



**INCLUDE YOUTH RESPONSE
TO NORTHERN IRELAND OFFICE CONSULTATION
ON A BILL OF RIGHTS FOR NORTHERN IRELAND:
NEXT STEPS**

'Make people respect young people.'

*'Tell them the fact that young people are the future and
will be taking their place.'*

*'Show young people have a voice as well and it can't be or
shouldn't be squashed.'*

(Quotes from Young Voices)

March 2010

Executive Summary

Include Youth have long been committed to the establishment of a strong and inclusive Bill of Rights for Northern Ireland. As an organisation working with some of Northern Ireland's most marginalised and vulnerable young people, we see the Bill of Rights as an opportunity to make the best interests of children and young people a paramount consideration in the development of legislation, policy and service provision. To this end, we committed considerable time and energy to involve young people in the process and to contributing to two of the Working Groups established to advise the Commission in drawing up its advices to Government in relation to a draft Bill of Rights for Northern Ireland, those looking at Children and Young People and Criminal Justice. We believe that the Reports presented by these groups to the NIHRC, outlines the necessary protections for children and young people which should be contained in a Bill of Rights for Northern Ireland.

Include Youth are therefore deeply concerned with the contents of the NIO proposals in respect of what appear to be the eroded protections afforded to children and young people generally, and children in contact with the law in particular.

It is our opinion that the NIO consultation paper is a totally inadequate attempt to increase human rights protections in Northern Ireland and does a grave injustice to the comprehensive and genuine efforts made by those who have engaged with the process to date.

Include Youth believes that a strong and inclusive Bill of Rights is essential to promote and protect the rights of all our citizens, and our vulnerable children and young people in particular. We have advocated strongly for a separate chapter on children's rights together with mainstreaming, due to the fact that children require additional protection due to their particular vulnerability, a view which is widely accepted by agencies working with children and young people in NI and which was subsequently advised by the NIHRC. We also support the inclusion of socio-economic rights within a Bill of Rights. As an organisation working with children and young people who have come into contact with the criminal justice system, we strongly advocate for a Bill of Rights which

acknowledges the particular vulnerabilities of children and young people within that system.

Children's rights should be afforded special protection in the Bill of Rights for a number of reasons – the fact that the European Convention on Human Rights (ECHR) contains only the minimal express recognition of the special needs of children, the growing international recognition of the need to guarantee the rights of all children as evidenced by the status of the UNCRC internationally, the exposure of children in Northern Ireland to conditions of the conflict, the high incidence of poverty, children's traditional lack of influence on decision-making and the particular vulnerability of children to exploitation.

Ensuring children's rights are contained within the NI Bill of Rights is a perfect opportunity to make the principles and provisions of the UNCRC justiciable. Not only has the Government failed to take this opportunity up, it has singularly failed to even mention the UNCRC in the consultation document. This is a glaring oversight and does nothing to instil any confidence that the current proposed Bill of Rights will mean any real and positive change for the children and young people of NI.

As earlier stated the NIO consultation paper has reduced rather than strengthened children's rights protections in the draft Bill of Rights in accordance with the UNCRC and other international standards. What we are now left with is a proposed Bill of Rights which falls below these minimum standards, particularly in relation to rights of children in conflict with the law. Moreover, we would more generally point out that the proposals also fail to provide the minimum protection for children's rights in other areas including the right to special protection, the right to be heard, the right to play, the right to health care, the right to protection from economic exploitation.

We firmly believe that the government should revisit the recommendations presented by the NIHRC in December 2008 and use this comprehensive, well researched and widely supported advice as the basis for any future framework for a Bill of Rights for Northern Ireland.

Introduction

Include Youth promotes best practice with young people in need or at risk. 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 aimed at influencing public policy and policy awareness – both locally and nationally.

Include Youth promotes the development of positive choices and opportunities for vulnerable and challenging young people 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 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.

Include Youth manages the LACE (Looked After Children in Education) Project which is a multi-agency partnership with the aim of promoting better educational outcomes for children and young people in care.

The Give and Take Scheme aims to improve the employability and increase the self esteem of young people in need or at risk from across Northern Ireland. The Scheme works with approximately 135 young people from a care or criminal justice background. The Scheme aims to support young people to overcome particular barriers that prevent them from moving into mainstream training or employment and towards independent living. 75% of people on the Scheme are care experienced and we have strong partnership with all Trusts, YJA, PBNI and Careers service. The Scheme provides essential skills training (ICT, English and maths) to all of the young people.

In addition, Include Youth runs the YOYO Practitioners Forum, which draws together professionals from a range of statutory, voluntary and community organisations working directly with young people in need or at risk, and meets on a quarterly basis.

Include Youth's Young Voices project is a way of delivering participative democracy to marginalised young people in Northern Ireland. Its main aim is to support young people at risk or with experience of the criminal justice system, as well as young people marginalised for a variety of reasons, to become involved in decision making processes which impact on their lives, particularly in social welfare, education and criminal justice matters. The project works with a range of groups of young people in the community and both juvenile and youth custody facilities in Northern Ireland.

General Comments

Include Youth, as you will be aware, have been involved with and supportive of the Human Rights Commission's work on advising the Secretary of State for Northern Ireland on a Bill of Rights, since this was first mooted in 1998. We made a substantial submission to the Commission's consultation 'Making a Bill of Rights for Northern Ireland' in February 2002. In addition, we participated in two of the Working Groups established to advise the Commission in drawing up its advices to Government in relation to a draft Bill of Rights for Northern Ireland, those looking at Children and Young People and Criminal Justice. We believe that the Reports presented by these groups to the NIHRC, outlines the necessary protections for children and young people which should be contained in a Bill of Rights for Northern Ireland. Furthermore, Include Youth is an active member of the Human Rights Consortium.

Moreover, we supported the participation of a range of children and young people at risk in direct consultation on this very important issue.

As an organisation which promotes the rights and best interest of young people at risk, **Include Youth believes that a strong and inclusive Bill of Rights is essential to promote and protect the rights of all our citizens, and our vulnerable children and young people in particular. We have advocated strongly for a separate**

chapter on children’s rights together with mainstreaming, due to the fact that children require additional protection due to their particular vulnerability, a view which is widely accepted by agencies working with children and young people in NI and which was subsequently advised by the NIHRC. We also support the inclusion of socio-economic rights within a Bill of Rights. As an organisation working with children and young people who have come into contact with the criminal justice system, we strongly advocate for a Bill of Rights which acknowledges the particular vulnerabilities of children and young people within that system. We will expand on each of these issues in our more detailed comments below.

We are therefore deeply concerned with the contents of the NIO proposals in respect of what appear to be the eroded protections afforded to children and young people generally, and children in contact with the law in particular.

It is our opinion that the NIO consultation paper is a totally inadequate attempt to increase human rights protections in Northern Ireland and does a grave injustice to the comprehensive and genuine efforts made by those who have engaged with the process to date.

We firmly believe that the government should revisit the recommendations presented by the NIHRC December 2008 and use this comprehensive, well researched and widely supported advice as the basis for any future framework for a Bill of Rights for Northern Ireland.

Specific Comments

Compatibility with International Standards

The Good Friday Agreement clearly stated the need to consider the applicability of human rights standards (1998). In its advice the NIHRC set out detailed references to how international standards reflected on a proposed Bill of Rights (NIHRC, 2008).

The NIO consultation paper fails to adequately draw out the implications of international standards or to refer to recommendations made by various international monitoring bodies.

The consultation paper fails to reference several relevant international standards which are applicable to children and young people and in particular for children and young people within the criminal justice system, namely, the UNCRC, the Beijing Rules, Riyadh Guidelines, Tokyo Rules and the UN Rules for the Protection of Juveniles Deprived of their Liberty.

The consultation paper makes no reference at all to the UNCRC. This omission is in complete contradiction to the Government's obligations under its commitment to implementation of the UNCRC.

Include Youth recommends that all policies and services, including the youth justice system, must be fully compliant with international human rights and children's rights standards, in particular with the UNCRC. When the UNCRC was ratified by the UK Government it signed up to obligations under international law to implement it.

Ensuring children's rights are contained with the NI Bill of Rights is a perfect opportunity to make the principles and provisions of the UNCRC justiciable. Not only has the Government failed to take this opportunity up, it has singularly failed to even mention the UNCRC in the consultation document. This is a glaring oversight and does nothing to instil any confidence that the current proposed Bill of Rights will mean any real and positive change for the children and young people of NI.

The inclusion of children's rights within the NI Bill of Rights is widely supported by those working with children in NI and has also been supported by numerous international human rights' expert. The UN Committee in the Rights of the Child in their concluding recommendations to the Government mentioned the potential of the Bill of Rights for Northern Ireland to incorporate the principles and provisions of the UNCRC in a special section of children's rights (UNCRC Committee, 2002; 2008).

More than 180 organisations representing a wide range of interests and constituencies from across NI endorsed maximum protections for children's rights in a Bill of Rights through a document prepared by the Children's Sector Working Group in August 2003, which was submitted to the NIHRC.

Children's rights should be afforded special protection in the Bill of Rights for a number of reasons – the fact that the European Convention on Human Rights (ECHR) contains only the minimal express recognition of the special needs of children, the growing international recognition of the need to guarantee the rights of all children as evidenced by the status of the UNCRC internationally, the exposure of children in Northern Ireland to conditions of the conflict, children's traditional lack of influence on decision-making and the particular vulnerability of children to exploitation.

As earlier stated the NIO consultation paper has reduced rather than strengthened children's rights protections in the draft Bill of Rights in accordance with the UNCRC and other international standards. What we are now left with is a proposed Bill of Rights which falls below these minimum standards, particularly in relation to rights of children in conflict with the law. Moreover, we would more generally point out that the proposals also fail to provide the minimum protection for children's rights in other areas including the right to special protection, the right to be heard, the right to play, the right to health care, the right to protection from economic exploitation.

Unique circumstances of NI

The NIO consultation paper fails to adequately understand the unique context of children and young people's lives in Northern Ireland. The legacy of the conflict continues to affect children, families and communities. In Northern Ireland many of the communities affected by the conflict continue to experience social and economic disadvantage. There is no mention in the document of the definition of 'the particular circumstances in NI'. As a result there is no attempt to give detailed reasoning behind certain omissions. For example, seven of the children's rights proposed by the NIHRC are deemed by the Government to be of 'equal importance' across other jurisdictions, but no evidence is given to support this position. We would take issue with this assumption.

Poverty

A recent report by Save the Children has highlighted that Northern Ireland has a much lower spend on children's public services, schools and personal social service services than England, Scotland and Wales. NI has a higher spend on public order, social

protection, housing and community (Save the Children, October 2009). This is particularly worrying given the fact that child poverty is higher in Northern Ireland than the rest of the UK (Horgan, 2009). Persistent poverty in NI (21% before housing costs) is double that in the rest of the UK (9%) (JRF, Nov 2009).

NI's most disadvantaged children and young people live in communities that face social exclusion and still experience violence that is a legacy of the conflict. There is agreement that the interaction of conflict with poverty tends to exacerbate both (Hillyard et al, 2005)

‘While poverty does not cause conflict, the evidence both locally and internationally indicates that conflict feeds on poverty while undermining the potential of those living in poverty to escape it‘ (JRF, Nov 2009, 11).

The Conflict

36% of all those killed as a result of political conflict in Northern Ireland between 1969 and 2003 were children and young people (Smyth et al 2004). 9 children have been killed by rubber and plastic bullets, the youngest just 10 years old (Horgan 2005).

The history of the conflict has also led to an acceptance and toleration of violence. This has resulted in a tendency to see violence as a way of resolving problems, as well as a way of showing opposition to drawing attention to a perceived injustice (Include Youth, 2009a).

Recent research on young people experiencing conflict and marginalisation in NI highlights that the conflict is far from over for many communities.

‘Some young people had lost mothers and fathers during the Conflict and had experienced and/or witnessed community violence, harassment by the police and security forces. Community representatives suggested that such experiences had been buried and were now emerging: the “hurt and damage done” to parents, relatives and friends “comes to the surface years after the Conflict is over”. Many discussed the continuation of violence within their communities’ (McAlister et al, 2009).

Paramilitary or vigilante activity remains within many communities, with young people allegedly involved in ‘anti-social’ behaviour receiving physical assaults, being intimidated and exiled. They are also drawn into illegal or potentially dangerous activities.

“Some people are forced to join in. They get told “If you don’t join in, you’re getting a beating. Then if they don’t, they get beat and then told that they’ve joined anyway. Kids like.”

“Paramilitaries force young people to do things and that’s when they get in trouble with the police. What are you supposed to do? We are caught in the middle.”

(Quotes from young people, McAlister et al, 2009)

Relationships between young people and the PSNI also remain fraught, characterised by mistrust and misconceptions. Include Youth Young Voices project works towards building the capacity of the police to effectively engage with young people. The majority of the young people we work with state that they are dissatisfied with policing in their area. The young people feel that the police stereotype them and as a result they feel alienated from them. This feeling is due to a variety of reasons, including being fearful of them, but ultimately because of pre-existing and current police attitudes and behaviours towards them as young people (Include Youth, 2009b). There is no doubt that young people in Liverpool or Manchester experience conflictual relationship with their local police force, but it must be acknowledged that young people’s relationship with the police in NI is influenced and shaped by the Conflict and in that way is totally unique and must be acknowledged as such in a NI Bill of Rights.

Health

The argument used in the NIO paper that to introduce a statutory entitlement to the highest attainable standard of health in NI would not be appropriate because that entitlement is not currently available to the rest of the UK is totally inaccurate. The absence of rights in one jurisdiction is not a justifiable reason for denying it in another.

The NIO consultation paper states that if a right to health is to be included in a Bill of Rights there would need to be evidence that the case for this particular right within NI is demonstrably greater or different in nature to that in the rest of the UK, due to the particular circumstances in NI. How can it not be different when we are emerging from 30 years of conflict? The conflict has had an enormous impact on mental health and well being.

It is widely recognised that there is a higher incidence of mental ill health in NI as a result of the conflict. Although children and young people today may not have witnessed or experienced the consequences of armed conflict, many of the adults in their families and communities have (Roche, 2008). The impacts of inter-generational trauma and unmet health needs among children and adults who care for them have been identified (Smyth et al, 2004). Conflict is a key feature in community representatives' understanding about the mental health and well being of young people in their area (McAlister et al, 2009).

In their Concluding Observations in 2008, the UN Committee on the Rights of the Child noted that the mental health needs of children in NI was particularly delicate given the legacy of the conflict (UN Committee on the Rights of the Child, 2008).

Complex Lives: The Reality of Life for Include Youth Young People

The children and young people we work with face daily struggles to achieve equality in education, health, accommodation, employment and training opportunities. Many of those young people who come into the criminal justice system have a depressingly similar set of complex and unmet needs. Many experience poor educational attainment (due to a disability or special educational need, truanting or exclusion from school), misuse drugs or alcohol, engage in unsafe sexual behaviour or have been in residential care. They are often survivors of childhood traumas such as sexual or physical abuse, domestic violence or living in unsafe neighbourhoods. Mental ill health is often undiagnosed or inappropriately treated. In most cases, this leads to young people who feel constantly disempowered, disengaged, unable to make their voices heard or to demand the right to appropriate provision. Include Youth have consistently argued for a holistic approach to ensure that the numerous and diverse

problems these young people face can be identified and responded to in their best interests.

We have also stated that this must be done in the full knowledge of the context of young people's lives in NI. In particular, it cannot be done in isolation of the political context in which these young people live. The NIO consultation paper seems to suggest that the educational experiences, health experiences, housing experiences of children living in NI is equal to those of children living in Liverpool or Manchester. While we concur that children in these areas experience poverty, poor education, lack of access to health etc, we cannot claim their lives are the same because they do not share the experience of living in a society emerging from conflict. Our education system, our housing patterns, our justice system and the overall fabric of our communities remains dominated by the remnants of civil and political conflict. Despite the fact that many children today have grown up in a 'peaceful' time in NI's history does not detract from the persistent and long lasting social, economic, civil and political impact of the conflict.

Nowhere is this more prevalent than in the experience of many of the young people Include Youth works alongside, who live in disadvantaged and marginalised areas. A recent research report from Save the Children, QUB and the Princes Trust highlighted the peace dividend has not yet reached those living in marginalised, disadvantaged and under resourced communities (McAlister et al, 2009). These young people continue to experience poor education, poor health, lack of employment opportunities and continue to live in neighbourhoods characterised by violence. Violence remains a part of life for many young people and they are all too familiar with the actions of paramilitaries and dissidents, who continue to draw in young people who cannot find value and self identity elsewhere.

It is astounding that the Government has failed to see the relevance of the 'particular' circumstances of the context of which our children and young people grow up in NI today.

The NIHRC makes a convincing argument for why social economic rights should be included in a NI Bill of Rights. We wholeheartedly support the Commissions advice.

We are disappointed that the Government has chosen not to take up this advice. Particularly since the chief reason for not doing so is because they believe these are rights which are equally applicable to England, Scotland and Wales. We agree that these rights are applicable to other jurisdictions but this does not seem to be a justifiable argument to omit them from the NI Bill of Rights. Denying the people of NI these rights just because our counterparts in other jurisdictions do not have them is wholly unjustifiable. Furthermore, we are insulted by the Government's comment that they do not propose to address in detail those rights that it considers fall outside the scope of the Bill. The Government appeared to have already answered the questions this consultation was supposed to ask. No real attempt is made to explore the evidence base for this pre-determined approach.

We along with many other organisations engaged in a lengthy and comprehensive consultation with our client base and supported the detail of work and evidence gathering that went in to the proposal that social-economic rights should be included. The NIO appears to have ignored this body of evidence.

The context of children and young people's lives as detailed above clearly illustrate the need for a Bill of Rights to take account of the particular circumstances of children and young people living in NI. The Bill of Rights should guarantee to children socio-economic rights as well as acknowledging that young people from areas affected by conflict have particular needs. Suffice to say, it is totally inadequate for the Government to give no real explanation as to why these rights will not be included.

Children in Conflict with the Law

As an organisation working to promote the rights of young people who come into contact with the law, we wish to briefly outline our serious concerns in respect of this matter. The proposed Bill of Rights is devoid of any mention of protections for children in conflict with the law, in particular those mentioned in the NIHRC advice (2.6 – 2.8 NIHRC).

The following fundamental children's rights protections are omitted:

- the principle of detention as measure of last resort and for the shortest appropriate period of time, which is a fundamental principle set out in the UN Rules for the Treatment of Juveniles Deprived of their Liberty and Article 37(b) UNCRC;
- the requirement / commitment to develop alternatives to custody and institutional care for children, in line with both Article 40 UNCRC and the Beijing Rules;
- the requirement that ‘every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age’ in line with Article 37 (c) and 40 UNCRC;
- the requirement that children be separated from adults in detention as required by Article 37(c) UNCRC and the International Covenant on Civil and Political Rights.

The section on the Right to Liberty and Security is deeply concerning as it does not sufficiently address standards set out in Article 37 of the UNCRC.

NIHRC Recommendation 2.2 draws attention to the need for family contact to be maintained for those arrested or detained. The NIO response to this is to cite current practice claiming that current practice is in line with ECHR obligations. While we support the NIPS Family Strategy, we do not see the existence of this policy as sufficient grounds to omit the NIHRC recommendations on this matter. In our response to the NIPS Family Strategy, Include Youth did state that we do not believe the strategy as it currently stands can adequately address the current mismatch between policy and practice in this area (Include Youth, 2009c). The policy falls far short of what steps to be taken to create a truly family centred approach. Furthermore, the absence of any detailed reference to support services tailored specifically to the needs of juveniles and women/ mothers was a glaring oversight in the NIPS Family Strategy. While we firmly believe that children (17 and under) should not be held in adult prisons, until such time as steps are taken to remove them, it is crucial that their particular needs are met under current arrangements. While the NIO consultation document on a Bill of Rights refers to children within the Juvenile Justice Centre it does nothing to address the (para9:16) visiting rights of children currently held in adult facilities of Hydebank Wood. Our recent consultation with young prisoners and

families highlight a number of key concerns with regard to visiting. It is simply not good enough for the NIO to cite existence of current policies as an example of rights being met in this area. We would contend that the existence of the policy is not enough to ensure the enactment of rights. The Codes and Policies listed do not equate to an enshrinement of rights. These protections must be enshrined in a Bill of Rights

We firmly disagree with the NIO proposal that the inclusion in a Bill of Rights for NI of a specific right to family visits for suspects and prisoners is not necessary or proportionate.

The NIHRC Advice under paragraph 2.4 proposes that public authorities should take all appropriate measures to reintegrate into society those in detention or alternative care. The Government response that this area is being addressed through significant policy and operational measures is wholly inadequate. Once again we would repeat that the existence of policies which encourage and promote co-ordination does not equate to enshrining these protections in a secure and long lasting way.

It is essential that a Bill of Rights includes a provision to ensure that all sections of society take responsibility for the reintegration of offenders and those in care.

We would further contend that the current set of pathways as set out in para 9.21 of the NIO paper are not being sufficiently delivered on for many detainees. Our recent report on Hydebank Wood identifies the continued lack of appropriate educational, employment and training and health provisions for young people (Include Youth, 2009d).

Article 37 of the UNCRC includes the right of non convicted children to be detained separately from those who have been convicted, the right to maintain family contact; and the right to access the school curriculum. There is widespread evidence to demonstrate that this requirement is currently not being met.

As professionals working closely with young people in the criminal justice system we know that children are not currently treated in a manner that pays due regard to their age, understanding and needs and they are not being helped to reintegrate into society.

We continue to have major concerns about the welfare of 17 year olds held in Hydebank Wood YOC.

Provision has been included in Article 96 of the Criminal Justice (NI) Order 2008 to allow the Secretary of State to direct young people aged 17 to be held at the JJC rather than at Hydebank Wood YOC.

The Chief Inspector of prisons and the Chief Inspector of Criminal Justice in NI unannounced inspection of Hydebank Wood YOC in November 2007 highlighted a plethora of concerns.

- Insufficient separation of juveniles and young adults in escort vans
- Overuse of handcuffs while travelling
- Procedures were ill suited to juveniles, particularly the use of strip searching
- Young people reported feeling unsafe
- Adjudication punishments were excessive
- Caring and therapeutic approach was lacking]
- Quality of food was poor
- Lack of trust in the request and complaints procedure
- Healthcare inadequate
- Long spells in cells
- Unpredictable cancellation of association
- Rare opportunities to be in the fresh air
- Opportunities for work, learning and skills limited
- Quality of education mixed
- Poor resettlement arrangements

These and other concerns were repeated in the Independent Monitoring Board's 2007/2008 Annual Report into Hydebank Wood Prison and YOC.

Aside from separate accommodation, there is no difference between the regime for 17 year olds as for the young adults – with no “apparent” policy governing the management of children.

- Decrepit state of the reception area.
- Lack of formal interaction between officers and “prisoners”.

- Inappropriate use of isolation for those at risk of self-harm and suicide.
- Lack of confidence in complaints process.
- Harsh nature of adjudicated punishment, with a 63% increase in cellular confinement for young men.
- Lack of child protection training and no assurances that all staff working with children have undergone relevant checks.

In response to the publication of the Independent Monitoring Board's report Include Youth carried out a number of consultations with young people in Hydebank Young Offenders Centre. Include Youth were keen to gain a young person's perspective of the YOC and therefore we worked with young people on the juvenile landing between April and July 2009. This included discussions around being locked up, the daily routine, relationships with staff, education provision, physical and mental health needs and the complaints procedure. The following quotes are just a sample of some of the comments:

"You're treated like you're nothing in here, you've no power in here, no rights. If a screw's rude to you and you say one word back, it's down to your room, you get locked."

"It's because we're nobody's, because they don't care about us on the outside, we're nothing, we don't matter."

"Well it's not meant to be nice in here, but you still have your rights."

"Because we're juveniles it should be different – we're still children, it should be different to Elm or Beech or Ash."

"It makes you worse in here – the government should know what it does to you."

It is clear from the young people's comments that there remains much room for improvement in practice within Hydebank Young Offenders Centre. Much of the young people's daily routine is characterised by frequent lock up and more disturbing is the reasons for being locked up are not always made evident and transparent. There is a concern that young people are being denied freedom as a punishment and too often at the whim of a prison officer's individual decision making. The lack of consistency between prison officer practice and behaviour is deeply worrying and

leaves much room for favouritism for some young people and harassment for others. The young people appear to be talked down to and verbally insulted on a regular basis by some prison officers. We accept that this is not standard practice but this type of behaviour should not be tolerated from any staff. The young people believe that security is the overriding priority in the Centre at the expense of rehabilitation. They are dissatisfied with the standard of educational and health care provided to them. Perhaps most worrying is the young people's complete lack of faith in the complaints system. As a result they feel unable to change anything and do not believe that they can make representation without reprisal. The subsequent tension and stress that builds up in these young people as a result of this treatment not only impedes any rehabilitation efforts but actually results in increased risk of re-offending.

Based on what we have heard from the juveniles held in the YOC in 2009 we would urgently call for the recommendation of the UN Committee on the Rights of the Child (with regards to article 37) in September 2008 that the government should “ensure that, unless in his or her best interests, every child deprived of their liberty is separated from adults in all places of deprivation of liberty” should be implemented forthwith.

The NIO consultation document does not even make reference to the NIHRC recommendation 2.5 to 2.8. No attempt is made to explain why these recommendations were omitted and no justification made as to why they are not even deemed worthy of comment in the consultation document.

Include Youth fully support the advice given by the NIHRC around the protection of children and young people in the criminal justice system. Our evidence clearly demonstrates the urgent need for this protection to be provided. By not including the NIHRC advise in the Bill of Rights the NIO have missed a critical opportunity to ensure the adequate and effective protection of our most vulnerable and voiceless children and young people.

Age of Criminal Responsibility

We are disappointed that the proposed Bill of Rights will not address the minimum age of criminal responsibility.

Given the breadth of our work we feel we are well positioned to advice on how best to tackle youth offending and how to ensure that young people are kept out of the criminal justice system. We have developed close relationships with the young people who come in contact with our organisation and understand the complexities of their lives and the challenges which they continually have to overcome. There is a story behind each of their experiences, stories which clearly demonstrate that they need support and help rather than punitive actions to aid their reintegration into society. We believe that raising the age of criminal responsibility would assist in this process.

The UN Committee on the Rights of the Child has recommended that the age be guided in particular by the best interests principle. In its 2008 recommendations, the Committee concluded that: “a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable”. The Committee recommended the age of 12 “as the absolute minimum age” and that State parties should “continue to increase it to a higher age level” such as 14 or 16.

We believe strongly that children in trouble with the law should be dealt with as children in need not as criminals. We are concerned that the justice system does not impact on all children equally. Children living in areas of high deprivation and affected by the Conflict are more likely to be at risk of offending and prosecution. There is no shortage of research linking criminal behaviour of young people with poverty, the Conflict, being in care or experienced neglect and abuse within their families, misuse of drugs and alcohol, and having learning and behavioural difficulties. Children in care are particularly over-represented in figures of children in custody in NI. A low age of criminal responsibility therefore further disadvantages these children by taking them on the path of criminality rather than addressing their needs.

The introduction of a Bill of Rights for Northern Ireland provides a new opportunity to push for an increase in the age of criminal responsibility. Those working to protect children and young people's rights have used the debate around the content of the Bill of Rights to call for an increase in the age of criminal responsibility. A Bill of Rights Forum was established to inform the Northern Ireland Human Rights Commission's (NIHRC) advice to the Government. A Final Report by the Forum was submitted to the NIHRC in March 2008. It contained recommendations from the Children and Young People's Working group and the Criminal Justice Working group. Both of these groups proposed a provision which set the age of criminal responsibility at 16, and imposed a duty on the public authority to raise this progressively to 18. In their Advice to the Secretary of State for Northern Ireland, published in December 2008, the NIHRC has not included a provision to raise the age of criminal responsibility within the Bill of Rights, but rather has within the Advice paper, cited the UNCRC recommendations on the MACR and recommended that the Government responds accordingly. In their advice, the Commission have said that custody should only be used as a measure of last resort and for the shortest possible time for children and young people under the age of 18. While we welcome the Commission's recognition that custody does not work for the majority of young people who commit crime, we are disappointed that they have not taken this opportunity to give advice on the age of criminal responsibility.

Include Youth believes that the age of criminal responsibility must be significantly raised. We do not believe that raising it to 12 years old will be sufficient to protect children's rights. This age is still too low as it takes insufficient account of children's different rates of development and of the difficult circumstances which many of these children have had to deal with. Criminalisation will not assist them on the road to being integrated as responsible citizens playing a full role in society.

Neither is the age of 12 in line with other rights and responsibilities in society. Having an age of responsibility set at adulthood would be more in keeping with the requirements of the Beijing Rules. A system which clearly identifies children as being of a particular age (as ours does and the UNCRC suggests) must treat children as such until they are adults.

In the best interests of children it is proposed that the age be raised to 18 years. This would need to be accompanied by enhanced services for children, and the development of a system based on children's rights and a child-centred approach whilst at the same time not ignoring the needs of victims.

We fully support the inclusion of a minimum age of criminal responsibility within the NI Bill of Rights, something which the NIHRC did not go forward with in its recommendations. However, we are broadly supportive of the NIHRC approach and were hopeful that if its advice had been taken up we could have had a Bill of Rights which offered the children and young people of NI an equal stake in a set of standards which could be to the benefit of ALL.

Section 75

We object to the fact that the NIO have not carried out a screening exercise and equality impact assessment of the policy proposals contained within the draft document. The Government are clearly in breach of their equality obligations through their failure to screen and carry out an EQIA of proposals.

Engagement of children and young people

In order for the final text of the Bill of Rights for Northern Ireland to truly work, it is essential that the document have widespread ownership and support across society. It occurs to us that this currently does not exist in Northern Ireland, either among children and young people or indeed the wider community. We believe that the current draft Bill of Rights, which has so ignored the children and young people's sector's views, including those proffered directly by children themselves, will serve only to further exacerbate this problem. Include Youth recently conducted a consultation with young people on their views on voting and the political process (Include Youth, 2010). It highlighted the widespread feeling that their needs and voices are not recognised at a higher political level. The proposed Bill of Rights for NI only serves to reinforce and indeed validate children and young people's invisibility from public and policy profile. They are not represented in the current proposals and as such the Government has chosen to blatantly dismiss the importance of including our future generations.

No attempt was made by the NIO to engage children and young people in this consultation process or even to provide child friendly version of the paper.

Concluding Comments

Include Youth considers the consultation paper to be an extremely disappointing and concerning document. This report has significantly reduced the protections proposed by the NIHRC.

The Bill of Rights when it becomes part of our domestic law, could be one of the most important pieces of governing legislation in the jurisdiction – it is therefore crucial to get it right. We want the Bill to be a strong and inclusive document which is living and accessible to all members of society, including children and young people in particular. The current document is a huge disappointment in this regard. Include Youth wish to stress to the NIO that much further work is needed to ensure that the children of Northern Ireland have a Bill of Rights which is strong and inclusive and enjoys widespread support.

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