

UPR Submission
Commissioner for Children and Young People Scotland
22 September 2016

Introduction

1.1 The responsibilities and powers of the Children and Young People's Commissioner Scotland, are set out in the Commissioner for Children and Young People (Scotland) Act 2002 (as amended in 2010 and 2014). The Commissioner is appointed by the Queen on the recommendation of the Scottish Parliament and is independent of the Scottish Government.

1.2 The Commissioner works to ensure that children and young people in Scotland freely enjoy their human rights and lead lives free from discrimination, their best interests are always taken into account, they have the opportunity to maximise their development and their views are given due regard in decisions that affect them.

1.3 Although the UK government is accountable to the UN, the Commissioner requests that specific recommendations are made for Scotland to acknowledge the devolved powers of the Scottish Parliament and Scottish Government under the Scotland Act 1998 and the Scotland Act 2016 e.g. criminal justice, childcare and new powers such as welfare. The 2012 recommendation from Vietnam that the government should "provide more resources for reforming the welfare system in order to make it better able to tackle poverty and worklessness, and reduce negative impact on social vulnerable groups" has implications for the UK government service funding. However it is also relevant for the Scottish Government in developing a new welfare system.

1.4 The Commissioner is keen to work with all governments within the UK, the public sector and with civil society to achieve progress on UPR delivery, within a reasonable timeframe.

2 The UK and Scotland: Concluding Observations and the UPR

2.1 There has been insufficient government engagement and accountability on the promotion and delivery of the 2012 UPR recommendations. In the mid-term review, the UK government reported a single event was held in Scotland to assess progress over 132 recommendations.¹

2.2 UK compliance with a number of UN treaties has been recently reviewed. The Concluding Observations inform what is expected from government in preparation for the UPR including:

- International Covenant on Civil and Political Rights (July 2015): the UK should raise the minimum age of criminal responsibility in accordance with international standards and ensure the full implementation of international

¹ Para 3, The Mid Term Report of the United Kingdom (July 2014) is available at [file:///C:/HRCS/UPR/UPR%20Mid%20Term%20Report%202014%20\(2\).pdf](file:///C:/HRCS/UPR/UPR%20Mid%20Term%20Report%202014%20(2).pdf)

standards for juvenile justice; step up its efforts with a view to further reducing the number of children in the juvenile justice system...”².

- Convention on the Rights of the Child (May 2016): the UK should “expedite bringing in line with the Convention its domestic legislation, at the national and devolved levels...”³.
- Covenant on Economic and Social Rights (June 2016): The Committee reminded the UK “of its obligations under the Covenant to use the maximum of its available resources with a view to progressively achieving the full realization of economic, social and cultural rights. The Committee draws the State party’s attention to the recommendations contained in its open letter of 16 May 2012 to States parties ... with regard to the criteria for austerity measures...”⁴.
- Convention on the Elimination of Racial Discrimination (August 2016): “Recalling its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party establish a statutory time limit on the duration of immigration detention and ensure that detention is used as a measure of last resort, and take further steps to end the immigration detention of children.”⁵

2.3 Co-ordination, monitoring and evaluation are all terms consistently referred to in UN recommendations. Despite these calls, there is no integrated strategy to deliver on the reports, recommendations and Concluding Observations from international and regional human rights treaty reviews. This undermines their impact in Scotland. Scotland’s National Action Plan on Human Rights (SNAP) was launched in 2013 but more needs to be done to ensure it is mainstreamed across government and the public sector. The UN Committee on the Rights of the Child recently recommended that the UK “allocate sufficient human, technical and financial resources, set up clear timelines and a monitoring and evaluation framework for the implementation of the strategy and the action plans and pay special attention to children belonging to the most vulnerable groups.”⁶

² ‘Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland’ pub by UN Human Rights Committee on 17th August 2015, para 23 and are available at UN website.

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f7&Lang=en

³ ‘Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland’ pub by UN Committee on the Rights of the Child 12th July 2016, para 7(a)

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/149/88/PDF/G1614988.pdf?OpenElement>

⁴ ‘Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland’ pub by Committee on Economic, Social and Cultural Rights 14th July 2016, para 19

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/152/41/PDF/G1615241.pdf?OpenElement>

⁵ ‘Concluding observations on the twenty-first to twenty-third periodic reports of United Kingdom of Great Britain and Northern Ireland’ pub by Committee on Elimination of Racial Discrimination 26th August 2016 para 39

http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GBR/CERD_C_GBR_CO_21-23_24985_E.pdf

⁶ ‘Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland’ pub by UN Committee on the Rights of the Child 12th July 2016, para 9

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/149/88/PDF/G1614988.pdf?OpenElement>

Recommendations

1. **The Commissioner recommends the establishment of an institutional framework at a UK and Scottish level, which includes the participation of children and young people, to oversee the delivery of a national action plan on monitoring the implementation of the UPR recommendations. This should be accompanied by tangible and measurable commitments, and progress benchmarks.**
2. **This framework should be integrated into a wider government strategy of delivering on and monitoring compliance with, the Concluding Observations from international treaty reviews, reports from UN Special Rapporteurs eg on housing⁷ and work of subsidiary bodies of the Human Rights Council such as the Forum on business and human rights.**

3 Issues

3.1 Some UPR recommendations have not been complied with and in some areas such as welfare reform there has been regression.

3.2 Incorporation of international covenants into domestic law has been repeatedly raised by the UN but has not been delivered by the Scottish or UK governments. For example in August 2016, the UN Committee on the Elimination of Racial Discrimination recommended that the UK should ensure CERD is “directly and fully applicable” under UK domestic law.⁸ The Scottish Parliament’s devolved powers give it authority to incorporate international human rights into domestic law but in 2014 chose not to do so with regard to the UNCRC. The Mid Term Review of the UPR acknowledged that civil society supported “ratification of all UN human rights instruments”⁹. It is therefore disappointing that the UK and Scottish Governments have failed to take action.

3.3 Domestic enforcement of human rights remains key to the equal enjoyment of rights. The UK Government’s decision to abolish the Human Rights Act 1998 and replace it with a British Bill of Rights was announced in May 2015 and raises new issues of concern. The UK Government has confirmed that the final arbiter on the Bill will be the UK Supreme Court.¹⁰ At the UK Parliament, an MP stated that "Britain's decision to leave the EU will remove the jurisdiction of the Luxembourg Court, which is probably the biggest obstacle to delivering a Bill of Rights."¹¹

⁷ The UN Special Rapporteur on Housing, Raquel Rolnik, visited the UK and published a report which was welcomed by the Scottish Government, see press release of 11th September 2013 <http://news.scotland.gov.uk/News/UN-Special-Rapporteur-3fc.aspx>

⁸ Para 8, The Concluding Observations are available at UN website http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GBR/CERD_C_GBR_CO_21-23_24985_E.pdf

⁹ Para 4, The Mid Term Report of the United Kingdom (July 2014) is available at [file:///C:/HRC/UPR/UPR%20Mid%20Term%20Report%202014%20\(2\).pdf](file:///C:/HRC/UPR/UPR%20Mid%20Term%20Report%202014%20(2).pdf)

¹⁰ UK Parliament Tuesday 6th Sept 2016 <http://hansard.parliament.uk/commons/2016-09-06/debates/16090629000003/OralAnswersToQuestions>

¹¹ Ibid.

3.4 *Together We Can Fix It* (2015), a consultation with children about their right to complain, concluded that children and young people currently face significant difficulties in bringing complaints. Whilst complaints bodies and regulators would welcome complaints from children and young people, these are rarely made in practice.¹²

3.5 Children need help to make complaints so service provision requires to be increased, for example to appeal against decisions on permanent, temporary or “informal” exclusion from school. Children’s Rights Officers, particularly at a local authority level, have declined in numbers.¹³

3.6 In Scotland, the way a child is assessed for civil and children’s legal assistance was altered in January 2011.¹⁴ The income of their parents and carers is now taken into consideration when a decision is made on legal aid.¹⁵ This has implications for their access to an enforceable remedy before national courts and tribunals, where their rights have been breached.

Recommendations

- 3. The UK Government should explain how a Bill of Rights will codify all ratified international human rights treaties in domestic law, including enforcement of human rights in UK domestic courts. It is also important that the Bill gives effect to the EU Social Charter in the light of the recent vote to leave the EU.**
- 4. The UK should ratify the third Optional Protocol to the Convention on the Rights of the Child on a communication procedure.**
- 5. The UK should protect the children and families of migrants and refugees, by acceding to the International Convention on the Protection of the Rights of All Migrant Workers (ICRMW).**
- 6. Children and families without sufficient means should be able to obtain legal advice assistance and where litigation is contemplated, legal representation free of charge in any case where a child’s best interests are engaged.**
- 7. There should be an audit of the availability of children’s rights officers across Scotland, particularly in local authority and health care settings, and unmet needs addressed.**

3.7 The equal enjoyment of human rights by children and young people remains to be secured. The UPR Mid-Term report emphasised the “areas for particular

¹² For more information see the Children and Young People’s Commissioner Scotland website <http://www.cypcs.org.uk/policy/new-powers> See also [http://www.cypcs.org.uk/ufiles/Together-we-can-fix-it-\(1\).pdf](http://www.cypcs.org.uk/ufiles/Together-we-can-fix-it-(1).pdf)

¹³ Issues raised in discussion at the Equal Opportunities Committee of the Scottish Parliament on 30th June 2016, Official Report <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10495>

¹⁴ Advice and Assistance (Scotland) Amendment Regulations 2010 and the Civil Legal Aid (Scotland) Amendment Regulations 2010

¹⁵ When applying for legal aid, the income and other resources of every person who owes the child an obligation of aliment must be taken into account in the calculation of the child’s means, unless it would be unjust or inequitable to do so. An obligation of ‘aliment’ is the duty owed to the child by their parents and those who have accepted the child as a child of the family, to support the child in kind or by way of financial assistance up to age 18 (and, in some circumstances, 25), regardless of whether the parent has parental responsibilities and parental rights.

concern” from civil society included the “age of criminal responsibility; corporal punishment of children; caste discrimination; inequality; gender equality; indefinite detention of migrants; hate crime (based on various grounds, including gender and disability); impact of the welfare reform.”

3.8 The lack of access to disaggregated data to make informed judgements on policy, services and funding decisions continues to be of concern. For example, in 2016, the UN Committee on Economic and Social Rights stated that the UK should “provide in its next report disaggregated data on the impact of the reforms to social security on women, children, persons with disabilities, low-income families and families with two or more children.”¹⁶ In 2016, the UN Committee on the Rights of the Child recommended that the UK “Systematically collect and publish disaggregated data on the number of children seeking asylum, including those whose age is disputed”.¹⁷

3.9 The Commissioner has developed a model for carrying out children’s rights impact assessments to look at decisions, policies or legislation. However, assessments are infrequently undertaken.

Recommendation

- 8. The UK and Scottish Governments should be required by legislation to routinely and comprehensively carry out child rights impact assessment of proposed policies and legislation and regular child rights impact analysis of policies and legislation already in effect.**

3.10 Children aged 16 and 17 years can still be recruited by the RAF, Army and Royal Navy across the UK.

Recommendation

- 9. The UK should raise the armed forces minimum recruitment age to 18**

3.11 Children should be given equal protection from assault. The Scottish Government did not change the law when there were opportunities to do so in 2005¹⁸, 2014¹⁹ and 2015²⁰. In ‘Equally Protected?’, a review of the evidence on the physical punishment of children published in 2015, clear evidence was presented about the harm to children by the continuing use of physical punishment.²¹ The

¹⁶ ‘Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland’ pub by Committee on Economic and Social Rights’ pub by UN Committee on Economic and Social Rights 16th July 2016 Para 41 (d) Available at UN website <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/152/41/PDF/G1615241.pdf?OpenElement>

¹⁷ Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland’ pub by UN Committee on the Rights of the Child 12th July 2016, para 77 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/149/88/PDF/G1614988.pdf?OpenElement>

¹⁸ Via the Family Law (Scotland) Bill <http://www.parliament.scot/parliamentarybusiness/Bills/25041.aspx>

¹⁹ Via the Children and Young People (Scotland) Bill <http://www.parliament.scot/parliamentarybusiness/Bills/62233.aspx>

²⁰ Via the Criminal Justice (Scotland) Bill <http://www.parliament.scot/parliamentarybusiness/Bills/65155.aspx>

²¹ ‘Equally Protected? A review of the evidence on the physical punishment of children’ was commissioned by the NSPCC Scotland, Children 1st, Barnardo’s Scotland and the Children and

evidence showed that: the physical punishment of children is still a common parenting practice in Scotland and the rest of the UK; there are detrimental effects on children's health and development evidenced strongly and consistently from good-quality research; physical punishment is associated with increased childhood aggression and antisocial behaviour; the relationship between physical punishment and problem behaviour is reciprocal - physical punishment exacerbates existing problem behaviour, leading to a vicious circle of cascading conflict.

3.12 In June 2016, the government's reservations on reform were explained to the Scottish Parliament "we have had some concerns and have been reticent on the question of needlessly criminalising parents for light smacking and the detrimental impact on family life."²² The UN has repeatedly called for legal reform including in the last UPR²³ and other countries have introduced legal protection.

Recommendations

10. Without further delay, the Scottish Government should abolish the adult defence of 'justifiable assault' on a child, under Section 51 of the Criminal Justice (Scotland) Act 2003.

11. This legal reform should form part of the national strategy to combat all forms of violence against women and girls.

3.13 Poverty is pernicious in the UK and Scotland, and is a barrier to children and families realising their human rights. Recent research by the Joseph Rowntree Foundation (JRF) on the extent of poverty in the UK concluded that: "13 million people in our wealthy country are living in poverty"²⁴; poverty costs the UK public finances around £78bn a year equivalent to around 4% of the UK's gross domestic product; £69bn of public service spend is required to address the impact of poverty, while an additional £9bn is the estimated cost of lost tax revenue and additional benefits spending.²⁵

3.14 Despite the welcome introduction of free school lunches for children in the first three years of primary school in Scotland, food poverty remains a serious problem: the number of children accessing food banks in Scotland has risen from 1,861 children (April 2011-March 2012) to 36,114 children (April 2014-March 2015).²⁶ The

Young People's Commissioner Scotland, pub November 2015

<https://www.nspcc.org.uk/globalassets/documents/research-reports/equally-protected.pdf>

²² Angela Constance MSP, Cabinet Secretary for Communities, Social Security and Equalities, giving evidence to the Equal Opportunities Committee on 30th June 2016 available from Scottish Parliament website <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10495>

²³ For example the UK government rejected Norway's recommendation to "Introduce a ban on all corporal punishment of children as recommended by the CRC and other treaty bodies".

²⁴ JRF chief executive Julia Unwin quoted in a Public Finance article published on 7th September 2016 http://www.publicfinance.co.uk/news/2016/09/may-urged-adopt-plan-tackle-poverty-following-brexitexit?utm_source=Adestra&utm_medium=email&utm_term=

²⁵ Research report published by the Joseph Rowntree Foundation and reported in Public Finance on 1st August 2016 <http://www.publicfinance.co.uk/news/2016/08/poverty-costs-public-finances-around-ps78bn-year>

²⁶ Save the Children (2014) A Fair Start for Every Child in Scotland.

www.savethechildren.org.uk/.../online-library/fairstart-every-child [Date accessed: 8.6.15]

Scottish Parliament's Welfare Reform Committee has concluded that there is a direct correlation between welfare reform and the increase in food banks.²⁷

Recommendation

12. The UK government and devolved governments must make child poverty a key focus, as a matter of urgency, and fully comply with the Child Poverty Act 2010. Sufficient resources must be provided to meaningfully tackle child poverty caused by the welfare system and low pay.

3.15 The right to a healthy environment is threatened by the prevalence of environmental toxins which pose a threat to children's right to life, survival and development. The UN Committee on the Rights of the Child expressed its concern "at the high level of air pollution, which directly affects child health" in the UK which "contributes to the negative impact of climate change affecting various rights of the child". In its Concluding Observations the Committee recommended that the UK "including the devolved administrations... set out a clear legal commitment, with appropriate technical, human and financial resources, to scale up and expedite the implementation of plans to reduce air pollution levels, especially in areas near schools and residential areas; Place children's rights at the centre of national and international climate change adaptation and mitigation strategies...".²⁸

Recommendation

13. There should be an inventory of current Scottish industrial chemical use.

14. A bio-monitoring programme should be introduced to guide government action to remove further risk of contamination of the Scottish population.

3.16 Child and adolescent mental health services (CAMHS) across the UK are vastly underfunded and this has affected the availability of services for children with mental health needs. Scotland was the first country in the UK to have a mental health waiting times target however from practice we know that demand is not being met, and children need to get the right help at the right time. For example, in Scotland, admissions to non-specialist inpatient settings have risen for a second year in 2013–14 (202 admissions involving 179 children). Only 50% of children had a Resident Medical Officer who was a CAMHS psychiatrist.²⁹ Despite Scottish

²⁷ Scottish Parliament (2014). Welfare Reform Committee, second report 2013: Foodbanks and welfare reform.

http://www.scottish.parliament.uk/S4_Welfare_Reform_Committee/Reports/wrr-14-02w.pdf [Date accessed: 8.6.15]

²⁸ Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland' pub by UN Committee on the Rights of the Child 12th July 2016, para 68
<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/149/88/PDF/G1614988.pdf?OpenElement>

²⁹ Mental Welfare Commission for Scotland (2014) *Young Person monitoring 2013–14*. Available at: http://www.mwscot.org.uk/media/203515/young_person_monitoring_2013_2014.pdf

Government announcements on additional funding³⁰, the demand for services at all levels is high and early intervention is essential if children are to recover quickly, often preventing longer term engagement with services and reduced life chances.

Recommendations

- 15. The Scottish Government should provide the required level of funding in child and adolescent mental health services to meet the needs of children with particular attention to those at greatest risk, including disabled children, children deprived of parental care, children affected by conflict, trauma, abuse and neglect, those living in poverty and those in conflict with the law.**
- 16. The Scottish Government should invest in universal preventative and early intervention children's services.**

3.17 The UN Guiding Principles on Business and Human Rights (UNGPs) are important for children as consumers, users of social media and as employees. The importance of regulation of private companies arose in the Commissioner's report submitted to the Scottish Parliament '*Improving Youth Football in Scotland*' (2015)³¹, which focused on children and young people's participation, their experience of the 'youth registration process' and the impact it has on their lives. Developing children and young people's football talent involves a significant public contribution e.g. via SportScotland and local authorities providing school sport facilities. Despite children and young people being involved in commercial arrangements with private companies that operate the professional football teams, there appears to be a gap in regulatory activity by the Scottish Government. For example, in the youth football registration process, currently, too many children are signing what they genuinely believe is a 'contract' from as young as 10 years.

Recommendations

- 17. The youth football registration process in Scotland must take account of the interests and rights of children and young people as much as the interests of professional football clubs.**
- 18. The system needs to be independently regulated and monitored.**
- 19. A new process needs to be put in place to ensure that children and young people can lodge a complaint when they feel their rights have been infringed by a club.**

4. Conclusion

4.1 This submission details the range and seriousness of problems which results in the unequal enjoyment of children's rights in Scotland.

³⁰ 'Mental Health Funding' Scottish Government News Release 12th January 2016
<http://news.scotland.gov.uk/News/Mental-health-funding-2139.aspx>

³¹ The full report can be read at
https://www.scottish.parliament.uk/S3_PublicPetitionsCommittee/Submissions_10/20150520_PE1319_YY_SCCYP.pdf

4.2 Effective and accessible redress is key to enforce rights. The Commissioner's powers are to be expanded to investigate complaints from individual children and young people³². It is anticipated that only a small number of investigations will be carried out annually. Sufficient resources must be made available to ensure that this function can be effectively delivered for Scotland's one million children and young people.

20. Recommendation

Therefore, the Scottish Parliament should consider allocating additional funds to enable the Commissioner to fulfil the existing as well as expanded functions.

(2813 words)

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³² Children and Young People (Scotland) Act 2014