

**Response from the Northern Ireland Commissioner for Children
and Young People to the Northern Ireland Office Consultation
Paper on 'A Bill of Rights for Northern Ireland: Next Steps'
March 2010**

1.0 Introduction

The Office of the Northern Ireland Commissioner for Children and Young People (NICCY) was created in accordance with The Commissioner for Children and Young People (Northern Ireland) Order 2003 to safeguard and promote the rights and best interests of children and young people in Northern Ireland.

Under article 7(2)(3) of the 2003 Order, NICCY has a duty to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. The remit of the Office is children and young people from birth up to 18 years, or 21 years of age if the young person is disabled or in the care of Social Services.

In determining how to carry out her functions, the Commissioner's paramount consideration is the rights of the child, and NICCY is required to base all its work on the United Nations Convention on the Rights of the Child (UNCRC).

1.1 Concern regarding the rejection of children's rights within the consultation paper

NICCY understands that many organisations and groups who have worked towards a strong and inclusive bill of rights for Northern Ireland have been disappointed by the NIO's consultation paper.

NICCY wishes to state at the outset our own disappointment with consultation, particularly the NIO's rejection of almost all of the advice of the Northern Ireland Human Rights Commission (NIHRC) with regard to children and young people's rights.

It is NICCY's position that the conflict in Northern Ireland has impacted on, and continues to impact on, many aspects of children's lives. As a result, many of the issues upon which children in Northern Ireland are in need of protection are particular to Northern Ireland. These issues are distinct from the circumstances of children's lives in other parts of the United Kingdom and therefore warrant additional protection to children in Northern Ireland. It is not for NICCY to repeat the case as to why children warrant such particular protection in the Bill



of Rights for Northern Ireland. This task has already been undertaken by the NIHRC, the work of the Bill of Rights Forum, and within that, the Bill of Rights Forum Children and Young People's Working Group.

NICCY is disappointed with the consultation document given its failure to commit to protecting children's rights against the negative impact of the conflict. The NIO has, by implication, rejected without explanation much of the evidence provided through the Bill of Rights processes over the past ten years.

Our overarching recommendation to the NIO is to urge it to reconsider the NIHRC's advice in terms of children and young people.

2.0 Consultation with Children and Young People

NICCY has often expressed concern through our policy and research analysis that section 75 of the Northern Ireland Act 1998 is not being adequately enforced in respect of the age criterion, and that public authorities are regularly failing in their duty to meaningfully consult with children and young people on issues that have direct relevance to their lives. NICCY has also expressed concern that Government has not fulfilled its obligations under article 12 of the UNCRC. Article 12 provides that children have the right to express their opinion in matters directly impacting upon them and have those views given due weight in accordance with their age and maturity.

NICCY requests further information as to how the NIO has sought the views of both children and young people at this stage of the consultation.

3.0 Comments on the proposals

Our comments on the consultation exercise relate to the NIO's consideration of children's rights, generally found in pages 62 to 64 of the consultation paper.

3.1 The NIO's failure to account for the relevant international children's rights standards

The proposals for the Bill of Rights for Northern Ireland should be reflective of the relevant international standards. NICCY would thus expect the NIO to take account of the relevant international standards in terms of children's rights. The NIO has failed to do this.



NICCY is highly disappointed to note that the consultation paper gives no consideration whatsoever to the UN Convention on the Rights of the Child. Indeed, the UNCRC is not referenced, nor are the most recent Concluding Observations on the UK by the UN Committee on the Rights of the Child. This is a glaring omission; particularly when viewed in light of the Committee's 2008 Concluding Observations, in which the Committee made a specific recommendation to Government regarding the Bill of Rights for NI:

*"The Committee recommends that the State party continue to take measures to bring its legislation into line with the Convention. To this aim, the State party could take the opportunity given in this regard by the development of a Bill of Rights in Northern Ireland and a British Bill of Rights, and incorporate into them the principles and provisions of the Convention, e.g. by having a special section in these bills devoted to children's rights."*¹

NICCY shares the view that the **there should be a separate child rights clause as well as mainstreaming of children's rights within the Bill of Rights for Northern Ireland.**

The NIHRC's advice to the NIO included consideration of relevant provisions of the UNCRC. **NICCY recommends that the NIO revisit the advice of the NIHRC in terms of taking appropriate account of the UNCRC.**

Recognising also that the UNCRC represents minimum standards for children's rights, **the Bill of Rights for Northern Ireland should, as such, build upon the relevant provisions of the UNCRC.**

3.2 Concern at the NIO's rejection of the recommendation for a child rights clause

As per page 7 of the consultation paper, NICCY understands that the Government is seeking views on:

- Precisely what the additional protections for the rights and freedoms of the people of Northern Ireland are (which reflect upon the particular circumstances of Northern Ireland)
- How those protections might be expressed
- How those protections might operate in practice

¹ Committee on the Rights of the Child (2008:para 11) *Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland.*



The extent to which respondents can input their views on these matters is limited by the fact that the consultation paper proposes rights across five areas only;² with the NIHRC's proposals for a separate child rights clause implicitly rejected.

The NIHRC proposed eight rights in a child rights clause, as well as mainstreaming of provisions relevant to children. The eight proposed rights making up the child rights clause include:

1. A legal definition of the child.
2. A non-discrimination provision in respect of children, their parents or legal guardians.
3. A best interests principle. This would include specific application to adoption proceedings.
4. A duty on public authorities in terms of ensuring the child's access to safe and appropriate play and leisure facilities.
5. A right to special protection for children deprived of their family environment.
6. A duty to protect children from violence, maltreatment, neglect, exploitation, and harassment.
7. A duty to ensure children are informed of their rights and have their views given due regard.
8. A duty to protect children from involvement in armed conflicts or civil hostilities, including their use as intelligence sources.

The NIO appears to outright reject the first seven of the proposed rights under the argument that they do not reflect the "particular circumstances" of Northern Ireland, and they are of equal importance across the rest of the UK.

The eighth proposed right is rejected by the NIO under the argument that "appropriate safeguards" for the use of children as intelligence sources are already contained in legislation and that an Intelligence Services Commissioner exists (page 63).

We address these two matters in turn.

² These five areas are listed as follows: Rights relating to equality, representation and participation in public life; Rights relating to identity, culture and language; Rights relating to sectarianism and segregation; Rights relating to victims and the legacy of the conflict; Rights relating to criminal justice.



3.2.1 The rejection of the first seven proposals under the argument that they do not reflect the “particular circumstances” of Northern Ireland and are of equal importance across the rest of the UK

In respect of the first seven proposed rights, the NIO makes the statement at page 62 to 63 that:

“While the protection and welfare of children are of highest importance in Northern Ireland, they are of equal importance across the UK.”

NICCY does not support this assessment. Due to the conflict, the lives and experiences of children in Northern Ireland are strikingly different when compared with those in other parts of the UK. The NIO not acknowledged this.

The NIO has also failed to give clear reasons as to why it believes that many of the proposed rights do not reflect the “particular circumstances” of Northern Ireland. If the NIO is to reject the NIHRC’s proposals on this basis, it is reasonable to expect the NIO to set to out its rationale for holding this belief.

In rejecting the NIHRC’s proposals regarding children’s rights, the NIO also states that children’s needs arising from the conflict would be “encompassed by the [consultation paper’s] earlier recommendation that “victims of the Northern Ireland conflict” should have rights to “redress and appropriate material, medical, psychological and social assistance” see paragraphs 8.8 to 8.9” (page 63).

NICCY does not support this statement, both on the basis of our comments set out above, and on the basis that, in our view, the consultation paper’s proposals regarding the rights of victims are unclear.

We also note that the consultation paper’s discussion of children contains a brief mention of the issue of ‘housing’. The consultation paper states at page 63:

“Housing (another issue mentioned) is also separately covered in the proposed right to accommodation (paragraphs 7.12 to 7.14).”

Having referred to paragraphs 7.12 to 7.14 of the consultation document as quoted, NICCY is still unclear as to what provision the NIO is intending for children in this area.



3.2.2 The rejection of the eighth proposed right under the argument that appropriate safeguards already exist

The eighth proposed right rejected by the NIO would include a right for children do be protected from use as intelligence sources.

NICCY understands that the NIO rejects such a right under the argument that “*appropriate safeguards*” are already contained in legislation, in a related code of practice, and due to the fact that there is an Intelligence Services Commissioner (page 63 of the consultation paper).

NICCY is unclear of the NIO’s rationale; particularly since the NIO admits that the proposal regarding the use of children as intelligence sources “*has a particular resonance in Northern Ireland*” (page 63). The NIO’s argument that existing legislation and a code of practice are adequate does not make sense to NICCY, since the very purpose of the Bill of Rights would be to ‘enshrine’ protections. We would also note that the legislation and code of practice referred to by the NIO relate to the ‘regulation’ of the practice of using children as intelligence sources, not their ‘protection’ from that practice, which was the essence of the NIHRC’s proposal.

3.3 Final considerations

NICCY is concerned that the NIO has rejected every proposal from the NIHRC in terms of children and young people. The implication is that the Government does not appear open to including any protections for children in a Bill of Rights for Northern Ireland. NICCY would question the value of the Government’s consultation exercise where it appears that the Government has pre-determined the outcome of the issues for consultation with regard to children.

In light of all these concerns, **NICCY recommends that the NIO carefully consider all of the evidence offered during the Bill of Rights processes which demonstrates the impact of the conflict on children and young people in NI.**

4.0 Recommendations

NICCY would take the opportunity to reiterate our recommendations to the NIO:

- To reconsider the NIHRC’s advice in terms of children and young people.



- To demonstrate how the views of both children and young people have been sought at this stage of the consultation.
- To follow the advice for a separate child rights clause as well as mainstreaming of children's rights within the Bill of Rights for Northern Ireland.
- To ensure that the Bill of Rights for Northern Ireland builds upon the relevant provisions of the UNCRC.
- To carefully consider all of the evidence offered during the Bill of Rights processes which demonstrates the impact of the conflict on children and young people in NI.

5.0 Conclusion

NICCY very much appreciates the opportunity to respond to the NIO's consultation on the next steps for a Bill of Rights for Northern Ireland. We are happy to offer further clarification of our comments if this would be of benefit. Please contact Caroline Cunningham, Policy and Research Officer, on 028 90316384 or caroline@niccy.org if you wish to avail of this opportunity.

