

Children's Rights Alliance for England

Universal Periodic Review

Submission by the Children's Rights Alliance for England to the UN Human Rights Council relating to the United Kingdom for session scheduled April 2008

About the Children's Rights Alliance for England

The Children's Rights Alliance for England ('CRAE') is a coalition of more than 380 voluntary and statutory organisations committed to the full implementation of the UN Convention on the Rights of the Child ('UNCRC'). Our mission is to transform the lives and status of children in England by lobbying for laws and policies to be fully compliant with children's human rights, monitoring Government action on implementing the UNCRC and other human rights instruments, and disseminating children's rights information to the public.

In this submission, we focus upon the UK Government's performance of its human rights obligations and commitments as they relate to children – principally under the UNCRC. The contents of our submission are based on our collaborative work with UK NGOs and Government throughout the year, including the preparation of our annual State of Children's Rights report and co-ordination of the NGO (England) alternative report to the UN Committee on the Rights of the Child.

The UK's framework for the promotion and protection of human rights

International human rights agreements

A full list of the international human rights agreements signed, ratified or acceded to by the UK, including the UK's declarations and reservations to those agreements, can be found on the UK Foreign & Commonwealth Office website.¹ The UK ratified the UNCRC in 1991 but has ratified only one of the Convention's two Optional Protocols (relating to armed conflict), and then with such a far-reaching declarative interpretation as to make its ratification effectively meaningless. The UK retains reservations in respect of children in custody and refugee and asylum seeking children (see below).

The UK has signed, but not yet ratified, the UN Convention on the Rights of Persons with Disabilities. While the UK has signed the revised European Social Charter, it has not ratified it, and has not signed up to its collective complaints mechanism. Indeed, it has to date only signed up to one complaints mechanism; that relating to CEDAW.

Human Rights Act

The European Convention on Human Rights ('ECHR') was incorporated into UK law by the Human Rights Act 1998 ('HRA'), which came into force in 2000. UK legislation must now comply with the ECHR, and the rights contained in it are enforceable against public authorities in the UK's courts.

¹<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1044360377428>

Voluntary pledges and commitments on human rights

When it stood as a candidate for election to the UN Human Rights Council, the UK Government made a number of voluntary pledges and commitments, stating that the UK would “*continue to strive for the highest standards in promotion and protection of human rights.*” In support of this promise, the Government referred to the Discrimination Law Review - which is expected to culminate in an Equality Act before 2009 - and the establishment in October 2007 of the first national human rights institution in the UK – the Equalities and Human Rights Commission (see below).²

Written constitution and British Bill of Rights and Duties

In July 2007 the Government published a Green Paper, ‘The Governance of Britain’, announcing plans to launch a national debate on British values, with a view to working towards the establishment of a British Bill of Rights and Duties and, ultimately, a written constitution. Supporters of civil liberties have expressed concerns that this could entail the dilution of the HRA, but the Government has repeatedly stated its intention to enhance and not weaken British human rights. We are therefore pushing for the Government to use this opportunity to strengthen children’s human rights, by incorporating at least some of the rights, principles and provisions of the UNCRC (see below), extending beyond civil and political rights.

Equality and Human Rights Commission

In October 2007, the Equality and Human Rights Commission (‘EHRC’) was established as the UK’s first national human rights institution. The EHRC is a non-departmental public body established under the Equality Act 2006 – accountable for its public funds, but independent of Government. Its responsibilities include enforcing human rights and equality laws, influencing Government and promoting equality and human rights. Ministers have made strong reassuring statements about the Commission working with and for children.

Promotion and protection of human rights on the ground

International treaties must be incorporated into UK law before they are enforceable by individuals in the UK courts. Other than the ECHR, no human rights treaties have been incorporated and their effect on human rights on the ground is therefore limited. Of course the Law of Treaties (articles 26 and 27), which the UK ratified in 1971, makes it plain that non-incorporation is no excuse for inaction on international law. However, incorporation of the UNCRC would bring many benefits for the UK’s children.

If the UNCRC were incorporated in the same way as the ECHR, this would require Ministers to introduce legislation only after it has been ‘children’s rights-proofed’; it would add authority to the UNCRC and give a clear message to public authorities about their human rights obligations to children. It would provide fertile ground for positive dissemination activities on children’s human rights, including with children, parents and professionals; and it would require the judiciary to use the UNCRC routinely as its framework for considerations relating to children’s human rights.

The HRA continues to be widely misunderstood by the British public, and few have even heard of the UNCRC and other international treaties. A Government online survey of over 4,000 children found that only six per cent knew a lot about the UNCRC – 16 years after ratification. It is not part of the national school curriculum.

² The UK’s statement of voluntary pledges and commitments on human rights can be found on the United Nations website at: www.un.org/ga/60/elect/hrc

Hopes are now pinned on the EHRC for the promotion and enforcement of human rights, but it will fail unless it has whole-hearted Government support.

The Government's over-arching strategy for children's services, entitled 'Every Child Matters', sets out how agencies and services should co-operate to improve children's well-being. It does not in any way meet the human rights obligations of the UNCRC (and was not designed to do so). Even within this narrow strategy, children in trouble with the law and refugee and asylum seeking children are treated differently from the rest of the child population.

The UK Government still resists a rights-based approach to improving children's well-being and position in society. Human rights debates – and especially children's rights - are still characterised by panic, fear and ignorance. Ministers rarely rebut myths about children's rights and sometimes they have been the promulgators. CRAE welcomed the appointment this year of Ed Balls as the first UK Secretary of State for Children, Schools and Families, and the establishment of new Government machinery working for children. However, when Mr Balls launched his consultation on a national Children's Plan (covering the next 10 years of policy and service development), the UNCRC was not mentioned.

The UK is one of the most unequal societies in Europe, and the gap between rich and poor is increasing. The Government's commitment to halve child poverty by 2010 has received cross-party support, but the consensus is that about £4 billion more needs to be spent each year in order to achieve this. The Government's failure to ratify the revised European Social Charter, and to sign up to its collective complaints mechanism, reflects a wider refusal to recognise socioeconomic rights as an essential tool for securing equality.

The UK's achievements, best practices, challenges and constraints

Achievements and best practices

New statutory bodies

The creation of the EHRC is a very positive step forward. We also very much welcomed the appointment of a Children's Commissioner in England in 2005, although we have serious reservations about the Commissioner's narrow remit (to promote awareness of children's views and interests, rather than to promote and protect their human rights), limited independence and lack of powers.

Child protection

The Children Act 2004 introduced new duties on social workers to ascertain and give due consideration to the child's wishes and feelings in child protection investigations. This has the potential to transform the focus of the child protection system, putting the child firmly at the centre.

Improvements in children's effective participation

The Government has promoted a number of positive developments over the past year, both in terms of departmental practice by Whitehall and the requirements on local authorities. Children's participation in decision-making continues to be seen as central to children's services reform, but there needs to be increased opportunity for children to participate in public policy making and more emphasis upon monitoring the impact of this participation. Provisions in the Childcare Act 2006 to increase the voice and influence of young children are especially welcome.

Protection against discrimination based on sexual orientation

Lesbian, gay and bisexual people (including children) have recently gained new protection with the passing of The Equality Act (Sexual Orientation) Regulations 2007, which make it unlawful to discriminate in the provision of goods, facilities and services on grounds of sexual orientation. The Government announced in October 2007 that it plans to introduce legal protection from incitement to hatred on the grounds of sexual orientation.

International protection against commercial exploitation of children

The UK Government has been responsible for a number of recent positive developments. In March 2007, the Government signed (although it has yet to ratify) the Council of Europe Convention on Action against Trafficking in Human Beings.

Challenges and constraints

Children in conflict with the law

The UK falls far short of its international human rights obligations in its treatment of children in conflict with the law – including the UNCRC, ECHR and UN Convention Against Torture ('UNCAT').³ The UK is the biggest child incarcerator in Western Europe. Twenty nine children have died in custody in the last 17 years, and the UK has never held a public inquiry into a child's death in custody. Inquests this year into the tragic deaths in 2004 of two teenage boys, both following the use of restraint, revealed serious failings by the Government and the Youth Justice Board ('YJB').

The Government has set up a welcome independent review of physical restraint of children in custody. However, in the meantime it allows staff in privately run child prisons to use very painful nose, rib and thumb 'distraction' techniques and, in July 2007, introduced regulations that allow such techniques to be used to achieve good order and discipline. This effectively introduces corporal punishment into secure training centres – places of detention for children as young as 12.

The Chief Inspector of Prisons says in her latest annual report that neither Government nor the YJB is adequately safeguarding vulnerable child prisoners. Parliamentary questions this year have revealed shocking statistics on children in custody self-harming, on the use of oxygen following physical restraint of children and forced strip-searching. This treatment would be regarded as child abuse in any other context but continues to be tolerated for children in custody, with serious concerns that Local Safeguarding Children Boards (new statutory child protection bodies) are failing these children.

Refugee and asylum seeking children

The UK still fails to meet its UNCRC obligations to protect refugee and asylum seeking children. Apart from suspected terrorists, asylum seekers – including children - are the only people in the UK who can be detained without any judicial scrutiny. Asylum seeking families still receive much fewer benefits than other destitute families and access to education remains subject to unacceptable barriers. The Government has proposed increased use of X-rays to determine the age of separated children, despite warnings from experts that they are unreliable and can be harmful.

³ Annexed to this report is our recent joint submission with the National Society for the Prevention of Cruelty to Children (NSPCC) to the Parliamentary Joint Committee on Human Rights in response to its inquiry into the use of restraint in secure training centres and compliance with international human rights obligations.

Equal protection for children

Despite strong support for full legal protection among professionals, children and many parents, and contrary to its UNCRC obligations, Ministers have indicated that they will not abolish the legal concept of 'reasonable punishment' – introduced in 2004 to replace the 'reasonable chastisement' of the 19th century common law. Coming in the same year as the UNICEF report showing children in the UK are the least happy of the world's 21 richest countries, and the publication of the UN Secretary General's Study on Violence against Children, we consider this to be one of the most wilful breaches of children's human rights. We endorse the submissions of the Global Initiative to End All Corporal Punishment of Children in this regard.

Key recommendations for the UK to strengthen human rights on the ground

Key developments we would like to see for children in the UK include:

- Incorporation of at least some of the rights, principles and provisions of the UNCRC into a British Bill of Rights that enhances children's rights and does not make them contingent on compliance with duties or responsibilities.
- Ratification of the UN Convention on the Rights of Persons with Disabilities.
- Ratification of the revised European Social Charter and acceptance of its collective complaints mechanism.
- Acceptance of the complaints mechanisms of all other regional and international human rights bodies, with publicity, training and resources to ensure these mechanisms can be used appropriately by vulnerable children.
- Introduction of a child custody threshold to dramatically reduce the numbers of children sentenced to custody.
- Transformation of children's custodial environments, by creating genuinely child-centred and non-punitive environments for children's protection and rehabilitation, staffed by experts, with rigorous independent monitoring, inspection and safeguarding mechanisms.
- Abolition of painful 'distraction' techniques and restriction of the purposes for which physical restraint can be used, requiring the introduction of management systems that make staff and institutions accountable for the inappropriate use of restraint.
- Withdrawal of the UK's reservation to the UNCRC concerning segregation of children from adults in detention and provision that all detained children are held separately from adults.
- Introduction of reporting restrictions to end the 'naming and shaming' of children subject to anti-social behaviour proceedings.
- Withdrawal of the reservation to the UNCRC concerning refugee and asylum seeking children and fulfilment of the UK's international human rights obligations towards refugee and asylum seeking children, ending their detention and inhumane treatment.
- Abolition of the 'reasonable punishment' defence, giving children equal protection against violence in the home.
- Protection of children against age discrimination in the forthcoming Equality Act.

**Children's Rights Alliance for England
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