

Rights of the Child UK response to Commission on a Bill of Rights discussion paper

‘Do we need a UK Bill of Rights?’

*There can be no keener revelation of a society's soul than the way
in which it treats its children – Nelson Mandela, 1995*

Introduction

1. The ‘Rights of the Child UK’ (ROCK) is a coalition of voluntary organisations and individuals from across the UK pushing for the full incorporation of the United Nations Convention on the Rights of the Child (UNCRC) into UK law. This submission is endorsed by the following ROCK member organisations, several of whom are large membership organisations in their own right:

- Article 12 in Scotland
- Centre for Studies on Inclusive Education
- Children in Wales
- Children's Rights Alliance for England
- The Children's Society
- Coram Children's Legal Centre
- The Fatherhood Institute
- Howard League for Penal Reform
- National Children's Bureau
- Just Fair
- Save the Children
- Scope
- Together – Scottish Alliance for Children's Rights
- UNICEF UK
- Voice

Children's rights affect everyone

2. The rights of children concern every human being, as we have all been, or are, children. Far from being a minority issue, the recognition and fulfilment of children's rights is fundamental to any society that claims to uphold human rights. A childhood without rights causes immense harm in the here-and-now; it also diminishes future adult lives. If human beings are to be treated as having equal worth and dignity, and to be able to develop their full human potential, children cannot be an after-thought. Human rights start with children and childhood, because this is where human life begins.
3. Furthermore, the UNCRC does not look at children in isolation. It is a comprehensive treaty that recognises the interrelationship between children, adults and the state. Fundamentally, the treaty provides children with specific and unique rights by virtue of their status, including rights in relation to parental support, child protection, education and juvenile justice. By focusing only on generic human rights standards, children's particular rights and interests will inevitably be overlooked. Crucially, the rights contained in the

UNCRC apply to all children without discrimination of any kind, including ethnicity, nationality, or status – for example immigration status.

State of children's rights in the UK

4. The UK's children require far greater protection of their rights. It is now 20 years since the UK ratified the Convention on the Rights of the Child, yet still:
 - a. 722 children under the age of 16 in England and Wales were the victims of homicide across the past 10 years (75% of children knew their suspect)¹
 - b. In the last five years, 1,698 children aged 14 and under were admitted to hospital in England following self-harm by a sharp object (48% more admissions in 2010/11 than in 2006/07)²
 - c. 3.8 million (29%) children in the UK live in relative poverty³
 - d. 1.6 million (13%) children in Britain live in severe poverty. This figure increases to as high as 27% of children living in Manchester and Tower Hamlets⁴
 - e. Children with statements of special educational needs are nearly eight times more likely to be permanently excluded from school than other children⁵
 - f. Nearly half of local authorities in England and Wales have either abolished their Traveller education service or made major cuts, despite a Government report in 2010 concluding *'much more needs to be done to achieve equality in educational opportunities for Gypsy, Roma and Traveller pupils. Without a framework of targeted support at both local and national levels, the improvement of outcomes for these pupils is likely to remain unacceptably slow'*⁶
 - g. 6% of care leavers enter higher education compared with 45% of the general population of school leavers⁷
 - h. 3% of the UK's prison population is children – the 7th highest proportion of child prisoners among all OECD member countries⁸
 - i. In 2009/10, an average 186 children each month were the victims of assault in custody in England and Wales; and an average 106 children self-harmed in custody each month⁹
 - j. Children are still made destitute and homeless through the asylum process.

Children need additional rights protection

5. It is now incontrovertible that children in the UK do not have sufficient rights protection. When the UN Committee on the Rights of the Child last examined the implementation of the UNCRC in the UK, it issued over 120 recommendations. Tellingly, it referred to *'the general climate of intolerance and negative public attitudes towards children, especially adolescents'*¹⁰ – something which the Vice-Chair of the UN Committee on the Rights of the Child later described as the first such observation for a European country.
6. The UN Committee in 2008 welcomed the development of a Northern Ireland Bill of Rights and a British Bill of Rights and saw both as opportunities to incorporate the principles and provisions of the UNCRC, including a 'special section' on children's rights.¹¹ Indeed, this

was the approach recommended by the Northern Ireland Human Rights Commission (NIHRC) in its advice to the Secretary of State.¹² When the former Government consulted on a British Bill of Rights, it elicited '*most support for including rights relating to children and children's wellbeing*'.¹³ The parliamentary Joint Committee on Human Rights came to a similar conclusion in its 2008 inquiry:

*There is a strong case for any Bill of Rights to include detailed rights for certain vulnerable groups such as children...*¹⁴

7. Hostile attitudes towards children run deep: recent ICM research undertaken for Barnardo's found 49% of respondents believe children in the UK are beginning to behave like animals; and a quarter believe children who behave anti-socially or commit crimes are beyond help by the age of 10.¹⁵ We regret that, 20 years after the UK's ratification of the UNCRC, and 10+ years after the Human Rights Act 1998 (HRA) came into force, the public remain largely unaware of the protection afforded to children under international law. The Rights of Children and Young Persons (Wales) Measure 2011 should help to rectify this in Wales, but the duty to promote knowledge of the UNCRC¹⁶ only applies to Welsh Ministers, not public authorities like schools and children's services, and there is no equivalent legislation for the rest of the UK.

Do we need a UK Bill of Rights?

8. We need a UK Bill of Rights that brings meaning and force to internationally agreed human rights, whilst also, when necessary, going further to develop rights protection that meets today's aspirations, concerns and challenges.
9. Our organisations are ambitious about a UK Bill of Rights providing much needed additional protection to children, spanning their civil and political rights as well as economic, social and cultural rights. This vision is premised on what we know other countries have in place constitutionally for children (and other members of society)¹⁷; and our close contact with children living in perilous conditions in our (still) wealthy country.
10. We remain fiercely protective of the HRA because it provides children with critical protection. For example, the HRA has curtailed police powers to remove under 16s from dispersal areas¹⁸; it has supported children's right to knowledge about their parentage^{19,20}; it has ensured equal financial support for family members and non-family members who foster children²¹; it has protected the needs of young victims and defendants during criminal proceedings²²; it has established that the needs of children should be considered when sentencing parents²³; and it has quashed restraint rules giving officers in private child prisons the power to use force to make children comply with instructions.²⁴
11. It is instructive that many successful legal challenges concerning children's rights have relied upon both the HRA and the UNCRC. For example:

Right to be heard in family proceedings

The Court of Appeal in 2005 held that three boys, aged 13, 15 and 17, could instruct their own lawyer in proceedings brought by their separating parents who were in dispute about which parent the boys should live with. The boys argued successfully that their views should be heard directly, in line with Article 12 of UNCRC.

Lord Justice Thorpe observed:

*...Unless we in this jurisdiction are to fall out of step with similar societies as they safeguard Article 12 rights, we must, in the case of articulate teenagers, accept that the right to freedom of expression and participation outweighs the paternalistic judgment of welfare.*²⁵

Child's best interests in criminal proceedings

The High Court held in 2004 that a child's best interests are a primary consideration when a court is making an order concerning a child. The case also considered whether the child's right to a fair trial under Article 6 of the ECHR had been breached but the best interests arguments were clearly founded on Article 3 of the UNCRC.²⁶

Children Act 1989 protects children in prison

In the Howard League for Penal Reform's successful challenge to the Home Office Prison Service Order 4590, the court held that the Children Act 1989 does apply to young offender institutions subject to the terms of imprisonment. In making his judgment, Mr Justice Munby considered the state's obligations under the ECHR, the UNCRC and the Charter of Fundamental Rights of the European Union (the Charter). Article 24 of the Charter accords priority to the child's best interests and is taken from the UNCRC.²⁷

The impact of parental removal on children's rights

In February 2011, the Supreme Court allowed an appeal concerning a mother of 12 and 9 year-old children due to be deported to Tanzania. It was unanimously agreed that the Court of Appeal had given insufficient priority to the well-being of the children, both British citizens, should they be forced to leave the country with their mother or be separated from their mother and have to live with their father (a British citizen) in this country. The Court focused on Article 3(1) of the UNCRC, the requirement that in all actions concerning the child his or her best interests be a primary consideration and Article 12, the child's right to have his or her views given due weight. That the parents had conceived knowing the mother's immigration status was not settled, and the mother's asylum history was 'appalling', should not be held against the children, the Court held. As Lord Hope explained: '*... considerations of that kind cannot be held against the children in this assessment. It would be wrong in principle to devalue what was in their best interests by something for which they could in no way be held to be responsible*'.²⁸

12. As international law, the UNCRC has played an important role informing domestic law in HRA (and other) cases. But stopping at this scope and level of protection is wholly inadequate. Whilst guarding against any weakening of the HRA, we are deeply disappointed that so much human rights discourse centres on attacking or defending this

single Act of Parliament. The HRA enshrines a set of rights drafted after the Second World War, when the notion of children being rights holders was far from established and before the need for additional international treaties was accepted for women and girls, disabled people, older people, victims of trafficking and many other groups. Despite this almost exclusive focus on the HRA, and its constant media vilification and distortion by some politicians, it is very heartening to note that the British public strongly support human rights values and want these mainstreamed in public services. A representative sample of nearly 2,000 British people, aged 16+, took part in face-to-face interviews with Ipsos Mori in August 2008. Interviewees were asked to indicate from a pre-set list the most important values for living in Britain today:

- a. Being treated with dignity and respect received by far the most support (selected by 75% of respondents)
 - b. Being able to express views freely came next (68%)
 - c. Being treated fairly was next highest (65%)²⁹
13. There was overwhelming support (82%) for having a set of human rights standards for how public services treat people.³⁰
14. The UNCRC's superior protection for children is well established, having been described as the "Children's Magna Carta" when the treaty was first adopted by the UN in November 1989.³¹ Civil and political rights within the UNCRC are, unlike the ECHR, tailor-made for children:
- a. Article 6 of the UNCRC protects the child's right to life and maximum development³²
 - b. Article 3 of the UNCRC requires that the child's best interests be a primary consideration in all actions concerning the child³³
 - c. Article 18(1) requires that the best interests of their children will be parents' 'basic concern'
 - d. Article 2(2) protects the child from discrimination or punishment connected to the status or actions of their parents or other family members
 - e. Article 7 of the UNCRC grants the child the right to, as far as possible, know and be cared for by both parents
 - f. Article 12 of the UNCRC grants all children the right to express their views freely; and for those views to be given due weight, in accordance with the child's age and maturity, in all matters affecting the child
 - g. Article 9(2) of the UNCRC requires that the child's views be known in any proceedings relating to separation from one or both parents
 - h. Article 19 of the UNCRC protects children from all forms of mental and physical violence
 - i. Article 28(2) requires that school discipline be administered in a manner consistent with the child's human dignity

- j. Article 25 of the UNCRC entitles every child placed away from his or her parents for the purposes of care, protection or treatment to periodic review of his or her treatment
- k. Article 40(1) of the UNCRC requires that children in conflict with the law be treated in a manner consistent with the promotion of the child's sense of dignity and worth
- l. Article 40(2)(b)(vii) of the UNCRC requires that the child's privacy be upheld at all stages of criminal proceedings.

15. In her evidence to the Joint Committee on Human Rights' inquiry on a Bill of Rights, Lady Brenda Hale noted:

*There is virtually nothing in the ECHR about children. The UK is party to the UN Convention on the Rights of the Child and there are aspects of that Convention which could, it seems to me, be with profit put into any British Bill of Rights; better to accord with our existing international obligations and with our understanding of children and what they should have. That would, of course, include a stronger right to education than is in the European Convention although there is one in the European Convention.*³⁴

16. The ability to uphold rights through legal challenge, however vital, is only one aspect of why our organisations support a UK Bill of Rights. Principally, we support a Bill of Rights because this is the hallmark of a democratic, civilised society. The tremendous cultural change we are looking for in how our society perceives and treats children can only be achieved through constitutionally embedding the UNCRC. The former Government's review of the HRA concluded that it had not threatened Parliamentary sovereignty, nor overburdened the courts. There had been 552 human rights cases since the HRA came into force – just 2% of the courts' caseload. The real impact had been outside the courts:

*... the Human Rights Act has changed the way that policy-formers and decision-makers view the Convention rights. Inevitably, making the Convention rights directly enforceable in the UK courts has contributed to this change. As the principles have become more embedded – and in some cases in response to the fear of litigation – policies and practices have been adjusted to ensure compliance with Convention rights and they are a more explicitly recognised part of the decision-making process.*³⁵

17. It is important to also note that the development of a third optional protocol (OP) giving children an international complaints mechanism for the UNCRC raises the prospect of children having to seek remedies from the UN rather than from domestic courts. The coalition Government has not yet stated its position on ratifying the OP though failure to do so would attract strong criticism.

What do you think a Bill of Rights should contain?

18. The UK Bill of Rights process represents an important opportunity to establish children's rights at a constitutional level and to consolidate children's rights standards in one binding

and enforceable document. The near universal acceptance of the UNCRC has brought change for children in every part of the world; it is the governing legal framework for children's rights. It would be inconceivable for drafters of a UK Bill of Rights not to have the UNCRC as their basis for developing protection for children.

19. International best practice indicates that, in order to ensure the maximum protection of children's rights, it would be necessary for the UK Bill of Rights to contain a dedicated children's section.³⁶ In its General Comment No 5, the UN Committee on the Rights of the Child welcomes the inclusion of sections on the rights of the child in national constitutions, noting that this helps to underline that children alongside adults are holders of human rights. However, it cautions against complacency in these rights being, in practice, for "everyone":

*The test must be whether the applicable rights are truly realized for children and can be directly invoked before the courts.*³⁷

20. This dedicated provision would be in addition to integrating provision for children throughout the constitution. This approach was proposed by the NIHRC for a Northern Ireland Bill of Rights, after very extensive public consultation and engagement. It is also the approach of the UN Convention on the Rights of Persons with Disabilities, which protects both adults and children. It is notable that the former UK Government rejected seven of eight distinct proposals for children's rights in the NIHRC's proposals because these were seen to affect all children, not only those living in Northern Ireland:

*... the Government does not consider that the first seven specific proposals made by the NIHRC in this area meet the criterion set out in the Agreement that the provisions in a Bill of Rights should "reflect the particular circumstances of Northern Ireland...". While the protection and welfare of children are of the highest importance in Northern Ireland, they are of equal importance across the rest of the UK.*³⁸

21. The provisions in the UNCRC which were specifically developed for children, and do not appear in any other international treaty, must be included in the UK Bill of Rights. This includes, for example:
- a. The four general principles of the CRC: the right to enjoy all rights without discrimination on the basis of the child's or parents' or other family members' status or actions (Article 2); the best interests of the child (Article 3); the right to life and maximum development; (Article 6); and the right to be heard and taken seriously (Article 12)
 - b. The positive role of parents, parental responsibilities and the child's evolving capacities (Articles 5, 18(1) and 14(2))
 - c. The right to family support and to maintain regular contact with both parents when separated from them (Article 18(2) and (3))
 - d. The right to protection from all forms of violence and to positive rehabilitation (Articles 19 and 39)

- e. The aims of education (Article 29)
 - f. The right to information and education about children's rights (Article 42)
 - g. The right to play, rest and leisure (Article 31)
 - h. The right to an adequate standard of living (Article 27)
 - i. The right to health and health care (Article 24)
 - j. The right to special care and protection when separated from parents (Article 20)
 - k. The right to protection from contact with the criminal justice system, including institutionalization (Article 37(b))
 - l. The right of children in conflict with the law to be treated in a way which promotes dignity and self worth, and consistent with the child's age (Article 40(1))
 - m. The right to privacy throughout all stages of criminal proceedings (Article 40(2)(vii))
 - n. The right to be separated from adults in detention (Article 37(c)).
22. Children will also benefit from other rights protection shared with adults – for example, the right to freedom of thought, conscience and religion; the right to peaceful assembly; the right to inclusive education; protection from exploitation in employment; and the right to equality before the law.
23. In addition, there are rights that do not appear in the UNCRC that we know children wish to see included, for example the right to contact with siblings when families separate; to be able to pursue hobbies; and the right to be treated as an individual and not as part of a group.³⁹ There are other matters of fundamental importance, such as the right to affordable – and culturally appropriate¹ – housing and public utilities (water, gas, electricity and public transport for example), that we believe would attract considerable public support were the Commission to engage in a high profile detailed consultation on a UK Bill of Rights.
24. The right to information and education about children's rights should be accompanied by a specific duty on public authorities to increase awareness and understanding of human rights. There is a great need for such a duty as the level of awareness of, and knowledge about, children's rights in particular is very low. A survey conducted for the Children's Commissioner for England in 2006 showed more than three-quarters of children were not aware of the UNCRC.⁴⁰
25. In addition to the lack of awareness, there is an added problem that much of the negative political and media debate focuses on the relationship between human rights and responsibilities, claiming that human rights undermine responsibility or that they should be tied to responsibilities. Clearly there is a need for greater awareness, both of the duties the human rights treaties (including the UNCRC) place on public bodies, and of how a human rights approach can engender a greater sense of respect for protection of other people's rights. Notwithstanding this, we would support a preamble to the UK Bill of Rights which cogently describes the purpose and principles of human rights – for everyone.

¹ Vis-a-vis permanent and halt sites for Gypsy, Roma and Traveller families.

26. A legally binding UK Bill of Rights should also include enforceable socio-economic rights. This should not be seen as over-ambitious for a wealthy country like the UK. Indeed, a series of statutory anti-child poverty measures have been introduced over the past five years, with no public opposition and strong consensus among political parties. Yet the Institute for Fiscal Studies predicts 24% of the UK's children living in relative child poverty by 2020/21 – the highest level since 1999/00.⁴¹
27. The realisation of civil and political rights and the realisation of economic, social and cultural rights are, in fact, parts of a single whole. It is naïve to believe that children's civil and political rights can be enjoyed on an equal basis when so many children's lives are blighted by poverty and other forms of socio-economic inequality.
28. The UN Committee on the Rights of the Child emphasises that economic, social and cultural rights, as well as civil and political rights, must be justiciable.
29. A review of more modern national human rights instruments shows new support for the inclusion of socio-economic rights. In particular, the constitutions of nine Central and Eastern European states (Belarus, Croatia, Czech Republic, Moldova, Poland, Romania, Russia, Slovakia, and Ukraine) contain very generous provisions relating to socio-economic rights, while only two constitutions (Bosnia Herzegovina and Georgia) contain few socio-economic rights. The constitutions of South Africa and India are also notable in the protection afforded to socio-economic rights. In all constitutions, the socio-economic rights that figure most prominently are the rights to social security, health care and education.
30. We note that the Commission's terms of reference raise the importance of consultation with the public, judiciary and devolved administrations. Children's rights are the crux and pillar of the issues our coalition works on, and are fundamental to the daily lives of children who we work with and for.
31. We believe it is important that the Commission approaches its consultation mandate in an open and creative way, reaching out to the children who are not always heard or considered in human rights debates.
32. There are many ways and means of achieving meaningful consultation. We would, however, caution against over-reliance on web-based tools. Such methods can be useful as part of a package of consultation tools, but a focus on online media runs the risk of missing many children who do not have ready access to computers and the internet.
33. We would welcome the opportunity to discuss the Commission's consultation plans and ongoing work and to consider with the Commission how we might assist in bringing the broadest range of children's voices and experiences to this vital debate.
34. We also take this opportunity to stress that children's rights protect all children and are not tied to citizenship. Article 2 of the UNCRC provides:

“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.”

35. Similarly, the HRA applies to any person within the UK's jurisdiction, irrespective of their status. This must continue to be the case with any UK Bill of Rights.
36. Our final point relates to ensuring an effective remedy for children. Giving serious and sustained consideration to children does not only relate to the content of rights provision in any UK Bill of Rights. It also applies to the remedies available when children's rights have been violated. Here, alongside some very vulnerable groups of adults, children also have particular needs. For example, we see the HRA requirement of claimants having to have victim status as being a significant barrier to children accessing justice. This is particularly so when children are living in institutional settings such as custody or residential schools. The OP to the UNCRC, which is close to adoption, will allow advocates acting on children's behalf to initiate complaints.⁴²

Contact:

Carolyne Willow

Co-Chair, ROCK coalition

cwillow@crae.org.uk

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² Ibid

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⁴ Save the Children (February 2011) Severe child poverty: nationally and locally

⁵ <http://education.gov.uk/inthenews/inthenews/a00192714/school-exclusion-statistics-for-200910>

⁶ Wilkin, A. et al (2010) Improving the outcomes for Gypsy, Roma and Traveller pupils: final report. Department for Education. Page 102

⁷ BBC News, 31 March 2010, 'Majority of young women in university': <http://news.bbc.co.uk/1/hi/education/8596504.stm>

⁸ This position is shared with Israel

⁹ Youth justice statistics 2009/10, published 20 January 2011: <http://www.justice.gov.uk/publications/statistics-and-data/youth-justice/statistics.htm>

¹⁰ Professor Kamel Filali made this observation at CRAE's annual children's rights conference in November 2008

¹¹ Concluding observations on the United Kingdom of Great Britain and Northern Ireland, October 2008, CRC/C/GBR/CO/4: paragraph 11

¹² Northern Ireland Human Rights Commission (December 2008) A Bill of Rights for Northern Ireland. Advice to the Secretary of State for Northern Ireland

¹³ Ministry of Justice (March 2010) Rights and Responsibilities: developing our constitutional framework Summary of responses. Paragraph 11

¹⁴ Joint Committee on Human Rights (August 2008) A Bill of Rights for the UK? Twenty-ninth report of session 2007-08. Paragraph 145

¹⁵ Barnardo's press release, 3 November 2011, 'Scandal of Britons who have given up on children'

¹⁶ Section 5 of Rights of Children and Young Persons (Wales) Measure 2011 provides that: 'The Welsh Ministers must take such steps as are appropriate to promote knowledge and understanding amongst the public (including children) of the Convention and the Protocols'

¹⁷ UNICEF Innocenti Research Centre (2005) Insight: Laying the foundation for children's rights. Page 25. The report cites Andorra, Azerbaijan, Belarus, Brazil, Bulgaria, China, Congo, Croatia, Ecuador, Eritrea, Estonia, Germany, Ghana, Hungary, Ireland, Italy, Kyrgyz Republic, Lithuania, Macedonia, Mexico, Moldova, Mongolia, Mozambique, Paraguay, Peru, Portugal, Romania, Russian Federation, Rwanda, Senegal, Slovenia, South Korea, Spain, Uganda and Ukraine as examples of jurisdictions with child rights constitutional provisions on children

¹⁸ R (W) v Commissioner of Police for the Metropolis and others [2006] EWCA Civ 458

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- ¹⁹ Re T (Paternity: Ordering Blood Tests) [2001] 2 FLR 1190
- ²⁰ Blood and Tarbuck v Secretary of State for Health, 2003, unreported
- ²¹ R (L and others) v Manchester City Council, High Court, 26.09.01
- ²² R v Camberwell Green Youth Court [2005] UKHL 4
- ²³ http://www.doughtystreet.co.uk/news/news_detail.cfm?iNewsID=471
- ²⁴ R (C) v Secretary of State for Justice [2008] EWCA 882
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- ³¹ James P. Grant, Executive Director of UNICEF. Reported in The New York Times, 21 November 1989, 'U.N. Assembly adopts doctrine outlining children's basic rights'
- ³² This Article applies to all rights in the Convention, including economic, social and cultural
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- ³⁸ Northern Ireland Office (November 2009) Consultation Paper. A Bill of Rights for Northern Ireland: next steps. Pages 62-63
- ³⁹ Ofsted (2010) Children on rights and responsibilities. A report of children's views by the Children's Rights Director for England. Pages 15-16
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- ⁴¹ Brewer, M. et al (October 2011) Child and Working Age Poverty and Inequality in UK: 2010. Page 2
- ⁴² A/HRC/17/L.8