress this 'demonisation' and the consequent negative implications for children's use of public space.
- Revision of the use of Anti-social Behaviour Orders in relation to children and young people and replacement with more appropriate responses to dealing with anti-social behaviour that address the root causes of such behaviour and do not blur the boundaries between civil and criminal law.
- Revision of the rules and procedures relating to the collection and retention of DNA, to bring the situation in Northern Ireland into line with the more rights compliant Scottish model.
- Ensuring police technologies such as Taser and Attenuating Energy Projectiles are not used against children and young people, or in situations where they could be harmed by their use, unless concrete evidence exists to disprove current concerns that this group may be disproportionately negatively impacted by their use.
- Comprehensive legislative reform in relation to the physical punishment of children in the home, that affords children the same level of protection within the home now afforded to adults. This must include a repeal of all existing legal defences and should be accompanied by increased investment in, and development of, positive parenting initiatives.
- Comprehensively addressing the recommendations of the Social Services Inspectorate Inspection of Child Protection Services, and those of other recent Inquiries, Inspections and research in the field, in order to ensure greater protection and better support for children exposed to, or at risk of, harm at all stages of the process. Consultation with children and young people, who have experience of the system, should be an integral element of progressing these recommendations.
- Establishment of a comprehensive monitoring and evaluation strategy to assess the success of new safeguarding developments and identify continued gaps in service delivery.
- Greater investment in educative and preventative work in relation to domestic violence, abuse and other behaviour negatively impacting upon children's rights to protection within both the home and the wider community.



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- Greater investment to ensure that the risks to children associated with current delays in vetting checks are addressed.
- Urgent implementation of all elements of the new sexual offences legislation and effective utilisation of its powers to address the currently low level of successful criminal prosecutions.
- Ensuring adequate safeguards are in place in the online community and ensuring children and young people and those who care for them are aware of the potential risks of the internet and how to stay safe when using it.
- Greater protection for children in communities, through identification and promotion of appropriate and effective means of addressing the issues undermining community safety outlined within this, and other, reports.
- Research into the scale and nature of sexual exploitation and trafficking within Northern Ireland and how this could be most effectively addressed.
- Revision of current procedures and protocols for the treatment of asylum seeking children and young people, especially those who are unaccompanied.

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