

Children’s Commissioner’s written response to the Government Plan Review Panel

Introduction

The Commissioner for Children and Young People was created in accordance with ‘The Commissioner for Children and Young People (Jersey) Law 2019’ to safeguard and promote the rights and best interests of children and young people in Jersey and those placed off-island for their care or treatment. The law sets out the powers and actions the Commissioner can take.

We welcome the publication of the proposed Government Plan 2020-23 (the Plan) and the priority focus on children and young people: ‘We will put children first’. We also welcome the invitation of the Government Plan Review Panel to provide analysis of the adequacy and inclusivity of the Plan in relation to the voice of children and young people.

We are particularly pleased to see specific commitments to improve and invest in education, early years and mental health, to better support children and young people in care, and to further implement the United Nations Convention on the Rights of the Child. However, given the lack of detail in relation to each of the new policies, this response is limited and addresses the proposals which are most relevant to the Commissioner’s work.

As an independent body we will monitor the Government’s progress in delivering their plan. We will focus not only on policies directly relating to children, but also on any areas that have a direct or indirect impact on children and young people. We will be commenting on and advising Government on an ongoing basis as the Plan develops into actions, activity and budget.

This submission’s broader aim is to contribute to the Government and the Panel’s thinking and processes leading to the effective adoption, enactment and implementation of legislation that complies with human rights standards. This submission will draw on the Plan to operationalise a children’s rights-based approach and provide further understanding of what it means to ‘Put Children First’ in legislation.

A rights-based approach to children

A human rights-based approach is a practical framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.¹ Children's rights are human rights. Human rights are binding on public authorities and guarantee our basic freedoms, underpinned by respect for human dignity. Children's rights are set out in international treaties, including the European Convention on Human Rights (ECHR) and, in particular, the UN Convention on the Rights of the Child (UNCRC).

When the approach focuses on the realisation of children's rights, it becomes a children's rights-based approach (CRBA). A CRBA is grounded in the UNCRC and works by integrating children's rights into every aspect of decision-making. This includes legislation, policy and service delivery. The focus of a CRBA is practical, offering guidance on procedures to give effect to children's rights in decision-making.

In 2014 the States of Jersey ratified the UNCRC and, in doing so, committed to be bound by its provisions. The UNCRC sets out the civil, political, economic, social, health and cultural rights of children. The UNCRC recognises that children are in a different situation than adults and will often have different needs, and that children face particular challenges because childhood involves stages of physical or emotional development. The UNCRC is divided into three parts: Part 1 sets out a comprehensive set of rights²; Part 2 requires the State, including public authorities, to make the UNCRC widely known to children and adults; and Part 3 deals with the monitoring and reporting responsibilities to the Committee on the Rights of the Child.

The UNCRC promotes the rights of children and their families through placing duties on the State to support parents and carers and recognises their role in the development of children and young people. All Articles of the UNCRC cover three main themes: participation, provision and protection. The UNCRC and its four key guiding principles (non-discrimination; adherence to the best interests of the child; the right to life, survival and development; and the right to participate)

¹ What is a HRBAP, UNICEF, available at https://www.unicef.org/policyanalysis/rights/index_62012.html

² The rights contained in the 54 articles of the UNCRC are universal, interdependent and interrelated. The UNCRC proclaims children's status as human beings with a distinct set of rights, not just as passive objects of care and charity.

need to be integrated into every aspect of decision-making through effective procedures and measurable actions.

Children's rights should guide those decisions and actions that have a substantial impact on children's lives in all policy areas, including wellbeing, mental and physical health, education and social care, as well as in other less obvious policy areas such as income inequality, employment and the protection of the natural environment.

A key aspect of creating an environment within which children's rights will be realised is the creation of an appropriate legislative framework which enshrines their rights. The United Nations Committee on the Rights of the Child has consistently stressed the need for review and reform of national legislation to harmonise it with the principles and provisions of the CRC. While this is clearly not enough to guarantee children's rights, and implementation of the law remains a major challenge, getting laws right is a crucial step to realising children's rights in practice.

CRBA recognises that children's best interests should be at the centre of legislative plans in order to effectively protect children and ensure the full realisation of their rights.

The key elements of a CRBA are:

- embedding children's rights;
- participation;
- accountability.

Embedding children's rights

Legislative plans that put children's rights at the centre of the process are based on the full recognition of the equal rights of children and young people as rights holders in society. Laws are important for ensuring the implementation of rights and holding duty bearers accountable. Children's rights are particularly enshrined in the UNCRC and optional protocols. This approach ensures full compliance of national legislation with human rights and the UNCRC. It also strives for the elimination of exclusion and discrimination (Article 2 of the

UNCRC). Public authorities must be aware of the damaging impact of multiple discrimination.³

For example: A youth justice system for Jersey should encompass not only punitive measures and reintegration, but issues that address children's access to justice, from police and courts to places of detention and rehabilitation. This needs to consider the development of a legal definition of a child, minimum age of criminal responsibility, fair hearings, respect of their right to privacy, legal assistance programmes and accessibility to complaint mechanisms and child/gender sensitive procedures. It also includes the examination of laws through a child rights lens that, while textually neutral, have a disproportionately negative impact on minority and disadvantaged groups of children. Children's Rights Impact Assessments (CRIA) are crucial to identify the impact of legislation on children's rights.

Participation

The legislative process should ensure that participation is active, free, and meaningful, including children. For this to be achieved, national and local development processes and institutions need to be accessible and their information transparent and timely. Article 12 of the UNCRC sets the standard for children's participation in decision-making and legislation that affect their lives directly or indirectly. It is important to note that young age or relative immaturity is no reason for discounting children's opinions in decision-making processes. Empowerment is a direct cause and consequence of full and inclusive participation as it develops capacities (including education and information) to improve their lives.

Participation can take place in different forms, appropriate to different circumstances and the evolving characteristics of the child. Therefore, children should be encouraged to take part in decisions that contribute to their lives and their families' lives. A CRBA requires children's participation in the drafting, debate and implementation of legislation.

In a CRBA, addressing legal illiteracy is crucial. This includes both the lack of knowledge of laws and of the legislative process. Therefore, the development of child-friendly participation mechanisms and awareness-raising are essential in

³ This occurs when a child faces discrimination on more than one ground, e.g. a disabled girl who is living in poverty.

order to ensure that participation is possible. Creating appropriate conditions for children to fully participate can lead to a better understanding of their rights and concerns by decision makers. The latter will also enhance the Government's capacity to fulfil its human rights obligations.

For example: When the Government starts to implement the educational improvement outcome, children should be fully informed and given opportunities to be involved in the decision-making process. The information should be clear and accessible, and their participation should be inclusive (Articles 12, 2 and 3 of the UNCRC). Barriers to participation should be identified and removed as well as carried out in safe places, including during the passing of legislation. Copies of the public consultations should be sent to schools, civil society, NGOs and the Children's Commissioner. At the end of the public consultation process, the Government should report back to children on how their views have been considered and taken forward.

Accountability

Accountability is a key aspect of a CRBA, where public authorities are accountable to children and young people for decisions and actions which affect their lives. A CRBA requires that the process of enacting laws also enhances the ability of rights holders to hold public authorities to account. Public authorities, with responsibilities that impact on children should be clear that children have human rights that entail obligations to respect, protect and fulfil their rights.⁴ Accountability requires effective monitoring of children's rights standards as well as effective remedies where there is a failure to meet these standards. This requires a number of procedural safeguards to be in place, such as fairness, transparency and the existence of complaint mechanisms.

For example: When introducing a piece of legislation, the Government should ensure that policy design engages children's participation, and an appropriate child rights impact assessment is undertaken to assess its impact on children. It also should ensure that the necessary administrative and budgetary resources to implement the measures adopted are available (as it would be for the 'new

⁴ The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.

entitlement offer for children in care’). Setting up mechanisms for monitoring legislation and its implementation, including developing applicable children’s human rights indicators relevant to service areas is crucial. Training and awareness-raising on public authorities’ duties is key to achieve a greater understanding of children’s rights. Particular regard should be paid to the UNCRC and its four guiding principles to identify both positive obligations of duty-holders (to protect, promote and fulfil) and negative obligations (to abstain from violations). Set up appropriate remedies (procedural and substantive) to ensure delivery of entitlements, respond to violations, and ensure better accountability.

The Plan

We are encouraged to see children as one of the key priorities for Government for 2020-23. It is important that the processes leading to the effective adoption, enactment and implementation of legislation takes into account not only the extent to which the legislation in question gives effect to the specific provisions of the UNCRC, but also the ways in which that legislation directly and indirectly affects the actual situation of children in their everyday lives.⁵

The Government is planning to introduce:

- A new ‘entitlement offer’ for children in the care of Government and for those leaving care, so they know what support they can and should expect, and focus on ensuring sufficient high-quality placements for children, as far as possible in Jersey.
- Launch a new ‘Right Help, Right Time’ integrated prevention and early intervention service for families.
- Continue to implement the Children’s Services Improvement Plan, so that vulnerable children are protected and supported, and the service makes demonstrable progress towards achieving consistently outstanding children’s social work practice.
- Develop better Child and Adolescent Mental Health Services, affording the service expertise and capacity to complement the wider support given to families where needed, helping to develop their resilience.

⁵ This means going beyond merely assessing the text of a law to examining how it is implemented by public authorities and the real impact on children and their families.

- Achieve demonstrably improved standards in nurseries and schools.
- Implement the recommendations of the review of the Jersey Premium, so that we spend money where it is needed most, enabling all children and young people to fulfil their potential.
- Establish a sustainable funding settlement for each element of the education system – early years, schools and post-16 education – coupled with appropriate investment in buildings.
- Bring forward primary legislation for indirect incorporation of the United Nations Convention on the Rights of the Child, which will establish a requirement for the Government to consider and safeguard children’s rights in relation to policy, legislation and practice.

As explained above, this paper aims to contribute to the Government and the Panel’s thinking and processes leading to the effective adoption, enactment and implementation of legislation. We are pleased to confirm that on behalf of the Minister for Children, the Children’s Commissioner is undertaking a substantial piece of work so that every piece of legislation (where it relates to children) is assessed in relation to the UNCRC and its four guiding principles:

a. The Equality Principle (Article 2 of the UNCRC)

“1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

b. The Best Interest of the Child Principle (article 3 of the UNCRC)

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

c. The Life, Survival, and Development Principle (Article 6 of the UNCRC)

- “1. States Parties recognize that every child has the inherent right to life.*
- 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.”*

d. The Participation Principle (Article 12)

“2. ...the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law”

Article 2 of the UNCRC makes clear that non-discrimination and reducing any form of it is a key aim of legislation. Article 3 of the UNCRC makes it clear that the primary importance of the ‘best interest’ of the child applies to the adoption of legislation. Article 6 of the UNCRC requires the State both refrain from negative actions that would cause injury and death to children and establish positive measures which will actively promote the fullest possible development of their children and their survival. In legislation this means paying particular attention to the physical, mental, spiritual, moral and social development (Article 27) of the child. Finally, Article 12 of the UNCRC refers to their right to be heard in all matters affecting the child and as such it should be taken into account in all legislation affecting children and their families.

Furthermore, there are a number of commitments, which we would like to welcome as they will have a direct or indirect impact on children’s’ rights. These include:

- Improving islanders’ wellbeing and mental and physical health

We welcome the commitments to implement a new model of healthcare and would urge the Government to ensure that children can realise their right to the highest attainable standard of health (Article 24 of the UNCRC). This right includes a number of measures that the State must take to implement it, including medical assistance and healthcare to all children with emphasis on the development of primary healthcare; budgetary analysis and allocation of necessary resources; and monitoring mechanisms as well as capacity-building. It is important that the new model opens real spaces for the right to respect the views of the child. There is an urgent need for this to be built into the design of healthcare services and health information.

- ‘Creating a sustainable, vibrant economy and skilled local workforce’.

The commitment to a new migration policy is to be welcomed. The policy will enable the outdated Control of Housing and Work Law to be reformed. We have previously expressed concerns about this legislation and the discriminatory impact on vulnerable children. Non-discrimination is a foundational principle of human rights. The non-discrimination principle in Article 2 of the UNCRC requires

States actively to ensure that the rights in the Convention are enjoyed by all children in their jurisdiction and that particular groups of children must not be discriminated against. It should be noted that the application of the non-discrimination principles of equal access to rights does not mean identical treatment.⁶

- ‘Reducing income inequality and improve the standard of living’.

Improving the quality and affordability of housing is a key component of the right of every child to an adequate standard of living (Article 27 of the UNCRC). Adequate housing fosters family integrations and contributes to social equity and the feeling of belonging. It should therefore be a high priority for Government to help families to meet children’s basic needs, including nutrition and housing. This obligation should be read in conjugation with Article 4 of the UNCRC which states that parties to the UNCRC should undertake the implementation of this right to the maximum extent of their available resources. The right to adequate housing includes security of tenure, affordability of housing and the availability of basic services.

- ‘Protecting and valuing our environment’.

We welcome the Government’s focus on the environment. Both environmental degradation and climate change are a direct threat to our children’s ability to survive, grow and thrive. There is a need to develop a better understanding of the relationship between children’s rights and the environment, including the specific State obligations in this area. This focus will contribute to meaningful dialogue and stronger cooperation in relation to child and environmental protection. Children are not only subjects of the law, but active rights holders. It is equally important therefore to recognise children as agents of change (in line with Article 12 of the UNCRC). Children and young people play a key role in addressing climate-related risks, and do so today, by elevating their voices and holding governments to account in creative platforms and advocacy around the world.

Conclusion

A rights-based approach must be the cornerstone of Government action, from policy design and law drafting all the way through to the delivery of services. The work to develop the full policy and legislation, systems and procedures that will

⁶ UN Committee on the Right of the Child, General Comments No. 5, 2003, CRC/GC/2003/5.

be necessary to operate the priorities in the Plan is still in its relatively early stages. Therefore, we will continue to assist and monitor Government's progress in delivering the 2020-23 Plan. Integrating the fundamental conceptions of the CRBA into Government can provide a significant basis for Jersey putting children first.
