

Seventh Meeting of the
Children & Young Peoples' Working Group
Children's Law Centre
Friday 9th November 2007, 9am-1pm

MINUTES

Attendance

Members Present: Sorcha McKenna, Children's Law Centre/Save the Children (Chair)
Pip Jaffa, Parents Advice Centre
Liam Larmour, Rainbow Project
Bronagh Byrne, Disability Action
Paddy Kelly, Children's Law Centre
Mathew McDermott, SDLP
Roy Beggs MLA, DUP
Lindsay Conway, Irish Council of Churches

Apologies: Sue Ramsay MLA, Sinn Fein
Anna Lo MLA, Alliance
Jenny Palmer, DUP

HR Advisor: Linda Moore

Observers: Thomas Redmond, HRC

Roy Beggs MLA was present from 10.30am-11.30am.

1. Minutes of the Last Meeting

Minutes of the Sixth Meeting were circulated and approved subject to the matters arising in section two.

2. Matters Arising

a) Full access to education

- Matters raised in the Sixth Meeting surrounding the implications of including the words full access in terms of the rights to education were to be explored. The issue is now put back to the next meeting, 16th November 2007. Linda Moore also recapped that the main area to be looked at surrounded those in young offenders institutions.

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b) Definition of State

- An alternative to the word State which was received from the Implementation Working Group after Sorcha McKenna had raised the issue with them. Roy Beggs expressed concern and aired caution as to what should ultimately be found to engender the word 'State'. The group agreed to use the term Public Authority instead.

c) Sexual orientation in relation to education

- Sorcha McKenna sought the advice of CoSo and the general feeling was that the use of the term young people would not be sufficient to include younger children. When opened for discussion, Lindsay Conway felt that there can be a difference between when a child becomes fully sexually developed and when they become fully aware of their sexuality.
- Sorcha McKenna reminded the group that the purpose of this provision was to ensure access to information to those who are unsure of their sexuality.
- Roy Beggs expressed difficulty with the use of the word children and felt it should be the term young adults which is used, as the term children in the provision could be interpreted as applying to a four year old.
- Liam Larmour pointed out that the group is meant to be using the term child to refer to those under 18 and that in his youth group it was apparent that issues around sexual awareness were prevalent in those of the ages around 10 – 13 and that it is in terms of heterosexuality not just homosexuality.
- It was discussed that those around 16 not calling themselves children, but in the eyes of the law they still are children. Lindsay Conway raised the point that not so long ago the word juvenile had to be done away with due to problematic implementation.

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- Liam Larmour discussed how orientation is an internal concept but Lindsay Conway points out that this can also become outwardly apparent in schools through play etc
 - Liam Larmour alluded to the fact that primary school education advocates the position that sexual relations are between husband and wife.
 - Paddy Kelly clarified that the purpose of including the issue in recommendations is to ensure that principles already existing around non-discrimination and bullying can be strengthened in inclusion as sexuality and gender referencing is becoming a tool for bullying.
- d) Fiscal implication of legal advocacy for children
- A brief synopsis of the legal aid situation regarding this issue was prepared by a solicitor for the Children's Law Centre, which was distributed. Paddy Kelly summarised the position, stressing that there are problems for representation in relation to mental health tribunals.

4. Family/ Parenting Provision

There were discussions based on the following suggested text which is based on UNCRC Preamble and Arts 5 & 15:

Suggested text

1. The Public Authority shall respect the responsibilities, rights and duties of parents and legal guardians to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of their fundamental rights.
2. The Public Authority shall provide appropriate assistance to parents and guardians in the performance of their child-rearing responsibilities and shall support them in enabling children to grow up in an atmosphere of happiness, love and understanding.

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Points of Discussion

- Pip Jaffa felt that something stronger than the word respect.
- Bronagh Byrne felt that a word should be used to oblige the State, as respect does not appear to.
- Paddy Kelly pointed out that the legal definition of respect means more than in everyday use i.e. to bring effect.
- Lindsay Conway contended that the word 'shall' gives the latter the authority in the courts.
- Paddy Kelly questioned the use of 'fundamental' in terms of rights and agreement that it is obsolete here and should be taken out.
- Liam Larmour questioned the applicability of the use of the words happiness, love and understanding.
- Lindsay Conway pointed out that ideas as abstract as love etc can never be guaranteed these and that sometimes pain and unhappiness are part of growing up.
- Paddy Kelly believed that it should say 'to realise their full potential'.
- Paddy Kelly felt the wording should be 'all appropriate assistance' to ensure all that everything which can be done should be done.
- Also, it was thought that carers should also be included as legal guardians is very narrow and legally specific.
- Paddy Kelly, felt there was a difference between child rearing and child caring responsibilities. Generally felt that 'rearing' is a word used in Northern Ireland to show up bringing.
- Pip Jaffa feels that rearing is giving a sense of growth and is more suitable, or the likes of up bringing.
- On checking the oxford dictionary definition of rearing in relation to children it was agreed that the term was appropriate.
- Pip queried the use of the term young people since other provisions referred only to children and therefore under 18s. Upon discussion it was deemed appropriate to include the term young people in this particular provision.

Agreed text

1. "The Public Authority shall respect the responsibilities, rights and duties of parents, legal guardians and carers to provide, in a manner consistent with the evolving capacities of the child,

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appropriate direction and guidance in the exercise by the child of their rights.

2. The Public Authority shall provide all appropriate assistance to parents, legal guardians and carers in the performance of their child-rearing responsibilities and shall support them in enabling children to grow up to realise their full potential."

5. Non-Discrimination

There were discussions based on the following text:

Suggested text

The Public Authority shall respect and ensure the rights set forth in this Bill of Rights to each child within the jurisdiction without discrimination of any kind, irrespective of the child's or his or her's parent's or legal guardian's 'race', 'colour', sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, sexuality, birth or other status including immigration status.

Points of Discussion

- Sorcha McKenna drew attention to the fact that there may be a general clause on non discrimination in the final forum document but that at this stage of the process the children's working group should ensure that child specific discrimination is addressed.
- The term carer's added in accordance with issues discussed under the earlier family provision.
- Lindsay Conway raised issue around immigration status etc. Following discussion the group agreed that the term 'or other status should be used' to ensure the living nature of the document. Lindsay Conway also questioned should this section be left open or qualified. Paddy Kelly explained that it is standard practice to leave it open.

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- Sorcha McKenna questioned the implications of the provision for a child with a parent being in prison. Paddy Kelly explained that this would be covered under the parent's legal status.
- Paddy Kelly questioned the implications of including the term jurisdiction using the example of children here whose parent(s) are being threatened with deportation. Sorcha McKenna felt that this would be covered by legal status.
- The validity of the word property was discussed and the group considered property to refer to economic status and as such the term property should be replaced with economic status.
- Paddy Kelly questioned why the second part of art 2 United Nations Convention on the Rights of Children was not included. Sorcha McKenna explained that this was on the advice of the Human Rights Advisor. Liam Larmour was of the opinion that if the provision is saying that there are other reasons why then this should be elaborated to some extent, which art. 2.2. does. Sorcha McKenna proposed possibility of merging art2.1 and art2.2 together, and that the issue at hand had been included in terms of education and child detention. Paddy felt that children needed protection from the status of their parents which is why she questioned the omission of art 2.2. Sorcha McKenna pointed out the use in art2.2 of United Nations Convention on the Rights of Children, of the word family members and it is discussed. Paddy felt that the latter section would help in terms of issues where the legal status of parents and access to appropriate welfare to ensure the child is protected. As a result, it was agreed that art 2.2.of the United Nations Convention on the Rights of Children should be included.
- Matthew felt that 'and protect' should be added in relation to public authority duty in the first line. Sorcha McKenna and Paddy Kelly pointed out that this was strongly implied in the legal interpretation of the existing wording.

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Agreed text

1. "The Public Authority shall respect and ensure the rights set forth in this Bill of Rights to each child within the jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's, carers or legal guardian's 'race', 'colour', sex, language, religion, political or other opinion, national, ethnic or social origin, economic status, disability, sexual orientation, birth or other status including immigration status."

6. Standard of Living

There were discussions based on the following text:

Suggested text

1. Every child has the right to grow up in a stable, safe and secure family environment and to this end, the state shall provide the support and resources necessary to assist parents in their role as primary carers.
2. All children have the right to an adequate standard of living including appropriate housing to facilitate the best possible level of physical, mental, spiritual, academic, moral and social development.
3. A child or young person deprived of, or in whose best interests cannot be allowed to remain in, that environment, is entitled to special protection and assistance from the State. This alternative care shall include foster placement or adoption within a reasonable time, the choice of which shall be determined by the best interests of the child alone. The State's obligation to protect and support children and young people shall end only when it is no longer required. In particular, children and young people leaving care should be prepared for and supported towards independent living.

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Points of Discussion

- Bronagh Byrne felt that the word appropriate should be put before the word support and Sorcha McKenna agreed adding that the word all should be included also.
- Issues arose surrounding the wording 'loving family environment', and Pip Jaffa felt the words safe & secure should be added. The general consensus was that the text should be amended accordingly.
- Lindsay Conway felt that it should read every child has the right to protection, but Paddy Kelly pointed out that this had been discussed previous week and Pip added that this is implied in her suggestion.
- Pip also felt that carers and legal guardians should also be included.
- Paddy felt that the legal notions of equality and non-discrimination have moved on in that non-discrimination assumes that children in this instance have the same starting point whereas equality addresses situation where this hasn't existed. She proposed a suitable statement.
- Liam questioned the use of physical etc at the end of line relating to housing. Sorcha McKenna points out that this is to do with not cramping large families into small spaces i.e appropriate no. of bedrooms.
- Mathew felt that 'adequate' not strong enough and that the word appropriate should replace it. This was agreed by the group.
- It was also discussed as to whether 'reaching their full potential' will encompass the areas of qualification at the end. Agreement that if the latter is included it is definitely intended to give affect to these areas outlined at the end of 6.2.2.of the proposal. It was the feeling that using reaching their full potential should be used to allow the document also to be a living instrument to allow for future circumstances. This was agreed by the group.

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- Pip Jaffa questions using appropriate again in the first line as the rest of the document would now read stronger.
- Paddy Kelly felt that the right should be asserted as well as the obligation of the public authority. She also enquired the thinking behind Paula Bradshaw including this in her paper and whether the housing case in South Africa might have any implications on this. Sorcha McKenna stated that Paula based many of her recommendations on her professional experience gained working in areas of high socio-economic need.
- Lindsay Conway wondered why there was a particular focus on housing when income which affects housing was not being discussed. Suggested that UDHR art5. should be looked to.
- Sorcha McKenna pointed out in relation to art5. UDHR that there was no need in this instance to refer to health as the working group has done so else where.
- Lindsay Conway pointed to the content of UNCRC Art 27.3 as a possible guide.
- Pip Jaffa questioned replacing after appropriate standard of living with health and well-being.
- It was felt by the working group generally that a separate paragraph should be inserted after 6.2. to address how the appropriate standard of living show be encompassed and addressed. Sorcha McKenna thought this could be incorporated into paragraph 1.
- Arguments were reiterated again as to the danger of including an extensive list of qualifications but Mathew McDermott felt that in this instance it was justified, a feeling echoed by Lindsay Conway.
- At this point, the original 6.3 becomes 6.4.
- The term young person was found not needed here as a child will still cover everyone under 18. It was proposed by Sorcha

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McKenna that it should read, 'a Child deprived of the family environment for what ever reason' should come before is entitled. This was agreed by the group which also felt it more practical to restructure the provision accordingly.

- Pip felt that the best interest of the child section of the sentence should move to the start of that sentence, with emphasis on timescale. This was agreed by the group.
- The third sentence relating to leaving care was thought to raise issues for young people in youth detention centres and reintegrating, as well as children moving on to e.g. university education, or children with mental health problems. Roy Beggs raised concern as to when the individuals concerned actually become adults if this approach is followed. Sorcha McKenna also referred to those young adults with the capacity of the age range of a child; however Paddy pointed out that this would be covered by vulnerable adult legislation.
- Paddy feels that the age range applicable in the courts for children is up to 18, those leaving care 21, and those with disabilities is 25, and that a court interpreting this provision would apply the provision accordingly.
- Third and fourth sentence of original 3 goes to the end of 6.1.
- Roy Beggs wanted on record his concerns about the budget implications of how these aspirational provisions could be delivered.

Agreed text

1. "Every child has the right to grow up in a stable, safe and secure family environment and to this end, the Public Authority shall provide all appropriate support and resources necessary to assist parents, carers and legal guardians to carry out their child rearing responsibilities. The Public Authorities obligation to protect and support the child shall end only when it is no longer required and shall in all circumstances be based on the best interest of the child.

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2. A child for whatever reason who is deprived of that environment is entitled to special protection and assistance from the Public Authority. The choice of alternative care shall be determined by the best interests of the child alone and should be provided within a reasonable time. Children leaving the care of the Public Authority should be prepared for and supported towards independent living.
3. All children have the right to an adequate standard of living including appropriate housing to enable the child to realise their full potential.
4. The Public Authority shall take all appropriate measures to ensure the right of all children to appropriate standard of living, ensuring the right to appropriate levels of housing, health, education, income and if appropriate social services."

7. Youth Justice / age of criminal responsibility

Before the recommended text was discussed, Linda Moore distributed and read through handouts relating to the relevant issues. A discussion on how best to address the youth justice took place given the fact that the Criminal Justice and Victims group were also working on it. The general feeling of this working group was that it was first necessary to look at the issues which the latter group had identified and discuss them. It was also agreed that both working groups should include, preferably identical if not largely similar, provisions on youth justice within their final recommendation to the forum.

There were discussions based on the following text:

Suggested text

1. "The Public Authorities recognise the right of every child alleged to, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability

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of promoting the child's reintegration and the child's assuming a constructive role in society."

2. "In all decisions taken within the context of the administration of youth justice, the best interests of the child shall be the paramount consideration."
3. "Children under the statutory school leaving age shall be presumed not to have the capacity to infringe the penal law and the age of criminal responsibility shall be set accordingly and subject to review by the Public Authority."
4. "The following minimum rights shall be guaranteed to every child:
 - a) the right to have criminal charges explained promptly and in appropriate language;
 - b) the right to have access to appropriate legal and other assistance in the preparation of a defence;
 - c) the right to have any criminal charge determined without delay by a competent, independent and impartial tribunal in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is contrary to his or her best interests and taking into account his or her age or situation, of his or her parents or legal guardians;
 - d) the right to have an appropriate adult present to represent the interests of the child even if a solicitor is also present;
 - e) the right to be tried for a criminal offence in an appropriate setting and manner, having regard to the child's age, maturity, needs, vulnerability and understanding;
 - f) the right to have measures taken to ensure his or her participation in and understanding of the criminal proceedings; and
 - g) the right to have his or her privacy respected before, during and after the proceedings."

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5. "The detention of a child must occur only in exceptional circumstances and in accordance with the law. Detention shall be used only as a measure of last resort and for the shortest appropriate period of time. A variety of dispositions and alternatives to institutional care shall be available to ensure that children are always dealt with in a manner appropriate to their well-being and proportionate to their circumstances and the alleged offence."

6. "Every child deprived of liberty shall have the following minimum rights:

- a) To be treated with respect for his or her dignity and human rights and in a manner which takes into account his or her age and particular needs.
- b) the right to be separated from adults in detention and (if not yet found guilty) from children who have already been found guilty;
- c) the right to receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality;
- d) the right to prompt access to appropriate legal and medical assistance and pastoral care;
- e) the right to privacy and respect for his or her correspondence;
- f) the right to maintain regular and direct contact with parents, siblings or other family members and friends, save in exceptional circumstances;
- g) the right to access the Northern Ireland Curriculum and/or educational and vocational training necessary to prepare for his or her re-integration and constructive participation in society following release.

7. Girls in detention deserve special attention as to their personal needs and problems. They shall by no means receive less care,

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protection, assistance, treatment and training than young male offenders.

8. Corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the child's physical or mental health is forbidden.

9. Use of force or instruments of restraint used only in exceptional cases 'where all other control methods have been exhausted and failed'. Physical restraint and use of force should not cause humiliation or degradation, and should only be used for the shortest period of time."

10. On release from an institution children shall be assisted and supervised by an appropriate authority and shall receive full support by the community."

Points of Discussion

NOTE: There was not sufficient time for the working group to review all of the above provisions however they made suggestions regarding several of the proposed clauses and agreed to return to youth justice on the 16th November.

Linda Moore raised the following points in her presentation;

- The gaps in terms of international standards
- The importance of the Beijing Rules in relation to the age of criminal responsibility.
- The fact that courts can now assume that from the age of 10 a child is aware of the consequences of their actions and criminally culpable as a result of the Criminal Justice (Northern Ireland) Order 1998 removing *doli incapax*.
- ECtHR ruled in *T&V v UK* that the child defendant's rights were violated as a result of media intrusion, adversarial nature of proceedings and in part due to the low age of criminal responsibility.
- There have been changes in policy and practice since *T&V v UK* case yet a number of inadequacies remain

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- Lindsay Conway asked if children in Northern Ireland were deferred to the youth courts for sentencing. He pointed to the Winchester case where one sister was deferred to the youth court for sentencing and the other was sentenced in an adult court. The main flaw was felt to be that a child could be tried in an adult court when adults were involved in the offence.
- Paddy Kelly went back to the T&V case in 1998 and acknowledged that at that time the age of 10 reflected the age of criminal responsibility in other European states, and that if T&V were to occur now the UK age is likely to be seen as too low and expected to rise in line with other states.
- Linda Moore felt the difficulties are as to whether a min. age limit is set now or whether it is decided to be from 14 over or to gradually to progress it to 18. The criminal justice group felt that it should reflect more the European standards.
- Lindsay Conway referred to the Black Report which he felt didn't take on board the expert opinion as it went down the legally conceptualised age. He also pointed that the experience to date has been that children in the criminal justice system have been stigmatised and labelled and that it is against this back-drop that we should approach the problem. He felt that since the move from indeterminate sentencing to determinate sentencing that that there was a noticeable in children using penal language such as how much time they had to do with remission etc.
- Sorcha McKenna put forward the idea of raising it to the age of compulsory education. Paddy Kelly felt that it is better that it is outlined that children below a certain age cannot be inferred to have criminal responsibility.
- Lindsay Conway alluded to the German experience where custody weekends were implemented for child offenders and that it had a positive influence in decreasing child associated crime rates.
- There was general concern expressed by the group about the media discussions around the age of criminal responsibility.

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- General agreement was that this working group should set the standard high to further the rights of children.
- Liam Larmour raised the disparity in other legal ages such as that of driving, drinking etc. when compared with criminal responsibility.
- Lindsay Conway contented that in the general education of children we are not providing children with information on the likes of criminal responsibility.
- Pip Jaffa furthered this and felt that parents also need to be actively informed about issues of social responsibility and the legality of certain actions and behaviours.
- Paddy Kelly questioned the wording in relation to 'promotion of the child's sense of dignity and worth'. General consensus was reached that worth was to be taken out.
- Lindsay Conway drew attention to the number of children in 'care careers' and feels that the issue of the number of children in state care has never really been addressed. Linda Moore supported this point by referring to statistics which state that 2/3 of children in the youth justice centre came through the care system.
- Linda Moore felt that the terminology 'formal agencies of social control' was reflective of a more European style and should be changed to reflect NI.

Agreed Principles

1. No child under the age of 16 will be held criminally responsible.
2. The public authority shall progressively increase the age of criminal responsibility to 18.
3. The Public Authority shall progressively provide effective alternatives to juvenile justice processing including in the form of family support and community based diversion and shall ensure that formal agencies of social control are only utilised as a means of last resort.

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9. Action points

- Issue of 'full access' to education to be investigated and discussed at next meeting.
- Sorcha McKenna to forward details of next meeting venue to members.
- Juvenile justice issues to be returned to.

Date of next meeting

- Friday 16th November 2007, 10am-4pm in The Mount, 2 Woodstock Link, Belfast.