SUBMISSION

TO THE UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD

NORTHERN IRELAND HUMAN RIGHTS COMMISSION

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EXECUTIVE SUMMARY

1 About the Northern Ireland Human Rights Commission

The Northern Ireland Human Rights Commission is a statutory body established on 1 March 1999 as a result of the Belfast Agreement of 10 April 1998. The Commission is a national human rights institution independent of government. We have observer status with the International Co-ordinating Committee of National Human Rights Institutions (not full membership because our jurisdiction is limited to one legal system within the United Kingdom). The activities of the Commission include reviewing the adequacy and effectiveness in Northern Ireland of law and practice relating to human rights, advising on the compatibility of legislation and policy with human rights, and promoting understanding and awareness of human rights. We also assist individuals in legal proceedings where human rights issues arise, bring proceedings in our own name involving law or practice concerning the protection of human rights, and conduct research and investigations.

The Commission sees as an important part of its work informing international treaty-monitoring bodies of the state of human rights in Northern Ireland. To that end we have already made submissions to the UN Human Rights Committee, to the UN Committee on the Elimination of Discrimination Against Women, to the UN Committee on the Elimination of Racial Discrimination and to the Council of Europe’s Committee on Economic and Social Rights. We have also submitted a third party brief to the European Court of Human Rights in a group of right to life cases.

2 A Brief Overview of the State of Children’s Rights in Northern Ireland

There have been significant changes in Northern Ireland since the Government was last examined by the Committee in 1995. Northern Ireland has seen huge shifts in the political landscape, since the signing of the Belfast Agreement in 1998 and devolution. Throughout the process of peace building, there has been an emphasis on the need to build a better future for our children in Northern Ireland. Children’s rights have suffered as a result of the conflict here and it is therefore essential that these rights are placed centrally in the new structures for Government and that priority is given to providing adequate funding for services.

The Northern Ireland Assembly and Executive were established under the Northern Ireland Act 1998. There is a Human Rights Unit and a Children and Young People’s Rights Unit within the Office of First and Deputy First Minister.

Under the Belfast Agreement power was devolved to the local Northern Ireland Assembly, although some matters such as criminal justice remain reserved matters, that is reserved to the Westminster Parliament.
Since the Belfast Agreement and devolution (which began operating in December 1999) there have been many developments which have, or have the potential to have, a positive impact on children’s lives. Some examples of these are as follows:

The Belfast Agreement led to the following:

- section 75 of the Northern Ireland Act 1998 placed duties on public authorities to “mainstream” equality; it includes age as one of the categories;
- the Human Rights Commission was established in March 1999;
- the Equality Commission was established in October 1999 merging the Fair Employment Commission, the Equal Opportunities Commission, the Commission for Racial Equality and the Northern Ireland Disability Council;
- an Independent Commission on the Future of Policing in Northern Ireland was established in 1998 and reported in September 1999; the first recruits to the new Police Service of Northern Ireland, the successor to the Royal Ulster Constabulary, will begin work in April 2002;
- a review of the criminal justice system was published for consultation in March 2000 and the implementing legislation, the Justice (Northern Ireland) Bill is currently before the Westminster Parliament.

In addition:

- the Race Relations (NI) Order 1997 was introduced providing, inter alia, specific protection from discrimination for Irish Travellers;
- the European Convention on Human Rights (ECHR) was incorporated into our domestic law in October 2000 by the Human Rights Act 1998; this means that all our public authorities must consider children’s rights under the ECHR when making decisions and that all our legislation must be compatible with the provisions of the ECHR.

3 Outstanding Concerns from the examination of the UK’s First Periodic Report

The NIHRC is concerned at the failure of the UK Government to fully implement the recommendations of the UN Committee of 1995. These concerns are clearly documented in a recent Report called Getting It Right? produced by the Children’s Law Centre and Save the Children in 1999. This report involved extensive research with children and young people in Northern Ireland and represented a comprehensive and clear analysis of the state of children’s rights here.

We would draw particular attention to the following points, which relate specifically to concerns raised by the Committee in 1995:

- no adequate steps have been taken to make the provisions and principles of the Convention widely known to adults and children;
- to our knowledge, no national mechanism has been established within the UK to co-ordinate and monitor implementation of the UNCRC;
- the law has not been amended to remove the defence of reasonable chastisement in respect of the physical punishment of children (although there has been a recent public consultation on possible law reform in Northern Ireland);
- although the criminal justice system was overhauled in 1998 through the enactment of the Criminal Justice (Children) (NI) Order 1998, with some welcome improvements, the best interests of the child is still not a central requirement of our youth justice system;
- our age of criminal responsibility remains alarmingly low at the age of 10; the Justice (NI) Bill currently before the Westminster Parliament fails to address this concern;
- the NIHRC’s recent investigation into the treatment of children in Juvenile Justice Centres (published in March 2002) confirms the Committee’s concern of 1995 that the system continues to emphasise imprisonment and punishment;
- the child’s right to silence in the criminal justice system has not been re-instated;
- emergency legislation still applies in Northern Ireland to children as young as 10;
- there remains no right of the child to appeal against school exclusions or against school suspensions; there is also no right of appeal or right to participate for children and young people who wish to challenge special educational needs provision in their own right;
- the reservation in respect of immigration and asylum remains and the Government report gives no rationale for its continuation;
- the lack of allocation of resources to children’s services, for example, mental health services, services for children with special educational needs and services for children who are looked after or in care continues to fail to reflect the requirement of the best interests of the child;
- the principles enshrined in Article 12 UNCRC in respect of separate representation are not reflected in many areas of the law relating to children and young people in Northern Ireland, for example, private law family disputes and educational matters;
- sufficient attention has yet to be given to the right of the child to express his or her opinion;
- children and young people are not being consulted regularly about legislation and policy affecting them; along with other groups, children should be consulted about such initiatives under section 75 Northern Ireland Act 1998;
- adequate steps of a proactive nature have not been taken to protect the rights of children belonging to Traveller communities;
- adequate support has yet to be provided to ensure the right of parents to have their children educated in an Irish-medium or integrated school.
The Commission’s work on a Bill of Rights for Northern Ireland and its impact on Children’s Rights

One of the Commission’s key priorities is the production of a draft Bill of Rights for Northern Ireland through an extensive process of public consultation. The Commission was mandated in the Belfast Agreement to advise the Secretary of State for Northern Ireland on the scope for defining rights supplementary to those in the ECR.2

The Commission published its draft Bill of Rights in September 2001 and is currently engaged in a further round of extensive public consultation on its proposals. Over 300 written responses to this draft document have been received to date and the Commission has facilitated discussions at numerous events with officials and with those from the community, voluntary and statutory sectors. The Commission has appointed a member of staff to facilitate consultation on the proposals with children and young people and we have enclosed a copy of the child-friendly version of the Bill of Rights consultation document with this submission. We are now beginning to re-draft our proposals in light of the comments received and the Commission aims to produce its final advice to the Secretary of State for Northern Ireland early in 2003.

One of the most extensive parts of the Commission’s proposals relates to the protection of children’s rights in Northern Ireland and our proposals will be referred to where relevant throughout this submission.3 A central proposal is that public bodies should carry out their functions in relation to children in accordance with the provisions of the UN Convention on the Rights of the Child.

There has already been significant debate in Northern Ireland regarding the interpretation of the Commission’s mandate in relation to the Bill of Rights. Those who interpret the mandate narrowly would consider that there are no circumstances particular to Northern Ireland which would merit the introduction of certain categories of additional rights here, such as those for children. We disagree4 and consider that the Bill of Rights presents an opportunity to enhance not only awareness of the rights in the UN Convention on the Rights of the Child but also opportunities to argue a breach of such rights before the domestic courts.

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2 The Commission’s mandate as laid out in the Belfast Agreement of 10 April 1998 is as follows: “The new Northern Ireland Human Rights Commission will be invited to consult and advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and- taken together with the ECHR, -to constitute a Bill of Rights for Northern Ireland...”

3 See extract from the draft Bill of Rights attached as Annex 1, pp.62-76.

It would therefore be very helpful if the Committee could consider the relevant part of the Commission’s preliminary proposals of September 2001 and indicate whether or not they would view these as an enhancement of children’s rights in line with the UK’s obligations under the UN Convention on the Rights of the Child.

5 The Commission’s Investigation into the Rights of Children in Custody

On 7 March 2002 the Commission launched its report In Our Care: Promoting the Rights of Children in Custody. We were honoured that Professor Jaap Doek, Chair of the UN Committee on the Rights of the Child, travelled to Belfast to launch the report and to meet with local politicians to discuss its findings. The report was the result of an investigation lasting some 20 months. It involved the identification of relevant human rights standards and an assessment of the extent to which the treatment of children in juvenile justice centres in Northern Ireland meets these standards. Children and staff working in the centres were interviewed. The findings are referred to throughout this document, where appropriate, but key findings include:

- a failure to incorporate core human rights principles in legislation, policy and juvenile justice centre documentation (especially the best interest, non-discrimination and participation principles);
- a high level of remand under the Criminal Justice (Children) (Northern Ireland) Order 1998 for children who are not subsequently given custodial sentences;
- a high level of remand to Lisnevin Juvenile Justice Centre under the Police and Criminal Evidence (NI) Order 1989;
- mental health services for children in custody which are seriously inadequate;
- a failure to adequately meet the educational needs of children in custody;
- a lack of an independent complaints process;
- out-of-date child protection policies and inadequate procedures for investigating allegations of abuse made by children in custody.6

It would be very helpful if the Committee could consider the main findings of the Commission’s investigation into the treatment of young people in the Juvenile Justice Centres in Northern Ireland and stress again the importance of such Centres moving away from an approach based upon imprisonment and punishment.

5 See Annex 1, pp. 62-76
6 The full version of the report can be viewed on the Commission’s web site at www.nihrcc.org. Unfortunately the effectiveness of the Commission’s investigation was limited by the inadequacy of its statutory powers of investigation which do not include a power to compel the production of witnesses or documents.
6 Other key current initiatives

The Committee may wish to pay particular attention to a number of current initiatives which have the potential to enhance the protection of children’s rights in Northern Ireland. The Human Rights Commission has sought to ensure that each of these initiatives fully reflects the Government’s obligations under international human rights standards. The Northern Ireland Executive is shortly to make final decisions in respect of the initiatives set out below. The Committee’s interest may help the Executive to take decisions which ensure the greatest protection of children’s rights.

A statement from the Committee regarding the need for the Government’s decisions in respect of these initiatives to be compliant with UN Convention would be helpful.

- A Bill establishing the Office of the Children’s Commissioner for Northern Ireland

The publication of a Northern Ireland Assembly Bill establishing the Office of the Children’s Commissioner for Northern Ireland is awaited. This follows a public consultation by the Human Rights Unit of the Office of the First Minister and Deputy First Minister in Northern Ireland. The NIHRC’S response to the consultation stressed the need for the powers of the Children’s Commissioner to fully comply with the UN’s Principles relating to the Status of National Human Rights Institutions, the so called Paris Principles. We also said that, in order to fully protect the rights of the child in Northern Ireland, the Children’s Commissioner must be empowered to deal with both reserved and transferred matters relating to children (“reserved” matters are those still dealt with in London; “transferred” matters are the responsibility of the Northern Ireland Executive in Belfast). It would, for example, be a nonsense if the Commissioner were excluded from considering the rights of children in the juvenile justice system or the children of refugees and asylum seekers simply because these matters remain, under devolution, matters for the Westminster Parliament rather than the Northern Ireland Assembly. It would be helpful if the Committee could stress the need for the Commissioner for Children to be independent from Government, adequately funded and with the powers and functions needed to protect and develop the rights of children in Northern Ireland.

- Reform of the law on the physical punishment of children

The Office of Law Reform in Northern Ireland recently conducted a public consultation on the possible reform of the law on the physical punishment of children in Northern Ireland following the decision of the European Court of Human Rights in the case of A v UK in 1998.7 The UN Committee on the Rights of the Child has made it clear that the defence of reasonable chastisement is not compatible with Articles 3, 19 and 37 of the Convention. During the January 1995 examination of the UK Report the Committee clearly expressed an expectation that

7 (1999) 27 EHRR 611.
the UK would take steps both to reform the law and to develop public awareness and education. The Northern Ireland Human Rights Commission is clear that in order to fully meet its obligations under international human rights law, the UK must outlaw the physical punishment of children in the home and establish positive parenting programmes. We are very concerned at the outcome of similar recent consultations in other jurisdictions of the UK. In England and Wales the defence of the reasonable chastisement of the child has been retained. In Scotland the defence has been removed only in respect of assaults on children under the age of three and assaults involving the use of an implement. It would be helpful if the Committee could restate its position in relation to the need for reform of the law on the physical punishment of children in advance of the announcement of the decision as to the way ahead in Northern Ireland.

• A Bill for the Protection of Children and Vulnerable Adults

The Northern Ireland Department for Health and Personal Social Services and Public safety recently conducted a consultation in relation to the introduction of a Protection Of Children and Vulnerable Adults Bill in Northern Ireland. The NIHRC’s response to the consultation stressed the need to ensure that all individuals seeking to work with children and young people should be vetted and that all organisations working with children should be subject to the new legislation. The present proposals, however, cover only defined government childcare organisations and will not, for example, as presently proposed, extend to uniformed organisations nor to all non-governmental organisations working with children and young people. It would be very helpful if the Committee could stress the duty of the state to protect all children from harm.

In addition the UK Government has announced an important review of its position under international human rights instruments

• The Review of the UK’s Position under International Human Rights Instruments

On 7 March 2002 the UK Government announced a review of its position under international human rights instruments in light of experience of the operation of the Human Rights Act 1998, the availability of existing remedies within the UK and law and practice in other European Union states. The Review is to report by Spring 2003. It provides an opportunity, inter alia, to revisit the UK reservation from the UN Convention in respect of asylum and immigration and to urge the UK to respond positively to international treaty-monitoring examinations of UK reports. It would be very helpful if the Committee could refer to the need for the UK Government to consider such matters in the current review.
LIST OF KEY QUESTIONS WHICH THE NORTHERN IRELAND HUMAN RIGHTS COMMISSION HAS RAISED WITHIN THIS SUBMISSION

CONTEXT OF THE SUBMISSION

1. It would be helpful if the Committee would consider underlining the importance of enhancing children’s rights through the implementation of a Bill of Rights in Northern Ireland.
2. It would be helpful if the Committee could consider the main findings of the Commission’s investigation into the treatment of young people in the Juvenile Justice Centres in Northern Ireland and stress again the importance of such Centres moving away from an approach based upon imprisonment and punishment.
3. It would be helpful if the Committee could stress the need for key current initiatives to fully reflect the UK’s obligations under the UNCRC, namely the establishment of a Children’s Commissioner in Northern Ireland, the reform of the law on the physical punishment of children, the Protection of Children and Vulnerable Adults Bill and the UK’s review of its position under international human rights instruments.

I GENERAL MEASURES OF IMPLEMENTATION (ARTICLES 4, 42 AND 44, PARA 6)

Article 42
1. Why has the Government not provided any training on the UN Convention on the Rights of the Child?
2. How will the Government ensure that in future all Government staff and public authorities receive training about their obligations under the Convention?

Article 44
Are all Government departments involved in monitoring children’s rights in Northern Ireland and do they all have an input into the Government’s report?

II DEFINITION OF THE CHILD

1. Why has the age of criminal responsibility (10 years) not been raised in Northern Ireland?
2. Why are 17-year-olds presently dealt with in the adult criminal justice system?

III GENERAL PRINCIPLES

a Non discrimination (article 2)
1. How does the Government intend to ensure that proper mechanisms are put in place to ensure that children and young people are consulted in a meaningful way
2. How will the Government ensure that the proposed Single Equality Act in Northern Ireland will firmly address children’s rights and in particular enshrine Article 2 of the UNCRC?

3. How will the Government address the fact that the Disability Discrimination Act 1995 does not at present extend to educational provision in Northern Ireland?

**Best interests of the child (Article 3)**

1. Why is the best interests principle not enshrined in the present juvenile justice legislation nor in the Justice (NI) Bill currently before the Westminster Parliament?

2. What measures will the Government take to ensure that the best interests principle becomes central to the decision-making process in all matters concerning children, including education and health provision?

**Respect for the views of the child (Article 12)**

1. Could the Government outline the ways in which consultation with children and young people will be facilitated by Government departments and confirm that in future child-friendly consultation documents will be produced in addition to adult ones regarding matters which directly affect the lives of children and young people (as an effective means of consultation under section 75 of the Northern Ireland Act 1998 and Article 12 of the UNCRC)?

2. When does the Government intend to commence Article 36 of the Family Homes and Domestic Violence (NI) Order 1998, which allows for the separate representation of children in certain cases involving domestic violence?

3. Does the Government intend to review the position in relation to separate representation for children in private family law proceedings under the Children (NI) Order 1995 (separate representation is at present available only in specified public law proceedings, not private family proceedings)?

4. Does the Government intend to review education legislation in Northern Ireland to ensure that children have a right to be heard and an independent right of appeal where appropriate in educational matters?

**IV CIVIL RIGHTS AND FREEDOMS**

**g Access to information**

What information does the Government produce for children and young people about their rights?

**h The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment**

1. Why has the Government not yet banned physical punishment of children in the home?

2. Why has the Government not yet abolished corporal punishment in all schools, including private schools, in Northern Ireland?
3. Has the Government banned the use of solitary confinement in Lisnevin Juvenile Justice Centre?
4. Has the Government taken steps to review the use of physical restraint in Lisnevin Juvenile Justice Centre? What types of physical restraint are authorised for use in juvenile justice centres by the Secretary of State and what training is provided to staff in juvenile justice centres in this regard?

IV FAMILY ENVIRONMENT AND ALTERNATIVE CARE

a Parental guidance (Article 5)
What types of supportive parenting programmes does the Government fund in Northern Ireland?

b Separation from parents (Article 9)
1. Does the Government intend to fund contact centres in Northern Ireland?
2. What support services are in place to support the families of prisoners?

g Children deprived of their family environment (Article 20)
1. What is the current position in relation to the implementation of the proposals concerning residential childcare contained in the report *Children Matter* and what steps is the Government taking to address the crisis in residential care for children in Northern Ireland?
2. What steps are being taken to address the shortage of foster care places?
3. What services does a child have access to when he or she is in secure accommodation?
4. What rights of review and appeal do children have in relation to their placement in secure accommodation?
5. Does the Government intend to fund projects to address the academic underachievement of many children in the care system?

h Adoption (Article 21)
Does the Government intend to introduce the paramountcy principle (that the best interests of the child be paramount) into adoption legislation in Northern Ireland?

j Abuse and neglect (Article 19)
1. Does the Government intend to ban physical punishment of children in the home? If so, what is the time scale for legislative amendments to be made?
2. Why has the Government not yet commenced legislation providing for additional measures for the protection of child witnesses in abuse cases?

VI BASIC HEALTH AND WELFARE

a Disabled children
1. What steps has the Government taken to ensure that information is available for children and young people and their parents or carers about special educational needs provision in Northern Ireland?
2. What plans does the Government have to provide children and young people themselves with a right of appeal or any legislative right to participate in tribunal proceedings under current special educational needs legislation?
3. What training has the Government provided in relation to the Special Educational Needs Code of Practice and how does the Government ensure that children and their carers are aware of the contents of the Code?
4. What plans does the Government have to review the adequacy and standard of educational provision for deaf children and young people in Northern Ireland?

b Health and health services (Article 24)
1. What steps have been taken by Government to improve the living conditions of Traveller children and ensure that they have access to adequate health provision and are not discriminated against in accessing these services?
2. What steps is the Government taking to address the lack of provision of mental health services in Northern Ireland for children and young people, particularly for young adolescents in the 14 to 17-year-old age group?
3. Can the Government confirm whether the practice of accommodating children and young people in adult psychiatric wards has ceased in Northern Ireland?
4. What steps is the Government taking to address the lack of speech therapy provision in Northern Ireland?

c Social security and childcare services and facilities
1. What information and training does the Government provide to staff dealing with social security benefits for 16 and 17-year-olds?
2. Will the Government ensure that the proposed Protection of Children and Vulnerable Adults Act extends to staff in all organisations working with children as regards the requirements to vet and refer?

d Standard of living (Article 27)
1. How does the Government propose to address the high levels of child poverty in Northern Ireland?
2. Can the Government clarify who is responsible for housing homeless 16 and 17 year olds?

VII EDUCATION, LEISURE AND CULTURAL ACTIVITIES

a Education, including vocational training and guidance (Article 28)
1. Why has the Government not introduced a right of appeal for children and young people in relation to school exclusions?
2. Does the Government intend to make it a legislative requirement that all schools in Northern Ireland have an anti-bullying policy?
3. What assistance does the Government offer to teenage parents to enable them to continue with their education? In particular, which Government department is responsible for the costs of childcare?
4. Does the Government intend to transfer responsibility for education in juvenile justice centres from the Northern Ireland Office to the Department of Education?
5. What measures is the Government taking to end segregated education for Traveller children in Belfast?
6. What measures is the Government taking to ensure that children attending Irish medium schools and integrated schools are not discriminated against as regards access to funding?

b Aims of education (Article 29)
How does the Government intend to incorporate the requirements of Article 29 of the UNCRC in terms of the aims of education into any new educational system in Northern Ireland? In particular what arrangements will be put in place to ensure that all children learn about human rights in school?

c Leisure, recreation and cultural activities (Article 31)
1. What is the Government’s policy on safe play areas for children?
2. How has the Government given effect to this policy?

VIII SPECIAL PROTECTION MEASURES

a1 Refugee children
Why has the Government failed to give any reasons for continuing its reservation regarding the application of the UNCRC to the Immigration and Asylum Act 1999?

a2 Children in armed conflicts (Article 38)
1. How does the Government propose to fulfil its obligations under the Belfast Agreement to children affected by the conflict?
2. In what ways does the Government intend to ensure that children’s rights are enshrined in the process of peace building and given central importance?
3. Will the Government ensure that the police in Northern Ireland must have mandatory training on children’s rights? (This is not presently the case.)

b Children involved with the administration of juvenile justice
1 The administration of juvenile justice (Article 40)
2 Children deprived of their liberty (Article 37)
1. Why does the Justice (NI) Bill currently before the Westminster Parliament allow for 17-year-olds to be sent to a Young Offenders Centre rather than a juvenile justice centre?
2. Why has Lisnevin Juvenile Justice Centre not been closed, despite government assurances that it would be?
3. Why are young women under 18 being held in an adult prison?
4. Is solitary confinement still being used in the Scrabo Unit of the Lisnevin Juvenile Justice Centre?
5. Have the practices in Lisnevin Juvenile Justice Centre in relation to physical restraint been changed?
6. What are the Government’s plans for the future of the secure juvenile justice estate?
7. Why has emergency legislation not been repealed in so far as it affects children and young people?
8. Why are the police continuing to use plastic bullets (or baton rounds) and why has a new type of plastic bullet been introduced which research has shown may prove even more dangerous than the previous model?

4 The physical and psychological recovery and social reintegration of the child (Article 39)
1 Economic exploitation including child labour (Article 32)
   1. Does the Government produce information for young people about their employment rights?
   2. Does the Government intend to review the existing employment regulations governing the work of children and young people?
   3. Does the Government hold any information about the enforcement of these regulations against employers of children? If the Government holds these statistics can they be released?
   4. What plans has the Government to extend the basic minimum wage to children?

3 Sexual exploitation and sexual abuse (Article 34)
   1. Why do many sexual abuse cases involving allegations by children not result in a prosecution?
   2. Why have the additional measures of protection for child witnesses not yet been implemented?
   3. What steps has the Government taken to ensure that children who are giving evidence in sexual abuse cases have the benefit of a witness supporter to help them through the criminal process?

d Children belonging to a minority and indigenous group (Article 30)
   1. What steps is the Government taking to ensure that the living conditions and accommodation provision for Irish Travellers is improved?
   2. What steps have been taken by Government to ensure that the school curriculum incorporates matters about other cultures?
   3. What steps have been taken by Health Boards and Trusts and all public authorities to ensure that information about Health and Social Services are available in different languages and to ensure adequate interpreting facilities?
   4. What steps are being taken by Government to ensure that Traveller children have full access to the school curriculum and to end segregated education for Traveller children in Belfast?
   5. Are there mechanisms in place to monitor and evaluate the educational attainment of children from ethnic minorities?
Main Submission

[GENERAL MEASURES OF IMPLEMENTATION]
(Articles 4, 42 and 44, paragraph 6 of the Convention)

**Article 4**
There are a number of legislative provisions and practices in Northern Ireland, which are not compatible with the UNCRC:

- Section 20 (6) the Children and Young Persons Act 1968 remains in force. It provides for the defence of reasonable chastisement in relation to the physical punishment of children in the home;
- the age of criminal responsibility in Northern Ireland remains at 10. This means that children as young as 10 can be sent to a juvenile justice centre. This is totally unacceptable. The Justice (NI) Bill currently before the Westminster Parliament has not taken the opportunity to raise the age of criminal responsibility and deal with these children in the care system;
- children do not have a right to separate representation in all cases under the Children (NI) Order 1995;
- looked after children/ children in care do not have a legal mechanism under the Children (NI) Order 1995 to challenge their care plans;
- there is no right of appeal against an exclusion from school for the child themselves, nor is there any independent right of appeal against a suspension;
- there is no right of appeal for children and young people under the special educational needs legislation and no mechanism for enforcement of statements of special educational needs. This can lead to serious delay in accessing services such a speech therapy;
- emergency legislation still exists and remains applicable to children as young as 10;
- plastic bullets are still in use by the police and British Army. The Government has introduced a new type of plastic baton round (the L21A1) which research has shown to be potentially more lethal than the previous bullet;
- young women in the criminal justice system remanded in custody to secure accommodation are held in an adult prison;
- despite the introduction of the Race Relations (NI) Order 1997 and the equality provisions of the Northern Ireland Act 1998, Traveller children and children of other ethnic groups continue to experience discrimination in relation to education, health, social services and housing;
- children and young people are not protected in relation to discrimination on grounds of age in respect of employment or access to goods, facilities and services;
- youth homelessness continues to cause concern, most notably the question of responsibility for young homeless people. Legal duties under the Housing (NI) Order 1998 and the Children (NI) Order 1995 are not sufficiently clear.
Questions for Government

1) What are the Government’s intentions in respect of amendment of the law on physical punishment of children in the home? Will the Government ensure compliance with the UNCRC by repealing the defence of reasonable chastisement?

2) Why are children of 10 treated as being criminally responsible and why, as has been suggested by children and by children’s organisations, has there not been a widespread consultation on this issue? Why has the government not taken the opportunity to raise the age of criminal responsibility as part of the current Justice (NI) Bill?

3) What measures have been taken to address the discrimination against Traveller children?

4) Why are 17 years olds dealt with in the adult criminal justice system?

5) What training do Government bodies receive in relation to children’s rights?

6) Why are children who are involved in private family law disputes, which significantly impact on their lives, not entitled to separate representation under the Children (NI) Order 1995?

7) Why is there currently no protection as regards discrimination against children on grounds of age in relation to employment and the provision of goods and services?

8) Why has a right of appeal for children and young people not been introduced in respect of school exclusions?

9) Why is there no mechanism for enforcement of a statement of special educational needs and why is there no Government-funded system for representation of children in these cases?

10) Why have the emergency laws in Northern Ireland not been repealed with respect to their effect on children as young as 10?

11) Why does the Government still not recognise the best interests of the child as a primary consideration in respect of children and young people in the Youth Justice System? Why has the Government not taken the opportunity to redress this in the current Justice (NI) Bill?

12) What procedures are available under the Children (NI) Order for a child in care to challenge their care plan?

13) What efforts have been made by Government in terms of dealing with the current crisis in residential care for children and young people in care in Northern Ireland?
Article 42
Any training provided for children and young people and professionals on the UN Convention on the Rights of the Child has been provided to date by non-governmental organisations. The Government does not provide training on the UNCRC, nor has there been an education and awareness raising campaign about the Convention.

Questions for Government
1) Why has there not been any training by statutory bodies on the Convention for either Government officials or young people?
2) Does the Government intend to carry out or to fund such training?

Article 44, paragraph 6
In order for there to be meaningful consultation the Government must first raise an awareness among children and young people and organisations about the existence of the Convention. Assistance should be given to enable organisations to monitor through their own work, how they see children’s rights being implemented or denied on a day-to-day basis.

This is particularly true in relation to children and young people themselves. The time scale for consultation needs to reflect the need to do preparatory work with young people and their organisations. The Government should fund the production of materials for children and young people about the UNCRC.

The Office of the Children’s Commissioner for Northern Ireland
Awareness of children’s rights and of the UNCRC would be greatly enhanced by the establishment of a Children’s Commissioner in Northern Ireland. The publication of a Northern Ireland Assembly Bill establishing the Office of the Children’s Commissioner for Northern Ireland is awaited. This follows a public consultation by the Human Rights Unit of the Office of the First and Deputy First Minister in Northern Ireland. The NIHRC’S response to the consultation stressed the need for the powers of the Children’s Commissioner to fully comply with the UN’s Principles relating to the Status of National Human Rights Institutions, the so called Paris Principles.

In order to fully protect the rights of the child in Northern Ireland the Children’s Commissioner must be empowered to deal with both reserved and transferred matters relating to children. It would, for example, be a nonsense if the Commissioner were excluded from considering the rights of children in the juvenile justice system or the children of refugees and asylum seekers simply because these matters remain, under devolution, matters for the Westminster Parliament rather than the Northern Ireland Assembly. It would be helpful if the Committee could stress the need for the Commissioner for Children to be: independent from Government, adequately funded and with the powers and functions needed to protect and develop the rights of children in Northern Ireland.
All Departments should take part in the preparation of the Government report not just the DHSS PS\(^8\). Each department should have training on the UNCRC to enable them to monitor appropriately. For example, the Department of the Environment is responsible for planning decisions in Northern Ireland. The decision to site a telecommunications mast could have implications for the health and welfare children and young people in the same way as could a decision by another government department about funding childcare services.

**Question for Government**

1) How were Government departments in Northern Ireland involved in the preparation of the periodic report to this UN Committee?

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**II DEFINITION OF THE CHILD**

*(Article 1)*

**Age of Criminal Responsibility**

The age of criminal responsibility remains alarmingly low in Northern Ireland at only 10 years. In recent years children’s organisations formed a lobby group on this and other issues to make submissions to the Criminal Justice Review in Northern Ireland.

The outcome of that review, the Justice (NI) Bill currently before Westminster, fails to address our concerns with regard to the age of criminal responsibility. It does, however, provide for the introduction of “custody care orders” for 10 – 13 year olds, that is children will still be criminally prosecuted and criminally responsible but will be sent to secure accommodation (care accommodation) rather than juvenile justice centres (justice accommodation).

In our view the age of criminal responsibility should be raised and widespread consultation on this issue alone should have been conducted by the Government with children and young people and with parents/carers/professionals.

The Commission’s draft Bill of Rights For Northern Ireland proposes that a child should be defined as every human being under the age of 18 and that the age of criminal responsibility be raised to 12 years.

**Administration of Justice**

The current situation under the Criminal Justice (Children) (NI) Order 1998 is that 17 year olds are excluded from the youth justice system and are dealt with in the adult criminal justice system. The current Justice (NI) Bill indicates that 17 year olds are to be brought within the ambit of the youth justice system. This Bill is currently before the Westminster Parliament.

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\(^8\) Department of Health & Social Services and Public Safety of the Northern Ireland Executive.
III GENERAL PRINCIPLES

A Non Discrimination (Article 2)
There have been a number of significant legislative developments in relation to non-discrimination in Northern Ireland. The Equality Commission was established in 1999 merging the Fair Employment Commission, the Equal Opportunities Commission, the Commission for Racial Equality and the Northern Ireland Disability Council.

The Disability Discrimination Act was passed in 1995 and covers employment and access to goods, facilities and services. Unfortunately, its remit does not extend to education and this gap needs to be addressed. We understand that there may be plans to introduce a Bill into the Northern Ireland Assembly which would extend the protection of the Disability Discrimination Act to the education sector.

The Race Relations (NI) Order was passed in 1997. A number of concerns remain in respect of the rights of ethnic minorities and traveller children. Our concerns are summarised under Education, Leisure and Cultural Activities (Articles 28, 29 and 31) and under Children Belonging to a Minority or Indigenous Group (Article 30).

The Northern Ireland Act 1998 introduced the section 75 equality provisions which are unique to Northern Ireland. These provisions require public authorities to consult with those directly affected by proposed policy/legislative changes. They do not provide a legal remedy for individuals alleging discrimination on grounds of age. Although some Government departments have consulted directly with children and young people in a meaningful way, others have not been so innovative. In our view all legislation/policy initiatives which have a direct effect on the lives of children and young people should involve a process of consultation with children and young people themselves and this process must be funded by Government. This is the only way in which actions, which may potentially discriminate against children, can be identified at an early stage.

There has recently been consultation in relation to a Single Equality Bill which would harmonise all our anti discrimination legislation in Northern Ireland. This Bill must address the issues of concern to children and young people and ensure that they have an accessible and effective legal remedy for discriminatory action against them.

There is need for rigorous scrutiny regarding the allocation of funding for children’s services. Although the Children (NI) Order 1995 was welcomed, there are concerns that there has been insufficient resources made available to fund its full implementation. The provision of services for children varies from one Board area to another and lacks standard assessment. In England an assessment framework has been introduced standardising concepts about “children in need” together with the introduction of the Quality Protects Initiative. There has yet to be consultation on these important initiatives in Northern Ireland and unfortunately the lack of a comprehensive framework appears to lead to unfair discrimination in terms of allocation of resources.
There is a statutory obligation on Health and Social Services Trusts to publish information on services available for children and young people but recent research has shown that there is no common approach to the publication of information on services. In our view such information should be made available in a child friendly format.

The Commission’s proposals on a Bill of Rights For Northern Ireland include a strong protections in relation to equality and non-discrimination which will apply to children as well as adults (section 4)

Questions for Government
1) How does the Government intend to ensure that children and young people are consulted in relation to policy/legislative developments and what mechanisms will Government departments put in place to facilitate consultation?

2) How does the Government intend to address the fact that the Disability Discrimination Act does not cover the field of education?

3) How does the Government intend to ensure that any new Single Equality Bill firmly addresses children’s rights and in particular ensure that it enshrines Article 2 UNCRC?

B Best Interests of the Child (Article 3)
Article 3 of the Children (NI) Order 1995 requires that in all decisions taken by courts in relation to children the best interests of the child should be the paramount consideration.

Case law has indicated that the paramountcy principle does not have to be considered in relation to applications for parental responsibility, nor in relation to applications for secure accommodation for children under Article 44 Children (NI) Order 1995, that is for children who are absconding from care and putting themselves and others at risk.

The best interests principle is not enshrined in our juvenile justice legislation. The Criminal Justice (Children) (NI) Order 1998 states at Article 4 that the court should have regard to the welfare of any child brought before it. This is not the same as making the best interests of the child paramount. The Justice (NI) Bill currently before the Westminster Parliament also fails to implement the best interests principle.

The best interests principle is also absent from our education legislation. It is particularly important to consider the best interests of children in terms of special educational needs provision and in terms of suspensions and exclusions and alternative educational provision for children who are out of school either for health or disciplinary reasons.

There should be a general duty on all public authorities to consider the best interests of the child as part of any decisions concerning children and young people, particularly in relation to the provision of health and social services and in the operation of the justice system.
Many provisions of the Children (NI) Order 1995 and Associated Guidance were welcomed as progressive steps towards implementing children’s rights. In particular the introduction of the system of separate representation through a Guardian ad Litem and Solicitor for children in all specified public law proceedings was welcomed.

However, implementation of the Children (NI) Order 1995 has not been adequately resourced and this has lead to an inconsistency in relation to the availability of services for children in different parts of Northern Ireland. The Children (NI) Order 1995 introduced the concept of children in need and children’s services plans. However we do not have a comprehensive assessment framework or a comprehensive definition of a child in need applicable to all in Northern Ireland and this needs to be addressed.

All children under 18 should be protected by the provisions of the Children (NI) Order 1995. The position, however, of provision of accommodation for 16 and 17-year-olds has proved to be problematic, with the result that some young people of this age have fallen through the gaps in provision and become homeless. In these cases they have to present as homeless to voluntary organisations and seek accommodation.

The Commission’s draft Bill of Rights proposes that the best interests of the child should be the paramount consideration in all actions concerning children and that public bodies must carry out their functions in relation to children in accordance with the provisions of the UN Convention on the Rights of the Child.

**Questions for Government**

1) What steps are being taken to ensure that the Children (NI) Order 1995 is adequately funded?

2) Why has the best interests principle not been enshrined in law in relation to ALL decisions concerning children by all public authorities and their agents, for example in decisions about access to health services and special educational needs provision?

3) In particular, why has the best interests principle not been enshrined in our juvenile justice legislation or education legislation? Why has the Government not taken the opportunity to include the best interests principle in the current Justice (NI) Bill?

4) What steps are being taken to ensure that the needs of 16/17 year olds are adequately addressed under the Children (NI) Order 1995 and that their best interests are considered?

**C Right To Life, Survival and Development (Article 6)**

These issues are explored in detail in the body of this text under the heading “Basic health & welfare”
D Respect for the Views of the Child (Article 12)

The Children (NI) Order 1995 introduced separate representation for children who are the subject of specified public law proceedings, that is care/supervision proceedings, contact with children in care, secure accommodation etc. The Commission welcomes this development which has involved the appointment of an independent Guardian ad Litem and solicitor for the child to ensure that the child’s views are heard in court. This provision for separate representation does not however, extend to private law family cases, for example contact and residence disputes under Article 8 of the Children (NI) Order. Some of these cases involve complex issues and we would recommend that separate representation be introduced in certain types of case to ensure that the child’s wishes and feelings can be fully considered by the court.

Once a final care order is made in respect of a child in care their solicitor and Guardian ad Litem are discharged from the case. Where difficulties arise subsequently with the child’s care plan, for example a change in placement or educational facility, there is no mechanism under the Children (NI) Order 1995 for the child to have their case returned to court. The child needs to have access to an independent representative in such cases to advocate on their behalf.

Children in custody are entitled to use the Independent Representation Scheme set up by NIACRO (Northern Ireland Association for the Care and Resettlement of Offenders). This scheme is funded by the Northern Ireland Office. The independent representatives do not, however, have an investigative role simply a reporting role and there is a need for an independent complaints procedure.

Article 36 of the Family Homes & Domestic Violence (NI) Order 1998 provided for the separate representation of children in cases concerning domestic violence. Unfortunately this provision has not yet been brought into force.

There is no legislative requirement for children’s voices to be heard in administrative decisions and proceedings about education. This needs to be addressed, particularly in the areas of suspensions/exclusions, bullying and special educational needs where there is no statutory duty to take into account the views of the child.

Section 75 of the Northern Ireland Act 1998 places an obligation on public authorities in Northern Ireland to consult with those affected by proposed policies/legislation considered likely to have a differential impact on one of the equality categories. As part of this obligation public authorities ought to put in place appropriate mechanisms and trained staff to consult with children and young people. Whilst there is evidence of some very good practice in this regard in recent consultations about physical punishment and the Children’s Commissioner, there are areas where there is no consultation whatsoever with children and young people.

The Commission’s draft Bill of Rights proposes a section on the participation rights of children and young people with a specific right to participate effectively in all proceedings affecting them.
Questions for Government:
1) What are the Government’s plans in relation to extending the provision of independent separate representation for children and young people to private law family disputes and to children subject to a final care order?

2) When will the Government commence Article 36 of the Family Homes & Domestic Violence (NI) Order 1998 allowing for independent representation of children and young people in cases concerning domestic violence?

3) In the field of education law does the Government intend to amend existing legislation to allow for separate representation of children and young people in these cases if necessary and to require children and young people to be able to participate in these decision making processes subject to age and understanding?

4) What plans has the Government got to establish an independent mechanism to investigate the complaints made by young people held in custody?

5) What mechanisms does the Government propose to implement to ensure that children and young people are consulted about legislation, policy and practice, which will affect them? In particular does the Government intend to fund public authorities to consult properly with children and young people?

IV CIVIL RIGHTS AND FREEDOMS
(Articles 7, 8, 13-17 and 37 [a])

C Freedom of Expression (Article 13)
Children and young people do not have a legal right to representation in legal proceedings in private law family proceedings or in Tribunals, including educational tribunals.

As with the other equality categories included in section 75 of the Northern Ireland Act 1998, children and young people should be afforded the opportunity to express their views in relation to proposed policy/legislative changes by Government and public authorities.

D Freedom of Thought Conscience and Religion (Article 14)
E Freedom of association and peaceful assembly (Article 15)
F Protection of Privacy (Article 16)
A number of issues in relation to privacy were raised by young people in the research carried out for the “Getting It Right?” Report.9

For example many young people taking part in the research felt that open showers and changing rooms in schools were an infringement on their right to privacy.

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The issue of privacy was also specifically raised in a report by the Social Security Inspectorate in 1997\textsuperscript{10} about the treatment of young people detained in juvenile justice centres. This included criticism of the process of admission to one juvenile justice centre which involved the removal of clothing and the concerns about the provision of viewing panels in each bedroom door.

\textbf{G Access to Appropriate Information (Article 17)}

In our view, children and young people do not at present have enough access to information about their rights in a child friendly format. The Government should facilitate and fund the provision of this information about children’s rights generally under the UNCRC and about specific rights of children, for example, in the field of education, employment, social security, youth justice, children in care, the police, adoption and family law. It is only through the provision of such information that children will be able to enforce their rights.

The Northern Ireland Human Rights Commission produced a children’s version of the draft Bill of Rights. The Office of Law Reform and the Human Rights Unit of the Office of the First Minister and Deputy First Minister have produced materials for children in respect of the ongoing consultations about physical punishment and a children’s commissioner for Northern Ireland. Non-governmental children’s organisations also produce information for young people about their rights. The majority of Government departments and public authorities do not produce child friendly information.

The draft Bill of Rights includes a clause requiring the State to make children’s rights widely known.

\textbf{Questions for Government}

1) In what ways does the Government produce materials for children and young people about their rights in Northern Ireland?

2) In what ways does the Government fund the production and distribution of materials for children and young people about their rights?

\textbf{H. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment [Article 37 (a)]}

Corporal punishment in state schools in Northern Ireland has been abolished since the introduction of the Education (Corporal Punishment) (NI) Order 1987. However independent schools can legally use corporal punishment (so long as this is not in breach of Article 3 ECHR as incorporated). Legislation is awaited which will outlaw corporal punishment in independent schools but this has not yet been introduced.

The Social Services Inspectorate Report of 1997 criticised the type of physical restraint used in Lisnevin Juvenile Justice Centre as well as recourse to the use of solitary confinement in the Centre. \textsuperscript{11}

\textsuperscript{10} Social Services Inspectorate Inspection of the Remand Unit at Lisnevin Training School, 1997,DHSS.

\textsuperscript{11} Ibid.
Although there has recently been a public consultation seeking views in relation to physical punishment in the home, the law in Northern Ireland remains the same. Under the Children and Young Persons Act 1968 (Section 20(6)) there is a defence of reasonable chastisement to the use of physical punishment against children and young people. This defence is also available under common law. The Northern Ireland Human Rights Commission recently submitted a written response to the consultation document. It is our view that retention of the defence is unsustainable and its continuing availability in our courts represents a serious breach of children’s rights under the UNCRC. In our view the defence of reasonable chastisement should be repealed. We are very concerned at the decision to retain the defence in England and Wales. The recent decision in Scotland to remove the defence solely in respect of the physical punishment of children under three years of age, while an improvement on the approach in England and Wales, still falls far short of compliance with the UNCRC. We have urged the Executive of the Northern Ireland Assembly to ensure full compliance with the UNCRC when considering how to reform our law.

The Commission’s draft Bill of Rights includes a specific section on protection rights for children to strengthen existing legal mechanisms for the protection of children from abuse.

**Questions for Government**

1) Why has the Government not yet amended the criminal and civil law on physical punishment of children in the home?

2) Will the changes to the law on the physical punishment of children be fully compliant with the UNCRC?

3) Has the Government taken steps to ban the use of solitary confinement in Lisnevin Juvenile Justice Centre?

4) Has the Government taken steps to review the use of physical restraint in Lisnevin Juvenile Justice Centre?

5) Why has Lisnevin Juvenile Justice Training Centre not yet been closed?

6) When will legislation be passed by the Government abolishing the use of corporal punishment in all schools?

**V FAMILY ENVIRONMENT AND ALTERNATIVE CARE**

(Articles 5; 18, paragraphs 1-2; 9-11; 19-21; 25; 27; paragraphs 4 and 39)

**A. Parental Guidance (Article 5)**

[12 The full text of the Commission’s submission can be viewed under “submissions” on the NIHRC website: www.nihrc.org.]

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The Children (NI) Order 1995 placed an emphasis on family support services. These services need to be adequately funded. There are often long waiting lists for referrals to Family Centres. Only two contact centres operate providing a safe environment where children can have contact with their parents. These two centres receive no funding from the Government. At present many of these services are provided by the voluntary sector. There are very few positive parenting programmes where parents can learn methods of positive discipline. This needs to be addressed in the context of the debate on physical punishment of children.

Many parents are not aware of their children’s rights nor of how to access help in parenting. The provision of information to parents about the UNCRC and domestic legislation affecting their children’s rights should be made through partnership arrangements between the Government and NGOs.

Questions for Government

1) Does the Government propose to introduce further funding for family centres and contact centres in Northern Ireland?

2) Does the Government intend to fund and co-ordinate positive parenting programmes throughout Northern Ireland to address the use of physical punishment in the home?

B. Parental Responsibilities (Article 18, paragraphs 1-2)
The Children (NI) Order 1995 introduced the concept of parental responsibility. The Family Law Act (NI) Order 2001 is currently awaiting a commencement date. It will extend the law on parental responsibility with the effect that unmarried fathers whose name is registered on a child’s birth certificate will have automatic parental responsibility (previously they had to sign an agreement or make an application to court). It also states that in all applications for parental responsibility the court should consider the best interests of the child. The Northern Ireland Human Rights Commission considers that the definition of parental responsibility should be widened to encompass care, security and respect for the child. This would require an amendment to the Children (NI) Order 1995.

C Separation from Parents (Article 9)
The Children (NI) Order 1995 introduced residence and contact orders and placed an emphasis on the child’s right to contact rather than the parent’s right to avail of contact. This is welcome. In all decisions taken by courts in respect of residence the best interests of the child has to be the paramount consideration. Sometimes it can be difficult for a parent to avail of contact with their children if they are not the residential parent. This is why two contact centres have been set up in Northern Ireland to provide a safe place for children to meet with a parent. These centres are not government funded and the Commission considers that the Government ought to be funding such centres.
Figures from a study carried out by NIACRO\textsuperscript{13} indicated that as regards the children of prisoners, almost half of the visiting partners did not like bringing the children to prison and that less than 20\% of the children visited on a weekly basis.

One of the messages from the \textit{Getting It Right} research\textsuperscript{14} was that contact with parents in prison was difficult and that families also needed support when they were reunified.

The Commission’s draft Bill of Rights proposes that children have a right to family life and that there be a right of assistance for parents and carers.

**Questions for the Government**

1) Does the Government intend to provide funding for contact centres?

3) What support services has the Government put in place to address the problems associated with children of prisoners?

\textbf{D Family Reunification (Article 10)}

The continuance of the United Kingdom’s reservation from the UNCRC in relation to the application of the Immigration and Asylum Act 1999 does not appear to be compatible with Articles 2, 3, 9 and 10 UNCRC. The Government has failed to provide a rationale for the continuation of this reservation in their Second Periodic Report. The Committee expressed concern about this reservation during its examination of the UK in 1995.

\textbf{E Illicit Transfer and non-return (Article 11)}

Again, provision should be made for children to have a right to independent separate legal representation in these cases.

\textbf{F Recovery of maintenance for the child (Article 27, paragraph 4)}

\textbf{G Children deprived of their family environment (Article 20)}

There are approximately 2,400 children and young people who are “looked after” or in care in Northern Ireland.\textsuperscript{15} The majority of these children are fostered while 12\% approximately are in residential care.

The Government’s Second Periodic Report does not in any way reflect the crisis in residential care in Northern Ireland at the present time. Children’s rights cannot be effectively guaranteed if the shortfalls in relation to the provision of residential accommodation for children are not addressed urgently. The report \textit{Children Matter} highlighted the urgent need for funding to build differentiated and small scale units throughout Northern Ireland which would meet the differing needs of children in the care system. The report also confirmed the need to address the shortfall in provision for children with a disability, children with emotional, psychological and psychiatric

\textsuperscript{13} Contact Between Prisoners and their Children in Northern Ireland, The Need for Child Centred Visits, Northern Ireland Association for the Care & Resettlement Of Offenders (NIACRO), 1998.

\textsuperscript{14} Children’s Law Centre and Save the Children: \textit{Getting It Right? The State of Children’s Rights in Northern Ireland at the end of the 20\textsuperscript{th} Century}, 1999.

difficulties and the needs of children from ethnic minorities.\textsuperscript{16} This would require funding and the building of differentiated and specialist small scale units throughout Northern Ireland to provide for the differing needs of children in the care system. There needs to be a particular emphasis on addressing the shortfall of provision for children with a disability, children with emotional, psychological and psychiatric difficulties and the needs of children from ethnic minorities.

“Currently, there is a range of general purpose children’s homes. Children are generally placed where a vacancy exists and there are a range of needs not specifically addressed. Staff perceive themselves as having little control over admissions with detrimental effect on individual children, the resident group and the staff”. (Children Matter 1998)

In 1998-99 60% of children who are ‘looked after’, that is looked after by local Trusts, were in foster care. In 1998 a report by the Social Services Inspectorate\textsuperscript{17} found that most children in foster care were under 10 years of age. The Report also identified a high level of instability in placements with many children experiencing multiple placements. A recent questionnaire by the Northern Ireland Foster Carers Association identified that there were 322 children waiting for a foster placement.\textsuperscript{18} Over half of these children needed long term and permanent foster placements.

Research shows that looked after children or children in care continue to under achieve academically.\textsuperscript{19} It is essential that the Government address this issue. The Northern Ireland Government has recently consulted on a Leaving Care Bill to be introduced into the Northern Ireland Assembly. The Commission would hope that the proposed Bill will place a legal duty on the appropriate authorities to support children and young people to continue their education after leaving care and to ensure that they do not leave care too early.

There has also been concern about the nature of some accommodation used for children leaving care, namely, bed and breakfast accommodation. It is therefore essential that the Leaving Care Bill introduced into the Northern Ireland Assembly in March 2002, prescribes in regulation what is deemed to be suitable housing for young people leaving care.

Secure Accommodation

Children who are in care can have their liberty restricted by the use of secure care accommodation. The grounds for removing a child to secure care are that they have a history of absconding and are likely to abscond from any other accommodation. In addition, should they abscond, that they are likely to suffer harm or if kept in any other accommodation are likely to injure themselves or others.

\textsuperscript{16} Ibid.
\textsuperscript{17} DHSS/SSI (NI) 1998 Fostering in Northern Ireland, Children And Their Carers.
\textsuperscript{18} Northern Ireland Foster Care Association Statistics 1999.
\textsuperscript{19} Pinkerton & Mc Crea “Meeting the Challenge? Young people Leaving The Care Of Social Services”, 1996. See also “Planning For Children In Care”, Horgan & Sinclair, National Children’s Bureau, 1997.
The use of secure accommodation has been found to be compatible with Article 5 of the ECHR in a judgement of the European Court of Human Rights.\textsuperscript{20} The NIHRC considers, however, that any interference with the right to liberty should be strictly limited. Care plans for children must clearly outline the purpose of restricting the child’s liberty and the nature of care and services, such as education and counselling services, which the child is to receive whilst in secure accommodation.

The Commission considers that secure accommodation should only be used as a very last resort. The serious concerns identified in our recent investigation report \textit{In Our Care: Promoting the Rights of Children in Custody} reinforce this position. The Government ought to implement the recommendations of the \textit{Children Matter}\textsuperscript{21} report so as to ensure the provision of specialist residential services for children with severe behavioural and psychiatric difficulties.

**Questions for the Government**

1) What is the current position in relation to the implementation of the proposals contained in the Social Services Inspectorate Report, \textit{Children Matter}?

2) What steps is the Government taking to address the crisis in residential care in Northern Ireland?

3) What steps are being taken to address the lack of foster places in Northern Ireland?

4) What services does a child have access to when they are placed in secure accommodation?

5) Does the Government intend to fund projects to address and monitor the academic underachievement of young people in the care system?

6) What steps did the Government take to consult with those working within the care system in Northern Ireland or with young people who are looked after/ in care when compiling the Second Periodic Report to the UNCRC?

**E. Adoption (Article 21)**

The UNCRC requires the Government to have in place a comprehensive system of provision for children who cannot live with their families including fostering, adoption and residential placements. Evidence is emerging that there may be unreasonable delay in freeing and adoption processes in Northern Ireland and that adoption is underused in Northern Ireland.\textsuperscript{22} Where assessment has shown adoption to be in the best interests of the child the issue of delay could be prejudicial to the child’s welfare. The best interests of the child ought to be the paramount consideration in adoption proceedings. Children and young people should be entitled to separate legal representation in all adoption and freeing processes.

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\textsuperscript{20} Koniarska \textit{v} UK, Admissibility Decision, Application No. 33670/96/12 October 2000.


\textsuperscript{22} Kelly \& McSherry, \textit{Reviewing the Freeing Order Processes} (2002), at press.
proceedings. The publication of an official inspection report is awaited regarding adoption proceedings in Northern Ireland.

**Question for Government**

Does the Government intend to review the adoption legislation in Northern Ireland to ensure that the best interests of the child is the paramount consideration?

**F. Periodic Review of Placement (Article 25)**

There are strict regulations governing the periodic review of care placements pursuant to the Children (NI) Order 1995. Children and young people have a right to be informed about these Reviews and their wishes and feelings must be considered. This can however be difficult for young people as many professionals attend the meetings and share information. It is suggested that these meetings need to adopt a more child-friendly format so that the child can participate and understand.

**G. Abuse and Neglect (Article 19), including physical and psychological recovery and social reintegration (Article 39)**

The Offences Against the Person Act 1861 and the Children and Young Persons Act 1968 (along with common law offences) contain the main criminal provisions for the protection of children from abuse. However, the defence of reasonable chastisement remains available to parents in relation to physical punishment in the home under section 20(6) of the Children and Young Persons Act 1968. In our view the criminal law does not offer adequate protection to ensure that children’s rights under Article 19 UNCRC are not breached.

The civil law is governed by the Children (NI) Order 1995 which introduced the concept of significant harm, that is if a child is suffering or likely to suffer significant harm the appropriate authority must take steps to protect the child concerned. This can be done by way of emergency protection orders, interim care orders, full care orders or supervision orders. The Children (NI) Order 1995 provides an effective legal framework in this regard.

The Family Homes & Domestic Violence (NI) Order 1998 provides for non-molestation orders which can be obtained on behalf of children. Molestation has a wide definition under the Order.

Children who are assessed as being at risk of harm can be placed on the child protection register and in cases where allegations of abuse are made interviews are conducted under the Protocol for Joint Investigation by Social Workers and Police Officers of Alleged and Suspected Cases Of Child Abuse. The police have also established Child Abuse and Rape Enquiry Units throughout Northern Ireland.

In terms of the prosecution process the Director of Public Prosecutions has to decide whether the case is strong enough to go to court. This very often depends on the competence of the child witness to give evidence. Many cases do not go to trial. The Government consulted about additional measures to help child witnesses in December 2002.

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23 The Review of Children’s Cases Regulations (NI) 1996.
1998. The measures being considered included the introduction of video cross-examination for children, use of screens and child witness supporters and the use of intermediaries. No action has yet been taken to implement any of these measures.

The Northern Ireland Government recently consulted on a proposed Children and Vulnerable Adults Bill for introduction into the Northern Ireland Assembly. The NIHRC expressed its concern at the Government’s proposal to enshrine in legislation a two tier system whereby organisations with a formal child care role would have a duty to conduct checks on prospective employees and to refer incidents of concern regarding the behaviour of an employee to a register. A mere discretion would exist for those organisations in the voluntary sector. International human rights law makes no such distinction in respect of the state’s duty to protect the child.

Questions for Government
1) Why does the defence of reasonable chastisement remain in Northern Ireland in relation to the physical punishment of children in the home?

2) Why have the additional measures for the protection of child witnesses not been implemented in Northern Ireland as yet?

3) Why has the Government not yet introduced legislation to establish a system of checks and registration to protect children from those working in both a formal childcare setting and in voluntary settings who may seek to harm them?

VI BASIC HEALTH AND WELFARE
(Articles 6; 18, paragraph 3; 23; 24; 26; 27; paragraphs 1-3)

A. Disabled Children (Article 23)
Disabled children are automatically considered to be “children in need” under the Children (NI) Order 1995 (Article 18, Schedule 2).

Full implementation of the Order requires the maintenance of a Register of Disabled Children within each Board area. These registers have yet to be established.

Children With Special Educational Needs
One of the most difficult areas for children with a disability relates to educational provision. Under the Education (NI) Order 1996 each of the five Education and Library Boards must make provision for children with special educational needs. This Order makes it clear that children with a disability should be educated in mainstream schools, so long as this is compatible with his/her needs and the efficient use of resources.

25 For the full text of the Commission’s response to the consultation see our website under submissions: www.nihrc.org.
A Code of Practice on Special Educational Needs was introduced in 1998 to complement this legislation. It is a comprehensive document but the procedures it procribes have yet to be implemented uniformly. There is a need for further training on the Code for relevant personnel. There are five “stages” under the Code Of Practice. The first three stages relate to in house school provision. Stages 4 and 5 relate to the statementing procedure. A statement of special educational needs issues from the Education Board setting out the provision which the child will require. There is a complex appeal procedure for parents who wish to challenge decisions made about the content of the statement.

There are currently a number of concerns about these procedures:

1) Many time limits under this procedure are contained in the Code of Practice and do not have legislative force (unlike the situation in England and Wales). This can lead to significant delay in the completion of assessments. The time limits, which should be given a statutory basis, are  6 weeks for the Education Board to respond to a request for an assessment, 18 weeks for a draft statement to be produced and an additional six weeks for a final statement to be produced;

2) Although legal aid is available for parents to get initial advice about appealing a case to the special educational needs tribunal, legal aid is not available for the actual hearing. There is no right of appeal at all for children themselves;

3) Parents have great difficulty in accessing independent reports to support their case at appeal as the relevant experts in Northern Ireland are in the employment of the Board. Invariably, the Tribunal reaches its decision having seen no expert evidence from the parents and relies solely upon the reports placed before it by the Board;

4) Even when a child receives a statement of special educational needs, there is no mechanism of enforcement. For example, at present even in cases where it is specified that a child should have speech therapy, there is such a lack of speech therapy provision in Northern Ireland that the child very often does not receive it. The Government needs to take urgent action to address the shortage of speech therapists in Northern Ireland;

5) There needs to be a clear enforcement mechanism/ independent complaints procedure to ensure the efficacy of the statementing process;

6) The statementing procedure is complex. There is one non-governmental organisation in Northern Ireland, which specialises in providing advice and assistance in this area called IPSEA (Independent Panel for Special Education Advice). Legal aid should be available for representation before the Tribunal. In addition, the Government needs to produce information for children and young people about special needs provision; and

7) Children and young people should be able to access independent advice, information and representation in these proceedings. Children and young people should have a right to participate subject to age and understanding both in the administrative decision making processes about provision and the Tribunal if they wish to do so. The right to participate,
the right to appeal and the right to legal representation/legal aid for Tribunal proceedings should be enshrined in legislation.

Recent research about the educational provision for deaf young people in Northern Ireland has indicated a relatively low level of academic achievement at GCSE and A level. It has also shown that 40% of deaf children and young people leave Northern Ireland in order to go to secondary schools in England and in Dublin. The limited choices of schooling suitable for deaf children and young people therefore has significant implications for their right to family life.

The Disability Discrimination Act was introduced in 1995 and offers important legislative protection in the areas of employment and access to goods and services. It unfortunately does not cover educational provision.

The Draft Bill of Rights provides children with a right to enjoy the highest possible standard of health care and to enjoy access to these services as well as to psychiatric services.

Questions for Government
1) Does the Government intend to amend the legislation relating to special educational needs to introduce legislative time limits?

2) What steps is the Government taking to ensure that all schools are trained about the Code of Practice and to ensure that children receive help as early as possible?

3) Do children and young people have a right of appeal under the statementing procedures?

4) Do children have the right to participate in decisions about educational provision for them and do they have the right to legal representation at the Special Educational Needs Tribunal?

5) Does the Government intend to produce information for children and young people about special educational needs provision?

6) Does the government intend to carry out a review of the adequacy and standard of educational provision for deaf young people in Northern Ireland?

B Health and Health Services (Article 24)
Research has shown that there is a lack of accessible information and interpreters available in Health Boards and Trusts for ethnic minority families. There is a need for training at all

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26 The Right To Learn; RNID; Byrne & Caul, September 2001.
levels of the Health Service in relation to specific cultural requirements. There is a need for basic healthcare material to be reproduced in different languages.

The average adult life expectancy of a Traveller is 11-15 years less than in the settled community. Levels of child mortality are much higher than amongst the settled community; levels of childhood immunisation are low; there are higher rates of hospital admission for diseases which are normally avoidable and many Traveller women suffer from increased levels of depression, stress and anxiety.

There are ongoing concerns in relation to the lack of mental health services for children and young people in Northern Ireland, which remain totally inadequate. In particular we are concerned about the use of adult psychiatric wards for the treatment of young people. In 1994-95, 233 young people were discharged from adult psychiatric wards. Whilst it is recognised that children need to be kept safe in light of a lack of alternative in-patient beds in Northern Ireland, it is our view that hospitalisation with adults should never be viewed as a suitable placement option for a child. A review of child and adolescent mental health services was carried out by the Eastern Health & Social Services Board in 2000 which indicated that during 1995-96 young people aged under 18 occupied 1,500 bed days in adult units.

The report indicated that the existing services for adolescents in Northern Ireland, particularly those in the 14 to 17-year-old age group, are extremely poor. There are only six in patient beds available for adolescents and there is a lack of specialist adolescent facilities. There is also a considerable difficulty in accessing mental health services with lengthy waiting lists.

There is anecdotal evidence to suggest that speech and language therapy provision is in crisis in Northern Ireland. Many of the children who have been assessed as in need of speech and language therapy are not receiving treatment due to the lack of trained therapists.

Questions for Government
1) What steps have been taken to improve the living conditions of Traveller children in Northern Ireland and ensure that they have access to adequate health services?

2) What steps is the Government taking to address the lack of provision of mental health services for children and young people, particularly for adolescents?


29 Man Kler, Out Of The Shadows, Chapter 4, 1997, NICEM and others.

30 Ibid.


32 See EHSSB A Review of Child and Adolescent Mental Health Services in the EHSSB Area. Also EHSSB Commissioning Intentions for Health & Personal Social Services for the period 2001-02 and 2002-03.
3) Can the Government confirm whether the practice of accommodating children and young people in adult psychiatric wards has ceased?

4) What steps are the Government taking to address the lack of trained speech and language therapists in Northern Ireland?

**C Social Security and Child Care Services and Facilities (Articles 26 and 18, Paragraph 3).**

It can be difficult for young people particularly those aged 16 or 17 to access correct information about social security benefits. It would be helpful if the Government produced leaflets for young people about their rights in this regard, as the social security system is complex.

Under the Children Order (NI) 1995 all childminders and people providing day care for children are required to register with a Health and Social Services Trust. Registered childminders are subject to annual checks by HSST staff. However, a number of individual and activities are exempt from the requirement to register. These include family members, nannies, uniformed organisations eg Girl Guides, religious organisations and organisations providing recreational activities.

A consultation has recently concluded in relation to the introduction of a Protection Of Children and Vulnerable Adults Bill in Northern Ireland. The NIHRC’s response to the consultation stressed the need to ensure that all individuals seeking to work with children and young people should be vetted and that all organisations working with children should be subject to the new legislation. The present proposals, however, only cover defined government childcare organisations and will not for example as presently proposed extend to uniformed organisations or all non governmental organisations working with children and young people.33

**Questions for Government**

1) What information and training is provided to social security staff dealing with the rights of 16/17 year olds to state benefits?

2) Will the Government ensure that the Protection Of Children and Vulnerable Adults Bill extends to all those working with children and young people?

**D Standard of Living (Article 27, paragraphs 1-3)34**

It is estimated that 37% of children in Northern Ireland live in poverty.35 Mortality rates for children are 30% higher amongst children living in the most deprived areas.36 Interface areas, which experience high levels of sectarian tension and violence demonstrate increased levels of poverty and disadvantage.

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35 Save the Children, Poverty is a War Against Children, 1995.
36 Save the Children Fund, Sick of Poverty, Poverty & Children’s Health in Northern Ireland, 1995.
A comprehensive study carried out by the Northern Ireland Statistics and Research Agency and published in July 2001\(^{37}\) shows that in over 60% of designated electoral areas in Northern Ireland there are more than 30% of children living in poverty. In a significant number of electoral areas over 70% of children live in poverty (31 out of 566 areas).

The UN Committee during its examination of the UK in 1995 expressed concern about the living conditions of Traveller children in Northern Ireland. Unfortunately little has been done to reduce these concerns. Traveller children have high rates of hospitalisation and death rates for Traveller children under 10 are 10 times that of non-Traveller children.\(^{38}\) Reports indicate that levels of child immunisation are much lower among the Travelling community.\(^{39}\)

Accommodation and living conditions are central to the issue of rights of Travellers in Northern Ireland. In 1998 Sandra Mason, who was at that time the Chairperson of the UN Committee on the Rights of the Child, visited a Travellers site in Belfast and said:

“\textit{I was in fact quite appalled to find in Britain on the eve of the 21\textsuperscript{st} century there are people living in such squalid conditions, conditions one expects to find only in third world countries. For some, clean drinking water and basic sanitation are not available, thus endangering the health of children living in these communities.}”

During his March 2002 visit to Belfast Professor Jaap Doek, current Chair of the UNCRC, also visited a Traveller site.

In particular and relative to the rest of Northern Ireland, interface areas demonstrate much higher levels of poverty and disadvantage: over two-thirds (69%) of the community earned less than £5,000 per year as compared to the Northern Ireland average of 45%; 31% of those living in interface areas are unemployed compared to a regional average of 14%; only 2% are educated to A Level standard as opposed to a regional trend of 12% and only 1% have a university degree compared with 12% of the population generally.\(^{40}\)

Levels of youth homelessness are on the increase in Northern Ireland. Nearly every voluntary organisation working in this field in Northern Ireland has recorded an increase in the number of young people seeking assistance.\(^{41}\) We would recommend that young people under 18 presenting as homeless should be automatically considered as priority need cases under the Housing (NI) Order1988. There should be a clear working protocol between the Housing Executive and the social services to ensure that 16 and 17 year olds do not “fall through the net”.

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\(^{37}\) NISRA \textit{The Northern Ireland Deprivation Measure 2001}, July 2001, Data Annex B.

\(^{38}\) PS\textit{i Working Group Report on Travellers, 2000} and also Noonan, \textit{Travelling People in West Belfast, 1994}, Save the Children.

\(^{39}\) \textit{Report of the PSI Working Group On Travellers, 2000}.

\(^{40}\) Centre For Policy Research 1994.

\(^{41}\) Children’s Law Centre and Save the Children: \textit{Getting It Right? The State of Children’s Rights in Northern Ireland at the end of the 20\textsuperscript{th} Century, 1999,} p. 43
Questions for Government

1) How does the Government propose to deal with the high levels of child poverty in Northern Ireland?

2) Can the Government clarify who is responsible for housing homeless 16/17 year olds?

VII EDUCATION, LEISURE AND CULTURAL ACTIVITIES
(Articles 28, 29 and 31)

a Education, including vocational training and guidance (Article 28)

Suspensions and Exclusions

The UN Committee recommended during its examination of the UK report in 1995 that a right of appeal for children and young people should be introduced into our education legislation. This has not been done. The Government have indicated in their 2nd Report that many schools allow children and young people to have a say in exclusion procedures. This is discretionary. The suspension and exclusion of pupils from school is governed by legislation and regulation. An amendment to these regulations would be required to provide children with the right to appeal against an exclusion. Such rights of appeal could be considered in a similar way to applications by children under the Children (NI) Order 1995, namely, if the child has sufficient understanding they should be able to lodge an application on their own behalf.

Although there is legal aid for initial advice about an exclusion, there is no legal aid for the actual hearing before an Expulsions Appeal Tribunal. This means that children are often unable to obtain legal representation.

A child can currently be suspended under our education legislation for up to 45 days in any one school year. This is a significant period of time. There is currently no statutory right of appeal against a suspension.

Whilst a child is suspended from school the Education Board are required to provide alternative education. This can mean following an out of school programme or the child can get home tuition. The level of home tuition varies, but can be as little as three hours per week. This is unacceptable educational provision.

Research has indicated that children in the care system underachieve academically. The NIHRC considers that the Government needs to take special measures to address this.42

In Northern Ireland, although guidance suggests that schools should have a bullying policy, this Guidance does not have legislative force. In England and Wales however, the School Standards and Frameworks Act 1998 places a legal obligation on schools to have an anti bullying policy.

42 See Better Education, Better Futures, Barnardos, 2001 and Pinkerton & Mc Crea, Meeting the Challenge? Young People Leaving the Care of Social Services, 1992.
**Traveller Children**
The Race Relations (NI) Order 1997 made discrimination against Travellers illegal. However one of the reasons given for non-attendance at schools by Travellers is the fear of racist bullying and intimidation.\(^{43}\) Every school should be obliged by law to have an anti bullying policy dealing specifically with racist bullying and intimidation.

Although there have been measures taken in the field of education to address some of the serious discrimination faced by Traveller children, such as the establishment of Traveller Liaison Teachers by some Education and Library Boards, serious concerns remain in relation to the failure to reintegrate Traveller children into mainstream education and the failure to maintain baseline data about the educational achievements of Traveller children.

The vast majority of the Traveller community have no formal academic qualifications (92% have no GCSEs (the examinations normally taken at the age of 16) or their equivalents or higher). This lack of educational attainment needs to be addressed urgently. The Government fund a segregated primary school for Travellers in Belfast. In light of the requirements of the Race Relations (NI) Order 1997 for non-segregation, efforts need to be made to reintegrate these children back into the mainstream education system. The Department of Education in Northern Ireland issued a circular in 1993 which clearly stated that it is in the best long term interests of both Traveller children and settled children that they should be educated together.\(^{44}\)

**Children from ethnic minorities**
Teachers in Northern Ireland have little opportunity to learn about ethnic minority communities in Northern Ireland as part of their in service training. Teachers themselves feel that there is a need for a positive strategy within schools and felt that Northern Ireland pupils should have more opportunity to learn about ethnic minorities. They also considered that special support should be made available in schools for children from ethnic minority communities.\(^{45}\)

Research has suggested that children from ethnic minorities whose first language is not English suffer educational disadvantage due to the lack of interpreters. The Equality Commission for Northern Ireland have now issued a Good Practice Guide in relation to Racial Equality in Education and it is hoped that this will contribute to developing an intercultural and anti racist educational strategy in Northern Ireland.\(^{46}\)

**Juvenile Justice**
At present the education system within our juvenile justice centres is administered by the Northern Ireland Office and not by the Department of Education. Very often the Northern Ireland Schools Curriculum is not followed. Statements of special educational needs are discontinued whilst a child is in custody. Research with young people carried out by the

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\(^{44}\) DENI circular No 1993/37, Para 5.

\(^{45}\) Racial Equality Bulletin No 1, Equality Commission for Northern Ireland.

Children’s Law Centre and Save The Children indicates that young people did not think that their education in these centres equated with that in “the outside world”. 47

**Teenage Parents**

In 1998 there were 1,700 births to mothers aged under 20 and 202 of these births were among 16 year olds and under. It is essential that young mothers are encouraged to continue with their education and that the government funds programmes to help them to do this. The cost of these support services including the costs of childcare must be included in the Health Board’s budget plans. There needs to be clarity about who is responsible for paying childcare costs and the Strategy Framework for the Education of School-Aged Mothers 1997 should be formally implemented in all schools. 48

**Irish Medium and Integrated Schools**

In 1995 the Committee recommended that the UK Government provide further support to the teaching of the Irish language in schools in Northern Ireland and to the integrated education sector. Irish medium schools and integrated schools have recently received more funding in relation to the provision of capital grants, but each school has to fulfil very strict criteria before they can receive funding. While schools are awaiting approval by the Department of Education in terms of their status, it can be difficult for children to access transport services and special needs provision.

The Commission’s draft Bill of Rights provides children with specific education rights, including the right to an effective education. Our recommendations include a requirement that the state, to the greatest extent possible, ensure the right of parents to have their children educated in conformity with their religious, philosophical and pedagogical convictions (subject to the competence of the child to decide for him or herself in accordance with his age and or maturity). The Commission’s draft Bill of Rights would require the State to respect the right of parents to choose for their children education in schools with a particular religious ethos, education in integrated schools and education in Irish medium schools.

**Questions for Government**

1) Why has the Government not introduced a right of appeal for children and young people in relation to exclusions?

2) Does the Government intend to make it a legislative requirement that all schools in Northern Ireland have an anti bullying policy?

3) Does the Government intend to transfer responsibility for education in juvenile justice centres from the Northern Ireland Office to the Department of Education?

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4) What steps will the Government take to ensure that children with special educational needs receive effective education while in Juvenile Justice Centres?

5) What assistance does the Government offer to teenage parents to enable them to continue with their education? In particular, which Government department is responsible for the costs of childcare?

6) What measures is the Government taking to reintegrate Traveller children in Belfast into mainstream schools?

7) How does the Government intend to ensure that children attending Irish Medium Schools and Integrated Schools are not discriminated against in terms of access to funding?

B. Aims of Education (Article 29)
The system of education in Northern Ireland has been subject to much criticism due to its rigidly academic focus. Following a Review of Post Primary Education and a report by the Post-Primary Review Body in October 2001 it appears that the Department of Education now intends to abolish the controversial “11 plus” test of academic selection. Unfortunately, however, this may take several years to achieve and in the meantime thousands more children will have to sit the exam next year.

The present two-tier education system, which operates in Northern Ireland means that those children who sit the 11 plus and gain good grades are able to access grammar schools, whilst other children attend secondary schools. The Review Group described the present system as inflexible, fragmented and wasteful of resources.\(49\) Children from lower socio economic groups are less likely to gain good grades in the 11 plus examination and therefore are less likely to gain grammar school places. The NIHRC has serious concerns about the ability of the current system to ensure equality of opportunity for all pupils.

Statistics have shown that children attending secondary schools are more likely to leave without the basic requirements for employment. The proportion of those leaving secondary school without any formal qualifications at all was almost seven times more in secondary schools than grammar schools (Department of Education 2001).

The Post-Primary Review Body report outlined three main areas of change:
1) the development of a pupil profile to provide information to parents, pupils and teachers on a wide range of attributes and achievement of children as they progress through their education;

2) the abolition of 11+ transfer tests; and

3) the creation of local collaborative networks of schools in a system of collegiates.

“Too often we reduce the richness of the education of our young people to a letter or a grade, and create hurdles that close options, when we should be finding ways of opening up possibilities. We owe our children the best we have to give, for if they are to have a tomorrow their needs must be met today.”

The NIHRC welcomes the opportunity the Review has presented to address our concerns about inequalities in the present selection system. We are currently considering the detail of the Group’s recommendations and will make a formal response in due course. As yet we cannot say whether or not the proposals will fully address our concerns about the current system, in particular in relation to the potential for indirect discrimination arising from the application of pupil profile appraisal criteria.

A review of the Northern Ireland post-primary schools curriculum has been conducted over the past number of years by the Northern Ireland Council for Curriculum Examinations and Assessment. This review is confined to the post primary sector and there are no proposals at present in respect of review of the primary school curriculum.

The Commission made recommendations regarding the need for human rights education to be included in the new Northern Ireland post-primary schools curriculum. We are currently awaiting further consultation on the content of the “citizenship” module. Our aim will be to ensure a specific human rights focus within the module in addition to the broader, more general citizenship approach. We understand the need for full consultation with the education sector but would hope that we will soon see the introduction of a comprehensive, compulsory citizenship module within the post primary curriculum.

**Questions for Government**

1) When will the Government abolish the 11+ examination - what is the precise time scale?

2) How does the Government intend to incorporate the requirements of Article 29 of the UNCRC in terms of the aims of education into any new education system in Northern Ireland?

3) How will the Government ensure that any new selection/pupil profile appraisal criteria will not result in discrimination against pupils from lower socio economic groups?

4) What arrangements will be put in place to ensure that all children learn about human rights in school rather than merely learning about broad concepts of citizenship?

5) What plans does the Government have to introduce human rights education for primary school children?

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50 *Ibid*, p. 8
C Leisure, recreation and cultural activities (Article 31)

There is no national play policy in Northern Ireland. However, six local authorities are working in co-operation with a non-governmental organisation called Playboard in order to develop play policies. This programme is however, at an early stage of development and it is still too early to make an assessment of its impact.

The Commission’s draft Bill of Rights includes a right to play.

Questions for Government
1) What is the Government’s policy on play areas for children?
2) How has the Government given effect to this policy?

VIII SPECIAL PROTECTION MEASURES
(Articles 22, 38, 39, 40, 37 (b)-(d), 32-36)

A. Children in situations of emergency
1. Refugee Children (Article 22)
The continuance of the reservation relating to the application of the Immigration and Asylum Acts 1995 does not appear to be compatible with Articles 2, 3, 9 and 10 of the UNCRC.

Question for Government
Why has the Government failed to address the reasons for the continuation of this reservation in their Second Report?

2. Children in armed conflicts (Article 38), including physical and psychological recovery and social reintegration (Article 39)
Northern Ireland is emerging from thirty years of conflict during which we have seen regular breaches of the rights of children.

The legacy of the conflict has been that we remain a divided society with largely segregated housing and education sectors. All children have been affected but, in particular, those children who have been the victim of violence or the witnesses of violence, are the children of prisoners or who live in interface areas.51

The Belfast Agreement deals specifically with the importance of placing children’s rights centrally on the agenda:

“The participants to the Agreement recognise that young people from areas affected by the Troubles face particular difficulties and will support the

51 An interface area is a common boundary line between a predominantly Protestant area and a predominantly Catholic area (Belfast Interface Project 1998).
In 2001, Olara Otunu, Special Representative of the United Nations Secretary General for Children and Armed Conflict, outlined some of the ways in which the conflict in Northern Ireland has impacted adversely on children: some children have lost loved ones; some children have been exposed to high levels of violence; there has been a polarisation in society and little opportunity for children from different communities to mix socially and educationally; and there has been a neglect of economic and social development.

He stated: “So all of these issues need now to be addressed, and addressed systematically in a co-ordinated way that will offer a brighter future for the young people of Northern Ireland”.

In his report to the Secretary General he made the following recommendations: “...children’s rights should be incorporated into the new Northern Ireland Bill of Rights. Emergency legislation that provides for the detention of very young children should be reviewed and police should receive training on children’s rights and protection”.

Questions for Government
1) How does the Government propose to fulfil its obligations under the Belfast Agreement to children affected by the conflict?

2) In what ways does the Government intend to ensure that children’s rights are enshrined in the process of peace building and given central importance?

3) Will the Government make it a requirement for all police officers in Northern Ireland to have training on children’s rights? (this is not presently the case)

4) Will the Government take steps to ensure that children’s rights will be fully protected in the new Bill of Rights for Northern Ireland?

B. Children involved with the system of administration of juvenile justice
1. The administration of juvenile justice (Article 40).

The Criminal Justice Children (NI) Order 1998 introduced many welcome changes to the youth justice system in Northern Ireland and placed an emphasis firmly on diversion, with custody only to be used as a last resort.

However a number of concerns remain:
Under the Criminal Justice (Children) (NI) Order 1998 17-year-olds are currently excluded from the youth justice system and are dealt with in the adult criminal justice system.

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52 The Belfast Agreement, p. 18.
54 Report to the UN General Assembly from the Special Representative on Children and Armed Conflict, UN 2000, pp. 13-14.
system. The Justice (NI) Bill currently before the Westminster Parliament proposes that 17-year-olds be dealt with in the youth justice system. The Bill provides for 17-year-olds to serve custodial sentences in a Young Offenders Centres (which deal with older young people up to 25). It is the Commission’s view that all those under 18 should serve remand times and custodial sentences in a Juvenile Justice Centres.

The Criminal Justice Children (NI) Order 1998 did not enshrine the principle of the best interests of the child. Unfortunately the current draft Justice (NI) Bill also fails to place the best interests principle at the core of all decisions regarding children.

The age of criminal responsibility has not been raised and remains at the alarmingly low age of 10. In fact, since the date of the Government’s last periodic report to the UN Committee the situation has worsened as the doctrine of doli incapax has been removed by statute. Under this doctrine, courts had to assess whether a child between the ages of 10 and 14 knew what he or she was doing was wrong. This has been abolished and now the law assumes that a child of 10 is capable of criminal responsibility. The current draft Justice (NI) Bill fails to raise the age of criminal responsibility. The NIHRC draft Bill of Rights proposes that the age of criminal responsibility be raised to 12 years.

2 Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings (Article 37 b-d)

The Criminal Justice Children (NI) Order 1998 makes provision for young people aged 15 and over to be remanded to a Young Offenders Centre. This is not acceptable as these centres are intended to deal with 17 to 21-year-olds.

Young women who are remanded to secure accommodation are held in HMP Maghaberry, an adult prison. In 1997 the then Chief Inspector of Prisons found this practice to be unacceptable and yet to date no action has been taken by Government to end the practice.55

Under the Criminal Justice (Children) (NI) Order 1998 all male young offenders who receive a custodial sentence from the court are sent to Lisnevin Juvenile Justice Centre for assessment in the first instance. A panel then decides whether they should remain at Lisnevin Juvenile Justice Centre or be transferred to another juvenile justice centre.

The Juvenile Justice Centre Rules allow for the indefinite detention of children in solitary confinement. When Criminal Justice (Children) (Northern Ireland) Order 1998 first entered into force in 1999 the Government stated that the a review of the Juvenile Justice Centre Rules would be undertaken within one year. This review has not yet taken place.

The following are a selection of comments of the Social Services Inspectorate arising from their inspections of Lisnevin Juvenile Justice Centre in 1997 and 1999:

Physical environment:

“Lisnevin...is a combination of single and two storey, flat roofed buildings enclosed by a perimeter security fence. The surrounding high wire fence, the fact that access to the unit is via a series of electronically controlled and locked doors and the presence of closed circuit TV to monitor movements around the entrance to the buildings all combine to give an initial impression of a very secure institution. This first impression is reinforced by the accommodation inside, where, for example, the children sleep in rooms with steel doors and narrow windows, which create a depressing prison-like aura. The building was in fact designed as a category C prison...(t)he present premises were not, therefore, built to house a training school and despite a number of modifications over the years it is, in many respects, not suitable as a centre for children and young people whose ages can range from 10 to 17 years” (SSI, 1997).

“Lisnevin, physically is a dehumanising penal institution...The inspectors consider that the current Lisnevin building is essentially unsuitable for the purpose for which it is currently being used and that it falls far short of meeting the standard set for the living environment...Careful consideration requires to be given as to whether premises originally designed as a prison can ever be modified to provide the sort of environment needed for children and young people” (SSI, 1997).

Isolation:

An adjudication system was used to respond to more serious misbehaviour. Boys were brought before a senior manager, charged with an offence and in all cases we examined were found guilty and sentenced to three, five or seven days in the Scrabo Unit. Although formally referred to by the management as a period of intensive care it was in effect a punishment wing in which young people were deprived of contact with their peers...the inspectors noted that one boy had spent 14 days in this Unit out of a period of 26 days (SSI, 1999)

Physical restraint:

“We were concerned both by the frequency with which physical restraint was used and by the particular method which was demonstrated to us......Not only did some boys complain of suffering injuries such as carpet burns, but also these methods rely on the use of wristlocks, arm lever application and pressure point control....Although on occasions the Prison Service use these methods on adults, the Inspectors were concerned that the use of such techniques on children whose bone structures are not fully mature could have long term damaging physical effects on them” (SSI, 1999)

The Government undertook a review of the juvenile justice secure estate in May/ June 2000 and made an announcement on 30 November 2001 that Lisnevin Juvenile Justice Centre was to be closed. The Implementation Plan for the Criminal Justice Review published with the draft Justice (NI) Bill in December 2001 has indicated that the Government is committed to closing Lisnevin Juvenile Justice Centre as soon as
acceptable alternative provision can be made. Closure does not appear to be imminent and this is unacceptable to the NIHRC.

Our concerns about the continued detention of children in Lisnevin Juvenile Justice Centre have been increased by the findings of our own investigation published on 7 March 2002, outlined in the Executive Summary.

**Counter-terrorism legislation**

Given the low age of criminal responsibility, emergency legislation applies to children in Northern Ireland form the age of 10 years.

Until recently, emergency powers in Northern Ireland were contained in the Prevention of Terrorism (Temporary Provisions) Act 1989 and in the Northern Ireland (Emergency Provisions) Act 1996. Section 14 of the 1989 Act allowed for the detention of children as young as 10 in police custody. Section 14(4) and (5) provided for an initial period of detention of 48 hours, which could be extended by up to 5 days by order of the Secretary of State for Northern Ireland. The Government made derogations from Article 5(3) of the ECHR in this regard.

By virtue of section 47 of the 1996 Act children had an absolute right to consult with their solicitor only after 48 hours and had no absolute right to have their solicitor present during interview. The Government have now introduced the Terrorism Act 2000 and the Anti-Terrorism, Crime and Security Act 2001.

The Terrorism Act 2000 reforms and extends the existing legislation as outlined above. Additional temporary provisions still apply to Northern Ireland which are subject to annual renewal. The NIHRC questioned the need for many of these additional provisions during the passage of the Bill through Parliament and again during the recent renewal of Part vii of the Act in which they are contained. The position remains that children as young as 10 could be subject to this legislation and only have an absolute right to consult with their solicitor after 48 hours. One improvement since the introduction of the 2000 Act is that the period of detention can now only be extended beyond 48 hours with the approval of the courts rather than by the Secretary of State.

We believe that immediate action should be taken to repeal the emergency legislation in so far as it affects children and young people. The NIHRC has serious concerns that the continued application of emergency legislation to children and young people contravenes Article 37 and Article 40 UNCRC.

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56 And the introduction of the Terrorism Act 2000 and the Anti-Terrorism, Crime and Security Act 2001, which replicate and extend previous emergency legislation.
57 See Part VII of the Terrorism Act 2000 which in February 2002 was renewed for a further year by the Westminster Parliament.
58 Section 41 and Schedule 8 of the Terrorism Act 2000.
Policing
In recent research, it was found that many young people had negative experiences in terms of their interactions with the police in Northern Ireland in the past. A new police service has now been established in Northern Ireland. The NIHRC recommends that children’s rights training should be mandatory for the new service.

Plastic Baton Rounds (or Bullets)
The police and army in Northern Ireland continue to use plastic bullets in spite of the substantial concerns raised at both the national and international levels. The Government recently introduced a new type of plastic baton round (the L21A1) which research has shown to be potentially more lethal than the previous bullet.

The Independent Commission on the Future of Policing in Northern Ireland recommended (recommendation 69) that "an immediate and substantial investment should be made in a research programme to find an acceptable, effective and less potentially lethal alternative to the Plastic Baton Round." The Government has established a project group to lead this research. The first report (a literature review) was published in April 2001, the second phase of the research, identifying various alternatives, was published later in 2001. The Commission is disappointed that Government appears to be giving little priority to seeking the views of human rights organisations, both in Northern Ireland and also in jurisdictions where the various alternatives under consideration are currently used. We understand that the research is still ongoing and the Commission is not aware of any target date for its completion.

The Commission’s draft Bill of Rights provides children in conflict with the law with specific rights.

Questions for Government
1) Why has the Government not raised the age of criminal responsibility?
2) Why are 17 year olds dealt with in the adult criminal justice system?
3) Why does the present juvenile justice legislation allow for 15 year olds to be sent to a Young Offenders Centre?
4) How will the Government ensure that in future no young women are sent to Maghaberry adult prison?
5) Has the practice in Lisnevin in relation to isolation within the Scrabo Unit ceased?
6) Have the practices in Lisnevin Juvenile Justice Centre in relation to physical restraint been changed?

7) Why has the Government not published any Social Services Inspectorate reports in respect of Lisnevin Juvenile Justice Centre since 1999 and in respect of Rathgael Juvenile Justice Centre since 1997?

8) What are the Government’s plans for the future of the secure juvenile justice estate?

9) Why has the Government not yet reviewed the Juvenile Justice Centre Rules as it said that it would?

10) Why has emergency legislation not been repealed insofar as it affects children and young people?

11) Why has the Police Service of Northern Ireland been issued with a plastic baton round (the L21A1) which research has found to be potentially more lethal than the previous bullet, especially for children?

12) What alternatives to the use of plastic bullets is the Government considering and when will the Government cease to use plastic bullets?

13) What is the Government’s position with regard to the findings and recommendations of the NIHRC’s investigation of March 2002 into the treatment of children in the Juvenile Justice Centres in Northern Ireland?

3 The sentencing of children, with particular reference to the prohibition of capital punishment and life imprisonment [Article 37(a)]

Under article 45 of the Criminal Justice (Children) (NI) Order 1998 children convicted of grave crimes may be detained during the pleasure of the Secretary of State in such place and under such conditions as the Secretary of State may direct.

Question for Government

Is the Government of the view that article 45 of the Criminal Justice (Children) (NI) Order 1998 is in keeping with Article 37 of the UNCRC?

4 The physical and psychological recovery and social reintegration of the child (Article 39)

C. Children in situation of exploitation, including physical and psychological recovery and social reintegration.

The Committee are referred to comments made in relation to funding for children’s services elsewhere in this report and in particular to the comments made about the need to adequately fund the “children in need” provisions of the Children (NI) Order 1995 and to fund the services envisaged by Children’s Services Plans throughout the Health & Social Services Boards.

1. Economic exploitation of children, including child labour (Article 32)

The employment of children has been the subject of extensive legislation since the early 19th century.
The European Union has placed restrictions on the employment of children and Council Directive 94/33/EC of 22 June 1994 encourages member states to legislate against the employment of anyone under the age of 15 except in light work. The EC Directive also placed a duty on member states to introduce improved health and safety requirements for young workers, that is those workers aged between 15 and 18. These extra safeguards were introduced in Northern Ireland in 1998 as part of the Working Time Regulations (NI) 1998.


Article 135 of the Children (NI) Order 1995 prohibits the employment of children under 13 at all and places restrictions on the number of hours and time of day children can work. There are also only certain permitted types of work in which children may be employed and these are set out in regulation.60

There are a number of problems associated with the employment of children in Northern Ireland. Research has indicated that although children and young people welcome the opportunity to do part time work, there are a number of causes for concern. 61 Although the majority of pupils worked less than 10 hours per week, there was a significant percentage who worked in excess of 10 hours per week. The average hourly wage was between £1 and £3. However, this average concealed an extremely low average wage for approximately 12% of the sample all of whom earned less than £1 per hour. The lowest recorded wage was 15p per hour. In addition 25% of the children had experienced accidents at work, the most common accidents being cuts and burns. Some children, especially boys, were working on building sites and other manual occupations.62

On the other hand children and young people aged 15 to 16 cannot at present work beyond 7pm on a school night and one of the recommendations of the research was that this should be reviewed.

The minimum wage does not apply to children and young people under the age of 18 in Northern Ireland and wages for children are unregulated.

There is not enough information available for employers and children/young people about the employment regulations. This important information should be widely accessible in a child friendly format.

The Education and Library Boards are responsible for enforcement of the regulations governing the employment of children. However recent research has shown that these regulations are rarely enforced. There is a need to review existing legislation in

60 The Employment of Children Regulations (NI) 1996.
62 Ibid.
consultation with children and young people themselves and to provide a sensible legislative framework and enforcement mechanism to protect children from exploitation.

The Commission’s draft Bill of Rights sets out economic rights for children.

**Questions for Government**  
1) Does the Government produce information for young people about their employment rights?  
2) Does the Government intend to review the existing employment regulations?  
3) Does the Government hold any information about the enforcement of these regulations against employers of children?  
4) Does the Government intend to regulate the minimum wages received by children?

**2. Drug Abuse (Article 33)**  
The Government introduced a policy statement on drug misuse in Northern Ireland in 1996 aimed at reducing the health risks and harm to young people from drug misuse.63  

**Question for Government**  
What support programmes does the Government fund to help provide drugs awareness education in Northern Ireland and to prevent drug misuse by young people?

**3 Sexual exploitation and sexual abuse (Article 34)**  
In March 1998 there were 1,386 children on the child protection register in Northern Ireland. In 1998-99 there were 990 sexual offences reported against children, but the number of convictions was a fraction of this figure.

Children who are assessed as being at risk of harm can be placed on the child protection register and in cases where allegations of sexual abuse are made interviews are conducted under the Protocol for Joint Investigation by Social Workers and Police Officers of Alleged and Suspected Cases of Child Abuse. The police have also established Child Abuse and Rape Enquiry Units throughout Northern Ireland. The relevant civil law governing the protection of children from sexual abuse is the Children (NI) Order 1995 which introduced the concept of significant harm. This means that if a child is suffering or likely to suffer significant harm the appropriate authority must take steps to protect the child concerned. In addition under the Family Homes and Domestic Violence (NI) Order 1998 non-molestation orders can be sought to protect children. Such molestation is defined widely under the Order and includes sexual abuse.

In terms of the criminal prosecution process, the Department Of Public Prosecution has to decide whether the case is strong enough to go to court. This very often depends on the competence of the child witness to give evidence. Many cases do not go to trial. The Government consulted about additional measures to help child witnesses in December  

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63 *The Drug Strategy for Northern Ireland*, 1999, DHSSPS.
1998. Some of the measures being considered were the introduction of video cross examination for children, use of screens and child witness supporters and the use of intermediaries. The relevant provisions of the Criminal Evidence (NI) Order 1999 implementing these measures have not yet been commenced.

Questions for Government
1) Why do many sexual abuse cases involving allegations by children not result in a prosecution?

2) Why have the additional measures of protection for child witnesses not yet been implemented?

3) What steps has the Government taken to ensure that children who are giving evidence in sexual abuse cases have the benefit of a witness supporter to help them through the criminal process?

4. Sale, trafficking and abduction (Article 35)

5. Other forms of exploitation (Article 36)
D. Children belonging to a minority or an indigenous group (Article 30)
The Commission’s concerns in respect of the rights of children belonging to a minority or an indigenous group are outlined in our comments under Article 24-Health and Health Services and under Articles 28, 29 and 31- Education, Leisure and Cultural Activities.

To assist Committee members we set out here a list of proposed questions in respect of the UK Government’s compliance with Article 30.

Questions for the Government
1) What steps are the Government taking to ensure that the living conditions and accommodation provision for Travellers is improved?

2) What steps have been taken by Government to ensure that the school curriculum incorporates matters about other cultures?

3) What steps have been taken by Boards and Trusts to ensure that information about Health and Social Services are available in different languages including services for children under the Children (NI) Order 1995 and that translators are available?

4) What steps are being taken by Government to ensure that Traveller children have full access to the school curriculum?

5) What steps are being taken by Government to end the segregated schooling of Traveller children in Belfast?

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64 Vulnerable or Intimidated Witnesses, A Consultation Paper NIO October 1998
6) Are there mechanisms in place to monitor and evaluate the educational attainment of children from ethnic minorities?

7) Does the Government intend to include children as one of the constituent groups in the proposed new Single Equality Act?