



Submission to the Universal Periodic Review of the United Kingdom of Great Britain and Northern Ireland - Thirteenth session of the Working Group on the UPR Human Rights Council 2012

The Wales Monitoring Group on the UN Convention on the Rights of the Child

Contact information:

**Wales UNCRC Monitoring Group
Save the Children Wales**

Phoenix House
8 Cathedral Road
Cardiff CF11 9LJ
Telephone: 00 44 (0) 2920 396 838
Website: www.childrensrightswales.org.uk

James Pritchard: Head of Wales Save the Children:

j.pritchard@savethechildren.org.uk

Trudy Aspinwall: Child Rights Policy Officer:

t.aspinwall@savethechildren.org.uk

The Wales UNCRC Monitoring Group is a national alliance of non-governmental and academic agencies convened and chaired by Save the Children in Wales. Observers from national and local government and from independent human rights institutions also sit on the Group. Established in 2002 the group is tasked with monitoring and promoting the United Nations Convention on the Rights of the Child in Wales. The Group works to advise and influence strategic developments in Wales regarding the implementation of children's rights, carries out research, awareness-raising, and coordinates the CRC reporting process on behalf of the non-governmental agencies in Wales publishing regular reports and briefings on the state of children's human rights in Wales.

The Wales UNCRC Monitoring Group membership includes:

Aberystwyth University Centre for Welsh Legal Affairs

www.aber.ac.uk/en/law-criminology/research/cwla

Action for Children

www.actionforchildren.org.uk

Barnardos Cymru

www.barnardos.org.uk

Cardiff University Department of Child Health
<http://medicine.cf.ac.uk/en/departments/child-health>

Children in Wales

www.childreninwales.org.uk

Funky Dragon

www.funkydragon.org

NACRO Cymru

www.nacro.org.uk/who-we-are/nacro-cymru

NSPCC Cymru

www.nspcc.org.uk

Save the Children Wales (Chair)

www.savethechildren.org.uk/where-we-work/united-kingdom/wales

Swansea University School of Law

www.swan.ac.uk/law

Observers:

Children's Commissioner Office for Wales

www.childcomwales.org.uk

Equality and Human Rights Commission

www.equalityhumanrights.com/wales

Welsh Government: Empowering Children and Young People Branch

<http://wales.gov.uk>

Welsh Local Government Association

www.wlga.gov.uk

UNICEF UK

www.unicef.org.uk

1. INTRODUCTION

1. This submission has been prepared by the Wales Monitoring Group on the UN Convention on the Rights of the Child – a Wales wide coalition of non-governmental organisations and academic institutions. Established in 2002 the Monitoring Group is chaired by Save the Children Wales and produces the Wales NGO report to the Committee on the Rights of the Child.

2. The issues raised in our submission draw on our concerns regarding children's human rights in the UK and Wales and are based on our previous reports to the CRC Committee in 2007 'Stop, look listen', the CRC Committee's Concluding Observations to the UK State party in 2008 and on the Save the Children research 'Governance Fit for Children' which examined the progress on implementing the general measures of the CRC across 5 European countries including the UK and the devolved governments of Wales, Scotland and Northern Ireland.

We work with Save the Children UK and with the Rights of the Child UK Coalition to realise the human rights of children through the full incorporation of the UN Convention on the Rights of the Child (CRC).

2. INSTITUTIONAL FRAMEWORK FOR THE PROMOTION AND PROTECTION OF CHILDREN'S HUMAN RIGHTS

No progress on incorporation of human rights treaties into UK law

3. None of the UN human rights treaties ratified by the UK has, to date, been incorporated into UK law. Treaties only become part of domestic law if an enabling act of parliament has been passed. Instead the UK Government applies a piecemeal approach to implementation and as a result, a number of rights from the conventions to which the UK is a State Party have not been given a legal effect in UK. For example The UN Committee against Torture expressed its concern in 2004 at "... *remaining inconsistencies between the requirements of the Convention and the provisions of the State party's domestic law which, even after the passage of the Human Rights Act, have left continuing gaps; ...*".

4. This concern is shared by all the UN human rights treaties-based bodies, including the CRC Committee, who have repeatedly called on the UK Government to incorporate the conventions into domestic legislation. The Human Rights Council made the following recommendation to the UK in 2008 relating to the realisation of Economic, Social and Cultural Rights:

"The Committee notes that the Covenant is not directly applicable in the State party. In this regard, it recalls that several Covenant rights are not included among the provisions of the European Convention on Human Rights which has been incorporated into the domestic legal order through the Human Rights Act 1998. The Committee also notes that the State party is the only Member State of the European Union not to be a party to the Optional Protocol to the Covenant. (art.2) The State party should ensure that all rights protected under the Covenant are given effect in domestic law."

Recommendation

1. The United Kingdom government should adopt as a matter of urgency appropriate legislative measures to give legal effect to human rights conventions in its domestic law.

A UK Bill of Rights and the Human Rights Act

5. The UK Government has established an independent commission to explore the development of a UK Bill of Rights – the commission is currently consulting with the public about the need for a Bill of Rights and will report on its overall findings at the end of 2012.

We are concerned that the commission's terms of reference have omitted reference to the Human Rights Act, referring only to the European Convention on Human Rights (ECHR). Any new Bill of Rights in the UK must build on and strengthen the current provision for human rights afforded by the HRA and not seek to dilute or undermine the legal protection, and opportunities for redress that it currently provides for people of all ages living in the UK.

6. We believe that a UK Bill of Rights represents an important opportunity to establish children's rights as set out in the UN Convention on the Rights of the Child at a constitutional level in the UK and to consolidate children's rights standards in one binding and enforceable document. At the same time, it can give legal effect in UK law to the CRC by incorporating it into domestic legislation.

7. A Bill of Rights is a powerful tool for the enforcement of the human rights of children. It has the potential to set the tone, direction and priorities of government policy, drive statutory reform and deliver budgets predicated on the obligation to promote and protect human rights.

8. In 2008 the UN Committee on the Rights of the Child recommended that the UK Government use the British Bill of Rights process *'to incorporate into it the principles and provisions of the Convention, e.g. by having a special section in these bills devoted to child rights'*.

9. We believe a legally binding Bill of Rights is needed that includes enforceable social, economic and cultural rights. The Committee on the Rights of the Child make it clear in their General Comment 5 that *'economic, social and cultural rights as well as civil and political rights must be regarded as judiciable'*.

There is an urgent need for these rights to be included if the Bill of Rights is truly to build on the HRA and the ECHR, both are dominated by civil and political rights whereas the CRC is a comprehensive and holistic human rights instrument for children setting out the economic, social, and cultural rights which are vital for the realisation of a child's right to develop to their full potential.

Recommendations

2. A UK Bill of Rights must build on and strengthen the existing Human Rights Act

3. A UK Bill of Rights should contain the principles and provisions of the CRC, including the economic, social and cultural rights therein, in a dedicated children's section whilst also ensuring children's rights are mainstreamed throughout the document.

General Measures of Implementation of the Convention on the Rights of the Child

10. The CRC 'general measures of implementation' (Article 4, 42 and 44.6) outline the requirements of the UK government and the steps that must be taken to ensure the full

implementation of the CRC and realisation of the rights in the CRC for all children in the UK. The Committee on the Rights of the Child have made it clear in their General Comment 5 that it expects governments to take all appropriate measures so that the CRC is given legal effect within their domestic legal systems and has repeatedly made recommendations to the UK government to do more to ensure the general measures are put in place.

11. The process of devolution in the UK has led to the development of different structures and mechanisms for implementing children's rights across the UK. Save the Children's 2011 research report '*Governance fit for Children*' assesses how the general measures of the CRC have been implemented differently across the UK and the devolved nations and notes that because of this that children across the UK do not enjoy equal protection of their rights.

Incorporation of the CRC into UK law

12. In common with other human rights treaties, as noted above, the CRC has not been incorporated into UK domestic legislation more than twenty years after the UK government originally ratified the treaty. The CRC Committee states that '*for rights to have meaning, effective remedies must be available to redress violations*'. In the UK children have few avenues of accessible redress available to them.

13. Following an inquiry into children's rights, the Parliamentary, Joint Committee on Human Rights (JCHR) concluded in 2009 that it agreed "*with those witnesses who emphasised the benefits of incorporation, accompanied by directly enforceable rights*".

14. The Rights of the Child UK Coalition, made up of 24 organisations from across the UK, is also calling for progress on this issue along with the UK's four Children's Commissioners.

15. There is much evidence that children in the UK are not able to fully realise their rights; children's best interests are not routinely taken into account across policy and legislation; children's views and voices are not routinely respected and listened to in legislative and administrative procedures; equal protection from physical punishment is not guaranteed.

The UK now has high levels of child poverty and widening inequalities in health and education. Discrimination experienced by disabled children, by Gypsy, Traveller and Roma children and a growing tendency to exclude children from services and demonise and portray children and young people in a judgemental and negative manner have all been highlighted by NGOs in Wales and in the UK in their monitoring and reports to the CRC Committee who have in turn echoed these concerns in their 2002 and 2008 recommendations to the UK government.

16. The lack of incorporation not only leaves gaps for children across the UK but also leads to a lack of accountability of the government for its obligations to children under the CRC.

For example in December 2010 the UK government, in a written statement, undertook to give 'due consideration' to the Convention whenever making new law and policy. The Ministerial Code refers to the "*overarching duty on Ministers to comply with the law including international law*". This was a welcome development, however, policy analysis carried out by the Children's Rights Alliance for England of UK government processes and actions since that date do not show that this undertaking has been adhered to.

Developments at a devolved level

17. More positive developments however have occurred at a devolved level. In Wales the Rights of Children and Young Persons Measure was passed in March 2011 placing a duty on the Welsh Ministers to have due regard to the CRC in exercising any of its functions. A children's scheme, developed through consultation with civil society, must set out the arrangements for carrying out this duty and the Welsh Government must report on a 5 yearly basis as to how it has complied with the due regard duty.

18. Whilst this is a welcome step on the road to incorporation, it does not amount to full incorporation and opportunities for redress to Welsh children are limited, however it should raise awareness of children's rights across government and the wider public, begin the culture of embedding a children's rights perspective into governmental decision making in Wales and strengthen accountability.

19. The Wales Measure is being implemented against a background of economic recession and spending cuts which are reducing the capacity of government and local authority officials in Wales as elsewhere in the UK. It is now critical that the Welsh government can take forward their obligations to realising children's rights in Wales by allocating sufficient financial and human resources to effectively implement the Measure

20. This land mark piece of legislation, unique in the UK, has encouraged other devolved governments to look at taking similar steps; the Scottish parliament has also issued proposals for a Children's Rights Bill based on that of the Wales Measure.

Recommendations

4. The UK Government should seek to incorporate the CRC into UK law at the earliest opportunity

5. The Welsh Government should ensure that it puts in place the necessary tools, resources and mechanisms to ensure that the Rights of Children and Young Persons (Wales) Measure is effectively implemented

Independent human rights institutions - Children's Commissioners

21. The UN Committee on the Rights of the Child states that '*independent national human rights institutions are an important mechanism to promote and ensure the implementation of the Convention. .*' and goes on to say that they consider the '*establishment of such bodies to fall within the commitment made by state parties upon ratification...*'

22. The CRCs Committee General Comment 2 provides guidance on the minimum standards required for independent monitoring bodies on children's rights as does the European Network of Ombudsmen for children (ENOC). The UN General Assembly adopted the 'Paris Principles' in 1993 which provide clear guidance to governments on the competence, responsibilities and independence of national human rights institutions.

23. The UK now has a Children's Commissioner established in each of the 4 nations; Wales was the first to appoint a Commissioner in 2001 who also has the broadest remit of the four UK Commissioners. However none of the Children's Commissioners' roles comply fully with the Paris Principles and the CRC Committee specifically called on the UK in 2008 to '*ensure that all four established commissioners are independent in compliance with the Paris Principles and mandated, inter alia, to receive and investigate complaints from or on behalf of children concerning violations of their rights*'.

24. In addition the Children Act 2004 conferred on the English Children's Commissioner a UK-wide remit in relation to non-devolved issues, despite them having a weaker statutory remit than for example the Wales Commissioner. This leads to inequalities and confusion to children in Wales, Scotland and Northern Ireland as they would need to seek recourse to the English Commissioner if an issue of their rights is concerned with a non-devolved issue such as juvenile justice, immigration, tax or social security.

25. The UK government has recently published welcome proposals from the Dunford independent review to amend the remit of the English Commissioner to be more rights based and has made recommendations that all the UK Commissioners should have the freedom to promote and protect the rights all children who live in their countries regardless of the nature of the complaint.

26. The First Minister for Wales announced in July 2011 that his new programme for government includes proposals to bring in a Children and Young Persons (Wales) Bill which will build on the Rights of Children and Young Persons Measure 2011 and expand the role of the Children's Commissioner for Wales. This would be an ideal opportunity to develop the remit of the Wales Commissioner to be Paris Principle compliant and provide more rigorous mechanisms for redress for children in Wales.

Recommendations

6. The UK government and the devolved governments must ensure that the remit of all the Children's Commissioners across the UK are Paris Principle compliant through bringing in new or amended legislation

7. The Welsh Government should use the opportunity of the forthcoming Children and Young Persons (Wales) Bill to:

8. Ensure the Children's Commissioner for Wales is fully compliant with the UN Paris Principles

9. Transfer the funding of the Wales Children's Commissioner from the Welsh Government to the National Assembly for Wales and empower the Commissioner for Wales to investigate and comment on any matter affecting any child ordinarily living in Wales.

Children's budgeting

27. The CRC Committee make it clear that *'no state can tell whether they are fulfilling children's economic, social and cultural rights to the maximum extent of its available resources, as required by Article 4, unless it can identify the proportion of national and other budgets allocated to the social sector and within that to children, directly and indirectly. Producing a children's budget provides a mechanism for governments to examine resource allocation with a view to ascertaining what they say about how children's rights are being implemented.'*

28. In 2008 the Committee noted that in the UK *'it is not possible to provide an accurate single UK figures, or an assessment of the GDP spent on children's because of a combination of factors such as devolved administrations, differing policy priorities and a variety of ways in which budgets are allocated.'*

29. The four UK Children's Commissioners have also concluded that *"allocation of resources [for children] is not dependent on assessed need, is not transparent, is often of short-term nature and its impact in outcomes for children are not always evaluated.'*

30. The CRC Committee have welcomed increased expenditure on children in recent years but recommended that the UK should *'undertake an analysis of all sectoral and total budgets across the state party and in the devolved administrations to show the proportion of spend on children'.*

Developments in Wales

31. In contrast to the lack of progress at a UK level, Wales has developed some positive work in this area; an analysis of budgets in 2006, a subsequent statistical bulletin, and the Welsh Government has committed to '*improving the transparency of budgeting for children and young people*' as one of its 16 priorities in its 2009 National Action Plan on Children's Rights.

32. However, despite recommendations from a Welsh Assembly Committee inquiry into children's budgeting, progress has not been maintained and recent published budgets have not included a Children's Budget Statement or an analysis of how the spending cuts being implemented are impacting on children and their rights.

Recommendations

10. The UK government and the devolved governments should build on the experience of the Welsh Government and set out spend on children at both national and local levels with a view to ascertaining how effectively their rights are being realised.

11. The Welsh government must maintain and build on its progress to improve the mechanisms to analyse resource allocation to children by preparing Children's Budget Statements for all its future budgets.

Raising awareness of children's human rights amongst children, parents and professionals working with children

33. The CRC Committee states that '*if the adults around children do not understand the implications of the Convention, and above all the equal status of children as subjects of rights, it is most unlikely that the rights set out in the convention will be realised for many children....*'

34. The Committee have raised concerns that there is no systematic awareness-raising of the CRC in the UK and that the level of knowledge amongst adults and children is low. They recommend *the reinforcement of adequate and systematic training of all professional groups working for and with children, in particular law enforcement officials, immigration officials, media, teachers, health personnel, social workers and personnel of childcare institutions*.

34. In Wales, The Welsh Government has taken steps to '*further strengthen its efforts, to ensure that all of the provisions of the Convention are widely known and understood*' and raising awareness in one of their priorities in their 2009 National Action Plan on children's rights.

Section 5 of the new Rights of Children and Young Persons Measure now places a direct duty on the Welsh Ministers to *promote knowledge and understanding of the CRC amongst children, young people and adults* this has been in force since May 2011.

In addition the Welsh Government have developed their own website and a range of resources for children, adults and professionals including supporting the development of training resources aimed at professional groups working with children through time limited grants to NGOs including Save the Children in Wales. Revised curriculum for schools also includes the need to teach pupils about human rights and about the CRC

35. These developments are to be welcomed but we remain concerned regarding the lack of a strategic approach to awareness-raising in Wales. In addition the current spending cuts and internal changes in the Welsh Government have seen a significant reduction of the number of civil servants working on the delivery of the UNCRC in Wales, at a time of increased duties around the CRC as the Rights of Children and Young Persons (Wales) Measure comes into

force. There remains a lack of understanding, commitment and capacity amongst some professional groups to implement teaching materials and training on the CRC across Wales. Current resources are insufficient to reach the approximately 230,000 professional workers in key groups across Wales.

Without a strategic and sustainable awareness raising programme in Wales the Rights of Children and Young Persons Measure will not be fully effective.

36. If the CRC is to be fully implemented then this needs to be accompanied by systematic and rigorous efforts at raising awareness of the CRC with everyone, with a focus on ensuring that all professionals working for and with children have a clear understanding of the CRC and how it applies to their role.

Recommendation

12. The Welsh Government should increase resources for the delivery of training on the UNCRC to law enforcement officials, immigration officials, media, teachers, health personnel, social workers and personnel of childcare institutions.

2. IMPLEMENTATION OF HUMAN RIGHTS OBLIGATIONS IN RELATION TO CHILDREN

The right to an adequate standard of living

Child Poverty

37. Levels of child poverty in the United Kingdom are unacceptable high and are still rising; this is despite the right to an adequate standard of living set out in Article 27 of the CRC and the welcome UK and devolved governments' statutory commitment to eradicate child poverty by 2020.

38. There are 3.5 million children growing up in poverty in the UK (after housing costs) with 1.6 million children living in severe poverty (13% of all children). This increases in Wales to 15%, 200,000 children and 96,000 of these are growing up in 'severe' poverty. As of November 2011 one million young people aged 16 to 24 year olds are unemployed in the UK – the highest levels since 1986.

39. Save the Children say that across the UK 900,000 children were lifted out of poverty between 1999 and 2010 but this fell short of the target to halve child poverty by around 800,000 during that same period. The Institute for Fiscal Studies (IFS) have projected that child poverty will begin to rise again after 2013 and will reach 4.2million (after housing costs) by 2020.

In effect, the progress made in reducing child poverty between 1999 and 2010 will have been reversed. Urgent action is needed to get the 2020 target back on track.

40. The Universal Periodic Review on the UK in 2008 recommended that the UK '*enhance the programmes aimed at addressing socio economic inequalities, from a human rights perspective in fulfilment of its obligations under the International Covenant on Economic, social and cultural Rights*' and '*provide further information with regard to efforts to reduce poverty among children in half by 2010*'.

41. In 2008 the CRC Committee welcomed the commitment to end child poverty by 2020 and the fall in child poverty in recent years but noted that "*poverty is a very serious problem affecting*

all parts of the United Kingdom” and raised concerns “that the Government’s strategy is not sufficiently targeted at those groups of children in most severe poverty.”

It recommended that the State party “Adopt and adequately implement the legislation aimed at achieving the target of ending child poverty by 2020, including by establishing measurable indicators for their achievement; Give priority in this legislation and in the follow-up actions to those children and their families in most need of support; and when necessary... intensify its efforts to provide material assistance and support programmes for children...”

42. The UK Government’s Child Poverty Strategy, published in April 2011, failed to set out a clear pathway towards reaching the 2020 target. Whilst there is a welcome focus on early years in the UK Strategy, there needs to be a much clearer recognition of the financial pressures currently facing families and the impact this is having on the health, education and well-being of children. In particular educational attainment is clearly linked to child poverty; children from poorer families fall behind at an early age compared to their better off peers and this gap is widening.

43. Reaching the 2020 target requires significant political will and investment: Research from the Joseph Roundtree Foundation in 2009 estimated that an extra annual investment of 4.2 billion will be required to meet the 2020 target. This investment would help low income families at a time of welfare retrenchment, wage stagnations, public service cuts and increasing levels of unemployment.

44. We have particular concerns about the impact on children and families of the Welfare Reform Bill, we believe the changes proposed to the welfare system will disproportionately affect the poorest families; disabled adults and children in particular will be hardest hit.

Wales

45. In Wales, taxation, social security and employment legislation remain the responsibility of the UK government. The Welsh Government does though have responsibility for the other policy areas which impact on the experience and the effects of living in poverty; education, housing, health, social services, childcare, job creation and the take up of social security benefits. In recent years it had worked towards developing an understanding of child poverty from a human rights perspective, and committed to a poverty strategy based on the CRC.

46. In 2010 Wales passed the Children and Families Measure which makes statutory provision to take forward the commitment to eradicate child poverty placing a duty on the Welsh Government and other public bodies to produce a child poverty strategy.

47. The National Wales’s Child Poverty strategy commendably focuses on addressing the inequalities and the widening gaps in education, health and participation of children between those living in poverty and those from better off families. However there is little evidence of a rights based approach in the current delivery plan and in common with concerns at a UK level there is a lack of accountability and clarity as to how key targets are to be monitored and assessed.

Recommendations

13. The UK Government should set out a clear pathway towards meeting the 2020 target

14. The UK Government should set a target to eradicate severe child poverty by the end of the Parliament

15 The UK Government should invest in Child Tax Credits and benefits so that levels of child poverty do not increase

16. The UK Government should reduce in-work poverty and ensure employment is an effective route out of poverty by allocating the resources needed to create clear work incentives for parents so that they keep more of their earnings

17. The Welsh Government should have due regard to Article 4 of the UNCRC and allocate the maximum extent of available resources to tackling child poverty within their devolved powers in Wales

18. The Welsh Government should ensure clear targets and milestones are included in the Wales Child Poverty Strategy and in future strategies and guidance.

19. The Welsh Government should invest in high quality early education and care

20. The Welsh Government should target education funding towards children living in poverty

The right to non- discrimination

Gypsy and Traveller children

48. Article 2 of the CRC states that all rights apply to all children without exception; it is the government's obligation to protect children from any form of discrimination and to take positive action to promote their rights.

49. In their recommendations in 2008 the CRC Committee raised concerns about the experiences of Gypsy, Traveller and Roma children living in the UK, including that *'in practice certain groups of children, such as: Roma and Irish Travellers' children.....and children belonging to minority groups continue to experience discrimination and social stigmatization.'* They also noted that Gypsy and Traveller children are amongst the groups who are not realising their right to education and that discrimination and accommodation issues mean that their right to an adequate standard of living is denied.

50. The Committee recommend that the UK government should consider *'Strengthening its awareness-raising and other preventive activities against discrimination and, if necessary, taking affirmative actions for the benefit of vulnerable groups of children, such as Roma and Irish Travellers' children...'* and a clear further recommendation to *'Reintroduce a statutory duty for local authorities to provide safe and adequate sites for Travellers.'*

51. In Wales the Welsh Government has published Travelling to a Better Future - a Framework for Action which aims to tackle the inequalities and social exclusion experienced by Gypsy Travellers in Wales. Whilst this is welcome there remains a lack of a coherent delivery plan and the rights under the CRC do not obviously underpin the document. In particular, the CRC concluding observations made in 2008 are not addressed.

52. Save the Children run the Travelling Ahead project which supports the participation of young Gypsies and Travellers in Wales. Their work highlights some key issues:

- Discrimination: Most young Gypsies and Travellers highlight discrimination as a key issue in their lives. This can take the form of bullying, media portrayal, a lack of opportunities, collective punishment, or outright racism.

- Accommodation: Access to safe and stable accommodation is also a significant issue. There is a huge shortfall of pitches on authorised sites in Wales, meaning that many families are forced to live by the roadside or on unauthorised encampments.

- Health: Shocking health statistics have come from various small-scale studies on Gypsy and Traveller health. Infant mortality has been recorded as three times the national average with higher incidences of asthma, bronchitis, anxiety, depression, and later in life, significantly lower life expectancy
- Education: Young people from these communities have the lowest school attendance of any ethnic group and the worst educational attainment. They also have high levels of school exclusion.
- Identity: Young Gypsies and Travellers grow up in Wales proud of their culture but tied to the stigma that it attracts. Through negative media portrayal, collective treatment by many, hostile public opinion and a lack of services, these young people become isolated and marginalised from the rest of young people in society.

Recommendations

21. The Welsh Government should re-instate the duty on local authorities to provide authorised sites where there is need.

22. The Welsh Government should encourage better ethnic monitoring of Gypsies and Travellers in the healthcare system to ensure that the true picture of health inequalities is revealed and confronted.

23. The Welsh Government should maintain the specific grant for Gypsy and Traveller education and work with schools to host open-days and properly deal with racist bullying.

Equal protection for children under the law

Physical punishment

53. Physical punishment is banned in schools, alternative care and childcare settings throughout the UK, but remains legal in the home and private foster care as long as it can be shown to be “reasonable” and where any injury caused is ‘trivial and transitory’. This is a clear breach of the United Kingdom’s obligations under international human rights law and in particular under Article 19 of the CRC which guarantees children’s rights to protection. In 2009 the Universal Periodic Review of the UK made 3 recommendations urging the UK to reconsider its position and legally ban corporal punishment.

54. In a recent study (Radford et al, 2010, NSPCC) focussing on the prevalence of child maltreatment in the UK, 41.6% of parents or guardians said they had physically punished or “smacked” their children in the past year (39.4% of the parents or guardians of under 11s and 45.9% of parents or guardians of 11-17 year olds.)

55. There has been pressure for complete removal of the reasonable punishment defence so as to give children equal protection under the law on assault from the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, and the European Committee of Social Rights:

“The Committee reiterates its recommendation that physical punishment of children in the home be prohibited by law.” (2009 Committee on ESCR) and *“The Committee recommends that the State party:*

a) With urgency adopt legislation throughout the State party to remove the “reasonable chastisement” defence and prohibit all corporal punishment in the family and in any other contexts not covered by existing legislation;

b) Promote positive, participatory and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, engaging with children and parents and all those who work with and for them, and carry out public education programmes on the negative consequences of corporal punishment.” (2008 CRC Committee)

Developments in Wales

56. In Wales ‘Working to make physical punishment of children and young people illegal in all situations’ is a key priority of the Welsh Government’s children’s rights National Action Plan. In June 2009, Welsh Ministers signed up to the ‘Children are Unbeatable’ campaign statement and said ‘We remain committed to the United Nations Committee on the Rights of the Child’s call for a global ban on physical punishment’ however the legal powers to change the law remained with the UK government at that time. Welsh resources for parents promoting positive parenting methods such as the ‘Help at Hand’ toolkit have been produced but its not clear if and how this approach is being monitored for its effectiveness.

57. In 2011 the National Assembly for Wales has recently voted in favour of introducing legislation to remove the defence of reasonable punishment. Following the introduction of enhanced legislative powers for the National Assembly for Wales, the First Minister has now clarified that there is competence to legislate in this area.

58. The Deputy Minister for Children has however indicated that legislation to remove the defence of reasonable punishment will not be introduced in the current legislative session (2011-2016). It is a concern that whilst the motion to remove the defence of reasonable punishment was passed by the National Assembly for Wales in plenary session, the Welsh Ministers present, including the First Minister and the Deputy Minister responsible for children’s issues, all abstained in the vote. If the Welsh Government is to take action to ensure that law and policy in Wales meets with the obligations imposed by the UNCRC this will require the express support of the Welsh Ministers.

Recommendations

24. The UK Government should move quickly to satisfy its human rights obligations by ensuring that children have full protection from abuse under the law

25. The Welsh Government should as a matter of urgency introduce legislation to remove the defence of reasonable punishment in Wales in order to give children equal protection under the law on assault. Alongside legislation the Welsh Government should invest resources to actively promote positive, non-violent discipline of children and monitor their effectiveness