

## **CHAPTER SIX**

# **YOUTH JUSTICE AND POLICING**

## INTRODUCTION

In addition to the CRC other complementary international standards for law, policy and practice regarding youth justice and policing are: UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990; UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules); UN Guidelines for the Prevention of Juvenile Delinquency, 1990 (the Riyadh Guidelines); UN Standard Minimum Rules for Non-custodial Measures, 1990 (the Tokyo Rules).

While articles and guidelines have specific application to youth justice, and these are outlined below under topic headings, several generic CRC articles are relevant to the administration of youth justice. These are: protection against discrimination (Article 2.1); consideration of best interests of the child and institutional care and protection of children (Article 3.1 and 3.3); survival and development (Article 6.2); protection and support (Article 19.1 and 19.2); freedom of expression and the right to consultation (Article 12.1 and 12.2).

More broadly, the CRC requires member states to “seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law” (Article 40.3). They should establish “a minimum age below which children shall be presumed not to have the capacity to infringe the penal law” (Article 40.3a). While international instruments do not provide precise guidance in establishing an “appropriate age of criminal responsibility”, the Beijing Rules suggest that it should “not be fixed at too low and age level, bearing in mind the facts of emotional, mental and intellectual maturity” (Rule 4). The important consideration is “whether a child by virtue of his or her individual discernment and understanding, can be held responsible for essentially anti-social behaviour”. Contextually, the Rule recognises the “close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority)”.

In 1998, following the removal of the presumption of *doli incapax*, the age of criminal responsibility was consolidated at 10 for England, Wales and Northern Ireland (NI). Courts were also allowed to draw inferences from the failure of an accused child to give evidence or answer questions at trial. In its report to the Committee, the UK Government (1999: 180) defended both measures on the basis of “putting all juveniles on the same footing as far as courts are concerned” thus “contribut[ing] to the right of children appearing there to develop responsibility for themselves”. Abolishing the protections of *doli incapax* and the right to silence were presented as securing children’s opportunities and rights. In response, the Committee (2002: 15) noted “with serious concern that the situation of children in conflict with the law has worsened since the consideration of the initial report”. Of particular concern was “the age at which children enter the criminal justice system”. The expansion of custody for children was criticised and the Committee recommended that the minimum age of criminal responsibility be raised considerably (ibid.: 16).

The Committee welcomed “the State party initiatives to introduce restorative justice and other constructive community based disposals for juvenile offenders; the almost complete inclusion of 17-year-olds in the juvenile justice system and the creation of multi-disciplinary teams to respond to child offenders’ behaviours”. Yet it expressed profound concern regarding the conditions experienced by detained children, the lack of protection against bullying in young offenders’ institutions, the high levels of violence, self-harm and suicide and the use of solitary confinement. It recommended that detention “is used as a measure of last resort and for the shortest appropriate period of time and that children are separated from adults in detention”. It encouraged the use of alternatives to custody. Every child in custody should “have access to independent advocacy services” and be protected by an “independent child sensitive and accessible complaint procedure”. The Committee called for an urgent review of the conditions of detention, focusing particularly on the “equal statutory right to education, health and child protection”. It also recommended a review of the orders introduced by the 1998 Crime and Disorder Act, extended in 2004 to the jurisdictions of Scotland and NI, to “make them compatible with the principle and provision of the Convention”. The State should also take measures to protect the privacy of children in conflict with the law.

In making its observations the Committee does not always address separately the distinct UK jurisdictions. Commenting on children in armed conflict, however, the Committee “remain[ed] concerned at the negative impact of the conflict situation in Northern Ireland on children, including the use of emergency and other legislation in force...” (ibid.: 13). It recommended a review of the legislation. It also proposed a further review of “the use of restraint and solitary confinement in custody, education, health and welfare institutions...” (ibid.: 8). Further, it stated that following “the recommendations of the Committee against Torture (A/54/44, para.77d), the State party should abolish the use of plastic baton rounds as a means of riot control” (ibid.: 7).

The defining legislation concerning children and criminal justice in NI is the 1998 Criminal Justice (Children) NI Order (CJCO). The *Review of the Criminal Justice System in Northern Ireland* was published in March 2000, followed in November 2001 by the *Criminal Justice Implementation Plan*. The Justice (NI) Act was passed in 2002 implementing many of the Review's 300 recommendations. The Act modified and expanded the CJCO. Under the CJCO (Article 2) children were defined as being under 17. The Act included 17 year-olds. While both the CJCO (Article 4) and the Act (section 53) were proclaimed as emphasising the welfare of the child as paramount this has been contested by the children's sector and criticised for not reflecting the best interests principle or complying with international standards. The Act aims to affirm the role of personal, social and educational development.

The Act allows children under 14 to be remanded to secure accommodation but this provision has not been enacted. Children over 14 can be remanded to the juvenile justice centre (JJC) or to the young offenders' centre (YOC). Although the YOC accommodates 17 to 21 year-olds, 15 and 16 year-olds can be remanded to the YOC should the Court decide that they pose a risk of self-harm, suicide or violence to others. Remands should be limited to children who have committed serious offences or pose a significant threat to the public. The CJCO (Article 19) restricts custodial sentences for children to serious crimes and for the protection of the public. The Court is compelled to provide justification for each custodial sentence. Under the reformed criminal justice system children can receive juvenile justice orders, custody care orders (10 to 13 year olds), custody probation orders and sex offender orders. Grave crimes, the equivalent of a 14 year plus sentence for adults (CJCO, Article 45.2) or a 5 year plus terrorism offence (Terrorism Act 2000, section 78), can result in a specified period of custody in conditions ordered by the Secretary of State. This has resulted in indeterminate life sentences.

The range of recent reforms demonstrates a measured commitment to alternatives to custody for children. The PSNI Youth Diversion Scheme, introduced in 2003, alongside the formal criminal justice system, deals with offenders through youth diversion and restorative justice principles. 'Informed warnings' and 'restorative cautions', the latter for more serious cases, lead to restorative conferencing and youth conferencing. For cases proceeding to court and resulting in convictions, a pre-sentencing report is required from a probation officer or social worker. This focuses on home circumstances, physical and mental health, 'character', prior offences, possible causes of offending behaviour, family support, risk factors, mitigation and the anticipated impact of possible sentences. The available non-custodial disposals are: absolute or conditional discharge; recognisance or binding over; fine; probation order; community service order (16 plus); combination order (16 plus); attendance centre order (under 17); drug treatment and testing order (17 plus); sentence deferment; suspended sentence. The Justice Act also introduced reparation orders, community responsibility orders and youth conference orders. While recognising that all international standards have not been achieved, McKeown (2003: 402) concludes that the "introduction of the Criminal Justice (NI) Order 1996 and the Criminal Justice (Children) (NI) Order in 1998 in many respects brought the juvenile justice system more in line with the Beijing Rules and the UNCRC".

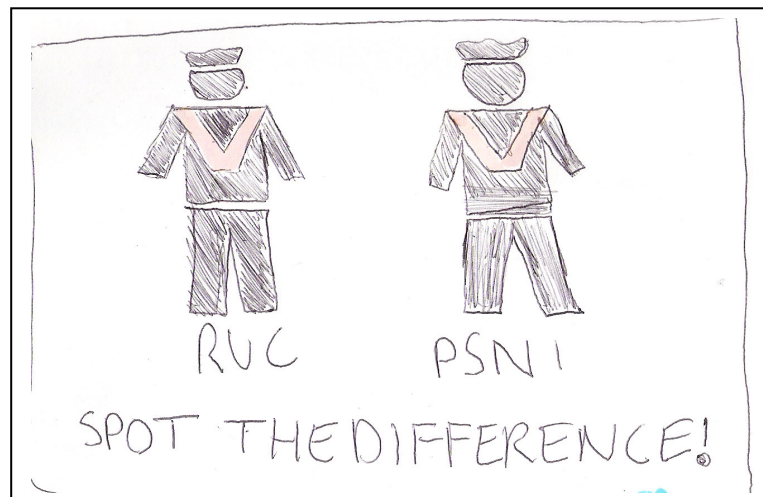
## **POLICING**

*Survival and development (arrest and detention); right to life; child's opinion; freedom of association; access to appropriate information; protection from abuse and neglect; deprivation of liberty; administration of juvenile justice (Article 40.1;2b;3b)*

### **Context**

The history of policing in NI since partition has been controversial and bitterly contested. Throughout the thirty years of conflict and beyond the 1998 Belfast Agreement policing has remained contentious: the tension between community and paramilitary policing; the handling of serious complaints; the politics of accountability; police powers under emergency legislation; the use of force and police technologies. The Belfast Agreement, however, established the basis for the *Independent Commission on Policing in Northern Ireland* (the Patten Commission). The Agreement called for a police service that "is professional, effective and efficient, fair and impartial, free from partisan political control; accountable, both under the law for its actions and to the community it serves; representative of the society it polices, and operat[ing] within a coherent and cooperative criminal justice system, which conforms with human rights norms". Patten consulted widely and reported in September 1999. It proposed that an effective, efficient and modern police service depended on the adoption of key principles. These were: collective responsibility involving the active and democratic participation of local communities, building a partnership for community safety; the acknowledgement and protection of human rights for all through training and strategies; legal, political and financial accountability; transparency and openness, particularly with regard to covert operations.

The Police Service of Northern Ireland (PSNI) was established as successor to the RUC in November 2001. New uniforms, badge and flag, issues of considerable dispute, were introduced in 2002 and a new programme of recruitment, training and agenda-setting, in line with Patten, was established under the broad direction of the PSNI Change Management Team. In this climate of change and critique, however, and despite the inclusivity inherent in the Patten Report and the work of the children's sector in achieving that end, minimal attention has been given to the largest group of people to have routine contact with the police: children and young people. Yet the issues raised by children in the research for this project and in other recent studies are profound. Children and young people in the NICCY schools research expressed scepticism about the degree to which the police service had changed other than in name and uniform. What was particularly interesting was that this view was expressed fairly equally among young people from both Catholic and Protestant communities. Below is a fairly typical image relating to this concern:



Hamilton et al. (2003) studied young people's views of police accountability. Although confined mainly to the 16 to 24 age range, 56% of young men and 28% of young women reported contact with the police in the previous 12 months. Being stopped and questioned by the police and being moved on were the most frequent reasons for contact and most young people regarded the circumstances as harassment. Their experiences of the police were "predominantly negative" and 24% were "very dissatisfied" with the police. Ellison (2001: 133) refers to this as "adversary contact". "Disrespectfulness and/or impoliteness" (58%) was the main criticism and harassment "included physical violence, a constant police presence and being watched, confiscation of goods and verbal abuse". The research also found marked differences in young people's perceptions and experiences of the police depending on their community.

Ellison's (2001) earlier research on the RUC found that 14 to 17 year-old males were three times more likely to be stopped and searched by a police officer than were 18 year-olds. Children from "socio-economically disadvantaged areas" were more than twice as likely to have been searched. His research also demonstrated a difference in perception and experience between Protestant and Catholic children: "92.6% of Catholic males who have been stopped and questioned by the RUC 'too many times to remember' believed this to constitute harassment, compared to 60.3% of Protestant males" (ibid.: 133). Ellison's research was conducted post Patten and he recorded considerable support among young Catholics for changes in the RUC, including name change. While a considerable minority (20.8%) of Protestant young people agreed with slight reform, the majority remained resistant to change.

Quinn and Jackson, (2003) researched the detention and questioning of children and young people. Their detailed study found that 55% of those detained were released within three hours, 25% between three and six hours, 13% between six and twelve hours and 7% between twelve and twenty four hours. Most were held in a cell or juvenile detention room, sometimes overnight. Only 15 % of those detained were eventually charged. 78% were searched, 52% were photographed, 70% were fingerprinted and 36% had a sample taken for DNA testing. "Some appropriate adults and solicitors complained that the taking of samples, fingerprints and photographs criminalised young persons" (ibid.: vi). According to custody staff, "securing the prompt attendance of an appropriate adult" was "a major problem" and "often prolonged young persons' time in custody unnecessarily" (ibid.: vii).

There was inconsistency in the advice given to children and young people by custody officers. Solicitors “complained that not enough was done to explain the importance of legal advice to young persons and their parents...” (ibid.: ix). Quinn and Jackson also found that solicitors “generally agreed that there were difficulties in ensuring that young persons, particularly under 14 year olds, understood the advice which was given to them” (ibid.: x). Whether children understood the caution, and how it was explained, was a significant issue and “it was suggested that 10-13 year olds would rarely understand the caution” (ibid.: xii). In terms of CRC compliance it is a concern that “interviewing officers had not received any special training on interviewing young persons” (ibid.: xii). Further, while “the dominant approach ... was simply to put an allegation to the young person ... other interview styles” included “an adversarial approach, a moralistic approach and an intelligence gathering approach” (ibid.: xii-xiii).

Routine, negative experiences of the police are consistent with young people’s focus groups conducted across NI for the NICCY research. Although all identified a ‘need’ for policing within their communities most recounted negative experiences of the police. Focus groups in Belfast and Derry/Londonderry gave recent examples of aggressive and bullying policing, including assaults, which occurred in non-riot situations. Typical comments, endorsed by the groups, were:

“The Peelers just push you around. You’ve got the attitude problem not them. If you come back at them they just give you a quick beating. It’s not right but it goes on all the time” (Young male, aged 17 – Youth group).

“We were just standing by the fences there the other day and the police came and told us to move on. We said we’re just havin’ a smoke, we’re here [in the building]. ‘You’re not allowed to stand there. Move on!’” (Young female, aged 18 - at risk of homelessness)

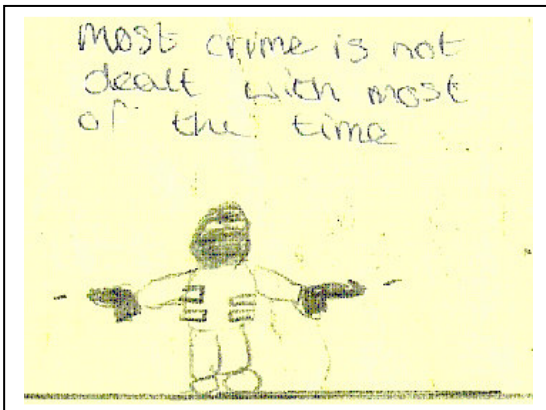
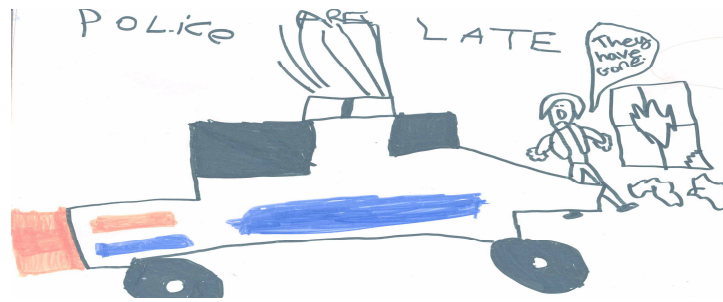
“If you’re on the street then you’re up to no good, like. They just come and tell you to go and when you say ‘Where?’ they tell you to ‘Fuck off, that’s where’” (Young male, aged 17 – Youth group).

“They know you, your families an’ all. They tell you ‘You’re next’ and that you’re up to no good an’ they’re watchin’ for you. I got paranoid that I was scared to go out” (Young female, aged 17 – Youth group).

“One of the blokes [police officer] grabbed me by the scruff of the neck and threw me against the wall and had me up against the wall like this. I just said ‘Nine one one, I’ve got your number’” (Young male, aged 17 – Youth group).

A youth worker witnessed an incident outside his house: “I was parking the car and I just heard a screech and a car pulled over and a guy came out, about four or five inches taller than me, and grabbed a wee young fella up by the throat and threw him into the car. The wee fella was only about 14. He was wearing an Ireland football jersey and he was just grabbed by the throat and threw into the car and taken away”. In focus groups held in Derry/Londonderry with 80 child sector workers 44% recorded their dissatisfaction with the police and 13% regarded the police as ‘bullies’. 19% considered that there should be better coordination between the PSNI and restorative justice projects. One NGO worker commented, “There needs to be an effective CRJ approach that tackles appropriately and effectively issues like under-age drinking and safety for young people and provides the opportunity for taking responsibility for misbehaviour and its consequences”.

The above accounts, across communities and from boys and girls, were consistent with the overall findings of the NICCY schools research. For example, when asked to write/draw/discuss images or words that came to mind when they heard the words ‘police’ or ‘crime’, 143 out of 710 children (20%) described the police as “lazy” and/or “not doing enough” to serve the community, that they were slow to arrive at the scenes of crimes/accidents and that they should focus more on solving “real” crime rather than “obsessing” about the wearing of seatbelts. Typical comments and images included:



"The police don't do anything about the people in [name of town], they just walk around the town at night and watch young people drink and take drugs. Over the past year our town has lost lots of things because of the teenagers and older people, for example, the circus and the fun fair festival. Some people suffer for the things they didn't do and they leave us with nothing. It's about time the police did something about it" (Girl, aged 12).

"The cops sometimes get it right by catching the robbers or killers but most of the time they are out to get the public who are not doing anyone any harm such as people who are slightly over the speed limit or people with no tax or even in some places they put a curfew on all kids even though it may just be a small percentage of the kids who are causing the trouble" (Boy, aged 14).

A further 13% remarked that the police were only interested in harassing young people; a view voiced by older children in general and boys in particular. An additional 7% claimed that differential policing was based on sectarianism and 6% associated the police with riots. Children commented:

"There should be more police about the area and the police should try to be a little more friendly. The police should try and let us play in our area because sometimes they would have a complaint saying we're not allowed to play in the streets but it's our street and we should be able to. They should try and get the people causing the trouble off the street so we can have a safer time. They should try and get joyriders off the road because they are killing people and themselves" (Boy, aged 13).

"The police are always up behind our house putting cameras in the field and watching our house. I found one about six months go in a field. I don't feel comfortable in my own house! My dog went over and started to bark at them in the field. The fucking bastards gave it a poisoned sausage and it died a few hours later. As they walk past our house they stick up their fingers at us and call us names like 'catholic scum' and 'fenian bastards'. They scare me with their guns" (Boy, aged 14).

"The police are a bad thing to have driving about the streets and roads. They cause fights and riots on the roads. People's houses and cars are being damaged by people throwing things at the police. Just four days ago, our car tyres were busted by glass on the road" (Boy, aged 14).

"Every time I see their cars I run an' all. I don't want them to see me. I'm not afraid I just don't want them to see me because each time they come they think I have done something bad, Sometimes I do" (Boy, aged 8 - Traveller Community).

It should be noted, however, that when asked about the words and images that came to mind when they heard the words 'police' and 'crime', 156 of 710 children and young people (22%) voiced annoyance regarding the use of

drugs, joyriding, drinking and noise in their community. Only 12% of children had a positive view of the police. Images which depicted the police in a positive light appeared to be influenced by media representations of ‘cops and robbers’ films and cartoons. That is, many depicted images of a cop chasing or arresting a robber or burglar, who would often be wearing a stereotypical black and white striped top with a swag bag. These images were most often expressed by younger aged children (i.e. those aged 5-11) and those with severe learning difficulties. A typical image is depicted below:



A focus group held with those working with lesbian, gay, bisexual and transgendered (LGBT) young people noted the average waiting time for the police to deal with a homophobic incident was three hours. When young people reported abuse or assault they were often not taken seriously and suffered alienation within communities for taking action. The distrust of the police by LGBT young people was shared regardless of religion or community. The group also emphasised the significance of ‘multiple identities’: “In Northern Ireland the focus is on whether you are a Catholic or Protestant and there is little attention given to other means of discrimination on the basis of class, gender or race. Yet these impressions can impinge on one another hence doubling or even tripling the oppression experienced by some young people...”

Smyth et al., (2004: 79) note that the “lack of accountability of the police and the sense that young people had of police impunity was a significant source of anger and frustration, particularly amongst young Catholics”. It amounted to “a strong sense of injustice and the powerlessness to challenge unfair treatment was a recurring theme in interviews”. An 11 year old girl Traveller in a NICCY research focus group commented, “They [the police] have guns and batons and they think they can do anything”.

### Key issues

- Absence of the ‘best interests’ principle in policing policy and strategy.
- Differential and discriminatory treatment of children and young people on the grounds of age, class, community, ethnicity, care, disability, gender and sexual orientation.
- Children’s negative perceptions of the police particularly associated with sectarian divide.
- Use of intimidation and unreasonable force against children and young people in certain locations; from ‘moving on’ to assault.
- Contested evidence regarding the use of children and young people as gatherers of covert ‘low level’ intelligence on crime within their communities thus compromising their right to life.
- Children and young people as victims of crime: bullying; assault; theft.
- Children and young people as victims/survivors of domestic violence and abuse: child protection and inter-agency cooperation.
- The development of a comprehensive child protection policy including the introduction of PECS checks for all police officers.

- Children and young people as victims/witnesses to the policing of adult crime: house raids by police; public disorder.
- Children and young people as perpetrators of crime: dealing with ‘vulnerable suspects’.
- Children and young people as witnesses to serious crime: trauma; evidence gathering procedures; vulnerable witnesses/protection.
- Appropriate accommodation and training for interviewing children as victims, perpetrators and witnesses.
- The right of silence and inferences drawn from children’s silence in the issuing of cautions.
- Development of youth diversion initiatives in the context of formal restorative approaches; tensions over community restorative work.
- Post-Patten move towards community accountable policing: information provision via schools; right to participate.
- Inter-agency cooperation in the investigation of commercially sexually exploited children; particular focus on children in care.
- ‘Service user involvement’ in the initiation and development of child-appropriate policing policies and practices.
- Police training in children’s rights and in the development of child-oriented policing including a commitment to assisting children to understand their rights.
- The development of a child-oriented complaints procedure.
- The need for the Policing Board to establish a commitment to child specific issues.

### **Comment**

A key issue raised by community groups across the sectarian divide was the use of children by the PSNI to gather low level intelligence as informers in exchange for immunity from prosecution. A community worker put it succinctly: “They know that if they recruit a child as an informer they turn the child into a combatant and immediately put his life at risk”. As institutional policy or practice, this was rejected by the PSNI and by the Police Ombudsman. Both referred to new legislation and strict operational guidelines governing the use of children as informers. A PSNI representative commented that in terms of routine policing modern forces are “intelligence led” and young people would be considered appropriate for “information gathering” regarding crime in the area. In observing police interviews of children detained by the police Quinn and Jackson, (2003: 116) comment: “it appeared indeed in some cases that the interview was being used, not so much to extract a confession from the young person or to provide an opportunity for exculpation, but rather to gather information about other matters or individuals”. The PSNI draws the distinction between the use of children as information-gatherers primarily for political ends and as part of the routine policing of crime. It would be naïve to assume, given recent history in NI, that the two issues are not inter-connected, at least in communities wary of any police intervention. This has serious implications regarding the meeting of international children’s rights standards including the right to life.

According to a PSNI representative, proposed initiatives are based on the development of new strategies for consulting with children and their families focusing on improved access to justice, including a more accessible complaints system for children and recognition that child protection is a police as well as social services’ responsibility. He stated that central to child protection is the principle of “proactive policing” and policies developed in close consultation with “a number of children’s organisations”. Other standards to be introduced include: children as victims of crime (recognising that as a group children require special provision); children as perpetrators of crime (consistency in the use of PACE); children as witnesses of crime (particularly training officers in child-sensitive interviewing techniques); children used as covert intelligence sources; children in domestic incidents (particularly regarding child protection matters); policing bullying (working more closely



with schools regarding access); children caught up in adult offences (particularly regarding house searches). Beyond this the PSNI representative stated that as an organisation the police needed to further develop appropriate methods of investigating complaints against their staff and to develop child protection training for officers.

## POLICE TECHNOLOGIES

*Best interests of the child; necessary protection and care for the well-being of the child; the right to life, survival and development; disaggregation of data on deaths and injuries; child's opinion; freedom of association; inhuman treatment*

### **Context**

The use of baton rounds as a means of crowd dispersal has been an issue of serious contention since rubber bullets were first introduced and used in NI in 1970. Following deaths and injuries the 'more accurate' and 'less lethal' plastic bullet was introduced in 1974. In 1994 a 'more accurate' anti-riot launcher was introduced followed by a 'more accurate' and 'potentially less lethal' baton round, the L21A1, in 2001. Throughout this period 17 people were killed by rubber or plastic baton rounds. Of these, eight were children. Many others, estimated in the hundreds, have been injured. It is not possible to provide accurate statistics on injuries due to baton rounds as no records were kept by the police or by hospitals. What is clear from interviews conducted with community-based support groups is that the physical and psychological trauma caused by serious injuries is extensive both to survivors and to their families. There is also evidence that lives have been prematurely ended as a result of this trauma.

The use of baton rounds "in situations of serious public disorder" is governed by the Association of Chief Police Officers' (ACPO) guidelines. The guidelines specify that baton rounds and CS munitions constitute a "less than lethal contingency in dealing with serious public disorder" although they recognise that baton rounds can cause serious injury and have resulted in deaths. Once a decision has been taken to deploy baton rounds they "should be fired at selected individuals and not indiscriminately at the crowd ... aimed to strike directly (i.e. without bouncing) at the lower part of the target's body (i.e. below the rib cage)". Noting that the "risk of serious and fatal injuries is significantly increased" should baton rounds be aimed at a higher part of the body, the guidelines prohibit such targeting. This instruction fails to recognise that child's upper body and head might well be at a height consistent with an adult's rib cage.

In 2003 revised guidelines were issued which, for the first time, addressed the issue of children. Referring to Article 3C of the UN Code of Conduct for Law Enforcement Officers, the guidelines stated that "every effort should be made to exclude the use of firearms, especially against children ... [b]aton rounds represent a less lethal alternative to conventional baton rounds ... [e]very effort should be made to ensure that children are not placed at risk by the firing of baton rounds in public order situations and children should not be directly targeted *unless their actions are presenting an immediate threat to life or serious injury*, which cannot otherwise be countered" (para 1.9, emphasis added). While appearing to establish a safeguard in principle, in effect the guidelines authorise the use of baton rounds against children and young people.

While the number of baton rounds has reduced significantly, between 2000 and 2002 well over 300 were fired by the PSNI and just under 100 by the Army (Omega Foundation, 2003: 27). Of the 12 injuries caused by baton rounds in one year (2001-2002), where the age of the person was known, 8 were to children. During an incident in April 2002, when police officers and soldiers were deployed to contain disorder between nationalist and loyalist youths, baton rounds were fired by a police officer and soldiers. The Police Ombudsman investigated the case and police officers were given "appropriate advice and guidance" on issuing a weapon to an unauthorised officer. The officer also "received appropriate advice and guidance". The Ombudsman supports the PSNI in the use of baton rounds on the basis that there is "no viable and effective alternative". The official position is that baton rounds are preferable to live ammunition. A PSNI representative stated that "*in my opinion while some lives have been lost more lives have been saved by their use. They have been shown to be effective in riot and crowd control, more than any other method*". Community groups argue that if baton rounds, like bullets, have the capacity to be lethal then they are a form of 'live' ammunition and should be treated accordingly.

Research conducted by the Omega Foundation on behalf of the NIHRC recommended that the "Government commits to a binding timescale for the completion of the search for an alternative and withdrawal of the baton round in Northern Ireland". The research contests the sparse evidence presented in defence of the L21A1 and the Government's reassurances that there is greater transparency in their use. In October 2002 the UN Committee

repeated its concern “at the continued use of plastic baton rounds as a means of riot control in NI as it causes injuries to children and may jeopardise their life”. Consistent with the recommendations of the Committee against Torture, it urged the Government “to abolish the use of plastic baton rounds as a means of riot control”.

The Patten Report recommended that alternatives to baton rounds be sought. The PSNI introduced CS Incapacitant Spray as “an additional less than lethal option as part of a graduated response to any situation where police or a member of the public may be subjected to attack or violence”. This PSNI position statement is not entirely accurate in that CS Spray has been involved in the deaths of at least two people in England and Wales since its introduction. If administered at close quarters while a person is being restrained it has lethal potential. The PSNI, however, states that CS Spray “is not an alternative to baton rounds, nor is it a tool for deployment in incidents of major public disorder”. On a “voluntary” basis the PSNI is committed to referring all cases of its use to the Police Ombudsman to “ensure that we learn all lessons possible for our use of CS Spray”.

### **Key issues**

- The abolition of the use of plastic baton rounds as a means of riot control as children and young people are particularly vulnerable in compliance with the Patten Report and international standards.
- Further research into the extent of physical injuries caused to children by baton rounds, the long-term psychological effects of surviving injury and the impact on families of deaths and injuries of children.
- CS Gas (crowd control) and CS Spray (close contact): current review of use of CS Spray by the Ombudsman’s Office to take account of impact on children and young people.
- The responsibilities of the Policing Board with regard to the use of baton rounds, CS Gas and CS Spray.

### **Comment**

Community-based groups argue strongly that the continuing use and sophistication of baton rounds places children and young people at risk. They do not accept reassurances over their use. A representative of a community-based group commented: “the thing about the technology is this. No-one was being made to adhere to the rules - neither the police nor the army. The rules stated that they were never to be fired above waist level. And that they were never to be fired at less than 20 metres. And that they were never to be fired in non-riot situations. Yet all the people who died including all the children, were hit in the head and upper body regions, some at point blank range ... All of the deaths, and let’s not forget all of the injuries, including children with horrendous facial injuries, impacted on families”. This poignant observation leads to a further crucial issue - the failure of statutory services to provide long-term care and counselling for those bereaved or injured by baton rounds. An NGO representative argues that there is a broader consideration, “the whole impact of the plastic bullet on the injured has not been adequately assessed ... and many of the children injured have never been able to take their place in a normal society ... can’t form relationships ... there’s been no research at all into the long-lasting effects of plastic bullet injuries”. Finally, on the introduction of the L21A1 campaigners argue: “They [the NIO] showed us the new bullet. There’s very little difference between it and the one they use now. We asked them, ‘Can you give us a guarantee that these are non-lethal?’ They said ‘No, we can’t’. There’s no guarantee they’re non-lethal. Despite the Patten recommendations that they be phased out and a safer alternative found, that has not happened”.

In October 2004 the PSNI announced an internal review of the holding and use of baton rounds on the basis that it had been two years since they had been used on the streets. It is of continuing concern to children’s rights’ organisations and to the UN Committee, as well as to community campaign groups, that baton rounds have remained available for use despite the Committee’s persistent request that they be withdrawn. As new technologies are introduced it is expected that the implications of their use will be fully assessed, monitored and evaluated in terms of the risk to children and young people.

## **POLICE OMBUDSMAN FOR NORTHERN IRELAND**

*Survival and development; the child's opinion; access to appropriate information; administration of juvenile justice*

### **Context**

The office and duties of the Ombudsman are enshrined in the 1998 Police (NI) Act, the 2000 Police (NI) Act and the 2003 Police (NI) Act. Central to its duties is the securing of “an efficient, effective and independent police complaints system” and to recommend, where appropriate, prosecution or disciplinary action against officers. Apart from acting on complaints the Ombudsman conducts inquiries on behalf of the Secretary of State or if there is “reason to believe that it would be in the public interest to investigate [a] practice or policy”. “Informal resolution” also plays a part in the resolution of “minor” or “non-criminal” complaints. For the purposes of investigation the Ombudsman’s office has the powers of arrest, search and seizure and of access to property and seizure of documentation and goods.

Statistics for 2003-04 show 2976 complaints containing 4196 allegations, a decrease of 3% on 2002-03 (Police Ombudsman, Annual Report 2004: 20). Of the 20 “serious matters reported to the Secretary of State, Chief Constable and NIPB” 12 concerned investigations of the use of baton rounds in 2002. 15.3% of allegations concerned ‘incivility’ and 37.4% concerned “oppressive behaviour”. Allegations of assault totalled 23.3% of all allegations and oppressive conduct/harassment amounted to 11.6%. Taken together this was the equivalent of 6 cases per day. 27% of complainants were aged 16 to 24 compared to 35% in 2002-03. No records were presented for complainants under 16 or for complaints made on their behalf. Given the concerns raised by children regarding their treatment by the police it appears that their experiences do not translate into formal complaints. If this is the case it is a worrying situation.

Research conducted by the Institute of Conflict Research for the Ombudsman focused primarily on 16 to 24 year-olds with only 10% of the sample under 16. While 72% recognised the role of the Ombudsman as one of investigating complaints against the police, only 52% knew of the Ombudsman and only 11% knew how to contact the office. The research concluded that on most issues – fair investigation, fair treatment, independence, impartiality – young people did not have a view. Yet, the Ombudsman considers that there is an over-representation of complaints from children possibly reflecting the range of daily interaction between the police and children on the street (interview, September 2004). Neither the research, nor the current statistics provide information on the nature and form of complaints. If they are consistent with the complaints overall they would include a disproportionate number of complaints of ‘incivility’ and oppressive ‘behaviour/harassment’. This is consistent with the findings of the NICCY research.

### **Key issues**

- The provision of effective and accessible information for children and young people about the Police Ombudsman and importance and availability of the police complaints process (also see Chapter 1).
- Alternative, non-threatening approaches to identifying and accessing complaints of all children under 18.
- Further research, particularly with the most vulnerable and marginalised children, regarding their experiences of the police.
- The establishment of a network of children’s consultative panels with a view to tracking and responding to generic complaints.
- The need to consult with children with regard to all policy matters.

### **Comment**

In her Annual Report for 2003/2004 the Police Ombudsman notes the work done by her staff in schools throughout NI. Alongside the PSNI, the Ombudsman has been involved in ‘youth-related projects’ including input into the Key Stage Four *Citizenship and Safety* textbook. In association with the Children’s Law Centre the Ombudsman also published an information leaflet *Young People and the Police*. It also commissioned the above referenced research into the attitudes, experiences and opinions of young people. This research, while in itself

comprehensive, focused on young people aged 16 to 24 years. The NICCY research suggests that a comparable research study with children is necessary. The expectation of the Committee is that States should not only promote but also monitor those authorities and institutions concerned with children in conflict with the law. While the office of Police Ombudsman clearly meets that expectation it would be beneficial to research the experiences and needs of children.

## **ANTI-SOCIAL BEHAVIOUR**

*Child's opinion; freedom of expression; freedom of association; leisure, recreation and cultural activities; arbitrary/unlawful interference; administration of juvenile justice (Article 40.1;2b;3;4). Beijing Rules. Also Northern Ireland Act, Section 75.*

### **Context**

The Anti-Social Behaviour (Northern Ireland) Order was introduced on 25 August 2004. From recoded crime data, research findings on victimisation and the fear of crime and consultation with community safety workers, "street violence, low level neighbourhood disorder and anti-social behaviour" were identified as the most significant community safety factors (NIO 2002). The subsequent community safety strategy document "identified that the legislation in England and Wales on anti-social behaviour needed to be examined to see if it was appropriate for Northern Ireland" (NIO 2003). The use of anti-social behaviour orders (ASBOs) was to be given particular consideration.

Recent legislation in England and Wales includes the 1998 Crime and Disorder Act and the 2003 Anti-Social Behaviour Act, defining anti-social behaviour as "act[ing] in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not in the same household as himself". In 2003 the Government White Paper, *Respect and Responsibility – Taking a Stand Against Anti-Social Behaviour*, listed six illustrative 'activities': harassment and intimidating behaviour; behaviour that causes alarm or fear; noisy neighbours; drunken and abusive behaviour; vandalism, graffiti and other deliberate damage to property; dumping rubbish or litter. Such activities can be subject to an ASBO applied for by either local authorities or the police in consultation with each other.

ASBOs are civil injunctions issued in the magistrates' court acting in its adult jurisdiction. Hearsay evidence is admissible, professional witnesses can be used, cases are decided on the balance of probabilities and reporting restrictions are not automatic, regardless of age. ASBOs impose very specific conditions on the behaviour, movement and, occasionally, dress of the recipient. Breach of a condition is a criminal offence. While not mandatory, part of their appeal is the publicity, naming and shaming, attached to each case. Children as young as 11 have been photographed and named in national as well as local newspapers, their addresses and conditions of their ASBO published. Several local authorities have distributed leaflets containing names, photographs and conditions imposed requesting people to report breaches. Home Office guidelines accompanying the 1998 Act stated that ASBOs would be used against children in exceptional circumstances and then only when in the company of an adult. Introduced in 1999, by 2004 1,169 of 2,455 ASBOs issued in England and Wales were against children aged 10 to 17 years. Further, of the young people prosecuted for breach of ASBOs who were subsequently found guilty 50% were given a prison sentence. Within the legislation there is no explicit recognition of the child's right to freedom of association and no measures to promote children's opportunities to exercise their rights to freedom of association.

In England and Wales the main concerns have been: the broad discretion used by local authorities in bringing cases against children; the targeting of families and their children; the lack of training provided for magistrates; the 'naming and shaming' of children in the media and in local publicity campaigns; the use of long-term ASBOs in addition to sentences following conviction for criminal offences; the extension of ASBOs in length (up to 10 years) and in location (to cover the entire jurisdiction); the 'threat' made by certain local authorities that should children enter specified areas at specified times unaccompanied by an adult they will be served with an ASBO; the increased number of children committed to custody for breaching the conditions of the order. The statistical data shows that certain local authorities are more committed to applying for ASBOs than are others and in most areas there has been an exponential growth in their use. Greater Manchester, for example, issued 127 ASBOs in the first four years and 295 in the fifth year. Perhaps the most alarming statistic is the ease with which ASBOs are granted by the courts. Over five years only 98.3% of those applied for have been granted. Those authorities where ASBOs are most used are also those with the least refusals. 93% of ASBOs issued against under 21s were issued against boys or young men. Given the tensions within NI concerning the exiling of families and punishment beatings of children, the introduction of ASBOs has been controversial.

The NIO claimed that the Order followed a “period of consultation”. This was a Section 75 Equality Impact Assessment consultation which, despite age being a core element, did not include consultation with children’s NGOs or with children. The NICCY, with unanimous support from the leading children’s NGOs, challenged the proposed legislation on several grounds. In rejecting the application Justice Girvan stated, “...one wonders in practical and realistic terms what meaningful response could be obtained from children unless they were in a position to understand the legal and social issues to anti-social behaviour, the mechanisms for dealing with it. The shortcomings of the criminal law, and the effectiveness or otherwise of the English legislation and its suitability for transplant to the Northern Ireland context, and the interaction of Convention and international obligations” [sic].

Under the Order where there is no associated conviction a District Council, the PSNI or the NI Housing Executive can apply to a magistrates’ court for an ASBO to be issued. ASBOs can also be added to a conviction. Interim ASBOs can be issued prior to the determination of the full order. Breach of an ASBO constitutes a criminal offence carrying a penalty of up to 5 years’ imprisonment, a fine or both. ASBOs can be issued to a child aged 10 or over and courts have the discretion to impose reporting restrictions regarding children. There has been considerable Home Office resistance to the granting of reporting restrictions as ‘naming and shaming’ is considered to be an essential element in effectiveness of the initiative.

Throughout the children’s sector in NI the negative response to ASBOs has been unanimous. The following comments, made as part of written submissions to the consultation, are typical of the sector’s response: “this measure has the potential to demonise and further exclude vulnerable children who already find themselves on the margins of society and the communities in which they live”; “information regarding the identity, residence and activities of those subject to an order [will] be in the public domain and could lead to the breach of a right to life were paramilitaries to act on that information”. A written conclusion of a children’s sector focus group put it more directly: “supporting ASBOs and supporting paramilitary beatings are about revenge”. Regarding vulnerability, a focus group with the TMNI was particularly concerned that ASBOs could be used as a device for exclusion.

In contrast a social services’ representative commented that a “pragmatic stance was appropriate with ASBOs used only as a ‘last resort’. They are an expression of ‘muscle’ and as such have to be used with discretion, particularly if they became a ‘trigger’ for paramilitary interventions”. In discussion with PSNI representatives the “personal view” was that ASBOs were “rushed through too quickly” and would not assist the police in developing a more positive image in the minds and experiences of children and young people. While the official line from within the PSNI has been to welcome ASBOs, a more general perception is that they are a potential barrier to effective community policing.

### **Key issues**

- The introduction of ASBOs and ABCs without appropriate consultation or research into potential impact and despite significant opposition from children’s NGOs and community groups.
- The lack of consultation with respect to magistrates’ rules.
- The Section 75 requirement to consult over policies regarding implementation.
- Concerns regarding the relationship between ASBOs and paramilitary responses: punishment beatings on children; house expulsions on families.
- Confusion of civil and criminal processes: balance of probabilities; hearsay evidence; professional witnesses; reporting restrictions (England and Wales data).
- Use of ASBOs in addition to prison sentence leading to a form of ‘release under licence’ (England and Wales data).
- Expansion of child custody as a consequence of breaches of ASBO conditions (England and Wales data).

- The CRC concern regarding orders introduced by the 1998 CDA in England and Wales and extended to NI as violating the principles and provisions of the CRC.
- The need to consider the circumstances specific to NI and the undermining of the Criminal Justice Review.
- Restrictions on play and leisure space exacerbated by community harassment and by police intervention: moving on/blaming/surveillance (also see Chapter 5).
- Appropriate training for those who seek and implement ASBOs.
- Child protection issues with regard to children served with ASBOs and the impact on other children within the household.
- The need to impose reporting restrictions on all cases involving children.
- The implications of ASBOs for housing of families.
- The introduction of appropriate and adequate arrangements for monitoring the issuing and impact of ASBOs on children and their families.

### **Comment**

The evidence on the use of ASBOs in England and Wales is compelling. In their conception they confuse civil and criminal justice and procedures. Local authorities' high rate of success securing ASBOs is explained by the denial of safeguards that obtain within the criminal courts, the admission of hearsay evidence, the use of professional witnesses and guilt decided on the balance of probabilities (each denial was considered by the House of Lords to be ECHR compliant). The relatively high number of children and young people receiving ASBOs as a result of breaching often demanding conditions can be viewed as criminalisation 'through the back door'. As such it represents a significant failure in children's rights standards regarding imprisonment as a last resort. The lack of reporting restrictions seriously compromises child protection standards.

It is instructive that in its 1999 report to the UN Committee, the UK Government failed to mention the introduction of ASBOs although it listed all other civil injunctions introduced by the 1998 Crime and Disorder Act. Following their introduction in NI, State monitoring of their use, particularly in relation to punishment attacks within communities, is necessary. Also significant will be the review of their use against other dispositions such as youth and family conferencing. A further issue, illustrated by the statistical data on England and Wales, will be the evaluation of consistency of application between similar demographic areas.

Finally, legislating against behaviour and actions that are so broadly defined gives considerable discretion to magistrates. The NI children's sector is concerned that minimal attention has been given to the particular circumstances in which behaviours come to be defined and represented as 'antisocial'. A trauma counsellor stated: "the physical harm is over to a point, but emotional harm is still there. Children and their parents are in dire need of medical support. The children are accused of misbehaving, of antisocial behaviour, rather than their mental ill-health being recognised".

## **CHILDREN AS VULNERABLE WITNESSES**

*Non-discrimination; the right to life, survival and development; respect for the views of the child; preservation of identity; protection of privacy; access to appropriate information; physical and psychological recovery (Articles 19 and 37); children's rights training of judges, prosecutors and lawyers*

### **Context**

Children before the courts, whether accused or as witnesses, are vulnerable. As Naffine (1992: 96) states, "children are often passive ... unsuited to the rigours of higher court justice which presupposes [an] informed defendant, capable of invoking her rights". This section concentrates particularly on children as vulnerable witnesses (also see Chapter 2). Delays in a case coming to court can be prolonged and in NI it is not uncommon for cases to be delayed for over a year. The impact on a child and her/his family is significant. When children are

due to give evidence against an adult, delays can have serious repercussions within the family, at school and in the community. There is evidence of cases involving child witnesses being withdrawn after a long delay. Delays also impact on the 'quality' of a child's evidence and their hesitation or inconsistency under cross-examination will be used to discredit the veracity and reliability of the evidence. Children are not able to access therapeutic counselling until after the criminal process is complete. The application of special measures to children is mandatory. While video links are used as a means of child protection, some children want to give evidence in person to the court. Insufficient research has been carried out on the impact on juries of video link evidence.

In the processing of children and the cross-examination of evidence in court there is an absence of training for those involved. Quinn and Jackson (2003) found that in gathering of evidence from children, police investigators have no appropriate training. In courts the failure to institute a child friendly context regularly results in the use of inaccessible language by barristers and judges. There is also concern, particularly within the children's sector, that children can be bullied by counsel and asked non-relevant questions as disclosures are sought to discredit their evidence. In her NI research on children as vulnerable witnesses McMahon (2004) found that the prosecution and the judiciary often fail to intervene to protect the best interests of the child and she noted a tendency to reveal children's personal details not directly relevant to the proceedings.

Child witnesses are particularly vulnerable in abuse cases. The lack of availability of, and reluctance to use, expert witnesses results in problems concerning the method of disclosure, delay in disclosure and the eventual discrediting of evidence. McMahon also notes that disclosure of a child's previous sexual history is a gender issue. If such disclosure is considered to be absolutely necessary it should be subject to a pre-trial decision and not emerge during the course of the trial. Enduring the trauma of abuse followed by subjection to bullying or leading cross-examination not only has consequences for the perceived reliability of a child's evidence but also for the long-term recovery of the child. A PSNI representative commented that he "cringed" whenever he walked into a criminal court with a child witness. From that moment, he stated, the child was left to the insensitivities of a court process ill suited to his or her needs.

### **Key issues**

- Solicitors, barristers and judges should receive children's rights training with particular emphasis on child protection and the implementation of the 'best interests' principle.
- The institution of a separate list for cases involving child witnesses with such cases prioritised.
- Disclosure of medical history and notes and the close monitoring by judges of the use of information obtained under the rules of disclosure.
- The control of all information allowed to be asked of the child with particular emphasis on gender.
- Reconsideration of the use and impact of video evidence.

### **Comment**

Hodgkin and Newell (1998: 151) state that there is "an increasingly recognized need to adapt courts ... to enable children to participate" including 'innovations such as more informality in the physical design of the court and the clothing of judges and lawyers, the videotaping of evidence, sight screens, separate waiting rooms and the special preparation of child witnesses'. In England and Wales a range of measures was introduced under the 1999 Youth Justice and Criminal Evidence Act. Such measures, including examination via an intermediary, are some distance from the Lord Chief Justice's direction concerning improved, child-friendly accommodation and assisted understanding for children.

## **CHILDREN DETAINED IN CUSTODY**

*Non-discrimination; right to life; survival and development; preservation of identity; separation from parents; child's opinion and freedom of expression; thought, conscience and religion; privacy; information; protection from abuse and neglect; health; refugee children (asylum); review of placement; education; children of minorities; leisure, recreation and play; deprivation of liberty; use of restraint; separation from adults (Article 37c); inhuman and degrading treatment; rehabilitative care; administration of juvenile justice*

## Context

In its concluding observations published in October 2002 the CRC recorded its particular concerns to the Government that across the UK young children were being deprived of their liberty, that the use of custody for children was increasing, that children were being sentenced for longer and for lesser offences and that court powers had increased to give detention and training orders. It stated that “deprivation of liberty is not being used only as a measure of last resort and for the shortest appropriate period of time, in violation of article 37(b) of the Convention”. Further, the CRC severely criticised young offenders’ institutions for their prevailing conditions, inadequate protection measures, poor staff-child ratios, violence, bullying, self-harm and suicide. Rehabilitation opportunities were limited and solitary confinement was used routinely for punishment and for protection. The CRC also noted that children in some prisons were not held separately from adults. These criticisms were scathing.

A commonly held position, however, is that these criticisms do not apply to children in custody within NI. Taken as a whole and as a proportion of the overall population NI (70 per 100,000) imprisons half the number of those imprisoned in England and Wales (141 per 100,000) and just above half of those imprisoned in Scotland (129 per 100,000). It is fair to assume, although comparable figures are not available, that this lower proportionate figure is replicated for children and young people. In keeping with the CRC’s requirement for provision of disaggregated data these statistics should be published. Clearly, however, the evidence suggests that diversionary strategies and the provision of alternatives to custody have been markedly successful in NI when compared to Scotland, England and Wales.

## The Juvenile Justice Centre

Following the closures of St Patrick’s Juvenile Justice Centre in 2000 and Lisnevin Juvenile Justice Centre in 2003, there remains one Juvenile Justice Centre (JJC) serving NI. Rathgael JJC, located at Bangor, is a secure facility for the detention of 10 to 17 year-olds. From 2005 vulnerable 17 year-olds can be detained in the JJC, rather than at the Hydebank Wood Young Offenders’ Centre (YOC), if they are assessed as being at risk of bullying or self-harm and have previously been held in the JJC. According to the Northern Ireland Office, the 1996 Criminal Justice (NI) Order (CJO) and the 1998 Criminal Justice (Children) (NI) Order (CJCO) were “framed to ensure that the custody of children would be strictly limited to the most serious, violent or persistent offenders” (NIO 2004: 121). Despite assurances being given to the children’s sector in 1998, JJC Rules have yet to be reviewed.

Rathgael is a determinate JJC taking those sentenced between 6 months and 2 years, half served in custody and half under supervision in the community. There were 323 admissions in 2002, 68% of which were under the 1989 Police and Criminal Evidence (NI) Order (PACE). Under PACE when a child is charged with an offence and bail cannot be granted or no place of safety can be secured, she or he can be held in custody pending a court appearance. Consequently, PACE admissions are usually for a day or two. While annually they present a high percentage of admissions, giving an annual number of 219 in 2002, the daily average for detention under PACE is one child. However, two-thirds of those admitted under PACE transfer to remand following a court hearing. In 2002 28% of those admitted to the JJC were direct remands with 5% after sentence. Remands averaged two-thirds of the JJC’s overall population. 86% of those admitted were boys, 14% girls.

Between 1 January 2002 and 31 December 2002 there were 17 admissions to the JJC of 10 to 13 year olds, 14 via PACE and three direct remands. Eight of these were from ‘looked after’ care as were two of the remands. The Chief Inspector of Social Services noted that none of these children received custodial sentences and “while one cannot minimise the seriousness of the behaviour in which they were engaged a question is raised regarding whether different interventions might have prevented them entering a criminal justice setting”. Admissions to the JJC from May 2003 to May 2004 were: 183 under PACE, 72 direct remands and 15 committals, giving a total of 270. 32 were aged 10 to 13, 235 aged 14 to 16 and 3 aged 17. There were 250 boys and 19 girls. The highest average monthly population was 33 (May 2003), the lowest being 16 (December 2003). Further, in the first six months of 2004 the over-representation of children from ‘looked after’ care admitted to the JJC rose from 4 out of 18 (January) to 21 out of 36 (June). The over-representation of catholic children and of children with special education needs were raised within the children’s sector interviews and in focus groups.

Given that emphasis is placed on the rehabilitative function of detention in custodial settings, the Committee’s expectation is that children will receive age-appropriate education. Once removed from community-based school settings, however, the statutory responsibility for the education of the child shifts from the Department of Education to the Northern Ireland Office (NIO). In their comprehensive research and analysis of the rights of



children in custody Kilkelly et al. (2002:4) found that while “[e]ducation for children in custody should be suited to their needs and abilities and designed to prepare them for their return to society” the provision they received was “inadequately resourced especially in relation to children with learning disabilities”. As the earlier discussion of children with special education needs shows (see Chapter 3), they are over-represented in the JJC. Kilkelly et al. (ibid.) concluded that “NIO responsibility for education in the centres marginalizes children from mainstream education and can deprive teachers of vital training and support”.

Interviews conducted with statutory agency representatives raised significant issues of concern. As the figures indicate, there “is leakage from the care system”. What this amounts to is pressure on the JJC through having to take children via PACE who stay for no more than one night: “This is often a traumatic experience for the child and is difficult to manage in the Centre”. By summer 2004 this issue came to a head and, after seeking legal opinion, the JJC for the first time refused several PACE referrals. A further problem relates to children who enter the custodial setting without any relevant records: “Their records are not complete and there is a lack of assessment of their needs prior to custody. There is no evidence of a consistent approach to their needs and what follows is a fairly rudimentary assessment” (Statutory Agency Representative). The frustration being, that delays in gaining access to relevant information inhibit the development of appropriate programmes when children are in the JJC for relatively short periods.

The interviews with statutory services representatives and with volunteer mentors consistently raised the concern that children who were disruptive in care homes were too easily moved, via PACE, to the JJC. The suggestion being that they were “management problems” rather than “offenders”. A statutory agency representative concurred: “there’s a pattern emerging in some of our homes, residential homes, basically calling the police and asking [them] to take away young people that they feel they can’t control. The Juvenile Justice Centre numbers are being swelled as a consequence of that. That’s not what we should be in the business of doing”. This was put more bluntly in the summary sheet of a children’s sector focus group: “If young people [in care homes] do something wrong, they end up in court. It’s the fault of residential staff phoning the police at the drop of a hat”.

### **The Young Offenders’ Centres**

Children and young people aged 17 to 21 on remand, committal or convicted are held in the Hydebank Wood Young Offenders Centre (male) or the Hydebank Wood Young Offenders’ landing (female). Until June 2004 and during the course of this research girl children and young women were held on a landing in the high security Mourne House women’s unit in Maghaberry Prison. The 1989 Treatment of Offenders (NI) Order limits, in theory, location in young offenders’ centres (YOCs) to children and young people aged 16 to 21. 15 year-olds can be sent to YOCs if they are deemed likely to self-harm or harm others. The Secretary of State has powers to extend admission to children aged 14 or 15. In the most recent published statistics the Prison Service records that between June 2003 and May 2004 of the 304 receptions into Mourne House four were aged 14-16 and 58 aged 17-20. During the course of the research several young women aged 17 were located within Mourne House. From 2005 vulnerable 17 year-olds can be transferred to the JJC if they have been held there previously. This will not apply to those who have not been in the JJC. The Social Services Inspectorate has noted the particular vulnerability of this group in terms of the potential for serious harm or death.

Scruton and Moore (2004) found that one 17 year old was held variously on association with adult women, in strip conditions in the Special Supervision Unit (punishment block) and in a strip cell in the Maghaberry male prison hospital (healthcare centre). Extensively self harmed, hearing voices, depressed and distressed she endured 23 hours lock up in a strip cell with no integral sanitation or ablutions, no mattress, no pillow, no underwear, dressed in a quilted ‘indestructible’ gown, and an ‘indestructible’ blanket to lie on. Her period in cellular confinement was 28 days. She was assessed as suicidal, a risk to herself and to others. There was also a serious suicide attempt by another 17 year-old. The 2002 Prisons Inspectorate Report raised profound concerns regarding the holding of a 15 year-old child in Mourne House.

In June 2004 the women and girls held in Mourne House were transferred to a refurbished house within the Hydebank Wood male YOC. Without in-cell sanitation or ablutions and with no discrete healthcare facility the move was criticised by children’s NGOs, the Prisons Inspectorate and Northern Ireland Human Rights Commission research. The main concern was reflected in the recommendation made by the Prisons Inspectorate, that women should be held in a discrete facility with a dedicated management and operational structure. A further concern, however, is the mixing of girls with adult women prisoners. The practice is defended because there are so few girls and women and their total separation would result in the isolation of girls. Research for the

NIHRC revealed that holding girls in severe penal conditions is a consequence of the lack of a secure facility for the therapeutic treatment of children and young people presenting with serious mental health problems (ibid.).

Apart from the concern for the health and well being of women and girls imprisoned in a male young offenders' establishment, which includes the lack of policies for young Muslim women and young mothers, there are also concerns regarding the boys and young men. The Prisons Inspectorate has repeatedly confirmed that young offenders' institutions should provide distinctive and dedicated environments yet in Hydebank Wood the women's house accommodates all categories of women prisoners. Prior to the women's transfer (June 2002), the Prisons Inspectorate conducted a full, announced inspection. It identified over 50 examples of good practice but was critical of several significant aspects of the regime and its operation. Its concerns were: the holding of 17 year-olds and younger boys and the requirement of separate provision; the policy and practices regarding self harm and suicide; the lack of appropriate training of officers for working with children and young people. In its annual report for 2002-03 the Hydebank Wood Visiting Committee also noted a 25% increase in the centre's population which had led to "doubling up in small rooms designed for single occupancy" (para 2.4) and the "small but growing number of very seriously disturbed young men being committed to the Centre" (para 2.6). The Committee recognised particularly those "borderline" cases "where acute behavioural problems and poor mental health combine" (ibid.).

From the evidence available the YOC averages between 25 and 30 boys and two or three girls (under 18s) on any given day. Until the 2002 inspection there was no discrete policy in operation to identify and respond to their needs and requirements. In 2003 a Child Protection Policy Statement and Management Instruction Manual were introduced. While the YOC management has stated that child protection a priority the extent and quality of children's rights training is an issue raised by children's organisations. While a unit provides discrete accommodation for 16 year-olds, 17 year-olds move to the YOC mainstream following assessment. Staff who work regularly with children receive child protection training but this does not extend to all staff in the YOC who have contact with under 17s. In 2002 HM Inspectorate made its position on training clear to the NI Prison Service: "This aspect of childcare is specialist work for staff with the appropriate training, skills and knowledge base" (MH.104). Child protection procedures "fell far short of the standard that would be required for staff working with very needy and damaged children in a custodial setting" (MH.105).

The Visiting Committee did not consider that the YOC had been sufficiently "aggressive" in developing an anti-bullying policy and had not prioritised the development of the Personal Officer Scheme. The Committee also noted that vocational trainers had commented on the bullying of a child by young men during classes. Not only does this raise questions concerning the effectiveness of anti-bullying strategies but also it illustrates the problem of mixing children with young adults in a potentially hostile environment.

Despite all that has been researched and published regarding self-harm and suicide and the emergence of positive anti-suicide initiatives within the YOC, the Visiting Committee noted the "disappointing" levels of staff training in suicide awareness. Of particular concern was the use of the "observation room" in the YOC hospital for those at risk of suicide or self-harm. The 'room' was an unfurnished strip cell in which the child or young person was held for long periods dressed in a "canvas vest and shorts", observed via CCTV. The cell had been used on 57 occasions through the year accommodating 46 children and young people. This was a significant increase on the previous year. The Visiting Committee recorded that "the experience of isolation for people who are threatening suicide or self harm is inappropriate" and "urg[ed] the Prison Service to end, without any further delay, the policy of using isolation ... to manage young people identified as being at risk of suicide, or liable to self harm" (para 11.4.4). It considered the delay in responding to the "care of vulnerable people" to be a consequence of a "combination of financial considerations, fear of litigation and inertia" (para 11.4.5).

"In Rathgael you had support. Psychiatric people don't come near you in here" (Young Female, aged 17 year-old, Mourne House).

"If you're suicidal they threaten you with the punishment block. Puts your head away. They don't even look in on you. I'm surprised the whole jail hasn't killed themselves" (Young Female, aged 17 year-old, Mourne House).

"The real issue is, there are too many under 18s in the YOC and we don't have the necessary services to support them when they're released" (Statutory Services Representative).

It is regrettable that as a direct consequence of carrying out research into the imprisonment of women and girls in NI's prisons the principal researcher for the NICCY research was denied access to Hydebank Wood to conduct research for this project.

### **Secure accommodation for children in care**

In the context of children's services 'secure accommodation' is provided at Lakewood House, to restrict the liberty of the child (see also: Section 2). The restriction of liberty of children in care is governed by the 1995 Children (NI) Order (Article 44) and the 1996 Children (Secure Accommodation) Regulations (NI). A history of absconding, the likelihood of absconding and the risk of harm to the self or to others are criteria for keeping children in secure accommodation. The 2002 Justice (NI) Act introduced custody care orders. While the orders have not been introduced they would allow 10 to 13 year-olds found guilty of certain offences to be located in secure accommodation. The practice of holding children in care alongside those disposed by the courts for offending behaviour has been heavily criticised as constituting a 'volatile mix' by Goldson's, (2002) in-depth research.

### **Key issues**

- Detention as a measure of last resort and for the shortest possible time: length and use of remands; also the practice of remands via video link (JJC).
- The requirement of incorporating the best interests principle into all custodial policies, programmes and practices.
- Increasing numbers of children from care backgrounds admitted to the JJC (marked 2004).
- The use of PACE remands to the JJC.
- Development of an 'appropriate staff culture' within the JJC through new recruitment and training (see also Chapter 1).
- The securing of child protection procedures, confidential complaints mechanisms and effective anti-bullying policies.
- The holding of girls in the JJC in a predominantly male-child environment.
- The provision of gender-specific regimes and programmes for all children in custody.
- The holding of children under 18 in HWYOC and in the adult women's prison unit.
- While 17 year olds will be brought into the youth court system the legislation still provides for their custody in HWYOC.
- The requirement to hold children and young adults in separate and discrete accommodation and the provision of age-appropriate regimes and programmes.
- The implementation and effectiveness of the child protection policy, PECS vetting, child protection awareness training (HWYOC) and children's rights training (JJC and HWYOC).
- Lack of appropriate healthcare provision and secure facilities for working with children with mental health problems.
- The use of isolation within Special Supervision Units (punishment blocks) for managing children self-harming or at risk of suicide or as discipline.
- The lack of therapeutic regimes and counselling; inadequate staff training for dealing with distressed and disturbed children.

- The lack of gender specific regimes particularly regarding the identification of and provision for appropriate healthcare needs including sexual health.
- The provision of an education curriculum appropriate to the assessed needs, attainment record and school background of each child.
- The removal of responsibility for education provision in the JJC from the NIO and its integration within the established education system
- The lack of child-friendly information and the need for advocacy.
- Issues concerning lock-up and the hours spent routinely in cell in isolation.
- The need for guidance, regulation, training and monitoring of the use of restraint.
- The requirement to ensure privacy and confidentiality at all times without compromising the safety of children and young people held in custody.
- The over-representation of children with special education needs and the lack of access within the JJC or HWYOC to their statements.
- The geographical location of both the JJC and HWYOC and the difficulties experienced by families in visiting children.
- The ambiguity over planning for the commencement of custody care orders.

### **Comment**

The combination of a low age of criminal responsibility and processes that net widen into criminalisation rather than divert children mean that while NI uses custody proportionately less than Scotland, England and Wales, there is evidence that it is not always used as a ‘last resort’. The Committee has expressed its concerns on these issues alongside its criticisms of the holding of under 18s in young offenders’ settings and the use of solitary confinement for children. The research found disturbing evidence of both issues. Not only is the State, through its institutional regimes and practices, in breach of the CRC, particularly with reference to Article 40, the seriousness of the evidence gathered suggests that children were, and continue to be, put at risk of harm and possibly death. This situation is not solely the responsibility of the Prison Service, and there is evidence also that managers have attempted to improve the situation in often difficult circumstances. What is required is an alternative disposal for children suffering from serious mental health problems. It is inappropriate that some of the most vulnerable children, in need of therapeutic mental health support services, are placed in custodial settings where they are often managed in punishment cells.

## **ALTERNATIVES TO CUSTODY AND SECURE CARE**

*Separation from parents; child’s opinion; freedom of expression; access to appropriate information; parental responsibilities; protection from abuse/neglect; periodic review of placement; education; administration of juvenile justice (Article 40.4)*

### **Context**

In 2002 the CRC expressed its ‘serious concern’ that for children in conflict with the law in the UK the “situation ha[d] worsened since the consideration of the initial report” in 1995. A particular concern was that the “detention of children is used as a measure of last resort”, the clear inference being that the increase in child and youth custody reflected the UNCRC (Article 37b) was being breached. As stated above, the use of detention for children in NI, although increasing, remains considerably lower than in Scotland, England and Wales. The Youth Justice Agency for NI was established in 2003 following the 1998 Belfast Agreement and the work of the Criminal Justice Review Group. Its four services are: Community Services; Corporate Services; Custodial Services; Youth Conference Services. It recognises the “importance of taking account of international and human rights obligations”, not least the use of imprisonment for children and young people as a last resort.

As stated in the introduction, preventative strategies involving various services are reflected in a range of orders available to the courts. Attendance Centre Orders (involving community service centre offending behaviour programmes), Reparation Orders (involving reparation to the victim or the community) and Community Responsibility Orders (involving citizenship education alongside appropriate activities) are each intended as alternatives to more punitive responses. The underlying principle is to support the child in recognising and addressing offending behaviour. Attendance Orders have been criticised for inconsistency and a lack of awareness regarding the needs of the child.

Youth Conferencing is central to the 2002 Justice (Northern Ireland) Act. Within the Agency, the Youth Conferencing Service (YCS) enables the development of a plan of action involving the offender, her/his family, the police and other relevant agencies and, where possible, the victim. Such restorative approaches are designed to divert children from the criminal justice system, to encourage them to take responsibility for their actions and behaviour and to develop case-specific interventions. It was raised by several youth conference workers that it should not be considered an appropriate mechanism for dealing with sex offences. There are serious child protection and privacy issues in such cases although, as one worker noted, "there needs to be acknowledgement that young people who display sexually harmful [behaviour] are not being treated in a consistent manner by the criminal justice system and social services".

### **Key issues**

- Commitment to and resourcing of community-based projects involving inter-agency partnerships: early intervention/preventative work but not as a criminal justice option.
- The need to ensure parity and consistency while working on a case-specific basis.
- The presentation and reality of youth and family group conferencing as an alternative approach to retributive or punitive responses.
- Independent monitoring of youth conferencing to ensure compliance with CRC guidelines.

### **Comment**

The YCS notes that the linking of ASBOs to criminal convictions "could be used as an alternative to youth conferencing where the young person does not consent to youth conferencing". It considers its potential as "an additional incentive to young offenders to engage properly with youth conferencing rather than having the contents of an ASBO imposed on them". The crucial issue here is that ASBOs are the product of a more authoritarian response to dealing with children's 'antisocial' behaviour and are directly connected, in breach, to the criminal justice system. Yet youth conferencing "came about through the review of the criminal justice system which had a clearer grasp of human rights considerations than the ASBO process" (Children's NGO Representative).

## **RESTORATIVE JUSTICE**

*Separation from parents; child's opinion; freedom of expression; access to appropriate information; parental responsibilities; protection from abuse/neglect; periodic review of placement; education; administration of juvenile justice (Article 40.4)*

### **Context**

Restorative justice approaches to offending and antisocial behaviour have become influential in many states seeking structural alternatives to criminal justice interventions that have minimal impact on recidivism. They are acceptable particularly to those concerned that authoritarian interventions create a spiral of worsening behaviour matched by hardening responses. They are criticised by those who depict restorative approaches as 'soft options' that fail to acknowledge the suffering of victims. Within criminological theory and research, restorative justice is an area of considerable and continuing expansion. For societies in periods of transition, where justice processes are constructed as providing the means of acknowledging past crimes and conflicts, restorative approaches take on a more profound meaning. This is particularly the case where the criminal justice system, the police and the prisons are central to the political process of transformation. As institutions linked directly to previous social and

political conflict their capacity not only to change but to win the confidence of communities is a key aspect of transition. It is in this context that restorative justice approaches have developed in NI.

Community-based restorative justice projects - such as Greater Shankill Alternatives, East Belfast Alternatives and the 16 groups across NI that comprise Community Restorative Justice, Northern Ireland - have emerged as significant community development projects negotiating difficult issues, most notably paramilitary punishment beatings. The projects aim to challenge and reduce offending and harmful behaviour in communities, develop opportunities for the reconciliation of offenders and victims and encourage 'safe' environments. They recognise that criminal justice responses have been unsuccessful in reducing crime and that a lack of trust prevails within communities regarding statutory agencies' provision and interventions. The NICCY research shows that there is considerable tension between community-based restorative justice projects and statutory providers although some progress has been made towards establishing a working protocol towards resolving that tension. Working towards an acceptance of community-based projects, funded and supported by the state as alternatives to statutory providers, is a clear illustration of 'transition'. Their expansion and consolidation reflect the support and trust of economically disadvantaged and marginalised communities. The projects also demonstrate the need within communities for the effective engagement of paramilitary groups if the issue of punishment attacks, particularly on children and young people, is to be addressed.

Family Group Conferencing has been developed by NGOs, in particular Barnardo's, in association with statutory agencies. The Diamond House project, based in Moy, has developed a model for restorative justice in schools, particularly directed towards disruptive or violent behaviour and bullying, and has used family group conferencing in the context of children 'at risk'. The Police Service of Northern Ireland (PSNI) has initiated and developed restorative conferencing in situations where an offence has been admitted and the police decide that it offers an appropriate alternative to prosecution. It is identified as 'complementing' the criminal justice process and aims to involve the offender, the victim and the community.

### **Key issues**

- The development of formal restorative approaches involving statutory agencies, YJA and PSNI as real alternatives to criminal justice disposals.
- The need to develop children's rights training for all involved in offering restorative programmes via statutory provision or community-based projects.
- Community-based restorative justice, its links with paramilitaries and the tension with formal approaches; issues of accountability and trust.
- Community-based projects and their negotiating potential with paramilitaries regarding punishment beatings and exclusions.
- The development of an effective strategy for resolving the impasse between community-based projects and statutory agencies and the need to allocate necessary and accountable funding to projects.

### **Comment**

The tension between community-based restorative justice schemes and State agencies is well illustrated by the interviews with both parties. A representative of the former stated that there would not be "a problem with centralised NIO funding to aid reintegration as long as the protocols were in place to retain our independence and it didn't interfere with our relationship with the community ... Agencies talk about community partnerships but what they mean is they all throw a few pound in and start another community project which is isolated from the workings of the community and yet is supposed to represent the community's views". In contrast a social services representative stated that for community-based programmes to gain credibility and legitimacy a "demonstration of trust" is required. They "have to be open to external scrutiny and must establish sets of standards and be open to inspection to establish whether or not they are working to those standards". The common line within State agencies was that community-based restorative justice programmes should be open, in all situations, to monitoring and review with their credibility determined by evidence-based analysis. The Criminal Justice Review recognised the sensitivities associated with requiring

detailed and specific information on alternative, community-based programmes involving often-difficult negotiation with paramilitary groups.

The stated objectives of Youth Justice Agency restorative justice approaches and those to have emerged within communities are similar. They are concerned primarily with diversion: from the criminal justice system and from punishment attacks. To that end they represent measures to prevent children from losing their liberty and/or from receiving physical punishments outside the law. Within Article 40 is the expectation that States will take measures without resort to judicial proceedings and will also establish a range of dispositions as alternatives to custody. While restorative justice initiatives, including family group and youth conferencing, constitute a significant development in alternative provision, it is essential that they are offered as a real alternative and not as part of a broader punitive process. In this context the measures taken should be CRC compliant in terms of participation, consultation and information with human rights respected and legal safeguards in place. The expectation is that children should experience and participate in the process in a manner appropriate to their well-being and proportionate to their circumstances and the offence. Whether State or community-based, programmes should not be offered to children under threat of other, more punitive options and all projects should demonstrate CRC compliance, a regard for due process and mechanisms for child protection.

## **COMMUNITY JUSTICE**

*Right to life, survival and development; freedom of association and peaceful assembly; protection of privacy; subjection to torture or cruel, inhuman or degrading treatment or punishment;*

### **Context**

Smyth et al. (2004) emphasise that the relationship between young people and paramilitaries is complex. They illustrate well the contradiction felt by many children in their contact with paramilitaries within their areas: “While some young people expressed admiration for paramilitaries from their own community, or said that paramilitaries were necessary for the protection of their community’ they also ‘criticised them for the brutality of their punishment attacks and for their harassment of children and young people” (ibid.: 28). Paramilitaries were often perceived as “cool”, enjoying the status of “local heroes and role models”, yet young people also considered that the “brutality of such attacks outweighed the seriousness of the crime they were meant to punish” and this “undermined the legitimacy of the paramilitaries’ authority” (ibid.: 85).

Paramilitary interventions in the lives of children extend beyond the administration of punishments to include the control of children’s movements within communities. In her unique study of the experiences of children living in interface areas, Leonard (2004) found that, with few options open to them, boys in particular hung around street corners in their community, drinking. Complaints from local people resulted in “children moving around the streets being chased from one location to another by paramilitary groups” (ibid.: 41). As Smyth et al. (2004: 28) record, paramilitaries often “enforc[ed] nightly curfews for people under a certain age”. This was bitterly resented by children as were non-paramilitary vigilante groups which, according to children, imposed “unreasonable and over-strict rules”. Leonard, (ibid.) notes that many children considered paramilitaries to be “gangsters”, who “used to be joy-riders themselves”, now “telling everybody what they can and can’t do”.

The most common description of punishment beatings administered to children and young people by paramilitaries of whatever organisation was ‘barbaric’. Perhaps the greatest concern, other than the beatings and shootings, was the widespread belief within communities that physical punishments worked and were supported by non-affiliated community members. In Derry/Londonderry and in Belfast, community workers gave accounts consistent with the following in which a woman in her seventies made a direct request to a community worker for ‘community justice’: “I’m not a [organisation] supporter, son, but the wee fella down the street has me tortured. Could you get him shot for me? I don’t want him shot too hard, I just want him shot so that he goes away”. The community worker remarked that “they’re all moderates, none of them are hard-liners. It really is crazy double standards”. In these cases the workers acknowledged that the children’s behaviour was unacceptable and that physical punishment was widely seen as an appropriate response.

### **Key issues**

- Punishment beatings and exiling and the impact on the health and welfare of children.
- Recruitment of children by paramilitaries.

- The use of children by the PSNI for low-level intelligence gathering.
- Establishing precautionary measures regarding the issuing of ASBOs and their potential for influencing punishment beatings or exiling.

### **Comment**

Paramilitaries' violence against children and young people has been endemic within both Loyalist and Nationalist communities. While there is evidence that some paramilitary groups have accepted there needs to be an end to the victimisation of children, there are others that refuse to negotiate protocols and seek alternatives. In terms of Article 37 (a) of the CRC, paramilitaries have enjoyed impunity and the State has failed to investigate and prosecute perpetrators. Further, the State has neglected to ensure the psychological recovery and protection of children as survivors of this brutality. The 'naming and shaming' of children, often through proclamations written on gable end walls, damages children's reputations and leaves them in fear of further attack and possible reprisals. Finally, it is appropriate that children punished and displaced by paramilitaries should be viewed as the casualties of armed conflict (Article 38) and their physical and psychological recovery and social reintegration (Article 39) be secured through the intervention of statutory agencies. The State should report on the extent of this issue and on the special care programmes it has established to respond to this specific need.

## **TRAUMA AND CONFLICT**

*Survival and development; protection from abuse/neglect; health (Article 24.1;3); appropriate mental health care particularly post trauma; armed conflicts (Article 38.4); rehabilitative care; recovery and reintegration through truth and acknowledgement*

### **Context**

A combination of the ceasefires and the Belfast Agreement, reflected in the commonly-used phrase 'peace process', has promoted the view that the 'conflict' has ended and NI has entered a 'post-conflict' phase. Whatever the advances made since 1995, it is important to emphasise that transition from long-term and deep-rooted conflict is itself a long and complex process. However sporadic and opportunist, conflict continues within and between communities. The loyalist feud, for example, led to the displacement of numerous families and their children and interface violence occasionally flares, particularly around parades. Beyond these issues, however, is the legacy of thirty years of serious conflict and its impact on children who are now parents. In this context is the significant issue of the right to truth and to acknowledgement as part of the process of recovery.

Smyth et al. (2004: 96) concentrated their research on areas that were "relatively more exposed to the Troubles than average" and illustrate their findings as an "iceberg". Relatively "infrequent effects such as severe traumatisation tend to attract more attention from the media, researchers and organisations" concerned with the impact of the conflict on children's lives. These include: victim of punishment attacks, witness to killing, shooting or punishment attack, being injured, rioting, loss of home, school-related sectarian violence and bullying. Other, less dramatic but significant experiences, however, are not always apparent and often unaddressed: "chronic anger, lack of trust in adults, isolation and feelings of marginalisation, bitterness at other community or at the police; distrust of all authority; feelings of marginalisation or lack of contact with or knowledge of 'other' community" (ibid.: 99). The researchers note that vulnerability "is not only experienced by individuals, but also by whole families and communities" and that "adults on whom children could ordinarily turn to for support or protection are more often than not exposed to the same traumatic events that the children are, and are themselves traumatised and sometimes incapacitated..." (ibid.: 109).

Interviews with community-based workers raised the problems faced by children and young people during the conflict which remain unresolved: house arrests involving a heavy military presence; forced house entry during the night by the police; parents imprisoned, 'on the run' or killed; witnessing violent confrontations, including death, in communities. "House raids are over to a point and the physical harm is over; but the emotional harm is there and it's not recognised" (Community-based Counsellor). Those interviewed felt that research studies had omitted to give sufficient priority to the impact of house raids in particular on children and their attainment. A typical response was: "As far as we are concerned no allowances were made for them at school".

Community workers in the most economically disadvantaged communities emphasised the significance of the "emotional effects of the conflict". They stressed the "dire need" for appropriate medical intervention to



support children and a reconsideration of how children in conflict with the law are defined and criminalised. A children's caseworker identified the issue graphically: "when you're raising mental health care for this generation, post-conflict, we're dealing with a huge age range of people who've been the bereaved, the injured, been the children who were killed. And another generation who are the children of the children ...the impact of the trauma, which they're calling trans-generational trauma ...it's affecting children's education, their mental health and their ability to participate in society". She stated that the cases dealt with by her organisation showed that "the agencies that are dealing with people have no idea what the effects of trauma are, they don't put it into the equation when children are displaying different symptoms, whether they are in education, the criminal justice system or whatever. The effects of trauma don't even factor there ... and the issue of the conflict doesn't even raise itself".

As Smyth et al. (2004: 43) noted in their study, those children deeply affected by the conflict had "difficulties in concentration and the aggressive behaviour that followed their traumatisation was misinterpreted by others, being seen as deliberately disruptive behaviour" posing "particular problems in school, where teachers did not always seem aware of the pupil's history or the difficulties faced by them, nor did they appear to be equipped to deal with such difficulties". What is clear from the existing and current research for NICCY is the serious deficit in child and adolescent mental health services. While no case research has been developed into suicides of children and young people, particularly in North Belfast, the relationship between trauma due to the conflict, to paramilitary threats and to forced exiling and economic marginalisation and social exclusion requires serious consideration. These are the contexts in which hopelessness, helplessness and despair accumulate in the minds of children who self harm. As one young woman stated, when asked why she self-harmed, "it's my only way of coping ...and I release the pain as well".

Issues arising from the conflict also emerged in the NICCY schools research. For example, 28 out of 710 children (5%) felt that their movements were restricted because of their religion. A further 4% raised the issue of paramilitary activity when asked to depict images and pictures that came to mind when they heard the words 'police' and 'crime'. Paramilitary activity was of particular concern to young people aged 15-16 years (61%). This is unsurprising given that it is the target age for recruitment into paramilitary organisations. Yet young children from the age of six demonstrated a clear awareness of paramilitary activity in their areas. For example, a six year old girl drew a vivid stick drawing of a punishment beating and another young boy drew a picture of a person being dragged from a car and beaten by paramilitaries.

### **Key issues**

- The longer term impact of the conflict on children, their parents and extended families including accessing the truth and securing acknowledgement.
- The consequences for children of the recent feuds, violence and displacements.
- Paramilitary allegiances and intra-community conflict in schools.
- Children as witnesses to violence and participants in interface violence.
- The need to address the impact of trauma, both primary and transgenerational, on children's behaviour, attainment and participation in school and the community.
- Research into self-harm and suicide in the context of their experiences of the conflict and the lack of opportunities.
- Resourcing of adequate and appropriate mental health services for children and young people.

### **Comment**

In the NICCY schools research, 11% of children and young people expressed a desire for peace. This desire increased in significance as children grew older. The message from these children was plain and direct:

"I would like people to live where they would like to and for the protestants and fenians to live together"  
(Girl, aged 16, MLD).

"Where I live there are people with a different religion who also live near and people give them a hard time. I wish there was no religion so that everyone could get on and there would be no fighting" (Boy, aged 13).

While these desires were common in the research interviews, the view from interface areas is bleak, indicating a resignation among children that differences have solidified. In her research report Leonard (2004: 105) notes, "while the situation was better [now] in some ways as there were less bombings and shootings", some children "felt there was more hatred than in the past". There was a pervasive "sense of inevitability and permanence about the conflict" and all were "pessimistic about the possibility for conflict resolution in Northern Ireland" (ibid.). In their lives and everyday experiences "peace remained a distant vision" (ibid.: 107).

It is often stated that NI is a society 'emerging from conflict' going through a long process of 'transition'. The sections in this Chapter on community justice and on violence against children, however, demonstrate that for many children the notions of 'post-conflict' or 'transition' are distant possibilities as sectarianism entrenches hatred for the 'other' physically as well as psychologically and culturally. This is a particularly harsh reality in interface locations. In these contexts the State has an obligation to investigate thoroughly all child deaths and, given the particular situation in NI, to demonstrate the measures it proposes to adopt to monitor and address the growing issue of self harm among boys and girls and to prevent suicide (Article 6).

## **YOUNG PEOPLE AND PARADES**

*Non-discrimination; right to life, survival and development; preservation of identity; freedom of expression; freedom of association and peaceful assembly*

### **Context**

The Parades Commission is an independent quasi-judicial body whose powers and duties are laid down in the 1998 Public Processions (Northern Ireland) Act. The Commission notes that it "operates from the fundamental premise that the rights to freedom of assembly (i.e. to parade) and to freedom of expression (i.e. to protest) are important rights to be enjoyed equally by all". These rights are "not absolute" and have to be balanced against "the rights of people living and working in the area of a parade or in the area of a parade protest". In regulating parades the Commission places obligations on organisers regarding the route, conduct, music, flags and other regalia. It has powers to ban parades and to exclude individuals or groups who caused trouble. The total number of parades, year on year has remained relatively consistent over the three years prior to 2004: 2,808 in 2001/02; 3,056 in 2002/03; 2,978 in 2003/04. In each year there were 23, 3 and 9 illegal parades. In 2003/04 of the 2,978 parades 2,361 were Loyalist and 172 were Nationalist (there were 445 parades classified as 'other'). Over a three year period Nationalist parades accounted for approximately 5% of all parades. In 2003/04, 22 parades were rerouted (all Loyalist), 103 had conditions imposed (99 of which were Loyalist) and 32 parades resulted in disorder (29 Loyalist). There has been a steady reduction in the number of parades classified by the Commission as 'contentious'. The Commission reports that over a quarter of all parades considered 'contentious' proceed without any restrictions and approximately 96% of all parades proceed without any restrictions. Route restrictions, to avoid direct confrontation with local communities, are the most common condition placed on organisers.

Parades are a significant aspect of children's experiences of sectarianism in high conflict working class areas. In their study of the experiences and perspectives of 3 to 11 year olds, Connolly and Healy (2004) note that 3 to 4 year olds "living under the shadow of sectarian violence" already tended to prefer events or symbols associated with their culture and a minority had begun to re-enact violent incidents through play. By 7 to 8 years old they were aware of the distinction between Protestant and Catholic communities and some were routinely involved in interface violence including stone-throwing and verbal abuse. They exhibited strong negative attitudes towards the other community and the majority were aware of local paramilitary groups, with some identifying with the groups. Leonard (2004: 44) found that 14 year olds often found rioting exciting and a relief from boredom, but also "a mechanism for demonstrating religious/sectarian identity ... a way of emphasising the internal cohesiveness of the group". It is in this context, as Smyth et al. (2004: 104) note, that children are recruited into paramilitary organisations.

### **Key issues**

- Community identity, territoriality and access to safe space.

- Children's expressed desire for peace and the lessening of the impact of religion/flags/bonfires.
- The threat to life, movement and education as consequences of curfews imposed on specific locations

### **Comment**

While the Commission records a low number of contentious parades there have been particular flashpoints, the most contentious being Garvaghy Road in Portadown and the Tour of the North in North Belfast. A North Belfast community worker commented that "allowing Loyalist parades right through places where Nationalists live, given the history of conflict, can only generate bitterness and violence. Children end up corralled in their own areas for protection". Parades are defended as part of a right of cultural expression, religious identity and freedom of movement. In areas of high conflict, however, they pose a significant threat to the right to life, freedom of movement and access to education. They also compromise the health and welfare of children.

## **CHILDREN OF PRISONERS AND EX-PRISONERS**

*Discrimination on the basis of parents' status, activities, expressed opinions or beliefs; separation from parents, right to parental care and direct contact; family life, parental responsibilities and family counselling; protection from abuse/neglect; freedom of expression/family life; protection of privacy; standard of living; children in armed conflicts*

### **Context**

In her study of the experiences and needs of the children of Loyalist political ex-prisoners Spence (2002: 20-21) distinguishes between psychological, social and physical effects. Children suffered depression, anxiety and panic attacks and reported being "bombarded by a variety of strong feelings, which left them more confused and worried". Typically these included: "loss, sadness, guilt, fear, anger, helplessness and loneliness". Children, their mothers and teachers, "noted changes in their [children's] normal behaviour". Most significant among these changes were an increased propensity to violence and "withdrawal from social interaction and the company of friends". Often they lacked trust in others and the capacity to build new relationships. Physical effects included: "sleepless nights, weight loss or gain, headaches, stomach upset, recurring illness and bedwetting". This range of serious consequences for the children of political prisoners could not be reduced simply to the imprisonment of one parent, usually the father. It has to be interpreted within the social, political and material context of that imprisonment.

For many children the reality of witnessing armed police raids, often in the middle of the night, resulting in the arrest of a parent and a full search of the house and personal possessions, was traumatic. Their home as a secure, safe and private place was lost forever. What followed was an attempt to adjust to the loss of a parent and the "beginning of their isolation and neglect [by statutory agencies]" (ibid.: 28). As is often the case with bereavement, children were not told the full story as families struggled to cope with the prospect of long-term imprisonment. Jamieson and Grounds (2002: 40), in their study of the effects of long-term imprisonment on Republican prisoners and their families, note that most children of politically motivated prisoners knew of their imprisonment, but it was not clear whether the children "had been told of the offences for which their absent parents had been imprisoned". As they state, "studies of prisoners' children emphasise that withholding the truth has potentially harmful effects on the child later on, for example, if the child is given a partial or distorted account of the circumstances at school, from other adults, or from the media". While poverty, meeting basic needs such as housing, food and clothing, was a material consequence, the emotional struggle involved attempts to maintain meaningful family contact in the inhibiting and punitive situation of prison visits.

Difficulties in maintaining positive and fulfilling relationships between children and their imprisoned parents extended into the period of adjustment on their release as "relationships had to be healed" (ibid.: 53). Anticipating release, the "assumption was that when they were reunited everything would fall into place, and everyone would be satisfied and happy. This was too often not the case". As Jamieson and Grounds (2002: 39) note, "a number of the ex-prisoners ... reported that they previously had, or were continuing to have, difficulties in their relationships with them [their children]". They comment that their findings were consistent with those of McEvoy et al. (1999) who recorded that "63% of prisoners' partners reported that their children were experiencing problems relating to their parents' imprisonment (e.g. disturbed behaviour, anger, depression)" (ibid.). In making the necessary adjustments "to cope" families often "have to 'close ranks' to cover the gaps (practical, financial and emotional) left by the prisoner's absence from family life" and "changes are likely to be more marked for those who were younger at the time of imprisonment and for those who had more traumatic

experiences” (ibid.: 41). While Jamieson and Grounds make this statement with regard to prisoners, the same could be argued for their children.

Depending on the circumstances of imprisonment, politically affiliated prisoners were ascribed clearly defined statuses within their communities. This ascription had, and continues to have, consequences for their families, especially their children. Spence (2002: 61) found that a number of children in her study “were made to feel that they had ‘done something’ or been guilty of something themselves”. There was also a marked difference “between the treatment of ex-prisoners children in urban and rural settings” with all participants from rural locations believing “that there was less stigma suffered in urban areas”. Further, was the feeling among children that they were not responded to as “individuals with their own views and opinions” but labelled “ex-prisoner’s child” (ibid.: 63). In this they felt defined by the actions or reputation of their parent. How they presented themselves to others created “vulnerability” in social situations where they did not want to be defined by their family history and also did not want to appear to be “bragging”. This also created tensions around personal safety. Jamieson and Grounds (ibid.: 60) conclude that while the “broader community ... must be informed and positively influenced to develop empathy and understanding of the needs of ex-prisoners and their families” the “quieter and more distant voices ... have been those of the children, whose own problems of lost parenting and family disruption also need to be recognised”.

The issue of prisoners’ children is not confined to political prisoners. While that is a specific and significant consequence of the conflict and continues, in terms of adapting to the early release of many prisoners and in terms of those prisoners held on separation in Maghaberry Prison, there are many children whose parents are in prison for non-conflict related offences. It is instructive that there are no available records in NI on the numbers of children routinely affected by the imprisonment of a parent. Given the number of prisoners held in prison at any one time, and those that pass through prison over a twenty year period, it is reasonable to assume that the overall number of children affected at some point in their childhood by the imprisonment of one or more parent would be in tens of thousands. They experience many of the same problems as those listed above, particularly: a sense of loss; lack of knowledge and/or understanding; material deprivation; emotional suffering; unstable and distanced relationships; stigmatisation and labelling; adapting to release and fear of further loss. A further issue, given that there are only three prisons in NI, relates to access, in terms of geography and cost, for families travelling long distances.

While few women are imprisoned at any one time in NI, the research demonstrates that many have several children, including the very small number of long-termers. Their experiences illustrate the problems faced by parents, particularly mothers, in prison. Scraton and Moore (2004: 52) quote a long-term prisoner: “My only priority in my day is contacting my children. There’s nothing worse when a day goes by and you don’t speak to them ... than going to bed that night knowing you’ve not spoke to them. If it’s a very limited access to the phones ... and you know it’ll be two minutes, that’s no good especially if there’s a problem at home and they want to talk about it ... maintaining contact and bonds that’s my top priority”. Another long-term prisoner felt that the “jail could do a lot more to maintain family ties”. Open days had been stopped in the women’s prison: “Coming in for families is important. If families see the place, see you’re ok, it settles them. They see where you’re living and how you interact with other people ... they don’t get that from visits ... and it’s not as bad as it seemed to them” (ibid.: 54).

Scraton and Moore’s research clearly illustrates that for all mothers their primary concern is the health and welfare of their children and the fear of losing their bond with them. Typical comments were, “I have felt like giving up numerous times. It’s only the children that gives me something to go on for”; “I only want to get through the day – one day less ‘til I get back to my children”; “It was just too much being locked away from my three kids... they think I’m in hospital having a baby” [she was pregnant]; “I have four kids and four grand-kids and I miss them all so much. I keep thinking to myself that I’ll never see mine again. I love them all so much too. Every day is like a nightmare” (ibid.: 52-54).

Focus groups conducted with paid workers and volunteers who work with the children of prisoners raised several issues of concern consistent with the research. The experience of being stigmatised was profound: “it starts with difficulties and fear in the school playground but as the child gets older it becomes more aggressive”. Particular problems faced by children of prisoners “are not understood or addressed in school” and often their behaviour “puts them in the detention unit and on a predetermined course”. Families “are left high and dry with no natural support mechanism, fearing the services provided”. Children “are the silent victims” and there has been “little or no commitment to identifying their needs and those of the family” yet “at the heart of working towards a reduction in recidivism is, in part, keeping families connected”. Regarding accessing mainstream services, participants in the focus groups were concerned about targeting children thereby

contributing further to their labelling. It was felt that creative ways had to be found of addressing service provision without identifying children.

### **Key issues**

- Children of ex-combatants and the impact of the politics of imprisonment and release; children's association within communities with the status of parents' imprisonment.
- Punishment attacks on/exiling of prisoners' families.
- Children of non-political prisoners: establishment of child-centred, flexible visits; separate partner visits; access to mainstream services; appropriate support without identification/stigma; employment and employability of young people; children's services planning.
- Inadequate welfare support for families; poverty as a consequence of imprisonment.
- Gender issues regarding the imprisonment of mothers; distinct visiting needs; recent adverse publicity concerning women lifers and the impact on their children.
- Children born in prison and their separation from their mothers.
- Greater family involvement with the sentence and appropriate, family-based programmes of resettlement; 'safe' return to community/integration.
- Language and cultural issues for children visiting their parents classified as non-nationals.
- Problems of information and access associated with visiting parents in custody in England

### **Comment**

Innovative provision developed by NIACRO at Magilligan Prison's visitors' centre has centred on the initiation of child-centred visits. The feedback on the programme, involving relatively small numbers of children, has been positive and has received the support of the NI Prison Service and the NIO. It operates, however, subject to prison staff goodwill and availability. The Barnardo's parenting education and support programmes have developed at Magilligan and Maghaberry male prisons and for women held in Hydebank Wood. They provide "the first opportunity to look at the impact of prisoners' offending behaviour on their children and consider the available opportunities to lessen the impact of their sentence". The focus groups agreed that universal, appropriate services should be made available, linked to children's services planning, particularly addressing those children's needs who are identified as being at risk of offending. Child centred visits and the assisted visits scheme, at the heart of effective provision, had been delayed by "more and more obstacles and red tape". The common position was that such visits "should be consistent, connected to resettlement and form an essential element of the children's strategy". In this process, "children have a view and should be consulted' and 'they should be fully informed about prison and what happens there". In the short term, "there needs to be a more respectful and dignified way of handling visits, they should be more family friendly". The overall conclusion was that there should be "greater family involvement with the sentence" including "knowing that their fathers are progressing and sitting in on resettlement interviews".

Support services for prisoners and their families' pre and post release is an important aspect of recovery from the disruption to family relationships. As Smyth (1998: 35) concludes, '[l]ong periods of readjustment, with the concomitant stresses on family relationships, the stigma of ex-prisoner status and discrimination against ex-prisoners means that children may have to live with the effects of the imprisonment of a parent for much longer than the term served in jail...' This was confirmed in interviews with ex-prisoners groups: "the impact of a criminal record on a family can't be under-estimated. We've established that unemployment among the children of ex-prisoners is 87.5%. The stigma is passed on".

## YOUNG PEOPLE AS VICTIMS OF CRIME/VIOLENCE

*Right to life, survival and development; freedom of thought, conscience and religion; freedom of association; protection from punishment; abuse and neglect (art.19); armed conflicts (art.38); psychological recovery and social reintegration (art.39)*

### **Context**

Although official statistics are rarely a reliable indicator of the extent of crime or violence they are a useful indicator of the distribution of reported offences. Bunting (2003: 11-12) notes that of the recorded 4,997 offences against children under 17, 4,211 were offences against the person. Of these, 79% were “classified as minor assaults” and 15% “as serious assaults, manslaughter or murder”. Sexual offences, probably the most under-reported category, amounted to 786. Depending on the self-report studies or rape crisis statistics used, it fair to assume that the hidden figure of sexual assault is between 10 and 13 times the recorded figure and this would not include the repeat or multiple victimisation of one child. Considering the number of child deaths in NI for 2001, Bunting (2003: 15) notes that of the 55 deaths of children aged 1 to 19 in the category of “external causes of morbidity and mortality a majority ... were related to transport accidents” but six “were the result of assault” and 11 (20%) “were classified as intentional self-harm”.

Victimisation rates in NI demonstrate that men are more likely than women to be victims of violent crime and younger people are most likely to be victims of violent offences (French et al., 2001). The exception is domestic violence in which women and children are the most vulnerable. As successive self-report studies have demonstrated, assault within households is the most common use of violence and the most under-reported. French et al. (2001: 17) note that “high proportions” of young women in NI claimed to be “very worried” about physical attack (32%) and racial or sectarian attack (19%). Data focusing on children’s experiences of being victims of crime or the fear of crime is not routinely recorded. The Northern Ireland Crime Survey, for example, categorises a ‘young person’ as being aged 16 to 29.

It is important to emphasise the relationship between poverty, social exclusion and small scale ‘criminal’ activity. A focus group of young people who had recently experienced the criminal justice system, several of whom had been in the JJC, gave clear accounts of the struggles they faced on the margins. A young mother stated “when you’re desperate nowhere will take you because you’ll get put out for fighting or smoking blow. When I was in [respite hostel] I ran away and they didn’t even phone my mammy and let her know. I ended up on the streets, drinking heavily, doing drugs and sleeping in a subway. I felt worthless. Maybe this was what I was supposed to be. I was suicidal, so low. Soon after I started to self-harm. They put me in this hostel in Downpatrick and I had all this anger inside me so I did it to release it. I was getting used to the pain so I was getting deeper cuts. You don’t think in the long run where you’ll end up. You feel like you’ll be like that for ever”.

A young man talked of his experiences of violence: “I used to wait for my Da, like, and he’d take off on us for nothing ... belt, fists, anything he could use. I was bullied all through my childhood. There were always fights in the house, like. And then I got it at school. You were going through enough at home, you didn’t expect it in school, like. Then it was on the street with the peelers. You’ve got the attitude problem. You feel like a hurt animal, just waiting to be released”. The young people shared their experiences and talked of always having to negotiate the violence in their lives. Much of it was within the family and at school, the two places that many other children experience as safe havens. They were careful where they walked and constantly feared assault: “You shouldn’t be here you Fenian bastard’ ... then they started spitting on her [girl-friend] on the street. Then social services turn round and blamed her”. Another young parent stated: “You’ve got to forget about your past, when you’ve got kids you don’t want them to live what you’ve lived”.

Street violence is most common and most severe in interface areas. In her research with children in both Loyalist and Nationalist areas of North Belfast, where 20% of all deaths in the conflict have occurred, Leonard (2004: 7) notes that the “area has experienced the mass movement of people, open street rioting, clashes with security forces, shootings and intimidation”. The complexity of “territory” is such that the area “contains around 24 interfaces” and “eight of the official Belfast peace lines”. Asked about the positive aspects of life in the area the 14 year olds specified “strong ties, family, friends and neighbours”. But the “amount of space devoted to highlighting positive aspects was insignificant” when contrasted to the negative: the area’s appearance; lack of amenities; availability of alcohol and drugs; joy-riding; paramilitaries; rioting.

Leonard (ibid.: 76) found that the “[f]ear of verbal and physical intimidation and violence impacted on the movements of both groups” with places “outside the children’s immediate locality ... labelled as spaces of risk and fear”. The levels of violence endured by children in and around their schools were extreme, including attacks on buses and vandalising or torching teachers’ cars. Children attended school behind locked gates monitored by security guards. They could not use playgrounds for fear of being stoned. Verbal abuse and spitting were everyday occurrences as they made their way home. The in-depth interviews with children showed that “many young people curtailed their movements because of fear of physical and verbal intimidation by the other main religious community” and many “recounted incidents where they had been direct victims of physical and verbal abuse” (ibid.: 133).

The most graphic and widely publicised example of sectarian violence and its impact on children occurred in 2001 around Holy Cross School, North Belfast. Following an increase in tensions within the area, caused primarily by the Loyalist feud and the renewed violence towards the Nationalist community initiated by Loyalist paramilitaries, tensions were high. On 20 June a major disturbance took place as children from the Holy Cross Primary School were leaving for home. The police recorded further rioting during the following day. Shots were fired and 10 blast bombs and 60 petrol bombs were thrown. As a consequence the police redirected children and their parents from walking their normal route to school, stating that they could not guarantee their safety. After a troubled summer the police reviewed their initial decision and made plans to allow children and their parents to take their normal route to Holy Cross. Access along the road was to be protected by barriers and an ‘anti-spit’ screen. In erecting the protection the army and police were attacked by Loyalists. As the protest gathered momentum children, accompanied by their parents, walked along the road through the corridor made by the barriers. They were subjected to verbal abuse and violent threats.

Between September and October the protests continued. The extreme levels of abuse and violence directed against children under 11 years of age and their parents had a major impact on the children, evidenced by the written statements of parents. They record the severe distress and suffering endured by young children who feared for their lives, the death threats received by parents and their enforced displacement from the area. Human rights organisations raised the issue of the failure by the police to adequately protect children, to apply the best interests principle and to secure the children’s right to education. Although the initial application for judicial review was lost it is undergoing appeal.

Intra community violence has also impacted on children. Leonard (ibid.) found that the forced movement of families from the Shankill area to North Belfast was particularly significant in children’s lives. Some idea of the extent of displacement can be gained from what was considered to be the “largest forced movement of households since the 1970s” between August and October 2000 (Inter-agency Working Group on Displaced Families). Within the 263 families were 269 children, 178 of whom were 11 years old or under. The Working Group noted that the “figures [seeking relocation from the Housing Executive] do not present the whole picture” as “many families are not living at home and are dispersed throughout the area because of death threats made on their lives. We estimate that approximately 1,000 individuals are directly affected by this situation”. Children’s experiences of these enforced moves included direct violence and assaults, their houses ransacked or burnt and furniture damaged, destroyed or stolen. While agencies provided temporary accommodation, emergency payments and health-care including ‘trauma counselling’ this was on a short-term basis.

Recently there has been a marked increase in racist attacks including intimidation, assault and arson. While media attention has tended to focus on incidents against black and Chinese families in Belfast, attacks have occurred across NI and include migrant workers from Europe and asylum seekers. The NICCY research with Portuguese children revealed their familiarity with racist attacks. All children were aware of or had experienced windows being broken, verbal abuse, stones thrown at them and being told to ‘go back to your own country’. The PSNI statistics show an increase in ‘racial incidents’ from 185 in 2001/02 to 453 in 2003/04. According to a police representative the PSNI has adopted a “zero tolerance policy towards hate crime both within the organisation and outside it”. NICCY research with the Portuguese and Traveller communities, however, demonstrates clearly that there is under-reporting of racist attacks because “fear and suspicion of authorities in general leads to under-reporting...” (Community Worker). This was confirmed by a focus group held with TMNI. Travellers often did not report incidents to the police because they would have left themselves vulnerable to investigation if the police arrived on their site.

As displayed in the images below, children within our schools sample were also aware of racial bullying within their schools and communities and discrimination on the grounds of sexuality and ethnicity:



### Key issues

- Recording and responding to children as victims of property crime.
- Establishing support networks for children to disclose violence within the family and within the community.
- Communities as 'unsafe' places for children: fear of crime and violence as debilitating as crime itself.
- Need for child-centred community safety strategies based on consultation with children and young people.
- Vulnerabilities and restrictions on movement and dress.
- Age appropriate mental health and welfare provision to aid the recovery of children as victims or survivors.
- Hate crime: racism; traveller children; asylum seekers children; homophobia.
- Media misrepresentation of children as perpetrators and offenders rather than as victims and survivors.

### Comment

NI is not only divided by sectarianism but also by class and poverty. The intersection of these two key determining contexts is crucial in the lives of children and young people. As many research studies have noted, in the urban areas people can live in close geographical proximity but occupy entirely contrasting worlds. The focus in this section has been on those communities in which violence has become normalised, a feature of daily life. They are also the communities in which crimes other than violence, mainly petty or low level crime, prevail. Yet they are communities rarely policed effectively by the PSNI and where many community-based workers argued that the statutory services had given up on their responsibilities. In terms of the 'best interests' of children local budgetary allocations for services directly concerned with identifying and meeting the needs of children alongside appropriate planning and development policies have to be reviewed with particular attention paid to the issues raised above. This also connects to protecting children's right to life, survival and development in the context of continuing sectarian conflict.

## **DRUGS AND ALCOHOL**

*The right to life, survival and development; access to appropriate information; highest attainable standard of health, treatment and rehabilitation; drug abuse (Article 33)*



## Context

Smyth (1998: 82) notes that NI “has not had the same level of illegal drug problems as other European regions”. While the statistics are not consistent regarding drug use among children and young people there is significant evidence (Ellison 2001) that cannabis in particular is commonly used by children in rural and urban areas. Quoting McEvoy et al. (1999) Smyth states that it is “impossible to see drug use as separate from politics and the dynamic of the conflict, because of the involvement of combatants in the armed conflict in drug trafficking and attempts to control the illegal drugs trade”. Yet, part of the explanation offered for the lower level of drug use is “the long-standing opposition of certain paramilitary groups to trafficking of illegal drugs, and the use of punishment beatings and shootings as a method of sanctioning those involved”. Despite this, in her more recent research Smyth et al. (2004: 44) note that in coping with trauma as a result of the conflict children “described using drugs or alcohol” and “in many cases children as young as 12 years started using alcohol”.

Ellison (2001: 55) found that “young males are more likely to have experimented with psychoactive drugs than young females”. In his study 48.5% of 14 to 18 year olds had tried cannabis at least once. Inhaling gas, glues or aerosols “is concentrated in the 14-15 year old cohort” but “their consumption decreases dramatically with age”. While he found the use of psychoactive drugs “prevalent throughout all social classes and socio-economic categories ... young people from areas of socio-economic disadvantage are more likely than young people from affluent areas to have tried inhalants and tranquilisers (e.g. Temazepam), and also to use them regularly”. 89.8% of Ellison’s sample had consumed alcohol and his results “confirm Northern Ireland’s status (along with England, Scotland and Wales) as having one of the highest levels of teenage alcohol consumption in Europe”. 64% of the sample drank alcohol regularly and binge drinking “appears to be widespread” (ibid.: 118). Just over half of the 14 year olds in the study consumed alcohol regularly, rising to 70% of 16 year olds. 14 to 16 year olds “tend to drink in local parks, friends houses (whenever parents are away) or any other location where adults are not around”. Ellison also found that high levels of regular alcohol consumption “correlate strongly with offending patterns and the risk of victimisation”.

The consumption of illegal drugs and alcohol by children and young people is a difficult issue in a society where the use of drugs, legal and illegal, and alcohol is prevalent among adults. Children and young people in the NICCY research were quick to point out the contradictions implicit in targeting and policing their consumption. “The peelers are after us for drinking or blow, but no one says anything about adults getting out of their heads” (Youth Focus Group). Another young person agreed: “I would dread him [father] coming in from the pub. He was always drunk and anything would set him off and we [siblings] would take a beating”. A third young person commented: “It’s one law for them and another for us. All we’re doing is hanging out, a few cans an’ all, we don’t even have to be making any noise and they’re down on us ... but when they [adults] kick off it’s just a laugh for them”.

Throughout the research there was considerable concern expressed, particularly by community workers, that children were actively encouraged into drugs and their distribution. Starting as ‘runners’ they were attracted by the status it gave them in certain communities and the money that was clearly on offer. Often this led “to a habit they couldn’t sustain, then they’re into small-scale stealing or burglary and then they take a beating if they’re caught” (Community Worker). The representatives of one community project were adamant that children were used by suppliers: “The kids role models become the BMW drivers. Everyone knows the major players and people have to live with it. But there are interest groups within our communities at a higher level who are quite happy to see the community flooded with drugs. What would happen to them if people became drug free?”

The Northern Ireland Drugs Strategy closely links the use of drugs and alcohol to poverty. Hillyard et al. (2003: 64) found that 37.4% of NI’s children are brought up in poverty. They state, “[t]he impact on the development and opportunities of these 150,000 children and young people should not be under-estimated ... growing up in excluded families increasingly characterised by anti-social behaviour, insecurity and threat”. Given that Northern Ireland’s Health Promotion Agency (HPANI: 1998) records that 62% of 14 to 17 year olds have tried at least one illegal drug it is reasonable to assume that for children in poverty drugs and under-age drinking are connected to their social exclusion.

The relationship between drugs and poverty was raised as an issue by all participants in the children’s sector workers’ focus groups. Drug use “is often no more than an attempt to escape, it’s how adults cope and are we surprised that it’s how children cope with all that’s going on around them”. But once in the poverty trap young people are made more vulnerable by the accommodation they are allocated: “They do the rounds of the

hostels, the B and Bs, and you have serious concerns about the type of environment they're in. They are becoming dumping grounds, often unsupervised, and then they have so much time on their hands, little wonder they drink and use other stuff".

### **Key issues**

- Need for inter-agency initiatives to identify and respond to the rising problem of drugs, alcohol and substance misuse.
- Children identify these problems as community safety issues; fighting; thefts; recruitment as runners.
- Policing priorities and targeting: tension between policing the users rather than tackling the suppliers.
- Relationship between drugs supply and paramilitary interests.

### **Comment**

Community-based projects in the poorest communities were adamant that the statutory agencies had failed to deal effectively with the issues. While stark, the following comment from a community-based worker was typical: "It's all connected. These are benefit-trap communities, they're abandoned by the police, by the faceless civil servants and the education system has failed. The perception in this community is that no-one cares, 'let the scumbags sort it out for themselves'. As long as it stays in the community, Drugs are deliberately allowed into this community. Drink, drugs, they're ignored by the police, just send the kids to the park".

The UN Committee stresses the significance of awareness raising programmes regarding children, obliging the State to indicate its response regarding schools and school curricula. Also significant under Article 33 compliance is an expectation to provide family-oriented programmes, including counselling and support. The emphasis is on recovery and reintegration. It is clear disaggregated data, regarding age-related analysis and other 'key' factors, has not been developed and there is no evidence that an integrated, focused and proactive strategy has been constituted to combat drug and alcohol abuse.

## **PRIORITIES**

Given that the baseline adopted for the research was the CRC, and that NICCY is committed to full implementation of the CRC, it is appropriate that the priorities for implementation established by the UN Committee are considered first. The research endorses those priorities. They are:

- The use of plastic baton rounds as a means of riot control should be abolished.
- A co-ordinated strategy for the reduction of child deaths through violence should be introduced, recording all crimes committed against children and monitoring, investigating and prosecuting cases of violence against children.
- The minimum age of criminal responsibility should be raised and age-appropriate welfare and justice interventions established.
- The detention of children in custodial and care institutions should be used a measure of last resort and children are at all times should be held separately from adults.
- The use of restraint in custodial and care settings should be reviewed and solitary confinement should be abolished.

Further priorities arising from the research are:

- Policing strategies should be initiated that gain the confidence of children and young people through effective consultation and challenging differential and discriminatory treatment.
- Given their incompatibility with the principles and provisions of the CRC, anti-social behaviour orders should be withdrawn.
- Appropriate training that meets the needs of children as vulnerable witnesses should be provided for the police, lawyers and judges.

- An appropriately resourced and integrated framework of mental healthcare and therapeutic provision should be established, directed towards the physical and psychological recovery of children who are survivors of violence, abuse, trauma and self-harm.
- Self-harm and suicides of children and young people should be researched and an informed, multi-agency strategy developed identifying and responding to children 'at risk'.
- Restorative justice initiatives should be monitored to ensure that in policy and practice they offer an effective alternative to punitive measures.
- Workable protocols through which state agencies and community-based restorative justice programmes can work co-operatively should be advanced.
- There should be an end to all community punishments and exiling of children and young people administered by paramilitaries and vigilante groups.
- Building on existing initiatives, fully-resourced programmes for the children and families of prisoners and ex-prisoners should be consolidated and expanded.
- Community-based initiatives for combating drugs and alcohol abuse should be implemented alongside effective policing strategies targeting the supply of drugs into NI.