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Scottish Alliance for Children's Rights

UN Convention on The Rights of the Child

Implications for Scotland 2008 - 2014

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Appendix 1

Short Guide For Children

References



About Ewart Communications

This report was written by Carole Ewart who was contracted by the Board of SACR. Communications Ewart Communications delivers a public policy and human rights consultancy service to the 'not for profit' sector. Established in 1997, it has worked with a range of charities, voluntary organisations and public sector organisations. Work includes communication audits, research, writing and editing reports, delivering training and devising influencing strategies.

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Thanks To....

This report depended on the expertise and knowledge of a wide variety of people and builds on work undertaken by SACR Board Members and staff over a number of years. In particular, I would like to thank the current Board of SACR especially Tam Baillie, Lisa Myers of the CRC NGO Group in Geneva and Cathy McCulloch of The Children's Parliament.

Forward BY SACR

The Scottish Alliance for Children's Rights (SACR) is a co-ordinating organisation to progress children's rights in Scotland. It represents a wide range of non-governmental organisations (NGOs) in Scotland culminating in periodic reports to the United Nations on the application of the Convention on the Rights of the Child (CRC). The monitoring body which receives our reports and holds Hearings is the UN Committee on the Rights of the Child (The Committee).

The UK Government ratified the CRC in 1991 and assumed specific obligations to undertake all appropriate measures for the implementation of the rights recognised in the CRC¹. As part of the UK, Scotland shares the same obligations as the UK in the implementation of the CRC.

This Report is the product of research and analysis of the Concluding Observations (COs) of The Committee and identifies the implications for Scottish Government, UK Government, local authorities and key public authorities such as health in Scotland. This Report is also directed at the media which has been identified by the UN as a key agent in demonising children so can play a significant role in generating a correct and fair understanding of Scotland's 1 million children.

SACR welcomes the COs and is pleased that the UN Committee has taken up a number of the issues we raised in our oral and written evidence. In agreeing our evidence, we listened to children on issues. One example is that we agreed there has been an absence of a sustained and effective strategy to expand dissemination of information on the CRC in Scotland:

*"A consultation carried out by the Children's Parliament in 2006 illustrated that only 53 out of 400 children had any knowledge of the UNCRC and only slightly more had any understanding of what was meant by the term rights."*²

We concluded it would be inappropriate for Scotland to be portrayed as having adequately disseminated the CRC to children and to adults who care for and work with them.

The COs set out key actions to address the Committee's main areas of concern including raising awareness of the CRC, ensuring widespread dissemination of the COs and stimulating debate and action by setting out a roadmap for compliance across Scotland.

We all share a responsibility to progress the COs and make rights real for children. SACR has therefore commissioned a second report setting out its long-term role in monitoring State compliance with the CRC. This demonstrates a sustained commitment by NGOs to place children's rights firmly in the culture, legislation and practice of Scotland.

SACR looks forward to working in partnership with civil society, the public sector, the private sector and with Government so that the UK's fifth periodic report, to be submitted by 14th January 2014, reports significant progress in delivering children's rights in Scotland.

Summary

The Hearings were the culmination of a long process including the submission by the UK Government of its report, reports from NGOs highlighting issues of concern, a pre-sessional hearing in Geneva, a subsequent 'Issues Paper' produced by the UN Committee and a response from the Government published on 10th September 2008.

The Committee was concerned about the framework in which the Reports and evidence were produced and commented that the Government used language such as 'well-being' and 'welfare' instead of compliance actions on general and specific rights of children as itemised in the CRC.

At the UK Hearing on 23rd and 24th September 2008, The Committee was clear that the Concluding Observations (COs) are an opportunity to focus on what the Government still needs to take action on to ensure compliance with CRC, rather than as a vehicle to award praise. The Hearing is brief, just 1.5 days to cover CRC and the Optional Protocol on Children in Armed Conflict. The COs are a short report, just 21 pages. At the end of proceedings, the Government assured The Committee that plans are already underway to implement the COs.

SACR's commitment to work on delivering and monitoring the COs in conjunction with Scotland's Commissioner for Children and Young People (SCCYP) and the Scottish Government is in line with The Committee's view that there should be 'active and systematic involvement of civil society'.¹

The COs have a number of implications for the UK Government, the Scottish Government, local authorities, public authorities such as health and the voluntary sector - as NGOs and also as providers of services to children and young people.

SACR's current priorities are rooted in the compliance mechanisms set out by The Committee in General Comment No 5 and specifically :

1. The Scottish Government produce an Action Plan which addresses the matters raised in the Concluding Observations. The Scottish Parliament should adapt Standing Orders to address specific concerns e.g. that all legislation is CRC complaint.
2. Increased awareness of the CRC through dissemination and education amongst politicians, civil servants, judiciary, public sector workforce, private sector and the wider public.
3. Promote a positive image and culture towards children and young people in Scotland
4. Increase opportunities for meaningful participation of children and young people
5. Incorporation of the CRC into Scottish law

SACR warmly welcomes the publication of the COs which provide a focus for co-ordinated work amongst a range of agency partners. SACR seeks the support of the Scottish Government, MSPs, local authorities, the public sector, the media and communities across Scotland to support the five priorities in order that children's rights are respected and delivered as set out in the COs.

¹ Para 23, CRC/C/GBR/CO/4 3rd October 2008

1. Introduction

The Scottish Alliance for Children's Rights has commissioned this Report to raise awareness of our duty to comply with the UN Convention on the Rights of the Child (CRC) in Scotland. This Report was prompted by the publication, on 3rd October 2008, of the Concluding Observations (COs) of the United Nation's Committee on the Rights of the Child on the UK's implementation of the CRC.

The UK ratified the CRC on 16th December 1991³ and joins a long list of countries with only the United States and Somalia failing to ratify the CRC. As *"The United Kingdom will not ratify a treaty unless the Government is satisfied that domestic law and practice enable it to comply"*⁴ so the UN's monitoring task is confined to an examination of where UK practice fails to meet the international minimum standards. The task of monitoring compliance is undertaken by the UN Committee on the Rights of the Child (The Committee). Membership of The Committee is broad and includes independent experts with acknowledged impartiality.⁵

The COs were published following the UK Hearing on 23rd – 24th September 2008 in Geneva which is the culmination of a prolonged period of evidence gathering. The COs contain several specific references to Scotland: positive on co-ordination of implementation and existence of Youth Parliament; negative on failure to ban corporal punishment and permitting the age of criminal responsibility to remain at 8 years; positive about the independence of Scotland's Commissioner for Children and Young People but concerned about her limited powers⁶.

However many of the COs are directly relevant to Scotland and challenge our current practice. SACR acknowledges that this international criticism sits uncomfortably with many Government Departments and public sector organisations that pride themselves in improving the lives of children and their families. Yet we cannot be complacent as we know we have much more to do to raise awareness of children's rights in Scotland and the public sector's duties in respect of those rights. The COs outline clear areas where action needs to be taken and is the product of expert deliberation and experience of how the CRC is implemented in other countries.

The COs require our detailed consideration especially since The Committee has repeated concerns over three separate reports, in 1995, 2002⁷ and again in 2008 on the same general measures of implementation and on particular human right standards⁸. The debate on the COs in the Scottish Parliament on 6th November 2008, clearly showed that there is Scottish Government and all party support for implementation of the CRC. SACR acknowledges that there remains disagreement over interpretation of several CRC standards, that there is a need for discussion as to the prioritisation on action and how children's rights can be protected when there are dual obligations e.g. on poverty which can be addressed by the devolved powers of the Scottish Parliament as well as the reserved powers of the Westminster Parliament.

2. Background to Concluding Observations

UN Compliance Process

The UN Committee is made up of 18 members from different countries and is chaired by Madame Yanghee Lee (Korea) who had made visit to the UK as had Ms Lucy Smith (Norway), a rapporteur on the UK to the Committee. The visit of the other Rapporteur, Dr Kamel Filali (Algeria), to Scotland had not taken place as planned but information and a DVD had been sent to him and he had been briefed on the key issues facing Scotland.

The Committee holds the State Party accountable for CRC compliance and that is the United Kingdom even though we have devolved administrations in Scotland, Wales and Northern Ireland which have extensive powers and obligations in respect of children. Such matters remain reserved to Westminster. So any breach of the CRC in Scotland will still be a criticism of the UK State.

The UNCRC has held nearly 1400 meetings across 49 sessions so has gained a broad insight into the barriers to delivering CRC in States across a variety of continents. In order to assist States with compliance it has deliberated and drafted best practice on turning policy commitments into actions which positively impact on the rights of children and include:

- General Comments which are the interpretation of the content of human rights provisions, for example General Comment No 5 (2003) on general measures of implementation of the CRC⁹.
- Days of General Discussion on thematic issues such as “Resources for the Rights of the Child – Responsibility of States’ (2007)¹⁰ and on Children without parental care (2005)¹¹.
- UN Guidance on relevant matters such as the 2002 Special Session of the General Assembly of the United Nations’ ‘A World Fit for Children’ and its Mid-Term Review in 2007¹².
- UN Resolutions which are relevant such as General Assembly resolution 48/96 on the Standard Rules on the Equalization of Opportunities for Persons with Disabilities¹³.
- Work of other human rights agencies and UN monitoring bodies such as on the right of children to protection from physical punishment in the home the UNCRC noted similar recommendations made by the Human Rights Committee; the Committee on the Elimination of Discrimination Against Women; and the Committee on Economic, Social and Cultural Rights¹⁴.

The Committee undertakes an ongoing programme to assist States interpret the CRC and meet its compliance obligations. Furthermore Committee members can assist with compliance issues generally such as Dr Filali addressing a conference on children’s rights in England in November 2008.

UK Evidence - Scotland

The process of submitting evidence to The Committee is both long and detailed with the Hearing being the culmination of both oral and written submissions including:

- The drafting of a Scottish Government report on Scotland’s compliance United Nations Convention on the Rights of the Child and publication of the 176 page report in 2007;¹⁵

- The incorporation of Scottish Information into the UK wide report submitted to the UN in 2007;¹⁶
- Written submissions from a range of NGOs such as SACR which were the product of a range of consultations and activities;¹⁷
- Pre-sessional hearings in June 2008 in Geneva which included hearing evidence from Scotland's Commissioner for Children and Young People;
- The publications of an 'Issues Paper' by The Committee;¹⁸
- The response of the UK Government;¹⁹
- Similar written reporting on the Optional Protocol on Children in Armed Conflict;²⁰
- The visit of a Special Rapporteur (Committee member) to parts of the UK;
- Members of The Committee meeting with NGOs;
- Members of The Committee meeting with children and young people in June and September; 2008
- Submission of further evidence including a DVD from SCCYP in early September 2008;
- Further written evidence submitted by SACR on 26th September 2008; and
- Independent research by UN officials and Committee members.

The UK Hearing

The United Kingdom sent a high level delegation made up of 26 civil servants led by Tom Jeffrey, Director General for Children and Families Department for Children and Schools and Families (DCSF). The delegation included civil servants from Northern Ireland, Wales and two from Scotland: Colin Mclean Director of Schools and Kit Wyeth Head of Children's Rights, at the Scottish Government.

The format of the Hearing was that the CRC was examined in clusters of sections e.g. General Measures of Implementation. The section would be introduced by the Chair who then invited a succession of Committee Members to ask questions. Then the Head of the UK delegation would introduce a selection of civil servants who each gave a response. Colin Mclean was invited to contribute on a few occasions. There were periods of evidence when English policies, laws and practices were repeatedly described as if they applied across the UK. After a reminder from the Chair in the afternoon session of 23rd September, the delegation became more frequently precise in identifying that they were referring to England.

The Committee has a clear focus on children's rights. A general issue of concern was that while the UK appears to be confident in asserting and demonstrating its commitment to child welfare and well-being, it can less easily demonstrate delivery of a children's rights approach e.g. embedded in its laws, policies and practices. A rights framework was not explicit in the written and oral evidence.

All of the UK's Children's Commissioners, NGOs including SACR and three young people from Article 12 were present. NGOs from across the UK were also present as were Geneva based organisations. Although not able to formally participate, those present raised matters with The Committee during breaks.

The Concluding Observations

The Committee addresses its concerns and recommendations to the UK in the form

of “Concluding Observations”. The COs apply to the UK, the overseas territories and the Isle of Man but the purpose of this Report is to focus on the relevance to and impact on, Scotland. The Committee produced an additional report on the Optional Protocol on Children in Armed Conflict (OPAC)²¹.

The process of producing the COs is the same for each country which has ratified the CRC and must be robust – very few Governments want to acknowledge weaknesses in respect of protecting children’s rights. The challenge for the The Committee is to adequately examine UK compliance on the 54 separate articles of the CRC plus OPAC , examine the detailed evidence from the UK Government, the four Children’s Commissioners, NGOs and from children themselves and to balance the sometimes conflicting oral and written evidence. The Committee must understand the differences in policy and practice in the UK to ensure that children, regardless of where they live, have equal respect and protection for their human rights. As the written and oral evidence of the UK lacked clarity on jurisdictional matters, The Committee task was made much more difficult.

However on several issues The Committee was able to highlight unequal enjoyment by children of their rights within the UK including: uneven application of the use of ASBOS with only 14 ASBOs issued in Scotland yet 5110 in England and Wales²²; differences in the right to play as England has invested £235m capital funding to support children playing and create more safe places for accessible play compared to much smaller investment in Scotland²³.

The challenge now is for the Scottish Government, the Scottish Parliament, our 32 local authorities, health boards, police services and our 10,000 public sector agencies, to understand and apply the COs which impact on their sphere of responsibility and influence. On matters where demarcation between reserved and devolved powers is less precise, there is joint responsibility for action by the UK and Scottish Governments such as in respecting the rights of refugee children²⁴.

Conclusion

The Committee has examined UK implementation of the CRC on three occasions over the last 13 years and is firmly focused on its practical effect on the rights of children. Policy commitments and good intentions are no longer sufficient. During the course of the Hearing it was clear that Committee members were perplexed that UK policy had been copied by new democracies e.g. in Eastern Europe and only now did they realise that UK policy was not always UK practice.

On matters such as child poverty, there was clearly frustration that the UK, a wealthy country, has only made slow progress in effectively addressing child poverty and even recent progress stalled. So where the UK had embarked on action, the Committee wanted evidence that the chosen measures are working to improve children’s rights and the impact on children is positive. The Committee also questioned UK strategy, for example adopting action on a narrow range of violence issues rather than a strategic approach to address all violence. On certain specific issues, the UNCRC and UK State ‘did not see eye to eye’. Although jurisdictional differences were insufficiently teased out, the robustness of the process and the general nature of the concerns and recommendations allow Scotland to map out a strategic approach to CRC implementation.

3. Summary of Concluding Observations

The main areas of concern and recommendations of The Committee run to 21 pages and divided into 10 action categories. The following summary highlights particular areas but reference should be made to COs for a complete understanding²⁵. A separate summary has been prepared for children and young people that can be adapted to ensure the information is age appropriate – See Appendix 1.

1. General Measures of Implementation (arts. 4, 42, and 44 para 6 of CRC)

Committee 'notes with regret' that previous recommendations have still not, or have not fully, been implemented e.g. incorporation of the CRC in the State party's law²⁶ and transparency of all budgets to show the proportion spent on children²⁷.

Legislation

Any British Bill of Rights should incorporate the CRC.

Coordination

Acknowledging devolved government and powers, the UK must ensure effective coordination of the implementation of CRC, including locally, especially where local authorities have significant powers to determine their priorities and allocate budgets.

National Plan of Action

UK should adopt comprehensive plans of action for the implementation of the Convention in cooperation with the public and private sectors, rooted in children's rights. The UK should ensure adequate budget allocations and evaluation mechanisms to regularly assess progress and identify deficiencies.

Independent Monitoring

The UK's 4 Children's Commissions should comply with the Paris Principles and specifically, receive and investigate complaints from or on behalf of children.

Allocation of Resources

UK should allocate the maximum extent of available resources for the implementation of children's rights, especially to eradicate poverty.

Dissemination, training and awareness-raising

UK should work harder to ensure that all of the provisions of the CRC are widely known and understood by adults and children alike, and there is systematic training of all professional groups working for and with children.

Cooperation with civil society

UK should encourage the involvement of civil society, including NGOs and associations of children, in the promotion and implementation of children's rights.

2. General principles (arts. 2, 3, 6 and 12 of CRC)

Non-discrimination

The UK needs to ensure full protection against discrimination including by 'taking urgent measures to address the intolerance and inappropriate characterization of children, especially adolescents, within the society, including the media'²⁸. Any discrimination against children should be addressed effectively.

Best interests of the child

The principle of the best interests of the child, needs to be better integrated in all legislation and policies which have an impact on children e.g. in criminal justice.

Right to life, survival and development

UK to use all available resources to protect children's right to life, including by reviewing the effectiveness of preventive measures.

Respect for the views of the child

UK needs to do more to ensure respect for the views of the child e.g. support forums for children's participation, such as the Scottish Youth Parliament. The UK should work with NGOs to increase opportunities for children's meaningful participation, including in the media.

4. Civil Rights and Freedoms (arts. 7, 8, 13-17 and 37(a) of CRC)

Freedom of peaceful assembly

The UK should reconsider ASBOs and other measures such as the mosquito devices as they may violate the rights of children e.g. to freedom of movement.

Protection of privacy

The UK should ensure that children are protected against unlawful or arbitrary interference with their privacy e.g. by working with the media.

Cruel, inhuman or degrading treatment or punishment

UK should ensure that restraint against children is used only as a last resort and to prevent harm to the child or others and abolish physical restraint for disciplinary purposes.

Corporal punishment

UK should prohibit as a matter of priority all corporal punishment in the family including through the repeal of all legal defences Scotland. Also, actively promote positive and non-violent forms of discipline to evidence respect for children's equal right to human dignity. The UK should provide parental education and professional training in positive non-violent child-rearing.

5. Family environment and alternative care (arts. 5, 18 (paras. 1-2), 9-11, 19-21, 25, 27 (para. 4) and 39 of CRC)

Foster Care

Broad recommendations made on the large number of children with disabilities who are in long term institutional care, the need for a child accessible complaint mechanism, the need to support children who have a parent in prison and the need to monitor the status of children placed in kinship homes, foster care, pre-adoptive homes and other care institutions.

Adoption

UK should strengthen its efforts to enable children, in their best interests, to be adopted as speedily as possible taking account of their cultural background.

Violence, abuse and neglect

UK should establish mechanisms to monitor the number of cases and the extent of violence, sexual abuse, neglect, maltreatment or exploitation, including within the family, in schools and in institutional or other care. Also strengthen support for victims of violence, abuse, neglect and maltreatment to ensure that they are not victimised once again during legal proceedings and provide access to adequate services for recovery, counselling and other forms of reintegration.

6. Basic health and welfare (arts. 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3) of CRC)

Children with disabilities

UK should take all necessary measures to ensure that legislation, programmes and services for children with disabilities, are effectively implemented. Training for professional staff should be provided e.g. teachers and social workers, and a public information campaign organised on children's rights, to encourage their inclusion in society and prevent discrimination.

Health and health services

Greater co-ordination across Government to address inequalities in access to health services.

Mental health

More trained staff and resources are required to meet the needs of children with mental health problems especially those at greater risk e.g. children deprived of parental care, affected by conflict, living in poverty and in conflict with the law.

Breastfeeding

UK must further encourage breastfeeding.

Adolescent health

UK should intensify its efforts to provide adolescents with appropriate reproductive health services and reproductive health education in the school. The UK should continue to address the issue of substances use by adolescents by preventative measures, by providing accurate and objective information on toxic substances, by delivering reactive services such as accessible mental health and counselling services and support those wanting to end their addiction.

Standard of living

UK is reminded of the broad and entirely negative impact of poverty on children's rights. The UK should achieve the target of ending child poverty by 2020, including by establishing measurable indicators to monitor progress. Also, provide material assistance and support programmes for children and requiring local authorities to provide safe and adequate sites for Travellers.

7. Education, leisure and cultural activities (arts. 28, 29 and 31 of CRC)

Education, including vocational training and guidance

UK should strengthen its efforts to reduce the effects of the social background of children in their achievement in school; deliver greater investment to ensure right of all children to an inclusive education; intensify efforts to tackle bullying and violence in schools; and strengthen children's participation in all matters which affect them.

Right to leisure and play

UK should guarantee the right of each child to rest and leisure, to engage in play and recreational activities, age appropriate, and to participate freely in cultural life and the arts e.g. in respect of children with disabilities.

8. Special protection measures (arts. 22, 30, 38, 39, 40, 37 (b)-(d), & 32-36 of CRC)

Asylum-seeking and migrant children

The detention of asylum-seeking and migrant children should only be used as a measure of last resort and for a short period; only specially-trained staff should conduct screening interviews of children; consider the appointment of guardians to unaccompanied asylum-seekers and migrant children; ensure that any return of a child occurs only with adequate safeguards.

Children in armed conflict²⁹

- The Committee recommends that the State Party provide training on OPAC to adults and children and to all members of its armed forces; that further training on the detail of OPAC be provided for all relevant professionals, including those working with asylum seeking and refugee children, migration authorities, police, lawyers, judges, including military judges, medical professionals, social workers and journalists; too.

- The Committee recommends the UK to re-examine its policy and practice to ensure that children are not exposed to the risk of taking direct part in the hostilities.
- The Committee encourages the UK to consider reviewing its position and raise the minimum age for recruitment into the armed forces to 18 years; ensure that recruitment does not target ethnic minorities and children of low income families.
- The Committee recommends that the State party review the requirements for, and expand the exercise of, the “discharge as of right” for child recruits.
- The Committee recommends that the UK should do more to identify and systematically collect data on refugee, asylum-seeking and migrant children within its jurisdiction who may have been recruited or used in hostilities; ensure that these children receive appropriate care and treatment.
- The UK should consider abolishing the handling and use of firearms by children.
- The Committee recommends that the State party ensure that children in conflict with the law, irrespective of its military or civil nature, are always dealt with within the juvenile justice system and in line with CRC.

Sexual exploitation and abuse

The UK should intensify its efforts to collect data on the extent of sexual exploitation and abuse of children in order to prepare adequate responses and take effective action. Child victims of these criminal practices, should be regarded as victims in need of recovery and reintegration, and not as offenders.

Sale, trafficking and abduction

The UK should provide the necessary resources for effective implementation of the Anti-trafficking Action Plan. The UK should ensure that child protection standards for trafficked children meet international standards.

Administration of juvenile justice

- The UK should raise the minimum age of criminal responsibility and develop a broad range of alternative measures to detention for children in conflict with the law. Adopt a statutory principle that detention is a measure of last resort and for the shortest period of time.
- The UK should adopt appropriate measures to protect the rights and interests of child victims or witnesses of crime at all stages of the criminal justice process.
- The UK should conduct an independent review on the ASBOs with a view to abolishing their application to children.

9. Ratification of international human rights instruments

The Committee encourages the UK to consider ratifying international human rights instruments e.g. The UN Convention on the Rights of Persons with Disabilities and the Optional Protocol on the sale of children, child prostitution and child pornography.

10. Follow-up and dissemination

The UK should take all appropriate measures to ensure full implementation of the present recommendations e.g. by transmitting them the Devolved Administrations for appropriate consideration and further action.

4. Concluding Observations - Implications for Scotland.

Introduction

The Committee on the Rights of the Child seeks to promote best practice by publishing its interpretation of children's rights in the form of 'General Comments' of which there are ten so far. The Committee has issued General Comment No 5 (GC 5) 'General Measures of Implementation for the Convention on the Rights of the Child' so that State parties are clear about the implementation measures which should be in place to promote the full and equal enjoyment of all rights in the CRC.

"When a State ratifies the Convention on the Rights of the Child, it takes on obligations under international law to implement it. Implementation is the process whereby States parties take action to ensure the realization of all rights in the Convention for all children in their jurisdiction."³⁰

State parties are required to have continuous strategies of implementation and evaluation to avoid progress on the CRC being measured only when the periodic reporting process takes place at the UN. GC5 is clear about implementation:

- Focus is on Government, Parliament and judiciary – at all levels.
- States take on the obligation but need to engage all sectors of society especially children.
- CRC principles must be directly applied and appropriately enforced.

The best practice contained in GC5 is supplemented by further General Comments (GCs) on implementing particular articles. All of the GCs are relevant and offer best practice on CRC implementation in the UK such as the rights of children with disabilities in General Comment No. 9.

Government's General Obligations

The Committee sets out the framework for compliance in GC No 5 and the Concluding Observations highlight the particular areas which require action by the UK. The following is a summary of GC No. 5 and sets out how the Concluding Observations may be met by the UK State. Some of the failings in respect of particular CRC Standards (individual articles in the CRC) reflect problems with general measure of implementation such as The Committee's concerns that there are insufficient resources to fund the UK's Anti-trafficking Action Plan.

Of course given the devolved nature of Government in the UK as well as our distinctive legal system, compliance with the COs in Scotland will navigate a particular route. The key players in implementation are the UK Government, the Scottish Government, the Scottish Parliament, the Judiciary and NGOs. SCCYP clearly has a role in monitoring compliance across all players.

Scottish Government's Role in Implementation of General Obligations under CRC

No.	Governments' General Obligations	Relevant COs
1	Obligation to make content of CRC widely known to children and adults.	Committee's Previous Recommendations; Dissemination, training and

- | | | |
|---|--|---|
| 2 | Obligation to make COs widely available | awareness raising; Co-operation with civil society. <i>Para 6(a) & 7, 20-21, 22-23</i>
Co-operation with civil society; Dissemination <i>Paras 22-23; 83</i> |
| 3 | Require Scottish Parliament to work and legislate within framework of CRC. | Legislation; Freedom of peaceful assembly; Protection of privacy. <i>Paras 10-11, 34-35, 36-37</i> |
| 4 | Review machinery of Government from the perspective of implementation of the CRC | Co-ordination; Family Environment and Alternative Care <i>Paras 12-13, 44-45</i> |
| 5 | Implement a comprehensive national strategy rooted in the CRC, taking account of the COs, developed through consultation and giving particular attention to marginalised and disadvantaged groups of children. The strategy requires to be endorsed at the highest level of Government, included in national budgets setting real and achievable targets for the human rights of children. | National Plan of Action; Family Environment and Alternative Care; Adoption; Children in Armed Conflict; Sexual exploitation and abuse; Sale, Trafficking and Abduction
<i>Paras 14-15, 44-45, 47, 72, 73-74, 76</i> |
| 6 | Strategy needs to be adequately resourced in financial and human terms. | National Plan of Action, Allocation of Resources
<i>Paras 15, 18-19</i> |
| 7 | Ensure domestic legislation is fully compatible e.g. laws on education, health, justice. | Legislation, Corporal Punishment, Follow up to the UN Study on Violence Against Children; Family Environment and Alternative Care; Asylum-seeking and migrant children; Administration of juvenile justice
<i>Paras 10-11, 42-43, 44-45, 70-71, 78, 80</i> |
| 8 | Procedure to ensure proposed legislation and policies are CRC compatible | Legislation, Respect for the Views of the Child
<i>Paras 11, 32-33</i> |
| 9 | Comprehensive and rigorous review of all domestic legislation and related administrative guidance to ensure compliance. Review requires to be continuous and built into machinery of government departments. | Committee's Previous Recommendations; Corporal Punishment, Follow up to the UN Study on Violence Against Children; Family Environment and Alternative Care; Adoption; Asylum-seeking and migrant children;
<i>Paras 7, 42-43, 44-45, 47,</i> |

- 70-71.
COs on OPAC – Para 72
Committee’s Previous
Recommendations;
Legislation; Family
Environment & Alternative
Care; Children with
disabilities; Education,
including vocational training
and guidance; Asylum
seeking and migrant children
Paras 6-7, 11, Para 45(c),
53(e), 67(e), 67 (h), 71(g)
*Committee’s Previous
Recommendations*;
Administration of Juvenile
Justice
Paras 6-7, 78
Committee’s Previous
Recommendations;
Legislation; Sale, Trafficking
and Abduction.
Paras 7, 11, 75-76.
Legislation; Dissemination,
training and awareness
raising; Freedom of peaceful
assembly; Freedom of
peaceful assembly;
Administration of juvenile
justice.
Paras 7, 21, 34-35, 36-37,78
Co-ordination; Independent
monitoring; Co-operation
with civil society.
Paras 13, 16-17, 22-23
Co-ordination; Independent
monitoring;
Paras 13, 16-17
Committee’s previous
recommendations; Violence,
abuse and neglect
Paras 6-7, 51(a), 71 (d), 74
Committee’s previous
recommendations; Allocation
of resources
Paras 6-7, 18-19
- 10 All rights should be regarded as justiciable
i.e. children can go to court and argue for
compliance with a particular CRC right.
- 11 Provisions directly invoked before the courts
and applied by national authorities
- 12 Remedies for non-compliance must be
effective.
- 13 CRC prevails where there is conflict
- 14 Establishment of co-ordination and
monitoring bodies both independent and of
government
- 15 Establishment of children’s rights
commissioner
- 16 Comprehensive data gathering to deliver
children’s rights.
- 17 Establish a children’s budget and make
children visible in budgets. Economic policies
are never neutral on their impact on
children’s rights so structural adjustments
e.g. due to credit crunch, demand rigorous
monitoring of the effects.
- 18 Obligation to develop awareness raising,
training and capacity building for **all those**
- Dissemination, training and
awareness raising; Co-

	involved in the implementation process e.g. government officials, parliamentarians and members of the judiciary and staff/volunteers working with children.	operation with civil society. Paras 20-21, 22-23
19	Development and implementation of application policies, services and programmes.	Committee's previous recommendations Paras 6-7
20	Develop a children's rights perspective throughout government, parliament and the judiciary.	Dissemination, training and awareness raising; Best interests of the child; Freedom of peaceful assembly Paras 20 - 21, 26-27, 36-37
21	Cultural & Structural – demonstrate change in perception of children in society.	Dissemination, training and awareness raising; Non-discrimination; Respect for the views of the child Paras 21, 24-25, 32-33
22	Children's rights units placed at the heart of government – should make children more visible in Government.	Committee's previous recommendations Paras 6-7
23	Demonstrate the impact of government on children's human rights.	Committee's previous recommendations Paras 6-7
24	Minister for Children in Government ensuring compliance with CRC across Government and through the public sector; ensuring compliance with COs. (a child being defined as under 18 years)	Committee's previous recommendations Paras 6-7
25	Establish inter-Ministerial Committees on Children to put CRC at the heart of Government, policy and services.	Committee's previous recommendations Paras 6-7
26	Introduce child impact assessment and evaluation on all matters which relate to children e.g. assessment of proposed budget and then evaluating actual impact of implementation.	Allocation of Resources Para 19
27	Produce annual state of children's rights reports.	Committee's previous recommendations; Co-ordination; National Plan of Action; Independent monitoring; Allocation of resources; Dissemination, training and awareness raising Paras 7, 13, 15, 17, 19, 21
28	Stimulate media interest in CRC	Dissemination, training and awareness raising; Non-discrimination; Respect for the Views of the Child;

29	Enable and encourage debate on COs	Protection of Privacy. Paras 21, 24, 25(a), 33(c), 37(b) Follow-up and Dissemination Paras 82-83
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Scottish Government's Role in Implementation of Specific CRC Standards

No.	Action on CRC Standards	Relevant COs
1	Take special measures to diminish or eliminate conditions that cause discrimination	Non-Discrimination; Family Environment and Alternative Care; Adoption Paras 24-25, 44-45, 47
2	Measures should take account of the rights and duties of parents	Respect for the views of the child; Protection of privacy; Cruel, inhuman or degrading treatment or punishment; Corporal punishment; Family environment and alternative care; Breastfeeding; Standard of living; Education, including vocational training and guidance. Paras 33, 37, 39, 42(c) & (d), 45(a), (d) (g), 59, 65, 67(c),
3	Active measures throughout Government, Parliament and judiciary to apply 'best interest' principle and consider how children's rights and interests are affected by their decisions.	Dissemination, training and awareness-raising; Non-discrimination; Best interests of the child; Freedom of peaceful assembly; Adoption Paras 20-21, 24-25, 26-27, 34-35, 36-37, 47.
4	Delivery of optimal child development - a holistic concept including physical, mental, spiritual, moral, psychological and social development.	Right to life, survival and development; Violence, abuse and neglect; Children with disabilities; Health and health services; Mental health; Adolescent health; Standard of living; Education, including vocational training and guidance; Right to leisure and play. Paras 28-31, 50-51, 52-53, 54-55, 56-57, 60-63, 64-65, 66- 69
5	Seek the views of children on all measures by Government - should seek to ascertain representative views. Due weight to be given to their views. Government required to establish direct contact with children as well as via NGOs.	Respect for the views of the child; Family Environment and Alternative Care Paras 32-33, 45(c),
6	Stimulate media interest in CRC	Non-discrimination; Respect for the views of the child; Protection of privacy; Dissemination.

Scottish Parliament's Role in Implementation

No.	Action on CRC Standards	Relevant COs
1	Parliament to legislate within framework of CRC and require effective implementation	Committee's previous recommendations; Legislation Paras 6-7, 10-11
2	Independently ensure legislation is fully compatible e.g. sectoral laws on education, health, justice	Legislation; Freedom of peaceful assembly; Freedom of peaceful assembly; Corporal Punishment; Administration of juvenile justice; Paras 10-11, 34-35, 36-37, 42-43, 78, 80
3	Review of legislative compliance with CRC should be undertaken by independent parliamentary committees and hearings, by NHRIs, NGOs, academics, affected children and young people.	Committee's previous recommendations; Independent monitoring; Co-operation with civil society; Respect for the views of the child; Freedom of peaceful assembly Paras 6-7, 16-17, 22-23,32-33, 34-35
4	Develop a children's rights perspective throughout Parliament.	Respect for the views of the child Paras 32-33
5	Set up a Parliamentary Committee on children's rights in Scotland	Committee's previous recommendations; Paras 6-7
6	Introduce child impact assessment and evaluation on all matters which relate to children e.g. assessment of proposed budget and then evaluating actual impact of implementation.	Allocation of resources Paras 18 - 19
7	Active measures in Parliament to apply 'best interest' principle and consider how children's rights and interests are affected by MSP decisions.	Best interests of the child; Respect for the views of the child. Paras 26-27, 32-33
8	Seeking the views of children on all measures by the Parliament. Should seek to ascertain representative views. Due weight to be given to their views.	Respect for the views of the child. Paras 32-33
9	Debate CRC Concluding Observations and hold annual debates on progress of implementation of COs.	Follow-up Para 82

UK Government's Role in Implementation

No.	Action on CRC Standards	Relevant COs
1	Require devolved Parliaments/Assembly to legislate within framework of CRC and require	Follow-up & Dissemination Paras 82-83

	effective implementation	
2	Implement a comprehensive national strategy rooted in the CRC, taking account of the COs, developed through consultation and giving particular attention to marginalised and disadvantaged groups of children. The strategy requires to be endorsed at the highest level of Government, included in national budgets setting real and achievable targets for the human rights of children.	National Plan of Action; Allocation of resources; Co-operation with civil society. Paras 14-15, 18-19, 22-23
3	Strategy needs to be adequately resourced in financial and human terms.	Committee's previous recommendations. Paras 6-7
4	Review machinery of Government from the perspective of implementation of the CRC	Committee's previous recommendations; Freedom of peaceful assembly; Freedom of peaceful assembly Paras 6-7, 34-35, 36-37.
5	Permanent monitoring mechanisms to ensure compliance with CRC and to prevent geographical discrimination in CRC.	Committee's previous recommendations; Co-ordination; Independent Monitoring; Freedom of peaceful assembly. Paras 7, 13, 17; 34-35
6	The collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realisation of rights, adopting nationally applicable indicators.	Committee's previous recommendations; Paras 6-7
7	Stimulate media interest in CRC	Non-discrimination; Respect for the views of the child; Protection of privacy; Dissemination. Paras 21, 24, 25(a), 33(c), 37(b)
8	Enable and encourage debate on CRC Concluding Observations	Follow-up & Dissemination Paras 82-83

NGO

No.	Actions on CRC Standards	Relevant COs
1	Develop NGO coalition on children's rights	Co-operation with civil society Paras 22-23
2	Work closely with Government	Corporal Punishment Paras 43
3	Independent monitoring of CRC implementation also with academics	Dissemination Para 83
4	Stimulate media interest in CRC	Non-discrimination Para 25
5	Enable and encourage debate on CRC	Co-operation with civil society

Concluding Observations

Paras 22-23
Dissemination
Para 83

- 6** Review of legislative compliance with CRC should be undertaken by NGOs, affected children and young people.

Respect for the Views of the Child
Paras 32-33

Conclusion

By adopting a consistent framework for implementing and monitoring CRC compliance, it will be progressively possible to compare and evaluate performance across the public sector in Scotland. Key public sector agencies, such as local authorities and health providers can replicate the above grids to fit in with their statutory responsibilities and the resultant impact of the CRC on organisational processes as well as policy funding and services.

5. Next Steps

While the COs are addressed to the 'state party', the Scottish Government has devolved responsibility for many of the matters and subject areas. Also responsible is the public sector in Scotland particularly local authorities and health boards. In the past the COs have not made an impact on policy and practice in Scotland and SACR acknowledges that we are now operating in a more positive environment. SACR welcomes the cross party support for the CRC and the Scottish Government's commitment to action that was articulated during the debate in the Scottish Parliament on the COs, in November 2008, by the Cabinet Secretary for Education and Lifelong Learning, Fiona Hyslop:

*"The Scottish Government has made clear its commitment to the provisions of the UN Convention on the Rights of the Child and our intention to use it as a driver for improvements to children's rights. It is a powerful tool to help deliver the improved outcomes that we want for all Scotland's children."*³¹

SACR recognises that there is a wide range of policy initiatives implemented by a large children's service staff who, on a daily basis work on behalf of children, without them necessarily recognising their obligations to respect children's rights. For this reason, SACR believes that there remain very considerable challenges on general awareness and understanding of CRC as well as the specific gaps raised by the COs e.g. on provision of and access to mental health services. SACR therefore firmly believes that the general implementation of the CRC should be the focus of activity for improved outcomes in terms of children's rights in Scotland.

SACR therefore suggests that as a matter of priority the following actions are delivered.

1. The production of an Action Plan which addresses the matters raised in the Concluding Observations.

This requires cross-sectoral support including national government, local government, health services, voluntary sector, private sector and other civil society bodies. The purpose of an Action Plan will be to make improvements on outcomes for children through the better realisation of their rights.

2. Increased awareness of the UNCRC through dissemination and education

This will require a substantial awareness raising and training programme including professionals, children and young people and parents. This would necessarily take account on the extent to which children's rights are realised in Scotland.

3. Promote a positive image and culture towards children and young people in Scotland

This will require a framework for redressing the negative images of children and young people in the media and consideration given to how to achieve a more accurate, positive and inspirational promotion of children and young people in Scotland

4. Increase opportunities for meaningful participation of children and young people

This will require a consolidation of existing means by which children's voices are heard and the creation of innovative ways for them to have a stronger presence in Scotland's civic society. In particular, the views of children belonging to minority groups should be sought. The Committee is clear that Governments should be able to evidence that listening to children has changed policy and practice.

5. Incorporation of the UNCRC in the State party's law

This will require the Scottish Parliament to explore ways on how children's rights can be incorporated into the Scottish Parliament's review of legislative proposals, its internal procedures and into the Scottish legal system. This would considerably strengthen the position of children's rights within Scottish culture and society.

In working towards these five priorities, SACR will work with SCCYP as we recognise that it has a statutory responsibility in delivering the principles and standards of the CRC³². The independence and role of SCCYP was recognised and applauded by The Committee which recognised that it operates as part of a larger jigsaw of bodies to protect children's human rights in the UK.

SACR also recognises that new partnerships will emerge as human rights for all people in Scotland become less abstract with the operation of the GB Commission on Equality and Human Rights with its enhanced range of powers e.g. on age discrimination, and the establishment of the Scottish Commission for Human Rights.

By working in partnership to encourage understanding of the CRC, to guide application of the COs to public sector practice in Scotland and by working towards a children's rights framework for public policy in Scotland, SACR believes that CRC implementation will improve services for children, and families, and make the outcomes for children better. Significant opportunities already exist including the UNCRC Partnership Group Meetings established by the Scottish Government which includes civil society and the public sector.

SACR believes that the COs will, for the first time, be taken forward in a meaningful and sustained way in Scotland and that is great news for children as we will all be clearer about their rights and responsibilities as well as our duties.

Appendix 1

Human Rights Report Card for Children

Many miles away in a city called Geneva, known for its mountains, watchmakers and cheese, a big meeting was held to discuss children's rights in the United Kingdom. The meeting was organised by the United Nations which is a huge body working across the world to promote human rights. The UN, as its known, wants to make sure that children in the UK equally enjoy the rights which have been given to them as soon as they were born and last until they reach 18 years of age.

The 42 rights are listed in the UN Convention on the Rights of the Child and our Government promises to protect children's rights at home, in school, in hospitals and in the community. Adults must also do their best for children.

The rights are important and make a difference such as the right to play and relax by doing things like sport, music and drama (Article 31) and the right to the best health possible (Article 24). Children have rights as well as duties such as the right to be with friends and join or set up clubs, unless this breaks the rights of others (Article 15).

People from Scotland travelled to the meeting and listened carefully. At the end of the 2 day session, the UN Committee sent their love and respect to children in the UK. Then the Committee had a secret meeting and discussed all the written information as well as what the 26 Government officials had said. The UN Committee also met with some independent organisations and listened to some young people, from Scotland.

After 2 weeks the UN Committee published a report which is like a school report card and said the UK Government must do better. Although some progress had been made such as setting up Scotland's Commissioner for Children and Young People, the UN Committee was firm with the Government and listed topics and skills which must be improved including:

- All laws and policies obey the UN Convention on the Rights of the Child.
- Adults think about children's rights when making plans and spending money.
- Decisions are made 'in the best interests of the child'.
- Adults never use violence in disciplining a child who has done wrong.
- Children get proper care, support and opportunities if they have a disability
- Health, including mental health, is enjoyed by children, equally.
- Children get information and support to help them make good decisions.
- No child and family should live in poverty in 12 years time - at the latest!

Now the Scottish Government has promised the UN it will take action:

- to send out copies of the UN Report, probably by computer to save the environment, so that more adults and children know about human rights;
- to write an action plan on delivering children's rights;
- to work with services such as education to do better such as on dealing with bullies;
- to think of and listen to children more when agreeing policy and services.

In 5 years, the UN Committee on the Rights of the Child will meet again, gather information, speak to children and issue another report card. What do you think it will say?

References

¹ Article 4 of the UN Convention on the Rights of the Child: “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention”.

² Ibid.

³ The Ratification was made with Reservations and Declarations with the effect of limiting compliance, for example see paras 8 – 9 of ‘Committee on the Rights of the Child, 49th Session, Consideration of Reports Submitted by State Parties Under Article 44 of the Convention Concluding Observations United Kingdom of Great Britain and Northern Ireland’ pub by United Nations CRC/C/GBR/CO/4 on 3rd October 2008.

⁴ UK National Report to the UN Human Rights Council, March 2008, para18

⁵ A similar compliance mechanism is deployed for the 6 UN Treaties ratified by the UK such the Convention on the Elimination All Forms of Racial Discrimination. The monitoring body, the Committee on the Elimination of Racial Discrimination’s membership includes Mr Paul Thornberry from the United Kingdom.

⁶ Concluding Observations United Kingdom of Great Britain and Northern Ireland’ pub by United Nations CRC/C/GBR/CO/4 on 3rd October 2008, Paras 16-17. Specifically that none of the Commissioners are in full compliance with the Paris Principles – UN rules on the establishment of National Human Rights Institutions (NHRIs). The UNCRC also directs the UK to General Comment No 2 (2002) on the role of NHRIs in the promotion and protection of the rights of the child.

⁷ For the initial report submitted by the Government of the United Kingdom, see document CRC/C/11/Add.1; for its consideration by the Committee, see documents CRC/C/SR.204-206; and for the Committee’s concluding observations see document CRC/C/15/Add.34; for the second periodic report, see document CRC/C/83/Add.3; and for the Committee’s concluding observations see document CRC/C/15/Add.188.

⁸ Concluding Observations United Kingdom of Great Britain and Northern Ireland’ pub by United Nations CRC/C/GBR/CO/4 on 3rd October 2008, Paras 6-7

⁹ In para 7, *ibid* - the UNCRC draws this guidance to UK’s attention.

¹⁰ In para 19, *ibid* – the UNCRC

¹¹ In para 45 (i), *ibid*

¹² In para 15, *ibid* – the UNCRC requests that the UK take account of the outcome document.

¹³ In para 53, *ibid*.

¹⁴ Concluding Observations United Kingdom of Great Britain and Northern Ireland’ pub by United Nations CRC/C/GBR/CO/4 on 3rd October 2008, Para 42

¹⁵ ‘A Report on Implementation of the UN Convention on the Rights of the Child in Scotland 1999 – 2007’ pub by Scottish Executive 2007 ISBN: 978-0-7559-5416-2

¹⁶ Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Third and Fourth Periodic Reports of States parties due in 2007, United Kingdom of Great Britain and Northern Ireland’, 16th July 2007 published by UNCRC 28th February 2008 CRC/C/GBR/4

¹⁷ The NGO Alternative Report (Scotland) to the United Nations Committee on the Rights of the Child 2008.

¹⁸ List of issues to be taken up in connection with the consideration of the third and fourth periodic reports of the United Kingdom of Great Britain and Northern Ireland CRC/C/GBR/Q/4 27th June 2008

¹⁹ UK Government Response CRC/C/GBR/Q/4/Add.1 10th September 2008.

²⁰ CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 8, PARAGRAPH 1, OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT Initial reports of States parties due in 2007 UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND CRC/C/OPAC/GBR/1 3rd September 2007

²¹ The UK ratified the Optional Protocol on the Involvement of Children in Armed Conflict on 24th June 2003.

²² However the age range and time frame varies due to the different data gathering systems cited in the ‘Written replies by the Government of the UK of GB and Northern Ireland’, to the UN CRC/C7GBR/Q/4/Add.1, pg 38

²³ *Ibid*, para 80

²⁴ Paras 70-71, Concluding Observations United Kingdom of Great Britain and Northern Ireland' pub by United Nations CRC/C/GBR/CO/4 on 3rd October 2008,

²⁵ Concluding Observations United Kingdom of Great Britain and Northern Ireland' pub by United Nations CRC/C/GBR/CO/4 on 3rd October 2008

²⁶ Paragraphs 8 & 9 2002 Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland CRC/C/15/Add.188

²⁷ Paragraphs 10 & 11, Ibid

²⁸ Para 25 (a), Concluding Observations United Kingdom of Great Britain and Northern Ireland' pub by United Nations CRC/C/GBR/CO/4 on 3rd October 2008

²⁹ A Separate Report was published by UN Committee "Consideration of Reports submitted by States Parties under Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict – Concluding Observations: United Kingdom", 3rd October 2008 CRC/C/OPAC/GBR/1

³⁰ General Comment No. 5, Para 1

³¹ Official Report 6th November 2008, Official Report Col 12164

³² For example see functions under S4 & S5(2) & (3) Commissioner for Children and Young People (Scotland) Act 2003