

Sir Leigh Lewis KCB
Secretariat for the Commission on a Bill of Rights
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10 November 2011

Dear Sir Leigh

Thank you for your time in our recent meeting, which we found a fruitful aid to our reflections on the questions your Commission is asking about the degree to which we may need a Bill of rights in the UK. This letter, as I indicated at the meeting we had with you, forms the response of the Office of the Children's Commissioner to your work.

The creation of a UK Bill of Rights could, in ideal circumstances, provide an opportunity for advancing and ensuring the protection of children's rights. We believe that for children in the UK to realise fully and enjoy their rights, the UN Convention on the Rights of the Child (UNCRC)¹ should be incorporated into domestic law.² We expressed our wish to see this happen when we met you. We consider there is a need for a longer, considered national debate that would seek to allay any fears that fulfilling human rights could equate with serving selfish motives by some members of society at the expense either of other citizens, or the nation's equilibrium.

Good progress towards incorporation of the UNCRC has been made in Wales and Scotland: by the Rights of Children and Young Persons (Wales) Measure 2011, and the Scottish Government's consultation on the Rights of Children and Young People Bill.

We believe that any UK Bill of Rights should:

- both guarantee, and extend beyond, the rights which are protected by the European Convention on Human Rights (ECHR) and enforced via the Human Rights Act (HRA);
- incorporate into UK law additional children's rights not contained in either of the above, but outlined in the UN Convention on the Rights of the Child (UNCRC);
- include specific rights protected by the EU Charter of Fundamental Rights;
- be compatible with the UK's other international human rights obligations;

¹ <http://www2.ohchr.org/English/law/crc.htm>

² UK Children's Commissioners Report to the UN Committee on the Rights of the Child (2008).



- be the result of a democratic process which as part of its debates takes full account of the views of children and young people and; reflect the increasingly devolved nature of the UK.

Our concern is that this seems to be a difficult time for the Commission to be consulting on a Bill of Rights for the UK. Currently, there is widespread misconception and misrepresentation of the Human Rights Act. It is also a time when policy and legislation are increasingly being devolved to the three administrations in Scotland, Wales and Northern Ireland. We are therefore concerned that the limited timeframe for the Commission to report does not allow enough time for a considered debate on whether or not the UK as a whole needs, or would benefit from, a Bill of Rights. The commission needs to address complex issues, both those arising from devolution, and those connected to some apparently widely held misconceptions regarding current human rights legislation.

We wish to register our support for the Human Rights Act 1998. This Act already offers vital protection for all people living within the UK. Any future Bill of Rights should be designed to enhance, not to weaken, the protections and mechanisms already in place in this legislation. In particular, any UK Bill of Rights should either retain, or strengthen, the obligations of this Act under sections 2 (interpretation of Convention rights), 3 (interpretation of legislation), 6 (acts of public authorities) and 19 (statements of compatibility) and the right to a remedy under section 7.

Whilst recognising that the Human Rights Act offers considerable protection for vulnerable people, including children, there are important rights which are not currently protected in the same way.

Specific rights for children outlined in the UNCRC should be included within any new Bill of Rights. These rights take account of the special status and particular needs of children and young people, all of whom are vulnerable by dint of their age (under 18) and some of whom are particularly and additionally vulnerable due to their life circumstances.

The UK Children's Commissioners' Midterm Report to the UK State Party on the UN Convention on the Rights of the Child (to be published on 21 November 2011) provides evidence on five important areas where children's rights are not yet fully realised: asylum, disability, poverty, participation in decision making about their lives, and youth justice. The report will provide recommendations to the State Party on improving children's rights in these five areas. It will be published on 21 November, the International Day of the Child. We will send you an embargoed copy prior to publication, as we consider it could aid your deliberations and contribute to the advice you then offer to government.

The rights protected by the UNCRC are mutually supportive and the Convention should be read as a holistic document. However, we would particularly like to draw your attention to, examples of UNCRC rights that should specifically be protected by any UK Bill of Rights. These include:



- Article 2 - Non-discrimination: all rights apply to all children
- Article 3 - Best interests of the child should be a key consideration in all actions and decisions about them
- Article 6 – Child's right to life and maximum survival and development
- Article 12 - Respect for the views of the child, commensurate with age and stage of maturity and development
- Article 20 – Children deprived of a family and their right to be protected and nurtured by others
- Article 22 – Refugee children and their right to humane and equal treatment
- Article 27 – A child's right to a adequate standard of living
- Article 37 - Detention only to be used as last resort if a child commits a crime
- Article 40 - Juvenile Justice, which must be child-appropriate and specific.

An important UNICEF report³ highlights how the UNCRC has been incorporated directly into the law of two-thirds of 60 countries studied. This means that in those jurisdictions the UNCRC forms part of national law, is binding on public agencies and can be applied by the courts. In addition, there are examples of the specific further protection of children's rights in some national and regional Bills of Rights. These include for example, the protection of children's rights enshrined in the Constitution of South Africa, and closer to home, the EU Charter of Fundamental Rights which is now directly applicable in UK law following our signing of the Lisbon Treaty.

These instruments, in addition to providing guarantees for civil, political and economic and social rights which are applicable to all people, have articles specifically guaranteeing children's rights. For example article 24 (the rights of the child) and article 32 (prohibition of child labour) of the EU Charter derive directly from the UNCRC. This model of derivation provides a model for the inclusion of children's rights in a general UK Bill of Rights. We also note the advice of the Northern Ireland Human Rights Commission on a Bill of Rights for Northern Ireland, which made suggestions for the explicit inclusion of children's rights on the face of such a Bill.⁴

In addition to specific children's rights, we support the inclusion of general rights beyond those incorporated by the Human Rights Act, a development that would greatly benefit children. These include article 47 of the EU Charter which includes a right of recourse to a tribunal where rights and freedoms have been violated, and to legal aid where this is necessary to preserve access to justice.

We strongly support the inclusion of economic, social and cultural rights in a UK Bill of Rights, should one come about as a result of your work. These rights' interdependence with and indivisibility from the civil and political rights of children is underlined in the UNCRC, and in the associated commentaries of the UN Committee on the Rights of the

³ UNICEF INNOCENTI Research Centre, 'Law Reform and Implementation of the Convention on the Rights of the Child', 2009

⁴ NI HRC, A Bill of Rights for Northern Ireland: advice to the Secretary of State for Northern Ireland, Dec 2008, see p51 and also the consideration of inclusion of children's rights to legal representation and an appropriate adult at the police station, and to age-appropriate criminal justice proceedings.



Child. The UN Committee on the Rights of the Child has repeatedly emphasised the need to ensure that all of the UNCRC's rights, including economic, social and cultural rights, are to be regarded as justiciable⁵.

We support the creation of a UK Bill of Rights that would build on the guarantees provided by the Human Rights Act 1998, in particular a UK Bill that protects and promotes the rights of children.

Please do let us know if we can be of any further assistance to you or the Commission.

Yours sincerely,

A handwritten signature in dark ink, reading "Maggie Atkinson". The signature is fluid and cursive, with a long horizontal flourish at the end.

⁵ UN Committee on the Rights of the Child, 'General comment no 5 General measures of implementation of the UN Convention on the Rights of the Child', 2003.

