



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Response of the Northern Ireland Human Rights Commission to
the Addressing Bullying in Schools Consultation**

Summary

The Northern Ireland Human Rights Commission (the NIHRC):

(para 8) welcomes the proposed legislative and administrative measures aimed at addressing bullying in school as a means to remove barriers and progressively realise the right to education for all children.

(para 14) recommends that the DENI give due consideration to the need to take specific measures to address bullying of children with disabilities and special educational needs so as to facilitate equal access to an effective education.

(para 19) welcomes the proposal to introduce mandatory recording of incidents of bullying that includes a record of the motivation which will allow the Department of Education Northern Ireland (DENI) to monitor any patterns of bullying affecting particular groups of children. This is an important step towards eliminating discrimination in the enjoyment of the right to education.

(para 24) recommends that the DENI establish clear procedures regarding the sharing of information gathered as a result of mandatory reporting of bullying incidents. These procedures should protect the privacy of children and act in the best interests of children by not undermining the effectiveness of the monitoring process.

(para 33) welcomes the proposed measures to provide clarity and consistency to aid the prevention of bullying, improve the 'monitoring and oversight mechanisms' and assign statutory responsibility to those with 'roles and responsibilities' for the protection of human rights. The NIHRC welcomes these proposals as they are consistent with the measures recommended by the UN Committee on the Rights of the Child (UNCRC committee).

(para 35) welcomes the proposed definition of bullying as it seeks to be clear and operational. The broad and inclusive nature of the definition seeks to ensure that the statutory duty to prevent bullying does not exclude any of the types identified by the UNCRC Committee, General Comment 13 and other emerging standards of best practice.

(para 37) recommends that the DENI give due consideration to the Council of Europe Parliamentary Assembly's resolution 1803 on Education against Violence at School in the development of legislative and administrative measures to address bullying in schools.

(para 40) recommends that the proposed measures to address bullying should also be reflected in the DENI's child protection guidance and that the importance of inter-agency cooperation to tackle more extreme cases of bullying should be highlighted

(para 43) recommends that the DENI makes every effort to seek the views of children and parents on these proposals.



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Introduction

1. The Northern Ireland Human Rights Commission (NIHRC) 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.¹ In accordance with this function the following statutory advice is submitted to the Department of Education (the Department) in response to its consultation on addressing bullying in schools.
2. The NIHRC 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. The relevant international treaties in this context include:
 - the CoE European Convention on Human Rights, 1950 (ECHR)²;
 - the CoE Framework Convention for the Protection of National Minorities (FCNM)³;
 - the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)⁴;
 - the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁵;
 - the UN Convention on the Elimination of All Forms of Discrimination Against Women (UNCEDAW)⁶;

¹ Northern Ireland Act 1998, Section 69(1).

² Ratified by the UK in 1951.

³ Ratified by the UK in 1998.

⁴ Ratified by the UK in 1969.

⁵ Ratified by the UK in 1976.

⁶ Ratified by the UK in 1986

- the UN Convention on the Rights of the Child (UNCRC)⁷;
 - the UN Convention on the Rights of Persons with Disabilities (UNCPRD)⁸;
 - the Charter of Fundamental Rights of the European Union⁹ (EUCFR).
3. The Northern Ireland Executive (NI Executive) is subject to the obligations contained within these international treaties by virtue of the United Kingdom (UK) 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... [s]he may by order direct that the proposed action shall not be taken.'¹⁰
 4. The NIHRC further recalls that the Northern Ireland Act 1998, section 24(1) states that 'a Minister or Northern Ireland department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act – (a) is incompatible with any of the Convention rights'.¹¹
 5. In addition to these treaty standards there exists a body of 'soft law' developed by the human rights bodies of the UN and CoE. These declarations and principles are non-binding but provide further guidance in respect of specific areas. The relevant standards in this context include:
 - CoE European Commission against Racism and Intolerance (ECRI) General Policy Recommendation 10 on Combating racism and racial discrimination in and through school;
 - the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity;
 - CoE Parliamentary Assembly Resolution 1803 (2011) on Education Against Violence in Schools;
 - CoE Parliamentary Recommendation 1965 (2011) on Education Against Violence in Schools.

The right to education

6. The right to education is protected in the ECHR Protocol 1 Article 2, the EUCFR Article 14, the ICESCR Article 13 and the UNCRC Article 28.

⁷ Ratified by the UK in 1991

⁸ Ratified by the UK in 2009

⁹ Ratified by the UK in 2000

¹⁰ Northern Ireland Act 1998, Section 26 (1)

¹¹ Ibid, Section 24 (1)

These standards require the DENI to take 'deliberate, concrete and targeted'¹² steps towards the full realization of the right to education.

7. The UNCRC Committee expressed concern in their Concluding Observation on the UK's 2008 examination that 'bullying is a serious and widespread problem, which may hinder children's attendance at school and successful learning'.¹³ It also recommended that the UK 'Intensify its efforts to tackle bullying and violence in schools, including through teaching human rights, peace and tolerance.'¹⁴
8. **The NIHRC welcomes the proposed measures legislative and administrative measures aimed at addressing bullying in school as a means to remove barriers and progressively realise the right to education for all children.**
9. The ECHR Article 14 guarantees the enjoyment of the Convention rights free from discrimination 'on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'¹⁵
10. The ICERD Article 5 also sets out a requirement to ensure equal access to education without discrimination on the grounds of race. The UNCEDAW Article 10 also requires that the DENI 'take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education'.¹⁶
11. The UNCRPD Article 7 requires that 'children with disabilities have the same rights as other children'¹⁷ and Article 24 protects the right to education without discrimination on the grounds of disability. Article 24 also places a duty on the DENI to ensure an 'inclusive education system' that children with disabilities can access 'on an equal basis with others in the communities in which they live.'¹⁸
12. The CoE highlights the importance of inclusive education. The Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015 states;

¹² UN Committee on Economic, Social and Cultural Rights (1999) *General Comment 13 on the right to education* para. 43

¹³ Committee on the Rights of the Child (2008) *Concluding Observations on the Examination of the United Kingdom of Great Britain and Northern Ireland* para. 66 (c)

¹⁴ *Ibid*, para. 67 (f)

¹⁵ *European Convention on Human Rights, 1950* Art 14

¹⁶ *United Nations Convention on the Elimination of all forms of Discrimination Against Women, 1979* Art 10

¹⁷ *United Nations Convention on the Rights of Persons with Disabilities, 2006* Art 7(1)

¹⁸ *Ibid*, Art 24(2)(b)

The creation of opportunities for disabled people to participate in mainstream education is not only important for disabled people but will also benefit non-disabled people's understanding of human diversity. Most education systems provide access to mainstream education and specialised educational structures for disabled people, as appropriate. Mainstream and specialised structures should be encouraged to work together to support disabled people in their local communities, but this should be consistent with the goal of full inclusion.¹⁹

13. This focus on inclusion is reflected in DENI's policy framework for supporting children with special educational needs and disabilities. The Special Education and Disability (NI) Order 2005 strengthened the rights of children with a statement of Special Educational Needs to mainstream education and introduced, for the first time, disability discrimination laws for the whole education system. In taking this approach, the particular vulnerabilities of children with disabilities mean that all potential barriers to their inclusion, including bullying, must be adequately addressed.²⁰

14. **The NIHRC recommends that the DENI give due consideration to the need to take specific measures to address bullying of children with disabilities and special educational needs so as to facilitate equal access to an effective education.**

15. The FCNM Article 12 requires measures 'to promote equal opportunities for access to education at all levels for persons belonging to national minorities'²¹ while the ECRI General Policy Recommendation 10 on Combating racism and racial discrimination in and through school recommends gathering 'the information required to identify problems facing pupils from minority groups in the school environment in order to introduce policies to solve these problems.'²²

16. In its 2011 examination of the UK, the ICERD Committee expressed concern at 'increased reports of racist bullying and name calling' and

¹⁹ Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015 para. 3.4.1

²⁰ United Nations Convention on the Rights of Persons with Disabilities, 2006 Art 24(2)(d)

²¹ Council of Europe Framework Convention for the Protection of National Minorities 1995 Art. 12

²² CoE European Commission against Racism and Intolerance (ECRI) General Policy Recommendation 10 on Combating racism and racial discrimination in and through school (2006), pg. 5

encouraged the UK to 'take all necessary steps to eliminate all racist bullying and name-calling in the State party's schools.'²³

17. The Yogyakarta Principles set out the application of the right to education in relation to sexual orientation and gender identity in Principle 16. It recommends that states,

Ensure that laws and policies provide adequate protection for students, staff and teachers of different sexual orientations and gender identities against all forms of social exclusion and violence within the school environment, including bullying and harassment.²⁴

18. The ICESCR Committee advises that

States parties must closely monitor education - including all relevant policies, institutions, programmes, spending patterns and other practices - so as to identify and take measures to redress any de facto discrimination. Educational data should be disaggregated by the prohibited grounds of discrimination.²⁵

19. **The NIHRC welcomes the proposal to introduce mandatory recording of incidents of bullying that includes a record of the motivation which will allow the DENI to monitor any patterns of bullying affecting particular groups of children. This is an important step towards eliminating discrimination in the enjoyment of the right to education.**

20. The NIHRC notes the DENI's recognition that,

the sharing of statistics regarding instances of bullying is a sensitive issue for schools and is one which must be undertaken with due regard to protecting the confidentiality of the individual pupils involved and the wider requirements of the Data Protection Act 1998.²⁶

21. Paragraph 72 also recognises that 'some schools may be reluctant to record significant numbers of bullying incidents'.²⁷

²³ Committee on the Elimination of Racial Discrimination (2011) *Concluding Observations on the Examination of the United Kingdom of Great Britain and Northern Ireland* para. 23

²⁴ *The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (2007) Principle 16 (E)

²⁵ United Nations Committee on Economic, Social and Cultural Rights, *General Comment 13 on The Right to Education* (1999) para. 37.

²⁶ DENI (2014) *Addressing Bullying in Schools Consultation Document* para. 68

²⁷ *Ibid*, para. 72

22. Children's right to privacy is protected in the ECHR Article 8 as well as the UNCRC Article 16. The UNCRC Article 3 also requires that 'in all actions concerning children...the best interests of the child shall be a primary consideration.'²⁸
23. The NIHRC notes that concerns over the public dissemination of bullying statistics may interfere with the right to privacy for children involved in bullying incidents and may also increase the reluctance of schools to accurately record such incidents. Should the effectiveness of the monitoring process be undermined, this would not be in the best interests of the child. The NIHRC believes that clear procedures can be devised to ensure that such issues can be accommodated.
24. **The NIHRC recommends that the DENI establish clear procedures regarding the sharing of information gathered as a result of mandatory reporting of bullying incidents. These procedures should protect the privacy of children and act in the best interests of children by not undermining the effectiveness of the monitoring process.**

Violence against children

25. As the consultation document points out, the UNCRC Article 19 protects children from 'all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.'²⁹
26. The UNCRC Committee has provided further interpretation in General Comment 13 on the right of the child to freedom from all forms of violence, which highlights that all forms of physical bullying, mental bullying and cyberbullying fall within the ambit of Article 19. As highlighted in the consultation, it also includes 'schools' and 'teachers' within the definition of care settings and caregivers having a positive obligation to protect this right for children.³⁰
27. General Comment 13 goes on to outline the range of measures included in the obligation to 'take all appropriate legislative, administrative, social and educational measures'³¹ to protect children from violence, including bullying.

²⁸ *United Nations Convention on the Rights of the Child 1989 Art 3*

²⁹ *Ibid*, Art 19

³⁰ *United Nations Committee on the Rights of the Child (2011) The right of the child to freedom from all forms of violence paras. 21 (g), 22 (b), 33 and 34*

³¹ *United Nations Convention on the Rights of the Child 1989 Art 19*

28. The DENI's proposal focuses on legislative and administrative measures that aim to 'help tackle the problem of bullying in our schools'.³²
29. The UNCRC Committee defines legislative measures as;
both legislation, including the budget, and the implementing and enforcing measures. They comprise national, provincial and municipal laws and all relevant regulations, which define frameworks, systems, mechanisms and the roles and responsibilities of concerned agencies and competent officers.³³
30. It also notes that administrative measures should;
reflect governmental obligations to establish policies, programmes, monitoring and oversight systems required to protect the child from all forms of violence.³⁴
31. It further recommends that;
Clear operational legal definitions are required of the different forms of violence outlined in article 19 in order to ban all forms of violence in all settings. These definitions must take into account the guidance provided in the present general comment, must be sufficiently clear to be usable and should be applicable in different societies and cultures.³⁵
32. The NIHRC notes the three main proposed changes within the consultation:
 - to provide in statute 'a common definition of bullying, to ensure greater consistency in the application of school discipline policies to address complaints of bullying'³⁶;
 - to introduce mandatory recording of 'incidents of bullying including their motivation and their outcomes'³⁷;
 - to require Boards of Governors to appoint 'one or more Governors to be responsible for anti-bullying policies and processes'³⁸.

³² DENI (2014) *Addressing Bullying in Schools Consultation Document* para. 2

³³ United Nations Committee on the Rights of the Child (2011) *The right of the child to freedom from all forms of violence* para. 40

³⁴ *Ibid*, para. 42

³⁵ *Ibid*, para. 18

³⁶ DENI (2014) *Addressing Bullying in Schools Consultation Document* par 55

³⁷ *Ibid*, para. 66

³⁸ *Ibid*, para. 73

33. **The NIHRC welcomes the proposed measures to provide clarity and consistency to aid the prevention of bullying, as well as improving the 'monitoring and oversight mechanisms'³⁹ and assigning statutory responsibility to those with 'roles and responsibilities'⁴⁰ for the protection of human rights. The NIHRC welcomes these proposals as they are consistent with the measures recommended by the UNCRC Committee.**

34. The NIHRC notes that the proposed definition of bullying clarifies the key characteristics of bullying behaviour while at the same time using 'broad and inclusive terminology' to take account of the increasing number of types, methods and motivations of bullying incidents.

35. **The NIHRC welcomes the proposed definition of bullying as it seeks to be clear and operational. The broad and inclusive nature of the definition seeks to ensure that the statutory duty to prevent bullying does not exclude any of the types identified in the UNCRC Committee, General Comment 13 and other emerging standards of best practice.**

36. The Parliamentary Assembly of the Council of Europe, Resolution 1803⁴¹ deals with the legislative and administrative measures necessary to tackle violence at school. It makes the following recommendations that are relevant to the DENI's proposals:

disciplinary standards should clearly prohibit all acts committed at school which can be qualified as "violent", including physical or degrading punishment of pupils, violence against pupils by school staff, violence by third persons against pupils on school premises and violent behaviour by pupils against other pupils, school staff or school property;⁴²

sanctions should be proportionate to the seriousness of these acts; however, with regard to young perpetrators of violence, account should be taken of the guidelines enshrined in Committee of Ministers

³⁹ United Nations Committee on the Rights of the Child (2011) *The right of the child to freedom from all forms of violence* para. 42

⁴⁰ Ibid, para. 40

⁴¹ This resolution was presented to the Committee of Ministers in Recommendation 1967 (2011) See <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=17981&lang=en> The reply was adopted by the Committee of Ministers on 11 January 2012 (http://www.minori.it/sites/default/files/cm-as-2012-rec1965_final.pdf)

⁴² Education Against Violence at School, Parliamentary Assembly Resolution 1803 (2011) para. 17.1.1

Recommendation CM/Rec(2008)11 on the European rules for juvenile offenders subject to sanctions or measures, and in the Issue Paper of 2009 on “Children and Juvenile Justice: Proposals for Improvements”, published by the Council of Europe Commissioner for Human Rights;⁴³

all acts of violence should be investigated and recorded and, where an act is of a sufficiently serious nature, it should be reported to the competent law-enforcement or disciplinary authorities; in this context, appropriate complaints mechanisms should be set up for pupils in education settings;⁴⁴

administrative procedures relating to acts of violence at school should guarantee the right of parents to be fully and promptly informed, as well as the right of the victims of violence to the protection of privacy;⁴⁵

school head teachers should be held professionally responsible for the effective implementation of the obligations outlined above.⁴⁶

37. The NIHRC recommends that the DENI give due consideration to the Council of Europe Parliamentary Assembly’s resolution 1803 on Education against Violence at School in the development of legislative and administrative measures to address bullying in schools.

38. The DENI’s guidance document Pastoral Care in Schools – Child Protection (1999) highlights the fact that some bullying incidents may need to be dealt with under a school’s child protection policy in the circumstances where;

a pupil’s bullying behaviour is persistent and defies attempts by the school to address it satisfactorily by behaviour management strategies or disciplinary methods within a reasonable time, the child protection procedures should be instigated. *The victim’s needs should always be paramount.*⁴⁷

⁴³ Ibid, para. 17.1.2

⁴⁴ Ibid, para. 17.1.3

⁴⁵ Ibid, para. 17.1.4

⁴⁶ Ibid, para. 17.1.5

⁴⁷ DENI (1999) *Pastoral Care in Schools – Child Protection*, para. 87

39. This approach is also reflected in the Department of Health, Social Services and Public Safety guidance *Co-operating to Safeguard Children* (2003) which states;

In extreme cases it will be important for the inter-agency network to make a concerted effort to eliminate bullying to safeguard children. Where necessary the use of child protection procedures should be considered.⁴⁸

40. **The NIHRC recommends that the proposed measures to address bullying should also be reflected in the DENI's child protection guidance and that the importance of inter-agency cooperation to tackle more extreme cases of bullying should be highlighted.**

Participation

41. While the consultation document highlights the obligations under the UNCRC Articles 19 and 28, it omits Article 12 which requires that the DENI respect the right of the child 'who is capable of forming his or her own views to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'⁴⁹

42. In relation to the issue of addressing bullying, this right is further protected through the statutory duty in the Education and Libraries Order (2003) Article 19(3) 'to consult the registered pupils at the school and the parents of those pupils' before determining anti-bullying measures.

43. **The NIHRC recommends that the DENI makes every effort to seek the views of children on these proposals.**

⁴⁸ DHSSPS (2003) *Co-operating to Safeguard Children*, para. 6.39

⁴⁹ *United Nations Convention on the Rights of the Child* 1989 Art 12 (1)