



Paper submitted to the UN Committee on the Rights of the Child for its General Day of Discussion on 'Children without Parental Care' by Include Youth

Include Youth is a regional NGO based in Northern Ireland which promotes best practice with young people at risk of social exclusion established in 1979. Include Youth is based at Alpha House, 3 Rosemary Street, BELFAST, Co. Antrim, Northern Ireland BT1 1QA. Director: Koulla Yiasouma. Telephone 00 44 28 90 311007. Fax 00 44 28 90 244436. Email: koulla@includeyouth.org

For further information about this paper contact

**Edel Quinn
Policy Co-ordinator
Include Youth
Tel: 00 44 28 90 311007
edel@includeyouth.org**

Introduction

Include Youth is a regional NGO based in Northern Ireland which 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 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.

Over-representation of children without parental care in custody

Statistics show that a large proportion of young people who end up in the criminal justice system in Northern Ireland have come from a care background. 25% of the custody population are admitted direct from residential care and most others have significant care issues in their background.¹ In the first six months of 2004 the over-representation of children from 'looked after' care admitted to the Juvenile Justice Centre (JJC) rose from 22% to 58%.² Moreover, an estimated 70% of 10-13 year olds detained in custody in Northern Ireland are from the looked-after system.³

This over-representation of care experienced young people in the youth justice system is directly in opposition to the general spirit and aims of the Convention on the Rights of the Child, to numerous standards it embodies, including the general principles of best interests, non-discrimination and participation. It also contravenes many provisions of the Beijing Rules⁴ and the Riyadh Guidelines⁵. These international standards stipulate that children should be detained only as a measure of last resort and for the shortest period of time.⁶ In addition, international protections make clear that deprivation of liberty should not be imposed unless the young person is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences *unless there is no other appropriate response*.⁷ (emphasis added)

It is widely accepted that children and young people in care or leaving care represent some of the most vulnerable and damaged in our society, often presenting with challenging behaviours which are a manifestation of unmet complex needs, and which require 'special protection' including a range of co-ordinated multi-disciplinary specialised support services to enable them to achieve their potential and make the transition to independent living.⁸

There is evidence to suggest that in Northern Ireland there is a 'leakage' or 'drip feed' phenomenon of care experienced children and young people into the youth justice system and into custody in particular.⁹ Much of this cross-over relates specifically to the 12% of looked after children and young people who live in a residential child care setting in Northern Ireland, and who 'present the looked after system with the greatest challenges as they

frequently have complex social, behavioural, psychological and educational needs and are also likely to have had difficulties with their educational careers.’¹⁰

It would appear on occasions that young people in care are placed in custody for lesser offences and it is unclear whether the offences are of a sufficiently serious nature to warrant a period of detention in custody under either governing domestic legislation or international standards.

Young people enter custody either under PACE¹¹, on remand or after they have been sentenced. Currently, the majority of young people placed in the JJC are there on remand awaiting appearance in court or bail, whichever happens first. Between January and September 2004, of those people placed on remand only 14% went on to serve a custodial sentence following conviction. In commenting on this issue, the NI Criminal Justice Inspector stated that ‘this raises serious doubts as to whether the detention of young people before trial is being limited to exceptional circumstances as required by international instruments and domestic law.’¹²

There are also significant concerns regarding the use of PACE, with 73% of all care-custody admissions in 2003 made under PACE legislation.¹³ The issue of PACE referrals to the JJC, which sees children removed from the care home by police officers and placed in custody for a relatively short period of time, often one night or a weekend, has been described by staff of the JJC as ‘a traumatic experience for the child and difficult to manage in the Centre’.¹⁴ Statutory and voluntary sector practitioners reported that ‘children who were disruptive in care homes were too easily moved, via PACE, to the JJC. The suggestion being that they were ‘management problems’ rather than ‘offenders’.’¹⁵ This matter came to a head in the summer 2004, when, after taking legal advice, the management of the JJC refused to accept some referrals from the police and did not admit a number of young people under PACE legislation because it considered them to be inappropriate.¹⁶

Lack of appropriate placements for looked after children

Given extensive evidence identifying poorer outcomes for care-experienced children and young people, it is essential that we understand reasons for initial and subsequent placement in care, and standardise policy and practice in this area, which has fluctuated between different HSS Trusts in the past, to ensure delivery of services which meet the best interests of the child. A continuum of services for children and their families, which includes planning, resourcing and delivering preventative services along a family support model is required.

Clearly such preventative measures must be long term and set in a socio-economic context, taking account of the particular circumstances of Northern Ireland and the fact that we are a society emerging from conflict which had enormous direct and indirect impact on children and young people, their families and the communities in which they live. Therefore the impact of violence and trans-generational trauma must not be underestimated.

Permanency planning for children unable to have a secure family life with their family of origin must follow through to include older children and adolescents, who are most likely to experience instability of placement and care, having multiple placements in both foster and residential care. Research, including accurate recording and regular enquiry into reasons for placement instability is essential in order that steps can be taken to mitigate the problem, which has been identified as a principal cause of poor outcomes for looked after children. A recent study into the state of mental health provision in secure care and custody, found that 48% of the young people questioned had been in care for over 5 years, and 22% had

experienced 4 or more placements within the previous two years – with the maximum number of moves for one person being 13.¹⁷

Foster Care

‘The provision of an adequate foster care service is clearly a positive and beneficial means of providing for children who cannot be cared for by their own families as it provides them with experience of family life necessary for the future of their development.’¹⁸

It is essential that all placements must be determined on an assessment of need which is in the best interests of the child, and which is not fettered by lack of appropriate alternative care facilities or services.¹⁹ However recent research has found that 64% of social workers admitted that lack of availability of suitable placements ‘affected decisions they made about admitting a child to public care or to the type of placement chosen for the child’.²⁰ Clearly this is not good enough. For example, whilst the majority of looked after children reside with foster carers, supply outstrips demand, with over 250 children waiting for foster placements in 2004. There are also problems in respect of securing long-term placements, or of accessing placements in emergency provision, resulting in children being placed in residential care. Another major problem within foster care system is that it is ‘almost impossible’ to find placements for adolescents.²¹ The NICCY research concluded that failure to provide a fully resourced foster care service raised concern with government’s duty to meet the best interests of children under both the CRC and the ECHR.²²

Residential Care

‘Where the behaviour of a child cannot be managed in a children’s home, the absence of other appropriate resources can result in the escalation of the difficulties the child faces to the point where an admission to secure accommodation is required.’²³

There are concerns that the lack of placement choice in residential care means that children are placed in units which are not geared to meet their needs, which may contribute to the behaviour of the young people within the units. In addition, the ‘inappropriate mix’ of young people placed in residential settings, and the negative impact that this can have on the entire group raises significant concerns.²⁴

I was put into a children’s home and I was really unhappy there; I didn’t want to be there. I had all this hurt and anger inside me. I just wanted to hide away. And it was really strange being in the same house with all these people I didn’t know and just be expected to get on with everybody. There were a couple of older boys in the home who had been in trouble with the paramilitaries for stealing cars and drugs and stuff. One of them had had his knees ‘done’ (shot) and the other had had three punishment attacks. I sort of started to hang around with them, and started getting into trouble.²⁵

Currently in Northern Ireland there are 394 residential childcare places available across Northern Ireland, providing ‘general purpose’ accommodation for looked after children, primarily through children’s homes run by Health and Social Services Trusts, and also by voluntary child care agencies and private providers. Fifteen per cent are accommodated at the Regional Care Centres based at Lakewood and Glenmona and 5% in Secure Accommodation.²⁶

A major review of residential services for children, ‘Children Matter’ in 1998, identified accommodation deficits within existing facilities, and a lack of specialist/differentiated residential provision for children, and found that lack of specialist provision resulted in a range of inappropriate placements for children with psychiatric needs, those with a disability

and those at risk of offending. The provision of a range of differentiated services was recommended including sub-regional specialist provision such as Intensive Therapeutic Units for children with psychiatric/psychological needs or those who present a significant risk to other children.²⁷ These findings were supported by the NI Human Rights Commission, in a study into the rights of children in custody *In Our Care* which concluded that ‘there is a need for a range of specialist and differentiated residential services to pre-empt the need for secure accommodation and / or custody for as many children as possible.’²⁸

Secure Care

Secure accommodation exists to ‘restrict the liberty’ of a looked after child who absconds or who presents a danger to him/herself or others.²⁹ There are currently fifteen beds available in Northern Ireland to provide secure accommodation to those young people who satisfy the statutory requirements. However, this is woefully inadequate, and demand for secure accommodation always exceeds supply – for every young person who is offered a place by the Secure Accommodation Admissions Panel, three young people who meet the criteria are refused.³⁰ Clearly lack of appropriate placement within residential care has created this demand.

On the evidence currently available, it would appear that without provision of a proper infrastructure of specialist and differentiated services, pressure will continue to be placed on the secure care sector and the ‘drip feed’ to custody will continue in significant numbers.

Bail Support / Remand Fostering

An Inspection into Secure Care recommended that a wide range of community based services for adolescents, such as specialist fostering services or supported living arrangements be provided.³¹ A Bail Support and Supervision scheme has been in operation for over eighteen months in Northern Ireland, which seeks to reduce the number of children and young people charged with offending behaviour from unnecessary detention in custody. Remand Fostering has also been introduced and following a positive pilot, it is planned to generate a project supporting six intensive foster placements for young people on remand. Clearly both of these initiatives are welcome additions to providing a continuum of care for young people involved or at risk of becoming involved in offending behaviour, and we look forward to similar schemes being rolled out regionally.

Leaving Care

Another problematic area involves the transition to independent living, which must include provision of suitable and supporting living arrangements for vulnerable looked after children. However, children leaving care experience a range of problems which often leaves them at increased risk of entering the criminal justice system. The lack of suitable accommodation for care-experienced 16-17 year olds often means that these very vulnerable young people are placed in extremely inappropriate environments, including bed and breakfasts, and homeless hostels. In the recent Inspection of the Juvenile Justice Centre, staff voiced their concerns about the difficulty in identifying suitable accommodation for young people due to be released from custody, describing some of the proposed places as ‘unfit for a dog to live in’.

³²

Custody used as alternative to appropriate accommodation

The absence of appropriate placements/accommodation providing specialist care and support would appear to be at least one causative factor explaining why young people without parental care are ending up in custody in such significant numbers – put simply, there is nowhere else for them to go. This is well illustrated by one young person’s experience who, having had charges against him dropped, was permitted to remain overnight at the JJC

because no other accommodation could be found for him.³³ This is an unacceptable and inappropriate use of custody, which breaches international standards.

Unfortunately it is not uncommon, and quite often young people who have displayed disruptive and challenging behaviour are removed from residential care homes by police, charged with minor offences and then refused to be placed elsewhere by the relevant Trust. As they are effectively homeless, many are deemed by the magistracy to meet the requirements of Article 12 (1) and (3) of the Criminal Justice (Children) (NI) Order 1998. Include Youth is strongly of the view that interpreting the legislation in this way is at odds with parliamentary intention which saw the '98 Order introduced to set out the limited circumstances in which custody would be used as a measure of last resort.

I was 13 when I first went into custody, and have been in four times since. Three of these was directly from the children's home – all incidents because of my reaction to being restrained were either common assault or criminal damage.³⁴

Another related problem is the fact that on occasion young people in residential care find themselves charged with very serious offences for seemingly relatively innocuous behaviour; behaviour which it is highly unlikely would ever be criminalised for children living in non-residential settings. For example, we understand that some young people have been charged with the very serious offence of Threatening to Kill. However, when one examines the circumstances leading to the arrest and charge, it becomes clear that the phrase 'I'm going to kill you' may have been taken completely out of context and be more reflective of a throw away comment which exists in common parlance rather than an identification of malice aforethought on the part of the young person. The repercussions of being the subject of such a serious criminal charge, however, are particularly severe, as it almost automatically means that the young person will have to be detained in custody, under Article 12 (1) and (2) of the '98 Order.³⁵ This will also have negative consequences for the future life opportunities of the young person concerned, including the restriction of career and employment choices.

It is also important to remember that it is well established that custody does not work for children and young people, with 75% re-offending rates.³⁶

In custody, people are obviously going to talk to each other, learn from each other about way to do crimes. When I went into custody I didn't have much of an idea how to steal cars, but when I came out, I knew exactly how to, because I'd been told.³⁷

Age of Criminal Responsibility

The over-representation of looked after children in the criminal justice system in Northern Ireland is exacerbated by the fact that the age of criminal responsibility is unduly low at 10 years of age, a matter which the UN Committee noted with 'particular and serious concern', recommending that the minimum age of criminal responsibility be raised considerably.³⁸ In addition the UN Committee Against Torture has also criticised heavily the low age of criminal responsibility which currently exists in many countries, including the UK. The clearest advice given by international human rights standards regarding the age of criminal responsibility is in the Beijing Rules, which does not fix an age but rather, states that it 'shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity'.³⁹

The expansion of custody for children was also criticised by the Committee, a situation which is further aggravated by the perverse current practice of placing young children aged 10-13 in custody alongside older children, despite the existence of legislation, which is still to be

commenced, that would allow for the provision of separate facilities for younger children who offend to be provided within the welfare rather than justice system.⁴⁰ While this legislation is to be welcomed, it is in our view a poor substitute for a law which would substantially raise the age at which children can be held criminally culpable, as recommended by the UN Committee.

While the overall number of 10-13 year olds detained in custody in Northern Ireland is relatively low in comparison to total admissions (11 i.e. 3% in 2002; 17 i.e. 6% in 2003), the vast majority of these children - over 70% - are from the looked-after system.⁴¹ This is a significantly higher ratio than those custody placements involving older care-experienced young people. While we would not wish to minimise the serious nature of some of these young people's behaviour, one must ask whether other non-custodial and therapeutic interventions would have been a more appropriate way of dealing with them. Clearly we need to understand this significant over-representation of 10-13 year olds in custody and eagerly await publication of research commissioned by the NIO and undertaken by the Youth Justice Agency, which is due to be published in the near future and which examines the needs and most suitable remedies for these younger children whose offending is regarded as 'serious and/or persistent'.

The Commentary to Rule 4.1 of the Beijing Rules states that 'efforts should be made to agree on a reasonable lowest age limit that is applicable internationally.' Guidance from the UN Committee in the form of a General Comment would be extremely persuasive in ensuring that individual states amend their legislation in line with the spirit of the UNCRC and other international standards.

Mental Health

*'The mental health needs of young people in looked after and juvenile justice system are not well recognised, understood or met.'*⁴²

International standards are clear that all children enjoy the right to the highest attainable standard of health care and recognise that those children who are deprived of their liberty are entitled to special protections in this regard. The UN Rules further specify that people with specific skills are required to work with this particularly vulnerable group of children and young people.⁴³

In Northern Ireland generally, over 20% of children suffer significant mental health problems. Despite this child and adolescent mental health has been neglected and under-resourced by policy makers and legislators, with the result that approximately only 20% of children with significant mental health problems or disorders receive specialist mental health services, while many more go unrecognised.⁴⁴ There are currently a woefully inadequate fifteen beds available in the whole of Northern Ireland for adolescents requiring a period of in-house treatment for serious mental health problems. This means that many children aged 14-17 are inappropriately placed on adult psychiatric wards and managed by staff with minimal or no training in paediatrics or child and adolescent mental health, and not subject to child protection vetting procedures, raising huge problems both of quality of provision and child protection. In 2003-2004 children in NI occupied 2386 Bed Days in Adult psychiatric wards.⁴⁵

While the rates of prevalence of mental health problems for children in care and custody are much higher than in the general population, these children do not have greater access to appropriate mental health services. In some ways the higher prevalence is unsurprising given that the risk factors leading to offending also predict the development of mental health

problems. It is estimated that people in custody exhibit three times higher rates of psychosocial and psychiatric problems than the general population; whereas up to 2/3rd of young people in care have mental health needs, with a higher rate for children in residential care than for those in foster placements, with one estimate of 96% for adolescents in residential units.⁴⁶

It is well-established that mental ill-health in children can be avoided through preventative and early intervention in children's lives, which is sustained and long-term. The implications of not detecting and treating the problems are extremely significant for the individual young people concerned and often result in s/he becoming involved in risk-taking behaviours, which can result in placement breakdown, entry into residential care and/or custody. Failure to deal with these problems significantly reduces the child's life chances.

A recent study of young people in secure care in NI found that only 15% had been diagnosed as having a clinical psychological or psychiatric illness. However, statistics on the behavioural and emotional indicators provided clear evidence of the range of disturbed and disturbing behaviours exhibited by children in residential and secure care— with almost 90% of the young people having angry outbursts, 35% self-harming, 60% taking alcohol or drugs/solvents, 52% displaying physical aggression, 90% have anxiety, and 71% reported having a sense of hopelessness.⁴⁷ There is a clear need to understand, properly assess and appropriately address the range of complex needs with which many of these young people present, in a co-ordinated, inter-disciplinary manner, which negates the practice of managing significant behavioural difficulties by placing very disturbed children in custody. The lack of specialised therapeutic services contributes to the practice of inappropriately remanding young people considered to be dangerous to themselves or others.⁴⁸

In 2003 there were 13 young people under the age of 16 detained in The Young Offenders Centre which is run by the NI Prison Service – some placed there by the court because of the seriousness of their offence, but others placed because they had been 'too challenging for the nature of the regime.'⁴⁹ Between January 2004 and September 2005 29 young people who had been detained in the JJC were placed in the YOC – five of these placements were at the direct request of the JJC. In addition, two of these 29 young people who had been placed by the Court in the YOC, were later returned to the JJC following discussions with the Centre Management.⁵⁰ Include Youth strongly supports the CJINI statement that 'any move of a 16-17 year old from the JJC to the YOC should be a last resort...retention of a vulnerable 17 year old in the YOC should be avoided [and] the criteria that they must be under 17½ years old and not have been in custody previously are too narrow.'⁵¹

In addition, if a young person in custody displays markedly disturbed or psychotic behaviour there are not appropriate resources within CAMHS, residential care or youth justice systems to deal with this, which has resulted in the transfer of young people from custody and secure care to adult psychiatric facilities or specialist services outside Northern Ireland because their needs could not be met in this jurisdiction. At October 2004 17 young people were receiving specialist services outside NI.⁵² This is highly inappropriate and not only has significant resource implications, with the annual costs of individual Out of Area placements ranging from between £120,000 and £300,000, but is not in the best interests of the child, who is moved to unfamiliar cultural surroundings, and is far removed from any network of support.

Moreover, it is clear that the principle of non-discrimination is not being fully complied with in relation to the detention of girls in custody. The majority of young people placed in custody are boys, with only a small and intermittent number of girls detained. On several occasions very disturbed girls, as young as fifteen, have been placed in adult prison facilities

in breach of international standards - in 2004 eleven girls were detained in adult prison facilities - two aged 14-16 and nine aged 17-20.⁵³ This practice has been roundly condemned by the UN Committee, the NI Human Rights Commission, NI Criminal Justice Inspectorate, Social Services Inspectorate, NICCY and most recently by the Prison's Inspectorate, which recommended that girls under 18 should not be held in the adult prison facility.⁵⁴ Child protection procedures for these children were found to be 'seriously deficient', and disciplinary measures rather than therapeutic interventions were used to punish self-harming or suicidal behaviour.⁵⁵

Use of physical restraint

*'A method of restraint thought not to be inhuman or degrading when used on an adult could still breach the rights of a child'*⁵⁶

In 2004, NICCY research expressed 'significant concern' regarding the use of physical restraint in both the context of secure accommodation and custody.⁵⁷ A number of care-experienced young people with whom we spoke, recounted having had experienced considerable problems whilst being restrained, which had led to their being arrested, detained in custody and convicted of common assault on staff. This problem also extended to mainstream residential care settings.

It is sore: you think your arm's going to break. I always struggle and try to get out of it – it's just natural - sometimes I get out, sometimes not. Being restrained makes you even madder, 10 times worse. I would say to staff 'don't restrain me, cos I am going to lash out' – but they would, and then I'd end up getting arrested for assaulting staff. It's worse if it's a member of staff you don't get on with. It is mostly big men who do the restraining. I got restrained by two women one time, didn't really want to struggle, in case one of them got hurt.⁵⁸

The use of physical restraint on children is somewhat of a grey area which lacks uniformity of approach across different sectors i.e. residential and secure care, custody, health care and education establishments. However, while there is good practice in some areas, for example in the area of youth justice where the introduction of Therapeutic Crisis Intervention (TCI) to the JJC appears to have had the effect of reducing the number of physical restraints from 1999 in 2004 to an estimated 100 in 2005⁵⁹, the issue of controlling difficult behaviour of children and young people through the use of physical restraint is marked by an absence of overarching primary legislation, policy guidance, training for staff, and research and monitoring into its use and impact. TCI is a crisis prevention and management system which involves a talking and listening approach. We submit that a uniform approach is necessary to provide sufficient safeguards to these very vulnerable children and young people, who so often gravitate between the different sectors. Include Youth therefore strongly supports the UN Committee's recommendation that there is an urgent need for a comprehensive and independent review of the extent of the use of physical restraint of children across all sectors in Northern Ireland, as reported during its examination of the UK government in 2002, in order to ensure compliance with particular Article 37 and 25 of the UNCRC.⁶⁰

Staff issues

There is no doubt that troubled young people in the care system may exhibit challenging and inappropriate behaviour which may be extremely difficult to manage for professionals charged with their care. For example a recent study of staff morale in residential childcare settings in Northern Ireland discovered that 94% of staff questioned stated that they had experienced some level of physical or verbal abuse by residents.⁶¹ Such a serious state of affairs is untenable, not only for the staff who are subjected to abusive behaviour, but also for the deeply troubled young people involved and their peers who may be damaged by

witnessing the inappropriate outbursts. However, fast-tracking such young people into the criminal justice system, is not the answer. Long-term solutions must be found which address the reasons why young people are getting involved in inappropriate behaviour. In addition, management and staffing issues within the care system must be addressed.

Worker consistency and continuity is critical for young people who experience chaotic and disjointed lifestyles, many of whom may have had multiple placements throughout the care system. However, often such children come into contact with a plethora of professionals, including shift staff within care home; police; nurse; education staff; Youth Justice Agency staff, psychologist, mentor, etc. One such young person counted contact with 50 different professionals in the course of one week, yet could only identify one as having an on-going commitment to her well-being.⁶²

NICCY research identified difficulty in recruiting and retaining appropriately qualified and experienced staff with concomitant difficulties in relationship forming between young people and their key workers.⁶³ A key worker system must be uniformly implemented for all looked after children across Northern Ireland, as it has been well documented that successful outcomes including an improvement in the young person's self-esteem can best be achieved through this model of working.⁶⁴ Such a system must ensure that staff in residential units are 'suitably qualified and have received both child protection and children's rights training'⁶⁵ and must also implement regular supervision for all residential care staff, including access to regular counselling services, as recommended by Children Matter in 1998 but still not fully implemented, with almost one quarter of staff reporting that they do not have access to supervision on a regular basis, as outlined in the guidance to the Children (NI) Order 1995.⁶⁶

In a recent study of residential care, specific concerns were raised by managers about their lack of access to appropriate training, lack of recognition for their multi-layered role and associated responsibility, lack of opportunities to meet regionally with other managers, underlined by the perception that they were being left to survive on their own initiative in the erroneous presumption that 'a good practitioner automatically becomes a good manager'.⁶⁷ In addition, the recent DHSSPS report found that there was unanimous agreement among social work staff that the generic social work training did not adequately equip staff for the highly specialised demands of residential settings.⁶⁸

Access to Independent Advocacy and complaints mechanisms

All children have, under Article 12 of the UNCRC, the right to be heard, to have their views given due weight and to participate in decision making processes which impact upon their lives. General Comment No 5 outlines clear requirements in terms of children's rights to access independent advocacy services and complaints mechanisms.⁶⁹ It is well established that children without parental care and those who are detained in custody are a particularly vulnerable group, for whom advocacy services are extremely important in terms of enabling them to exercise their Article 12 participation rights. Include Youth believes that the Northern Ireland government needs to place advocacy services for all looked after children and those in custody on a statutory footing.

In respect of complaints mechanisms, it is essential that children in care and custody are aware of the existence of such mechanisms, can avail of relevant and accessible information or access external advice, advocacy and support, and have confidence in the system's independence and efficacy. NGOs expressed concern in the recent NICCY research that children in care and custody are not aware of the existing complaints processes, and even when they are, have little confidence in them.⁷⁰

Conclusion

In conclusion Include Youth greatly welcomes the opportunity to contribute to the UN General Day of Discussion on Children without Parental Care by way of written submission. Whilst we have raised issues specifically relating to the experience in Northern Ireland, we believe that these identify children's rights principles which have a more general application, which we hope has been illustrated by Include Youth's recommendations to the UN Committee on the Rights of the Child at Annex 1 to this document. We look forward to continue to work with all stakeholders in securing the rights of all children without parental care.

¹ DHSSPS, *Young People in Regional Care Centres/Youth Justice*, October 2004, p5

² Kilkelly, U. et al. *Children's Rights in Northern Ireland 2004*, NI Commissioner for Children and Young People, Belfast 2004, p189

³ Criminal Justice Inspection NI, *Inspection of the Juvenile Justice Centre (NI)*, October 2004, p14

⁴ UN Standard Minimum Rules for the Administration of Juveniles Justice, UN General Assembly resolution 40/33 Nov 85

⁵ UN Guidelines for the Prevention of Juvenile Delinquency, UN General Assembly resolution 45/112 Dec 90

⁶ Article 37 United Nations Convention on the Rights of the Child; Rules 1 and 2 of the Riyadh Guidelines

⁷ Op. cit at note 4, Rule 17.1.(b) and (c)

⁸ Article 20 UNCRC

⁹ Op cit, note 3, p11; op cit at note 2, p190

¹⁰ Op cit note 2, p68

¹¹ Police and Criminal Evidence (NI) Order 1989

¹² Op cit at note 3 p10

¹³ Op cit note 3

¹⁴ Op cit note 2, p190

¹⁵ Ibid, p 190

¹⁶ Op cit note 3, p11

¹⁷ Op cit note 1, p31

¹⁸ Op cit note 2, p67

¹⁹ Olsson v Sweden, ECHR, 1998

²⁰ Op cit note 2, p65

²¹ Ibid, p 65

²² Ibid, p67

²³ DHSSPS, Social Services Inspectorate and Education and Training Inspectorate, *Secure Care: An Inspection of Secure Accommodation at Shamrock House and Linden House*, June 2002, p5

²⁴ Op cit note 2, p68

²⁵ Young Voices Participant: Young Voices is a Participation Project run by Include Youth for young people in Northern Ireland with experience of crime and the criminal justice system

²⁶ Campbell, A, and Mc Laughlin, A., *Staff, Morale, Qualifications and Retention in Residential Childcare in NI*, National Children's Bureau, March 2005, p20

²⁷ DHSSPS, *Children Matter: A Review of residential child care services in Northern Ireland*, 1998

²⁸ Kilkelly, Dr. U. et al *In Our Care: Promoting the Rights of Children in Custody*, NI Human Rights Commission, Belfast 2002, p48

-
- ²⁹ Article 44 Children (NI) Order 1995
- ³⁰ Op cit note 2, p70
- ³¹ Op cit at note 23, p5
- ³² Op cit note 3, p31
- ³³ Ibid
- ³⁴ Op cit note 25
- ³⁵ Criminal Justice (Children) (NI) Order 1998
- ³⁶ NIO Statistics and Research Branch, *Juvenile Reconviction in NI 2001*, Bulletin 6/2005, p3
- ³⁷ Op cit, note 25
- ³⁸ CRC/C/15/Add 188 para 58 (b)
- ³⁹ Op cit, note 4, Rule 4.1
- ⁴⁰ Section 56 Justice (Northern Ireland) Act 2002
- ⁴¹ Op cit, note 3, p14
- ⁴² Op cit, note 1, p16
- ⁴³ UN Rules for the Protection of Juveniles Deprived of their Liberty, UN General Assembly, Resolution 45/113, Dec. 90, Rules 81-87
- ⁴⁴ Op cit, note 2, p88
- ⁴⁵ DHSSPS, *Number of Admissions of Young People to Adult Wards and Bed Days Occupied across the Region, 03-05*
- ⁴⁶ Op cit, note 1, p11 and 12
- ⁴⁷ Ibid, p35
- ⁴⁸ Op cit, note 28, p116
- ⁴⁹ Op cit, note 3, p19
- ⁵⁰ Correspondence between Phil Tooze, Director Juvenile Justice Centre, Youth Justice Agency and Edel Quinn, Include Youth, 21 October 2005
- ⁵¹ Op cit, note 3, p62
- ⁵² Op cit, note 1, p43
- ⁵³ NIO Statistics and Research Branch, *The Northern Ireland Prison Population in 2004*, Bulletin 8/2005, p 17
- ⁵⁴ HM Chief Inspector of Prisons and Criminal Justice Inspectorate NI, *Report of Unannounced inspection of the imprisonment of women in NI, Ash House, Hydebank Wood Prison*, November 2004, p15
- ⁵⁵ Ibid, p5
- ⁵⁶ Hart, D. and Howell, S. *Report on the use of Physical Intervention across Children's Services*. National Children's Bureau, 2004
- ⁵⁷ Op cit, note 2, p91
- ⁵⁸ Op cit, note 25
- ⁵⁹ Op cit, note 50
- ⁶⁰ CRC/C/15/Add.188 para 34
- ⁶¹ Op cit, note 26, p58
- ⁶² Interview conducted for research at Op cit, note 2
- ⁶³ Op cit, note 2, p68
- ⁶⁴ Gibbs, I and Sinclair, I. *Treatment and treatment outcomes in children's homes*, Child and Family Social Work, 1998, 4, 1, 1-8
- ⁶⁵ Op cit, note 2, p68
- ⁶⁶ Op cit, note 26, p74
- ⁶⁷ Ibid, p71
- ⁶⁸ Op cit, note 1, p39
- ⁶⁹ CRC/GC/2003/5 paragraph 24
- ⁷⁰ Op cit, note 2, p1

ANNEX 1

Suggested Recommendations from Include Youth to be adopted by the UNCRC Committee following Discussion Day on Children Without Parental Care

1. Include Youth recommends that the UN Committee on the Rights of the Child should urge State parties to examine the extent to which children without parental care are over-represented in custody; the degree to which detention is or is not being used as a measure of last resort, and whether systems are in place to ensure that children are detained separately from adults, as is required by the UNCRC and other international instruments. States should be further advised to take requisite steps to remedy such situations, in order to ensure full compliance of their law, policy and practice with the UNCRC.
2. Include Youth recommends that the UN Committee on the Rights of the Child should issue guidance in the form of a General Comment on the issue of raising the age of criminal responsibility in line with the spirit of the UNCRC, and the Commentary to the 'Beijing Rules' which favours the introduction of an internationally acceptable and applicable lower age limit for criminal responsibility.
3. Include Youth recommends to the UN Committee on the Rights of the Child that the Committee urge State parties to ensure that best interests principle is incorporated into all policies, legislation, service planning and delivery for children and young people without parental care which recognises the fundamental rights and freedoms of all children, and that all decisions on the development and delivery of services are based on assessment of need rather than availability of resources. Such recommendation should pay particular attention to issues surrounding mental health provision, and should ensure that independent advocacy services for all looked after children and those in custody is legislated for.
4. Include Youth recommends that the UN Committee on the Rights of the Child urge State parties to develop and deliver clear protocols providing guidance, training and support to residential social workers and social care staff around the meaning of parental responsibility and the proper discharge of their duty as corporate parent.
5. Include Youth recommends to the UN Committee on the Rights of the Child that the Committee urges State parties to ensure the development of frameworks to include clear protocols between police and residential care homes which allow for more creative responses to dealing with children who present behavioural challenges, incorporating the use of conflict resolution approaches; and legislation and clear policy guidance governing the strict and consistent use of physical restraint against children across all sectors, ensuring staff training and research and monitoring on the use and impact of physical restraint on children.