

A Bill of Rights for Northern Ireland: Next Steps
NIO Consultation Paper

CONSULTATION RESPONSE

**Childhood, Transition and Social Justice Initiative
Institute of Criminology and Criminal Justice
School of Law
Queen's University
Belfast**

**Chelsea Marshall
Siobhán McAlister
Deena Haydon
Phil Scraton**

March 2010

Correspondence to:

Chelsea Marshall

Email: cmarshall06@qub.ac.uk

Tel: 02890 97 1322

Summary

The following consultation response from the Childhood, Transition and Social Justice Initiative at Queen's University, Belfast (see Appendix 1) details concerns about the *Next Steps* consultation paper. They comprise four broad categories:

Procedural concerns

- The duration of the initial consultation was inadequate and included 'a period when consultees were less able to respond'. Notification about the extended deadline for submission of responses was too short.
- The issues under consideration are 'particularly complex'. Yet the duration of the initial consultation period did not reflect the significance of the exercise, the breadth of interest or the technical expertise necessary to respond appropriately.
- The consultation process was inaccessible to children and young people. The Government failed its UNCRC obligations to provide information relevant to children and young people and to seek their views on issues that affect them in a form appropriately reflecting their evolving capacities. Further, the Government failed to uphold its commitment to 'reach a wider audience' and design consultations to be 'accessible to those it intends to reach', especially when seeking the 'views of non-experts'.
- The people of Northern Ireland have not been given the opportunity to consult at a stage when there could, and should, have been scope to influence the outcome of many omissions from the consultation document. This is of particular concern as the Human Rights Commission developed its advice based on in-depth and extensive consultation with the public and specialist advisors.
- The Government should explain in detail its methodology for assessing those provisions it excluded. Lack of transparency about the criteria used to exclude nine groups of rights and most provision specific to children and young people as proposed by the NIHRC is unacceptable.

Interpretative concerns

- The claim that the Bill of Rights for Northern Ireland must be 'considered in a UK-wide context' indicates decontextualisation of its origins in the Belfast/Good Friday Agreement. A Bill of Rights for Northern Ireland was proposed to reflect and address the 'particular circumstances' of Northern Ireland.
- The Government failed to draw on international instruments and experience in developing the consultation paper, as stipulated by the Belfast/Good Friday Agreement.

- The Government's interpretation of the particular circumstances of Northern Ireland is unduly narrow and applied inconsistently.
- This narrow interpretation fails to address adequately the Government's commitment to the 'protection and vindication of the human rights of all', including children and young people.

Children, young people and the legacy of the Conflict

- Research continues to demonstrate the impacts of the legacy of the Conflict on many children and young people in contemporary Northern Ireland.
- A Bill of Rights which reflects the 'particular circumstances of Northern Ireland' must address and provide for children's rights consistent with international conventions and obligations.
- The Government's inclusion of a 'duty on public authorities to prevent sectarian violence and harassment' will not address sufficiently these issues, particularly the persistence of intra-community threats. Moreover, this provision narrowly construes sectarianism as the only legacy of violence from the Conflict, while children's and young people's experiences indicate otherwise.
- The Government's proposal to include the right to identify as Irish or British or both does not address the complex ways in which children's and young people's right to identity is affected by the legacy of the Conflict. The Government's proposal to 'consider... extending the existing duty on public authorities around promoting good relations' is not sufficient to address sectarianism and racism.
- *Next Steps* fails to consider the range of implications divided spaces has on children's and young people's rights, including the right to play and leisure, freedom of movement and the right to adequate accommodation. The secondary effects of restricted safe areas, combined with antisocial behaviour legislation, compromise rights concerning freedom from violence and harassment and civil and administrative justice.
- The Government's exclusion of education rights fails to reflect how the legacy of the Conflict continues to impact on children's and young people's differential opportunities.
- The Government's exclusion of the right to health fails to recognise the additional health and mental health considerations following a period of intense civil conflict. Moreover, the Government's brief mention of a measure for 'victims' of the Conflict (which is not included) does not sufficiently address the specific needs of children and young people, many of whom may not be considered or classified direct 'victims'.

Failure to uphold the Agreements

- The limited proposals in *Next Steps* do not reflect adequately the commitments made in the Belfast/Good Friday and St Andrews

Agreements, potentially undermining the peace process in Northern Ireland.

- Procedurally, the limited consultation period, inaccessible format and predetermined omission of rights particular to children and young people mean the consultation process failed to genuinely seek the views of all those potentially affected by a Bill of Rights for Northern Ireland.
- The narrow interpretation of the 'particular circumstances of Northern Ireland' and omission of all rights specific to children and young people undermine the Government's previous commitments to establish additional safeguards and protections in Northern Ireland.

A Bill of Rights for Northern Ireland

The Belfast/Good Friday Agreement 1998 (the Agreement) established the Northern Ireland Human Rights Commission (NIHRC) to consult and advise the Secretary of State:

...on the scope for defining, in Westminster legislation, *rights supplementary* to those in the European Convention on Human Rights, to *reflect the particular circumstances* of Northern Ireland, *drawing as appropriate on international instruments and experience*. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and – taken together with the ECHR – to constitute a Bill of Rights for Northern Ireland. (sec ‘Rights, safeguards and equality of opportunity’, para 4, emphases added).

As a component of the peace agreement, the proposed Bill of Rights demands rigorous attention and must reflect the context of the peace process.

A strong and inclusive Bill of Rights offers significant potential as a stabilising and peace-building tool. Bills of Rights empower marginalised individuals and groups with the means to lobby government, advocate for progress and, occasionally, demand justice through the courts (Kavanagh, 2004). In a divided society, this is especially important for those, including children, young people and often women, who are marginalised or excluded from the political process.

Crucially, the legacy of the Conflict in Northern Ireland has a differential impact on those living in areas of poverty. Recent research (McAlister et al., 2009) indicates a feeling among some communities that there exists a ‘new form of reverse discrimination’. By guaranteeing rights vis-à-vis the State, a robust Bill of Rights has the potential to lessen tension within and between those experiencing the highest levels of deprivation and poverty. Moreover, a Bill of Rights ensuring consistent, robust safeguards to all people in Northern Ireland has the potential to promote stability and peace in the event that the majority choose a united Ireland.

The Government’s consultation paper *Next Steps* fails to acknowledge the constitutional significance of a Bill of Rights, disregards the substantive cross-community support for a strong Bill and undermines the commitments central to the Agreement. The Government has failed to produce a consultation document that reflects the significance of a Bill of Rights within the peace process.

Procedural Concerns

Consultation Criteria

The second consultation criterion in *Next Steps* states:

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible (para 12.10).

Moreover, the *UK Code of Practice on Consultation*, on which the NIO relies for this criterion, elaborates:

If a consultation exercise is to take place over a period when consultees are less able to respond, e.g. over the summer or Christmas break, or if the policy under consideration is particularly complex, consideration should be given to the feasibility of allowing a longer period for the consultation (para 2.2).

The consultation period was set initially at 13 weeks and included the winter holidays, limiting opportunities for wide consultation and participation. Although the deadline for submission of responses was extended, notification was published just three working days before the original deadline.

- *The duration of the initial consultation was inadequate and included ‘a period when consultees were less able to respond’. Notification about the extended deadline for submission of responses was too short.*

A Bill of Rights is important to everyone in Northern Ireland, and this should have been reflected in the duration of the consultation period. The technical expertise necessary to comprehend, consider and form an opinion on a substantial and detailed document amounted to a substantial drain on resources for many organisations. Consequently many organisations without the staff capacity or experience to provide detailed consultation responses were excluded from the process.

- *The issues under consideration are ‘particularly complex’. Yet the duration of the initial consultation period did not reflect the significance of the exercise, the breadth of interest or the technical expertise necessary to respond appropriately.*

Next Steps also states:

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach (para 12.10).

The *UK Code of Practice on Consultation* explains:

As far as is possible, consultation documents should be easy to understand... when the views of non-experts are also required, simpler documents should be produced (para 4.2).

Thought should also be given to alternative versions of consultation documents which could be used to reach a wider audience, e.g. a young person's version... (para 4.4).

The *UN Convention on the Rights of the Child* requires the Government to 'assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child' (UNCRC, Art 12). A Bill of Rights for Northern Ireland would directly affect all aspects of children's and young people's lives. As such, the consultation exercise should have been 'designed to be accessible' to children and young people of all ages.

- *The consultation process was inaccessible to children and young people. The Government failed its UNCRC obligations to provide information relevant to children and young people and to seek their views on issues that affect them in a form appropriately reflecting their evolving capacities. Further, the Government failed to uphold its commitment to 'reach a wider audience' and design consultations to be 'accessible to those it intends to reach', especially when seeking the 'views of non-experts'.*

Benchmark for Consideration

The *UK Code of Practice on Consultation* states:

Formal consultation should take place at a stage when there is scope to influence the policy outcome (Criterion 1).

...there is no point in consulting when everything is already settled (para 1.1).

The Government's consultation omitted economic and social rights, rights specific to children and young people, and rights the Government considered 'equally relevant' (para 9.26) throughout the UK, or 'unworkable in practice' (para 3.15).

- *The people of Northern Ireland have not been given the opportunity to consult at a stage when there could, and should, have been scope to influence the outcome of these omissions. This is of particular concern as the Human Rights Commission developed its advice based on in-depth and extensive consultation with the public and specialist advisors.*

Using health as an example, the Government argues that creating a statutory obligation for the right to health in Northern Ireland, when it is 'not available to the rest of the UK population', would not be 'the most appropriate way to address that special need' (para 3.19). It is unclear how 'appropriateness' is established or could be tested, yet this is presented as a criterion on which the Government has excluded economic and social

issues. *Next Steps* also omits any discussion of more than half of the NIHRC's proposals.

- *The Government should explain in detail its methodology for assessing those provisions it excluded. Lack of transparency about the criteria used to exclude nine groups of rights and most provision specific to children and young people as proposed by the NIHRC is unacceptable.*

Interpretive Concerns

'UK-Wide Context'

The Government's claim that the Bill of Rights for Northern Ireland must be 'considered in a UK-wide context' disregards the intention of the Belfast/Good Friday Agreement and decontextualises the reason to establish additional safeguards and protections to meet the 'particular circumstances' of Northern Ireland. The debate in Northern Ireland follows three decades of armed conflict and is distinct from other UK jurisdictions.

The Bill of Rights process in Northern Ireland emerged as a component of the peace process independently of, and separate to, human rights discussions across the UK. A Bill of Rights for Northern Ireland is designed to complement, and be complemented by, UK human rights legislation. Neither the Belfast/Good Friday Agreement nor the St Andrews Agreement refers to a national debate.

A Bill of Rights for Northern Ireland cannot depend on the 'UK-wide context' for supplementary protections (either through current statutory provision or proposals for a UK Bill of Rights) because the people of Northern Ireland may not be subject to UK provision. The Agreement affirms self-determination of the majority of the people of Northern Ireland to bring about a united Ireland if it so decides.

- *The claim that the Bill of Rights for Northern Ireland must be 'considered in a UK-wide context' indicates decontextualisation of its origins in the Belfast/Good Friday Agreement. A Bill of Rights for Northern Ireland was proposed to reflect and address the 'particular circumstances' of Northern Ireland.*

Failure to Draw on International Instruments and Experience

The Agreement invites the NIHRC to draw on international instruments and experience as appropriate in advising the Secretary of State on a Bill of Rights for Northern Ireland. The Government appears to have referred only to international obligations in establishing the limited *Next Steps* proposals. In its three references to international instruments, the Government lists obligations it has not brought into domestic law (para 3.5; inaccurately in one case), limits a suggested provision (para 5.21) and rejects another provision due to the recent implementation of one instrument (para 7.2).

- *The Government failed to draw on international instruments in developing the consultation paper, as stipulated by the Belfast/Good Friday Agreement.*

The Government expresses concern about the justification for, and workability of, specific rights protections in Northern Ireland. Drawing on international experience might have allayed these concerns. Many societies emerging from armed conflict include robust rights protections in constitutional documents (e.g. South Africa, Timor-Leste). Reflecting the specific human rights abuses occurring during or as a result of conflict, Bills of Rights commit new governments to the promotion and protection of rights for all. The Agreement committed the two Governments and all political parties to the realisation of this aim.

The Government's concern about specific rights for Northern Ireland fails to reflect the constitution of the United Kingdom. Drawing on international experience, the Government might have considered the United States and Canada, both long-standing democracies that employ regional rights protections successfully.

- *The Government failed to draw on international experience in developing the consultation paper, as stipulated by the Belfast/Good Friday Agreement.*

Narrow Interpretation of the Particular Circumstances of Northern Ireland

The Government states that the 'legacy of Northern Ireland's past can still be traced in many aspects of life for people in Northern Ireland today' (*Next Steps*, para 1.2), that 'the legacy of the conflict forms a part of the particular circumstances of Northern Ireland' and that 'measures to address the impact of this legacy should be considered for inclusion in a Bill of Rights for Northern Ireland' (para 3.19). However, the Government excludes the majority of the NIHRC's proposals on the grounds of 'equal relevance' to other jurisdictions of the United Kingdom (para 3.14), arguing that social and economic rights, in particular, are 'of enormous significance to **all** communities in the UK' (para 3.20, emphasis in original). Consequently, it appears that only issues *exclusively* resulting from the Conflict are deemed sufficiently particular to the circumstances of Northern Ireland to justify further discussion. This is a questionable interpretation.

First, the Agreement does not indicate that circumstances must be particular within a broader UK context. Since human rights are deemed universal, it is expected that most provisions will have wider relevance. The task was to identify rights that were lacking in Northern Ireland domestic law and, due to the particular circumstances of the jurisdiction, should be incorporated into a Bill of Rights.

Second, the Government ambiguously applies its ‘equal relevance’ test as a determining criterion for inclusion. Despite the history of broad and inclusive consultations and participative processes that persuaded the NIHRC otherwise, social and economic rights, ‘in particular’, are rejected due to their ‘equal relevance’ throughout the UK. The Government does not ‘address in detail...those rights that it considers to fall outside the scope of such a Bill’ (para 3.16). Thus, it is unclear why the Government disagrees with consultees and participants who have supported such rights on the basis of their particular relevance to Northern Ireland.

Third, the Government’s proposals reveal a failure to appreciate its specific commitment within the Agreement to the human rights of all. Elaborating its decision to exclude consideration of more than half of the NIHRC proposals, the Government notes that ‘the introduction of such rights in Northern Ireland alone would either be unworkable in practice, or could give rise to unjustified inequalities across the UK’ (para 3.15).¹ Here it appears the Government is demonstrating its broader reluctance to bring social and economic rights into domestic legislation. On the other hand, a general principle of inclusive and equitable representation in the Assembly (*Next Steps*, Appx 1) is included partly because the Government ‘fully supports the objective of inclusive, proportionate and equitable participation in regional government’ (para 5.23). Worryingly, these arguments follow closely the broader UK agenda and indicate the Government’s failure to approach a Bill of Rights for Northern Ireland within its distinct context.

The Government’s narrow interpretation of particular circumstances fails to appreciate the continuing impact of the Conflict on life in Northern Ireland. Many aspects of people’s lives, including children’s and young people’s, remain affected by the legacy of the Conflict, and the *Next Steps* proposals do not sufficiently address their experiences.

- *The Government’s interpretation of the particular circumstances of Northern Ireland is unduly narrow and applied inconsistently.*
- *This narrow interpretation fails to address adequately the Government’s commitment to the ‘protection and vindication of the human rights of all’, including children and young people.*

¹ It is unclear how this same rationale is used to justify the exclusion of freedom of movement or the right to marriage, for example.

Children, Young People and the Legacy of the Conflict

It is expected that a Bill of Rights for Northern Ireland would include 'rights supplementary to those in the European Convention on Human Rights' (ECHR; Agreement, 1998), recognising that the ECHR does not protect sufficiently the 'rights of all'. Notwithstanding the obvious limitation to civil and political rights, the ECHR does not make specific reference to children and young people. As such, all rights reflecting the particular circumstances of children's and young people's lives in Northern Ireland are within the scope of a Bill of Rights for Northern Ireland.

In establishing the Agreement, 'participants particularly recognise[d] that young people from areas affected by the troubles face particular difficulties' (sec 'Rights, Safeguards and Equality of Opportunity': para 12). Moreover, Article 39 of the *United Nations Convention on the Rights of the Child* expects States Parties to take 'all appropriate measures to promote physical and psychological recovery and social reintegration' of any child victim of armed conflict. A Bill of Rights which appropriately reflects the particular circumstances of Northern Ireland, and affirms the peace process, must include specific provisions for a full range of children's rights.

Experience has shown that rights that are not incorporated into domestic law, such as those in the UNCRC, remain unrealised, especially for the most 'vulnerable' and 'disadvantaged' (see Haydon, 2008a). Contrary to Article 42 of the UNCRC, many children and young people do not know about the *Convention on the Rights of the Child* or the establishment of a Northern Ireland Commissioner for Children and Young People whose role is to safeguard and promote children's rights (ARK, 2008; McAlister et al, 2009). Although the UNCRC has been acknowledged in judgments delivered in Northern Ireland Courts, there has not been a consistent approach regarding its standing or applicability with Judges commenting, for example, that 'Quite simply, a treaty is not part of English law unless and until it has been incorporated into the law by legislation' (Haydon, 2008b: 8).

The legacy of the Conflict resonates within segregated provision of services, interpersonal, inter- and intra-community violence, and differential experiences of poverty and marginalisation. *Next Steps* excluded NIHRC proposals including rights related to: non-discrimination, education, health, standard of living, housing, work, access to safe play and leisure, access to information, participation, the justice system and protection from all forms of violence. Each of these rights should be included in the Bill of Rights for Northern Ireland (see Horgan and Kilkelly, 2005; Kilkelly, 2009) since the legacy of the Conflict continues to impact on the realisation of these rights for all children and young people in Northern Ireland.

- *Research continues to demonstrate the impacts of the legacy of the Conflict on many children and young people in contemporary Northern Ireland.*

- *A Bill of Rights which reflects the ‘particular circumstances of Northern Ireland’ must address and provide for children’s rights consistent with international conventions and obligations.*

The following sections indicate in detail the particular need for the inclusion of rights specific to children and young people.

Right to life and protection from violence

While the peace process has brought an end to ‘severe violence’, sectarian violence, disorder and paramilitary-related activities are still prevalent (Jarman, 2002). Young people are more likely to experience sectarian harassment and violence than older age groups (Jarman, 2005), with young men perceived to be the main perpetrators and victims of sectarian attack (Hamilton et al., 2008). Actual and feared sectarian attack is part of everyday life for children and young people living in interface communities and those areas most affected by both poverty and the legacy of the Conflict (Jarman, 2002; Todd, 2002; Leonard, 2004; McAlister et al., 2009). A significant number of children living in interface areas define their homes as unsafe places – they have experienced, or fear, sectarian attack due their location close to an interface or a ‘peace wall’ (Leonard, 2007).

Paramilitary threats, shootings, beatings and exiling have also remained post-Agreements and post-ceasefires with the continued presence, influence and fear of paramilitaries and ‘low-level’ recruitment of children and young people in some communities (Smyth et al., 2004; Hansson, 2005; NICCY, 2008; Roche, 2008; McAlister et al., 2009). While there has been a decline in paramilitary-style shootings and assaults, children and young people under-25 are disproportionately represented among victims (Hansson, 2005). Threats and intimidation continue to be directed towards children and young people accused of anti-social behaviour, particularly in economically disadvantaged urban areas associated with high levels of conflict-related violence (Kilkelly et al., 2004; Smyth et al., 2004; Hansson, 2005; Smyth and Campbell, 2005; Haydon, 2007; Roche, 2008; McAlister et al., 2009).

McAlister et al. (2009) note the concern of community representatives about ‘the secrecy’ of family life in Northern Ireland, particularly regarding ‘hidden levels of domestic violence’. As a consequence many children and young people cope with regular experiences of violence in their homes in silence. This research also reveals that children and young people are exposed to intra-community violence, identifying fighting and conflict as routine. While noting instances of sporadic but extreme community feuding, ‘less dramatic’ acts of violence are constant, particularly at weekends and often alcohol related. Violence, fear and intimidation impact heavily on children’s and young people’s feelings of safety, their freedom of movement, opportunities for play and levels of victimization.

- *The Government’s inclusion of a ‘duty on public authorities to prevent sectarian violence and harassment’ will not address sufficiently these*

issues, particularly the persistence of intra-community threats. Moreover, this provision narrowly construes sectarianism as the only legacy of violence from the Conflict, while children's and young people's experiences indicate otherwise.

- *The Government should reconsider NIHRC proposals:*
 - *9.1. Everyone has the right to be free from all forms of violence and harassment, from either public or private sources, including but not limited to:*
 - a) domestic violence or harassment;*
 - b) sexual violence or harassment;*
 - c) gender-related violence or harassment;*
 - e) violence or harassment motivated by hate on any prohibited ground of discrimination.*
 - *20.6. Public authorities must take all appropriate legislative, administrative, social and educational measures to protect every child from all forms of violence, maltreatment, neglect, exploitation and harassment.*

Right to identity

Because visual cues such as school uniforms, football shirts, caps, scarves, jewellery and chosen sports connect to cultural identity, children and young people experience restrictions on outward expressions of their identity. Beyond the boundaries of their communities many children and young people manage their identities through altering their style and dress. Those who choose to openly express their identity risk sectarian attack and negotiate this by remaining vigilant, prepared for attack and staying together in groups (McGrellis, 2004; Leonard, 2008; McAlister et al., 2009). In recent research some young people expressed frustration about the limits they experienced in expressing their cultural identities in comparison to other ethnic groups. This created resentment and hostility, sometimes resulting in violence and racism (McAlister et al., 2009).

- *The Government's proposal to include the right to identify as Irish or British or both does not address the complex ways in which children's and young people's right to identity is affected by the legacy of the Conflict. The Government's proposal to 'consider... extending the existing duty on public authorities around promoting good relations' is not sufficient to address sectarianism and racism.*
- *The Government should reconsider NIHRC proposals:*
 - *10.4. Everyone belonging to a national, ethnic, religious, linguistic or cultural minority in Northern Ireland has the right, individually and in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, and*

to use their own language, in private and in public. No one exercising these rights may do so in a manner inconsistent with the rights and freedoms of others.

- *10.5. Public authorities must encourage a spirit of tolerance and dialogue, taking effective measures to promote mutual respect, understanding and co-operation among all persons living in Northern Ireland, irrespective of those persons' race, ethnicity, language, religion or political opinion.*

Rights and divided spaces

Due to feelings of relative safety within their communities, and fear of sectarian attack beyond, children and young people in some of poorest and least well-resourced communities are often restricted to what is available within their own areas. Their right to play and leisure is not only restricted because of a lack of locally available and age-appropriate facilities, but also because it is unsafe to access leisure facilities within the 'other' community (Hansson, 2005: 28; Byrne et al., 2005; Shirlow and Murtagh, 2006).

Shared resources, such as leisure complexes and football pitches, are viewed as 'out of bounds' for one or other cultural group because of where they are located (Leonard, 2007; McAlister et al., 2009). Recent research with young people living in some of the most segregated communities in Northern Ireland found that three quarters expressed fear of entering areas associated with the 'other' tradition (Roche, 2008). Further research found that many children and young people spend the majority of their free time in their own communities due to fears of attack outside them. For some, their community was defined as the only safe space (McAlister et al., 2009).

As acknowledged by the UN Committee for the Rights of the Child (2008: para 68), limited access to playgrounds and safe play/leisure spaces can push children and young people into gathering in public places. When they do, they are regularly defined as anti-social under current legislation, which raises issues concerning rational and proportionate administrative action. This carries additional consequences in Northern Ireland as being labelled 'anti-social' within their communities places some at risk of paramilitary victimisation (see McAlister et al., 2009).

- *Next Steps fails to consider the range of implications divided spaces has on children's and young people's rights, including the right to play and leisure, freedom of movement and the right to adequate accommodation. The secondary effects of restricted safe areas, combined with antisocial behaviour legislation, compromise rights concerning freedom from violence and harassment and civil and administrative justice.*
- *The Government should reconsider NIHRC proposals:*

- *20.4. Public authorities must take all appropriate measures to ensure the right of every child to access safe and appropriate play and leisure facilities.*
- *8.1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*
- *13.2. Everyone has the right to administrative action that is lawful, procedurally fair, rational, proportionate and taken within a reasonable time.*
- *16.1. Everyone has the right to adequate accommodation appropriate to their needs. Public authorities must take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right.*

Right to access education on the basis of equality

In 2007-08, only 6 per cent of the school population was enrolled in integrated nursery, primary or post-primary schools (DENI, 2008: 2). Yet the 2006 Northern Ireland Life and Times Survey reported that 67 per cent of respondents expressed a preference to send their child to an integrated school (cited NICCY, 2008: 273). Choice of, and equal access to, integrated education is limited. With 39 integrated primary, and 20 post-primary schools in Northern Ireland in 2007-08, current provision is inadequate in meeting demand for places (ibid). Segregated schooling is a mechanism through which the two communities uphold and transmit their cultural identities. Opportunities for cross community contact and the development of inter-community relations are severely limited as a result of both segregated housing and education (Healy, 2006; McAlister et al., 2009).

Despite teachers and pupils referring to schools as places of safety, Leonard (2004; 2006) details how schools close to interfaces remain flashpoints for serious violence, including attacks on school buses, vandalising teachers' cars, and sectarian attacks in and close to school grounds. Children moving between home and school were regularly verbally abused and spat on. While these experiences are most pronounced in interface areas, Kilkelly et al. (2004) found that children and young people in various locations across Northern Ireland reported sectarian abuse on their way to and from school.

While segregated education technically ends at the post-secondary level, research reveals that the location of Further Education Colleges can impact on the 'choices' young people make – with some choosing those located in communities with their own cultural tradition and avoiding those where they have to travel through the 'other' community (McAlister et al., 2007; see also Hamilton et al., 2008: 27). Divided educational opportunities impact on employment opportunities.

- *The Government's exclusion of education rights fails to reflect how the legacy of the Conflict continues to impact on children's and young people's differential opportunities.*
- *The Government should reconsider NIHRC proposals:*
 - *7.1. Education in all its forms must be directed towards the promotion of human rights, equality, dignity of the person, respect for diversity and tolerance.*
 - *7.2. No child shall be denied the right to access the full Northern Ireland education curriculum.*
 - *17.1. Everyone has the right to work, which includes the right to the opportunity to gain their living by work which they freely choose or accept. Public authorities must take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right.*

Right to adequate health provision

Under-resourcing has been long-term and institutionalised in Northern Ireland. The Conflict severely undermined economic investment and development, exacerbated child poverty, and contributed to high levels of mental ill health resulting in impaired employment opportunities (Horgan in Horgan and Kilkelly, 2005: 13). McAleavy and McCrystal (2007) note that the Conflict obscured health problems and the factors contributing to them. Under-investment and the withdrawal of services were experienced most heavily in those communities worst affected by the Conflict. Thus the relationship between poverty and poor health is more profound in Northern Ireland than in other UK jurisdictions and should be considered within the scope of the particular circumstances.

The under-resourcing of health services is starkly illustrated in the area of Child and Adolescent Mental Health. The Bamford Review found that child and adolescent mental health services were 'wholly inadequate ... characterised by overwhelming need and chronic under investment' (McClelland, 2006: 13). This is of particular concern given that those in Northern Ireland are at greater risk of mental ill health as a consequence of high levels of poverty and community conflict (NICCY, 2008: 261). Since the initiation of the peace process, there has also been an increase in the diagnosis of conflict-related trauma, with more people acknowledging 'their personal traumatisation' (Gilligan, 2006: 326).

Children and young people living in areas most affected by the Conflict have also been found to be disproportionately affected by mental health problems (Muldoon et al., 2005). Health professionals and community workers note 'collateral damage' of the Conflict (Kilkelly et al., 2004: 112), stating that among children and young people living in some of the most deprived

communities there is evidence of ‘anxiety, depression, deliberate self harm and escalating suicide rates’. Children whose past trauma went unrecognised and untreated have become parents themselves. The multiple stresses they experience as a consequence of the combination of conflict and poverty-related trauma, impacts upon their ability to cope and parent effectively, and thus on their children’s emotional well-being (Smyth et al., 2004; McAlister et al., 2009).

- *The Government’s exclusion of the right to health fails to recognise the additional health and mental health considerations following a period of intense civil conflict. Moreover, the Government’s brief mention of a measure for ‘victims’ of the Conflict (which is not included) does not sufficiently address the specific needs of children and young people, many of whom may not be considered or classified direct ‘victims’.*
- *The Government should reconsider NIHRC proposals:*
 - *14.1. Everyone has the right to the highest attainable standard of physical and mental health. Public authorities must take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right.*
 - *14.2. No one shall be refused emergency medical treatment and essential primary healthcare.*

Conclusion: Failure to uphold the Agreement

The British and Irish governments declared their ‘commitment to the protection and vindication of the human rights for all’ when they signed the Belfast/Good Friday Agreement 1998 (*Next Steps*, para 1.1). It is clear from the *Next Steps* proposals that this commitment has wavered. Drawing on the ‘wide-ranging and thorough advice’ (Woodward, 2009: 6) produced by the NIHRC, the Secretary of State has suggested inclusion of only five provisions.

The omission of all rights specific to children and young people is unduly narrow, and their effective procedural exclusion from this consultation process indicates a failure to engage genuinely in the Bill of Rights exercise. The experiences of children and young people growing up in ‘post’-Conflict Northern Ireland demonstrate the need to incorporate additional protections, including many UNCRC obligations, while its people deal with the legacy of the Conflict.

The present proposals fail to uphold the Government’s commitment to the protection of rights for all in Northern Ireland. This is of great concern, undermining the commitments in the Agreement to supporting development of an inclusive and peaceful Northern Ireland.

- *The limited proposals in Next Steps do not reflect adequately the commitments made in the Belfast/Good Friday and St Andrews Agreements, potentially undermining the peace process in Northern Ireland.*
- *Procedurally, the limited consultation period, inaccessible format and predetermined omission of rights particular to children and young people mean the consultation process failed to genuinely seek the views of all those potentially affected by a Bill of Rights for Northern Ireland.*
- *The narrow interpretation of the ‘particular circumstances of Northern Ireland’ and omission of all rights specific to children and young people undermine the Government’s previous commitments to establish additional safeguards and protections in Northern Ireland.*

Appendix 1

Childhood, Transition and Social Justice Initiative

The Childhood, Transition and Social Justice Initiative is an interdisciplinary team of researchers from across Queen's University Belfast. Engaged in projects seeking to challenge the structural marginalisation of children and young people, our research is underpinned by the principles of social justice. We are concerned about issues of social exclusion, particularly in the contexts of the transitions experienced by all children and young people and Northern Ireland's societal transition from armed conflict.

Previous research commissioned by the Northern Ireland Commissioner for Children and Young People, *Children's Rights in Northern Ireland* (Kilkelly et al., 2004), identified two overarching determinants in the lives of children and young people: the legacy of conflict and violence; the concentration of poverty. This research demonstrated that economic marginalisation, social exclusion, criminalisation and 'community punishments' form the context in which a significant number of children live. More recent research, *Childhood in Transition: Experiencing Marginalisation and Conflict in Northern Ireland* (McAlister et al., 2009: 25), confirmed these determinants:

The inter-relationship of unaddressed conflict-related trauma, interpersonal violence within families, continuing paramilitary intimidation, forced exiling, economic marginalisation and social exclusion constitute 'special circumstances' for children, young people, their families and communities in Northern Ireland (ibid: 25).

We seek to have the particular circumstances of the lives of children and young people in Northern Ireland reflected in, and appropriately addressed by, a Bill of Rights for Northern Ireland.

Appendix 2

The following rights suggested by the NIHRC are relevant to the particular circumstances of Northern Ireland and should be included in a Bill of Rights:

2.5. Every child or vulnerable adult who is questioned under arrest, held in detention without charge, or being charged, has the right to have a legal representative and appropriate adult present to represent their best interests.

2.6. Every child alleged to, accused of, or proven to have infringed the criminal law has the right to be treated in a manner that pays due regard to the child's age, understanding, and needs and is directed towards the child's reintegration in society.

2.7. Every child has the right not to be detained except as a measure of last resort, in which case, the child may be detained only for the shortest appropriate period of time, and has the right to be:

- a) kept separately from detained persons over the age of 18 years; and
- b) treated in a manner, and kept in conditions, that pays due regard to the child's age.

2.8. No child in the criminal justice system shall be subject to the use of force or methods of restraint unless it is absolutely necessary to avoid serious injury to the child or another person.

3.3. In the case of children and vulnerable adults, accused of a criminal offence, the procedures must be such so as to pay due regard to their age, their understanding and the desirability of promoting their rehabilitation.

9.2. Everyone has the right to be protected from sexual exploitation and sexual and other forms of trafficking.

12.1. Every victim of crime has the right to appropriate material, medical, psychological and social assistance.

14.3. Everyone has the right to appropriate healthcare and social care services free at the point of use and within a reasonable time. Public authorities must take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right.

14.4. Women and girls have the right to access gender-sensitive and appropriate healthcare services and information.

15.1. Everyone has the right to an adequate standard of living sufficient for that person and their dependents. Public authorities must take all appropriate measures, including legislative measures, to

the maximum of their available resources, with a view to achieving progressively the full realisation of this right.

15.2. No-one shall be allowed to fall into destitution.

20.2. The rights in a Bill of Rights for Northern Ireland must be guaranteed to every child, without discrimination on any of the grounds listed in Recommendation 2 of the Right to Equality and Prohibition on Discrimination, whether the ground of discrimination applies in respect of the child or the child's parents or legal guardians.

20.3. Public authorities must ensure that, in all actions concerning the child, whether undertaken by public authorities or private institutions, the best interests of the child shall be the primary consideration. In adoption, or any other child placement proceedings, the best interests of the child shall be the paramount consideration.

20.5. Every child who is temporarily, or permanently, deprived of his or her family environment has the right to special protection and assistance for as long as they need it.

20.7. Public authorities must take all appropriate measures to ensure the right of every child to be informed of their rights and to have his or her views respected, considered and given due regard in all matters affecting the child, taking into consideration the child's age, level of understanding and evolving capacities.

References

- ARK, (2008) *Young Life and Times Survey 2007*, February 2008 (available at: www.ark.ac.uk/2007/Rights/KNOWRIGH.html)
- Byrne, J. et al, (2005) *Young People's Attitudes and Experiences of Policing, Violence and Community Safety in North Belfast*, Belfast: Northern Ireland Policing Board.
- DENI (2008) *Enrolments at schools and in funded pre-schol education in Northern Ireland 2007-08*, Statistical Press Release, DENI, 26 February 2008.
- European Convention for the Protection of Human Rights and Fundamental Freedoms*, adopted 4 Nov 1950, 213 UNTS 221 (ECHR).
- Gilligan, C. (2006) 'Traumatised by Peace? A Critique of Five Assumptions in the Theory of Conflict-Related Trauma', *Policy and Politics*, 34, (2), pp325-345.
- Hamilton, J., Hansson, U., Bell, J. and Toucas, S. (2008) *Segregated Lives: Social Division, Sectarianism and Everyday Life in Northern Ireland*, Belfast: Institute of Conflict Research.
- Hansson, U. (2005) *Troubled Youth? Young People, Violence and Disorder in Northern Ireland*, Belfast: Institute for Conflict Research.
- Haydon, D. (2007) *United Nations Convention on the Rights of the Child. Consultation with Children and Young People*, Belfast: OFMDFM.
- Haydon, D. (2008a) *Northern Ireland NGO Alternative Report: Submission to the United Nations Committee on the Rights of the Child for consideration during the Committee's scrutiny of the UK government report (July 2007)*, Belfast: Save the Children NI and Children's Law Centre.
- Haydon, D. (2008b) *Additional information from Northern Ireland in response to the List of Issues relating to implementation of the Convention on the Rights of the Child in the UK. Summary of additional information, suggested questions, executive summary and actions required*, Belfast: Save the Children NI and Children's Law Centre.
- Healy, J. (2006) *Locality Matters: Ethnic Segregation and Community Conflict*, Oxford: Blackwell Publishing.
- Horgan, G. and Kilkelly, U. (2005) *Protecting children and young people's rights in the Bill of Rights for Northern Ireland: Why? How?*, Belfast: Save the Children and Children's Law Centre.
- Jarman, N. (2002) *Managing Disorder: Responding to Interface Violence in North Belfast*, Belfast: Community Development Centre.
- Jarman, N. (2005) *No Longer a Problem? Sectarian Violence in Northern Ireland*, Belfast: Institute of Conflict Research.

Kavanagh, A. (2004) 'The role of a Bill of Rights in reconstructing Northern Ireland', *Human Rights Quarterly*, 26, pp956-982.

Kilkelly, U. (2009) 'A children's rights analysis of the Northern Ireland Human Rights Commission's Advice to the Secretary of State on a Bill of Rights for Northern Ireland', Belfast: Children's Law Centre, Save the Children, Northern Ireland Commissioner for Children and Young People.

Kilkelly, U., Kilpatrick, R., Lundy, L., Moore, L., Scraton, P., Davey, C., Dwyer, C. and McAlister, S. (2004) *Children's rights in Northern Ireland*, Belfast: Northern Ireland Commissioner for Children and Young People.

Leonard, M. (2004) *Children in Interface Areas: reflections from North Belfast*, Belfast: Save the Children NI.

Leonard, M. (2007) 'Trapped in Space? Children's Accounts of Risky Environments', *Children and Society*, 21, pp432-445.

Leonard, M. (2008) 'Building, Bolstering and Bridging Boundaries: Teenagers' Negotiations of Interface Areas in Belfast', *Journal of Ethnic and Migration Studies*, 34 (3), pp471-489.

McAleavy, and McCrystal, P. (2007) 'School based Health Education Provision for Young People in Northern Ireland', *Child Care in Practice*, 13 (3), pp281-295.

McAlister, S., Scraton, P. and Haydon, D. (2009) *Childhood in Transition. Experiencing Marginalisation and Conflict in Northern Ireland*, Belfast: Queens University Belfast, Save the Children NI, Princes Trust NI.

McClelland, R. (2006) *The Bamford Review of Mental Health and Learning Disability (Northern Ireland): A Vision of a Comprehensive Child and Adolescent Mental Health Service*, July 2006, Belfast: DHSSPS.

McGrellis, S. (2004) *Pushing the Boundaries in Northern Ireland: Young People, Violence and Sectarianism*, London: Families and Social Capital ESRC Research Group.

Muldoon, O., Schmid, K., Downes, C., Kremer, J. and Trew, K. (2005) *The Legacy of the Troubles: Experience of the Troubles, Mental Health and Social Attitudes*, Belfast: QUB.

NICCY (2008) *Children's Rights: Reality or Rhetoric*, Belfast: NICCY.

Northern Ireland Human Rights Commission (2008) *A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland*, 10 Dec 2008.

Northern Ireland Office (2009) *A Bill of Rights for Northern Ireland: Next Steps*, 30 Nov 2009.

Northern Ireland Office (2006) *St Andrews Agreement* Belfast: Northern Ireland Office (available at: www.nio.gov.uk/st_andrews_agreement.pdf).

Northern Ireland Office (1998) *Belfast/ Good Friday Agreement* Belfast: NIO (available: www.nio.gov.uk/agreement.pdf).

Roche, R. (2008) *Sectarianism and Segregation in Urban Northern Ireland: Northern Irish Youth Post-Agreement. A Report on the Facts, Fears and Feelings Project*, Belfast: Queens University.

Shirlow, P. and Murtagh, B. (2006) *Belfast: Segregation, Violence and the City*, London: Pluto Press.

Smyth, M, Fay, M., Brough, E. and Hamilton, J. (2004) *The Impact of Political Conflict on Children in Northern Ireland*, Belfast: Institute of Conflict Research.

Smyth, M. and Campbell, P. (2005) *Young People and Armed Violence in Northern Ireland*, Belfast: Institute of Conflict Research.

Todd, H. (2002) *Young People in the Short Strand Speak Out*, Belfast: University of Ulster.

UK Code of Practice on Consultation (2008) (available at: <http://www.berr.gov.uk/files/file47158.pdf>)

United Nations Convention on the Rights of the Child, entered into force 2 Sep 1990, U.N. Doc. A/44/49 (1989).

UN Committee on the Rights of the Child (2008) *Concluding Observations. United Kingdom of Great Britain and Northern Ireland*, 20 October 2008, CRC/C/GBR/4.

Woodward, S. (2009) 'Foreword by Rt Hon Shaun Woodward MP, Secretary of State for Northern Ireland', in Northern Ireland Office, *A Bill of Rights for Northern Ireland: Next Steps*, 30 November 2009, pp5-6.