

# Childhood, rights and justice in Northern Ireland

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## Introduction

What is 'childhood'? When does it start? When does it end? Seemingly self-evident, definitions of 'childhood' are not universally shared; varying over time, between cultures, within sovereign state policies and legislation. 'Childhood' as a distinct period of human development is a relatively recent construct. Developmental theories identify discrete 'stages' in the transition from birth to adulthood, the assumption being that the latter represents the 'completed' human condition. In contrast, social constructionist analyses affirm the significance of the determining contexts of culture, religion, learning and political economy in mapping this transition. At its simplest, the distinction between these quite different approaches has been represented as the 'nature versus nurture' dichotomy. A more complex, critical analysis focuses on social and political constructions of childhood within the dominant social order, differential power relations, and consequent impacts on the lives of children and young people.

Political economies, social mores and cultural dynamics differ between and within states, manifested in institutional and interpersonal conflictual relations of class, 'race', sectarianism, gender, sexuality, ability and age. Thus, 'adulthood becomes institutionalised and mediated through social structures and their processes and policies', with material power 'complemented by persistent ideologies of subservience and subjugation to silence and nullify the actions of young people' (Scraton 1997, p. xiii). Within advanced democratic states, to varying degrees, childhood is perceived and regulated as a period of potential; children as adults 'under construction'. This ideological representation encourages public discourses and policy formulations that 'deprive them [children] of an existence as human beings in favour of an image of them as human becomings, thus underlining the suggestion that *children are not authentic contemporaries of adults*' (Qvortrup 2005, p. 5). More than a suggestion, this assumption is central to adult hegemony evident in the use, and abuse, of adult power.

The late twentieth century was a period in which the 'rights' of children were formulated and shared internationally, culminating in the 1989 United Nations (UN) *Convention on the Rights of the Child* (UNCRC). In essence the UNCRC articulates the distinctiveness of childhood and the need to establish universally agreed principles and provisions that both *protect* and *affirm* the rights of all under the age of 18. Minimum standards in the form of Rules and

Guidelines focus on the administrative responses to 'anti-social' or 'of anti-social development'. Regular assessments of progress towards meeting targets and related standards can be a significant indicator of the broader context of children's rights within the broader context of a jurisdiction emerging from a period of social justice, this analysis acknowledges the impact of the youth justice system that functions in the United Kingdom (UK)

## Northern Ireland: from conflict to peace

### The Conflict

Contemporary Northern Ireland since the 1990s ceasefires it endured three decades. While Nationalists/Republicans sought a united Ireland, Unionists/Loyalists sought retaining the union with the United Kingdom. Those with the highest levels of education and income, just 1.7 million people, during the conflict, 17 per cent of whom were aged 24 or under and 629 young people aged 18 who were killed were casualties of the conflict. Within Republican communities, the British Army was an instrument of oppression with the British Army in Loyalist communities, those who were not protected from external threat or 'anti-community' behaviour. The largest proportion of infant mortality was in the Republic of Ireland (Knox 2002).

In 1970, Northern Ireland's *Emergency Provisions Act* as a direct response to the conflict for civil, political and economic rights following the introduction of the *Emergency Provisions Act* by the Parachute Regiment in 1970 was suspended and the UK's *Emergency Provisions Act* followed.

In 1998 negotiations between the British and Irish governments resulted in the *Good Friday Agreement* for a democratically elected government, rights, accountability and transparency; sustainable economic

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# Justice in Northern Ireland

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Guidelines focus on the administration of criminal justice, prevention of 'juvenile delinquency', and responses to 'anti-social' or 'offending' behaviour aimed at promoting children's wellbeing and development.<sup>1</sup> Regular assessment by the UN Committee on the Rights of the Child of a state's progress towards meeting the expectations contained within the Convention's Articles and related standards can be a significant lever in promoting and protecting children's rights.

What follows considers the progress made in Northern Ireland towards realization of children's rights within the broader context of the United Kingdom and the specific circumstances of a jurisdiction emerging from a century of conflict and 30 years of war. While prioritizing criminal justice, this analysis acknowledges the significance of social justice in policies and practices affecting children's lives.<sup>2</sup> A key focus will be on the findings and recommendations of a review of the youth justice system that followed the devolution of policing and criminal justice powers from the United Kingdom (UK) government to the Northern Ireland Assembly in 2010.

## Northern Ireland: from conflict to peace

### The Conflict

Contemporary Northern Ireland is a society in transition. Between the late 1960s and the mid-1990s ceasefires it endured three decades of armed, political conflict regarding its constitutional status.<sup>3</sup> While Nationalists/Republicans, the majority of whom were Roman Catholic, demanded a united Ireland, Unionists/Loyalists, the majority of whom were Protestant, remained dedicated to retaining the union with the British State. Communities most affected by the Conflict were those with the highest levels of deprivation and poverty (Hillyard et al. 2005). In a population of just 1.7 million people, during the Conflict 3,600 men, women and children were killed, 40 per cent of whom were aged 24 or under. Between 1969 and 2003 this included 274 children aged 17 or under and 629 young people aged 18–21. Almost three-quarters of children under the age of 18 who were killed were Catholic and a fifth were Protestant (Smyth et al. 2004).

Within Republican communities, the police and the criminal justice system were perceived 'as instruments of oppression without any legitimate mandate' (Doak and O'Mahony 2011, p. 306). In Loyalist communities, those supporting paramilitaries disengaged with the formal criminal justice system (Byrne and Monaghan 2008). Paramilitaries filled the policing void, providing protection from external threats and severe regulation of those accused of 'criminal', 'anti-social' or 'anti-community' behaviour through public humiliation, beatings, shootings and forced exiling. The largest proportion of informal punishments was inflicted on young people aged under 25 (Knox 2002).

In 1970, Northern Ireland's Unionist government passed the *Criminal Justice (Temporary Provisions) Act* as a direct riposte to the Nationalist/Republican/Catholic community demands for civil, political and economic rights. Two years later, with British troops on the streets, and following the introduction of internment without trial and the killing of 13 unarmed civilians by the Parachute Regiment in Derry, the Conflict escalated. The Northern Ireland parliament was suspended and the UK government introduced direct rule. Nearly three decades of war followed.

In 1998 negotiations between the political parties in Northern Ireland, the UK and Irish governments resulted in the Good Friday Agreement establishing the constitutional foundation for a democratically elected Northern Ireland Assembly. Committed to embedding human rights, accountability and transparency into all institutions and practices, the Agreement prioritized sustainable economic stability and growth; equality and social inclusion; normalization of

state security operations and practices; representative and accountable civil policing; review of criminal justice; disarmament of paramilitary organizations; and the early release of politically affiliated prisoners.

In December 1999 limited powers were devolved to the Assembly. Following brief periods during which the Assembly's powers were suspended, in 2002 direct rule was reintroduced. In October 2006, the St Andrews Agreement prepared the way for resumption of the Assembly. Devolution returned seven months later. In May 2007 the Northern Ireland Executive took responsibility for all law and policy matters with the exception of policing and criminal justice, later devolved following the 2010 Hillsborough Agreement.<sup>4</sup> This Agreement's priorities included a review of the youth justice system to ensure compliance with international obligations (see Youth Justice Review Team 2011).

### The legacy of the Conflict

In 2014 Northern Ireland's population was 1,840,498, of whom 24 per cent were aged under 18 (NISRA 2015). A discrete legal jurisdiction of the UK, it remains a divided society. Housing, schools, public services and leisure facilities are segregated according to religious or political allegiances (see Roche 2008, McAlistier et al. 2009). Forty-two per cent of the population identify as Protestant, 41 per cent as Roman Catholic (2011 Census, NISRA n.d.). Following expansion of the European Union 'newcomers' have made a significant contribution to the labour market, but cultural diversity has resulted in a marked increase in recorded racist attacks and racially motivated crimes (PSNI 2014, p. 13).

The Conflict has left a lasting legacy, affecting the lives of contemporary children, young people, families and their communities. The Commission for Victims and Survivors estimates that 30 per cent of the population are 'victims' of the Conflict – directly affected by bereavement, physical injury or trauma (Hansard 17 April 2013). Transgenerational trauma, evident in educational underachievement and mental ill-health, remains a reality for many children of parents and grandparents whose childhoods were blighted by war. Segregation, reflecting entrenched sectarianism, persists; its manifestation visible in 'peace walls' and security barriers at the 'interfaces' of Nationalist and Unionist communities. Sporadic outbreaks of violence or 'disturbances' continue at interfaces. Flags, murals and symbols delineate territory, demonstrating allegiances to paramilitary organizations. Cross-community interaction is limited, consolidating negative attitudes towards the 'other' community and protection of a shared identity within people's 'own' community (Leonard 2007, McAlistier et al. 2009).

Contentious marches through Nationalist/Republican communities by the Orange Order (a fraternity committed to defending Protestantism and opposed to Ireland's reunification) prompt inter-community violence. Within the reformed Police Service of Northern Ireland (PSNI), 67 per cent of officers self-identify as Protestant, 31 per cent as Catholic (PSNI 2015). In Nationalist/Republican communities, mistrust of the police persists and Loyalist working class communities remain disengaged from policing.

In this climate of 'uneasy peace', and despite a much-proclaimed commitment to human rights principles and practices, the realization of children's rights has been undermined. Children continue to suffer 'informal' regulation by community-based paramilitaries alongside formal regulation by welfare and criminal justice systems. Young people report being threatened, experiencing punishment and exiling by paramilitaries (Haydon 2009, McAlistier et al. 2009, Harland 2011, McAlistier and Carr 2014). Between 2008 and 2010, 47 per cent of the 272 recorded casualties from 'paramilitary style' shootings and attacks were aged under 25 (PSNI 2011).

### Implementation

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### Minimum age of cr

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### Prevention of offend

The Riyadh Guidelines grounded in promotion ensure delivery of adequate services, including that prevention policies the family, the community voluntary organization

## Implementation of international standards

The UNCRC provides 'a directional framework' for policy and practice, 'recognising the role of the state in supporting families and carers in the development, socialisation and welfare of children' (Scruton and Haydon 2002, p. 313). Ratified by the UK government of Britain and Northern Ireland in 1991, it came into force in 1992. Following periodic examination of the UK government's implementation of the Convention, the UN Committee repeatedly has raised concerns regarding the regulation of children.

### *Minimum age of criminal responsibility*

International standards do not specify a minimum age of criminal responsibility, but Beijing Rule 4 warns that it should 'not be fixed at too low an age, bearing in mind the facts of emotional, mental and intellectual maturity'. A close association between responsibility for criminal behaviour and other social responsibilities (for example, marriage, voting) is expected. The UN Committee (2007, para. 32) states that a minimum age of criminal responsibility below the age of 12 is unacceptable. In Northern Ireland it is 10. The Youth Justice Review Team (2011, p. 107) recommended raising the minimum age to 12 with immediate effect, with consideration given to raising it to 14 following a period of review. These recommendations have been rebutted because of doubts about public and political will to accept reform (CJINI 2013, p. 8).

### *The aims of youth justice*

According to the Beijing Rules, the administration of youth justice should meet the diverse needs of young offenders while protecting their basic rights. The aims of the youth justice system should prioritize the child's wellbeing, avoid punitive sanctions, and ensure that reaction is proportionate to the circumstances of the offender and the offence. While acknowledging that public safety is a legitimate aim of the criminal justice system, the UN Committee (2007, para. 14) considers this is best served by implementation of the overarching principles of juvenile justice enshrined in the UNCRC.

The *Justice (Northern Ireland) Act 2002* established that the 'principal aim of the youth justice system is to protect the public by preventing offending by children' (Part 4, Section 53[1]). In this, children should be encouraged to 'recognise the effects of crime and to take responsibility for their actions' alongside responses aimed at 'furthering their personal, social and educational development' (ss 53[2] and [3]). Consequently, a 'responsibilising' agenda with a welfare-based orientation was established, ignoring the 2000 Criminal Justice Review recommendation that the 'best interests' principle be enshrined in juvenile justice legislation. Fourteen years after this recommendation, the 'best interests' principle was incorporated into the 2014 Justice Bill.

### *Prevention of offending*

The Riyadh Guidelines establish prevention of offending as a society-wide responsibility, grounded in promoting children's development and wellbeing with sufficient resources to ensure delivery of adequate medical and mental health care, nutrition, housing and other relevant services, including drug and alcohol abuse prevention and treatment. The Guidelines state that prevention policies should facilitate the socialization and integration of children through the family, the community, peer groups, education, vocational training and employment, and voluntary organizations. Criminalizing or punishing children for behaviour that does not cause

serious damage to their development or harm to others should be avoided. Non-conformity should be accepted as part of maturation, declining through transition to adulthood. Labelling children 'deviant', 'delinquent' or 'pre-delinquent' should be recognized as contributing to subsequent 'undesirable' behaviour and the 'formal agencies of social control' should only be 'utilised as a means of a last resort' (Riyadh Guideline 5). Community-based programmes and services should be voluntary, designed and implemented in collaboration with young people.

In 2008 Northern Ireland established an early intervention programme targeting 8–13-year-olds 'at risk of offending'. Prioritizing prevention of offending as a long-term objective, it emphasized the personal, social and educational development of referred children and increased access to local support for parents. Practitioners were aware that using 'criminogenic' risk factors as referral criteria deflected attention from addressing the diverse and complex needs of referred children and their families (Haydon 2014). The programme conflated welfare provision for children 'in need' with criminalizing responses by defining them as children 'at risk of offending'. Despite practitioners' concerns about focusing on children's 'problematic' behaviour rather than its underlying causes, work concentrated on helping referred children manage their behaviour at home, in school or in the community. Practitioners suggested that many referred children did not understand the meaning of 'anti-social' behaviour and had been 'under-socialised' by parents whose capacity to parent had been 'compromised' by poverty, depression, domestic violence, substance misuse, abuse, lack of support and/or social isolation. Assumed 'anti-social' behaviour of groups on the streets brought children to the attention of the police, generating regulation of behaviour that was neither harmful nor causing damage.

The Northern Ireland Policing Board (2011) acknowledges that negative stereotyping reinforces the 'demonisation' of young people 'feed[ing] perceptions of anti-social behaviour', and amplifying a regulatory spiral. This is reflected in frustrations expressed by children and young people about negative media stereotyping, being 'moved on' from public spaces, and threatened with Anti-Social Behaviour Orders (McAlister et al. 2009, Nelson et al. 2010). These civil injunctions, which can lead to a criminal offence if breached, have been served disproportionately on young people, potentially 'fast-tracking' them into the criminal justice system (CJINI 2012a). Young people have stated that police officers regularly behave disrespectfully and make wrongful allegations of misbehaviour, but they were reticent to complain formally because they assumed they would not be believed (CJINI/NICCY 2007, p. 12). Such experiences were verified by the Youth Justice Review Team's (2011, p. 39) finding that 'too many officers are still adopting a judgemental and prejudiced, even antagonistic, attitude towards some of the young people they encounter'.

In July 2010, following rioting in Ardoyne, North Belfast, the PSNI released photographs of children they wished to interview. Simultaneously, the PSNI's 'Operation Exposure' was mounted in Derry where 50 photographs of young people were released to the media, followed by a house-drop of 25,000 leaflets containing photographs of 23 young people. These interventions breached children's right to privacy, undermined the presumption of innocence and access to due process, and placed the identified children at risk of community-based punishments. Despite criticism, the PSNI claimed their initiative was in children's 'best interests' as a way of identifying those requiring help and deterring them from involvement in further disorder (Burrows 2010) – illustrating the assertion that rights violations are often presented 'as a courtesy to the child' (Goldson 2000, p. 52).

### *Diversionsary measures*

The UNCRC, the Beijing and Tokyo Rules, articulate a commitment to dealing with young people who offend without resorting to court proceedings. Diversion to community-based

services is expected to mitigate that most child offenders receive processing and referral to alternative services (2007, p. 24).

The optimum response is when the family, school or police are expected that the police, police or juvenile cases without recourse to these agencies are regulated. It is expected that care will be taken and responsibility for an alleged criminal prosecution.

In 2002, diversionary provisions regarding diversion from the Probation Service, which can include diversionary youth conferences, guilt must be admitted and must not be regarded as a punishment registered on the young person for two years for a restorative justice conference.

A youth conference brings the victim or a representative person is confronted with harm done. A Conference Plan (MCP) is developed and the victim and prevent further criminal justice process are agreed and there is limited legal representation (Haydon 2008, p. 3 and O'Mahony 2011, p. 3).

Young people have developed punitive and shaming, with criticisms include being present at the Conference Plan (MCP) are disclosed through criminal education, training or employment significant over-representation (CJINI 2015a, p. 20).

### *Non-custodial measures*

The Beijing and Tokyo Rules which proceedings recognized should be available, draw determining outcomes, a rights of the victim and the offender and aimed at prevention of non-custodial measures and specialized treatment by a

services is expected to mitigate the negative effects and stigma of criminal conviction. Given that most child offenders commit minor offences, removal from criminal/juvenile justice processing and referral to alternative (social) services should be used in most cases (UN Committee 2007, p. 24).

The optimum response is non-intervention (by criminal justice or social services), especially when the family, school or other social institution has reacted constructively. If involved, it is expected that the police, prosecution or other agencies should use their discretion to dispose of juvenile cases without recourse to formal hearings. In addition to ensuring that the powers of these agencies are regulated and reviewed to protect children from discrimination, it is anticipated that care will be taken to minimize potential for children to be coerced into admitting responsibility for an alleged offence or pressured into accepting a diversionary measure to avoid criminal prosecution.

In 2002, diversionary measures were introduced via the *Justice (Northern Ireland) Act*. Decisions regarding diversion from prosecution were located within the remit of the Public Prosecution Service, which can impose police-led informed warnings or restorative cautions, or diversionary youth conferences delivered by the Youth Justice Agency. As a prerequisite, however, guilt must be admitted, the offence must not be deemed serious, and the young person must not be regarded a persistent offender. Although not a conviction, these measures are registered on the young person's criminal record for 12 months for an informed warning and two years for a restorative caution or diversionary youth conference.

A youth conference brings together the young person, their parent or appropriate adult, the victim or a representative, a police officer and a youth conference coordinator. The young person is confronted with the impact of their behaviour and is expected to acknowledge any harm done. A Conference Plan is agreed, comprising actions intended to meet the needs of the victim and prevent further offending. However, procedural safeguards afforded by the formal criminal justice process are absent. Guilt has to be admitted, rather than determined by a court, and there is limited legal representation. Concerns have also been raised concerning 'informed consent' (Haydon 2008, p. 46), particularly when a young person is eager to avoid court (Doak and O'Mahony 2011, p. 318).

Young people have described the youth conferencing process and outcomes as oppressive, punitive and shaming, with unfair emphasis on acceptance of individual responsibility. Their criticisms include being publicly lectured or berated with minimal potential for negotiation of the Conference Plan (Maruna et al. 2007). Although not classified a criminal conviction, details are disclosed through criminal record checks, potentially affecting a young person's access to education, training or employment (Carr et al. 2015). In youth conference referrals there is a significant over-representation of 'looked-after' children (that is, those in the care of the state) (CJINI 2015a, p. 20).

### *Non-custodial measures*

The Beijing and Tokyo Rules emphasize that prosecuted children should receive a fair trial in which proceedings recognize their best interests and enable participation. A range of disposals should be available, drawing on community support to implement non-custodial measures. In determining outcomes, a balance should be achieved between the rights of the offender, the rights of the victim and the needs of society. Conditions should be practical, precise, minimal and aimed at prevention of offending and at social integration. Prioritizing individual needs, non-custodial measures could include casework, group therapy, residential programmes and specialized treatment by appropriately trained and experienced professionals. Practical assistance

(accommodation, education or vocational training and psychological, social, or material support) should be provided to facilitate rehabilitation.

A range of non-custodial disposals have been introduced in Northern Ireland for those prosecuted and found guilty of an offence by the youth court. Rather than emphasizing the rights of the young person, however, restorative justice measures delivered by the Youth Justice Agency, such as court ordered youth conferences (in which the conference plan is agreed as the basis of a youth conference order), community responsibility orders and reparation orders, tend to focus on balancing the concerns of victims and the community with reintegration of the young person into their community.

### Custody

International standards stress that deprivation of liberty should be used as a last resort, for the minimum necessary period, in exceptional cases (a serious, persistent or violent act for which there is no alternative response). Detention pending trial should also be a measure of last resort. Outlining the rights of those held in secure facilities, the Beijing and Havana Rules emphasize that young people should receive care, protection, education and vocational training in preparation for assuming socially constructive and productive roles post-release in addition to any assistance they require for their holistic development.

The 2002 *Justice (Northern Ireland) Act* made provision for children aged 10–13 to serve a custodial sentence in secure accommodation, but this has never been enacted. In 2007 a purpose-built Juvenile Justice Centre (JJC) was opened. Operated by the Youth Justice Agency, it accommodates up to 48 young people aged 10–17. Inappropriate use of remand is more pronounced in Northern Ireland than in other UK jurisdictions (CJINI 2011, p. 4). Many on remand are neither serious nor persistent offenders but ‘troubled children’ (CJINI 2008, p. vii). Given that 80 per cent are subsequently bailed and do not receive a custodial sentence, the Youth Justice Review Team (2011, p. 55) concluded that custodial remands are used inappropriately by the courts, ‘as a kind of “short, sharp, shock” or more benignly to secure the young person’s safety’. Further, the Review Team criticized the imposition of bail conditions that are disproportionate or impossible to fulfil, particularly given the long delays between arrest and disposition. This leads to a ‘revolving door’ involving the young person being remanded to custody, bailed, breaching bail, and remanded again, often for the same offence (ibid., p. 56).

The Police and Criminal Evidence (NI) Order (PACE) was amended in 1998 to include the JJC as a ‘place of safety’ for children awaiting a court appearance. Usually PACE admissions are held for under 24 hours, justified on the basis of ‘absence of alternative accommodation when they [children] presented chronic social problems’ (CJINI 2011, p. 4). Noting that the majority of PACE admissions during weekends are looked after children, the Youth Justice Review Team (2011, p. 53) questioned, ‘how children, already under the protection of the state, can be in need of a place of safety’. Four years later, the Criminal Justice Inspectorate stated: ‘Alternatives must be found to the Juvenile Justice Centre being used as a temporary, short term location for children who breach children’s home rules’ (CJINI 2015b, p. 5).

In 2014–15, just 10 per cent of the 645 transactions in the JJC related to sentenced young people, while 54 per cent related to remand and 36 per cent to PACE (O’Neill 2015, p. 5). The average daily population was one individual held under PACE, 20 on remand, and 30 sentenced (ibid., p. 2). The over-representation of children from residential care has been a ‘long-standing feature of juvenile custody in Northern Ireland’ (CJINI 2008, p. vii) and, in 2014–15, 39 per cent of the transactions involved young people in care (ibid., p. 7).

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### Tensions and chal

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Regarding non-di the Youth Justice Agency accessed through the youth of males in custody in 89 per cent (O’Neill under diversionary arrangements (ibid., p. 33). While provide disaggregated youth justice (for example measures for those fe

Many young people in custody have special educational needs and/or been excluded from school, are on the child protection register, have a diagnosed mental health disorder, a history of self-harm and attempted suicide, or have been subjected to paramilitary threats or punishments (CJINI 2012b). It is an indictment of the inadequacy of existing provision that 'in many cases courts, social services and even children themselves felt they were better off in the JJC than living at risk in the community or in residential care' (CJINI 2008, p. 5). That some young people appreciate the routine, safety and provision they receive in custody (McAlister and Carr 2014), or welcome 'a period of respite in the JJC' (CJINI 2015b, p. 7), reveals serious deficits within community-based health, education and welfare provision.

### Tensions and challenges

Tensions prevail between the dynamics of criminalization and promotion/protection of children's rights. Since the late 1990s, in legislation and policy, 'crime' has been linked to 'public disorder' and 'anti-social behaviour'. Media and political debate has focused on negative stereotypes, reinforcing assumptions that children and young people pose a 'threat' in public spaces. Yet many behaviours considered 'anti-social' are learned by children from influential adults in their families and communities. As stated previously, sectarian antagonism, contentious rituals and parades, and inter-community violence reflect the legacy of the Conflict.

While the rationale behind early intervention may be progressive, when conceptualized and delivered through a 'crime prevention' framework it can reinforce and amplify the process of criminalization. Since devolution of policing and criminal justice, in contrast to England and Wales, the Department of Justice has resisted introducing punitive, mandatory 'support' targeted at 'troublesome' young people, parents or families. Northern Ireland's Community Safety Strategy defines interventions during the early years and key transition periods as 'positive child-focused support services rather than "crime prevention" strategies', with the justice system intended to play 'a supportive role' (DoJ 2012, p. 16). This includes support for 'intergenerational programmes to build trust and positive perceptions of young people' (*ibid.*, p. 23).

The Youth Justice Review Team (2011, p. 37) recommended cross-departmental funding for early intervention and development of a strategy to be delivered through a partnership between statutory and non-statutory agencies. Achieving this investment, however, entails overcoming legislative, administrative and cultural barriers to resource-sharing, and the processes of government in Northern Ireland inhibit cross-departmental working. Undermining the best interests of the child, restorative justice initiatives emphasize the needs of victims and communities rather than the rights of children and, as currently operated, diversionary interventions do not ensure the legal safeguards underpinning formal criminal justice processes. Most significantly, the high proportions of those detained on remand and under PACE clearly illustrate that custody is not being used as a measure of last resort.

Regarding non-discrimination, lack of gender-specific data is a matter of concern. In 2015, the Youth Justice Agency published figures showing that the majority of young people processed through the youth justice system are male. Over the five years 2010–15, the proportion of males in custody in the Juvenile Justice Centre has been consistently between 83 per cent and 89 per cent (O'Neill 2015, p. 29) and the proportion involved with Youth Justice Services under diversionary and non-custodial disposals has been between 82 per cent and 85 per cent (*ibid.*, p. 33). While these statistics reflect established patterns, state agencies do not routinely provide disaggregated data or contextual analysis recording the administration of gender-specific youth justice (for example, in relation to policing, diversionary disposals, bail or non-custodial measures for those found guilty of an offence).

To secure children's rights principles and provisions within a hostile political and ideological context is a daunting challenge. This chapter provides a brief insight into the complexities of tackling systemic social, political and economic inequalities and the abiding tensions within communities divided by sectarianism and the legacy of war. The fledgling, fragile Northern Ireland Assembly, elected via proportional representation, is a microcosm of societal division operating against a backcloth of continuing paramilitary activity within some communities.

Of the 12 UK regions, Northern Ireland records the lowest economic growth, the highest costs of basic goods and necessities, the highest concentration of families living in persistent poverty, and restricted sustainable employment opportunities. It has the highest proportion of children leaving school with the lowest range of qualifications. Despite vibrant voluntary and community sector interventions, this combination of material factors has contributed to the marginalization of children and young people living through the out-workings of the Conflict in working class communities. Within this bleak context, the relationship between a deficit in social justice and the regulation of children through criminal justice alongside the informal justice of community-based punishments are powerful determinants of children's futures. For those in conflict with the law, diversion from the criminal justice system is essential, with interventions focused on addressing their needs and supporting their families. Further, to prevent criminalization and in line with other social responsibilities, the minimum age of criminal responsibility should be raised to 16.

The question we raised over a decade ago (Scraton and Haydon 2002) remains relevant: can the State's endorsement of a rights-based agenda through ratification of international standards contribute to the resolution of structural inequalities? Recognizing the 'special status' afforded to all under 18s, the UNCRC and other international human rights standards affirm a comprehensive body of entitlements which are not 'rewards' or 'privileges, nor are they dependent on acceptance of responsibilities. They specify the obligations of the State and its agencies as duty-bearers. These are useful 'auditing tools', providing a common reference point or benchmark against which law, policy and practice can be measured (Kilkelly 2008).

Implementation of policy and practice grounded in the principles of social justice and inclusion necessitates provision, throughout childhood, of universal services and additional support by mainstream health, social care, education, youth and community services. Challenging and overcoming structural inequalities cannot be achieved solely through ratification of Conventions, Guidelines and Rules. While advanced democratic states proclaim social responsibility and equal opportunity, their class systems protect and sustain the acquisition of wealth by a privileged minority. Welfare capitalism has enabled a reasonable standard of living through income redistribution. Yet a high proportion of families and their children remain trapped in systemic poverty – socially excluded, politically silenced, permanently disadvantaged. For rights on paper to become rights in practice a fundamental redistribution of power, wealth and opportunities is required to enable the personal, social, and educational development of all children and young people.

## Notes

- 1 UNCRC Article 40 focuses on the administration of youth justice, Article 37 on the rights of children deprived of their liberty; the 1985 Beijing Rules on the administration of justice; the 1990 Riyadh Guidelines on the prevention of juvenile delinquency; the 1990 Tokyo Rules on non-custodial measures; the 1990 Havana Rules on the rights of children deprived of their liberty.
- 2 For a detailed analysis of the implementation of children's rights in Northern Ireland, see Children's Law Centre and Save the Children NI (2015). For a comprehensive overview of contemporary trends in criminal justice in Northern Ireland, see McAlinden and Dwyer (2015).

- 3 *The Government of Irish Ulster as Northern Ireland as a British Colony replaced the 1922 Convention*
- 4 *The UK Government*

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- 3 The *Government of Ireland Act 1920* partitioned Ireland, establishing six of the nine northern counties of Ulster as Northern Ireland within the United Kingdom (May 1921). The Irish Free State was established as a British Commonwealth Dominion and in 1937 the creation of Ireland as a sovereign state replaced the 1922 constitution. In 1949 it secured full independence as the Republic of Ireland.
- 4 The UK Government retains responsibility for 'excepted' and 'reserved' matters.

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## Introduction

In this chapter, I propose today in terms of providing the protection of human instances, but they are in daily lives. Understanding failures is so often lacking in peace and upholding human

In the next section, discussing improvements in policing conducted in this area. That will be addressed in additional moves, mainly a focus on security and how reflection upon the impact of policing that underpins concludes by looking at international policing

## The nature of the

You would have a chance of not killing blame and you know that friendship and

This statement is that alongside local police