



**Include Youth response to NICCY Draft Priorities and Corporate Plan  
January 2005**

## **Introduction**

Include Youth promotes best practice with young people at risk of social exclusion. We achieve this through the development and promotion of resources, the provision of training, information and support of practitioners and organisations. We also undertake activities which attempt to influence public policy and public awareness locally and nationally.

Include Youth promotes the development of positive choices and opportunities for vulnerable and challenging young people whether in the community, residential care or custody. Include Youth promotes the use of community alternatives to care and custody for children and young people.

Amongst the young people at risk with whom, and on whose behalf Include Youth works are young people from socially disadvantaged areas, those with a learning disability, those with special needs, those who have been truanting, suspended or expelled from school, those from a care background, those who have had a negative parenting experience, young people who have committed or are at risk of committing crime, misusing drugs or alcohol, undertaking unsafe sexual behaviour or other harmful activities, or of being harmed themselves.

## **General**

Include Youth strongly supports the creation of the Office of Commissioner for Children and Young People (NICCY), and is encouraged by the crucial positive role NICCY is developing in promoting and protecting the rights and best interests of all children living in Northern Ireland. We look forward to continuing to develop positive working relationships in the future.

We are very pleased to respond to the consultation in respect of NICCY's Draft Priorities 2005 – 2008, and to inform the Commissioner's deliberations on this crucial matter.

We are aware that both Children in Northern Ireland and the Children's Law Centre have made detailed and substantial submissions to the draft Priorities, and wish to express our endorsement of the comments and recommendations contained therein. Include Youth has decided to make a number of overarching comments, and focus specifically on the issues which impact upon the children and young people at risk with and on whose behalf we work.

### **NICCY Research**

Include Youth warmly welcomed the decision of the Commissioner to commission research to 'highlight the gaps, problems and difficulties in the protection, promotion and implementation of children's rights in Northern Ireland', and were most impressed by the comprehensive analysis of the current state of children's rights in NI today, if more than a little concerned at the findings and disheartened at the amount of work still to do to make children's rights a reality for all our children. We believe that this research, which took on board the views of over 1000 children and over 350 individuals working with and on behalf of children and young people, provides very solid grounding which can inform the strategic priorities, and are pleased to note that the Commissioner states the 'this invaluable work has helped us decide on our priorities'.

The publication of the NICCY Research provides an evidence based and children's rights analysis, should not only inform the strategic focus of the Commissioner's Office, but also has much added value in terms of informing the children and young peoples sector including the statutory, voluntary and community sectors of what's required to really deliver services, policies and laws that uphold the best interests of the child. We believe that it would be extremely beneficial to produce a similar document on a bi-annual basis. This not only fulfils NICCY's research function but also falls clearly within the promoting children's rights functions – and we would suggest making the main findings available in child / young person appropriate formats.

### **Direct Consultation with children and young people**

Include Youth and other organisations have faced significant struggles recently in relation to the issue of direct consultation with children and young people, and indeed

with Section 75 groups generally. This has necessitated our organisation, with other partners in the children's / NGO sector invoking the formal complaints procedures of the Equality Commission. NICCY, as the champion of children and young people, must not only conduct a comprehensive consultation exercise in respect of the draft Priorities and Corporate Plan, but must also be seen to be doing so. This is particularly important in the context of Article 12 of the UNCRC. NICCY must take the lead in developing new and effective models of participation, particularly in regards to reaching those young people who are marginalised, including children in conflict with the law.

Therefore, NICCY must state clearly how and with whom it has consulted in relation to the Draft Strategic Priorities and Corporate Plan. Include Youth would like to know what steps were taken to ensure that the direct views of marginalised children and young people have been gleaned in the consultation exercise.

### **Ranking draft Priorities**

Include Youth notes with some concern the Response Form in the Shout Document which proposes ranking the draft priorities in order of preference. It is clear that each of the draft priorities are laudable, and raise extremely important issues, especially for those children and young people who live with the direct or indirect consequences of a failure to uphold their rights in any of the particular areas. Whilst we appreciate that NICCY wishes to hear the views of all stakeholders in informing its strategic priorities, we believe that it would be unhelpful for us to rank our priorities, and believe that this approach could be seen to be divisive and creating an unnecessary hierarchy of children's rights.

We note from the draft Corporate Plan the process by which NICCY has arrived at the list of draft priorities, and would like to make a number of comments. In terms of providing a framework within which to make decisions on the strategic priorities and direction of the Commissioner's Office, Include Youth believes strongly that this should be evidence based and rooted firmly in the Concluding Observations of the UN

Committee on the Rights of the Child, the statutory framework, and informed by the comprehensive research, which as we know sought the views of over 1000 children.

We are aware that the UN Committee on the Rights of the Child made almost 30 recommendations, many of which were multi-part recommendations, and further appreciate the vast number of issues identified in the research. We accept that it would be unrealistic to expect the Commissioner's Office to embark on tackling all of these issues at once.

Whilst we believe that the issues raised by children and young people or their parents / carers through the Commissioner's complaints process are extremely important and could help inform the Commissioner in his deliberations, we would sound a note of caution against weighting this criteria too heavily in the decision-making process, for a number of reasons. We understand that NICCY's complaints and legal function has been active for over a year, and analysis of this function could provide insight and identify possible priority areas of work for the Commissioner in a number of ways. For example, Include Youth would submit that in examining the complaints profile it may be just as important if not more so, to identify which types of issues are not being presented by children and young people. Having gleaned this information NICCY may then wish to take special measures within the statutory function to promote and protect the rights of the young people concerned.

Take for example the young people with whom and on whose behalf we work, which include children in conflict with the law. We believe that many of these children and young people are at risk of suffering persistent and often serious attacks on their civil, political, social, cultural and economic rights. However, we are also aware that many of these breaches go unreported and unchallenged, for a range of reasons, including as stated in the NICCY Research: 'children's lack of information and understanding about their rights, and the language required to articulate them... [and] the existence of a cultural problem, which requires a fundamental attitudinal shift among adults who hold the balance of powering the relationship dynamic with young people.' xx Whilst these

comments were made in respect of children generally, it is our submission that young people on the margins of society are multiply disadvantaged in this area. The Children's Law Centre's Chalky Helpline reports that only 2% of annual total complaints received are in respect of juvenile justice (CLC Annual Report 2003) – yet as been documented clearly by both the UN Committee and the NICCY Research, this is an area where there continues to be serious and significant breaches of children's rights (quote un ctt). It is interesting to note in the 'Children and Crime' section of the Shout Document, mention has been made of complaints received by NICCY in respect of 'children who have been affected by criminal activity [and] facilities that have been affected by criminal behaviour'.

As stated earlier, we believe that it may be just as enlightening for NICCY to examine which issues are not being brought forward by children and young people. We would hope that in such endeavours, the Commissioner's Office would draw on the expertise and experience of colleagues in the voluntary sector, many of whom are working directly with young people who would be reluctant to make complaints. For example, Include Youth's Young Voices participation project works with the aim of involving young people who are engaged or at risk of becoming engaged in the criminal justice system an opportunity to become involved in decision-making processes which impact upon their lives. We would be very happy to engage with NICCY on the issue of tackling barriers to participation / making complaints among young people at risk.

As stated in the NICCY Draft Corporate Plan states 'we must do what the legislation requires us to do' (pg5) Include Youth believes that it would be beneficial to have the statutory functions, duties and powers of the Commissioner, as laid down in The Commissioner for Children and Young People (Northern Ireland) Order 2003, clearly set out in the Corporate Plan. There are a number of draft priorities which clearly fall within the scope of the powers conferred to the Commissioner under this legislation, e.g Having Your Say; Knowing your Rights and Responsibilities; Implementing the UN Convention on the Rights of the Child. Include Youth recommends that these should underpin NICCY'S work in respect of all agreed priorities, and should not be stand alone priorities.

We believe that issues such as those surrounding complaints to NICCY could in large part be tackled by the Commissioner exercising his statutory functions, together with striving to see the recommendations of the UN Committee fully implemented, both of which, to re-iterate we believe should underpin all areas of work undertaken by NICCY. We see that many of the draft priorities identified reflect significant cross-cutting themes of the NICCY/QUB report and would suggest addressing issues within this thematic context would bring about the greatest overall impact and indeed would have a knock on effect on many different aspects of a child's life.

Clearly, following adoption of priorities for the next three years, we recommend that NICCY produces a detailed strategic action plan, with targets, performance indicators and appropriate timescales, and that this is subject to a public consultation in compliance with the Commissioner's office's duties under s75 Northern Ireland Act 1998.

### **Context**

Include Youth believes that it is important in setting 'The context in which NICCY operates', to include specific reference to international rules, principles, conventions etc. This is particularly the case in respect of the UNCRC, as this falls within the Commissioner's statutory remit – where at article 3(b) of the Commissioner for Children and Young People (NI) Order 2003 it is stated:

'In determining whether and, if so, how to exercise his functions under this Order, the Commissioner shall have regard to – any relevant provisions of the United Nations Convention on the Rights of the Child.'

NICCY's watchdog role in terms of government compliance with the UNCRC and the Committee's recommendations should also be clearly set out in this section. In addition, Include Youth believes that it would be most useful to provide, perhaps in appendix form, a list of relevant international standards on children's rights.

We welcome the fact that NICCY states that it wishes to see improvements in proposed legislation for the protection of children and young people from abuse and the difficulties they encounter from sectarianism, racism, discrimination as a result of disability and sexual orientation. NICCY states that they will work with the Equality Commission and other statutory bodies to remove these difficulties. We believe that non-governmental organisations such as Include Youth Also have a role in partnership working with NICCY and believe that NGOs should be included here.

As previously stated Include Youth is a strong supporter of the Office of the Commissioner for Children and young people, and look forward to continuing to develop positive working relationships with NICCY. The UN Committee recommended at Paragraph 17 (d) , in welcoming the establishment of a Children’s Commissioner for Northern Ireland, that steps should be taken to ‘ensure that children and children’s organisations are involved in their establishment and activities’. We believe that it would be useful to include in the NICCY Corporate Plan an explicit commitment to doing this work, which we are well aware the Commissioner’s Office is already engaged in.

### **Values**

We advocate that NICCY include explicit reference in this section to the United Nations Convention the Rights of the Child, and reference to other relevant internationally accepted rules and principles on children’s rights and human rights. Furthermore, we believe that explicit reference should be made at point 2 to the need for NICCY to be an organisation which is Paris Principle compliant, as recommended at paragraph 17 of the UN Committee’s 2<sup>nd</sup> Periodic Report. (Paris Principles - Principles relating to the status and functioning of national institutions for protection and promotion of human rights.) We also believe that it is important that NICCY state clearly in its Corporate Plan its commitment to transparency.

### **Investigatory Powers**

NICCY has extensive and powerful investigatory powers as detailed in sections 16 – 23 of the Order. We are concerned that these powers do not appear to be reflected in the

Draft Corporate Plan. It is vital that NICCY indicates a readiness to utilise these powers, particularly in light of the serious difficulties encountered by the Northern Ireland Human Rights Commission in attempting to conduct investigations.

We would welcome greater clarity in relation to the proposed use of investigatory powers, as well as an indication of where these powers are located within the Corporate Plan.

### **Legal Assistance**

Include Youth very much welcomed the powers to bring, intervene or assist in legal proceedings in the Order and is of the view that the appropriate exercise of these powers will be of crucial importance in the realisation of children's rights in Northern Ireland. We agree that it is necessary for NICCY to develop clear criteria to dictate under what circumstances it will engage this function, as NICCY must be extremely strategic in terms of resources. We believe that these criteria must not be too proscriptive and unduly fetter the Commissioner's discretion. We believe that it would be beneficial if NICCY included in its Corporate Plan, more detail on each of the five distinct legal functions which are conferred to the Commissioner under the Order.

### **Children and Crime**

Include Youth, as an organisation working to promote and safeguard the rights and best interests of vulnerable and challenging young people, wish to make a number of points in respect of the draft strategic priority 'children and crime'.

Clearly we welcome the inclusion of this strategic area in the draft Corporate Plan. We welcome NICCY's recognition in this section that children can be both victims of crime, and they can commit crime. In addition, young people can also often be witnesses to crime. It is important that this strategic priority tackles the rights of children in all of these situations.

As the UNCRC is central to the functions and role of NICCY, it is fundamental that in relation to children and crime that the UNCRC Committee recommendations as well as other relevant international standards, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System are examined in an effort to afford children their most basic rights.

The Committee made more critical observations about children in the youth justice system than in any other area, noting with ‘serious concern’ that,

“...the situation of children in conflict with the law has worsened since the consideration of the initial report”.

A particular concern for the Committee is the low age of criminal responsibility. It also criticised the conditions that children experience in detention with specific concerns including the use of solitary confinement as a disciplinary measure or for protection, the lack of access to independent advocacy services and the fact that children are still not separated from adults in prison. Amongst the Committee’s recommendations to government was to ensure that detention of children is used as a measure of last resort for the shortest appropriate period of time. Another factor raised has been the significant number of children and young people in custody and at risk of offending with mental health problems, and the wholly inadequate and inappropriate response to the needs and rights of these children and young people.

### **Best interests**

Include Youth believes that there is a pressing need for the Children’s Commissioner to advocate for the introduction of the best interests principle within youth justice, in order to comply with Article 3 of the UNCRC. The importance of implementing this principle in the criminal justice system is clear from other international standards. For example,

Rule 4 of the UN Rules for the Protection of Juveniles Deprived of their Liberty provides that the juvenile justice system should uphold the rights and promote the physical and mental well-being of children. Paragraphs 4 and 52 of the UN Guidelines for the Prevention of Juvenile Delinquency attach clear priority to the need to protect the best interest of all children. In 1995, the UN Committee recommended that greater priority be given to incorporating Article 3 into legislation and administrative measures and policies regarding children (paragraph 27)

The UN Committee in its Second Periodic Report in 2002 observed that

*‘while noting that the “welfare” of the child is included in child care and protection legislation, the Committee is concerned that the principle of primary consideration for the best interests of the child is not consistently reflected in the legislation and policies affecting children throughout the State party, notably in the juvenile justice system or immigration practices’* (paragraph 25)

The Committee recommended that government ‘establish throughout the State party the best interest of the child as a paramount consideration in all legislation and policy affecting children, notably the above mentioned systems.’ (paragraph 26)

Currently, none of the governing legislation -, Criminal Justice (Children) NI Order 1998 and Justice (NI) Act 2002 – contain and express commitment to the best interests principle but instead place the emphasis on the ‘welfare of the child’. It is our contention that this does not go far enough, as it is not consistent with the UNCRC, and confers a lower standard of protection on children in conflict with the law, than those which fall under the remit of for example, the Children (NI) Order 1995. This is a lesser test and in any proceedings for an offence, the court shall have regard to the welfare of any child brought before it.

In addition, the Youth Justice Agency’s Aim is ‘to prevent offending by children’, which in our view has completely the wrong focus, and the starting point should be an

overarching commitment to the best interests principle – clearly it is in the best interests of all children not to engage in risk taking or offending behaviours. This failure to give expression to the best interests principle falls short of minimum international standards and undermines real attempts to prioritise children’s welfare throughout the system.

Nowhere in the area of youth justice generally is the requirement that the best interests of the child guide all decisions made about a child’s care given express recognition. This absence of the best interests principle manifests throughout the youth justice system, as there are a number of areas which breach the UNCRC. These include, as stated elsewhere in this document, the low age of criminal responsibility, the number of young people detained on remand, the detention of young people in adult prisons, the over-representation of care experienced children and young people in the youth justice system.

Include Youth believes that NICCY has a crucial role to play in advocating for and using its Offices to influence those public bodies whose remit is youth justice to expressly include the best interests principle in all relevant legislation and policies. In addition, NICCY should support these agencies to assist all staff in the translation of this principle into practice.

As stated previously the UN Committee recommended that age of criminal responsibility should be raised. Whilst little guidance is given with regards to the most suitable age there is advice that it should comply with other administrative thresholds in the jurisdiction. Include Youth believe that the age of criminal responsibility should be raised to 16. More importantly we believe that NICCY should have its own policy with regards to the most suitable age that children and young people can be held responsible for their criminal actions and would urge the office to review the adequacy and effectiveness of the law in this regard.

The NICCY research makes a number of recommendations based on the UNCRC Committee’s recommendations and identified the ‘Impact of the Experience in the Care

and Justice System' as one of the significant cross-cutting themes of the research, listing a number of outstanding UNCRC breaches and other pressing issues.

### **ASBOs**

One such issue which the Research identified as wholly incompatible with the UNCRC was the introduction of Anti-social behaviour orders (ASBO's), which recommended that they be withdrawn. We strongly support this recommendation and the Include Youth is currently awaiting the Equality Commission's Statutory Duty Investigation's Committee report on the outcome of an official investigation into the introduction of ASBO's. We welcomed and supported the Commissioner's efforts in seeking a judicial review of the Secretary of State's decision to introduce ASBOs to Northern Ireland. It is disappointing that despite the strong lobby from the children's sector highlighting, amongst other concerns, the human rights and equality breaches associated with these orders, the legislation has been introduced and is in the process of being implemented.

The High Court judgement of Mr. Justice Girvan serves only to weaken the interpretation of the UNCRC and as the custodian and champion of the UNCRC, NICCY must reassert the importance of the UNCRC and monitor and review the operation of ASBO's with a view to further challenging their legality and having them withdrawn.

### **Changes to youth justice system**

There have been many changes in the youth justice system in the past number of years following the extensive research and consultation exercise undertaken by the Review of the Criminal Justice System which reported in 2000. The Review recommended far-reaching changes to the criminal justice system in Northern Ireland. These changes include a major rationalisation of the juvenile justice estate, including the long-awaited closure of Lisnevin Juvenile Justice Centre in 2003; the creation of a Youth Justice Agency of Northern Ireland, established in April 2003; and through the enactment of the Justice (NI) Act 2002, the introduction of a range of new restorative and diversionary measures for dealing with young people who offend, including Youth Conferencing. In addition, the legislation made provisions for the inclusion of 17 year olds within the

youth court system, which will take effect in September 2005. A further key recommendation of the Criminal Justice Review was the development of a regional Community Safety Strategy, launched in March 2003.

Include Youth believes that NICCY must be involved in measuring the impact that these changes have had on children and young people.

For example, on the issue of Youth Conferencing, which has just been the subject of an Interim Evaluation, Include Youth would like NICCY to keep under review this issue from a children's rights perspective, particularly in relation to the issue of proportionality. The interim Evaluation stated that 'many offenders express[ed] a degree of discontent with certain aspects of the process and / or outcome' (Interim Evaluation of the Northern Ireland Youth Conferencing Scheme, NIO Research and Statistical Bulletin 1/2005, p11). Include Youth are concerned to ensure that Youth Conferencing is rolled out in an equal fashion across Northern Ireland, and that Action Plans are proportionate to the matter which has come before the Conference, and reflective of how many times the young person has offended etc.. We are concerned that young people could end up with a significantly more onerous Action Plan, than had they chosen to go before a Youth Court, which may perhaps, taking into account the seriousness of the offence, whether it was their first time before the court, their guilty plea, have ordered a conditional discharge.

### **Whole System Approach**

Whilst the Commissioner has indicated the need for further research within this area, we believe that there is already much evidence to support taking forward specific action in this area. For example, NICCY states that it is a priority 'to find out more about children and young people who are at risk of offending, in custody, who may be at risk of anti-social behaviour or who may be subject to anti-social behaviour orders...[and] also wants to examine why some children commit crimes'. There is a body of international evidence in respect of what works to prevent and divert children and young people from getting involved in risk taking behaviours, which involve reducing risk factors and enhancing the range of protective factors which exist for children and young people and their families.

It is well documented that very often, those children and young people who offend or are at risk of offending, are also engaged in a range of other risk-taking activities, and may well be known to a range of agencies and service providers, for example, social services (family and childcare, child protection, leaving and aftercare, children with a disability); education (education welfare services, EOTAS providers); Youth Justice Agency Community Services Directorate; and PSNI, as well as a number of voluntary and community sector service providers. There is a wealth of experience, expertise and good practice, which has developed in recent years in working with vulnerable and at risk children and children in need as defined by the Children (NI) Order 1995, most notably through Children's Services Planning.

Include Youth believes that government needs to approach the issue of youth justice in a holistic way, which includes dedicating resources into providing effective services and support for young people and their families who are in trouble. We believe that NICCY has an important role to play in influencing the development of much more effective joined up working practices between all agencies with responsibility for children in conflict with the law.

### **Public Perception of Young People at risk**

It is important that NICCY take on board the point that quite often those young people who witness or are victims of crime may also engage in criminal activity. It is crucial that the Commissioner's Office promote and protect the rights of these very often challenging and vulnerable young people in any and all situations where these rights are breached or called into question. Very often these children are among the most marginalised in our society, and we note with extreme concern the increasingly punitive approach being adopted by government in respect of young people through the introduction of anti-social behaviour orders. In addition, we continue to be alarmed at the negative public image of young people at risk which is portrayed daily in our media. We believe that the Commissioner has an important role to play in tackling this negative and unhelpful stereotyping of young people.

## **NICCY in strong position to tackle egregious breaches in area of youth justice**

The research, while acknowledging the huge amount of progress required in children's rights and crime states that NICCY is in,

*"...a strong position to tackle the egregious breaches faced by these children in a strategic way through awareness raising, lobbying for change including the full implementation and incorporation of the CRC and advising Government on the implications for children's rights of law and policy in the area."* (NICCY, p. xviii)

Include Youth hopes that NICCY will as a matter of urgency, tackle these egregious breaches, raise awareness and lobby for change as it is clear that in order to safeguard and promote the rights and best interests of children and young people within and in contact with the criminal justice system, there is much work to be done. We believe that a detailed and timetabled strategic action plan with clear targets and indicators regarding children and crime, including youth justice, must be developed, which will see NICCY work to ensure government's full compliance with the UN Committee's recommendations.

### **Conclusion**

Include Youth is delighted to have had an opportunity to comment on the NICCY Draft Priorities and Draft Corporate Plan. We look forward to working in partnership with NICCY to help promote and protect the rights of all our children and young people. We hope our comments have been constructive and we will be happy to meet to discuss further any aspect of this response with you. We wish to be kept informed about the developments in respect of the NICCY Priorities and Corporate Plan and look forward to hearing from in this regard.