

**Scottish Youth Parliament and Children's Parliament's
Joint Shadow Report
to United Nations Committee Against Torture - March 2019**

For consideration in relation to the United Kingdom's (UK's) Sixth Periodic Report during its 66th Session (23 April 2019 - 17 May 2019) on the implementation of UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

About us

Scottish Youth Parliament

The Scottish Youth Parliament (SYP) is the democratically elected voice of Scotland's young people. SYP's vision for Scotland is of a nation that actively listens to and values the meaningful participation of its young people. Our goal is to make this vision a reality, in order to ensure Scotland is the best place in the world to grow up. Our purpose embodies Article 12 of the United Nations Convention on the Rights of the Child (UNCRC): that young people have the right to express their views freely and have their opinions listened to in all matters affecting them. A rights-based organisation, SYP played a key role in the UN Committee on the Rights of the Child's 2016 examination of the UK and the UN Committee on the Rights of the Child Day of General Discussion on Children as Human Rights Defenders in September 2018.

As part of their 2017-18 national campaign on young people's rights '*Right Here, Right Now*', SYP held a Young People's Rights Review with the Scottish Government in April 2018 to ensure young people's voices were at the heart of national human rights policy. The event, inspired by the Universal Periodic Review at the United Nations (UN), saw MSYPs using UN recommendations to back up their own consultation-based calls to the Scottish Government - linking local, national and international human rights monitoring in a unique way as human rights defenders.

Children's Parliament

Children's Parliament (CP) is Scotland's Centre of Excellence for children's participation and engagement. The work is rooted within the human rights framework of the UNCRC. Since 1996, we have worked with children aged 3-14 using a creative, rights-based approach that ensures that their experiences, opinions and ideas can influence life at home, at school and in the community as well as Scotland's wider social and political landscape. We believe children should live and grow with dignity and be valued for what they can offer the world. CP delivers projects, consultations and longer-term programmes of work in partnership with local authorities, health boards and other public bodies and the Third Sector.

The CP's *Unfearties* initiative invites adults who are standing up for and alongside children to talk about the things they do that are making a difference in children's lives. This new, inspiring band of *Unfearties* will inspire, encourage and motivate friends and colleagues to think about what they can do to help improve outcomes for children and join the *Unfearties* movement.

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Priority concerns from List of Issues (see key recommendations in blue boxes)

(CAT/C/GBR/QPR/6 - see paragraph references next to headings below)

Please note that the comments in this response sit alongside both CP and SYP's full support for full incorporation of the UNCRC into Scots law. **We warmly welcome the commitment in the Programme for Government 2018-19 from the First Minister to 'incorporate the principles of the UNCRC into domestic law'; and call for a clear timetable for how this will happen (including when a draft Bill will be introduced to Parliament) to ensure the legislation is able to receive Royal Assent in advance of the next Scottish Parliament election in 2021.**

Equal Protection from Assault (paragraph 41)

It is our view that Scotland cannot be regarded as the best place in the world in which to grow up when our law gives children and young people less protection from assault than anybody else in society. The national and international research is loud and clear on this issue - physical punishment of children and young people is detrimental to children and young people's long-term health and wellbeing and adult outcomes, carries a high risk of escalation into abuse, and receives decreasing public support.

In SYP's Lead the Way (2016-2021) manifesto, we conducted a mass consultation on young people's views on various issues, securing 72,744 responses. One of our resulting manifesto commitments, the highest level of SYP policy, is: 'All physical assault against children should be illegal.' Respondents, who were aged 12-25, were overwhelmingly in support of this statement, receiving 82% agreement of our membership. Only 6% disagreed, and 12% abstained.

In CP's Pushing the Boundaries project (2015), children discussed family rules, discipline and punishment, and parental support and guidance. About physical punishment, they said, 'hitting me makes me feel sad in my heart, it's upsetting and it teaches you to hit your own kids.' This view has been echoed across the work we have done with children aged 3-14 across Scotland, who tell us that they do not want their parents or carers to shout at or hit them as it causes them to feel afraid and unloved.

We therefore agree with the Committee Against Torture (CAT)'s findings in 2013 that 'corporal punishment' of children should be explicitly prohibited in all settings. The defence of 'reasonable chastisement' in common law, cemented by the 'justifiable assault' concept in Section 51 of the Criminal Justice (Scotland) Act 2003, is discriminatory as it results in weaker protection from assault for the youngest in society. Children and young people merit equal, if not greater, protection from physical punishment, and certainly not less protection.

This can only be done through legislation and six years have passed since the Committee last called on the UK to prohibit 'corporal punishment' of children. Therefore, **SYP and CP fully support the Children (Equal Protection from Assault) (Scotland) Bill and ask for the Committee to urge the Scottish Government (who supported the removal of the defence to the physical punishment of children in this proposed legislation in their Programmes for Government 2017-18 and 2018-19) to ensure that this law passes without delay in 2019.**

Age of Criminal Responsibility (paragraph 25)

The minimum age of criminal responsibility in Scotland remains at 8-years-old and the Age of Criminal Responsibility (Scotland) Bill is currently passing through parliament, aiming to raise the age to 12-years-old. This will bring Scotland in line with a minority of European Union (EU) member states behind the majority of EU member states with a minimum age of 14-years-old.

CP supports this Bill in raising the age of criminal responsibility to at least 12, but after listening to the views of children and young people, CP feels that this legislation could go further in order to bring Scotland into line with UN and Council of Europe recommendations and other EU member states. When speaking with children, they suggested different ages between 12 and 18-years-old for when they thought more serious consequences should be considered. 'I think 12 because that's the midpoint in video games and things are a bit more adult.' 'Maybe 14. It's the second year of being a teen and you have more responsibility and you look a bit older.' 'Middle of your teenage years - so 16 - because you've gained more responsibility.' 'I don't think anything should go on your record before you're 18. You're ... still learning.'

SYP and CP agree with our partner organisation, the Commissioner for Children and Young People Scotland, that children who engage in harmful behaviour are often vulnerable and lack the capacity to breach criminal law, and would instead benefit from protection and rehabilitation rather than criminalisation which could increase the risk of returning to harmful behaviour and seriously affect their educational and employment opportunities later in life.

Therefore, CP and SYP support this Bill in raising the age of criminal responsibility to the age of 12, and urge the Committee to recommend that the Scottish Government ensures that this legislation passes without delay in 2019.

Gender-based bullying in schools (paragraph 11)

We agree that an update on action taken to tackle gender-based violence, violence against women and girls, sexism, and gender-based discrimination is necessary from the State Party (Lead the Way manifesto commitment 2016 - 90% MSYPs agree). As part of the *Equally Safe* project SYP carried out with the Scottish Government and Third Sector partners, children and young people identified a strong need for nurseries, schools, colleges and universities to be equal and safe places.

At the 2018 Cabinet Meeting with children and young people, Member of the Children's Parliament (MCPs) raised issues around bullying, gender stereotypes, LGBTQ+ discrimination, and the stigma of care experience. They asked the Scottish Government to do more around equality and equity, in order to ensure that all children feel included and loved, and have access to support and services.

We welcome the action taken by the Scottish Government to improve recording and monitoring of incidents of bullying in schools, in Action Point 8 of the Progress report on actions agreed at the Cabinet meeting with children and young people March 2018.

We are calling for teachers to receive training in gender equality and gender-based violence, in supporting children and young people experiencing abuse, combatting gender stereotypes and ensuring lessons co-designed with young people and experts on gender equality, relationships, sex, consent and LGBT issues.

In particular, we ask for the Committee's support in asking the State Party how children and young people will be involved not just in the delivery of reformed Personal and Social Education in Scotland (following the 2018 review), but in the co-production and development of *national* toolkits, guidance, resources and support provision.

Hate crime (paragraph 43)

With the Scottish Parliament's Equalities and Human Rights Committee, SYP's counterpart Committee responded to Lord Bracadale's Independent Review of Hate Crimes Legislation in November 2017. We found that many children and young people do not feel confident in reporting a hate crime, and current hate crime laws are patchy, exclusive and do not effectively deal with online hate. Furthermore, Islamophobia is a serious issue for children and young people in Scotland, which negatively impacts on Muslims and their families.

We therefore ask the Committee's support in calling on the UK Government and the Scottish Government (through its recently closed Consultation on Scottish Hate Crime Legislation) to **revise and harmonise hate crime law to ensure all groups in marginalised or vulnerable situations** *(relating to age, gender, immigration status, welfare status, membership of gypsy/traveller communities, and other groups such as people with a non-binary gender identity, people with invisible disabilities or mental health difficulties and care-experienced children and young people)* **are equally protected** with a parity of consequence of hate speech online and face-to-face hate speech, as well as specific harassment offences, and stirring up of hatred offences.

In addition, hate crime should be better explained through **transparent, preventative and empowering rights education**, and accompanying media campaigns on how to report a hate crime. We need a **robust national reporting procedure** of hate crime, including social media reporting; third party reporting centres, community-based approaches and proactive policing. In order to tackle religious bigotry and Islamophobia, we ask the Committee to call on the Scottish Government to take action by **supporting the work of grassroots organisations such as FOSIS in tackling religious bigotry and hatred** (SYP Members' Motion passed with 81% on 9th June 2018).

Mosquito devices

The use of mosquito devices as a method of dispersing groups of children and young people continues in communities around Scotland. This is discriminatory and violates the rights of children and young people to be free from torture and inhuman or degrading treatment or punishment.

A research survey report published last year in Scotland, as well as various Freedom of Information reports, found that the devices are found at bus stations, outside shops, in town centres, outside schools and outside private residences in Scotland. When the young people were asked to outline what physical and mental effects they experienced, 68% said they suffered headaches and migraines, while 48% said they endured earache and tinnitus. Other effects included experiencing dizziness, nausea, anxiety and panic attacks.

SYP has been campaigning for an outright ban since 2010 and will continue to do so.

'The 'Mosquito', a device that makes an unpleasant high-pitched noise that only those under 25 can hear, should be banned.' (66.76% agreement, passed 31st October 2010 and renewed three times since).

The Scottish Government has taken steps to demonstrate their lack of support for the use of mosquito devices, but their stance is that they do not have devolved powers to introduce a ban.

We ask for the Committee's support in calling for a UK-wide ban on these devices, and for the Scottish Government to implement a ban on their use (not sale) through their devolved powers for justice and health.