

Children's Law Centre

ANNUAL LECTURE 2023

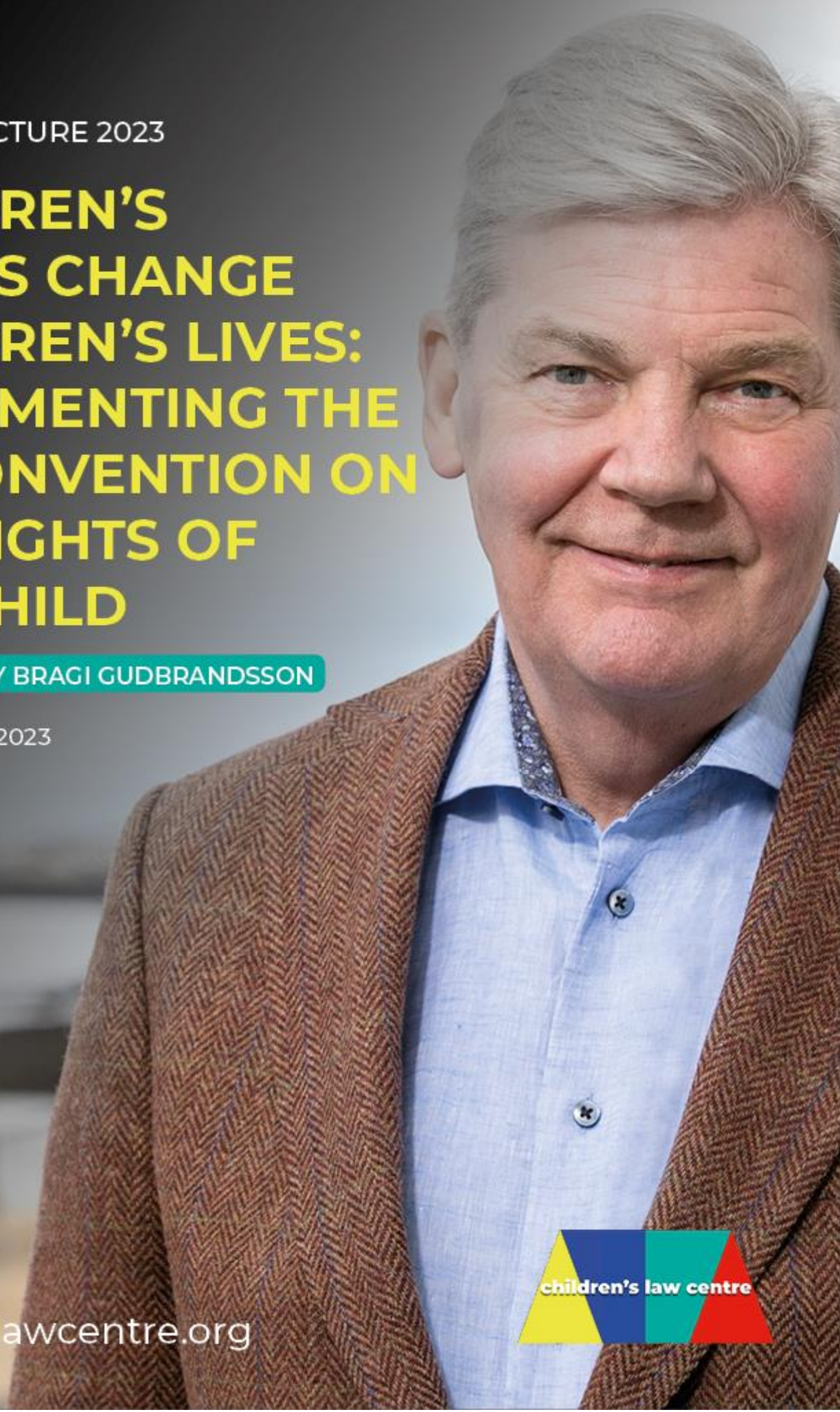
CHILDREN'S RIGHTS CHANGE CHILDREN'S LIVES: IMPLEMENTING THE UN CONVENTION ON THE RIGHTS OF THE CHILD

DELIVERED BY BRAGI GUDBRANDSSON

21 NOVEMBER 2023



childrenslawcentre.org



Chairperson's Introduction

The Honourable Mr Justice Humphreys

Good afternoon, it is a great pleasure to be able to introduce today's event and our guest speaker for the 2023 Children's Law Centre Annual Lecture. This has become an important fixture in the legal calendar, bringing together as it does key stakeholders in the area of children's rights. I am conscious that in doing so I follow in the footsteps of some of the leading members of our judiciary, including Lord Stephens, Sir Declan Morgan and the Lady Chief Justice. Dame Siobhan is disappointed not to be here today but we are delighted to have the senior Lord Justice of Appeal, Treacy LJ, in the audience.

Arriving here today, one could not fail to notice the large contingent of people whose interest lay in another part of this building, in relation to the legal challenge to the Legacy Act. There are so many families who suffered during what we euphemistically called the Troubles and whose quest for truth, justice and reconciliation continues. In this lecture, we look towards the future, for the next generation in Northern Ireland, and hope that their lives will be better than those of generations before.

The focus of today is the implementation of the United Nations Convention on the Rights of the Child ('UNCRC') and, in that context, the Concluding Observations and Recommendations of the UN Committee on the Rights of the Child in relation to the United Kingdom published in June 2023.

Today's speaker, Bragi Gudbrandsson, is not only one of the most pre-eminent global practitioners in this field, he is also Vice Chair of the UN Committee and the lead Rapporteur on the UN Committee Task Force which recently examined the United Kingdom and its devolved governments. Bragi was previously a member of the Council of Europe which monitored the Lanzarote Convention 2010 on the protection of children from sexual exploitation and abuse.

Bragi has, for many years, been the instigator of and the inspiration for the Barnahus model, a multidisciplinary approach to child victims of violence. Starting in Iceland, it has been adopted by many European countries, including as "Bairns' Hoose" in Scotland. An equivalent was proposed by Sir John Gillen in his 2018 report and has

also been supported by the NI Commissioner for Children and Young People. There are, of course, many agencies providing invaluable services in this field but it is hard to resist these calls for a “Children’s House” in Northern Ireland. It will, of course, be necessary for such an institution to have three names - maybe “Teach na Bpáistí” and “Weans’ Hoose”?

Today provides us with the first opportunity to hear from Bragi in relation to the recently published Concluding Observations and Recommendations, which make for shocking reading for anyone who believes in the need to uphold children’s rights or, indeed, who seeks to promote a fairer and more just society. The description, using the language of the Children’s Law Centre, of a “grim picture” being painted through a “damning set” of findings should be of real concern to us all. We hope that today will provide a platform to boost the understanding of the importance of the UNCRC and the very significant areas of work which have been identified by the Committee in order to comply with international standards.

It is notable that one of the recommendations of the report is that the UN Convention on the Rights of the Child be incorporated into domestic law. As you will be aware, the Scottish Parliament passed legislation to effect such incorporation only for the Supreme Court to declare in 2021 that parts of it exceeded the devolved parliament’s legislative competence. I understand that there is an intention in Scotland to proceed with an amended bill in due course. Since 2011 there has been a statutory duty to have regard to the UNCRC in legislation and policy making in Wales, but the Convention rights are not given directly enforceable effect. Given the antipathy towards human rights being expressed in some political quarters, it is perhaps not surprising that there has not been more progress towards implementation of an enforceable system of children’s rights.

In the absence of incorporation, the attitude of the courts to the UNCRC takes on particular significance. It is fair to say that the relationship between the higher courts and the UN Convention has waxed and waned in recent years, as illustrated by a series of cases arising out of welfare reform. In *DA & DS*¹ in 2019, the UK Supreme Court held that the content of the UNCRC can inform the question of whether there has been

¹ [2019] UKSC 21

a breach of ECHR rights and therefore an inquiry must be conducted as to whether there has been a breach of UNCRC. Similarly, in *Siobhan McLaughlin*², an appeal from this jurisdiction, Lady Hale took the view that her conclusions were ‘reinforced’ by the obligations in UNCRC as they “inform the interpretation of the guarantees contained in ECHR”.

This approach was followed by the Northern Irish courts in *O’Donnell -v- Department for Communities*³ where Stephens LJ held that the department had breached article 3.1 of the UNCRC by failing to take into account the best interests of children in relation to the inability of disabled persons to make pension contributions. In that case, a decision which was not in substantial compliance with such international obligations was held to be in breach of ECHR.

However, the following year, the Supreme Court adopted what might be described as a more constitutionally orthodox position in *SC*⁴, holding that UNCRC forms no part of the law of the UK. Lord Reed said:

“for a United Kingdom court to determine whether this country is in breach of its obligations under an unincorporated international treaty, and to treat that determination as affecting the existence of rights and obligations under our domestic law, contradicts a fundamental principle of our constitutional law.”⁵

Just last week, in the Rwanda decision, Lord Reed did place express reliance on a number of other UN Conventions (the Refugee Convention, the Convention Against Torture and the Covenant on Civil and Political Rights), albeit in the context of a case with an international focus. Significantly, the court also recognised that the UNHCR should be accorded a ‘special status’ by the courts in light of its “unique and unrivalled experience” in the field of asylum and refugee law. The UN’s Periodic Review of Rwanda and its asylum system formed a key part of the evidence relied upon by those challenging the government policy. Thus, although the UNCRC may not, at the moment, be directly enforceable in our courts, it may be that the evidence contained

² [2018] UKSC 48

³ [2020] NICA 36

⁴ [2021] UKSC 26

⁵ Para [91]

in the Concluding Observations and Recommendations could be used to pursue claims in relation to existing rights.

So where does all of that leave us? If the courts are declining to analyse whether there has been a breach of UNCRC, by reason of constitutional principle, does that strengthen the case for incorporation? Is there the political will to take such a step? What can be done in the absence of the devolved institutions in Northern Ireland? How else can the rights of children be best recognised and protected?

I seem to have posed several questions but provided few answers. Fear not, however, since I am sure our guest speaker today will address some of these issues and many more.

Ladies and gentlemen, please welcome Bragi Gudbrandsson.

Children's Law Centre Northern Ireland Annual Lecture 2023

Bragi Guðbrandsson

Dear Paddy Kelly,

Honourable Mr. Justice Humphreys,

Distinguished guests, dear friends!

Allow me to express my appreciation and pleasure for the invitation to speak at this esteemed event. I think it is only appropriate to make it clear, that I look at this as a great honour because of the admiration I have for the Children's Law Centre, it's dedication of Paddy, Fergal and other staff members in advocating for children's rights and the great contribution to facilitate the work of Committee on the Rights of the Child (the C'mte) in its role to monitor the implementation of the Convention of the Right of the Child (the CRC) in Northern Ireland (NI).

For me as an Icelander, Northern Ireland represents not only a close neighbour in geographical terms but rather, as my countrymen are now becoming increasingly aware of, as a people that are historically and genetically much more related to us than previously thought of. A research findings recently published by Decode Genetics in Iceland, a global leader in understanding the human genome, has demonstrated by analysis of the genetic of contemporary Icelandic women, that almost 2/3 of the women settlers in Iceland during the 9th and the 10th century came from gaelic background, i.e. Ireland, Scotland and Isle of Man. Obviously this has had a profound impact on the language, religion and culture of the Icelandic society.

These words are of course said by the way of passing. However, perhaps they reflect and underline the common heritage of humanity irrespective of the modern day's geographical, national or regional groupings of peoples and nations - the fact that we all belong to one humanity, to one family. And the children of this one family, their development and wellbeing are our common responsibility. This is the essence of the United Nations, its very existence as reflected in its treaties and in particular the UN CRC.

I.

The topic of my presentation today is on the C´mte´s Concluding Observations (COBs) in relation to the State review of the combined sixth and seventh periodic reports of the United Kingdom of Great Britain and in particular Northern Ireland. As you are aware of the main role of the CRC Committee is to monitor the implementation of the UN CRC in accordance with Article 44 of the Convention. Every state in the world except for the USA, in total 196, have ratified the Convention. States are obliged to submit an initial report on the implementation within two years of the entry into force of the Convention for the State Party concerned and thereafter periodic reports at the invitation of the Committee, usually every 5 years for an examination.

Following an examination of each State party´s report, the Committee requests further information on substantive topics that is of particular interest in the context of the State concerned. The written replies determine the substantive framework for the dialogue with the State Party concerned. Following the dialogue with the delegation of a State Party, the CRC Committee addresses its concerns and recommendations in a document referred to as the **Concluding observations (COBs)**, which is the outcome document of the monitoring round.

The COBs are structured in “clusters of rights”, upon which the State Party should indicate progress made and challenges encountered. In particular, the State Party should provide specific information on actions taken to implement the recommendations in the Committee´s previous COBs as they relate to each cluster of rights.

Importantly, the COBs are not limited by the information submitted by the State Party. During the process of review, the Committee invites international, regional, national and local organisations to submit written reports on how the Convention is being implemented in a country, and greatly welcomes submissions by children. Moreover, the Committee invites national civil society organisations (NGO´s), human rights institutions NHRI as well as children´s delegation to direct consultation and engagement with the Committee in Geneva. This implies that the COBs are based not only on state reports but on multiple sources of information which may complement, and/or contradict, the States Parties´ reports.

The child participation in the monitoring process is of a particular importance. Toward this end, the C´mte has approved a very detailed document on Working method for

Child Participation in the reporting process to ensure a safe, child-friendly, respectful and inclusive consultation as well as child safeguarding measures and guidelines for children's meeting with the C'mte.

I wish to use this opportunity to express the C'mte's appreciation and gratitude for the detailed and comprehensive submissions and dialogue with the stakeholders in Northern Ireland without which we would not have obtained the necessary understanding to be able to complete our COBs in a meaningful way. This includes the Children and Young People's Commissioner, the Northern Ireland's Human Rights Commission and the Children's Law Centre on behalf of civil society in NI. The submissions and dialogues were crucial for us to understand the complexities of the situation in Northern Ireland and paved the way for many of our most important recommendations in the COBs.

The participation of children and young people from Northern Ireland was particularly inspiring, informative and rewarding. This did not come as a surprise to us, bearing in mind that Belfast is the home town of world's leading authority on the legal rights of children to be heard according to Art. 12 of the Convention, Professor Laura Lundy at the Queen's University. The child participation was supported by the Children's Law Centre, the Northern Ireland Youth Forum, the Children and Young People's Commissioner, Include Youth and the Voice of Young People in Care. Some of these children not only participated in the pre-session of the Committee last February but also came in May during the main session of the State review. I wish to use this opportunity to thank the children for their wonderful contribution to the COBs by sharing with us their experiences and opinions and as well as the supporting organizations that did a great job. I will include some of the impacts the children had on the COBs later in my speech.

Generally speaking, the COBs should be seen as the C'mte's guidance to the State party to make further progress in realizing children rights. While the COBs include remarks on the progress achieved, the main focus is on the shortcomings and challenges in the journey to strengthen children's rights. The C'mte reminds the State party of the indivisibility and interdependence of all the rights enshrined in the Convention and emphasizes the importance of all the recommendations contained in the concluding observations. However, the C'mte draws the State party's attention to the recommendations concerning up to 6 areas, in respect of which urgent measures

must be taken. With regard to the COBs for the United Kingdom of Great Britain and Northern Ireland, the 6 priority areas are: 1) **non-discrimination**; 2) **abuse, neglect and sexual exploitation and abuse**; 3) **children deprived of a family environment**; 4) **mental health**; 5) **asylum-seeking, refugee and migrant children**; and 6) **administration of child justice**.

II.

When the COBs for the UK are read with a particular focus on Northern Ireland, one needs to bear in mind that there are concerns and recommendations that explicitly address the situation in Northern Ireland while others are of a more general nature and apply to the whole of the UK, including Northern Ireland. In my speech today I will mainly highlight the issues that specifically address Northern Ireland as well as the 6 priority areas for which urgent measures must be taken albeit they may have wider applicability within the UK.

The first cluster of the COBs is on **General implementation**. Couple of opening remarks are specific to Northern Ireland: the welcoming of the adoption of the **Children and Young People's Strategy 2020–2030** and the establishment of the **Northern Ireland Youth Assembly**.

The first recommendation with regard to General implementation is on the **Incorporation of the Convention to the national legislation in England, Wales and Northern Ireland and to conduct a comprehensive review of all legislation to align it with the Convention and address any inconsistencies**.

Incorporation means here that the provisions of the Convention can be directly invoked before the courts and applied by national authorities and that the Convention will prevail where there is conflict with domestic legislation or common practice.' (Committee on the Rights of the Child (2003) General Comment 5). As you may know this process is ongoing in Scotland and the Scottish Parliament has already approved a bill to that effect which is being amended to meet the requirements of the devolution settlement in this context. There are number of European states that have incorporated the Convention into their domestic legislations, including the Nordic states Norway, Iceland and Sweden by specific legislation passed by the relevant Parliaments. There are examples of other states in which the CRC became constitutionally part of the domestic legislation by ratification, such as Belgium and Spain. However, in Northern

Ireland this would need to happen by the NI Assembly approving such bill, and probably subject to confirmation by Westminster.

A step in the direction of the implementation of this recommendation would be to decide on the systematic and comprehensive review of the domestic legislation and mapping the deviation from the principles embodied in the UN CRC. This was for example carried out in Norway and Sweden before the incorporation was decided by the Parliaments.

The second recommendation is on **the enactment of a Bill of Rights for Northern Ireland.**

The Human Rights Act of 1998 has been under review following Brexit. The C'mte is concerned that the review of the Human Rights Act does not ensure that all existing children's rights will be guaranteed and that the 'no diminution' commitment made in the Northern Ireland Protocol and subsequently the Windsor Framework, will not be respected. The C'mte is of the view that any new Bill of Rights should build upon, rather than reduce, the protection of the fundamental rights of all children in the jurisdiction without discrimination. Furthermore, that any new proposals in relation to the new Bill of Rights are developed through a consultative and democratic process in which children's Article 12 rights are fully respected. It is the understanding of the C'mte that specific Bill of Rights is necessary for Northern Ireland to protect human rights standards that are fundamentally linked to the Good Friday Agreement and the peace process in Northern Ireland which underlines its importance. Furthermore, this Bill of Rights will prove to be a key mechanism for the incorporation of the Convention on the Rights of the Child into the domestic legislation in Northern Ireland; the C'mte have made repeated recommendations to this effect.

The third recommendation is as follows: **Develop mandatory child-rights impact assessment procedures for legislation and policies relevant to children in England, Northern Ireland and Wales. Assess the impact of the State party's withdrawal from the European Union on the enjoyment of children's rights.**

It is the C'mte's position that UK and devolved governments should introduce a statutory obligation at national and devolved levels to systematically conduct a child rights impact assessment when developing laws and policies affecting children, including in international development cooperation. The C'mte is aware of many good

practices in the UK, including NI on child rights impact assessments. However, there is a great scope for improvement and a mandatory child rights assessment in relation to decisions in matters of importance to children.

An assessment on the impact of Brexit on the enjoyment of children's rights has not been carried out. There are EU law on important protective rights that are no longer valid in the UK, for instance the Directive on the rights of victims and witnesses and the Directive on Sexual Abuse and sexual exploitation. There are number of other aspects of Brexit that are likely to have negative impact of children's protective rights. The loss of EU funding streams due to the UK's withdrawal from the EU do adversely affect children's rights, such as the European Social Fund (child poverty, youth employment skills) and PEACE funding. It is clear that a lack of clarity on the extent of replacement funding available is likely to have a particularly negatively impact children who are already experiencing socio-economic disadvantage.

The fourth recommendation relating to the General implementation measures is **on lack of comprehensive policy and action plan on children's rights.**

The UK, including the devolved governments, have not developed and adopted comprehensive policies and action plans on the implementation of the Convention, with the participation of children, and which include specific, time-bound and measurable goals. This would need to include action plans to implement the Concluding Observations and Recommendations of the C'mte on the Rights of the Child in the past, setting priorities and actions to ensure continuous progress in implementing the Convention across the UK. However, as said before the C'mte welcomed Northern Ireland's Children and Young People's Strategy 2020–2030 albeit it lacks the action plan and designed resources for its implementation.

The C'mte puts a high emphasis on that these actions plans include a special focus on children in disadvantaged situations, including refugee and migrant children, children belonging to minority groups, children with disabilities, LGBTQ+ children, children in care, and the so-called young carers, or children with caregiver responsibilities.

The C'mte reminds the state party on the importance of ensuring the effective implementation of policies and action plans on children and ensure that they are

supported by sufficient human, technical and financial resources. I will come back to this in a minute.

The fifth recommendation of the Committee relates to **the lack of coordination structure with regard to the implementation of the Convention.**

The C´mte recommends that the State party establish structures, preferably a statutory body or a ministerial lead body at the national level, with corresponding structures in the devolved administrations and territories, responsible for ensuring the effective monitoring and coordination of all activities relating to the implementation of the Convention across all sectors and at all levels. From the C´mte´s perspective it is paramount that a designated body has an oversight over the actions of the multiple structures and mechanisms involved in implementation at different levels of government, the national, regional and local as well as the diverse activities and services delivered by Civil Society Organisations.

III.

By now you are probably quite frustrated by the very fact that currently; Northern Ireland has limited and even zero possibility to implement the recommendations of the Committee already mentioned. May I assure you that the C´mte is abundantly aware of the fact that the lack of the executive and legislative powers in Northern Ireland, thus the limited administrative and institutional capacities to act, precludes effective steps being taken to implement these recommendations and probably many more that I will highlight today. The lack of progress in legislation being brought forward and delays implementing existing legislation and strategies to improve children´s lives in Northern Ireland require a solution to the political crisis in Northern Ireland without further delay. But there are more issues that underscores this.

Shortly before the C´mte´s review of the UK, the Secretary of State for Northern Ireland set out the 2023/24 budget in a Written Ministerial Statement to the Westminster Parliament. An initial analysis from the Northern Ireland Fiscal Council suggested that this budget would mean a substantial cut up to 3.3 per cent in real terms in addition to the cuts from the previous year. The C´mte was informed of a letter prepared by the Children´s Law Centre and endorsed by over 200 organisations and experts all over Northern Ireland. The letter demonstrated how the budgetary decisions failed to take account of statutory equality and human rights duties, including the disproportionately

adverse impact on the most vulnerable children and young people, feeding an already system wide regression in children's rights in Northern Ireland. This letter included a summary of some of the many programmes, services and interventions for children and young people which are negatively impacted.

This is the context of the recommendation of Para 11 of the COBs which reads as follows: **“Ensure that, in situations of economic crisis, regressive measures are not taken without meeting the requirements set out in paragraph 31 of the Committee’s general comment No. 19 (2016) on public budgeting for the realization of children’s rights, including that children participate in the decision-making process relating to such measures”**.

As you may already know the C’mté’s General Comments are seen as authoritative legal interpretation of the Convention on the Rights of the Child. The requirement that para 31 of the GC 19 (2016) on public budgeting introduces the general principle that “States parties should not allow the existing level of enjoyment of children’s rights to deteriorate. However, that in times of economic crisis, regressive measures may be considered but only after assessing all other options and ensuring that children are the last to be affected, especially children in vulnerable situations. In these circumstances, States parties shall demonstrate that such measures are necessary, reasonable, proportionate, non-discriminatory and temporary. States parties should take appropriate measures so that the groups of children who are affected, and others with knowledge about those children’s situation, participate in the decision-making process related to such measures”.

In the context of the cut back of the budget for Northern Ireland the condition described in the GC 19 children’s rights, the Committee makes the following recommendation to the UK Government.

“Withdraw the budget for Northern Ireland for the period 2023–2024 and fully consider the equality and human rights implications for a new budget, taking all possible steps to mitigate any adverse impact on children’s rights before issuing a revised budget”.

To my knowledge, no steps have been taken in Westminster to revise, yet alone withdraw the budget for Northern Ireland or to take any serious steps to mitigate any adverse impact on the most vulnerable children. Given the continued absence of

devolution I can only assume that the UK Government and its Secretary of State is at least considering taking steps to begin the same budget process for the next financial year. In that context I urge all those with responsibility for setting the budget, not least the Secretary of State and the Northern Ireland Office to give effect to the C'mte's recommendations on this issue and comply with GC 19 now and when setting any future budgets for Northern Ireland.

IV.

I will now turn my attention to other aspects of the Concluding Observations for Northern Ireland and follow the order of clusters applied in the State reviews. In the cluster on the **Definition of the Child** the C'mte highlights the fact that in Northern Ireland children 16 and 17 years of age are allowed to marry provided they have their parent's consent. **The jurisprudence of the C'mte has consistently been to recommend states to abolish child marriages and that is now underlined with regard to Northern Ireland.** Child marriages may rob children of many significant elements of their childhood, can have adverse effect on their education and cause vulnerability to violence, discrimination and abuse. It should also be mentioned that marriage of children in Northern Ireland is not recognized in other parts of the UK nor the Republic of Ireland.

With regard to the cluster of the **General Principles**, age is in fact one of the main concerns in the COBs with regard to the **principle of non-discrimination**. I recall the interesting dialogue with children and young people from Northern Ireland that shared the view that discriminatory attitudes and practices were among the most significant child rights issues they experienced. They expressed the view that the Age Discrimination legislation should be progressed without further delay and should be inclusive of all children irrespective of age; that all children should have the right to dignity, be treated with fairness and be respected and this should be embodied in the national legislation.

The C'mte took notice of the children's views and recommends legislative and other measures to ensure the protection of all children below 18 years of age from discrimination on the grounds of their age. This should particularly address discriminatory stereotypes against children and include the promotion of a positive image of children as rights holders.

The children and youth from Northern Ireland also highlighted **discrimination of particular groups** of children who are vulnerable or disadvantaged as a result of their circumstances. They articulated their empathy and solidarity with these children and demanded measures to ensure equal realisation of their rights and affirmative action appropriate for specific groups of children.

Again the C'mte took notice of the children and young people's views and recommended that targeted policies and programmes should be implemented to eliminate discrimination against children in vulnerable situations, including children belonging to ethnic minority groups, asylum-seeking, refugee and migrant children, Roma, Gypsy and Traveller children, children with disabilities, children in alternative care, children of incarcerated parents, children of unmarried parents, lesbian, gay, bisexual, transgender and intersex children, socioeconomically disadvantaged children and children in the justice system;

I think it would be appropriate to reflect here a number of the C'mte's key recommendations in relation to education. That is, because it was the input of children and young people which so strongly reinforced our developing, and in some cases, ongoing, concerns. One such recommendation is the need to bring an end, finally, to the use of academic selection in Northern Ireland and I offer my sympathies and best wishes to every child preparing to sit their second examination this coming Saturday.

In addition, and recognizing that a public consultation on the issue is due to close later this week I wish to draw attention to the fact that the C'mte has recommended that comprehensive, age-appropriate and evidence-based education on sexual and reproductive health should be made mandatory in school curricula at all levels of education and into teacher training, without the possibility for faith-based schools or parents to opt out of such education. On this matter I would also draw your attention to the C'mte's statement from last month on Article 5 of the Convention in clarifying the concepts of parental guidance and evolving capacities of the child.

Reflecting on my earlier comments on discrimination of particular groups, I must also make clear the C'mte's concern about the evidence presented to us of the experiences of children with special educational needs and disabilities in NI in both access to education and the consistency and quality of provision made available to this particular cohort of children.

Moreover, and again in line with the proposals of the children and young people in Northern Ireland, the C´mte recommends that clear avenues for children to seek justice in cases of discrimination should be established and, where appropriate, to ensure the access of children in disadvantaged situations to health services, education and a decent standard of living;

Another significant contribution of the children and young people in Northern Ireland to the State party review was on **child participation and the right to be heard**. In a wonderful report they submitted to the C´mte called “Rights here, right now” a detailed and rich account on the cross cutting and overarching principles of the convention – the principles of non-discrimination, participation, survival and development – as well as knowledge about children’s rights and children’s and young people’s message to Government. Reading this report, engaging in constructive dialogue with the children and young people on these topics, including learning about the Youth Assembly, how it functions and ensured that children not only have voice but also the appropriate audience, reflects that you have accomplished to create a culture of implementing Art. 12 of the Convention. However, there is a scope for progress. **The C´mte recommends that Northern Ireland initiate consultations with children and civil society organizations on lowering the voting age to 16 years**. This process of extended rights to vote and stand in public elections and referendum from the age of 16 has taken place in some other European states, including Scotland and Wales.

One of the priority areas that is identified in the Concluding Observations with regard to Northern Ireland is on the **cluster on violence**. The C´mte is concerned about the use of Tasers, spray, Plastic Bullets and other harmful devices on children, which may not be in compliance with international human rights standards as well as the use of spit and bite hoods on children in some circumstances. The C´mte is also concerned about strip searching of children and young people by the Police Service. The C´mte recommends that legislative steps be taken to explicitly prohibit, without exception, strip searches on children and the use of harmful devices, including spit hoods, plastic bullets and taser guns, and other electrical discharge weapons against children. In this context the C´mte also makes the recommendation that Northern Ireland should effectively enforce the prohibition of the use of non-statutory stop-and-search checks against children. Furthermore, the COBs make reference to Northern Ireland recommending that measures should be taken to protect children from intimidation or

other forms of violence, committed by non-State actors, including so-called paramilitary organizations in Northern Ireland, and protection from recruitment by such actors into violent activities.

Ending **corporal punishment** of children in Northern Ireland and meeting international human rights standards is absolutely one of the highest priorities in the C´mte COBs. While physical punishment may be effective in stopping undesirable behaviour in the short run, we know that the reverse is true with regard to long-term consequences. The evidence-based knowledge on the harmful impact of physical punishment on the mental development of the child into adulthood is mounting. Today there is no excuse for accepting corporal punishment of children. The C´mte commended Scotland and Wales for prohibiting corporal punishment and recommends as a matter of urgency that England and Northern Ireland repeal the legal defence of “reasonable punishment” and prohibits physical punishment in all setting.

The legal prohibition of physical punishment is however not enough. We need to ensure its implementation by providing parents with positive and non-violent skills to bring up their children. Northern Ireland has the capacity and professionals to carry this out and are in fact already supporting parent all over the country to strengthen their skills in the care of their children. They deserve that the legislation and public policies support their efforts to provide all loving parents with the tools needed.

The COBs also puts a great weight on measures to address **child abuse, including domestic abuse and child sexual abuse and exploitation**. In this context the C´mte made an important recommendation on strengthening the legislation on the abuse of trust in all environments and extracurricular activities in Northern Ireland.

The jurisprudence of the C´mte on child sexual abuse has been developing in recent years. This is reflected in the recommendations to the UK and the devolved Governments which emphasises that an infrastructure should exist to deal with child abuse, child sexual abuse in particular, which is child friendly, multiagency and provides comprehensive services including forensic interviews, medial evaluation, trauma focused therapy and family counselling. The arrangement of providing these services under one roof aims to avoid re-traumatisation of child victims through repetitive interviews, preserve the child´s narrative which is often the main if not the

only evidence in the criminal case and ensure that the healing process to the child and family can start without delay.

In early 2019 as a new member of the C'mte I was invited by the NICCY (NI Commissioner for children and young people) to share with you the Barnahus model which I pioneered in Iceland exactly 25 years ago and is built on the principles I have already mentioned. By then I had already received a delegation headed by the former Child and Young Commissioner Koulla Yiasouma for a visit in Barnahus in Iceland. During my exciting days in Belfast in 2019, I had an opportunity to meet Government officials, NGO's and children activists. Since my visit, I know that much work has been carried out in order to find the path for Northern Ireland to develop its own Barnahus concept.

Last year, NICCY submitted a report "Putting the Child in the Centre" presenting the recommendations for the implementation of Barnahus in Northern Ireland. I was privileged to participate in an online dialogue on the report following its publication. In my view, the recommendations were firmly founded in evidence based knowledge and I was delighted to observe the involvement of the academia, both the Queen University in Belfast and the University of Edinburgh in the project. I know this work is ongoing in Northern Ireland as only couple of weeks ago I met representatives from the Dep of Justice and Dep of Health of NI who were on a visit to Iceland to further progress in the area.

In the NICCY report, the authors quote the words of Lord Justice Gillen during an interview with the research team, in which he expressed his views on the attitude that Northern Ireland must have to move forward: "The attitude [toward Barnahus] must be a "can do" not "I can't do"...Because the concept is absolutely first class. It's worked in Norway, Greenland, Denmark, Finland, and Lithuania, it's working in England". To these words of Sir Gillen I should add that in the Council of Europe report "Barnahus journey to Europe" published last September we are informed that in total 28 member states had already established Barnahus or a similar structures and 10 more states had plans to do so.

In the Concluding Observations the C'mte identifies the Lighthouse, which is the Barnahus in London, and the wonderful "Bairn Hoose" in Scotland which I was privileged to visit last month, as good practices. This is in line with the COBs for the

Republic of Ireland from earlier this year which recommended the expansion of the Barnahus in Galway which is another example of best practice in this area.

Importantly the C´mte highlights the importance of implementing the recommendations of the Gillen Review. One of the core recommendations of the Gillen Review is in line with the jurisprudence of the C´mte as is articulated in the COBs in the following recommendation: “Ensure that all child victims of violence, including sexual abuse, are allowed, as child witnesses, to provide video-recorded evidence for testimony and cross-examination during the pretrial stage in judicial procedures as a default process”. The aim is to strengthen evidentiary value of the child’s narrative and avoid the child victim from distressing and often traumatising waits for trials and cross examinations. This arrangement introduces a balance of the two fundamental human rights principles, the “due process” and the “best interest of the child” by introducing less restrictive rules of judicial procedures in line with the Jurisprudence of the ECtHR.

V.

Family support and children in alternative care is among the most important cluster of rights that the C´mte examines in State reviews. There are many concerns, such as the lack of family support and deficient child protection systems that commonly are to blame for unnecessary separation of children and families. There are also concerns on children deprived of family environment, safety of those children, the quality of care and aftercare support. The C´mte identified progress in Northern Ireland by the Adoption and Children Act 2022 but is concern about the inability to enact legislation that has passed such as new Foster Care regulations which aims at strengthening the quality of care.

Prevention in terms of general provisions for families and children at risk in particular are concern. The C´mte highlights measures to enable working parents and caregivers to balance their professional and family responsibilities, including by allocating sufficient resources for childcare services, encouraging parents to take parental leave and ensuring access to affordable childcare. Northern Ireland is of particular concern due to the lack of childcare strategies with the aim to ensure that all children in socioeconomically disadvantaged situations have access to free childcare.

The COBs generally express concern that children in alternative care are far too many and require improved quality of care. They should have access to independent, well-

resourced, child-friendly advocacy services and specialized support, including mental health and therapeutic services and be able to maintain contact with their family members and communities. Measures should be taken to prevent frequent or unnecessary transfers of children in alternative care settings. It should be ensured that children are consistently supported by means of individualized care plans and by a social worker throughout their time in care. Regular and substantive reviews of placements in care should be carried out.

The C´mte emphasises the importance of investigating all cases of abuse and ill-treatment of children in alternative care and health-care settings, particularly among children with disabilities, adequately sanction perpetrators and provide reparation to victims. Furthermore, we must be alert about the circumstances in which we place our children.

The C´mte proposed prohibition on the use of solitary confinement, isolation, seclusion and restraint as disciplinary measures in schools and alternative care and health-care settings. The C´mte further recommends that statutory guidance on the use of restraint on children should be developed to ensure that it is used only as a measure of last resort and exclusively to prevent harm to the child or others and monitor its implementation. On this issue I acknowledge that a consultation by the Department of Education on draft statutory guidance on the reduction and management of restrictive practices in educational settings in NI has closed in recent weeks. This is of course a welcome step in the absence of legislative change. I would however caution that while this statutory guidance is urgently needed, it should not be rushed if, in the process, the serious concerns about the draft guidance that have been raised by NGOs, parents, carers and others are not meaningfully addressed.

VI.

The C´mte´s recommendation on the cluster of rights with regard to **Basic Health and Welfare** are numerous and include the need to develop policies and program to address the quality of health care, health inequalities, including the underlying causes, in particular in respect of children in disadvantaged situations. Children with disabilities, children from the Roma community routinely experience barriers in accessing healthcare. As do members of the Traveller community and refugee and asylum-seeking children. Mental health needs, obesity and dental decay being more prevalent

in children living in poverty. In 2022 NICCY reported an analysis of child health waiting lists. They found an almost universal increase in the number of children waiting for an appointment across all services

The C'mte identifies **mental health of children and young people** as one of the priority issue. The large number of children with mental health issues, learning disabilities and autism placed in detention and adult psychiatric wards. The waiting lists and the long waiting times, for instance faced by transgender and gender-questioning children in accessing specialized health-care services. The lack of specialised professionals, mental health nurses and doctors are among the concerns.

Among the recommendations the C'mte identifies are to a) explicitly prohibit the detention or placement in adult psychiatric units or police stations of children with mental health issues, learning disabilities and autism; b) children's right to be heard in decisions regarding their mental health care needs to be ensured, c) the access to therapeutic mental health services and support from independent mental health advocates needs to be guaranteed; d) strategies should be developed, with sufficient resources, to ensure the availability of community-based therapeutic mental health services for children of all ages as well as to e) promote mental health services and screening for mental health issues and early intervention services in schools.

It is in the context of these recommendations I would also briefly like to reflect on the seriousness of the situation in which far too many children in Northern Ireland are growing up. Alarming rates of child poverty, a profoundly difficult economic context, lack of financial support to meet the true cost of living, the complexity of the impact of the Covid-19 pandemic still not fully known – all compounded by a budget which failed to give any hope of meaningful intervention. The C'mte recommended, amongst other measures; the development or strengthening of existing policies, with clear targets, measurable indicators and robust monitoring and accountability mechanisms, to end child poverty and ensure that all children have an adequate standard of living, including by increasing social benefits to reflect the rising cost of living.

The final health concern that I will mention is the C'mte concerned about the access to reproductive health services. In the COBs there is a recommendation explicitly referring to Northern Ireland to ensure access for adolescent girls to age-appropriate family planning services, affordable contraceptives, safe abortion and post-abortion

care services, with a view to ensuring that no adolescent girl has to travel to other jurisdictions to access reproductive health care.

VII.

The cluster of rights embodied in the **Special Protection Measures** is the final priority that is identified in the COBs for the UK and the devolved Governments. There are specifically two topics that this includes: a) asylum-seeking, refugee and migrant children and the administration of justice.

The C´mte recommends that the Nationality and Borders Act 2022 should be amended with the view to ensure that no **asylum-seeking and refugee children, including unaccompanied children**, are criminalized and that they have access to necessary support and services. The Government should ensure that children receive age-appropriate information and legal advice about their rights, asylum procedures and requirements for documentation; that their best interests are given primary consideration in all asylum processes, that their views are heard, taken into account and given due weight and that they have access to child-friendly justice mechanisms. To strengthen measures to ensure that all asylum-seeking, refugee and migrant children have equal and prompt access to education, health-care services, housing, psychosocial support and social protection, including benefit entitlements. Age assessment should be multidisciplinary and child-friendly and asylum seekers rights to family re-unification respected.

With regard to Northern Ireland the C´mte is aware of the generous reception of over 2 thousand refugees from Ukraine, including approximately 600 children. The main concerns however being discussed in the C´mte there were specific concerns about the rights and experiences of asylum seeker children living in 'Contingency Accommodation' in Northern Ireland which are repurposed hotels and B&Bs. We share the concerns expressed by some NGO´s on the lack of safeguarding of these children, their health, development, wellbeing and access to services.

The last priority issue that I will address today which the C´mte identifies in the COB´s in respect of which urgent measures must be taken is the **administration of child justice**. As many of you know, the C´mte submitted a General Comment no 24 on Child Justice in 2019 which replaced an older General Comment 10 (2007) on Juvenile Justice. It reflects the developments that have occurred since 2007 as a result of

the promulgation of international and regional standards, the Committee's jurisprudence, new knowledge about child and adolescent development, and evidence of effective practices, including those relating to restorative justice. The GC24 also reflects concerns such as the trends relating to the minimum age of criminal responsibility and the persistent use of deprivation of liberty.

The repeated recommendation of the C'mte is for Northern Ireland to **raise the minimum age of criminal responsibility**. It is the view of the C'mte that the current age of 10 is unacceptable. This is said in light of our knowledge today on the complex needs of children's and young people's mental, emotional, physical or social well being as well as on children's brain development. As you are in the process of raising the minimum age and already there has been public consultation which closed last year, I know that you are familiar with the arguments involved. My suspicion is, like in the many other progressive steps concerning the rights of children that the absence of government in NI has delayed the process. We know that the HRI, Civil Society including children's and youth organisations in NI supports the rise of the minimum age to 16 and the C'mte wholeheartedly supports this position.

There are a number of other concerns that are included in the COB's concerning child justice. Investigation and the judicial process should take place without delay, applying a child-friendly and multisectoral approach. We are concerned about the information that court cases in Northern Ireland are typically taking twice as long as in England and Wales.

We recommend that detention is used as a measure of last resort and for the shortest possible period of time and is reviewed on a regular basis. Moreover, that early intervention should be developed for children in conflict with the law and that non-judicial measures should be actively promoted, such as diversion, mediation and counselling, for children accused of criminal offences. Wherever possible, the use of non-custodial measures for children, such as probation or family/community based services should be applied and access to mental health service is of course crucial for these children.

The COBs includes recommendation to repeal the practice of remanding children into police custody, to ensure that no child is held in police custody overnight and avoid the use and reduce the maximum duration of pretrial detention. Furthermore, the C'mte

recommends that for the few situations in which deprivation of liberty is used as a measure of last resort, to strive for full compliance with the international requirement to detain children separately from adults and ensure that detention conditions are compliant with international standard.

VIII.

I have now given an overview of the recommendations of the COBs with regard to the UK and NI in particular. I have had to limit my speech to the six priority areas in which urgent measures must be taken. There are of course numerous other clusters of rights and topics that are highly relevant to NI that I would have liked to address and are just as important for the lives and development of children in NI. The environmental crisis has not been covered in my speech. I urge you to examine our most recent GC 26 on the environment with special attention on how the content of the GC can be operationalized in Northern Ireland. We must understand climate change as a human rights issue. I regret not being able to address every challenge but I hope you agree we have covered quite a lot of ground. I encourage everyone here, and watching online to take seriously the duty to act on the C'mte's recommendations. That is what is owed to your young people.

IX.

A few concluding remarks: The UN Committee on the Rights of the Child completed extensive research over the past number of years to understand the challenges faced by children in Northern Ireland. While there has no doubt been progress in some areas, we have regrettably concluded that a vast number of children are being let down because of the continued failure to implement key measures and protections as laid out in the UN CRC.

Decades of delay in implementing international best practice standards to protect and support children and young people has left them facing a huge number of challenges. In recent years, this has been made dramatically worse by the lack of local decision making and the recent Northern Ireland budget.

At the risk of some you may find I am using too strong words, I have argued that children and young people in NI are facing crisis in terms of lack of progress and even push-backs in crucial clusters of rights embodied in the UN CRC. I have repeatedly

said in my speech that the prerequisite for overcoming the hindrances, I believe that as a matter of urgency, that Northern Ireland needs to regain its executive and legislative power. May this message be the final recommendation I highlight.

Thank you for listening!

Children's Law Centre

Rights House
2nd Floor
127 - 131 Ormeau Road
Belfast, BT7 1SH

Tel: 028 9024 5704
Fax: 028 9024 5679
Email: info@childrenslawcentre.org

CHALKY Freephone Advice Line:
0808 808 5678
chalky@childrenslawcentre.org

REE Rights Responder
#Ask REE at reerights.com

The Children's Law Centre is a charity and can accept donations to support our work.

If you are a UK taxpayer, Gift Aid your donation and we can claim back an extra 25p from your taxes for every £1 you donate. Donate securely online at www.cafonline.org by selecting Children's Law Centre under 'find a charity' or send your donation directly to Children's Law Centre.

Children's Law Centre is a company limited by guarantee.

Charity Registration No. NIC101148
Company Registration No. NI033998 (Northern Ireland)

