



## BRIEFING PAPER

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# UN Convention on the Rights of the Child: a brief guide

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2. What does the Convention cover?
3. How is it enforced?



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## Summary

This Commons Library briefing gives an overview of the [1989 UN Convention on the Rights of the Child](#), what it covers and how it is enforced.

### What is the Convention?

The Convention on the Rights of the Child is a multilateral treaty designed to promote the protection of children worldwide. It is one of the core UN human rights treaties, and is the most rapidly and widely ratified of them all. The UK ratified it in 1991.

The Convention has been hailed as a victory for the children's rights movement. However, it is only as effective as its implementation, and has been criticised for endorsing only Western values.

### What does the Convention cover?

The rights set out in the Convention are wide-ranging, encompassing civil and political rights as well as economic, social and cultural ones, for all children under 18. They have been categorised as rights to provision, rights to protection and rights to participation, with the last of these often considered the Convention's main achievement (although implementation is often particularly problematic).

The Convention also says what governments, public authorities and adults must do to ensure all children can enjoy all their rights.

Two optional protocols added to the Convention in 2000 concern children in the armed forces, and commercial sexual exploitation. A 2011 optional protocol provides a quasi-judicial process for children whose rights have been violated. The UK has ratified the first two but not the third optional protocol.

### How is it enforced?

All treaties bind the States that have ratified them, under international law, but this does not necessarily mean that they are implemented and enforced.

The Convention on the Rights of the Child established a Committee on the Rights of the Child to oversee and report on States' implementation. Its latest report on the UK was published in May 2016. The Committee can also hear complaints from individual children whose Governments have ratified the 2011 optional protocol on individual complaints (the UK has not). However, the Committee's recommendations are not legally binding.

UNICEF, the United Nations Children's Fund, is specifically named in the Convention as a source of expert assistance and advice on implementation. Independent National Human Rights Institutions (NHRIs), non-governmental organisations (NGOs) and national reporting and follow-up mechanisms can also have a direct role.

The extent to which the Convention forms part of national law and can be enforced by national courts varies. Generally speaking the UK Government has preferred to take a sector-by-sector approach to implementing the Convention. In Wales and Scotland Ministers and public authorities have some new general duties in relation to children's rights. But there have been many calls for the UK to incorporate the Convention directly into domestic law.

# 1. What is the UN Convention on the Rights of the Child?

## 1.1 A core human rights treaty

The [1989 UN Convention on the Rights of the Child](#) is a multilateral treaty designed to promote the protection of children worldwide.

It is one of the core UN human rights treaties, and is the most rapidly and widely ratified of them all. 196 out of the 197 UN Member States have ratified it, the US being the only exception (despite being actively involved in its drafting). The UK ratified the Convention in 1991.

Under international law, the Convention binds the states that have ratified it. But many of its provisions are now also part of 'customary international law' that binds all states, even if they have not ratified the Convention.

The Convention has three optional protocols, which can be ratified separately. The first two, dating from 2000, have been ratified by more than 120 states (this time including the US). The UK has ratified the first two but not the third optional protocol.

## 1.2 A ground-breaking document

The Convention has been hailed as a victory for the children's rights movement.

UNICEF (the UN Children's Fund) describes the Convention as 'the most complete statement of children's rights ever produced'. It goes well beyond earlier international instruments such as the 1924 Geneva Declaration of the Rights of the Child and the UN General Assembly's 1959 Declaration of the Rights of the Child.

Although the rights in general international human rights treaties also apply to children, this Convention includes additional rights that apply only to children. In identifying a distinct set of rights for children, the Convention is often considered to have given children a new status in international law that has affected the way children are viewed and treated across the world. In particular, the general principle that 'the best interests of the child shall be a primary consideration' in all actions concerning children (Article 3) has influenced legislation, policy and practice in dozens of countries including the UK.

The Convention provides a set of guiding principles for UNICEF and other organisations working to protect and promote children's rights, as well as a more concrete set of duties against which they and others can measure governments' action. Many countries have incorporated child codes or specific child rights into national legislation or even constitutions,<sup>1</sup> and there have also been many harder-to-quantify changes in attitude, assumptions and expectation.

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<sup>1</sup> Sweden, for example, amended its constitution in 2010 to require public institutions to safeguard the rights of children

## 1.3 Weaknesses and controversies

Like other human rights treaties, the Convention is only as effective as its implementation.

It has made a difference in some fields and in some countries, whereas in other fields and other countries it has not worked so well. Sometimes a provision is controversial or unrealistic; sometimes there is a lack of political will, or other circumstances make compliance impossible; or the enforcement mechanisms might not have enough teeth (the Convention contains no power to penalise countries that breach its provisions, or to require them to do anything, even under the optional individual complaints mechanism).

Furthermore, the Convention has been criticised for an endorsement of Western values that is seen as a 'moral crusade to save children, especially regarding Third World children whose lives do not comply with a Western concept of childhood'.<sup>2</sup> Several countries have entered reservations to the Convention on the grounds that some principles and provisions are not consistent with their cultural context and domestic legislation.

It has also been argued that although the Convention is hailed as an important step towards greater children's participation and fairer power relations, it in fact reinforces existing forms of power and does not empower children.<sup>3</sup> At least to begin with, children themselves were not part of the child rights movement, and children were not consulted on the drafting of the Convention.

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<sup>2</sup> Andressa Gadda, '[A critical analysis of the United Nations Convention on the Rights of the Child](#)', Edinburgh Working Papers in Sociology No 31, January 2008 (quoting V Pupavac, 'Misanthropy Without Border: The International Children's Rights Regime', *Disasters* 25 (2), 2001, 95-112)

<sup>3</sup> See Andressa Gadda, '[A critical analysis of the United Nations Convention on the Rights of the Child](#)', Edinburgh Working Papers in Sociology No 31, January 2008

## 2. What does the Convention cover?

### 2.1 Which children?

The Convention applies to all children within the jurisdiction of the 196 states that have ratified it, no matter what their nationality, religion or other status.

It defines children as those under the age of 18, unless a country has set the legal age for adulthood lower.

The Convention does not specify when childhood begins, leaving it open whether or not its rights and duties apply to unborn children.

### 2.2 Which rights?

The [rights](#) set out in the Convention are wide-ranging, encompassing civil and political rights as well as economic, social and cultural ones. They have been categorised as rights to provision, rights to protection and rights to participation,<sup>4</sup> with the last of these often considered the Convention's main achievement (although implementation is often particularly problematic).

The Convention rights cover varying aspects of a child's life, for example the right to an identity, the right to receive and impart information and ideas, and the right of detained children to be separated from adults.

Some restate rights that are also set out in other human rights instruments, such as the right not to be subjected to torture.

Four overarching rights are regarded as '[general principles](#)' that are needed for any and all rights in the Convention to be realised:

- **Non-discrimination** (article 2): the Convention applies to all children whatever their ethnicity, gender, religion, language, abilities, whatever they think or say, no matter what type of family they come from, whatever their circumstances. For example a child in care has the same right to an education as a child who lives with his/her parents.
- **Best interest of the child** (article 3): a child's best interests must be a top priority in all decisions and actions that affect children. All adults should do what is best for children and should think about how their decisions will affect children. Determining what is in children's best interests should take into account children's own views and feelings.
- **Right to life, survival and development** (article 6): children have the right to life and governments must do all they can to ensure children survive and develop to their fullest potential. The right to life and survival guarantees the most basic needs such as nutrition, shelter or access to

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<sup>4</sup> P Alderson, 'UN Convention on the Rights of the Child: some common criticisms and suggested responses', *Child Abuse Review* (9), 2001, 439-443

health care. Development - physical, emotional, educational, social and spiritual - is the goal of many of the rights in the Convention, for example the right to education, access to information, freedom of thought or right to play.

- **Right to be heard** (article 12): every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously. This principle recognises children as actors in their own lives and applies at all times, throughout a child's life. This means that when adults make decisions about a child's life, the child should be asked what they think and feel and adults' decisions need to take these into account. The Convention recognises that the level of a child's participation in decisions must be appropriate to the child's age and maturity.

The Convention's Committee on the Rights of the Child (see below) has said that these general principles have to be reflected in legislation and customary law as well as actions taken by social welfare institutions, courts of law, and administrative authorities.

Some rights are absolute, whereas others can be restricted in certain circumstances. For example, the Convention allows no exceptions to the prohibition on capital punishment and life imprisonment for children (Article 37); but the right to freedom of expression may be restricted by law where necessary to respect others' rights or reputations, or to protect national security, public health or morals (Article 13).

Some rights are concrete, subjective and specific, such as the right to a periodic review for children who have been placed in residential care for their protection or their physical or mental health (Article 25). Others are more objective or aspirational, such as the right of every child to an adequate standard of living (Article 27). For the latter category of rights, States Parties are only required to undertake measures progressively, to the maximum extent of their available resources and, where needed, within the framework of international cooperation.<sup>5</sup>

## 2.3 Which duties?

The Convention also says what governments, public authorities and adults must do to ensure all children can enjoy all their rights.

Under Article 4, governments must take all available measures to implement children's rights. Although no further detail is given in the Convention, the kind of measures governments take include:

- incorporating the Convention or particular provisions of it into domestic law;
- imposing legal duties to have regard to the Convention;
- national strategies and action plans for children;

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<sup>5</sup> Evarist Baimu, '[Children, International Protection](#)', Max Planck Encyclopedia of Public International Law, April 2013

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- child impact assessments for proposed laws, policies or budgetary allocations;
- establishing children's commissioners or ombudsmen;
- child budgeting or identifying, allocating and monitoring resources spent on children and children's services
- children's rights training, awareness raising and capacity building for those working with and on behalf of children
- developing and collecting data on children's lives.<sup>6</sup>

The Convention also sets out duties for all public or private social welfare institutions, courts of law, administrative authorities and legislative bodies. Principally, the 'best interests of the child' must be a primary consideration for all actions they take concerning children (Article 3.1).

Under Article 5, parents and others have the 'responsibilities, rights and duties' to direct and guide their children so that, as they grow, they learn to use their rights properly.

One of the controversies over the Convention is the extent to which the state's primary duty to consider the best interests of the child might override the views, rights and responsibilities of children and their parents.

### 2.4 Three optional protocols

In 2000 two optional protocols were added to the Convention, on:

- children in armed conflict: governments must 'take all feasible measures' to ensure that members of their armed forces under the age of 18 do not take a direct part in hostilities, and ensure that children under the age of 18 are not forcibly recruited into their armed forces.
- commercial sexual exploitation: states must prohibit child prostitution, child pornography and the sale of children into slavery, and protect the interests of child victims.

The UK has ratified both of these protocols.

A third optional protocol was added in 2011. This enables children whose rights have been violated to complain directly to the UN Committee on the Rights of the Child (see below). The UK has not ratified this protocol.

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<sup>6</sup> Professor Laura Lundy and others, '[The UN Convention on the Rights of the Child: a study of legal implementation in 12 countries](#)', Queen's University Belfast / UNICEF UK, 2012

## 3. How is it enforced?

### 3.1 Introduction

All treaties bind the States that have ratified them, under international law, but this does not necessarily mean that they are implemented and enforced.

The Convention on the Rights of the Child established a Committee on the Rights of the Child to oversee and report on States' implementation. Its latest report on the UK was published in May 2016. The Committee can also hear complaints from individual children whose Governments have ratified the 2011 optional protocol on individual complaints (the UK has not). However, the Committee's recommendations are not legally binding.

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The extent to which the Convention forms part of national law and can be enforced by national courts varies. Generally speaking the UK Government has preferred to take a sector-by-sector approach to implementing the Convention. In [Wales](#) and [Scotland](#) Ministers and public authorities have some new general duties in relation to children's rights. But there have been many calls for the UK to incorporate the Convention directly into domestic law.

### 3.2 Committee on the Rights of the Child

#### What is the Committee?

The [UN Committee on the Rights of the Child](#) is in charge of making sure that the Convention is properly observed by the countries who have signed it.

The Committee is a group of 18 children's rights experts from different countries, and meets three times a year in Geneva.

It has three main roles:

- Overseeing the regular reports on children's rights from each state, and issuing recommendations to governments.
- Hearing complaints from individual children who think that their rights have been breached. Children can take a case to the Committee only if their government has ratified the 'individual complaints mechanism'.
- Explaining in more detail what the Convention rights mean, in its 'General Comments'.

#### Country reports

Every five years, each State that has ratified the Convention must report to the Committee on the progress it has made in implementing the

Convention. This is a familiar mechanism for major human rights treaties.

### Outline of the process

The usual process is as follows:

- The State draws up its implementation report.
- NHRIs and NGOs produce their own reports for the Committee on the Government's compliance (see below).
- [Children can also submit information](#) to the Committee, and the Committee has published its [working methods for child participation](#) in the reporting process.
- The Committee has a preliminary discussions ('pre-sessions') on the situation of children in the State concerned with UNICEF, other international organisations, child protection NGOs, and children who ask for a meeting.
- The Committee draws up a list of issues on which it needs more information from the State.
- The State responds to the list of issues, and other organisations can comment or make additional submissions.
- The Committee holds public meetings ('country sessions') with representatives of the State concerned about the situation of children's rights there.
- The Committee agrees (in a closed meeting) on written 'concluding observations'. These include suggestions and recommendations on the law and policy changes the State should make before its next report.<sup>7</sup> They can only mention issues discussed during the country sessions.
- The State is then expected to implement the recommendations before its next report.

### 2016 report on the UK

The Committee published its latest [concluding observations on the UK](#) in May 2016. It welcomed progress in a number of significant areas since its last review in 2008, including:

- the increased independence of the UK's Children's Commissioners
- the decision to end immigration detention of children
- the new criminal offence of coercive and controlling behaviour in the home
- measures taken to address child sexual exploitation and abuse and Female Genital Mutilation (FGM)
- new legislation on human trafficking
- the decreasing use of exclusion from school

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<sup>7</sup> Evarist Baimu, '[Children, International Protection](#)', Max Planck Encyclopedia of Public International Law, April 2013

- the introduction of independent statutory guardians for all unaccompanied children in Scotland and Northern Ireland and for potential victims of trafficking in England and Wales.

However, the Committee also expressed concern, and in some cases serious concern, about a number of issues and made more than 150 recommendations to the UK. The most significant recommendations concern:

- systematically conducting a child rights impact assessment when developing laws and policies affecting children, including budgetary decisions and welfare reforms
- counter-terrorism and counter-extremism measures
- measures stigmatising children from certain communities
- children's access to justice and ability to participate in proceedings which affect them as a result of changes to legal aid
- the use of restraint on detained children
- the lack of an independent and automatic review of unexpected deaths of children in custody, care and mental health settings;
- children's access to mental health services
- corporal punishment in the family
- whether removal from the family is only used as a measure of last resort
- ensuring that the best interests of children are a primary consideration when sentencing parents
- access to sexual and reproductive health education
- family reunion for unaccompanied and separated refugee children
- access to an independent guardian in immigration and asylum matters
- whether 16 and 17 year olds lack some of the protections available for younger children
- the minimum age for recruitment into the armed forces (16).<sup>8</sup>

## Complaints mechanism

A [third optional protocol](#) was added to the Convention in 2011 and entered into force in April 2014, enabling children to complain directly to the UN Committee on the Rights of the Child. The UK has not ratified this optional protocol.

The third protocol sets out two new procedures:

- A 'communications procedure' that enables individual children, groups of children or children's representatives to bring complaints about violations of Convention rights to the Committee, if they have not been fully resolved in national courts.

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<sup>8</sup> For a useful summary of the concluding observations concerning England and Wales, see CRAE [The Concluding Observations of the UN Committee on the Rights of the Child 2016](#).

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The Committee transmits its views on the communication to the parties, along with any recommendations

- A confidential 'inquiry procedure' for allegations of grave and systematic violations of child rights. The Committee transmits the findings of the inquiry, along with any comments and recommendations, to the State concerned.

If the Committee finds that a violation has occurred, it will make concrete recommendations to the State concerned, such as rehabilitation, financial compensation or requests to prosecute the perpetrator(s). The recommendations are not legally binding, but States that ratify the protocol commit to following them.

### General comments

On the basis of its consideration of State reports over the years, the Committee publishes '[general comments](#)' to guide States on their international obligations under the Convention.

As of 28 November 2016 the CRC Committee had issued 19 general comments, on subjects ranging from 'The Aims of Education' through 'the right of the child to have his or her best interests taken as a primary consideration' to 'public budgeting for the realization of children's rights'.

The general comments are not legally binding, but contain legal analysis of the Convention's provisions.

The Committee also organises '[Days of General Discussion](#)' every two years, to foster a deeper understanding of the contents and implications of the Convention. Governments, NGOs, NHRIs, UN bodies, the business sector, individual experts and children may take part. The 2016 one was on '[Children's Rights and the Environment](#)'.

## 3.3 UNICEF

UNICEF, the United Nations Children's Fund, is the only organisation specifically named in the Convention as a source of expert assistance and advice on implementing the Convention (Article 45).

Among other activities, UNICEF and its field offices

- support countries to ratify and implement the Convention and its Optional Protocols
- support the Committee on the Rights of the Child
- help governments and NGOs with their reports to the Committee
- submit their own presentations or reports
- participate in the Committee's review of submitted reports
- work with governments to identify implementation strategies in response to the Committee's recommendations

UNICEF's detailed [Implementation Handbook for the Convention](#) is now in its third edition (2007). It analyses the Committee's interpretation of each article of the Convention, describes the role, power, procedures

and activities of the Committee, and includes a guide to related UN bodies.

UNICEF is a subsidiary organ of the UN General Assembly entrusted with the protection of the child. It reports to the Economic and Social Council. All its funding is voluntary, with the largest donor being the US (as a result the Executive Director of UNICEF has always been a US citizen). A network of national UNICEF committees, based in industrialised countries including the UK, promote UNICEF's work and raise funds for it.<sup>9</sup>

### 3.4 National implementation

The primary responsibility for implementing the Convention lies with its States Parties. All have agreed to take action to implement it, but it is up to each State to decide how to do so.

One means of implementing the Convention is incorporation – giving legal effect to the treaty in domestic law. But other measures such as training and guidance are also necessary.

#### Incorporation

The domestic effect of the Convention varies from country to country.<sup>10</sup>

#### International approaches

In some countries, international treaties are automatically incorporated into domestic law as soon as the government ratifies them. Their legal effect might be the same as statute law, or they might have some higher status.

In other countries, including the UK, treaties are not automatically part of domestic law. Their provisions therefore need to be incorporated into domestic law by parliament if they are to have legal effect.

A separate but related question is whether the Convention is justiciable and whether it can be used as a binding authority in the courts.

Although direct incorporation of the Convention is not required by international law, the Committee prefers it, and has repeatedly called on States Parties to take this step.

#### UK

Generally speaking the UK Government has preferred to take a sector-by-sector approach to implementing the Convention. The UK has not incorporated most of the Convention's provisions into domestic law, and individuals cannot generally rely on it directly in the courts here.

The most obvious exception is the Convention's 'best interests of the child' principle (Article 3) which appears in several pieces of legislation including the Children Act 1989 (England and Wales) and the Children (Scotland) Act 1995.

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<sup>9</sup> Antje von Ungern-Sternberg, '[United Nations Children's Fund \(UNICEF\)](#)', Max Planck Encyclopedia of Public International Law, August 2009

<sup>10</sup> See L Lundy, U Kilkelly and B Byrne, '[Incorporation of the United Nations Convention on the Rights of the Child in Law: A Comparative Review](#)', *International Journal of Children's Rights* 21(3) (2013) 442-463

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Of course the children's rights protected by the European Convention on Human Rights are also incorporated into UK law by the Human Rights Act 1998.

In [Wales](#) and [Scotland](#) Ministers and public authorities have some new duties in relation to children's rights which are enforceable in the courts. But these duties do not amount to the direct incorporation of the Convention: they do not provide children with any new rights under domestic law, nor do they give children the right to seek help in the courts if their individual rights are violated.

Organisations supporting UK incorporation of the Convention include the [Joint Committee on Human Rights](#), the four Children's Commissioners across the UK, and the [Rights of the Child UK coalition](#) (ROCK).

### Follow-up

For the Committee's recommendations to have effect, they must be implemented by the States Parties.

#### Committee follow-up procedures

All human rights treaty bodies require States to explain how they have followed up recommendations in their next periodic report. Some also ask States to report back within one year on the measures taken in response to specific recommendations or 'priority concerns', and appoint a rapporteur to assess the follow-up reports.

The Committee on the Rights of the Child has not adopted formal follow-up procedures. The kind of follow-up activities that states undertake are illustrated by the [case studies](#) in a 2013 report from the independent non-profit network Child Rights Connect.

#### NHRIs and NGOs

The Convention on the Rights of the Child is the only international human rights treaty to give independent National Human Rights Institutions (NHRIs) and non-governmental organisations (NGOs) a direct role in overseeing its implementation (Article 45a). This can involve:

- commenting on the State report or providing additional information;
- helping the Committee to identify issues to ask the national government about during the review;
- supporting the government in following up the Committee's recommendations;
- providing information to the Committee on how the State is implementing its recommendations.<sup>11</sup>

However, NHRIs and NGOs are not obliged under the Convention to take on any of these roles.

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<sup>11</sup> See [Child Rights Connect](#) (formerly the NGO Group for the CRC) which supports national NGOs engaging with the Committee on the Rights of the Child and other UN human rights mechanisms.

In the UK, the four Children's Commissioners (for England, Wales, Scotland and Northern Ireland) submitted a '[shadow report](#)' to the Committee in 2015 alongside the UK's State report. Many NGOs also did so, for instance the [Civil Society Alternative Report for England](#) submitted by the Children's Rights Alliance for England (CRAE).

### **National mechanisms for reporting and follow-up**

The UN Office of the High Commissioner for Human Rights has recently emphasised the role that [national mechanisms for reporting and follow-up](#) can play in coordinating and preparing country reports for treaty bodies such as the Committee, and coordinating and tracking national follow-up and implementation of treaty obligations and treaty body recommendations. These are government bodies separate from NHRIs.

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