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Document Title:

**Remarks by OMCT/SOS-Torture in response to the report of the
Government of The United Kingdom of Great Britain and Northern
Ireland**

Region:

Western Europe, Europe

Country:

United Kingdom

Issued by:

OMCT/SOS-Torture

Date of publication of NGO Report:

09/94

Date of presentation to preessional working group:

06/96

CRC Session

(at which related national state party report was submitted):

08th Session : Jan 95

Language:

English

Document Text

[Link to Associated State Party Report](#) at UNHCHR

Committee on the Rights of The Child

Consideration of Reports Submitted by States Parties Under Article 44 of the
Convention

Remarks by OMCT/SOS-Torture in response to the report of the Government of
The United Kingdom of Great Britain and Northern Ireland

December 1994

1. The UK ratified the Convention on The Rights of the Child on 16 December
1991 though certain reservations were maintained. The International Secretariat of

the World Organisation against Torture welcomes the thorough and detailed report submitted by the government. The report goes into considerable depth detailing the many provisions concerning the interests of children, the actions taken subsequent to ratification and future proposals.

General Comments

2. Generally speaking the legal and social provisions for children in the UK are positive. Provision for children is on the whole comprehensive, and broad-ranging. OMCT/SOS Torture feels that the broad issues are well covered by legislation and that rights for children in The United Kingdom are in a positive state. These remarks will be largely confined to questions of detail.

Ratification and implementation:

3. The International Secretariat welcomes the moves taken by the government, at both central and regional level, with a view to better coordinating and cooperating over policies regarding children, as outlined in (CRC/C/112/add.1 paragraphs 52, 55, 57 and 58). We are encouraged by these moves and feel they are very much in line with the provisions of the Convention of The Rights of the Child. However OMCT/SOS-Torture does feel, that a clearer indication as to the status of the Convention under UK law would be helpful.

4. The International Secretariat of OMCT/SOS-Torture notes, as part of their publicity obligations under the treaty, the report states:

"The Department of Health and the Welsh office sent a copy of the Convention to every local authority, Regional and District health authorities including NHS trusts and to the major voluntary child care organizations in England and Wales" (CRC/C/11/ADD.1 §59).

Whilst these bodies were advised that their policies and practice had to comply with the provisions of the Convention, it is less than clear what guidance was given by the government as to how this might be best achieved by each specific and very individual case, nor what explicit measures, would be taken to monitor their compliance, nor does it seem evident why government departments in Scotland, whilst having their attention drawn to the provisions of the Convention, were not similarly instructed to comply with the Convention. (CRC/C/Add.1 59)

5. Furthermore as a general observation of the report, the International Secretariat of OMCT/SOS-Torture with reference to Scotland generally, is in agreement with the report produced by the Children's Rights Development Unit where it notes: "The Government Report claims to indicate clearly which of the provisions described apply to which jurisdiction in the UK. However there are numerous examples where the position of children in Scotland is totally disregarded"

The Secretariat of OMCT/SOS-Torture believes therefore, a fuller explanation as to the provisions available to Scottish children should be made available.

Definition of a child

6. Article 2 of the Convention on the Rights of the Child states:

"States Parties shall respect and ensure the rights.....without discrimination of any kind"

In paragraph (CRC/C/11/add.1 §75) The report states:

"A boy may qualify for a custodial sentence or be sentenced to detention in young offender institution."

It would therefore, seem appropriate that the government supply further information on this issue. It would also seem pertinent to ask at what age this type of sentencing can be imposed on a girl.

7. In (CRC/C/11/add.1 §86) reference is made to a child being in a position to instruct his or her solicitor, under the provisions of the Child Act provided that "he or she has sufficient age and understanding". Could the government expand on the guidelines for determining a child's ability to understand.

The Age of Responsibility

8. OMCT/SOS-Torture feels bound to express its concern over the diversity of age of responsibility that exists in the UK. Thus, according to (CRC/C/11/add.1 § 74):

"In England and Wales a child between the ages of 10 and 13 (inclusive) can only be convicted of a criminal offence if it is proved that he or she knew what they were doing was wrong.....In Scotland the age of criminal liability is 8....."In Northern Ireland, no child under the age of 10 can be guilty of any offence. Where a child is aged between 10 and 14 he may be charged with a crime provided the prosecution can prove that he or she knew what he or she was doing"

OMCT/SOS-Torture is concerned by several issues. Firstly, what is the reasoning behind the differing age and, is this not in any sense discriminatory? Secondly how does one evaluate a child's awareness to know as to whether or not he or she has committed a crime. Furthermore, the report does not make clear in the case of Scotland as to whether such provisions for establishing whether or not a child knew whether he or she was committing a crime, exist?

9. Furthermore OMCT/SOS-Torture is particularly concerned by the provisions in Scotland, as laid out in the report and where it states:

"In the case of a major crime or one committed in the company of adults the child would be referred to the adult court" (CRC/C/11/add.1 §74)

It would seem pertinent to ask what the minimum age foreseen for this measure is, if any. It is furthermore possible that the child could be the object of discrimination, since he or she would be judged not in his or her function as a child but rather, he or she would be judged in the light of their having committed a crime in the company of an adult. It would also be instructive to know how the authorities foresee guaranteeing all the legal rights of the child as outlined in the Convention of the Rights of the Child, under such circumstances.

10. The issue of concern for the equal access to rights for children in Scotland is compounded by provisions for imprisonment. In (CRC/C/11/add.1 §75) the report outlines that for England and Wales the age for probation orders starts at seventeen whereas in Scotland, the age is sixteen.

11. There is further contradiction in the case of older children in Northern Ireland, the report in paragraph (CRC/C/11/add.1 §589) states that as regards Northern Ireland:

"neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offenses committed by persons under the age of 18"

In the rest of the UK, according to paragraph (CRC/C/11/add.1 § 586) the age where one is exempted from such punishments is 17. The International Secretariat of OMCT/SOS-Torture feels that it would be appropriate that this contradiction also be investigated.

The Right not to be subjected to Torture

12. The legal provisions surrounding torture, as set out in the report, are broad-ranging. OMCT/SOS-Torture expresses satisfaction in noting that torture is a recognised and punishable crime and, that those found guilty can be subject to a life sentence. OMCT/SOS-Torture expresses its satisfaction that a child's access to legal aid is assessed on his or her own means not that of their parents (CRC/C/11/add.1 §65). Furthermore OMCT/SOS-Torture supports the efforts made to provide special provisions designed to protect children in view of their particular vulnerability, in children's homes. However it is felt that more clarification is necessary on certain issues.

13. With reference to (CRC/C/11/add.1 §65) where it states " A child of any age may sue in the court but it has to be done through a "next friend". At the age of 16 a child may apply for criminal legal aid in his or her own right or through the parents on their behalf. OMCT/SOS-torture wonders if, given the particularly exceptional circumstances of an alleged torture of a child, there exist any special provisions for such cases. Specifically:

I. What recourse to their rights does a child victim of torture have?

II. Does a special legal aid service exist to deal with such cases?

III. Are there any provisions for a child victim of torture to sue directly, without recourse to a "next friend"?

IV. What paths are open to a child victim of torture to seek compensation?

V. What facilities exist to rehabilitate child victims of torture?

Furthermore is there a differentiation in terms of the gravity of the punishment, between a crime of torture against a child and that of an adult.

14. Whilst the International Secretariat of OMCT/SOS-Torture welcomes the regulations against the use of corporal punishment in England, and Wales (CRC/C/11/add.1 § 18), in Scotland (CRC/C/11/add.1 § 198) and whilst we welcome the findings of reports that found that no degrading forms of punishment were practised in Northern Irish Children's home (CRC/C/11/add.1 §198), it would seem appropriate to ask what is the existing regulation against such practice in Northern Ireland.

Physical chastisement of children:

15. The government refers to its acceptance of appropriate parental chastisement of children (CRC/C/11/add.1 §335). The definition given is: "reasonable and moderate physical chastisement" How does the state define this and to what extent is it felt that this could be open to interpretation?

Administration of Juvenile Justice

16. The right to be presumed innocent until proved guilty is expressly recognized (CRC/C/add. 1 § 547). It is thus with concern that the International Secretariat of OMCT/SOS-Torture notes paragraph (CRC/C/add. 1 §549) which states that:

"The government is introducing a bill into Parliament which will allow, in certain circumstances, a court to draw proper inferences from an accused's failure to or refusal to answer questions. Children under the age of 14 are exempted from the proposed legislation."

The International Secretariat of OMCT/SOS-Torture can only view this development with alarm. Given the states solid adherence to the principal of presumption of innocence, it would be helpful if the Government could furnish further information as to the conditions, under which such inferences could be drawn from an accused's failure to reply and, how this inference of guilt which the court can arrive at, is consistent with the principal of presumption of innocence. We believe that such a measure would effect children, who are particularly vulnerable to outside influences, threats and pressure.

OMCT/SOS-Torture questions if this measure, in any way, contravenes Article 40.2 part iv of the Convention of the Rights of the Child where it states that a child is:

"Not to be compelled to give testimony or to confess guilt"

17. Whilst being more than satisfied by the legal provisions concerning a child's right to appeal, as it is explained in the report (CRC/C/11/add.1 550), it is felt that it would be instructive if the report detailed the delay foreseen by the law, before a judge rules on whether an appeal is to be granted or not and what the delay is, if any, before the accused can request an appeal.

18. The International Secretariat of OMCT/SOS-Torture welcomes the systematic application and recognition of the right of all persons involved in court proceedings to be understood, particularly the provisions made for a translation service (CRC/C/11/add.1 §551) OMCT/SOS-Torture would hope that provisions have been made such that this right be upheld for those held in police custody.

19. According to the report (CRC/C/11/add.1 §552), if a child is accused of a minor crime he or she will be tried in a youth court. If the crime is a more serious offence and the child has attained a certain age, he or she will be tried in an adult court.

If a child is tried before a youth court their rights to privacy, as foreseen in Convention Article 16.1 and 16.2, are upheld. The government has for a very long time recognised and legislated for their protection.

"No newspaper may reveal the name and address, school or any other identifying particulars of a child" (CRC/C/11/add.1 §552)

If however, he or she is tried before an adult court, then it is the judge who will decide on the issue.

The International Secretariat of OMCT/SOS-Torture believes that the Convention on the Rights of the Child makes very clear that children are entitled to their rights because they are children and as such, are entitled to special treatment. It therefore seems contradictory that a child should suffer a curtailment of these rights, in view of the scale of crime they have been accused of having committed and the court in which they are standing trial in and, that their being children seems to have been ignored.

20. The Secretariat of OMCT/SOS-Torture wholeheartedly welcomes the progressive view taken by the report regarding the importance of preventing

children from initially entering the formal penal system (CRC/C/add.1 §555) and applauds the measures taken, particularly the informal powers of the police, which are very much in line with the spirit of article 40.3(b)

Detention of children

21. The report paragraphs (CRC/C/11/add.1 §558) and (CRC/C/11/add.1 §563) state a number of limits to the number of hours that a child can be held without charge. It would be helpful if it explained what, finally, is the disposition that one applies?

22. Whilst OMCT/SOS-Torture welcomes provisions outlining codes of practice for juveniles held in police custody (CRC/C/11/add.1 §564), could the government expand the explanation, in detailing the foreseen time delay before which, police authorities must inform the parents or other responsible persons or the Judicial authorities.

23. The International Secretariat of OMCT/SOS-Torture welcomes the provisions designed to protect children against coercion (CRC/C/11/add.1 §566). However, the report adds that a juvenile can be made:

"to sign a written statement in the absence of an appropriate adult under narrowly defined circumstances."

It would seem pertinent to ask under what circumstances a child would be asked to sign in the absence of an appropriate adult.

24. OMCT SOS-Torture welcomes the provisions made for a child's right to legal advice and assistance. The report states:

"A child has the right to challenge the legality of his detention through the courts" (CRC/C/add.1 §568)

Whilst OMCT/SOS-Torture welcomes this provision we feel it would be appropriate that the government outline what is the foreseen time delay, before the child can exercise this right.

25. The report states that the rights of children in the case of a police search are the same as an adult: "but normally a responsible person..... will be present." (CRC/C/11/add.1 §572) Could the Government detail under what circumstances it would be permissible that a responsible person would not be present.

Imprisonment

26. The report stresses the growing importance of non-custodial sentences and recognises their importance (CRC/C/11/add.1 §555) and recognises the importance of empowering of police with informal methods of dealing with crime. This is clearly in line with the Convention and OMCT/SOS-Torture believe this commitment on the part of the government is showing a path for other reforms, and is partly responsible for the drop in number of children in institutional care. OMCT/SOS-Torture welcomes these initiatives and welcomes any future plans in this direction.

27. However, in the light of government recognition of the validity of such progressive thinking, it would appear somewhat contradictory that the report foresees the extension of the maximum custodial sentence from one to two years for certain criteria of child offenders (CRC/C/11/add.1/§574). Such action would

seen to run contrary to its progressive stance generally and Article 37 b of the Convention in particular which states that where custodial sentences are necessary, they should be for "the shortest appropriate period of time" It would therefore seem justifiable to ask why the government has decided to adopt this measure, particularly in the light of the great number of organisations working with young offenders including: The Prison Governors Association, The Association of Directors of Social Services, the Association of Chief Officers of Probation, the Association of County Councils, the National Association of Probation Officers and many other important institutions who are wholly opposed to its inception.

28. Under the conditions set out in the report (CRC/C/11/add.1 §577) the government foresees the sentencing of certain cases of children to be 'detained without limit of time'. Furthermore in (CRC/C/11/add.1 §583) the government has legislated for certain crimes for which the duration would be "during her Majesty's pleasure". In paragraph CRC/C/11 add.21 §584 The report states that for such crimes outlined in the paragraph the sentence "has the same effect as one of detention during her Majesty's pleasure". OMCT/SOS-Torture is concerned over such regulation and feels that it would be appropriate to ask what guidelines exist concerning the pleasure of her Majesty. And furthermore, what access do defendants held at her Majesty's pleasure have to appeal. It would seem important that the committee is furnished with more precise information regarding the offenses that could lead to such sentences. Finally, we are also concerned to what extent the punishment fits the nature of the crime, in such cases.

OMCT/SOS Torture is concerned that these prescriptions violate the spirit of Article 40.1 where it is states: "States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the child's sense of dignity or worth" We feel that a sentence which in theory has no end will not encourage any sense of self worth nor dignity, nor do we feel that such sentencing encourages, in the words of Article 40.1: "desirability and promoting the child's reintegration and the child's assuming a constructive role in society."

Sexual Crimes against Children

29. In (CRC/C/11/add.1 §613) the government outlines its belief that due to the difficulties of bringing to trial British subjects who have committed sexual crimes against children in foreign countries, there would be little point in legislating against such crimes. If this is the case, OMCT/SOS-Torture wonders why it has been possible for other European countries to enact such legislation feeling that their commitment, when signing the Convention of the Rights of the Child, was to protect all children, not simply their own children from such crimes. OMCT/SOS-Torture also wonders to what extent this non sanctioning of a crime may encourage similar acts to be committed in its own country.

30. OMCT/SOS-Torture notes that the punishments for sexual crimes vary, as outlined in the report (CRC/C/11/add.1 §611): for taking or permitting to be taken, indecent photographs of children, the punishment is set at 3 years, whereas, other sexual crimes against children detailed, are set lower. Could the government explain the reasoning behind the differing levels of punishment.

Children Seeking Asylum

31. Whilst OMCT/SOS-Torture considers encouraging, certain measures designed to assist to children seeking asylum. OMCT/SOS-Torture would like to bring to the attention of the Committee, the cases of two young asylum seekers who although now over 18, were both under 18 when they were held in detention whilst awaiting the outcome of their applications for asylum. What was

particularly worrying was that at least one of these children who had deserted, faced a serious risk to his physical and psychological integrity if he were to be returned to his country. The second child was believed to be seriously disturbed by her incarceration (additional information included in annexe). We would hope that the British government would put an end to the detention of children who are seeking asylum which it is felt, to some extent, infringes the norms of the convention.

Director **Eric Sottas**

The Committee on the Rights of the Child
Centre for Human Rights
Palais des Nations
CH-1211 Geneva 10
Geneva, 21 September 1994

Ladies and Gentlemen,

Please find attached a letter which the World Organisation Against Torture (OMCT/SOS-Torture) has today sent to the Right Honourable Michael Howard, the Secretary of State for Home Affairs at the UK Home Office, concerning two minors currently seeking political asylum in the country.

The first, a young Angolan by the name of Miguel CHAVEZ (b. 18 December 1976), reportedly lost his parents a few years ago in the war in Angola. Following their death, he was removed from school by the army, enrolled by force and trained. He eventually managed to escape from the army and made his way, via Portugal, to the UK where he arrived about a year ago. According to the information received he has been detained at Campsfield Detention Centre in Oxfordshire for the last three months.

The second minor, Sita KAMARA (b. 23 October 1976) from Ivory Coast is also being detained at Campsfield and according to sources who have visited her, is very much disturbed.

We have appealed to the British government to ensure that both are released to await the outcome of their requests for political asylum. We have also requested that their petitions be granted. Especially in view of the risks run by Miguel CHAVEZ should he be returned to Angola, where he deserted from the army of a country currently torn apart by war.

We should like to request you, distinguished experts of the Committee on the Rights of the Child, to address a further appeal to the British government on behalf of both Pierre de Senarciens these minors.

President
Pierre de Senarciens

Vice-president
Devis von der Weid

Treasurer
Olivier Mach

President of the Advisory Board
Theo van Boven

We will happily provide you with more information should you require it and in the meantime, we thank you for your kind attention to this case and remain,

Yours faithfully,

Katharine Mann
Programme Officer

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Director
Eric Sottas

The Right Honourable
Sir Michael Howard
Secretary of State for Home Affairs
Home Office
50, Queen Anne's Gate
London SW1H 9AT
Great Britain

Geneva, 21 September 1994

Dear Sir,

The World Organisation Against Torture (OMCT/SOS-Torture), is a Geneva - based NGO whose mandate is the struggle against torture, forced disappearances, summary executions, arbitrary detention and other forms of cruel, inhuman and degrading treatment or punishment.

We are taking the liberty of writing to you to voice our concern about the situation of two juvenile political asylum seekers: Miguel CHAVEZ (b. 18 December 1976) from Angola and Sita KAMARA (b. 23 October 1976) from Ivory Coast, both of whom are currently being detained at Campsfield Detention Centre in Oxfordshire.

According to the information transmitted to us, Miguel CHAVEZ lost his parents in the war in Angola a few years ago. Following their death he was removed from school by the army, enrolled by force and trained. At this point we feel that it must be made clear that it is common practice in Angola to recruit children under the age of fifteen in the army for active combat.

He eventually deserted from the army and made his way, via Portugal, to the UK

where he arrived about a year ago and put in a request for political asylum. For reasons that are currently unclear to us he has reportedly been detained at Campsfield for the last three months.

We unfortunately have little information about the case of Sita KAMARA save that she too is being detained at CAmpsfield and according to sources who have visited her she is psychologically disturbed and is far less mature than her seventeen years would normally lead them to expect.

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Director
Eric Sottas

The World Organisation Against Torture (OMCT/SOS-Torture), should therefore like to appeal to you, in your capacity as Secretary of State for Home Affairs, to intervene and ensure that these two young persons are released from detention to await the outcome of their petitions for political asylum.

We should further like to request that all measures be taken to grant refugee status to both minors since both would be at risk if they were returned to their countries, particularly Miguel CHAVEZ who deserted from the army and whose life and physical and psychological integrity would be severely compromised were he to be sent back to Angola.

We thank you in advance for your kind consideration of our request on behalf of both Miguel and Sita and hope that their cases will be resolved forthwith.

In the meantime, we remain,
Yours faithfully,

Katharine Mann
Programme Officer
OMCT/SOS-Torture

Director
Eric Sottas

The Committee on the Rights of the Child
Centre for Human Rights
Palais des Nation
CH-1211 Geneva 10

Geneva, 19 October 1994

Ladies and Gentlemen,

Further to my letter of 21 September 1994 concerning two minors -Miguel CHAVEZ and Sita KAMARA - currently seeking political asylum in the United Kingdom, I am taking the liberty of up-dating you on the situation.

We have been informed that Miguel CHAVEZ has now been released from Campsfield and has been granted temporary admittance to the UK pending the decision about his petition for political asylum.

Sita KAMARA, however, is still being held in Campsfield.

Although we are encouraged by the release of Miguel CHAVEZ, we have been informed of another case of a young Angolan Oscar BARATA (b. 22/10/76) who is currently being detained in Hammondsworth detention centre. While we are aware that he will be eighteen and therefore will have come of age in two days, we nevertheless feel that these cases demonstrate a rather alarming practice by the UK authorities. Therefore, we would be very grateful if you could take this matter up with the UK authorities during the forthcoming examination of the report by the Committee on the Rights of the Child.

President
Pierre de Senarciens

Vice-president
Denis von der Weid

Treasurer
Olivier Mach

President of the Advisory Board
Theo van Boven

We thank you in advance for your kind attention to this matter and remain,

Yours sincerely,
Katherine Mann
Programme Officer

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