The UK before the UN Committee on the Rights of the Child

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On 19th September 2002, representatives of the UK Government met with the United Nations Committee on the Rights of the Child in Geneva to discuss the UK’s implementation of the United Nations Convention on the Rights of the Child 1989 (CRC). Also attending the meeting, as observers, were a large number of representatives from UK NGOs, including a significant number of young people, many of whom had submitted information to the Committee about the ‘real’ situation for children and young people in the UK.

In 1995, the Committee met with a delegation from the UK Government, described by the Committee as uncooperative and arrogant, to discuss the UK’s first report on its implementation of the CRC. Following their meeting, the Committee published a list of concerns and criticisms regarding the Government’s performance, along with a comprehensive set of recommendations on how the Government could better implement the CRC and protect children’s rights. These criticisms were met with outrage by the UK press and politicians, who described the Committee session as a kangaroo court. They challenged the authority of the Committee to pass judgment on a country which, in their view, led the world in the protection of children.

Seven years later, a far more co-operative delegation, led by Althea Efunshile, Director of the Children and Young People’s Unit (CYPU), opened the discussions on the UK’s second report. This second report described the steps the UK has taken to implement the CRC since 1995.

PROGRESS

Ms Efunshile cited the recent establishment of the CYPU as a major step forward in the implementation of the CRC. The CYPU is the first Government body to focus on the UK’s obligations under the CRC and will have responsibility for reporting to the Committee in the future. In addition, the UK delegation announced that an overarching strategy for children would be published by the end of the year.

The message from the Government was that, although the UK’s past performance has not been perfect, concrete steps are being taken to implement children’s rights and the Government is committed to making progress in the future.

FAILINGS

While recognising that some significant steps had been taken in the last seven years by the UK Government, overall, the Committee was highly critical of the UK performance.

THE UK REPORT

Judith Karp, the Rapporteur for the Committee on the UK, responded to the opening comments of the UK delegation with a scathing attack on the UK report itself. The report had failed to follow the guidelines set out by the Committee and did not provide a picture of the situation for children in the UK – the purpose of the report. Instead, the report merely listed white papers, green papers and studies, without detailing the results, and was ‘unduly confusing, complicated and chaotic’.

The Committee said that the quality of the report was below what should be expected from a ‘great country’ such as the UK. The UK delegation agreed that the report was below par and guaranteed that, as the CYPU was now in charge of reporting, the next report would be significantly better.
FAILURE TO FULFIL CRC OBLIGATIONS
As well as having an obligation to implement the CRC, States have a duty to implement any concluding observations made by the Committee, such as those made in 1995 in relation to the UK's performance. The Committee expressed disappointment that the UK Government had failed to act upon the majority of those recommendations.

The attitude of the UK Government to the CRC, and to children's rights in general, was highlighted as a particular obstacle to its implementation. Despite the very essence of the CRC being the rights of children, the Committee said that the UK lacked a 'rights-based approach'. Instead, the UK focused on the welfare of children and service provision. This was borne out by the absence of the language of children's rights in the report, in Government rhetoric and in domestic legislation.

Nonetheless, the UK delegation said that the Government had no intention of incorporating the CRC into domestic legislation as it did not believe that some of the rights contained therein should, or could, be justiciable. The Government preferred instead to use administrative measures and other strategies to implement children's rights. The Committee did not accept that this approach adequately protected children's rights and encouraged the UK to incorporate the rights, principles and provisions of the CRC into domestic law. This would ensure not only the compliance of all legislation with the CRC, but a more widespread application of its provisions and principles in legal and administrative proceedings.

Dissemination of CRC
The Committee stated that the lack of a children's rights approach in the UK was exemplified by the fact that 75% of children have not heard of the CRC. The Committee criticised the absence of the CRC in teacher training and in the school curricula.

The Government has a duty under Article 42 to make the CRC widely known to children and adults. The Committee considered that the UK relied far too heavily on the initiatives of NGOs to disseminate both the CRC and the Committee’s concluding observations. The delegation informed the Committee that the Government had no intention of publishing the concluding observations.

The Committee recommended the substantial expansion of the dissemination of the CRC by the UK and the publication of the concluding observations of the Committee.

Children's Rights Commissioners
While commending the creation of a Children's Commissioner for Wales and the Northern Ireland Human Rights Commission, the Committee expressed dissatisfaction at the lack of a body or post to monitor the implementation of the CRC in England.

Although the delegation said that the Government was open to the idea of a Children's Rights Commissioner, it argued that the size of the under-18 population made it more difficult to establish such an office in England than Wales!

The Committee did not accept these arguments and recommended that the UK establish an adequately funded, independent human rights institution to monitor, protect and promote all the rights of the CRC for all children. This post should be easily accessible to children, able to investigate violations of children's rights and should provide an effective remedy for such violations.

Child Participation
Over the years, the general principle contained in Article 12 – the right of children to have their views heard in all decisions affecting them – has taken on greater importance and has been recognised as vital in fully implementing and upholding children's rights. The efforts of the UK in this regard were recognised by the Committee. The delegation said that, in 2001, the CYPU had developed Core Principles of Participation and was now building experience and expertise at both national and local levels to enable children and young people to
express their views freely, and for their views to be taken into account in the development of policies and services.

However, participation initiatives are still on an ad hoc basis and the Committee recommended that the UK take steps to promote, facilitate and monitor systematic and meaningful participation of all groups of children in society.

**MAIN ISSUES**

While the Committee addressed a wide range of issues during the six-hour session, it highlighted the UK's poor performance in several areas.

**CORPORAL PUNISHMENT**

The Committee stated that the lack of implementation of CRC and lack of respect for children’s rights was exemplified by the retention in domestic legislation of the 'reasonable chastisement' defence which allows parents to use physical violence against their children.

Corporal punishment violates a number of children's rights and the Committee emphasised that, in its general discussion on violence against children, it had clearly recommended the prohibition of corporal punishment in all its forms.

Despite the Committee’s 1995 recommendation that corporal punishment be prohibited, and the ruling by the European Court of Human Rights that the defence of reasonable chastisement violated Article 3 European Convention on Human Rights, the Government has not taken any action to prohibit corporal punishment in the family, or to remove the defence of reasonable chastisement.

The Committee recognised that UK public opinion was currently against a ban on corporal punishment because it is believed that it would be unenforceable, would violate parent’s rights and would criminalise parents for smacking their children. Nonetheless, the Committee emphasised that public opinion did not override the UK's obligation to implement and protect children’s rights. The Committee urged the Government to challenge public misconceptions.

The Committee recommended that the UK urgently adopt legislation that removes the defence of 'reasonable chastisement', prohibit all corporal punishment in the family, and promote non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity.

**JUVENILE JUSTICE**

Overall, the Committee criticised the lack of a child-centred and rights-based approach to the juvenile justice system and the punitive attitude currently prevailing.

**Age of criminal responsibility**

One of the main recommendations made by the Committee in 1995 was that the UK's low age of criminal responsibility should be raised. However, the Committee noted with disappointment that, not only had the age not been raised, but that it had effectively been lowered by the abolition of the presumption of doli incapax for 10- to 14-year-olds. In addition, the age of criminal responsibility in Scotland remained at 8 years.

The delegation stated that the Government believes that the age of ten is reasonable for several reasons. Firstly, the Government wants be able to intervene early – one of the key principles of the youth justice system. Secondly, from the age of ten years, most children know the difference between right and wrong, and should take responsibility for their actions. Therefore, the Government has no current proposals to change the age of criminal responsibility.

Earlier this year, the Scottish Law Commission published a report that proposed the abolition of the age of criminal responsibility in Scotland, and the introduction of a bar on
prosecuting children under 12 years of age. The results of discussions on the proposals will be known later this year.

The Committee recommended that the UK raise the minimum age for criminal responsibility.

**Deprivation of liberty**

The Committee expressed concern about the increasingly punitive climate in the UK which has resulted in an increase in the use of detention for longer periods, and for younger children. Twelve-year-olds can be deprived of their liberty, and even children as young as ten can be detained at the discretion of the Home Secretary. The Committee pointed out that the UK has the highest number of children in detention of any Western European country. Article 37 states that children should only be deprived of their liberty as a last resort and for the shortest period of time. Therefore, the current use of detention does not comply with the *CRC*.

In addition, the Committee cited reports of the Inspectorate of Prisons and the Howard League for Penal Reform, which severely criticised the conditions in a number of juvenile detention facilities for being inadequately staffed, lacking rehabilitation programmes, and allowing a culture of bullying and violence to prevail.

The delegation emphasised that deprivation of liberty was used sparingly and that an effective system of diversion from the court system was in place, involving a reprimand and a final warning before the juvenile appears in court. Indeed, out of the 180,000 young people that come into contact with the youth justice system, only 4% go into custody. In an effort to keep juveniles out of detention facilities, the delegation said that the Government had also introduced intensive supervision schemes, electronic tagging and restorative justice schemes.

However, the delegation confirmed that the *Children Act 1989*, which provides protection and guarantees services for children, does not apply to children in detention. The delegation said that the Government has no intention of rectifying this situation and is awaiting the decision of the courts in a case, brought by the Howard League for Penal Reform, challenging this gap in protection for children.

The Committee recommended that the UK ensure that detention is used as a last resort and for the shortest appropriate period. The Committee further recommended that the Government reviews the conditions in detention as a matter of urgency and ensures that children who are detained have an equal statutory right to education, health and child protection as other children.

**IMMIGRATION**

One of the main criticisms of many of the NGOs reporting to the Committee was the treatment, and in particular the detention, of refugees and asylum seekers under the age of 18. The Government has retained its reservation on Article 22 *CRC*, the provision which guarantees all the rights contained in the *CRC* for refugee and asylum seeking children. The delegation said that the Government had no intention of withdrawing the reservation, asserting, unconvincingly, that it discouraged children from coming to the UK for the purpose of benefiting from the rights under the *CRC* and, therefore, controlled the immigration flow. Further, the delegation enthused in such a manner about the welfare response for refugee and asylum seeking children, either accompanied or unaccompanied, that the chairperson of the Committee was prompted to exclaim that it seemed as though the UK was a paradise for them – *something that we all know is not true!*

The Committee recommended that the UK refrain, as a matter of policy, from detaining unaccompanied minors. The UK should also ensure that refugee and asylum seeking children have access to basic services, such as education and health.

**POVERTY**
Child poverty has hit the UK headlines a number of times over the last year and the Committee picked up on the fact that although the UK has the fourth strongest economy in the world, a third of its households are classified as living in poverty. The Committee was extremely concerned as poverty leads to a higher incidence of mortality, accidents, teenage pregnancies, poor housing and homelessness, malnutrition, educational failures and suicide. The delegation responded that the Government has a target to eradicate poverty within a generation and has already reduced the number of children living in workless households by 250,000 and has raised child benefit by 25% in real terms since 1997.

Although the Committee welcomed the initiatives of the Government, the Government was urged to better co-ordinate these efforts to eradicate child poverty.

CHILDREN IN ARMED CONFLICTS

Article 38 CRC specifies that, in recruiting young people under the age of 18, priority should be given to those who are eldest. The Committee therefore expressed its deep concern that one third of the annual intake of the armed forces is under 18 years of age.

The Committee also picked up on the anomaly that, although all recruits into the Army must sign a four-year contract, this four-year period does not start to run until the recruit turns 18. Therefore, if a 16-year-old joins the Army, he or she is locked in to a six-year contract (the six-year trap).

The Committee criticised the declaration made by the Government on the Optional Protocol on the Involvement of Children in Armed Conflict 2000, which went against the object and purpose of the protocol. The Committee urged the withdrawal of the declaration when the UK ratifies the Optional Protocol. Once ratified, the UK will be obliged to take 'all feasible measures’ to ensure under-18s are not deployed into armed conflict. The declaration constructs a definition of 'all feasible measures’ that undermines this obligation and means that the UK can continue to deploy under-18s.

The Committee urged the Government to strengthen and increase efforts to recruit persons of 18 years and older. It recommended that the UK ratify the Optional Protocol and take all necessary measures to prevent the deployment of persons below the age of 18.

CONCLUSION

At the beginning of the session, Ms Efunshile stated that the UK had much more to do. This statement is borne out by the comprehensive list of recommendations issued by the Committee. While progress has been made on many aspects of children’s welfare, there is a long way to go on protecting children’s rights, especially in the more contentious areas of corporal punishment, juvenile justice and immigration. However, it is in these areas that change seems least likely. The Government all too readily bows to public opinion at the expense of children’s rights, and against its legal obligations under the CRC.

Whereas the Committee’s criticisms of the UK’s performance were met with outrage by press and politicians in 1995, the response this year was rather more subdued. Focussing almost entirely on the controversial subject of corporal punishment, the media refrained from questioning the Committee’s authority and instead reported the recommendations objectively.

A very clear message of the Committee was that if children are ever going to fully benefit from the CRC, the Government needs to take a proactive role in challenging and changing public opinion. The next UK report is not due for another seven years. It is hoped that in that expanse of time, the Government will make a concerted effort to make children’s rights a reality in the United Kingdom.

FOOTNOTES

1 For example, the right to health contained in Article 24.
For a fuller discussion of children in armed conflict, see the Children and Armed Conflict Unit’s submission to the NGO Report for England to the Committee on the Rights of the Child in *childRIGHT* No 187, pp.9-11.