

Children's Rights Alliance for England

Submission to the UN Committee Against Torture on behalf of Children's Right's Alliance for England in respect of its examination of the United Kingdom

April 2013

About CRAE

The Children's Rights Alliance for England (CRAE) is a membership body for organisations and individuals committed to our overarching aim: the full implementation of the Convention on the Rights of the Child (CRC). CRAE is the leading organisation working to promote children's rights in England. We do so by lobbying government and others who hold power, by bringing or supporting test cases and by using national and international human rights mechanisms. We provide free legal information, raise awareness of children's human rights, and undertake research about children's access to their rights. We mobilise others, including children and young people, to take action to promote and protect children's human rights. Each year we publish a review of the state of children's rights in England.

Introduction

CRAE welcomes the opportunity to bring to the attention of the UN Committee against Torture those issues affecting children in the UK which, in our view, contravene the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Our comments relate to **Article 16**.

Age of Criminal Responsibility

In England and Wales the age of criminal responsibility is 10 years-old.¹ This is lower than the vast majority of other countries.

The UN Committee on the Rights of the Child (the CRC Committee) has been clear that setting the age of criminal responsibility below 12 is '*not to be internationally acceptable*', that the age of 12 should be '*the absolute minimum age*' and that member states must '*continue to increase it to a higher age level*', as many other countries have done.² The CRC Committee has repeatedly recommended that the UK should raise the minimum age of criminal responsibility.³ Such an approach is supported by other international human rights standards, including the Beijing Rules which state that the minimum age

¹ Children and Young Persons Act 1933, s 50

² UN CRC Committee (2007) *General Comment No 10: children's rights in juvenile justice*, para 32

³ See most recently UN Committee on the Rights of the Child (2008) *Concluding Observations United Kingdom of Great Britain and Northern Ireland*, para 78

should not be fixed at too low a level.⁴ The Committee against Torture (the CAT Committee) has itself expressed concern over low minimum ages of criminal responsibility, including by advising New Zealand that the age of 10 is too low and recommending an increase in line with international standards.⁵

The CRC Committee makes it clear that children in conflict with the law should be treated differently from adults because they *'differ from adults in their physical and psychological development, and their emotional and educational needs'*.⁶ Criminalisation of children at such a young age in the UK stigmatizes children as criminals and can have a lasting detrimental impact on their sense of self-worth, and psychological integrity. It also places them in a criminal justice system which can be highly distressing, and is inappropriate for their care and rehabilitation.

We would urge the CAT Committee to recommend to the State Party:

The age of criminal responsibility should be raised significantly to reflect the requirement of international human rights standards.

Detention, Detention Conditions, and Deaths in Custody

Children who are criminalised can be detained in the youth custody secure estate. The act of detaining children can be highly damaging to their psychological and physical wellbeing. Notwithstanding this, far too many children continue to be detained inappropriately in the United Kingdom.⁷ Further, as currently configured, the conditions of detention in the youth custody secure estate breach children's rights to be free from inhuman and degrading treatment.

Article 3 of the CRC, which requires that the child's best interests are a primary consideration, means *'that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders'*.⁸ The CRC proposes a separate, distinct system of juvenile justice, one that respects the child's right under Article 6 CRC to maximum possible development. Currently, children can be held in Young Offender Institutions (YOIs), large prison-like institutions, which are inappropriate to meet children's rights to rehabilitation and reinsertion. The Youth Justice Board, which is responsible for the youth custody secure estate, has confirmed that it will reflect the fact that far fewer children are in custody by decommissioning places in the secure training centre and secure children's home sectors, rather than YOIs. The YJB itself acknowledges that

Both secure children's homes and [secure training centres (STCs)] have specially trained staff and staffing ratios that allow for the delivery of regimes that address the holistic needs of children and young people. In addition, the size of

⁴ *United Nations Standard Minimum Rules for the Administration of Juvenile Justice – The Beijing Rules, adopted by General Assembly resolution 40/33 of 29 November 1986, Rule 4*

⁵ Committee Against Torture (4 June 2009) *Concluding Observations New Zealand CAT/C/NZL/CO/5*, para 8(a)

⁶ UN Committee on the Rights of the Child (2007) *General Comment No 10: children's rights in juvenile justice*, para 10

⁷ Figures released in April 2013 show that 1,320 children were in custody. Youth Justice Board/ Ministry of Justice (31 January 2013) *Youth Justice Statistics 2011/2012 England and Wales*

⁸ UN Committee on the Rights of the Child (2007) *General Comment No 10: children's rights in juvenile justice*, para 10

secure children's homes and STCs is comparable – and a lot smaller than under-18 YOIs... Under current arrangements, the under-18 YOI sector can lack a distinct focus on service delivery for children and young people. In this sector there is potential for tensions to arise between the YJB's requirements for services with an exclusive focus on children's needs, and the various demands placed on its main provider NOMS, which mainly provides services to adults.

The Article 3 ECHR protection against inhuman and degrading treatment and torture applies with particular stringency in the context of detention. There is a presumption that, where a person in custody is subjected to treatment considered to be in breach of Article 3, responsibility for the treatment can be attributed to the State.⁹

Similarly, the CAT not only requires each State to prevent cruel, inhuman or degrading treatment or punishment 'when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity'¹⁰ but also requires States to 'keep under systematic review ... arrangements for the custody and treatment of persons subject to any form of arrest, detention, or imprisonment ... with a view to preventing any cases of torture' and preventing cruel, inhuman or degrading treatment.¹¹ Crucially, therefore, it imposes on States, in addition to a negative duty not to treat children in a cruel, inhuman or degrading way, a positive duty to safeguard them from such treatment. Elaborating on the state's positive duty in this regard, the CAT Committee has said '...each State party should prohibit, prevent and redress torture and ill-treatment in all contexts of custody or control, for example, in prisons, hospitals, schools, institutions that engage in the care of children, the aged, the mentally ill or disabled, in military service, and other institutions as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm'.¹²

In this regard, the conditions forming the background to self-inflicted deaths in custody are relevant. Unsatisfactory custodial conditions unsuited to a child's needs may breach the right to be free from inhuman and degrading treatment. For example, where a child has been given inadequate medical, mental health or drug detoxification treatment¹³ leading to the suicide of the child in custody, this has been held to breach this right. In *Keenan v UK*, the suicide in custody of a mentally ill prisoner was found to breach Article 3 by reason of neglect; there had been inadequate monitoring of his condition and psychiatric assessment, and he had been inappropriately segregated in a punishment block. Whilst these cases were decided in the context of Article 3, the principles apply equally to CAT as the provisions, including the positive and negative duty on the State, are the same.

That the UK Government and those managing the secure estate are failing children in this regard is clear. A recent report by the Prison Reform Trust and INQUEST¹⁴ highlights that 31 children aged 14 to 17 (all boys) have died in prison from 1990 to

⁹ *Tomassi v France* [1993] 15 EHRR 1

¹⁰ Article 16

¹¹ Article 11

¹² UN Committee Against Torture (2007) *General comment No. 2 Implementation of article 2 by States parties*, para. 15

¹³ *Keenan v UK* (2001) 33 EHRR 913

¹⁴ Prison Reform Trust and INQUEST (2012) *Fatally Flawed: Has the state learned lessons from the deaths of children and young people in prison?*

2011, 29 of which were self-inflicted deaths.¹⁵ A further three have died since then.¹⁶ The report observes that children in prison are among the most disadvantaged in society, many having complex support needs, such as mental health, learning disability or speech, language and communication difficulties,¹⁷ needs reflected in the backgrounds of the children who have died. The high prevalence of emotional and mental health problems among children in prison is noted as a particular concern, with self-harm common; there was an average of 144 incidents of self harm per month in 2011/12, involving an average of 87 young people.¹⁸ This discrepancy between number of incidents and number of individuals reflects the tendency of individuals to injure themselves repeatedly.¹⁹ This heightened vulnerability intensifies the state's duty to protect.

Notwithstanding this widespread vulnerability, the report concludes that none of the children who died in prison between 2003 and 2010 received the level of support and protection they needed. Key findings in the context of the CAT obligations include:-

- Opportunities for safeguarding children being hampered by a failure to record significant experiences in a child's background - for example, care status which is clearly an important indicator of potential vulnerability.
- Failures in communication and information exchange between prisons and the agencies/services children had contact with before custody –leading to signs of difficulty not being picked up and inadequate help and support being provided.
- Doubt as to the ability of the Prison Service's monitoring system to accurately identify and address risks of self-harm and suicide; worryingly, 50% of the deaths of the 98 children and young people in the INQUEST sample, had a known history of self-harm and/or mental health issues but no care-planning system in place²⁰ for staff to work towards defusing a potentially suicidal situation and/or helping those with long-term needs (e.g. those repeatedly self-harming) to better manage and reduce their distress.
- Being placed in unsafe and unsuitable environments, damaging and inappropriate to deal with their complex needs – conditions and treatment experienced by children include physical and mental health care neglect, endemic bullying, ill treatment (staff on child and child on child), racism and other forms of discrimination, long periods of cell-based confinement, deprivation of fresh air and exercise, inadequate education and rehabilitative provision, poor diet, ill fitting and shabby clothing, insufficient opportunities to maintain contact with family, and poor complaints processes.²¹

¹⁵ Ibid. p 13

¹⁶ Youth Justice Board/ Ministry of Justice (31 January 2013) *Youth Justice Statistics 2011/2012 England and Wales*

¹⁷ Talbot, J. (2010) *Seen and Heard: supporting vulnerable children in the youth justice system*, Prison Reform Trust

¹⁸ Youth Justice Board/Ministry of Justice (31 January 2013) *Youth Justice Statistics 2011/2012 England and Wales*

¹⁹ Prison Reform Trust and INQUEST (2012) *Fatally Flawed: Has the state learned lessons from the deaths of children and young people in prison?*, p 24

²⁰ Either an Assessment, Care in Custody and Teamwork (ACCT) plan or its predecessor the F2052SH form

²¹ Prison Reform Trust and INQUEST (2012) *Fatally Flawed: Has the state learned lessons from the deaths of children and young people in prison?*, p 46

Similarly, the problem of poor and inappropriate cell design continues to feature, with inadequate consideration being given to safeguarding issues such as being placed in cells where ligature points are freely accessible.²²

- What is raised as '*the most troubling aspect of the research*'²³ is the State's inadequate response to the deaths. Despite the number of deaths of children in custody the state bodies and agencies do not seem to have learned lessons from the numerous Prisons and Probation Ombudsman investigations, inquest findings, coroner's reports and serious case reviews. For example, the serious case review undertaken following Liam's McManus death (aged 15 when he hung himself) called on the chair of the local safeguarding children board to write to ministers highlighting

*the unsuitability of most cells at Lancaster Farms for children at risk of self-harm without higher levels of direct supervision and requesting that all cells in the secure estate used for children are brought up to safer cell standards.*²⁴

There are still no plans to upgrade all accommodation in the under-18 secure estate to safe standards.

Despite their identified risks (including mental health problems and self-harming behaviour) a significant number of children have been able to take their own life in custody. Each of those children died in the 'care' of the State while the State was responsible for their health and safety. This failure by the Government and the secure estate to take positive action to protect vulnerable children in custody from self-harm and suicide clearly amounts to a breach of their obligations under the CAT.

We would urge the CAT Committee to recommend to the State Party:

A distinct children's custody threshold should be introduced in law to ensure that only children who have caused serious physical or psychological harm and who are a serious danger to others can be held in custody; and then only when the court is satisfied that no sentence other than a custodial sentence is appropriate and for only the shortest period of time.

Any legislation and policy that allows under-18s to be treated as adults within the criminal justice system, should be amended to ensure it is in compliance with the CRC.

A new, distinct secure estate with an emphasis on therapeutic environments and interventions should be developed for the minority of children whose offending is so serious that only a secure placement can be justified. Children should only ever be placed in custodial settings which are appropriate for and focus on their rehabilitation and reintegration into society. Children should only ever be detained

²² Use of ligatures accounted for 52 of the 57 self-inflicted deaths (of all ages) in prison in 2011. Ministry of Justice (2012) *Safety in custody statistics quarterly bulletin January to March 2012*, Table 1.13

²³ Prison Reform Trust and INQUEST (2012) *Fatally Flawed: Has the state learned lessons from the deaths of children and young people in prison?*, p 53

²⁴ Executive Summary available: <http://sthelenslscb.org.uk/media/536/screxecutivesummary12009.pdf>

in child-centred environments which have a single joint aim: to provide positive rehabilitation and to meet the child's needs. These environments must operate to the highest child care and human rights standards, be non-punitive and demonstrably distinct in culture and practice from prison establishments. Children in custody should have a statutory right to independent advocacy. To ensure equitable care and protection with other vulnerable children, both in and after custody, they should have "looked after" legal status. The practice of detaining children in prison-like environments should be brought to an end.

Recommendations taken from *Fatally Flawed*:

A clear system for identifying and managing looked after children and care leavers in prison, and ensuring the input of all statutory partners including social workers, youth offending practitioners and staff in the secure estate, should be introduced.²⁵

A review of the operation of the Assessment, Care in Custody and Teamwork scheme as it applies to children should be conducted with a view to improving the accuracy of assessments and providing better support to those identified as at risk of harm.

Substantial improvements are needed in the availability and quality of mental healthcare provided to children and young people in prison.

Imminent changes to healthcare provision in prisons should be taken as an opportunity to drive up standards.

Procedures for transferring children out of the secure estate under mental health legislation should be re-examined, and, where necessary, updated with new guidelines.

An Independent Review should be established, with the proper involvement of families, to examine the wider systemic and policy issues underlying the deaths of children in prison. As a starting point the Ministerial Council on Deaths in Custody should commission a new working group of the Independent Advisory Panel to draw together the specific learning from recent deaths of children and identify issues for an Independent Review to consider.

Taser Guns

Firearms officers in police forces across England and Wales are permitted to use Taser stun guns, emitting a 50,000 volt electric shock, on children. In recent years Tasers have been rolled out to an increasing number of rank and file officers, and the Police Federation recently called for all officers to be Taser armed.²⁶ Taser use in England increased dramatically in 2011 (by 45%²⁷).

²⁵ Recommendation from Prison Reform Trust and INQUEST (2012) *Fatally Flawed: Has the state learned lessons from the deaths of children and young people in prison?*

²⁶ Letter from Police Federation to Prime Minister, 25 June 2012. See: <http://www.rtaylor.co.uk/police-federation-all-officers-taser-armed.html>

²⁷ Carter, H. (21 October 2012) "Campaigners raise concern over increased police Taser use", *The Guardian*

Tasers inflict intolerable pain. After being shot by one, the Chief Constable of Greater Manchester Police Force said: *'I couldn't move, it hurt like hell... I've never experienced anything like that. You just seem to freeze'*.²⁸ The use of these weapons on children is particularly harmful, owing to their particular vulnerabilities. In May 2007, the Defence Scientific Advisory Council's Sub-Committee on the Medical Implications of Less Lethal Weapons (DOMILL) concluded that children are *'at potentially greater risk from the cardiac effects of Taser currents than normal adults'*.²⁹ This is reflected in the recommendation by the Police Scientific Development Branch, following their evaluation of Tasers, that they should not be fired on small children³⁰ and in the Association of Police Officers' Policy and Guidance on use of Tasers which states that until more research is undertaken to clarify the vulnerability of children to Taser currents, children should be considered at possible greater risk than adults.³¹

The CAT Committee has previously confirmed that similar weapons violate the rights protected in the Convention. In relation to the purchase of TaserX26 weapons by Portugal, the CAT Committee raised concerns that the use of these weapons causes severe pain constituting a form of torture, and that in some cases it may even cause death, noting that the impact *'on the physical and mental state of targeted persons would appear to violate articles 1 and 16 of the Convention'*.³² This is a view shared by a former chairperson of the CRC Committee who stated that the Taser is an inhuman and degrading measure for any child and that there is a risk of serious harm due to the potential for physical and psychological suffering.³³ In 2008 the CRC Committee urged the UK *'to treat Taser guns [and AEPs] as weapons subject to the applicable rules and restrictions and put an end to the use of all harmful devices on children'*.³⁴

We would urge the CAT Committee to recommend to the State Party:

The use of Taser guns on, or in the vicinity of, children should be prohibited in law.

Mosquito Devices

Mosquito devices inflict acoustic pain on children and young people, which does not affect adults. The devices were first developed to scare away vermin, but are now used by local authorities, schools, companies and private individuals (such as shopkeepers)

²⁸ Chief Constable hit by Taser gun BBC News, 5 July 2005

²⁹ DOMILL Statement ref DSTL/BSC/27/01/07 DATED 30 May 2007

³⁰ Steering Group (Dec 2002) *Patten report recommendations 69 and 70 relating to public order equipment; a research programme into alternative policing approaches towards the management of conflict, Phase 3 Report*, Chapter 5, para 32

³¹ Association of Chief Police Officers (December 2008) *Taser Policy and Guidance – Authorised Firearms Officers*, page 22

³² Committee Against Torture (2008) *Conclusions and Recommendations of the Committee Against Torture: Portugal*, 39th Session, 2 – 23 November 2007 (CAT/C/PRT/CO/4)

³³ Professor Yanghee Lee, then Chairperson of the UN Committee on the Rights of the Child, Children's Law Centre Annual Lecture 2008, Thursday 13 March 2008 cited in Northern Ireland Human Rights Commission (April 2008) *Response to the Police Service of Northern Ireland's Equality Impact Assessment for Consultation: Proposals to Introduce Taser*

³⁴ UN Committee on the Rights of the Child (2008) *Concluding Observations United Kingdom of Great Britain and Northern Ireland*, para 30

to drive away children by making it too uncomfortable for them to be within earshot of the device.

A report by the UN Committee on Culture, Science and Education,³⁵ adopted by the Parliamentary Assembly of the Council of Europe, highlighted a lack of adequate medical research regarding the physical impact of high-frequency sounds on children and young people and advised that the precautionary principle should therefore apply. It also stressed that use of the Mosquito breaches numerous rights under both the CRC and the ECHR. The report notes that inflicting acoustic pain on young people and treating them as if they are unwanted birds or pests, is harmful, highly offensive and may therefore result in degrading treatment prohibited by Article 3 of the ECHR³⁶, the provisions of which correspond to those in CAT:

the main issues raised by this kind of device are their degrading and discriminatory consequences for young people, who are driven from given places as “unwanted”. This is neither politically acceptable nor consistent with the safeguard of fundamental human rights which the use of “Mosquito” devices clearly infringes.³⁷

In addition to being untested, the device is unregulated, and its manufacture, marketing and use are not subject to appropriate controls. The report of the UN Committee on Culture, Science and Education found that the UK had more Mosquitos than any other European state.³⁸ The UK Government confirmed recently (December 2012) that it does not plan to introduce any controls, suggesting that it is for the police and Police and Crime Commissioners to decide on the most appropriate approach to antisocial behaviour in a particular area.³⁹

We would urge the CAT Committee to recommend to the State Party (in accordance with the Council of Europe report):

Introduce appropriate legislative measures against the marketing and selling of Mosquito devices

Introduce a ban on the installation and use of Mosquitos in all public places.

Corporal Punishment

Parents and those in *loco parentis* are still able to raise “reasonable punishment” as a defence to a charge of common assault against children.⁴⁰ This is discriminatory, in that it denies children the same legal protection as adults against violent assault, and legitimises the use of violence against them. It means that UK law does not prohibit all forms of inhuman and degrading punishment of children.

³⁵ Committee on Culture, Science and Education (22 March 2010) *Prohibiting the marketing and use of the “Mosquito” youth dispersal device*, Council of Europe Parliamentary Assembly

³⁶ Committee on Culture Science and Education (March 2010) *Prohibiting the marketing and use of the “Mosquito” youth dispersal device*, Council of Europe Parliamentary Assembly, para 11

³⁷ *ibid.* Summary

³⁸ *ibid.* para 13

³⁹ HC, 20 December 2012, c. 875W

⁴⁰ Section 58 Children Act 2004

As well as parents, anyone in loco parentis has a legal right in England and Wales to use the defence of “reasonable punishment” in respect of a charge of common assault on a child.⁴¹ Although teachers are *loco parentis*, physical punishment is expressly prohibited in schools. However, a loophole means that the prohibition only applies to full-time education providers. As a result there remains a wide range of part-time educational and learning settings⁴² where there is no statutory prohibition on the use of physical punishment and in which the defence of reasonable punishment is still available. These settings range from supplementary schools and private tutoring, sports coaches and leisure activities to evening and weekend faith schools such as madrasas (part-time weekend or evening Islamic schools). Sir Roger Singleton (then Chief Adviser on the Safety of Children) has specifically advised that the ban on physical punishment should be extended to include ‘*any form of advice, guidance, teaching, training, instruction, worship, treatment or therapy and to any form of care or supervision which is carried out other than by a parent or member of the child’s own family or household*’.⁴³ However the UK Government has no plans to implement this recommendation.⁴⁴

A whole range of degrading or inhuman physical chastisement could fall within the notion of assault, for which the defence is available – pulling a child’s hair, rapping their knuckles or even, according to Court of Appeal judges in a recent civil case,⁴⁵ giving them a kick, provided they are not bruised or physically injured. It could also include forcing a child to sit or stand in a painful position, such as a particularly brutal form of punishment reported to be prevalent in madrasas in which the victim is forced to hold his ears while squatting with his arms fed through his legs.⁴⁶

As stated in the Study on Violence against Children, ‘*Violence against children in the family may frequently take place in the context of discipline and takes the form of physical, cruel or humiliating punishment*’ resulting in physical and psychological hurt.⁴⁷ The CAT Committee has repeatedly expressed its concern at the fact that corporal punishment in families is not expressly prohibited and that it may still be applied as reasonable punishment in disciplining children.⁴⁸ It has many times recommended a ban on all corporal punishment of children in all settings, the running of public campaigns to educate parents and the general public about its harmful effects and the promotion of positive non-violent forms of discipline as an alternative to corporal punishment.⁴⁹ Likewise, the CRC Committee sees corporal punishment as ‘invariably degrading’.⁵⁰ It

⁴¹ Section 58 Children Act 2004

⁴² i.e. those providing under 12.5 hours education a week

⁴³ Singleton, R. (March 2010) *Physical punishment improving consistency and protection*, para 27

⁴⁴ HC, 21 November 2012, c. 499W

⁴⁵ Court of Appeal (Civil Division) MA, SA and HA and MA, HA and the City and County of Swansea, Case No B4/2009/1068, 31 July 2009

⁴⁶ The Times (10 Dec 2008) referred to by the Children Are Unbeatable! Alliance (January 2010) in its Memorandum to the Public Bill Committee (Children, Schools and Families Bill) on *Extending prohibition of corporal punishment to madrasas, Sunday schools, youth clubs and others in loco parentis*

⁴⁷ United Nations General Assembly (August 2006) *Report of the independent expert for the United Nations study on violence against children*, para 41

⁴⁸ See for example: Committee against Torture (June 2011) *Concluding observations on initial report Ireland*, para 24; Committee against Torture (19 January 2009) *Concluding observations on second report Belgium* CAT/C/BEL/CO/2, para 24; Committee against Torture (19 February 2008) *Concluding observations on fourth report Portugal* CAT/C/PRT/CO/4, para 15

⁴⁹ See for example: Committee against Torture (June 2011) *Concluding observations on initial report Ireland*, para 24; Committee against Torture (25 May 2010) *Concluding observations on sixth report Switzerland* CAT/C/CHE/CO/6, para 2

⁵⁰ UN Committee on the Rights of the Child (June 2006) *General Comment No. 8 on the right of the child to*

has consistently interpreted the CRC as requiring prohibition of all corporal punishment in the family, issuing its General Comment on the subject to highlight the obligation on state parties 'to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children'.⁵¹ The CRC Committee has recommended three times that the UK change its law in this regard.⁵²

We would urge the CAT Committee to recommend to the State Party (in line with previous recommendations of the CAT Committee and CRC Committee⁵³):

Prohibit as a matter of priority all physical punishment of children in all settings, including in the family and in all educational, learning, training, teaching and instruction settings.

The legal defence of reasonable punishment should be repealed and the law amended to explicitly prohibit corporal punishment and other cruel or degrading forms of punishment in all such settings.

Given that the primary purpose of such reform is prevention, the legislative changes should be accompanied by campaigns to raise awareness of parents and the public of the negative effects of physical punishment and to encourage the development of positive, non-violent child-rearing and educational practices.

Given that the primary purpose of such reform is prevention, the legislative changes should be accompanied by awareness raising, guidance and training of all those working with children in these settings about the rationale for abandoning corporal punishment, their role in preventing such violations and how to respond in situations when there are indications that a child may suffer violence and need help.

Physical Restraint of Children in Custody

Methods of Restraint

A new system of restraint for use in under-18 young offender institutions (YOIs) and secure training centres (STCs) - Minimising and Managing Physical Restraint (MMPR) - went live on 4 March 2013 at Rainsbrook Secure Training Centre and is to be rolled out more widely over the next two years.⁵⁴ The new system includes techniques which involve the deliberate infliction of pain on children. It also includes restraint techniques which have been assessed as dangerous to children.

protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28(2) and 37, inter alia), para 11

⁵¹ *ibid.* para 2

⁵² UN Committee on the Rights of the Child (October 2002) *Concluding observations on second report United Kingdom of Great Britain and Northern Ireland*, para 38 and (3 October 2008) *Concluding observations on third/fourth report United Kingdom of Great Britain and Northern Ireland*, para 42

⁵³ UN Committee on the Rights of the Child (June 2006) *General Comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28(2) and 37, inter alia)*, paras 34 and 38; and see footnote 30 in relation to the CAT Committee

⁵⁴ See: <http://www.justice.gov.uk/youth-justice/custody/behaviour-management/behaviour-management-and-restraint-update>

MMPR was subject to independent assessment by a panel of operational, child welfare, medical and physiotherapy and other experts. The panel's assessment of MMPR stated that it:

regrets that [the authorities] when commissioned to develop a new restraint system were not asked to consider the option of restraint that does not rely on pain induction; [th]e option of restraint that does not rely on pain induction was not contemplated or developed for consideration; this despite the fact that some secure institutions currently do not use such techniques

The panel also raised significant concerns about the inclusion of, and risks associated with, a head hold technique.⁵⁵ Its report said that:

This form of restraint was considered by [the panel] to have some inherent potentially serious risks even when applied with complete accuracy, and to be too easily misapplied by staff ... with relatively small, inadvertent errors nonetheless carrying further risks of serious harm.

Its concerns included:

That the 'pistol grip' of the mouth and jaw could be too easily misapplied so that a member of staff restraining a child's head could accidentally compromise the circulatory and/or ventilation physiology of the child via the placement of their hand(s).

In using this grip (correctly) the child's mouth is being held shut and this may compromise the child's respiratory efficiency;

The child is pulled forward by the head with possible cervical spine damage and/or traumatising neural structures as a result;

We share the view of the Equality and Human Rights Commission that current restraint techniques for use on children in custody do not meet international human rights standards.⁵⁶ These techniques are in our view sufficient in themselves to amount to degrading or inhuman treatment or punishment, but further, as the Equality and Human Rights Commission rightly points out, the threshold of severity for defining such treatment or punishment is lowered in the custodial context because of the vulnerability of young people in custody.⁵⁷

The European Committee for the Prevention of Torture has recommended the discontinuation of the use of manual restraint based upon pain compliant methods⁵⁸ and the then Commissioner for Human Rights of the Council of Europe urged as long ago as 2008:

⁵⁵ Restraint Advisory Board (August 2011) *Assessment of minimising and managing physical restraint (MMPR) for children in the secure estate*

⁵⁶ Equality and Human Rights Commission (2012) *Human Rights Review 2012*, Article 3 Freedom from torture and inhuman and degrading treatment or punishment, p 91

⁵⁷ *Ibid.* p 71

⁵⁸ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment *Report to the Government of the United Kingdom on the visit to the United Kingdom carried out from 18 November to 1 December 2008*

...the immediate discontinuation of all methods of restraint that aim to inflict deliberate pain on children (among which physical restraints, forcible strip-searching and solitary confinement).⁵⁹

We would urge the CAT Committee to recommend to the State Party:

The use in the secure estate of any physical restraint techniques which aim to inflict deliberate pain on children and young people should be banned without delay.

Extent and Purpose of Restraint

The circumstances in which it is lawful to restrain children in custody are too wide. As such, the law does not adequately protect children against inhuman and degrading treatment. The use of force against children in custody is also too widespread, indicating that it is used otherwise than as a last resort.

The CRC Committee has stressed that any restraint against children should be used exclusively to prevent harm to the child and others around the child and only then as a last resort.⁶⁰ The circumstances in which STCs, YOIs and secure children's homes (SCHs) can lawfully use restraint on children are not restricted to restraint in order to prevent harm to the child and others. In addition to being able to use restraint where this is necessary to prevent the child from injuring himself or others, YOIs, STCs and SCHs can also use restraint to prevent the child from damaging property (seriously in the case of SCHs). Additionally in the case of YOIs restraint can be used to prevent the child creating a disturbance, and in the case of STCs and SCHs to prevent the child from escaping/absconding.⁶¹

Figures on the use of restraint in the secure estate call into question whether it is used only as a last resort. Despite a dramatic decrease in the number of children in custody, data provided by the Youth Justice Board shows the use of "restrictive physical interventions" (RPI) has increased.⁶² There were 8,419 incidents of RPI used in the youth secure estate in 2011/12, up six per cent from 2008/09 and up 17 per cent since 2010/11. There was an average of 702 restraints per month in 2011/12, involving an average of 474 young people. An inquiry by the Joint Committee on Human Rights in 2008 into the use of restraint in secure training centres found a high use of restraint, which was suggestive of restraint being used more frequently than absolutely necessary.⁶³ The UK National Preventive Mechanisms has also questioned whether restraint is always used safely and only when absolutely necessary.⁶⁴

⁵⁹ Thomas Hammarberg, then Commissioner for Human Rights of the Council of Europe *Memorandum following his visits to the United Kingdom (5-8 February and 31 March-2 April 2008) Issue reviewed: Rights of the child with focus on juvenile justice*

⁶⁰ UN Committee on the Rights of the Child (2008) *Concluding Observations United Kingdom of Great Britain and Northern Ireland*, para 39

⁶¹ Rule 52(1) of The Young Offender Institution Rules 2000; Rule 38(1) of The Secure Training Centre Rules 1998; and Regulation 17A(1) of The Children's Homes Regulations 2001 (as amended)

⁶² Youth Justice Board (January 2013) *Youth Justice Statistics 2011/12*

⁶³ Joint Committee on Human Rights (2008) *The use of restraint in secure training centres. Eleventh Report of Session 2007-08*

⁶⁴ Ministry of Justice (2011) *Monitoring places of detention, First Annual Report of the United*

Recommendations (in line with the CRC Committee's Concluding Observations⁶⁵):

The use of restraint against children in the secure estate should be used only as a last resort in cases of absolute necessity and should not be permitted as a form of discipline but exclusively where there is a need to protect the child or others from serious harm

Where there is a need to physically restrain a child as a last resort, such restraint must be proportionate to the circumstance and be for the minimum amount of time necessary, by trained staff, using approved techniques.

Effective and accessible complaints mechanisms should be in place in custodial settings

The collection and dissemination of data in relation to the use of restraint in custodial settings should be improved

Asylum Seeking Children: Destitution

Asylum-seeking children are regularly subjected to destitution, a form of inhuman and degrading treatment.

Asylum support is a temporary form of assistance aimed at meeting the essential living needs of individuals seeking international protection in the UK, who would otherwise be destitute. However, in practice, the Government's policies are ineffective in protecting children against destitution. Analysis by The Children's Society has suggested that asylum support levels for children and families can be as little as half mainstream benefit levels in some cases, leaving around 10,000 children in severe poverty for long periods of time.⁶⁶ It found that many families are not able to pay for the basics, including clothing, powdered milk and nappies. A recent report following the cross-parliamentary inquiry into asylum support for children and young people highlights evidence of widespread destitution among asylum seeking children and families.⁶⁷ The British Red Cross, for example, told the inquiry that they frequently see families with no support at all; of the 10,000 destitute refugees and asylum seekers they assist every year across the UK, 20% are families with small children. Similarly, a survey of refused asylum seekers in Bradford identified 66 individuals as being destitute, of which 15% were dependent children. The Asylum Support Partnership research into destitution in 2009 found that 13% of their destitute clients were people with children; half of these families had been destitute for over six months and they were most commonly refused asylum seekers.

The Children's Society has found that asylum seeking children:

are being left hungry, homeless and forced to resort to increasingly desperate

Kingdom's National Preventive Mechanism 2009-10

⁶⁵ UN Committee on the Rights of the Child (2008) Concluding Observations United Kingdom of Great Britain and Northern Ireland

⁶⁶ The Children's Society (April 2012) *Highlighting the gap between asylum support and mainstream benefits*

⁶⁷ Inquiry into Asylum Support for Children and Young People (January 2013) *Report of the parliamentary inquiry into asylum support for children and young people*, p 9

*means to survive. From our services, we know they are being put at risk of abuse, exploitation, violence and long-term health problems because of immigration restrictions on their access to critical support.*⁶⁸

Such destitution can last for prolonged periods of time, sometimes several years, and without access to even the most basic welfare support.⁶⁹

Recommendations:

The government should implement an end-to-end cash based support system for all children and their families who are seeking asylum or have been refused asylum as long as they are in the UK. This should include children who were born after an asylum refusal or those who have not claimed support previously, to ensure that no child is left destitute.

Asylum support should be amended in line with the cost of living and should be in-line with mainstream benefits to ensure that no child is forced to live in severe poverty.

A children's rights impact assessment should be conducted to ensure that Home Office policy and service providers adhere to the government's obligations under the UNCRC and Section 55 duty of the Borders, Citizenship and Immigration Act 2009 to safeguard and promote the welfare of children. The Home Office should be required to publish an annual report detailing how it has complied with these obligations when providing children and their families with asylum support.

⁶⁸ Press release by Matthew Reed, Chief Executive of the Children's Society (28 June 2012) accessible at: <http://www.childrensociety.org.uk/news-views/press-release/our-statement-destitution-among-asylum-seeking-migrant-children>

⁶⁹ Pinter, I. (2012) '*I don't feel human*' Experiences of destitution amongst young refugees and migrants, The Children's Society, p.3