RESPONSE OF THE NORTHERN IRELAND HUMAN RIGHTS COMMISSION TO THE DRAFT GENERAL COMMENT OF THE UN COMMITTEE ON THE RIGHTS OF THE CHILD

**The role of independent national human rights institutions in the protection and promotion of the rights of the child**

1. The Northern Ireland Human Rights Commission (the NIHRC) is grateful for the opportunity to comment on the UN Committee’s Draft General Comment. It commends the UN Committee on the Rights of the Child for preparing it.

2. The NIHRC is a statutory body set up in 1999 to promote and protect the human rights of everyone in Northern Ireland as part of the peace process initiated by the Belfast (Good Friday) Agreement of 10 April 1998. Pending the appointment under statute of a Children and Young Person Commissioner for Northern Ireland (a Bill is pending before the Northern Ireland Assembly at the moment) the NIHRC has undertaken to do its best to perform the functions normally associated with such a Commissioner. To that end, for example, the NIHRC was represented at the First Global Meeting of Independent Human Rights Institutions, held in New York in May 2002.

3. As well as making the comments below, the NIHRC would remind the UN Committee that in October 2001, at its annual meeting in Paris, the European Network of Children’s Organisations (ENOC) unanimously endorsed a set of Standards for Independent Human Rights Institutions for Children. The Committee may wish to review those Standards before finalising its General Comment.

4. The Draft General Comment is, generally speaking, written in accessible language, but the paragraphs should be numbered.

5. On page 2, the first paragraph refers to the fact that children have no vote. In some countries we understand that the age of majority in law is not the same as the voting age and we ourselves have recently recommended that at least in some
6 On page 2, the second paragraph fails to make clear what the Committee thinks the position should be in a State party where there is already a national human rights institution and a specialist independent human rights institution for children. In such a situation, does the Committee still think the NHRI should include within its structure either a Commissioner specifically responsible for children’s rights or a specific section or division responsible for children’s rights?

7 On page 2, the third paragraph (under the heading Mandate and powers) should make it clear that NHRI should work for the benefit of all children in the State (including, for example, the children of asylum-seekers). The vulnerability of children demands that there be no exceptions in this regard.

8 On page 2, the fourth paragraph misses an opportunity to say that NHRI should be accorded special status by State parties when presentations are being made to the UN Committee. Moreover, to avoid compromising the independence of NHRI, State parties should be asked to consult with their NHRI when periodic reports are being prepared for the Committee. State parties should also be asked to encourage their NHRI to monitor the way in which the Concluding Observations and Recommendations of the UN Committee are publicised and implemented.

9 On page 2, the fifth paragraph (under the heading Accessibility) fails to include children in care (whether in the care of the State or otherwise), as well as children with special educational needs, within the list of the most vulnerable and disadvantage children.

10 This same paragraph fails to say explicitly that NHRI should have the power to support children taking cases to court. It should also say that NHRI should have the power (a) to take cases concerning children’s issues in the NHRI’s own name and (b) to apply to intervene in court cases to inform the court about the human rights issues involved in the case.

11 The same paragraph should include a reference to the need for the NHRI to devise specially tailored consultation programmes and imaginative communication strategies to ensure full compliance with Article 12 of the Convention (which requires that the child’s voice be heard). The definition of accessibility should include a requirement for the establishment of a range of suitable ways in which children can communicate with the organisation.

12 On page 3, the third paragraph (under the heading Pluralist representation) fails to clarify in what sense the NHRI should ensure pluralist “representation” of the various elements of civil society involved in the promotion and protection of human rights. Does this mean representation within the NHRI itself (as Board
This same paragraph fails to deal with the question whether children should be specifically represented in a NHRI. Our own Commission, for example, has 13 members, the youngest of whom is 34. It could be argued that in an institution of our size there should be one or two places reserved for people under the age of 18. We would recommend to the Committee that consideration be given to including some such provision in the General Comment.

The same paragraph should be explicit in saying that appointment to the NHRI should be through an open and competitive selection process.

On pages 3-4, in the section entitled Recommended activities, there may be merit in including the following:

"Ensure that an annual debate is held in Parliament to provide parliamentarians with an opportunity to discuss the work of the NHRI in respect of children’s rights and the State’s compliance with the UN Convention on the Rights of the Child."

On page 4, at point (p), the term amicus curiae is used in the American sense, i.e. anyone who is permitted to give an opinion to the court. In many other countries based on English law an amicus curiae has a more specific meaning, viz. someone who is asked by the court itself to give advice on a certain matter. In those countries the term “intervenor” is used to describe someone who applies to the court – without being asked to do so – for permission to provide an opinion. It would therefore be better if the General Comment mentioned both roles – as amicus curiae and as intervenor.

Northern Ireland Human Rights Commission
Temple Court, 39 North Street
Belfast BT1 1NA, Northern Ireland.
Tel: (00 44) (028) 9024 3987. Fax: (0044) (028) 9024 7844
E-mail: nihrc@belfast.org.uk. Web: www.nihrc.org.

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