

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Liberty's response to the Home Office Consultation:

**"Code of Practice to Keep Children Safe
from Harm Whilst in the United Kingdom"**

April 2008

Introduction

1. In January 2008, the Border and Immigration Agency within the Home Office published a consultation relating to the proposed ‘Code of Practice to Keep Children Safe from Harm Whilst in the United Kingdom’.¹ We note that this follows last year’s consultation on unaccompanied asylum-seeking children.² We are encouraged that the Government is giving its attention to this particularly vulnerable group of children, and we welcome its stated commitment to keeping children safe from harm while in our country.

2. In this short briefing, we do not comment in detail on the majority of the questions posed in the consultation, though we would note that we do have reservations regarding the suggested approach to the detention of families with children, given our concerns regarding the over-use by the Government of immigration detention powers.³ Instead we focus on Question 16, which asks: “*Should the UK withdraw its immigration reservation to the UN Convention on the Rights of the Child?*” In outline, this reservation seeks to reserve the Government’s right, notwithstanding the provisions of the Convention, to legislate “as it may deem necessary” in respect of individuals who fall under immigration control, and in respect of matters relating to citizenship.

3. As we explain below, Liberty believes that the UK should withdraw its reservation to the Convention on the grounds that it is an international embarrassment, it dehumanises migrant children and it is unjustified.

¹ <http://www.bia.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/keepingchildrensafe/>.

² <http://www.bia.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/uasc/>.

³ Cf., for example, our intervention in the case of *R (Saadi and others) v Secretary of State for the Home Department*, which can be found online at <http://www.liberty-human-rights.org.uk/publications/pdfs/saadi-and-others-oakington-hl-01.PDF>.

Context

4. The Convention is a major international treaty guaranteeing particular rights to members of a vulnerable section of human society. Its Preamble notes that the Universal Declaration of Human Rights “*has proclaimed that childhood is entitled to special care and assistance*”. The parliamentary Joint Committee on Human Rights has rightly described the Convention as “*central to international human rights protection*”.⁴

5. The Convention was ratified more quickly and by more states than any other human rights instrument. It has been ratified by every member state of the United Nations, with the exception of Somalia (which has been in a state of civil war since 1988) and the United States of America (which is nonetheless substantially in compliance with it⁵), and by several non-members. It currently has 193 parties, compared to (for example) 160 for the International Covenant on Civil and Political Rights.

6. When Britain ratified the Convention on 16 December 1991, it entered a number of reservations to the provisions contained in it – a reservation being essentially a partial exception to the effect of a treaty that a party claims for itself.⁶ The reservation in question here provides as follows:

“(c) The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under the law of the United Kingdom to enter and remain in the United Kingdom, and to the acquisition and possession of citizenship, as it may deem necessary from time to time.”

⁴ Liberty and Education Action, *Evidence to the Joint Committee on Human Rights: Treatment of Asylum Seekers*, October 2006, p14; Joint Committee on Human Rights, Seventeenth Report, 2004-2005 Session, March 2005, para. 49.

⁵ D.M.Smolin, “Overcoming Religious Objections to the Convention on the Rights of the Child”, p4-9 (online at <http://www.law.emory.edu/fileadmin/journals/eilr/v20n1/SmolinCROP.pdf>).

⁶ E.g. in the Vienna Convention on the Law of Treaties, a reservation is defined as “*a unilateral statement... made by a State, when... ratifying... a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State*” (Art. 2, 1(d)).

This reservation principally concerns children who are migrants or asylum-seekers, potentially including (for example) child victims of people-trafficking. It therefore excludes from the protection of the Convention some exceptionally vulnerable people.

7. The reservation is not irreversible. Since 1997, the British Government has already withdrawn two of its original reservations. Withdrawal of this reservation would merely be a continuation of this process, ensuring that the full protection of the Convention applies to all children in the UK.

International Embarrassment

8. The Prime Minister has rightly proclaimed the importance of human rights in tackling injustice and persecution around the world. He has claimed an important role for the UK in ensuring greater respect for basic rights and freedoms:

“You know, there is a golden thread of common humanity that across nations and faiths binds us together, and it can light the darkest corners of the world. And the message should go out to anyone facing persecution anywhere from Burma to Zimbabwe: human rights are universal and no injustice can last forever.”

Such sentiments are certainly admirable but, sadly, they are difficult to reconcile with the fact that the United Kingdom, almost alone in the world, is currently choosing to maintain a sweeping reservation in respect of a major and almost universally endorsed human rights treaty.⁷ The denial of human rights protection to one of the most vulnerable groups of children in the UK undermines the UK’s moral authority, weakening our ability to speak to oppressive regimes like Zimbabwe and Burma about the importance of respect for universal human rights.

⁷ Generalised declarations and reservations to the Convention like that of the UK regarding immigration, nationality and residence have been entered only by Germany, Monaco, Singapore and Vatican City. It will be noted that three of these states are exceptionally small and/or densely populated. Even Germany has a significantly larger immigrant population than the UK (10.1 million, amounting to 12.3% of the general population, as opposed to 5.4 million, amounting to 9%, according to 2005 UN figures).

9. In 2002, the UN Committee on the Rights of the Child, a body of independent experts which monitors compliance with the Convention, stated that it “remain[ed] concerned that the [UK] does not intend to withdraw its wide-ranging reservation on immigration and citizenship, which is against the object and purpose of the Convention”.⁸ The Committee’s concerns are shared by many others.⁹ The Joint Committee on Human Rights has, for example, repeatedly criticised the reservation, most recently in February of this year.¹⁰ In the past, it has expressed the view that “the maintenance of [the] reservation, which withdraws the protection of the Convention from a particularly vulnerable group of children, undermines the otherwise strong record of the Government in the advancement of children’s rights”.¹¹

Dehumanising

10. The opening sentence of the Universal Declaration of Human Rights speaks of “the inherent dignity and... the equal and inalienable rights of all members of the human family”. This expresses the important fact that the rights and freedoms protected by the post-war human rights framework belong to every human being by virtue of their common humanity, regardless of race, religion or nationality. There is no place here for the notion that fundamental human rights are dependent upon the possession of a particular passport or nationality. Asylum-seekers and other migrants in the UK are therefore entitled to the same essential human rights and freedoms as British nationals, subject only to such qualifications as are truly necessary and proportionate to the fair administration of the immigration system. This principle certainly applies no less to children than it does to adults.

⁸ *Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain & Northern Ireland*, October 2002, p2.

⁹ *United Kingdom’s 3rd Quinquennial Report to the UN Committee on the Rights of the Child: Submission from UNICEF UK*, Undated, p9-10; ECPAT UK and World Vision UK joint briefing, *Almost Every Child Matters?*, February 2007; Save the Children (<http://www.savethechildren.org.uk/caris/petition.php>).

¹⁰ Sixth Report, 2007-2008 Session, February 2008, Annex, paras 22-23.

¹¹ Seventeenth Report, 2004-2005 Session, March 2005, para. 49.

11. We cannot ignore in this context the stigmatisation and marginalisation of asylum-seekers and other immigrants evident in certain quarters of British society. This may be attributed in part to the misrepresentation of such people by elements of the media as a drain on public resources, a threat to British identity, and even a danger to our health and national security.¹² Such stereotyping encourages prejudice, and injures both the individuals targeted and society as a whole.¹³ However, the media cannot be held solely responsible for the ignorance and ill-will towards migrants that colours some sections of public opinion. Politicians and officials are guilty too. The “politics of asylum” has operated both to encourage hostile public perceptions and to undermine the developing values and law of human rights in the UK. Migrants have been treated in inhumane, degrading and discriminatory ways as a result of laws passed by Parliament, policies pursued by Government and decisions taken by officials.

12. Sadly, examples abound of Government policies and practices exhibiting disregard and disrespect for the rights of non-nationals.¹⁴ One statutory provision which has given rise to serious human rights concerns is Section 9 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. This allows support to be withdrawn from a failed asylum-seeker, who may have dependant children, if the Home Secretary considers that they have failed to take reasonable steps to leave the UK voluntarily, even if that person’s children are then taken into care. In June 2007, the Government announced that, following unsatisfactory pilots, it would not be applying Section 9 on a blanket basis in the future. The provision, however, remains in force and at the disposal of the authorities.

¹² Cf. our comments in Liberty and Education Action, *Evidence to the Joint Committee on Human Rights: Treatment of Asylum Seekers*, October 2006.

¹³ See the website of the Information Centre about Asylum and Refuge (ICAR): <http://www.icar.org.uk>.

¹⁴ Cf. our comments in Liberty and Education Action, *Evidence to the Joint Committee on Human Rights: Treatment of Asylum Seekers*, October 2006.

13. Another area of particular concern with regard to children is the continued incarceration of children in immigration detention centres.¹⁵ A report issued last year by the Children's Rights Alliance for England and the National Children's Bureau highlighted the link between immigration detention and fear, distress, depression and physical sickness on the part of children subjected to it.¹⁶ Earlier, the Children's Commissioner for England had stated, after visiting one detention centre, that it was "*not possible to ensure that children detained in Yarl's Wood stay healthy, stay safe, enjoy and achieve, make a positive contribution and achieve economic well-being*".¹⁷

14. The Joint Committee on Human Rights has also criticised the unequal protection of the rights of asylum-seeking children in domestic law and practice:

*"In our recent report on the Children Bill, we expressed particular concern at the exclusion of agencies dealing with asylum seeking children from the duty under the Bill to promote the welfare of children, and concluded that this exclusion amounted to unjustified discrimination against asylum-seeking children on the grounds of nationality. It is regrettable that such unequal treatment is legitimised by the continuance in force of the reservation to the CRC."*¹⁸

It should be noted, however, that the Government has now placed a specific, statutory child-safeguarding duty on the Border and Immigration Agency.

Objectively Unjustified

15. The Government has sought to justify its reservation on the following grounds:

¹⁵ The Refugee Council has estimated that over 2,000 children were detained in 2004, and that over 30% of children are detained for over 7 days.

¹⁶ *Meeting the obligations of the Convention on the Rights of the Child in England: Children and young people's messages to Government*, April 2007, p44-45, 70.

¹⁷ Cited at e.g. *Bail for Immigration Detainees, Obstacles to Accountability: Challenging the Immigration Detention of Families*, June 2007, p15.

¹⁸ Seventeenth Report, 2004-2005 Session, March 2005, para. 48.

*“The UK Government’s view is that effective immigration control could be compromised were it to withdraw or narrow the extent of the general Reservation with regard to matters of immigration or nationality... Removal of the Reservation would allow others an additional opportunity to intervene in immigration processes. There is a risk that this would, on occasions, be used to frustrate effective immigration control.”*¹⁹

It has further been suggested that withdrawing the reservation might allow children to enter the UK for no other reason than to invoke their Convention rights, and that it might enable a child asylum-seeker to escape the application of asylum legislation and then subsequently to claim the right to be reunited with their parents within the UK.²⁰

16. These objections have been robustly challenged. The notion that the Convention would require the acceptance of children and families who do not legitimately fall within the Refugee Convention has been described by the Joint Committee on Human Rights as *“farfetched”*. The Committee has further noted that such concerns would not justify the breadth of the reservation in any event, and that the right to reunion is discretionary.²¹ It has described fears that the Convention, unencumbered by the reservation, would affect immigration status as *“unfounded”*.²² The Committee has elsewhere stated that *“the Government will be able to withdraw the Reservation without detriment to existing policy choices in respect of the care and support of unaccompanied asylum-seeking children”*.²³

17. The Joint Committee’s point regarding the breadth of the reservation is well taken. The Government has reserved its position in very general terms, in respect of *“the entry into, stay in and departure from the United Kingdom”* of those subject to immigration control. Given, for example, the broad scope of

¹⁹ *The Consolidated 3rd and 4th Periodic Report to the UN Committee on the Rights of the Child*, July 2007, p7.

²⁰ See the comments of the relevant Government ministers cited in the Joint Committee’s Tenth Report, 2002-2003 Session, June 2003, para. 84.

²¹ Tenth Report, 2002-2003 Session, June 2003, paras 81-87.

²² Seventeenth Report, 2004-2005 Session, March 2005, para. 48.

²³ Twenty-Sixth Report, 2005-2006 Session, October 2006, para. 41.

the words “stay in”, it appears that the Government would not in principle feel bound to extend *any* of the Convention’s protections to (say) a foreign child who entered the UK on a tourist visa with their parents for a short holiday. It should also be noted that the reservation extends to the related but distinct matter of citizenship.

18. Perhaps surprisingly the Government has, at the same time as making the above arguments, itself suggested that the reservation might be otiose because UK law is already compatible with the Convention:

“The care and welfare arrangements for those children who are present in the United Kingdom in breach of UK Immigration Rules are... considered to be consistent with the Convention. The interests and rights of asylum seeking children and young people are fully respected.... [T]he various children acts and orders [sic]... apply equally to all children within the United Kingdom’s boundaries, regardless of their immigration status or citizenship.... [T]here are appropriate social and legal mechanisms in place to ensure that all children present in the UK receive appropriate levels of protection and care....”²⁴

If this is indeed the case, it serves only to erode further the case for maintaining a reservation which is so difficult to reconcile with the Government’s stated commitment to global human rights and which invites national and international embarrassment.

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²⁴ *The Consolidated 3rd and 4th Periodic Report to the UN Committee on the Rights of the Child*, July 2007, p7-8.