

Joint submission to the United Nations Committee Against Torture 66th session on the sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland by the Scotland, Wales and Northern Ireland Children and Young People's Commissioners

Authors

Children and Young People's Commissioner Scotland

Children's Commissioner for Wales

Northern Ireland Commissioner for Children and Young People

Introduction

1. This submission regarding the UK's sixth Periodic Report on compliance with the UN Convention against Torture (UNCAT) relates to the protection of children's human rights in Scotland, Wales and Northern Ireland.
 - 1.1. The Children and Young People's Commissioner Scotland, Children's Commissioner for Wales and Northern Ireland Commissioner for Children and Young People operate under the Paris Principles to promote and safeguard children's human rights with their devolved contexts in the UK.
 - 1.2. Our submission highlights nine key children's human rights issues of concern in Scotland, Wales and Northern Ireland and recommends actions that the UN Committee Against Torture (the Committee) can hold the UK and devolved governments accountable for:
 - Incorporation of the UN Convention Against Torture and UN Convention on the Rights of the Child (Article 4 UNCAT)
 - Minimum age of criminal responsibility (Article 11 UNCAT)
 - Youth justice (Article 11 UNCAT)
 - Strip-searching children (Article 11 UNCAT)
 - Restraint and seclusion of children (Article 16 UNCAT)
 - Physical punishment of children (Article 16 UNCAT)
 - Mosquito devices in Scotland (Article 16 UNCAT)
 - Abortion in Northern Ireland (Article 16 UNCAT)
 - Recruitment of children by paramilitary groups in Northern Ireland (Article 16 UNCAT)

Article 4: Take effective legislative, administrative, judicial or other measures to prevent acts of torture.

2. The UK, Scottish, Northern Ireland and Welsh governments¹ should incorporate the UN Convention Against Torture (UNCAT) and UN Convention on the Rights of the Child (UNCRC) into domestic law as a matter of urgency.
 - 2.1. The Committee asked for detailed information on measures taken to incorporate the UN Convention Against Torture. UNCAT protections for children and young people will be strengthened via incorporation of the UNCRC. Despite consistent calls from across the UN, including the UN Human Rights Council UPR mechanism, UN Committee on the Rights of the Child and UN Special Rapporteur on Extreme Poverty and Human Rights, the UNCRC has still not been incorporated into domestic law in Scotland, Wales, Northern Ireland or the UK.
 - 2.2. The Scottish Government must act urgently to progress its Programme for Government 2018-19² commitment to incorporate the principles of the UNCRC into domestic law beyond consultation on models of incorporation to the introduction of a bill within the current parliamentary term.³
 - 2.3. The Welsh Government must take concrete steps to further incorporate the UNCRC into Welsh law, to create a duty for all public bodies to act compatibly with the UNCRC and to allow for individuals to challenge those bodies in the case of a failure to do so. The existing Welsh Government duty to pay due regard to the UNCRC does not amount to full direct incorporation of the UNCRC.
 - 2.4. The Northern Ireland Government should demonstrate its commitment to the UNCRC on its 30th anniversary by fully and expressly incorporating the Convention and its protocols in domestic legislation. Few policies or pieces of legislation refer to the UNCRC and only a very limited number of Child Rights Impact Assessments have been conducted. The development of the Children's Services Cooperation Act 2016 and a new Children's Strategy (currently in draft form) requires government departments to provide a child rights basis for the delivery of children's services, but fall short of full incorporation of the UNCRC.

Article 11: Systematic review of interrogation rules, instructions, methods and practices and arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment, with a view to preventing torture.

3. The UK, Scottish, Northern Ireland and Welsh governments should raise the minimum age of criminal responsibility to at least 14 years, without delay, and immediately start work to raise to a higher minimum age, for instance 15 or 16 years.
 - 3.1. The Committee asked if the UK is considering increasing the minimum age of criminal responsibility in line with international standards. The UN Committee on the Rights of the

¹ While some of our recommendations refer to a 'Northern Ireland Government', there has been no government in, or of, Northern Ireland since January 2017. However, the Secretary of State has not suspended devolution, which would allow governance to return to the UK Government.

² Scottish Government (2018). [Delivering for today, investing for tomorrow: the Government's programme for Scotland 2018-2019](#), pp.75 and 83.

³ The next Scottish Parliamentary elections are scheduled for May 2021.

Child is in the process of finalising a revision to its General Comment 10 to make it clear that 14 is the minimum international standard, and has consistently raised this issue. .

- 3.2. The Scottish Government must legislate to raise the age of criminal responsibility to at least the international minimum standard of 14 years, preferably a higher age of 15 or 16 years. For example, by amending the proposed Age of Criminal Responsibility (Scotland) Bill. Scotland currently has the lowest minimum age of criminal responsibility in Europe, at 8 years, and the bill, at this time, would only raise this to 12 years, below international and European minimum standards. The CRC gave evidence to the Scottish Parliament, along with the Council of Europe Commissioner for Human Rights highlighting the international minimum standard, but their calls were rejected by the Scottish Government who oppose any raise above 12.
 - 3.3. The UK Government should raise the age of criminal responsibility to 14 for the single legal jurisdiction of England and Wales. The minimum age of criminal responsibility in England and Wales is 10.
 - 3.4. The Northern Ireland Government must ensure that Northern Ireland's Youth Justice System is child rights compliant and publish proposals to raise the minimum age of criminal responsibility to 14 without delay. The minimum age of criminal responsibility in Northern Ireland is 10. In 2011 the Northern Ireland Youth Justice Review made a clear recommendation that the Minimum Age of Criminal Responsibility should be raised to 12, with immediate effect, and then further consideration should be given to an increase to 14 within 3 years. This has not occurred.
4. The UK, Scottish, Northern Ireland and Welsh governments should ensure that children under 18 years are not detained in prisons, other adult provision, or young offender institutions. Where children do need detained for safety and proportionate sanctions, they should be given appropriate human rights centred support and accommodation.
 - 4.1. The Committee asked for information on efforts to meet the special needs of minors in detention and raised concerns of deficiencies in access to appropriate mental health care and inappropriate placement of children. The needs of under 18s within the criminal justice systems of the UK are not being fully met and there is a gap for data on the detention of minors.
 - 4.2. The Scottish Government should ensure that no children under 18 years are detained in prisons, other adult provision, or young offender institutions, by providing sufficient alternate accommodation for under 18s. Those children who do need detained for safety and sanctions should be given appropriate human rights centred support and accommodation.
 - 4.3. The Scottish Government should go further than its independent expert review of mental health and other support for young people entering HM Prison & Young Offenders Institution Polmont. There is a need for a comprehensive review of mental health support across environments where children and young people are detained, with consideration of systems, processes and decision-making that lead to children being detained.
 - 4.4. The UK Government should give further consideration to the devolution of youth justice to allow for changes in practice and support offered to children in Wales. Despite youth justice remaining part of one single legal jurisdiction for England and Wales, many of the

support mechanisms and services are devolved to Wales, such as health, social care and housing.

- 4.5. The Welsh Government should ensure there is suitable safe accommodation available for all young people with severe or complex behavioural or emotional needs, whether in youth justice, mental health or social care.
 - 4.6. The Northern Ireland Government must monitor how it is fulfilling its statutory obligations to ensure adherence to the best interests of children involved with the youth justice system, including data demonstrating improvements in levels of delay. No child has been in an adult prison for a number of years, however legislation is required to copper fasten this policy. A 'Review of the Youth Justice System in NI' (YJR) was published in 2011, with one of the key concerns "unconscionable" levels of delay within the Youth Justice System.⁴ The YJR made a clear recommendation that "Statutory Time Limits (STLs) should be introduced for all youth cases, providing a maximum period from arrest to disposal of 120 days". Since the publication of the YJR, there have been three Justice Acts passed by the Northern Ireland Assembly, none of which introduced STLs for youth justice cases. The latest available statistics from the Department of Justice indicate that there has been no improvement in delays for youth justice cases. In fact, the median number of days has increased between 2015/16 and 2016/17. The YJR was extremely forthright in 2011 and it is unacceptable that, 7 years later, there is no evidence of any progress.
5. The UK, Scottish, Northern Ireland and Welsh governments should provide data and rights-based practice guidance on the use of strip-searching across the range of institutions where children are detained.
 - 5.1. National data and information on the treatment of children who have been detained, restrained, secluded or strip-searched by the State is limited.
 - 5.2. The Scottish Government should ensure data and rights-based practice guidance is made routinely and publicly available on the use of strip searches on children in all settings. The Scottish Government should undertake a review of use of the practice of strip searching and what information is given to parents and children in relation to the legal basis of the search and their rights throughout the process to inform publication of national guidance for practitioners consistent with international and domestic law.

Article 16: Prevent other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1 (which reads 'pain or suffering inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity')

6. The UK, Scottish, Northern Ireland and Welsh governments should create national policy and statutory guidance on restraint and seclusion of children in all settings and should require Scottish Government to record and report data on restraint and seclusion of children

⁴ Northern Ireland Government, 'A Review of the Youth Justice System', Northern Ireland Department of Justice, 2011.

in all settings.

- 6.1. In the Concluding Observations on the fifth periodic report of the UK, the UN Committee on the Rights of the Child expressed its concern about ‘the use of restraint and seclusion on children with psycho-social disabilities, including children with autism, in schools.’ In its 2017 Concluding Observations on the initial report of the UK, the UN Committee on the Rights of Persons with Disabilities urged the UK to ‘adopt appropriate measures to eradicate the use of restraint for reasons related to disability within all settings.’ Despite these calls to action, the UK and devolved governments are still not fulfilling their responsibilities in relation to restraint and seclusion of children in all settings.
 - 6.2. The Scottish Government should publish a rights-based national policy and guidance on restraint and seclusion of children in all settings. Children and young people should be involved in all stages of its development. The Scottish Government should analyse and publish data on restraint and seclusion of children in all settings as part of its official statistics. These recommendations are taken from the first formal investigation by the Children and Young People’s Commissioner Scotland into restraint and seclusion in Scotland’s schools.⁵
 - 6.3. The Welsh Government should promote ‘Positive Behaviour Support’ approaches through guidance and training, within a broader children’s rights approach to education, to minimise the use of restrictive practices such as restraint and seclusion. Guidance on the use of restraint and restrictive practices in schools and other settings in Wales comes from a range of different sources. The Welsh Government should ensure that guidance for practitioners is clear and that children’s human rights are at the forefront of all policies relating to restraint and seclusion of children.
 - 6.4. The Northern Ireland Government must ensure that restraint is only used where the child poses an imminent threat of injury to themselves or others, and only when all other means of control have been exhausted. Only techniques proven to be safe for children should be used and pain should never be deliberately inflicted in order to restrain a child. Schools should be required to record and report uses of restraint and seclusion. There is no requirement on schools to record and/or report uses of restraint and seclusion, and so there is little data to allow an analysis of the frequency and impact of these practices. NICCY has been informed of some cases of this being used, for example the use of seclusion as ‘in school’ or ‘informal’ suspensions for breaches of uniform rules. We are also aware of seclusion and restraint being used with children with Special Educational Needs to address behavioral challenges.
7. The UK, Scottish, Northern Ireland and Welsh governments should ensure every child has equal protection from all forms of assault, including physical punishment, through legislative reform and a commitment to fully resourced family support.

⁵ Children and Young People’s Commissioner Scotland, [‘No Safe Place: Restraint and Seclusion in Scotland’s Schools’](#), CCYP/2018/3, 2018.

- 7.1. The Committee asked for information on the measures taken to ensure that physical punishment of children is explicitly prohibited in all settings, including at home and in alternative care settings.
 - 7.2. The Scottish Government should ensure that new legislation prohibiting the physical punishment of children is supported by awareness raising and increased support for parents and families. The Children (Equal Protection from Assault) (Scotland) Bill is currently being considered by the Scottish Parliament.
 - 7.3. The Welsh Government must urgently act on its intention to remove the defence of 'reasonable punishment' from law, to give children protection from physical punishment in any setting, including family. The law of assault for England and Wales currently allows for a parent or someone acting 'in loco parentis' to claim a defence of "reasonable punishment" if charges of assault or battery are being considered in relation to an offence against a child.
 - 7.4. While the law regarding physical punishment in Northern Ireland was reformed to restrict the defence of 'reasonable chastisement' or 'reasonable punishment' in the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006, the defence is still available to parents in certain circumstances in regard to the offence of common assault. It is time for government to reform the law to ensure children have equal protection from all forms of assault, including physical punishment, and to renew its commitment to supporting families, including through dedicated and effective positive parenting support. Equal Protection must be directly addressed by the Family and Parenting Support Strategy, currently being developed by the Department of Health in conjunction with other Departments, as well as in broader strategies, such as the Children and Young People's Strategy.
8. The UK, Northern Ireland and Scottish governments should ban the use of acoustic 'mosquito' devices used to disperse gatherings of children and young people in public places.
 - 8.1. In its 2016 Concluding Observations, the UN Committee on the Rights of the Child explicitly called on the UK to prohibit the use of mosquito devices in public spaces in order to guarantee children's right to freedom of movement and peaceful assembly. The use of mosquito devices to repel children and young people further entrenches the negative and intolerant attitudes towards children and young people in public spaces; a pre-existing problem for children and young people in the UK.
 - 8.2. The Scottish Government should use all available powers to restrict the use of mosquito devices. The Scottish Youth Parliament urged the Scottish Government to ban outright the use of 'mosquito devices' in Scotland via its 2018 public petition PE01713 and media attention. However, a ban or any restrictions have not yet been introduced.
 - 8.3. The Northern Ireland Children and Young People's Commissioner welcomes the fact that mosquito devices are not used on government properties nor do PSNI advise their installation in Northern Ireland. The Northern Ireland government should consider banning their use altogether, as the devices discriminate against children and could cause distress to babies and non-verbal children.

9. The UN Committee on the Rights of the Child's recommendation to decriminalise abortion, and ensure girls' access to safe abortion and post-abortion care services, should be implemented in Northern Ireland, without delay.
 - 9.1. Abortion remains illegal in Northern Ireland, except in very limited cases where a woman's life is at risk. This is in contrast to the rest of the UK and Ireland. In 2014, the Northern Ireland Department of Justice launched a consultation on whether abortion should be legalised where a foetus has a fatal abnormality or where pregnancy is the result of sexual crime. In 2015, the Belfast High Court declared that the Northern Ireland abortion law was incompatible with Article 8 of the ECHR and this was supported in 2018 by a Supreme Court ruling that the ban on abortion in NI was in breach of human rights.
 - 9.2. The UN Committee on the Rights of the Child commented on the ban on abortion in Northern Ireland in 2016, stating:

'65. With reference to its general comments No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child and No. 15 (2013), the Committee recommends that the State party (...)

(c) Decriminalize abortion in Northern Ireland in all circumstances and review its legislation with a view to ensuring girls' access to safe abortion and post-abortion care services. The views of the child should always be heard and respected in abortion decisions.'
10. The UK and Northern Ireland governments should continue to work to address the role that 'paramilitary organisations' have in the lives of children and young people and greater effort must be made to work in partnership with community-based NGOs and young people themselves.
 - 10.1. Reports of activity by non-state forces continue to be confirmed by young people across both communities who have stated that there is continued recruitment to paramilitary organisations often through coercion or in payment for drug debts. Young people perceived to be involved in crime or anti-social behaviour continue to be assaulted and excluded from their communities. Additionally, children and young people witness the assaults and murders of family members.
 - 10.2. The media has also highlighted the trauma experienced by children who witness paramilitary style attacks. A report using figures obtained from the Northern Ireland Housing Executive (NIHE) showed that from 2012-2015 there were almost 1,300 cases of paramilitary intimidation which forced people out of their homes. This accounts for 70% of cases of intimidation from public housing over this period. This does not take into account incidents of forced paramilitary intimidation from other types of accommodation including private housing.

10.3. The Tackling Paramilitary Activity, criminality and Organised Crime – Executive Action Plan was published by the NI Executive in July 2016 and it contained a recommendation (B13) regarding outlining early intervention programmes to prevent young people becoming involved in paramilitary activity. Whilst the implementation of this recommendation is still to be realised several of the measures being taken under the broader action plan have resulted in greater public awareness of the harm caused by paramilitary organisations.

Summary of Recommendations

1. Incorporate the UN Convention Against Torture (UNCAT) and UN Convention on the Rights of the Child (UNCRC) into domestic law as a matter of urgency.
2. Raise the minimum age of criminal responsibility to at least 14 years, without delay, and immediately start work to raise to a higher minimum age, for instance 15 or 16 years.
3. Ensure that children under 18 years are not detained in prisons, other adult provision, or young offender institutions. Where children do need detained for safety and proportionate sanctions, they should be given appropriate human rights centred support and accommodation.
4. Provide data and rights-based practice guidance on the use of strip-searching across the range of institutions where children are detained.
5. Create national policy and statutory guidance on restraint and seclusion of children in all settings and should require Scottish Government to record and report data on restraint and seclusion of children in all settings.
6. Ensure that every child has equal protection from all forms of assault, including physical punishment, through legislative reform and a commitment to fully resourced family support.
7. Ban the use of acoustic ‘mosquito’ devices used to disperse gatherings of children and young people in public places.
8. Decriminalise abortion and ensure girls’ access to safe abortion and post-abortion care services in Northern Ireland, without delay.
9. Continue to work to address the role that ‘paramilitary organisations’ have in the lives of children and young people and greater effort must be made to work in partnership with community-based NGOs and young people themselves.

About the authors

The Children and Young People's Commissioner Scotland was created in accordance with the Commissioner for Children and Young People (Scotland) Act 2003 to promote and safeguard the rights of children and young people across Scotland, with reference to the United Nations Convention on the Rights of the Child (UNCRC) and wider international human rights framework. Under Articles (4) and (5) of this legislation the Commissioner has a mandate to continually review the effectiveness of all law, policy and practice to promote and protect children's human rights and the best interests of children and young people. The Commissioner's remit includes children and young people aged 18 and under, and 21 and under if care-experienced.

The Children's Commissioner for Wales is an independent children's human rights institution. The Commissioner's remit is laid down in the Children's Commissioner for Wales Act 2001, which amended the Care Standards Act 2000. The principal aim of the Commissioner is to safeguard and promote the rights and welfare of children. This must be the Commissioner's overriding objective when undertaking her work. In carrying out her work, the Commissioner must have regard to UNCRC. The UNCRC underpins all of the Commissioner's work. The Commissioner's remit covers all areas of the devolved powers of the National Assembly for Wales insofar as they affect children's rights and welfare.

The Office of the Northern Ireland Commissioner for Children and Young People (NICCY) was created in accordance with 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland. Under Articles 7(2) and (3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. Under Article 7(4), NICCY has a statutory duty to advise any relevant authority on matters concerning the rights or best interests of children and young persons. The Commissioner's remit includes children and young people from birth up to 18 years, or 21 years, if the young person is disabled or in the care of social services. In carrying out her functions, the Commissioner's paramount consideration is the rights of the child or young person, having particular regard to their wishes and feelings. In exercising her functions, the Commissioner has regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

For more information please contact:

Kara Brown, Legal Officer (International)

Children and Young People's Commissioner Scotland.

Telephone: (+44) 0131 345 5350

Email: kara.brown@cypcs.org.uk