



Include Youth's Response to the Northern Ireland Human Rights Commission's Publication *Progressing a Bill of Rights for Northern Ireland: An Update*

August 2004

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.

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 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, which we have enclosed for your ease of reference. 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. Moreover, we supported the participation of a range of children and young people at risk in direct consultation on this very important issue.

Furthermore, Include Youth is an active member of both the Children and Young People's Sector Bill of Rights Group and the Human Rights Consortium.

Update Report – A step backwards

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 was taken by the Commission in its 2001 Report.

We are therefore deeply concerned with the contents of the Commission's most recent publication, 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. As you will know, upon receiving the current document we met with the Chief Commissioner and Research Worker Ciarán Ó Maoláin to discuss our concerns in an attempt to gain some understanding into the thinking behind what we consider to have been a significant rolling back of children's rights protections in the 2004 Update Report. Unfortunately we remain unconvinced that these current provisions provide necessary protection for children and young people in Northern Ireland, and indeed we would go further to say that this document represents a step backwards rather than forwards in the journey towards a comprehensive Bill of Rights for NI.

It is not our intention to critique the document section by section, suggesting how to make improvements. As mentioned earlier, Include Youth participated in the Commission's Children and Young People's Working Group, and believe that the Report presented by this group to the Commission three years ago, outlines the necessary protections for children and young people which should be contained in a Bill of Rights for Northern Ireland. However, what we intend is to make some broader comments on the issue.

Children's Rights Eroded

We are concerned in particular by the extent to which children's rights contained in the 2001 document have been either fundamentally weakened or removed entirely from the Update Report. Moreover we are less than convinced by the logic put forward by the Commission to explain the apparent u-turn. The 2001 Document contains a separate children's rights chapter with 11 paragraphs delineating substantive rights. [1] In addition, children's rights are mentioned elsewhere throughout the document.

As mentioned earlier, this approach was supported by the Commission's stated analysis in the 2001 document that 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 evidence 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. [2]

However, in the current proposals the Commission appears to have cast aside these coherent arguments, and greatly reduced the children's rights section in length, opting instead for a mainstreaming approach which provides child specific protections only where these are considered by the Commission to go beyond the protections afforded by the UNCRC, and which imposes a general duty on government to ensure all provisions of the UNCRC are fully implemented. On what basis has the Commission embarked on this u-turn which strips back children's rights protections in the current draft? According to the Document, the Commission was concerned to 'avoid unbalancing the Bill', [3] and stated that earlier proposals were widely criticised because they had 'given undue prominence to the rights of children and insufficient attention to other disadvantaged and vulnerable groups'. [4]

We are deeply disappointed and concerned by the Commission's analysis in this matter. It would appear that the Commission has chosen to ignore the more than one third of respondents to its 2001 Document who were in favour of strong children's rights protections [5] – which included many children and young people and those organisations working with them – and instead has given extraordinary weight to this criticism. However, it is not apparent from the Commission's document summarising the submissions received that such widespread criticism was made of its children's rights proposals. Dr. Ursula Kilkelly, who has provided an analysis of the Update Report commissioned by Children's Law Centre and Save the Children, comments *'the extent to which this criticism appears to have influenced the Commission' entire approach in this area is a worrying sign not just for children's rights in Northern Ireland but for the integrity of the Bill of Rights (consultation) process as a whole.'*

She continues ‘ *it is difficult to understand how the decision to react to such criticism could justify the taking of measures whose result is to undermine the entire potential of the Bill of Rights of children particularly when so many submissions were made in support of these provisions.* ’ [6]

This bowing to perceived criticism also fails to take account of the fact that more than 180 organisations representing a wide range of interests and constituencies from across Northern Ireland endorsed maximum protections for children’s right in a Bill of Rights through a document prepared by the Children’s Rights Sector Working Group in August 2003 and submitted to the Commission. It also runs contrary to the Commission’s stated position in earlier publications that children represent a disadvantaged group requiring special protection, fails to take account of their duty to reflect international human rights standards in the Bill of Rights, and does not fulfil its mandate to work towards greater protection of human rights in Northern Ireland.

What is perhaps saddest of all is that the Commission in its current document has effectively broken its pledge to the children and young people of Northern Ireland who were involved in making submissions on the Bill of Rights, when the Chief Commissioner stated ‘ *we promise you that the Human Rights Commission will think very seriously about what you have said to us...[and] a Bill of Rights offers a wonderful chance to strengthen the rights children and young people already have under the UN’s Convention of the Rights of the Child.* ’ [7]

Incorporation of the UNCRC

One of the main tenets of the Commission’s recent approach is that rights not repeated from the 2001 draft did not add significantly to the protection afforded by the UNCRC, which they propose to incorporate. Despite the fact that the UNCRC is recognised by international human rights experts as being a ‘floor rather than a ceiling’ in terms of children’s rights standards of protection, the current proposals in our view are deeply problematic. Clause 12 (1)(c) does not go far enough to ensure that the protections contained with the UNCRC will be fully implemented by public authorities and falls short of international standards. In particular what is missing is an obligation on all public authorities to take all necessary measures to act compatibly with and to implement the provisions of the UNCRC and the Bill of Rights.

Compatibility of the revised proposals with international law

As earlier stated the current document 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 provisions which in many instances 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 Commission's Update Report also fails 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.

Indeed Kilkelly in her analysis has commented in respect of participation rights that *'the Commission has removed two fundamental provision including the general principle in Article 12[...] the child's right to express his/her views and have them given due weight in accordance with the child's age and maturity. Removal of this provision, elevated to the status of a guiding principle by the Committee on the Rights of the Child, is probably the most serious flaw in the Commission's latest proposals given the extent to which the child's right to be hear represent respect for children's views, their evolving capacity and their right to influence decision-making in all areas of their lives. Its removal is absolutely unsustainable in this context and undermines the relevance of the entire Bill of Rights to children an young people and its potential to protect their rights.'* [8]

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 concerns in respect of this matter. The Children's Rights Section of the Update Report is almost devoid of any mention of protections for children in conflict with the law, save for a disappointing subsection which states that the age of criminal responsibility shall not be less than 12 years, but removes the provision contained in the earlier version to keep the age under review, without explanation. Given that the Update Report states that *'the Commissioners would acknowledge that they do not have the expertise to decide what is the optimum age at which to start imposing criminal liability on children'* [9], it rather begs the

question ‘how then did they arrive at the age of 12?’ We believe that the obligation to keep the age under review should be reinstated and believe that the current position which asserts in the accompanying text that the Commissioners ‘*would like the age to be kept under review and to be raised if the reviewing body recommends*’ [10] is confusing and unhelpful.

However, what is equally if not more concerning is Section 7(6) on the right to liberty, which deals with the detention of children and which reflects a number of the standards set out in Article 37 UNCRC. These include 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. What is deeply problematic in this subsection, however, is not what is included, but rather what has been omitted from the most recent draft Bill of Rights.

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.

These significant omissions, Kilkelly states ‘*mean that the protection afforded to children in detention in the Bill of Rights falls a long way short of the requirements of the Convention on the Rights of the Child and other international standards*’ [11]

Engagement of children and young people in the Bill of Rights process

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. Much work remains to be done to communicate to children and young people, as well as to wider society, the relevance and importance of the Bill of Rights in their lives. One approach which we favour is for the Commission to engage (in an independent role) with the proposed roundtable forum of political parties and civil society to move the Bill of Rights ahead, and use this as an opportunity to reinvigorate a wider public debate on respect for human rights.

Conclusions

Include Youth consider the Update Report to be an extremely disappointing and concerning document, as Kilkelly puts it '*significant for all the wrong reasons*' [12]. This report has significantly reduced the protections proposed in the 2001 document, and in many cases current provisions fall far short of the international standards which the Commission itself professes to consider as benchmarks. In addition, we are not convinced that the Commission has provided a credible explanation for the dramatic sea change in their approach to children's rights, and believe that there are questions to be asked with regards to the veracity of the process to date.

The Bill of Rights when it becomes part of our domestic law, will 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 Commission 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

Footnotes

1. Making a Bill of Rights for Northern Ireland, A Consultation by the Northern Ireland Human Rights Commission, 2001, Chapter 10
2. Ibid, page 62
3. Preogressing a Bill of Rights for Northern Ireland An Update, Northern Ireland Human Rights Commission, April 2004, page 61
4. Ibid, page 14
5. Summary of Submissions, Northern Ireland Human Rights Commission, 2003
6. Kilkelly Dr. U., 'An Evaluation of the extent to which the Northern Ireland Human Rights Commission's proposals for a Bill of Rights comply with international children's rights standards.' Paper commissioned by Children's Law Centre and Save the Children. (unpublished) July 2004
7. What You Said: Young People's views on a Bill of Rights for Northern Ireland. Northern Ireland Human Rights Commission. May 2002, page 3
8. Op Cited at note 6
9. Op cited at note 3, page 64
10. Ibid
11. Op cited at note 6
12. Ibid