



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Delivering Social Change for Children and Young People

Introduction

1. The Northern Ireland Human Rights Commission (NIHRC or Commission) pursuant to Section 69(1) of the Northern Ireland Act 1998 reviews the adequacy and effectiveness of law and practice relating to the protection of Human Rights. In accordance with this function the following statutory advice is submitted to the Office of the First Minister and Deputy First Minister (the OFMDFM) on the consultation 'Delivering Social Change for Children and Young People' (hereafter 'the strategy').
2. The Commission bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE) and United Nations (UN) systems. Each of the international treaties is potentially relevant to the development of domestic laws and policies that seek to implement the State's obligations towards children and young people. In the context of this advice, the Commission relies in particular on,
 - The United Nations Convention on the Rights of the Child, 1989 (UNCRC);
 - The United Nations Convention on the Rights of Disabled People, 2009 (UNCRPD).
3. The Northern Ireland Executive (NI Executive) is subject to the obligations contained within these international treaties by virtue of the United Kingdom Government's ratification. In addition, the Northern Ireland Act 1998, section 26 (1) provides that 'if the Secretary of State considers that any

action proposed to be taken by a Minister or Northern Ireland department would be incompatible with any international obligations... he may by order direct that the proposed action shall not be taken.'

General observations

4. The Northern Ireland Human Rights Commission welcomes the strategy's purpose to provide an integrated framework encompassing policy on children and young people. As recognised by the Committee on the Rights of the Child, many different government departments and public bodies affect children's enjoyment of their rights. Visible co-ordination is therefore required.¹

5. Respect for human rights requires the State to ensure participation by the public in its decision-making processes. Crucially, in all matters affecting them, children and young people must be actively involved.² The OFMDFM's commitment to consult widely with stakeholders and provide specific arrangements to engage with children and young people is therefore especially important. Notably:
 "Listening to children should not be seen as an end in itself, but rather a means by which States make their interactions with children and their actions on behalf of children ever more sensitive to the implementation of children's rights."³
Consistent and ongoing arrangements by the OFMDFM are therefore required to engage, and reflect the views of, children and young people in the development, implementation, and monitoring of the final Strategy.

A Human Rights-Based Approach

6. In its response to the Executive's Draft Programme for Government 2011-2015, the Commission highlighted the necessity of a human rights-based approach.⁴ This requires that human rights standards: "... guide all development co-operation and programming in all sectors and in all phases of the programming process."⁵ For this strategy, the human rights standards contained in, and derived from, the UNCRC

¹ UNCRC General Comment No. 5, para. 27.

² UNCRC, Article 12.

³ Ibid, para. 12

⁴ NIHRC (2012) *Response to the Northern Ireland Executive's Draft Programme for Government 2011-2015*.

⁵ The Human Rights Based Approach: Statement of Common Understanding, Developed at the Inter-Agency Workshop on a human rights-based approach in the context of UN Reform, 3 to 5 May 2003.

should form its core with all actions contributing directly to fulfilment of the state's obligations.⁶ This rights-based framework is necessary for the best interests and holistic development of the child:

"The full application of the concept of the child's best interests requires the development of a rights-based approach [...] to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote his or her human dignity"⁷

7. The Commission acknowledges that for the most part the strategy's outcomes have the potential to ensure realisation of children's rights and welcomes the analysis in Appendix 1, which sets out Programme for Government commitments and performance against the UNCRC. The strategy itself, however, could do more to place children's rights at its core. For example, furthering implementation of UNCRC obligations is presented as only one of its constituent elements. Similarly, 'respect for children's rights' forms only one of five other outcomes, rather than being viewed as the impetus for each. Importantly, tackling child poverty, a key element of the strategy, would benefit from an approach embedded within a holistic child's-rights framework.⁸

The Commission advises that the strategy should adopt a rights-based approach placing children's rights at its core with the indicators and actions for each outcome contributing directly to the fulfilment of the State's obligations under the UNCRC.

8. The Commission is concerned that the status of the UNCRC and the nature of the Executive's obligations is not clearly portrayed. The UNCRC is an international treaty to which the UK is legally bound. In the context of devolved matters, it is the Northern Ireland Executive's duty to promote and protect children's rights. This role involves clear legal obligations to each and every child. But this is not reflected in the strategy; rather it presents a limited view of the UNCRC as "addressing many domains of a child's life."
9. At times, the strategy appears to confuse the nature of State party obligations under the UNCRC. For example, it states that child's rights indicators show "...progressive achievement

⁶ Ibid

⁷ UNCRC General Comment No. 14, para. 5.

⁸ Social Protection Committee *Advisory Report to the European Commission on Tackling and Preventing Child Poverty, Promoting Child Well-Being*, Brussels, 27 June 2012, p. 10.

of children's rights."⁹ Many of the UNCRC's provisions require full and immediate effect. Although economic, social and cultural rights are subject to the principle of progressive realisation, each contains 'minimum core obligations' that must be immediately fulfilled.¹⁰ For example, non-discrimination in the enjoyment of economic, social and cultural rights must be ensured. Additionally, minimum essential levels of food, clothing, housing, primary healthcare and education should be guaranteed.¹¹ Rather than reflect progressive achievement, child's rights indicators should identify discrimination or disparities in the realisation of children's rights, as well as monitor and assess progress on implementation.¹²

The Commission advises that the strategy should clearly reflect the UNCRC's status as a legally binding international treaty; the nature of the Executive's legal obligations should also be clearly portrayed.

Disadvantaged and marginalised groups of children

10. It is indicated that this strategy represents the Executive's Child Poverty Strategy. The EU 'Social Protection Committee' refers to an appropriate balance between universal policies, on the one hand, aimed at preventing poverty for all children and, on the other, measures to combat poverty among the most vulnerable and marginalised groups.¹³ In its most recent concluding observations relating to the UK and Northern Ireland, the Committee on the Rights of the Child noted that Government strategy "...is not sufficiently targeted at those groups in most severe poverty and that the standard of living of Traveller children is particularly poor."¹⁴ The Commission is concerned that the strategy makes no reference to Traveller children, or to other vulnerable and marginalised groups, including Roma children, minority ethnic children, children in care, children of parents in prison, and those in conflict with the law. Furthermore, given the Executive's obligations under the UNCRPD the limited reference to children with disabilities (something that is returned to further below) is especially disappointing.

⁹ At para. 3.25

¹⁰ UN Committee on Economic, Social and Cultural Rights, General Comment No. 3, para. 10.

¹¹ Ibid

¹² UNCRC General Comment No. 5, para. 48.

¹³ Social Protection Committee Advisory Report to the European Commission on Tackling and Preventing Child Poverty, Promoting Child Well-Being, Brussels, 27 June 2012, p. 45

¹⁴ CRC/C/GBR/CO/4, at para. 64.

The Commission advises that the strategy should include outcomes, indicators and actions that also include and protect the rights of marginalised and disadvantaged groups of children who may be particularly affected by poverty and economic downturn.

Portrayal of children and young people

11. The Committee on the Rights of the Child recommends “urgent measures to address the intolerance and inappropriate characterisation of children, especially adolescents, within the society [...]”¹⁵ To help address the circumstances in which such negative characterisation occurs, positive representations of children and young people should be included in national laws and policies:

“Creating a safe and supportive environment entails addressing attitudes and actions of both the immediate environment of the adolescent – family, peers, schools and services – as well as the wider environment created by, inter alia, [...] national and local policies and legislation.”¹⁶

The strategy’s ‘key first action’ 5.3 reflects this by committing to “develop a programme designed to challenge the negative perceptions of children and young people [...]” Nevertheless, in many other instances the strategy’s portrayal of children and young people risks contributing to, and reinforcing, negative societal attitudes. Two examples are set out below:

Example 1 – Outcome 4: Children and families live in a safe and secure environment – the ‘key first action’ commits to deliver “priority youth intervention through Policing and Community Safety Partnerships to improve community safety and tackle anti-social behaviour.” Community safety is undoubtedly an important focus for the Executive. But presenting ‘youth’ anti-social behaviour as the first priority for a safe and secure environment risks communicating a message, and feeding into the media portrayal, of ‘problem youth.’ Notably, there are no key actions addressing children’s experiences as victims of crime, including serious threats to their safety and security, such as child sexual exploitation, trafficking or paramilitary violence.

Example 2 – Outcome 5: Children and young people contribute positively to community and society – children should be viewed as active and valued members of the community.¹⁷ As worded, outcome 5 risks communicating a view

¹⁵ CRC/C/GBR/CO/4, para 25(a)

¹⁶ UNCRC General Comment, No. 15, para. 14.

¹⁷ UNCRC General Comment No. 7

that children and young people do not already positively contribute. The outcome is then linked to the proportion of 16 to 24 years olds "Not in Education, Employment or Training" (NEET) implying that mainstream education, employment or training is the main way that young people are valued. Moreover, despite the requirement to ensure children are protected from the adverse effects of financial downturn,¹⁸ the State's obligations to address the economic circumstances that have contributed to a lack of such opportunities for this age group are not referenced.

The Commission advises that the strategy should be refocused so that the vision, outcomes and actions recognise and value children positively, as active members of families, communities and society.

Young children as rights holders

12. The Committee on the Rights of the Child highlights States parties' failures to give sufficient attention to young children as rights holders.¹⁹ Importantly, a number of the strategy's actions²⁰ and the 'delivering social change signature programmes' focus on early childhood. But in the main it appears that transitioning to adulthood has been prioritised. For example, the vision aims to skill children for employment suggesting this is the route by which 'active, engaged citizenship' is achieved. A number of the 'outcomes' and associated indicators are similarly adult oriented. For instance, 'key first action' 2.8 is to help unemployed 18-24 year olds find work; school leavers are the primary focus for outcome 3 on education; and outcome 4 refers to 16 to 24 years olds who are 'NEET.' Overemphasis on this approach risks portraying children as 'adults in waiting,' a public discourse that should be avoided: "A shift away from traditional beliefs that regard early childhood mainly as a period for the socialization of the immature human being towards mature adult status is required."²¹

The Commission advises that the strategy includes and protects the rights of young, as well as older children with a shift away from a discourse that risks portraying children as 'adults in waiting.'

¹⁸ UNCRC General Comment No. 5, para. 51

¹⁹ UNCRC General Comment No. 7, para. 3

²⁰ For example, 'key first action 3.9' on support to parents of children 0-4 years old in the 20% most disadvantaged ward areas

²¹ UNCRC General Comment No. 7, para 5.

Children and young people with disabilities

13. A lack of reference to young children with disabilities is particularly disappointing. The strategy focuses instead on supporting young people with disabilities “[...] to improve their transition to adulthood and enable them to seek further education and qualifications.” Although an important aim, the rights of younger disabled children or young people with disabilities for whom further education and qualifications are not key priorities appear to have been overlooked.

The Commission advises that actions for children with disabilities should not be restricted to seeking further education. Outcomes and actions that protect and promote the rights of young, as well as older disabled children should be included. In accordance with UNCRPD, Article 7 these should be developed in consultation with children with disabilities.

Holding Government to account

14. As already noted, the Commission’s advice is that respect for children’s rights should form the strategy’s core rather than one of a number of other outcomes. Notwithstanding, the ‘key first action’ for ‘outcome 6’ to raise awareness of the UNCRC for officials, children, young people and the general public is an important one. As the Committee on the Rights of the Child states: “if adults around children [...] do not understand the implications of the Convention, and above all its confirmation of the equal status of children as subjects of rights, it is most unlikely that the rights set out in the Convention will be realized [...].”²² Importantly, the strategy recognises that children should be enabled to hold Government to account for delivery on their rights. In terms of accountability for non-compliance by Government, the third optional protocol to the UNCRC gives the right of individual petition to the Committee on the Rights of the Child. Within any future strategy, therefore, the OFMDFM should commit to encourage UK ratification of the third optional protocol.

The Commission advises that as a key action the OFMDFM should commit to encourage UK ratification of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure.

²² UNCRC General Comment No. 5, para. 66.

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