

Scotland's UNCRC Bill: A Work in Progress

“There can be no keener revelation of a society's soul than the way in which it treats its children”ⁱ

The introduction of the [UN Convention on the Rights of the Child \(UNCRC\) Bill in Scottish Parliament](#)ⁱⁱ may come to be remembered as a pivotal moment in Scotland's social history. Not only does the Bill reinvigorate and demonstrate Scotland's firm commitment to [respect, protect, and fulfil](#)ⁱⁱⁱ a broad range of children's human rights, it may yet act as a watershed Bill: [Paving the path to further incorporation of the international human rights framework into Scotland's domestic legal system](#).^{iv} The Bill, as is current, represents a laudable first step towards incorporating the human rights enumerated by the UNCRC. There is much within the Bill to be proud of, and the groundwork of organisations such as 'Together', among many others interested and invested in the improvement of young person's lives in Scotland, shines through.

However, as the Bill passes through stage 1 of Parliamentary scrutiny, it is clear from the expert [evidence submitted and reviewed](#),^v key amendments to the Bill are necessary. Section 4 of the Bill sets out how Scotland's courts will interpret the UNCRC requirements. The Bill currently provides courts 'may take into account' the preamble to the UNCRC, its articles, as well as the first and second UNCRC optional protocols. Meaning, in its existing format, the Bill makes no attempt to oblige decision makers or the courts in Scotland to take into consideration the wider international human rights framework when interpreting the UNCRC. So why is broadening the interpretative tools to be utilised by the courts and decision makers so integral to the Bill and improving children's rights in Scotland?

Firstly, it is important to grasp the nature of human rights as [interrelated, interdependent, and indivisible](#).^{vi} The implication of which, is human rights cannot be understood nor fully enjoyed when siloed from one another. Human rights, in their essence, are designed to be understood and applied with consideration of the human rights framework holistically. For interpreting the requirements of the UNCRC, this means utilising the other [major UN human rights treaties](#),^{vii} expert guidance laid forth in [UN General Comments](#),^{viii} [Committees Concluding Observations](#),^{ix} and relevant comparative justice. As [is carried out in Sweden](#).^x It is about providing context, not just for the meaning and

scope of children's human rights, but for the obligations associated with their realisation.

For example, the UNCRC Bill contains [both civil and political rights as well as economic, social, and cultural](#).^{xi} However, how the government intends to meet its economic and social rights obligations remains relatively unclear. Throughout their development, both categories of human rights have been provided with different methods for their implementation. Civil and political rights are often discussed as immediate in nature, whilst economic, social, and cultural rights are to be progressively realised over time. Whilst this is a simplification, it illustrates how different human rights can require different methods of implementation. To understand economic and social rights, their obligations of '[progressive realisation](#)', [use of 'maximum resources'](#), [inviolable 'minimum core'](#),^{xii} [or inherent connection to budgets](#),^{xiii} requires an awareness and consideration of the International Covenant for Economic, Social, and Cultural Rights (ICESCR), its guiding materials produced by expert committees at the UN, and concluding observations in which States have been found to be in violation of the Covenant. Understanding the meaning of these terms and their application, is essential to achieving the fulfilment of children's rights in Scotland and cannot be achieved solely through the interpretative tools outlined in S4(2) of the UNCRC Bill. As such, Section 4 of the Bill must be broadened.

The holistic approach to comprehending children's rights, as described above, must too be reflected in the Bills Children's Rights Scheme. This can be achieved through expanding the wording of S12(2) of the Bill to include UN treaties, General Comments and Concluding Observations. This would dramatically underline Scotland's intention to incorporate and remedy children's rights with consideration of the human rights framework as a whole.

Scotland is placing itself as a leader in human rights throughout the world. Now is the time to push and ensure Scotland's incorporation of the UNCRC meets its intended aims and is not let down by the ultimately limiting nature of its current sources for interpretation.

ⁱ Mandela N, Address by President Nelson Mandela: Launch of Children’s Fund Pretoria, (8 May 1995).

ⁱⁱ United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill (1 September 2020). As can be found at:

<https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/115977.aspx>.

ⁱⁱⁱ The obligations to respect, protect and fulfil human rights is well established within international law and academic literature. A brief overview of the obligation and its purpose within the international human rights framework can be found here:

<https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx#:~:text=International%20human%20rights%20law%20lays,States%20are%20bound%20to%20respect.&text=The%20obligation%20to%20protect%20requires,enjoyment%20of%20basic%20human%20rights.>

For a more detailed account of the obligations associated with children’s rights, see A Nolan ‘Children’s Economic and Social Rights’ (Springer 2018). As found at:

https://www.parliament.scot/S5_Equal_Opps/General%20Documents/Aoife_Nolan.pdf.

^{iv} See First Minister’s Advisory Group on Human Rights Leadership ‘Recommendations for a new human rights framework to improve people’s lives’ (December 10, 2018). As found at

<https://humanrightsleadership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf>.

For the importance and meaning of incorporation, please see previous blog by U Kilkelly and L Lundy ‘Does legal incorporation of the UNCRC matter?’ (UCC, 2020) as found at

<https://www.ucc.ie/en/law/news/does-legal-incorporation-of-the-uncrc-matter.html>.

^v See Summary of Evidence for UNCRC (Incorporation)(Scotland) Bill. As found at

[https://www.parliament.scot/S5_Equal_Opps/General%20Documents/UNCRC_Summary_of_Evidence_\(1\).pdf](https://www.parliament.scot/S5_Equal_Opps/General%20Documents/UNCRC_Summary_of_Evidence_(1).pdf).

^{vi} To understand the importance of the indivisible nature of human rights, see Vienna Declaration and Programme of Action (25 June 1993). As found at

<https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>.

^{vii} The UN Framework consists of 9 major human rights treaties. An overview can be found in the UN Factsheet as found here: <https://www.ohchr.org/documents/publications/factsheet30rev1.pdf>.

^{viii} General Comments are issued by UN Committees established to oversee and provide guidance on a specific treaty. An overview of General Comments the UN Committees can be found here: <https://www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx>. For the

UNCRC, the Committees General Comments can be accessed here:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11.

^{ix} UN human rights committees provide concluding observations for States who have ratified the treaty. Further information on Concluding Observations and the UNCRC can be found here:

<https://crcreporting.childrightsconnect.org/convention-on-the-rights-of-the-child-concluding-observations/#:~:text=What%20are%20the%20concluding%20observations,for%20every%20State%20under%20review.>

^x A Political, ‘How Sweden is rewriting national law to put children’s rights front and centre’ (March 21, 2018). As found at: https://apolitical.co/en/solution_article/how-sweden-is-rewriting-national-law-to-put-childrens-rights-front-and-centre.

^{xi} For a brief overview of the differences, see

<https://www.ohchr.org/en/issues/escr/pages/areescrfundamentallydifferentfromcivilandpoliticalrights.aspx>.

^{xii} Economic and social rights have a range of obligations which apply. For a very good overview of these obligations, see A Nolan’s evidence to Scottish parliament. As found at

https://www.parliament.scot/S5_Equal_Opps/General%20Documents/Aoife_Nolan.pdf. For a

further detailed discussion on the UNCRC and minimum core obligations, see evidence

submitted by A Flegg. As found at <https://yourviews.parliament.scot/ehrc/un-convention-on-the-rights-of-the-child-bill/>.

^{xiii} For an overview of the importance of Human Rights Budgeting and human rights realisation. See work conducted by the Scottish human Rights Commission as found at

<https://www.scottishhumanrights.com/news/human-rights-budget-work-what-why-and-how/>. For the specific connection between the UNCRC and budgetary decision making, see General Comment 19 (2016) on Public Budgeting for the Realisation of Children’s Rights. An overview can be found at SavetheChildren here <https://resourcecentre.savethechildren.net/library/uncrc-general-comment-no-19-2016-public-budgeting-realization-childrens-rights-art-4#:~:text=realize%20children's%20rights.,General%20Comment%20No.,resource%20mobilizati on%2C%20budgeting%20and%20spending.>