

Protecting children and young people's rights in the Bill of Rights for Northern Ireland

Why? How?



Research commissioned by
Save the Children and the Children's Law Centre
for the Children and Young People's Sector Bill of Rights Group



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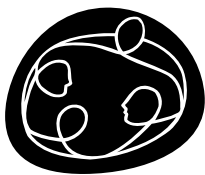
This research outlines the need for protection and promotion of rights for children and young people in the proposed Bill of Rights for Northern Ireland, and the mechanisms best suited to realise those rights.

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Save the Children and the Children's Law Centre also convene the Children and Young People's Sector Group for the Bill of Rights, which campaigns for maximum protections for children and young people in the proposed Northern Ireland Bill of Rights. The group has the support of over 180 community groups and organisations across communities and the political spectrum.

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Preface

“...consult and advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and the parity of esteem, and taken together with the ECHR, to constitute a Bill of Rights for Northern Ireland.”

Paragraph 4, Belfast (Good Friday) Agreement 1998

A Bill of Rights, based on advice by the Northern Ireland Human Rights Commission, was at the heart of a commitment within the 1998 Belfast (Good Friday) Agreement to human rights and equality issues, and to a wider transition of society away from conflict. For children and young people in Northern Ireland, at a minimum links must be made between the particular realities they face as a result of the conflict and the international standards, set as a minimum, in the United Nations Convention on the Rights of the Child. The provisions in the Bill of Rights must be grounded in an understanding of how, given the particular circumstances of Northern Ireland, children can best have their rights protected and promoted. This research has been commissioned to sketch in more detail the need for protection and promotion of rights for children and young people and the mechanisms best suited to realise those rights.

The results of this research are the papers that follow, and can be read to answer two questions: i.e. why and how? Firstly, why do children and young people in Northern Ireland need their rights enshrined in the Bill of Rights? This question is addressed in the first paper, ‘The Particular Circumstances of Children in Northern Ireland’ by Goretta Horgan.

The second question is ‘How?’ This is addressed in the second paper, ‘How the Bill of Rights can best protect and promote the rights of children and young people in Northern Ireland: learning from international law and the experience of other jurisdictions,’ by Dr. Ursula Kilkelly.

We welcome every opportunity for dialogue with the Human Rights Commission and others in respect of the issues raised in these papers. We offer these papers for discussion with the shared conviction that promoting and protecting the rights of children may determine how successfully our society makes the transition from conflict.

Children and Young People’s Sector Group,
November 2005

Why the Bill of Rights should protect and promote the rights of children and young people in Northern Ireland

The particular circumstances of children in Northern Ireland

GORETTI HORGAN

Children and young people make up almost a quarter of the population of Northern Ireland and yet we have not always given their interests and needs the priority they deserve. But this is changing. Never before has there been such a groundswell of support for securing the rights and meeting the needs of children and young people in Northern Ireland and the momentum is gathering.

Minister John Spellar, Foreword to The draft Children and Young People's Strategy, 2004

Summary

This paper will argue that the particular circumstances of children and young people in Northern Ireland, combined with their vulnerability, are such that the Bill of Rights must address the rights of children specifically and in detail.

The particular circumstances of children in Northern Ireland include:

1. The legacy of the conflict;
2. Segregation in housing, education, health and leisure services;
3. Very high levels of child poverty;
4. Low levels of family support services;
5. Totally inadequate provision of services for young people with additional needs
6. The relationship between poverty, segregation and conflict.

After the introduction, this paper is divided into two broad parts that link to some of the provisions of the United Nations Convention on the Rights of the Child (1989), ratified by the United Kingdom in 1991. The first part is about children's rights to care (e.g. Articles 2,3, 5, 6), protection (e.g. Arts 19, 20, 21, 23, 25, 37, 39) and freedom of expression (e.g. Articles 12, 13, 14). The second part focuses on the importance of socio-economic rights for children and young people in Northern Ireland (e.g. Articles 4, 6, 26, 27,28, 30,31).

Introduction

There is widespread community support for specific rights for children and young people to be included in the Bill of Rights. In October 2001, Research Evaluation Services conducted a survey on behalf of the Northern Ireland Human Rights Commission (NIHRC) in which 78% of Catholics and 67% of Protestants indicated their support for such rights. Most importantly of all, the NIHRC's consultation with children and young people revealed almost unanimous support for the provision of specific rights for children and young people.

As the draft Children and Young People's Strategy, produced by the Office of the First Minister and Deputy First Minister in 2005 points out, there is no single experience of childhood in Northern Ireland. For children in Northern Ireland, especially those who live in poor families in the most disadvantaged parts of Northern Ireland, there are very particular circumstances which need to be acknowledged and addressed.

The Special Representative of the Secretary General of the United Nations on Children and Armed Conflict, Mr Olara Otunnu after his second visit to Northern Ireland argued that

“Following conflict, the prospects of recovery often depend largely on giving priority attention to young people in the rebuilding process, rehabilitating young people affected by war, and restoring their sense of hope. This issue must become a priority. All key actors responsible for developing post-conflict peace-building programmes should make the rights and protection of children a central concern in their planning, programming and resource allocation.”

He appealed to political leaders *“to address the basic concerns of children in Northern Ireland, particularly social and educational integration, youth unemployment, substance abuse and poverty, improved access to health facilities and housing, increased access to counselling, and improved administration of child protection and juvenile justice. Children's rights should be incorporated into the new Northern Ireland Bill of Rights.”*

(United Nations General Assembly Fifty-fifth session: Agenda item 110: Promotion and protection of children's rights. 3 October 2000:pp 9-10)

Part 1: Children's rights to care, protection, health services, education, freedom of expression and in respect of the administration of criminal justice

I wish there was no religion so that everyone could get on and there would be no fighting. (13 year old boy, in research commissioned by Northern Ireland Commissioner for Children and Young People [NICCY], 2004)

1. Particular circumstances: the legacy of the conflict.

The impact of the conflict on society in Northern Ireland is immense. What some people call “The Troubles”, when viewed proportionately to the small size of Northern Ireland’s population, was a war in scale, intensity and duration. More people died in the political violence of the past quarter century in Northern Ireland – 3,352 by the end of 2002 – than in any similar period in Ireland over the past century, with the possible exception of the 1922-23 Irish Civil War. In addition, about 50,000 people have been injured, representing just over three per cent of the population. If we extrapolate these figures to Britain, some 126,000 people would have died, with 1.8 million people injured. This represents just under half of all British deaths (265,000) during the Second World War. Further extrapolating the deaths to the United States, some 608,000 would have died, notably more than died during the Second World War (405,000) and nine times the American war dead in Vietnam. (Hayes and McAllister, 2003).

In the Poverty and Social Exclusion NI survey, half of all household respondents said they knew someone who had been killed in the conflict. (Hillyard et al, 2005) The impact of conflict goes far beyond the question of knowing someone who was killed. Other experiences have had a major impact: the shock of witnessing a violent event, being forced to move house, fear of travelling out of one’s own area. There is a strong coincidence too, between experience of the conflict and experience of poverty, as will be argued below. An acknowledgement of this relationship should be reflected in government policy to impact on poverty in the region, if those policies are to be successful. Yet, government responses to

poverty generally fail to even mention the conflict, still less address its legacy.

Between 1969 and 2003 as a result of political conflict in Northern Ireland:

- 274 children aged 17 and under died;
- 629 young people aged 18 to 21 lost their lives;
- The 18 to 23 age group suffered the highest number of deaths;
- 36% of all those killed were children and young people
- More than half of all those killed were 29 years and under;
- Over 90% of those killed were young men;
- Almost three quarters of children under the age of 18 killed during the conflict have been Catholic, a fifth were Protestant, and the remaining 6% were from outside Northern Ireland;
- The overwhelming majority lived in those areas that experience the highest levels of deprivation and family poverty;
- Almost half (48%) of all deaths of those under 21 were concentrated in Belfast, North and West Belfast in particular. A further 9% of deaths under 21 were in Derry-Londonderry, with other concentrations in the border counties.

(Smyth et al, 2004)

About half were killed by republican paramilitaries, a further quarter by loyalist paramilitaries and the rest by the British Army, with about 3% killed by the RUC. Nine children have been killed by rubber and plastic bullets, the youngest just ten years old; seven of those killed by British paratroopers on Bloody Sunday were 18 or under. A number of young “joyriders” have been killed or injured by police and army personnel, and four children were killed by army vehicles (Fay et al., 1998).

There are no complete figures for children injured as a result of the political conflict. The Northern Ireland Office, however, does provide a breakdown for those shot or beaten by paramilitaries in “punishment attacks.” Between 1991 and 1997, 120 young people were shot (usually in the kneecaps) and 234 assaulted by paramilitaries. Again, all these young people live in the most disadvantaged communities (Smyth, 1998). The most recent figures (2004-05) available for punishment beatings was 109 in the year, but we do not know how many of these targeted children or young people.

Plastic bullets pose a particular threat to children and young people given the size of the bullet relative to the size of a child (Leitch & Kilpatrick, 1999). Although there are no figures for the number of children injured by rubber and plastic bullets, in addition to those children who have been killed there have been several children severely disabled by plastic bullets, and a number of children were blinded.

Conflict and trauma

I was crossing the bridge and they were all shouting at me and I was in my uniform as well. It didn't really register until afterwards to me. (Young woman, NICCY, 2004)

There is growing evidence that the conflict has had a traumatising effect on far larger numbers of children and young people than was formerly acknowledged. Leitch and Kilpatrick (1999) researched the effect of political conflict on children's education in Northern Ireland. They found that virtually every one of the 78 pupils they spoke to initially tended to minimize the effects of political conflict on his or her life and education. However, when the respondents were probed, substantial evidence was uncovered of often very traumatic impact by the conflict on the young person's life and education.

Smyth et al, (2004) found that the children in their study who had been deeply affected by the conflict had “*difficulties in concentration and the aggressive behaviour that followed their traumatisation was misinterpreted by others and seen as deliberately disruptive behaviour*”.

In the aftermath of the Omagh bomb of August 1998, which killed 29 people, more than one third of those receiving trauma counselling were children, some as young as two years old. A body of work that centres on the effects of the bomb includes a school based survey to assess the extent and nature of psychiatric morbidity among children and adolescents aged between 8 and 18 years living in the Omagh area 15 months following the bomb (McDermott et al., 2004). Around 14% of children and 16% of adolescents sampled had some direct experience of the bombing. This study found that as the degree of exposure to the bomb increased, so did the levels of reported symptoms of Post Traumatic Stress Disorder (PTSD), depression and anxiety among children. Girls reported higher levels of depressive feelings and anxiety than boys. In addition, higher levels of overall anxiety were identified in younger children. Among adolescents, girls had a higher risk of suffering from a psychological disorder and reported higher PTSD scores.

The impact of the ‘Holy Cross’ blockade, which directly involved the children seeking to attend their primary school, has not yet been scientifically measured. However, six months after the loyalist attacks on the children ended, one of the teachers told The Guardian newspaper (25 June 2002) “We have children waking up in the middle of the night screaming and not knowing what they are screaming about”.

Shortage of mental health services

“I think Children and Adolescent Mental Health services are good but sometimes they don’t give you what you’re looking for.” (Young person’s comment, focus group consultation, RMHLD, 2005)

The serious shortage of mental health services, both community and hospital based, for children and young people in Northern Ireland was noted by research for NICCY in 2004 and by the Social Services Inspectorate (2005, see below for further details). This is particularly concerning given the growing evidence of psychological distress among so many of our children and young people. The NICCY research, for example, points to the high rate of suicides by young people where there was evidence that a *“relationship between trauma due to the conflict, to paramilitary threats and to forced exiling and economic marginalisation and social exclusion...are the contexts in which hopelessness, helplessness and despair accumulate in the minds of children who self harm.”*

Concentration of poverty in areas most affected by the conflict

There is a marked concentration of poverty in a relatively small proportion of Northern Ireland’s electoral wards. Many of these wards are in and around the areas most impacted by the conflict. In fact, a map of the areas where child poverty is most concentrated in Northern Ireland will match very closely the map of areas where the conflict has been most intense. (Fay et al, 1998) There is growing evidence 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. For example, a report from the 1997 Northern Ireland Health and Social Wellbeing Survey (O’Reilly and Browne, 2001) indicates that people in poorer households were more likely to suffer significant health stresses and

were also more likely to have borne the brunt of the conflict either in their areas or on their lives. Variation in intensity of political violence between different areas of Northern Ireland has been linked to area differences in the level of psychological disorder. (Cairns and Wilson, 1991; Cairns and Wilson, 1993)

The Bill of Rights needs to take account of the right of children to all appropriate measures needed to ensure the protection and care of children in the course of conflict (UNCRC, Art. 38) and their “recovery and reintegration” (UNCRC, Art. 39) in its aftermath and their right to services, including mental health services, and education.

Relationships between young people and the police

The police are a bad thing to have driving about the streets and roads. They cause fights and riots on the roads. People’s houses and cars are being damaged by people throwing things at the police. Just four days ago, our car tyres were busted by glass on the road. (14 year old boy, NICCY, 2004)

An uneasy relationship between young people and the police is not unusual in industrial societies. But the particular contested nature of policing in Northern Ireland has led to a level of hostility and suspicion between young people and the police here which adds to sectarian tension and disorder. (Jarman and O’Halloran, 2001; Jarman et al, 2002) Despite a police reform process as part of the transition from conflict, studies have continued to find young people experiencing contact with the police as “predominantly negative”. Ellison (2001) in research on the RUC had found that children from “socio-economically disadvantaged areas” were more than twice as likely to have been stopped and searched than other children.

Quinn and Jackson (2003) researched the detention and questioning of children and young people. Their study found that over half of those detained were released within three hours, a further quarter between

three and six hours, 13% between six and twelve hours and 7% between twelve and twenty four hours. Only 15% of those detained were eventually charged, while 78% were searched, 52% were photographed, 70% fingerprinted and 36% had a sample taken for DNA testing. The researchers reported complaints from solicitors and appropriate adults that fingerprinting etc. criminalised young people.

Hamilton et al (2003) studies the views of young people in the 16-24 age range on police accountability. They found that 56% of young men and 28% of young women reported contact with the police in the last twelve months. Being stopped and searched by the police and being moved on were the most frequent reasons for contact. Most young people regarded this as harassment. Seventy per cent of complaints by young people to the Police Ombudsman's Office were for "oppressive behaviour" by police, compared to 41% of complaints by over 25 year olds. The broad category of "oppressive behaviour" includes assault and harassment. An additional 12% of young people's complaints were for "incivility". Thus, four out of five young people who complained considered they had been treated with varying levels of disrespect. The young people's complaints were also more likely to refer to events that occurred between 9pm and 6 am and at weekends, than those of people aged 25 and over.

The right of children and young people to protection from discrimination and abuse, to physical integrity, to education, to freedom of expression and their rights in respect of the administration of criminal justice must be included in the Bill of Rights. These rights are particularly necessary given the impact of the conflict, including segregation, alienation of children and young people from the institutions of the state and allegations of religious, political and age discrimination in the administration of criminal justice.

2. Particular circumstances: segregation in housing, education, health and leisure services.

The impact of segregation on young people

"We can only go to the swimmers at the Robinson Centre – Maysfield Leisure Centre is seen as Catholic and therefore it's dangerous for us to go there." (Belfast Interface Project, 1998)

Northern Ireland is a highly segregated society. Although there was always a tendency toward segregation, particularly in education and employment since the foundation of the state, the past 30 years have seen a marked increase in segregated housing. The census figures suggest that more than half the population in Northern Ireland now lives in areas that are more than 90% Catholic or Protestant. Strict residential segregation is most marked in public housing, with more mixed options available in private housing. Highly segregated areas are often the most disadvantaged and suffer stigmatization, discrimination, security force surveillance and harassment. Sectarian attacks on the areas or on people entering or leaving are also commonplace.

Despite children and young people in Northern Ireland having much in common, whatever their community background, children living in the most impoverished parts of the region tend to learn very young that there is a 'them' and an 'us'. Some research suggests that the very fact that segregation exists, and in particular the divided nature of our education system, emphasises group differences and hostilities and so initiates children into the conflict. Implicit values within the school (or the schoolyard) – often referred to by educationalists as the 'hidden curriculum' – further reinforce the negative messages of segregated schooling. Further, as the draft Children and Young People's Strategy points out, the segregated nature of education and of public, including leisure, services is costly and goes some

way to explaining the poor provision in Northern Ireland of many public services. In fact, Donnelly and Osborne point out that our segregated education system means there are 40% more secondary schools per head of population than the UK average, with associated additional costs to the education budget.

There is growing evidence that from a very early age children in Northern Ireland have some understanding of group labels and that many come to school already identifying with one community. There is now research to show that it is children who are living in poverty who are most likely to gain this early awareness of sectarian labels and, by age 7 – 8 to have developed strong, negative attitudes and prejudices towards the other community. (Connolly and Healy, 2004)

This research indicated that in terms of their day-to-day experiences, there was little to distinguish the Protestant and Catholic children. Rather, the major source of influence on the children's lives was where they lived. The children who developed sectarian attitudes at a very young age lived in deprived working class areas where sectarian tensions are relatively high. They had early experience of sporadic incidents of violence; stone-throwing and conflict was common between children and young people at nearby interface areas. Those who were older when they developed sectarian attitudes tended to live relatively affluent, middle-class areas with little or no direct experience of the violence and sectarian tensions in society.

Part 2: The importance of socio-economic rights for children

My area has no playing facilities and nothing to do. There are no places where we can play football or just run about and play something else. It is just all roads and nowhere to play. It could be dangerous for young children who want to play and they would go onto the roads and they could get knocked down and get hurt or even killed! All the facilities are too far away from where we live. (Boy, aged 14, NICCY, 2004)

The remainder of the evidence presented here is aimed at explaining why socio-economic rights for children must be guaranteed by the Bill of Rights. Such rights include healthcare, education, social services, accommodation, an adequate standard of living and a healthy and sustainable environment.

1. Particular circumstances: the high level of child poverty in Northern Ireland

There is considerable evidence to demonstrate that Northern Ireland has higher levels of children living in poverty than any other region in the UK or Ireland. Research funded by OFMDFM (Hillyard et al, 2003) showed 38% of children living in households that have low incomes and lack three or more necessities. The research showed a fifth of all households lacked six or more items because they could not afford them. The risk of poverty is higher in Northern Ireland than in Britain and a further 12% of children are at risk of falling into poverty i.e. they live in a family which has a number of risk factors, e.g. three or more children, lone parent, or disabled member. This means that every other child in Northern Ireland is living in, or at risk of, poverty. There is evidence to suggest that the relative disadvantage faced by some groups, particularly the children of lone parents and of a disabled parent, is actually increasing despite government anti-poverty measures (Dignam, 2003).

There is a marked concentration of poverty. Over half of all children that live in households in receipt of Income Support reside in 16 % of wards and over three quarters living in just 37 % of wards

(McClelland, 2003). Many of these wards are in and around the areas most impacted by the conflict.

The level of child poverty in some parts of Northern Ireland is even higher. One in three wards in the Derry City Council area have a child poverty rate of more than 70 percent, while most of the remaining wards with the highest levels of child poverty are in North and West Belfast.

Not only is child poverty higher here, but the cost of bringing up children is also higher. The cost of food in Northern Ireland is considerably higher than in Britain, even than London and the South East. The 2003-4 Family Spending Survey found, for example, that the average amount per household spent on food is 20% higher in the North of Ireland than in the North East of England (ONS, 2005). Even taking the larger household sizes into account, the cost of basic foodstuffs is considerably higher in Northern Ireland. Thus, it is even more difficult for parents to provide a nutritious diet for their children. This may go some way to explaining why it is that, over the last 10 years, the percentage of children in Northern Ireland aged between twelve and fifteen years of age who are overweight or obese has increased by more than a quarter. The Chief Medical Officer for Northern Ireland has said that the rise in obesity among both adults and children is due mainly to an unhealthy diet and lack of exercise. (DHSS, 2005)

Parents here also have to spend considerably more on children's clothes than is the average in Britain. While all clothing and footwear costs 37% more than the UK average, children's clothes are even more expensive. The cost of clothes for girls (5 – 15 years old) is 50% higher than the UK average and for boys (5-15) is 87% higher. Footwear is also considerably more expensive – some 51% more expensive than the UK average.

The cost of keeping a house warm and healthy is also higher: 114,000 children in Northern Ireland live in fuel poor homes. The Government defines

fuel poverty as where a household needs to spend 10% or more of income to meet fuel costs. The 2001 NI Housing Conditions Survey found that 203,000 households (33% of all households) are in fuel poverty. This compares with 9% of households in England and 13% in Scotland that were fuel poor in the same period. Levels of fuel poverty in Wales are similar to Northern Ireland at 31%. Fuel costs are considerably higher than in Britain. The 2003-4 Family Spending Survey (ONS, 2004) found fuel costs in Northern Ireland were 143% of the UK average at £16.90 a week, compared to £11.80 a week in the UK generally. Fuel costs in Scotland and Wales are higher also, but the difference is much less, at £12.10 a week in Wales (102.5% of UK costs) and £12.40 in Scotland (105%).

These particular circumstances of the experience of poverty in Northern Ireland led Save the Children research to conclude that children in Northern Ireland are at greater risk of severe poverty than children in Britain, despite their families receiving similar levels of benefit (Monteith and McLaughlin, 2004).

2. Particular circumstances: low level of family support

There are no available statistics on the numbers of children affected by the imprisonment of a parent. However, since the release of political prisoners as part of the 1998 Belfast Agreement, there have been studies of the impact of a parent's imprisonment on children from both loyalist and republican families. Both studies found that children were often not told the full story about their parent's imprisonment, often with damaging effects on the child's emotional and psychological development. While most political prisoners' families struggled to meet basic needs, the material consequences of a parent's long-term imprisonment were not as harmful to children as the psychological effects. In her study of the children of loyalist ex-prisoners, Spence (2002) found children

suffered depression, anxiety and panic attacks as well as general confusion and worry. Teachers, parents and children themselves noticed changes in behaviour including an increased tendency towards violence and a withdrawal from friends.

Children of both loyalist and republican political prisoners found police raids on their home traumatic. Both reported difficulties maintaining meaningful contact with imprisoned parents. Both groups of children also had difficulties adjusting to the release of their imprisoned parents. Jamieson and Grounds' (2002) study of the effects of long-term imprisonment on republican prisoners and their families reported a number of the ex-prisoners were having difficulties in their relationships with their children, while a report by the Derry group Cúnamh found some of the children of ex-prisoners were resentful towards their returned parent and found it difficult to accept boundaries set down by him/her.

All the studies of prisoners' families, including qualitative research for NICCY, found that schools and other agencies failed to understand or address the difficulties faced by the children of prisoners and ex-prisoners. This is particularly important as ex-prisoners groups are reported in the NICCY research as claiming that unemployment among the children of ex-prisoners is as high as 87%.

Despite high levels of child poverty and the impact of conflict, per capita expenditure on family and childcare has been considerably lower than that in England. Information from the Social Services Inspectorate shows per capita expenditure on Family and Child Care programmes has been between a third and a quarter less than that in England.

This is particularly concerning when one takes into account the higher rates of children on the Child Protection Register (CPR) in Northern Ireland. In 2002 there were around 1,600 children in Northern Ireland on the CPR, a rate of 3.4 per 1,000 children. This compares with 2.3 per 1,000 in England and

3.0 per 1,000 in Wales. The number of children per 10,000 on the CPR has increased from 31.8 in 1999 to 33.9 in 2002 in Northern Ireland, compared with a fall from 28.2 to 23.1 in England during the same period. (DHSS, 2004)

There is no evidence to suggest that the higher number of children on the CPR here is due to better reporting or different organisational arrangements. Rather, the numbers may be due to higher levels of poverty, the impact of the conflict, poor provision of family support services and particular difficulties faced by cross-community families. The lower per capita spending, combined with higher levels of child poverty and subsequent family difficulties, means that much more of Northern Ireland's social care expenditure on children is on statutory protection duties, rather than on preventative family support measures. Northern Ireland continues to have one of the lowest provision of childcare not only within the UK but Europe as a whole (ECNI, 2003).

In addition, there are higher levels of disability and ill-health in Northern Ireland than in other parts of these islands. Some of this is due to physical and mental damage caused by the conflict and some is related to higher levels of poverty and poor diet generally, in particular the poor diet of many expectant mothers. (RCOG, 2003; Eurocat, 2004) For example, the rate of births with a congenital malformation in Northern Ireland is over twice the level in England and Wales. (DHSS, 2004) and the 2001 Census suggests that 5% (22,036) of children aged under sixteen have a limiting illness or disability. Health Research Board figures indicate a learning disability prevalence of 16.3 per 1,000 population, which is more than double that of the Republic of Ireland (ROI). Comparable figures are not available for children with learning disability in Britain. We do know that, across all age groups, 9.7 people per 1,000 are known to Social Services as having a learning disability, compared to 5.45 per 1,000 in Scotland. (DHSS, 2004b)

3: Particular circumstances: poor provision of support for children with additional needs

"The course is only one lesson a week. Because at the minute, you see, they haven't the bus free to get to the college. I'm hoping eventually to get more days there." (Educable, 2000)

A recent inspection of children who had long stays in hospitals in Northern Ireland, found that 173 children had been in hospital for three months or longer during the 28 month period under consideration by the Inspection Team. Of these, the vast majority, (84%) were accommodated within one of eight hospitals that have a regional remit.

Fifty-one children and young people had spent periods of three consecutive months or longer in mental health hospitals; of these, five children had been admitted to adult psychiatric units, 28 children had been admitted to the Child and Family Centre at Foster Green Hospital and 18 young people to the Young People's Centre, then based in the centre of Belfast.

The latter two facilities were the only inpatient mental health units in Northern Ireland dedicated exclusively to the care of children and young people. The Inspection Team supported the need for inpatient mental health provision for children and young people but noted that both facilities were operating without the full multidisciplinary staffing necessary to achieve the best outcomes for children and young people in the shortest possible time. Both had significant waiting lists and a number of children had been admitted to, or remained in, each facility longer than was clinically necessary due to lack of community support or alternative specialist services, such as day units, appropriate to their needs. Neither service was operating in buildings that were suited to their purpose. There are plans for an 18 bed purpose built adolescent unit on the Foster Green site.

However, since the inspection was carried out, both units have been closed. At the time of writing, despite high rates of mental health problems among children and young people and the impact of the conflict, neither are operating and there are no in-patient child or adolescent mental health beds in Northern Ireland.

During the 28 month period under consideration by the Inspection Team, 44 children and young people had been admitted for periods of three consecutive months or longer to hospitals for the learning disabled. One children's ward in Muckamore Abbey Hospital accounted for 17 children in the sample. Of the remaining 27 children and young people, 20 were accommodated in the adult wards of Muckamore and seven in other learning disability hospitals. The hospitals inspected, where some children had been accommodated for a number of years, were found to be "*wholly unacceptable environments for the care of children or young people*". *That children who do not have intensive nursing needs should be accommodated in hospitals, including on adult wards, indicates a catastrophic failure in support services for the families of those children*" (SSI, 2005).

4. Particular circumstances: the interaction of poverty, segregation and conflict

There is already significant evidence of the role of the conflict and its legacy in exacerbating the difficulties of addressing child poverty in Northern Ireland. Conflict undermines economic growth. Higher levels of mental ill-health are significantly related to the Troubles and these reduce the ability of people to take up employment opportunities.

The high levels of fear that remain in those areas that have taken the brunt of the conflict are reflected in high levels of unemployment and long-term unemployment in those areas. A large-scale survey of the impact of fear on Belfast 'interface' communities collected data on over 4,500 individuals. It revealed that just one in twelve worked in areas dominated

by the 'other' religion. Almost half would not travel, due to fear, through an area dominated by the other community – during the daytime. Between a third and two thirds of respondents said their job seeking activities are limited by fear (Shirlow, 2003).

The interaction of poverty, segregation and conflict on adults has been, and is, immense. But the fact that segregation has worsened over recent years, that sectarian attitudes are growing and that child poverty remains pervasive in those areas most impacted by ongoing conflict seriously undermines children's rights and presents a very serious risk for the future. Further, the history of the conflict has resulted in a high toleration of violence here. It has also 'normalised' recourse to violence as a method of conflict resolution, demonstration of opposition to something, or drawing attention to grievances and injustices (perceived or felt).

Conclusion

There is no clear and comprehensive code of rights for children and young people in domestic law at present in Northern Ireland. The process of drafting the Bill of Rights offers an opportunity to address the particular and unique reality of children and young people in Northern Ireland-most notably the direct and indirect result of the conflict-within a strong and positive framework of rights.

A framework of rights is important because children are the most vulnerable members of society. Failure to support individual children has damaging effects for those children, but also for the capacity of the society in which they live to develop and in the case of Northern Ireland, to emerge from conflict.

The incorporation of the UN Convention on the Rights of the Child is required as a minimum starting point towards establishing such a rights benchmark for children in a society emerging from conflict. However, it is acknowledged internationally that the Convention represents the minimum children's rights standards. In addition to the incorporation of the Convention, as the UN Special Rapporteur on the Impact of Armed Conflict on Children recognised, the Bill of Rights will need to provide additional protection for children and young people recognising the particular denial of their rights in this jurisdiction.

This paper has addressed the question why children and young people in Northern Ireland need a Bill of Rights. It proposes that maximum protections in the Bill of Rights for children and young people would be a powerful tool to address the realities of the past and present and help prevent these from happening in the future.

This paper has argued that 'particular circumstances' of children in Northern Ireland include six realities for children and young people here:

- 1) the legacy of the conflict
- 2) segregation in housing, education, health and leisure services;
- 3) very high levels of child poverty;
- 4) low levels of family support services;
- 5) totally inadequate provision of services for young people with additional needs; and
- 6) the relationship between poverty, segregation and conflict.

These are the reasons why a Bill of Rights for Northern Ireland should draw from and strengthen the provisions of the UNCRC as below. All children and young people in Northern Ireland should have the right¹:

- to enjoy their rights without discrimination (from Art. 2.2).
- have their best interests be a paramount consideration in actions concerning them, not only in children's services but in areas of education, justice and health (from Art. 3 of the UNCRC).
- to all appropriate legislative, administrative and other measures for implementation of their rights... including making necessary resources available (Art. 4).
- to have a channel and a means to enable them to express their views (based on Art. 12 but with a more positive right of obligation).
- to be aware of their rights (based on Art. 42).
- to be detained only as a last resort (Art. 37).
- to be treated in a manner consistent with their dignity and human rights (Art. 40).
- to play, to access to space and leisure facilities (Art. 31).
- to the highest attainable standard of health along with the right of access to health facilities and services (Art. 24).

¹ For more information see the Submission by the Working Group on Children and Young People to the Northern Ireland Human Rights Commission, 2001. The Articles cited are from the UNCRC.

- to justiciable social and economic rights, starting with a standard of living adequate to physical, mental, spiritual and social development (Art. 27).
- to life and survival and to realize their full potential (Art. 6).

The Bill of Rights should guarantee to children socio-economic rights such as the right to healthcare, social services, accommodation, an adequate standard of living and a healthy and sustainable environment.

Social and economic rights are fundamental to a child's survival, development and participation in society. This is true for all members of society but particularly so for children-given that there is a limited time for their development-and more so

for children affected by the conflict. Without socio-economic rights, a child's rights to participate, to protection and to have their best interests respected become meaningless.

The Bill of Rights also needs to acknowledge that young people from areas affected by conflict have particular needs. The provision of justiciable socio-economic rights in a Bill of Rights would provide a tool for addressing the problems of the past, address the injustices of the present, and form a sound basis for a peaceful future. Such provision would also reflect international trends. Finally, it has the potential to become a universal model of best practice in the promotion and protection of the rights of our most vulnerable citizens.

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How the Bill of Rights should protect and promote the rights of children and young people in Northern Ireland

Learning from international law and the experience of other jurisdictions

DR URSULA KILKELLY

Introduction

This paper analyses how the potential of the Bill of Rights for Northern Ireland can be maximised in order to best protect and promote the rights of children and young people. To this end, it presents the experience of other jurisdictions and the best practice reflected in international law with regard to the instruments and systems used for the protection of human rights and children's rights. It considers what can be learned from these models and approaches with regard to how children's rights can be best protected and promoted, and applies this experience to the proposed Bill of Rights for Northern Ireland.

The first section deals with the substantive content of the Bill of Rights and the second section concentrates on enforcement and implementation issues.

Executive summary of recommendations

The content of the Bill of Rights

1. The Bill of Rights must as a minimum meet the standards set out in the United Nations Convention on the Rights of the Child (CRC).
2. The Bill of Rights should adapt CRC principles and provisions to ensure the highest standards of children's rights are incorporated into law.
3. The enumeration of children's rights should not be construed as a denial of children's rights set out elsewhere.
4. CRC provisions should be tailored to the special circumstances of Northern Ireland.
5. Full incorporation of children's rights should take place at constitutional level/in the Bill of Rights.
6. The Bill of Rights should both mainstream children's rights and contain a dedicated children's rights provision with child specific rights.
7. The Bill of Rights should include both socio-economic and civil and political rights.
8. The Bill of Rights should make all children's rights justiciable.
9. The Bill of Rights should place positive obligations on public authorities to prioritise the rights of children when taking decisions, including budgetary decisions.
10. The Bill of Rights should recognise rights rather than responsibilities.
11. The Bill of Rights should recognise the right of children to have their rights protected in the private sphere.

Enforcement and implementation of the Bill of Rights

1. Provision for enforcing and implementing the Bill of Rights is central to its potential to protect and promote children's rights.
2. A comprehensive and effective review procedure should be established to ensure that the protection and promotion of children's rights is a continuous and comprehensive process.
3. A comprehensive and meaningful review of the extent to which the law and policy complies with the Bill of Rights should be undertaken before it comes into force.
4. A constitutional court should be established to hear complaints from individuals and groups regarding breaches of the Bill of Rights.
5. Children and those representing them must enjoy access to the court to have their rights indicated. Support, including financial support, and advocacy programmes should be established to assist children in this regard.
6. The court should have the power to supervise the implementation of the Bill of Rights.
7. The court should have the power to strike down legislation that is inconsistent with the Bill of Rights, with individual access to the court for this purpose.
8. The Bill of Rights must contain a meaningful system for ensuring that all law and policy is compliant with the children's rights principles and provisions in it.
9. The Bill of Rights must contain strong interpretive principles compelling those charged with interpreting its provisions to take children's rights into account.
10. The Bill of Rights should be accompanied by a widespread campaign to educate and raise awareness among children and young people, and adults, about the rights protected.

Section 1: Content of the Bill of Rights

1. The Bill of Rights must as a minimum meet the standards set out in the CRC.

International instruments recognise the rights of children and young people in a wide variety of different ways and much can be learned from these instruments as to how to enforce and protect children's rights effectively in Northern Ireland's Bill of Rights. The Convention on the Rights of the Child (UNCRC, 1989) is the world's leading instrument on the rights of children and young people. Its 42 provisions are both detailed and comprehensive. Its fundamental principles of best interests - the child's best interests must be a primary consideration in all decisions made concerning children (Art. 3) – and the child's right to participate – children have the right to express their views and have them taken into account in decisions made about them (Art. 12) - inform the modern approach to children and childhood. The near universal acceptance of the CRC has led to widespread legal and social change. As such this Convention is the most obvious source of guidance for those drafting the children's rights provision in the Bill of Rights. Having ratified the CRC, the United Kingdom is both part of this international consensus and has undertaken to implement the CRC at national level.

The Bill of Rights represents an important opportunity to establish children's rights at a constitutional level in Northern Ireland and to consolidate children's rights standards in one binding and enforceable document. While the process of drafting the Bill of Rights is not yet complete, the Northern Ireland Human Rights Commission's latest proposals in the public domain (Progressing the Bill of Rights, July 2004) reflect a standard of children's rights protection which falls far short of the CRC's minimum standards. Core rights are omitted which will significantly reduce its relevance and potential to protect and promote the rights of children and young people in Northern Ireland. Moreover, these proposals are a weakened version of the Commission's original draft provisions

and the advice of the Commission's Children and Young People's Working Group. By contrast, in the South African experience, subsequent drafts of the Constitution were used to strengthen the children's rights provision.

Given one important opportunity to incorporate children's rights standards into domestic law, it is imperative that Bill of Rights fully reflect the standards set by the CRC. To do so, the following rights must be given explicit protection:

- The four general principles of the CRC:
 - right to life, survival and development; (Art. 6)
 - the right to enjoy all rights without discrimination; (Art. 2)
 - the best interests principle; (Art. 3)
 - the right to be heard (Art. 12) – while the right to participate in legal proceedings is contained in current proposals, the more general right of the child to express his/her views and have them given due weight in all decisions made concerning him/her is not;
- The child's right to special protection including the right to protection from abuse, neglect and ill-treatment (current provision in Section 6 of the proposals falls short of CRC standards);
- The right to education, and to play and leisure (the latter right is absent from the current proposals);
- The right to family support and to maintain regular contact with both parents when separated from them (the reference to 'regular' contact is not contained in current proposals);
- The right to information and education about children's rights (current proposals unjustifiably limit this right to 'appropriate' information);
- The right to an adequate standard of living, the right to health and health care (current proposals do not meet CRC standards);

- Protection from exploitation (current proposals do not recognise the child's right to equal protection from exploitation);
- The right to liberty and fair trial for children (current proposals omit basic principles such as detention as a last resort, separation from adults in detention, the right to be treated in an age appropriate manner and the right to privacy throughout proceedings);
- Rights of particularly vulnerable children including those without families, those with disabilities, refugee children, children of minority groups including members of the Traveller community and children in conflict with the law. Current proposals fall significantly short in these areas and include conditions such as 'to the greatest extent possible' not contained in the CRC.

Unless these changes are made, the Bill of Rights will have significant shortcomings in the area of children's rights in so far as it fails to recognise well-established, fundamental children's rights principles. In their present form, the proposals will not improve the current, inadequate legal protection of children's rights in Northern Ireland. In fact, they may make it worse by undermining current standards and reversing some positive changes that have occurred.

2. The Bill of Rights should adapt the CRC's principles and provisions to ensure the highest standards of children's rights are incorporated into law.

Other Jurisdictions

Few of the world's leading constitutional charters make any substantial provision for children's rights. This is arguably due to their being drafted before the CRC (1989). Thus, the Constitutions of the United States, the Bills of Rights of New Zealand and Australia, the Basic Laws of Germany and Israel and the Canadian Charter of Fundamental Rights and

Freedoms make little or no provision for children's rights meaning that there is a distinct lack of best practice for Northern Ireland to follow in this area.

Those instruments that provide expressly for children's rights have little in common with the exception of guaranteeing protection to the family, including recognising the rights and duties of parents to raise their children (e.g. the Constitutions of the Czech Republic, 1992, Belarus, 1994 and Germany, 1949). The Constitutions adopted by new Central and Eastern European (CEE) states confine their protection to the family, motherhood and/or childhood (Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Hungary, Lithuania, Macedonia, Moldova, Poland, Russia, Slovenia, Montenegro, and Serbia).

Few constitutional documents thus give express or detailed protection to a wide range of children's rights, and many instruments focus on specific issues such as the child's rights within the family, the child's right to education, the right of the child born outside marriage to equal protection, or the child's right to protection from economic exploitation. Others articulate children's rights in clearer terms by recognising the child's right to care and assistance, and compelling public authorities to give priority to the views of the child in the course of establishing the child's rights (e.g. Republic of Poland, 1997). However, some constitutional instruments make express reference to the rights of children under international law and in doing so make it clear that children enjoy rights other than those domestically protected. It is common also for constitutional documents to refer to the general right of the child to special protection (e.g. Poland, Czech Republic, Romania) without specifying what rights this guarantees to protect.

International Law

Looking to international law, it is clear that despite the considerable merits of the CRC, it is not perfect; its provisions were drafted as **minimum** standards that could apply universally and would be widely achievable and relevant. Consensus was not achieved in every area of children's rights. There are omissions and gaps in certain areas. Some of the CRC's standards are weak and offer little guidance to highly developed and rich countries like the United Kingdom.

Fortunately, the CRC is supplemented by more specialised international documents adopted by the United Nations and others. These include, for example, the UN Rules for the Protection of Juveniles Deprived of their Liberty, the UN Standard Minimum Rules for the Administration of Juvenile Justice and ILO Convention 138 on Eliminating the Worst Forms of Child Labour.

Moreover, the UN Committee on the Rights of the Child - the expert body which monitors its implementation - has adopted a number of General Comments which provide further detail as to how the CRC is to be interpreted and has organised Discussion Days on its application in certain areas, including children and the media, children with disabilities, youth justice and the role of the family. Furthermore, the Committee's observations on state reports take into account each country's specific circumstances and offer a unique analysis of how the CRC can be more fully implemented at national level. All of this material builds on the CRC standards and should be taken into account when drafting the children's rights provisions for the Northern Ireland Bill of Rights to ensure compliance and that the highest standards are incorporated at national level.

3. The enumeration of children's rights should not be construed as a denial of children's rights set out elsewhere.

Where an instrument identifies only select provisions from the CRC or details a limited number of children's rights, this leaves open the suggestion that any rights not enumerated are not protected. In this way, the more detail a Bill of Rights contains, the clearer it is that those rights not listed are not protected. Importantly, this difficulty may be refuted by including in the document a clause, such as that contained in the Ninth Amendment of the US Constitution, which provides that *'the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparate others retained by the people'*. Indeed, this phrase was borrowed by the South African Constitution with the added caveat that retained or pre-existing rights must be consistent with the new Bill of Rights

While these are clauses made with general reference to all rights provisions, the same lesson can be learned with respect to children's rights. The Bill of Rights should thus provide expressly that the enumeration of children's rights should not be construed to deny children the rights set out elsewhere.

4. CRC provisions should be tailored to the special circumstances of Northern Ireland.

The experience of countries like Canada and South Africa highlights the need to ensure that the Bill of Rights is specifically tailored to Northern Ireland and its specific circumstances. For example, there is little value in simply reproducing the CRC and other standards in the domestic document. Rather, in order to be effective, the Bill of Rights must reflect the circumstances of Northern Ireland society and must mould and shape the provisions of international law to meet its own needs and objectives. For example, in the light of the impact of the conflict

on children and young people, consideration should be given to recognising in the Bill of Rights the right of children and young people to participate and play a constructive role in society and the future of Northern Ireland.

Adapting the CRC also involves introducing new rights and applying higher standards as appropriate. For example, while the current draft of the Bill of Rights (which proposes to set the age of criminal responsibility at 12) may be said to be consistent with the CRC-which does not specify an age-a higher age would undoubtedly achieve greater protection of the rights of children in conflict with the law. Accordingly, an age of at least 14 years should be preferred here together with the inclusion of a requirement to keep the age under review.

Experience indicates, therefore, that the drafting of the Bill of Rights should combine the well-established provisions of international law with new and higher standards designed to meet the specific needs and particular circumstances of Northern Ireland.

5. Full incorporation of children's rights standards should take the place at constitutional level/in the Bill of Rights.

Incorporation is the means by which an international treaty becomes part of domestic law. In common law countries like Ireland and the United Kingdom incorporation requires an act of Parliament to give an international instrument domestic effect.

Incorporation can happen in a number of ways. The strongest method of incorporation is for the *text* of the treaty to be fully incorporated into domestic law: in this way, the treaty becomes part of national law and a source of rights and obligations. The highest form of protection is guaranteed where entrenchment takes place at a constitutional level. An example of this is the Swedish model of

incorporating the European Convention on Human Rights (ECHR) which involved inserting into the Swedish Constitution a provision (section 23) which prohibits the enactment of any laws or regulations contrary to Sweden's obligations under the ECHR. Giving the ECHR such strong constitutional protection ensures that its provisions are supreme to all Swedish law and policy and that they have the highest form of protection in domestic law. Austria has adopted a similar commitment incorporating the ECHR at a constitutional level. The Canadian Charter of Fundamental Rights and Freedoms is entrenched within the Canadian Constitution meaning that all Charter rights and freedoms have legal effect in the domestic legal system.

A second method of incorporating international law is for the *substance* of the treaty to be incorporated into domestic law. According to this approach, known as indirect incorporation, the treaty itself does not become part of domestic law, but rather the values of the international instrument may help inform the interpretation of the domestic statute and bind public authorities to act in a manner consistent with the treaty's obligations.

The Human Rights Act 1998 and to a lesser extent the (Republic of Ireland) European Convention on Human Rights Act 2003, are examples of this indirect model of incorporation. Rather than incorporating the Convention itself into domestic law, the legislation – which operates at a sub-constitutional level in Ireland at least - creates a set of duties based on Convention rights. These include the duty to use the Convention to interpret legislation and to bind the acts of public authorities. The indirect model of incorporation can be said to offer less secure protection of rights than full incorporation of a treaty at a constitutional level.

Current proposals for the Bill of Rights place a duty on public authorities to carry out their functions in relation to children in accordance with the CRC. While welcome, this provision is not equivalent to

incorporating the CRC in so far as it does not make the CRC legally enforceable in domestic courts. Nor will it ensure that children's rights are incorporated fully into the domestic legal system.

The experience of other jurisdictions makes it clear that full incorporation of the CRC, as well as other adapted children's rights standards at constitutional level, offers the highest form of protection to children's rights. Provided the Bill of Rights is given constitutional status, it offers the ideal vehicle for full incorporation of children's rights into the domestic legal system at a level higher than ordinary law and policy.

6. The Bill of Rights should both mainstream children's rights and contain a dedicated children's rights provision with child specific rights.

Experience elsewhere shows that maximum children's rights protection requires that the Bill of Rights contain a section dedicated to children's rights, while also placing children's rights throughout the document in a process known as mainstreaming.

International Law

International human rights law includes instruments that deal exclusively with children's rights, and general human rights treaties that contain some children's rights provisions. An example of the former is the CRC that is dedicated exclusively to children's rights. Its comprehensive nature combined with its almost universal acceptance means that it represents wide consensus in this area: it thus acts as an important benchmark against which the implementation of children's rights everywhere can be measured. The profile and wide support the CRC enjoys have enabled it to raise the profile of children's rights at national and international levels. Including in the Bill of Rights a section dedicated exclusively to the rights

of children would give it similar potential to protect as well as to promote children's rights at a national level.

The disadvantage with grouping children's rights together in one section is that it isolates the standards in a way that may undermine the applicability to children of all the rights recognised. However, this difficulty could be addressed by including in the Bill of Rights a provision clarifying that those rights in the children's rights provision supplement rather than replace the rights recognised elsewhere. The relevance of general rights to children is also supported by combining a dedicated children's rights provision with mainstreaming.

The International Covenant on Civil and Political Rights (ICCPR) provides a limited example of an instrument that both integrates children's rights into its main provisions and contains a dedicated children's rights provision. Art. 14 ICCPR deals with the right to a fair trial, paragraph 4 of which provides that in the case of juveniles, the procedure shall be such as will take account of their age and the desirability of promoting their reintegration. It also contains provisions that deal separately with the family and children's rights (Art. 23 and 24 respectively). Although the latter provision is relatively weak (and deals only with the right to special protection, and the right to a name and nationality), the overall approach of the ICCPR is a positive example of an attempt to mainstream children's rights where appropriate, while also including a dedicated children's rights provision dealing with rights, which are exclusive to children.

Overall, international law illustrates the importance of both recognising the importance of child-specific rights, contained in their own section, while integrating children's rights into other relevant provisions to reinforce the relevance of general rights to children. It is recommended that a similar combined approach would maximise the potential of the Bill of Rights to protect and promote children's rights in Northern Ireland.

Other Jurisdictions

Among the domestic instruments that grant constitutional protection to children's rights, there is no single approach taken to where these rights are placed in the document. Some states integrate children's rights throughout the instrument, while also setting out specific children's rights in dedicated provisions: for example, the Constitutions of Poland (1997), Romania (1991) and Belarus (1994) include references to children's rights in the provisions of education, health care and labour rights, while also dedicating a special provision to the rights of children. On the other hand, the South African Constitution (1996) groups children's rights together in a separate provision - Art. 28 – rather than placing them throughout the document. For example, the child's right to protection from harm in employment is contained in Art. 28, the children's rights provision, and not in Art. 23, which focuses on labour rights. Significantly, however, rather than reinforcing that children do not enjoy the rights contained in other constitutional provisions, Art. 28 is understood to grant rights to children in addition to, not in place of, the rights granted to all citizens in the Constitution.

The lesson to be learned from international law and the experience of other jurisdictions, therefore, is that the potential of a domestic instrument to protect children's rights can be maximised by combining a dedicated children's rights provision – which makes these rights accessible to children and gives the document potential to raise the profile of children's rights – with a mainstreaming approach – which reinforces the relevance of the general provisions to children and integrates human rights and children's rights.

7. The Bill of Rights should include both socio-economic and civil and political rights.

Rights are often divided into 'programmatic' and 'justiciable' rights.

Programmatic rights depend on the implementation of social and political policies and programmes to ensure their implementation and protection. This description is typically used to refer to rights of a socio-economic nature, such as the right to an adequate standard of living or the right to health or health care. The traditional view, therefore, is that these rights require gradual rather than immediate implementation and that guaranteeing them to everyone involves expenditure of considerable resources. As a result, the conventional view is that such rights are not justiciable or capable of precise legal determination before a court. For these reasons also, it is sometimes argued that it is inappropriate to include them in the Bill of Rights.

Justiciable rights, on the other hand, are said to be appropriate for inclusion in a constitutional document or Bill of Rights due to their precise nature and the fact that they are capable of immediate implementation. These rights, which include many civil and political rights, such as the right to a fair trial and the right to liberty, are deemed to be capable of precise legal determination and can thus be enforced through court proceedings.

Many national human rights instruments contain only civil and political rights. The US and Irish Constitutions for example focus on civil liberties, such as the freedom of expression, and due process rights such as the right to a fair trial. However, a review of more modern national human rights instruments shows new support for the inclusion of socio-economic rights. In particular, the Constitutions of nine CEE states (Belarus, Croatia, Czech Republic, Moldova, Poland, Romania, Russia, Slovakia, and Ukraine) contain very generous

catalogues of socio-economic rights, while only two constitutions (Bosnia Herzegovina and Georgia) contain few socio-economic rights. In all Constitutions, the socio-economic rights that figure most prominently are the rights to social security, health care and education. There is considerable support therefore for the inclusion of socio-economic rights in the Bill of Rights for Northern Ireland.

8. The Bill of Rights should make all children's rights justiciable.

Among domestic instruments that contain both socio-economic rights and civil and political rights are some that identify only the latter category as justiciable or capable of direct enforcement by the courts. The Irish Constitution (1937) for example, relegates many socio-economic rights to the status of guiding principles. Thus, although personal rights (Art. 40), family rights (Art. 41) and the right to education (Art. 42) are justiciable, others, such as the right to earn a livelihood and the right of weaker (including orphans) sections of society to support are included purely to advise the legislature. Similarly, the Constitution of Spain (1978) recognises children's rights in Art. 39 under the heading 'Guiding Principles of Social and Economic Policy'. Thus, although the Spanish Constitution provides that *'children shall enjoy the protection provided in international agreements which safeguard their rights'* this provision appears alongside other socio-economic rights and does not appear to be justiciable. In this sense, children who do not enjoy the rights recognised by international agreements have no access to a remedy under the Spanish Constitution.

It is arguably for this reason that many modern constitutions provide that *all* provisions (including socio-economic rights) can be used to measure the constitutionality of statutes. As a result, the constitutional courts of CEE states have been quite active in reviewing, and at times invalidating, statutes

under the standards of socio-economic rights. The view that these socio-economic rights are not justiciable has thus never gained recognition in these states.

The reality is that any right can be made justiciable by adopting an approach that recognises that claims based on the right can be brought before a court. There are risks attached to this process, not least that it takes power from the political process – the normal way in which decisions involving the expenditure of resources are made – and gives it to an unelected judiciary.

It is also important to remember that a judicial remedy, if successful, will usually only solve the problem for one individual with any compensation, damages and fees paid from the collective funds available. Thus, for example, if parents win a case against the state for a failure to provide special needs education for their child, any damages or fees awarded will reduce the money available for special needs education for everyone. This is clearly an argument against making such rights justiciable.

At the same time and, on balance probably more importantly, rights that are justiciable are considered to be capable of more effective enforcement; the threat of legal action can act as an effective deterrent to states contemplating a certain course of action and is often the stick needed to encourage them to act with great respect for human rights. In this regard, making rights justiciable empowers individuals and redresses the imbalance of power between individuals and the government in the area of rights protection.

It is thus vital for the effectiveness of the Bill of Rights to protect children's rights that its provisions bind all government agencies and bodies, and are justiciable in the courts allowing remedies to be sought for breach of a child's rights. Only this approach will ensure that the Bill of Rights offers effective legal protection to the rights of children and young people.

9. The Bill of Rights should place positive obligations on public authorities to prioritise the rights of children when taking decisions.

In contrast to other older constitutions, the South African Constitution does not relegate socio-economic rights to a weaker status. Indeed, Art. 28 on children's rights not only contains socio-economic rights for children but it has been interpreted as having established a priority in favour of children. That means that when the government is confronted with competing claims for economic resources, children may claim a priority that the judiciary would be bound to apply in concrete cases. This principle should be given express provision in the Bill of Rights for Northern Ireland to ensure maximum protection of children's rights in government decision-making.

10. The Bill of Rights should recognise rights not responsibilities.

Although the Constitutions of some CEE states recognise the child's duty to care for his/her parents, the implication that the enjoyment of rights is conditional upon the performance of duties has been criticised. The dependence of rights upon duties is particularly dangerous in the context of children's rights. Imposing responsibilities or duties on children will effectively operate as a pre-condition illustrating the type of behaviour expected of children before they can 'earn' the rights to which all adults are entitled. This belies the immaturity and vulnerability of children and undermines the very reason children's rights are so important.

Moreover, the popular argument that 'with rights come responsibilities' is not borne out from an analysis of international human rights instruments. For this and other reasons, reference to responsibilities or duties should be avoided in any document seeking to establish strong and clear

protection for children's rights and thus has no place in the Bill of Rights for Northern Ireland.

11. The Bill of Rights should recognise the right of children to have their rights protected in the private sphere.

The traditional view was that international human rights instruments – and the rights that they contained – applied only to the infringements of government and not private individuals. Given that those who violate children's rights – abusing and neglecting them – are frequently private in nature (notably their parents) this notion that children's rights did not apply in the home posed a real threat to effective protection of children's rights at all levels. However, this view has lost much of its credibility by virtue of the inclusive language of instruments like the CRC which, for example, refers to the responsibilities of parents to their children (and is not limited to the duties of the state/rights of the child dichotomy).

The question of whether rights can apply between private individuals (or horizontally) has also been the focus of dispute. For example, the Canadian Charter specifically provides that the Charter applies only to elements of governmental action that are implicated in litigation, thereby limiting its application to family law and children's rights cases (as court orders per se are not government action). However, this has been addressed to an extent in Canadian case law (Dolphin Delivery case, 1986) which established that the courts are bound by the Charter and should develop the law in all fields in a manner consistent with the Charter's values thereby allowing some room for Charter influence on private law.

This experience highlights the need for the Northern Ireland Bill of Rights to clarify that children's rights should be recognised and demand protection in the private, as well as the public sphere.

Section 2: Enforcement and implementation of the Bill of Rights

1. Provision for enforcing and implementing the Bill of Rights is central to its potential to protect and promote children's rights.

While the content of the Bill of Rights is crucial for the protection it offers the rights of children and young people, in itself it is of little value without adequate provision for enforcing and implementing these rights. Although the enforcement, implementation and effective protection of children's rights depends on many factors, international and national experience offers some guidance as to how this potential can be maximised in the Bill of Rights.

International Law

According to Art. 4 of the CRC, State Parties must take '*...all appropriate legislative, administrative and other measures for implementation*'. The Committee on the Rights of the Child has provided that legal protection for children's rights at domestic level can be provided in a number of ways. First, the rights of children and young people must be given protection at a constitutional level; second, they must be enshrined in all sectoral laws and third, steps must be taken to translate these legal provisions into reality by way of awareness raising, training, support and advocacy. This is borne out by the many examples highlighted below.

International law is made up of both binding and non-binding documents. Examples of the former are the CRC and the ECHR: these are binding on individual states because their governments have chosen to ratify them (the legal process of commitment) thereby agreeing to be bound by the standards they reflect. In contrast, non-binding instruments – such as the UN Rules for the Administration of Juvenile Justice - are recommendations only; they do not bind states as they are adopted collectively by groups of states in a forum such as the General Assembly of the United Nations and not by states individually.

Even though some international instruments (the binding ones) impose legal duties on states, the lack of an international police force or court system means that there is no central authority with responsibility for their enforcement. Instead, each treaty comes with its own enforcement mechanism, such as a reporting process in the case of the CRC, or a system of an individual complaints mechanism in the case of the ECHR.

The effectiveness of these instruments and the different purposes they serve can usefully guide the drafting of the Bill of Rights for Northern Ireland and the choice of enforcement method chosen.

2. A comprehensive and effective review procedure should be established to ensure that the protection and promotion of children's rights is a continuous and comprehensive process.

Lessons can be learned from international experience about the importance of putting in place review procedures to ensure that the protection of children's rights is a continuous and comprehensive process. At international level, each individual treaty adopts its own method for enforcing or implementing its standards. However, the most common method is to establish a monitoring body whose function it is to keep the implementation of the treaty concerned under review. The CRC has adopted this model. For example, the Committee on the Rights of the Child has responsibility for reviewing reports by states on measures adopted to implement children's rights. Following this review, the Committee makes recommendations as to the steps a state needs to take to further implementation of the CRC.

This approach has its advantages and disadvantages and offers valuable lessons to those seeking to adopt such procedures at national level. On the one hand, while the reporting mechanism is slow, it is intended to be a comprehensive and self-critical review of

the extent to which the CRC has been implemented in the country concerned. It promotes dialogue between state and non-governmental bodies in the area with a view to furthering implementation. In this way, it is a constructive, albeit long-winded process that aims to encourage rather than force change in law and policy to ensure greater compliance with the CRC.

A further positive feature of the process is that the broad scope of the review procedure means that all areas of state practice affecting the rights of children can be opened to discussion before the Committee. Finally, their concluding observations and recommendations regarding the state's compliance with the CRC can be put to effective use in campaigning and lobbying activities. The disadvantage, however, is that there are no sanctions for states which fail to implement the CRC, to engage in a positive manner with the reporting process or to implement the Committee's recommendations. States who choose to do so can ignore the process and refuse to engage either with NGOs at national level or with the Committee at international level.

While not perfect, the experience of the CRC illustrates that the positive features of the reporting process far outweigh its negative aspects. Since its establishment in 1992, the Committee's work has shown considerable potential to improve the lives and protect the rights of a great number of children and young people in the long-term. The modest success of the mechanism highlights the value in introducing at national level effective procedures for keeping the compatibility with the Bill of Rights of domestic law and policy under review. If lessons are to be learned from the experience of the CRC process, however, any national review procedure must be comprehensive, frequent and compel the co-operation of government both with its review and in the implementation of its recommendations.

3. A comprehensive and meaningful review of the extent to which law and policy complies with the Bill of Rights should be undertaken before it comes into force.

The Australian experience highlights the importance of establishing a system of public review of the compatibility of legislation with international treaties. Also, when the Canadian Charter was first adopted in 1982, the equality provision was set aside for a period of three years to enable federal and provincial governments to review their legislation to see whether statutes were in conformity. The objective, apart from achieving consistency between statute law and the Charter, was to try to avoid unnecessary and expensive court challenges to legislation.

Canadian experiences highlight that different types and levels of review are possible in this context. For example, in the province of Saskatchewan the review committee took a formal equality approach looking only for laws that were overtly discriminatory. The membership of the Committee undertaking this work was also criticised in so far as it was not composed of people who understood the complexity of women's issues or human rights issues. The superficial nature of the review therefore meant that the proposals for reform made were simplistic and did not address the inequalities that existed between the treatment of men and women in a meaningful way. Despite these inadequacies in the review procedure, however, family law, for example, can be said to be *prima facie* consistent with the equality provision of the Charter: evidence of that is that the main challenges to the legislation have come from their unequal application to same sex relationships and not from the more traditional areas of family law.

It is both important and wise therefore that an audit of law and policy take place before the Bill of Rights comes into force to ensure compatibility. Moreover, the Canadian experience highlights the need to ensure that the review is undertaken by those with a clear understanding of the nature of children's rights and is detailed and thorough in nature.

4. A constitutional court should be established to hear complaints from individuals and groups regarding breaches of the Bill of Rights.

In some cases, international treaties are enforced by a court specially established for this purpose. The most effective example of this is the European Court of Human Rights, which has the power to hear complaints brought by individuals against the state under the ECHR.

The process has advantages and disadvantages: its positive features are that it offers individuals whose rights have been breached access to a legal tribunal for the determination of the dispute. In addition to having their rights vindicated, therefore, victims can obtain compensation for the loss suffered and/or have the costs of the legal action refunded to them by the Court. Such challenges may also lead to changes in law and policy aimed at preventing similar violations of rights from happening in the future. The availability of an effective remedy before the Court undoubtedly encourages states to comply with their ECHR duties: in many cases the threat of the international embarrassment of losing a case before the Court will force it to settle the dispute at national level. More broadly, it is important that hearing individual cases has allowed the European Court to develop its own human rights jurisprudence which has led to an impressive and unique body of law setting out the detail of ECHR rights and the duties on states to vindicate them. Its case law is cited internationally and in the Supreme Courts of the United States and Canada. The negative features are, however, that the Court's focus is on an individual complaint only, and the remedy, which may not address the wider problem, may come many years after the fact due to the Court's backlog of cases.

In many ways, the European Court of Human Rights represents a positive example of how the right of individual petition can help bring about change at domestic level in so far as it demonstrates the importance of litigation in protecting rights and

victims' access to court to this end. Its judgments have had a broader knock-on effect in many cases resulting not only in an individual violation being remedied but in necessary changes to law and policy which ensure that repeat violations do not occur. It may also be argued that the success of one individual encourages and empowers others to follow a similar path. The experience of the Court thus offers strong support for establishing a similar court in Northern Ireland to hear complaints under the Bill of Rights.

5. Children and those representing them must enjoy access to the court to have their rights vindicated. Support and advocacy programmes should be established to assist children in this regard.

Even where children's rights enjoy strong constitutional protection, this will be set at nought where children, individually or collectively, cannot access a court to have their rights vindicated. Children's vulnerability and immaturity means that their access to the courts can be denied in a number of ways, both deliberate and inadvertent. Supporting children to exercise their rights and have them vindicated requires putting in place and properly resourcing educational programmes, advocacy programmes and legal aid schemes. It also requires that the Bill of Rights recognises their right to have their rights vindicated directly or indirectly and that they have the right to representation and standing in this context.

The South African Constitution allows members of the public and interested parties to litigate on behalf of anyone who is unable to litigate on his or her own. Section 38 provides that 'anyone acting in their own interest may approach the court.' Thus all that the applicant must do is show that he or she has an interest in the matter or that the matter concerns an issue that is of public interest. Two examples show the clear practical benefit to children of this provision. First, in 2000, the South African Prisoners

Organisation for Human Rights brought an urgent application before the High Court in Durban on behalf of two boys aged 13 and 14, who were kept in a local prison in violation of their constitutional rights. The court ordered the immediate transfer of the two boys to a place of safety.

Also in 2000, an urgent application was brought before the Cape High Court by a Member of Parliament (Ms P. de Lille, PAC) on behalf of a group of children held at Pollsmoor Prison under unhygienic and overcrowded conditions. The application succeeded in obtaining some limited concessions from the relevant government departments in respect of health-related issues and an undertaking that deserving children would be transferred to places of safety. A number of children who required medical attention were given medical treatment and a substantial number of children were either transferred to places of safety or released into the custody of their parents or guardians.

To take another example: the US Supreme Court has not been at the forefront of the protection of children's rights, but it has a significant record in allowing access to the court by non-governmental organisations and civil liberties groups making complaints on behalf of others. What is important here is the ability of citizens to access the court (and have the support of others in doing so) to make a constitutional challenge.

While many countries have publicly funded legal aid in civil cases, not all systems grant legal aid in constitutional cases. Even those that do may not be accessible, in practical or legal terms, to children who are particularly marginalised in this respect. Positive note should thus be taken of the approach of the Canadian government which has provided funding to a Court Challenges Programme that enables equality seeking groups, or an individual from an historically disadvantaged group, to prepare arguments relating to equality rights and federal legislation or actions. Both parties and intervenors can be funded under this programme.

Clearly, children will require substantial practical and financial support to assist them in taking legal action to have their rights vindicated under the Bill of Rights. In this regard, it is recommended that a provision mandating that support be included in the Bill of Rights for Northern Ireland.

6. The courts should have the power to supervise the implementation of the Bill of Rights.

In addition to the function of hearing individual complaints, courts in some jurisdictions have a general power to safeguard or supervise the implementation of the Bill of Rights. In CEE states, for example, the Constitutions have established special constitutional courts whose function it is to safeguard supremacy of constitutional rights over statutory provisions by judicial review. This contrasts with the US model that permits ordinary courts to determine such issues in the process of deciding specific cases and controversies. Each approach has its advantages and disadvantages although what is significant is that a judicial body or bodies be entrusted with supervising the implementation of the Bill of Rights and acting as the guardian of the rights that it protects.

7. The court should have the power to strike down legislation that is inconsistent with the Bill of Rights with individual access to the court for this purpose.

At the heart of the Bill of Rights in the US Constitution is the principle that constitutional rights are cognizable and enforceable by courts and should be a basis for declaring legislation invalid in cases of inconsistency. This principle has been copied by many countries. The concept of judicial review, at the heart of many constitutional instruments in the common law world gives the courts potentially wide-ranging powers to review the compatibility

with the constitution of legislation. In the Irish, Australian and US constitutional systems, for example, individuals have the right to challenge the constitutionality of legislation in the abstract, ie without having a specific interest in the outcome of the case. In some cases (e.g. Ireland), the courts have the power to invalidate the legislation found to be unconstitutional whereas in others (e.g. South Africa) the courts may order the legislature to make the necessary changes to bring the legislation into line, a practice which does not affect the validity of the legislation in the interim. Many other constitutions also provide for judicial review of administrative acts that infringe their constitutional rights. As a result of the strong role given to the Constitutional Court under CEE constitutions, for example, they have been quite active in reviewing and at times invalidating statutes.

Access to the courts is important in this context. In Germany, for example, where the Constitutional Court has the power to strike down legislation found to be incompatible with the Basic Law (Constitution) the court cannot itself take the initiative against any given act. Like other states, it acts, in a highly formalised procedure, on suits brought forward by members of parliament or other constitutional bodies, as well as on suits brought forward by individuals when fundamental rights are concerned and all other judicial means have been exhausted. Some have criticised this procedure in so far as it gives to unelected judges the power to strike down laws passed by elected members of Parliament. But many argue that this is a legitimate and important role for the judiciary who act free from popular and political influence.

Accordingly, the vast experience of other countries supports the proposal that the infrastructure needed to enforce the Northern Ireland Bill of Rights must include a Constitutional Court with the power to invalidate statutes and hear such complaints from individuals including cases brought by or on behalf of children.

8. The Bill of Rights must include a meaningful system for ensuring that all law and policy is compliant with it.

Some Constitutions require specifically that Parliament must not pass laws (or ratify treaties) that are inconsistent with the Bill of Rights. The Netherlands Constitution, for example, provides that only those treaties that are compatible with domestic law can be passed by Parliament and are thus binding in the State (automatic incorporation).

While the New Zealand Bill of Rights affirms the rights set out in the Bill of Rights and specifically applies the Bill to those performing public functions as well as all branches of Government, it specifically excludes the courts from finding legislation to be incompatible with the Bill of Rights. On the positive side, it contains a provision requiring the Attorney General to report to Parliament where a Bill appears to be inconsistent with the Bill of Rights, and where a Bill is introduced the Attorney General has a duty to bring to the attention of the House of Representatives any provision in the Bill that appears to be inconsistent with any of the rights and freedoms contained in the Bill of Rights.

The Human Rights Act 1998 contains a similar provision requiring all legislation passed by Parliament to be checked for its consistency with the ECHR and certified accordingly.

These experiences highlights the need to incorporate into the Northern Ireland Bill of Rights a meaningful system for ensuring that all law and policy is compliant with the children's rights principles and provisions in the Bill of Rights.

9. The Bill of Rights must contain strong interpretive principles compelling those charged with interpreting its provisions to take children's rights into account.

The experience of other jurisdictions highlights the importance of giving consideration to principles of judicial interpretation. The varying experience of the US Supreme Court and the European Court of Human Rights illustrates why.

The US Constitution and the ECHR contain broadly similar provisions protecting the right to liberty, security and due process. Both documents are virtually silent on children's rights yet the US and European Courts have reached dramatically different conclusions when applying the US Constitution or ECHR to cases involving children's rights. The case law on the child's right to protection illustrates this point. In 1989, in the case of *DeShaney v Winnebago County Department of Social Services*, the US Supreme Court rejected that the due process clause of the Fourteenth Amendment could be interpreted to place a duty on a social worker to protect Joshua DeShaney from the abuse he suffered at the hands of his father. According to the Court, while the State may have been aware of the dangers Joshua faced, it played no part in their creation nor did it do anything to render him more vulnerable to them. The most that could be said of the State in this case, according to the Court, was that it stood by and did nothing.

In a similar case before the European Court of Human Rights, *Z v UK* in 1999, however, the Court interpreted the prohibition on inhuman treatment in Art. 3 of the ECHR to impose a positive obligation on the State to intervene where it knows that there is a real risk that children are being abused by their parents. In numerous other cases, the Court has interpreted the ECHR to impose a positive duty on the state to protect private individuals from harm by other private individuals. In doing so, it has relied on the importance, reflected in the CRC, of the child's right to protection from abuse, including from his/her parents.

These two cases illustrate how different outcomes can be achieved in cases involving similar facts and a similar lack of explicit children's rights standards.

While it is uncertain what factors are responsible for a positive outcome in the European Court and a negative one in the US Supreme Court, it is clear that one likely reason is a judicial tendency towards progressive and expansive interpretations of the text to maximise the protection which it offers and a willingness to take account of relevant international instruments in doing so. This judicial activism can be encouraged indirectly by ambitious and progressive lawyers and the provision of judicial training, or directly by making this guidance explicit: Section 39 of the South African Constitution for example, contains an interpretive principle which encourages judges to embrace opportunities for constitutional expansion. In both cases, however, judicial activism, must come with a warning of its dangers - once you leave a strict literal interpretation behind, there is no knowing how far or in which direction the text will stretch.

For this reason, detailed and express provision for children's rights in the Bill of Rights is to be preferred to general provisions whose use in children's case may depend on expansive judicial interpretation. Inclusion of children's rights in the Bill of Rights also serves to copper-fasten their protection and prevent any future reversal or undermining of that protection at a later date. While a Bill of Rights which contains specific, detailed provisions for children's rights may be criticised for being inflexible, nonetheless it stands as a clear statement of the rights which that society holds important at that single place in time. Both rights and their limits are not open to interpretations that influence the essence of the right in the same way as one founded in case law; nor are such interpretations dependent on forward looking judicial activists seeking to use the constitution to promote rights, or vulnerable to backward-looking constitutional interpretation. The simple text, on the other hand, while criticised for being vague or

scant on detail, is capable of rich interpretation and the reading-in of clauses and even rights (as with the un-enumerated rights doctrine of the Irish Supreme Court) to ensure it always reflects modern social and legal conditions.

In short, where certainty and stability is provided by specific enumeration, flexibility and social responsiveness are provided by silent and open provisions. The jury is still out as to which produces the better outcome from a rights perspective, although it is indisputable that many such outcomes are essentially political in nature. Either way, the advantages and disadvantages of both approaches need to be borne in mind when drafting the Bill of Rights.

One lesson that can be learned from the South Africa Constitution is to include an interpretive principle to guide judges charged with interpreting the Bill of Rights. Section 39 of the Constitution provides that when interpreting the Bill of Rights, a court, tribunal or forum (i.e. very broad) must promote the values that underlie an open and democratic society based on dignity, freedom and equality and, perhaps more importantly, must consider international law. It may also have regard to foreign law. The second interpretive principle contained in section 39(2) is that when interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights. Thus, all South African courts and tribunals are under a strict constitutional duty to be guided by international law when interpreting the Bill of Rights, and human rights values when interpreting other legislation or laws. This minimises the opportunity judges have to take a restrictive approach to the interpretation of the Bill of Rights and encourages, if not requires, purposive and holistic interpretations of rights.

The importance of linking interpretation of the Bill of Rights to the CRC is highlighted by the Canadian experience. In *Baker v Canada (Minister of Citizenship*

and Information) in which the Supreme Court dealt with an immigration matter, the majority referred to the CRC and concluded that

International treaties and conventions are not part of Canadian law unless they have been implemented by statute . . . Nevertheless, the values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review . . . the important role of international human rights law as an aid in interpreting domestic law has also been emphasised in other common law countries . . . It is also a critical influence on the interpretation of the scope of rights included in the Charter.

This approach to the interpretation of the Canadian Charter is positive and highlights the potential of using the CRC as an interpretive tool. At the same time, this approach is based on case law and is thus dependent on the support of residing Supreme Court judges. Accordingly, it offers further support for the inclusion in the Bill of Rights of express interpretive principles that would encourage expansive and progressive approaches to interpretation of all its provisions in line with international law.

10. The Bill of Rights should be accompanied by a widespread campaign to educate and raise awareness among children and young people and adults about the rights protected.

The experience of other jurisdictions highlights that it is insufficient to adopt a new law or grant constitutional protection to children's rights without raising awareness of the change in the law and providing professional training to secure its implementation. Sweden's approach to banning physical punishment of children is a positive example here. In addition to adopting a civil statute in 1983, which recognised children's right to be treated with respect, Sweden undertook a sweeping education campaign that, together with provision for vast

support services for families, maximised the potential of the law to eliminate physical punishment. The public school system served as an important vehicle to reach children. Children were taught what parents could and could not do and how they should respond when punished physically. Parental education programmes instructed parents on alternate discipline methods. The government distributed 600,000 copies of a mailing to families with young children and to day-care facilities. The media also inundated the public with information about the new law in accessible forms. As a result, there has been measured evidence of dramatic changes in the attitude of Swedish parents towards corporal punishment. Although most Swedes opposed the law upon its enactment in 1983, they now favour it by a wide margin. A similar approach to banning physical punishment in Finland was equally successful.

These examples illustrate the importance of undertaking a comprehensive publicity campaign to raise awareness and educate both children and young people and adults about children's rights in the Bill of Rights. A variety of innovative methods and approaches should be used to ensure that the campaign has the maximum reach possible and engages with children, young people and adults about children's rights in a positive way.

This research outlines the need for protection and promotion of rights for children and young people in the proposed Bill of Rights for Northern Ireland, and the mechanisms best suited to realise those rights.

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