

Submission to United Nations Office of the High Commissioner for Human Rights September 2021

We welcome the opportunity to respond to the High Commissioner's call for inputs to the report on good practices and challenges faced by States in using the [Guidelines on the Effective Implementation of the Right to Participate in Public Affairs](#) (the Guidelines). We welcome the inclusion of children's participation in the Guidelines and hope that this report will lead to further concrete guidance and a sharing of good practices on how to implement the Guidelines effectively and ensure children's right to meaningful engagement in matters concerning them.

This submission focuses on the challenges faced by children to be involved in decision-making processes concerning them, particularly in Scotland. It sets out the legal and policy framework, barriers faced by all children, including children human rights defenders (CHRDs), and shares some good practices. It further provides recommendations to States, businesses, and international organisations on how to better engage with children to ensure that their rights are respected, protected, and fulfilled and they are meaningfully involved in all decision-making processes concerning them. This submission draws on our 2019 [publication on children human rights defenders](#) and our [Independent Child Rights Impact Assessment on the response to Covid-19 in Scotland](#).¹

Children and young people as human rights defenders and legal protections

"I take part in the strikes because climate change is not being treated as an urgent crisis, when it is the biggest problem facing our world. I would consider myself as a human rights defender by protecting our rights — that our views must be considered and taken into account in all matters affecting us. Going on protests is a way of the young people around the world getting our concerns heard. The right to live is only meaningful if we can enjoy it."²

Children have led causes to protect and promote human rights throughout history, including through climate, anti-racism, immigration, and gun reform movements all over the world, exercising their right to participation in matters concerning them. In Scotland, thousands of children campaign nationwide for different causes on a daily basis. They have been particularly active [in the context of the climate crisis](#), [in response to the Scottish Qualification Authority's awarding of academic results due to the Covid-19 pandemic](#), and against music tuition fees in schools in 2019. Most notably, children have been at the centre of the years-long campaign for the incorporation of the UN Convention on the Rights of the Child (UNCRC) into domestic Scots law.

However, children often face restrictions on their public participation in decision-making processes concerning children due to a lack of meaningful, sustained engagement with them on the part of power-holders. They are one of the most marginalised groups from civil society spaces and decision-making in general.

¹ Commissioned in May 2020 through the Observatory of Children's Human Rights Scotland

² Charlotte, Young Human Rights Defender, CYPCS, 2020, *Annual Report 2019-2020* [viewed 12.07.21]. Available from: <https://cypcs.org.uk/wp-content/uploads/2020/10/Children-and-Young-Peoples-Commissioner-Annual-Report-19-20.pdf>, p. 21.

In line with UNCRC Article 12, one of the UNCRC's guiding principles, children have a right to participate in decision-making processes relevant to them, in line with their evolving age and maturity. The Committee on the Rights of the Child provides additional guidance in its [General Comment no. 12](#). In its last review of the United Kingdom (UK) in 2016, the Committee [recommended](#) the establishment of "structures for the active and meaningful participation of children and giv[ing] due weight to their views in designing laws, policies, programmes and services at the local and national levels." With regards priority areas such as climate justice, where children are leading advocates, the UN Secretary-General's [2020 Call to Action for Human Rights](#) identifies climate justice as a priority and highlights the need to create space for young people's participation, protect CHRDs, and include climate education in curricula.

In March 2021, the Scottish Parliament voted unanimously to directly incorporate the UNCRC into Scots law through the [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Bill](#). While the Bill does not include matters reserved to the UK Parliament, it takes a maximalist approach and requires Child Rights Impact Assessments (CRIAs) to be conducted on strategic decisions. The Commissioner will be able to take more direct action when children's rights are not realised, with new powers to take proceedings if a public authority is acting incompatibly with the UNCRC. This significantly strengthens the ability for all stakeholders – including children – to hold the government accountable when their rights are not realised and to realise children's UNCRC right to participation.

Challenges, threats, and barriers to participation for children and young people

Children must be actively involved in all stages of the decision-making processes and in designing fair and inclusive legislation and policies in matters concerning them. This extends to all children, including those most at risk of being left behind. However, in practice, this is often not the case.

Children in Scotland have told the Commissioner that when they have been invited to speak at the United Nations or to comment on national law and policy development, it often feels more tokenistic than meaningful. Furthermore, rather than being standard practice, engagement is often dependent on the creation of opportunities by power-holders. Engagement can involve one-off or retrospective consultations. These do not fulfil international obligations nor meet children's expectations to be actively included in public processes concerning them.

The power imbalance between adults as duty-bearers and children as rights-holders can significantly affect children's ability to mobilise and exercise their right to participation. They are dependent on duty-bearers in many settings – at home, school, wider community, and on the international stage – and can have little power to challenge them or confidence to ask for help. The climate strikes, which have seen adults join child-led protests and recognise children's advocacy, have shown how this could change. Governments and international agencies now need to effect systemic change to ensure this can be achieved. Awareness of unequal power structures – including those that perpetuate discrimination against the most marginalised groups – can prevent the reinforcement of such imbalances and help power-holders understand how to best protect and support children in their participation.

Adults' attitudes can also serve as a barrier to the effective participation of children, failing to take their concerns seriously or recognise their right to express their views in matters concerning them. In particular, a group of young people advising the Commissioner on CHRDs in 2019 described adults' attitudes and discourse around the climate strikes as "scare-mongering" and noted that the attitudes of many teachers and adults need to change for them to be empowered.

Digital activism and social media are central to children's public participation, especially in the context of the Covid-19 pandemic. Challenges of the shift to digital activism include age-restricted or age-based membership of different social media platforms, concerns around protection of the right to privacy in the online context, access to appropriate information, and bullying and reprisals online. It is a space where significant reprisals can take place and children often face online abuse and attack. Governments must ensure that social media companies are properly regulated to keep children safe online, including through legislation that gives companies providing online services a legal responsibility to keep users safe, forcing companies to remove harmful material quickly, and imposing sanctions for non-compliance. In the UK, proposed [Online Safety legislation](#) must meet these standards.

Furthermore, children, particularly those affected by poverty or in rural areas, may not have access to digital devices or an internet connection to be able to exercise their participation rights online.

In terms of civic participation, Scotland established its [Youth Parliament](#) in 1999 at the time of devolution. The Scottish Government meets annually with Youth Parliament representatives.

Children in Scotland also face barriers to participation in public policymaking through restrictions on the voting age. [In Scotland](#), the voting age is 16 for devolved Parliament and local government elections. However, the voting age for UK general elections remains 18.

Engagement between decision-makers and children was lacking in governmental responses and measures related to the Covid-19 pandemic [in Scotland](#), [the UK](#) and [across Europe](#). Decision-makers should have engaged with children and considered their views throughout the decision-making process, yet children's views were at times absent from decision-making. Most notably, in Scotland, this concerned decisions around school closures, the shift to online learning, and academic assessments as well as family contact and socialisation.

Furthermore, the lack of certainty and clarity around pandemic-related measures has also created additional stress for children and affected their ability to participate effectively in relevant decision-making processes. It is important that the rationale for decision-making is clear and transparent to retain public confidence and facilitate public engagement, including of children. Communication with children must be accessible and child-friendly. They need to be listened to and understood and receive clear communication and certainty about what measures will be applied and when.

One manner in which to ensure that children are meaningfully engaged in decision-making processes concerning them, and that this informs decision-making is to conduct a Child Rights Impact Assessment (CRIA). Evidence-based decision-making is essential to ensuring that the human rights challenges faced by children can be avoided or mitigated in legal and policy

decisions and state programmes and practices. The pandemic, in particular, has highlighted the need for a structured CRIA process as government responses often overlooked children's rights. In Scotland, several decisions affecting children were taken without a published CRIA, including school closures and support for education, childcare-related decisions, and restrictions on family contact. States should routinely conduct CRIA and consult with children as part of the process.

Good examples of child participation in public decision-making

Participation with children and young people should be meaningful, tailored, age-appropriate, and accessible, including targeted consultations with children. Several tools exist to support a child rights approach to participation, including the [Lundy model of participation](#) and our [7 Golden Rules for Participation](#). Ensuring children and young people's public participation, recognising their role as agents of change, and including their views in legislative and policy design and implementation will be critical to ensure inclusive, quality public decision-making that considers matters affecting children and their human rights.

In 2020, the [European Network of Ombudspersons for Children](#) (ENOC) [conducted research](#) on the use of CRIA and Child Rights Impact Evaluations (CRIE) across its Member States, and developed a [position statement](#) and a [Common Framework of Reference for Child Rights Impact Assessments and Impact Evaluations](#) to guide States and other stakeholders in these processes.

In 2010, [ENOC](#) established its child participation platform - the [European Network of Young Advisers](#) (ENYA). ENYA actively empowers children, as rights-holders and experts of their experiences, to participate in ENOC's activities, advise Ombudspersons on matters concerning children, and the protection and promotion of children's rights. They participate in the development of common recommendations, which directly inform ENOC's annual position statement and activities. In 2020, ENYA focused on children's rights in decision-making, [making key recommendations on child participation and CRIA](#).

We also welcome the Council of Europe's and European Union's increased focus on child participation. The [Council of Europe](#) has developed several tools and guidance, including its [Handbook on children's participation "Listen – Act – Change"](#), [the Child Participation Assessment Tool](#) and [Recommendation on the participation of children and young people under the age of 18](#). The European Union's thematic area 1 of its recently-adopted [Strategy on the Rights of the Child](#) focuses on [child participation in political and democratic life](#).

Child Rights Connect's [Implementation Guide](#) provides further information on CHRDs and engaging with them.

As Scotland's [Climate Assembly](#)³ involved people aged 16 years and older, the secretariat invited Children's Parliament to support the participation and engagement of younger children across Scotland to ensure their views, experiences and ideas informed the discussions and

³ Section 32A of the Climate Change (Scotland) Act 2009 introduced by section 2A of the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 (the 2019 Act) required Scottish Ministers to establish a 'citizens' assembly' to consider how to prevent or minimise, or remedy or mitigate the effects of, climate change; b) make recommendations on measures to address climate change.

recommendations going forward. This has been a unique and significant realisation of children's right to participate in decision-making processes and resulted in the inclusion of the [children's report](#) in the official [Climate Assembly report](#) to Scottish Parliament.

Measures and actions that States should take to ensure children participation in matters concerning them

“What we need is for people to listen, support and empower us. Don't just put us on the kid's table and then ignore us. Give us a seat at the table where decisions are being made about our futures and our lives. And if bureaucratic structures mean that's not possible, then it's time for a new table. One where everyone has a voice, no matter their age.”⁴

The importance of children's views and their role as human rights defenders to the realisation of children's human rights but also to society cannot be underestimated. Meaningful participation is central to their human rights advocacy. States should demonstrate a renewed commitment to ensuring children are engaged meaningfully in matters concerning them. Children should be afforded the same rights as adults, should be taken seriously, and engaged on an equal basis. Therefore, we recommend that States take the following steps:

- Support and empower children including through implementing meaningful, ongoing participation in decision-making processes concerning them. This includes transforming processes to be more accessible and inclusive, developing child-friendly tools, and disseminating accessible, age-appropriate information about climate change processes and means to engage. Further practical steps include choosing timings that suit children, being honest about what can be delivered, listening to children's calls, and remaining in touch and providing feedback;
- Routinely undertake and publish CRIAs on all legislative and policy decisions affecting children and conduct CRIEs to inform future legislative and policy decisions, and consult children as part of the process;
- Review consultation processes with children and advocate for international multilateral human rights and environmental institutions to do the same;
- Publicly recognise the role of children as human rights defenders;
- Protect children who exercise their right to public participation through online and offline activism, including from possible violence and reprisals;
- Encourage and support children to mobilise and play a central role in initiatives concerning them through creating an enabling environment. This should include the creation of structures for the active and meaningful participation of children in designing laws, policies, programmes and services at the local and national levels.
- Embed human rights and human rights defender education in the national curriculum at primary and secondary level;
- Create safe spaces online and offline for CHRDs to mobilise, share stories, and influence people in power;
- Establish and promote complaints mechanisms for all children;
- Sign and ratify the Third Optional Protocol to the UNCRC on a complaints procedure;

⁴ Young Advisor to the Commissioner, CYPCS, 2019, *Promote, Protect, Defend*, p. 8

- Ensure children have the necessary digital access to be able to exercise their participation rights; and
- Ensure that professionals interacting with children have specialised children's rights training to ensure that they engage in a rights-respecting manner and facilitate children's participation.

Businesses should:

- Protect and promote children's human rights in the context of their operations; and
- Engage meaningfully with children concerning the human rights impact of their operations.

International institutions should:

- Recognise the [core role](#) that children play as agents of change and partners in defending human rights, and ensure that their participation rights are respected, protected, and fulfilled in all decisions concerning them.
- Ensure meaningful engagement with and participation of children in international level decision-making, including meetings, processes, and programmes concerning them. This includes the provision of safe spaces and ways to engage in an accessible, child-friendly manner, both online and offline. Such participation should be guaranteed on an equal and safe basis without fear of reprisals.