



Northern Ireland  
Assembly

Ad Hoc Committee on a Bill of Rights

# OFFICIAL REPORT (Hansard)

Children's Rights in Northern Ireland:  
Northern Ireland Commissioner for Children  
and Young People

2 July 2020

# NORTHERN IRELAND ASSEMBLY

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Children's Rights in Northern Ireland:  
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**Members present for all or part of the proceedings:**

Ms Emma Sheerin (Chairperson)  
Mr Mike Nesbitt (Deputy Chairperson)  
Ms Paula Bradshaw  
Mr Mark Durkan  
Miss Michelle McIlveen  
Mr John O'Dowd

**Witnesses:**

Ms Koulla Yiasouma	Northern Ireland Commissioner for Children and Young People
Ms Mairead McCafferty	Office of the Northern Ireland Commissioner for Children and Young People

**The Chairperson (Ms Sheerin):** I welcome Koulla Yiasouma, the Commissioner for Children and Young People (NICCY), and Mairead McCafferty, the chief executive of NICCY, to the meeting. Thank you both for your time this afternoon. Do you want to begin your briefing?

**Ms Koulla Yiasouma (Northern Ireland Commissioner for Children and Young People):** OK. Thank you, Chair. I will make a few opening remarks just to set the context. I should not take any more than 10 minutes. Of course, Mairead and I will then be very happy to take questions and get into a discussion. It is a little daunting coming after Kate, but I will do my best.

First, I want to thank the Committee for giving us the opportunity to present to you this afternoon. I really welcome the discussion on a children's rights-complaint bill of rights for Northern Ireland. As you have said, Chair, the UN Convention on the Rights of the Child (UNCRC) is celebrated as the most complete statement on children's rights ever produced, containing civil, political, socioeconomic and cultural rights. It is the most widely ratified international human rights treaty in history. The UK Government signed the UNCRC in 1990 and ratified it a year later. I am obliged, by the Commissioner for Children and Young People (Northern Ireland) Order 2003, to have regard to the relevant provisions of the convention when determining whether and how to exercise the functions of NICCY. It is, therefore, challenging and often frustrating that the relevant authorities that we are advising and monitoring do not have the same obligation. A bill of rights that includes the UNCRC would address this.

The Committee on the Rights of the Child, which oversees the convention, has highlighted the incorporation of the UNCRC into domestic legislation as a key means of implementation. Each time that the committee has examined the UK on its implementation of the convention, it has expressed concern that it has not yet been incorporated. The concluding observations of 2016 linked the

incorporation of the UNCRC to a bill of rights in Northern Ireland and recommended to the UK that it should expedite the enactment of a bill of rights for Northern Ireland agreed under the Good Friday Agreement.

You will have seen from my recent evidence paper that we have outlined the different ways in which the particular circumstances of Northern Ireland influence every aspect of the lives of children and young people today. While children and young people have been born and grown up in a time of relative peace and stability, the impact of the Troubles is still very heavily felt by them. Segregation and community division continue to impact on the daily life of many. Every summer, we feel the tensions rising as children and young people often get caught up in civil unrest and become needlessly criminalised. There is evidence that the high levels of persistent child poverty, mental ill-health, education and health inequalities exist in the areas that suffered most as a result of the conflict. Add to that the continued impact of armed and paramilitary-style gangs who traumatise and abuse young people and their families through criminal coercion, exploitation and assault. It is clear that children and young people's life chances and rights are deeply affected by living in communities that continue to feel the effect of the particular circumstances in Northern Ireland. This has been echoed in the Fresh Start panel report on addressing paramilitary activity, which clearly identified the need to address systematic societal issues in the areas of economic deprivation, segregated housing and education. It recognised that the Troubles are deeply imbedded in Northern Ireland society and that it is impossible to differentiate between disadvantage, breach of rights and the impact of the conflict, and made recommendations accordingly, all of which have been accepted by the Executive.

A bill of rights provides an opportunity to recognise the unique circumstances of children and young people here, most notably as a result of the conflict, and to put in place a framework of rights to address this. As has already been discussed, we note that the Committee is tasked to consider the implications of the UK exiting the EU when developing its proposals. While there have been many developments in the Brexit process, the concerns of young people remain highly relevant and have yet to be allayed. The Committee will be aware that, along with our counterparts in the Republic, we have worked with young people to articulate their concerns regarding Brexit. There are a range of issues particular to children, specifically that there can be no difference to the rights, opportunities and benefits enjoyed by young people who identify as Irish compared to those who identify solely as British, as is their right under the Good Friday Agreement. It is imperative, therefore, that the Assembly takes the opportunity afforded by the bill of rights to protect children and young people from the negative effects of Brexit, including the changes on rights-based and cultural and national identity.

The COVID-19 pandemic has thrown into sharp relief the necessity to have robust children's rights protection mechanisms in place. As we emerge from what may be just the first phase of this pandemic, we are gaining a better understanding of the negative experiences of young people, and existing inequalities are becoming more exacerbated in many cases. There are a number of issues to be considered. Just briefly, the issues include the rights to services for families and children with a disability, who have expressed feelings of being abandoned by the state; the impact on a child's right to education; and the inconsistencies in the equality and support received by children. Whilst there has been a recognition that there may be a surge in referrals to mental health services, we also have to be concerned that that may well be the case for child protection referrals. The continuing use of emergency measures to dilute existing legal protections without clear evidence of the need or likely impact is concerning. For example, the use of best endeavours to replace compliance with a child's statement of special educational needs must be addressed urgently.

I will move on to what is going on elsewhere. The Committee has already heard from Professor Hoffman about developments in GB, notably the rights of children and young persons measure in Wales. It is also the explicit intention of the Scottish Government to incorporate the UN convention into domestic legislation, which they plan to do during this session of their Parliament. In view of the particular circumstances of Northern Ireland, and the added challenges that our children face, it is incongruous that there is a potential that they may have fewer protections than their peers in Scotland and Wales as well as the Republic of Ireland.

The passing of the Children's Services Co-operation Act (Northern Ireland) 2015 (CSCA) by the Assembly was a significant and welcome legislative development, but it is only the start. The obligations under the Act should inform all the work of Departments and agencies, compelling them to cooperate in order to improve the lives of children and young people; they place a statutory obligation on government to adopt a children's and young persons' strategy. However, a national action plan and coordination are just two of the several measures that the Committee on the Rights of the Child believes are necessary to ensure the mainstreaming and full implementation of children's rights. Others include a child's rights impact assessment, data collection and indicators, child budgeting,

training and cooperation, and the provision of an independent human rights institution specifically tasked to monitor the implementation of the UNCRC. I will leave it to the Committee to decide how effective that institution is in Northern Ireland.

Moving on, the bill of rights, as you have already discussed with Kate, is intended to complement the protections outlined in the ECHR and incorporated, in turn, in the Human Rights Act 1998. Whilst it does, of course, apply to children and young people, the ECHR does not have specific provision for children, except in the protocol on education — even then, it talks about "persons". Relying on case law to fully test the ECHR's application to children and young people is expensive and cumbersome and places a burden on the youngest and most vulnerable members of the community. Therefore, when the Committee is considering why it is supplementary to those outlined in the ECHR, it must make provisions for the UNCRC, ensuring that children's rights are more explicit than they currently are.

The real question has to be this: will the inclusion of the UNCRC into a bill of rights make a difference to the lives of children? Will it ensure that we give our children the best start in life? If it does not, there is no point to it; it is just another example of paying lip-service to how important our children are. Incorporating the UNCRC into domestic law, or through a bill of rights, will make it a key tool to improve outcomes for all children and young people in Northern Ireland. Its main value is not in the possibility of strategic litigation but in the message that it conveys about the status of children and the way in which it will embed their rights into practice, policy and legislation. It will no longer be an afterthought but central to everything that we do and makes explicit the frameworks that the Government must use to inform their work and from which only positive outcomes will inevitably ensue. Incorporation will not make unreasonable demands on the public purse, and you discussed that earlier. Article 4 of the convention reminds states of the necessity to:

*"undertake all appropriate legislative, administrative, and other measures ... to the maximum extent of their available resources".*

The Committee on the Rights of the Child reminds Governments that they have to understand how their spending decisions affect the lives of children and young people and that Governments must be confident that they are achieving the best outcomes for every pound, shilling and penny — in old money — spent. NICCY has a suite of resources on child budgeting that we can make available to the Committee should that be of assistance.

Twenty-six years on from the ceasefires and 22 years after the Belfast/Good Friday Agreement, and despite not having lived through the conflict, the impact of the Troubles is still very heavily felt by our children and young people. Segregation, community division, socio-economic deprivation and trauma continue to be a daily part of life for many of them. There has been insufficient focus in the peace process to date on the impact of the conflict on our children. Once it is accepted that the particular circumstances of Northern Ireland impact the lives of every child here, it is logical to conclude that the United Nations Convention on the Rights of the Child, with its established and internationally recognised status, should be the standard that the bill of rights sets for all our children.

Similarly, regardless of support or not for Brexit, it has to be accepted that there is a risk of diminution of rights between North and South and those who identify as Irish and British. There is an opportunity to address those inequalities in the bill of rights.

In my role as Commissioner for Children and Young People, I have the privilege of talking to children of all ages and telling them about their rights and hearing about their worries. When speaking to younger children about their rights, I describe the UNCRC as a set of promises that our Government have made to them. Incorporating the UNCRC will demonstrate to our children that their Government intend to keep those promises. Thank you. We look forward to having a discussion with you.

**The Chairperson (Ms Sheerin):** Thank you, Koulla, for your briefing and your submission. You said that you watched the earlier briefing. I do not know whether you caught all the questions. We talked about the specific remit of a bill of rights in the North, and we referred to the particular circumstances of the North and the impact of Brexit here. You referred to the impact of both of those things on children and young people and outlined how they are already at a loss. We had presentations from Professor Hoffman and Professor Tobias Lock about what other jurisdictions are doing to implement the UNCRC. How much urgency do you think Brexit adds to a need to implement children's rights in a bill of rights here?

**Ms Yiasouma:** It was urgent in 2006. If we go with no deal at the end of the year, we will be in crisis. The protocol for Northern Ireland was helpful, but it did not necessarily address all the issues, so we have to make up for the challenges in the Brexit deal and we have to take it into our own hands. We are in an emergency now, given that we are in the last six months post-transition and will soon go into transition. It is urgent.

The bill of rights was reassuring when we looked at it in 1998, and it gave me hope when I saw it in the New Decade, New Approach deal. That is now urgent. COVID-19 has shone a spotlight on where our children are most disadvantaged, particularly those living in poverty and those with disabilities and special educational needs. We now know how difficult it is for those children and families to get some of their most basic needs met, including their right to education. We are in an urgent place.

**The Chairperson (Ms Sheerin):** You talked about the impact of the conflict on the generations since, and you referred to the fact that we are 22 years post the Good Friday Agreement and 26 years post the first ceasefire and there is still an impact on that generation. I was born in the very last days of 1991, so I can attest to growing up in that post-conflict situation but still very much feeling the impact of segregation and all the things that you outlined. You can see how those effects are greater in the areas worst impacted by the conflict. How will that be exacerbated if we lose the rights that we have under the European charter of fundamental rights, as it looks likely that we will lose them? What will happen if we do not have a stopgap?

**Ms Yiasouma:** That is the point, Emma. A whole generation of children has been born and grown up since the Good Friday Agreement, including my daughter. The Good Friday Agreement guarantees parity of esteem of rights between North and South, so whatever is lost through losing the European charter of fundamental rights has to be addressed through the bill of rights. In article 24, there is a broad range of rights for children under the fundamental charter, and incorporating the UNCRC lock, stock and barrel into the bill of rights will go some way to addressing that. However, it also needs to address the challenges of the possibility of different rights being enjoyed by children and young people who hold an Irish passport and those who have every right to identify as British and to hold a British passport. We are going to see different challenges and those two groups of children enjoying different rights. That is not fair and runs the risk of creating greater divisions than we already have.

**The Chairperson (Ms Sheerin):** Of course, we do not want to see that. Thank you.

**Mr Nesbitt:** Good afternoon, Koulla and Mairead. Koulla, is it reasonable to say that with regard to the particular circumstances, these are all defined through the post-conflict legacy?

**Ms Yiasouma:** Yes. In a nutshell, when you think of particular circumstances, and certainly when you look at the provisions in the Good Friday Agreement, you think about what is unique about Northern Ireland. There are many things that are unique and joyous about Northern Ireland, which is why I chose to live here, but you immediately think about the particular outworkings of the conflict, and that includes our divisions and the trauma that people across Northern Ireland have experienced. That is how I interpret, and how NICCY interprets, the particular circumstances of Northern Ireland.

**Mr Nesbitt:** You mentioned Stephen Agnew's private Member's Bill on children's cooperation, but you have described it as the starting point —

**Ms Yiasouma:** Yes.

**Mr Nesbitt:** — so what is the next step? What would a bill of rights do that the private Member's Bill has not done?

**Ms Yiasouma:** The Children's Service Co-operation Act (Northern Ireland) 2015 — we have yet to see it in its full glory — allows for cooperation against eight outcomes, and it requires the Government to cooperate to deliver on those eight outcomes, all of which are rights-complaint and people have to take account of the UNCRC. However, it only allows for cooperation and for a national action plan. It does not enshrine in law all 42 rights outlined in the UNCRC. It does not allow for mechanisms such as a child's rights impact assessment or children's budgeting, although it does allow for the pooling of resources and mandatory training for everybody who delivers a service to children and young people. Please do not underestimate the possible impact of the CSCA. However, it is the beginning of something. It is not the end of something. It does not deliver what has to be delivered: protecting every right that children have. Governments and their agencies are legally obliged to deliver on those.

**Mr Nesbitt:** Finally, you are obviously concerned about the impact of Brexit —

**Ms Yiasouma:** Yes.

**Mr Nesbitt:** — and I share your concerns. However, more specifically, is it about the fact that we would not have the EU charter of fundamental rights, and what does that remove that is currently there?

**Ms Yiasouma:** I will ask our Brexit expert, Mairead, to answer, and then I will take other questions. Over to you, Mairead.

**Ms Mairead McCafferty (Office of the Northern Ireland Commissioner for Children and Young People):** I was enjoying sitting back. Article 24 of the charter protects children's rights; it talks about their best interests and it talks about article 3 [*Inaudible*] talks about the best interests being applied. The issue with wanting to have incorporation of the UN convention is very much as Koulla outlined: it is about a comprehensive incorporation of all the civil, political, economic, social and cultural rights that we all say that we want for our children and young people. Therefore, it is very important because we know that the charter has already been set aside — the Westminster Government have already done that. The prospect, as Emma said earlier, of a no-deal scenario, come 31 December and hitting 1 January with no deal, does not bear thinking about. People have fundamental concerns about Brexit already, and particularly about the protection of rights. The land border will have an impact on children and rising levels of child poverty. We are concerned about the traffic of children through and to Northern Ireland. There are other issues to do with security, protection and safeguarding. We are calling for the incorporation of the UN Convention into the bill of rights for the comprehensive protections we all want to see.

A big issue for us, and we heard this from the young people, North and South, is that they know and appreciate that we do live in a society with segregated communities, that is still contested in parts, even after all these years of relative peace. We still live with the legacy of the conflict. Before COVID, we heard from our children and young people about the segregation in their communities. They face fear because of ex-paramilitary gangs, and they feel that they cannot associate with each other.

We know that the charter has been set aside, so, in a sense, that ship has sailed. However, how do we make a robust bill of rights that will comprehensively protect our children and young people? If there is a commitment to no diminution of rights, this is one fundamental way to do it for our children and young people.

**Mr Nesbitt:** Mairead, currently you have a statutory duty to advise the Executive on the adequacy and effectiveness of law and services for children. If you got your way on a bill of rights, is there a danger that you would be going to court rather than to Stormont Castle?

**Ms McCafferty:** No, and that has always been the fear. That issue is always raised when any kind of legislation is passed. History has shown that the floodgates do not open. Professor O'Regan alluded to this earlier: the purpose of legislation is about what you do as a society. We have legislation as a basis to establish the culture, values and the kind of society that we want to live in and create. It does not necessarily mean that the floodgates will be opened. I am sure that Koulla would be the first to say this: we would certainly not have the resources to go to courts every five minutes. When you have legislation, it makes people think twice before they breach the rights of children and young people who already have their rights compromised.

**Ms Yiasouma:** Mike, can I quickly respond by saying that, if protecting children's rights is in the "must do" column, it may remove the need to go to court, as the threat is there. It also makes our job and the conversations that we have a lot easier. We will not be in the courts every day.

**Mr Nesbitt:** Thank you both very much.

**The Chairperson (Ms Sheerin):** We will go to teleconferencing. Paula has indicated that she has a question. Paula, we cannot hear you.

**Ms Bradshaw:** Sorry, good to see you, ladies. My first question is about COVID-19, education and the safeguarding of children with disabilities. How would the response of the statutory agencies have differed if children's rights had been fundamentally embedded in law?

**Ms Yiasouma:** I have thought a lot about this. We went into lockdown quite quickly, and we were not necessarily prepared. However, when we look back at COVID and how we supported children's right to education, we will find that we were not as vigilant as we could have been. When I say "we", I mean schools, the Department of Education, the Education Authority and the Council for Catholic Maintained Schools. I do not mean teachers. That is a whole different thing.

We did not do enough to ensure that we were maintaining a good quality education in the circumstances that the children were in. We are not replicating the curriculum or a school day in homes. However, are we confident that schools were supported enough to ensure that children were able to progress in their education in the circumstances? It was recently described to me by a parent, who said, "Our schools set homework. They did not educate my child during COVID." I thought that that was a perfect way to describe what has been going on.

The other thing is that we have not identified and responded quickly enough to children who did not have the necessary tech to engage in online education. We have not necessarily been able to follow them up. We will probably find that we were not as vigilant in following up with those children who we were not hearing from, who were not logging on. Whereas, if you have a right that says, "The child has a right to an education that develops their talent, skills, personality and ability", that is non-negotiable. That does not say, "A child has a right to go to school." It says, "A child has a right to education", and that education applies whether you are in lockdown or not. It would have then said, "We are legally obliged to continue to do this", in a far more robust way. It might have compelled the guidance coming out from the Department of Education to be a little bit more instructive and less advisory.

**Ms Bradshaw:** My second question is around the Troubles-related generational trauma. I suppose there are opportunities, with the new mental health champion and the 10-year strategy coming out of the Department of Health. In some ways, would a lot of the legacy stuff not still be dealt with through policy and programmes, as opposed to through the courts? How do you think that children's rights being embedded in a bill of rights would make any difference to that?

**Ms Yiasouma:** It is really interesting. You could argue that we will sort out in policy all the issues that are coming out of the conflict, but we have not done that. We have not been able to do that. Back in 2010, when the Northern Ireland Human Rights Commission advised the Government that they should have child rights clauses in a bill of rights, they responded by saying that they did not consider that those proposals met the criteria of reflecting the particular circumstances. Children did not need protecting, because they were not affected by the particular circumstances. However, we know that children are affected.

To be honest, Paula, if you look at all the agreements from the last 20 years, whether it is the Good Friday Agreement, the St Andrews Agreement, Stormont House and, to a lesser extent, Fresh Start, and the full criteria for the legacy institutions, children are completely absent. Their voices and experience are not heard. Yet we know that our new interim champion estimates, in a report that she wrote for the Commission for Victims and Survivors, that 15% of mental ill health is as a result of the conflict.

We are not talking to our children about the conflict, and we are not listening to them about how it impacts on them. Yet, when we look at social disadvantage and education and health inequalities, the evidence tells us that they are in the communities most directly affected by the conflict. When we look at how our education system is structured, we can see that it is all rooted in the conflict. That does not even begin to address paramilitary or armed gangs' behaviour. We are not listening to and we are not protecting our children the way that we should.

Enshrining the UNCRC in a bill of rights will say to our children, "Yes, you have been affected by the conflict, in a different way from people who are victims of it". I am not saying that children are victims of the conflict — they are not — but they are impacted by it. The particular circumstances of Northern Ireland apply to their lives in a different way, but they have the same right to have that met, recognised and addressed, as anybody else.

**Ms Bradshaw:** Thank you very much. That is great.

**The Chairperson (Ms Sheerin):** OK, Paula. John has indicated, too.

**Mr O'Dowd:** Can you hear me?

**The Chairperson (Ms Sheerin):** Yes.

**Mr O'Dowd:** Thank you for the presentation. It was interesting. It is an interesting briefing document, particularly on the evolution of rights over time, even from when the Good Friday Agreement was first negotiated, all those years ago. I note Koulla's comments about the lack of the voice of children in that and subsequent documents, which is a very good point. It is something that we have to take on board, not only in this Committee but outside it.

It is worth pointing out that there is, of course, a legacy of the conflict, but we are in a much better place than we were 22 years ago. We can learn from the experiences of South Africa and America about tackling division and inequalities. It is not solved by one document or piece of legislation; there has to be constant momentum behind it. One of the concerns that I have is that the North is beginning to fall behind other parts of these islands once again, particularly around children's rights. The presentations, two weeks ago, from the Welsh and Scottish counterparts were very interesting. The points that you are making around the inclusion of the UNCRC in a future bill of rights are very valid.

I think that a bill of rights is a very abstract idea to many people out there. In their opinion, it will not impact on their daily life. I note your comments, Koulla, about your discussions with young people about the promises that government has made to them. How do we make rights understood to citizens? It goes back, even to Kate's presentation beforehand; it is about making people legally proficient, in the sense that they understand that they have rights and how to exercise them. How do we motivate young people to demand those rights, a progressive society and a new way forward to ensure that they are part of building a new society and that their voices are heard as well?

**Ms Yiasouma:** Thanks for the question, John. You are absolutely right: we need to make rights a reality. One of the points that we are concerned about is that, sometimes, people think that rights are abstract things that you just make up as you go along. That is why the UNCRC is so important: it is actually a thing. It is 42 rights that have been developed. There are a lot of initiatives about explaining what it means for children. However, I do not think that we need to motivate our children. I think that our children are really motivated. Any event in a constituency for young people that an MLA will attend will be packed. Young people want to talk about their rights. We have a responsibility to make sure that they understand what the tangible rights are. Then, you and your colleagues, as decision-makers, have a responsibility to demonstrate to young people that you take that seriously and that when they pack out those rooms, take part in webinars, visit the Assembly, are on their school councils and when, hopefully, we get a youth assembly in Northern Ireland, you are not just paying lip service to listening to them but are giving them the voice so that they can have the influence to make a difference.

It is a transactional thing; we all have a responsibility to make sure that our children are able and ready. I have seen that they are — they are up for it — but I am less confident that those with the power are willing to listen properly and make the changes, where they can, that the children ask them to make. That is a hard truth, but it is true nevertheless. We have paid too much lip service to listening to young people. I can see that Mairead wants to jump in here. I suppose that the question back to you is this: what are you, as a decision-maker and political leader, going to do about it? Sorry, Mairead.

**Ms McCafferty:** Just as an example, about a year and a half ago, we did a piece of work on children as human rights defenders. Young people engaged with that very effectively. They actually attended the Day of General Discussion at the UN. As part of that, they produced a report on their own experience and what it was like to live in Northern Ireland.

It is absolutely key that we listen to young people. That is about upholding the rights that actually say that we will listen to them — article 12 and article 3 on best interests. Listening to young people actually will make a difference. If young people feel as though they are not being listened to and that anything they say does not matter, they will disengage after a while. It is about encouraging them to understand that they have a vested interest in their own futures and society, and ensuring that they are being listened to by the duty-bearers. Children and young people are rights-holders; it is Government who are the duty-bearers. They have that duty to ensure that young people feel that they are listened to and that they influence public policy, and to look at civic engagement in the broadest sense, which includes children and young people. You are talking about half a million citizens of Northern Ireland.

**Mr O'Dowd:** Thank you.



**The Chairperson (Ms Sheerin):** Are you finished, John?

**Mr O'Dowd:** Yes. Thank you.

**The Chairperson (Ms Sheerin):** Thank you. I think that we have lost Mark from the call. He has not dropped back in. If members have no further comments, I want to thank you both for your time, Mairead and Koulla. Thanks for joining us. That was very useful. I appreciate you joining us today.

**Ms Yiasouma:** No worries. Thank you.

**Ms McCafferty:** Thank you. Bye.