# Children's rights: rhetoric and reality

**Deena Haydon** and **Phil Scraton** explore the deficit in effective implementation of children's rights in the UK.

'The Committee welcomes', 'reminds', 'notes', 'encourages', 'urges', 'recommends', 'reiterates', 'is concerned', 'notes with regret'; words that open the 85 paragraphs constituting the October 2008 Concluding Observations of the UN Committee on the Rights of the Child (UNCRC, 2008) in response to the third and fourth periodic report submitted by the UK and Northern Ireland. They reveal a spectrum of responses to the state's progress towards implementation of the UN Convention of the Rights of the Child (CRC). Although the UK ratified the CRC in 1991, its articles are not incorporated into domestic law and the Committee is powerless to enforce recommendations or act on egregious breaches. Statements of 'regret' or 'concern', accompanied by a strong recommendation to change social policy and/or legislation, constitute the most severe level of censure.

Throughout the children's sector, including the four Children's Commissioners (England, Northern Ireland, Scotland, Wales), immense effort is devoted to the reporting process: gathering evidence, writing reports, organising visits and sending delegates to hearings in Geneva. Alternative submissions are vital in the UNCRC's evaluation of the State's reports. Yet the process raises questions about accountability and incorporation – common whenever official discourse meets alternative accounts, particularly where ambitious claims are disputed. In achieving change, what is the real potential of monitoring without sanctions? In holding states to account, is admonition a satisfactory resolution? Through involvement in a process without enforceable consequences, do critical voices become part of an elaborate endeavour that, at its most cynical, allows the state to continue on a set course while appearing to engage in debate and review? Does participation in the process become incorporation, in which the agenda is orchestrated by the party being assessed?

Such equivocation contrasts with the expectations of international rights standards and the language of the rights debate. 'Advanced' democratic states, except the USA, ratify internationally-agreed conventions that protect individuals while fulfilling institutional responsibilities towards citizens, visitors, refugees and asylum-seekers. The principles underpinning defensive or protection rights (e.g. 'right to life') and positive or proactive rights (e.g. 'right to participate') are often delivered and debated in a language of certainty – 'fundamental'; 'inalienable'; 'universal' – belying a complex history of contestation. However rational and logical, however inclusive and acceptable, rights as codified absolutes are regularly challenged by relativism – variously represented as transactional and particularly evident in the assumed exchange between 'rights' and 'responsibilities'.

This raises the ideological context in which rights discourses are framed. Rights theorists argue that in responding politically to the 'need' for rights, and formulating measures accordingly, proposals must achieve cultural acceptability. A significant inhibition to achieving popular appeal is the notion of the 'pendulum'; that in protecting or affirming rights, the state can 'go too far'. Right-wing politicians and their media counterparts claim that, in promoting and protecting freedoms, rights provisions become over-inhibiting and anti-libertarian. A variation on the rights-responsibilities couplet, such commentaries invariably appeal to reaffirming 'balance'.

The representation of 'sovereignty' is a further inhibition on cultural acceptance; ratification of international conventions and standards is portrayed as undermining domestic law and policy. For example, the political and media response was ferocious when the European Court of Human Rights (ECtHR) ruled that, in the detention, trial and sentencing of two boys who had abducted and killed James Bulger, the government had breached articles of the European Convention on Human Rights. Deflecting criticism, Michael Howard (Home Secretary at the time of the case) was appalled that the Convention could be 'applied to cases like this' (*Hansard*, 6 December 1999). The *Liverpool Echo* claimed the ruling would be 'bitterly resented by those who feel we need no lessons from Europe on how to operate a just legal system in a democracy … this European Court has no obvious claim to lecture us on how to behave' (17 December 1999). *The Sun* railed: 'Who gave a bunch of European lawyers, from countries with much less satisfactory and mature legal systems than ours, the right to dictate how British courts and elected British politicians should deal with child murderers?' (17 December 1999). An 'outside court' was 'interfering in long-standing judicial and political procedures which have been democratically established and accepted by the British people' (*Daily Mail*, 17 December 1999). Minnet Marrin's jingoism was palpable: 'There is something rather monstrous … about a bunch of foreigners telling us what is right. And what a gallimaufry of foreigners they are too' (*Daily Telegraph*, 17 December 1999).

In contrast, 'internationalization secures the protection of citizens from rights violations *within* their



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states … where a rights agreement is accompanied by a higher court through which domestic rulings can be reversed' thus upholding the principles of 'internationally agreed justice' (Scraton and Haydon, 2002). Through the European Court, the articles of the European Convention on Human Rights are 'the conduit through which certain actions are policed and specified freedoms guaranteed, while providing 'mechanisms through which culpability is established and redress delivered' (ibid).

Advanced democratic states are often complacent in assuming they meet international standards, particularly with regard to children. Yet, they are aware that criticisms from domestic children's rights organisations must be 'managed'. For example, in its report to the UNCRC, the UK government (1999) was obliged to provide an explanation of the impact of new legislation on children and young people. While commenting on new powers for the police and courts within the 1998 Crime and Disorder Act, there was no reference to the introduction of Anti-Social Behaviour Orders (ASBOs) in England and Wales. Within months of introduction, ASBOs were used disproportionately against children and young people resulting in custodial sentences for breaches of civil injunctions never tested in a criminal court. Six years later, in reporting 'on the effective respect of human rights' in the UK, European Human Rights Commissioner Álvaro Gil-Robles expressed 'surprise' at the government's 'enthusiasm' for the 'novel extension of civil orders', not least 'particularly problematic' ASBOs (Gil-Robles, 2005). As civil injunctions these were easily obtained, covered a 'broad range' of behaviour, 'named and shamed' children and carried custodial consequences. Harsh conditions imposed on children made breach 'inevitable'.

Gil-Robles considered ASBOs, 'personalised penal codes, where non-criminal behaviour becomes criminal for individuals who have incurred the wrath of the community'. ASBOs had been 'touted as a miracle cure for urban nuisance' in a climate of 'Asbomania'. Troubled that children between 10 and 14 were judged 'criminally culpable', he concluded that civil injunction brought children to the 'portal of the criminal justice system'. Naming and shaming violated Article 8 of the ECHR, transforming 'the pesky into pariahs'. Alongside curfews and dispersal orders, ASBOs breach the CRC (undermining the 'best interests' principle, the presumption of innocence, due process, the right to a fair trial and access to legal representation). More specifically, conditions imposed regularly breach: the right to family life; freedom of expression; freedom of association; protection of privacy.

More recently, the UNCRC (2008) expressed 'concern' about the 'general climate of intolerance and negative public attitudes towards children, especially adolescents', noting that media coverage 'may be often the underlying cause of further infringements' of children's rights. It considered that ASBOs, 'instead of being a measure in the best interests of children, may in practice contribute to their entry into contact with the criminal justice system', imposing inappropriate restrictions on freedom of movement and assembly. Identifying infringements of children's privacy through 'naming and shaming', particularly targeting children 'from disadvantaged backgrounds', the UNCRC recommended an 'independent review' towards 'abolishing their application to children'. The lack of child-oriented play-space 'has the effect of pushing children into gathering in public open spaces … a behaviour that may be seen as anti-social'. Despite these strong criticisms, supported by academic research, the UK government remains resolute in its commitment to ASBOs, anti-social behaviour contracts, dispersal zones, curfews, parenting orders and family intervention as key elements in securing 'community safety'.

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Our recent research clearly shows that children and young people in Northern Ireland have an intuitive sense of 'rights' and 'freedoms', yet virtually no knowledge of the Convention on the Rights of the Child or independent human rights institutions such as the Northern Ireland Commissioner for Children and Young People or the Human Rights Commission. In their lives, rights are aspirations rather than realities. Despite significant investment in Commissions, a legal requirement on public bodies to consult those likely to be affected by legislation and policy and a wealth of strategies focusing on children and young people, they experience rights violations in every aspect of their lives.

If the 'rights agenda' is subject to ideological challenges and state 'management', is its value solely symbolic? Freeman (2000) recognises the 'chasm' between CRC principles and 'practice', yet asserts that a 'regime of rights is one of the weak's greatest resources'. Hudson (2001) argues for 'substantive justice' via 'the development of a rights-based approach … predicated on difference, on conflicts of rights generated by individual cases'. In this, 'universal statements of rights'

and internationally-agreed standards are 'starting-points' – providing a foundation on which to construct 'a jurisprudence of rights geared to deciding conflicts and upholding rights in specific cases'. Beyond political and ideological inhibitions, however, the most significant barrier to realising this objective is the pervasiveness of structural inequalities that contextualise children's life experiences and personal opportunities.

Over a decade ago, the Children's Rights Office (1995) listed the growing problems endured by children and young people in the UK: inequality, poverty, drug abuse, teenage pregnancy, violence, sexual abuse, child prostitution, homelessness, suicide and mental illness within 'a deteriorating environment and alienation from the political process'. The alternative reports presented to the UNCRC in 2008 demonstrated little change. Such experiences create and sustain profound alienation, especially when considered within the context of class, 'race', sectarianism, gender and sexuality. Together with political exclusion, structural inequalities can be challenged but not resolved by state-managed rights implementation. Children's rights organisations, children's advocates and children themselves have highlighted the discrepancies between rhetoric and reality. Development of a 'positive rights agenda' requires a 'fundamental shift in the structural relations and determining contexts of power which marginalize and exclude children and young people from effective participation in their destinies' (Scraton and Haydon, 2002). ■

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