



**WE LISTEN, WE SUPPORT,
WE TAKE ACTION**
for Scotland's vulnerable
children and families

**Submission from CHILDREN 1ST
to UN Committee on the
Elimination of Discrimination
against Women (CEDAW)
United Kingdom seventh periodic
report on compliance with UN
Convention on the Elimination of
All Forms of Discrimination
against Women**

At CHILDREN 1ST, we listen, we support and we take action to secure a brighter future for Scotland's vulnerable children. Our work is built on over 125 years experience as the RSSPCC. By working together with, and listening to children, young people, their families and communities, and by influencing public policy and opinion; we help to change the lives of vulnerable children and young people for the better. We work to safeguard children and young people, to support them within their families and to help them to recover from abuse, neglect and violence.

CHILDREN 1ST has 46 local services and four national services across Scotland, and we work closely with many local authorities as well as working in partnership with other organisations. All our services are child centred. The children, young people and families we support are key partners in all aspects of our work.

At CHILDREN 1ST our priority is the wellbeing of children, although we take a whole family approach to this. Most of our work aimed at supporting children means we support their whole family, many of whom are lone parent families or the families of vulnerable women. In our work with families we see first hand the impact of the failure to address children's rights, and we see how this disproportionately impacts women. For this reason we feel that the needs and rights of children and those of women are very closely linked, which is why we are making a submission to CEDAW.

We welcome the opportunity to bring to CEDAW's attention those issues affecting children, and therefore women, in the UK which we feel do not comply with the UN Convention on the Elimination of All Forms of Discrimination Against Women.

Articles 1-4, Legislative Approach

Although CHILDREN 1ST welcomes the 2010 Equality Act and other measures taken to ensure legislation protects women, we are very concerned that the Scottish Government remains unwilling to fully incorporate the UN Convention on the Rights of the Child in legislation, despite its ratification in the UK in 1991. Full incorporation would send a clear signal about how we as a society value children and how we will treat them in the future. It would also enable clarity about what is expected from

future policy and law in terms of meeting the needs and interests of children and young people. We do not accept the concern expressed that such a move would somehow compromise parents' rights under ECHR and would draw attention to the legal opinion prepared by Aidan O'Neill QC for UNICEF in this regard¹. There is a current opportunity to do this in the Children and Young People Bill currently being formed, and we urge the Committee to recommend the full incorporation of the UNCRC as a matter of urgency.

In addition, the UN Committee on the Rights of the Child recommends that all countries that have ratified the UN Convention on the Rights of the Child should undertake children's rights impact assessments on all decisions related to children. The Committee specifically recommended to the UK governments to adopt the process in policy and decision-making. Although the Scottish Government undertook in 2008 to complete Child Impact Rights Assessments on all new legislation, this has not happened at all to date.

We would urge the CEDAW Committee to recommend to the state party:

The UNCRC should be fully incorporated in legislation in Scotland.

The Scottish Government should undertake Children's Rights Impact Assessments on all decisions or legislation affecting children.

Women offenders

Criminal law in Scotland defines a child as a person under 16 years of age. This conflicts with provisions in the Education (Scotland) Act, the UNCRC, and various other legislation. This means that young women aged 16 or 17 who come to the attention of the police are usually referred into the adult criminal justice system rather than the children's hearings system. This has a huge impact on the possible outcomes for these young women as the two systems are set up for different purposes; the adult justice system is very likely to treat them as adult offenders, while the children's hearings system is about needs not deeds, and is able to take into account all the factors affecting the child's life when making a decision about how to support them. Factors such as drug and alcohol misuse, domestic abuse, family situation, poverty, education and health can all be taken into account in the children's hearings system but would be unlikely to influence the outcome of a hearing in the adult justice system. In addition, the children's hearings system is set up to be less formal and more child-centred, so would be more likely to enable the young person to participate fully in the process.

We know that over one third (37%) of female prisoners have been in care as a child (compared to just 2% of the Scottish population) and more than a quarter (28%) of females in prison were in care at the age of sixteen². Clearly there is a link between personal circumstances and offending, and there is a huge need to work with children and young people to support them with the difficulties they are experiencing,

¹ <http://www.unicef.org.uk/Latest/Publications/Legal-opinion-from-Aidan-ONEill-QC/>

² <http://www.sps.gov.uk/Publications/Publication-4017.aspx>

rather than waiting until an offence is committed to punish the offender rather than support the child before an offence is committed.

In addition, international law states that child offenders in prison must be held separately from adult offenders. This is not currently happening for young women in Scotland, perhaps due to the relatively small numbers of female young offenders³. Young female offenders in Cornton Vale, Scotland's only women-only prison, are not always separated from adult offenders and there is very limited access for young female prisoners to age and gender appropriate services such as education⁴. This affects young women more than young men, as there is a separate young offenders' institution for male young offenders.

CHILDREN 1ST feels that it is entirely inappropriate for children and young people to be held in adult prisons, and would encourage the Committee to explore this issue further.

We would urge the CEDAW Committee to recommend to the state party:

All young people aged under 18 should be considered children under criminal law and therefore referred to the children's hearings system rather than the adult justice system.

There should be no young people under 18 in adult prisons, and the reasons for the continued custody of children in adult prisons should be explored and reported on.

Article 6 – Exploitation of women

Last year CHILDREN 1ST worked with 1881 people, 204 of whom said they had experienced or been impacted by sexual abuse; 59 were adults, the rest were children. We think this number is probably much higher, because of the number of people who don't feel able to tell anyone. When we look specifically at child sexual exploitation (CSE) it is even harder to know exactly how many people have been affected. This is a problem across Scotland, and is partly about the definition, and understanding of the definition, of CSE.

We believe that one of the barriers to disrupting and prosecuting CSE perpetrators is inconsistent sentencing and disposal. Although this problem is not limited to CSE, there have been several recent cases involving child sexual abuse which caused widespread concern and threatened to undermine the positive work and resulting forward steps the NSCU has taken in recent years.

Cases like the 2012 case in which a rape charge faced by a 22 year old man who had sex with a 13 year old girl was plea bargained down to sex with a minor rather than rape, can be extremely distressing for victims and their families. These cases also contribute to the view that older children, usually girls, are capable of consent, and that being sexually abused and exploited is a lifestyle choice. This belief is

³ <http://www.sps.gov.uk/Publications/Publication-4023.aspx>

⁴ http://www.sacro.org.uk/Womens_Offending_in_Scotland_final.pdf

incredibly damaging as it leaves vulnerable children open to abuse without challenge from the adults who should be protecting them.

This is evidenced when, as in the recent case in Oxford, organised paedophile rings set up to exploit and abuse children are able to do this in public places and over a long period of time without anybody questioning or reporting this. It is everybody's responsibility to protect children, and this includes speaking out when we suspect CSE is occurring. If, however, it is the accepted norm in our society to see older children as consenting adults who have chosen to be with their exploiters, then it becomes difficult for those with concerns to speak out.

It is vital that the Scottish courts send out a very clear message that the sexual abuse and exploitation of children and young people is wholly unacceptable and that victims will be listened to, taken seriously and given the support they need. The use of maximum charges and sentences in CSE and CSA cases would go some way toward this.

Another barrier to the prosecution and disruption of CSE perpetrators is that the full range of sentencing powers available is currently not being used. Risk of Sexual Harm Orders (RSHOs) were introduced as part of The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005. RSHOs give courts the power to place restrictions on someone who is behaving in such a way which suggests that they pose a risk of sexual harm to a particular child or children in general. The person's behaviour need not constitute a criminal offence and s/he need not have any previous convictions. The Court may impose on the person any restrictions which are required to protect a particular child or children generally from sexual harm from the person. Sexual Offence Prevention Orders (SOPOs) are more appropriate where a person has a previous conviction for crimes of a sexual nature. A SOPO requires the subject to register as a sexual offender and can include conditions, for example to prevent the offender loitering near schools or playgrounds. CHILDREN 1ST believes there is scope for using RSHOs and SOPOs constructively to protect children, for example by imposing restrictions on internet usage in certain cases.

The most recent statistics available from Multi Agency Public Protection Arrangements (MAPPA) state that only 35 SOPOs were granted by the courts in 2009-10. When we consider that 3062 sex offenders were at liberty and living in Scotland in this year, we see that just 1.05% offenders on the Sexual Offenders' Register had SOPOs imposed by the courts. This suggests SOPOs are not being used as effectively as they could be. In addition, just two RSHOs were issued in the same year, suggesting that these are not being used preventatively as was the intention.

CHILDREN 1ST believes that it is essential that the use of child pornography is not seen as a victimless crime. Behind every image or film of child pornography there is a real child who has suffered. The downloading and distribution of these images creates a demand for new material that results in the further abuse of children. Often, though, the sentences received by those found guilty of possession of child pornography do not reflect this, and there have been cases in the past year in which very lenient sentences have been given. In the case of Bryan Haswell, for example, on whose computer police found 471 computer images and 96 movies, which had

also been shared with others, the Sheriff was only able to impose a maximum one year sentence because it was decided that Haswell should be prosecuted under summary procedure. After the trial the Sheriff stated that she would have given a harsher sentence if it had been in her power to do so. This is not a one-off case.

We believe this is an area in which we need a societal shift and for norms to change. Ensuring that maximum sentences are imposed in child pornography cases, in order to help the public understand that child pornography is a form of child abuse, would be a welcome first step.

We know that children and young people are increasingly confident and capable in the online world, and can navigate their way around it fluently. Those who wish to sexually exploit children are exploiting children's online abilities. We need to equip children with the skills they need to understand the dangers and protect themselves, not just online but in all aspects of life. We welcome the moves that have been made by the UK and Scottish Governments, along with key industries, to address this, but feel there is a long way still to go.

In Scotland there is a great shortage of abuse recovery services for children and their families. CHILDREN 1ST is clear that there are children and families in Scotland who have suffered from sexual abuse, including CSE, whose needs are not being met. Children are often on waiting lists for months, if not years. More needs to be done to protect children and help them recover from sexual abuse and harm.

We would urge the CEDAW Committee to recommend to the state party:

Evidence about the use and outcomes of SOPOs and RSHOs should be made publicly available.

Use of maximum sentences should be considered in all child sexual abuse and child sexual exploitation cases in order to send a clear message about how we as a society value children.

Maximum sentences should be imposed in child pornography cases, in order to help the public understand that child pornography is a form of child abuse.

Article 10 – Education

Many organisations in Scotland currently deliver workshops in schools about healthy relationships. These can cover sexual health, domestic abuse, and parenting, sometimes with a different organisation delivering each session. A sector-wide mapping exercise should be undertaken in order to draw out existing good practice. This way we could, as a sector, plan an approach to 'healthy relationships' education and deliver a comprehensive programme, building on the work that has already been undertaken. Currently as a sector we often attempt to divide this complex area into palatable 'chunks' in order for each organisation to protect its knowledge base and funding. This undoubtedly prevents us achieving the best outcome for the children and young people with the highest level of need, as in the allocated time for each 'chunk' it is not possible to really get to grips with the thematic underlying issues affecting all relationships, including power, control, assertiveness, confidence and

independence. Until we truly explore these issues with all children and young people, we are leaving the most vulnerable at risk of being exploited.

CHILDREN 1ST is currently working in a number of local authorities to deliver domestic abuse awareness raising workshops in primary. These projects allow a level of trust and openness that may not otherwise be possible. It also makes use of the extensive knowledge and experience CHILDREN 1ST has in this area, meaning that the best and most up to date knowledge can be shared with the young people taking part. In addition, it creates a direct link with trauma and abuse recovery services so that children can be referred directly into these services. The programme draws on materials already available, including Zero Tolerance and MVP, and was devised in conjunction with relevant agencies working with families experiencing domestic abuse in each area, as well as the schools involved, in order to avoid duplication. The focus of the sessions is on relationships, feelings and identity, and enables the children to build their knowledge and consider more complex issues as the sessions go on. We would like to see more of these types of high-quality courses, but dealing with all aspects of relationships, available to children across the whole of Scotland. This education needs to weave through the education system from a very early age in an age appropriate way. It is not an 'issue' to be dipped in and out of, but a whole school approach where respect is nurtured and modelled by staff.

In addition, we need to actively encourage the next generation of parents to learn how to be parents. This, among other things, means placing an emphasis on parenting skills on the curriculum in schools across Scotland.

We would urge the CEDAW Committee to recommend to the state party:

Holistic education programmes dealing with healthy relationships should be delivered in all schools in Scotland.

Parenting skills should be part of the curriculum in Scottish schools.

Article 11 – Employment

Childcare

CHILDREN 1ST welcomes the Scottish Government's intention to create a statutory right (or duty on others) to pre-school provision for children⁵. This in itself sends a very clear message about the value we now place as a society on a child's earliest years and the role we know that appropriate provision can play in giving children the very best start in life.

Many of our family support services provide real early intervention, working with families to address parenting skills, family relationships, issues with attachment and child development when these have been identified as an issue early on in families' lives. We also work with children and young people and families where there are

⁵[http://www.scottish.parliament.uk/S4_Bills/Children%20and%20Young%20People%20\(Scotland\)%20Bill/b27s4-introd.pdf](http://www.scottish.parliament.uk/S4_Bills/Children%20and%20Young%20People%20(Scotland)%20Bill/b27s4-introd.pdf)

specific issues for parents, such as substance misuse. For many vulnerable families, these are the kind of services which children need to continue accessing if they are to be “school ready” and just as importantly, have a better start in life. And while their access to such services need not be an either/or, any move to create a statutory entitlement to early learning/childcare must include in the definition this sort of family support and early years activity as a desirable option for many vulnerable children. Moreover, we know from looking at outcomes for parents who have engaged successfully with our services, often they are ready to take up training, further education or work after participating in our parenting programmes and receiving support. If we remove this kind of more specialist and intensive early years support for vulnerable families from availability in order to enable universal, increased access to early learning and childcare, then we will be compromising the life chances of our most vulnerable children.

In addition, the focus on pre-school childcare to the exclusion of that for older children suggests that there is not a need to improve availability of age-appropriate and affordable childcare for older children, yet we know from hearing from parents and carers who call ParentLine Scotland that this is an issue for many and we need a policy focus on improving such provision.

While we welcome the proposed increased flexibility, we would seek assurance that parenting programmes and family support activity that is already provided for many families will still feature in the mix of flexible early provision.

The proposals appear to imply that flexible childcare and early learning provision should be provided outwith the home, but CHILDREN 1ST's experience of providing family support in the early years is that a mixed approach, tailored to suit the individual needs of children and young people and families, works best. Often, that involves providing support – around key building blocks similar to those in the play, talk, read campaign and also, in establishing boundaries, routines and norms for family life – in families' own homes, as well as in other facilities, such as nursery schools and our own resource bases. This level of flexibility needs to be built in to ensure that the needs and interests of children – particularly the most vulnerable – are being met with the new provisions.

We would urge the CEDAW Committee to recommend to the state party:

When considering childcare provision the needs of the most vulnerable families, and those with the greatest need, must be taken into account. This will mean making parenting support and a tailored approach available to families rather than adopting a one-size-fits-all approach.

Article 12 – Women's health

Sexual health

There are many complex reasons why there is a high rate of teenage pregnancies in Scotland. This makes finding a single policy or legislative solution difficult. Our view is that there should be a holistic approach to understanding, and dealing with the issues surrounding teenage pregnancies.

While we acknowledge the need reduce teenage pregnancies in Scotland, it should also be acknowledged that young mums can be good mums, and that it is important to ensure there is appropriate support and advice for both young mums and young dads throughout the pregnancy and beyond. It is extremely important to address and resource early intervention and early years and we believe that there are clear indications that it would help to listen to young people and their experiences to establish what could really make a difference.

CHILDREN 1ST also believes that while sex education should include information about correct use of contraception and STI's, this on its own is not enough, and sex education also needs to involve young people in discussions around building and sustaining healthy relationships, and the importance of communication within trusting respectful relationships. It's vital to start talking to children (in schools and in our homes) when they're young and to help them understand what makes a good relationship. It is not one where one person is possessive or demanding or abusive. As they get older the conversation can then move on to sexual relationships – not just the act of sex itself.

Appropriate and accessible support services should be available to all young people across Scotland, in a confidential environment where they feel comfortable and not judged.

We would urge the CEDAW Committee to recommend to the state party:

Holistic education programmes dealing with healthy relationships, including, but not exclusively, sex education should be delivered in all schools in Scotland.

Drug and alcohol misuse

CHILDREN 1ST is clear that many adult services in Scotland are still not routinely considering children's needs and child protection when working with adults with drug or alcohol misuse issues. Adult services across Scotland are still often working in isolation and not considering or implementing the appropriate child protection procedures. This can be the case when parents are admitted to high dependency alcohol treatment hospital wards, for example, with staff overlooking child protection.

In 2012 the Scottish Government launched Getting Our Priorities Right (GOPR)⁶, guidance which encourages services working with adults affected by drug and alcohol misuse to consider the needs of any children their service users may have. It is our view that this guidance does not go far enough to encourage a more rights-based approach to work with children and young people.

We would urge the CEDAW Committee to recommend to the state party:

All staff in public services should have an understanding of child protection issues and their role related to this.

⁶ <http://www.scotland.gov.uk/Publications/2013/04/2305>

Article 13 – Economic and social benefits

Article 15 – Equality before the law

CHILDREN 1ST welcomes the new Victims and Witnesses Bill but is aware that it does not fully implement the EU directive on victims.

The use and impact of existing special measures, as well as those included in the new Bill, need to be monitored and reported on.

The new Victims and Witnesses Bill includes a provision giving both parties the right to object to the use of special measures for giving evidence where they consider it to be “inappropriate in the circumstances” (articles 9 and 13)⁷. We are very concerned about this as it could lead to more children being expected to give evidence in court, where they are likely to be retraumatised.

Article 16 – Family law

Corporal punishment

Adults hitting children is a human rights issue – it is not a parental right justified by Scotland’s cultural traditions. It is out of date, out of sync with the majority of countries in Europe and delivers a harmful message that hitting is a way to solve problems. The current law in Scotland is confusing and undermines our ability to protect children from harm. By removing the current legal ambiguity about what constitutes physical harm to a child we can keep all children safe and respect their human rights.

The UK Hearing on CEDAW is a timely opportunity for the Committee to specifically remind the UK and the Scottish Government of the need to take effective legislative, administrative, judicial and other measures to prevent acts of violence against women and girls. There is a current legislative opportunity to positively promote and respect children’s human right to be protected by the law from violence, with the imminent publication of a Children and Young People’s Bill designed to ‘further progress the realisation of children’s rights’.

However the Scottish Government as recently as August 2012 confirmed that it has no intention of changing the law in Scotland. In the Human Rights Council UPR Report on the UK Sweden, Finland, Norway and Hungary recommended that the UK must ensure the freedom of children from corporal punishment, in accordance with the UN Convention on the Rights of the Child (UNCRC). In September 2012 the UK Government, in agreement with the Scottish Government, chose to formally

⁷ <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/59133.aspx>

reject this recommendation . In a letter of 29th August 2012 to Lord McNally, the Scottish Government states “that the existing law provides the right protection of children and young people” and that there are “no plans to change this approach”.

In practice there is a real potential for conflict as the oath of Scotland’s new National Police Force, operational since 1st April 2013, states “I, do solemnly, sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable with fairness, integrity, diligence and impartiality, and that I will uphold fundamental human rights and accord equal respect to all people, according to law.” It is now time that the law on hitting children is consistent with international human rights law. Legal reform has been delivered successfully around the world without criminalising the majority of parents and Scotland can learn from example eg 19 countries in Europe now give children equal protection. Legal reform will operate in parallel with the existing Scottish Government programme designed to promote positive parenting and the use of alternative forms of discipline.

There are established links between the physical punishment of children and other forms of violence, including violence against women . We also encourage the Committee to make separate recommendations for Scotland. Currently Section 51 of the Criminal Justice (Scotland) Act provides parents/carers with a “justifiable assault” defence if they hit a child as a punishment. It is bizarre that the law should permit and define “justifiable assault” on any human being. By amending the law and removing this defence, the human rights of children will be respected and protected. Children will have the same legal protection from violence as adults currently enjoy.

We would urge the CEDAW Committee to recommend to the state party:

The Scottish Government should pass legislation to explicitly prohibit corporal punishment in all settings including the home.

Domestic abuse

Police statistics show that, although in the last year instances of domestic abuse seemed to decrease slightly, there is a clear general trend showing an increase over time.⁸ We know that women are far likelier than men to be victims of domestic abuse, while men are far likelier to be perpetrators. We are very concerned that 133 under 16s and 2715 16-18 year olds were victims of domestic abuse in 2011/12, the vast majority of whom were girls.⁹ At the same time, the number of young perpetrators has increased, with incidents of domestic violence increasing across the board. This is clearly a very concerning trend which needs to be tackled in a number of ways, as early as possible in childrens’ lives. The holistic relationship education we discuss above, if delivered in a consistent way across Scotland, would go some way towards this.

CHILDREN 1ST acknowledges that the ACPOS joint protocol on domestic abuse has been updated¹⁰ but children and young people are still barely mentioned, particularly

⁸ <http://www.scotland.gov.uk/Topics/Statistics/Browse/Crime-Justice/TrendDomesticAbuse>

⁹ <http://www.scotland.gov.uk/Topics/Statistics/Browse/Crime-Justice/TrendDomesticAbuse>

¹⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85456/7th-cedaw-report.pdf, para 271

in their capacity as victims as well as witnesses. Similarly the Guidelines on the Investigation and Reporting of Sexual Offences need to be updated in the light of the recent abuse cases in the UK.

The report also makes reference to resources available for victim support relating to domestic abuse, and we felt it is very important to consider the needs of children, who will often have very different and specific needs, and should be considered as victims in their own right, not simply bystanders or witnesses to the abuse going on around them.

We would urge the CEDAW Committee to recommend to the state party:

Holistic education programmes dealing with healthy relationships should be delivered in all schools in Scotland.

Guidelines and protocols should be updated reflecting recent abuse cases and the increasingly frequent and very real role of children and young people in cases domestic abuse.

For more information about CHILDREN 1ST contact the policy team at policy@children1st.org.uk or on 0131 446 2310.