Response to Consultation on the Social Investment Fund

Executive Summary

The Northern Ireland Human Rights Commission (NIHRC) pursuant to Section 69 (1) of the Northern Ireland Act 1998 reviews the adequacy and effectiveness of law and practice relating to the protection of Human Rights. In accordance with this function the following statutory advice is submitted to the Office of the First Minister and deputy First Minister (OFMdFM) on The Social Investment Fund.

The response welcomes the initiative but advises OFMdFM to devise and implement the Social Investment Fund through a rights-based approach which would expressly link rights with participation, empowerment, non-discrimination, transparency and accountability. For the Social Investment Fund initiative this would involve:

- acknowledging human rights law under which all individuals have rights to, for example, health, employment and an adequate standard of living with Government being the corresponding duty bearer
- ensuring active and meaningful participation from those living in poverty, including capacity building measures where required
- addressing the rights of the most vulnerable and marginalised in a manner consistent with the principle and law of equality and non-discrimination
- engaging with the affected communities in a positive manner and sharing all relevant information through the ethos of transparency, and
- providing accountability mechanisms within the initiative including targets against which Government performance can be audited and methods of redress.

1 Northern Ireland Act 1998, s.69 (1).
Response to the Consultation

1. The Northern Ireland Human Rights Commission (NIHRC) pursuant to Section 69 (1) of the Northern Ireland Act 1998 reviews the adequacy and effectiveness of law and practice relating to the protection of Human Rights. In accordance with this function the following statutory advice is submitted to the Office of the First Minister and deputy First Minister (OFMdFM) on The Social Investment Fund.

2. The Social Investment Fund (SIF) plans appear to acknowledge the causal link between poverty and lack of access to, for example, health, employment, education and community safety. While the consultation document itself does not use the language of rights, individuals in the UK do indeed have rights to health, employment, education, a safe environment, etc and these are enshrined in international law. In addition, poverty itself can be seen as a human rights violation. The UK Government is the corresponding duty-bearer and while nothing exists in UK law which explicitly denies access to the poor or socially deprived to these rights, Government inaction and/or decisions can be linked to the causes of poverty and social deprivation. The Commission therefore welcomes OFMdFM’s commitment to tackle poverty and deprivation in communities in Northern Ireland through the SIF. An allocation of £80 million is a positive step in meeting that commitment.

3. Under the SIF applications can be made by groups or a consortium of groups in defined geographical areas (referred to as investment zones) for funding in order to roll out programmes that are intended to meet the following strategic objectives:
   - build pathways to employment by tackling educational under achievement and barriers to employment
   - tackle the systemic issues linked to deprivation (including poor mental and physical health, community safety, young mothers, children and young people at risk)
   - increase community services by regenerating and refurbishing existing facilities and providing play facilities and environmental improvement, and

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2 Northern Ireland Act 1998, s.69 (1).
• address dereliction and promote investment in the physical regeneration of deprived communities.  

4. The devising and implementation of the programmes in each investment zone will be monitored by a Steering Group comprised of community, political, statutory agency and business representatives. The consultation paper puts forward a number of options for appointing the Steering Group as well as a number of options for applying for, and delivery and management of, funds.

5. Before turning to its advice the Commission seeks further clarification on the rationale behind the decision to allocate 50 per cent of the £80 million to the fourth strategic goal cited above. The Commission would, in particular, wish to see the evidence base for how this allocation will lead to the greatest level of human rights protections in the proposed investment zones.

6. This submission will now advise OFMdFM on the human rights principles that ought to inform its decisions in allocating and operationalising the SIF. Human rights law and principles must play a central role in tackling poverty and social deprivation. First, because Government must not implement policies, practices or laws that breach its national or international human rights obligations. Second, there rests a positive duty on Government to ensure the full enjoyment of rights for those within its territory. Third, human rights law and principles offer a means of achieving positive outcomes for whole societies because when human rights are protected all individuals are enabled to contribute politically, socially, culturally and economically. Finally, international experience evidences how a rights-based approach can lead to positive gains in tackling poverty.

7. It is regrettable that the language of rights is not used in the consultation document. This absence is not simply an issue of language or cosmetics. A rights-based approach expressly links rights with participation, empowerment, non-discrimination, transparency and accountability and, while some of these principles are underlying themes throughout the consultation document, the absence of their express mention along with that of rights risks the outcomes falling short of human rights goals. In 2009 it was specifically recommended by the UN Committee on Economic, Social and

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3 The Programme for Government 2011-2015 indicates that 50% of the £80 million is to be allocated to the fourth strategic goal.
Cultural Rights that the UK “develop human rights-based poverty-reduction programmes, taking into consideration the Committee’s Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights of 2001”. This submission will now elaborate on how a rights-based approach should be followed.

**Human Rights Obligations**

8. Under Article 2 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Parties to the Covenant undertake “to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”. Legislative measures to tackle poverty and deprivation are crucial but General Comment No. 3 from the UN Committee on Economic, Social and Cultural Rights elaborates that other measures such as “financial” are also important in terms of States fulfilling their obligations under ICESCR. Therefore the creation of the SIF can be seen as an important contribution on the part of OFMdfM to Government meeting some of its obligations under ICESCR.

9. Indeed, the strategic objectives, listed above, already speak to some of the UK’s human rights commitments under a number of UN treaties. For example, of direct relevance to the first strategic objective is Article 6 ICESCR under which everyone has the right to “work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses”. This right includes access to “technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual”.

10. The second strategic objective speaks directly to Article 11 ICESCR under which everyone has “the right to an adequate standard of living for himself and his family” and under Article 12 everyone has the right to “the highest attainable standard of physical and mental health”.

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11. Article 31(1) of the UN Convention on the Rights of the Child enshrines the right of children “to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts”, which is of direct relevance to the third strategic objective.

12. In terms of the fourth strategic objective the Committee on Economic, Social and Cultural rights has expressly linked physical environment to the right to health in General Comment No.14. General Assembly Resolution 45/94 stresses the “need for countries to take effective measures for the protection and enhancement of the environment”.

13. In turn, the UN Office of the High Commissioner for Human Rights has developed rights-based approaches for each of the rights listed above as well as on generic policies and initiatives to tackle poverty. This submission will concentrate on the generic SIF policy. Given the direct relevance of the SIF to the UK’s human rights obligations, it would be opportune for OFMdFM to make the direct linkage itself and move forward in a manner in which the process and outcomes are grounded in human rights principles as enshrined in the international and regional treaties to which the UK is a party, and drawing as appropriate on the relevant Concluding Observations of the monitoring bodies.

Participation and empowerment

14. From the outset the Commission is of the view that the SIF as it is currently articulated in the consultation document can deliver substantial human rights goals. The overarching aim of tackling poverty through the ethos of community involvement is to be welcomed. The need for a social perspective and a people-centred approach is explicit in United Nations discourse on eradicating poverty. In a statement of 2001 the UN Committee on Economic, Social and Cultural Rights declared “the international human rights normative framework includes the right of those affected by key decisions to participate in the relevant decision-making processes... In the Committee’s

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7 See for example the UN Committee on Economic, Social and Cultural Rights General Comment No. 18 on employment.
8 See for example, Division for Social Policy and Development (DSPD), Department of Economic and Social Affairs (DESA) of the United Nations Secretariat http://social.un.org/index/Poverty.aspxT.
experience, a policy or programme that is formulated without
the active and informed participation of those affected is most
unlikely to be effective”.

15. Since the SIF is still at its formulation stage the Commission
also welcomes the commitment that in addition to the
opportunity to respond in writing “a series of consultation
events will be held in several locations”. Written and oral
inputs from those communities to be targeted should inform
the SIF from this very early stage. The location and times of
the proposed consultation events are currently on OFMdFM’s
website. Postings on an official website, however, are not
adequate to ensure full participation from the most
marginalised. There needs to be active publicising of the
consultation events across Northern Ireland, making
interpreter, signing, childcare and disability proofed facilities
available at the events and involving children and young
people.

16. As well as the greater likelihood of successful outcomes, the
SIF model if embedded in a rights-based approach provides
an important opportunity to overcome some of the
misconceptions around human rights in which the relationship
between rights holder and duty bearer is seen as an
inherently adversarial one. The idea presented in the
consultation document that the community would work
alongside elected representatives, local business and
representatives from OFMdFM to tackle poverty gives rise to
that potential. The Commission would stress, however, that it
is important that the community group is representative of,
and represents the, disaffected. Community support for the
funding bid and programmes is a prerequisite for securing
funding in the consultation document but more information is
needed on how that community support will be demonstrated.
Communication with the communities to be affected needs to
be live and ongoing throughout the lifetime of the SIF and to
be both formal and informal. The various options put forward
in the consultation paper for creating the Steering Groups do
not provide reassurance that concrete measures will be taken
to ensure this level of representation and participation. In
establishing the Steering Group OFMdFM officials have an
important role to play in ensuring full and effective
representation from the community and addressing obstacles
to effective participation. However, the involvement of
OFMdFM officials ought to be confined to a supportive and
capacity building role rather than a directive one and, of

course, the officials themselves must be knowledgeable of human rights obligations and a rights-based approach.

17. The Commission would add that the community group representation is not simply one voice amongst many but is given a central role in devising and delivering the programmes the fund is to be spent on.

18. Under a rights-based approach the SIF cannot be seen as an initiative being bestowed upon those living in poverty but as a step towards Government fulfilling its legal obligations. This ought to be the ethos that informs OFMdFM’s engagement with the Steering Groups. Thus “people must be recognized as key actors in their own development, rather than passive recipients of commodities and services”.  

Non-discrimination

19. While it is welcome that children are specially mentioned in the strategic objectives, women, ethnic minorities and disabled people are also the subject of distinct human rights treaties: the UN Convention on the Elimination of Discrimination Against Women, the International Convention on the Elimination of All Forms of Racial Discrimination and the UN Convention on the Rights of Persons with Disabilities respectively are all concerned with the range of rights engaged in the SIF initiative. Evidence also shows that people belonging to these groups are more likely to be poor and at risk of being poor.  


The Commission notes the Equality Impact Assessment already carried out by the OFMdFM. This is obviously a legal requirement on all public authorities in Northern Ireland. However, while it is unlawful to discriminate under any of the grounds in our equality legislation, international human rights treaties to which the UK is a party, as well as those established under the Human Rights Act 1998 and its jurisprudence, public authorities tackling poverty and deprivation can discriminate on the basis of need. Indeed, it
is incumbent in a human rights-based approach that the needs of the most vulnerable and marginalised be prioritised. The Commission acknowledges that given the social realities in Northern Ireland this may involve a larger proportion of monies from the SIF being allocated to the Catholic community than the Protestant community. That is acceptable in human rights terms provided that the same application and assessment process is applied to all regardless of, for example, their religious background. That is the same opportunity is afforded to all groups to apply for the SIF even if the outcome in terms of successful applications is not equally dispersed.

21. In addition, special measures are of course acceptable indeed desirable under certain, temporary circumstances where a minority has suffered particular hardship as a result of government decisions or inaction in the past. Article 1(4) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Article 5(4) of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) and Article 4 of the UN Convention on the Elimination of Discrimination Against Women (UNCEDAW) have established this principle.

22. The Commission notes that certain geographical areas (investment zones) are identified in the consultation document as being in particular need of social investment. It also welcomes that OFMdFM is inviting further views on those zones identified and whether others should be considered. The Commission accepts the need to establish some criteria for eligibility for applications for the SIF. Where evidence indicates strongly the concentration of poverty and social deprivation in certain geographical areas it is acceptable to use that as a pre-condition for eligibility provided the choice of zones is evidence based. The Commission will not comment on the suggested zones or recommend additional ones but does advise that OFMdFM make available the primary sources of the evidence which show these areas to be in particular need. Given the demographics of Northern Ireland, where many areas are likely to be heavily populated by either the Catholic or the Protestant community, the availability of that evidence would protect OFMdFM from accusations of unduly favouring one community over the other.

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12 These are Greater North Belfast (Community Empowerment Partnership areas), West Belfast and Greater Shankhill Taskforce Area, Greater East Belfast and Lagan Valley, Derry/Londonderry and greater North West, Antrim Area, North Armagh, Border.
other. The need for anti-poverty strategies to be informed by disaggregated data has been expressed by the UN Committee on Economic, Social and Cultural Rights.\textsuperscript{13}

23. However, the Commission also notes that demonstrated community support for the application to the SIF is one of the requirements of receiving funding. Furthermore, the consultation states “the Steering Groups should ensure the plan is reflective of the needs across the entire zone, meets those needs and is impact driven”. Community support and involvement is important provided that community is not defined by the ‘majority’ community living in the geographical area. To define as such would risk the SIF being unavailable for some of the most marginalised and vulnerable groups in Northern Ireland that do not enjoy support, for a number of reasons, from the wider community. Such groups might be Travellers, asylum seekers or migrants. There may be practical communication barriers between these communities and the ‘majority’ which make seeking and securing that support difficult. In some cases prejudices and misunderstandings may have prevented that support from being forthcoming. Access to the SIF for such groups then, becomes more vital as a means of tackling poverty and encouraging integration through the strategic objectives of increasing access to employment and education opportunities and community services.

24. In its Concluding Observations of 2011 the Committee for the Elimination of Racial Discrimination called on the UK to ensure that concrete measures are taken to improve the livelihoods of these communities [Gypsies and Travellers] by focusing on improving their access to education, health care and services, and employment and providing adequate accommodation, including transient sites, in the State party”. The need for particular attention to be paid to the rights of ethnic minorities, asylum seekers, migrants, Travellers and disabled people was expressed in the Concluding Observations of the UN Committee on Economic, Social and Cultural Rights in 2009.\textsuperscript{14} Funding for such ‘minority’ groups should not be seen as at odds with the needs of the entire zone but as enabling smaller communities to claim their rights to employment, health and education, etc. In short, it is not a zero-sum game.

\textsuperscript{14} E/C.12/GBR/CO/5 (CESCR, 2009).
25. It ought to be clarified therefore that ‘community’ is defined as the applicant group’s own community, whether that be ethnically or religiously defined or perhaps defined by immigration status. To do otherwise may risk the SIF being discriminatory towards one or more of the protected groups in human rights law. Article 2(2) ICESCR clearly states that “the States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. General Comment No. 5 from the Committee on Economic, Social and Cultural Rights expressly clarifies that disabled people are also protected under Article 2 (2) ICESCR.

Transparency

26. For the SIF to be truly participatory and empowering OFMdFM and relevant Departments must provide communities and those represented on the Steering Groups with all relevant information. This should include, but not be restricted to, relevant baseline data, budget decisions and allocations, policies, strategies and action plans whether in complete or draft form. It is only with this information can those involved in implementing the programmes be effective in realising the strategic goals. The information needs to be made available in a timely and accessible manner. Access to information is in itself an essential element of the right to freedom of expression as enshrined in the UK’s domestic law under the Human Rights Act 1998 and the International Covenant on Civil and Political Rights (ICCPR).

Accountability

27. When rights are overtly denied or cannot be accessed Government as the ultimate duty-bearer is accountable. The allocation of money for the SIF itself indicates, to some degree, that OFMdFM recognises it has responsibility to those in poverty. However the suggested mechanisms for the allocation and workings of the SIF itself fall short of a human rights-based model. OFMdFM is involved in an advisory, approval and oversight role rather than one that is directly accountable to the Steering Group. Similarly, the Learning and Advisory Forum proposed is to be concerned with sharing good practice but again not a mechanism of accountability. The focus on the Steering Group for devising, delivering and overseeing strategic area plans is correct insofar as
participation at the local level is a vital component of a rights-based approach. However, when goals are not realised the responsibility lies with Government to intervene whether by making more funds, expertise or human resources available to the Steering Group. Moreover, Government must itself be answerable in terms of the outcomes. At present, the consultation document might be read as suggesting that OFMdFM has met its responsibility simply by making the SIF and itself available for certain functions.

28. The Commission is of the view that economic, social and cultural rights should ultimately be justiciable and redress should be available through the courts. However, this response will not focus on that need but advise Government of other ways in which it might provide redress and accountability.

29. Accountability must be built into the SIF because without this component there is little opportunity for the OFMdFM to improve in how it delivers its rights commitments and for those in poverty to truly be empowered. It is important that the Steering Groups involved in the SIF can engage directly with the duty-bearers in a positive manner with the latter taking ultimate responsibility for delivering, improving, correcting and redressing. Representatives of community groups could then see, probe and input into the range of initiatives aimed at empowering them and their communities.

30. The SIF consultation document also lacks any information on how its success will ultimately be measured. The strategic goals are set out but data on the measures of success such as higher levels of positive experience in health care, lower suicide rates or numbers or percentage increase of people in employment or training by end of the four year period of the SIF are required. It is only with these targets or measures clearly set out can Government be truly held to account. Clearly stated targets will also serve as a vital component of the Steering Group’s work. Without them the initiative’s very purpose is questionable. The terminology in the strategic goals such as ‘building’, ‘tackling’ or ‘increasing’ are not sufficient as targets.

31. It is noted that the draft Programme for Government 2011 – 2015 states, in relation to the SIF, a commitment to establish a monitoring framework and baseline targets which support identification of demonstrable improvements in levels of education, health and employment in areas experiencing high
levels of deprivation. This development is welcome. It is unclear, however, whether OFMdFM will establish these targets or if the Steering Groups will also be involved. The Commission is of the view that the Steering Groups ought to be central to the establishment of targets that they see as appropriate and desirable in their communities with the ultimate duty on OFMdFM to deliver them.

Conclusion

32. There are many examples of where civil society has used rights-based approaches with success. These range from winning resources for maternal health in Mexico to securing additional public spending for homeless people with AIDS in the US. The SIF initiative presents an important opportunity for a Government to be part of a rights-based approach from the outset rather than only the subject of complaints and accusations as the identified four year period concludes. OFMdFM is urged to bring a rights-based approach to a local level in which it delivers rights through a process of learning and engagement.

33. In conclusion, the Commission reiterates the need for OFMdFM to view and present the SIF through the lens of human rights, under which those living in poverty are recognised as holders of inalienable rights that must be empowered to claim them.

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