



Submission to the UK Parliamentary Joint Committee on Human Rights (JCHR) Inquiry into the UK's record for protecting the human rights of children.

Introduction

Together (Scottish Alliance for Children's Rights) is a NGO with over 320 members, working across Scotland to promote and monitor the implementation of the UN Convention on the Rights of the Child (UNCRC). In November 2016, we will publish our 2016 State of Children's Rights report, which will provide a non-government perspective on the UK and Scottish Government's record for protecting the human rights of children in Scotland. It will suggest a number actions for the UK and Scottish Government to take forward. We will ensure that the JCHR receives a copy of the report to inform its work and would be happy to answer any questions that may result.

What are the most significant human rights issues for children in the UK?

The UN Committee on the Rights the Child (UN Committee) raised significant and widespread concerns around the UK's record for protecting the human rights of children. The UN Committee's 2016 Concluding Observations (recommendations) strongly echo the concerns of many of Together's members. The plethora of issues show that very many significant human rights issues for children remain, and that much more progress is needed across the UK and devolved nations. The different approaches taken by the UK and devolved governments can present a challenge in achieving a coherent overarching implementation of the UN Committee's recommendations. Furthermore, the interaction between reserved and devolved powers significantly impacts on the implementation of the UNCRC across the devolved nations. There is a need for a mechanism to be put in place to ensure that the UK Government's exercise of reserved powers is assessed for its impact on the human rights of children in Scotland and the other devolved nations.

- **Priority should be given to the General Measures of Implementation¹ of the UNCRC to ensure there are adequate structures and mechanisms in place at a UK and devolved level to protect, respect and fulfil the full spectrum of children's human rights.**
- **Together endorses the JCHR's previous recommendation that it should conduct a UK-wide examination of the impact of devolution on the protection and promotion of human rights.²**

¹ See UN Committee on the Rights of the Child (2003) General Comment No.5 – General Measures of Implementation of the Convention on the Rights of the Child
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f5&Lang=en

² Para. 26 Joint Committee on Human Rights (2015) The UK's compliance with the UN Convention on the Rights of the Child <http://www.publications.parliament.uk/pa/jt201415/jtselect/jtrights/144/144.pdf>

How should Government respond to the UN Committee's recommendations?

Focusing on the General Measures of Implementation, the UK and devolved Governments should respond and prioritise the UN Committee's recommendations as follows:

*Children's rights in legislation*³

The UN Committee has recommended that '*domestic legislation, at the national and devolved level*' is brought in line with the UNCRC so it is '*directly applicable and justiciable*' in domestic law.⁴ In ratifying the UNCRC, the UK Government made a commitment in international law to put in place measures and legislation that comply with its obligations. Contrary to the UK Government's assertion in its response to the UN Committee's List of Issues⁵, there is no general principle of UK law preventing general or sectoral measures of implementation of an international treaty. The UK Parliament has passed numerous statutes giving legal effects to international obligations within domestic law, of which the Human Rights Act 1998 is an example. The absence of legislative measures at the UK level is a matter of political choice.

The Scottish Parliament has passed a general legislative measure of implementation in the Children and Young People (Scotland) Act 2014. Whilst welcome, it doesn't place a firm duty on Scottish Ministers to strengthen implementation of the UNCRC, as it is left to Ministers' discretion as to whether they '*consider it appropriate to do so*'.⁶ Scotland's First Minister recently stated that she is open to '*exploring implementing and incorporating into Scots law some of the key international human rights treaties*', including the UNCRC. Scottish Government has pledged to use the Scottish Parliament's new powers to establish social and economic rights and further embed the European Convention on Human Rights (ECHR).⁷

It is clear that further steps can and should be taken to give legal effect to the UNCRC at both UK and devolved levels. The current lack of incorporation of the UNCRC into domestic law means that children still do not have redress if their UNCRC rights are violated, and there is no duty on local or national government to act compatibly with the UNCRC. In evidence presented to the JCHR in February 2015, a UNICEF representative stated that incorporation of the UNCRC into domestic law would help to coordinate UNCRC implementation across the UK and ensure there is a synergy in the way in which children's rights are realised across the UK.⁸

Whilst the UN Committee does not specifically mention the Human Rights Act 1998 (HRA), the above recommendation makes it clear that there should be no diminution of children's rights protection in law. As such, there is real concern about UK Government plans to repeal the HRA and replace it with a 'British Bill of Rights'. The HRA provides the only mechanism through which children can seek redress for breaches of their human rights (albeit ECHR rights rather than UNCRC). A recent UN

³ Para.72. UN Committee on the Rights of the Child (2016)

⁴ Para.7a. UN Committee on the Rights of the Child (2016)

⁵ Para.5. UK Government (2016) Replies of the United Kingdom of Great Britain and Northern Ireland to the list of issues http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fQ%2f5%2fAdd.1&Lang=en

⁶ Children and Young People (Scotland) Act 2014 pt.1, s1.1(b)

⁷ Pg.22. Scottish National Party Manifesto 2016
<https://drive.google.com/file/d/0B8Tu6kHw0HUMdXZyb0RHNHdRSzQ/view>

⁸ http://www.parliament.uk/documents/joint-committees/human-rights/TRANSCRIPT_JCHR_HC1016_110215.pdf

report warned that repealing the HRA could lead to decreased levels of human rights protection.⁹ The UK Government wrongly asserts that the HRA has led to ‘*abuse*’.¹⁰ There is ample evidence of its positive effect on children’s rights. Through the HRA, courts use the UNCRC as an aid to interpret the ECHR.¹¹ The duty on public authorities to comply with the ECHR has led to positive changes to children’s rights protection without the need to go to court.¹²

The Scottish Government’s approach to human rights is distinct from that of the UK Government. Political and public opinion in Scotland is generally supportive of human rights. In response to the potential repeal of the HRA, the Scottish Government delivered a strong statement supporting human rights, stating that it is ‘*strongly opposed to any attempt by a future UK Government to repeal the Human Rights Act or to withdraw from the European Convention on Human Rights.*’¹³

Together encourages UK and devolved governments to take forward the UN Committee’s recommendations around legislative protections of children’s human rights as follows:

- **Expedite bringing domestic legislation in line with the UNCRC at both national and devolved level to ensure that the principles and provisions of the UNCRC are directly applicable and judiciable under domestic law.**
- **Retain the Human Rights Act 1998 and recognise the vital role it plays in protecting children’s universal human rights, including key provisions in the UNCRC.**

UNCRC implementation

The UN Committee highlights the need for comprehensive policy and strategic measures of implementation to be progressed, including revising and implementing child rights action plans at a UK and devolved level. A UK-wide action plan (in addition to action plans at a devolved level) would provide a conduit through which the UK Government can identify where the exercise of reserved powers impacts differently on children’s rights in the devolved nations. Together endorses the UN Committee’s recommendation that such action plans should be underpinned by ‘*sufficient human, technical and financial resources*’ and include ‘*clear timelines as well as a monitoring and evaluation framework*’.

⁹ UN Committee on the Elimination of All Forms of Racial Discrimination (2016) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland: 90 Session
http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GBR/CERD_C_GBR_CO_21-23_24985_E.pdf

¹⁰ UN Committee on the Rights of the Child (2016) List of issues in relation to the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland Addendum: Replies of the United Kingdom of Great Britain and Northern Ireland to the list of issues.

¹¹ See examples illustrated by Children’s Rights Alliance for England (2015) UK Implementation of the UN Convention on the Rights of the Child: Civil Society alternative report 2015 to the UN Committee; Wales UNCRC Monitoring Group (2015) Report to the United Nations Committee on the Rights of the Child; Together (Scottish Alliance for Children’s Rights) (2015) Implementation of the UN Convention on the Rights of the Child – Scotland: Report to the United Nations Committee on the Rights of the Child.

¹² For example it has enabled a disabled girl to access transport to get to school, prevented a new born baby and her mum have from being made homeless and enabled a young person to have a voice in order to be rehoused following abuse.

¹³ <http://news.scotland.gov.uk/News/Human-Rights-Act-must-stay-10d4.aspx>

Child Rights Impact Assessments (CRIA) are an essential mechanism through which children's rights can be embedded within governmental decision-making. In Scotland, the 2014 Act has resulted in the use of CRIA.¹⁴ The UK Ministerial commitment to give '*due consideration*' to the UNCRC when making law and policy in England or on reserved matters¹⁵ is welcome but analysis shows implementation is inadequate.¹⁶ The UN Committee calls for the use of CRIA to be embedded at a national and local level.¹⁷

The UN Committee recommends that structures are established '*for the active and meaningful participation of children*' in policy making.¹⁸ In the past year, both the Scottish Youth Parliament¹⁹ and Children's Parliament²⁰ have been actively and meaningfully involved in working with UN Committee members to monitor the implementation of the UNCRC in Scotland, albeit on a one-off basis. Learning from these organisations should be used to inform wider and more sustainable structures for children's participation across the UK.

Together encourages UK and devolved governments to take forward the UN Committee's recommendations around UNCRC implementation as follows:

- **Develop child rights action plan at a UK and devolved level, in consultation with stakeholders, to set out how recommendations from the UN Committee will be addressed. Include clear, resourced, time-bound actions and a monitoring framework. Progress should be reviewed on an annual basis.**
- **Make a transparent system of CRIA for all new policy, legislation and budgetary decision-making mandatory across the UK; implement widespread training to ensure that officials have the necessary skills, knowledge and understanding to undertake CRIA; all CRIAs must be published.**
- **Ensure permanent structures to facilitate the systematic participation and involvement of children in national and local policy making and scrutiny, such as child and youth parliaments and other accountability mechanisms.**

For more information, please contact:

Juliet Harris, Director, Together (Scottish Alliance for Children's Rights)

Telephone: 0131 337 9015 Email: juliet@togetherscotland.org.uk

Together (Scottish Alliance for Children's Rights), 9 Haymarket Terrace, Edinburgh, EH12 5EZ

¹⁴ <http://www.gov.scot/Topics/People/Young-People/families/rights/child-rights-wellbeing-impact-assessment>

¹⁵ HC Deb 6 December 2010, col 17WS

¹⁶ Children's Rights Alliance for England (2015) UK implementation of the UN convention on the Rights of the Child: Civil society alternative report 2015 to the UN Committee – England

¹⁷ Para.10a. UN Committee on the Rights of the Child (2016)

¹⁸ Para. 31a. UN Committee on the Rights of the Child (2016)

¹⁹ See www.syp.org.uk

²⁰ See www.childrensparliament.org.uk/under-the-same-sky/