



UNICEF UK

**SUBMISSION TO THE UN HUMAN RIGHTS COUNCIL:
THE UNIVERSAL PERIODIC REVIEW OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND**

SEPTEMBER 2016

ABOUT UNICEF UK

UNICEF is the world's leading organisation working for children. UNICEF works with families, local communities, partners and governments in more than 190 countries to help every child realise their full potential. Unicef UK raises funds for UNICEF's emergency and development work around the world and advocates for lasting change for children worldwide, including in the UK.

1. This submission focuses on children, with analysis of progress against existing recommendations from the UN Human Rights Council in 2012, and on emerging issues of concern.

INTERNATIONAL NORMS

2. Recommendations 110.4, 110.6 – 110.8 have not been met. The UK retains its interpretive declaration on the UN Convention on the Rights of the Child's (CRC) Optional Protocol on Involving Children in Armed Conflict (OPAC), which states that the UK may not exclude children from taking part in hostilities where there is a genuine military need to deploy their unit or ship, and where it may be "not practicable" to withdraw children before deployment, or where such withdrawal would undermine "operational effectiveness".

3. The UK has not signed or ratified the CRC Optional Protocol on a communications procedure; it has committed to keeping the decision *not* to ratify under active review. Ratification would provide children with the same protections as other groups (see, for example, UK ratification of similar procedures under the Convention on the Elimination of Discrimination Against Women, and the Convention on the Rights of Persons with Disabilities), reaffirming children's status as rights holders and providing an important route for justice where children are unable to seek redress for rights violations in domestic courts. **The UK should withdraw its declaration on OPAC and ratify the Optional Protocol on a communications procedure without delay.**

CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK

4. Recommendation 110.32 is at risk. The UK Government has confirmed plans to repeal the Human Rights Act (HRA) and replace it with a British Bill of Rights. In response to the UN Committee on the Rights of the Child, the UK stated that "the [HRA] opened the system to abuse".¹ The HRA has been central to the development of children's human rights in the UK, allowing children to directly enforce rights including the right to protection from torture, inhumane or degrading treatment; to freedom of expression; and to private and family life. It is crucial for children who access public services, as it places a positive duty on the public sector to comply with the rights in the European Convention on Human Rights (ECHR). **The UK must maintain the same level of human rights protection provided by the HRA in a British Bill of Rights; additional child-specific rights should also be included.**

5. Recommendation 110.9 has not been met. The CRC has not been incorporated into domestic law. However, although it does not have direct effect, in Wales the 2011 duty to have due regard to the CRC and its Optional Protocols (see the Rights of Children and Young Persons Measure) has now been extended as planned to all Ministerial functions; and Ministers in Scotland are required to "keep under consideration whether there are any steps which they could take which would or might secure better or further effect" of the CRC, and to take those steps where they consider it "appropriate to do so" (see the Children and Young People Act 2014). There are no corresponding obligations on public authorities in either nation, although in Scotland public authorities must report every three years on action to implement the CRC. There have been no comparable developments in England or Northern Ireland. **The UK Government should commit to incorporating the principles and provisions of the CRC into domestic law and – as an interim step – ensure equality of rights protection for children across all jurisdictions of the State Party.**

6. Recommendation 110.10 is at risk. Child rights impact assessments (CRIA) are not routinely undertaken on all policy and legislation affecting children across all UK jurisdictions. In Wales and Scotland, CRIA tools are used to support Ministers to comply with child rights

¹ HM Government (2016), *Replies of the United Kingdom of Great Britain and Northern Ireland to the List of Issues, CRC/C/GBR/Q/5/Add.1*, paragraph 3

duties, although these do not yet take place across all relevant policy and legislation in Scotland. Work is under way in Wales to develop a stronger CRIA framework. In England, there is little systematic consideration of the impact of policy and legislation on children's rights, and no formal assessment tool is used across government despite the 2010 political commitment to "give due consideration" to the CRC.

7. There are few indications that any local authority in the UK is using an explicit and comprehensive CRIA to assess local policy affecting children. In a period which has seen almost unprecedented cuts to public services, a rapidly changing service provision landscape and a growing trend of private and voluntary outsourcing, it is essential that CRIA is used to inform all local authority policy decisions and place children's best interests above fiscal efficiency considerations. **The UK and devolved governments should introduce a statutory obligation to undertake high quality CRIA in developing policy and legislation. Similar obligations should be extended to public authorities to ensure children's rights are taken into account in local decision-making.**

NATIONAL HUMAN RIGHTS INSTITUTIONS

8. Recommendation 110.38 has been partially met. Legislation in 2014 gave the Children's Commissioner for England an explicit role of promoting and protecting children's human rights in line with the CRC. **The Children's Commissioners should be responsible to the legislature rather than the executive to ensure full independence from government.**

AWARENESS OF RIGHTS

9. Scottish Ministers assumed a duty in 2014 to promote awareness and understanding of the rights of children (reflecting that in Wales in 2011). There are no corresponding obligations in England or Northern Ireland. Evidence gathered through Unicef UK's Rights Respecting Schools Award indicates knowledge about human rights is limited in the education sector (among both adults and children) across the UK. Curriculum, inspection regimes and initial teacher education differ in each of the four nations, and there is no explicit curriculum requirement ensuring all children everywhere learn about their rights.² Teachers are not trained about human rights as part of initial teacher education, although the General Teaching Council for Scotland does reference respect for the rights of children. **UK and devolved governments should ensure an explicit curriculum entitlement for children to learn about human rights (including those under the CRC); and ensure teaching professionals are supported to understand the human rights framework and their role as duty bearers.**

RIGHT TO DEVELOPMENT

10. Recommendations 110.129 – 110.131 are being met: The UK has played a leading role in driving forward the global international development agenda. In 2015 the International Development (Official Development Assistance Target) Act enshrined in law the commitment to use 0.7% GNI for international development, which among other things funds work to deliver protection for the world's most vulnerable children. It is crucial that DFID and other Government departments spending aid continue to do so in line with the principles enshrined in the International Development Acts and according to OECD rules, and that aid continues to be delivered to reduce poverty.

HUMAN RIGHTS AND BUSINESS

11. In September 2013, the UK Government published the first National Action Plan (NAP) on Business and Human Rights, which set out the UK's plan to implement the UN Guiding Principles on Business and Human Rights (UNGPs), principles unanimously endorsed by the UN Human Rights Council in 2011. The NAP is the main vehicle for the UK's

² Although a curriculum review in Wales has proposed a "pillar" on human rights

realisation of children's rights as they relate to private sector activity. In issuing its updated NAP in 2016, the UK Government reiterated its commitment to the UNGPs and the expectation that "UK Plc" should be undertaking human rights due diligence. However, substantive action to implement the UNGPs falls short.

12. The UNGPs require "special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalisation". Children are not afforded sufficient attention in the UK's implementation of the UNGPs, and all future efforts should integrate an explicit focus on children's rights. Five years on from the unanimous endorsement of the UNGPs at the UN Human Rights Council, relatively few UK businesses are carrying out and reporting on human rights due diligence, one of the central tenets of the UNGPs and the Government's expectation of all UK businesses as articulated in its original NAP. Similarly, in both versions of the NAP, the UK Government has failed to use its leverage with businesses to scale up the practice of human rights due diligence. More attention needs to be afforded to removing the barriers that prevent people whose human rights have been violated by UK-linked companies from accessing justice in British courts, paying particular regard to the specific challenges faced by children. **The UK Government should prioritise scaling up the practice of human rights due diligence – which must include special attention to children's rights – through integrating human and children's rights into public procurement. This should also include the application of the Transparency in Supply Chain clause in the Modern Slavery Act to public sector bodies.**

CLIMATE CHANGE

13. Climate change directly and indirectly threatens children's full enjoyment of a range of human rights. In response to the UN Committee on the Rights of the Child, the UK stated that it will meet its Paris Agreement commitments through EU and domestic climate and energy targets. However, recent Government policy announcements have undermined the UK's ability to meet both its own legally-binding climate change targets and its contribution to meeting the Paris Agreement's goal of limiting global temperature rises to 1.5°C above pre-industrial levels. **The UK should place children's rights at the centre of climate change adaptation and mitigation strategies by mainstreaming child-sensitive risk and vulnerability reduction strategies into its National Adaptation Programme; adopting a rights-based approach to its forthcoming Emissions Reductions Plan; and through international climate change policies, programmes and financial support.** Furthermore, **the UK should take concrete measures to implement the Geneva Pledge for Human Rights in Climate Action.**

PHYSICAL PUNISHMENT

14. Recommendations 110.78 – 110.80 have not been met. Children still do not have equal protection from assault. The UK Government continues to retain the defence of "reasonable punishment" for parents/guardians in England and Wales; the defence of "justifiable assault" in Scotland remains in place. The Welsh Government has announced its intention to legislate to ban the physical punishment of children in 2017. **The UK and Scottish governments should commit to banning the physical punishment of children.**

FAMILY REUNIFICATION

15. The increase in UK resettlement places for Syrian refugees and children at risk from the Middle East and North Africa region, alongside additional commitments to relocate unaccompanied refugee children from Europe, are welcome. Yet there remain insufficient safe and legal routes for children to reach the UK, in many cases incentivising children to embark upon dangerous journeys. Refugee family reunion rules in the UK are restricted only to parents and spouses, and there is little clarity as to how discretionary powers are applied. **The UK Government should continue to invest in effectively operating the Dublin III**

Regulation for unaccompanied children. It should also widen the eligibility criteria of family reunion rules and apply them more flexibly, to enable extended family members to sponsor children facing protection risks in crisis zones to come to the UK. Moreover, children who have been granted refugee status or humanitarian protection should be able to sponsor their parent or main carer to reunite with them. The UK must also ensure that the asylum system itself continues to adhere to the principle of non-discrimination regardless of an individual's method of entry to the UK. This would comply with duties under Article 8 ECHR (right to respect for family life), Article 10 CRC (duty to expedite family reunification in a humane manner), and adhere to the principle of non-discrimination in the treatment of refugees.

BEST INTERESTS DETERMINATION

16. There is no formal Best Interests Determination mechanism for arriving at a durable solution in the best interests of each unaccompanied and separated migrant child, which takes into account all the child's protection needs. **The UK Government should establish a best interests determination procedure for unaccompanied and separated children.**

DETENTION FOR IMMIGRATION PURPOSES

17. Recommendation 110.115 is not met, and is at risk in relation to children. The UK relies on and utilises detention in asylum procedures more frequently than most other countries in the EU (in 2015, almost 15,000 immigration detainees were asylum-seekers). Despite a commitment made by the UK Government in 2010 to end the detention of children for immigration purposes, 228 children were detained in 2013, 128 in 2014 and 128 in 2015.³ Although unaccompanied and separated children are no longer detained, children whose age is subject to dispute may be detained in adult immigration removal facilities, and may be held in isolation until their age is determined. Children can also be detained as part of the family removal process in pre-departure accommodation for short periods, in entry refusal cases, or for other reasons in short-term holding facilities at ports of entry to the UK. The UK Government recently announced its intention to close Cedars, a purpose-built pre-departure accommodation facility for families, by the end of 2016, and to instead accommodate families with children prior to return in a separate wing of Tinsley House, an immigration removal centre near Gatwick Airport. Tinsley House does not provide an appropriate environment for children. **The UK Government should end the detention of children for immigration purposes, and make appropriate alternatives available.**

LEGAL REPRESENTATION FOR MIGRANT CHILDREN

18. Good quality legal advice at the earliest opportunity can have a decisive impact on asylum and other claims by a child. However, in 2012, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) drastically restricted the scope of legal aid provision and, while asylum legal aid is still funded, most non-asylum immigration is not. As a result, there is a shortage of high quality legal advice for children, with much of this concentrated in particular locations such as London and Manchester. Some unaccompanied asylum-seeking children have had to wait months for access to legal representation where the need has outstripped provision. Moreover, research has indicated that thousands of children are affected by the exclusion of immigration from legal aid support.⁴ The lack of qualified legal aid providers in many areas across the UK is a particular concern in light of the new national transfer scheme to relocate unaccompanied and separated children to other local authority areas to achieve a more equitable distribution of children across

³ UNHCR (2016), *Beyond Detention: Progress Report*
<http://www.unhcr.org/uk/protection/detention/57b579e47/unhcr-global-strategy-beyond-detention-progress-report.html>

⁴ The Children's Society (2015), *Cut off from justice*
https://www.childrenssociety.org.uk/sites/default/files/LegalAid_Full_0.pdf

England (and the UK). **The UK Government should ensure that all unaccompanied and separated children have access to high quality legal advice and representation in all matters that affect them.**

PROHIBITION OF SLAVERY AND TRAFFICKING

19. Recommendation 110.75 is partially met. A UK-wide Independent Anti-Slavery Commissioner was established in 2015, although the Commissioner reports directly to the Secretary of State rather than to Parliament. Separate anti-trafficking and modern slavery laws were passed in 2015 in England and Wales, Northern Ireland and Scotland which, while very welcome, have resulted in different criminal offences and varying entitlements to support applying across different UK jurisdictions.

20. Recommendations 110.72 – 110.74 and 110.76 have been partially met. Independent guardians have been introduced for all unaccompanied children in Northern Ireland and Scotland, and independent child trafficking advocates for all potential child victims of trafficking (including British-born children) in England and Wales. At the time of writing, the Scottish Guardianship Service is the only one that is fully operational; and additional trials are under way in England and Wales to further test the child trafficking advocacy service before any nationwide implementation. **The UK Government should extend the role of independent child trafficking advocate to all unaccompanied and separated children, and roll out a national service without undue delay.**

21. A new multi-agency approach to the National Referral Mechanism (NRM – the procedure to formally identify victims of human trafficking and modern slavery) is being trialled at the time of writing following recognition of shortcomings in the existing procedure. However, there is no right to appeal a negative NRM decision, and a persistent disparity in conclusive grounds decisions based on an individual's country of origin. **The UK should implement the multi-agency approach to the NRM without delay; establish a child specific NRM to better serve the needs of trafficked children; and introduce a right to appeal negative NRM decisions.**