

# HUMAN RIGHTS AND THE SCOTTISH PARLIAMENT

## UNICEF UK TO THE EQUALITIES AND HUMAN RIGHTS COMMITTEE INQUIRY ON HUMAN RIGHTS AND THE SCOTTISH PARLIAMENT

March 2018

### INTRODUCTION

UNICEF, the United Nations Children’s Fund, is mandated by the UN General Assembly to uphold the Convention on the Rights of the Child and promote the rights and wellbeing of every child. Together with partners, UNICEF works in over 190 countries and territories to translate that commitment into practical action, focusing special effort on reaching the most vulnerable and excluded children, to the benefit of all children, everywhere. Unicef UK is one of 36 National Committees.

Parliaments and members of parliament are essential actors when it comes to human rights promotion and protection, parliamentary activity as a whole – legislating, adopting a State’s budget and overseeing the executive branch – covers the entire spectrum of political, civil, economic, social and cultural rights from the Convention on the Rights of the Child (CRC) and thus has an immediate impact on the enjoyment of these rights by children. As the State institution which represents the people and through which they participate in the conduct of public affairs, the Scottish Parliament is a guardian of human rights.

Unicef UK welcomes the opportunity to submit to this inquiry and to suggest what more the Scottish Parliament could do to mainstream child rights into its procedures and practices.

### THE CHANGE WE WANT TO SEE

Unicef UK is a member of Together: the Scottish Alliance for Children’s Rights, and we endorse the recommendations in their submission to this inquiry. In addition, we will seek to address the **Accountability** and **Participation Engagement** sections of the consultation, and put forward the following two sets of recommendations:

- The Convention on the Rights of the Child is incorporated into law.
- Child participation and child rights are mainstreamed into the work of the Scottish Parliament

### ACCOUNTABILITY

Direct incorporation means that the CRC itself forms part of national law, is binding on public agencies and can be applied by the courts. The UN Committee on the Rights of the Child favours direct and full incorporation as the preferred method of implementation, thus giving full legal effect to the binding commitments made by governments when ratifying the CRC. A UNICEF study shows that this is a very

common method – the CRC has been directly incorporated into national law in two thirds of the countries covered by a study conducted in 2006-7.<sup>1</sup>

Direct incorporation is common in civil law countries but rare in common law countries, like Scotland. In the latter, the prevailing practice is not to make a treaty itself part of the national legal framework, but rather to amend existing legislation. In these cases new laws are adopted as needed in order to ensure that the rights, principles and obligations contained in the treaty also form part of national law.

Since the UK ratification of the Convention on the Rights of the Child in 1991, successive governments across all UK jurisdictions have failed to comprehensively implement children’s rights. The piecemeal approach to the CRC has meant that many children are still unable to realise the full extent of their rights. Access to justice for children suffering rights violations remains limited. There has been substantial progress in Scotland over recent years – most notably through Part 1 of the Children and Young People (Scotland) Act 2014 which introduced new duties on Scottish Ministers to give due consideration to children’s rights and promote knowledge and understanding of the CRC; duties on public authorities to report on their implementation of the CRC; a CRWIA process being rolled out across government departments; and commitments made to legislate for equal protection against assault for children, and to raise the age of criminal responsibility.

While significant, however, it must be noted that the measures within the Act are still limited to administrative duties alone, and neither give children any new rights in the domestic context nor extend duties to consider or act on children’s rights beyond Scottish Ministers.

In her 2017 Programme for Government, the First Minister Nicola Sturgeon announced a three-year programme to raise awareness of children’s rights, beginning with the Year of Young People in 2018, and committed to undertaking a “comprehensive audit” on the most practical and effective way to further embed the principles of the CRC into policy and legislation, including the option of full incorporation into domestic law.<sup>2</sup>

Unicef UK believes the time is right for incorporation and we encourage the Equalities and Human Rights Committee to support such a legislative measure.

- The status quo – a step-by-step approach to the CRC – fails to ensure that every child can realise their rights.
- Scotland has made significant progress – but can and should be more ambitious for children. Incorporation of the CRC is within the scope of devolved powers.
- Children and young people should be able to seek redress in the Scottish courts for violations of their individual rights.
- Other countries have taken steps to incorporate the CRC, it can be done where the political will exists.

Incorporation will help embed a children’s rights culture in Scotland.

---

<sup>1</sup> [Law reform and implementation of the Convention on the Rights of the Child](#) UNICEF, 2007

<sup>2</sup> Scottish Government (2017) A nation with ambition: the Government’s Programme for Scotland 2017-18.

Unicef UK research<sup>3</sup> shows that CRC incorporation in and of itself is significant. The very process of incorporation raises awareness of children's rights and the CRC in government and civil society. In countries where there has been incorporation (Belgium, Norway, Spain), our research showed that children were more likely to be perceived as rights holders and that there was a culture of respect for children's rights. Whilst incorporation provided opportunities for strategic litigation given that the CRC was part of the domestic legal system, its main value was thought to be in the strong message it conveyed about the status of children and children's rights, and the knock-on effects for implementation of children's rights principles into domestic law and policy.

Unicef UK believes that incorporating the CRC into Scots law would be a significant legal measure facilitating mainstreaming child rights in the Scottish Parliament and raising general awareness of them in Scotland, two twin objectives that the Scottish Parliament aims to achieve via this consultation.

In parallel with the CRC incorporation, the Scottish Parliament should initiate a review of its legislation in order to act on the UN Committee's recommendation to 'expedite bringing its ... legislation in line' with the CRC "to ensure that the principles and provisions are directly applicable and justiciable under Scottish law".

The moment to call for the incorporation will be later this year when the CRC report is submitted to Scottish Parliament in by Ministers setting out a plan of action on children's rights for the period to 2021.

## PARTICIPATION AND ENGAGEMENT

The Convention on the Rights of the Child (adopted by the United Nations General Assembly in 1989) opens the door to full citizenship for children. Article 1 of the CRC defines a child as "every human being below the age of eighteen years unless under law applicable to the child, majority is attained earlier". The Convention transforms children from passive objects to active agents of rights. It demands that their views be considered and given due weight.

The CRC is unique in that it delineates the first comprehensive set of rights – including social, economic, cultural and civil rights – relevant to children and recognizes children as social actors and active holders of their own rights. It contains new provisions relating to children – for example, the right to participation and the principle that in all decisions concerning the child, the child's best interests must come first. The basic rights and principles of participation are found in articles 12, 13 and 15 of the Convention on the Rights of the Child.

The Inter-Parliamentary Union and UNICEF<sup>4</sup>, have addressed some of the key ways in which parliamentarians can guarantee that children's voices, concerns and interests find expression in and enjoy meaningful attention from parliaments. Building in particular on the right of participation – one of

---

<sup>3</sup> [The UN Convention on the Rights of the Child: a study of legal implementation in 12 countries](#), QUB, 2012

<sup>4</sup> ["A Handbook on Child Participation in Parliament"](#), Handbook for Parliamentarians No 18 - 2011, UNICEF-Inter-Parliamentary Union

the bedrock principles articulated in the CRC – a handbook has been published that identifies the many opportunities for enhanced participation of children in parliamentary processes, illustrating its recommendations with examples culled from around the globe.

## WHY PARLIAMENTS SHOULD INVOLVE CHILDREN

- Child participation improves parliaments' representative function
- Child participation improves legislative outcomes
- Child participation offers a long-term perspective
- Child participation promotes civic engagement and civic education

The global commitments were strengthened in June 2009 when the Committee on the Rights of the Child adopted 'General Comment No. 12: The right of the child to be heard'. The General Comment is intended to support State party efforts for effective implementation of article 12; it details the scope of legislation, policy and practice entailed as well as what is needed for effective and ethical child participation.

## CHILD PARTICIPATION IN THE PARLIAMENTARY CONTEXT: PRINCIPLES

1. **Sustainability** – It is important that participation be part of ongoing processes that integrate child inputs into parliamentary decision-making and not mere token events or consultations. Follow-up mechanisms are needed that make child participation meaningful and sustainable.
2. **Participation is NOT substitution** – Child participation is by no means intended to supplant or serve as a substitute for the work of representatives. Rather, it is intended to help parliamentarians do their work more effectively.
3. **The power of child testimony** – If exercised through the appropriate parliamentary channel or mechanism, child testimony can serve as a powerful way to inform parliamentarians about the implications of a given law, policy or budget allocation.
4. **Risk of politicisation** – When engaging children, parliamentarians might consider promoting political tolerance or conveying to children that there are often different standpoints on issues, and that their views may differ from those of members of other parties

**Children can participate outside the capital** – Children's participation or their parliamentary engagement is sometimes easier to facilitate or include at the local or district level than at the national level, which requires that children be in the capital.

5. **Equity** – One issue of concern relates to how representative a particular child or youth organization is. Parliamentarians should avoid giving undue weight to well-placed children who may come from privileged backgrounds.
6. **Protection and security** – The protection and security of children is paramount. When involving children in mechanisms such as hearings, for example, many procedures can be adopted to protect children, such as making the hearings closed to the public.
7. **Accountability** – If the children consulted are presented as child representatives then they must be held accountable to their peers.

8. **Selection** – parliamentarians should ensure that children are selected in an open and democratic manner such that they are representative of and accountable to their peers.

Child participation should cut across all the work, structures and functions of parliament, whether oversight, budgeting, law-making or representation. Children are affected by a host of issues, ranging from transportation policy to health and education. Their involvement should not be limited to child rights discussions. Indeed, their contribution should help mainstream children's rights across all policy areas. Various mechanisms are available for enabling child participation in parliamentary processes. Working within the parliamentary committee system committees constitute a clear entry point for child participation since they can invite children to testify at hearings on particular subjects, whether they pertain to new laws under consideration, to budgets that require parliamentary approval or to investigations into specific issues such as rights violations.

### WHAT SCOTTISH PARLIAMENTARIANS CAN DO TO INCREASE CHILD PARTICIPATION IN COMMITTEES:

- Liaise with stakeholders outside parliament such as youth associations and children's clubs, and leverage those contacts to bring children's voices, especially those heard less often, into its work by such means as inviting them to testify in hearings or to provide the committee with relevant evidence/data.
- Develop regular contacts with child representatives and associations and establish a systematic consultation mechanism with a view to ensuring that committee members remain aware of children's priorities and concerns.
- Solicit written submissions from those affected by bills
- Ensure that requests for submissions are well advertised and aimed at children's associations and NGOs; encourage the use of information technology to reach out to children, and allow sufficient time for children to participate.
- Initiate inquiries and make field trips/on-site visits to directly engage and interact with children or their representative(s). Direct that at least one child be invited to attend any relevant committee hearings. This could become a criterion for policy-making, especially with regard to Bills related to children.
- Participating in oversight through input in plenary discussions
  - Participating in the budget process. Parliamentarians can help facilitate child input into the budget process and bring children's perspectives to bear in a number ways, including producing a child-friendly budget that is intelligible to children;
  - Gathering relevant data in the context of budget discussions;
  - Meeting with children's organizations/representatives;
  - Requesting written and/or oral submissions from children.

In addition, parliamentarians can bring parliament to children by: undertaking national and constituency-level consultations; engaging with individual children at the constituency level; and making better use of ICT to reach children, including through SMP websites.

To facilitate that final point, parliamentarians can:

- Ensure that including children have online access to all legislation enacted by parliament and the ability to follow the law-making process. This includes access to the full text and status of all proposed legislation.
- Produce child-friendly versions/websites of all political platforms.

- Explore and evaluate the use of interactive ICT to connect parliaments with children and to offer them the means to express their opinions.
- Foster the employment of all tools judged to be useful and effective in the parliamentary environment, including new media and mobile technologies, to provide citizens (including children) with improved access to the work of parliament and increased means of participation in the political dialogue.

For further information, please contact Dragan Nastic, Senior Policy and Advocacy Advisor

**UNICEF UK**

UNICEF House, 30a Great Sutton Street, London, EC1V 0DU