

**International Children's Rights: A Comparative Study of 52
State Parties Concluding Observation Reports, Investigating,
Implementation and Legal Incorporation of the UNCRC.**

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Doctor of Philosophy**

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This is to certify that, except where specific reference is made, the work described in this thesis is the result of the candidate's research. Neither this thesis, nor any part of it, has been presented, or is currently submitted, in candidature for any degree at any other University.

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Abstract

This thesis explores children's rights in 52 State parties. It compares implementation of the United Nations Convention on the Rights of the Child by using the Concluding Observations (CO) reports from the Committee on the Rights of the Child. It then investigates the higher scoring State parties, exploring whether there are commonalities, for instance, in the legal framework including whether the Convention has been incorporated into State legislation.

The first phase of the project compares the CO report for each State party on ten thematic groups of articles (clusters) from the Convention. In addition to assessing the State party's implementation, the analysis also reveals which issues the Committee focuses on for each cluster enabling discussion on the prevalence of different issues. The second phase of the project focuses on the State parties which achieved higher grades from the cluster grading process. The profiles of these State parties are investigated as to whether there are commonalities. The type of legal system supporting the implementation of children's rights for the State parties is investigated, along with the types of legal incorporation of the Convention into domestic legislation. The results of the first phase are compared to other human rights and global health indices as a part of understanding the profile of the State parties achieving higher grades.

The conclusions bring together the strands of the project, critically concluding that the method of comparing CO reports enables State party implementation to be assessed and graded. In addition, this analysis concludes that there is a flaw in the way that the reporting process has developed to be a continuous cycle, potentially missing vital information as the understanding and interpretation of the Convention by the Committee develops. Further, that the Convention itself can no longer be considered in isolation, it has to be read in conjunction with the general comments and guidelines on reporting published by the Committee. This thesis confirms the importance of legal incorporation at the domestic level, additionally this concept is taken further with the conclusion that deliberate incorporation rather than automatic can be essential to implementation. Additionally, this method can be used to demonstrate to a State party which clusters or rights are not being adequately implemented. Ultimately, this project adds to the knowledge and understanding of both the reporting process connected to the Convention, and of the implementation of children's rights.

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Glossary and Explanation of terms

Americanisation:

Where quotations use American or other spellings variations to British English this is reproduced and not amended nor noted as [sic].

Cluster names and abbreviations:

There are 10 clusters of articles identified throughout this thesis:

- ❖ GMI - General Measures of Implementation
- ❖ DOTC - Definition of the Child
- ❖ GP - General Principles
- ❖ CRF - Civil Rights and Freedoms
- ❖ VAC - Violence Against Children
- ❖ FEAC - Family Environment and Alternative Care
- ❖ DBHW - Disability, Basic Health, and Welfare
- ❖ ELCA - Education, Leisure, and Cultural Activities
- ❖ SPM - Special Protection Measures
- ❖ JJ – Juvenile Justice

Issues:

The term ‘issue’ is used to describe an identifiable topic that the Committee raises concerns and make recommendations about – for instance ‘children being subject to corporal punishment’ is identified as an issue – with the location of the corporal punishment, such as in the home or in school are identified as ‘sub-issues’.

Juvenile Justice / Youth Justice:

Within the UK, the current preferred language is that of ‘Youth Justice’ rather than ‘Juvenile Justice’ which is the phrase used by the UN, within this thesis, as it is centred on the UNCRC the term used is generally ‘Juvenile Justice’ unless a specific reference to the UK system is being made.

Referencing:

This thesis uses ‘The Oxford University Standard for Citation of Legal Authorities’ (OSCOLA) with some minor adaptations due to the international nature of the study.

- ❖ Legislation and Case Names – for clarity and consistency all State party legislation and case names are preceded by the name in square brackets, of the State party of the relevant jurisdiction. For instance:
 - [Australia] - Human Rights (Parliamentary Scrutiny) Act, No.186, 2011.
 - [Australia] - *Minister of State for Immigration & Ethnic Affairs v Ah Hin Teoh* ('Teoh's case') [1995] HCA 20 [25].

- ❖ UN Committee on the Rights of the Child Concluding Observations Reports are referenced as – 'CRC CO' - followed by the State party name and year of report. For instance, long and short form:
 - CRC CO Estonia 2017, 'Concluding Observations on the Combined Second to Fourth Periodic Reports of Estonia, UN Doc CRC/C/EST/CO/2-4' (United Nations 2017).
 - CRC CO Estonia 2017.

State party / State parties:

Within UN documentations both 'State' and 'States' is used preceding 'party' and 'parties'. For consistency, within the original text of this thesis the terms used are 'State party' and 'State parties', quotations will show the original spelling without the addition of [sic] as it is accepted that both forms are as original.

In addition, within UN and State party documents 'party' appears with and without a capital 'P', for consistency, within the original text of this thesis this is not capitalised, quotations and document names will show the original punctuation.

State Party names:

Viet Nam – is in some documents shown as 'Vietnam' and in others as 'Viet Nam', as both the published State party report and Concluding Observation report use 'Viet Nam' this is the form used throughout this thesis.

In some spreadsheets and tables Dominican Republic and Russian Federation are shortened to Dominican Rep. and Russian Fed. In some figures displaying spreadsheets, The Gambia appears as 'Gambia (The)', this is to enable alphabetic sorting in the spreadsheet.

Translations:

Whenever possible government translations are used, when these are not available then translations located via University portals are used. If a translation is not available, then computer translation using Collins Dictionary Free Online Translator (<https://www.collinsdictionary.com/translator>) has been used.

Whenever computer translation has been used this is identified with (CT) following the translation.

Table of Cases – by State party

Australia - Minister of State for Immigration & Ethnic Affairs v Ah Hin Teoh ('Teoh's case') [1995] HCA 20

Norway - HR-2016-2554-P Holship Norge AS -v- Norwegian Transport Workers' Union

UK - Fothergill v Monarch Airlines Ltd [1981] AC 251

UK - Gillick v West Norfolk and Wisbech AHA [1986] AC 112; [1985] 3 WLR 830;

UK - R (SG and others) v Secretary of State for Work and Pensions [2015] UKSC 16

UK - R (on the application of Al-Jedda) v Secretary of State for Defence [2007] UKHL 58

UK - R v Secretary of State for the Home Department, Ex parte Brind and Others [1991] 2 WLR 588

UK - Re McKerr [2004] UKHL 12

UK - Salomon v Commissioners of Customs and Excise [1967] 2 QB 116

UK - Thoburn v Sunderland City Council [2002] EWHC 195 (Admin)

Table of Statute – by State party

Australia - Human Rights (Parliamentary Scrutiny) Act, No.186, 2011

Croatia - Constitution of the Republic of Croatia (Consolidated text) 2010

Estonia - Constitution of the Republic of Estonia (as amended 2015) 1992

Germany - Basic Law for the Federal Republic of Germany (revised 2014) 1949

Iceland - Constitution of the Republic of Iceland 1944 (as amended 1999) 1944

Iceland - Law in Respect of Marriage No.31/1993, 1993

Iceland - Law on the Convention on the Rights of the Child, Law No. 19/2013 'Lög um samning Sameinuðu þjóðanna um réttindi barnsins 2013 nr. 19 6. mars' 2013

Iceland - The General Penal Code (Hegningarlögum) No.19/1940 (Amended up to and including 1.44/2015) 1940

Ireland - Constitution of Ireland 1937 (as amended 2015) 1937

Kazakhstan - On Marriage (Matrimony) and Family. The Code of the Republic of Kazakhstan No. 518-IV 2011

Malta - Constitution of Malta 1964 (as amended 2016) 1964

Norway - (Human Rights Act) Lov om styrking av menneskerettighetenes stilling i norsk rett (menneskerettsloven) LOV-1999-05-21-30 (Amended up to and including 2014) 1999

Norway - Constitution of the Kingdom of Norway 1814 (as amended 2016) 1814

Norway - Lov om barneombud (Barneombudsloven) No.5/1981 (Amended up to and including 2009) 1981

Norway - Lov om ekteskap No.47/1991 (Amended up to and including 2018) 1991

Norway - Lov om endringer i ekteskapsloven 2018 (absolutt 18-årsgrense for å inngå ekteskap i Norge) 2018

Norway - Lov om konfliktrådsbehandling (konfliktrådsloven) 1991 (Amended up to and including 20/12/2018) 1991

Norway - The Marriage Act (Lov om ekteskap) No.47/1991 (Amended up to and including 2009) 1991

Norway - The Penal Code (Lov om straff (straffeloven)) (Translation amended up to and including 01/01/2017) 2005

Poland - Constitution of the Republic of Poland 1999 (as amended 2009) 1999

Portugal - Código Civil 1966 DL No.47344/66 (Amended up to and including February 2019) 1966

Portugal - Constitution of the Portuguese Republic 1974 (as amended 2005) 1974

Portugal - Decreto-Lei n. 23/2014 O regime jurídico dos espetáculos de natureza artística e da instalação e funcionamento dos recintos de espetáculos de natureza artística 2014

Portugal - Lei n. 30/2015 Estabelece o regime de acesso e exercício da atividade de artista tauromáquico e de auxiliar de espetáculo tauromáquico 2015

Seychelles - Constitution of the Republic of Seychelles 1993 (as amended 2011) 1993

Sweden - The Instrument of Government 1975 (as amended 2016) 1975

Switzerland - Federal Constitution of the Swiss Confederation 1999 (as amended 2016) 1999

UK - Armed Forces Act 2006 c. 52 2006

UK - Care Standards Act 2000 C.14 2000

UK - Children Act 1989 C.41 1989

UK - Children Act 2004 C.31 2004

UK - Children and Young Persons Act 1933 C.12 1933

UK - Crime and Disorder Act 1998 C.37 1998

UK - Criminal Justice Act 2003 C.44 2003

UK - Extradition Act 2003 c. 41 2003

UK - Marriage Act 1949 C.76 1949

UK - Powers of Criminal Courts (Sentencing) Act 2000 C.6 2000

UK - Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017.C18 2017

UK - Secure Training Centre Rules 1998 SI No.472 1998

UK - The Human Right Act 1998 c.42 1998

UK - The School standards and Framework Act 1998 C.31 1998

UK - The Young Offender Institution Rules 2000 SI No.3371 2000

Uruguay - Constitution of the Oriental Republic of Uruguay 1976 (as amended 2004) 1976

Wales - Rights of Children and Young Persons (Wales) Measure 2011 2011

Wales - The Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003 NO.3227 (W.308) 2003

International:

Council of Europe - Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (as amended up to and including 2010)

United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989

Chapter 1 - Introduction

The history and purpose of the study

This thesis was inspired by working as a lawyer in the youth criminal courts and the family courts on children's cases, and the evolution of a concern that the whole process, not just the court element, was not fully respecting children's rights as set out in the United Nations Convention on the Rights of the Child.¹ This led to wondering if any country (State party) had created a system that managed to give full respect and implementation of children's rights. Assuming that 'full perfect implementation' of children's rights was a utopian dream, the questions quickly focused not so much on which State parties might be achieving best practice, but wondering which were achieving better implementation and what the UK (or any State parties struggling to implement children's rights) could learn from that better implementation. A further question was: in comparison to other State parties, how does the UK fare on children's rights? The thought process and the questions that formed evolved again. The questions became:

- ❖ Where to look to find better practice?
- ❖ How to know which State parties are achieving better implementation of children's rights?
- ❖ How to measure children's rights implementation?
- ❖ Is it possible to compare different State parties?
- ❖ If different State parties are compared, what can that comparison reveal?

This study, therefore, starts from a place of enquiry about which State parties are achieving better implementation of children's rights and creates a method to evaluate this. Then, if it is possible to evaluate the implementation of children's rights, the study will analyse the legal framework underpinning that implementation and consider the legal incorporation of the Convention for the better performing State parties, to investigate what lessons can be learnt.

Overarching aim

The overarching aim of the thesis can therefore be described as developing a method to enable it to be known which State parties are achieving better implementation of children's rights.

Research objectives

The research objectives can be described as threefold, firstly to create a method to measure implementation of the UNCRC and to test this by analysing a sample of State parties. Secondly, to investigate the legal framework of the better performing State parties to understand whether

¹ Hereafter UNCRC or the Convention

there are commonalities underpinning this better performance. Finally, to explore the situation of children's rights in England and Wales based upon the results from the first two objectives.

The structure of this thesis is then split into two distinct parts. The first half up to and including chapter 4 is the investigation to see if it is possible to compare different State parties' implementation of the UNCRC. These chapters contain the method, the analysis, and the results of this comparison.

The second half of the thesis from chapter 5 onwards takes the results from the State party analysis and considers in more detail, firstly, the legal frameworks of the top-performing State parties. Then for the top three State parties, the criticisms and recommendations to amend their legislation are considered. These comments are then compared to the criticisms and recommendations to amend legislation received by the UK (England and Wales). Finally, the conclusions are split into five sections.

[Research Questions](#)

The concepts and context that underpin this study are discussed in chapter 2, they enabled the formation of the research questions from the initial research objectives. The research questions can be summarised as:

- ❖ Is it possible to infer State party implementation of children's rights by analysing Concluding Observations reports by the Committee on the rights of the child?
- ❖ Is it possible to assess which State parties are achieving better implementation?
- ❖ Of the State parties achieving better implementation, what can be observed about their legal framework?
- ❖ What can be learnt about the Committee's interpretation of the Convention by analysing their Concluding Observations reports?
- ❖ What can the results of the analysis tell us about implementation of children's rights in the UK?

[Thesis chapters](#)

[Chapter 2 – Context](#)

This chapter introduces the relevant framework and procedures from the United Nations Committee on the Rights of the Child, including explaining the reporting process and describing the Committee's grouping of Convention articles into 'clusters'. Though relevant literature is interwoven throughout this thesis, in chapter 2 some of the key themes from children's rights

literature that underpin this study are discussed in order to provide the context for the study. This chapter explores the premise of treating the Committee on the Rights of the Child's Concluding Observations reports as a form of jurisprudence upon which to base an analysis of State party implementation.

Chapter 3 – Methodology and method

Chapter three has ten sections. The first section focuses on the methodology and theoretical approach of the study. The remaining sections discuss the methods used in the study. As the first stage of this study is exploratory, using an innovative approach to compare and grade State parties on their implementation of the UNCRC using the Committee's Concluding Observations (CO) reports, the method used for this section of the study is set out in detail. Because this approach is innovative, chapter 3 also reflects on the method including how successful it was and how it could be adjusted in future.

Chapter 4 – State and cluster analysis

Chapter 4 has five sections. In the main section each of the groups of articles (clusters of articles) for the reporting process is introduced, setting out the included Convention articles, 'general comment' documents produced by the Committee and additional reporting requirements. The construction of the spreadsheets used for the analysis is demonstrated in this section. The results of both the State party grades, as well as a content analysis of the different issues, are discussed.

In the third section particular areas, discrimination, corruption, legislation and juvenile justice are considered in further detail. The fourth section considers the results from the grading process and analysis.

Chapter 5 – Overview of the top 16 State parties

Chapter 5 has seven sections. The chapter investigates the characteristics of the top-ranking State parties from the analysis discussed in chapter 4. There were 16 State parties which fell into the higher grade category and are considered in more detail in this chapter. Other human right monitoring systems are introduced in this chapter due to the importance of the documents available publicly through these monitoring processes. The legislative frameworks, including the global legal families and the different methods of legal incorporation of the Convention, are described in this chapter. In addition, the existence and status of Child Ombudspersons are discussed. General human rights and health indicators are compared to the results for this study, both for the top 16 and in contrast to the whole study sample. The legislation discussed in chapter 5 was correct as accessed at the date of 8th January 2019.

Chapter 6 – Analysis of the top three State parties

Chapter 6 has five sections, these investigate the top three State parties identified during the grading process in chapters 4 in more detail: Iceland, Norway and Portugal. All three have now fully incorporated the Convention; therefore, the starting point is the presumption that their legislation is in line with the Convention. However, as the Committee has still found it necessary to make recommendations about the nature of their legislation, the chapter focuses on these recommendations to amend legislation in order to explore the legal implementation of the top three State parties. In the chapter conclusion and observations, the Committee's comments and recommendations are broken down to analyse the basis or grounds upon which the recommendation is being made. The legislation discussed in chapter 6 was correct as accessed at the date of 1st March 2019.

Chapter 7 – Focus on England and Wales

Chapter 7 has five sections which focus on England and Wales, which is treated as a distinct legal system(s) within the UK. In the original cluster analysis in chapter 4 the whole of the UK was graded; chapter 7 starts by discussing the status of England and Wales within the UK and then re-grades the clusters for England and Wales alone. The chapter then investigates the recommendations from the Committee to amend the legislation of England and Wales in order to bring it into line with the Convention. The legislation discussed in chapter 7 was correct as accessed at the date of 1st June 2019.

Chapter 8 – Conclusions

The conclusions chapter has five sections, with the conclusions brought together under four headings, they are:

- ❖ Conclusion regarding the results of grading Concluding Observations reports
- ❖ Conclusions regarding the Convention, the Committee's Concluding Observations reports and the reporting process
- ❖ Conclusions regarding legal incorporation of the Convention
- ❖ Conclusions regarding how the UK can improve the incorporation and implementation of the Convention

The first set of conclusions focuses on the results of the first stage of the analysis and considers whether any of the clusters are predictive of the overall grade. In addition, other observations from the results are discussed. The third section focuses on the Convention itself as well as the documents that the Committee used to express interpretation and clusters of articles the Committee has created. It considers whether the Convention or the clusters are in need of

updating. Further, it discusses a flaw in the current monitoring process that was discovered during the grading process.

The last two sections relate to the conclusion about legal incorporation of the Convention and consider what steps the UK could take to improve the incorporation and implementation of the Convention.

Original contribution to knowledge

The original contribution to knowledge of this thesis echoes the threefold research objectives.

Firstly, this study has confirmed that it is possible to utilise content analysis to evaluate United Nations Committee Reports in order to indicate levels of State party implementation of the Convention. The Analysis of the CO reports also generated data illustrating the themes focused upon by the Committee. The method has also exposed a weakness within the current reporting process.

The second distinct area of original contribution to knowledge is that having identified State parties with better implementation, the commonalities of their legal frameworks are investigated and revealed.

Finally, whilst the conclusion that the UK should incorporate (or repeat) the Convention into domestic law is not new, the evidence upon which this conclusion rests is original.

Chapter 2 – Context

2.1 Introduction

This chapter introduces relevant United Nations procedures to give context to the study. This includes describing the reporting process to the Committee and explaining the Committee's thematic grouping of articles into clusters, which are critical to the method. It will also introduce some of the key concepts fundamentally germane to this study, and which form the basis for the approach and method used such as the recognition of Committee reports as jurisprudence.² The importance surrounding the concepts of the legal incorporation of the Convention, and the different types of incorporation are discussed. Finally, the study's identification as a comparative study rather than as comparative law is explored.

This chapter does not attempt to answer any of the research questions directly. It creates the foundations to do so in later chapters by introducing the relevant systems and concepts that are central to the research objectives of creating a method to measure implementation of the UNCRC and exploring commonalities underpinning implementation.

2.2 Reporting to the Committee on the Rights of the Child

The Convention on The Rights of the Child entered into force 2nd September 1990, article 43(1) provides for the creation of a Committee 'For the purpose of examining the progress made by States Parties'.³ The Committee currently has eighteen members each of whom serves for four years. The four-year term is staggered so that only a portion of the Committee changes each time.⁴ Article 44 sets out the reporting duties of State parties to report initially within two years of the Convention's entry into force for the State party and then every five years.

The reporting process to the Committee on the Rights of the Child

The reporting cycle relevant for this study has four stages. The first stage is the submission of the State party's report, which is considered by the Committee along with the State party's

² The term jurisprudence relates to the theory and study of law, it can also be used to describe for instance, a courts judgment where the law is explored and how the law has been applied in the circumstances of the case is reasoned out. Section 2.3 of this chapter explores the use of the term jurisprudence to the Committee's interpretation of the Convention.

³ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 43(1).

⁴ UN Committee on the Rights of the Child, 'Committee on the Rights of the Child - Membership' <<https://www.ohchr.org/EN/HRBodies/CRC/Pages/Membership.aspx>> accessed 12 December 2019.

common core document. After the State party report is submitted then 'alternative reports' by NGO's and NHRI's (National Human Rights Institutions) can be submitted. The second stage is the Committee creating a List of Issues (LOIs), highlighting specific areas that the Committee would like additional information. The third stage is the State parties replies to the LOI's. The final and fourth stage is the Committee's Concluding Observations (CO) report. This also contains the date by which the State party is invited to submit its next report. The website for the Committee on the Rights of the Child enables access to databases of the reports of the four stages. There is a new optional system from 2019 where the Committee tells the State party ahead of their report what issues they wish to be addressed, this study focuses on the current reporting process described.

Common Core Document and the Universal Periodic Review

The current format of reports to the Committee on the Rights of the Child is specified by the guidelines originally produced in 2006 by the Secretary-General in response to the General Assembly resolutions in 1997 and 1998⁵ requesting harmonisation of Human Rights reports to six Committees:⁶

- ❖ The Human Rights Committee
- ❖ The Committee on Economic, Social and Cultural Rights
- ❖ The Committee on the Elimination of Discrimination against Women
- ❖ The Committee on the Elimination of Racial Discrimination
- ❖ The Committee on the Rights of the Child
- ❖ The Committee against Torture

These guidelines also include details of a 'Common Core Document'(CCD) which State parties are recommended to keep current and to update, or note that an update is not necessary, whenever submitting a specific treaty report. The CCD should cover both general and factual information about the implementation of the treaties to which the State is a party. It is designed to reduce the need for repetition of information and is initially submitted to the Secretary-General and then transmitted to all the relevant treaty Committees.⁷ In addition to the above six committees the CCD now includes reporting obligations under the International Convention

⁵ United Nations General Assembly, 'General Assembly Resolution - Implementation of International Instruments on Human Rights, Including Reporting Obligations on Human Rights UN Doc No. A/RES/52/118' (1997). United Nations General Assembly, 'General Assembly Resolution - Human Rights Instruments UN Doc No. A/RES/53/138'.

⁶ United Nations, *Yearbook of the United Nations 2006 - Volume 60* (Department of Public Information, United Nations 2009).

⁷ United Nations Secretary-General, 'Compilation of Guidelines on the Form and Content of Reports to Be Submitted by State Parties to the International Human Rights Treaties UN Doc. HRI/GEN/2/Rev.6' (United Nations 2009).

on the Protection of the Rights of All Migrant Workers and Members of Their Families, reporting to the Committee on Migrant Workers (CMW).⁸

The intention of the CCD is that:

Reports presented in accordance with the present harmonized guidelines will enable each treaty body and State party to obtain a complete picture of the implementation of the relevant treaties, set within the wider context of the State's international human rights obligations, and provide a uniform framework within which each committee, in collaboration with the other treaty bodies, can work.⁹

Moreover, within the Core Document:

States should provide a description of the constitutional structure and the political and legal framework of the State, including the type of government, the electoral system, and the organization of the executive, legislative and judicial organs. States are also encouraged to provide information about any systems of customary or religious law that may exist in the State.¹⁰

The Core Document then theoretically creates a document that can be investigated and utilised for comparison of State party characteristics. Further, for a comparative legal analysis, it is expected that these documents should be a rich source of data, as:

States should set out the specific legal context for the protection of human rights in the country. In particular, information should be provided on:

- (a) Whether, and if so, which of the rights referred to in the various human rights instruments are protected either in the constitution, a bill of rights, a basic law, or other national legislation and, if so, what provisions are made for derogations, restrictions or limitations and in what circumstances;
- (b) Whether human rights treaties have been incorporated into the national legal system;
- (c) Which judicial, administrative or other authorities have competence affecting human rights matters and the extent of such competence;
- (d) Whether the provisions of the various human rights instruments can be, and have been, invoked before, or directly enforced by, the courts, other tribunals or administrative authorities;

⁸ *ibid* 1.

⁹ *ibid* 3.

¹⁰ *ibid* 36.

(e) What remedies are available to an individual who claims that any of his or her rights have been violated, and whether any systems of reparation, compensation and rehabilitation exist for victims;

(f) Whether any institutions or national machinery exist with responsibility for overseeing the implementation of human rights, including machinery for the advancement of women or intended to address the particular situations of children, the elderly, persons with disabilities, those belonging to minorities, indigenous peoples, refugees and internally-displaced persons, migrant workers, non-authorized aliens, non-citizens or others, the mandate of such institutions, the human and financial resources available to them, and whether policies and mechanisms for gender mainstreaming and corrective measures exist;

(g) Whether the State accepts the jurisdiction of any regional human rights court or other mechanism and, if so, the nature and progress of any recent or pending cases.¹¹

In reality, State parties have interpreted these guidelines relatively widely, resulting in variation in the level of information contained in the CCD; this may be because the report writers are so ingrained within their own system and its norms that the need for explanation and clarification does not occur to them. Nevertheless, these are a useful source of data on how a State party wishes to present its system of Human Rights.

Human rights - Universal Periodic Review

Under the Universal Periodic Review (UPR) process (created in 2006) State parties are invited to submit a document 'to declare what actions they have taken to improve the human rights situations in their countries and fulfil their human rights obligations.'¹² There are guidelines for the preparation of information including:

Background of the country under review and framework, particularly normative and institutional framework, for the promotion and protection of human rights: constitution, legislation, policy measures, national jurisprudence, human rights infrastructure including national human rights institutions and scope of international obligations...¹³

The UPR is in its third cycle, so all State parties have been reviewed at least twice and possibly concluded their third review. As with the CCD, whilst the UPR is concerned with general

¹¹ *ibid* 42.

¹² United Nations Human Rights Council, 'Universal Periodic Review' (2018) <<https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>> accessed 20 November 2018.

¹³ United Nations Human Rights Council, 'Report of the Human Rights Council on Its Sixth Session - 2007 - Organizational and Procedural Matters UN Doc. A/HRC/6/22 Resolution 6/102. General Guidelines for the Preparation of Information under the Universal Periodic Review' (United Nations, 2008).

human rights the information on the legislative framework, in general, is relevant to children's rights as well as there being specific information included on children's rights.

The Committee's creation of article clusters and guidance for reporting

The Convention is comprised of 54 articles, logistically, receiving reports in differing formats could have created difficulty and in 1991 during the Committee's 22nd meeting, guidelines on reporting were adopted and published.¹⁴ These remain as the guideline for initial reports, and the current version of the guidelines for periodic reports was most recently updated and adopted in 2014 and published in 2015.¹⁵ These two documents set out the form the reports should be in, including specifying the 'clusters'¹⁶ of rights to be used as subheadings. Regarding these clusters, in the 1991 guidelines, the Committee explained, 'the provisions of the Convention have been grouped under different sections, equal importance being attached to all the rights recognised by the Convention.'¹⁷ While the Committee has emphasised the equal importance of these clusters of articles, the first three groups tend to deal with more general aspects of rights that underpin the subsequent six clusters, which deal with more narrowly focused rights.

Despite the Committee creating clusters of articles, others have also grouped the articles into thematic groups, for instance being divided into the '3Ps' of protection, participation, and provision. Other examples of article grouping include LeBlanc's¹⁸ four categories of Survival, Membership, Protection, and Empowerment, and UNICEF's set: Guiding Principles, Survival and Development, Protection, and Participation.

The State party report is requested to be in the format of addressing the Committee's clusters of articles. It specifies that the report:

Should indicate progress made and challenges encountered in achieving full respect for the provisions of the convention and the optional protocols, if applicable. In particular, the State party should provide the specific information on actions taken to implement

¹⁴ UN Committee on the Rights of the Child, 'General Guidelines Regarding the Form and Content of Initial Reports to Be Submitted by State Parties under Article 44, Paragraph 1(a), of the Convention UN Doc. CRC/C/5' (United Nations, 1991).

¹⁵ UN Committee on the Rights of the Child, 'Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child UN Doc. CRC/C/58/Rev.3' (United Nations 2015).

¹⁶ *ibid* 17.

¹⁷ *ibid* 8.

¹⁸ Lawrence J LeBlanc, *The Convention on the Rights of the Child: United Nations Lawmaking on Human Rights* (University of Nebraska Press 1995).

the recommendations in the Committee's previous concluding observations as they relate to each cluster of rights.¹⁹

The most up-to-date clusters of articles are from the Committee's current guidelines on periodic reporting:

- ❖ General measures of implementation (GMI)- relating to articles 4, 42, and 44, para.6.²⁰
- ❖ Definition of the child (DOTC) - a unique cluster as it only contains a single article, article 1.²¹
- ❖ General principles (GP) - relating to articles 2, 3, 6 and 12.²²
- ❖ Civil rights and freedoms (CRF) - relating to articles 7, 8, 13-17.²³
- ❖ Violence against children (VAC) - relating to articles 19, 24 (3), 28 (2), 34, 37 (a), and 39.²⁴
- ❖ Family environment and alternative care (FEAC) - relating to articles 5, 9-11, 18 (1-2), 20, 21, 25, and 27 (4).²⁵
- ❖ Disability, basic health, and welfare (DBHW) - relating to articles 6, 18 (3), 23, 24, 26, 27 (1-3), 33.²⁶
- ❖ Education, leisure, and cultural activities (ELCA) - relating to articles 28-31.²⁷
- ❖ Special protection measures (SPM) - relating to articles 22, 30, 32, 33, 35, 36, 37 (b-d) and 38-40.²⁸

Request for information

In addition to relevant information relating to the specific articles being referred to, for some clusters additional relevant information not specified as relating to an article is requested. For instance, what is requested under the cluster 'Violence against Children' is as follows:

Violence against children (arts. 19, 24, para3, 28, para.2, 34, 37 (a) and 39)

30. Under this cluster, States parties should provide relevant and up-to-date information regarding the following:

¹⁹ UN Committee on the Rights of the Child, 'Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child UN Doc. CRC/C/58/Rev.3' (n 15) para 17.

²⁰ *ibid* 18–21.

²¹ *ibid* 22.

²² *ibid* 23–27.

²³ *ibid* 28–29.

²⁴ *ibid* 30–31.

²⁵ *ibid* 32–33.

²⁶ *ibid* 34–37.

²⁷ *ibid* 38–39.

²⁸ *ibid* 40–41.

- (a) Abuse and neglect (art.19);
- (b) Measures to prohibit and eliminate all forms of harmful practices, including, but not limited to, female genital mutilation and early and forced marriages (art. 24, para. 3);
- (c) Sexual exploitation and sexual abuse (art. 34);
- (d) The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, including corporal punishment (arts. 37 (A) and 28, para. 2);
- (e) Measures to promote the physical and psychological recovery and social reintegration of child victims (art. 39);
- (f) The availability of helplines for children.²⁹

In paragraph 30 the first 5 items listed (a-e) are followed by a note clarifying to which article they relate. Nonetheless, the last item in the list under para.30 '(f) the availability of helplines for children', is one of the items that is not specified as linked to an identified article, despite information being requested. Further, it should be noted that in the Convention there is no mention of the availability of helplines.

Special protection measures cluster and the Optional Protocols

The Convention itself now has three optional protocols, all with reporting processes:

- ❖ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2002);³⁰ (OP- Armed Conflict)
- ❖ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2002);³¹ (OP- Sale of Children)
- ❖ Optional Protocol to the Convention on the Rights of the Child on a communications procedure (2014).³² (OP – Comms)

The first two Optional Protocols relate to articles found within the SPM clusters, and within the CO reports references to the Optional Protocols are generally found within the SPM clusters or in a paragraph directly after the SPM clusters.

²⁹ *ibid* 30.

³⁰ United Nations, 'Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. Treaty Collection, Chapter IV Human Rights Document 11b, New York 25th May 2000'.

³¹ United Nations, 'Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Treaty Collection, Chapter IV Human Rights Document 11c, New York 25th May 2000'.

³² United Nations, 'Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure. Treaty Collection, Chapter IV Human Rights Document 11d, New York 19th December 2011' (United Nations 2011).

General comments

In addition to the guidelines on reporting, one of the important sets of documents created by the Committee on the Rights of the Child are the 'general comments' (GC) which are thematic documents that publish the Committee's interpretation of the Convention. Within the CO reports the Committee refer State parties to relevant GC. As of November 2017, when the analysis of the 52 CO reports was undertaken, there were 23 general comments including three 'joint general comments' published with other Human Rights Bodies. This contrasts with the end of 2013, where there were only 17 general comments; therefore, the earlier CO reports would have fewer opportunities to be referred to general comment documents. General comments are included in the guidelines on periodic reporting, for the Violence against children cluster, it is requested that:

31. Under this cluster, States parties should take into account the Committee's general comments No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment; No. 13 (2011) on the right of the child to freedom from all forms of violence; and joint general recommendation No. 31 of the Committee of the Elimination of Discrimination against Women/general comment No. 18 (2014) of the Committee on the Rights of the Child on harmful practices.³³

Statistical information.

The annex to the guidelines for periodic reports also gives guidance on the inclusion of statistical information and data, how it should be disaggregated and presented and specifies that it should cover the time span of the reporting period. Returning to the cluster 'Violence against children' the additional guidance includes request for data, such as:

- (a) The number and percentage of children reported as victims of abuse and/or neglected by parents or other relatives/caregivers;
- (b) The number and percentage of reported cases that resulted in sanctions or other forms of follow-up for perpetrators;
- (c) The number and percentage of children who received special care in terms of recovery and social reintegration.³⁴

³³ UN Committee on the Rights of the Child, 'Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child UN Doc. CRC/C/58/Rev.3' (n 15) para 31.

³⁴ UN Committee on the Rights of the Child, 'Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child UN Doc. CRC/C/58/Rev.3' (n 15) Annex Section II 'Statistical information to be provided in the report', E. 'Violence against children'.

These clear guidelines as to the form and content of reports, using the cluster system created by the Committee enable comparison of the reports.

Creation of an additional cluster

Despite there being some variation in the clusters over time, this framework was still sufficiently consistently applied throughout the sample of CO reports analysed and therefore chosen to be used as the framework for the grading analysis (described in chapter 3). The one amendment or addition to the cluster framework, was the removal of 'juvenile justice' from SPM and its creation as a cluster in its own right. This was done for a number of reasons. Firstly, SPM as it stands, is a very large cluster and covers a number of separate issues. The guidelines for periodic reporting³⁵ demonstrate that this cluster has 11 subsections, with the subsection on juvenile justice being broken down further into five more sections. This size and complexity of this cluster would be difficult to analysis using the method explained in chapter 3. In addition to the practical consideration of analysing clusters, juvenile justice was chosen to be separated into its own cluster because organisations such as UNICEF reflected that:

Juvenile justice is one of the child rights issues most closely linked to law reform... Juvenile justice is also one of the areas where law reform was most needed when the Convention entered into force – and it remains so. Much of the legislation enacted since 1990 falls short of international standards. At the same time, important advances have been made in many countries around the world.³⁶

Therefore, as well as being a large section of SPM, and in addition to juvenile justice being an area where there has been recorded law reform, it is also a particularly interesting area of children's rights because it is where children involved in juvenile justice are fundamentally 'at odds' with society or the government, and it is an area where they directly come into contact with and have to negotiate the legal system. Finally, it was also noted through engaging with the text of the CO reports that juvenile justice, or aspects of children's rights relating to juvenile justice were frequently mentioned in other clusters. On this basis then, juvenile justice was not only treated as a cluster in its own right, but it was chosen to demonstrate the interrelated nature of the clusters by noting when comments in other clusters related back to juvenile justice.

The evolution of clusters

In analysing the CO reports from the Committee it is possible to see that over time there have been changes in the format of the reporting process including changes to clusters either

³⁵ *ibid* 40, 41.

³⁶ UNICEF Innocenti Research Center, 'Law Reform and the Implementation of the Convention on the Rights of the Child' (Innocenti Research Center 2008) 81.

incorporating an article or incorporating additional items that information is requested on, which are not specified within the original Convention articles. Several of these evolutions can also be seen in the guidelines, for instance in the guidelines for initial reports from 1991 under the cluster heading of 'Education, leisure and cultural activities' State parties are asked to address a list of three items, all directly related to identified articles of the Convention, 28, 29, and 31. By the periodic guidelines updated as recently as 2015, under the cluster heading of 'Education leisure and cultural activities', the State parties are now asked to address five items, the original three as well as article 30 (the cultural rights of children belonging to indigenous and minority groups) and the additional item of 'Education on human rights and civic education' which is not specified as linked to an identified article. Further, it is possible to see evolution in the concerns that the Committee emphasises to the State parties. For instance, prior to 2015, the word 'intersex' does not occur within the set of reports analysed. From 2015, two different concerns are frequently raised by the Committee with regards to the treatment of intersex children, firstly with regards to ensuring that intersex children are not subject to discrimination and secondly with regards to health and harmful practices as the Committee is concerned about intersex children undergoing medically unnecessary and irreversible gender assignment surgery at a young age without their informed consent.

The inclusion over time of a new, or newly understood issues, in addition to the Committee lengthening the list of subheadings under a cluster that they wish to be addressed on, and the addition of items not mentioned in the original Convention, shows the adaptation the Committee is prepared to make as knowledge and understanding of rights evolve. However, it does raise the question of whether the Convention should be modernised and redrafted to include up-to-date understanding, and if, the Convention was to be redrafted, whether it should be done in such a manner as to reflect the clusters of rights the Committee has developed, and State parties have become used to collating information under.

[The monitoring system of the UNCRC](#)

One of the themes found within the literature on children's rights relevant for this study is the criticism of the Convention, the Committee, and the monitoring process, including discussion on concepts and methods for improvement. This group would include Baxter's 'The Suggestions on the Rights of the Child: Why the United Nations' Convention on the Rights of the Child is a Twenty-five Year failure',³⁷ and Davidson's 'Does the UN Convention on the Rights of the Child

³⁷ Sherilyn C Baxter, 'The Suggestions on the Rights of the Child: Why the United Nations' Convention on the Rights of the Child Is a Twenty-Five Year Failure' (2015) 2 Journal of Global Justice and Public Policy 89.

make a difference?³⁸ Within this existing literature there occurs what could be referred to as a post optimism hangover, criticising the Convention and the Committee for the lack of change throughout the world in children's situations.

It is as if the Convention on the Rights of the Child is embraced as a triumph of international law, regardless of the fact that it has enjoyed little success by the rule of law in conferring rights to children. While wonderful in theory, it has not yielded the desired result in practice.³⁹

The relevance for this study, is that, within these texts the current monitoring process and potential alternatives are explored, such as the potential for the Committee to have enforcement powers in addition to monitoring implementation through a self-reporting process. As Ramesh describes, the current reporting process can be considered to be, 'a weak form of enforcement because, states... often seek to supply inadequate and uncritical information regarding the condition of children's rights in the state'.⁴⁰ Engle notes that whilst the CRC 'presents lofty goals for children's rights. It does not, however, present effective enforcement mechanisms for their implementation',⁴¹ and Milne describes the monitoring process as 'toothless'.⁴² Despite the criticisms of the monitoring process and a lack of an 'enforcement mechanism' as Linde suggests, 'it nonetheless serves as a means of confronting states about their child policies';⁴³ and O'Flaherty argues the CO reports are 'the single most important activity'⁴⁴ of human rights Committees. As Freeman concludes:

We have a long way to go, but we have come a long way in a relatively short time. Children's rights are now being discussed seriously, if critically. In the UNCRC we have a benchmark, and a foundation upon which we can build.⁴⁵

In considering the juridical nature of the CO, Price Cohen also focused on the reporting process and monitoring system. She noted the unique aspect of Article 45 giving the Committee broader

³⁸ Howard Davidson, 'Does the U.N. Convention on the Rights of the Child Make a Difference Symposium: Whether the United States Should Become a Party to the U.N. Convention on the Rights of the Child' [2013] Michigan State International Law Review.

³⁹ Lynne Marie Kohm, 'A Brief Assessment of the 25-Year Effect of the Convention on the Rights of the Child' [2014] Cardozo Journal of International and Comparative Law.

⁴⁰ Abhinaya Ramesh, 'UN Convention on Rights of the Child: Inherent Weaknesses' (2001) 36 Economic and Political Weekly 1948.

⁴¹ Eric Engle, 'The Convention on the Rights of the Child' (2011) 29 Quinnipiac Law Review 793.

⁴² Brian Milne, 'Signed, Ratified but Not Implemented' in Brian Milne (ed), *Rights of the Child: 25 Years after the adoption of the UN Convention* (Springer International Publishing 2015).

⁴³ Robyn Linde, 'The Globalization of Childhood: The International Diffusion of Norms and Law against the Child Death Penalty' (2014) 20 European Journal of International Relations 544, 563.

⁴⁴ Michael O'Flaherty, 'The Concluding Observations of United Nations Human Rights Treaty Bodies' (2006) 6 Human Rights Law Review 27.

⁴⁵ Michael Freeman, 'The Human Rights of Children' (2010) 63 Current Legal Problems 1, 44.

powers than ‘simply examining’ the reports submitted by State parties, permitting them to gather information from other sources, provide technical assistance, and ‘request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child’.⁴⁶ In 1999 she noted that 58 of the then 191 State parties had failed to submit their initial report with many that had reported doing so up to a year late.⁴⁷ In chapter 3.2 in describing the selection process for State parties, the dates that State parties have reported is discussed, and it is noted that some State parties have not reported since the 1990s. The full spreadsheet showing when State parties have reported and how many times is in Appendix A-1. Verheyde and Goedertier⁴⁸ considered the ‘interrelated factors’ upon which the success of the monitoring system relies, including the timeliness and quality of reports from the State party, the quality of the dialogue and the quality of the CO reports. The timeliness of the reporting cycle is also an essential factor in comparative analysis. Comparing the reports of two different State parties with dates 20 years apart is potentially problematic; this is a factor that it is necessary to take into account for the selection of the study sample which is discussed further in chapter 3.

The current monitoring process based on State party information is central to this study as the initial trial method focuses on the Committee’s Concluding Observations reports, which have been described as the ‘jurisprudence’ of the Committee.

[The new ‘simplified reporting procedure’](#)

For State parties whose next report is due from September 2019, a new ‘simplified reporting procedure’ is available. If a State party has accepted the new process, the Committee will send ‘a request for specific information’ with up to 30 questions (List of Issues Prior to Reporting – LOIPR); the State party’s replies to the questions are their report. This process additionally affects the date that stakeholders’ submissions are due, as this date is set before the LOIPR. Currently, State parties are being invited to accept the new procedure based upon when their next report is due. The UK has accepted the new procedure and the LOIPR is expected in February 2021, with the new report date for the UK of February 2022.

The introduction of the new simplified reporting procedure means that it is not yet known how the Committee CO reports will look. Will they focus solely on the topics raised in the LOIPR, or will they integrate those topics into broader comments on clusters? The first State party report

⁴⁶ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 45(c).

⁴⁷ Cynthia Price Cohen, ‘Convention on the Rights of the Child’ (1999) 21 Whittier Law Review 95, 97.

⁴⁸ Mieke Verheyde and Geert Goedertier, ‘The Effectiveness of the Reporting Process’, *A commentary on the UNCRC* (Martinus Nijhoff 2006).

from Hungary under the new system is recorded as received during June 2019.⁴⁹ However, at the time of writing this does not yet appear to be available on the Committee's website database, nor is the Committee's LOIPR which was produced in June 2018, neither are any of the other LOIPR recorded as having been submitted to State parties. The website currently offers four databases for the four key documents from the original reporting cycle. It is not yet clear if the new reports will be available in the current databases or whether new databases will be created.

2.3 The Convention as a legal framework

This study uses the concept that the Convention can be considered to be a legal framework that can be used to judge domestic recognition and implementation of children's rights. This concept comes from the literature on children's rights, with one of the important identifiable themes, focusing on comparing legal frameworks and their influence on, or interaction with, children's rights. The Convention is a strange legal creature for a lawyer to grapple with; it is not a law creating clearly defined concepts of rights, and it has been described as both an 'aspirational document' and 'legally binding mandate',⁵⁰ a legal chimera.

One of the peculiarities of literature focused on the UNCRC is the prevalence of articles published in and focusing on children's rights in the USA, currently the only UN member state not to have ratified the UNCRC. Due to the non-ratification of the Convention, the USA cannot be one of the State parties analysed in the first stage of the study. However, some of these USA-centric articles are still very relevant to this study. For instance, Davidson⁵¹ formulates arguments as to why the USA should ratify the UNCRC. In doing so, he develops an analysis of the strengths and weaknesses of the Convention and pertinently notes in response to the criticisms that 'the CRC [is] ineffective because it has no enforcement teeth'⁵² that:

The CRC is not a criminal enforcement statute; rather, by establishing positive legal rights for children to be protected from abusive and harmful treatment, it provides an important legal framework that legislators and reformers can and should use, and have

⁴⁹ UN Committee on the Rights of the Child, 'Simplified Reporting Procedure - SRP Calendar' (2019) <<https://www.ohchr.org/Documents/HRBodies/CRC/CalendarSRP.pdf>> accessed 1 September 2019.

⁵⁰ James Garbarino, 'Commentary: An Approach to Assessing "Accountability" in Implementing the UN Convention on the Rights of the Child' (2011) 35 Child Abuse and Neglect 990.

⁵¹ Davidson (n 38) 497.

⁵² *ibid* 522.

used, to advocate for domestic legislation, policies, and practices that enforce those rights within their own countries.⁵³

This premise, that the Convention creates, 'an important legal framework that legislators and reformers can and should use', is at the heart of the enquiry of this study; investigating how the Committee responds to State parties' implementation of the Convention and then considering the underlying legal structure of incorporation among State parties that the Committee has responded to more positively.

Historical context and aging of the Convention

Within the sphere of children's rights literature, themes emerge relating to the history and to the development of the Convention since it came into force. Published a decade ago, Reynaert, Bouverne-De Bie, and Vandeveld⁵⁴ undertook discourse analysis on a relatively comprehensive review of children's rights literature since the adoption of the UNCRC. It is necessary now to treat this review with some caution due to its age; additionally, the literature they reviewed has a strong USA-centric focus, which results in an overrepresentation of articles focused on 'children's rights vs parental rights'. Nevertheless, it is an important foundation piece, including observing the prevalence of literature focusing on participation and Article 12, 'the right to be heard'.

Within the literature on children's rights, the history of the UNCRC is chronicled. LeBlanc⁵⁵ gives a detailed description of the creation of the Convention, including an in-depth discussion of the drafting process and the State parties involved. In contrast to LeBlanc, Fass⁵⁶ focuses on the historical evolution of children's rights and how the CRC is a continuation of that evolution. Additionally, primarily historical texts such as Haywood⁵⁷ and Cunningham⁵⁸ chart the evolution of the concept of children as rights holders in the historical development of childhood. The historical perspective gives a lens through which understanding of both some of the idiosyncrasies of the Convention and how the Committee's understanding and interpretation has evolved, even though this study fundamentally focuses on the recent and up-to-date realisation of children's rights, with the Concluding Observations (CO) reports being

⁵³ *ibid* 523.

⁵⁴ Didier Reynaert, Maria Bouverne-de-Bie and Stijn Vandeveld, 'A Review of Children's Rights Literature since the Adoption of the United Nations Convention on the Rights of the Child' (2009) 16 *Childhood* 518.

⁵⁵ LeBlanc (n 18).

⁵⁶ Paula Fass, 'A Historical Context for the United Nations Convention on the Rights of the Child.' (2011) 633 *The ANNALS of the American Academy of Political and Social Science* 17.

⁵⁷ Colin Haywood, *A History of Childhood* (Blackwell Publishing, Oxford 2001).

⁵⁸ Hugh Cunningham, *Children and Childhood in Western Society since 1500* (2nd edn, Pearson Longman 2005).

focused on falling from 2010 to 2018, at the extremes and most falling within a five-year period from 2012 to 2017.

In addition to texts focusing on the history of the Convention, as the Convention has aged and reached milestones authors have reflected on how the Convention has stood the test of time, for example, Kilkelly's chapter 'The Convention on the Rights of the Child after Twenty-five Years: Challenges of Content and Implementation',⁵⁹ in addition to considering the challenges the CRC has faced in implementation, notes that:

it is important to reflect on the wider effect that the Convention has had on international and regional law. Since the Convention's adoption, it has been argued that its status as a treaty of international law could be used to secure its influence on regional human rights mechanisms. This argument has grown in importance with the Convention's standing in international law as the almost universally accepted standard of children's rights.⁶⁰

The status of the Convention, twinned with the high levels of ratification, resulting in globally comprehensive interaction with the reporting procedure (even if some State parties have only reported once), creates a valuable source of data on children's rights. Some of the reflective, milestone, texts highlight that the Convention may be becoming out of date. For instance, Veerman⁶¹ in 2010 discussed 'the ageing' of the Convention, describing that 'the CRC looks like an archaic document' and noting the unforeseen issues missing from the Convention such as online gaming and gambling. He also highlights a surprising omission of alcohol, both consumption and abuse, from the Convention and notes the absence of any reference to a right to rehabilitation under article 33 on the illicit use of drugs. Texts such as Kilkelly's and Veerman's have particular relevance to this study because, over time, the Committee has expanded its remit from the original Convention by its publication of general comments and inclusion in their guidelines on periodic reporting issues or concepts that do not appear in the original wording of the Convention. In considering one of the developments by the Committee, that of articles being clustered together for the purposes of reports, and the creation of a cluster named 'general principles', Hanson and Lundy observe that:

⁵⁹ Ursula Kilkelly, 'The Convention on the Rights of the Child after Twenty-Five Years: Challenges of Content and Implementation' in Martin D Ruck, Michele Peterson-Badali and Michael Freeman (eds), *Handbook of Children's Rights - Global and Multidisciplinary Perspectives* (Routledge 2017).

⁶⁰ *ibid* 88.

⁶¹ Philip E Veerman, 'The Ageing of the UN Convention on the Rights of the Child' (2010) 18 *International Journal of Children's Rights* 585.

The concept of “general principles” is questioned rarely, a position that is surprising given the fact that they were not envisaged at any stage by the drafters when they concluded their work just a few years prior.⁶²

They point out that these ‘general principles’ have ‘largely evaded a critical gaze’. In this study, by focusing on State party implementation for each cluster in turn, the intention is to gather data on clusters which should enable further consideration of the cluster system. The results of the cluster analysis is in chapter 4.

[The Jurisprudence of UNCRC Concluding Observations reports.](#)

One element of enquiry in this study is whether, and to what extent, the CO reports from the Committee can be used to infer implementation. Significantly then, is the question that of what status can be attributed to CO reports? Can they be considered jurisprudence? In the first phase of this study, 52 Concluding Observations reports from the Committee on the Rights of the Child are analysed and graded on the apparent level of implementation of the Convention. This may appear to be an analysis of State party implementation, but it is not. Rather, it is an analysis of what the Committee has said about the State party’s implementation, which is taken to be an indication of implementation, an important distinction.

One of the authors focusing on the Jurisprudence of the CRC was Cynthia Price Cohen, who described that even though the UNCRC ‘is a legal instrument, it is not a “law” in the ordinary sense’⁶³ In 1998, she noted that:

At the present time States Parties are working in the dark because they must interpret the Convention on their own, without any official guidelines as to how the Convention should be interpreted. The extent to which they are successful in this endeavor will be decided by the Committee on the Rights of the Child, whose decisions form the core of international child rights jurisprudence.⁶⁴

⁶² Karl Hanson and Laura Lundy, ‘Does Exactly What It Says on the Tin?’ (2017) 25 *International Journal of Children’s Rights* 285, 286.

⁶³ Cynthia Price Cohen, ‘The Jurisprudence of the Committee on the Rights of the Child’ [1998] *Georgetown Journal on Fighting Poverty* 201, 202.

⁶⁴ *ibid.*

In 2006 she published 'Jurisprudence on the Rights of the Child' 'compiling and cataloguing the jurisprudence contained in the Concluding Observations of the Committee on the Rights of the Child'.⁶⁵ The intention of this compilation of CO reports was to provide:

the researcher with the means to instantly discover the developing standards in international child rights law as framed by the Convention on the Rights of the Child, and interpreted by its monitoring body – the Committee on the Rights of the Child.⁶⁶

Undoubtedly, since Price Cohen's article in 1998 and her book in 2006, the situation has changed even further with the continued development of the guidelines on periodic reporting. In addition, there has been the publication of multiple general comments explicitly setting out the Committee's interpretation of articles and not forgetting an ever-increasing body of CO reports that can be explored. State parties are therefore no longer operating in the dark; there is generally an abundance of information from the Committee and commentators.

Over time the interpretation of the Convention has changed, and the subjects that are included under the guidelines on periodic reporting have widened. As Hanson and Lundy express, the Convention 'should be interpreted dynamically over time, with its meaning evolving' they also caution that the Committee:

should attempt to honour the intentions of the drafters and those who ratified the CRC by adhering to an interpretation that the actual wording chosen is capable of bearing.⁶⁷

Fortin also remarks on the 'considerable influence' that the Committee has in the way in which it interprets the Convention, and crucially for this study notes that:

Its Concluding Observations, which have gradually become more detailed and complex, are read with considerable interest by human rights experts throughout the world... Researchers have been able to gain, from this growing body of jurisprudence, some insight into the way in which the Committee interprets the convention and the relative importance it places on states' obligations thereunder.⁶⁸

The evolution of the interpretation, and the widening of the scope of the Convention, are explored in this study during the analysis of the Committee's comments and recommendations found in the CO reports. In consideration of the monitoring process, and in noting the lack of

⁶⁵ Cynthia Price Cohen, *The Jurisprudence on the Rights of the Child* (Transnational Publishers 2006) ix.

⁶⁶ *ibid.*

⁶⁷ Hanson and Lundy (n 62) 299.

⁶⁸ Jane Fortin, 'International Children's Rights', *Children's rights and the developing law* (Cambridge University Press 2009) 47.

the ability to enforce or penalise for breaches and importantly for this study, Hoffman puts forward an argument that the Committee's focus on calling for the incorporation of the Convention is, therefore, 'unsurprising':

so that it is fully justiciable and enforceable before national courts, and given predominance when in conflict with national law, policy or practice, and a remedy provided where rights are violated.⁶⁹

The second stage of this study considers further the legal framework and incorporation of the Convention in the State parties whom, from the first phase analysis of the Committee's CO reports, appear to be achieving better implementation of the Convention.

2.4 Legal incorporation of the UNCRC

Central to the rationale of this study is the concept of legal incorporation of the UNCRC and the different methods of achieving this. There are several key pieces of literature related to this, including Gran's innovative and ambitious paper 'Comparing Children's Rights: Introducing the Children's Rights Index'⁷⁰ creating an index of 'formal' rights, that is to say assessing whether domestic legislation is in place for eight specifically chosen rights, seven relating to the articles from the UNCRC. The eight rights chosen are split into pairs of rights each covering civil, political, social, and economic rights. The rights and relevant articles assessed are:

- ❖ Civil: Article 14 - freedom of freedom of thought, conscience and religion
- ❖ Civil: Article 37 - freedom from imprisonment with adults
- ❖ Political: Article 15 - the right to assemble
- ❖ Political: Right to vote (not a right contained in the UNCRC)
- ❖ Social: Article 28 - the right to education
- ❖ Social: Article 24 - the right to health care
- ❖ Economic: Article 32 - freedoms from economic exploitation
- ❖ Economic: Article 32 – protection from hazardous work

He uses a coding weight attributing to each right of:

⁶⁹ Simon Hoffman, 'The UN Convention on the Rights of the Child, Decentralisation and Legislative Integration: A Case Study from Wales' (2019) 23 *The International Journal of Human Rights* 374, 376.

⁷⁰ Brian K Gran, 'Comparing Children's Rights: Introducing the Children's Rights Index' (2010) 18 *International Journal of Children's Rights* 1.

(1) no right, (2) right exists with significant, formal limitation; (3) right exists with informal, minor limitation; and (4) right exists.⁷¹

One of the noteworthy aspects of this study was that it covered 190 countries, therefore in chapter 4.4 where the results of the analysis are discussed, the intention is to compare Gran's results with those this method produces, with the caveat that the two studies are in reality assessing different aspects of implementation. Nevertheless, looking for similarities and differences in results may give further insight into methods of assessing the implementation and incorporation of children's rights. In Gran's study there are, however, two aspects that could be considered problematic. Firstly, the inclusion of a right that is not in the UNCRC, that of voting, is doubly problematic because not only is it not a right under the UNCRC but in some State parties, where age of majority is not defined, it is inferred as the age at which you can vote, so by being able to vote at 16, you become an adult and lose your children's rights. Secondly, an aspect that is both problematic and yet also a strength is that his study looks at domestic-created legislation and does not take into account monist legal systems, whereby ratified treaties are considered legislation that can be relied upon and therefore the legal right exists in the terms set out in the treaty. This is a problem as it omits that some State parties have the legislation albeit not having created it themselves. However, it is also arguably a strength as this study is assessing the purposely created legislation rather than that acquired by ratification.

In contrast to Gran's Index focusing on domestic legal realisation of rights, the KidsRights Foundation publishes a yearly index⁷² ranking countries (the index uses the term country rather than State party) on children's rights. This index combines quantitative data from UNICEF and the United Nations Development Programme and qualitative data by considering some elements from the Concluding Observations reports.⁷³ The index organises the data into five groups called 'domains', the fifth domain called 'Enabling Environment for Child Rights' is based on CO reports. The indicators chosen from the CO reports are article 2 (non-discrimination), article 3 (best interests of the child), article 4 (enabling legislation, best available budget, collection and analysis of disaggregate data), and article 12 (Respect for the views of the child/child participation).⁷⁴ Whilst as with Gran's index, this is an interesting piece of work that adds to the greater understanding of the implementation of children's rights it is problematic that only a few articles of the Convention are used to assess one of their five

⁷¹ *ibid* 7.

⁷² KidsRights Foundation, 'KidsRights Index 2019' (2019) <<https://www.kidsrightsindex.org>>.

⁷³ KidsRights Foundation, 'Methodology KidsRights Index' (2019) <<https://www.kidsrightsindex.org/Methodology/Methodology>> accessed 24 December 2019.

⁷⁴ KidsRights Foundation, 'Definitions of the Indicators in the KidsRights Index' (2018).

'domains'. Further, this is a 'domain' that is capable of significantly effecting the overall score of a country due to the construction of the equation they use to bring the results of the five domains together. A further problem with this domain is that it is:

The actual score assigned to each sub-indicator is exclusively based on the language used by the Committee in the document.⁷⁵

This is a problematical because it does not appear to take into consideration the construction of the CO reports or the nature of the issues being discussed by the Committee or that they potentially omit issues where they do not need to make a negative comment or recommendation.

Due to Gran's index focusing on a larger number of rights than the KidsRights index, and because Gran's index is concerned with the legal formulation of rights at the domestic level, creating an index of children's rights in domestic law, Gran's index results will be contrasted to this study's results in chapter 4.

Legal incorporation of the Convention is expanded upon by the Committee in 'General Comment No.5 on the general measures of implementation', where they note from the introduction that:

Ensuring that all domestic legislation is fully compatible with the Convention and that the Convention's principles and provisions can be directly applied and appropriately enforced is fundamental.⁷⁶

The general comment is clear that the Committee 'welcomes' the incorporation of the Convention and expands on their concept of incorporation:

Incorporation should mean that the provisions of the Convention can be directly invoked before the courts and applied by national authorities and that the Convention will prevail where there is a conflict with domestic legislation or common practice. Incorporation by itself does not avoid the need to ensure that all relevant domestic law, including any local or customary law, is brought into compliance with the Convention. In case of any conflict in legislation, predominance should always be given to the Convention, in the light of article 27 of the Vienna Convention on the Law of Treaties.⁷⁷

⁷⁵ KidsRights Foundation, 'KidsRights Index 2019' (n 72) 8.

⁷⁶ UN Committee on the Rights of the Child, 'General Comment No.5 (2003) on the General Measures of Implementation of the Convention on the Rights of the Child - UN Doc CRC/GC/2003/5' (2003) para 1.

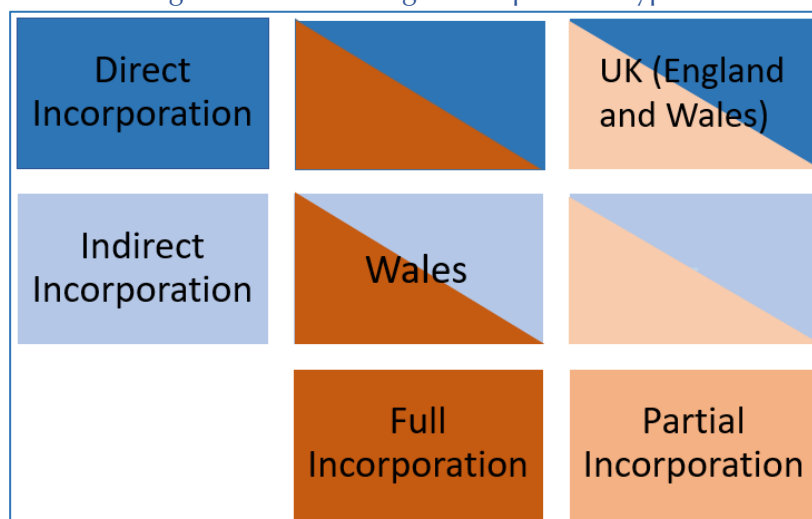
⁷⁷ *ibid* 20.

State parties have chosen different methods of incorporating the Convention and one of the most important articles influencing this study relating to the legal incorporation of the Convention is from Lundy, Kilkelly, and Byrne titled: ‘Incorporation of the United Nations Convention on the Rights of the Child in Law: A Comparative Review,’⁷⁸ based on the study conducted by them for UNICEF-UK.⁷⁹ In the study, they considered the legal incorporation of the Convention by 12 State parties and classified them into three categories, however in the article they set out a typology with four categories:

- ❖ direct incorporation (where the CRC forms part of domestic law)
- ❖ indirect incorporation (where there are legal obligations which encourage its incorporation)
- ❖ full incorporation (where the CRC has been wholly incorporated in law)
- ❖ partial incorporation (where elements of the CRC have been incorporated).⁸⁰

These categories overlap and act in accordance with each other and can be considered as two variables, direct or indirect, and full or partial. For instance, even though the UK as a whole can be described only as having ‘*partial direct incorporation*’, Wales also has ‘*full indirect incorporation*’. This can be understood as a grid (figure 2.1) with ‘direct or indirect’ as the Y-axis and ‘full or partial’ as the X-axis. Therefore, each State party can only be described using both an X and a Y-axis category as a description.

Figure 2.1 Grid of legal incorporation types



⁷⁸ Laura Lundy, Ursula Kilkelly and Bronagh Byrne, ‘Incorporation of the United Nations Convention on the Rights of the Child in Law: A Comparative Review’ (2013) 21 The International Journal of Children’s Rights 442.

⁷⁹ Laura Lundy and others, ‘UNICEF - The UN Convention on the Rights of the Child: A Study of Legal Implementation in 12 Countries’ (UNICEF UK 2012).

⁸⁰ Lundy, Kilkelly and Byrne (n 78).

Lundy et al.'s study also considers other factors such as the hierarchical level of incorporation, including whether children's rights are contained in the constitution of the State party, and if incorporated into legislation, whether the status of this legislation is higher than ordinary statute. Critically this study found that:

what emerges from the research is an understanding that children's rights are better protected - at least in law if not also in practice - in countries which have given legal status to the CRC in a systematic way and which have followed this up by establishing the necessary systems to effectively support, monitor and enforce the implementation of CRC rights.⁸¹

An aspect that is mentioned in their article is that full direct incorporation can be automatic as a result of ratification in monist State parties. In this study, in chapter 5, the concept of 'automatic' incorporation is included as a third variable to the classification system. This is due to the observation that there would appear to be a difference between situations of automatic incorporation in comparison to deliberate incorporation.

Other authors have also considered the taxonomy of incorporation. McCall-Smith uses the term 'sectoral or piecemeal incorporation' rather than partial incorporation and notes that: 'arguably this is not "incorporation" at all, but the cherry-picking of obligations and, as is often the case, done without direct reference to the treaty.'⁸² Moreover, does the method of incorporation matter? In the report by Daly, McDermott Rees, and Curtis on Enhancing the Status of UN Treaty Rights in Domestic Settings, one of the concluding remarks was that:

The research also concurs with previous studies which indicate that direct incorporation of entire treaties is preferable. ... this method appears to have the best results in terms of the effective realisation of rights and in raising the consciousness of rights-holders and duty bearers.⁸³

In chapter 5, the type of incorporation of the State parties achieving better grades will be contrasted to the remainder of the sample to see whether there is a notable difference. Also not discussed in the literature is the definition or, possibly more to the point, the use of the word 'incorporation' in legal terms. Throughout this thesis 'incorporation' is used, as it appears to be used in children's rights academic commentary, to include both domestic acts that 'echo' international instruments in order to give rise to those rights domestically, as well as acts that

⁸¹ *ibid* 461.

⁸² Kasey McCall-Smith, 'To Incorporate the CRC or Not – Is This Really the Question?' (2019) 23 *International Journal of Human Rights* 425, 435.

⁸³ Aoife Daly, Yvonne McDermott Rees and Joshua Curtis, 'Enhancing the Status of UN Treaty Rights in Domestic Settings' (2018) 20.

explicitly express that they incorporate a named international instrument into domestic law. In chapter 8, within the conclusions on whether the UNCRC should be incorporated into domestic law, the narrower meaning of the word incorporation used, for instance, by some judges is discussed.

[The UNCRC in the UK](#)

With regards to children's rights in the UK, Driscoll describes that the situation in the UK 'reflects the remnants of a paternalistic culture and an ambivalent commitment to the concept of children as rights holders'.⁸⁴ She is also critical of the UK government on the basis that under article 4, particularly regarding social and cultural rights, State parties 'shall undertake such measures to the maximum extent of their available resources'.⁸⁵ In that as she describes, 'To date, the UK Government has not demonstrated a commitment to children's rights commensurate with its economic standing'.⁸⁶ It is because of the concerns about the UK's implementation and as the UK has, using McCall-Smith's language, 'piecemeal' incorporation as the UNCRC has not been fully incorporated into UK legislation, that understanding how the Convention still interacts and influences UK law is necessary. Gilmore's⁸⁷ article on the use of the Convention by the Family Courts in 130 reported cases up until April 2017 is vital to understanding the role the Convention can have even when domestic legislation is absent. His study is both quantitative and qualitative and considers which articles of the UNCRC are being raised, with articles 12 (right to have view heard) and 3 (best interests) the most frequently referred to. In addition, he found that the third most prevalent reference was to the Convention in general rather than a specific article. He found that the Convention was being used in a number of ways: as a means by which to interpret law where there is ambiguity, as a means of grounding the decision in a children's rights perspective, and as a means to reinforce domestic legislation that reflects the principles of the UNCRC.

[Comparative Children's Rights – when are comparisons 'Comparative law'?](#)

By the very nature of the Convention being international, it invites comparative studies such as the work mentioned above by Gran and Lundy et al. Many of these comparative studies tend to be consecutively comparative rather than concurrently comparative – that is to say each State party is considered alone, one at a time; in some texts overarching observations are then

⁸⁴ Jenny Driscoll, 'The Rights of the Child: United Kingdom National Report' in Olga Cvejić Jančić (ed), *The Rights of the Child in a Changing World - 25 years after the UN Convention on the Rights of the Child* (Springer International Publishing 2016) 346.

⁸⁵ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 4.

⁸⁶ Driscoll (n 84) 347.

⁸⁷ Stephen Gilmore, 'Use of the UNCRC in Family Law Cases in England and Wales' (2017) 25 *International Journal of Children's Rights* 500.

brought together in conclusion. An example of a consecutive comparative text would include Jančić⁸⁸ where each chapter in the collection relates to the implementation of the Convention in twenty-one member states. Zweigert and Kötz would argue that this is not truly 'comparative law', and state that 'the mere study of foreign law falls short of being comparative law'.⁸⁹ An example they give is of a study produced by the League of Nations where a collection of reports from different nations about their solution to a problem were brought together. However, as there were 'no real comparisons' of these solutions, 'at most one could call it descriptive comparative law', in Zweigert and Kötz's view:

One can speak of comparative law only if there are specific comparative reflections on the problem to which the work is devoted.⁹⁰

Under this narrow definition, the study by Lundy et al. could be argued to be considered 'comparative law' but many of the other comparative studies would not. Is this study then 'comparative law' or merely 'comparative'? In chapter 4, what is being compared is not law per se; though described as jurisprudence by authors such as Price Cohen, these are the Concluding Observations reports of the Committee. The study is, in many ways, a comparison of criticisms and recommendations to improve, which is why the grading process starts each time at an A grade and works down the grading options dependent on how many criticisms there are and their substance. The legal systems of the top-performing State parties from chapter 4 are considered in greater depth in chapter 5, and in later chapters, the recommendations to amend law are investigated, but legal remedies to specifically identified problems are not compared between State parties. Therefore, under Zweigert and Kötz's definition, this study is not comparative law. However, this study may assist future studies in choosing which foreign legal systems to undertake comparative law studies about as it highlights which legal systems have achieved better implementation of the Convention. This study also highlights the prevalence of the existing commentary on individual topics and issues which may facilitate future studies. Additionally, it is the existence of serial comparative studies such as Jančić's that has enabled a study such as this to go beyond the Committee's comments. It could further be argued that this is a 'meta-comparative law' study, comparing not the details of legislation but the successfulness of legal systems' integration of a United Nations treaty, as measured by the Committee's concluding observations. Nevertheless, in this study in the first phase State parties

⁸⁸ Olga Cvejić Jančić, *The Rights of the Child in a Changing World - 25 Years after The UN Convention on the Rights of the Child* (Springer International Publishing 2016).

⁸⁹ Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law (Translated by Weir, T)* (3rd edn, Oxford University Press 1998) 6.

⁹⁰ *ibid.*

are considered concurrently while the clusters of articles are considered consecutively comparing the Committee's comments.

This study places the Convention at the centre of its enquiry because as Price Cohen notes in the introduction to her compilation of CO reports on the Jurisprudence on the Rights of the Child:

The Convention on the Rights of the Child is central to any effort to understand child rights law, primarily because it was the first comprehensive child rights treaty in the world, and secondarily because it is the standard by which all other child rights laws are measured.⁹¹

2.5 Conclusions

This chapter has introduced the concepts that underpin the theory and method of this study which enabled research questions to be formed from the research objectives outlined in chapter 1 (the introduction to the thesis). Chapter 2 itself does not attempt to answer any of the research questions, it explores the foundations upon which the method was developed in order to address these questions.

The first conclusion critical to this study is that the process for reporting to the Committee creates a framework, both due to the process (cycle of reporting) and structure (clusters of articles), which can be used for investigating State party implementation of the Convention. Further, the structure the Committee has created with the creation of clusters, is a useful tool for grouping articles into manageable sets for analysing implementation. This chapter has also described the larger structure of human rights reports that create the overall monitoring system that the Convention on the Rights of the Child and the Committee are a part of.

That CO reports have been considered to be 'jurisprudence' by experts researching and commenting on children's rights is demonstrated. In addition, they have been recognised as a method by which it is possible to gain 'insight into the way in which the Committee interprets the convention'.⁹² Furthermore, and critically important to this study is that the Convention's status as providing 'a comprehensive set of standards against which ratifying states may measure the extent to which they fulfil children's rights'⁹³ has been accepted. This study uses this concept that the UNCRC is a standard against which domestic legislation and

⁹¹ Price Cohen, *The Jurisprudence on the Rights of the Child* (n 65).

⁹² Fortin (n 68) 47.

⁹³ *ibid* 45.

implementation of rights can be measured.

Further to the CO reports being considered as jurisprudence, and the reporting process being a framework that can be used to gauge implementation, this chapter has demonstrated that the Convention itself is accepted as a legal framework that can be used to judge incorporation of rights. This chapter has confirmed that the legal incorporation of the Convention has been an important theme in the literature, with studies undertaken to explore incorporation types and create taxonomies of incorporation. This literature is significant for this study, because it forms the basis upon which the types of incorporation of this sample are categorised.

This chapter has also established that interest in assessing the realisation of children's rights by State parties is not new, however, attempting to assess implementation using the CO reports as the documentary evidence indicating levels of implementation is a new approach.

Chapter 3 – Methodology and Method

3.1 Introduction

This chapter describes the methodology behind this study as well as a detailed description of the method used. As this is an innovative method and a trial to see if it is possible to infer levels of implementation by comparing concluding observations (CO) reports, the method used is set out in detail. It is primarily a legal study, nevertheless, the first phase uses social research methods in order to investigate the implementation of the UNCRC. Therefore, as it can be described as a socio-legal study, it is important to locate the study, both in legal and social research theories and methodologies. The terms ‘method’ and ‘methodology’ are construed in line with Cryer et al.⁹⁴, where the method is ‘the way in which the research project is pursued’ and the methodology ‘has theoretical connotations’, Cryer et al. also describe that methodology ‘guides our thinking or questioning of, or within, that field or both’. This chapter primarily discusses the method for the first phase of the study, setting out in detail how the documents were analysed, the results of which are contained in chapter 4 and it is the results from this analysis that are the basis for the legal discussion for chapters 5, 6 and 7.

The first section of this chapter is about the methodology behind the study. The chapter then explores the method used, initially focusing on the selection of the study sample and the reporting process that the study utilises. The concept that CO reports have been considered to be jurisprudence has been illustrated in chapter 2. This chapter progresses to explain the document analysis method used and expands on a specific cluster to demonstrate the potential complexity of clusters. The grading process that has been used is explained and examples given. Finally, chapter conclusions are drawn together.

Chapter 3 is focused on the research objective ‘to create a method to measure implementation of the UNCRC’, and therefore the creation of a method to answer three of the research questions, firstly is it possible to infer State party implementation of children’s rights by analysing Concluding Observations reports by the Committee on the rights of the child. Secondly, is it possible to assess which State parties are achieving better implementation? Finally, what can be learnt about the Committee’s interpretation of the Convention by analysing their Concluding Observations reports?

The Concluding Observations reports are documents and the rationale behind the decision to analyse them using content analysis, was because the intention was to investigate whether they

⁹⁴ Robert Cryer and others, *Research Methodologies in EU and International Law* (Hart 2011).

were sufficiently formulaic and structured in such a manner as to allow direct comparison between each one. It was anticipated that by attributing codes to the text in replicable and systematic ways the framework of the documents would be revealed which would enable content analysis of each section (clusters) of the documents to be undertaken. Additionally, that this would in turn enable patterns in the implementation to be discovered which would facilitate answering the first relevant research question i.e. whether it is possible to infer State party implementation of children's rights by analysing Concluding Observations reports. Having established that the CO reports do give a comparable indication of the Committee's view of implementation in each State party then it was possible to answer the second research question and assess which State parties are achieving better implementation. With regards to the research question of, what can be learnt about the Committee's interpretation of the Convention, by using content analysis for each cluster, the patterns of the Committee's comments for each cluster could be observed, enabling assessment of comments on specific issues to be evaluated to infer interpretation of issues and the Convention.

3.2 Methodology

This study is primarily situated in the legal field of study, nevertheless social research methods are utilised and therefore the theoretical perspectives of both have relevance. Before considering how the social research epistemological and ontological considerations interweave with legal jurisprudential theory it is useful to first consider legal theory separately.

Legal theory is frequently separated simply into 'natural law' and 'positivist law' (not to be confused with social positivism). Natural law theory is the theory that law draws its legitimacy from morality (frequently Christian), whereas positivist legal theory considers that law derives its validity from been created in accordance with the correct procedure and by being written law. It is valid law whether it is morally right or not. This study is a pragmatic look at what the law is, in the form of a UN treaty, and considers how it has been implemented in different domestic legal systems. The initial analysis accepts the Convention as it is; as the Convention is explored through the jurisprudence of the Committee, elements of the Convention that could be improved are noted for discussion in the conclusion. Despite an initial legal positivist approach to the Convention, the relevance of a 'natural law' jurisprudential approach cannot be ignored when considering human rights law as:

much human rights scholarship in both international and EU law is based on a secular version of natural law, in that the content and status of human rights law is assumed by many to spring fully formed from the inherent dignity of the human being.⁹⁵

As Price-Cohen expands:

One of the most consistently accepted theories regarding the basis of human rights treaties is that the roots of these treaties – the positive law of human rights – can be found in earlier concepts of natural law.⁹⁶

She describes how many of the human rights treaties were based upon previous declarations of human rights so that the positive law occurred after and was built on the foundations of a concept born of natural law. She critically notes, however, that the UNCRC is the exception as the final treaty bears little similarity to the earlier declaration. Further, it expands on the preceding recognised rights:

In other words, the Convention on the Rights of the Child is an anomaly among human rights treaties in that an important segment of the positive law of the Convention was not preceded by rights claims based on natural law nor does it faithfully replicate the content of its related declaration. In this case, positive law preceded claims for rights.⁹⁷

It can be accepted then that many of the rights in the Convention are based on earlier moral claims of rights, however the Convention also includes new rights not previously declared as moral rights. The Convention draws its legal standing from being created as a treaty as that, 'once it had been completed by the Working Group, ... it has gone into force more quickly than any other previous human rights treaty'.⁹⁸ Within this study the Convention is approached from a legally positivist standpoint in that it is accepted as valid law and its implementation is the focus of the analysis.

The social research methodology and theoretical approaches utilised for this study can be described using Bryman's⁹⁹ terminology. Essentially, the epistemological stance is one of interpretivism with an ontological constructionist position. That is to say, this study considers that the social world is in a state of change as it is a social construct and that to study it is interpreting human action. Interpretivism is the contrasting epistemology to (social) positivism, which is why the description of the legal theory stance being legal positivism does not sit easily.

⁹⁵ *ibid.*

⁹⁶ Cynthia Price Cohen, 'The Relevance of Theories of Natural Law and Legal Positivism' in Michael Freeman and Philip Veerman (eds), *The Ideologies of Children's Rights* (Brill Nijhoff 1992) 54.

⁹⁷ *ibid.*

⁹⁸ *ibid.* 65.

⁹⁹ Alan Bryman, *Social Research Methods* (5th edn, Oxford: Oxford University Press 2016).

Despite the approach being described as interpretivist it is still possible to describe the legal jurisprudential approach to the study as legally positivist even though it is acknowledged that legal positivism is originally related to epistemological positivism, in that knowledge is based on what can be known through observation, 'Law is thus the observable phenomenon of legislation, custom, adjudication by courts and other legal institutions'.¹⁰⁰ This original link between social and legal positivism does not exclude an interpretivist approach and here the theoretical approach taken is that law is a social-construct and the result of human behaviour. Though law can be observed, it is necessary to do so, and to form understanding of those observations taking into consideration that law is a human construction and subject to social changes; therefore, the epistemological stance is one of interpretivism. Linked to the epistemological position is the ontological consideration, whereby law is viewed as 'social constructions built up from the perceptions and actions of social actors'.¹⁰¹ Further, as Samuel¹⁰² discusses when considering comparative law, it is necessary to consider legal culture as embedded within a broader social culture, as a lens through which to view the law. Human rights can also be considered to be 'social-constructs', as Abramson describes, he also calls them "tools' that society uses to promote the well-being of its members'.¹⁰³

This study is a legal exploration to see whether it is possible to use the jurisprudence of the Committee (the CO reports) to analyse and compare different State parties' implementation of the Convention, searching for better practice. The study is based on a philosophy that law is a human construct and that what was constructed as the UNCRC is different to what has been constructed by separate State parties. It seeks to compare these different legal constructions of children's rights using the UNCRC as the keystone against which the individual State party's laws are compared.

3.3 The selection of State parties for the study sample

With 196 State parties who have ratified the UNCRC to select from the process of deciding which State parties to include in the initial document analysis was a critical step. The intention was to choose a sample of State parties that covered different profiles, taking into account the geography, regional voting group, population, political, legal, historical, and religious

¹⁰⁰ Cryer and others (n 94).

¹⁰¹ Bryman (n 99).

¹⁰² Geoffrey Samuel, 'Comparative Law and Its Methodology' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (2nd edn, Routledge 2018).

¹⁰³ Bruce Abramson, 'Article 2: The Right of Non-Discrimination' in André Alan and others (eds), *Commentary on the United Nations Convention on the Rights of the Child* (Brill | Nijhoff 2008) 3.

backgrounds. Furthermore, selecting State parties whose most recent CO from the Committee was within a relatively narrow time frame was considered imperative, in order to be able to compare the relatively current state of affairs within each State party.

The reporting dates of the most recent concluding observations from the Committee

The first step was to gather the data on the current dates of reports for all State parties in the reporting process. The final spreadsheet and a full description are included in appendix A-1. This spreadsheet was created and was accurate as of August 2017. An example showing a section of this table is displayed in figure 3.1 to demonstrate the range of dates of reports and the varying frequency of reporting.

The column with the heading ‘Most recent State report’ shows the year the most recent State party report was published. These are highlighted using a colour gradient from red to green, red being the oldest date and darker green being the most recent date. The oldest ‘recent’ reports in the sample at figure 3.1 are from Bahamas and Belize for 2004 and it can be seen in figure 3.1 that the Bahamas have only reported the once. However, the oldest ‘most recent report’ of all State parties was noted to be from the Federated States of Micronesia in 1996.

The next four columns under the heading ‘Previous state reports’ show the dates State parties reported prior to the most recent report. This highlights that some State parties have reported as many as five times, whilst some have only reported once. The State parties with the most reports are Denmark, Norway, and Sweden with five reports each. These columns continue the colour gradient from the previous column of red to green, red being the oldest date and darker green being the most recent date.

Figure 3.1 Sample of spreadsheet of reporting dates.

	Most recent State report	Previous State Reports				Most recent concluding observations	Due in 2017 /2018	Overdue
Austria	2011	2004	1997			2012	2018	
Azerbaijan	2011	2005	1996			2012	2018	
Bahamas	2004					2005		2008
Bahrain	2010	2001				2011	2017	
Bangladesh	2014	2008	2003	1995		2015		
Barbados	2014	1997				2017		
Belarus	2010	2001	1993			2011	2017	
Belgium	2009	2001	1994			2010	2017	
Belize	2004	1997				2005		2007
Benin	2013	2005	1997			2016		
Bhutan	2016	2007	1999			2017		
Bolivia	2009	2004	1997	1992		2009		2015
Bosnia and Herzegovina	2011	2004				2012	2017	

The next column with the heading 'most recent concluding observations' shows the year of the current CO report. This column uses the colour gradient from pink to blue with the most recent CO showing as blue. It is, therefore, possible to see where a state is currently in the reporting process of having reported but not yet received a CO from the committee. The next column gives the year in which each State party is next due to report, if that is in 2017 or 2018, the time period within which data is being collected.

The final column above lists the date that a State party should have reported if that report is overdue. The graduated colour for overdue reports runs from yellow for reports that are only just due to red for reports that are very overdue. Initially State parties were to report two years after ratification and then periodically every five years. However due to the committee's workload and various delays, increasingly States were invited to merge two or three reports into one single report and in the text of the CO, the committee began to set the date for the next report to be received. This table enabled the chosen sample of 50 State parties to be selected from State parties who had completed the reporting cycle within the last five years (2012 to 2017) with two additional reports outside the five-year band. The sample chosen from those available within the five-year period were deliberately chosen to represent different legal systems, both civil and common law, to cover different geographical locations (as designated by the UN statistical department 'geoscheme'). In addition, differing land mass sizes and populations were taken into consideration in an attempt to have as diverse a sample as possible within the limitation of the five-year period of reports. The two exceptions to the five-year period are Japan and Norway where, due to their legal framework in the case of Japan and history of human and children's rights in the case of Norway, it was felt that they should be included even though they are both in the process of starting new reporting cycles and therefore their previous CO is older than the chosen sample years. The final sample size was, therefore, 52 State parties.

[Reservations and declarations](#)

One of the variables in the way that State parties have ratified the Convention is the use of 'Reservations' and 'Declarations'.¹⁰⁴ In order to understand which State parties had used these, a further spreadsheet was created. The spreadsheet showing the result of the analysis is shown

¹⁰⁴ Reservations and declarations are statements upon signing or ratifying a treaty. Reservations are a statement 'made by a State by which it purports to exclude or alter the legal effect of certain provisions of a treaty in their application to that State'. The type of declarations relevant to this treaty are interpretive declarations which are a statement by a State party 'about its understanding of a matter contained in, or the interpretation of, a particular provision in a treaty'. United Nations Office of the High Commissioner for Human Rights, 'Human Rights Treaty Bodies - Glossary of Technical Terms Related to the Treaty Bodies' <<https://www.ohchr.org/EN/HRBodies/Pages/TBGlossary.aspx>> accessed 7 June 2020.

in appendix A-2. This enabled the existence of reservations and declarations to be taken into consideration for the selection process.

Study sample

Figures 3.2 and 3.3 display the fifty-two chosen states in alphabetical order.

The table displays relevant details, including:

- ❖ The 'UN Geoscheme' that the United Nations statistics division allocates a member state for geographical statistical analysis. (N.B. these are a description of physical location not political or historical connections.)
- ❖ The 'UN regional groups' that the State party votes with (WEOG is 'Western Europe and Others Group'. GRULAC is the 'Group of Latin America and Caribbean Countries'.)
- ❖ The date of the most recently published concluding observations report
- ❖ If in the near future, the date that the next State report is due (highlighted blue shows that the state report has been received and published, therefore it is hoped that the concluding remarks will follow forthwith).
- ❖ 'R&D' refers to how many reservations and declarations have been made by each member state.
- ❖ 'Obj' refers to the number of other member states who have lodged objections against the member states' reservations and declarations.

The dates in figure 3.2 and 3.3 were accurate in August 2017 when the sample was selected, and the analysis commenced.

Having chosen the sample State parties, the next phase was to find a way by which they could be compared. Fundamental to the UN treaty monitoring process is the method by which State parties report to the Committees.

Figure 3.2 Study Sample State parties A- M

State	UN Geoscheme	UN Regional Groups	CO Report	Next State Report	R&D	Obj
Albania	E. Europe	E. Europe	2012	2017	1	0
Algeria	N.Africa	Africa	2012	2018	4	0
Australia	Oceania	WEOG	2012	2018	1	0
Azerbaijan	W.Asia	E. Europe	2012	2018	0	0
Bhutan	S.Asia	Asia-Pacific	2017		0	0
Brazil	S.America	GRULAC	2015		0	0
Cameroon	C.Africa	Africa	2017		0	0
Canada	N.America	WEOG	2012	2018	2	0
Chile	S.America	GRULAC	2015		0	0
China	E.Asia	Asia-Pacific	2013		1	0
Columbia	S.America	GRULAC	2015		1	0
Croatia	S.Europe	E. Europe	2014		1	0
Dominican Rep	Caribbean	GRULAC	2015		0	0
Estonia	N.Europe	E. Europe	2017		0	0
Ethiopia	E.Africa	Africa	2015		0	0
Fiji	Oceania	Asia-Pacific	2014		0	0
France	W. Europe	WEOG	2016		3	0
Germany	W. Europe	WEOG	2014		0	0
Ghana	W.Africa	Africa	2015		0	0
Iceland	N.Europe	WEOG	2012	2018	0	0
India	S.Asia	Asia-Pacific	2014		1	0
Ireland	N.Europe	WEOG	2016		1	0
Israel	W.Asia	WEOG	2013	2018	0	0
Jamaica	Caribbean	GRULAC	2015		0	0
Japan	E.Asia	Asia-Pacific	2010	2016	3	0
Kazakhstan	C.Asia	Asia-Pacific	2015		0	0
Malta	S.Europe	WEOG	2013		0	0
Mexico	C.America	GRULAC	2015		0	0
Mongolia	E.Asia	Asia-Pacific	2017		0	0
Morocco	N.Africa	Africa	2014		1	0

Figure 3.3 Study Sample State parties N-Z

State	UN Geoscheme	UN Regional Groups	CO Report	Next State Report	R&D	Obj
Nepal	S.Asia	Asia-Pacific	2016		0	0
New Zealand	Oceania	WEOG	2016		3	0
Norway	N.Europe	WEOG	2010	2016	0	0
Poland	E. Europe	E. Europe	2015		6	0
Portugal	S.Europe	WEOG	2014		0	0
Romania	E. Europe	E. Europe	2017		0	0
Russian Fed	E. Europe	E. Europe	2014		0	0
Saudi Arabia	W.Asia	Asia-Pacific	2016		1	7
Senegal	W.Africa	Africa	2016		0	0
Serbia	E. Europe	E. Europe	2017		0	0
Seychelles	E.Africa	Africa	2012	2016	0	0
South Africa	S.Africa	Africa	2016		0	0
Suriname	S.America	GRULAC	2016		0	0
Sweden	N.Europe	WEOG	2015		0	0
Switzerland	W. Europe	WEOG	2015		4	0
The Gambia	W.Africa	Africa	2015		0	0
Timor-Leste	S.E.Asia	Asia-Pacific	2015		0	0
Turkey	W.Asia	WEOG	2012	2017	3	3
UK	N.Europe	WEOG	2016		4	0
Uruguay	S.America	GRULAC	2015		1	0
Viet Nam	S.E.Asia	Asia-Pacific	2012	2017	0	0
Zambia	E.Africa	Africa	2016		0	0

3.4 Document analysis method

The first stage of document analysis, using techniques from content analysis, is designed to identify which member states will be considered and analysed in more depth at the second stage. Due to the substantial number of documents of varying lengths, the decision was made to undertake this analysis using MAXQDA¹⁰⁵ a computer-assisted qualitative data analysis software (CAQDAS). Creating and calibrating the method for analysing the CO reports from the United Nations was an iterative process, which has developed from an initially deductive set of codes with additional codes developing inductively from the text analysis process. The terms

¹⁰⁵ MAXQDA by VERBI GmbH.

'code' and 'coding' describe the act of identifying a piece of text within a document that can be labelled (coded) as belonging to a set criteria or theme. A code then is a form of a label.

The first cycle of coding uses predetermined codes which would fall under the heading described by Saldaña¹⁰⁶ as structural and descriptive coding. Structural coding is used to identify text that relates directly to a topic that had been predetermined for analysis and descriptive coding is used to identify the overall topic of a passage.

Deductive codes

Prior to starting the coding process, there were groups of predetermined themes based on the concept of the study and research framework investigating the implementation of the CRC. These predetermined themes being searched for created the deductive codes. These included codes relating to the articles of the Convention, and the language used where it indicates a 'judgement', whether positive or negative, as well as recommendations made by the committee. Additionally, predetermined were codes relating to specific areas of interest. These codes developed during the testing phase and some changes were made inductively.

Codes from the Convention on the Rights of the Child

The first predetermined set of codes comes from the articles contained within the Convention. Each comment and recommendation pair were identified with the article of the Convention to which it relates. Initially, these codes were grouped together using the UNICEF categorisation noted in chapter 2.2 (Guiding Principles, Survival and Development, Protection, and Participation). However, the UNICEF groups have some articles in more than one category, for instance, article 4 (Implementation of the Convention) is categorised as survival and development, protection, and participation. Therefore, for coding the documents and to allow quick, visible recognition within the software, the codes allocated to articles were adapted from the UNICEF categories to allow a single categorisation per article. A colour was assigned to each category which was matched to the coding colour assigned within MAXQDA. The coding process in MAXQDA and the subsequent inductive changes are discussed under the subheading of Coding Process and Inductive Codes. The articles and their categories are shown in figure 3.4 and 3.5.

¹⁰⁶ Johnny Saldaña, *The Coding Manual for Qualitative Researchers* (London : Sage 2009).

Figure 3.4 Key to UNICEF categorisation of articles

Key	Guiding Principles
	Survival and Development
	Protection
	Participation

Figure 3.5 Articles grouped into four categories.

Article		Article	
1	Definition of the Child	23	Children with a disability
2	Non-discrimination	24	Health and health services
3	Best interests of the child	25	Review of treatment and care
4	Implementation of the convention	26	Social Security
5	Parental guidance/evolving capacity	27	Adequate standards of living
6	Life, survival and development	28	Right to education
7	Birth registration, name, nationality, care	29	Goals of education
8	Protection and preservation of identity	30	Children from minority or indigenous groups
9	Separation from parents	31	Leisure, play and culture
10	Family reunification	32	Child labour
11	Abduction and non-return of children	33	Drug abuse
12	Respect for the views of the child	34	Sexual exploitation
13	Freedom from expression	35	Abduction, sale and trafficking
14	Freedom of thought, belief and religion	36	Other forms of exploitation
15	Freedom of association	37	Inhumane treatment and detention
16	Rights to privacy	38	War and armed conflicts
17	Access to information from the media	39	Recovery from trauma and reintegration
18	Parental responsibilities and state assistance	40	Juvenile justice
19	Protection from violence, abuse and neglect	41	Respect for higher national standards
20	Children unable to live with their family	42	Knowledge of rights
21	Adoption	43	
22	Refugee children	44	Timely reports

NB. Article 43 is not allocated to a group as it relates to the creation of the committee.

Within MAXQDA higher level codes are referred to as ‘parent codes’¹⁰⁷ and sub-level codes as ‘child codes’. Here these four categories form parent codes, and they themselves are not used to code text, it is the child sub-codes labelled to each individual article (art 1, art 2 etc.) which are used to identify text relating to each article. Having a parent code allows both management of the codes and assists with running analysis and retrieving subsets of data known as ‘retrieved segments’ in MAXQDA.

Language

The first element to consider regarding language is that the documents being considered are in English. English is one of the six official languages of the UN and all of the documents accessed from the UN including the CO and State party reports have an official version in English. Further, English and French are the working languages of the UN Secretariat and the Committee on the Rights of the Child publish their general comments either in English or an official English

¹⁰⁷ VERBI GmbH, ‘MAXQDA - Reference Manual’ (2015)
https://www.maxqda.com/download/manuals/MAX12_manual_eng.pdf accessed 1 September 2017.

version is available. It is suitable therefore to undertake this analysis in English because of the availability of documents in English and because English is one of the main UN languages.

Language usage

The second set of predetermined codes were based on language, looking for words denoting judgement. Because the documents are published on behalf of a committee and will have had multiple authors in any single documents and different authors over time, a detailed analysis of the discourse and the linguistics would be problematic. Therefore, the use of language has been analysed in a broader sense of negative and positive and whilst specific words have been searched for and categorised as negative or positive, the individual weighting of different words has not been undertaken. For instance, 'welcomes' and 'appreciates' have both been encoded as positive, and one is not considered to be greater or lesser on a positivity scale. Red, amber, and green have been used to identify language: red for negative, green for positive, and 'amber' (brown and yellow) where the committee is making a recommendation to the state party.

Positive language

The term *positive language* (italic text denotes a named code) is given to a parent code within the coding hierarchy. This code does not have any sections of text directly coded to it. Initially there were multiple child codes under this parent code. However, as the initial sample documents were coded it became clear that these could be merged into simpler codes due to different words being used interchangeably. An example of this is 'welcomes' and 'appreciates' which originally were separate child codes; it became clear that merging these into a single code called *Welcomes/Appreciates* gave a clearer representation of the text. This code now encompasses variations of these words: welcome, welcomes, welcoming, appreciates, appreciation, appreciating. Further child codes are named *positive* (which covers the use of specific words, positive, notes, and noting) and *positive statement*, which is used manually when there is a positive statement that does not fall into one of the specific words already identified. The parent code and the child codes for *positive language* are visible in figure 3.7 where the full code system is set out.

Where a paragraph identified as falling under the heading *positive language* has two or more words that would be identified as positive, then the first or the main word is used for coding the paragraph and the second word is used as either an 'enhancer' or a 'multiplier'. Enhancers and multipliers are coded as individual words, not paragraphs, and are coded with the highlight colour relevant to the parent paragraph (*red* for negative and *green* for positive).

Figure 3.6 Screenshot from MAXQDA

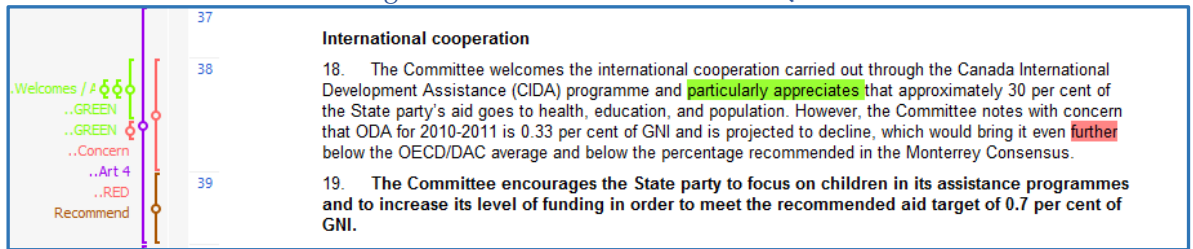


Figure 3.6 shows a screenshot from MAXQDA of two paragraphs numbered 18 and 19 from a CO report under the subheading of International cooperation. (An example of part of a fully coded CO report is included at appendix A-3 to A-9). On the left-hand side of the screenshot, the coding strip can be viewed, and there are seven distinct codes attached to these two paragraphs which can be seen by the number of stripes with small circles pinpointing the midpoint of the stripe. Focusing on codes under the parent *positive language* there are three green stripes. The largest coding stripe is attached to the code *welcomes/appreciates*; this is attached to the text from the beginning of the paragraph up to and including the word ‘however’ in the third line. The word ‘however’ here is identified as a ‘qualifier’ as it qualifies the statement. The reason it is necessary to include the qualifying word in the coded segment is because when this code is used to analyse the text and the section is included in a report of retrieved segments, the addition of the word ‘however’ indicates that the paragraph continued into a negative comment. In this section, two individual words are visibly highlighted as green (in the screenshot this looks like two words highlighted in a single stripe, they are in fact two separate highlights which can be seen by there being two small stripes in the coding stripe section of the screenshot). The reason for these words to be highlighted *green* is because they are acting as ‘multipliers’ and ‘enhancers’. The word ‘particularly’ is an enhancer as it is strengthening the positive language. The second green highlight is of the word ‘appreciates’; had the paragraph not started with the word ‘welcomes’ (third word), this paragraph would still have been coded under the code *welcomes/appreciates* due to the use of the word ‘appreciate’. However, in this sentence, the word ‘appreciates’ is indicating a second positive statement. Therefore, it is individually coded and highlighted as a multiplier.

Negative language

The term *negative language* as with *positive language* is the name of a parent code; the child codes are labelled *concern* and *regret*. The code *concern* relates to a statement where the Committee raises a concern or makes a note of a negative. In most cases, it will include the word ‘concern’; however, the precise use of the word ‘concern’ is not a prerequisite for this code, whereas, the code *regret* is a form of ‘in vivo’ coding due to the paragraph always including the word ‘regret’.

The codes under *positive language* are used to encode only the section of the paragraph that related to the positive statement and the potential existence of a qualifier. In order for the retrieved segment to make sense when it appears in a separate report, the whole paragraph that includes the negative statement is coded as negative. In line with the coding of positive language, a red highlight of an individual word or short phrase is indicative of an emphasiser or multiplier. During the initial trial coding phase, it was identified that at times the report would use such words as 'reiterate' or 'recalls' to emphasise that a concern was long-standing and previous recommendations had been made. These words are also treated as emphasisers and highlighted as *red*, indicating their negative nature.

For both positive and negative language, if the report is written with the paragraph having bullet points to indicate multiple aspects of either the concern or the positive, these are not highlighted to show multipliers as the bullet points themselves indicates the multiple aspect of the paragraph.

Recommendations

The CO reports are written with paragraphs of actions the committee recommends the state party undertakes; these are in almost all cases identified by bold text. These were coded under *recommends*. The vast majority of these paragraphs do contain the word 'recommends'; occasionally the word 'encourage' is used in the alternative, and these are also encoded to the code *recommend*. In addition, a *yellow* highlight is used for multipliers and enhancers. Recommendations can include a positive element where the Committee is encouraging a State party to continue their work improving an area, frequently the language used is 'to continue' or 'to strengthen'. Where it is clear that a recommendation has been repeated by the use of language such as 'reiterate' or 'recall', these are highlighted as *red* as they are a use of negative language even though they are in a recommendation paragraph.

Codes relating to areas of specific interest.

Three other parent codes were identified prior to the initial coding process as themes that were likely to be found and had already been identified as potentially interesting from literature. These are individual codes of *reservations* and *declarations* which come under a parent *R&D*, *legislation* and *criminal justice*. The code *legislation* is used when there is a specific piece of legislation mentioned or where there is a clear comment or recommendation about a piece of legislation. The code *criminal justice* is used in addition to the code *Art 40* which relates precisely to juvenile justice; the code *criminal justice* is used when children in conflict with the state are mentioned in context of other articles as well. This is to allow a comprehensive review of references to criminal justice using the retrieved segments analysis.

Inductive coding

Prior to starting the encoding process the need for individually identifying words being used as multipliers and enhancers was not anticipated and the creation of the *red*, *green*, and *yellow* highlights as described with regards to language codes was an inductive process.

Additional themes began to emerge from the text and soon warranted their own codes; these included *child marriage*, *gender*, and *race*. These themes were identified as meriting their own code because there was clear repetition of the themes across different clusters. The themes were coded so that at the analysis stage they could be considered further to understand, what if anything, they could tell us about the Committee's focus of concern.

With regards to the CRC articles, it became clear that on occasion it was not possible to identify which article the committee was commenting on; these sections of text are coded as *Unknown Art*. In addition, it was observed that article 44, which relates to State parties' reports and the reporting process, needed its own code and subheading in the code hierarchy. Other additional codes created inductively included *corruption* which was allocated an icon of a red beetle so that it would stand out. References to 'general comment' (GC) documents were coded with a *blue* highlight as it became apparent the Committee referred to GC documents regularly, and therefore the references to these documents was identified as an element of the construction of the CO reports that would need further consideration or recognition in the analysis stage.

The resulting parent and child codes in the Code System appears as the screenshot from MAZQDA in figure 3.7. Due to the large number of articles that fall under the parent codes for the CRC these lists are not expanded for view.

This screenshot also shows that within MAZQDA, it is possible to attach memos to codes (the yellow or half yellow box icon). These allow the user to make notes about how a code is being used and developed to keep track of the process.

Figure 3.7 Screenshot of MAXQDA Code System

Code System	Frequency
Code System	14,801
corruption	71
BLUE - Gen Com No.	561
Financial resources	305
Racial Minorities	467
Gender	0
Girl	383
G	542
Female	387
intersex	52
Child Marriage	87
Criminal Justice	103
Legislation	345
R & D	0
Reservations	18
Declarations	6
Recommend	2,029
YELLOW	2,127
Positive Language	0
GREEN	146
Welcomes / Appreciates	773
Positive	461
Positive Statement	74
Negative Language	1
RED	2,150
Regret	97
Concern	1,536
CRC - ? Unknown Art?	69
CRC - Reporting (inc Art 44)	59
CRC - Guiding Principles	538
CRC - Survival and Development	714

The third column shows how many times the code has been attached to a piece of text. Because *Gender* is a parent code, whilst expanded to show the children codes, it has 0 codes registered to it. The child codes of *Girl* (blue star) has been attached to 383 sections of text, and the ‘grandchild code’ of magenta highlight code of ‘G’ has been attached to 542 uses of the word ‘girl’ or ‘girls’. The second child code of *female* has been attached to 387 segments of text that use the word ‘female, woman, women, or mother’, whereas, because the parent code *CRC-Guiding Principle* was not expanded to show child codes at the time of the screenshot, the total number of codes from all the child codes is displayed – in this case, 538.

The individual steps of the coding process are recorded in appendix A10-12.

[Format of concluding observations reports using clusters of articles.](#)

Initially, as described, the coding process included the use of the UNICEF group of codes as parent codes. During the coding process it was evident that the span of five years covering the sample of 52 reports was narrow enough that though there had been some variation of format of the Committee's clusters, prescribed in their guidelines on periodic reporting, the difference was sufficiently small that these clusters could be used as the framework for assessing the

reports. In figures 3.8 and 3.9, how the articles of the Convention are allocated into clusters is demonstrated, including how some articles such as 39 are allocated to multiple clusters. As to whether an article is included in a cluster is taken from the text and not the headings in the guidelines on periodic reporting which don't necessarily reflect the text.

Figure 3.8 Key to Clusters of articles as used by the Committee in the CO reports.

Key
General measures of implementation
Definition of the Child
General Principles
Civil rights & Freedoms
Violence against Children
Family Environment and alternative care
Disability, basic health and welfare
Education, leisure and cultural activities
Special protection measures

Figure 3.9 Clusters of articles as used by the Committee in the CO reports.

Article		Article	
1	Definition of the Child	26	Social Security
2	Non-discrimination	27 (1-3)	Adequate standards of living
3	Best interests of the child	27 (4)	Adequate standards of living
4	Implementation of the convention	28	Right to education
5	Parental guidance/evolving capacity	28 (2)	Education - prohibit - corporal punishment
6	Life, survival and development	29	Goals of education
6 (2)	Life, survival and development	30	Children from minority or indigenous groups
7	Birth registration, name, nationality, care	30	Cultural rights of children
8	Protection and preservation of identity	31	Leisure, play and culture
9	Separation from parents	32	Child labour
10	Family reunification	33	Drug abuse
11	Abduction and non-return of children	33	Drug abuse
12	Respect for the views of the child	34	Sexual exploitation
13	Freedom from expression	34	Sexual exploitation
14	Freedom of thought, belief and religion	35	Abduction, sale and trafficking
15	Freedom of association	36	Other forms of exploitation
16	Rights to privacy	37 a	Inhumane treatment and detention
17	Access to information from the media	37 (b-d)	Inhumane treatment and detention
18 (1-2)	Parental responsibilities and state assistance	38	War and armed conflicts
18 (3)	Parental responsibilities and state assistance	39	Recovery from trauma and reintegration
19	Protection from violence, abuse and neglect	39	Recovery from trauma and reintegration
20	Children unable to live with their family	40	Juvenile justice
21	Adoption	41	Respect for higher national standards
22	Refugee children	42	Knowledge of rights
23	Children with a disability	43	
24	Health and health services	44	Timely reports
24 (3)	Prohibit - harmful practices	44.6	Timely reports
25	Review of treatment and care		

The version of these clusters as correct in July 2017 is described in chapter 2.2.

While the use of the clusters from the guidelines on periodic reporting is reasonably consistent, it is noted that there are some variations. For instance, the category education leisure and cultural activities in more recent reports include articles 28, 29, 30 and 31; however, in some

early reports it did not include article 30. It is also worth noting that while in some instances under a category subheading within the report the committee will then address individual articles separately, in contrast in some reports they will deal with a category as a whole and not specify which article is being addressed.

3.5 Exploring the complexity of a cluster – Definition of the Child

Before describing the details of the grading process, exploring the complexity of the cluster framework by discussing a single ‘simple’ cluster is beneficial.

The second cluster addressed in the State party and Committee reports is ‘Definition of the Child’ (DOTC); it is the only cluster relating to a single article of the Convention, article 1, defining to whom the rest of the rights apply. Though article 1 initially appears to give a straightforward definition, upon further consideration, it poses potential issues and is not as clear as it could be:

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.¹⁰⁸

The first potential issue raised with the definition is regarding the attainment of majority earlier than eighteen years. Another potential issue is what is not mentioned, because whilst the age at which a child ceases to be a child is expressly mentioned in the article, the point in time when an unborn child ‘becomes’ a child and is covered by the Convention is not expressly defined.

The articles contained in the Convention do not stand alone as there is a preamble to the Convention. Additionally, since the Committee was formed it has released a number of ‘general comments’ and guidelines regarding the reporting process giving additional information that adds to the interpretation of the Convention. The first additional piece of information as to the definition of the child precedes the articles and is contained within the preamble:

¹⁰⁸ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 1.

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”.¹⁰⁹

The immediate question resulting from reading this part of the preamble is what is meant by the term ‘appropriate legal protection’: whether that is a reference to Convention rights or other legal protection. In addition, the inclusion in the preamble of the phrase ‘before as well as after birth’ raises the question as to when a child’s rights start, pre-birth or from birth, and if they do commence pre-birth, then when during gestation. Conversely, the Committee’s GC No.7 appears to give a different view on when rights are applicable under the subheading ‘Definition of early childhood’:

In its consideration of rights in early childhood, the Committee wishes to include all young children: at birth and throughout infancy; during the preschool years; as well as during the transition to school.¹¹⁰

Here due to the use of the phrase ‘at birth and throughout infancy,’ it appears that an inference can be drawn that childhood starts at birth. However, as Grover notes, the use of the terms ‘childhood’ and ‘child’ are not necessarily the same:

In this regard, it is quite noteworthy that the Universal Declaration of Human Rights refers to “childhood” as requiring special protection, rather than to “child” the latter being a term that could be interpreted to refer to a certain legal status under national law with attendant age limits. The term “childhood” used as it is in the same phrase with the term “motherhood” in the Universal Declaration makes it clear that the proper interpretation relates to: a) the biological reality of childhood is a vulnerable period combined with b) a social status involving relative powerlessness rather than to an arbitrarily defined legal status relating to domestic law concerning age of majority.¹¹¹

Within the study sample, from the accessible English language translations, only Kazakhstan appeared to have legislative definitions of both “child (children)”¹¹² and “childhood”;¹¹³ many State parties only defined when adulthood was reached rather than defining what a child was.

¹⁰⁹ *ibid* Preamble.

¹¹⁰ UN Committee on the Rights of the Child, ‘General Comment No.7 (2005) Implementing Child Rights in Early Childhood - UN Doc. CRC/C/GC/7/Rev.1’ (2005).

¹¹¹ Sonja Grover, ‘On Recognizing Children’s Universal Rights: What Needs to Change in the Convention on the Rights of the Child’ [2004] *International Journal of Children’s Rights* 259.

¹¹² [Kazakhstan] - On Marriage (Matrimony) and Family. The Code of the Republic of Kazakhstan No. 518-IV 2011 Article 1(1)(8).

¹¹³ *ibid*.

The creation of, and reservations and declarations to article 1

In order to understand how and why there appears to be a lack of clarity as to when a child begins to have rights, considering the origins of the Convention and the process of its creation is illuminating. The originally proposed Polish draft for the Convention in 1978 was based on the declaration on the rights of the child and article 1 read:

Every child, without any exception whatsoever, shall be entitled to the rights set forth in this Convention, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.¹¹⁴

This first draft gave rise to a number of comments and issues, an illustrative example of which is from Austria pointing out that: ‘the draft does not define the term “child”. More especially, it does not say up to what age an individual may be described as a child.’¹¹⁵ Subsequently in the revised Polish draft (1979) article 1 read:

According to the present Convention a child is every human being from the moment of his birth to the age of 18 years unless, under the law of his state, he has attained his age of majority earlier.¹¹⁶

LeBlanc reflects that had this draft been accepted, ‘there would have been no controversy over the issue of abortion’.¹¹⁷ He goes on to explain how this approach would have been more consistent with other covenants and Conventions on human rights. Further, he expands that in 1980, the Holy See’s proposal to include the words ‘before as well as after birth’ divided the working group and continued to be an issue within the drafting process:

The issues continued to be raised sporadically throughout the years that the convention was under negotiation. In 1989, the delegations of Malta and Senegal, supported by the Holy See, attempted to reopen the issue by proposing an amendment of article 1 that would define the life of the child as beginning at the moment of conception.¹¹⁸

The controversial nature of the final adopted version of article 1 is evidenced by the resulting reservations and declarations that State parties made upon signing or ratifying the Convention.

¹¹⁴ United Nations Office of the High Commissioner for Human Rights, *Legislative History of the Convention on the Rights of the Child Volume 1 - UN Doc No. HR/PUB/07/1* (United Nations, 2007) 301 <<https://www.ohchr.org/Documents/Publications/LegislativeHistorycrc1en.pdf>>.

¹¹⁵ United Nations Economic and Social Council, ‘Commission on Human Rights - Thirty-Fifth Session - Item 13 - Question of a Convention on the Rights of the Child UN Doc No. E/CN.4/1324’ (1978).

¹¹⁶ United Nations Economic and Social Council, ‘Commission on Human Rights - Thirty-Sixth Session - Item 13 - Question of a Convention on the Rights of the Child UN Doc No. E/CN.4/1349’ (1980).

¹¹⁷ LeBlanc (n 18) 66.

¹¹⁸ *ibid* 67.

There is a reservation by Botswana and three declarations from Argentina, Cuba, and Guatemala directly relating to article 1. However, a number of other reservations and declarations, some made as a general statement and some referring to other specific articles, also relate to issues with article 1. Most of these reservations and declarations – with the exception of Cuba - relate to when a child first has rights rather than to when a child transitions into an adult. For example, Argentina’s declaration reads:

Concerning article 1 of the Convention, the Argentine Republic declares that the article must be interpreted to the effect that a child means every human being from the moment of conception up to the age of eighteen.¹¹⁹

With regards to general reservations and declarations relating to the issue of whether the Convention applies pre-birth, the Holy See made what was termed as ‘a statement of interpretation’ which reads:

The Holy See recognizes that the Convention represents an enactment of principles previously adopted by the United Nations, and once effective as a ratified instrument, will safeguard the rights of the child before as well as after birth, as expressly affirmed in the ‘Declaration of the Rights of the Child’ and restated in the ninth preambular paragraph of the Convention. The Holy See remains confident that the ninth preambular paragraph will serve as the perspective through which the rest of the Convention will be interpreted.¹²⁰

In direct contrast, a number of State parties chose to interpret the article differently. The United Kingdom made a general declaration: ‘The United Kingdom interprets the Convention as applicable only following a live birth.’¹²¹ In addition, France and Tunisia made declarations regarding article 6, the right to life, that they interpreted this article as not being an obstacle to the domestic legislations allowing voluntary termination of pregnancy. LeBlanc concludes that the surprising factor was how few State parties made reservations and declarations considering the controversy during the drafting process.

¹¹⁹ United Nations, ‘Status of Treaty, Chapter IV Human Rights Document 11, The Convention on the Rights of the Child, New York 20th November 1989 Accessed 31-10-2018’, (United Nations Treaty Collection ed, 2018) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en> accessed 29 January 2019.

¹²⁰ *ibid.*

¹²¹ *ibid.*

This issue, raised during the drafting of the Convention, as to whether rights are first applicable pre or at birth demonstrates that even at first glance what may appear to be an uncontroversial article, in fact, caused such significant differences of opinion that:

it was necessary to set up an informal drafting group [...] in the hope of finding a compromise. The drafting group recommended the adoption of the ninth preambular paragraph, but also recommended that the statement be included in the travaux préparatoires to the effect that, in adopting the paragraph, the working group did “not intend to prejudice the interpretation of article 1 or any other provision of the convention by States parties”.¹²²

However, in practice looking at the evidence of the Committee’s CO reports, for the 52 State parties analysed, none contained a reference to pre-birth rights or abortion under the ‘Definition of the Child’ cluster. Comments regarding abortion were generally found under the cluster covering health and welfare, indicating that in practice, what was a significant issue in drafting has not been as large an issue in the process of monitoring rights as one might initially anticipate, or that the issue is considered to be included in a different cluster.

Issues raised by the Committee in concluding observations reports

This cluster does not appear in every single CO report due to the nature of the cluster having only the single article, and therefore it is possible for a State party to have fully implemented legislation in accordance with the article and elements described in the reporting guidance. In the study sample of 52 State parties, only 27 had comments and recommendations under this cluster heading. The first step in the analysis and grading process for this cluster was recording which topics and issues were raised by the Committee in their CO reports. In the guidelines on periodic reporting, the Committee gives the following guidance:

In this section, the State party should provide relevant and up-to-date information with respect to article 1 of the Convention concerning the definition of the child in its domestic laws and regulations. If the age of majority is below the age of 18 years, the State party should indicate how all children benefit from protection and enjoy their rights under the Convention up to the age of 18 years. The State party should indicate the minimum age for marriage for girls and boys in its legislation.¹²³

¹²² LeBlanc (n 18) 69.

¹²³ UN Committee on the Rights of the Child, ‘Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child UN Doc. CRC/C/58/Rev.3’ (n 15) para 22.

This paragraph demonstrates what the Committee is looking for in reports; therefore, even before reading any of the CO reports of the sample State parties, it can be anticipated that 'age of majority' and 'child marriage' will be topics discussed. Figure 3.10 shows the range of topics that were raised in addition to those described in the guidance. Abramson warns of confusing 'statements' made by the Committee and the 'interpretation' of an article by the Committee, he argues that the Committee made a mistake when in the first guidance for initial State party reports it requested information on minimum age legislation such as for buying alcohol and the age of marriage and that statements about age of marriage are merely that: 'a statement under the heading 'Definition of the Child''.¹²⁴ Abramson's careful analysis of 'interpretation' verses 'statements' has much to commend it, and informs part of one of the focuses about how the Convention has been expanded by the Committee raising concerns where the basis for the concern is not clear, and this focus is returned to later in the study. Nonetheless, it can be argued that it is the cluster named 'DOTC' that has been expanded and re-interpreted to include additional issues such as the age of marriage even if article 1 'Definition of the Child' has not. Here then, it is the issues raised by the Committee under the cluster that are being identified.

Whilst 25 of the 27 had reference to legislation in general or a reference to a named piece of legislation this tended to be fairly general such as: 'The Committee urges the State party to take all necessary measures to clarify the definition of the child in Albania and review existing legislation'¹²⁵ or: 'recommends that the State party amend the Family Law to remove all exceptions that allow marriage for those under the age of 18 years',¹²⁶ rather than a specific reference to an article or section of legislation.

This table visually demonstrates which topics the Committee focused on and which were more frequently raised. This would indicate that it might be possible to extrapolate from these results and formulate hypotheses, for instance, that child marriage and sexual exploitation is a more prevalent issue than the age at which state support for children is stopped.

¹²⁴ Abramson (n 103) 134.

¹²⁵ CRC CO Albania 2012, 'Concluding Observations on the Combined Second to Fourth Periodic Reports of Albania. UN Doc CRC/C/ALB/CO/2-4' (United Nations 2012) para 26.

¹²⁶ CRC CO Serbia 2017, 'Concluding Observations on the Combined Second and Third Periodic Reports of Serbia, UN Doc CRC/C/SRB/CO/2-3' (United Nations 2017) para 21.

Figure 3.10 Distribution of ‘issues’ commented on for the DOTC cluster. (Note the final spreadsheet for the DOTC clusters appears in a different format.)

State	Legislation	Gender	Criminal Justice	Sexual exploitation / Marriage / Majority	DOTC / Majority	State Support	Reiterates
Albania	1	1	1			1	1
Bhutan	1	1		1			
Cameroon	1			1			1
Canada			1	1			
Chile	1			1			
Estonia	1			1			
Fiji	1				1		
Ireland	1			1			
Israel	1		1				
Japan		1		1			1
Malta	1			1	1	1	
Nepal	1				1		
New Zealand	1	1		1			
Romania	1			1			
Saudi Arabia	1	1		1	1		
Senegal	1	1		1			
Serbia	1			1	1		
Seychelles	1	1		1			1
South Africa	1	1		1			
Suriname	1	1		1			
The Gambia	1			1			
Timor-Leste	1	1		1	1		
Turkey	1			1			
UK	1			1			
Uruguay	1			1			
Viet Nam	1				1		
Zambia	1			1	1		
	25	10	3	22	8	2	4

Of the 27 State parties that had comments and recommendations for this cluster:

- ❖ 25 had a specific reference to legislation,
- ❖ 10 to gender,
- ❖ 3 to criminal justice,
- ❖ 22 to child marriage or sexual exploitation,
- ❖ 8 to the legal definition of a child and age of majority in the member state,
- ❖ 2 had comments regarding state support for children,
- ❖ 4 of the State parties had specific mention that the Committee felt that it was reiterating its concerns or recommendations.

Age of majority

The one issue raised by the Committee that directly relates back to the wording of article 1 is the age of majority. Some State parties (such as Kazakhstan, Malta, UK, and Viet Nam) have legislation specifying what a child is; however, most of the States in the study sample do not legally specify what a child is. This is inferred by what an adult is not, someone who has not reached majority, as their legislation specifies when majority is reached. A few do not have either definition in legislation, and legal adulthood is interpreted as the age at which someone can vote (for instance, in Ghana).

As previously noted, article 1 reads: ‘For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.’ One of the apparent issues, therefore, is where, how, when,

and very importantly, how often children attain majority under the age of 18 years. Considering the question of when a child is no longer a child and becomes an adult, the Committee's GC No. 20 'On the implementation of the rights of the child during adolescence' contains information in a paragraph that adds to the documentary information expanding on article 1 regarding the Committee's view on the maximum age for the definition of a child:

VII. Definition of the child

40. The Committee reminds State parties of the obligation to recognize that persons up to the age of 18 years are entitled to continuing protection from all forms of exploitation and abuse. It reaffirms that the minimum age limit should be 18 years for marriage, recruitment into the armed forces, involvement in hazardous or exploitative work and the purchase and consumption of alcohol and tobacco, in view of the degree of associated risk and harm.¹²⁷

Paragraph 40, published over 25 years after the adoption of the Convention, is clear that the Committee considers that the protection under the Convention should be available to all persons up to the age of 18 years. This demonstrates the importance of now reading the Convention in conjunction with the general comments. Grover focuses on 'the limiting language' of article 1, discussing what needs to change, and argues that the wording of article 1 limits its scope as to whom it can apply and that the addition of the clause regarding attaining majority early undermines the whole article. Furthermore Grover posits that article 1 is not consistent with other international human rights treaties and conventions, suggesting that: 'a textual analysis indicates that the actual wording of article 1 does not adequately reflect the intent and spirit as espoused in the preamble'¹²⁸ and concludes: 'There is thus a moral imperative requiring that the protection provided by all articles of the Convention be extended to all persons under 18.'¹²⁹

Absent from Grover's article is a list of which member states have an age of majority under 18, and what the age of majority is. In order to gauge in practice how large the issue of the age of majority is or is not, using the study sample, of the 27 with comments under the cluster, eight had specific reference to the age of majority or the way a child was defined but only two appear to have an age of majority lower than 18: Viet Nam, where majority is reached at 16, and Nepal where a child is defined as under the age of 17 (legislation specifying when the age of majority is reached has not yet been identified). In contrast, five State parties have an age of majority

¹²⁷ UN Committee on the Rights of the Child, 'General Comment No.20 (2016) on the Implementation of the Rights of the Child during Adolescence- UN Doc. CRC/C/GC/20' (2016) para 40.

¹²⁸ Grover (n 111) 259.

¹²⁹ *ibid* 270.

greater than 18, which raises the question as to how this affects those individuals who are no longer protected under the Convention but do not yet have full rights of an adult, under their national legislation, enabling them to make their own decisions.

Gender and child marriage

The Committee's view on gender differentiation regarding age is clear. In GC No. 20 from 2016, titled 'On the implementation of the rights of the child during adolescence' it states:

VII. Definition of the child

38. The Convention prohibits any gender-based discrimination, and age limits should be equal for girls and boys.¹³⁰

This is particularly important for the definition of the child with regards to the issue of the age at which children are allowed to marry – one of the most frequently mentioned topics in the CO reports – as well as specifically mentioned in the guidelines for periodical State reports. Of the 27 State parties, 22 received comments on child marriage and child sexual exploitation and 10 received comments on gender disparity. The lowest age expressly mentioned in relation to marriage was nine years old; this was within the concluding observations for Saudi Arabia, which includes the comment:

The Committee is particularly concerned that judges frequently authorize the marriage of girls who have attained puberty. It also notes with deep concern that efforts to set a minimum age for marriage were successfully challenged in December 2014 by the highest-ranking religious leader, who declared being in favour of marriages involving girls as young as 9 years old.

14. The Committee draws the attention of the State party to the fact that the exception contained in article 1 of the Convention cannot be interpreted as authorizing child marriage, a practice internationally recognized as harmful to children. The Committee urges the State party to set, as a matter of priority, the minimum age of marriage at 18 years for both girls and boys.¹³¹

This level of concern, where the Committee uses the words 'particularly' and 'deep' to emphasize their concern with the exceedingly low potential age of marriage for girls, will be reflected in the grading process for this cluster, as described in section 3.6.

¹³⁰ UN Committee on the Rights of the Child, 'General Comment No.20 (2016) on the Implementation of the Rights of the Child during Adolescence- UN Doc. CRC/C/GC/20' (n 127) para 38.

¹³¹ CRC CO Saudi Arabia 2016, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Saudi Arabia, UN Doc CRC/C/SAU/CO/3-4' (United Nations 2016) paras 13–14.

Equally clear on child marriage, being a human rights violation is UNICEF:

Today, one in four young women will be married in childhood. Child marriage is a human rights violation on a vast scale and a major obstacle to sustainable development. Girls are disproportionately affected; levels of child marriage among boys are about one fifth of the levels among girls. Around 750 million girls and women alive today were married in childhood, and unless progress is accelerated, that number will remain at least as high through 2030.¹³²

Further, considering the scale of the issues, they note that: 'Unless progress is seriously accelerated, it will take over 100 years to end child marriage in West and Central Africa.'¹³³

Baxter is critical of the Convention for the lack of progress and notes:

The ten countries with the highest percentages of child marriage are all CRC signatory nations. After twenty-five years, it is clear that the CRC has done little, if nothing to protect the hundreds of millions of women who were forced to be child brides.¹³⁴

Additionally, Baxter points out that the Convention does not specifically address child marriage, let alone prohibit it. Considering the focus on this issue, with a contemporary viewpoint, this is a surprising omission. Therefore, whilst this cluster has only one Convention article, already it has come to light that there are at least two aspects that attention is being drawn to as warranting redrafting or expanding of the Convention.

Of the 25 State parties from the sample group who did not have comments under this cluster, the presumption is that they all have a legal age of marriage of 18 or over. If they have a marriage age of under 18, then for consistency the Committee should have commented on this and made recommendations to amend legislation. However, as will be discussed in detail in chapter 6.5 this presumption may not be entirely correct. How this, in turn, affects the innovative grading process is explored further in chapter 6 and chapter 8, the conclusion. Of the 27 with comments:

- ❖ 9 State Parties have a legal age of marriage, even without parental consent, of under 18 (Cameroon, Canada, Chile, Ireland, Malta, Saudi Arabia, Senegal, Timor-Leste, and Turkey).

¹³² UNICEF, 'UNFPA-UNICEF Global Programme to Accelerate Action to End Child Marriage' (2017) <https://www.unicef.org/protection/57929_92681.html> accessed 20 November 2017.

¹³³ UNICEF, 'Press Release - At Current Rates of Reduction, It Will Take over 100 Years to End Child Marriage in West and Central Africa' (2017) <https://www.unicef.org/media/media_101149.html> accessed 20 November 2017.

¹³⁴ Baxter (n 37) 107.

- ❖ 24 State parties have an age of marriage under 18 with parental consent (Australia, Brazil, Columbia, Dominican Republic, Estonia, Germany, Ghana, Jamaica, Japan, Mexico, New Zealand, Norway, Poland, Portugal, Serbia, Seychelles, South Africa, Suriname, Switzerland, Timor-Leste, UK, Uruguay, Viet Nam, and Zambia).
- ❖ 13 State parties allow marriage at a younger age than the normal minimum when there are 'exceptions' (Albania, Azerbaijan, Brazil, Croatia, France, Ireland, Kazakhstan, Morocco, Russian Federation, Turkey, UK, Viet Nam, and Zambia). These exceptions generally take the form of a Court or Judge being able to authorise the marriage, in some instances if parental consent is not granted.
- ❖ 11 State parties' legislation includes different minimum ages for marriage for males and females (Cameroon, China, Dominican Republic, India, Japan, Mexico, Poland, Senegal, South Africa, Suriname, and Viet Nam).

In the 2016 UNICEF State of the World's Children report,¹³⁵ the percentage of girls married under 18 and under 15 is given for many countries including 25 of the study sample. These figures show that there is a significant difference between the legal age of marriage and practice. Thirteen of the State parties who did not receive comments under this cluster and have a legal minimum age of marriage of 18 still had a percentage of girls married under 18, for instance, in Ethiopia, where the legal age of marriage is 18 but 16% of girls are married under 15 and 41% under 18.

Clearly, no matter what the legal age is, other social factors such as religion or culture are still having a significant effect. This table demonstrates that the State parties for whom the Committee did not raise DOTC in the CO because legislation is in place, may still have issues with DOTC.

Interdependency of topics and Convention articles.

One of the factors that allows child marriage, and other issues relating to age, to take place can be a lack of provable age, where due to a lack of birth registration and therefore no birth certificate the authorities may not know a child legally exists, let alone that a girl has been married below the official legal age. Birth registration corresponds to article 7, which is included in the civil rights and freedoms (CRF) cluster, demonstrating the interlinking nature of many issues between clusters.

Further, issues regarding juvenile criminal justice would fall under the special protection measures (SPM) cluster; however, in this cluster, three State parties received comments relating

¹³⁵ UNICEF, 'The State of the World's Children 2016: A Fair Chance for Every Child' (UNICEF 2016) <https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf>.

to criminal justice in regard to age. Albania's comments were relating to a lack of clarity for the age group 14 to 18 in juvenile justice, including girls under the Criminal Code being treated as adults from puberty. Canada's comments were focused on the inconsistency whereby in some provinces or territories, children can be tried as adults. Israel's comments were regarding the lack of practical application of the law increasing the age of majority in the military courts to 18, and further, they were urged to:

ensure that children living in the OPT [Occupied Palestinian Territories] are considered as children up to the age of 18 years and that they effectively benefit from the full protection under the Convention, in particular, the provisions relating to the administration of juvenile justice.¹³⁶

An additional issue raised under this cluster was State Support, which would again generally be included under the cluster 'Disability, basic health and welfare' (DBHW) as with criminal justice above it was due to their specific focus on the age that they were included in this cluster. There were only two State parties that received a comment relating to this issue: Albania, due to the age for leaving state care being set at 15 without state financial support or protection; and Malta due to the lack of child welfare services and support above the age of 16, creating as the Committee described a: 'de facto definition of the child being a person under 16 years of age'.¹³⁷

Grading clusters

The resulting spreadsheet for the DOTC cluster is at appendix A-22. In the final spreadsheet for DOTC some of the initial 'issues' that were identified were reclassified as 'multipliers'. How multipliers are used in the grading process and examples of grades are contained in the next section 3.6, a detailed description of the final DOTC spreadsheet and results are contained in chapter 4.

One of the points the Committee is frequently clear on is where they consider themselves to be repeating a previous comment, and the word 'reiterates' can be seen frequently included in reports. In this instance, for this cluster, four State parties were reminded of previous recommendations: Albania, Cameroon, Japan, and Seychelles.

Evidently, the potential number of topics or issues that can be identified for a single article is larger and more complex than might be initially anticipated. However, in the DOTC cluster,

¹³⁶ CRC CO Israel 2013, 'Concluding Observations on the Second to Fourth Periodic Report of Israel, UN Doc CRC/C/ISR/CO/2-4' (United Nations 2013) para 20.

¹³⁷ CRC CO Malta 2013, 'Concluding Observations on the Second Periodic Report of Malta, UN Doc CRC/C/MLT/CO/2' (United Nations 2013) para 27.

the first to be assessed, the grading criteria was clearly dictated by the issues commented on by the Committee, not only in their reporting guidelines but also in the issues that they focused on in the CO reports.

3.6 Grading clusters using a matrix

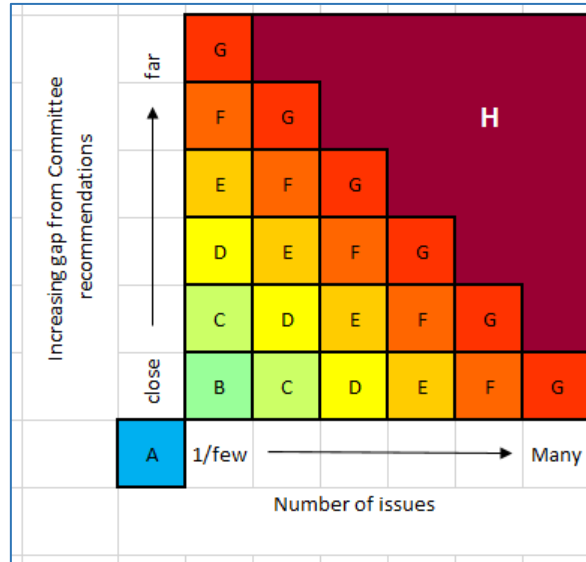
Having prepared the CO documents by coding them, the next stage in identifying State parties with better implementation was to create a method to 'grade' the reports using the framework of the clusters of articles. Due to there being two primary variables that needed to be taken into consideration – the number of issues raised and the severity of those issues – a matrix format has been utilised. It was deemed necessary to develop this method so that the analysis could take the severity of issues into consideration as well as counting the total number of issues and the frequency of comments.

Before describing how the objective and subjective stages of the analysis work together in the final spreadsheets for each cluster, it is important to reflect why a subjective element is necessary for this research study. One of the limitations of content analysis is that it is not always able to differentiate between degrees of content. Content analysis can be described as reductive, where it condenses large amounts of content into tables and quantitative descriptions, such as figure 3.10 for the 'Definition of the child' cluster, where many pages of text is shown as a single table reflecting which topics have been discussed, but this data does not reflect the relationship between the topics nor the detail of the text. An example of this is the issue identified and encoded as 'child marriage or sexual exploitation'. As shown in figure 3.10, 22 State parties received comments or recommendations for this issue. However, this only records that there was a reference to the issue, it does not record the range of the severity of the comment. In this example there was a wide range of severity in that there were State parties that reported that they were planning on raising the age of marriage from 17 to 18, in contrast there were also State parties which frequently authorised the marriage of girl children including as young as 9 years old. There needed therefore, to be a method of reflecting the severity of the comments. It was important that the overall approach allowed not only the objective analysis of the content but that an interpretative approach could also be included. How this interpretive element is included by using what is termed here as the 'multiplier' is explored in this section.

Grading Matrix

Figures 3.11 and 3.12 illustrate the grading matrix used for this study. Figure 3.11 displays the grade awarded for each square of the matrix.

Figure 3.11 The grading matrix used for grading clusters.



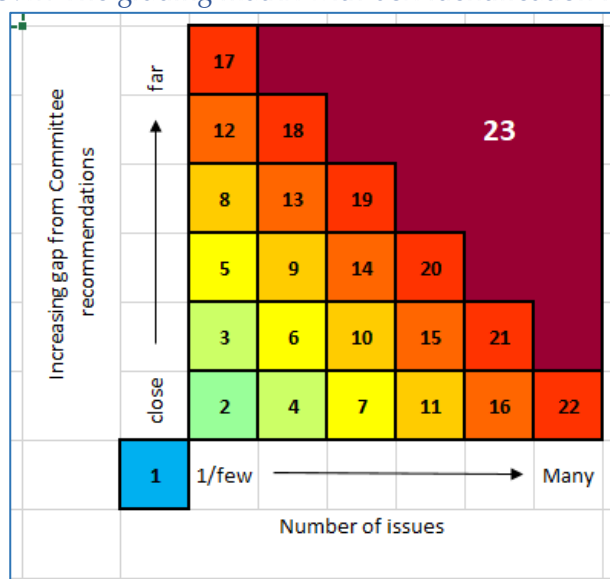
Grade A is achieved where there are no issues commented on and no recommendations to improve from the Committee. This is why it is visibly outside of the rest of the matrix.

The upper right portion of the matrix becomes a single grade of H; the intention is that this grade will rarely be used and on the rare occasion that it is, it demonstrates a situation that has multiple issues with significant gaps from the Committee recommendations. Grade H is not broken down further into more detailed grades as ultimately what is being searched for is better examples of implementation, and once a State party is sufficiently far from the Committee's recommendation as to receive an H grade, identifying further degrees of non-implementation is not necessary.

The scale 'Number of issues' will vary depending on the cluster, as some clusters are more complex with many more articles and therefore potentially more possible issues. For one cluster where there are not many identified issues, a grade D might be achieved with a relatively low number of issues, whereas for a cluster covering a large number of articles, and subsequently a large number of identifiable issues, a grade D as a starting point would need a more substantial number of issues.

In the second example of the matrix, at figure 3.12, each box of the matrix has a number – this does not signify a hierarchy but is to identify each box located within the matrix. A grade C, whether in box 3 or 4, is an equal grade though achieved in slightly different circumstances.

Figure 3.12 The grading matrix with box identification numbers.



Examples of grading using the matrix

For each cluster, in addition to the text of the Convention of the articles, there are guidelines giving more details as to what additional information should be covered within the State party report. For the CRF cluster the guidelines for periodic reporting reads:

4. Civil rights and freedoms (arts. 7, 8, and 13–17)

28. Under this cluster, States parties should provide relevant and up-to-date information in respect of the following:

- (a) Birth registration, name and nationality (art. 7);
- (b) Preservation of identity (art. 8);
- (c) Freedom of expression and the right to seek, receive and impart information (art. 13);
- (d) Freedom of thought, conscience and religion (art. 14);
- (e) Freedom of association and of peaceful assembly (art. 15);
- (f) Protection of privacy and protection of image (art. 16);
- (g) Access to information from a diversity of sources and protection from material harmful to a child's well-being (art. 17).

29. If appropriate, information may also be provided on the particular role of the media with regard to the promotion and protection of child rights.¹³⁸

¹³⁸ UN Committee on the Rights of the Child, 'Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child UN Doc. CRC/C/58/Rev.3' (n 15).

This paragraph identifies eight headings or potential issues. A spreadsheet was created using these issues as column headings for recording the frequency of comments under each heading. Furthermore, from reading the COs, additional issues or ‘sub-issues’ can be identified reflecting the changing focus of the Committee’s concern over time: these include two sub-issues linked to (a) above, birth registration not being free, or the lack of birth registration being a block to education. A further sub-issue is linked to either (a) or (b), in that there is discrimination related to either birth registration or preservation of identity. This discrimination can take any form identified by the Committee. Finally, the fourth additional issue is if there are reservations or declarations to these articles. The title boxes of these issues are shaded to allow easy identification. This is shown in figure 3.13.

For the cells under the issue headings, the colour of the cell changes, becoming darker with larger values, indicating the issue was raised more than once. The number of issues identified is totalled in the column ‘Total number of issues covered’.

Figure 3.13 Example of CRF Spreadsheet demonstrating the columns recording issue frequency.

State	28(a) Birth registration, name and nationality (art.7)	BR - NOT free of charge	BR - block to education	28 (a) or (b) Discrimination (Wedlock / gender / race /migrant / disadvantaged)	28(b) Preservation of identity	28(c) Freedom of expression, - right to seek, receive, impart information	28(d) Freedom of thought, conscience and religion	28 (e.) Freedom of association and peaceful assembly	28(f) Protection of privacy and protection of image	28(g) Access to information from a diversity of sources and protection from material harmful to a child's well-being	29 - Role of media with regards to promotion of child rights	Reservations and Declarations	Total number of issues covered	Starting Grade
Albania	1	1	1	1						1			5	C
Algeria	1		1	2	1		1					1	7	D
Australia	1	1		2	1			1	1				7	D
Azerbaijan	1			1			1		1	1			5	C
Bhutan	1			1			1			1			4	C
Brazil	1			1									2	B
Cameroon	1	1		3	1								6	C
Canada	2			2	1								5	C
Chile	2			2	1			1					6	C
China	1	1		2			1						5	C

This first section of the grading process is therefore relatively objective content analysis, as it is counting issues raised by the Committee. The spreadsheet then uses a ‘lookup table’ as shown in figure 3.14, to attribute a grade to the number of issues. As mentioned, some clusters potentially have a greater number of issues that could be commented on – some as low as four and some as high as eighteen. Therefore, the lookup table varies depending on the cluster.

Figure 3.14 An example of the 'lookup table' used to attribute a grade to the total number of issues.

No. of issues	Grade
1	B
2	B
3	B
4	C
5	C
6	C
7	D
8	D
9	D
10	E
11	E

The next section of the grading spreadsheet for CRF covers potentially exacerbating features, such as where the Committee is 'reiterating' their concern or recommendation, as well as highlighting elements of particular interest such as references to legislative amendments or juvenile justice. This is shown in figure 3.15.

Figure 3.15 An example of 'multipliers' in the CRF grading spreadsheet.

State	Total number of issues covered	Corruption	GC No.	Legislation	Reiterates (remains)	Juvenile Justice	Comment	Multiplier score (0-5)	Square on Matrix	Final Grade
Albania	5	C		1			Registration of all children immediately after birth is still not insured – children without birth certificates might still be refused access to schools – inappropriate movies are routinely broadcast during hours when children can be expected to watch television.	2	9	E
Algeria	7	D		1	2		Officials often refuse to register children born out of wedlock, refugee and stateless children not systematically provided with birth certificates, unregistered children deprived of access to schools – children born out of wedlock denied to take mother's family name instead registered with 2 surnames identifying them as born out of wedlock and adding stigmatisation – restricted conditions for professing a religion other than Islam, attacks and violence against religious minorities.	4	23	H

As noted in chapter section 3.4 juvenile justice has been chosen to explore the interrelated nature of clusters, therefore there is a column for recording comments under this heading.

In the grading spreadsheet shown in figure 3.15, after the column for juvenile justice and a column to record comments, a 'multiplier' score is displayed. This section is the more subjective phase of the grading process, enabling an interpretive approach from the examination and interpretation of the documents. The multiplier takes into consideration a number of factors that the objective element of the (conceptual) content analysis is not able to. Firstly, it explores the severity of the issue, both by the comparison of one CO report to another, as already described using child marriage as an example. It also takes into consideration relational content analysis by acknowledging the language used by the Committee, for instance, whether they are 'deeply concerned', 'seriously concerned', or telling the State party to 'urgently amend'. Further, it takes into consideration the context of the comment when the way that the CO is written makes it clear that the Committee is repeating itself by 'reiterating' a recommendation or comment or that the issue 'remains'. In figure 3.15 Algeria is shown to have a score of 2 for the 'reiterates' column, their multiplier figure will reflect the Committee's need to repeat a comment or recommendation. The multiplier is also where the inclusion of specific critical issues that are focused on by the Committee can be taken into consideration. These specific critical issues are identified by the use of language and usually by the existence of additional guidance and will be reflected within the multiplier. This is also where the relationship between issues can be taken into consideration. An example of this is gender differentiation in legislation relating to another identified issue, such as the age of marriage being lower for girls than for boys. Where relational analysis is the primary focus of the content analysis it is time consuming and would be difficult to undertake on such a large sample size of lengthy reports. Here, it has been used in conjunction with conceptual content analysis as the primary analysis tool. Within this analysis, where the documents have a set formula and frequently use identifiable language, the relationship of the language to the concept is extracted and recognised in the multiplier score, which enables the method to acknowledge where the Committee is not only 'concerned' but 'deeply concerned'.

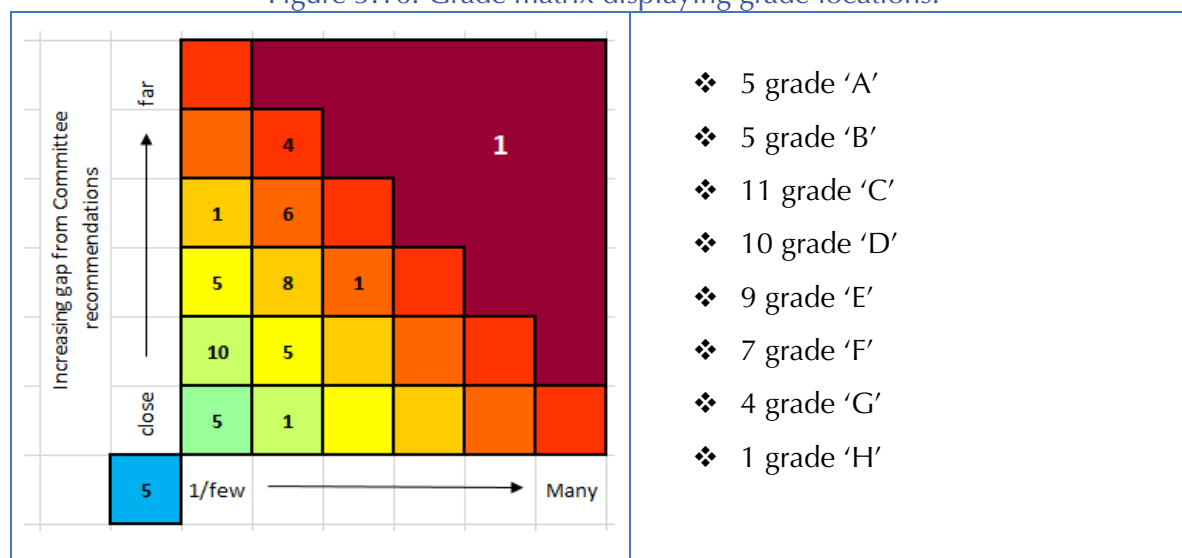
Reliability of subjective analysis creates inherent challenges, in order to ensure that the grading process was replicable and reliable, testing of the method took place throughout the grading process. For each cluster's spreadsheet construction there was initially an iterative process, whereby the column's headings started with the issues identified from the guidance on periodic reporting, evolving as new themes were identified as issues in their own right or the need to divide them into sub-issues became apparent. At this stage in the analysis process the CO reports were focused on by cluster not by State party. That is to say, all State parties would be graded in turn for one cluster, then once the analysis for the cluster was finished, the next cluster would be focused on and all states considered for that cluster. This was to enable in-depth knowledge of each cluster to be created aiding a deep understanding of the cluster and

the relationship between issues within the cluster to develop. This process assisted not only the inductive discovery of significant issues and the recognition of sub-issues but also enabled the context and subtlety of interrelationships of issues to be taken into account for the multiplier score. As the spreadsheet and the understanding of the cluster developed during the initial grading phase, the first few State parties that were graded were rechecked and regraded as the spreadsheet evolved. At the end of grading a cluster to ensure reliability in the grading process, the earlier State parties to be graded were compared to the later state parties to ensure parity of the multipliers. In addition, a sample of State parties achieving the same grade were crossed checked against each other in order to ensure both the objective and subjective elements of the grading process had been applied equally during the method.

Figure 3.15 illustrates how using the matrix enables the multiplier score to increase the grade. Albania's starting score was a grade C box 4 on the matrix, with a multiplier of 2, moves to box 9 on the matrix, a grade E, whereas Algeria's multiplier score of 4 takes a D grade (box 7) up to four boxes to 23 and a grade H.

Figure 3.16 displays the resulting spread for grades for the CRF cluster showing how many State parties fell into each square of the matrix.

Figure 3.16. Grade matrix displaying grade locations.



An example for each grade is included in appendix A13-20 a single grade is set out here. An example of a grade D for the CRF cluster is from the Russian Federation CO report. The comment and recommendation regarding birth registration reads:

Birth registration

28. The Committee is seriously concerned about reports that children born to Roma, refugee and asylum-seeking mothers with non-Russian passports or without identity

documents are denied birth registration and are issued with only a hospital certificate indicating merely their sex, height and weight. The Committee is concerned that this practice gives rise to a new generation of undocumented persons, whose rights are limited in all areas of life.

29. The Committee urges the State party to ensure that all children born in its territory, irrespective of the status of their parents, are registered on the same terms as children born to Russian citizens and are issued with a standard birth certificate.¹³⁹

In this instance, though only one issue is raised, the sub-issue of discrimination is included, giving an initial score of 2, a starting grade of B; however, the language used in the report (seriously concerned) and the severity of the issue of being 'denied birth registration' gives a multiplier score of 2. This multiplier moves the Russian Federation from box 2 on the matrix to box 5 and a grade D.

The process of grading the CO reports was checked by selecting a smaller sample of the CO reports and regrading them for each cluster without looking at their original grade to ensure that the same result was achieved.

Using this method of grading the CO documents creates a replicable method and combined with the grading tables identifying themes and issues, while still possessing a subjective element to the process, creates a more objective framework to the grading process. The question therefore is whether it is possible to find meaningful data by comparing State party implementation of the Convention using the Convention monitoring process of the Committee CO reports.

Though the study is essentially qualitative, the construction of the spreadsheets for the grading process facilitates straightforward quantitative analysis of the types of concerns raised by the Committee for each cluster. The spreadsheet essentially then can be read horizontally for each State party or vertically for each issue. The results from counting the number of times each identified issue is commented on for the sample is included in chapter 4 with the grading results.

¹³⁹ CRC CO Russian Federation 2014, 'Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Russian Federation, UN Doc CRC/C/RUS/CO/4-5' (United Nations 2014) paras 28–29.

3.7 Legal analysis

Once the clusters have been graded and the individual cluster grades for each State party totalled, the results will be used to identify which State parties demonstrate, on the basis of the CO reports, better implementation of the UNCRC. These better scoring State parties will then be considered in greater detail and their legal frameworks investigated by considering where the Committee has commented on and made recommendations to change legislation.

3.8 Research challenges

There are a number of challenges for this research. First, as it was necessary to choose a sample of State parties to analyse, ideally all State parties that had received a CO report would have been graded. This was not possible, mainly due to the time it would take to analyse that many reports but also because over time the reports have evolved and changed meaning that it would be increasingly difficult to meaningfully compare a 2017 report to a report from, for instance 1996. The decision to use a five-year spread of reports was because, though within those five years the evolution of the Committee's CO reports was evidenced, the changes were not so great as to prevent comparisons. In addition, the evolution that was observable would allow investigation and discussion.

Some of the challenges for this research were practical, such as the large number of documents to be analysed, which would have been time consuming to undertake manually hence the decision to use computer software to assist in the coding process.

One of the challenges for the study and potentially a weakness of using the Committee's views to infer implementation, is that there are various factors potentially influencing the starting point of their reports. For instance, the Committee's understanding of children's rights is evolving and that at any one point in time they may not yet be informed on an issue. This is evidenced particularly well in this study by the issues surrounding the topic of intersex children which were not included in the CO reports prior to 2015. In addition, the Committee may be unaware of a significant issue within a State party if it is not reported by the government or by alternative reports, therefore they will be commenting from an uninformed, or not fully informed basis and their comments and recommendations could be flawed.

One of the challenges for this method is that there are a number of variables related to the CO reports which have the potential to affect the data produced. These include factors such as the changing members of the Committee over time, the changing of personnel within the staff of

the Office of the High Commissioner for Human Rights. A further variable is the construction of the CO reports where the format of the report can change subtly. These variables are considered further in section 3.9.

Using a matrix for the grading process allowed for both the number of issues to be considered, as well as the severity of the concern raised. The challenge is that there is a subjective element where the person undertaking the analysis has to judge the severity of an issue making the allocation of a multiplier an interpretive process. However, this method does not try to be a defined measurement of an absolute objective criteria, and it is because of the challenges and potential weaknesses discussed here, that it is emphasised that this method is indicative of State party's implementation of children's rights not conclusive.

Ethical Considerations

The ethical considerations for this study are straightforward and no issues were initially identified as the project relates to 'children' as a group of rights holders and not to individuals. Further, the documents used for the research are written either by 'State parties' (Governments) or by the Committee on the Rights of the Child and available publicly from the UN Committee on the Rights of the Child webpage. Therefore, initially there were no identifiable ethical issues arising from this project, however during the grading process it was discovered that very rarely the reports would identify a child or children by name. In one instance the individual would be an adult by the date the report was written and in another the children referred to were no longer alive having been executed. Nevertheless, the decision was taken not to use these passages naming children as quotations within the thesis. Essentially, due to the research being based on publicly available documents the ethical considerations for this study are straightforward.

3.9 Observations regarding the method of grading Concluding Observations Reports and proposals for future improvements

In this section, the intention is to consider the innovative method used and to consider, using hindsight, what are the limitations and strengths and what can be improved.

Reflections on Method

At the start of this study, the question was posed as to whether it is possible to find meaningful data by comparing State party implementation of the clusters of the Convention using the Convention monitoring process of the Committee's CO reports. Chapter 4 concludes that the answer is 'yes'. However, it needs to be recognised that it is not a statistical comparison of

quantitative data creating a clear league table: it is indicative and illuminative, not conclusive. There are some limitations to this method; however, within the context and understanding of those limitations, it produces interesting data and reliable information.

Generalisability

The sample of 52 State parties represents approximately a quarter of the total number of State parties that have ratified this Convention, therefore the generalisability of the study is relevant. Whether the method could be applied meaningfully to any of the remaining State parties not in the sample is one concern, another is whether the results from the sample can be considered to be representative of the Committee's comments. Firstly, the limitation as to whether the method could meaningfully be applied to all the remaining State parties is due to the fact that not all State parties report as frequently as they should. With global social changes and therefore changes in what the Committee is focusing on, and their interpretation of issues developing comparing State parties with CO reports 20 years apart is problematic. Nonetheless, the method can be applied to any State party's CO report within a reasonable time frame, how wide that time frame is would have to be explored. Secondly, as to whether the results from the sample can be considered to be representative of the Committee's comments. With a sample size of 52 State parties spanning a total of 7 years, patterns in the Committee's comments are clearly visible as will be demonstrated in chapter 4. If the sample size was increased by including more reports of a similar time frame, it is not anticipated that these patterns of comments would significantly change as the initial sample is sufficiently large and drawn from as diverse a set of State parties as possible.

Regarding scores and totals

It is noted in chapter 4 where the total scores are discussed, that partly due to the subjective element within the grading process, and partly due to the variables in the CO reports, that at this stage the method is not sufficiently intricate to be used to differentiate between a single point difference in the overall scores. For instance, where there are total scores of 83 and 84, this single point difference is not enough to conclude that one State party is achieving better implementation than another. There is sufficient conviction that a grade C is higher than a grade D, and conviction that, on the basis of the CO reports, which State parties have achieved a grade C. The view that this method has produced meaningful results is based on the combination of the sample size allowing significant differences in comments from the Committee to be observed and taken into consideration, in addition to the grading being double checked for a portion of the sample resulting in the same grades. However, the method has not

yet been sufficiently tested and developed further to be able to have full confidence in small score variations. Further finessing of the method, particularly of the multipliers as this is the subjective element, would be needed before small score differences can be considered important.

Variables in the creation of the Concluding Observations

There are variables relating to the nature of the documents being analysed that are important to recognise when using this method, many of which relate to the fact that the documents analysed cover a span of seven years. If the study was expanded to include all the most up-to-date CO reports of all State parties, then this span would be larger.

One of the variables is the composition of the Committee on the Rights of the Child, whose views are recorded in the CO reports. The Committee has eighteen members at any time, each of whom serves for four years. Currently, this is staggered so that only a portion of the Committee changes each time. Therefore, the Committee changes over time, as does the staff of the Office of the High Commissioner for Human Rights. These personnel changes are a variable in the construction of the reports, and it is possible that this human factor might have unforeseen effects on the reports.

In addition, regarding the construction of the reports, within the study sample there is considerable difference both in length and format even though there is a clear layout being followed. There is an order in which the Committee considers the clusters, and within each cluster, the headings tend to follow the same order. Furthermore, each sub-section follows a set pattern of a paragraph containing a positive comment and then raising a concern, followed by a paragraph making a recommendation. Sometimes the Committee starts with the concern or even only makes a recommendation. For instance, the report for the UK has ninety-three paragraphs in total and generally follows the 'positive, concern, recommendation' format throughout, whereas the report for Bhutan is much shorter with only fifty-five paragraphs and tends towards only making recommendations. This difference of layout and level of detail will inevitably affect the comparison process, particularly in the first objective half of the cluster analysis. However, the second subjective half allows the person undertaking the grading process to take the nature and level of issues raised into consideration when allocating the multiplier.

Considering the factor of time as a variable, the Committee has over time changed the guidelines as to what it is asking a State party to report and reflect upon, even amending or creating new clusters. Issues have also changed and evolved over time, for example, chapter 4 will discuss that, prior to 2015 there was no reference to discrimination against intersex

children and medical procedures being carried out on intersex children before they have the capability to consent.

Further, with regards to time as a variable, the reports, both State party and CO reports, are accurate at a precise date in time; in fact, the CO report can be argued to be out of date as soon as it is produced as it is based upon an older moment of time being the State party and alternative NGO reports. Then, to add to the temporal problem, this method compares different moments of time. However, as long as it is acknowledged that this method is comparing the situation in each State party at the time of the reporting process and is indicative of the situation not intended to be conclusive, then this does not undermine the method and results.

One of the significant variables is that the whole monitoring process starts with the State party report. Depending on how self-critical and openly reflective the State party is able to be, this will affect the information that is contained in their report. As previously noted, Ramesh describes 'states... often seek to supply inadequate and uncritical information regarding the condition of children's rights in the state'.¹⁴⁰ This variable is tempered by the ability of other organisations to submit reports about the State party.

Proposed changes for the future

Having reflected on the method used, using hindsight, the next question is: what could be carried out differently in the future to improve the method?

Changes to coding

In this chapter, the step-by-step method of document analysis using MAXQDA and the cluster grading method has been set out in detail. The first change to implement if this study were to be repeated or expanded to include more State parties, would be not to use the UNICEF groups of clusters as 'parent codes'. It was not necessary as there was sufficient adherence to the cluster framework and using the clusters as 'parent codes' would be preferable. If sections are coded to clusters then coding for individual articles (or coding that it is not clear which article is being referred to) is not necessary unless there is an intention to investigate references to a specific article.

If a single cluster or a single issue is being investigated, then a more detailed coding set including more inductive coding could be used. An example of this is demonstrated in chapter 4, with the consideration of a single issue from the general measures of implementation cluster, that of 'legislation' and its component elements, demonstrating the complexity of issues. One

¹⁴⁰ Ramesh (n 40).

potential for improving or fine-tuning this method would be to attempt to adapt the method to be more objective. This would be done by first creating a grading framework for each 'issue' that the Committee could focus on for the cluster. Then applying this framework to record in the spreadsheet the result for each issue and finally combining the issue grades to come to an overall cluster grade. This method would be an incredibly lengthy process if applied to full CO reports but would be realistically viable for an individual cluster or issue.

Changes to grading

The grading matrix system allowed both the number of issues combined with the level of concern to be taken into consideration for the grading process. If a single cluster or single issue was being focused on, then a more defined and detailed framework for the multiplier could be developed.

Changes to issues

The issues identified for the clusters, came from the list of information requested by the Committee in their guidelines on periodic reporting. Some of these issues were then divided into smaller sub-issues. In addition, during the coding process, if supplementary themes were noticed, these were also created as additional issues. In some instances, the fact that there was the potential for an additional theme, or that a main issue was significantly large enough to be split into two, was not identifiable until the end of the coding process. If this process were to be repeated or extended, then the creation of the following additional categories of issues would be recommended for consideration.

Generally, for all clusters, it is recommended that consideration is given to splitting the column totalling the number of references to general comments and in some clusters to other guidance, for instance 'the Riyadh guidelines' in Juvenile Justice into separate columns for each of the different GC or guidelines. For the Disability, Basic Health and Welfare cluster, an additional theme that was observed, which could have been included in the spreadsheet as an issue, was the topic of breastfeeding, and there were comments on this in 39 of the reports. For the Juvenile Justice cluster, the column covering paragraph 40(e)(ii)¹⁴¹ should be split into two categories, 'deprivation of liberty' in one and 'access to legal and other assistance' in another.

¹⁴¹ UN Committee on the Rights of the Child, 'Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child UN Doc. CRC/C/58/Rev.3' (n 15).

3.10 Chapter conclusions

This chapter has described how methodologically this study takes a legal positivist view that law is an 'observable phenomena', however, it does so from an interpretivist and constructionist approach considering law and human rights to be social constructions.

The identification of the CO reports as the documents to base the analysis on, was described in chapter 2. Within this chapter, the process behind the selection of the study sample of 52 State parties is explained. Also explained, was the decision to analyse the documents using the cluster framework, due to the initial analysis confirmed the sufficient adherence of the CO reports to the cluster format. Additionally, as the clusters were created by the Committee itself this framework was considered preferable, rather than, for instance, the groups of articles displayed in figures 3.4 and 3.5 which were created by UNICEF.

This chapter has detailed the process undertaken to analyse the CO reports and to grade the clusters for the sample 52 State parties, this includes detailing the document analysis and the cluster grading process. The use of a spreadsheet to record the 'issues' commented on by the Committee, assisted with the identification of repeated topics focused on by the Committee that were not listed within the guidelines on periodic reporting. The spreadsheets also enabled content analysis of the prevalence of topics commented on. The results from this analysis are explored in chapter 4.

Chapter 3 has focused on the research objective to create a method to measure implementation of the UNCRC, this objective has been met and the resulting method described in this chapter is designed to answer the first two research questions, firstly whether it is possible to infer State party implementation of children's rights by analysing Concluding Observations reports by the Committee on the rights of the child. Secondly, is it possible to assess which State parties are achieving better implementation? The success of the method in answering these research questions is demonstrated by the results in chapter 4.

Chapter 4 – State and cluster analysis

4.1 Introduction

Chapter 4 continues from the focus in chapter 3 on the research objective, to create a method to measure implementation of the UNCRC. Chapter 4 concentrates on analysing the data produced by the method described in chapter 3 and therefore attempting to answer three of the research questions, firstly whether it is possible to infer State party implementation of children's rights by analysing Concluding Observations reports by the Committee on the rights of the child. Secondly, is it possible to assess which State parties are achieving better implementation. Thirdly, what can be learnt about the Committee's interpretation of the Convention by analysing their Concluding Observations reports?

This chapter describes the results from the analysis of the Concluding Observations (CO) reports as described in chapter 3 and the results from grading each State party for the 10 thematic clusters of articles. In addition, some specific observations from the results will be explored. The final totals of the grading analysis will be considered ahead of chapter conclusions.

4.2 Grading results for clusters

The matrix grading method explained in chapter 3 and considered in detail for cluster 2 'Definition of the Child' was applied to all the remaining clusters from the CO reports of the 52 State parties forming the study sample. This chapter explores the results of this analysis. As previously explained, the starting point for the construction of this analytical framework is the guidelines issued by the Committee on the periodic reporting process.¹⁴²

Cluster 1 - General Measures of Implementation

Cluster 1 'General Measures of Implementation' (GMI) covers three Convention articles:

- ❖ art.4 (implementation of the Convention);
- ❖ art.42 (making the principles and provisions of the Convention widely known); and
- ❖ art.44.6 (making State reports widely available in their own country).

The issues identified by the Committee relating to this cluster are contained in paragraphs 18, 19, and 20 of the guidelines for periodic reporting:¹⁴³ reservations and declarations; legislation;

¹⁴² *ibid.*

¹⁴³ *ibid.*

national strategy; government coordination; budget; international assistance; independent monitoring; dissemination of the Convention, State reports and concluding observations; cooperation with civil society; and how business activities impact children's rights. These issues were used as column headings in the grading spreadsheet for the cluster (figure 4.1).

The GMI cluster is noteworthy, as it is the first of the clusters focused upon by the Committee and it contains articles focused on the realisation of the Convention rather than on actual rights. In General Comment No.5 on the General Measures of Implementation, it is expressed that these measures are 'intended to promote the full enjoyment of all rights in the Convention'.¹⁴⁴ Collins argues that GMI 'offer a useful, practical framework to facilitate the realisation of child rights' and she describes:

The GMIs contribute the necessary focus for child rights progress and learning with attention to what actors should consider as objectives and also how they carry out their efforts.¹⁴⁵

The guidelines on periodic reporting specifically refer to three relevant 'general comments' in paragraph 21:

- ❖ No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child;¹⁴⁶
- ❖ No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child;¹⁴⁷ and
- ❖ No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights.¹⁴⁸

As noted in chapter 2 general comments are thematic documents that publish the Committee's interpretation of the Convention. Over time the number of general comments has increased, from 17 at the end of 2013 to 23 by November 2017, therefore, the earlier CO reports would have fewer occasions where they could be referred to general comment documents.

¹⁴⁴ UN Committee on the Rights of the Child, 'General Comment No.5 (2003) on the General Measures of Implementation of the Convention on the Rights of the Child - UN Doc CRC/GC/2003/5' (n 76) para 9.

¹⁴⁵ Tara M Collins, 'The General Measures of Implementation: Opportunities for Progress with Children's Rights' (2019) 23 *International Journal of Human Rights* 338.

¹⁴⁶ UN Committee on the Rights of the Child, 'General Comment No.2 (2002) The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child (Arts.4) - UN Doc CRC/GC/2002/2' (2002).

¹⁴⁷ UN Committee on the Rights of the Child, 'General Comment No.5 (2003) on the General Measures of Implementation of the Convention on the Rights of the Child - UN Doc CRC/GC/2003/5' (n 76).

¹⁴⁸ UN Committee on the Rights of the Child, 'General Comment No.16 (2013) on State Obligations Regarding the Impact of the Business Sector on Children's Rights - UN Doc. CRC/C/GC/16' (2013).

Notwithstanding this increasing number of general comments, the number of times the Committee referred the State party back to a general comment was recorded in the cluster grading spreadsheet under the multiplier factors. Additionally, the current version of guidelines on periodic reporting was published in March 2015. Therefore, five of the general comments, numbers 19 to 23, were published after the guidelines. However, in this cluster, some of the more recent reports did refer to GC No.19¹⁴⁹ as exemplified from the CO report for Serbia:

In the light of general comment No. 19 (2016) on public budgeting for the realization of children's rights, the Committee recommends that the State party:

- (a) Establish a budgeting process that includes a child rights perspective and specifies clear allocations to children in the relevant sectors and agencies, with specific indicators and a tracking system;¹⁵⁰

The paragraph then goes on to list three other items in the recommendations.

Through the process of reading and analysing the CO reports, further issues were identified and included as headings within the spreadsheet. In this cluster the CO reports frequently contained a paragraph heading of 'previous recommendations', along with the less frequently used headings of 'data collection' and 'training of staff'.

These two additional issues became column headings for the grading process whereas comments under a heading of 'previous recommendations' were used as a multiplier indicator rather than as a primary heading. The inclusion as a multiplier rather than as an issue reflects the essence of the content, as fundamentally the Committee is using the heading 'previous recommendation' to emphasise that these issues have been raised with the State party before and that no action, or not enough action, has been taken to remedy the situation. To ensure against double counting, this paragraph is not included in the results for the multiplier column titled 'Reiterates (recalls)' which counts the number of times the Committee uses language to show that concerns or recommendations have been repeated from previous reports.

The inclusion of 'budget' as both an issue and a multiplier for this cluster is because from the guidelines, and within the text of the CO reports, there is an option for a subheading of 'budget'. This is reflected in the issues score; tallied under the multiplier column 'budget' was the number of references to financial resources. These references tended to be worded as follows: 'ensure

¹⁴⁹ UN Committee on the Rights of the Child, 'General Comment No.19 (2016) on Public Budgeting for the Realization of Childrens Rights - UN Doc. CRC/C/GC/19' (2016).

¹⁵⁰ CRC CO Serbia 2017 (n 126) para 13.

the provision of adequate human, technical, and financial resources for...'¹⁵¹ However, relevant issues relating to budget can be construed widely; as Rishmawi observes, under article 4 resources are 'essential not only to deliver services, but also for the promulgation and implementation of legislation, policies and regulations'.¹⁵²

Finally, if a reference was made to corruption or gender discrimination, these factors were recorded and increased the multiplier score for the State party.

The resulting spreadsheet and column headings are shown in figure 4.1 The spreadsheet showing all 52 State parties, can be seen in appendix A-21.¹⁵³

Figure 4.1. Column headings for cluster 1 General Measures of Implementation showing both 'issues' and multiplier factors'.

Issues											Multiplier factors												
18. R&D	19. (a) Legislation	(b) National Strategy	(c) Government coordination	(d) Budget	(e) International assistance	(f) Independent monitoring	(g) Dissemination- CRC	(h) Dissemination - reports	(i) Cooperation - Civil society	20. Business activities	Training - (Staff)	Data Collection	Total number if issues covered	Starting Grade	Corruption	21. GC No.2, No.5, No.16, (No 19)	Budget (Total)	Gender - discrimination / issues	Previous Recommendations	Retierates (remains)	Multiplier score (0-5)	Square on Matrix	Final Grade
	1	1	1	1		1	1				1	1	8	C		1	3		1	4	2	9	E
1	2	1	1	1		1	1		2		1	1	12	E	1	3	1	1	5	3	23	H	

As previously described, the multiplier score is not a direct sum of the multiplier factors but also considers the form and level of issues raised by the Committee. The headings additional to the guidelines on periodic reporting, are identified in the spreadsheet by a blue background.

A grade A can only be achieved if the Committee did not raise any concerns or make recommendations. No State parties achieved the highest two grades of A or B for this cluster.

¹⁵¹ An example of this wording can be seen in paragraph 16 of CRC CO Azerbaijan 2012, 'Concluding Observations on the Combined Third and Fourth Periodic Report of Azerbaijan, UN Doc CRC/C/AZE/CO/3-4', (United Nations 2012).

¹⁵² Mervat Rishmawi, 'Article 4 The Nature of States Parties' Obligations' in André Alan and others (eds), *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff 2006) 25.

¹⁵³ The spreadsheets for each cluster are in appendix A-21 through A-30 – for the GP cluster a second version of the spreadsheet including the comments column is also available in appendix A-31-34. Due to the size of these spreadsheets for the other nine clusters the spreadsheets available exclude the comments column. The headings of columns, in some instances, have been reduced further in the appendix version due to size.

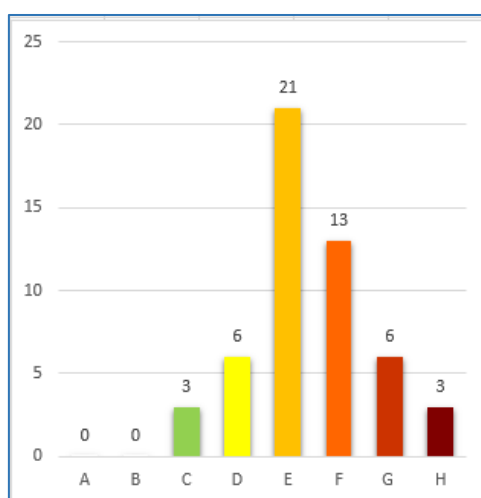
The detailed results showing the number of State parties achieving each grade are in Table 4.1. Within each grade, the State parties are listed alphabetically.

Table 4.1 Grades awarded for cluster 1, General Measures of Implementation.

Grade	Number	State Party (Alphabetical)
A	0	
B	0	
C	3	Fiji, Norway, Poland,
D	6	France, Iceland, Jamaica, Portugal, Sweden, UK,
E	21	Albania, Bhutan, Brazil, Cameroon, Chile, Columbia, Dominican Republic, Estonia, Ethiopia, Germany, Ireland, Kazakhstan, Malta, Mexico, New Zealand, Serbia, Seychelles, South Africa, Switzerland, Timor-Leste, Uruguay,
F	13	Australia, Azerbaijan, Canada, China, Croatia, Ghana, Mongolia, Nepal, Romania, Russian Federation, Senegal, Suriname, Zambia
G	6	Japan, The Gambia, Israel, Morocco, Turkey, Viet Nam
H	3	Algeria, India, Saudi Arabia

In the spread of grades for this cluster shown in figure 4.2, grade E is visible as the most commonly achieved grade.

Figure 4.2 Graph of grades achieved in cluster 1, General Measures of Implementation.



For this study, the term ‘frequency’ of an issue denotes the number of reports out of the potential total of 52 within which it is mentioned, whereas the ‘total’ refers to how many times overall an issue is mentioned.

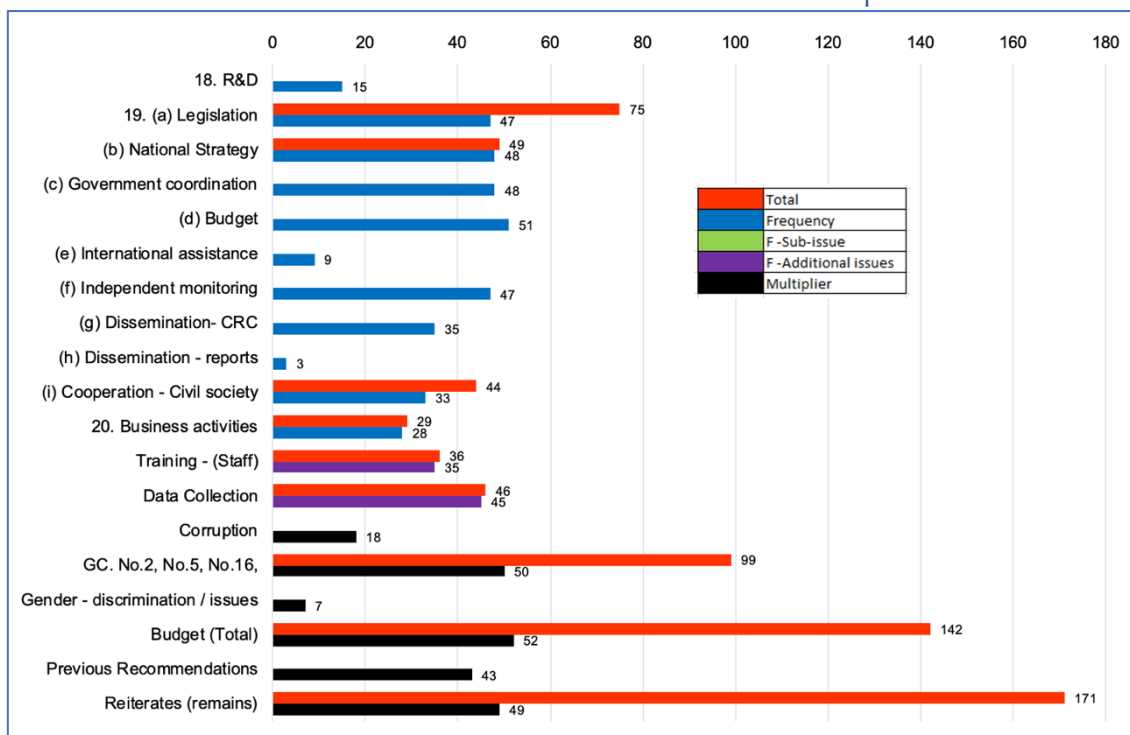
For this cluster, the least frequently mentioned issue, raised only three times by the Committee, related to the State parties’ efforts to disseminate the reports relating to the monitoring process, whereas 35 State parties received comments on the dissemination of the Convention in general. Six of the issues were raised in over 45 of the reports; these issues were: legislation; national strategy; government co-ordination; budget; independent monitoring; and data collection. The heading ‘independent monitoring’ includes comments on child ombudspersons and commissioners and relates to GC No.2 and NHRIs (independent national human rights institutions). Imanian and Thomas note in relation to the creation of Children’s Ombudspersons that the proliferation has been the most ‘rapid and extensive’ in Europe.¹⁵⁴ Not having established a NHRI for children or not doing so to the standard set out in GC No.2, will undoubtedly affect grades with additional negative comments.

The issue of legislation had a frequency of 48 and the total value of 76; this is because in many reports more than one issue was commented on under the heading. Figure 4.3 shows the totals and frequency of the issues used as column headings as well as some of the multiplier column headings of corruption, gender discrimination, references to budget, and comments regarding previous recommendations. Where the ‘total’ (orange bar) and the ‘frequency’ (blue, green, purple, or black bar) are the same, only the ‘frequency’ is shown. Where the issue is an additional issue not identified in the guidelines on periodic reporting, the colour of the bar is purple as for ‘Training (staff)’ and ‘Data Collection’ in figure 4.3. Multipliers, even if inductively created during the grading process, are shown as a black bar. For this cluster, there are no examples of a ‘sub-issue’ (green bar).

An example of where the total and frequency are different is column ‘(i) Cooperation with civil society’. The frequency is 33, meaning that out of 52 reports 33 State parties received at least one comment on cooperation with civil society, usually with a subheading and new paragraph within the report.

¹⁵⁴ Sara Imanian and Nigel Patrick Thomas, ‘Understanding the Impact of Independent Human Rights Institutions for Children: A European Study’ (2019) 27 *International Journal of Children’s Rights* 339, 340.

Figure 4.3 Graph showing the frequency and the total number of references to issues commented on within cluster 1 General Measures of Implementation.



The total number of times the issue was raised, in this case, was 44 times. For example, The Gambia scored a '2' under the heading 'cooperation with civil society'; this is due to a recommendation under the heading 'Comprehensive policy and strategy' to work in partnership with civil society organisations,¹⁵⁵ in addition to the inclusion of paragraphs under the heading 'Cooperation with civil society'¹⁵⁶ containing concerns and recommendations. In some instances, a higher score for an issue is due to the way that the paragraph is written, where it is clear that there is more than one separate issue being commented on under the heading. An example of this from the CO for Germany under the paragraph heading 'Legal status of the Convention' (graded under the spreadsheet heading 'legislation') are two separate issues, firstly constitutional inclusion and secondly statutory hierarchy:

The Committee notes with satisfaction that most Länder have explicitly recognized children's rights in their constitutions. However, the Committee remains concerned that children's rights have not yet been explicitly recognized in the constitutions of Hamburg and Hesse, or in the Federal Constitution (Basic Law). The Committee further notes that

¹⁵⁵ CRC CO The Gambia 2015, 'Concluding Observations on the Combined Second and Third Periodic Reports of The Gambia, UN Doc CRC/C/GMB/CO/2-3' (United Nations 2015) para 10.

¹⁵⁶ *ibid* 23 and 24.

under article 59, paragraph 2, of the Basic Law, the Convention is placed at the level of an ordinary federal law.¹⁵⁷

Whilst reservations and declarations relating to specific articles are sometimes commented on by the Committee in the relevant cluster for the article, it is within this cluster that the Committee generally addresses whether the State party has reservations or declarations. Fifteen reports contained references to the existence of reservations and declarations; the importance of these as LeBlanc¹⁵⁸ discusses is the concern that they undermine the robustness of the Convention or affect the integrity of the Convention.

References to corruption within clusters

Corruption is a potential heading within the GMI cluster, in addition to this it is one of the multipliers included throughout the grading process. In this cluster, there were a total of 18 comments relating to corruption. Because of the nature of the cluster these tended to be in general terms, mostly a single comment within a paragraph with a different heading. Sixteen of the comments were under the paragraph titled 'Allocation of resources'; for instance, the comment received by Algeria was:

The Committee is also concerned that corruption remains pervasive in the State party and continues to divert resources that could enhance the implementation of the rights of the child.¹⁵⁹

All of these references under 'allocation of resources' specifically used the word corruption. In one instance, under the heading 'independent monitoring', corruption was inferred from the text; this was in a recommendation to the Russian Federation (emphasis added):

The Committee recommends that the State party introduce a transparent and competitive process, regulated by law, for nominations and appointments to all posts of commissioners for children's rights, ensuring that the candidates are selected on the basis of merit and *are free from political or other influence* and in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).¹⁶⁰

¹⁵⁷ CRC CO Germany 2014, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Germany, UN Doc CRC/C/DEU/CO/3-4' (United Nations 2014) para 9.

¹⁵⁸ Lawrence J LeBlanc, 'Reservations to the Convention on the Rights of the Child: A Macroscopic View of State Practice.' (1996) 4.4 International Journal of Children's Rights 357.

¹⁵⁹ CRC CO Algeria 2012, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Algeria, UN Doc CRC/C/ALG/CO/3-4' (United Nations 2012) para 19.

¹⁶⁰ CRC CO Russian Federation 2014 (n 139) para 17.

One State party had a paragraph titled corruption. This was Azerbaijan, receiving the comment:

The Committee notes as positive the State party's efforts to combat corruption, including the adoption of a law to combat corruption in 2004 and the establishment of a national strategy. However, the Committee remains gravely concerned at the severity and pervasiveness of corruption among, inter alia, municipal authorities, as well as health-care and education professionals in the State party, which constitute a serious obstacle to the effective use of the State party's resources and the implementation of the Convention. Furthermore, the Committee is concerned that current sanctions against perpetrators of corruption are not commensurate with the seriousness of the offences.¹⁶¹

Within the sample of 52 State parties, more than a third therefore received a comment involving concerns about corruption in the GMI cluster. In addition to this as corruption is an issue that is commented on in other clusters in relation to more specific concerns. The totality of these concerns will be considered further in section 4.3.

The complexity of issues – legislation

By exploring a single issue used as a heading in the spreadsheet, the complexity and breadth of the Committee's comments can be demonstrated. Focusing on 'legislation' as an example due to its relevance to this study, it is possible to break the issue down further to investigate its complexity. Generally, within the CO reports the title used is 'Legislation';¹⁶² occasionally the title is along the lines of 'Legal status of the Convention'.¹⁶³ The starting point, as previously identified, is the Committee's guidelines for periodic reporting. Regarding legislation, paragraph 19 reads:

19. In this section, the State party should provide relevant and up-to-date information in relation to the Convention and the Optional Protocols, if applicable, on the following:

(a) Measures taken to review and bring domestic legislation and practice into full conformity with the Convention and the Optional Protocols. States parties to OPAC and OPSC should provide details of relevant penal and other applicable legal provisions for each Optional Protocol;¹⁶⁴

¹⁶¹ CRC CO Azerbaijan 2012 (n 151) para 19.

¹⁶² For example - CRC CO Colombia 2015, 'Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Colombia, UN Doc CRC/C/COL/CO/4-5' (United Nations 2015) para 7.

¹⁶³ For example - CRC CO Uruguay 2015, 'Concluding Observations on the Combined Third to Fifth Periodic Reports of Uruguay, UN Doc CRC/C/URY/CO/3-5' (United Nations 2015) para 7.

¹⁶⁴ UN Committee on the Rights of the Child, 'Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child UN Doc. CRC/C/58/Rev.3' (n 15).

In 47 of the sample CO reports, the Committee included a heading regarding legislation. Further investigation of these paragraphs reveals 17 'elements' the Committee has chosen to comment on, ranging from the need to bring legislation into conformity with the Convention raised in 39 reports, to elements such as public access to case law raised in only one CO.

Thirty-seven comments were written starting with a positive comment, and 21 included reference to the Committee's opinion that it was reiterating or recalling an issue or recommendation. These are included in the graph at figure 4.4: green for the frequency of a positive comment, and red for the frequency of an indication that the Committee was repeating its concern or recommendation.

Figure 4.4 Frequency of elements of issues under the heading 'legislation' for cluster 1 General Measures of Implementation (Spreadsheet for issue 'legislation' is in appendix A-35)

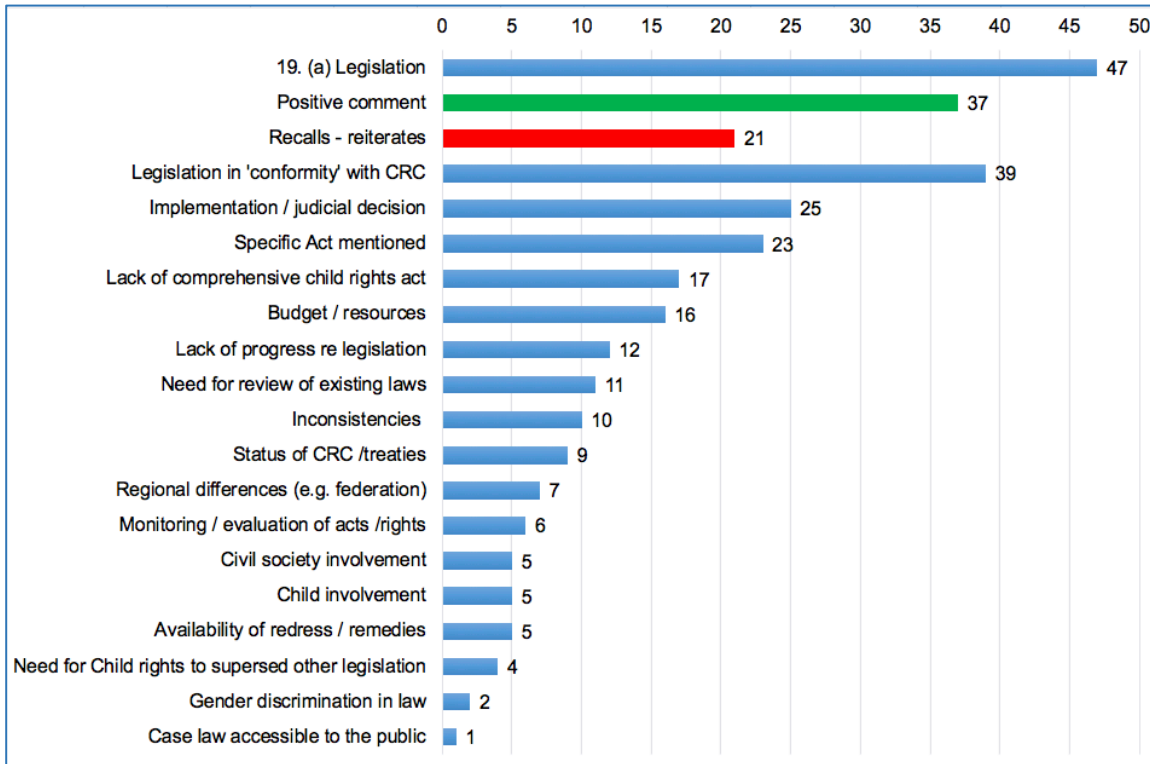


Table 4.2 shows each of these elements from figure 4.4 in order of the most frequently commented on and gives an example of what the Committee said identifying the State party which received the example comment.

Table 4.2 Frequency and details of 'elements' of issues.

Frequency (F) No.	The element of the issue commented on with an example
39	<p>Legislation 'harmonised' or in 'conformity' with CRC.</p> <p>'that the State party strengthen its efforts in bringing its domestic laws and practice into conformity with the principles and provisions of the Convention...'¹⁶⁵ Australia</p>
25	<p>Issues of weak implementation, and or judicial decisions that do not take the CRC into consideration, or a recommendation to 'ensure' full implementation.</p> <p>'the Committee reiterates its concern about their insufficient implementation and, in some instances, the evident gap between law and practice.'¹⁶⁶ Ghana</p>
23	<p>One or more specific pieces of legislation named.</p> <p>'review the Child Care and Protection Act of 2011 to include all the rights enshrined in the Convention'¹⁶⁷ Bhutan</p>
17	<p>The lack of or the need for a comprehensive children's rights act.</p> <p>'strongly recommends that the State party consider adopting a comprehensive law on child rights'¹⁶⁸ Japan</p>
16	<p>The lack of or the need to ensure adequate budget and resources for the implementation of children's rights legislation</p> <p>'include the provision of adequate budget allocation for the implementation of legislation and all other measures adopted to end violence against children.'¹⁶⁹ Malta</p>
12	<p>Lack of progress in the legislation process.</p> <p>'The Committee remains concerned, however, about: (a) The lack of progress in adopting a comprehensive Children's code, the elaboration of which was proposed in 2003'¹⁷⁰ Morocco</p>

¹⁶⁵ CRC CO Australia 2012, 'Concluding Observations on the Fourth Periodic Report of Australia, UN Doc CRC/C/AUS/CO/4', (United Nations 2012) para 12.

¹⁶⁶ CRC CO Ghana 2015, 'Concluding Observations on the Combined Third to Fifth Periodic Reports of Ghana, UN Doc CRC/C/GHA/CO/3-5' (United Nations 2015) para 8.

¹⁶⁷ CRC CO Bhutan 2017, 'Concluding Observations on the Combined Third to Fifth Periodic Reports of Bhutan, UN Doc CRC/C/BTN/CO/3-5', (United Nations 2017) para 5.

¹⁶⁸ CRC CO Japan 2010, 'Concluding Observations on the Third Periodic Report of Japan, UN Doc CRC/C/JPN/CO/3' (United Nations 2010) para 11.

¹⁶⁹ CRC CO Malta 2013 (n 137) para 11.

¹⁷⁰ CRC CO Morocco 2014, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Morocco, UN Doc CRC/C/MAR/CO/3-4' (United Nations 2014) para 10.

F. No.	The element of the issue commented on with an example
11	<p>The need for a comprehensive review of existing law or laws to ensure their conformity with the CRC.</p> <p>'recommends that the State party review and revise all of its legislation relating to children to ensure coherent and consistent harmonization'¹⁷¹ India</p>
10	<p>Concern about inconsistencies in the legislation.</p> <p>'Eliminate all ambiguous and contradictory legal provisions that are not in conformity with the Convention'¹⁷² Senegal</p>
9	<p>The status of the CRC – how international treaties are treated in the State party.</p> <p>'While noting that the Supreme Court of Justice has declared that international human rights treaties have constitutional status in the national legal framework, the Committee is concerned about the limited application of the Convention owing to the lack of awareness among judges.'¹⁷³ Uruguay</p>
7	<p>Variation or inconsistencies in legislation within internal borders (federal).</p> <p>'that given the State party's federal system and dualist legal system, the absence of such overall national legislation has resulted in fragmentation and inconsistencies in the implementation of child rights across the State party, with children in similar situations being subject to disparities in the fulfilment of their rights'¹⁷⁴ Canada</p>
6	<p>Monitoring or evaluating the implementation of laws.</p> <p>'Guarantee systematic accountability for all children's rights, including by facilitating effective access to justice and ensuring that the relevant laws, policies and programmes are monitored and evaluated.'¹⁷⁵ Dominican Republic</p>
5	<p>The issue with or the need for a process of redress or remedies.</p> <p>'ensure that the Law on the Protection of the Rights of the Child supersedes all legislation and provide children with appropriate means of redress.'¹⁷⁶ Albania</p>

¹⁷¹ CRC CO India 2014, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of India, UN Doc CRC/C/IND/CO/3-4' (United Nations 2014) para 12.

¹⁷² CRC CO Senegal 2016, 'Concluding Observations on the Combined Third to Fifth Periodic Reports of Senegal, UN Doc CRC/C/SEN/CO/3-5' (United Nations 2016) para 8(b).

¹⁷³ CRC CO Uruguay 2015 (n 163) para 7.

¹⁷⁴ CRC CO Canada 2017, 'Concluding Observations on the Combined Third to Fifth Periodic Reports of Canada, UN Doc CRC/C/CAN/CO/3-5' (United Nations 2017) para 10.

¹⁷⁵ CRC CO Dominican Republic 2015, 'Concluding Observations on the Combined Third to Fifth Periodic Reports of Dominican Republic, UN Doc CRC/C/DOM/CO/3-5' (United Nations 2015) para 8.

¹⁷⁶ CRC CO Albania 2012 (n 125) para 9.

F. No.	The element of the issue commented on with an example
5	Involvement of Civil society in drafting and or monitoring new laws. 'Adopting the implementing regulation of the General Act in consultation with civil society and children;' ¹⁷⁷ Mexico
5	Involvement of Children in drafting new laws. 'develop without further delay and in cooperation with all segments of civil society and children themselves a comprehensive law on children that equally embraces child protection and the promotion of children's rights' ¹⁷⁸ Saudi Arabia
4	The need for children's rights legislation to supersede other laws. 'take all the necessary measures to bring national legislation into full conformity with the Convention, and that the Convention should always prevail when provisions of domestic law conflict with the Convention.' ¹⁷⁹ Sweden
2	The existence of gender discrimination in relevant legislation. 'The Committee further urges the State party to promptly repeal from the Family Code all other provisions that discriminate against girls and women and negatively impact on all children,' ¹⁸⁰ Algeria
1	That case law is not readily available to the public. 'Most of the case law is not disclosed publicly;' ¹⁸¹ Croatia

Norway had only one element mentioned: the need to ensure legislation is 'harmonized' with the Convention. However, because this element was in its own right an 'issue', this was recorded as a '1' in the 'Legislation' column on the grading sheet. Croatia, on the other hand, had nine elements, which combined into three issues; therefore, the score in the 'Legislation' column was recorded as a '3'. The level of issues under the heading is taken into consideration

¹⁷⁷ CRC CO Mexico 2015, 'Concluding Observations on the Combined Fourth and Fifth Periodic Report of Mexico, UN Doc CRC/C/MEX/CO/4-5', (United Nations 2015) para 8.

¹⁷⁸ CRC CO Saudi Arabia 2016 (n 131) para 7.

¹⁷⁹ CRC CO Sweden 2015, 'Concluding Observations on the Fifth Periodic Report of Sweden, UN Doc CRC/C/SWE/CO/5' (United Nations 2015) para 8.

¹⁸⁰ CRC CO Algeria 2012 (n 159) para 12.

¹⁸¹ CRC CO Croatia 2014, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Croatia, UN DocCRC/C/HRV/CO/3-4' (United Nations 2014) para 6.

in the final stage of the creation of the ‘multiplier’ for the cluster, taking into consideration all the issues and multiplier factors.

This consideration of a single issue and its elements demonstrates that even a single issue within a cluster can be complex and can illuminate areas for improvement in implementing children’s rights.

Cluster 2 – Definition of the Child

Cluster 2 ‘Definition of the Child’ (DOTC) is unique as it has only one article:

- ❖ Art.1 (the definition of the child)

Paragraph 22 of the guidelines on periodic reporting expands on the information requested:

In this section, the State party should provide relevant and up-to-date information with respect to article 1 of the Convention concerning the definition of the child in its domestic laws and regulations. If the age of majority is below the age of 18 years, the State party should indicate how all children benefit from protection and enjoy their rights under the Convention up to the age of 18 years. The State party should indicate the minimum age for marriage for girls and boys in its legislation.¹⁸²

No general comments are referred to for this cluster; therefore, the spreadsheet for grading the cluster does not have as many columns as other clusters as shown in figure 4.5.

Figure 4.5 Column headings for cluster 2 Definition of the Child. (Appendix A-22)

DOTC / Majority	Marriage / Sexual Exploitation	Juvenile Justice	State Support	Total number of issues covered	Starting Grade	Corruption	GC No.	Gender Discrimination	Legislation	Reiterates (remains)
1	1			1	B				1	
1		1		2	D				1	

The first two column headings relate to paragraph 22; the next two columns coloured blue are additional issues discovered from reading the CO reports. In this cluster both gender

¹⁸² UN Committee on the Rights of the Child, ‘Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child UN Doc. CRC/C/58/Rev.3’ (n 15).

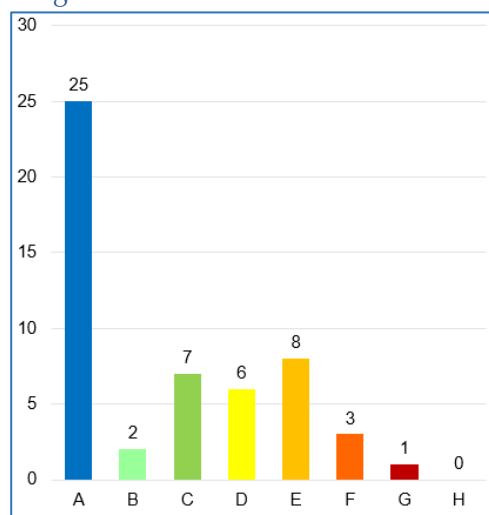
discrimination and legislation are shown in the multiplier section rather than as columns in the issues section, as there may only be one issue, where both legislation and gender discrimination are mentioned for instance in the CO report for Seychelles:

The Committee remains deeply concerned that despite its previous recommendation ..., the State party has not amended its legislation to raise the minimum age of marriage for girls, which is between 15 and 17 years with parental consent, to that for boys, which is 18 years, thus maintaining gender disparity among children.¹⁸³

In this instance there is a single issue raised, a starting grade of B, but because this issue has gender discrimination with a large difference between boys and girls, marrying at 15 in comparison to 18, and this issue has been raised with the State party before, the multiplier in this instance was 3, creating a final grade of E. Further detail on the issues raised under this cluster are discussed in chapter 3.5. What this additional focus on a cluster and the issues used as column headings illustrates is that each issue in the spreadsheet can potentially be much more complex and involved than it might first appear.

Within this cluster 25 State parties did not receive comments in their CO reports, therefore achieving a grade A. The full grade spread is shown in figure 4.6.

Figure 4.6 Graph of grades achieved for cluster 2 Definition of the Child.



No State parties received the lowest possible grade of H. The lowest grade attained was a G by Saudi Arabia, having received the comment:

The Committee is seriously concerned that the State party does not intend to change the fact that judges have discretion to determine the age of majority. The Committee is

¹⁸³ CRC CO Seychelles 2012, 'Concluding Observations on the Combined Second to Fourth Periodic Reports of Seychelles, UN Doc CRC/C/SYC/CO/2-4' (United Nations 2012) para 32.

particularly concerned that judges frequently authorize the marriage of girls who have attained puberty. It also notes with deep concern that efforts to set a minimum age for marriage were successfully challenged in December 2014 by the highest-ranking religious leader, who declared being in favour of marriages involving girls as young as 9 years old.¹⁸⁴

The detailed results showing the number of State parties achieving each grade is shown in table 4.3 and the prevalence of the different issues and the frequency of the multipliers are shown in figure 4.7.

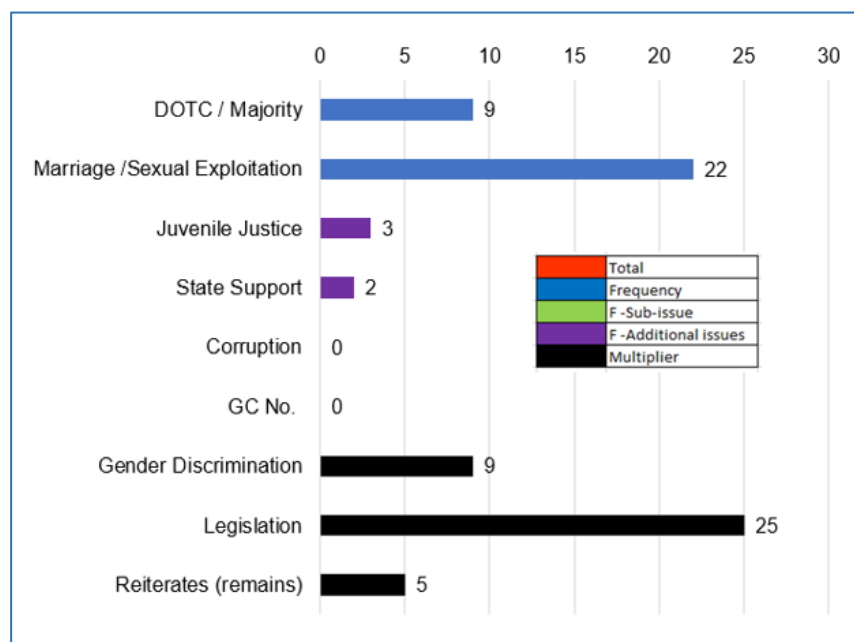
Due to this cluster referring to only one article with a limited number of issues identified a separate total for the number of times an issue is mentioned is not necessary.

Table 4.3 Grades awarded for cluster 2 Definition of the Child.

Grade	Number	State Party (Alphabetical)
A	25	Algeria, Australia, Azerbaijan, Brazil, China, Columbia, Croatia, Dominican Republic, Ethiopia, France, Germany, Ghana, Iceland, India, Jamaica, Kazakhstan, Mexico, Mongolia, Morocco, Norway, Poland, Portugal, Russian Federation, Sweden, Switzerland,
B	2	Ireland, Uruguay,
C	7	Chile, Estonia, Fiji, New Zealand, Romania, UK, Viet Nam,
D	6	Bhutan, Cameroon, Canada, Japan, Nepal, Turkey,
E	8	The Gambia, Malta, Senegal, Serbia, Seychelles, South Africa, Suriname, Zambia,
F	3	Albania, Israel, Timor-Leste,
G	1	Saudi Arabia,
H	0	

¹⁸⁴ CRC CO Saudi Arabia 2016 (n 131) para 30.

Figure 4.7 Graph showing the frequency and total number of references to issues commented on within cluster 2 Definition of the Child.



Twenty-two State parties received comments on the age of marriage and/or sexual exploitation of children; an example of a comment regarding sexual exploitation comes from the CO for Canada:

The Committee is concerned that not all children under the age of 18 are benefiting from the full protection under the Convention ... and children between the ages of 16 and 18 who are not appropriately protected against sexual exploitation in some provinces and territories.¹⁸⁵

Nine State parties received comments highlighting concerns that included gender discrimination, which, as in the preceding examples, relates to their being different ages for boys or girls to marry.

Cluster 3 – General Principles

Cluster 3 'General Principles' (GP) covers four articles:

- ❖ art.2 (non-discrimination);
- ❖ art.3 (best interests of the child);
- ❖ art.6 (the right to life, survival and development); and

¹⁸⁵ CRC CO Canada 2017 (n 174) para 30.

❖ art.12 (respect for the views of the child).

This cluster is covered by paragraphs 23 to 27 in the guidelines on periodic reporting. The issues identified in paragraph 23 are the four articles mentioned above. Paragraph 24 expands on non-discrimination and explicitly mentions discrimination against: children in disadvantaged situations, children with disabilities, children belonging to minorities and indigenous groups, and gender-based discrimination. To record these various types of discrimination, column headings were created as sub-issues. Within the CO reports, though not mentioned in the guidelines, the Committee also criticised discrimination against children due to their or their parent's sexual orientation, and the way that State parties treat intersex children. It is worth noting that reference to intersex children within the CO reports only occurs from 2015 onwards, demonstrating the Committee's evolving awareness of issues and the willingness to raise and comment on issues currently not explicitly covered in either the Convention or even in the guidelines on periodic reporting. An additional column to cover the issue of discrimination of sexual orientation/gender identity was therefore created, despite this potentially being detrimental to State parties with newer reports by lowering the grade of the more recent CO reports, as even if this type of discrimination exists within the State party it would not have been commented on for the State parties with older reports.

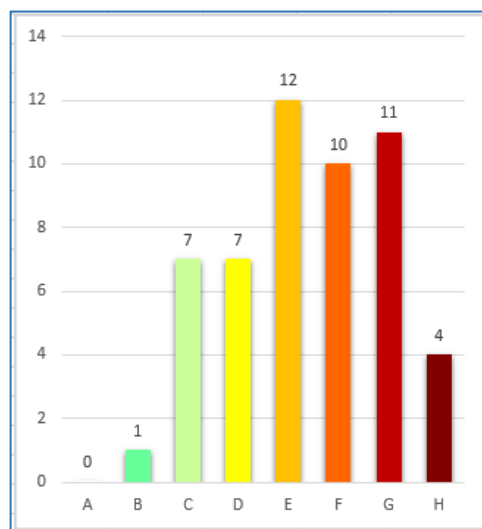
Due to the differentiation of discrimination in paragraph 24, the cluster grading spreadsheet shown in figure 4.8 reflects this by an initial column relating to paragraph 23, indicating whether the Committee used the heading 'Non-discrimination' in the CO report for the State party. The next four columns (shaded green) break down discrimination into the sub-topics paragraph 24 identified. The next two columns cover two additional types of discrimination identified from reading the reports (shaded blue): discrimination on the grounds of sexual orientation or gender identity, and discrimination against single parents, which was frequently referred to in the reports as discrimination against children born out of wedlock. The scores for these sub-headings have a background colour of green as their combined total is shown in the first column '23(a) Non-discrimination'. This combined score is used to calculate the total number of issues; therefore, to ensure against double counting, the number displayed in the column 'Total number of issues covered' is the total of the scores with a blue background only.

interwoven nature of issues within the Convention articles and clusters. The results from this analysis are in section 4.3.

The question of whether the chosen four articles do indeed act as ‘general principles’ and how they came to be called that is explored in detail by Hanson and Lundy.¹⁸⁹ Further discussion of which articles should be construed as ‘general principles’ and even if that is an accurate name for the cluster, will be considered further in chapter 8. Nonetheless, as Kilkelly observes, the Committee imbue these four articles with an ‘important status, as a lens through which the Convention’s ordinary provisions should be viewed’;¹⁹⁰ consequently, the results for this cluster are an important ‘snapshot’ of a State party’s situation. Whether the result a State party achieved for this cluster is an indication of what their final average grade will be is discussed further in chapter 8.2.

Within this cluster, there were no State parties without comments, and therefore none achieved a grade A. The spread of grades is shown in figure 4.9.

Figure 4.9 Graph of grades achieved for cluster 3 General Principles.



Estonia was the highest scoring State party, with comments focused only on ‘the best interest of the child’ and ‘respect for the views of the child’ and did not receive any comments on discrimination. Of the four State parties with the lowest grade, as well as having comments on other issues, one received comments on all six types of discrimination, and two State parties

¹⁸⁹ Hanson and Lundy (n 62).

¹⁹⁰ Ursula Kilkelly, ‘The UN Convention on the Rights of the Child: Incremental and Transformative Approaches to Legal Implementation’ (2019) 23 *International Journal of Human Rights* 323, 324.

had comments on five types of discrimination. The detailed results showing the number of State parties achieving each grade is shown in table 4.4.

Table 4.4 Grades awarded for cluster 3 General Principles.

Grade	Number	State Party (Alphabetical)
A	0	
B	1	Estonia
C	7	Croatia, Fiji, Germany, Iceland, Norway, Poland, Portugal,
D	7	Chile, Ireland, Jamaica, Kazakhstan, Malta, Suriname, Switzerland,
E	12	Australia, Bhutan, Cameroon, Canada, France, Nepal, New Zealand, Seychelles, Sweden, Timor-Leste, UK, Uruguay,
F	10	Albania, Azerbaijan, Dominican Republic, The Gambia, Japan, Morocco, Serbia, South Africa, Turkey, Zambia,
G	11	Algeria, Brazil, China, Ethiopia, Ghana, India, Mongolia, Romania, Russian Federation, Senegal, Viet Nam,
H	4	Columbia, Israel, Mexico, Saudi Arabia,

The remaining State party with a grade H was Israel. Though it did not initially attain a low score based on the number of issues the Committee commented on, it received the largest multiplier score possible due to the nature of the issues commented on and the level of the discrimination against Palestinian children, including under the heading of Non-discrimination:

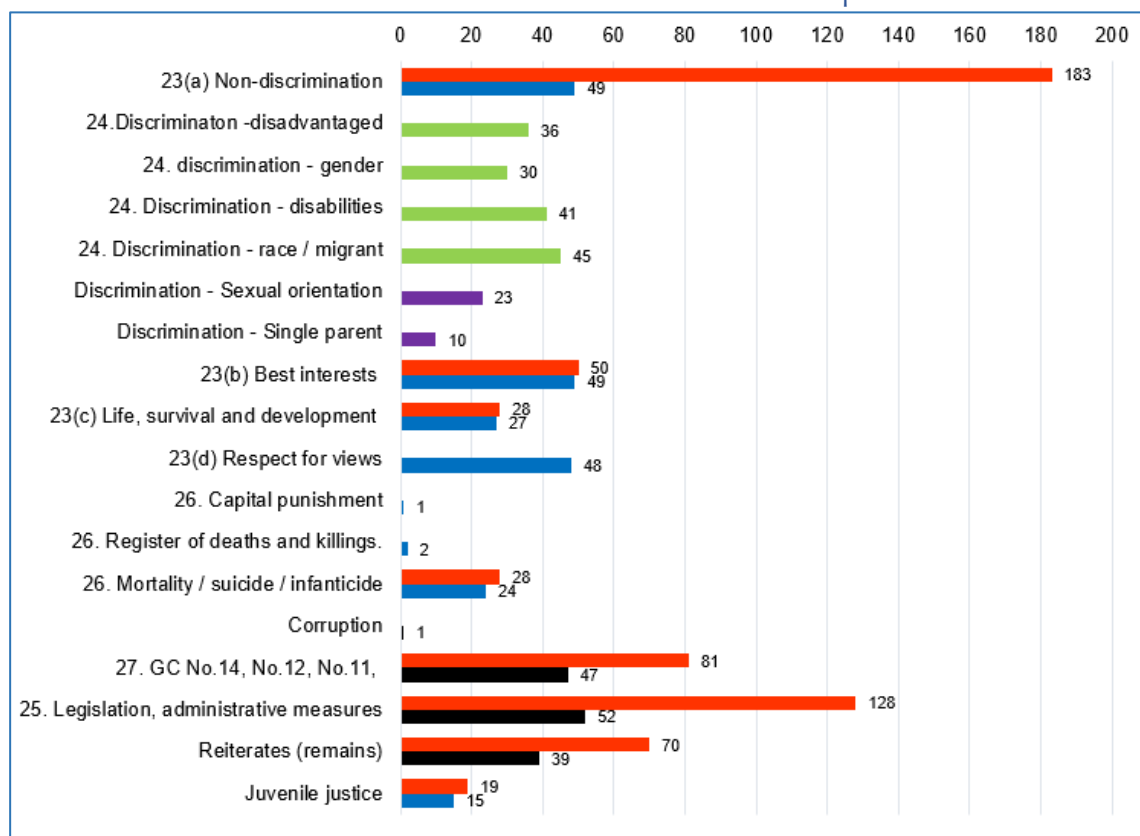
...the implementation of separate legal systems and institutions amount to de facto segregation and lead to inequality between Israeli and Palestinian children in the enjoyment of their rights.¹⁹¹

Moreover, under the headings of 'The best interest of the child' and 'Right to life, survival and development', the discriminatory practices, particularly against Palestinian children that were given prominence, created the high multiplier score.

Considering the issue of non-discrimination, and the five sub-types of discrimination identified for grading this cluster, discrimination on the grounds of race, minority ethnic groups, or migration status (including refugees) was the most usual form of discrimination, raised with 45 of the total 52 State parties receiving comments as shown in figure 4.10.

¹⁹¹ CRC CO Israel 2013 (n 136) para 21.

Figure 4.10 Graph showing the frequency and total number of references to issues commented on within cluster 3 General Principles.



Comparing the number of comments relating to the four articles of the GP cluster, clearly non-discrimination receives the greatest focus. One of the other four general principles, art.6 ‘the right to life, survival and development’, relating to paragraphs 23(c) and 26 in the guidelines on periodic reporting, has 28 comments recorded under the main heading, and 31 related to the three parts of paragraph 26. The only State party with a comment relating to capital punishment under the subheading of ‘right to life, survival and development’ was Saudi Arabia, where the Committee went as far as to name five children who have been executed after being sentenced to death when they were under the age of 18.¹⁹² Nowak observes that the understanding of art.6 ‘requires an *interpretation... which takes into account all the other human rights enshrined in the convention*’ (original emphasis)¹⁹³; whether this cluster is where this right should be grouped will be considered further in chapter 8. Only one State party, Columbia, received a comment relating to corruption for this cluster.¹⁹⁴

As already noted, discrimination against intersex children, which comes under the heading of sexual orientation and gender identity, was not referred to before 2015; therefore, it is presumed

¹⁹² CRC CO Saudi Arabia 2016 (n 131) para 20.

¹⁹³ Manfred Nowak, ‘Article 6: The Right to Life, Survival and Development’ in André Alan and others (eds), *A Commentary on the United Nations Convention on the Rights of the Child* (Brill | Nijhoff 2005).

¹⁹⁴ CRC CO Colombia 2015 (n 162) para 23(a) and 24(a).

that intersex discrimination is under-represented in this sample. Two State parties received comments relating to all six types of discrimination: Cameroon and Saudi Arabia. A further ten State parties received comments relating to five forms of discrimination: Algeria; Columbia; Dominican Republic; France; The Gambia; Mexico; Romania; South Africa; UK; and Zambia.

Because discrimination is potentially a factor affecting grades in all clusters this issue is considered further in section 4.3.

Even though legislation was a column heading as an issue under cluster 1 GMI, references to specific pieces of legislation or the need for legislative changes are interwoven throughout the clusters. These cluster-specific references are counted under a multiplier column. In this cluster, all 52 State parties received at least one comment relating to legislation and the administration of children's rights, with a total of 128 comments. An example of a comment regarding legislation for this cluster is:

The Committee ... expresses concern at the persistence of legal provisions that discriminate against girls and women such as those related to inheritance contained in the 2005 Family Code.¹⁹⁵

This comment appears in the paragraph under the heading of 'Non-discrimination'. Further discussion regarding the prevalence of comments on legislation are contained in 4.3.

[Cluster 4 – Civil Rights and Freedoms](#)

Cluster 4 'Civil Rights and Freedoms' (CRF) covers seven articles:

- ❖ art.7 (birth registration, name and nationality);
- ❖ art.8 (preservation of identity);
- ❖ art.13 (freedom of expression and the right to seek, receive and impart information);
- ❖ art.14 (freedom of thought, conscience and religion);
- ❖ art.15 (freedom of association and peaceful assembly);
- ❖ art.16 (protection of privacy and protection of image); and
- ❖ art.17 (access to information from a diversity of sources and protection from material harmful to a child's well-being).

The guidelines on periodic reporting list the seven articles for the cluster at paragraph 28, and in paragraph 29 request 'appropriate information on the role of the media with regard to the

¹⁹⁵ CRC CO Algeria 2012 (n 159) para 29.

promotion and protection of children’s rights.¹⁹⁶ No general comments are referred to in the guidelines for this cluster. However, as Ziemele¹⁹⁷ notes, GC No.7 on ‘Implementing child rights in early childhood’ is relevant in relation to art.7 and birth registration. From analysing the sample, it was observed that the older CO reports were written prior to the current version of the guidelines on periodic reporting and what is now cluster 5 ‘violence against children’ (VAC) was originally a heading within CRF. For this study, paragraphs in CRF on ‘violence against children’ were graded in cluster 5 VAC to enable closer parity and comparison.

From reading the CO reports for the study sample under the issue of ‘birth, registration, name and nationality’, three sub-issues became apparent which had not been expressly noted in the guidelines: firstly, that birth registration was not free of charge; secondly, that where a birth was not registered it becomes a block to education. The third sub-issue can relate to either 28(a) ‘birth registration’ or 28(b) ‘preservation of identity’; the sub-issue is the existence of discrimination of one of four forms: being born out of wedlock; gender; race including migration status; or being disadvantaged. These three sub-issues were included as column headings and identified by a blue background, as can be seen in figure 4.11.

Figure 4.11 Issues as column headings for grading spreadsheet for cluster 4 Civil Rights and Freedoms. (Appendix A-24)

Juvenile justice																		
Reiterates (remains)																		
Legislation,																		
Corruption																		
Starting Grade																		
Total number of issues covered																		
Reservations and Declarations																		
29 - Role of media with regards to promotion of child rights																		
28(g) Access to information from a diversity of sources and protection from material harmful to a child’s well-being																		
28(f) Protection of privacy and protection of image																		
28 (e.) Freedom of association and peaceful assembly																		
28(d) Freedom of thought, conscience and religion																		
28(c) Freedom of expression, - right to seek, receive, impart information																		
28(b) Preservation of identity																		
28 (a) or (b) Discrimination (Wedlock / gender / race /migrant / disadvantaged)																		
BR - block to education																		
BR - NOT free of charge																		
28(a) Birth registration, name and nationality (art.7)																		
	1	1	1	1														
	1		1	2	1				1									

A wide interpretation is used for ‘disadvantaged’; an example is a concern raised to Cameroon under the heading ‘Birth registration and nationality’:

¹⁹⁶ UN Committee on the Rights of the Child, ‘Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child UN Doc. CRC/C/58/Rev.3’ (n 15).

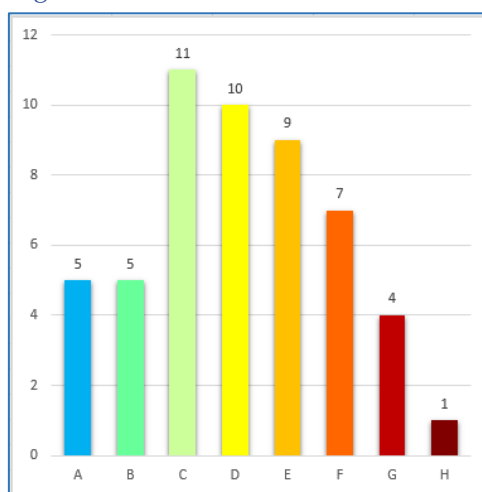
¹⁹⁷ Ineta Ziemele, ‘Article 7: The Right to Birth Registration, Name and Nationality, and the Right to Know and Be Cared for by Parents’ in André Alan and others (eds), *A Commentary on the United Nations Convention on the Rights of the Child* (Brill | Nijhoff 2007) 1.

concerned about the low level of birth registration, particularly in rural areas, owing to:

- (a) Gaps in the law failing to address the impact on poor and vulnerable families of costs associated with birth registration and the declaration of all births outside hospitals;¹⁹⁸

From the process of grading this cluster, the sub-issue of discrimination relating to paragraph 28(a) art.7 (birth registration) and paragraph 28(b) art.29 (preservation of identity), particularly on the grounds of wedlock or gender, were noted to be frequently commented on by the Committee although not included in the guidelines or the Convention. Due to some of the issues having multiple elements and the way that the reports are written it is possible for State parties to score higher than '1' against an issue. For instance, Morocco has a score of '2' for 28(a) Birth registration, name and nationality, a score of '1' regarding birth registration not being free of charge and a score of '3' for discrimination as there were three explicit references to different types of discrimination or discrimination in different circumstances.

Figure 4.12 Graph of grades achieved for cluster 4 Civil Rights and Freedoms.



Five State parties achieved a grade A for this cluster; this is because the Committee did not comment on nor make recommendations to improve this cluster for that State party. The full grade spread is shown in figure 4.12 and the details of which grade State parties achieved are in table 4.5.

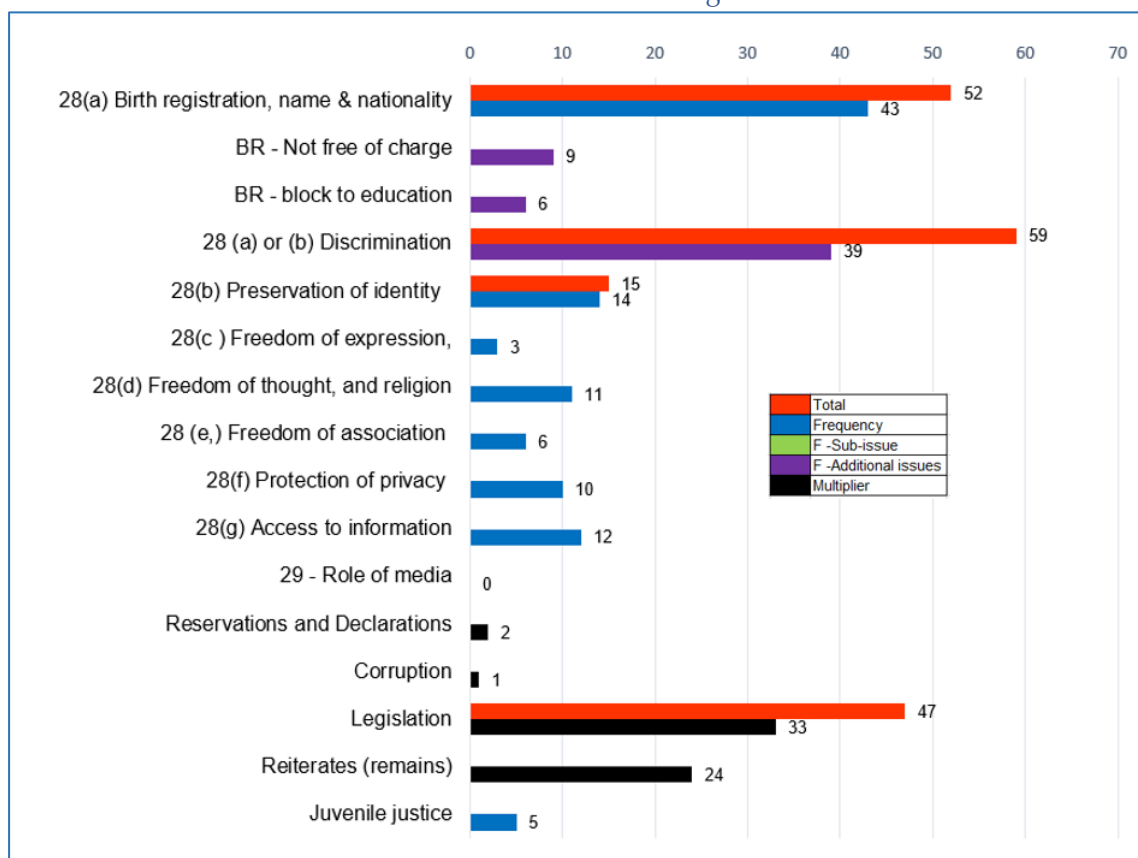
¹⁹⁸ CRC CO Cameroon 2017, 'Concluding Observations on the Combined Third to Fifth Periodic Reports of Cameroon, UN Doc CRC/C/CMR/CO/3-5' (United Nations 2017) para 18.

Table 4.5 Grades awarded for 4 Civil Rights and Freedoms.

Grade	Number	State Party (Alphabetical)
A	5	Columbia, Iceland, Kazakhstan, Portugal, Uruguay
B	5	Estonia, Malta, Seychelles, Suriname, Sweden
C	11	Fiji, Germany, Ireland, Jamaica, Japan, Mexico, Norway, Poland, Romania, Serbia, Zambia
D	10	Bhutan, Brazil, Croatia, Mongolia, New Zealand, Russian Federation, South Africa, Switzerland, Timor-Leste, UK
E	9	Albania, Cameroon, Canada, France, The Gambia, Ghana, India, Senegal, Viet Nam
F	7	Australia, Chile, Dominican Republic, Ethiopia, Morocco, Nepal, Turkey
G	4	Azerbaijan, China, Israel, Saudi Arabia
H	1	Algeria,

Only one State party received a comment on corruption for this cluster; Azerbaijan. Despite the guidelines in paragraph 29 asking for information on the role of the media regarding the promotion of children's rights, within the sample this issue was not commented on as shown in figure 4.13.

Figure 4.13 Graph showing the frequency and total number of references to issues commented on within cluster 4 Civil Rights and Freedoms.



There were 10 reports with comments on right to privacy. The focus in these were varied, mostly focused on government data relating to children, but also related to juvenile justice and internet privacy protection. A modern twist on the privacy issue ‘which can include the media’s role in protection of rights’ relates to parents not respecting the privacy of children by posting information and images on social media or engaging children in ‘reality’ television programs, as described by Oswald et al.¹⁹⁹ This type of breach of privacy was not found to be commented on within this sample; it will be intriguing to observe whether it will be included in the future. Article 15, freedom of association, appears to be somewhat eclipsed in comparison to other civil rights in this cluster and was only noted to be commented on in six reports. As Daly describes:

¹⁹⁹ Marion Oswald, Helen James and Emma Nottingham, ‘The Not-so-Secret Life of Five-Year-Olds: Legal and Ethical Issues Relating to Disclosure of Information and the Depiction of Children on Broadcast and Social Media’ (2016) 8 Journal of Media Law 198.

The result of discriminatory attitudes towards children is that their presence can often irritate and offend adults, and the law has been used in some jurisdiction to control and exclude children from public spaces.²⁰⁰

The CO report for the UK gives an example of the Committee's view:

In order to fully guarantee children's right to freedom of movement and peaceful assembly, the Committee recommends that the State party:

- (a) Prohibit the use in public spaces of acoustic devices used to disperse gatherings of young people (so-called "mosquito devices");
- (b) Collect data on measures used against children, including children aged 10-11 years, to deal with antisocial behaviours and for the dispersal of crowds, and monitor the criteria and proportionality of their use.²⁰¹

Freedom of association, as with protection of privacy, is an area that as society changes, for instance children en masse protesting climate change, that may result in an increase in comments in future CO reports.

It has already been noted that discrimination is a specific issue within the GP cluster. Within this cluster, discrimination - as it relates specifically to civil rights and freedoms - appears again to be an important issue from the frequency with which the Committee commented on the issue: 59 times in 39 of the CO reports. While race, religion, and gender continue to be grounds for discrimination, here 'wedlock', more specifically children born out of wedlock, is a recurring theme of discrimination such as in the report for Algeria: 'Registration officers and family judges often refuse to register children born out of wedlock although no legal restrictions exists...',²⁰² or the comment from the Committee to Canada:

...seriously concerned that some children have been deprived of their identity due to the illegal removal of the father's name on original birth certificates by government authorities, especially in cases of unwed parents.²⁰³

This focus on discrimination in forms relevant to a specific cluster continues throughout the reports for each cluster and builds evidence of the importance of the issue of discrimination to

²⁰⁰ Aoife Daly, 'Article 15: The Right to Freedom of Association and to Freedom of Peaceful Assembly' in André Alan and others (eds), *A Commentary on the United Nations Convention on the Rights of the Child* (Brill | Nijhoff 2016) 90.

²⁰¹ CRC CO UK 2016, 'Concluding Observations on the Fifth Periodic Report of United Kingdom of Great Britain and Northern Ireland, UN Doc CRC/C/GBR/CO/5' (United Nations 2016) para 37.

²⁰² CRC CO Albania 2012 (n 125) para 37.

²⁰³ CRC CO Canada 2017 (n 174) para 38.

the Committee in any form and any circumstance. The reoccurrence of discrimination as an issue in different clusters is explored further in section 4.3.

Cluster 5 – Violence against Children

Cluster 5 'Violence against Children' (VAC) covers six articles:

- ❖ art.19 (protection from violence, abuse and neglect);
- ❖ art.24.3 (abolishing traditional practices prejudicial to child health);
- ❖ art.28.2 (school discipline to be consistent with dignity and in conformity with the Convention);
- ❖ art.34 (protection from sexual exploitation and abuse);
- ❖ art.37 (a) (not to be subjected to torture or cruel, inhuman or degrading treatment); and
- ❖ art.39 (promotion of physical and psychological recovery).

The grading spreadsheet for cluster 5 VAC became particularly complicated due to the number of sub-issues. Paragraph 30 of the guidelines on periodic reporting identifies the articles above for the VAC cluster; though it combines art.37 (a) and art.28 para (2) as a single issue, and there is an addition of a heading of '(f) The availability of helplines for children'.

The general comments referred to in paragraph 31 are:

- ❖ No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment;²⁰⁴
- ❖ No. 13 (2011) on the right of the child to freedom from all forms of violence;²⁰⁵
- ❖ No. 18 (2014) of the Committee on the Rights of the Child on harmful practices.²⁰⁶

From the reading of the CO reports, additional issues and sub-issues developed. The sub-issues for harmful practices included: child marriage and polygamy; female genital mutilation; and irreversible surgery without the child's consent on intersex children. The sub-issues for para. '30 (d) The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, including corporal punishment', were related to the location of the treatment: within the home and family environment; at school, which included both punishment and

²⁰⁴ UN Committee on the Rights of the Child, 'General Comment No.8 (2006) The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment - UN Doc. CRC/C/GC/8' (2006).

²⁰⁵ UN Committee on the Rights of the Child, 'General Comment No.13 (2011) The Right of the Child to Freedom from All Forms of Violence - UN Doc. CRC/C/GC/13' (2011).

²⁰⁶ UN Committee on the Rights of the Child, 'General Comment No.18 (2014) on Harmful Practices (Joint General Comment) - UN Doc. CRC/C/GC/18' (2014).

bullying; and within the environment of juvenile justice administration. Additional issues that add more detail also became apparent: domestic violence and honour-based violence (reflecting general comment No.18 [2014]); and the freedom from all forms of violence (reflecting both art.19 and general comment No.13 [2011]). Other themes that were noted within the cluster and became column headings were: violence against disabled children; violence within the workplace; violence related to gangs and organised crime; and executions (including extrajudicial) of children. The resulting spreadsheet is shown in figure 4.14.

For this cluster, the sub-issues to 30 (b) (harmful practices), and to paragraph 30 (d) (torture, degrading treatment and corporal punishment), are identified with a green background both for the heading and the column score, as they are combined into a total score for the 'head-issue'. As with previous clusters, to ensure that they are not double counted they are excluded from the equation for the 'total number of issues covered'. In the example shown in Figure 4.14, for the first row there was a single issue of 'harmful practices' commented on, namely the sub-issue of 'child marriage', whereas there were comments on all three sub-issues of corporal punishment: in the home, in school, and the 'ill-treatment of juveniles in detention'. In this case, the 'head-issue' score was 3. The additional issues to the guidelines already mentioned were highlighted with a blue background to indicate this status.

Figure 4.14 Issues as column headings for grading spreadsheet for Cluster 5 Violence against Children. (Appendix A-25)

VAC - included in CRF	
Reiterates (remains)	1
Legislation	4
GC No. 8,13,18	3
Corruption	2
Starting Grade	
Total number of issues covered	11
Executions (including extrajudicial) of children	E
Gangs & organised crime	
Violence in workplace	
Violence against disabled	
30(f) The availability of helplines for children.	1
30(e) Measures to promote the physical and psychological recovery and social reintegration of child victims (art. 39);	1
Home / family	1
Schools (punishment & Bullying) (GC.8)	1
Juvenile justice (GC.8)	1
30(d) The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, including corporal punishment (arts. 37 (a), 28, para 2);	3
30(c) Sexual exploitation and sexual abuse (art. 34);	2
Irreversible surgery - intersex	
FGM (GC.18)	
Child Marriage & polygamy (GC.18)	1
30(b) Measures to prohibit and eliminate all forms of harmful practices, including, but not limited to, FGM and early/forced marriages (art. 24, para. 3);	1
Freedom from all forms of violence (art. 19, GC.13)	1
Domestic Violence & honour based violence (GC.18)	2
30(a) Abuse and neglect (art. 19);	1
	7
	C
	1

As discussed in cluster 4 CRF, it is possible to see the evolution of the reporting process and the guidelines on reporting, due to the older reports not having a cluster called 'violence against children'. In some of the oldest reports analysed sometimes issues that would in the more recent

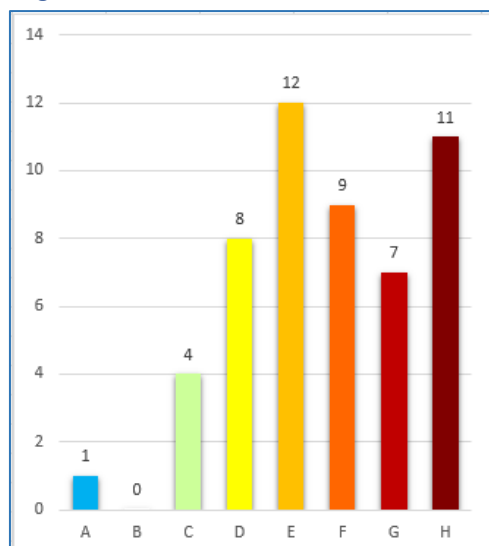
CO come under the umbrella of VAC were also found in other clusters, in ‘Family Environment and Alternative Care’ (FEAC) was ‘Abuse and Neglect’, and in ‘Disability, Basic Health and Welfare’ (DBHW) was ‘Harmful traditional practices’. An example of this would be one of the oldest reports analysed, Norway from 2010, where in order to grade VAC elements were brought together from CRF, FEAC and DBHW. It is noticeable that less detail was given to VAC when combined as a heading under CFR, and therefore the State parties with the older reports almost certainly will have achieved a better grade for this cluster than they would have if VAC had been considered separately in its own cluster. These included Algeria, Australia, Azerbaijan, Japan, Norway, Seychelles, Turkey, and Viet Nam, and are identified in table 4.6 in red text.

Table 4.6 Grades awarded for cluster 5 Violence against Children.

Grade	Number	State Party (Alphabetical)
A	1	Iceland
B	0	
C	4	Ireland, Norway , Portugal, Seychelles
D	8	Croatia, Estonia, Japan , Malta, Poland, Romania, Switzerland, Viet Nam
E	12	Australia , Azerbaijan , Canada, China, France, Germany, Jamaica, Mongolia, New Zealand, Sweden, Timor-Leste, Uruguay
F	9	Algeria , Bhutan, Chile, Fiji, The Gambia, India, Serbia, Turkey , Zambia
G	7	Columbia, Dominican Republic, Ghana, Russian Federation, Senegal, Suriname, UK
H	11	Albania Brazil, Cameroon, Ethiopia, Israel, Kazakhstan, Mexico, Morocco, Nepal, Saudi Arabia, South Africa

One State party, Iceland, received a grade A for VAC, as there were no concerns raised or recommendations made. What is very noticeable in this cluster, particularly taking into consideration the eight State parties with potentially artificially inflated grades, is the high number of State parties: eleven in total, with the lowest grade H. In fact, more State parties achieved a grade H in this cluster than for any other cluster. The full grade spread is shown in figure 4.15.

Figure 4.15 Graph of grades achieved for cluster 5 Violence against Children.



Notwithstanding the change in the format of reports, the frequency with which the Committee mentioned issues is revealing, with the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, including corporal punishment' mentioned a total of 113 times in 49 of the CO reports. The sub-issues focus on the location or environmental context of the treatment or punishment; with comments linking juvenile justice in 30 reports; the location of ill-treatment and punishment in schools, whether as punishment or as bullying, mentioned in 34 reports; and corporal punishment within the home and family environment mentioned in 37 reports as shown in figure 4.16.

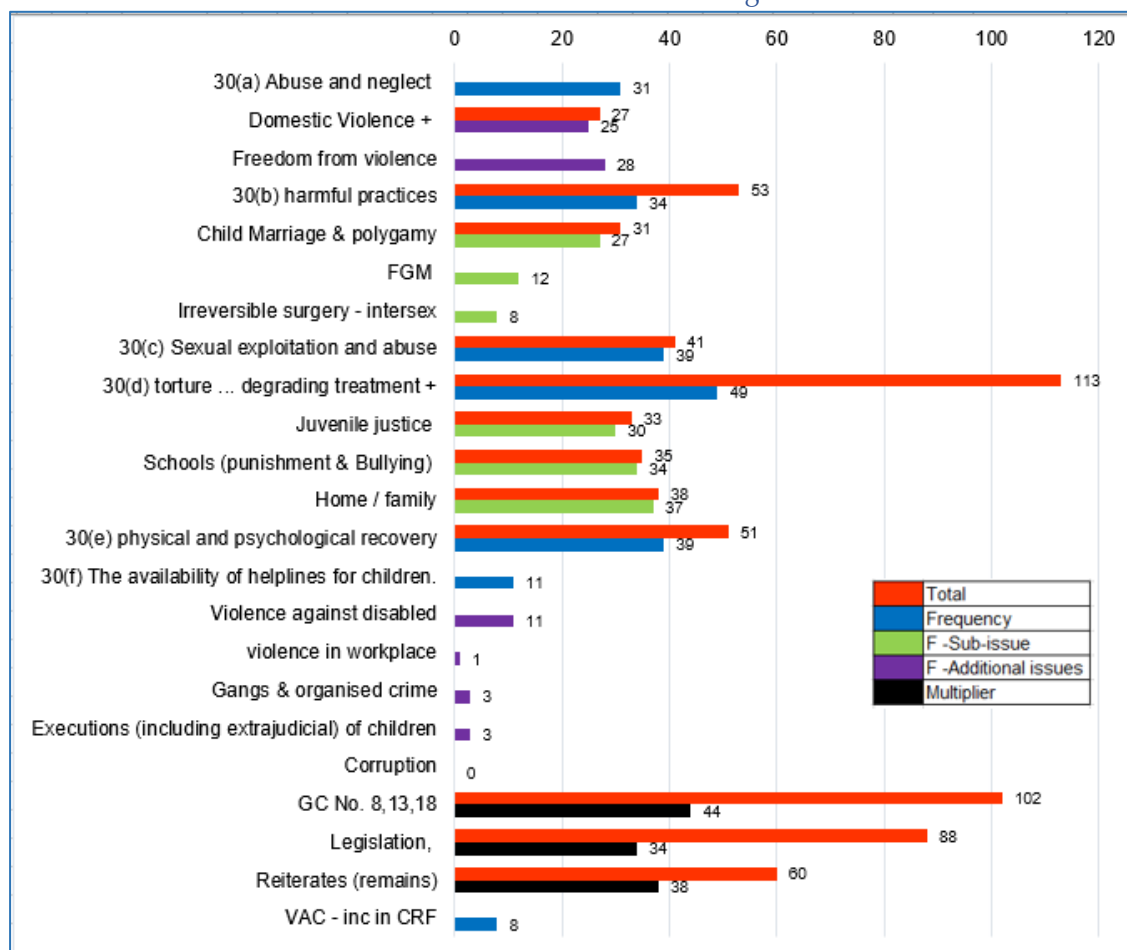
Under the issue relating to art.19 abuse and neglect, two sub-issues were apparent: domestic violence and honour-based violence, relating to general comment No.18, which was commented on 25 times; and freedoms from all forms of violence, which relates to general comment No.13, 28 times.

For the head issue from paragraph 30(b) on harmful practices, two of the subheadings come directly from splitting the paragraph, 'child marriage and polygamy' which had 31 comments in 27 of the reports, and FGM which was specifically mentioned in 12 reports, such as in the comment received by The Gambia:

notes the delegation's statement that the National Plan of Action for Accelerated Abandonment of Female Genital Mutilation 2013–2017 has been finalized and is being implemented. However, the Committee is deeply concerned about the high prevalence

of female genital mutilation that still exists in the country, as well as the absence in the legislation of explicit criminalization of the practice.²⁰⁷

Figure 4.16 Graph showing the frequency and total number of references to issues commented on within cluster 5 Violence against Children.



Female genital mutilation, as with many of the issues raised by the Committee such as domestic violence, is not solely a children’s rights issues; however, data shows that it is a practice that is carried out predominantly on children. For instance, in The Gambia, of the girls aged 15 to 19 who had undergone FGM, 60% had done so in the 0 to 4 years old category.²⁰⁸ Further, the same statistical profile also records that by comparing age groups of adult women there has been no significant change in the prevalence of FGM. The percentage of girls aged 0 to 14 years old that have undergone FGM (as reported by their mothers) is 56%, and the overall percentage of girls and women aged 15 to 49 years who have undergone FGM is 75%.²⁰⁹

²⁰⁷ CRC CO The Gambia 2015 (n 155) para 45.

²⁰⁸ UNICEF - Data and Analytics Section - Division of Data Research and Policy, ‘The Gambia - Statistical Profile on Female Genital Mutilation’ (UNICEF 2019) <<https://data.unicef.org/resources/fgm-country-profiles/>>.

²⁰⁹ *ibid.*

Legislation prohibiting FGM can be constructed from a children's rights issue standpoint, as Gaffney-Rhys describes the law in England and Wales:

The distinction made between adult and child victims corroborates the assertion that the law in England and Wales regards FGM as a children's rights issue. This is further reinforced by the fact that the Serious Crime Act 2015 created a new offence of failing to protect a girl under the age of sixteen from a genital mutilation offence, which is designed to criminalise parents who do not actually organise or perform FGM on their children, but do not take reasonable steps to protect them from it.²¹⁰

The third subheading under the head-issue of harmful practices, irreversible surgery on intersex children is not, as noted earlier, listed within the guidelines on periodic reporting. Within the study sample reference to 'intersex' either relating to discrimination, as in the GP cluster, or within this cluster, relating to 'Intersex Genital Mutilation'²¹¹ as a form of violence, does not occur until 2015. Therefore, the frequency here, being commented on in eight reports, is presumably underrepresented, and it is highly likely that in a comparison of reports from 2016 onwards the occurrence in comments for this issue would be more prevalent.

Whilst not explicitly focused on, issues under the umbrella of discrimination can be observed within this cluster, with domestic violence, honour-based violence, child marriage, and FGM, generally having a gender discrimination element. Also linked to concepts of gender were eight references to irreversible surgery in intersex children before they are old enough to consent. With regards the issue of discrimination, 11 reports contained comments regarding violence against disabled children.

In three reports, Brazil, Nepal, and Saudi Arabia, comments on executions of children including extrajudicial were made such as:

the Committee is gravely concerned about the very high number of extrajudicial executions of children by the military police, "militias", and the civilian police, and by the widespread impunity for these grave violations of children's rights.²¹²

²¹⁰ Ruth Gaffney-Rhys, 'Female Genital Mutilation: The Law in England and Wales Viewed from a Human Rights Perspective' [2019] *The International Journal of Human Rights* 1 <<https://doi.org/10.1080/13642987.2019.1646249>>.

²¹¹ Melinda Jones, 'Intersex Genital Mutilation – A Western Version of FGM' (2017) 25 *The International Journal of Children's Rights* 396 <<http://booksandjournals.brillonline.com/content/journals/10.1163/15718182-02502008>>.

²¹² CRC CO Brazil 2015, 'Concluding Observations on the Second to Fourth Periodic Report of Brazil, UN Doc CRC/C/BRA/CO/2-4' (United Nations 2015) para 35.

Due to the nature and severity of the issues commented on, such as the existence of extrajudicial executions, Brazil received the highest multiplier score of 5, as did Israel and Saudi Arabia. Five other State parties received multipliers of 4; this means that eight State parties (15%) received comments regarding extreme circumstances and/or indicating situations far from the Convention and the Committee's recommendations. When combined with the high number of grades G and H awarded – 18 in total, which is more than a third of the sample, it is extremely worrying as an indication of how many State parties (the UK included with a G grade) are failing to implement the Convention in such a way as to protect children from violence.

In this cluster, there were no explicit comments on corruption.

Cluster 6 – Family Environment and Alternative Care

Cluster 6 'Family Environment and Alternative Care' (FEAC) covers nine articles:

- ❖ art.5 (family environment and parental guidance in a manner consistent with the evolving capacities of the child);
- ❖ art.9 (separation from parents);
- ❖ art.10 (family reunification);
- ❖ art.11 (illicit transfer and non-return);
- ❖ art.18.1 (parents' common responsibilities) and art.18.2 (assistance to parents and provision of childcare services);
- ❖ art.20 (children deprived of a family environment);
- ❖ art.21 (adoption, national and intercountry);
- ❖ art.25 (periodic review of placement);
- ❖ art.27.4 (recovery of maintenance for the child).

The issues identified from paragraph 32 of the guidelines on periodic reports include these articles and an additional issue at para 32 (j) 'measures to ensure the protection of children with incarcerated parents and children living in prison with their mothers'.

Within the grading process, paragraph 32 (b) 'parents' common responsibilities and the assistance to parents and provision of childcare services' was split into two columns, because within the reports it was observed that the issues were mentioned separately. Further, two sub-issues emerged under the heading of 'children deprived of a family environment', firstly, where children's deprivation was due to poverty or socio-economic hardship, and secondly, comments on the quality of the facilities or treatment of children.

These are identified by a green background in the spreadsheet, and as with previous spreadsheets these sub-issues are not themselves totalled in the final score, but are instead totalled in the column preceding them: the head-issue of ‘children deprived of a family environment.’ In the example at figure 4.17, each sub-issue was mentioned once giving the head-issue a score of two.

The additional issues identified and included in the spreadsheet were: domestic violence; discrimination regarding gender; discrimination regarding race, ethnic minority or religion; leaving care; and family law proceedings. These are visually identified in the spreadsheet with a blue background.

Figure 4.17 Issues as column headings for grading spreadsheet for cluster 6 Family Environment and Alternative Care. (Appendix A-26)

Juvenile justice	
Reiterates (remains)	
Legislation,	
GC No. 7 and Guidelines for alternative care	1
Corruption	3
Starting Grade	E
Total number of issues covered	8
Family law proceedings	
Leaving 'care'	1
Discrimination - Race / religion	
Discrimination - Gender	5
Domestic Violence	1
32(j) ... protection of children with incarcerated parents and children living in prison with their mothers.	
32(i) Illicit transfer and non-return (art.11)	1
32(h) Adoption (national & intercountry)(art.21)	1
32(g) Periodic review of placement (art.25)	1
Quality of facilities / treatment of children	1
Poverty	1
32(f) Children deprived of a family environment (art. 20)	2
32(e) Recovery of maintenance for the child (art. 27 , para. 4)	1
32(d) Family reunification (art. 10)	
32(c) Separation from parents (art. 9)	
Assistance to parents and provision of childcare services (art. 18)	1
32(b) Parents' common responsibilities,	1
32(a) Family environment and parental guidance in a manner consistent with the evolving capacities of the child (art. 5)	1

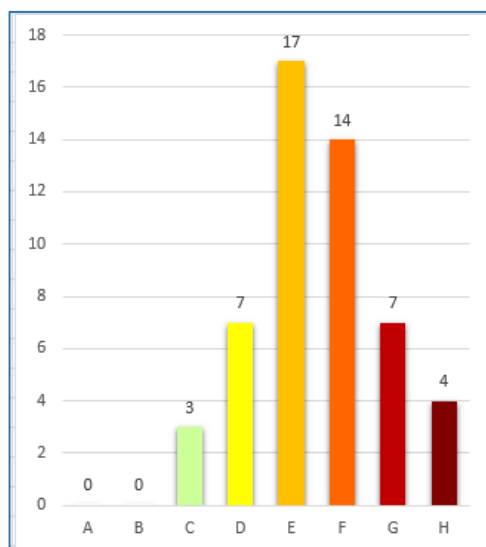
The general comment referred to under this cluster in paragraph 33 is general comment No. 7 (2005) on implementing child rights in early childhood;²¹³ additionally, the State parties are asked to consider the General Assembly Guidelines for the alternative care of children.²¹⁴

All the State parties in the sample received comments for this cluster, meaning no A grades were awarded. The highest grade, grade C, was awarded in three instances and the lowest grade, grade H, to four State parties. The spread of grades is shown in figure 4.18, and the details of which State party achieve each grade is shown in table 4.7.

²¹³ UN Committee on the Rights of the Child, 'General Comment No.7 (2005) Implementing Child Rights in Early Childhood - UN Doc. CRC/C/GC/7/Rev.1' (n 110).

²¹⁴ United Nations General Assembly, 'Guidelines for the Alternative Care of Children - Report of the Human Rights Council 64th Session Res 64/142 2010 - UN Doc A/RES/64/1' (2010).

Figure 4.18 Graph of grades achieved for cluster 6 Family Environment and Alternative Care.



An example of a State party achieving a grade C is Iceland, for which the Committee raised concerns under two of the headings. Firstly, under the heading ‘assistance to parents and provision of childcare services’, the comment was that social benefits aimed at families in poverty were inadequate, and ‘that in cases of family disputes there is insufficient funding for mediation services to parents’.²¹⁵ Then, under the additionally identified heading of ‘leaving care,’ the Committee regretted the ‘lack of information on measures taken to integrate children into society after leaving alternative care settings’.²¹⁶ These comments gave an initial total number of issues covered of 2, a starting grade of B; with a multiplier of 1 the final grade was a C.

Table 4.7 Grades awarded for cluster 6 Family Environment and Alternative Care.

Grade	Number	State Party (Alphabetical)
A	0	
B	0	
C	3	Iceland, Malta, Sweden
D	7	Chile, Germany, Ireland, Norway, Poland, Portugal, Seychelles
E	17	Australia, Bhutan, Columbia, Croatia, Estonia, Fiji, France, Jamaica, New Zealand, Romania, Serbia, South Africa, Suriname, Timor-Leste, Turkey, UK, Viet Nam,

²¹⁵ CRC CO Iceland 2012, ‘Concluding Observations on the Combined Third and Fourth Periodic Reports of Iceland, UN Doc CRC/C/ISL/CO/3-4’ (United Nations 2012) para 30.

²¹⁶ *ibid* 32.

Grade	Number	State Party (Alphabetical)
F	14	Azerbaijan, Brazil, Cameroon, Canada, Ethiopian, Ghana, Japan, Kazakhstan, Mexico, Mongolia, Nepal, Switzerland, Uruguay, Zambia
G	7	Albania, Dominican Republic, The Gambia, Israel, Russian Federation, Saudi Arabia, Senegal
H	4	Algeria, China, India, Morocco

In direct comparison, an example of a State party receiving a grade H is Morocco, where the nature of the multiple issues raised ranged from polygamy remaining permissible to:

the consequences of the criminalisation of sexual relations outside of marriage (art. 490 of the Criminal Code), which reportedly results in the abandonment of dozens of babies every day.²¹⁷

Other issues commented on included ‘two thirds of children are placed in institutions on the sole basis of poverty’,²¹⁸ and the concern ‘that the legal situation of children in Kafalah remains precarious’,²¹⁹ and the concern that ‘in some instances, the Kafalah system is used to exploit girls in domestic labour’.²²⁰ Morocco therefore received a high multiplier due to the severity and nature of the issues raised, resulting in a final grade of H. These two examples of Iceland and Morocco illustrate the variety of issues and scope of levels of concerns under this cluster.

As to the frequency of issues shown in figure 4.19, 50 of the State parties received comments regarding children deprived of a family environment, with the issue raised a total of 91 times. Also commented on in over two-thirds of the reports were the issues of assistance to parents and the provision of childcare services, the quality of the facilities and the treatment of children where they have been deprived of a family environment, and adoption.

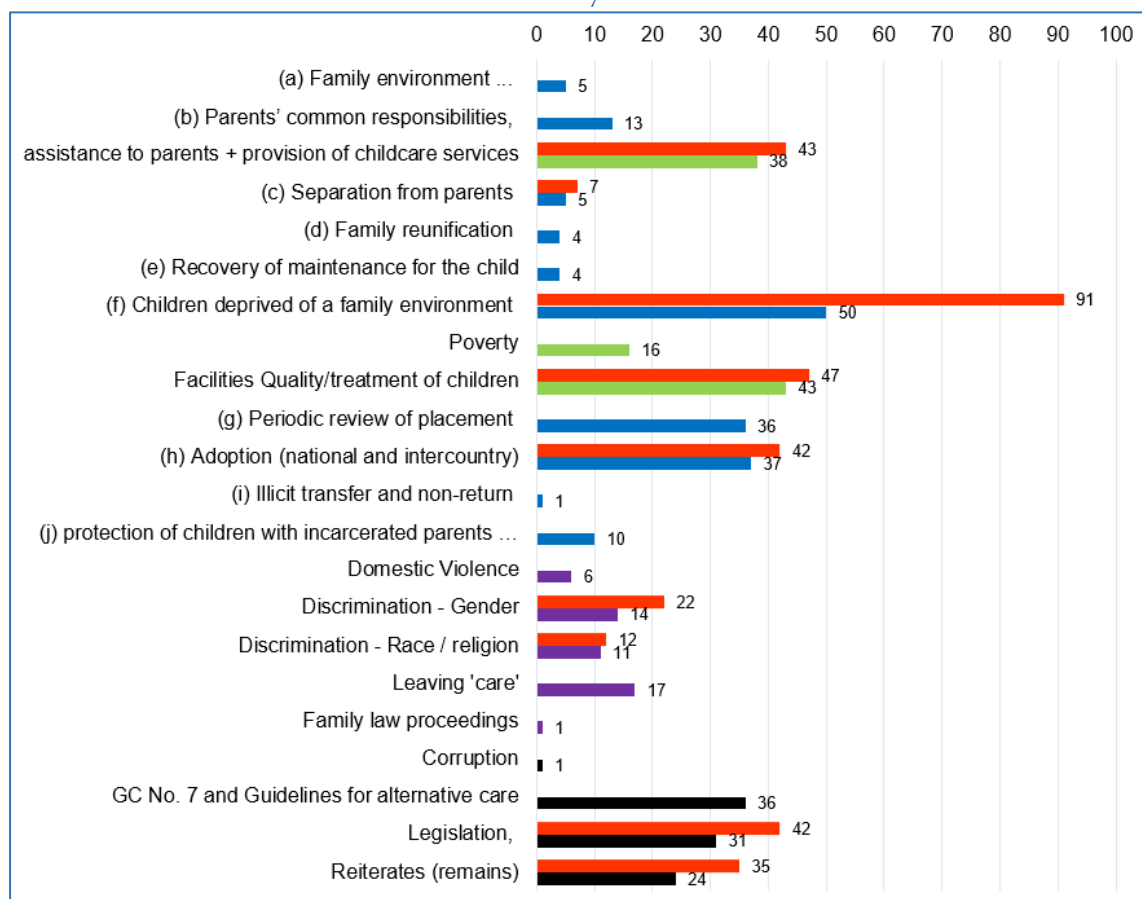
²¹⁷ CRC CO Morocco 2014 (n 170) para 46.

²¹⁸ *ibid* 48.

²¹⁹ *ibid* 50.

²²⁰ *ibid*.

Figure 4.19 Graph showing the frequency and total number of references to issues commented on within cluster 6 Family Environment and Alternative Care.



It is intriguing to notice the lack of comments, only five, under the column of family environment, art.5, and the comments that do exist are focused on parental responsibility, as exemplified in the comment to France:

The Committee is concerned that the State party continues to refer to “parental authority”, which is not conceptually in line with the rights of the child.²²¹

What is conspicuous by its absence is any reference to evolving capacities (emphasis added):

States Parties shall respect the responsibilities, rights and duties of parents ... to provide, **in a manner consistent with the evolving capacities of the child**, appropriate direction and guidance **in the exercise by the child** of the rights recognized in the present Convention.²²²

²²¹ CRC CO France 2016, ‘Concluding Observations on the Fifth Periodic Report of France, UN Doc CRC/C/FRA/CO/5’ (United Nations 2016) para 49.

²²² United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 5.

In 2012 Kamchedzera noted how ‘the notion of the child’s evolving capacities has only recently started to gain recognition as a principle applicable to all other rights’,²²³ and in Hanson and Lundy’s²²⁴ reconsideration of the GP cluster, they remove article 6 and replace it with article 5, because it contains the ‘evolving capacities’ concept. One of the reasons it may be absent from comments is because of the question of how to monitor, or more accurately, how to measure if ‘direction and guidance’ is being provided ‘in a manner consistent with evolving capacities’.

Once again, while considering the frequency of issues, it can be noted that there were comments on discrimination on the grounds of gender and of race or religion, as well as discrimination against children from disadvantaged situations. Finally, one State party, Brazil, received a comment on corruption.

Cluster 7 – Disability, Basic Health and Welfare

Cluster 7, ‘Disability, Basic Health and Welfare (DBHW), covers seven articles or sections of articles:

- ❖ art.6 (survival and development);
- ❖ art.18.3 (childcare services and facilities);
- ❖ art.23 (children with disabilities);
- ❖ art.24 (health and health services);
- ❖ art.26 (Social Security);
- ❖ art.27 para.1-3 (standards of living) and
- ❖ art.33 (substance abuse).

The issues identified for this cluster are from paragraphs 34, 35 and 36 in the guidance on periodic reporting. Paragraph 34 relating to art.23 was split into two separate issues, firstly relating to children with disabilities and the measures to respect their dignity, self-reliance and active participation in the community, then issues relating to their education and cultural activities. Paragraph 35 identifies five issues: survival and development; health and health services; efforts to address the most prevalent health challenges and promote physical and mental health; reproductive health rights of adolescents; and substance abuse. The third issue, of prevalent health challenges, was split into two sub-issues, separating issues surrounding communicable and non-communicable diseases from issues relating to the promotion of

²²³ Garton Kamchedzera, ‘Article 5: The Child’s Right to Appropriate Direction and Guidance’ in André Alan and others (eds), *A Commentary on the United Nations Convention on the Rights of the Child* (Brill | Nijhoff 2012) 39.

²²⁴ Hanson and Lundy (n 62).

physical and mental health, identified in the spreadsheet column headings with a green background. Additional issues identified from the reports were: discrimination relating to race or gender; HIV, Aids and sexually transmitted infections; and illegal, unsafe or denial of abortions. These are identified in the spreadsheet headings with a blue background. The resulting spreadsheet column headings are shown in figure 4.20.

The general comments referred to under this cluster are:

- ❖ No. 3 (2003) on HIV/AIDS and the rights of the child;²²⁵
- ❖ No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child;²²⁶
- ❖ No. 9 (2006) on the rights of children with disabilities;²²⁷ and
- ❖ No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health.²²⁸

Figure 4.20 Issues as column headings for grading spreadsheet for cluster 7 Disability, Basic Health and Welfare. (Appendix A-27)

Juvenile justice	
Reiterates (remains) Legislation, GC No. 3 / 4 /9/ 15	3
Corruption	2
Starting Grade	
Total number of issues covered	12
Abortion - illegal / unsafe / denial	D
HIV/AIDS (& STI)	1
Discrimination - gender	1
Discrimination - race	1
36(b) Standard of living, support programmes with regard to nutrition, clothing and housing, reduce poverty (art 27)	1
36 (a) Social security and childcare services and facilities (arts. 26 and 18, para. 3);	1
(e) Measures to protect children from substance abuse (art. 33)	1
35(d) Reproductive health rights of adolescents and measures to promote a healthy lifestyle	1
35 (c.) promote physical and mental health and well-being of children (environmental)	1
35. (c.) health challenges - communicable and non-communicable diseases;	1
35. (b) Health and health services, in particular primary health care (art. 24);	1
35 (a) Survival and development (art. 6, para 2);	1
34. Education and cultural activities	2
34. (art 23) children with disabilities -dignity, self-reliance, participation in the community, services,	1

In this cluster all 52 State parties received comments, and therefore none achieved a grade A. Eighteen State parties fell into the lowest two grades G and H.

Within this cluster one of the (by current views) surprising omissions in the Convention is visible. Article 33 reads:

²²⁵ UN Committee on the Rights of the Child, 'General Comment No.3 (2003) HIV AIDS and the Right of the Child - UN Doc. CRC/GC/2003/3' (2003).

²²⁶ UN Committee on the Rights of the Child, 'General Comment No.4 (2003) Adolescent Health and Development in the Context of the CRC - UN Doc. CRC/GC/2003/4' (2003).

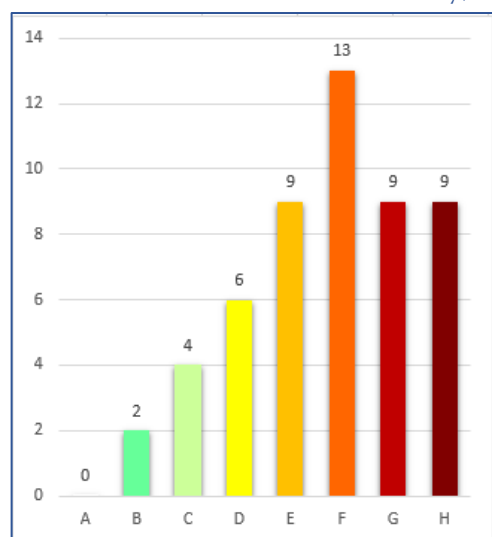
²²⁷ UN Committee on the Rights of the Child, 'General Comment No.9 (2006) The Rights of Children with Disabilities - UN Doc. CRC/C/GC/9' (2006).

²²⁸ UN Committee on the Rights of the Child, 'General Comment No.15 (2013) on the Right of the Child to Enjoy the Highest Attainable Standard of Health - UN Doc. CRC/C/GC/15' (2013).

State parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to prevent children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.²²⁹

Nowhere, however, is there reference to the protection of children from alcohol abuse, nor rights enabling them access to rehabilitation programs and systems for alcohol, drug, or substance abuse. Veerman focuses on these omissions where he describes that ‘the CRC looks like an archaic document’.²³⁰ Despite this, DBHW is again an area over which the Committee has expanded its sphere of interest using general comments and guidelines for reporting, and have included these topics in their comments. The study sample once again showcases the evolution of the clusters within DBHW. Norway and Japan with CO reports from 2010, the cluster has the heading of ‘Basic health and Welfare’; nevertheless, it still includes art.23 ‘Children with a disability’ within the list of articles covered by the cluster even though disability is not in the title. By 2012 the title change can be observed. The notable change regarding included articles is art.33 ‘Drug abuse’ which is not included in the list of articles contained in the title for the cluster in the earlier CO reports. Art.33 appears in the title list from 2014; however, even in one of the earliest reports, Norway in 2010, drug abuse is commented on, but it is done so under the sub-heading of ‘Adolescent Health’.

Figure 4.21 Graph of grades achieved for cluster 7 Disability, Basic Health and Welfare.



Norway received one of the highest grades, a B, with comments under four of the headings: health and health services; promotion of physical and mental health and well-being; measures

²²⁹ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989.

²³⁰ Veerman (n 61).

to protect children from substance abuse; and standards of living. In direct comparison, South Africa's CO report obtained them an initial score of 17, with a score of four under the column 'promotion of physical and mental health and well-being of children'. The full list of grades achieved is shown in table 4.8.

Table 4.8 Grades awarded for cluster 7 Disability, Basic Health and Welfare.

Grade	Number	State Party (Alphabetical)
A	0	
B	2	Malta, Norway
C	4	Croatia, Iceland, Portugal, Sweden
D	6	Canada, Estonia, Japan, Poland, Seychelles, Switzerland,
E	9	Chile, Dominican Republic, Germany, Ireland, Kazakhstan, Serbia, Timor-Leste, Turkey, UK
F	13	Albania, Australia, Azerbaijan, Bhutan, Colombia, Ethiopian, Ghana, Jamaica, Morocco, New Zealand, Romania, Saudi Arabia, Uruguay
G	9	Algeria, China, France, The Gambia, Mexico, Nepal, Russian Federation, Suriname, Vietnam
H	9	Brazil, Cameroon, Fiji, India, Israel, Mongolia, Senegal, South Africa, Zambia

With regards to the frequency with which issues were commented on, it was the issue of the promotion of physical and mental health and well-being of children that was commented on the greatest number of times: 100 times in total, in 45 of the 52 reports. A rare subheading of 'Environmental health' was noted in some CO reports. These were included under this column heading; an example comes from Brazil's CO report:

the Committee is concerned about the negative effects of polluted air, water and soil, and of food contamination, on children's health.²³¹

As Desmet and Aylwin²³² describe, there does not yet exist a body of literature on natural resources exploitation and children's rights, and as Kaime points out, the consequences of

²³¹ CRC CO Brazil 2015 (n 212) para 65.

²³² Ellen Desmet and Jose Aylwin, 'Natural Resource Exploitation and Children's Rights' in Wouter Vandenhoele and others (eds), *Routledge International Handbook of Children's Rights Studies* (2015).

children living in environmentally undesirable living conditions, being ‘constantly exposed to pollution’, has significant ramifications for health and development and frequently this is ‘poorly translated into effective remedial actions, and is often overlooked in policy and programming’.²³³ However, with increasing focus on climate and environmental issues and prominent child activists, it would not be surprising if this element of children’s health was increasingly focused on in future CO reports.

During the drafting process of the Convention, the issue of abortion was focused on the foetus and when the rights within the Convention would first apply: at birth, or prior to birth. The resulting wording, as discussed in chapter 3.5, left significant room for interpretation, which has occurred with reservations and declarations, such as the declaration by Argentina:

Concerning article 1 of the Convention, the Argentine Republic declares that the article must be interpreted to the effect that a child means every human being from the moment of conception up to the age of eighteen.²³⁴

Under this cluster, the issue of abortion is approached from a different angle, the rights of a child who is pregnant, and it is evident that the Committee is of the view that a pregnant girl should have access to a legal and safe abortion if she so chooses. For example, from the report to Morocco the Committee is:

Seriously concerned that the criminalisation of abortion leads to dozens of teenage girls every year undergoing illegal unsafe abortions, at the risk of their lives.²³⁵

This method of focusing on the issue from a different angle, in conjunction with the use of general comments and the guidelines on periodic reporting to widen the scope of the Committee beyond the original text of the Convention even to the point of including new issues, raises the question as to whether the Convention is now significantly out of date and in need of amending or whether it is a framework that is able to be reinterpreted as societal norms evolve. It further raises questions about the status of treaties within domestic legislation. DBHW is a large and complex cluster, covering a wide range of issues as can be seen in figure 4.22. Arguably it is too large and covers too many aspects, for instance article 27 alone covers as Nolan describes a ‘wide range of elements’ and that in comparison to other economic and

²³³ Thoko Kaime, ‘Children’s Rights and the Environment’ in Ursula Kilkelly and Ton Liefwaard (eds), *International Human Rights of Children* (Springer International Publishing 2019) 564.

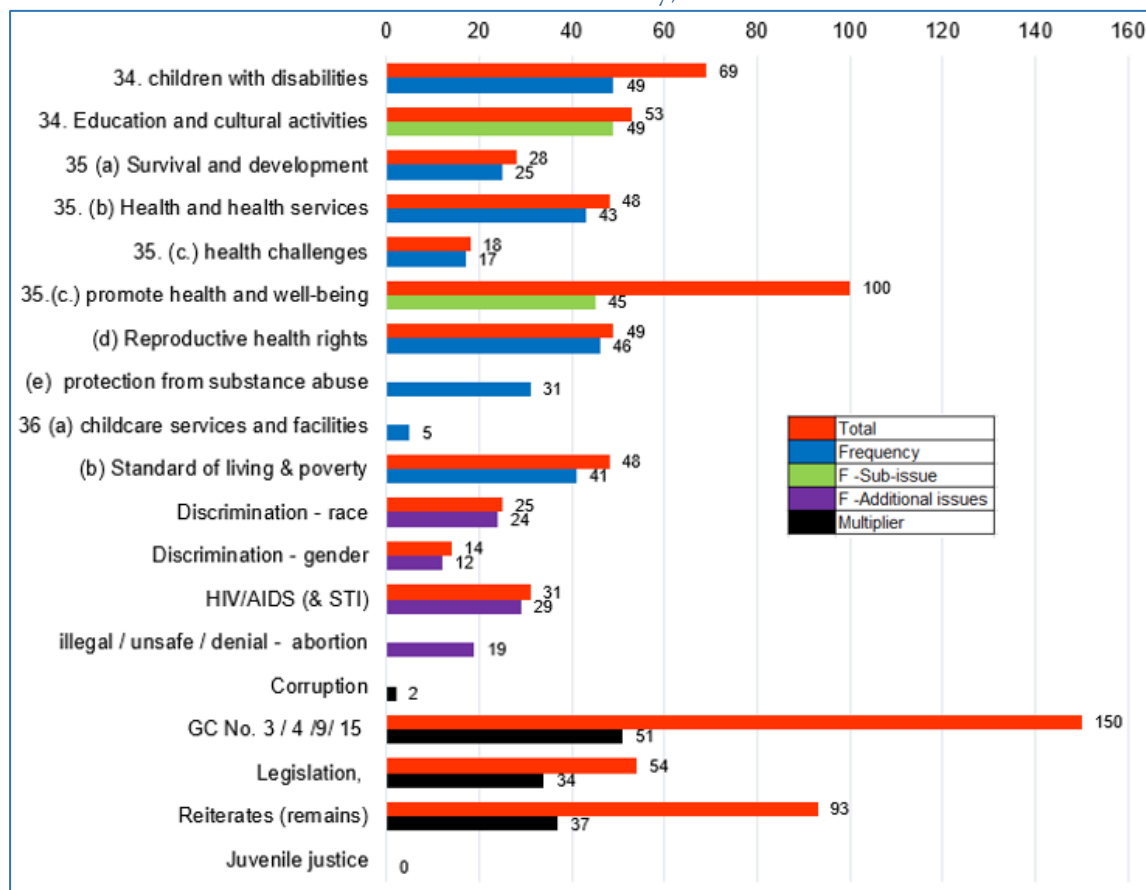
²³⁴ United Nations, ‘Status of Treaty, Chapter IV Human Rights Document 11, The Convention on the Rights of the Child, New York 20th November 1989 Accessed 31-10-2018’, (n 119).

²³⁵ CRC CO Morocco 2014 (n 170) para 56.

social rights it has not ‘received the level of scholarly attention’.²³⁶ One of the aspects under this cluster receiving significant focus, and forming part of the cluster name is ‘disability’, specifically the:

measures taken to ensure the dignity, self-reliance and active participation in the community, through access to all kinds of services, transportation and institutions, and in particular to education and cultural activities.²³⁷

Figure 4.22 Graph showing the frequency and total number of references to issues commented on within cluster 7 Disability, Basic Health and Welfare.



For this spreadsheet, this issue was split into two sub-issues with relatively high scores for both sections: 49 of the State parties receiving comments, with a total score of 69 for general comments on the issue, and a score of 53 focused on education and cultural activities for disabled children.

²³⁶ Aoife Nolan, ‘Article 27: The Right to a Standard of Living Adequate for a Child’s Development’ in John Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press 2019).

²³⁷ UN Committee on the Rights of the Child, ‘Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child UN Doc. CRC/C/58/Rev.3’ (n 15) para 34.

The reoccurring themes of discrimination and corruption are present within this cluster, not only with racial and gender discrimination being mentioned in 24 and 12 reports respectively, but with many of the comments under the first heading 'children with disability' relate to discrimination. For instance, Ghana:

the Committee notes with deep concern that:

Children with disabilities, especially those with mental disabilities, are victims to a higher extent of abuse, violence, stigma and exclusion, particularly in traditional communities;²³⁸

As to corruption, two State parties received comments on this issue: Azerbaijan and Mongolia.

Cluster 8 – Education, Leisure and Cultural Activities

Cluster 8 'Education, Leisure and Cultural Activities' (ELCA), covers four articles:

- ❖ art.28 (the right to education, including vocational training and guidance);
- ❖ art.29 (the aims of education with reference to the quality of education);
- ❖ art.30 (cultural rights of children belonging to indigenous and minority groups); and
- ❖ art.31 (rest, play, leisure, recreation and cultural and artistic activities).

Paragraph 38 of the guidelines for periodic reporting identifies five headings for this cluster: the four articles mentioned above and the addition of 38(d) 'education on human rights and civic education'. From analysing the CO reports, two of these headings were further divided into sub-issues. The right to education included five sub-issues: free schooling; funding; discrimination on the grounds of gender; discrimination on the grounds of race, religion and caste; and discrimination on the grounds of disability. The sub-issue of discrimination on the grounds of race, religion, ethnic minority or cast, reflects comments specifically about discrimination in the education setting rather than comments relating to article 30 'the cultural rights of children belonging to indigenous and minority groups'. The aims of education included two sub-issues: the quality of teaching and teacher training, and the quality of buildings and facilities.

In addition to the issues identified in the guidance, four further issues were identified: illiteracy rates, non-attendance to school and drop-out rates; regional variation including urban-rural divide; bullying, peer violence and sexual harassment in schools; and corporal punishment.

²³⁸ CRC CO Ghana 2015 (n 166) para 47(a).

The additional issues, along with the sub-issues, are identified in the spreadsheet by their blue and green backgrounds as shown in figure 4.23.

Figure 4.23 Issues as column headings for grading spreadsheet for cluster 8 Education, Leisure and Cultural Activities. (Appendix A-28)

Juvenile justice																
Reiterates (remains)																
Legislation,																
GC No. 1 (2001); No. 7 (2005); No. 9 (2006); No. 11 (2009); and No. 17 (2013)																
Corruption																
Starting Grade																
Total number of issues covered																
Corporal punishment																
Bullying / Peer violence / sexual harassment in school																
Regional variation (including rural)																
Literacy rates / non attendance / drop out																
38(e) Rest, play, leisure, recreation and cultural and artistic activities (art. 31);																
38(d) Education on human rights and civic education;																
38(c) Cultural rights of children belonging to indigenous and minority groups (art. 30);																
Quality of Teaching / teacher training																
Quality of building etc.																
38(b) The aims of education (art. 29) with reference also to the quality of education;																
Discrimination - Disability																
Discrimination- race, religion, cast (not art 30)																
Discrimination - Gender (F)																
Funding																
Free schooling																
38 (a) The right to education, including vocational training and guidance (art. 28);																
	5	1	1	1		1	1									
	4	1		2		1	1		1	1						

The general comments referred to under this cluster are:

- ❖ No.1 (2001) on the aims of education;²³⁹
- ❖ No.7 (2005) on implementing child rights in early childhood;²⁴⁰
- ❖ No.9 (2006) on the rights of children with disabilities;²⁴¹
- ❖ No.11 (2009) on indigenous children and their rights under the Convention;²⁴²
- ❖ No.17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts.²⁴³

As shown in figure 4.24, one State party, Sweden, achieved a grade A as it did not receive any comments or recommendations from the Committee for improvements under this heading. One State party, Switzerland, achieved a grade B. Two State parties

²³⁹ UN Committee on the Rights of the Child, 'General Comment No.1 (2001) on the Aims of Education - UN Doc. CRC/GC/2001/1' (2001).

²⁴⁰ UN Committee on the Rights of the Child, 'General Comment No.7 (2005) Implementing Child Rights in Early Childhood - UN Doc. CRC/C/GC/7/Rev.1' (n 110).

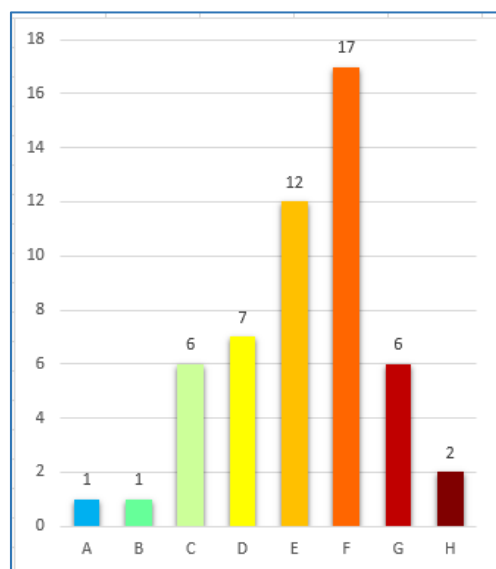
²⁴¹ UN Committee on the Rights of the Child, 'General Comment No.9 (2006) The Rights of Children with Disabilities - UN Doc. CRC/C/GC/9' (n 227).

²⁴² UN Committee on the Rights of the Child, 'General Comment No.11 (2009) Indigenous Children and Their Rights under the Convention - UN Doc. CRC/C/GC/11' (n 188).

²⁴³ UN Committee on the Rights of the Child, 'General Comment No.17 (2013) on the Right of the Child to Rest Leisure Play Recreational Activities Cultural Life and the Arts - UN Doc. CRC/C/GC/17' (2013).

achieved a grade H: Colombia and Senegal. Switzerland's B grade was achieved because they only received one comment: 'that human rights education for children at school is not carried out systematically in all Cantons'.²⁴⁴

Figure 4.24 Graph of grades achieved for cluster 8 Education, Leisure and Cultural Activities.



In comparison, Columbia received an initial grade of E with a multiplier of three, resulting in a grade H; this was due to multiple issues being covered including issues of discrimination, low quality of teaching and facilities, a high dropout rate and, specifically to Columbia, a serious concern being raised regarding:

Teachers' exposure to an increasing number of death threats and violence, attacks against schools, military bases and military units near schools, the occupation of schools and school study visits to military centres against directives.²⁴⁵

The full grade spread across the sample is shown in table 4.9. This cluster, as does cluster VAC, shows the evolution of the Committee's guidelines and the reporting process, as the older reports do not indicate that they include article 30 (cultural rights of children belonging to indigenous and minority groups). However, whilst they do not specify the inclusion, it does not mean that the Committee did not cover that issue within the cluster. For instance, Algeria's CO report published in 2012 has the heading for this cluster as including articles 28, 29 and 31,

²⁴⁴ CRC CO Switzerland 2015, 'Concluding Observations on the Combined Second to Fourth Periodic Reports of Switzerland, UN Doc CRC/C/CHE/CO/2-4' (United Nations 2015) para 66.

²⁴⁵ CRC CO Colombia 2015 (n 162) para 51.

yet they still received a comment that relates to article 30 in that the Committee was concerned that:

teaching of written or spoken Berber languages in the State parties schools remains unavailable in most of the State parties schools despite the guarantee contained in the 2008 education act.²⁴⁶

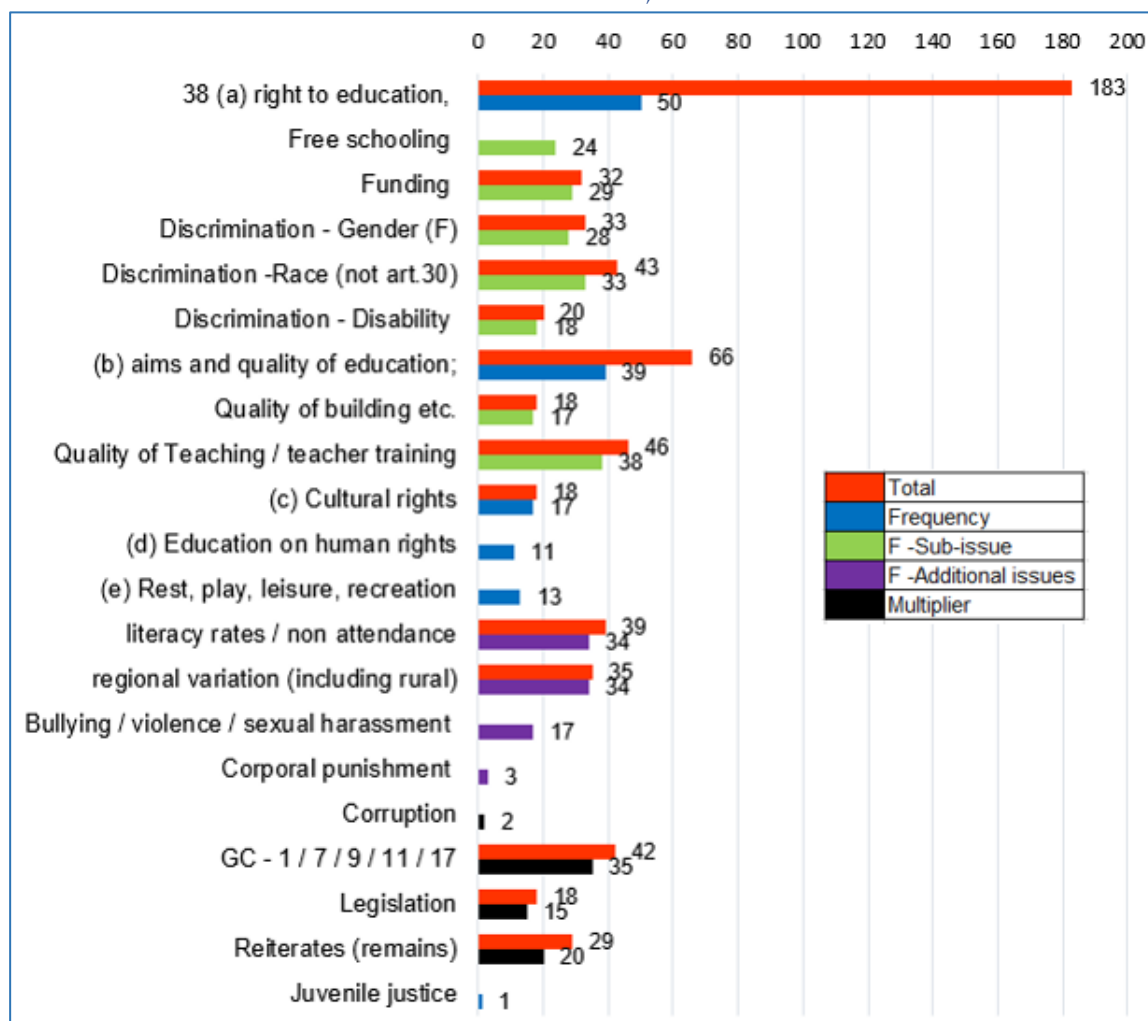
Table 4.9 Grades awarded for cluster 8 Education, Leisure and Cultural Activities.

Grade	Number	State Party (Alphabetical)
A	1	Sweden
B	1	Switzerland
C	6	Estonia, Germany, Iceland, Ireland, Malta, Portugal
D	7	Australia, Fiji, Japan, Kazakhstan, New Zealand, Norway, Poland
E	12	Azerbaijan, Chile, Croatia, Dominican Republic, France, Jamaica, Morocco, Nepal, Romania, Seychelles, UK, Uruguay
F	17	Algeria, Bhutan, Brazil, Canada, China, Ethiopia, The Gambia, Ghana, Mexico, Mongolia, Russian Federation, Saudi Arabia, Serbia, Suriname, Timor-Leste, Turkey, Viet Nam
G	6	Albania, Cameroon, India, Israel, South Africa, Zambia
H	2	Colombia, Senegal

The State parties where the cluster heading include three rather than four articles are identified in red in the grade table 4.9. This change appears to have occurred in 2013/2014. Unlike the earlier cluster, VAC, within this cluster the change in the cluster format does not appear to particularly affect grades as the Committee still commented on the issue in earlier reports even though the specific article was not listed as included.

²⁴⁶ CRC CO Algeria 2012 (n 159) para 63.

Figure 4.25 Graph showing the frequency and total number of references to issues commented on within cluster 8 Education, Leisure and Cultural Activities.



Regarding the frequency of issues as displayed in figure 4.25, 50 of the study sample received comments relating to article 28 ‘the right to education, including vocational training and guidance’. When including all the sub-issues as well as comments around the general right to education, the total score was 183. Beeckman²⁴⁷ comments on the issue of assessing the implementation of the right to education, noting that while various indicators have been created to measure ‘educational performance’ what is missing is an indicator ‘reflecting the implementation of the child’s *right to education*’. She notes that this would need to expose the limitations of educational systems to enable improvements in both public policy and practice. In the CO reports, the Committee appear to have considered the right to education by focusing on issues of access, whether due to schooling being free or having cost implications, or issues related to discrimination causing access problems. Thirty-eight State parties received comments

²⁴⁷ Katrien Beeckman, ‘Measuring the Implementation of the Right to Education: Educational versus Human Rights Indicators’ (2004) 12 The International Journal of Children’s Rights 71 <<http://booksandjournals.brillonline.com/content/journals/10.1163/157181804323016550>>.

on the quality of teaching and teacher training, with 17 State parties receiving comments about the quality of buildings.

One of the issues commented on was that of regional variation, particularly noting a rural and urban divide in quality of schooling, and this issue was picked up on in 34 CO reports.

As previously observed in other clusters, discrimination was again a prevalent theme within this cluster, not just under article 30 and ‘the cultural rights of children belonging to indigenous and minority groups’ which was distinctly referenced in 17 of the reports. Discrimination was also referred to as a barrier to the right to education and article 28, with discrimination on the grounds of race, religion or caste being mentioned in 33 reports, discrimination on the grounds of gender in 28 of the reports, and discrimination against disabled children in 18 of the reports. Two State parties, Albania and Azerbaijan, received comments relating to corruption in the education system.

Cluster 9 – Special Protection Measures – and Optional Protocols

Officially cluster 9 ‘Special Protection Measures’ (SPM) covers ten articles and a wide range of issues. Due to the complexity of the cluster, juvenile justice has been split into its own cluster number 10 leaving nine articles for SPM:

- ❖ art.22 (children outside the country of origin seeking refugee protection, and unaccompanied asylum-seeking children, internally displaced children, migrant children and children affected by migration);
- ❖ art.30 (children belonging to minority one indigenous group);
- ❖ art.32 (economic exploitation, including child labour with specific reference to applicable minimum ages);
- ❖ art.33 (the use of children in the illicit production and trafficking of narcotic drugs and psychotropic substances);
- ❖ art.34 (sexual exploitation and sexual abuse);
- ❖ art.35 (sale, trafficking and abduction);
- ❖ art.36 (other forms of exploitation);
- ❖ art.38 (children in armed conflicts); and
- ❖ art.39 (physical and psychological recovery and social reintegration).

Paragraph 40 of the guidelines identifies an additional issue to the Convention at 40(c) ‘children in the street situations’. It also groups articles 32, 33, 34, 35, and 36 together in paragraph 40(d) as sub-issues under the collective heading ‘children in situations of exploitation, including

measures for their physical and psychological recovery and social reintegration’. In addition, the themes that were identified through the grading process which became column headings in their own right for the spreadsheet were: illegal labour activities (excluding drug trade), and the recovery and reintegration of trafficked or sexually exploited children. Under paragraph 40(a) relating to article 22, ‘children seeking refugee protection...’, three additional sub-issues were identified as: access to education, health and other services; free legal aid for children; and being treated as illegal migrants. The final additional issue identified was relating to child helplines. The resulting spreadsheet column headings are shown in figure 4.26.

Figure 4.26 Issues as column headings for grading spreadsheet for cluster 9 Special Protection Measures. (Appendix A-29)

Juvenile justice	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Reiterates (remains)	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Legislation,	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
GC - No. 6 (2005), No. 10 (2007), and No. 11 (2009)	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Corruption	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Starting Grade	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E
Total number of issues covered	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11
Child Helpline	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
40(f) Children in armed conflicts (art. 38), including physical and psychological recovery and social reintegration (art. 39)	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
(v) Other forms of exploitation (art. 36);	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
(w) Sale, trafficking and abduction (art. 35);	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
recovery and reintegration - of trafficked / sexually exploited children	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
(iii) Sexual exploitation and sexual abuse (art. 34);	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
(ii) Use of children in the illicit production and trafficking of narcotic drugs and psychotropic substances (art. 33);	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Illegal labour activities (not drugs)	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
(i) Economic exploitation, including child labour (art. 32), with specific reference to applicable minimum ages;	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
40(d) Children in situations of exploitation, including measures for their physical and psychological recovery and social reintegration;	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5
40(c) Children in street situations;	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
40(b) Children belonging to a minority or an indigenous group (art. 30);	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
treated as illegal migrants	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Free legal aid - for children	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Access to education / health etc. (migrant/refugee)	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
40(a) Children - seeking refugee protection (art. 22), unaccompanied asylum-seeking, internally displaced migrant, and children affected by migration;	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2

As with earlier cluster spreadsheets, the scores with green backgrounds indicate a sub-issue used to calculate the score for the column with the head-issue. The blue background indicates additional issues. In the example shown para 40(d) has a score of five, from the seven potential sub-issues.

The general comments referred to under this cluster are:

- ❖ No. 6 (2005) on children outside their country of origin;²⁴⁸
- ❖ No. 10 (2007) on children’s rights in juvenile justice,²⁴⁹ and

²⁴⁸ UN Committee on the Rights of the Child, ‘General Comment No.6 (2005) on the Treatment of Unaccompanied and Separated Children Outside Their Country of Origin - UN Doc. CRC/GC/2005/6’ (2005).

²⁴⁹ UN Committee on the Rights of the Child, ‘General Comment No.10 (2007) Children’s Rights in Juvenile Justice - UN Doc. CRC/C/GC/10’ (2007).

- ❖ No. 11 (2009) on indigenous children.²⁵⁰

It is also necessary to take into consideration that two of the three of the optional protocols of the UNCRC are related to this cluster. In the following figure 4.27 the sample 52 are shown displaying the date that they have ratified the Convention, the dates if they have ratified the optional protocols in addition to their 'group' explained below, and finally the date of the CO report.

The three optional protocols are:

- ❖ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OP-AC)
- ❖ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OP-SC)
- ❖ Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OP-CP)

In the spreadsheet the Convention dates are shown with a yellow background for the oldest through to pink for the most recent.

For the three optional protocols, if they have been signed but not ratified this is indicated by an 'S' in front of the date and there is no background colour. The ratification dates are shown in green for the oldest through to purple for the most recent. Where a State party has neither signed nor ratified an optional protocol no date is shown. The next column titled 'group' relates to the UN Human Rights Office of the High Commissioner 'Status of Ratification' webpage²⁵¹ where countries are allocated a colour to indicate their status as to how many of the 18 international human rights treaties they have ratified.

- ❖ Between 15 and 18 are shown as dark blue (in this spreadsheet allocated a number 1)
- ❖ Between 10 and 14 are shown as light blue (in this spreadsheet 2)
- ❖ Between 5 and 9 are shown as orange (in this spreadsheet 3)
- ❖ Between 0 and 4 are shown as red (in this spreadsheet allocated 4)

Only one of the sample 52 are ranked as red, Bhutan, having ratified only 4 of the 18 international human rights treaties.

²⁵⁰ UN Committee on the Rights of the Child, 'General Comment No.11 (2009) Indigenous Children and Their Rights under the Convention - UN Doc. CRC/C/GC/11' (n 188).

²⁵¹ United Nations Office of the High Commissioner for Human Rights, 'Status of Ratification of 18 International Human Rights Treaties' (2019) <<http://indicators.ohchr.org/>> accessed 30 July 2019.

The final column shows the date of the CO report from the Committee, from red for oldest to green for the most recent. As the CO report will have been prepared in response to an earlier State party report, it is possible to observe that a number of State parties have ratified the third optional protocol, on a communications procedure, more recently than the reporting cycle that they are being graded for. In addition, as the OP-CP was only approved in December 2011, some of the State party reports will predate this. Therefore, the ratification status of the OP-CP has not been included in the grading process.

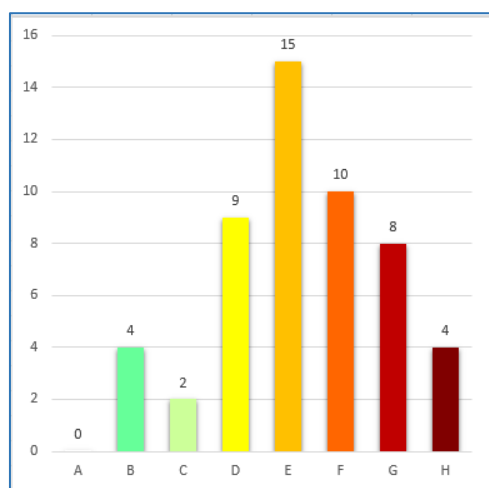
The first two optional protocols, OP-AC and OP-SC, are reflected in the grading of this cluster. The separate CO reports for the optional protocols with additional obligations have not been taken into account, what has been graded are the comments in the main Convention CO report relating to the optional protocols. These are included in the reports as subheadings in the SPM clusters. In older reports the subheading refers to the issue such as 'Children in Armed Conflict'; in later reports the subheading will have a specific reference to the CO report for that optional protocol. A comment under the subheading for OP-AC will, for instance, be recorded in the SPM grading spreadsheet under the column heading '40(f) Children in armed conflicts (art. 38), including physical and psychological recovery and social reintegration (art. 39).'

All State parties within the sample received comments under this cluster, and therefore none were awarded a grade A. As shown in figure 4.28, four State parties achieved a grade B: Australia, Croatia, Estonia, and Portugal. Australia for instance only received comments regarding refugee children and children affected by migration.

Figure 4.27 Dates of ratifying the Convention and Optional Protocols

State Party	CRC	OP - AC	OP-SC	OP-CP	Group	CO
Albania	1992	2008	2008	2013	1	2012
Algeria	1993	2009	2006	-	2	2012
Australia	1990	2006	2007	-	2	2012
Azerbaijan	1992	2002	2002	-	1	2012
Bhutan	1990	2009	2009	-	4	2017
Brazil	1990	2004	2004	2017	1	2015
Cameroon	1993	2013	S2001	-	3	2017
Canada	1991	2000	2005	-	2	2012
Chile	1990	2003	2003	2015	1	2015
China	1992	2008	2002	-	3	2013
Columbia	1991	2005	2003	-	2	2015
Croatia	1992	2002	2002	2017	1	2014
Dominican R.	1991	2014	2006	-	2	2015
Estonia	1991	2014	2004	-	2	2017
Ethiopia	1991	2014	2014	-	3	2015
Fiji	1993	S2005	S2005	-	3	2014
France	1990	2003	2003	2016	1	2016
Germany	1990	2004	2009	2013	1	2014
Ghana	1990	2014	S2003	S2013	2	2015
Iceland	1992	2001	2001	-	2	2012
India	1992	2005	2005	-	3	2014
Ireland	1990	2002	S2000	2014	2	2016
Israel	1991	2005	2008	-	3	2013
Jamaica	1991	2002	2011	-	3	2015
Japan	1994	2004	2005	-	2	2010
Kazakhstan	1994	2003	2001	-	2	2015
Malta	1990	2002	2010	S2012	1	2013
Mexico	1990	2002	2002	-	1	2015
Mongolia	1990	2004	2003	2015	1	2017
Morocco	1993	2002	2001	S2012	2	2014
Nepal	1990	2007	2006	-	2	2016
New Zealand	1993	2001	2011	-	2	2016
Norway	1991	2003	2001	-	2	2010
Poland	1991	2005	2005	S2013	2	2015
Portugal	1990	2003	2003	2013	1	2014
Romania	1990	2001	2001	S2012	2	2017
Russian Fed.	1990	2008	2013	-	2	2014
Saudi Arabia	1996	2011	2010	-	3	2016
Senegal	1990	2004	2003	S2012	2	2016
Serbia	2001	2003	2002	S2012	1	2017
Seychelles	1990	2010	2012	S2013	2	2012
South Africa	1995	2009	2003	-	2	2016
Suriname	1993	S2002	2012	-	3	2016
Sweden	1990	2003	2007	-	2	2015
Switzerland	1997	2002	2006	2017	2	2015
The Gambia	1990	S2000	2010	-	2	2015
Timor-Leste	2003	2004	2003	-	2	2015
Turkey	1995	2004	2002	2017	1	2012
UK	1991	2003	2009	-	2	2016
Uruguay	1990	2003	2003	2015	1	2015
Viet Nam	1990	2001	2001	-	3	2012
Zambia	1991	S2008	S2008	-	3	2016

Figure 4.28 Graph of grades achieved for cluster 9 Special Protection Measures.



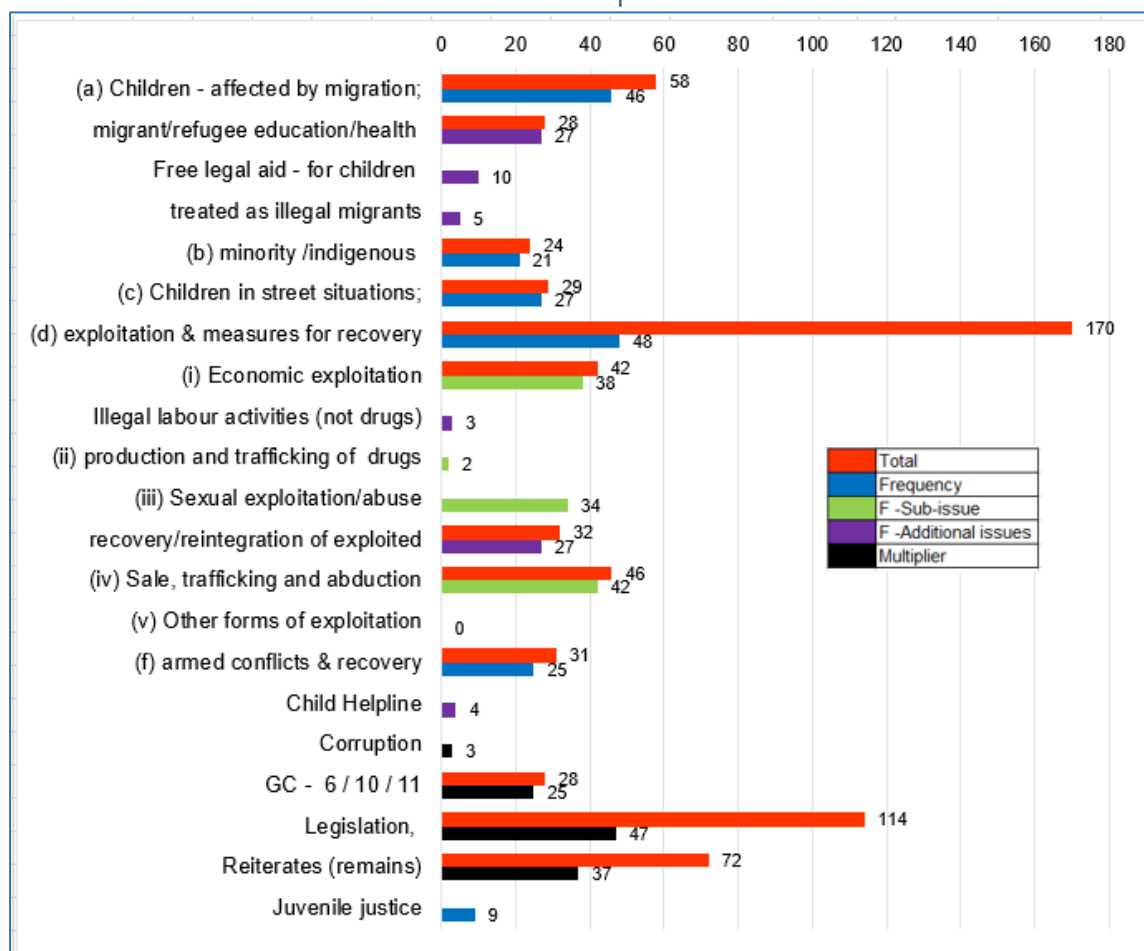
Algeria, in contrast, one of the four State parties (including Albania, Colombia, and Ethiopia) which received the lowest grade H, had comments under 11 of the 16 possible headings and subheadings. The full grade results for the cluster are shown in table 4.10.

Table 4.10 Grades awarded for cluster 9 Special Protection Measures (including OP-AC and OP-SC).

Grade	Number	State Party (Alphabetical)
A	0	
B	4	Australia, Croatia, Estonia, Portugal
C	2	Switzerland, Uruguay
D	9	Azerbaijan, France, Germany, Iceland, Jamaica, Japan, Norway, Romania, Timor-Leste
E	15	Canada, Chile, Fiji, The Gambia, Ireland, Kazakhstan, Malta, New Zealand, Russian Federation, Seychelles, South Africa, Suriname, Sweden, UK, Zambia
F	10	Bhutan, China, Ghana, Israel, Mongolia, Morocco, Nepal, Serbia, Turkey, Viet Nam
G	8	Brazil, Cameroon, Dominican Republic, India, Mexico, Poland, Saudi Arabia, Senegal
H	4	Albania, Algeria, Colombia, Ethiopia

The frequencies and total references to issues are shown in figure 4.29.

Figure 4.29 Graph showing the frequency and total number of references to issues commented on within cluster 9 Special Protection Measures.



The issue of 'situations of exploitation and measures for recovery' immediately stands out with a total score of 170, and a frequency of having been commented on in 48 separate CO reports. The high total score is due to the reflection in the spreadsheet of the way paragraph 40(d) is broken into five sub-issues and the subsequent identification of two further sub-issues. Within the sub-issues, there are three with high numbers of comments from the Committee: art.32 'economic exploitation including child labour' is commented on in 38 reports, art.35 'sale, trafficking and abduction of children' is referred to in 42 reports (which includes comments under the subheading relating to the optional protocol), and art.34 'sexual exploitation and abuse' is commented on in 34 CO reports.

The comments on economic exploitation are, as article 32 is, focused on protective elements relating to child labour, such as what age they are permitted to work and concerns focusing on hazardous work, rather than on child workers as rights holders.²⁵²

Forty-six State parties received comments on art.22 children outside their country of origin seeking refugee protection, unaccompanied asylum-seeking children, internally displaced children, migrant children and children affected by migration. One issue that has been the focus of a number of articles²⁵³ but was not observed as mentioned in the study sample links the clusters SPM and DOTC, as it relates to the issue where migrant children who are already married then arrive in a State party that does not permit child marriage. How, when, and whether such marriages should be recognised as valid is a complex problem and is added to by State parties formulating quite different legal procedures to deal with these circumstances. For instance, Jänterä-Jareborg²⁵⁴ compares the legal reactions of Sweden and Germany to married minors. As a global issue, this would be an area where having an indication from the Committee in one of the relevant general comments would clearly be helpful in order to at least have a starting point for the harmonisation of laws.

Twenty-seven State parties received comments regarding children in street situations, for instance in the CO report for Serbia:

While the Committee notes as positive efforts made by the State party to address the plight of children living in street situations, it is concerned that they are not legally recognised as victims but rather, after turning 14 years of age, treated as offenders.²⁵⁵

The inclusion of the issue of 'children in street situations' mentioned in paragraph 40(c) in the guidelines on periodic reporting, is particularly revealing because the guidelines refer to the Convention article that an issue relates to, and none is referenced for this issue because it is not mentioned in the Convention. Again, this is an example of the Committee broadening the scope of the Convention to include additional issues.

²⁵² Karl Hanson and Arne Vandaele, 'Working Children and International Labour Law: A Critical Analysis' (2003) 11 *International Journal of Children's Rights* 73.

²⁵³ Maarit Jänterä-Jareborg, 'Non-Recognition of Child Marriages: Sacrificing the Global for the Local in the Aft Ermath of the 2015 "Refugee Crisis"' in Gillian Douglas, Mervyn Murch and Victoria Stephens (eds), *International and National Perspectives on Child and Family Law* (Intersentia 2018); Medha D Makhoul, 'Theorizing the Immigrant Child: The Case of Married Minors', (2017) 82 *Brooklyn Law Review* 1603; Jessica Smith, 'A Clash of Civilizations: An Overview on Child Brides and How the Syrian Refugee Crisis Is Forcing Europe to Follow Its Laws or Follow Another's' [2017] *The Indonesian Journal of International & Comparative Law* 3.

²⁵⁴ Jänterä-Jareborg (n 253).

²⁵⁵ CRC CO Serbia 2017 (n 126) para 60.

Three State parties, Albania, China, and Mongolia, all received comments about corruption, such as:

The committee is further concerned that...The involvement of police and government officials in trafficking cases and the corruption within the judiciary hamper the overall antitrafficking law enforcement.²⁵⁶

Though comments under the specific heading of juvenile justice were considered under a new cluster, the nine comments under other issue headings relating to juvenile justice were counted in the multipliers.

Cluster 10 – Juvenile Justice

As previously noted, there is not a tenth cluster in the reporting guidelines; this cluster has been created for this study by dividing cluster 9 and making cluster 10 ‘juvenile justice’ (JJ) from paragraph 40(e) (i-v).

(e) Children in conflict with the law, child victims and witnesses of crimes and juvenile justice:

(i) The administration of juvenile justice (art. 40), the existence of specialized and separate courts and the applicable minimum age of criminal responsibility;

(ii) Children deprived of their liberty and measures to ensure that any arrest, detention or imprisonment of a child shall be used [as] a measures of last resort and for the shortest amount of time and that legal and other assistance is promptly provided (art. 37 (b)–(d));

(iii) The sentencing of children, in particular the prohibition of capital punishment and life imprisonment (art. 37 (a)) and the existence of alternative sanctions based on a restorative approach;

(iv) Physical and psychological recovery and social reintegration (art. 39);

(v) The training activities developed for all professionals involved with the system of juvenile justice, including judges and magistrates, prosecutors, lawyers, law enforcement officials, immigration officers and social workers, on the provisions of the Convention, the Optional Protocols as applicable, and other relevant international instruments in the field of juvenile justice, including the Guidelines on Justice in Matters

²⁵⁶ CRC CO Albania 2012 (n 125) para 82.

involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex),²⁵⁷

Cluster 10, juvenile justice therefore covers three articles:

- ❖ art.37 (not to be subjected to torture or cruel, inhuman or degrading treatment, and detention to be a measure of last resort);
- ❖ art.39 (promotion of physical and psychological recovery); and
- ❖ art.40 (right of every child alleged as, accused of, or recognized as having infringed the penal law).

The issue identified in paragraph 40 (e)(v) is an additional issue not specified as linked to an article of the Convention. This issue was split into two column headings separating the sub-issues of victims and witnesses.

The general comment referred to under this cluster is No. 10 (2007) Children's rights in juvenile justice.²⁵⁸ In addition, it was noted that the CO reports frequently referred State parties to three other UN documents:

- ❖ The United Nations Standard Minimum Rules for the Administration of Juvenile Justice. (The Beijing Rules)²⁵⁹
- ❖ The Guidelines for the Prevention of Juvenile Delinquency. (The Riyadh guidelines)²⁶⁰
- ❖ The United Nations Rules for the Protection of Juveniles Deprived of their Liberty. (The Havana Rules)²⁶¹

References to these were totalled in a separate column to GC No.10.

The final spreadsheet column headings are shown in figure 4.30.

²⁵⁷ UN Committee on the Rights of the Child, 'Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child UN Doc. CRC/C/58/Rev.3' (n 15).

²⁵⁸ UN Committee on the Rights of the Child, 'General Comment No.10 (2007) Children's Rights in Juvenile Justice - UN Doc. CRC/C/GC/10' (n 249).

²⁵⁹ United Nations General Assembly, 'The United Nations Standard Minimum Rules for the Administration of Juvenile Justice. (The Beijing Rules) Res 40/30 (1985) UN Doc. A/RES/40/30' (1985).

²⁶⁰ United Nations General Assembly, 'Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) Res 45/112 (1990) UN Doc. A/RES/45/112' (1990).

²⁶¹ United Nations General Assembly, 'United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (The Havana Rules) Res 45/113 (1990) Un Doc A/RES/45/113' (1990).

Figure 4.30 Issues as column headings for grading spreadsheet for cluster 10 Juvenile Justice. (Appendix A-30)

Reiterates (remains)																			1
Legislation,																			
Beijing / Riyadh / Havana Rules																			3
GC No. 10 (2007) children's rights in juvenile justice																			3
Corruption																			
Starting Grade																			D
Total number of issues covered																			9
deaths in custody																			8
discrimination																			
Detention facilities (access to education)																			2
detained with adults																			1
Ill-treatment - police / in detention																			1
treatment - child victims and witnesses																			1
training re Child Victims and Witnesses of Crime																			
(v) training for all professionals involved with the system of juvenile justice,																			1
(iv) Physical and psychological recovery and social reintegration																			1
- alternative sanctions / measures to detention																			1
(iii) The sentencing of children; - prohibition of capital punishment and life imprisonment																			
(ii) Children deprived of their liberty - measures of last resort / legal and other assistance																			1
the applicable minimum age of criminal responsibility;																			
the existence of specialized and separate courts																			1
40 (E)(i) administration of juvenile justice																			1

Three of the issues identified in the guidelines on periodic reporting covered a number of elements and therefore were separated into separate issues, for instance, 40(e)(i) split into: administration of Juvenile Justice; the existence of specialised and separate courts; and, the applicable minimum age of criminal responsibility. These are identified by the green background. Furthermore, from engaging with the reports, six additional issues were identified and used as column headings for the grading spreadsheet: the treatment of child victims and witnesses; the ill-treatment of children by the police or in detention; children being detained with adults; comments regarding detention facilities including access to education; issues relating to discrimination; and deaths in custody. These are identified by a blue background.

The highest grade achieved for cluster 10 is a grade C by four State parties: Estonia; Germany; Iceland; and Portugal. Germany, for instance, received the comment:

the Committee notes with satisfaction the legislative amendments prohibiting children in detention from being placed with persons up to the age of twenty-four. However, the Committee regrets that not all Länder apply the principle of “deprivation of liberty as a last resort”.^{262, 263}

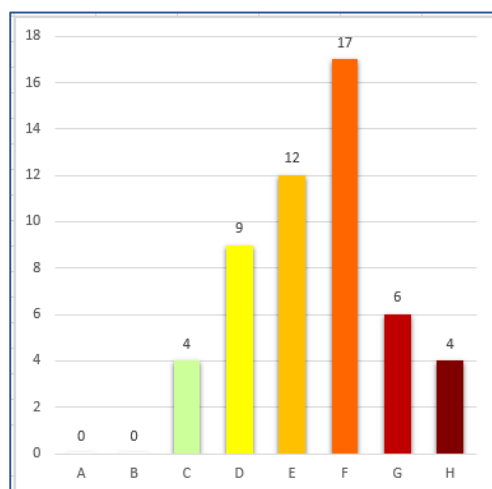
Moreover, the Committee recommended that ‘the State party take all necessary steps to expand the possibilities for alternative sentences, such as probation or community service.’²⁶⁴

²⁶² The Länder also known as Bundesländer are the sixteen component districts or states in Germany in the federal republic.

²⁶³ CRC CO Germany 2014 (n 157) para 74.

²⁶⁴ *ibid* 75.

Figure 4.31 Graph of grades achieved for cluster 10 Juvenile Justice.



Four State parties also achieved the lowest grade H: Cameroon, Israel, Saudi Arabia, and Turkey. In comparison to Germany's CO report with juvenile justice covering only two short paragraphs within the report, Saudi Arabia's report was much longer covering nine different issues identified as column headings; it also received the maximum multiplier score due to the nature and the details of the specific issues commented on, for instance:

the Committee is concerned about the absence of a comprehensive legal framework in relation to children in conflict with the law and the broad discretion given to law enforcement officials to determine, in the absence of the penal code, the offences for which children can be arrested and detained, as in the case of girls suspected of *Khalwa* or mingling (*ikhtilat*) and to decide whether children are mature enough to be tried as adults.^{265,266}

Linked to the way that girls are treated differently than boys is the concern that:

the ministry of social affairs can detain both boys and girls indefinitely, even when they have been neither charged with no convicted of an offence. While such detention is subject to judicial review for boys, it is not for girls,²⁶⁷

The full list of grades awarded for cluster 10 is shown in table 4.11.

²⁶⁵ Khalwa in this instance refers to a female and male being in 'seclusion' alone together and Ikhtilat as the intermingling of the sexes where there are 'rules' as to what is acceptable behaviour that should be followed.

²⁶⁶ CRC CO Saudi Arabia 2016 (n 131) para 43.

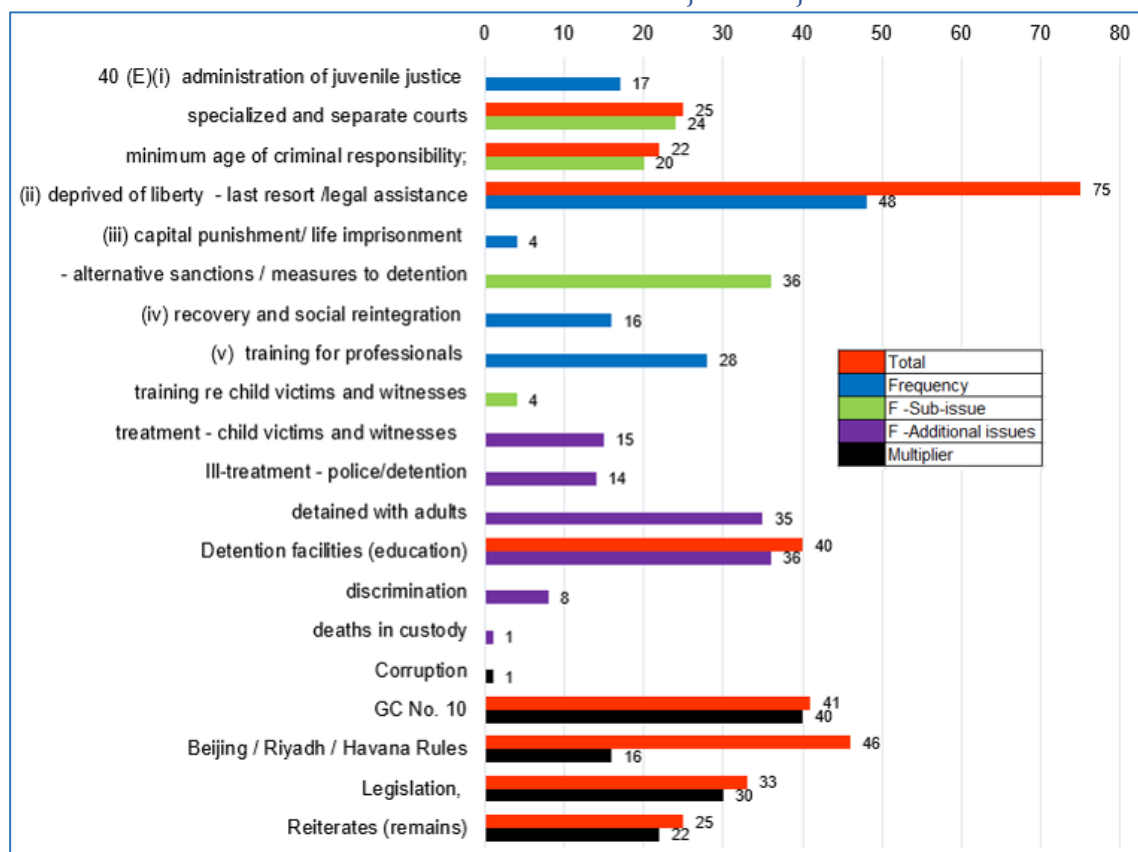
²⁶⁷ *ibid.*

Table 4.11 Grades awarded for cluster 10 Juvenile Justice.

Grade	Number	State Party (Alphabetical)
A	0	
B	0	
C	4	Estonia, Germany, Iceland, Portugal
D	9	Canada, Chile, Croatia, Ireland, Malta, Norway, Poland, Sweden, Switzerland
E	12	Australia, Bhutan, France, The Gambia, Kazakhstan, Mongolia, Morocco, Romania, Seychelles, South Africa, Suriname, Uruguay
F	17	Albania, Algeria, Azerbaijan, Colombia, Dominican Republic, Ethiopia, Fiji, Japan, Mexico, Nepal, New Zealand, Russian Federation, Senegal, Serbia, Timor-Leste, UK, Viet Nam
G	6	Brazil, China, Ghana, India, Jamaica, Zambia,
H	4	Cameroon, Israel, Saudi Arabia, Turkey

As to the frequency of issues for the JJ cluster shown in figure 4.32, the most commented on issue was the use of deprivation of liberty as a last resort, commented on in 48 reports with a total score of 75. The closely linked issue of the existence of alternative sanctions based on a restorative approach was commented on in 36 CO reports. Issues relating to detention were also frequently commented on, with the facilities for detention including access to education being raised for 36 State parties, and the issue of children being detained with adults being commented on for 35. Ill-treatment of children, whether by the police or in detention facilities, was commented on for 14 State parties. Also frequently commented on, in 28 reports, was the training of all professionals involved in the juvenile justice system.

Figure 4.32 Graph showing the frequency and total number of references to issues commented on within cluster 10 juvenile justice.



Four State parties received comments on sentencing relating to capital punishment and life imprisonment: Fiji, Jamaica, Saudi Arabia, and the UK where the comments regarding the concerns were:

life imprisonment of children, in the form of “detention at her Majesty’s pleasure” in England and Wales, “detention during the pleasure of the secretary of state” in Northern Ireland and “detention without limit of time” in Scotland, is mandatory for murder committed while the offender was under the age of eighteen;²⁶⁸

Moreover, the linked recommendation was to:

abolish the mandatory imposition of life imprisonment the children for offences committed while they are under the age of 18.²⁶⁹

The comments to Fiji and Jamaica were also related to life sentences, whereas the comment to Saudi Arabia was regarding the death sentence:

²⁶⁸ CRC CO UK 2016 (n 201) para 78.

²⁶⁹ *ibid* 79(c).

Children involved in demonstrations have been tried and sentenced, including to death, by the Specialized Criminal Court,²⁷⁰

Linde discusses that by the end of the 20th century 96% of states had banned the death penalty for Children.²⁷¹ Executions 'including extrajudicial' were also commented on in the VAC cluster; in that cluster it was Brazil, Nepal, and Saudi Arabia who received comments.

The one State party which received a comment that came under the theme of corruption was Cameroon.

Whilst the number of State parties which received comments regarding discrimination was not as significantly high as the focus on discrimination in other clusters, eight State parties still received comments on discrimination. The State parties with comments about discrimination were: Brazil; Canada; China; Israel; New Zealand; Portugal; Saudi Arabia; and the UK. Generally, this discrimination was on the grounds of race or ethnic minority; however, in the case of Saudi Arabia discrimination commented on by the Committee is the discrimination against girls within the juvenile justice system:

- (f) At the end of their term, detained children can only be released to the custody of their guardian, leaving them vulnerable to indefinite detention if their guardian or the institution believe that the child is in need of additional guidance and care or to having their detention extended until the age of 18 years for boys and beyond for girls;
- (g) Girls are highly discriminated in the justice system, as there are no female judges or lawyers in the State party, and are often detained together with adults and placed in detention centres far from their families;²⁷²

Notable by its absence from the guidelines on periodic reports is any reference to the child's right of participation from article 12, one of the 'general principles', due to the way that the guidelines are constructed and therefore the format of the CO reports, frequently comments about children's participation in the justice system were contained in the GP cluster, not under the heading of juvenile justice. In section 4.2 one of the topics focused on to explore the interdependent nature of the clusters is juvenile justice, and how and where this is commented on in other clusters is explored.

²⁷⁰ CRC CO Saudi Arabia 2016 (n 131) para 43(d).

²⁷¹ Linde (n 43).

²⁷² CRC CO Saudi Arabia 2016 (n 131) para 43.

4.3 Observations and reflections on the cluster results

The cluster system created by the Committee is clearly designed to break the complex Convention into logical thematic groupings. There are some themes running throughout the CO reports and their clusters, such as the repeated issues of discrimination, which can be seen to affect grading quite significantly, indicating that a key component for any State party wanting to improve their implementation of the Convention is to take steps to eradicate discrimination in any form and setting. Considering the way that discrimination as one of the 'general principles' has been interwoven throughout the other clusters, it is noticeable that the other general principles have not been treated this way.²⁷³

Discrimination recorded in the CO reports

The third cluster GP includes article 2 on non-discrimination:

Article 2

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.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.²⁷⁴

Within this cluster discrimination was divided into six types, four from the guidelines on periodical reporting and two additional forms of discrimination from the CO analysis:

- ❖ Gender – this covers discrimination against girls
- ❖ Race – including discrimination on the grounds of belonging to a specific race, being from an ethnic minority, being migrants, belonging to a specific religion or not belonging to a preferred religion, being from a particular cast.
- ❖ Disabilities – which covers discrimination on the grounds of having a disability
- ❖ Disadvantaged – which includes discrimination based on poverty or being from a rural location

²⁷³ Hanson and Lundy (n 62) 296.

²⁷⁴ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 2.

- ❖ Sexual orientation & gender identity – which includes discrimination on the grounds of the child’s or members of the child’s families sexual orientation, transgender children, and discrimination against intersex children
- ❖ Single parent – this covers discrimination against children born out of wedlock, and mothers with children born out of wedlock being discriminated against in a fashion that will have a negative effect on the child.

In all of the spreadsheets for the ten clusters there was a total of 23 column headings that referred to discrimination. Some of these identified specific types of discrimination, some such as the column for JJ noted a comment regarding discrimination rather than the type of discrimination. In the CRF cluster, the form of discrimination that was recorded was in regard to art.7 (birth registration) and art.8 (preservation of identity). It is important to note that these results regarding discrimination are not exhaustive but indicative; as column headings were created from the guidelines on periodic reporting and from observations which identified themes, a rare reference to discrimination in a specific circumstance will not have been recorded as a theme. These columns recorded in most instances clear discrimination, for instance where the Committee used the word ‘discrimination’, however from the VAC cluster discrimination was inferred under the heading of ‘harmful practices’ and split into gender discrimination for child marriages, and for FGM. Concerns about surgery on intersex children has been logged as gender identity discrimination.

In Hanson and Lundy’s paper on the general principles, for the six CO reports they examined they noticed that, ‘Only issues of discrimination appear regularly, albeit not routinely, in discussion of other substantive rights.’²⁷⁵ The 52 CO reports analysed for this study show that discrimination is considered throughout the reports. In figure 4.33 part of the spreadsheet analysing discrimination is shown. It is reproduced from a high level which though prohibits close reading demonstrates the spread of comments attributable to discrimination across the ten clusters. The full spreadsheet can be seen in appendix A-36-37.

²⁷⁵ Hanson and Lundy (n 62) 296.

Figure 4.33 Spreadsheet demonstrating the spread of comments related to discrimination.

GMI	DOTC	GP						CRF		VAC		FEAC	DBHW		ELCA		SPM	JJ										
		Disadvantaged	Gender	Disabilities	Race, minorities, migrant, religion, caste	Sexual Orientation /gender identity	Single parent /wedlock	Discrimination re birth registration or nationality	Wedlock	Gender	race /migrant/ religion	disadvantaged	Gender - child Marriage	Gender - FGM	Sexual Orientation /gender identity	Gender	Race, minorities, migrant, religion, caste	34: Education and cultural activities	3 (art 23) children with disabilities	Race, minorities, migrant, religion, caste	Disabilities	migrant/refugee- access education / health	Refugee (art. 22) migrant.	Discrimination	gender	race	disadvantaged	
	1		1	1	1			1			1		3	1	1		1		1	2	1							
1		1	1	1	1		1	2	1	1			5	1	2		1	2		2	1							
				1		1		2		2			1	2	1	1			1		2							
		1						1			1			2	1				2	1		2	1					
	1	1	1	1	1		1	1	1		1		1	1	2			1	1	1	1	1	1					
		1	1	1	1	1	1	1		1				2	1	1	1	1	1	1	1	1	1	1		1		1
		1	1	1	1	1	1	3	1	1	1	1	1	3	1			1	1	1	1	1	1	1				
		1	1	1	1	1		2	1	1	1			1	1	1	1			2	1	2		1			1	
			1	1	1	1	1	2		2		1	1	1	1	1	1	1	1	1	1	1	1					
			1	1	1	1		2		1	1		1	1	2		1		3		2	1	1				1	
			1	1	1	1	1	2						1	1	1	1			1	1	1	1	1				
		1						1						1	1	1				1	1	1	1	1				
		1	1	1	1	1	1	2		1	1	1		1	1	1			1	1	1	1	1	1				
		1	1	1	1	1		1		1			1	1	1				1	1	1	1	1	1				
1		1	1	1	1	1		1			2	1		1	1				1	1	1	1	1	1				
		1	1	1	1	1		1		1				2	1	1	2		1		1	1	1	1				
		1	1	1	1	1	1	1				1	1	3	2	1				1	1	1	1	1				
1		1	1	1	1		1	2	1		1		1	2	1				1		1		1					

In order to consider the identified discrimination across all of the clusters, where these columns did not specify the type of discrimination these were further analysed to dividing discrimination into the six types identified in the GP cluster. In the order of the most frequent record discrimination and the total number:

- ❖ 252 – Racial discrimination (includes discrimination on grounds of race, ethnic minority, migrant status, religion, and caste)
- ❖ 183 – Disabilities
- ❖ 160 – Gender
- ❖ 43 – Disadvantaged
- ❖ 31 – Sexual orientation / gender identity
- ❖ 21 – Single parent /wedlock

It is not surprising that some forms of discrimination are more frequently commented on due to the construction of the guidelines on periodic reporting and the existence of specific articles in the Convention. For instance, under the DBHW cluster, there is a specific paragraph in the guidelines on periodic reporting which was split into two column headings for the analysis. The score of 183 includes where multiple issues were noted; the frequency of the comments on disabilities is 157. In contrast, the only time that gender discrimination is mentioned in the guidelines for periodic reporting is in regard to the GP cluster and art.2 non-discrimination. However, gender discrimination was identified as a theme in 8 clusters; only SPM and VAC did not specify gender discrimination. However, in VAC one of the issues to receive 12 comments is FGM, a gendered issue, as too were most of the 31 comments on child marriage and polygamy specific to girls, hence being recorded here as discrimination. As Croll explores,

focusing on gender discrimination in a specific region, there is frequently a presumption that the family is 'a benign institution'²⁷⁶ when studies have shown that family resource allocation is biased towards male children, and that it is important to recognise this in policy and programmes aimed to combat discrimination against girls. Frequently comments about gender discrimination from the Committee did include concerns about family dynamics, for instance the recommendation to Bhutan to:

Take measures to change the prevalent gender stereotypes concerning the tasks and roles of women and girls in the family and in the workforce.²⁷⁷

The total number of times that any references to discrimination was recorded in all of the cluster spreadsheets was 696. The vast majority these references are focused on discrimination against a group of children rather than children as class of people who can be discriminated against. However, in the GP cluster, under the subheading of 'discrimination' the Committee do at times reflect discrimination in general against children. An example of this is from an earlier CO report than the study sample; in the 2008 CO to the UK it was noted that:

The Committee is also concerned at the general climate of intolerance and negative public attitudes towards children, especially adolescents, which appears to exist in the State party, including in the media, and may be often the underlying cause of further infringements of their rights.²⁷⁸

Additionally, in the CO report from 2016, analysed for this study, they made the recommendation to:

Consider the possibility of expanding legislation to provide protection of all children under 18 years of age against discrimination on the grounds of their age.²⁷⁹

Liebel noted in 2012 that even though some countries do legislate to protect age discrimination of the elderly, that 'in hardly any country is the age or status of children officially recognized as a reason or cause for discrimination'.²⁸⁰ However, in the above recommendation the Committee is advocating the UK do just that.

²⁷⁶ Elisabeth J Croll, 'From the Girl Child to Girls' Rights' (2006) 27 Third World Quarterly 1285.

²⁷⁷ CRC CO Bhutan 2017 (n 167) para 28(b).

²⁷⁸ CRC CO UK 2008, 'Concluding Observations on the Fourth Periodic Report of United Kingdom of Great Britain and Northern Ireland, UN Doc CRC/C/GBR/CO/4' (United Nations, 2008) para 24.

²⁷⁹ CRC CO UK 2016 (n 201) para 22(a).

²⁸⁰ Manfred Liebel, 'Discriminated against Being Children: A Blind Spot in the Human Rights Arena' in Manfred Liebel (ed), *Children's Rights from Below - Cross-Cultural Perspectives* (Palgrave Macmillan 2012).

The four State parties with the highest number of comments on discrimination and the four State parties with the lowest numbers of comments on discrimination are shown in figure 4.34 and the full spreadsheet is in appendix A-36-37.

Figure 4.34 Spreadsheet showing the highest and lowest number of comments on discrimination.

State party	Total	Gender	Race	Disabilities	disadvantaged	Single parent	Sexual Orientation /gender identity
Saudi Arabia	24	12	5	3	1	2	1
Algeria	22	10	5	4	1	2	0
Morocco	21	7	5	5	2	2	0
Cameroon	19	4	5	5	2	2	1
Norway	6	2	3	1	0	0	0
Iceland	4	0	2	2	0	0	0
Jamaica	4	1	1	2	0	0	0
Malta	4	0	4	0	0	0	0

Interestingly the four State parties with the lowest number of comments on discrimination are all featured in the overall top 16, and the four with the highest number of comments on discrimination are in the lowest 16 overall.

In comparison to the highest and lowest, the UK had a total score of 18, placing it joint 5th worst with France, Mexico and Nepal. The UK had two comments on gender discrimination, both inferred under VAC relating to marriage and FGM, seven comments on racial discrimination, five on discrimination against children with disabilities, two regarding sexual orientation/gender identity and one each for discrimination against disadvantaged children and children of single parents.

It would be possible to carry out a more detailed analysis of all remarks regarding discrimination within the CO reports using this method; even with this simple overview of discrimination the prevalent nature of discrimination is reinforced. Furthermore, the effect of discrimination on implementation of children’s rights cannot be underestimated, and within this study it will have had an undeniable consequence on State parties’ scores for individual clusters as well as overall grades. For instance, Canada came joint 6th worst for the most number of comments on discrimination, 17 in total mainly due to having 9 comments on racial discrimination (the joint worst score for racial discrimination). Their overall grade was a low grade E, had they not had

so many comments on discrimination then it is likely that they would have achieved at least a higher grade E; or a grade D, either of which would have brought them into the top group for further analysis.

The importance of non-discrimination to the United Nations, it has been argued:

can be confirmed both by the frequency with which the principle is included and the prominence it has been given being usually placed at the beginning in each instrument.²⁸¹

Discrimination in any form undermines implementation of children's rights and is a recognisable area that a State party wanting to improve its implementation should focus on, as it is evident that eliminating discrimination in legislation and practice will improve overall implementation of children's rights.

[Corruption recorded in the CO reports](#)

Another of the reoccurring themes in the cluster analysis was Corruption. In eight of the clusters, the Committee found it necessary to comment on issues of corruption; this is fundamentally important due to the undermining impact of corruption.

The main comments on corruption can be found in cluster 1 GMI, with 18 State parties, 35% receiving comments. In all clusters, 22 State parties, 42% received comments on corruption. The State parties which received comments on corruption are shown in figure 4.35 where it is possible to see under which cluster they received the comment. Azerbaijan received the greatest number of comments regarding corruption with references in four clusters, as noted in 4.1. Azerbaijan was the only State party in the sample that had a sub-heading of corruption with both comments and recommendations under cluster 1 GMI.

²⁸¹ Samantha Besson, 'The Principle of Non-Discrimination in the Convention on the Rights of the Child' (2005) 13 *International Journal of Children's Rights* 433.

Figure 4.35 Spreadsheet showing which State parties received references to corruption by cluster.

State	1 - GMI	2 - DOTC	3 - GP	4 - CRF	5 - VAC	6 - FEAC	7 - DHW	8 - ELC	9 - SPM	10 - JJ	Total
Albania								1	1		2
Algeria	1										1
Azerbaijan	1		1				1	1			4
Brazil						1					1
Cameroon	1									1	2
China								1			1
Columbia	1	1									2
Croatia	1										1
Dominican Republic	1										1
The Gambia	1										1
Ghana	1										1
India	1										1
Mexico	1										1
Mongolia							1		1		2
Morocco	1										1
Nepal	1										1
Russian Federation	1										1
Saudi Arabia	1										1
South Africa	1										1
Suriname	1										1
Viet Nam	1										1
Zambia	1										1
Total	18	0	1	1	0	1	2	2	3	1	

The issue of corruption is significant not only as an ‘issue’ for the purpose of the grading of the CO reports but due to the insidious nature of corruption. Once it is clear that a system is affected by, or worse tolerates corruption, this calls into question and undermines the reliance that can be placed on the State party’s report.

One State party received a comment regarding corruption under cluster 3 GP, and the heading of ‘right to life, survival and development’:

Many children are the victims of killing and disappearance, including killing committed by government agents; and extensive impunity prevails in this regard. The root causes of those violent acts—such as the armed conflict, organized crime, corruption, drugs, poverty and marginalization—remain insufficiently addressed;²⁸²

²⁸² CRC CO Colombia 2015 (n 162) para 23(a).

Azerbaijan was the only State party to receive a comment on corruption in cluster 4 CRF, that the Committee was: 'concerned at the prevalence of corruption in the birth registration process'.²⁸³

Brazil was the only State party to have corruption mentioned in cluster 6 FEAC, that the Committee was: 'concerned about reports of irregular adoptions due to corruption among officials administering adoptions.'²⁸⁴

Azerbaijan and Mongolia both received comments or recommendations about corruption in cluster 7 DBHW. Under the heading 'health and health services' Mongolia were recommended to:

Take concrete measures to combat corruption in the health-care sector, such as the practice of soliciting additional informal payments, including by holding those responsible accountable.²⁸⁵

For cluster 8 ELCA, both Albania and Azerbaijan had comments on corruption, with the Committee raising the concern to Albania that: 'The educational system continues to be seriously affected by corruption.'²⁸⁶

Three State parties received comments or recommendations on corruption in cluster 9 SPM; China received a recommendation under the issue of the sale, trafficking and abduction of children:

Immediately address the issue of corruption and impunity in Macao, China as a matter of priority, through rigorous investigations of complaints of complicity by government officials and their prosecution for such crimes;²⁸⁷

In the final cluster 10 JJ, though the word corruption was not used, corruption was nevertheless inferred from the comment to Cameroon that the Committee was concerned about:

Arbitrary detention of children by police and the informal fees demanded for their release, including informal fees for legal aid lawyers;²⁸⁸

²⁸³ CRC CO Azerbaijan 2012 (n 151) para 38.

²⁸⁴ CRC CO Brazil 2015 (n 212) para 47.

²⁸⁵ CRC CO Mongolia 2017, 'Concluding Observations on the Fifth Periodic Report of Mongolia, UN Doc CRC/C/MNG/CO/5', (United Nations 2017) para 30(b).

²⁸⁶ CRC CO Albania 2012 (n 125) para 70(f).

²⁸⁷ CRC CO China 2013, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of China, UN Doc CRC/C/CHN/CO/3-4' (United Nations 2013) para 89(b).

²⁸⁸ CRC CO Cameroon 2017 (n 198) para 46(b).

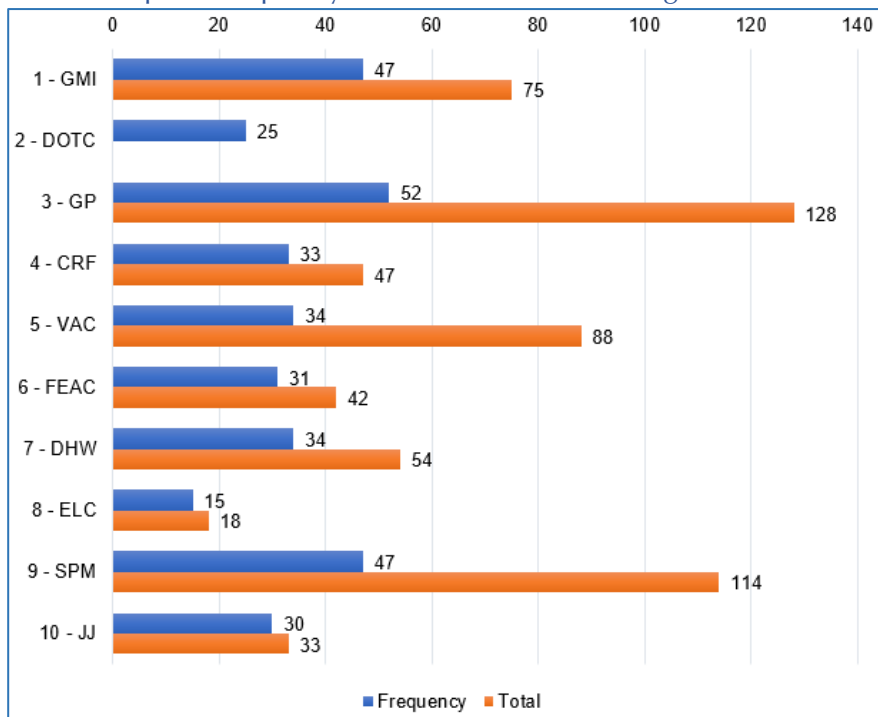
The existence of corruption will have reduced the State parties' grades by acting as a multiplier, exacerbating the level of concern for any issue where it is present and undermining not only the aspect of the system within which it is present but also weakening the reliance that can be placed on the system as a whole.

Legislation reviewed in the CO reports

Further to cluster 1 GMI having a specific section on legislation and therefore being included in the 'issue' section of the spreadsheets, within each cluster specific references to legislation and its implementation was tallied in the 'multiplier' section of the spreadsheet.

In cluster 3 GP, all State parties received at least one comment regarding a specific piece of legislation, the need to create legislation or improve the administration of legislation. The frequency and total number of references to legislation are shown in figure 4.36.

Figure 4.36 Graph of frequency and total references to legislation in all clusters.



Whilst there are a number of issues that are interwoven throughout the clusters, comments on legislation are fundamental to the implementation of the Convention. Looking across all clusters for each State party, it is interesting that there were 15 State parties which received less than ten comments in total for all clusters, 13 of which made it into the overall top 16.

Shown in figure 4.37 are the six State parties with the fewest references to legislation, and to contrast the five State parties with the most.

Figure 4.37 Extract from spreadsheet showing five states with the least and most number of references to legislation.

	1	2	3	4	5	6	7	8	9	10		
State	GMI	DOTC	GP	CRF	VAC	FEAC	DHW	ELC	SPM	JJ	Total	Freq
Norway	1		2								3	2
Portugal	1		2				1		1		5	4
Switzerland	1		2				1			1	5	4
Germany	2		1			1		1	1		6	5
Iceland	1		1						3	1	6	4
Turkey	1	1	3						1		6	4
Senegal	2	1	3	1	3	1		1	4	1	17	9
Mexico	2		4	1	3	1	1		5	1	18	8
Morocco	3		2	2	4	3	1		4		19	7
Serbia	3	1	3	1	2	1	2	2	4	1	20	10
Nepal	1	1	3	1	5	1	1	1	6	1	21	10

Nepal, for example, received 21 references to legislation in total and six for cluster 9 SMP, including the recommendation:

Amend the Child Labour Act and other relevant legislation so that the necessary regulation of child labour applies to all areas of work, including the worst forms of child labour and the informal sector;²⁸⁹

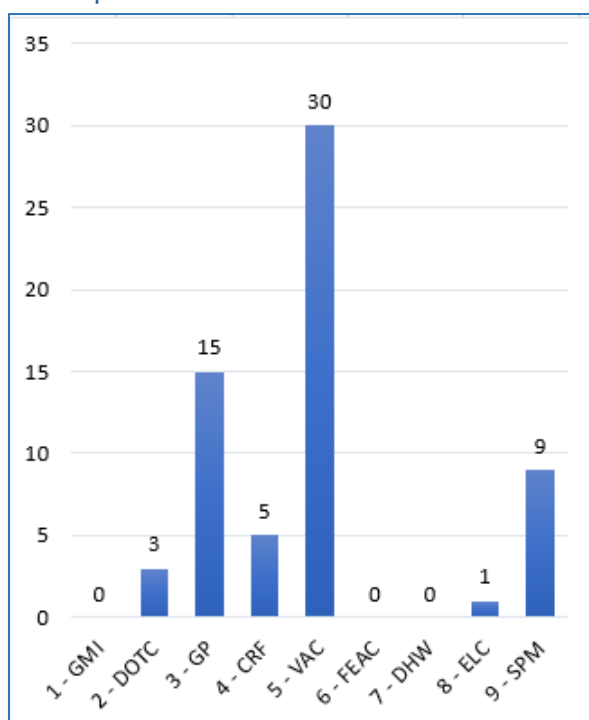
As can be seen in this example, the Committee is quite specific about a piece of legislation that they identify as needing amending. Therefore, to understand the level of legislative change that is needed, for instance within the UK, it would be informative to consider the legislative recommendations to the UK in the context of the legislative framework of the State parties achieving better implementation.

Juvenile Justice recorded in the CO reports

Along with recurring themes such as corruption and discrimination, the interwoven nature of issues and clusters can be shown using Juvenile Justice as an example. In the actual CO reports, it is a section under SPM; for this study a separate cluster has been created. However, as shown in figure 4.38, it is an element that was commented on in six other clusters.

²⁸⁹ CRC CO Nepal 2016, 'Concluding Observations on the Combined Third to Fifth Periodic Reports of Nepal, UN Doc CRC/C/NPL/CO/3-5' (United Nations 2016) para 69.

Figure 4.38 Graph of references to Juvenile Justice in all clusters.



Due to the cluster and the subject matter that each comment was made under, the comments demonstrate how interrelated issues can be even when occurring in quite different circumstances.

In the DOTC cluster, the concern raised for Canada was: ‘children in some provinces and territories, can be tried as adults.’²⁹⁰ In the GP cluster, under the subheadings of ‘Right to life, survival and development’ and sub-heading of ‘Self-immolations by Tibetan children’, one of the recommendations made to China was:

Refrain from arresting and detaining Tibetan children and implementing security measures that may exacerbate the situation and ensure that children arrested or sentenced for “instigating” or “inciting” self-immolation can gain full access to their right to legal aid and fair trial.²⁹¹

In addition, the GP cluster is where comments on art.12, and the right to be heard, including in the context of juvenile justice, are to be found, with comments such as, ‘The right to be heard in all judicial and administrative proceedings remains largely ineffective’.²⁹² In paragraph 40(e)(i-v) of the guidelines on periodic reporting for juvenile justice, the existence of specialized courts is referred to, however the child’s participation and the respect for the views of the child

²⁹⁰ CRC CO Canada 2017 (n 174) para 30.

²⁹¹ CRC CO China 2013 (n 287) para 36.

²⁹² CRC CO Algeria 2012 (n 159) para 35(b).

are not referred to, presumably because they are covered under the GP cluster. If juvenile justice was truly a cluster in its own right, then it is arguable that the child's participation in the court process should specifically be included, because as Daly and Rap describe:

The "right to be heard" must truly be seen as a child's right and should mean more than mere listening ... It should mean that children have full status as individual rights-holders in our justice systems.²⁹³

In the CRF cluster, under the issue heading of 'Protection of privacy', one of the concerns raised for Australia was:

The Committee is also concerned at the inadequacy of privacy protection for children involved in penal proceedings, including legislation in Western Australia and the Northern Territory permitting the publication of personal details of a person, including minors, who has carried-out "anti-social behaviour".²⁹⁴

The VAC cluster has the most number of references to juvenile justice. These were generally regarding the ill-treatment of children within the justice system, such as the concern raised to Albania:

deep concern about ill-treatment and improper use of force, in particular against children, both by public officials and the police, in pretrial detention centres, prisons and other institutions in which children are in the care of the State. The Committee is also deeply concerned about information on ill-treatment of juveniles in detention in relation to the arrests following the opposition's demonstration on 21 January 2011.²⁹⁵

In the FEAC cluster, there were no clear references to juvenile justice. Nevertheless, comments on alternate care facilities may have intended to include detention facilities, although this was never expressly mentioned. There is, however, an important link between FEAC and JJ, that has not been mentioned in any of the reports considered here. Though this link would more arguably be likely to be discussed within the JJ cluster if the JJ existed as a genuine cluster. The link being, as Evans describes:

²⁹³ Aoife Daly and Stephanie Rap, 'Children's Participation in the Justice System' in Ursula Kilkelly and Ton Liefwaard (eds), *International Human Rights of Children* (Springer International Publishing 2019) 316.

²⁹⁴ CRC CO Australia 2012 (n 165) para 41.

²⁹⁵ CRC CO Albania 2012 (n 125) para 39.

the over-representation of the Looked After Children population within the youth justice system has been a longstanding policy issue in the UK.²⁹⁶

This over-representation of an identifiable group of 'disadvantaged' children also demonstrates the interwoven nature of clusters and issues linking back to discrimination already discussed.

Similarly to the FEAC cluster, under the DBHW cluster, there were no comments relating to juvenile justice, though Viet Nam did receive a comment regarding treatment of children in detention and being detained with adults. However, this was related to drug rehabilitation rather than 'justice' and 'children in conflict with the law'.

For the ELCA cluster, the Committee expressed its concern to France that:

Certain categories of children face difficulties in entering, continuing or re-entering education, school-related activities and facilities, especially children with disabilities, ... and children in conflict with the law;²⁹⁷

Despite juvenile justice being a separate heading under SMP, there were references in other paragraphs, generally relating to situations when children should be treated as victims rather than held responsible and criminalised for their actions. For instance, the concern was raised to Algeria under the issue heading of 'Sale, trafficking and abduction' that:

Child victims of trafficking may be jailed for unlawful acts committed as a result of their being trafficked, such as engaging in prostitution or lacking adequate immigration documentation.²⁹⁸

Similarly, India received the recommendation to 'Avoid treating children in street situations as criminals.'²⁹⁹

The preceding consideration of how juvenile justice is mentioned in multiple clusters demonstrates the interrelated nature of issues and when analysing the monitoring documents, particularly if focusing on one article or cluster, it would be possible to miss relevant information by not assessing the whole report.

²⁹⁶ Jonathan Evans, "Objects of Concern" or "Risky Young Offenders?" Assessment and Intervention with Children in the Public Care and Youth Justice Systems of England and Wales' in Jeffery Ulmer and Mindy Bradley (eds), *Handbook on Punishment Decisions Locations of Disparity* (Routledge 2018) 406.

²⁹⁷ CRC CO France 2016 (n 221) para 71.

²⁹⁸ CRC CO Algeria 2012 (n 159) para 77.

²⁹⁹ CRC CO India 2014 (n 171) para 84.

Evidenced in this study is the evolution, even over a short period of time, of the clusters. With VAC previously in CRF, now in this analysis where VAC is its own cluster, it is one of the more complex, covering six articles of the Convention. This analysis has also highlighted the evolution and widening of the spectrum of issues that the Committee consider to be relevant to children's rights even if not directly referenced in the original Convention, with the inclusion of topics such as intersex children, street children, and rehabilitation from drugs or alcohol abuse.

Further, considering the cluster system, it can be argued that some clusters are too large, covering too many very separate issues for instance SPM, one of the reasons why in this study JJ is moved into its own cluster. Further, there are articles which could be in other clusters, for instance, the right to play,³⁰⁰ like the lives of children, have been 'scholarised'³⁰¹ and included in education, but in reality, is it an education issue or a health or welfare issue, and should it be in the cluster 7 DBHW?

4.4 Grading totals

[Results from grading 52 State party Concluding Observations reports.](#)

Having completed the process of grading the individual clusters, the scores were entered into a spreadsheet to compare the results, calculate average grades, and identify which State parties appear on the basis of the CO reports to be achieving a better implementation of the Convention.

In order to calculate average grades, numerical values were attributed to each grade, starting with 10 points for grade A, 9 for B, 8 for C, 7 for D, 6 for E, 5 for F, 4 for G, and finally a 3 for H. Therefore, the highest score theoretically possible, if the Committee had no concerns or recommendations for improvement, would be a score of 100. The lowest score under this point system if a State party received a grade H for every cluster would be 30.

The highest average grade was, in fact, a C, achieved by two State parties as shown in figure 4.39 and the full spreadsheet is in appendix A-38.

³⁰⁰ Naomi Lott, 'Making the Right to Play Real through Incorporation and Implementation. PhD Thesis (Forthcoming)' (University of Nottingham).

³⁰¹ Berry Mayall, 'The Sociology of Childhood in Relation to Children's Rights' (2000) 8 International Journal of Children's Rights 243.

Figure 4.39 Grade spread for the two State parties achieving an overall grade of C.

State	TOTAL	Av Score	8.0	Spread	Av Grade	1 - GMI	2 - DOTC	3 - GP	4 - CRF	5 - VAC	6 - FEAC	7 - DHW	8 - ELC	9 - SPM	10 - JJ													
						Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score									
Iceland	84	8.4	8.0	4	C	D	7	A	10	C	8	A	10	A		10	C	8	C	8	C	8	D	7	C	8		
Portugal	83	8.3	8.0	4	C	D	7	A	10	C	8	A	10	C		8	D	7	C	8	C	8	C	8	B	9	C	8

The first column after the State name is the total score calculated from totalling each cluster score. The average score, as there are 10 clusters, is the total divided by 10 with the second column of the average rounding down the score to the whole number, which enables the average grade to be displayed. In this spreadsheet the term ‘spread’ and corresponding column refer to the size of the spread across the grades. For instance, if a State party had achieved the same grade for all clusters then the spread would be ‘1’; if they had achieved all grades D and E then the spread would be ‘2’, up to a maximum of ‘8’ if a State party achieves grades across the board from A to H. In this case both Iceland and Portugal have the same spread of 4 as they both achieved A as their highest grade and D as their lowest grade.

There is an additional column under 5-VAC called ‘crf’. In these examples this column is blank; if it is shaded it signifies that ‘violence against children’ was a heading under the cluster CRF rather than a cluster in its own right.

The graph at figure 4.40 shows the State parties in score order to give a visual representation of the grade spread, with the UK highlighted in purple.

This is a developing method and because of that, whilst in this instance Iceland has a total score of 84 and Portugal 83, a single point of difference would not be sufficient to conclude that Iceland is achieving better implementation than Portugal. There is however confidence that, on the basis of the analysis of the CO reports, both Iceland and Portugal have achieved grade C.

Table 4.12 splits each grade into two sections; however, within each section the State parties are listed alphabetically rather than by score, and these sections still cover a relatively large score spread. The mean average score was 60 (a low-grade E), and the median score, splitting the two halves of the sample was 58 (a high-grade F). In either case, the UK just scraped into the top half of the sample.

Figure 4.40 Graph of final grades for study sample. (Full size graph in appendix A-39)

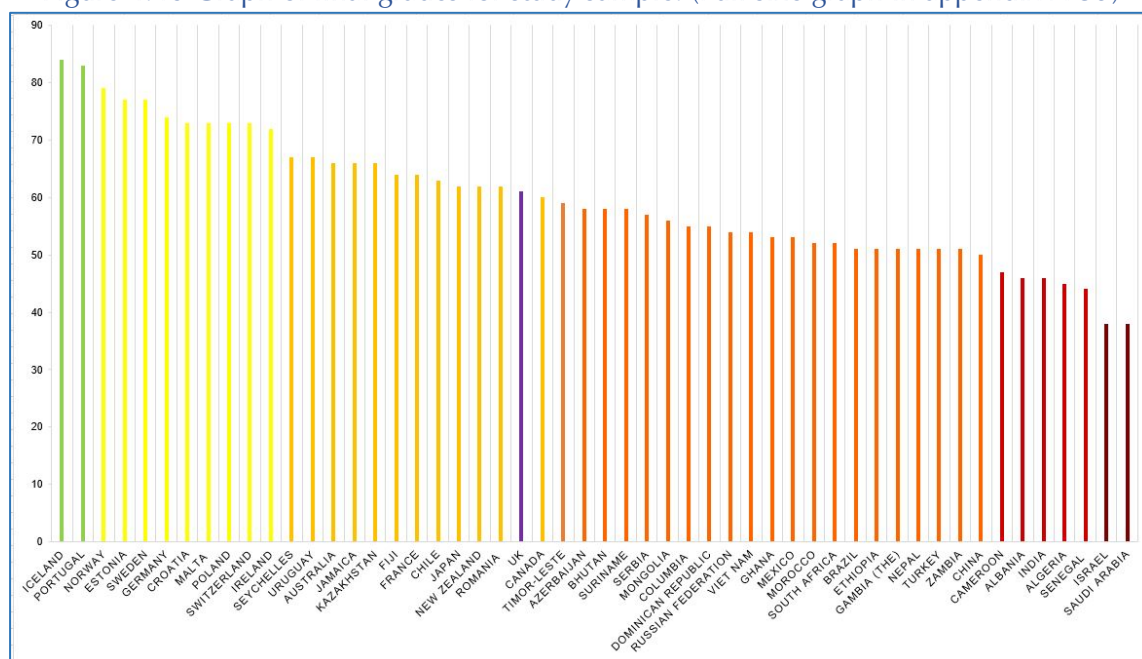


Table 4.12 Final grades and number of State parties achieving each grade.

Grade	No.	Score band	State party (alphabetical within the section)
C	2	89-85	-
		84-80	Iceland, Portugal
D	9	79-75	Estonia, Norway, Sweden
		74-70	Croatia, Germany, Ireland, Malta, Poland, Switzerland
E	13	69-65	Australia, Jamaica, Kazakhstan, Seychelles, Uruguay
		64-60	Canada, Chile, Fiji, France, Japan, New Zealand, Romania, UK
F	21	59-55	Azerbaijan, Bhutan, Colombia, Dominican Republic, Mongolia, Suriname Serbia, Timor-Leste
		54-50	Brazil, China, Ethiopia, The Gambia, Ghana, Mexico, Morocco, Nepal, Russian Federation, South Africa, Turkey, Viet Nam, Zambia,
G	5	49-45	Albania, Cameroon, India,
		44-40	Algeria, Senegal,
H	2	39-35	Israel, Saudi Arabia,
		34-30	-

Identification of State parties for further analysis into better implementation of the Convention

If just the State parties with C and D grades are used for further analysis these would only include State parties identified as in Europe from the UN’s geoscheme; if the next top half of grade E is included, then all the geoscheme regions are covered in the sample at least once. This creates a sample group of 16, identified in table 4.12 in blue. With the addition, for comparative purposes, of the UK, (identified in red) which scored in the lower grade E. The second phase sample contains the top 16 State parties, with the UK considered later in chapter 7.

The grade spread for the ten clusters for the sample 17 is shown in figure 4.41 and raises some interesting observations.

Figure 4.41 Spreadsheet showing the cluster grades for the sample 16 and UK.

State	TOTAL	Spread	Av Grade	1 - GMI		2 - DOTC		3 - GP		4 - CRF		5 - VAC		6 - FEAC		7 - DHW		8 - ELC		9 - SPM		10 - JJ	
				Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score
Iceland	84	4	C	D	7	A	10	C	8	A	10	A	10	C	8	C	8	C	8	D	7	C	8
Portugal	83	4	C	D	7	A	10	C	8	A	10	C	8	D	7	C	8	C	8	B	9	C	8
Norway	79	4	D	C	8	A	10	C	8	C	8	C	1	8	D	7	B	9	D	7	D	7	D
Estonia	77	4	D	E	6	C	8	B	9	B	9	D	7	E	6	D	7	C	8	B	9	C	8
Sweden	77	5	D	D	7	A	10	E	6	B	9	E	6	C	8	C	8	A	10	E	6	D	7
Germany	74	5	D	E	6	A	10	C	8	C	8	E	6	D	7	E	6	C	8	D	7	C	8
Croatia	73	6	D	F	5	A	10	C	8	D	7	D	7	E	6	C	8	E	6	B	9	D	7
Malta	73	4	D	E	6	E	6	D	7	B	9	D	7	C	8	B	9	C	8	E	6	D	7
Poland	73	7	D	C	8	A	10	C	8	C	8	D	7	D	7	D	7	D	7	G	4	D	7
Switzerland	73	6	D	E	6	A	10	D	7	D	7	D	7	F	5	D	7	B	9	C	8	D	7
Ireland	72	4	D	E	6	B	9	D	7	C	8	C	8	D	7	E	6	C	8	E	6	D	7
Seychelles	67	4	E	E	6	E	6	E	6	B	9	C	1	8	D	7	D	7	E	6	E	6	E
Uruguay	67	6	E	E	6	B	9	E	6	A	10	E	6	F	5	F	5	E	6	C	8	E	6
Australia	66	6	E	F	5	A	10	E	6	F	5	E	1	6	E	6	E	6	D	7	B	9	E
Jamaica	66	7	E	D	7	A	10	D	7	C	8	E	6	E	6	F	5	E	6	D	7	G	4
Kazakhstan	66	8	E	E	6	A	10	D	7	A	10	H	3	F	5	E	6	D	7	E	6	E	6
UK	61	5	E	D	7	C	8	E	6	D	7	G	4	E	6	E	6	E	6	E	6	F	5

Firstly, the initially striking element of this spread of grades is the apparent change in colours from cooler tones at the top to warmer at the bottom. Worth noting is the three VAC grades where this was included in the CRF cluster and therefore suspected to be a higher grade than would have been received otherwise. Unsurprisingly, due to the nature of the first and third clusters ‘general measures of implementation’ and ‘general principles’, it appears that the combination of these two grades is indicative of the overall grade a State party achieves (this is explored further in chapter 8). What is noticeable for GMI is that no State party achieves a grade B, and in figure 4.41, two received as low as an F. Only one ‘H’ is visible in the top 16, given

to Kazakhstan for VAC. Kazakhstan also has the largest grade spread of 8 as it achieves as high as grade A and as low as H.

Comparing the UK to the top 16, immediately two clusters are noticeable: VAC with a grade G and JJ with a grade F, in comparison to the remaining clusters (five with grade E, two with grade D and one grade C). Therefore, this indicate two areas of children’s rights that the UK needs to give attention to in order to improve its implementation. The UK’s implementation will be analysed in chapter 7.

By way of a comparison to the sample 16, for the lowest seven overall grades of G and H, the cluster grades look entirely different as in figure 4.42

Figure 4.42 Cluster grades for the lowest average grades.

State	Spread	Av Grade	1 - GMI		2 - DOTC		3 - GP		4 - CRF		5 - VAC		6 - FEAC		7 - DHW		8 - ELC		9 - SPM		10 - JJ		
			Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	
Cameroon	5	G	E	6	D	7	E	6	E	6	H	3	F	5	H	3	G	4	G	4	H	3	
Albania	4	G	E	6	F	5	F	5	E	6	H	3	G	4	F	5	G	4	H	3	F	5	
India	8	G	H	3	A	10	G	4	E	6	F	5	H	3	H	3	G	4	G	4	G	4	
Algeria	8	G	H	3	A	10	G	4	H	3	F	1	5	H	3	G	4	F	5	H	3	F	5
Senegal	4	G	F	5	E	6	G	4	E	6	G	4	G	4	H	3	H	3	G	4	F	5	
Israel	3	H	G	4	F	5	H	3	G	4	H	3	G	4	H	3	G	4	F	5	H	3	
Saudi Arabia	3	H	H	3	G	4	H	3	G	4	H	3	G	4	F	5	F	5	G	4	H	3	

Particularly noticeable here is the lowest two State parties, Israel and Saudi Arabia, as their spread grade is small as they never achieve a grade higher than F. Again, the combination of clusters 1 and 3 appear to be somewhat indicative. Chapter 5 will consider in more detail the top 16 and the UK.

In chapter 2.4 the study by Gran³⁰² and the creation of a Children’s Rights Index was discussed. As noted, this index focuses on only eight rights, one of which is not contained in the Convention. In this index the scoring used attributes to each right a score from 1 for ‘no right’ through to 4 where the right exists. The highest score possible then is 32 and the lowest 8. Figure 4.43 displays the state parties for this study in order of their score, then shows the score achieved under Gran’s index. Both scoring systems are colour coded with the highest score shown as a blue colour through to orange for the lowest scores.

³⁰² Gran (n 70).

Figure 4.43 State parties total score for this study compared to Gran's index.

State	Project Total	Gran score	State	Project Total	Gran score
Iceland	84	24	Bhutan	58	15
Portugal	83	25	Suriname	58	21
Norway	79	28	Serbia	57	25
Estonia	77	27	Mongolia	56	22
Sweden	77	29	Columbia	55	25
Germany	74	26	Dominican Republic	55	19
Croatia	73	27	Russian Federation	54	22
Malta	73	28	Viet Nam	54	19
Poland	73	21	Ghana	53	21
Switzerland	73	25	Mexico	53	23
Ireland	72	23	Morocco	52	21
Seychelles	67	27	South Africa	52	23
Uruguay	67	28	Brazil	51	25
Australia	66	26	Ethiopia	51	19
Jamaica	66	24	Gambia (The)	51	22
Kazakhstan	66	26	Nepal	51	19
Fiji	64	22	Turkey	51	20
France	64	28	Zambia	51	17
Chile	63	25	China	50	19
Japan	62	28	Cameroon	47	19
New Zealand	62	25	Albania	46	22
Romania	62	24	India	46	20
UK	61	27	Algeria	45	23
Canada	60	30	Senegal	44	21
Timor-Leste	59	18	Israel	38	24
Azerbaijan	58	25	Saudi Arabia	38	19

What this figure demonstrates is that though there are some individual anomalies, despite the two studies using very different methods and grading very different information in order to assess children's rights there is a clearly a similarity in the results. The standout anomalies are Canada, Timor-Leste and Bhutan.

In regard to Canada, the surprising result was that they did not perform better in this study. Their CO report was one of the older reports from 2012 and there was clear repetition in the report about two specific aspects that undoubtedly affected their score, the first of which was linked to their being a federal nation where criticisms were made on a number of occasions that legislation varied in different provinces and territories. Secondly, there were repeated criticisms about discrimination, specifically how children from racial minorities, particularly African-Canadian and Native Canadian children, faced discrimination. Therefore, it is not surprising that there is such a difference between the score for this study and Gran's index where Canada scored highly because the focus was on written national legislation. Because it

is surprising that Canada scored less well in this study, it raises the question that if the Committee have expectations that a State party should be managing to implement the UNCRC at a fairly high level, could they then be more critical in their assessment, comments and recommendations? With regards to Timor-Leste and Bhutan, the CO report assessed for this study were much more recent than Gran's assessment. In addition, at the time of Gran's assessment Timor-Leste had been a sovereign state for less than a decade after many years of frequently violent occupation, and Bhutan had only recently transitioned from an absolute monarchy to a constitutional monarchy.

4.5 Chapter conclusions

This analysis has shown is that it is possible to compare the Committee's Concluding Observations reports to identify examples of better implementation of the Convention. Therefore, the first research objective, to create a method to measure implementation of the UNCRC and to test this by analysing a sample of State parties, has been met. The method has produced a wealth of data, not only grading State parties' implementation, but also revealing the issues that the Committee has focused on for each cluster.

The first research question relevant for this chapter, whether it is possible to infer State party implementation of children's rights by analysing Concluding Observations reports by the Committee on the rights of the child, can be answered in the affirmative that it is possible to gauge implementation from the CO reports though it is essential to recognise that this method is indicative of levels of implementation, not an absolute measure. For the second research question focused on i.e. whether it is possible to assess which State parties are achieving better implementation, this chapter can again conclude that it is possible to compare State parties' implementation and identify which are achieving better implementation (via the lens of the Committee's comments) and to grade the concerns raised by the Committee.

As to the third research question focused on i.e. what can be learnt about the Committee's interpretation of the Convention by analysing their Concluding Observations reports, the results from the analysis have made it possible to investigate elements of the Committee's changing interpretation of the Convention and to understand better their focus on different issues and topics they comment on. The spreadsheets used to break down and record the comments from the Committee, were designed with the main aim of comparing State parties, nevertheless, the construction used enabled a detailed analysis of the different topics (issues) that the Committee commented on. In this chapter, for each cluster it has been possible to display the frequency

and total number of times that the Committee commented on an issue for the sample. This has included the sub-issues which have given additional data on different aspects of issues. In addition, the data from the original spreadsheets allowed more detailed investigations of topics such as discrimination.

For any individual State party, the results not only indicate how well they are achieving the implementation of the Convention in comparison to other State parties, the results also can show which clusters a State party is achieving worse grades in comparison to other clusters. Therefore, potentially highlighting areas of children's rights that need additional attention and improvement.

This chapter has also enabled a detailed review of how the Committee has treated specific issues that are interwoven throughout the CO reports. The four issues focused on, discrimination, corruption, legislation, and juvenile justice have been shown to be commented on in various clusters even if there is an identified cluster that has a specific request for information on the issue. The results of this analysis have shown that where there are pervasive issues related to discrimination, this results in the Committee then commenting on the discrimination in a number of clusters, which therefore affects the cluster and final grade for that State party.

What remains to be investigated is how this implementation is being achieved from a legal point of view; this will begin with a more detailed analysis of the top sixteen.

Chapter 5 – Overview of the top 16 State parties

5.1 Introduction

Chapter 5 is focused on the research objective to investigate the legal framework of the better performing State parties to understand whether there are commonalities underpinning this better performance. The research question focused on is, of the State parties achieving better implementation, what can be observed about their legal framework?

This chapter investigates the characteristics of the State parties graded in the top 16 and will consider their implementation and incorporation of the Convention, covering various aspects from political and legal profiles to the existence of reservations and the ratification of optional protocols. In addition, general human rights and health indicators rankings of both the top 16 and the remainder of the study sample will be contrasted to the results of this study.

5.2 The profiles of the top 16

The method for choosing the sample 52 is fully explained in chapter 3.3; of the potential State parties, only those with concluding observations (CO) reports within a five-year span of 2012 - 2017 were considered for analysis with, as explained, the two exceptions of Japan and Norway, of which only Norway achieved a grade bringing it into the top 16.

Geographic profile of the top 16

The original sample of 52 State parties was purposely chosen to cover a range of different UN 'geoschemes'.³⁰³ There were 119 State parties with CO reports in the timeframe chosen. The two charts in figure 5.1 illustrate the similarity of the regional designation distribution, between all of the State parties and the final sample. It can be observed that there is a slight percentage increase in European and Americas State parties from the potential sample to the final sample, and a slight decrease in African and Asian State parties. This change was not intentional, it was a by-product of selecting State parties with varying 'legal families'.

The final study sample of 52 State parties, and their dispersal into the subcategories from the geoscheme, are illustrated in figure 5.2; these included 17 from Europe, ten from Africa, 13 from Asia, three from Oceania, and nine from the Americas. Whereas in contrast, considering the geoscheme spread of the top 16, 11 State parties are from Europe, two from the Americas

³⁰³ The United Nations 'geoscheme', has been devised by the United Nations Statistics Division for statistical convenience and does not imply political affiliations.

and only one each from Africa, Asia, and Oceania.

Figure 5.1 Geoschemes designation for the original list of 121 State from which the sample 52 were chosen, in contrast to the geoscheme of the final study sample.

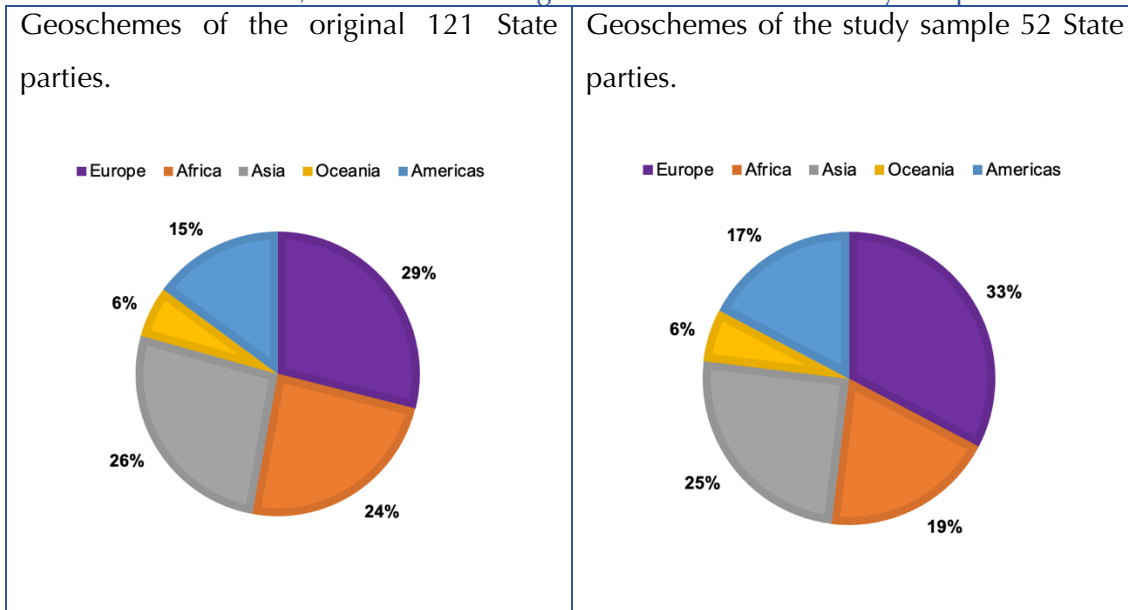
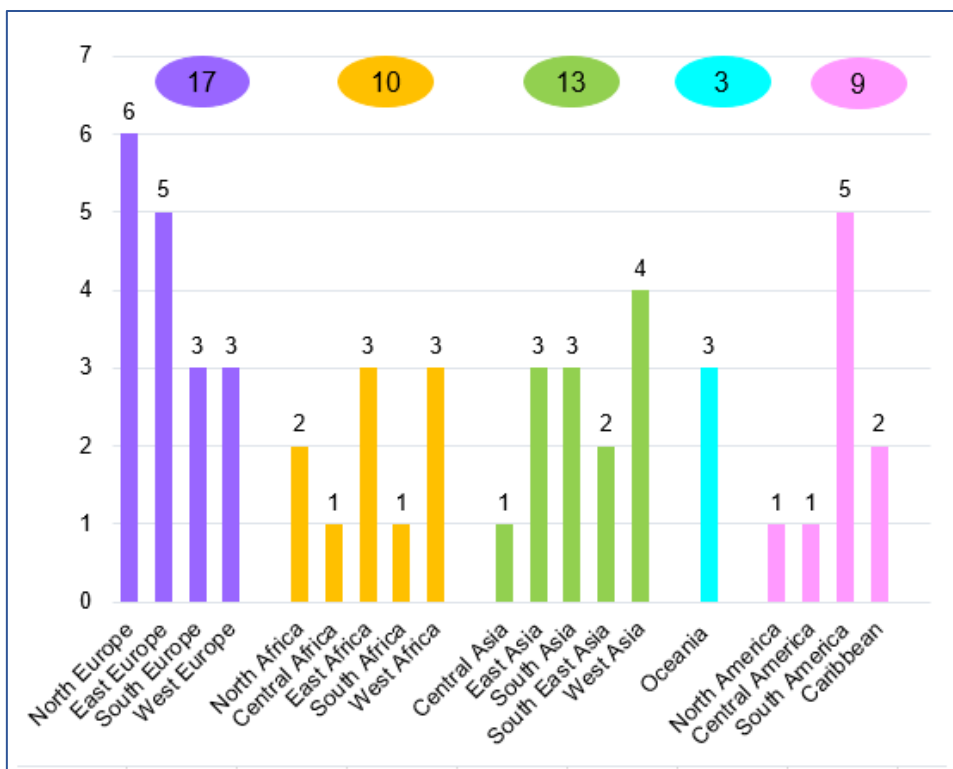


Figure 5.2 Graph of study sample State parties by UN Geoscheme.

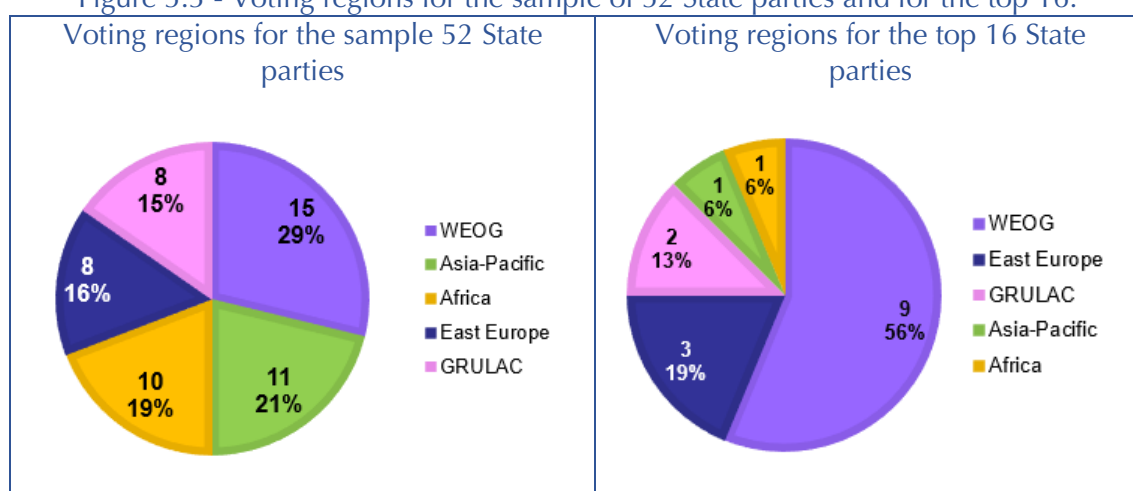


The second regional classification of the sample State parties is the UN voting regional groups.³⁰⁴ The UN regional voting groups are significantly different to the geoscheme

³⁰⁴ United Nations Department for General Assembly and Conference Management, 'United Nations Regional Groups of Member States' <<http://www.un.org/depts/DGACM/RegionalGroups.shtml>> accessed 14 November 2018.

classifications. In part due to the geoscheme being a designation made by the UN statistical department based upon on physical geography, whereas State parties have a say in their voting group. One of the Oceania geoscheme State parties (Fiji) votes with Asia-Pacific, whereas the other two Oceania State Parties (Australia and New Zealand), vote with WEOG (Western Europe and Others Group). Also voting with WEOG is the North American State party (Canada), and two State parties from the West Asia geoscheme (Israel and Turkey). One State party from South Europe geoscheme (Croatia) and one from North Europe geoscheme (Estonia) vote with East Europe.

Figure 5.3 - Voting regions for the sample of 52 State parties and for the top 16.



In the initial sample at figure 5.3 WEOG has 29% (15 State parties). In the top 16, with nine State parties, it covers 56%. Eastern Europe and GRULAC (Latin American and Caribbean Group) retain similar percentages from the initial sample to the top 16, with Eastern Europe increasing from 16% to 19%, and GRULAC reducing from 15% to 13%. It is Africa and Asia-Pacific that reduce significantly, from 19% and 21% respectively to only 6% each as there is only a single State party in the top 16.

Socio-political characteristics of the top 16

Religion

Twelve State parties of the top 16 (75%) are officially secular with a separation of state and church; four have an official state religion of Christianity (two each of Catholic and Protestant). However, in all State parties, it would appear that more than half the population are religious, 15 Christian (eight predominantly Catholic, six predominantly Protestant and one equal amounts) and one Muslim.

Government formations

Of the 16 State parties, the majority are republics whereas four are monarchies. In addition, only three of the 16 are federal³⁰⁵ governments whereas the majority are unitary states.³⁰⁶ Within the study sample one of the repeated issues federal State parties faced, which may have affected their score, was comments on variations in legislation across internal boundaries. For example, in relation to Switzerland:

The Committee notes the challenges presented by the federal system of the State party and is concerned that the absence of overall coordination has resulted in significant disparities in the implementation of the Convention across the State party's cantons.³⁰⁷

Observed in the analysis of the CO reports was a repetition of concerns raised by the Committee about there being differences in legislation within the component units of federal State parties. As Doek describes:

It is not easy ... to produce a report that fully reflects what happens in their autonomous provinces, cantons, or devolved entities. It is a challenge to provide integrated and coherent information on the various clusters.³⁰⁸

Variation across internal states in legislation undoubtedly affected the individual cluster grades as well as the overall grade achieved by federal states. It appears to be a factor as to why a State party such as Canada only achieved an overall grade of E. The Committee in their GC No.5 on general measures of implementation expressly comment on 'decentralization, federalization and delegation' noting that this 'does not in any way reduce the direct responsibility of the State party's Government to fulfil its obligations'.³⁰⁹ They conclude this section by voicing that 'there must be safeguards to ensure that decentralization or devolution does not lead to discrimination in the enjoyment of rights by children in different regions'.³¹⁰ This statement gives the indication that they consider decentralisation potentially problematic. Whether a federal system is a disadvantage in the implementation of the Convention depends on the type of legal incorporation: direct or indirect; full or partial. Methods of incorporation are considered further in 5.3. Nevertheless, in contrast to the concerns decentralisation raises, as noted by Lundy et

³⁰⁵ Technically Switzerland is a Confederation; however, it shares the same structural form as a federation in regard to the operation of legislation.

³⁰⁶ A unitary State is one which is governed as a single entity with a centralised government, which may delegate some powers to regional administrative divisions.

³⁰⁷ CRC CO Switzerland 2015 (n 244) para 12.

³⁰⁸ Jaap E Doek, 'The U.N. Convention on the Rights of the Child: Some Observations on the Monitoring and Social Context of Its Implementation' (2003) 14 University of Florida Journal of Law & Public Policy 125, 129.

³⁰⁹ UN Committee on the Rights of the Child, 'General Comment No.5 (2003) on the General Measures of Implementation of the Convention on the Rights of the Child - UN Doc CRC/GC/2003/5' (n 76).

³¹⁰ *ibid.*

al.³¹¹ there is a potentially positive aspect of a federal or devolved system, because it is possible for a region to incorporate the Convention more fully than at the national level and become a leader within the jurisdiction in children's rights playing 'an important role in encouraging good practice elsewhere'.³¹² Examples identified in their study were Victoria in Australia and Berlin in Germany.

Notwithstanding the issues that federal State parties can face due to legislative differences across internal borders, other State parties such as France or the UK, neither of which appear in the top 16, have a different yet similar issue affecting them. France as a State party includes more than just mainland France in Europe, as their current 'Core Document forming part of the reports of State parties' elaborates:

The country comprises metropolitan France (territories in Europe), and overseas territorial collectivities. The latter are divided into two categories:

- The overseas departments and regions (DROM): Guadeloupe, French Guyana, Martinique, Mayotte and Réunion (which replace the overseas departments, or DOM);
- The overseas collectivities (COM): French Polynesia, Saint-Barthélemy and Saint Martin, Saint Pierre and Miquelon, and Wallis and Futuna replaced the overseas territories, or TOM.³¹³

The United Kingdom as a State party, similarly to France, has this complexity for reporting to the Committee and includes:

- ❖ 4 Jurisdictions: England, Wales, Scotland, and Northern Ireland;
- ❖ 3 Crown Dependencies: Bailiwick of Guernsey, Bailiwick of Jersey, and Isle of Man;
- ❖ 14 British Overseas Territories: Anguilla; Bermuda; British Antarctic Territory; British Indian Ocean Territory; Cayman Islands; Falkland Islands;³¹⁴ Gibraltar; Montserrat; Pitcairn, Henderson, Ducie and Oeno; St Helena, Ascension, and Tristan da Cunha;

³¹¹ Lundy, Kilkelly and Byrne (n 78).

³¹² *ibid.*

³¹³ France, 'Core Document Forming Part of the Reports of State Parties UN Doc. HRI/CORE/FRA/2017' (United Nations 2017) para 2.

³¹⁴ It is noted that within Argentina, 'Common Core Document Forming Part of the Record of States Parties - Argentina (2015) UN Doc HRI/CORE/ARG/2014' (United Nations 2014)., two of the British Overseas Territories are disputed as noted within footnote no.3: 'The Falkland Islands (Malvinas), South Georgia, the South Sandwich Islands and the surrounding maritime areas are an integral part of Argentine territory and currently under illegal occupation by the United Kingdom of Great Britain and Northern Ireland. They are the subject of a sovereignty dispute between two countries recognized by the United Nations.'

South Georgia and South Sandwich Islands;³¹⁵ Sovereign Base Areas of Akrotiri and Dhekelia on Cyprus; Turks and Caicos Islands; British Virgin Islands.³¹⁶

The consequence of this complexity is that the CO reports frequently included concerns and recommendations that were directed at a single element of the State party rather than being relevant to the whole:

The Committee regrets that the State party maintains its reservations with regard to the applicability of some of the articles of the Convention to its overseas territories and Crown dependencies, namely the reservations on:

- (a) Article 22 to the Cayman Islands;
- (b) Article 32 to all its dependent territories, except Pitcairn;
- (c) Article 37 (c) to all its dependent territories.³¹⁷

Therefore, in common with some federal State parties (where the Convention has not been incorporated at the federal level), unitary State parties such as France and the UK with complex territories and separate legislation also had an overall reduction in grades.

Within the 13 Unitary State parties of the top 16, only Portugal has this additional complexity with: 'two autonomous regions in the Atlantic Ocean: the archipelagos of the Azores and Madeira'.³¹⁸

Reservations and Declarations

In the original sample of 52 State parties, 35% had a least one reservation or declaration to the Convention in general or to a specific article; in the top 16 this percentage is increased slightly to 38%. However, as presented in table 5.1 there are two that can be discounted as they do not limit the applicability of the Convention, leaving a figure of only 25% and 0% for the top three State parties.

Of the top 16, ten State parties did not have any reservation or declarations, four State parties had one (Australia, Croatia, Ireland, and Uruguay), one State party had four (Switzerland), and one State party had declarations that refer to six articles (Poland).

³¹⁵ *ibid.*

³¹⁶ Four of the British Overseas Territories: the British Antarctic Territory, the British Indian Ocean Territory, South Georgia and South Sandwich Islands, and the Sovereign Base Areas of Akrotiri and Dhekelia on Cyprus, are not included in the Core document or State party report as they do not have permanent populations.

³¹⁷ CRC CO UK 2016 (n 201) para 5.

³¹⁸ Portugal, 'Core Document Forming Part of the Reports of State Parties - Portugal - UN Doc. HRI/CORE/PRT/2014' (United Nations 2014) para 2.

The reservations and declarations of two State parties can be discounted as ‘not limiting the applicability of the Convention’ because Ireland’s declaration upon signing was that they could make reservations and declarations upon ratifying, which they did not, and Uruguay’s reservation was that they will hold themselves to a higher minimum age for the armed forces. Therefore, only 4 State parties in the top 16 have limiting declarations or reservations. As previously noted, described by LeBlanc³¹⁹ the concerns around the use of reservations and declarations is the effect of weakening the Convention.

Table 5.1 Reservations and Declarations by State parties to the Convention on the Rights of the Child

State Party Article	Reservations and Declarations Text reproduced from UN Status of Treaties webpage ³²⁰
Australia Art.37	<i>Reservation:</i> ‘Australia accepts the general principles of article 37. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the Convention to the extent that it is unable to comply with the obligation imposed by article 37 (c).’
Croatia Art.9	<i>Reservation:</i> ‘The Republic of Croatia reserves the right not to apply paragraph 1 of article 9 of the Convention since the internal legislation of the Republic of Croatia provides for the right of competent authorities (Centres for Social Work) to determine on separation of a child from his/her parents without a previous judicial review.’
Ireland General	Upon signature: <i>Declaration:</i> ‘Ireland reserves the right to make, when ratifying the Convention, such declarations or reservations as it may consider necessary.’

³¹⁹ LeBlanc (n 158).

³²⁰ United Nations, ‘Status of Treaty, Chapter IV Human Rights Document 11, The Convention on the Rights of the Child, New York 20th November 1989 Accessed 31-10-2018’, (n 119).

State Party Article	Reservations and Declarations Text reproduced from UN Status of Treaties webpage
Switzerland General and Art.10, art.37 and art.40.	<p><i>Declaration:</i></p> <p>‘Switzerland refers expressly to the obligations of all States to apply the rules of international humanitarian law and national law to the extent that they ensure better protection and care of children who are affected by an armed conflict.’</p> <p><i>Reservation concerning article 10, paragraph 1:</i></p> <p>‘Swiss legislation, which does not guarantee family reunification to certain categories of aliens, is unaffected.’</p> <p><i>Reservation concerning article 37(c):</i></p> <p>‘The separation of children deprived of liberty from adults is not unconditionally guaranteed.’[sic]</p> <p><i>Reservation concerning article 40:</i></p> <p>‘The Swiss penal procedure applicable to children, which does not guarantee either the unconditional right to assistance or separation, where personnel or organization is concerned, between the examining authority and the sentencing authority, is unaffected.’</p>
Poland Art.12, art.13, art.14, art.15, art.16 and art.24	<p><i>Declarations:</i></p> <p>‘The Republic of Poland considers that a child's rights as defined in the Convention, in particular the rights defined in articles 12 to 16, shall be exercised with respect for parental authority, in accordance with Polish customs and traditions regarding the place of the child within and outside the family;’</p> <p>‘With respect to article 24, paragraph 2 (f), of the Convention, the Republic of Poland considers that family planning and education services for parents should be in keeping with the principles of morality.’</p>

State Party	Reservations and Declarations
Article	Text reproduced from UN Status of Treaties webpage
Uruguay Art.38	<p>Upon signature:</p> <p><i>Declaration:</i></p> <p>‘On signing this Convention, Uruguay reaffirms the right to make reservations upon ratification, if it considers it appropriate.’</p> <p>Upon ratification:</p> <p><i>Reservation:</i></p> <p>‘The Government of the Eastern Republic of Uruguay affirms, in regard to the provisions of article 38, paragraphs 2 and 3, that in accordance with Uruguayan law it would have been desirable for the lower age limit for taking a direct part in hostilities in the event of an armed conflict to be set at 18 years instead of 15 years as provided in the Convention.</p> <p>Furthermore, the Government of Uruguay declares that, in the exercise of its sovereign will, it will not authorize any persons under its jurisdiction who have not attained the age of 18 years to take a direct part in hostilities and will not under any circumstances recruit persons who have not attained the age of 18 years.’</p>

5.3 Human rights monitoring systems

Additional guidance from the Committee

In addition to the reporting process to the Committee on the rights of the child, there are other documents and review procedures that are relevant for considering a State party’s implementation of children’s rights. These are the Common Core Document (CCD) and Universal Periodic Review (UPR), which are explained in more detail in chapter 2.2.

For the purpose of investigating State party implementation of children’s rights and gaining understanding of their legal framework underpinning implementation then these additional documents are theoretically useful because as noted the CCD reports should be:

presented in accordance with the present harmonized guidelines will enable each treaty body and State party to obtain a complete picture of the implementation of the relevant treaties, set within the wider context of the State’s international human rights obligations,

and provide a uniform framework within which each committee, in collaboration with the other treaty bodies, can work.³²¹

Additionally, within the Core Document:

States should provide a description of the constitutional structure and the political and legal framework of the State, including the type of government, the electoral system, and the organization of the executive, legislative and judicial organs. States are also encouraged to provide information about any systems of customary or religious law that may exist in the State.³²²

Further:

States should set out the specific legal context for the protection of human rights in the country.³²³

The Core Document therefore should be a document that can be used for comparative purposes. As noted in chapter 2, State parties have interpreted these guidelines differently. Subsequently they vary in their usefulness and do not always describe the constitutional structures and legal framework. It is possible that this is because the report writers do not recognise that someone from another system reading the report potentially needs additional explanation.

Human rights - Universal Periodic Review

In addition to the Core Document is the Universal Periodic Review (UPR) process, as explained in chapter 2.2, State parties are invited to submit a document 'to declare what actions they have taken to improve the human rights situations in their countries and fulfil their human rights obligations.'³²⁴ This document is to be in line with the guidelines for the preparation of information. Though the UPR is concerned with general human rights, the information on the legislative framework and information on children's rights is relevant explanatory material.

Convention on the Rights of the Child – Optional Protocols

The Convention itself now has three optional protocols, all with reporting processes:

- ❖ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2002);³²⁵ (OP- Armed Conflict)

³²¹ United Nations Secretary-General (n 7) para 3.

³²² *ibid* 36.

³²³ *ibid* 42.

³²⁴ United Nations Human Rights Council, 'Universal Periodic Review' (n 12).

³²⁵ United Nations, 'Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. Treaty Collection, Chapter IV Human Rights Document 11b, New York 25th May 2000' (n 30).

- ❖ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2002);³²⁶ (OP- Sale of Children)
- ❖ Optional Protocol to the Convention on the Rights of the Child on a communications procedure (2014).³²⁷ (OP – Comms)

Figure 5.4 gives an overview for each of the State parties, the date of ratification of the Convention, whether they have ratified the three optional protocols, and the date of doing so. Where it has been signed but not yet ratified, this is recorded as 'Sig date'. It records the date of the State party report upon which the concluding observations graded for this study are based, as well as the date of the CO. If there is a more recent State party report, this date is noted. The date of the Core Document and UPR document is recorded.

Figure 5.4 Table of ratification dates of the Convention and Optional Protocols, State party report date, and date of Common Core Document, and Universal Periodic Review report.

	CRC	OP - Armed Conflict	OP - Sale of C	OP - Comms	State Party Report	CO	New State Party Report	Core Document	UPR Doc
Australia	1990	2006	2007	N	2011	2012		2007	2015
Croatia	1992	2002	2002	2017	2013	2014		2011	2015
Estonia	1991	2014	2004	N	2015	2017		2015	2015
Germany	1992	2004	2009	2013	2012	2014		2014	2018
Iceland	1992	2001	2001	N	2010	2012		1993	2016
Ireland	1992	2002	Sig 2000	2014	2015	2016		2014	2016
Jamaica	1991	2002	2011	N	2013	2015		1997	2015
Kazakhstan	1994	2003	2001	N	2014	2015		2012	2014
Malta	1990	2002	2010	Sig 2014	2012	2013	2018		2018
Norway	1991	2003	2001	N	2009	2010	2017	2017	2014
Poland	1991	2005	2005	Sig 2013	2014	2015		2014	2017
Portugal	1990	2003	2003	2013	2012	2014		2014	2014
Seychelles	1990	2010	2012	Sig 2014	2011	2012	2017		2015
Sweden	1990	2003	2007	N	2014	2015		2018	2014
Switzerland	1997	2002	2006	2017	2013	2015		2017	2017
Uruguay	1990	2003	2003	2015	2013	2015		2016	2013

All of the top 16 have ratified the OP on the involvement of children in armed conflict. One State party, Ireland, has signed but not ratified the OP on the sale of children while all the others have ratified it. The newest OP on a communications procedure has only been ratified by six State parties: Croatia, Germany, Ireland, Portugal, Switzerland and Uruguay. Three more State parties, Malta, Poland, and Seychelles have signed the OP but not yet ratified it.

³²⁶ United Nations, 'Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Treaty Collection, Chapter IV Human Rights Document 11c, New York 25th May 2000' (n 31).

³²⁷ United Nations, 'Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure. Treaty Collection, Chapter IV Human Rights Document 11d, New York 19th December 2011' (n 32).

The more recent a document, the darker the background colour. It is noticeable that two State parties have not filed a Core Document. As noted, both the Core Document and the UPR document are useful tools in understanding a State party's relationship with international law and how they have incorporated the Convention.

5.4 The legislative framework of the top 16

Types of legal systems

The most straightforward classification of legal systems is to categorise them as either 'Common Law' or 'Civil Law'. However, that does not give the whole picture and within the field of study of comparative law more complex taxonomies are used. Zweigert & Kötz³²⁸ divide legal systems into six 'legal families of the world':

- ❖ The Romanistic Legal Family;
- ❖ The Germanic Legal Family;
- ❖ The Anglo-American Legal Family (referred to in this study as Common Law Family);
- ❖ The Nordic Legal Family;
- ❖ Law in the Far East;
- ❖ Religious Legal Systems.

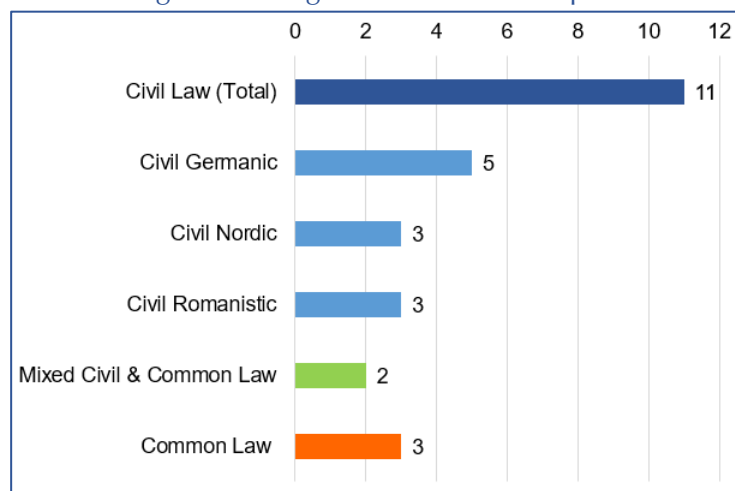
For this study, because of the number of European State parties which could be classified as civil law systems but whose rich diversity would not be recognised by such a classification, the Zweigert & Kötz classification is preferred. However, the term 'Common Law Family' is preferred to their term of 'Anglo-American Legal Family' because although Common Law legal systems historically come from, and share, a genealogy with the English legal system, calling them 'Anglo-American' does not recognise that many of these legal systems, such as Canada, are adapting and innovating further and in different directions than either England or America. It is also necessary to adapt this taxonomy further to include 'Mixed Civil & Common Law Systems', which necessitate their own classification as they blend elements of both Civil and Common Law systems and cannot be defined as one or the other.

Figure 5.5 demonstrates the spread of legal families of the top 16. There are 11 State parties whose legal system can be described as one of the civil law families, three as common-law, and two with mixed civil and common law, both of whose civil law element have a Romanistic ancestry. Of those under the umbrella of civil law, five are from the Germanic legal family,

³²⁸ Zweigert and Kötz (n 89).

three from the Nordic legal family, and three from the Romanistic legal family, one of which has a recent legal history as a religious legal system.

Figure 5.5 'Legal families' of the top 16



Legal Systems are invariably intertwined with the history of a nation, sometimes forming over a very long period of time and sometimes developing suddenly at a specific historical juncture in a State's history such as independence. Following is a brief description of each of the top 16 State parties' legal classification.

Common-law legal family

Australia

The Commonwealth of Australia has a common law system based on English common law with some customary aboriginal laws being partially recognised. It has a written constitution from 1901 (most recently amended in 1977 and the latest version in the Federal Register of Legislation is from 2013); however, as a federal state, individual state and territory governments have concurrent legislative power with the Commonwealth government. The constitutional links between Australia and the UK were formally ended in 1942 (backdated to 1939 to confirm the validity of legislation passed during World War II) when Australia adopted the Statute of Westminster of 1931.^{329,330,331}

³²⁹ Alice de Jong, 'Australia' in Dinah Shelton (ed), *International Law and Domestic Legal Systems - Incorporation, Transformation, and Persuasion* (Oxford University Press 2011).

³³⁰ Museum of Australian Democracy, 'Documenting a Democracy' (Lenore Coltheart ed) <<https://www.foundingdocs.gov.au/item-did-25-aid-2-pid-23.html>> accessed 20 November 2018.

³³¹ Petal Kinder, 'GlobeLex Foreign Law Research - Australia' (2018) <<http://www.nyulawglobal.org/globalex/Australia1.html>> accessed 20 November 2019.

Ireland

The Republic of Ireland's (Eire) legal system is based on English common law. The written constitution is from 1937 after Ireland gained independence from the UK in 1922; it became a republic in 1949 with the Republic of Ireland Act 1948 (No.22 of 1948) and then joined the EU in 1973.^{332,333}

Jamaica

Jamaica's current legal system is based on English common law which was declared to be in force in 1661. The constitution dates from 1962 when Jamaica achieved independence from the United Kingdom; it is a Commonwealth country with Queen Elizabeth II as its monarch and head of State. The final court of Appeal is still the Judicial Committee of the Privy Council which sits in the UK.^{334,335}

Mixed common and civil law legal family

Malta

The Republic of Malta has a mixed civil and common law system. Historically the islands have been conquered and ruled by numerous powers; its current legal system has historical elements of the Romanistic civil law system, as a Maltese version of the code of Napoleon in 1852 replaced the legal code of the Knights of Malta. The legal influence of common law stems from the British colonial rule imposed in 1814; its influence is apparent with the recognition of case law even though a common law system was not fully imposed. Independence was granted in 1964 and Malta became a republic in 1974; it has been a member of the European Union since 2004.^{336,337}

Seychelles

The Republic of Seychelles has a mixed civil and common law system historically influenced by Romanistic civil law, as it was a colony of Mauritius, which was a colony of France. Subsequently from 1814 it was a British colony finally gaining independence in 1976. After a

³³² Darius Whelan, 'GloLex Foreign Law Research - Ireland' (2016)

<<http://www.nyulawglobal.org/globalex/Ireland1.html>> accessed 20 November 2018.

³³³ Hester Swift, 'Ireland: IALS Library Guides' (2017) <<http://libguides.ials.sas.ac.uk/ireland?hs=a>> accessed 20 November 2018.

³³⁴ Adam Woellhaf, 'Jamaica: IALS Library Guides' (2015) <<http://libguides.ials.sas.ac.uk/jamaica>> accessed 20 November 2018.

³³⁵ Jeanne Slowe and Claudette Solomon, 'GloLex Foreign Law Research - Jamaica' (2014) <<http://www.nyulawglobal.org/globalex/Jamaica1.html>> accessed 20 November 2018.

³³⁶ David Attard, *The Maltese Legal System - Volume 1*, (Malta University Press 2012).

³³⁷ Lawyers in Malta, 'Malta's Legal System' (2018) <<http://www.lawyersinmalta.com/page/maltas-legal-system>> accessed 20 November 2018.

period as a socialist single-party state until 1993 a multi-party system was introduced, and the current constitution dates from this time. The current civil code retains many aspects of the Napoleonic French civil code that was translated into English and innovatively updated including allowing for a doctrine of precedence.³³⁸

Civil law legal family – Germanic

Croatia

The Republic of Croatia proclaimed independence from the Socialist Federative Republic of Yugoslavia (SFRY) in 1991, the constitution stemming from that date, though the Croatian war of independence lasted until 1995. Croatia joined the European Union in 2013. It has a civil law system based in the Germanic legal family, with a clear hierarchy of legal norms: the first and highest of which is the constitution, the fundamental law; secondly constitutional acts (law which implement the constitution); thirdly international contracts; fourth EU Laws; and fifth and finally Croatian laws and sub-statutory acts.^{339,340}

Estonia

The Republic of Estonia initially gained independence from the Russian Empire in 1918. After the occupations by Germany and the Soviet Union during the Second World War it was incorporated into the Soviet Union as the Estonian Soviet Socialist Republic. Independence was restored in 1991; it is now a unitary republic and the current constitution dates from 1992. It is a civil law system, considered to be influenced by both the Romanistic and predominantly Germanic legal families; however, it is considered to be 'increasingly influenced by other legal systems' and judicial decisions of higher courts are increasingly influential in subsequent cases, though they do not create precedent and are not considered to be binding. The Estonian legal system subscribes to the theory that the capacity for the 'interpretation of norms' is necessary for a legal system to evolve with modern society.³⁴¹

³³⁸ Mathilda Twomey, 'Seychelles: "Things Fall Apart" -The Mixing of Fate, Free Will and Imposition in the Laws of Seychelles"' in Sue Farran, Esin Orucu and Sean Donlan (eds), *A Study of Mixed Legal Systems: Endangered, Entrenched or Blended* (Ashgate 2014).

³³⁹ Siniša Žugić and Milivoje Žugić, 'GloLex Foreign Law Research - Croatia' (2017) <<http://www.nyulawglobal.org/globalex/Croatia1.html>> accessed 20 November 2018.

³⁴⁰ Mladen Klemenčić, Ankica Šunjić and Zvonimir Frka-Petešić, 'Contemporary Croatia in Croatia.Eu Land and People - History' <<http://croatia.eu/article.php?lang=2&id=24>> accessed 20 November 2018.

³⁴¹ Kart Miil, Maia Ruttu and Jannu Kuusik, 'GloLex Foreign Law Research - Estonia' (2013) <<http://www.nyulawglobal.org/globalex/Estonia1.html>> accessed 20 November 2018.

Germany

The Federal Republic of Germany, a civil law system undeniably in the Germanic legal family, still has historical foundations in the Romanistic legal family. Germany is a republic federation of 16 Länder (states). The initial codification of legislation dates to the 1790s and the *Code Napoleon* was adopted in 1804. After the Nazi rule from 1933 to 1945 legislation has been influenced by the intention to prevent such atrocities reoccurring. The most recent constitution, known as 'the Basic Law' (*Grundgesetz*), originates in 1949 and the German Democratic Republic and the Federal Republic of Germany reunified in 1990. Germany was one of the founding members of the European Communities (1956) which subsequently developed into the European Union. As a civil law system, the primary source of law is statutory law including the constitution, statutes and regulations. Court decisions are considered a source of law but do not create precedent. Additionally, custom can be recognised as a source of law. The hierarchy of legal rules has four tiers of law, the highest being The Basic Law (and its amendments), followed by Statute Law, regulations and finally bylaws. However, as a federal state law exists and can be created at both at Federal and Länder level, with each Länder having a constitution and its own statutes. The Federal Constitution sets down the rule that Federal law has superiority over Länder law.^{342,343, 344}

Portugal

The Portuguese Republic has a civil law system with strong Germanic and historically Romanistic legal family influence. The codification of Portuguese laws started in the 15th century with the first recognisably modern civil codification enacted in 1867 (*Código de Seabra*), which was in force until 1967. The present code has been in force since then. The current constitution dates from 1976 after the Carnation Revolution of 1974 when Portugal became a democracy and soon after granted independence to the majority of its overseas territories. Portugal is a unitary republic, and it joined the European Communities in 1986. The sources of law in Portugal are the constitution, principles of international law, acts of parliament, and regional rules and regulations. In the Portuguese system a distinction is drawn between 'immediate sources' of law and 'indirect sources' this is described by Ferreira de Almeida as:

³⁴² Sebastian Omlor, 'GloLex Foreign Law Research - Germany' (2017)

<<http://www.nyulawglobal.org/globalex/Germany1.html>> accessed 20 November 2018.

³⁴³ Europa, 'The History of the European Union - European Union Official Website' (2017)

<https://europa.eu/european-union/about-eu/history_en> accessed 20 November 2018.

³⁴⁴ Raymond Youngs, *English, French & German Comparative Law* (2nd edn, Routledge 2007).

The first group of sources corresponds to methods of creating and disclosing legal rules. The second group lacks innovative capability, as it only involves methods for the disclosure of legal rules.³⁴⁵

It is agreed that Statutory Law (*lei*) falls into the first group. Some consider custom also to be an 'immediate source'; other sources such as case decisions and doctrine fall into the second category. Case law (*jurisprudência*) is used to identify and to give examples of previous decisions of how legislation was interpreted rather than establishing precedence.^{346,347}

Switzerland

The Swiss Confederation is a federal republic with 26 cantons (federal states). Having regained independence in 1815 after periods of Napoleonic rule and subsequent Russian and Austrian invasions, the Swiss Confederation was created after the *Sonderbund* War in 1847. The first federal constitution dates to 1848. Switzerland has a civil law system in the Germanic legal family; the current federal constitution dates from 1999 and the Swiss civil code from 1907. Switzerland joined the UN in 2002. Statutory written law is the primary source of law, and there are clear rules as to the hierarchical order to follow in the sources of law, such as federal laws having superiority over cantonal constitutions and laws, and constitutional rules have hierarchical status over ordinary statutes.^{348,349}

Civil law legal family – Nordic

Three of the State parties in the top 16 have civil legal systems from the Nordic legal family, frequently referred to as Scandinavian civil law. However, that term geographically excludes Iceland and Denmark which have legal systems of the same legal family. The political history of the region is intertwined with different unions between separate groupings of states over history. Additionally, there have been elements of legal unification in the region. Currently, this continues with the work of the Nordic Council founded in 1952.^{350,351}

³⁴⁵ Carlos Ferreira de Almeida, Assuncao Cristas and Nuno Picarra, *Portuguese Law an Overview* (Almedina - Universidade Nove de Lisboa 2007).

³⁴⁶ *ibid.*

³⁴⁷ Carlos Ferreira de Almeida, 'Portugal' in Dinah Shelton (ed), *International Law and Domestic Legal Systems - Incorporation, Transformation, and Persuasion* (Oxford University Press 2011).

³⁴⁸ Martin Molina, Alisa Burkhard and Gregory Bovey, 'GlobalLex Foreign Law Research - Switzerland' (2015) <<http://www.nyulawglobal.org/globalex/Switzerland1.html>> accessed 20 November 2018.

³⁴⁹ Katherine Read, 'Switzerland: IALS Library Guides' (2017)

<<http://libguides.ials.sas.ac.uk/switzerland>> accessed 20 November 2018.

³⁵⁰ Hester Swift, 'Nordic Countries: IALS Library Guides' (2017) <<http://libguides.ials.sas.ac.uk/nordic>> accessed 20 November 2018.

³⁵¹ Nordic Council, 'The Nordic Council Website' (2018) <<https://www.norden.org/en/nordic-council>> accessed 20 November 2018.

The Nordic legal family can be differentiated from the Germanic or Romanistic legal families as:

Nordic countries lack a general civil code and are using a system of less comprehensive statutes supplemented by analogies from statutory provisions, case law and legal doctrine filling the gaps, is a factor of particular importance. Scandinavian law is characterized by its specific legal method, its mixture of statutory and case law and its, in relation to most continental EU countries, less theoretical and conceptualized approach to legal problems.³⁵²

Iceland

The Republic of Iceland dates from 1944 although the progress to independence can be seen from 1814 when, after the Napoleonic wars, Denmark-Norway split into two separate kingdoms, and at this time Iceland remained a Danish dependency. In 1874 Iceland was allowed to create a constitution and given some decision-making powers. In 1918 in a 25-year agreement, Denmark recognised Iceland as a sovereign and independent state with a union with Denmark, not dissimilar to Commonwealth nations. When this agreement ended, Iceland voted to end the union and became a republic; the current constitution dates to this time of 1944. Iceland has a civil legal system characterised by written law; the primary sources of law are the constitution, statutory legislation, and regulatory statutes. Decisions of the Supreme Court are not binding but persuasive and in an area not covered by statute are considered a source of law. In addition, customary law and in some situations the 'tradition of culture' (*eðli máls*) can be taken into consideration in Icelandic law when other sources of law do not establish the rule.^{353,354}

Norway

The constitution of the Kingdom of Norway dates from 1814 when Denmark ceded Norway to the King of Sweden; the union of Sweden and Norway was subsequently dissolved in 1905 when Norway achieved independence. The Norwegian legal system is a civil law system although the sources of law are broader than for many civil law systems and include custom and 'conception of law, especially as expressed in legal literature'³⁵⁵. The constitution dates to

³⁵² Ulf Bernitz, 'What Is Scandinavian Law? Concept, Characteristics, Future' (2007) 50 *Scandinavian Studies in Law* - Stockholm Institute for Scandinavian Law, 13.

³⁵³ Zweigert and Kötz (n 89).

³⁵⁴ Rán Tryggvadóttir, Thordis Ingadóttir and Erna Mathiesen, 'GloLex Foreign Law Research - Iceland' (2018) <<http://www.nyulawglobal.org/globalex/Iceland1.html>> accessed 20 November 2018.

³⁵⁵ Rebecca Bergstrom and Pål Bertnes, 'GloLex Foreign Law Research - Norway' (2015) <<http://www.nyulawglobal.org/globalex/Norway1.html>> accessed 20 November 2018.

1814 with various revisions including in 2015 a revision of the language used in the constitution, bringing it up to date.³⁵⁶

Sweden

The Kingdom of Sweden, independent since its split from the Kalmar union in 1523, forced Norway into union from 1814 until 1905. Sweden is a civil law system with influences from both Germanic and Romanistic civil laws. In 1734 a wide-ranging codification of Swedish laws was enacted, divided into eight 'books'.

The current constitution is made up of four separate fundamental laws: the instrument of government, the act of succession, the freedom of the press act, and the fundamental law on freedom of expression. Legislation remains the primary source of law in Sweden, with preparatory legal materials, case law, and literature used for interpretive purposes. Sweden joined the European Union in 1995.^{357,358}

Civil law legal family – Romanistic

Poland

The Republic of Poland has existed in its current form since the transition in 1989-91 to a democratic government. Important legal codification took place in the 18th century with the Cardinal laws in 1768 and the May Constitution of 1791. It has a civil law system influenced by Napoleonic Law (which was influenced by the Romanistic legal family), and the constitution of Poland is the supreme law. The current constitution is from 1997 and Poland joined the European Union in 2004. There are two categories of the sources of Polish law: the universally binding law, and the internal law. The sources of the universally binding Polish law are the constitution, statute, ratified international agreements and regulations.^{359,360}

Uruguay

The Oriental Republic of Uruguay gained its independence from Brazil in 1825 (recognised 1828) and its first constitution dates from 1830. The 20th century saw much political upheaval and unrest, and from 1973-85 there was a civil-military rule. The current constitution dates

³⁵⁶ *ibid.*

³⁵⁷ Sofia Sternberg, 'GloLex Foreign Law Research - Sweden' (2017) <<http://www.nyulawglobal.org/globalex/Sweden1.html>> accessed 20 November 2018.

³⁵⁸ Official Site of Sweden, 'History of Sweden' (*Swedish Institute*, 2018) <<https://sweden.se/society/history-of-sweden/>> accessed 20 November 2018.

³⁵⁹ Piotr Rakowski and Robert Rybicki, 'GloLex Foreign Law Research - Poland' (2010) <<http://www.nyulawglobal.org/globalex/Poland1.html>> accessed 20 November 2018.

³⁶⁰ Anna Wyrozumska, 'Poland' in Dinah Shelton (ed), *International Law and Domestic Legal Systems - Incorporation, Transformation, and Persuasion*, (Oxford University Press, 2011).

from 1967, however, many elements of which were suspended during the military rule and reinstated in 1985. Uruguay has a civil law system based on the Spanish civil law system (influenced by the Romanistic legal family). There are two sources of law in Uruguay: the constitution and the legislation. Court decisions are not binding and only assist with interpretation. There are 10 Codes of law, many of which are relatively old and increasingly there exist many other more recent pieces of legislation in addition to the codes, resulting in a situation described as 'decodification'.³⁶¹

Kazakhstan

The Republic of Kazakhstan declared independence from the USSR in 1991 and was admitted to the United Nations in 1992. The current constitution dates from 1995. Prior to the 1920s, Kazakhstan's legal system was primarily Islamic religious law. From the Soviet influence, the civil law system is based in the Romanistic legal family. Both Islamic and Roman law influence the current legal system. Kazakh legislation is mostly codified and there exists a clear hierarchy in the sources of law, the highest being the constitution followed by constitutional laws and decrees, then international treaties, then codes and ordinary laws, and finally other regulations and decrees.^{362,363}

Overview of legal family, government and constitution

The figure at 5.6 sets out the top 16, illustrating their legal family, type of national government, whether a federation, confederation, or unitary, and then their constitutional form, whether a monarchy or a republic.

Within the top 16, all of the monarchies are 'constitutional monarchies' where the powers of the head of state are constrained by legislation (usually in the constitution) rather than absolute monarchies or monarchies where the monarch has considerable powers.

³⁶¹ Juan Troccoli, Mariana Barua and Juan Fischer, 'GloLex Foreign Law Research - Uruguay' (2016) <<http://www.nyulawglobal.org/globalex/Uruguay1.html>> accessed 20 November 2018.

³⁶² Zhenis Kembayev, 'Basic Features of the Legal System' in Zhenis Kembayev (ed), *Introduction to the Law of Kazakhstan* (Kluwer Law International 2012).

³⁶³ Anur Nurakhmet, Oleg Stalbovskiy and Maria Stalbovskaya, 'GloLex Foreign Law Research - Kazakhstan' (2013) <<http://www.nyulawglobal.org/globalex/Kazakhstan1.html>> accessed 20 November 2018.

Figure 5.6 Legal family, type of national government, and monarchy or republic status of the top 16.

State Party	Legal Family	Unitary / Federal	Monarchy / Republic
Australia	Common Law	Federal	Monarchy
Croatia	Civil Law (Germanic Legal Family)	Unitary	Republic
Estonia	Civil Law (Germanic Legal Family)	Unitary	Republic
Germany	Civil Law (Germanic Legal Family)	Federal	Republic
Iceland	Civil Law (Nordic Legal Family)	Unitary	Republic
Ireland	Common Law	Unitary	Republic
Jamaica	Common Law	Unitary	Monarchy
Kazakhstan	Civil Law (Romanistic and Religious Legal Family influences)	Unitary	Republic
Malta	Mixed Civil and Common Law	Unitary	Republic
Norway	Civil Law (Nordic Legal Family)	Unitary	Monarchy
Poland	Civil Law (Romanistic Legal Family)	Unitary	Republic
Portugal	Civil Law (Germanic Legal Family)	Unitary	Republic
Seychelles	Mixed Civil and Common Law	Unitary	Republic
Sweden	Civil Law (Nordic Legal Family)	Unitary	Monarchy
Switzerland	Civil Law (Germanic Legal Family)	Confederation	Republic
Uruguay	Civil Law (Romanistic Legal Family)	Unitary	Republic

Methods of incorporating the Convention

Having considered the legal systems (families) of the focus sample, the next element to consider is the method by which the Convention is realised within each jurisdiction and what legal status it holds. In order to understand what the Committee considers is expected of a State party, the starting point is the Convention and GC No.5 'General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)'. Article 4 of the Convention requires that:

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.³⁶⁴

Supplemental to the Convention, CG No.5 stipulates:

When a State ratifies the Convention on the Rights of the Child, it takes on obligations under international law to implement it ... Ensuring that all domestic legislation is fully compatible

³⁶⁴ United Nations, 'The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989'.

with the Convention and that the Convention's principles and provisions can be directly applied and appropriately enforced is fundamental.³⁶⁵

Further, GC No.5 expands that:

States parties need to ensure, by all appropriate means, that the provisions of the Convention are given legal effect within their domestic legal systems.³⁶⁶

Additionally, GC No.5 elaborates on the Committee's view:

The Committee welcomes the incorporation of the Convention into domestic law, which is the traditional approach to the implementation of international human rights instruments in some but not all States.³⁶⁷

Therefore, one of the critical elements of implementation is the legal incorporation of the convention. The method by which a State party gives the convention legal status undoubtedly will affect the implementation in perception if not in actuality. In addition, as noted by Kilkelly there is 'no single way to implement the Convention',³⁶⁸ with State parties choosing different methods. The method of incorporation is heavily influenced by the relationship the State party has with international law. Principally there are two categories of the types of relationship a State party has with international law: monist and dualist. Fundamentally, in a monist state a treaty automatically becomes national law and in a dualist state, a second stage must be gone through to create domestic law.

In reality, while this is a useful starting point to understand a State party's jurisprudential ethos, it is an oversimplification as will be demonstrated by closer inspection of the top 16. Some authors include a third category, where whether or not a treaty is automatically applicable at the national level is dependent on whether or not a treaty is considered to be 'self-executing'. The concept of self-executing treaties can be further complicated as some treaties are considered to contain both self-executing and non-self-executing articles; moreover, not only is there not a clear definition as to what is or is not self-executing, this definition is dependent upon each domestic legal system interpreting it.³⁶⁹ In a monist state (that does not differentiate between self-executing status) the whole convention becomes law, in a dualist system there is

³⁶⁵ UN Committee on the Rights of the Child, 'General Comment No.5 (2003) on the General Measures of Implementation of the Convention on the Rights of the Child - UN Doc CRC/GC/2003/5' (n 76) para 1.

³⁶⁶ *ibid* 19.

³⁶⁷ *ibid* 20.

³⁶⁸ Kilkelly (n 190).

³⁶⁹ André Alen and Wouter Pas, 'The UN Convention on the Rights of the Child's Self-Executing Character' in Eugeen Verhellen (ed), *Monitoring Children's Rights* (Martinus Nijhoff 1996).

an option for the whole of a convention to be incorporated into national law or for a sectoral or piecemeal or as McCall-Smith describes it an 'à la carte selection of rights protection'.³⁷⁰

A further aspect that needs to be considered regarding incorporation of the Convention, is the status of any convention based legislation once in place. Where is it in the legal hierarchy? Is it at constitutional level, or the same level as an ordinary statute, or is it higher than ordinary statute but lower than the constitution? Is there a clause that states that if there is a conflict between a piece of legislation and the convention enacting legislation that the convention enacting legislation supersedes? As the Committee recommends:

Incorporation should mean that the provisions of the Convention can be directly invoked before the courts and applied by national authorities and that the Convention will prevail where there is a conflict with domestic legislation or common practice ... In case of any conflict in legislation, predominance should always be given to the Convention, in the light of article 27 of the Vienna Convention on the Law of Treaties.³⁷¹

In order to compare different methods of incorporation, a taxonomy is needed whereby similar approaches can be classified to allow meaningful comparison. As noted in chapter 2 Lundy et al. categorised four forms of incorporation:

direct incorporation (where the CRC forms part of domestic law) and indirect incorporation (where there are legal obligations which encourage its incorporation); and full incorporation (where the CRC has been wholly incorporated in law) and partial incorporation (where elements of the CRC have been incorporated).³⁷²

This classification system categorises by describing the aspects of incorporation relevant to this study and is the starting point for describing and classifying the incorporation methods of the study sample.

The incorporation of the Convention in the top 16

Australia

Australia is a federal monarchy with a written constitution. The Constitution of Commonwealth of Australia from 1901 (as amended in 2012) is fundamentally concerned with the relationship between the states that formed the Commonwealth rather than with the Commonwealth's

³⁷⁰ McCall-Smith (n 82).

³⁷¹ UN Committee on the Rights of the Child, 'General Comment No.5 (2003) on the General Measures of Implementation of the Convention on the Rights of the Child - UN Doc CRC/GC/2003/5' (n 76) para 20.

³⁷² Lundy, Kilkelly and Byrne (n 78).

relationship with the rest of the world.³⁷³ Children's rights are not specifically addressed in the Constitution.

Australia's approach to international law has been described as 'one of strict dualism'³⁷⁴ in that international law is not law at the national level until and unless national law specifically gives it valid legal status and only to the extent expressed.

In the 2018 State party report under the heading of Legislation the approach to incorporation is apparent:

Australia protects and promotes the rights of children through legislation, policy and programs at Commonwealth (federal) and State and Territory levels. Each jurisdiction has a framework of laws and institutions that implement CRC rights.³⁷⁵

Taking into considering that Australia is a Common Law jurisdiction, case law is particularly relevant and in 1995 a case was heard which included a point on the legitimate expectations arising out of treaty ratification. Specifically in this case, which relates to the Convention on the Rights of the Child, the court reiterated that provisions of an international treaty are not part of Australian law unless 'those provisions have been validly incorporated into our municipal law by statute'.³⁷⁶ The court went on to say:

But the fact that the Convention has not been incorporated into Australian law does not mean that its ratification holds no significance for Australian law. Where a statute or subordinate legislation is ambiguous, the courts should favour that construction which accords with Australia's obligations under a treaty or international convention to which Australia is a party ...

Moreover, ratification by Australia of an international convention is not to be dismissed as a merely platitudinous or ineffectual act, particularly when the instrument evidences internationally accepted standards to be applied by courts and administrative authorities in dealing with basic human rights affecting the family and children. Rather, ratification of a convention is a positive statement by the executive government of this country to the world and to the Australian people that the executive government and its agencies will act in accordance with the Convention. That positive statement is an adequate foundation for a legitimate expectation, absent statutory or executive indications to the contrary, that

³⁷³ Australia, 'Core Document Forming Part of the Reports of State Parties UN Doc. HRI/CORE/AUS/2007' (United Nations 2007) para 17.

³⁷⁴ de Jong (n 329).

³⁷⁵ Australia, 'Fifth and Sixth Periodic Report of the State Party - Australia - UN Doc. CRC/C/AUS/5-6' (United Nations 2018) para 9.

³⁷⁶ [Australia] - *Minister of State for Immigration & Ethnic Affairs v Ah Hin Teoh* ('Teoh's case') [1995] HCA 20 [25].

administrative decision-makers will act in conformity with the Convention and treat the best interests of the children as "a primary consideration".³⁷⁷

Later government statements and a Ministerial Direction undermined this decision as far as immigration and deportation are concerned, and at least one State government (South Australia) has passed legislation to limit 'legitimate expectation' from international treaties.³⁷⁸

The full incorporation of the Convention into domestic law was considered and rejected in 2011.³⁷⁹ However, passed in 2011 was the Human Rights (Parliamentary Scrutiny) Act 2011³⁸⁰ which requires statements of compatibility for Bills and Acts regarding their compatibility with the Human Rights Treaties Australia has ratified (including the CRC). In addition, Australia, as noted in section 5.1, has a remaining reservation to the CRC which limits the scope of article 37(c).

Therefore, using the classifications from Lundy et al. Australia has 'full' 'indirect' incorporation due to the Human Rights (Parliamentary Scrutiny) Act 2011, but has only 'partial' 'direct' incorporation of the CRC into domestic law.

Croatia

The Republic of Croatia is a unitary republic with a written constitution from 1991; Article 3 includes respect for human rights as one of its 'highest values':

Freedom, equal rights, national and gender equality, peace-making, social justice, respect for human rights, inviolability of ownership, conservation of nature and the environment, the rule of law and a democratic multiparty system are the highest values of the constitutional order of the Republic of Croatia.³⁸¹

Part III of the constitution (Articles.14 -70) is focused on the 'Protection of Human Rights and Fundamental Freedoms' with art.63 and 64 particularly focused on children. However, the language used demonstrates a child protection approach rather than the promotion of children as rights holders:

Article 63

The state shall protect maternity, children and youth, and shall create social, cultural, educational, material and other conditions promoting the achievement of the right to a suitable life.

³⁷⁷ *ibid* 26 and 34.

³⁷⁸ de Jong (n 329).

³⁷⁹ Lundy, Kilkelly and Byrne (n 78).

³⁸⁰ [Australia] - Human Rights (Parliamentary Scrutiny) Act, No.186, 2011.

³⁸¹ [Croatia] - Constitution of the Republic of Croatia (Consolidated text) 2010 Article 3.

Article 64

Parents shall bear responsibility for the upbringing, welfare and education of their children, and they shall have the right and freedom to make independent decisions concerning the upbringing of their children.

Parents shall be responsible for ensuring the right of their children to the full and harmonious development of their personalities.³⁸²

In part VII International Relations under 1. 'International Treaties', art.141 sets out the relationship between national and international treaties, describing a fundamentally monist relationship:

Article 141

International treaties which have been concluded and ratified in accordance with the Constitution, published and which have entered into force shall be a component of the domestic legal order of the Republic of Croatia and shall have primacy over domestic law.³⁸³

Further, as explained in the Core Document:

Courts are authorized to directly apply treaties when they decide on matters of protection of human rights of individuals. The Courts Act in Article 5 prescribes: "Courts shall administer justice on the basis of the Constitution and law. Courts also administer justice on the basis of treaties that are integral part of the legal order of the Republic of Croatia".³⁸⁴

However, in the CO report, the Committee raised the following concerns under the heading of 'Legislation.'

While welcoming the progress made by the State party in harmonizing its legislation with the Convention on the Rights of the Child, the Committee remains concerned about the lack of effective and full implementation of all legislation relevant to the Convention. In particular, the Committee is concerned that:

- (a) Laws are frequently changed, which leads to inconsistent implementation and legal uncertainty;
- (b) Insufficient time and space is provided for public debates and the involvement of all stakeholders, before the adoption of laws;
- (c) Most of the case law is not disclosed publicly;
- (d) The adoption of subsidiary legislation necessary for implementation is often protracted;

³⁸² *ibid* Articles 63,64.

³⁸³ *ibid* Article 141.

³⁸⁴ Croatia, 'Core Document Forming Part of the Reports of State Parties - Croatia UN Doc. HRI/CORE/HRV/2011' (United Nations 2011) para 22.

- (e) Effective monitoring, evaluation and accountability mechanisms are missing;
- (f) Necessary funds for implementation are not always allocated.³⁸⁵

Despite the Committee's concerns regarding the implementation of the Convention, considering the legal incorporation, using the classifications from Lundy et al, Croatia can be said to have 'direct' and 'full' incorporation of the CRC into domestic law save for their reservation to Article 9 as it has been automatically incorporated upon ratification.

Estonia

Estonia is a unitary republic with a written constitution; the current constitution is from 1992 most recently amended in 2015. Chapter II (Articles. 8-55) covers 'Fundamental Rights, Freedoms and Duties'; chapter IX (Articles.120-123) covers 'Foreign Relations and International Treaties' article 123 reads:

The Republic of Estonia may not enter into international treaties which are in conflict with the Constitution.

When laws or other legislation of Estonia are in conflict with an international treaty ratified by the *Riigikogu*³⁸⁶, provisions of the international treaty apply.³⁸⁷

As the Core Document explains, Estonia has a monist legal system and 'the provisions of international instruments become binding in the domestic legal order upon ratification'.³⁸⁸ Therefore, the Convention can be relied upon in the domestic courts. However, in the CO report the Committee made the following recommendation:

The Committee recommends that the necessary regulations and budgetary allocations are made for the effective implementation of existing legislative measures, including the Child Protection Act. The Committee also recommends that the State party further regulate the obligations of local governments with regard to by-laws on establishing the position of child protection workers.³⁸⁹

This recommendation indicates that whilst the legislative framework may be in place the implementation is still an issue. The Convention, therefore, has 'direct' and 'full' incorporation into domestic legislation in Estonia.

³⁸⁵ CRC CO Croatia 2014 (n 181) para 6.

³⁸⁶ Parliament

³⁸⁷ [Estonia] - Constitution of the Republic of Estonia (as amended 2015) 1992 Article 123.

³⁸⁸ Estonia, 'Core Document Forming Part of the Reports of State Parties - Estonia UN Doc. HRI/CORE/EST/2015' (United Nations 2015) para 123.

³⁸⁹ CRC CO Estonia 2017, 'Concluding Observations on the Combined Second to Fourth Periodic Reports of Estonia, UN Doc CRC/C/EST/CO/2-4' (United Nations 2017) para 5.

Germany

The German legal system has as its foundation 'The Basic Law' (*Grundgesetz*) which is a comprehensive constitution from 1949; the first section is titled 'I. Basic Rights' (Articles.1-19) and in their Core Document this placement is highlighted:

The human rights enjoy special status in Germany's constitutional system. This is made clear by the fact that the Basic Law (GG) places them at the beginning of its provisions, thus documenting the understanding that Germany has of the role and tasks of a state.³⁹⁰

However, as a federal republic the constitution 'Basic Law', is more focused on the relationship between Länder and the federal government than with the federations' relationship internationally. The starting place for understanding the relationship to international law is the Basic Law, Article 25 reads:

Primacy of international law

The general rules of international law shall be an integral part of federal law. They shall take precedence over the laws and directly create rights and duties for the inhabitants of the federal territory.³⁹¹

Because of this Germany is frequently describes as a monist state, however, 'general rules of international law' appears to refer to what is described as customary rules 'state practices recognised by the community at large as laying down patterns of conduct that have to be complied with'³⁹² rather than relating to all treaties as article 59 'Representation of the Federation for the purposes of international law (2) states that:

(2) Treaties that regulate the political relations of the Federation or relate to subjects of federal legislation shall require the consent or participation, in the form of a federal law, of the bodies responsible in such a case for the enactment of federal law.³⁹³

The Committee in their CO of 2014 notes that the provision of article 59(2) would create ordinary federal law rather than 'overarching' or constitutional level law as recommended in GC No.5., Omlor describes that it is necessary for Federal legislation to be enacted for a treaty to have an effect at the national level.³⁹⁴ Therefore, Germany is one of the State parties to which the simple description of monist or dualist is not easy to apply as it varies depending on the

³⁹⁰ Germany, 'Core Document Forming Part of the Reports of State Parties - Germany - UN Doc. HRI/CORE/DEU/2016' (United Nations 2016) para 130.

³⁹¹ [Germany] - Basic Law for the Federal Republic of Germany (revised 2014) 1949 Article 25.

³⁹² Malcolm Shaw, *International Law* (Cambridge 2017) 5.

³⁹³ [Germany] - Basic Law for the Federal Republic of Germany (revised 2014) Article 59.

³⁹⁴ Omlor (n 342).

treaty. Further, with regards to this Convention attention must be given to a declaration made at ratification which includes (emphasis added):

The Federal Republic of Germany also declares that **domestically the Convention does not apply directly**. It establishes state obligations under international law that the Federal Republic of Germany fulfils in accordance with its national law, which conforms with the Convention.³⁹⁵

At the time of ratification then, this treaty was explicitly not directly applicable and therefore cannot be described as 'automatic'. However, this declaration was withdrawn in 2010. (This overlaps with the timing of the State party report to the Committee where there had been a resolution to withdraw but it had not yet been achieved, by the time of the Committee's CO, it had been withdrawn.)

In the State party report, the inclusion of children's rights in all Länder constitutions except Hamburg and Hesse (as of March 2010) is noted. However, paragraph 19 contains the response to the Committee's previous recommendations to include children's rights at federal constitution level in the Basic Law:

The Federal Government intends to create child-friendly circumstances in all fields, in particular when it comes to protection, promotion and participation rights. It is however not necessary to amend the Constitution in order to do so.³⁹⁶

The State report outlines the legislation that includes children's rights and highlights the interpretation of the rights contained in the Basic Law as applicable to children. In the study by Lundy et al., Germany was one of the countries where they found:

child protection or 'the child as victim' were reported as being more common public attitudes ... and, in several instances, the tension between parents' rights and children's rights appeared to be part of the ongoing discussion, with adverse impact for the acceptance of children's rights.³⁹⁷

Critically in the most recent State party report submitted in 2019, under the heading of 'Measures taken to review and bring domestic legislation and practice into full conformity with the Convention and the Optional Protocols' it includes after noting the withdrawal of the declaration:

³⁹⁵ United Nations, 'Status of Treaty, Chapter IV Human Rights Document 11, The Convention on the Rights of the Child, New York 20th November 1989 Accessed 31-10-2018', (n 119) Footnote 36.

³⁹⁶ Germany, 'Third and Fourth Periodic Reports of State Parties - Germany - UN Doc. CRC/C/DEU/3-4' (United Nations 2012) para 19.

³⁹⁷ Lundy, Kilkelly and Byrne (n 78) 453.

The Convention thus unrestrictedly applies in Germany with the rank of a federal law. It must be taken into account in accordance with the case-law of the Federal Constitutional Court, both in the interpretation of other federal laws and of the fundamental rights and constitutional principles that are enshrined in the Basic Law (GG) within the recognised methods of interpretation (principle of interpretation that is compatible with international law).³⁹⁸

The incorporation of the Convention in Germany can, therefore, at the relevant time be described as 'full' and 'direct' though not 'automatic'.

Iceland

The Republic of Iceland is a unitary republic with a written constitution from 1944 (most recently amended in 1999) Part VII (Article 65-76) covers Human Rights. Article 76(3) specifically relates to the protection and care of children:

For children, the law shall guarantee the protection and care which is necessary for their well-being.³⁹⁹

This article, however, uses language in terms of the protection and care of children rather than the promotion of children's rights.

Iceland's Core Document dates from 1993 and therefore must be treated as potentially out of date. Nevertheless, it contains useful information on whether Iceland is 'monist' or 'dualist' state; section V is titled 'International human rights conventions and Icelandic law' and paragraph 54 reads:

Iceland adheres to the legal doctrine that international treaties do not assume the force of domestic law even if ratified, but rather are only binding according to international law. Human rights conventions have not been incorporated into Icelandic law and consequently they cannot be directly applied by the courts.⁴⁰⁰

However, in the more recent report under the Universal Periodic Review of Human Rights, paragraph 69 reads:

³⁹⁸ Germany, 'Fifth and Sixth Periodic Reports of State Parties - Germany - UN Doc. CRC/C/DEU/5-6' para 1.

³⁹⁹ [Iceland] - Constitution of the Republic of Iceland 1944 (as amended 1999) 1944 Article 76(3).

⁴⁰⁰ Iceland, 'Core Document Forming Part of the Reports of State Parties - Iceland - UN Doc. HRI/CORE/I/Add.26' (United Nations 1993) para 54.

The UN Convention on the Rights of the Child was incorporated into Icelandic law in 2013, as well as its optional protocols, except for the third protocol on communication procedure. Increased participation of children in all levels of policy making should be encouraged.⁴⁰¹

The incorporation of the CRC into domestic legislation in 2013⁴⁰² is subsequent to the State party report and CO report on which Iceland was graded for this study. At the time of the CO report the recommendation by the Committee was:

The Committee appreciates the legislative actions that are being undertaken by the State party to strengthening the constitutional, legal and normative framework related to the implementation of the Convention. The Committee recommends that, once the reservation concerning article 37 has been withdrawn, the State party take the necessary steps to incorporate the Convention and its Optional Protocols into its domestic laws.⁴⁰³

As to the reservation to Article 37 which was still in place at the time of the CO report, in 2015 the government of Iceland informed the Secretary General of the decision to withdraw the reservation.⁴⁰⁴ Therefore, although at the time of the CO report Iceland's incorporation as a dualist system was 'partial' and direct', it is now 'full' and 'direct' after the enacting of relevant legislation.

Ireland

Ireland (Eire) is a unitary republic. Its written constitution (*Bunreacht na hÉireann*) is from 1937; it has been updated numerous times, most recently 2015 (34th Amendment). Article 42A within the section on 'Fundamental Rights, Personal Rights' deals with children's rights:

1) The state recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights.⁴⁰⁵

Article 29 deals with international relations with art.29(3) recognising the principles of international law and art.29(6) setting out that Ireland is a dualist state:

No international agreement shall be part of the domestic law of the state save as may be determined by the Oireachtas.^{406, 407}

⁴⁰¹ Iceland, 'National Report Submitted for Universal Periodic Review - Iceland - UN Doc. A/HRC/WG.6/26/ISL/1/1' (United Nations 2016) para 69.

⁴⁰² [Iceland] - Law on the Convention on the Rights of the Child, Law No. 19/2013 'Lög um samning Sameinuðu þjóðanna um réttindi barnsins 2013 nr. 19 6. mars' 2013.

⁴⁰³ CRC CO Iceland 2012 (n 215) para 11.

⁴⁰⁴ United Nations, 'Status of Treaty, Chapter IV Human Rights Document 11, The Convention on the Rights of the Child, New York 20th November 1989 Accessed 31-10-2018', (n 119).

⁴⁰⁵ [Ireland] - Constitution of Ireland 1937 (as amended 2015) 1937 Article 42A.

⁴⁰⁶ Oireachtas is the National Parliament

⁴⁰⁷ [Ireland] - Constitution of Ireland 1937 (as amended 2015) Article 29(6).

The dualist nature of the system is confirmed in the Core Document⁴⁰⁸ at paragraph 96.

The CO from 2016 notes that the Convention is not fully incorporated in domestic law⁴⁰⁹ and that there is no legislation creating statutory obligations on 'public entities' to take the Convention and the rights therein into consideration in administrative and decision making processes.⁴¹⁰

The incorporation of the Convention in Ireland can, therefore, be described as 'partial' though 'direct' as some elements of the Convention are incorporated in legislation.

Jamaica

Jamaica is a unitary monarchy; its written constitution is from 1962 (the current version was published in 2005). Chapter III contains the 'Fundamental Rights and Freedoms' (Article 13-26). The constitution dates from the creation of Jamaican independence and is fundamentally concerned with self-governance. It does not express the relationship to international treaties. The Core Document, however, sets out that Jamaica has a dualist system:

In order for the provisions of any international agreement to which Jamaica is a party to become enforceable by the courts, legislation implementing the agreement is necessary.⁴¹¹

The primary legislation as highlighted in the State party report⁴¹² is the Child Care and Protection Act 2004 (most recently amended 2009). However, this piece of legislation has minimal reference to children's rights, focusing predominantly on their protection and the Committee in their CO report still recommended that:

the State party finalize the review of the Act and enact amendments thereto to ensure that the Act is fully compatible with the principles and provisions of the Convention, ensuring the effective implementation of child-related laws at the national, provincial and municipal levels.⁴¹³

⁴⁰⁸ Ireland, 'Core Document Forming Part of the Reports of State Parties - Ireland - UN Doc. HRI/CORE/IRE/2014' (United Nations 2014).

⁴⁰⁹ CRC CO Ireland 2016, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland, UN Doc CRC/C/IRL/CO/3-4' (United Nations 2016) para 8.

⁴¹⁰ *ibid* 10.

⁴¹¹ Jamaica, 'Core Document Forming Part of the Reports of State Parties - Jamaica - UN Doc. HRI/CORE/1/Add.82' (United Nations 1997) para 38.

⁴¹² Jamaica, 'Third and Fourth Periodic Reports of State Parties - Jamaica - UN Doc. CRC/C/JAM/3-4' (United Nations 2013) para 18.

⁴¹³ CRC CO Jamaica 2015, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Jamaica, UN Doc CRC/C/JAM/CO/3-4' (United Nations 2015) para 9.

The incorporation of the Convention in Jamaica can, therefore, be described as ‘partial’ though ‘direct’ as some elements of the Convention are incorporated in legislation.

Kazakhstan

Kazakhstan is a unitary republic with a written constitution. The current constitution is from 1995; the most recent version referred to in the Core Document includes the 2007 amendments. Section II ‘The Individual and Citizen’ (articles 10-39) deals with freedoms and rights.

Within the Core Document reference is made to the relationship with international treaties:

Article 4 of the Constitution provides that all international treaties ratified by the State take precedence over domestic law and are implemented directly except in cases in which the application of an international treaty requires the promulgation of a law.⁴¹⁴

In addition, the Core Document continues to elaborate:

To ensure that the obligations of the international treaties that have been ratified are actively applied in judicial practice, on 10 July 2008, the Supreme Court issued a regulatory decision on the implementation of international treaties by Kazakhstan. The decision requires judges to be guided by the standards of international treaties to which Kazakhstan is party, those standards being an integral part of prevailing Kazakh law.⁴¹⁵

However, though Kazakhstan has a fundamentally monist relationship with international treaties, the Committee in its CO report still commented that it:

is concerned that implementation of the State party’s legislation and the Convention overall remains insufficient.⁴¹⁶

Moreover, the Committee recommended that:

the State party strengthen its mechanisms for implementing its legislation that is in compliance with the Convention and the Optional Protocols thereto, including by introducing sanctions for violations of children’s rights and raising the awareness of judges, law enforcement officials and children themselves of their rights under the Convention and the Optional Protocols thereto.⁴¹⁷

⁴¹⁴ Kazakhstan, ‘Core Document Forming Part of the Reports of State Parties - Kazakhstan - UN Doc. HRI/CORE/KAZ/2012’ (United Nations 2012) para 93.

⁴¹⁵ *ibid* 95.

⁴¹⁶ CRC CO Kazakhstan 2015, ‘Concluding Observations on the Fourth Periodic Report of Kazakhstan, UN Doc CRC/C/KAZ/CO/4’, (United Nations 2015) para 8.

⁴¹⁷ *ibid* 9.

Therefore, the incorporation of the Convention into Kazakh law can be described as ‘direct’ and ‘full’ even though there remain issues with the implementation of the legislation highlighting that Kazakhstan is an example of where ‘direct incorporation does not equate to consummate rights protection’, as McCall-Smith describes.⁴¹⁸

Malta

The Republic of Malta is a unitary republic with a written constitution from 1964 (most recently amended in 2018). Chapter IV (articles 32-47) deals with ‘Fundamental Rights and Freedoms’. The only reference to international law in the Constitution is in Chapter VI, Parliament, Part 2 ‘Powers and Procedure of Parliament’:

65. (1) Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Malta in conformity with full respect for human rights, generally accepted principles of international law and Malta’s international and regional obligations, in particular, those assumed by the treaty of accession to the European Union signed in Athens on the 16th April, 2003.⁴¹⁹

This article does not, however, specify the relationship to international treaties. Additionally, Malta has not submitted a Core Document which generally sets out a State party’s relationship to international law. As there is no core document, the State party report covers additional background information on Malta. Unfortunately, this too is silent on international treaties’ status in domestic law. Nevertheless, it is possible to infer that they have a dualist system as the State party report records the various legislative measures that relate to or incorporate elements of children’s rights, demonstrating that Malta’s incorporation is piecemeal. In addition, further evidence to support this inference comes from the CO:

The Committee recommends that the State party consider enacting a comprehensive child rights act at the national level, which fully incorporates the principles and provisions of the Convention and its Optional Protocols and provides clear guidelines for their consistent and direct application in the State party.⁴²⁰

The incorporation of the Convention in Malta can, therefore, be described as ‘partial’ though ‘direct’ as some elements of the Convention are incorporated in legislation.

⁴¹⁸ McCall-Smith (n 82) 433.

⁴¹⁹ [Malta] - Constitution of Malta 1964 (as amended 2016) 1964.

⁴²⁰ CRC CO Malta 2013 (n 137) para 11.

Norway

The Kingdom of Norway is a unitary monarchy with a written constitution from 1814 (most recently amended in 2016). Section E covers 'Human Rights' including articles specifically related to children including article 104:

Children have the right to respect for their human dignity. They have the right to be heard in questions that concern them, and due weight shall be attached to their views in accordance with their age and development.

For actions and decisions that affect children, the best interests of the child shall be a fundamental consideration.

Children have the right to protection of their personal integrity. The authorities of the state shall create conditions that facilitate the child's development, including ensuring that the child is provided with the necessary economic, social and health security, preferably within their own family.⁴²¹

The language used in the Constitution is one of rights belonging to the child rather than duties of adults affording protection to children. The Constitution also clarifies Norway's dualist system in article 26:

...treaties whose implementation, according to the Constitution, necessitates a new law or a decision by the Storting⁴²², are not binding until the Storting has given its consent thereto.⁴²³

Conversely, article 92 could be read to incorporate human rights treaties as it states that:

The authorities of the State shall respect and ensure human rights as they are expressed in this Constitution and in the treaties concerning human rights that are binding for Norway.⁴²⁴

Clarification of this article is included in their Core Document, based on case law.⁴²⁵

According to the Supreme Court, the reference to international human rights treaties binding on Norway in Article 92 cannot be seen as incorporating these treaties at a constitutional level. Instead, the article imposes a duty upon the courts and other public authorities to enforce human rights at the level in which they are implemented in national law.⁴²⁶

⁴²¹ [Norway] - Constitution of the Kingdom of Norway 1814 (as amended 2016) 1814.

⁴²² parliament

⁴²³ [Norway] - Constitution of the Kingdom of Norway 1814 (as amended 2016) Article 26.

⁴²⁴ *ibid* Article 92.

⁴²⁵ [Norway] - *HR-2016-2554-P Holship Norge AS -v- Norwegian Transport Workers' Union*.

⁴²⁶ Norway, 'Core Document Forming Part of the Reports of State Parties - Norway - UN Doc. HRI/CORE/NOR/2017' (United Nations 2017) para 101.

Initially, the Convention was not incorporated into domestic law; this was achieved in 2003 when the Convention and the two Optional Protocols Norway has ratified were included in the Human Rights Act 1999.⁴²⁷ With regards to the hierarchy of acts:

Section 3 of the Human Rights Act states that if national legislation is in conflict with provisions in the human rights conventions incorporated by the act, the latter shall prevail.

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Despite the Convention's incorporation in the 2010 CO, the Committee made the recommendation that:

the State party continue its efforts to harmonize Norwegian law with the Convention, including by child-rights based revisions or new laws with regard to the right of the child to be heard in health matters, the protection of the child's right to privacy and regulations for guardianship of children separated from their parents.⁴²⁹

However, in the most up to date CO of 2018, the Committee has not noted any concerns, nor made recommendations regarding the legal status of the Convention. Norway can be classified therefore as having 'direct' and 'full' incorporation of the Convention, though at the time of the CO report used for grading there was still some harmonisation of legislation needed.

Poland

The Republic of Poland is a unitary republic with a written constitution from 1997 (most recently amended in 2009). Chapter II covers 'The Freedoms, Rights and Obligations of Persons and Citizens', Chapter III covers 'Sources of Law' and Article 87(1) clarifies the status of international treaties:

The sources of universally binding law of the Republic of Poland shall be: the Constitution, statutes, ratified international agreements, and regulations.⁴³⁰

Whilst many State parties require a second stage after ratification for international treaties to be domestic law, Poland's procedure is the other way around, as set out in Art.89 where prior consent by statute to the ratification of a treaty is necessary in set circumstances, including if the treaty concerns 'freedoms, rights or obligations of citizens, as specified in the

⁴²⁷ [Norway] - (Human Rights Act) Lov om styrking av menneskerettighetenes stilling i norsk rett (menneskerettsloven) LOV-1999-05-21-30 (Amended up to and including 2014) 1999.

⁴²⁸ Norway, 'Core Document Forming Part of the Reports of State Parties - Norway - UN Doc. HRI/CORE/NOR/2017' (n 426) para 104.

⁴²⁹ CRC CO Norway 2010, 'Concluding Observations on the Fourth Periodic Reports of Norway, UN Doc CRC/C/NOR/CO/4' (United Nations 2010) para 9.

⁴³⁰ [Poland] - Constitution of the Republic of Poland 1999 (as amended 2009) 1999 Article 87.

Constitution;'.⁴³¹ There is an additional step needed for an international treaty to be law in Poland, as it has to be published in the Journal of Laws of the Republic of Poland.⁴³² In addition, the hierarchy of international treaties is set down in Art.91(2):

An international agreement ratified upon prior consent granted by statute shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes.⁴³³

Poland's fundamentally monist system is clearly set out within their Core Document,⁴³⁴ other relevant legislative changes are carefully detailed in their State party report⁴³⁵ as is their intention to withdraw their reservations (subsequently withdrawn in 2013). Further detailed are the reasons why declarations remain to articles 12 -16 and 24.

In the Committee's Concluding Observations report a subheading of 'Legislation' is not included, whereas the subheading of 'Reservations' remains with a recommendation to remove the remaining declarations.

The incorporation of the Convention into Polish law can therefore be described as 'direct' and 'full'. However, there is scope for their interpretive declarations to weaken their incorporation of six of the articles.

Portugal

Portugal is a unitary republic with a written constitution from 1974 (most recently updated in 2005) considered to be one of the longest in the world (Caramelo-Gomes & Tomas 2014).⁴³⁶ Part II titled 'Rights, freedoms and guarantees' includes Chapter I (Articles 24-47) which covers 'Personal rights, freedoms and guarantees'. Contained within Title III 'Economic, social, cultural rights and duties, Chapter II 'Social rights and duties' is Article 69 titled 'Childhood':

1. With a view to their integral development, children shall possess the right to protection by society and the state, especially from all forms of abandonment, discrimination and oppression and from the abusive exercise of authority in the family or any other institution.
2. The state shall ensure special protection for children who are orphaned, abandoned or deprived of a normal family environment in any way.

⁴³¹ *ibid* Article 89(2).

⁴³² *ibid* Article 91(1).

⁴³³ *ibid* Article 91(2).

⁴³⁴ Poland, 'Core Document Forming Part of the Reports of State Parties - Poland - UN Doc. HRI/CORE/POL/2014' (United Nations 2014).

⁴³⁵ CRC CO Poland 2015, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Poland, UN Doc CRC/C/POL/CO/3-4' (United Nations 2015).

⁴³⁶ Jose Caramelo-Gomes and Sergio Tomas, 'GlobalLex Foreign Law Research - Portugal' (2014) <<http://www.nyulawglobal.org/globalex/Portugal1.html>> accessed 20 November 2018.

3. Labour by minors of school age shall be prohibited as laid down by law.⁴³⁷

As previously noted in other State parties, the wording is focused on the protection of children rather than the realisation of their rights. Regarding the status of international treaties Art.8 'International Law' states:

1. The rules and principles of general or common international law shall form an integral part of Portuguese law.

2. The rules set out in duly ratified or passed international agreements shall come into force in Portuguese internal law once they have been officially published, and shall remain so for as long as they are internationally binding on the Portuguese state.⁴³⁸

The applicability of this article to the Convention, and its ability to be relied upon in domestic courts, was confirmed in the Second State party report of 2001:

6. The Convention has the force of law in the internal legal order, once it has been approved for ratification by the Assembly of the Republic. The basic principles of the Convention are also included in the principles contained in the Constitution of the Republic of Portugal, approved in 1976 following the institution of a democratic political regime in Portugal. ...

7. All the provisions of the Convention may be directly invoked before the courts and applied by the national authorities; in the event of a conflict of laws the Convention takes precedence unless the national legislation is more favourable.

8. One provision of the national legislation that is clearly more favourable relates to the minimum age of compulsory military service, which is 18.⁴³⁹

This status of the Convention being actionable in the courts has also been reconfirmed in the most recent Core Document of 2014.⁴⁴⁰ Nevertheless, in the Committee's CO report of 2014 it was noted that:

The Committee encourages the State party to continue to take steps to ensure that domestic legislation is fully compatible with the principles and provisions of the Convention and ensure the effective implementation of child-related laws at the national, provincial and municipal levels.⁴⁴¹

⁴³⁷ [Portugal] - Constitution of the Portuguese Republic 1974 (as amended 2005) 1974 Article 69.

⁴³⁸ *ibid* Article 8.

⁴³⁹ Portugal, 'Second Periodic Reports of State Parties - Portugal - UN Doc. CRC/C/65/Add.11' (United Nations 2001) paras 6–7.

⁴⁴⁰ Portugal, 'Core Document Forming Part of the Reports of State Parties - Portugal - UN Doc. HRI/CORE/PRT/2014' (n 318) para 61.

⁴⁴¹ CRC CO Portugal 2014, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Portugal, UN Doc CRC/C/PRT/CO/3-4' (United Nations 2014) para 10.

In response to the recommendation in the subsequent State party report⁴⁴² significant detail is given on legislative progression as described by the State party as ‘profound revision’, indicating that despite the Convention having legislative status at the domestic level, importance is being placed upon ensuring meaningful incorporation and eradicating inconsistencies. Therefore, the incorporation of the Convention into Portuguese law can be described as ‘direct’ and ‘full’.

Seychelles

Seychelles is a unitary republic with a written Constitution from 1993 (most recently updated in 2011). Chapter III part I (articles 15-39) contains ‘Seychellois Charter of Fundamental Human Rights and Freedoms’. Article 5 states that:

This Constitution is the supreme law of Seychelles and any law found to be inconsistent with this Constitution is, to the extent of the inconsistency, void.⁴⁴³

Under Chapter III, Part V ‘Principles of Interpretation’ Article 48 states that:

This Chapter shall be interpreted in such a way so as not to be inconsistent with any international obligations of Seychelles relating to human rights and freedoms and a court shall, when interpreting the provision of this Chapter, take judicial notice of–

- (a) the international instruments containing these obligations;
- (b) the reports and expression of views of bodies administering or enforcing these instruments;
- (c) the reports, decisions or opinions of international and regional institutions administering or enforcing Conventions on human rights and freedoms;⁴⁴⁴

Additionally, article 64(4) further clarifies that:

A treaty, agreement or convention in respect of international relations which is to be or is executed by or under the authority of the President shall not bind the Republic unless it is ratified by–

- (a) an Act; or
- (b) a resolution passed by the votes of a majority of the members of the National Assembly.⁴⁴⁵

⁴⁴² Portugal, ‘Fifth and Sixth Periodic Reports of State Parties - Portugal - UN Doc. CRC/C/PRT/5-6’ (United Nations 2017) N.B. Available via the UN OHCHR database of State party reports, as of 20/12/18 without an official publication date.

⁴⁴³ [Seychelles] - Constitution of the Republic of Seychelles 1993 (as amended 2011) 1993.

⁴⁴⁴ *ibid* Article 48.

⁴⁴⁵ *ibid* Article 64(4).

Therefore, whilst the Convention is not domestic law as it has not been ratified by an Act nor a resolution, it is 'indirectly applicable' under Article 48.

The CO report analysed for this study in 2017 was from 2012; at that stage, a newer State party report had been filed, and subsequently a new CO report is available from 2018.

In the 2012 CO report the Committee's concern raised under the subheading of legislation was:

that certain relevant and important legislation, such as on the minimum age of marriage for girls and boys, has not yet been amended.⁴⁴⁶

In the State party report of 2017 paragraphs 20 to 31 detail the 'most significant legislative and regulatory measures aimed at strengthening the protection of children's rights'⁴⁴⁷ however, in the 2018 CO report the Committee made the following recommendations under two relevant subheadings:

Legal status of the Convention

5. The Committee recommends that the State party take measures to explicitly and fully incorporate all provisions of the Convention and its Optional Protocols into its national legislation in order to ensure their direct application by the courts and administrative decision-making bodies.

Legislation

6. Noting the insufficient implementation of legislation, in particular of the Children Act, the undergoing review of which has not reached the bill stage yet, and recalling its previous recommendation (see *CRC/C/SYC/CO/2-4*, para. 11), the Committee urges the State party to accelerate amendment of the remaining legislation that contradicts the Convention and to ensure that all the principles and provisions of the Convention are fully incorporated into the domestic legal system and that the human, technical and financial resources allocated for the implementation of legislation providing for children's rights are sufficient and adequate.⁴⁴⁸

It is considered that due to the mixed civil and common law nature of Seychelles' legal system that it is difficult to classify as either monist or dualist (Kerr, 2015)⁴⁴⁹ as depending on the circumstances and fulfilment of specific elements it can be either. However, in the instance of the CRC, the Seychellois system has operated as dualist in that the Convention is not directly

⁴⁴⁶ CRC CO Seychelles 2012 (n 183) para 10.

⁴⁴⁷ Seychelles, 'Fifth and Sixth Periodic Reports of State Parties - Seychelles - UN Doc. *CRC/C/SYC/5-6*' (United Nations 2017).

⁴⁴⁸ CRC CO Seychelles 2018, 'Concluding Observations on the Combined Fifth to Sixth Periodic Reports of Seychelles, UN Doc *CRC/C/SYC/CO/5-6*' (United Nations 2018) paras 5–6.

⁴⁴⁹ Jessica Kerr, 'GlobeLex Foreign Law Research - Seychelles' (2015) <<http://www.nyulawglobal.org/globalex/Seychelles.html>> accessed 20 November 2018.

applicable in court, though questions of rights conveyed by the convention would have to be interpreted so as not to be inconsistent with the Convention. Therefore, Seychelles can be said to have ‘full indirect’ and ‘partial direct’ incorporation of the Convention.

Sweden

Sweden is a unitary monarchy with a constitution made up of the four ‘fundamental laws of Sweden’.⁴⁵⁰ In their Core Document, it is clear that:

Sweden adheres to a dualistic system and ratified conventions do not automatically become part of domestic law.⁴⁵¹

At the time of the State party report 2014 and CO 2015 applicable for this study, the Convention had not been enacted as domestic legislation. However, in June 2018 it was announced that the *Riksdag* (parliament) had voted in favour of the Convention becoming national law from January 2020.

Some elements of the Convention are covered in the constitution such as the inclusion in Chapter 1, Article 2 of:

The public institutions shall promote the opportunity for all to attain participation and equality in society and for the rights of the child to be safeguarded. The public institutions shall combat discrimination of persons on grounds of gender, colour, national or ethnic origin, linguistic or religious affiliation, functional disability, sexual orientation, age or other circumstance affecting the individual.⁴⁵²

Nevertheless, the Committee’s recommendation in the CO was to:

take all the necessary measures to bring national legislation into full conformity with the Convention, and that the Convention should always prevail when provisions of domestic law conflict with the Convention.⁴⁵³

Therefore, using the classification of Lundy et al., Sweden has ‘partial’ and ‘direct’ incorporation of the Convention. Although from 2020 they will achieve ‘full’ incorporation, what hierarchical legal status this new legislation will have is not yet clear.

⁴⁵⁰ Sweden, ‘The Constitution of Sweden: The Instrument of Government, the Act of Succession, the Freedom of the Press Act, and the Fundamental Law on the Freedom of Expression (as Amended 2016)’.

⁴⁵¹ Sweden, ‘Core Document Forming Part of the Reports of State Parties - Sweden - UN Doc. HRI/CORE/SWE/2018’ (United Nations 2018) para 77.

⁴⁵² [Sweden] - The Instrument of Government 1975 (as amended 2016) 1975.

⁴⁵³ CRC CO Sweden 2015 (n 179) para 8.

Switzerland

The Swiss Confederation is a federal republic with a written constitution the current version of which is from 1999 (updated in 2016). Title 2, Chapter 1 (article 7-36) covers 'Fundamental Rights'; art.11 specifically relates to children:

Art. 11 Protection of children and young people

1 Children and young people have the right to the special protection of their integrity and to the encouragement of their development.

2 They may personally exercise their rights to the extent that their power of judgement allows.⁴⁵⁴

Supplemental is Art.35 which states that: 'Fundamental rights must be upheld throughout the legal system'.⁴⁵⁵ The fundamental rights referred to here are those enshrined within the constitution.

As to the method of incorporation of international treaties, as noted in the Core Document:

In view of the particular nature of its legal organization, Switzerland relies upon a long-term strategy conducted by the Confederation, the cantons and the communes when implementing directives on human rights. ... This is a complicated process but enables sustainable implementation appropriate to the different levels of the State.⁴⁵⁶

As to whether a treaty is 'self-executing' becomes relevant in Switzerland, for instance, they consider the European Convention on Human Rights to be self-executing and therefore:

The legislature, the courts and the government departments of the Confederation and the cantons are bound by them and citizens may rely upon them.⁴⁵⁷

Because of the concept of self-executing being relevant within the Swiss system, many authors such as Alen and Pas, classify them as fundamentally 'monist'.⁴⁵⁸ However, as explained further within their Core document:

Switzerland has ratified other human rights treaties. The degree to which violation of them can be relied upon before the national courts depends on the direct applicability of the specific rule ... in many cases the Federal Supreme Court presumes that the international obligations arising from other international treaties are more soft law in nature, that they

⁴⁵⁴ [Switzerland] - Federal Constitution of the Swiss Confederation 1999 (as amended 2016) 1999 Article 11.

⁴⁵⁵ *ibid* Article 35.

⁴⁵⁶ Switzerland, 'Core Document Forming Part of the Reports of State Parties - Switzerland - UN Doc. HRI/CORE/CHE/2017' (United Nations 2017) para 58.

⁴⁵⁷ *ibid* 96.

⁴⁵⁸ Alen and Pas (n 369) 167.

need to be made explicit and implemented by the legislator and do not, in theory, establish rights that can be relied up in court.⁴⁵⁹

Therefore, for the purposes of this Convention, the Swiss system has a dualist nature. In the State party report of 2013, individual legislative measures relating to children's right are detailed further. It was noted that the reason for the failure of a parliamentary motion to establish, at the federal level, a central body responsible for coordination the advancement of children's rights was that:

the Constitution did not grant the Confederation the competence to impose rules on the cantons with regard to child and youth policy.⁴⁶⁰

The relevant recommendations from the Committee in the CO report were:

that the State party continue and strengthen its efforts to harmonize federal and cantonal laws comprehensively with the Convention.⁴⁶¹

Finally, Switzerland's reservations to the Convention are also relevant as they limit the extent to which the Convention is implemented. The State party report sets out plainly Switzerland's view on the remaining reservations, for instance: 'This position has not changed to date, and therefore the reservation in question cannot be withdrawn.'⁴⁶² The incorporation of the Convention in Switzerland can, therefore, be described as 'partial' though 'direct' as some elements of the Convention are incorporated in legislation.

Uruguay

Uruguay is a unitary republic with a written constitution from 1976 (most recently updated in 2004). Section II covers 'Rights, Duties and Guarantees, and includes article 41, which frames the right as of the parent rather than of the child:

The care and education of children, so that they may attain their fullest physical, intellectual, and social capacity, is the duty and the right of parents.⁴⁶³

The Core Document sets out that 'fundamental human rights are protected by the Constitution'⁴⁶⁴ and that:

⁴⁵⁹ Switzerland (n 456) para 98.

⁴⁶⁰ Switzerland, 'Second to Fourth Periodic Reports of State Parties - Switzerland - UN Doc. CRC/C/CHE/2-4' (United Nations 2013) para 27.

⁴⁶¹ CRC CO Switzerland 2015 (n 244) para 9.

⁴⁶² Switzerland (n 460) para 17.

⁴⁶³ [Uruguay] - Constitution of the Oriental Republic of Uruguay 1976 (as amended 2004) 1976 Article 41.

⁴⁶⁴ Uruguay, 'Core Document Forming Part of the Reports of State Parties - Uruguay - UN Doc. HRI/CORE/URY/2016' (United Nations 2016) para 45.

The fundamental rights set out in the various international human rights instruments to which Uruguay is a party have thus been enshrined in the Constitution, and the exercise of those rights is, in most cases, regulated by law.⁴⁶⁵

Whilst as above, there are articles that refer to children, none of these is formed in terms of the 'children's rights' as in the Convention. Further, the Core Document goes on to explain that:

In principle, a treaty that is in force and has been ratified by Uruguay is directly applicable under domestic law and may be invoked before the country's courts, unless the treaty itself provides otherwise or the structure of the international standard makes this impossible.⁴⁶⁶

This statement initially gives the impression that Uruguay is a monist state, but contradicts this suggestion in the very next paragraph

For an international standard to be applicable domestically, the executive must express the will of the State by signing or acceding to an international instrument. It is the responsibility of the legislature to adopt and incorporate the instrument into domestic legislation, after which the executive deposits the instrument of ratification or accession. Thus, the procedure for expressing the Uruguayan State's consent to be bound internationally requires the adoption of enabling domestic legislation.⁴⁶⁷

This describes what would be recognised as a dualist system. Further confusing the matter is the State party report in contrast to the Committee's CO report. The State party report of 2013, in response to the recommendations from the previous CO Report (2007), details various relevant laws adopted in the period since the last state report. There is no mention of a declaration from the Supreme Court of Justice. However, the CO report under the heading of 'Legal Status of the Convention' reads:

While noting that the Supreme Court of Justice has declared that international human rights treaties have constitutional status in the national legal framework, the Committee is concerned about the limited application of the Convention owing to the lack of awareness among judges.⁴⁶⁸

What is not clear is on what basis the Committee is noting this declaration. The declaration is also not referred to in the Core Document nor in the reply to the list of issues. Further judgments of the Supreme Court are only available in Spanish, and an English language translation of this declaration has not been found.

⁴⁶⁵ *ibid* 46.

⁴⁶⁶ *ibid* 47.

⁴⁶⁷ *ibid* 48.

⁴⁶⁸ CRC CO Uruguay 2015 (n 163) para 7.

This lack of clarity leaves a potential problem within this study. The information contained in the CO reports and the basis for the grading appears that Uruguay has 'full' and 'direct' incorporation; however, upon further investigation, it appears that incorporation may be only partial. This study, though, is based upon the CO reports and whilst the comment at para.7 has not been found to be substantiated by a State party document, it is accepted for this research (cautiously) as correct.

Overview of the legal incorporation of the Convention in the top 16

Within this sample of 16 State parties it can be observed how the categories act in accordance with each other, with the description of incorporation type being created from both variables, direct or indirect, and full or partial. For instance, a State party with 'direct' incorporation is also described with incorporation being either 'full' or 'partial'. Therefore, within this thesis, incorporation will henceforth be described using both variables, i.e. as either having, 'full direct' incorporation or 'partial direct' incorporation.

The spreadsheet shown in figure 5.7 details the legal family, whether there are reservations or declaration that limit the effect of the Convention, the date of the four critical reports and whether there is a newer version of the State party report than for the CO used for this study analysis. The spreadsheet then records whether the State party has a fundamentally monist approach with regards to this Convention where it has been incorporated 'automatically' by being ratified. (This includes 'simple' required secondary steps, for instance, publishing in a set method.) Within this sample only three of the four types of incorporation have been identified, 'full direct', 'partial direct', and 'full indirect'. 'Partial indirect' incorporation is theoretically possible; however, it was not explicitly identified within this sample and is therefore not shown in figures 5.7 and 5.9.

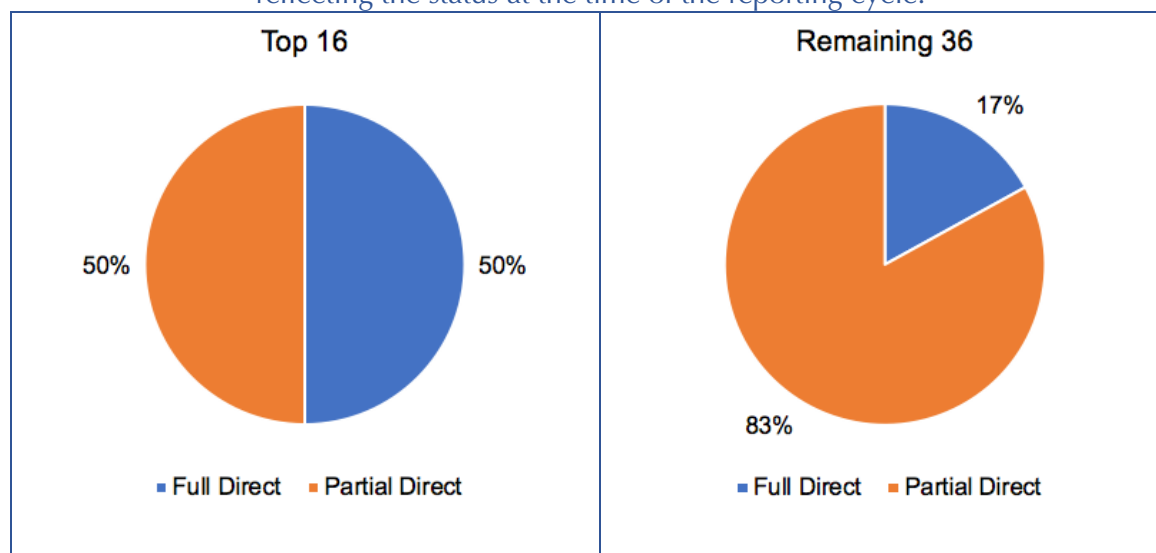
The State party (Iceland) with an 'A' in the 'Full - Direct' column in addition to the status of 'Partial - Direct' denotes that they had 'Partial - Direct' incorporation at the relevant date of the CO report analysed and graded for this study but have subsequently enhanced their status to 'Full - Direct'. Likewise, the State party (Sweden) with a 'B' in the 'Full - Direct' column denotes that they had 'Partial - Direct' incorporation at the relevant date and have subsequently announced that they will be achieving 'Full - Direct' incorporation at a set future date.

Figure 5.7 Legal incorporation of the Convention.

	Legal Family	R & D 'reducing effect of CRC'	Concluding Observations	Core Document Year	Universal Review Doc	State Party Report	New State Party Report	Incorporation			
								Monist / 'Automatic incorporation'	Full - Direct	Partial - Direct	Full - Indirect
Australia	Common Law	1	2012	2007	2015	2011			1	1	
Croatia	Civil Law	1	2014	2011	2015	2013		1	1		
Estonia	Civil Law	0	2017	2015	2015	2015		1	1		
Germany	Civil Law	0	2014	2014	2018	2012			1		
Iceland	Civil Law	0	2012	1993	2016	2010			A	1	
Ireland	Common Law	0	2016	2014	2016	2015				1	
Jamaica	Common Law	0	2015	1997	2015	2013				1	
Kazakhstan	Civil Law	0	2015	2012	2014	2014		1	1		
Malta	Mixed	0	2013		2018	2012	2018			1	
Norway	Civil Law	0	2010	2017	2014	2009	2017		1		
Poland	Civil Law	6	2015	2014	2017	2014		1	1		
Portugal	Civil Law	0	2014	2014	2014	2012		1	1		
Seychelles	Mixed	0	2012		2015	2011	2017			1	1
Sweden	Civil Law	0	2015	2018	2014	2014			B	1	
Switzerland	Civil Law	3	2015	2017	2017	2013				1	
Uruguay	Civil Law	0	2015	2016	2013	2013			1		
Total at date of CO report								5	8	8	2
Total including commitment to full incorporation									10	6	

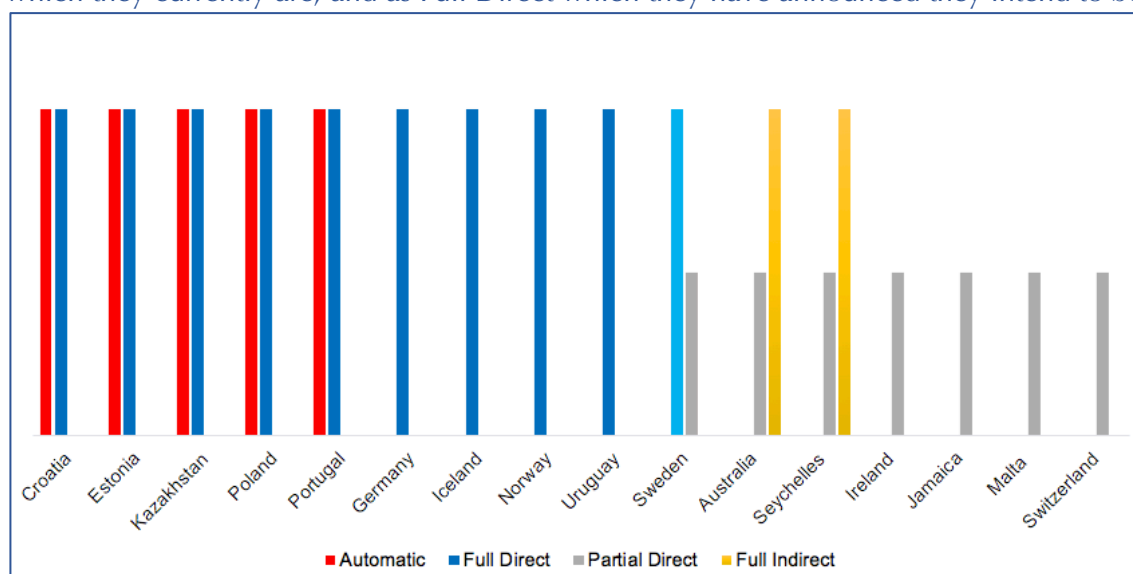
At the date of the CO reports of the top 16, 50% had full direct incorporation, with 63% now achieving or pledging to achieve full direct incorporation. In comparison is the remaining 36 State parties of the full sample, where only 17% appear (on the basis of the information in the CO reports) to have full direct incorporation. Figure 5.8 demonstrates the difference between the percentages of full direct incorporation of the top 16 and the remaining 36 State parties at the time of the CO reports.

Figure 5.8 Comparison of the percentage split between Full Direct and Partial Direct incorporation between the top 16 State parties and the remaining 36 other State parties - reflecting the status at the time of the reporting cycle.



In reality, many of those with apparently full direct incorporation, still receive comments relating to the concerns and recommendations for improvements to their legal incorporation and implementation, as can be seen by the comments and recommendations received by State parties in the top 16 with full direct incorporation. The updated incorporation by type for the top 16 can be displayed as a graph demonstrating the types and levels of incorporation figure 5.9.

Figure 5.9 Graph demonstrating level of incorporation (as at the date of writing) the type of incorporation and whether it is automatic. Note – Sweden, is shown as both Partial Direct which they currently are, and as Full Direct which they have announced they intend to be.



Full direct incorporation, whether automatic or by deliberate enactment, is going to have an effect on the method of grading used in this study as it affects the CO reports. This effect is created because comments on issues including legislation or recommendations to improve or harmonise legislation reduce the score when grading. Kilkelly notes that in some monist states, there is an ‘acceptance’ of international treaties and consequently they are more likely to become ‘embedded in the national legal framework’.⁴⁶⁹ However, the importance of the value of the incorporation process within dualist states has been noted as ‘advancing understanding’,⁴⁷⁰ ‘awareness-raising’⁴⁷¹ and to ‘insofar as the political debate that surrounds it can serve to promote public awareness’,⁴⁷² critically Kilkelly reflects that:

⁴⁶⁹ Kilkelly (n 190) 326.

⁴⁷⁰ Lundy, Kilkelly and Byrne (n 78) 453.

⁴⁷¹ McCall-Smith (n 82) 427.

⁴⁷² Kilkelly (n 190) 327.

legal incorporation matters. According to the research, in the States Parties where the CRC has been incorporated into the national legal system (i.e. Belgium, Norway and Spain), children are more commonly perceived as rights-holders, within a broader context of respect for children's rights. Unpacking this a little, where the CRC has formal standing in the domestic system, it becomes an influential touchstone at national level, for law and policy makers, for advocates and those who work with and for children.⁴⁷³

Legal incorporation is only one element of implementation, and there is still the 'implementation gap' to be considered; moreover as Vandenhoele⁴⁷⁴ describes, lawyers assume that children's rights issues are due to a lack of implementation of 'existing legal standards' rather than critically considering the legal construction of children's rights. That being said, if either the Convention can be relied upon in court, or a specific piece of legislation has been enacted that replicates the Convention at the domestic level, then this creates a legal framework that gives children's rights legitimacy, reviewability and enforceability.

5.5 Child Ombudspersons and Commissioners

Article 4 of the Convention not only obliges State parties to undertake all appropriate legislative measures but to undertake 'administrative and other measures'. One aspect of these measures is expanded upon within GC No.2 of 2002: 'The role of independent national human rights institutions in the promotion and protection of the rights of the child' in which the first paragraph sets out that:

Independent national human rights institutions (NHRIs) are an important mechanism to promote and ensure the implementation of the Convention, and the Committee on the Rights of the Child considers the establishment of such bodies to fall within the commitment made by States parties upon ratification to ensure the implementation of the Convention and advance the universal realization of children's rights. In this regard, the Committee has welcomed the establishment of NHRIs and children's ombudspersons/children's commissioners and similar independent bodies for the promotion and monitoring of the implementation of the Convention in a number of States parties.⁴⁷⁵

⁴⁷³ *ibid* 332.

⁴⁷⁴ Wouter Vandenhoele, 'Children's Rights from a Legal Perspective: Children's Rights Law' in Wouter Vandenhoele (ed), *Routledge International Handbook of Children's Rights Studies* (Routledge 2017).

⁴⁷⁵ UN Committee on the Rights of the Child, 'General Comment No.2 (2002) The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child (Arts.4) - UN Doc CRC/GC/2002/2' (n 146) para 1.

In addition to the 'commitment' the Committee considers the efforts State parties have made to establish NHRIs. The Committee gives guidance on the composition:

NHRIs should be established in compliance with the Principles relating to the status of national institutions for the promotion and protection of human rights (The "Paris Principles")⁴⁷⁶ adopted by the General Assembly in 1993 ... These minimum standards provide guidance for the establishment, competence, responsibilities, composition, including pluralism, independence, methods of operation, and quasi-judicial activities of such national bodies.⁴⁷⁷

The Paris Principles mentioned stem from the first International Workshop for the National Institutions for the Promotion and Protection of Human Rights, they 'define the role, composition, status and functions of national human rights institutions.'⁴⁷⁸ Table 5.2 shows the existence of a children's Ombudsperson/Commissioner within the top 16.

The State parties with a '1' in the column titled 'Children's Ombudsperson / Commissioner' have what is recognised by the Committee in the CO reports as a Children's Ombudsperson in accordance with the 'Paris Principles' as set out in the GC No.2. The State parties with an 'A' recorded in the Ombudsperson column (Seychelles and Uruguay) have a 'National human rights Commission / Institution, which includes children's rights but does not include a separate and specific Children's Ombudsperson. The State party with a 'B' recorded in the Ombudsperson column (Jamaica) has an 'Office of the Children's Advocate' but according to the Committee this is not fully independent, not fully in-line with the Paris Principles and not provided with sufficient resources.

⁴⁷⁶ United Nations General Assembly, 'National Institutions for the Promotion and Protection of Human Rights (The Paris Principles) 20th December 1993, UN Doc. A/RES/48/134'.

⁴⁷⁷ UN Committee on the Rights of the Child, 'General Comment No.2 (2002) The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child (Arts.4) - UN Doc CRC/GC/2002/2' (n 146) para 4.

⁴⁷⁸ United Nations Office of the High Commissioner for Human Rights, 'Paris Principles: 20 Years Guiding the Work of National Human Rights Institutions' (2013) <<https://www.ohchr.org/EN/NewsEvents/Pages/ParisPrinciples20yearsguidingtheworkofNHRI.aspx>> accessed 18 February 2019.

Table 5.2 Children's Ombudspersons and ENOC membership within the top 16.

State Party	Legal Family	Children's Ombudsperson / Commissioner	European Network of Ombudspersons for Children ⁴⁷⁹
Australia	Common Law	1	
Croatia	Civil Law	1	1
Estonia	Civil Law	1	1
Germany	Civil Law		
Iceland	Civil Law	1	1
Ireland	Common Law	1	1
Jamaica	Common Law	B	
Kazakhstan	Civil Law		
Malta	Mixed	1	1
Norway	Civil Law	1	1
Poland	Civil Law	1	1
Portugal	Civil Law	1*	
Seychelles	Mixed	A	
Sweden	Civil Law	1	1
Switzerland	Civil Law		
Uruguay	Civil Law	A	

* Within the Portuguese system there is not a separate role of Children's Ombudsperson, it is a function of a larger department

The final column denotes membership of the 'European Network of Ombudspersons for Children'. Only State parties from the 47 member states of the Council of Europe can belong to this network; within the top 16 there are only three State parties which could be members but are not full members: Germany, Portugal, and Switzerland.

In the study by Imanian and Thomas, into the impact of 'independent human rights institutions for children' (IHRIC), they note a lack of evaluation of the effectiveness of Children's Ombudspersons as called for by the Committee. They refer to this as a 'serious omission',⁴⁸⁰ and note how important this is not only for the individual institutions, but also:

⁴⁷⁹ ENOC Secretariat, 'European Network of Ombudspersons for Children - ENOC Members' <http://enoc.eu/?page_id=2469> accessed 18 February 2019.

⁴⁸⁰ Imanian and Thomas (n 154) 340.

for the children's rights movement as a whole in understanding the particular contribution of independent children's rights institutions and making the case for their existence.⁴⁸¹

Imanian and Thomas raise concerns about the vulnerability of IHRICs and note that their 'independence may be threatened by political and economic factors'.⁴⁸²

Part of the importance of the existence of a Children's Ombudsperson is that it demonstrates a commitment to obligations under Article 4 and recognition of GC No.2. Most importantly, an Ombudsperson in concordance with the Paris Principles is a position to monitor and encourage a State party's commitment to, and implementation of, the Convention.

5.6 Global human rights and health indicators

Whilst children's rights are a particular aspect of human rights, considering the ranking of the top 16 in particular and also the whole sample of 52 State parties in regard to general human rights, democracy, health and other indicators adds to the understanding of the results for this study. Figure 5.10 displays a number of relevant indices in a single spreadsheet for the top 16, Figures 5.11 and 5.12 then show the indices for the whole study sample of 52 State parties. In some of the indices a low score is better, and in others, a high score is better; therefore the spreadsheet is coloured from blue for the better scores through amber to red for the worst score for each indicator. In figure 5.10 the colour change covers only the top 16 to emphasise the differences within the top 16, in figures 5.11 and 5.12 as the variables in the scores is greater, the colour representation covers the whole spreadsheet and highlights that the top few grades are consistently scoring better than the lower grades. The spreadsheets show the State parties in order of their ranking from the scoring for this study. Each column and the data source for the figure is described in turn.

Human development indices and indicators for the top 16 State parties

The first column shows the study rank depending on the State party's overall score in the grading process. The rank is shown here despite the reservations expressed previously about the developing nature of this grading process as in this table the rank is illustrative, and the average grade is also shown in the third column. The date of the CO report is included due to the various indices being based on data from different years. In figure 5.10 a number of these

⁴⁸¹ *ibid.*

⁴⁸² *ibid* 370.

indices data on Seychelles is absent this is for a number of reasons, including being due to the data upon which the rankings are calculated not being available.

Figure 5.10 Global human rights and health indexes for the top 16 State parties.

Project Rank	A-Z	Av Grade	UN HDI Rank (2018)	UN Gender Inequality Index (2018)	UN Gender Development Index Group (2017)	The Economist Intelligence Unit's Democracy Index 2017	EIU - DI - Classification	WHO - Child Mortality - per 1000 live births	WHO - Stunting among children %	WHO - Adolescent birth rate - per 1000 women aged 15-19 (2005-2014)	WHO - % of Gov. spending on health
1	Iceland	C	6	9	2	2	Full	2	0	7.1	15.7
2	Portugal	C	41	19	1	26	Flawed	3.6	0	10.5	11.9
3	Norway	D	1	5	1	1	Full	2.6	0	5	18.2
4	Estonia	D	30	27	1	30	Flawed	2.9	0	15.6	13.5
4	Sweden	D	7	3	1	3	Full	3	0	5.1	19.8
6	Germany	D	5	14	2	13	Full	3.7	1.3	7.8	19.6
7	Croatia	D	46	29	1	58	Flawed	4.3	0	11.8	14
7	Malta	D	29	45	2	17	Full	6.4	0	13.1	15.6
7	Poland	D	33	32	1	53	Flawed	5.2	0	14	10.7
7	Switzerland	D	2	1	1	9	Full	3.9	0	2	22.7
11	Ireland	D	4	23	1	6	Full	3.6	0	9.2	13.4
12	Seychelles	E	62	-	-	-	-	13.6	7.9	61.2	9.7
12	Uruguay	E	55	57	1	18	Full	10.1	10.7	63.5	20.8
14	Australia	E	3	23	2	8	Full	3.8	2	14.2	17.3
14	Jamaica	E	97	95	1	38	Flawed	15.7	5.7	45.7	8.1
14	Kazakhstan	E	58	43	1	141	Authoritarian	14.1	8	36.4	10.9

Figure 5.11 Global human rights and health indexes for the study sample of 52 State parties – grades C to E and Figure 5.12 grades F- H. (Appendix A-40)

Project Rank	A-Z		AV Grade	UN HDI Rank (2018)	UN Gender Inequality Index (2018)	UN Gender Development Index Group (2017)	The Economist Intelligence Unit's Democracy Index 2017	EU - DI - Classification	WHO - Child Mortality - per 1000 live births	WHO - Stunting among children %	WHO - Adolescent birth rate - per 1000 women aged 15-19 (2005-2014)	WHO - % of Gov. spending on health
1	Iceland	84	C	6	9	2	2	Full	2	0	7.1	15.7
2	Portugal	83	C	41	19	1	26	Flawed	3.6	0	10.5	11.9
3	Norway	79	D	1	5	1	1	Full	2.6	0	5	18.2
4	Estonia	77	D	30	27	1	30	Flawed	2.9	0	15.6	13.5
4	Sweden	77	D	7	3	1	3	Full	3	0	5.1	19.8
6	Germany	74	D	5	14	2	13	Full	3.7	1.3	7.8	19.6
7	Croatia	73	D	46	29	1	58	Flawed	4.3	0	11.8	14
7	Malta	73	D	29	45	2	17	Full	6.4	0	13.1	15.6
7	Poland	73	D	33	32	1	53	Flawed	5.2	0	14	10.7
7	Switzerland	73	D	2	1	1	9	Full	3.9	0	2	22.7
11	Ireland	72	D	4	23	1	6	Full	3.6	0	9.2	13.4
12	Seychelles	67	E	62	-	-	-	-	13.6	7.9	61.2	9.7
12	Uruguay	67	E	55	57	1	18	Full	10.1	10.7	63.5	20.8
14	Australia	66	E	3	23	2	8	Full	3.8	2	14.2	17.3
14	Jamaica	66	E	97	95	1	38	Flawed	15.7	5.7	45.7	8.1
14	Kazakhstan	66	E	58	43	1	141	Authoritarian	14.1	8	36.4	10.9
17	Fiji	64	E	92	79	-	81	Hybrid	22.4	0	27.5	9.2
17	France	64	E	24	24	1	29	Flawed	4.3	0	6.2	15.7
19	Chile	63	E	44	72	2	26	Flawed	8.1	1.8	51.5	15.9
20	Japan	62	E	19	22	1	23	Flawed	2.7	7.1	4.4	20.3
20	New Zealand	62	E	16	34	2	4	Full	5.7	0	19.1	23.4
20	Romania	62	E	52	68	1	64	Flawed	11.1	0	38.9	12.8
23	UK	61	E	14	25	2	14	Full	4.2	0	19.3	16.5
24	Canada	60	E	12	20	1	6	Full	4.9	0	12.6	18.8
25	Timor-Leste	59	F	132	-	5	43	Flawed	52.6	50.2	50	2.4
26	Azerbaijan	58	F	80	71	3	148	Authoritarian	31.7	18	47.2	3.9
26	Bhutan	58	F	134	117	5	99	Hybrid	32.9	33.6	28.4	8
26	Suriname	58	F	100	99	2	50	Flawed	21.3	8.8	65.3	11.8
29	Serbia	57	F	67	40	1	66	Flawed	6.7	6	22	13.9
30	Mongolia	56	F	92	65	1	60	Flawed	22.4	10.8	26.7	6.7
31	Columbia	55	F	90	87	1	53	Flawed	15.9	12.7	84	18.1
31	Dominican Republic	55	F	94	103	1	55	Flawed	30.9	7.1	90	17.4
33	Russian Federation	54	F	49	53	1	135	Authoritarian	9.6	0	26.6	9.5
33	Viet Nam	54	F	116	67	1	140	Authoritarian	21.7	24.6	36	14.2
35	Ghana	53	F	140	131	4	52	Flawed	61.6	18.8	65	6.8
35	Mexico	53	F	74	76	2	66	Flawed	13.2	12.4	70.9	11.6
37	Morocco	52	F	123	119	5	101	Hybrid	22.6	14.9	32	6
37	South Africa	52	F	113	90	1	41	Flawed	40.5	23.9	54	14.2
38	Brazil	51	F	79	94	1	49	Flawed	16.4	7.1	64.8	6.8
38	Ethiopia	51	F	173	121	5	129	Authoritarian	59.2	38.4	71.2	15.7
38	Gambia (The)	51	F	174	149	5	113	Hybrid	68.9	25	88	15.3
38	Nepal	51	F	149	118	4	94	Hybrid	35.8	37.1	71	11.2
38	Turkey	51	F	64	69	4	100	Hybrid	13.5	9.5	29	10.5
38	Zambia	51	F	144	125	3	85	Hybrid	64	40	145	11.3
45	China	50	F	86	36	2	139	Authoritarian	10.7	9.4	6.2	10.4
46	Cameroon	47	G	151	141	5	126	Authoritarian	87.9	31.7	119	4.3
47	Albania	46	G	68	52	2	77	Hybrid	14	23.1	19.7	9.4
47	India	46	G	130	127	5	42	Flawed	47.7	38.4	28.1	5
49	Algeria	45	G	85	100	5	128	Authoritarian	25.5	11.7	12.4	9.9
50	Senegal	44	G	164	124	4	74	Flawed	47.2	20.5	80	8
51	Israel	38	H	22	21	2	30	Flawed	4	0	10.2	11.6
52	Saudi Arabia	38	H	39	50	5	159	Authoritarian	14.5	9.3	17.6	8.2

United Nations Development Programme Data

The United Nations Development Programme (UNDP) is part of the United Nations Sustainable Development Group (UNSDG),⁴⁸³ within which it has an advisory role including producing and collating data. The first three of the data columns in the spreadsheet is based on data from the UNDP.

Human development indices and indicators

Column heading UN HDI Rank (2018) focuses on people's freedoms and opportunities rather than economic growth, and whilst not a direct reflection of human rights the Human Development Index (HDI) is a significant indicator as it has 'captured human progress, combining information on people's health, education and income in just one number'.⁴⁸⁴

State parties with a ranking of higher than 60 are in the category of 'Very High Human Development', and those with a rank lower than 60 in the top 16 (Seychelles and Jamaica) still fall in the category of 'High Human Development'. Seven of the top 16 are ranked in the top ten for global HDI, and none of the top 16 falls into the categories of either 'Medium' or 'Low Human Development'. Globally 51% of the population have 'very high or high human development'; only 12% have low human development. When considering the full study sample of 52 State parties, the HDI for grades F-H mostly show a rank lower than 50, only 3 State parties (11%) had a rank better than 50. For grades C-E, 75% had a rank better the 50.

Gender Development Index and Gender Inequality Index

The Gender Development Index (GDI) and Gender Inequality Index (GII) present notably different information despite their similar names. The GII and GDI have been included in this spreadsheet for a number of reasons, firstly regarding GII because one of its indicators is adolescent birth rate (also included separately in the spreadsheet) which directly affects children's development and opportunities. They are also included because discrimination was observed to be an important factor within the grading process, and one of the forms of discrimination the Committee was undoubtedly concerned about was discrimination against girls.

The Gender Inequality Index is recorded by ranking countries and it:

measures gender inequalities in three important aspects of human development—reproductive health, measured by maternal mortality ratio and adolescent birth rates;

⁴⁸³ United Nations Development Group, 'UNSDG Home Page' (2018) <<https://undg.org/>> accessed 3 January 2019.

⁴⁸⁴ United Nations Development Programme, 'Human Development Indices and Indicators 2018 Statistical Update' (2018) Forward iii.

empowerment, measured by proportion of parliamentary seats occupied by females and proportion of adult females and males aged 25 years and older with at least some secondary education; and economic status, expressed as labour market participation and measured by labour force participation rate of female and male populations aged 15 years and older.⁴⁸⁵

The current GII data ranks 189 countries or territories; it is observable that within the top 16, figure 5.10, the lowest ranking of 95 for Jamaica still places them at the halfway point for the overall GII rank. Ten State parties (63%) are in the top 30, and 14 State parties (88%) are in the top 50.

The Gender Development Index however, 'measures gender gaps in human development by accounting for disparities between women and men in three basic dimensions of human development'⁴⁸⁶ and uses the same three indicators as the HDI, life expectancy, education and standard of living. It is recorded by classifying the country or territory into one of five groups based on the 'absolute deviation from gender parity', which means that gender gaps favouring females is taken into account as well as those favouring males. Group 1 denotes the least deviation from gender parity with group 5 the greatest. The current GDI data records groups for 164 countries or territories. Eleven of the top 16 (69%) are recorded as being in the top group. Globally 34% were ranked as in group 1, four of the top 16 are ranked in group 2 and Seychelles is not ranked. Globally 55% were ranked in the top two groups; within the top 16 all that have been ranked fall into these two groups.

In considering the full sample of 52 State parties, it is relevant to recognise that the Gender Inequality Index includes 'reproductive health, measured by maternal mortality ratio and adolescent birth rates'.⁴⁸⁷ This aspect of the index is one of the reasons why there can be a significant difference between GII and GDI. For some State parties, having good quality maternal health rates and a low adolescent birth rate can increase the GII score, even though women's empowerment and educational level are low in comparison to men.

The Gender Development Index for the full sample of State parties is revealing when looking at the top three grades (C-E). Only rankings in group 1 and 2 are visible whereas in the lowest three grades (F-H) only six State parties achieve a ranking of 1, and all rankings including group 5 (the worst possible rank) are present with nine State parties (32% of grades F-H) achieving this lowest rank.

⁴⁸⁵ United Nations Development Programme, 'Gender Inequality Index (GII)' (2018) <<http://hdr.undp.org/en/content/gender-inequality-index-gii>> accessed 3 January 2019.

⁴⁸⁶ United Nations Development Programme, 'Gender Development Index (GDI)' (2018) <<http://hdr.undp.org/en/content/gender-development-index-gdi>> accessed 3 January 2019.

⁴⁸⁷ United Nations Development Programme, 'Gender Inequality Index (GII)' (n 485).

The Economist Intelligence Unit's Democracy Index 2017

The next two columns in the spreadsheet compare governments. There are two elements to the Economist Intelligence Unit's (EIU) Democracy Index, the individual countries rank, and which of the four classifications it is considered to fall into: Full democracies; Flawed democracies; Hybrid regimes; and Authoritarian regimes. There are five elements taken into consideration in order to create the index score:

electoral process and pluralism; civil liberties; the functioning of government; political participation; and political culture.⁴⁸⁸

This index is included as it gives background on the political situation in each of the top 16, as well as 'civil liberties' being one of the elements used to calculate the index score. Globally the index covers 167 countries. Nineteen (11%) are ranked as having full democracies, which can be contrasted with the top 16 where nine have full democracies forming (56%). Globally 57 (34%) are ranked as having flawed democracies; within the top 16 this is 5 (31%). Globally 39 (23%) are ranked as having hybrid regimes; this category does not appear within the top 16. Finally, globally 52 (31%) are ranked as having authoritarian regimes; only one (6%) of the top 16 were categorised as authoritarian. Excluding Seychelles - which was not included in the index as a 'micro-state' - and Kazakhstan, the remaining 14 of the top 16 all achieved a ranking in the top 36%.

The score for Kazakhstan is noticeable within the top 16 as its rank is significantly lower than any of the other State parties and is the only State party to be classified as having an authoritarian regime. State parties' reports are written by government departments; they are the primary sources of information upon which the Committee bases its comments and recommendations. Other sources of information including NGO and independent NHRI reports are also taken into account; however, the State party report is undeniably critical within the monitoring process. As previously noted, the ability or the willingness to be open and transparent by a government and to be able to be self-critical, or conversely only to portray what a government wishes to be seen, will undeniably shape the State party report and affect the monitoring process. Kazakhstan's low democracy index raises the question of the reliability of the information from the State party. Whether there is, in reality, an issue or merely a perception that there might be an issue with the reliability and transparency of the government report, the end result is a concern that the report may not be as rigorous as it could or should be.

⁴⁸⁸ The Economist Intelligence Unit, 'Democracy Index 2017' (2018).

The first observation about the difference between grades C-E in comparison to F-H is that 'Full democracies' are only found in the top three grades. Furthermore, though one each of 'Hybrid regime' and 'Authoritarian regime' is present within the top three grades, they are far more prevalent (54%) within the lowest three grades with a total of 15.

The World Health Organization

The World Health Organization (WHO) produces an annual compilation of health statistics that cover their 194 member states. The data in the four columns relating to WHO comes from their World Health Statistics 2017 report, which is produced to assist and monitor progress on the 'Sustainable Development Goals' (SDG).⁴⁸⁹

The first three indices relate directly to aspects of child health: child mortality, child stunting, and adolescent birth rates. The last WHO indicator in the spreadsheet is related to government spending on health.

Child mortality

The figure shown represents the under-five mortality rate per 1000 live births. In the report, the highest figure was 156. The SDG target is to reduce all countries to a rate lower than 25 per 1000 live births by 2030. The lowest score within the top 16, of 15.7 by Jamaica is already within this goal. However, there is relatively large distribution amongst the top 16. Ten State parties (63%) have an under-five mortality rate of under 5 per 1000 live births. Considering the full sample of 52 State parties, only one State party (Fiji) in the top three grades has a child mortality rate higher than 20 per 1000 live births, whereas 18 (64%) of the lowest three grades have a rate higher than 20 per 1000 live births and 6 (21%) higher than 50.

Child stunting

For a child to be statistically classified as suffering from stunting their height has to be 'below minus two standard deviations' for their age; fundamentally they are 'too short for their age', and it is a:

well-established risk marker for poor child development. Specifically, stunting before age two predicts poorer cognitive and educational outcomes in later childhood and adolescence.⁴⁹⁰

⁴⁸⁹ World Health Organization, 'World Health Statistics 2017: Monitoring Health for the SDGs, Sustainable Development Goals' (World Health Organization, 2017).

⁴⁹⁰ World Health Organization, 'WHO Global Nutrition Target: Stunting Policy Brief' (World Health Organization, 2014).

The figure in this column is a percentage; therefore Uruguay, with the highest figure in the top 16, has a rate of 10.7% of children suffering from stunting. Five other State parties all have rates of stunting; however, within the top 16, ten (63%) are recorded as having 0% of children suffering from stunting. In the WHO figures the highest percentage of stunting is 57.5%, and 98 countries had a percentage of 11 or higher. Within the top three grades 16 State parties have a percentage of 0 for child stunting, whereas only two achieve such a high score in the lowest three grades. Only one State party has a percentage over ten in the top three grades, whereas 23 (89%) has a percentage over ten in the lowest three grades, with one State party (Timor-Leste) having a percentage over 50.

Adolescent birth rate

The adolescent birth rate is shown as the number of adolescents (15-19 years of age) per 1000 women of the same age group who give birth. The SDG target is described as follows:

By 2030, ensure universal access to sexual and reproductive health-care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes.⁴⁹¹

The highest figure in the WHO data is an adolescent birth rate of 229 per 1000 adolescent women. Within the top 16, Uruguay and Seychelles stand out with rates higher than 60, whereas 6 State parties (38%) have a rate less than 10, and 12 (75%) less than 20 adolescent births per 1000 adolescent women. The difference between the top and lowest three grades is not as pronounced for adolescent birth rate as for child stunting. Nevertheless, there is still a predominance of 'blue' better rankings in the top three grades than in the lowest three grades. Only three State parties (Seychelles, Uruguay and Chile) in the top three grades have an adolescent birth rate higher than 50 per 1000 women of the same age group who have given birth. Fourteen of the lowest three grades (50%) have a rate higher than 50, and two State parties have a rate higher than 100: Cameroon with 119, and Zambia with 145.

Government spending on health

The final WHO set of figures relates to government spending in general and is not explicitly focused on children. However, it is still an indicator of government activity, and priority and the availability of good quality health care is essential for children to be able to develop and for improved outcomes. The figures in the 2017 WHO report shown are the: 'General government health expenditure as % of general government expenditure, 2014.'⁴⁹² In contrast to the previous figures, here the lower the figure, the smaller the spending on health, and

⁴⁹¹ World Health Organization (n 489) 65.

⁴⁹² *ibid* 74.

therefore the colour indicators in the spreadsheet are reversed, blue for higher spending. The highest percentage of spending on health as part of general government spending in the top 16 is by Switzerland with 22.7%; globally the WHO report shows the highest to be 27.9%. Ten of the top 16 (63%) show spending of over 15% whereas only two State parties (Seychelles and Jamaica) have a health spending of under 10%. The highest of all State parties in the full sample is New Zealand with 23.4% of government spending on health. The lowest is Timor-Leste with only 2.4%. As with the other indices considered in this spreadsheet, there is a visual separation between the top three grades and the lowest three grades, though for this index it is not as pronounced as some of the others. Only three State parties in the top three grades have a spending percentage less than 10%, whereas in the lowest three grades 14 State parties (50%) have a government spending on health of less than 10%.

Whilst no inference regarding causation is able to be drawn from such an illustrative spreadsheet as figure 5.10, there are thought-provoking correlations observable. For instance, taking an overview of the colour representation for each index, there is a visible change noticeable where the grade D grade E split occurs with a predominance of blue colours above and orange colours below. This observation is reinforced when all 52 State parties are included in the spreadsheet with these same indices, shown in figures 5.11 and 5.12.

5.7 Chapter conclusions

Chapter 5 focused on the research objective to investigate the legal framework of the better performing State parties to understand whether there are commonalities underpinning this better performance. The research question focused on therefore is, of the State parties achieving better implementation, what can be observed about their legal framework? A number of distinct observations can be made about the commonalities and the legal framework that underpins the top 16 State parties. This chapter has shown that the top 16 State parties come from around the globe, though Europe is most heavily represented. They cover different government and political systems, nevertheless Unitary rather than Federal systems dominate. Consequently, while the governmental structure of a State party (whether federal or unitary) can influence the implementation of rights, the method of incorporation can either eliminate or exacerbate the potential issues relating to the individual structure. The top 16 also includes a wide range of legal systems. However, they are predominantly civil law, which is not unsurprising as civil law systems are far more common globally.

One of the conclusions that can be drawn from this chapter focusing on the top 16 is that State parties with full direct incorporation achieve a better grade when comparing CO reports as they draw fewer negative comments and corresponding recommendations. However, there appears to be a clear differentiation between incorporation and implementation, and in some circumstances, automatic incorporation appears to be theoretical rather than actual. Therefore, understanding if a State party's full direct incorporation was automatic or deliberate can assist in understanding that State party's approach and commitment to children's rights. In addition, this chapter has illustrated that whilst the concept of a State party being monist or dualist is a useful starting point to understanding the State party's relationship to international law, it is important to still confirm the individual situation for each international instrument. This was illustrated by Germany, a State party generally referred to as monist, however, originally the CRC was declared as not being applicable domestically.

One observation about the top 16 sample is that many of the State parties have undergone significant political change or a significant financial crisis in the last 50 years. Therefore, one element to consider is whether public social crisis can act as a crucible for the need to reconsider their values and the norms of civil society. Can a crisis allow a State party to take stock and reinvent themselves, creating modern legal frameworks incorporating rights and freedoms?

The figure at 5.10 displaying indices on human rights and democracies demonstrates that the top 16 State parties are those with better human rights, less gender discrimination and rank relatively highly on democracy indexes. This distinction is even more visible in figures 5.11 and 5.12 where the State parties, with the highest two grades (11 State parties) illustrate the connectivity of children's rights within the broader context of respecting human rights. Here it can be seen that State parties that respect and incorporate children's rights are likely to respect other aspects of human rights.

The comparison of all 52 State parties in figures 5.11 and 5.12, presenting an overview of different but relevant indicators set out in the order of the rank achieved through this grading process, validates the innovative method as the indices result generally correlates with the study ranking. Where there are apparent anomalies, for instance Kazakhstan scoring higher in the cluster grading method than would be expected by this spreadsheet, this is explainable due to their legislative system of automatic incorporation reducing the comments and recommendations from the Committee. On the reverse side, for instance, Israel's indicators would appear to signpost that it should have performed better in the study sample. However, when considering their CO report, there are repeated concerns and recommendations in every

cluster around the fact that there is an apparent difference in how Jewish Israeli children are treated and how children from the Occupied Palestinian Territory are treated. This constant extreme discrimination brings down their grade for each cluster and therefore their overall grade.

The next chapter will investigate the recommendations to amend legislation from the Committee to the top three State parties, Iceland, Norway and Portugal, in more detail.

Chapter 6 – Analysis of the top three State parties

6.1 Introduction

Chapter 6 continues from chapter 5 in that it is focused on the research objective to investigate the legal framework of the better performing State parties to understand whether there are commonalities underpinning this better performance. The research questions focused on are firstly, of the State parties achieving better implementation, what can be observed about their legal framework? Secondly, what can be learnt about the Committee's interpretation of the Convention by analysing their Concluding Observations reports?

This chapter will investigate in more detail the top three State parties identified during the grading process in chapters 4 and 5: Iceland, Norway and Portugal. All three have fully incorporated the Convention; therefore, the starting point is the presumption, based on the analysis of the CO reports, that they are therefore likely to receive fewer comments or recommendations to amend their legislation from the Committee. In reality, the Committee has still found it necessary to make some recommendations about the nature of their legislation. The focus of the chapter will, therefore, be on the recommendations these State parties received from the Committee to amend their legislation in order to explore their legal implementation. This chapter will consider, the grades from the cluster analysis stage, an overview of the three State parties, a review of the recommendations to amend legislation, and end with observations and conclusions.

Investigating Iceland's and Norway's legislation is assisted by government websites and other organisations' websites having some (frequently many) pages translated into English. Additionally, those two governments provide English translations to many pieces of legislation, and other institutions such as the University of Oslo law department have a database of translated legislation.⁴⁹³ Government translations have been used wherever possible and where another source of translation has been used, it is specified. It is acknowledged that even government-provided translations of legislation do not have the status of original language versions of legislation and cannot, for instance, be relied upon in court, in which case any difference would be resolved in favour of the original language version.

Unfortunately, a similar situation does not exist for Portugal, with translations of legislation not being readily available. However, because Portugal's Concluding Observations (CO) report

⁴⁹³ University of Oslo Law Library, 'Translated Norwegian Legislation' <<https://app.uio.no/ub/ujur/oversatte-lover/english.shtml>> accessed 19 February 2019.

dates from 2014 and they have started the next cycle of reporting, they have submitted their next State party report, which was published in 2017. Due to the way that the reporting system has evolved this report is structured around replying to the CO of 2014 and for many clusters, this is the primary source of information as to how the situation and legislation in Portugal has or has not changed.

Where an official or reputable translation is not available ‘Computerised Translation’⁴⁹⁴ – hereafter referred to as (CT) has been used and this will be indicated by (CT) within the text. Translating Norwegian and Icelandic is easier than Portuguese which is done with caution as the complexity of the Portuguese sentence structure causes difficulty with computerised translations.

6.2 Grades from the cluster analysis

The top three scoring State parties were Iceland, Norway and Portugal. Their grades are displayed in figure 6.1. (in order of total score). Since the cluster analysis was undertaken, Norway has received a new updated CO report, and Portugal has submitted a new State party report. In this chapter, the newer, more up-to-date reports will be used where possible in order to understand the current framework within each State party. In figure 6.1 Norway appears twice, showing the results of both the 2010 and 2018 CO reports. The results of Norway’s more recent CO report will be considered in more detail.

Figure 6.1 Cluster Grades for Iceland, Norway and Portugal.

State	TOTAL	Av Score	Spread	Av Grade	1 GMI		2 DOTC		3 GP		4 CRF		5 VAC		6 FEAC		7 DHW		8 ELC		9 SPM		10 JJ		
					Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade
Iceland	84	8.4	4	C	D	7	A	10	C	8	A	10	A	10	C	8	C	8	C	8	D	7	C	8	
Portugal	83	8.3	4	C	D	7	A	10	C	8	A	10	C	8	D	7	C	8	C	8	B	9	C	8	
Norway 2010	79	7.9	4	D	C	8	A	10	C	8	C	8	C	1	8	D	7	B	9	D	7	D	7	D	7
Norway 2018	80	8	4	C	C	8	A	10	C	8	B	9	D	7	D	7	C	8	C	8	D	7	C	8	

All three achieved a grade of A for the definition of the child; in addition, Iceland and Portugal achieved a grade A for ‘Civil rights and freedoms’ (CRF), and Iceland a further grade A for ‘Violence against children’ (VAC). All three State parties achieved a grade spread of 4, as they all ranged from grade A to grade D. Because of the age of Norway’s original CO report, it did not have a separate cluster for VAC, which was instead included in the CRF.

⁴⁹⁴ The computerised translation used is Collins Dictionary online translation - <https://www.collinsdictionary.com/translator>

Because the CO report for Norway used in the grading process was from 2010 and subsequent to the grading process for the main sample it has now received the CO report from the next reporting cycle, this has been graded for comparative purposes. For section 6.3 where the recommendations to amend legislation are considered, all three State parties will be evaluated on the most up-to-date information as possible. Norway will, therefore, be considered on the basis the most recent CO report.

[Norway - Concluding Observations report 2018](#)

When comparing Norway's 2010 CO report to that of 2018, overall Norway's average grade improved from a D to a C. In three clusters the grade improved and in two it reduced. The changes to the grades and issues between these two reports are as follows.

[General Measures of Implementation](#)

In the 2010 CO report, Norway had a starting grade of C. This remains in 2018, giving the impression that there has been no improvement, but this does not appear to be the case, as upon viewing the number of issues the Committee commented on these have reduced. However, they are still within the banding of the same grade as can be seen in figure 6.1.

[General Principles](#)

Though the overall grade remains the same for GP, it is arrived at differently in each case. In 2010 the starting grade was B and had a multiplier of 1, whereas in 2018 the starting grade was a C but was not increased by a multiplier. The difference in the starting grade is due to different forms of discrimination being commented on by the Committee. Here it is necessary to take into account the changing perceptions of norms over time and the increasing focus within this time period both on how women are portrayed in the media and increasing awareness of issues surrounding gender stereotypes. For example, in the 2018 report, there are concerns about girls being oversexualized in the media and about 'Children who do not conform to gender stereotypes are subjected to discrimination, bullying and intimidation, and violence'.⁴⁹⁵ As previously discussed, issues relating to intersex children, for instance, are not noted within the CO reports before 2015. Therefore, there has been expansion over time of not only the types of discrimination but what social behaviours constitute discrimination. Hence it is not surprising that more recent reports consider discrimination in more depth.

⁴⁹⁵ CRC CO Norway 2018, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Norway, UN Doc CRC/C/NOR/CO/5-6' (United Nations 2018).

Civil Rights and Freedoms

In 2010 two issues were commented on: freedom of thought, conscience and religion; and protection of privacy. Neither of these was commented on in 2018, where the sole issue commented on was regarding nationality, and concerns arise out of the risk of children being stateless. The grade in 2010 was a C and in 2018 improves to a B.

Violence Against Children

In 2010 'violence against children' was a heading under CRF, with some of the issues that later were brought under the heading of VAC being found in the clusters 'family environment and alternative care' (FEAC) and 'disability, basic health and welfare' (DBHW). The presumption during the grading process was that State parties with these earlier reports, as the comments tended to be shorter, would likely have positive inflation to their grades for this cluster. As VAC was graded using paragraphs from CRF, FEAC and DBHW in 2010 in comparison as a whole cluster in 2018, it is reasonable to expect that it would now be a more exhaustive review of the situation. Whilst this presumption is correct in that the section within the report is much longer and has clear subheadings, in reality, the 2010 report mentions very similar issues to the 2018 report, the latter doing so in much more detail in addition to a few more issues being covered. Understandably, then, the overall grade - partly due to this difference of report format - changes from a C in 2010 to a grade D in 2018.

Family Environment and Alternative Care

From 2010 to 2018 the initial and final grades do not change; however, the issues commented on do show some variation with concerns about regional variations being mentioned in 2018.

Disability, Basic Health and Welfare

As discussed in chapter 4, DBHW is another example of a cluster where the evolution of the system can be seen. There is a change of the title from 'Basic health and welfare' to 'Disability, basic health and welfare' by 2012, even though art.23 'Children with a disability' was included in the earlier list of articles considered in the cluster. In addition, later CO reports also include art.33 'Drug abuse' in the list of cluster articles; however, though not expressly listed, drug abuse was still commented on in earlier reports.

A noticeable difference in Norway's two reports as a consequence of this evolution is the inclusion in the more recent report of a long paragraph on 'Children with disabilities', with various recommendations made for improvements. Accordingly, the grade for this cluster changes from a B in 2010 to a C in 2018.

Education, Leisure and Cultural Activities

In the 2010 report, Norway had concerns about regional variations which are not repeated in 2018; the new issues identified in 2018 include discrimination on the grounds of sexual orientation or gender identity. In the 2010 report, the only sub-heading was 'Education, including vocational training and guidance', whereas the 2018 report now includes a second sub-heading of 'Rest, leisure, recreation and cultural and artistic activities'. Despite the additional paragraph, due to the lower level of concerns and the nature of the elements commented on for the 2018 report the multiplier is 0; therefore, the grade has gone up from D to C.

Special Protection Measures

The concerns raised in the two reports while varying in content tend to fall under the same issue classification: 'asylum-seeking and refugee children and children in migration situations', which draws the most comments and recommendations. The grading results for the two reports look very similar, with the same overall grade of D achieved.

Juvenile Justice

The section in the 2010 report on Juvenile Justice is significantly longer than the one in the 2018 report. The concerns raised in the 2018 report are all focused on elements regarding children in detention. The grade for this cluster has risen from a D to a C.

Norway's average grade overall, therefore improved from a D to a C as the total score moved from 79 to 80.

6.3 Overview of Iceland, Norway and Portugal

Due to the similarities in the two Nordic legal systems, Iceland and Norway will be considered first for comparative purposes, followed by Portugal.

As discussed in chapter 5 all of the top three have civil law systems, Iceland and Norway identified as Nordic legal family and Portugal as Germanic.

Iceland's incorporation was identified at the time of the CO report to be 'partial direct' but it is now 'full direct'; Norway's and Portugal's incorporation was identified as fully direct.

The Convention, Optional Protocols, and human rights monitoring systems

With regards to the Convention, its optional protocols and other UN monitoring systems, the relevant ratification and reporting dates are shown in table 6.1.

Table 6.1 Relevant dates for Iceland Norway and Portugal relating to the Convention and other UN Human Rights monitoring systems.

Document	Iceland	Norway	Portugal
CRC ⁴⁹⁶ - ratified	1992	1991	1990
OP Armed Conflict ⁴⁹⁷ - ratified	2001	2003	2003
OP Sale of Children ⁴⁹⁸ - ratified	2001	2001	2003
OP Communications ⁴⁹⁹ - ratified	-	-	2013
Concluding observations report	2012	2010/18	2014
Core document year	1993	2017	2014
Universal review document year	2016	2014	2014
State party report year	2010	2009/17	2012

The Optional Protocol to the Convention on the Rights of the Child on a communications procedure is the newest of the optional protocols, the resolution having been adopted by the General Assembly in 2011 and entering into force in 2014.

Iceland

As noted in table 6.1, Iceland has not ratified the optional protocol on a communications procedure. Within the National Report⁵⁰⁰ submitted under the Universal Periodic Review procedure (UPR) it is noted that this optional protocol has not been signed or ratified. It is conspicuous by its absence in the 'Report of the Working Group on the Universal Periodic

⁴⁹⁶ United Nations, 'Status of Treaty, Chapter IV Human Rights Document 11, The Convention on the Rights of the Child, New York 20th November 1989 Accessed 31-10-2018', (n 119).

⁴⁹⁷ United Nations, 'Status of Treaty Chapter IV Human Rights Document 11b, Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. New York 25th May 2000', (2018) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&clang=_en> accessed 31 October 2018.

⁴⁹⁸ United Nations, 'Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Treaty Collection, Chapter IV Human Rights Document 11c, New York 25th May 2000' (n 31).

⁴⁹⁹ United Nations, 'Status of Treaty Chapter IV Human Rights Document 11d, Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure. New York, 19 December 2011', (2018) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&clang=_en> accessed 31 October 2018.

⁵⁰⁰ Iceland, 'National Report Submitted for Universal Periodic Review - Iceland - UN Doc. A/HRC/WG.6/26/ISL/1/1' (n 401) para 8,69.

Review’ where it is not included within ‘The recommendations formulated during the interactive dialogue/listed below have been examined by Iceland and enjoy the support of Iceland’,⁵⁰¹ nor within the recommendations that Iceland would respond to at a later date, nor within the list titled ‘The recommendations below did not enjoy the support of Iceland and would thus be noted’.⁵⁰²

Therefore, though it is possible to be sure that Iceland has not ratified the OP, whether it is under consideration has not been communicated.

Norway

As indicated in table 6.1 Norway has not ratified the optional protocol on a communications procedure. In the National report submitted to the Committee, it was recorded that:

In September 2016, the Government submitted a report to the Storting (Parliament) on the communications procedures under the ICESCR, the CRC and the CRPD. Based on a thorough assessment, the Government has concluded that it will not present a proposal to accept these procedures now.⁵⁰³

Therefore, not only has Norway not ratified this OP, there is currently no plan to ratify it.

Portugal

Portugal has ratified all of the OP to the Convention including the communications procedure in 2013.

Human rights and health indicators

In chapter 5, the top 16 and the full sample of 52 State parties were compared against nine Human rights and Health indicators. Figure 6.2 illustrates these indices for the top three.

⁵⁰¹ United Nations Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review - Iceland - UN Doc. No. A/HRC/34/7’ (United Nations 2017) para 8.

⁵⁰² *ibid* 24.

⁵⁰³ Norway, ‘Fifth and Sixth Periodic Report of the State Party - Norway - UN Doc. CRC/C/NOR/5-6’ (United Nations 2016) para 8.

Figure 6.2. Human rights and health indices for the top three State parties.

	Iceland	Norway	Portugal
UN HDI Rank (2018)	6	1	41
UN Gender Inequality Index (2018)	9	5	19
UN Gender Development Index Group (2017)	2	1	1
The Economist Intelligence Unit's Democracy Index 2017	2	1	26
EIU - DI - Classification	Full	Full	Flawed
WHO - Child Mortality - per 1000 live births	2	2.6	3.6
WHO - Stunting among children %	0	0	0
WHO - Adolescent birth rate - per 1000 women aged 15-19 (2005-2014)	7.1	5	10.5
WHO - % of Gov. spending on health	15.7	18.2	11.9

In comparison to the whole sample in chapter 5 the top State parties generally achieve noticeably higher rankings in these indices than the lower graded State parties. When considering just the top three, Portugal has a noticeably lower 'Human Development Index' rank, a lower EUI 'Democracy index' and is classed as having a flawed democracy. In 2017, only 19 countries achieved the status of 'full democracy'. The democracy index is 'based on five categories: electoral process and pluralism; civil liberties; the functioning of government; political participation; and political culture'.⁵⁰⁴ For countries to be classed as having a 'full democracy' such as Iceland and Norway, they are:

Countries in which not only basic political freedoms and civil liberties are respected, but which also tend to be underpinned by a political culture conducive to the flourishing of democracy. The functioning of government is satisfactory. Media are independent and diverse. There is an effective system of checks and balances. The judiciary is independent and judicial decisions are enforced. There are only limited problems in the functioning of democracies.⁵⁰⁵

Whereas for a country to be classified as having a flawed democracy such as Portugal:

These countries also have free and fair elections and, even if there are problems (such as infringements on media freedom), basic civil liberties are respected. However, there are significant weaknesses in other aspects of democracy, including problems in governance, an underdeveloped political culture and low levels of political participation.⁵⁰⁶

Whilst ranking on indices such as this democracy index is not an absolute indication of how a State party will respect and implement children's rights, it is less surprising when a State party with a reputation for very high rankings in a democracy indices, high gender equality, and good health services, performs well in an analysis such as this study. When a State party such as Portugal - which in reality has relatively high global rankings, though not generally in the top

⁵⁰⁴ The Economist Intelligence Unit (n 488) 62.

⁵⁰⁵ *ibid* 64.

⁵⁰⁶ *ibid*.

twenty - achieves a high grade in a study such as this, then understanding how they have achieved that respect and implementation of children's rights may provide additional insights to how other State parties can replicate this achievement.

Children's Ombudspersons

All three State parties have a Children's Ombudsperson⁵⁰⁷ noted within the CO reports to be Paris Principles compliant. Iceland's and Norway's ombudspersons are also a member of European Network of Ombudspersons for Children (ENOC) whereas Portugal's is not.

Iceland

In 2012 Iceland received the following comment and recommendation regarding its Ombudsperson for Children under the subheading of Independent monitoring:

16. While welcoming the increase in resources provided to the Ombudsman for Children in 2007, the Committee notes the State party's information that the Ombudsperson is not entitled to receive individual complaints. It is also concerned that there is a complicated system of complaints mechanisms established under various Government agencies.

17. The Committee recommends that the State party consider giving the Ombudsman for Children the competence to handle individual complaints and ensure that this mechanism is effective and accessible to all children, especially to children in vulnerable situations, as well as raise the public's, especially children's awareness of such complaints procedure. Drawing attention to its general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child, the Committee also calls upon the State party to ensure that this complaints mechanism be provided with the necessary human, technical and financial resources to ensure its independence and efficacy.⁵⁰⁸

According to the webpages of the '*Umboðsmaður barna*' (Ombudsman for Children) contained within the 'information for foreign languages,' the role of the Ombudsman is described as:

⁵⁰⁷ Different reports and documents use the alternative terms of ombudsperson or ombudsman, here the term used is ombudsperson unless it is a direct quote or in reference to a quote in which case the term used is repeated.

⁵⁰⁸ CRC CO Iceland 2012 (n 215) paras 16–17.

to further the wellbeing of children and to look after their interests, rights and needs vis-à-vis public as well as private parties in all walks of life. The Ombudsman for Children is expected to be a protector of all children up to the age of 18.⁵⁰⁹

Further, it is made clear what is considered as 'falling outside the scope of the Ombudsman for Children':

The Ombudsman for Children does not deal with disputes between individuals. Nor does the Ombudsman for Children take up the cases of individual children of which the legislature has entrusted the solution to others, such as the public authorities, the courts of law or the Althing Ombudsman.^{510,511}

Therefore, it does not appear that there has been significant change since the 2012 CO report; in addition in the more recent report to UPR there was not any reference to any proposed changes to the remit of the Ombudsman for Children.

Norway

In the CO report of 2018 Norway received the following comment and recommendation under the subheading of 'Independent monitoring':

The Committee welcomes the establishment in 2015 of a national human rights institution and its compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). It also welcomes the additional funds allocated to the Ombudsman for Children. It is concerned, however, about the absence of any institution mandated to receive complaints about violations of the rights of the child.

With reference to its general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and of the rights of the child, and in line with its previous recommendations (CRC/C/NOR/CO/4, para. 14), the Committee recommends that the State party take measures to ensure that the Ombudsman for Children and/or the national human rights institution are entrusted with the mandate to receive, investigate and address complaints by children, in all areas that concern them, in a child-sensitive manner.⁵¹²

⁵⁰⁹ Umboðsmaður Barna, 'Ombudsman for Children - Upplýsingar á Erlendum Tungumálum - English - Wwww.Barn.is' (2014) <<https://www.barn.is/um-empaettid/upplysingar-a-erlendum-tungumalum/enska/>> accessed 21 January 2019.

⁵¹⁰ *ibid.*

⁵¹¹ The role of the Althing Ombudsman is to monitor the administration of the State and local authorities and safeguard the rights of the citizens vis-à-vis the authorities. Umboðsmaður Alþingis, 'The Althing Ombudsman - Information in English' (2017) <<https://www.umbodsmadur.is/en>> accessed 21 January 2019.

⁵¹² CRC CO Norway 2018 (n 495).

Paragraph 14 of the CO report from 2010 as mentioned above reads:

The Committee recommends that the State party consider providing the Ombudsman with the mandate to receive complaints from children and the resources to follow up complaints in a timely and effective manner.⁵¹³

The Ombudsman for Children (*Barneombudet*) Act dates from 1981⁵¹⁴ and is translated as either 'Commissioner' or 'Ombudsman' depending on the document. The official record of the legislation notes that the act was most recently amended in 2009; a translation of the most up-to-date version is not available. However, the 2009 amendments are relatively narrow and, for instance, amend the length of time a Commissioner can be appointed for.

The critical section in relation to the Committee's recommendation is Section 3 which was updated in 2009. An unofficial translation of the current form of this section reads:

The duties of the Ombudsman is to promote children's interests vis-à-vis the public and private sector, and to monitor the development of children's upbringing.

The Ombudsman must, in particular:

- a) On their own initiative or as a hearing body, safeguard the interests of children in connection with planning and investigation in all fields;
- b) Ensure that legislation relating to the protection of the interests of children is followed, including whether Norwegian law and administrative practice are in accordance with the obligations Norway has under the UN Convention on the Rights of the Child;
- c) Propose measures which can strengthen children's safety under the law;
- d) Propose measures that can resolve or prevent conflicts between children and society;
- e) Ensure that sufficient information is provided to the public and private about the rights of children and the measures they need.

The Ombudsman may act on their own initiative or upon request from other people. The Ombudsman decides whether an application gives sufficient grounds for action.⁵¹⁵

Not only is it clear by its omission from the legislation that the Ombudsman does not have the authority to hear individual complaints, in Norway's State party report their stance on this point is unequivocal:

The Government has decided that the Ombudsman's mandate will not be expanded to cover the consideration of individual complaints. Such an expansion would give the

⁵¹³ Norway, 'Forth Periodic Report of the State Party - Norway - UN Doc. CRC/C/NOR/4' (United Nations 2009) para 14.

⁵¹⁴ [Norway] - Lov om barneombud (Barneombudsloven) No.5/1981 (Amended up to and including 2009) 1981.

⁵¹⁵ *ibid* unofficial translation of Section 3.

Ombudsman the formal authority to make decisions concerning individual cases and would require administrative responsibilities in relation to one or more specific Acts. The Ombudsman is independent and currently enforces no laws. The current arrangement allows the Ombudsman to become involved in individual cases and to give opinions and address these to the relevant authority. Expanding the Ombudsman's mandate could diminish its important role as a driving force behind more fundamental questions concerning the protection of children's interests. On the other hand, the Ombudsman will be strengthened such that it can act as a 'watchdog' for children in cases of bullying and so it can help children and parents in complicated cases. The Ombudsman will remain an independent ombudsman for all children, but will be enhanced so that it is better able to provide assistance.⁵¹⁶

Therefore, while it has been clarified that there is no intention to expand the role of the Ombudsman to receive individual complaints, observing how the role is expanded to act as described as a 'watchdog' regarding bullying, and how it will be 'enhanced so that it is better able to provide assistance'⁵¹⁷ may generate valuable information regards acting as a watchdog for the issue as bullying, the complexity of which is increased by contemporary social media platforms. It will also be interesting to see whether this enhancement would lead to improvements in the comments from the Committee.

Portugal

In the CO report of 2014 Portugal received the following comment and recommendation under the heading of 'Independent monitoring':

the Committee is concerned about the level of resources allocated to the Office of the Ombudsperson for it to discharge its mandated functions as well as awareness of the mandate of the Ombudsperson among the general public and children, in particular.

20. Taking into account general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child, the Committee recommends that the State party provide the Office of the Ombudsperson and the Department on Children, Elderly Persons and Persons with Disabilities with adequate human, technical and financial resources or the effective implementation of their mandated functions. The Committee also encourages the State party to raise awareness among the general public, and children in particular, of their right to file a complaint directly with the

⁵¹⁶ Norway, 'Fifth and Sixth Periodic Report of the State Party - Norway - UN Doc. CRC/C/NOR/5-6' (n 503) para 18.

⁵¹⁷ *ibid.*

Ombudsperson, and to ensure that the procedures are accessible, simple and child friendly.⁵¹⁸

In this instance, the concern and one part of the recommendation are regarding resources not legislation. The issue regarding resources is not responded to in the new State party report; as this is linked with the financial situation since the 2008 economic crash, this will only change as the economy improves sufficiently for the government to increase spending. This highlights the situation of wealthier State parties having greater ability to achieve better compliance. The second element to the recommendation is about raising awareness and again is not a recommendation for changes to legislation.

The Portuguese system has a different framework to other State parties as the Children's Ombudsperson does not form a separate organisation; instead it is a function of a larger department, as their newer State party report explains:

Issues concerning the rights of children, the rights of elderly persons and the rights of persons with disabilities are addressed by the Children, Elderly Persons and Persons with Disabilities Unit (N-CID) of the Ombudsman.⁵¹⁹

This may explain why Portugal is not a full member of ENOC⁵²⁰ as the Child's Ombudsperson is not a separate role; it is, however, a member of the European Network of National Human Rights Institutions (ENNHRI)⁵²¹. The Portuguese Ombudsperson's remit is quite different from the Norwegian and Icelandic, as receiving and investigating complaints is a primary aspect of the office, as explained on the English version of the website:

The Ombudsman can act on his own initiative, but as a rule it receives and analyses citizens' complaints, listens to the entities concerned and seeks to deal with all matters quickly and informally. In this process, it has the power to request all information and to carry out the investigations and inquiries that it deems necessary, and may carry out inspection visits, without prior notice, to any sector of the Public Administration. Unjustified breach of the duty to cooperate constitutes a crime of disobedience.⁵²²

⁵¹⁸ CRC CO Portugal 2014 (n 441) paras 19–20.

⁵¹⁹ Portugal, 'Fifth and Sixth Periodic Reports of State Parties - Portugal - UN Doc. CRC/C/PRT/5-6' (n 442) Response to para.20.

⁵²⁰ ENOC Secretariat (n 479).

⁵²¹ ENNHRI, 'List of Members - European Network of National Human Rights Institutions', (2017) <<http://www.ennhri.org/List-of-members>> accessed 19 February 2019.

⁵²² Provedor De Justiça, 'Provedor De Justiça - Página Inicial - What We Do -FAQ' (2019) <<http://www.provedor-jus.pt/?idc=141>> accessed 19 February 2019.

The second element of the Committee's recommendation is about raising awareness of the complaint procedure; and the subsequent State party report includes the information that:

Since 2012, the Ombudsman runs a child-friendly webpage on the role, functions and activities of the Ombudsman in the area of children's rights (<http://criancas.provedor-jus.pt/index.php>).

Special mechanisms of access of children to the Ombudsman were created, including a special complaint mechanism and a children's telephone line. The Ombudsman's website was overhauled in 2015, with the introduction of a full English version and a specific webpage for the National Preventive Mechanism. A Facebook page was also created, in 2016, (<https://www.facebook.com/Provedor-de-Justiça>) with regular posts, which is also an important tool to inform people regarding their right to file a complaint.⁵²³

Whether the resource levels and the public awareness of the complaint procedure have sufficiently improved to meet the expectations of the Committee remains to be seen. Nevertheless, as noted these recommendations are not for changes of, or improvements to, the relevant legislation.

6.4 Review of recommendations to amend legislation for Iceland, Norway and Portugal

The aforementioned full legal incorporation of the Convention by the top three State parties creates a starting point of a presumption of legal frameworks compliant with the Convention. To test this presumption, the Committee's comments that are critical of legislation and the recommendations to amend legislation will be examined. This exploration will consider whether the legislation deviates from the Convention, or if the recommendation goes further than the Convention.

In order to investigate the relevant legal provisions, the comments and recommendations regarding legislation made by the Committee in the CO reports were considered.

The one exception to this framework is cluster 2 'Definition of the Child' where all three State parties achieved a grade A, consequently not receiving any comments or recommendations to improve. However, upon further investigation, it is apparent that they should not have achieved

⁵²³ Portugal, 'Fifth and Sixth Periodic Reports of State Parties - Portugal - UN Doc. CRC/C/PRT/5-6' (n 442) Responce to para.20.

a grade A. For this cluster the legislation for why a grade A was incorrect will be set out in section 6.4.

For this comparison the newest CO report for Norway, and the more recent State party report for Portugal will be considered on the basis that they are more recent and will provide more up-to-date information. As Norway's CO report is so recent, it is to be expected that in many cases Norway may not have had time to enact any changes recommended by the Committee.

Recommendations for legal improvements

The comments and recommendations by the Committee can be categorised as relating the State party's legislation or as a recommendation regarding an international instrument, or both. Further, the basis for the recommendation can be categorised into one or more of the following categories:

- ❖ Not in line with the Convention or an Optional Protocol;
- ❖ An issue with implementation;
- ❖ Not in line with a GC (general comment);
- ❖ Not in line with a different international instrument;
- ❖ The basis for recommendation is unclear.

Finally, the current situation can be characterised as:

- ❖ The recommendation has been undertaken (Rectified);
- ❖ The legislation did not need amending;
- ❖ The concern raised is still an issue with regards to the CRC;
- ❖ The concern raised is still an issue with regards to an international instrument;
- ❖ The situation is unclear as to whether it has been rectified or is still an issue.

Iceland

Figure 6.3 illustrates the comments and recommendations received by Iceland using the categories above.

Figure 6.3 Breakdown of comments received by Iceland regarding legislation.

CR Number	Cluster	Subheading	State Party	Comment		Basis for 'issue'				Situation now					
				Legislation	International Instrument	Not in line with CRC /OP	Issue with implementation not in line with GC	Not in line with other international instrument	Basis for recommendation unclear	Rectified	Did not need amending	Still an issue - CRC	Still an Issue Int. Instrument	Unknown if rectified	
I-CR/1	GMI	Reservations	Iceland		1	1				1					
I-CR/2	GMI	Legislation	Iceland	1			1			1					
I-CR/3	GP	Respect for the views of the child'	Iceland	1			1						1		
I-CR/4	FEAC	Family Environment'	Iceland		1			1					1		
I-CR/5	DBHW	Children with disabilities	Iceland		1			1					1		
I-CR/6	SPM	Children affected by armed conflict'	Iceland	1					1		1				
I-CR/7	SPM	Economic exploitation, including child labour'	Iceland	1	1				1		1				
I-CR/8	SPM	Sale and trafficking	Iceland	1		1				1					
I-CR/9	JJ	Reservation	Iceland	1		1				1					
I-CR/10	JJ	Child victims and witnesses of crimes'	Iceland	1				1	1					1	
I-CR/11	Additional	Ratification of International instruments	Iceland		1			1		1			1		
	Total			7	5	3	0	2	4	3	5	2	0	4	1

The first column attributes an identifying reference for each comment for instance, 'I-CR/1' identifies 'Iceland - comment recommendation number 1'.

Iceland received comments or recommendations relating to legislative change under 11 subheadings. Seven of these were directly about national legislation and five about international instruments. Only three were identified as having a basis (or partial basis) for being not in line with the CRC or one of its Optional Protocols (I-CR/1, 8 and 9). All of these, upon investigation, were found to have been amended and would now appear to be in line with the Convention. In addition, there were two relating to not being in line with general comments (I-CR/2 and I-CR/3). The remaining eight were already in line with the Convention as it stands and were being made under the Committee's broader interpretation from general comments, other international instruments and in three circumstances the basis for the recommendation was unclear. In two of these, the legislation did not appear to need amending. In one instance as the recommendation was relating to more than one international instrument, where one had

been subsequently ratified but others not, this is demonstrated with two of the 'situation now' columns identified.

The five comments or recommendations identified as having a basis (or partial basis) for being not in line with the CRC or one of its Optional Protocols or not being in line with a general comment are set out below (I-CR/1,2,3,8, and 9), the remaining six (I-CR/4, 5,6,7,10, and 11) are set out in appendix A-41-71.

General Measures of Implementation – I-CR/1 and I-CR/2

Under GMI Iceland received comments on two aspects relating to legislation, firstly regarding reservations:

The Committee welcomes the withdrawal of the reservation concerning article 9 of the Convention in February 2009. The Committee regrets, however, that the State party has not withdrawn its reservation concerning article 37.

The Committee reiterates the recommendation made in its previous concluding observations (CRC/C/15/Add.203, para. 5) that the State party guarantee by law the separation of detained children and adults, in accordance with article 37 (c) of the Convention and withdraw its reservation concerning article 37.⁵²⁴

Moreover, in addition to the specific comment on the reservation was the repetition under the heading 'legislation':

The Committee appreciates the legislative actions that are being undertaken by the State party to strengthening the constitutional, legal and normative framework related to the implementation of the Convention. The Committee recommends that, once the reservation concerning article 37 has been withdrawn, the State party take the necessary steps to incorporate the Convention and its Optional Protocols into its domestic laws.⁵²⁵

Pertaining to the reservation (previously noted in 5.4) in 2015 the Government announced the decision to withdraw this reservation. Further, as to the recommendation to incorporate the Convention and Optional Protocols into domestic legislation - excluding the OP on a Communications Procedure as discussed in 6.2 - the Convention and two of the Optional Protocols were incorporated into Icelandic law in 2013 in '*Lög um samning Sameinuðu þjóðanna um réttindi barnsins*',⁵²⁶ unofficially translating (CT) to 'Law on the United Nations Convention on the Rights of the Child', which came into force 13th March 2013. Unfortunately

⁵²⁴ CRC CO Iceland 2012 (n 215) paras 9–10.

⁵²⁵ *ibid* 11.

⁵²⁶ [Iceland] - Law on the Convention on the Rights of the Child, Law No. 19/2013 '*Lög um samning Sameinuðu þjóðanna um réttindi barnsins* 2013 nr. 19 6. mars'.

for this study, this particular act is only available in Icelandic; however, it appears to be a direct translation and incorporation of both the Convention and the two Optional Protocols.

Therefore, Iceland has acted in accordance with this recommendation with the exception of the third optional protocol which it has not signed, ratified, or incorporated.

General Principles – I-CR/3

For the ‘General Principles’ cluster, the subheading under which Iceland received a comment and correlating recommendation was ‘Respect for the views of the child’:

The Committee also appreciates that under the Youth Act municipal authorities may establish youth councils to advise authorities on youth affairs. Nevertheless the Committee remains concerned that there is no legal requirement that such councils be established nor any procedures and regulations governing the functioning of such councils, leaving them at the discretion of municipalities. The Committee is also concerned that all children may not have equal opportunity to express their views.

In the light of the Committee’s general comment No. 12 (2009) on the right of the child to be heard, the Committee recommends the State party to adopt regulations governing the functioning, role and mandate of youth councils and to ensure that children’s views are given due consideration in courts, schools, relevant administrative and other processes concerning children and in the home, including children with disabilities, immigrant children or children in other vulnerable situations.⁵²⁷

The act mentioned in the CO report is the Youth Act No.70/2007. The English translation available from the government website does not give any indication that this act has been subsequently amended; and therefore, the presumption is that the act is the same today as it was at the time of the CO report. Thus, considering the details of the recommendation, starting with the Convention, there is no recommendation or obligation under art.12 regarding children’s or youth councils and Article.12(2) only stipulates that:

For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.⁵²⁸

Therefore, due to the wording above, the comment and recommendation do not highlight a legal incompatibility with the incorporation of the Convention into Icelandic legislation.

⁵²⁷ CRC CO Iceland 2012 (n 215) paras 28–29.

⁵²⁸ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 12(2).

However, the concern raised reads ‘no legal requirement that such councils be established nor any procedures and regulations governing the functioning of such councils, leaving them at the discretion of municipalities’⁵²⁹. Taking into account the corresponding recommendation being worded ‘In the light of the Committee’s general comment No. 12 (2009)’ and thus turning to GC No.12 in order to clarify the Committee’s comments, it can be seen that under the subheading of ‘Core obligations of State parties’ the Committee gave the following guidance:

The child’s right to be heard imposes the obligation on States parties to review or amend their legislation in order to introduce mechanisms providing children with access to appropriate information, adequate support, if necessary, feedback on the weight given to their views, and procedures for complaints, remedies or redress.

In order to fulfil these obligations, States parties should adopt the following strategies:

...

Ensure appropriate conditions for supporting and encouraging children to express their views, and make sure that these views are given due weight, by regulations and arrangements which are firmly anchored in laws and institutional codes and are regularly evaluated with regard to their effectiveness.⁵³⁰

In addition to this general guidance on obligations, there is specific reference in GC No.12 to the creation of children’s councils in four circumstances; these are under the subheadings of: ‘In alternative care’; ‘In health care’; ‘In education and school’; and under ‘In national and international settings’.

Therefore, the Acts specifically mentioned under the GP cluster raises an issue with Iceland’s legislation not being in line with a general comment, rather than being incompatible with the actual Convention.

Special Protection Measures – I-CR/8

Within the SPM cluster, Iceland received specific comments and recommendations under three subheadings relating to legislation, one of which can be categorised as not being in line with the Convention.

The third and final recommendation including reference to legislation for SPM related to the Penal Code and was under the subheading ‘Sale and trafficking’:

The Committee welcomes the significant efforts made by the State party by introducing amendments to the Penal Code whereby the use of prostitution, in particular involving

⁵²⁹ CRC CO Iceland 2012 (n 215) para 28.

⁵³⁰ UN Committee on the Rights of the Child, ‘General Comment No.12 (2009) on the Right of the Child to Be Heard - UN Doc. CRC/C/GC/12’ (n 187).

children, is criminally punishable, and the adoption of a National Plan of Action against Trafficking in 2009. Nevertheless, the Committee reiterates its concern (CRC/C/OPSC/ISL/CO/1) about the principle of “double criminality” in article 5 of the General Penal Code, which requires that a person who has committed a serious or lesser offence abroad can be punished in Iceland only if the act is punishable under the law of the country in which it was committed. The Committee is concerned that this requirement limits the possibility of the prosecution of offences on sale, prostitution and pornography involving children, and therefore limits the protection of children against these crimes.

The Committee reiterates its previous recommendation that the State party amend its legislation in order to abolish the requirement of double criminality for prosecution in Iceland of offences committed abroad.⁵³¹

The Committee’s recommendation is based on the Optional Protocol on the Sale of Children, which includes in Article 4(2) that:

Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:

(a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;⁵³²

Turning to Iceland’s legislation, it is notable that Article 5 of the Penal Code was amended by law 58/2012 subsequent to the State Party report and Committee’s CO report. The first part of article 5 initially appears not to have been amended and reads:

Punishment shall be imposed according to the Icelandic Penal Code for offences committed abroad by Icelandic citizens or by persons resident in Iceland as follows.

1. If the offence was committed in a place outside the criminal jurisdiction of other states under international law, provided that it was also punishable at the time under the law of the defendant’s home state.

2. If the offence was committed in a place under the criminal jurisdiction of another state under International law, provided it was also punishable at the time under the law of that state.⁵³³

⁵³¹ CRC CO Iceland 2012 (n 215) paras 54–55.

⁵³² United Nations, ‘Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Treaty Collection, Chapter IV Human Rights Document 11c, New York 25th May 2000’ <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en> Article 4(2).

⁵³³ [Iceland] - The General Penal Code (Hegningarlögum) No.19/1940 (Amended up to and including 1.44/2015) 1940.

However, the relevant part of the addition to the article reads:

In the instances covered in item 2 of the first paragraph, punishment shall be imposed under the Icelandic Penal Code for offences committed by a person who was an Icelandic citizen, or was domiciled in Iceland, at the time of the deed, which are covered by the second, third or fourth paragraph of Article 206, the first paragraph of Article 210 b, Article 218 a and item 2 of the first paragraph of Article 227 a, and were committed abroad even if the deed is not considered a punishable offence under the laws of the state involved. The same shall apply to violations committed against a child under the age of 15 which come under Article 194, 197-198, 200-201 and the first paragraph of Article 202, and offences under the first paragraph of Article 210 a, providing they involve the production of items listed there.⁵³⁴

It is necessary therefore to understand what offences are covered by the articles specified. The sections of articles referred to in Art.51 can be summarised as:

- ❖ 2nd, 3rd, and 4th paragraph of Article 206 – cover offences relating to prostitution on the part of a child under the age of 18
- ❖ 1st paragraph of Article 210 b – covers offences relating to the creation of indecent images of children
- ❖ Article 218 a – covers offences relating to female genital mutilation
- ❖ item 2 of the 1st paragraph of Article 227 a – covers offences relating to human trafficking individuals under the age of 18.
- ❖ Article 194 – covers offences of rape
- ❖ Articles 197-198 – cover sexual intercourse in specific circumstances of abuse of power
- ❖ Articles 200-201 – cover incestuous offences
- ❖ 1st paragraph of Article 202 –covers the offence of sexual intercourse with someone under the age of 15
- ❖ 1st paragraph of Article 210 a, providing they involve the production of items listed there – covers offences relating to possession of indecent images of children including adults posing as children and cartoons or other virtual images.

Whilst Iceland has not wholly amended its legislation in order to abolish the requirement of double criminality for prosecution in Iceland of offences committed abroad, it has done so for offences relating to the sale of, the prostitution of, pornography of, and other sexual offences involving children. Therefore, the concern and recommendation made by the Committee has been negated.

⁵³⁴ *ibid.*

The first recommendation under JJ relates directly to not being in line with the Convention, precisely to a reservation:

The Committee notes that the agreement between the State Prison and Probation Administration and the Governmental Agency for Child Protection on the imprisonment of persons under 18 years of age falls short of a legal guarantee of separation from adults, as contained in article 37 (c) of the Convention under which the State party has made a reservation.⁵³⁵

Firstly, as already noted, Iceland withdrew its reservation to article 37(c) in 2015. In addition, the precise wording of article 37(c) is relevant:

...every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so...⁵³⁶

In line with this wording, as noted in the State party report to UPR in 2016:

According to recent legislative changes children, i.e. individuals between 15 and 17 years old, serve their sentences in facilities which fall under the auspices of the Government Agency for Child Protection, unless there are particular reasons that they serve in prison. Children would only serve their sentence in prison if experts find it to be in the child's best interest, in accordance with the UN Convention on the Rights of the Child. However, a child has never served in prison in Iceland according to this provision.⁵³⁷

What is not explicitly expressed is the degree of separation, for instance from violent offenders, available for a child serving in prison. It is also necessary to take into consideration the further information in the report to the UPR that Iceland has only approximately 150 prisoners,⁵³⁸ and a new prison facility has been built which separately houses both men and women, though allowing the genders to mix under specific circumstances with the exception of violent or sexual offenders.⁵³⁹ Therefore, Iceland's current situation is now in accordance with the Convention.

Of the five comments or recommendations to amend legislation, which relate directly to the Convention, an Optional Protocol or general comment, only one I-CR/3 under GP 'respect for

⁵³⁵ CRC CO Iceland 2012 (n 215) para 56.

⁵³⁶ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 37(c).

⁵³⁷ Iceland, 'National Report Submitted for Universal Periodic Review - Iceland - UN Doc. A/HRC/WG.6/26/ISL/1/1' (n 401) para 109.

⁵³⁸ *ibid* 112.

⁵³⁹ *ibid* 110.

the views of the child' remains outstanding. The most common basis for comments and recommendations to Iceland was that legislation was not in line with other international instruments rather than the CRC.

Norway

As illustrated in figure 6.4 in the CO report of 2018, Norway received comments or recommendations relating to legislative changes under ten subheadings. Only three were identified as having a basis (or partial basis) for being not in line with the CRC or one of its Optional Protocols (identified as N-CR/6, 7 and 9. As this CO report was published less than a year before this analysis it is not surprising that these remain an issue. Three further comments were identified as issues with implementation, and therefore the legislation did not need amending (N-CR/1, 2 and 5). One set of comments under the OP on the Sale of Children (N-CR/9) was particularly complex and resulted in three indicators as to the current situation.

Figure 6.4 Breakdown of comments received by Norway regarding legislation.

CR Number	Cluster	Subheading	State Party	Comment		Basis for 'issue'				Situation now					
				Legislation	International Instrument	Not in line with CRC /OP	Issue with implementation not in line with GC	Not in line with other international instrument	Basis for recommendation unclear	Rectified	Did not need amending	Still an issue - CRC	Still an Issue Int. Instrument	Unknown if rectified	
N-CR/1	GP	Best Interest of the Child	Norway	1			1				1				
N-CR/2	GP	Respect for the views of the child	Norway	1			1				1				
N-CR/3	CRF	Nationality	Norway	1				1					1		
N-CR/4	VAC	Sexual exploitation and abuse	Norway	1				1					1		
N-CR/5	SPM	Children belonging to minority groups and indigenous children	Norway	1			1				1				
N-CR/6	JJ	Administration of juvenile justice - Reservation	Norway	1	1	1	1	1				1			
N-CR/7	JJ	Administration of juvenile justice - Youth sanction	Norway	1	1	1						1			
N-CR/8	Additional	Ratification of International instruments	Norway		1			1					1		
N-CR/9	Additional	OP- Sale of Children	Norway	1		1			1		1	1		1	
N-CR/10	Additional	OP - Armed conflict	Norway	1					1		1				
	Total			9	3	3	3	1	4	2	0	5	3	3	1

As with the case of Iceland, many of the recommendations were made under the basis of relating to other international instruments, or the basis for the recommendation was unclear.

The three comments or recommendations relating to legislative changes identified as having a basis (or partial basis) for being not in line with the CRC or one of its Optional Protocols, N-CR/6, 7 and 9, are set out below. The remaining comments and recommendations N-CR/1, 2, 3, 4, 5, 8, and 10, are set out in appendix A-41-71.

Juvenile Justice – N-CR/6 and N-CR/7

Norway received the following comments and recommendations under the subheading of 'Administration of juvenile justice':

The Committee welcomes the amendments to the Execution of Sentences Act abolishing the possibility of using isolation as a disciplinary measure. With reference to its general

comment No. 10 (2007) on children's rights in juvenile justice, the Committee urges the State party to bring its juvenile justice system fully into line with the Convention and other relevant standards. In particular, the Committee recommends that the State party:

...

(b) Where detention is unavoidable, ensure that children are not detained together with adults, both in pretrial detention and after being sentenced, and, in line with the Committee's previous recommendations, withdraw the reservation to article 10 (2) (b) and (3), of the International Covenant on Civil and Political Rights, "with regard to the obligation to keep accused juvenile persons and juvenile offenders segregated from adults" (CRC/C/NOR/CO/4, para. 7);

...

(d) Make the necessary legislative amendments to extend the application of the alternative form of sanction, the so-called juvenile sanction, to asylum-seeking children.⁵⁴⁰

The first recommendation, then, is related to ICCPR. The sections of the article to which there is a reservation read:

10(2)(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

10(3). The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.

Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.⁵⁴¹

According to the UN Treaty Collection status, Norway's reservation to the ICCPR is still in place.

In Norway's State party report, it is noted that the reservation could not be lifted at this time and went on to explain the current situation with regard to separation from adults as:

Prior to 2009 there were no prison units for minors. Were Norway to comply with both the principle of the separation of adult and juvenile prisoners and the principle of proximity, one would risk that the few juvenile prisoners would be completely isolated. However, separate juvenile units for juvenile prisoners have been established in a trial project. The aim is to avoid minors either having to serve sentences or endure pretrial detention together

⁵⁴⁰ CRC CO Norway 2018 (n 495).

⁵⁴¹ United Nations, 'International Covenant on Civil and Political Rights, Treaty Collection, Chapter IV Human Rights Document 4, New York 16th December 1966' <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en> Article10(2)(b) and 10(3).

with adults or in isolation. An evaluation report recommends that juvenile units be made permanent on the condition that the resources continue to be made available.⁵⁴²

As described by Holmboe, there are currently two specialised units for young offenders in Norway: Bjørgvin on the west coast near Bergen, and Eidsvoll in the East.⁵⁴³ Bjørgvin is part of a larger prison estate where the youth unit is located outside of the secure prison complex. Norway has an extremely low population in the juvenile units; for instance, when the Parliamentary Ombudsman visited Bjørgvin in February 2015 there was only one inmate.⁵⁴⁴

Whilst the reservation is still in place, Norway has therefore been making changes to its facilities for detaining children. Whether those changes will be sufficient to withdraw the reservation is yet to be seen.

The second element to the recommendation was regarding extending the juvenile sanction, to asylum-seeking children (N-CR/7). The sanction being referred to was implemented in the 'Act on the Mediation Services 2014' and offers a 'youth punishment' (also translated in some text to youth sentence) (*ungdomsstraff*),⁵⁴⁵ which is intended to be used instead of a prison sentence for serious offences. However, Holmboe explains that in 'cases of murder or serious sexual offences, for example, imprisonment will still, as the clear main rule, be deemed to be the proper punishment'.⁵⁴⁶ In order for a youth sentence to be imposed, one of the conditions that must be met is that: 'the offender consents and is domiciled in Norway'.⁵⁴⁷

Holmboe expands on this, explaining that:

The carrying out of a youth punishment will require that the defendant is available for the Mediation Services. He or she is obliged to stay within Norway during the carrying out of the youth punishment. Therefore, the law requires that the defendant must be a resident in Norway. This does not require him or her to be a Norwegian citizen, but he or she must have legal residence here.⁵⁴⁸

⁵⁴² Norway, 'Fifth and Sixth Periodic Report of the State Party - Norway - UN Doc. CRC/C/NOR/5-6' (n 503) para 337.

⁵⁴³ Morten Holmboe, 'Norwegian Youth Punishment - Opportunity or Trap?' (2017) Volume 5 Bergen Journal of Criminal Law and Criminal Justice, 37.

⁵⁴⁴ Parliamentary Ombudsman Norway, 'Visit Report - Bjørgvin Prison's Juvenile Unit - National Preventive Mechanism against Torture and Ill-Treatment' (Sivilombudsmannen, 2015) <<https://www.sivilombudsmannen.no/en/visit-reports/bjorgvin-prison-juvenile-unit/>>.

⁵⁴⁵ [Norway] - Lov om konfliktrådsbehandling (konfliktrådsloven) 1991 (Amended up to and including 20/12/2018) 1991 Chapter IV The content and implementation of juvenile sentences and youth follow-up (Kapittel IV. Innholdet i og gjennomføringen av ungdomsstraff og ungdomsoppfølging).

⁵⁴⁶ Holmboe (n 543).

⁵⁴⁷ [Norway] - The Penal Code (Lov om straff (straffeloven)) (Translation amended up to and including 01/01/2017) 2005 Chapter 8a Youth Sentences, Section 52a(c).

⁵⁴⁸ Holmboe (n 543).

The requirement for an offender to be domiciled in Norway is also true for adult community sentences and, as noted by Holmboe raises issues under Art.2 'non-discrimination'. Due to the nature of community sentences whether for adults or youths, there is a practical element as to why residency is necessary. How this can be resolved, or even whether it is possible for this to be resolved is yet to be seen. Therefore, the recommendation from the Committee is yet to be acted upon and is still relevant.

Additional Recommendations – N-CR/9

Under the subheading of 'the Optional Protocol on the sale of children', the Committee recommended that the State party:

- (a) Bring its Penal Code fully into line with the Optional Protocol, including by ensuring that it explicitly prohibits the sale of children;
- (c) Adopt specific legislation on the obligations of Internet service providers in relation to child pornography on the Internet;
- (d) Abolish the requirement of double criminality regarding extraterritorial jurisdiction for offences related to the Optional Protocol;
- (e) Make the necessary legislative amendments to ensure that children who are victims of sexual exploitation abroad and in the context of travel and tourism can also bring claims under the Tort Liability Act;⁵⁴⁹

The most up-to-date translation of the penal code includes amendments only up to 2017, and in relation to recommendation (a) does not contain an offence of the sale of children. With regard to recommendation (c) as of yet, it does not appear that such legislation has been passed.

With regards to recommendation (d) and the requirement for double criminality the Penal Code Section 5 'Application of the criminal legislation to acts committed abroad' reads:

Outside the area of application pursuant to section 4, the criminal legislation also applies to acts committed

- a) by a Norwegian national
 - b) by a person domiciled in Norway, or
 - c) on behalf of an enterprise registered in Norway,
- when the acts:

...

- 9. fall within the scope of sections 257, 291-296, 299-306 or sections 309-316⁵⁵⁰

⁵⁴⁹ CRC CO Norway 2018 (n 495).

⁵⁵⁰ [Norway] - The Penal Code (Lov om straff (straffeloven)) (Translation amended up to and including 01/01/2017) Chapter 1. Section 5.

The amendments not yet incorporated into the translated version of the code do not include the section listed in S.5(C) 9) as being amended. Under this section, the list of when criminal legislation applies to acts committed abroad, the first item has the element of double criminality:

when the acts:

1. are also punishable under the law of the country in which they are committed,⁵⁵¹

However, this is only one of the instances listed as to when criminal legislation can be applicable to acts abroad; the question then becomes, what are the offences listed within item '9' of subsection C? These are:

- ❖ S.257. Human Trafficking
- ❖ S.291-296: Sexual assault; Sexual assault involving intercourse; Aggravated sexual assault; Grossly negligent sexual assault; Abuse of unequal power relationship, etc.; Sexual activity with inmates, etc. of an institution.
- ❖ S.299-306: Sexual assault on a child under 14 years of age; Minimum penalty for sexual assault involving intercourse on a child under 14 years of age; Aggravated sexual assault on a child under 14 years of age; Sexual activity with a child between 14 and 16 years of age; Aggravated sexual activity, etc. with a child between 14 and 16 years of age; Sexual act with a child under 16 years of age; Sexually offensive conduct, etc. directed at a child under 16 years of age; Arranging a meeting to commit sexual abuse.
- ❖ S.309-316: Purchase of sexual services from minors; Showing of sexual abuse of a child or shows which sexualise children; Depiction of sexual abuse of children or depiction which sexualises children; Incest; Sibling incest; Sexual activity between other closely connected persons; Controlling and facilitating prostitution; Purchase of sexual services from adults.

Unfortunately, due to the format of translated acts, it is not clear when item 9 was included in Section 5(C) and therefore when this change was achieved. Further, when considering the information present to the Committee by Norway in their report, suspicion is raised that the recommendation is in relation to a small lacuna in the law. This is because Section 5 relates only to a Norwegian National or someone who lives in Norway – someone who is visiting would not be covered, and in those circumstances double criminality is still necessary (save in select prescribed circumstances such as war crimes). In the circumstances of a non-national or non-resident, the extradition of the person to, either the country of nationality or the country where the offence took place would theoretically be possible, and the issue of extradition

⁵⁵¹ *ibid* Section 5(c)(1).

'double criminality' would not exist as the acts are criminal in Norway.⁵⁵² The issue of double criminality in relation to child sexual abuse originated from the issues of persons travelling to countries to commit acts that would be criminal in their home country but were not in the country they were visiting. This type of circumstance is covered by Norwegian legislation. In addition, article 4 of the OP requires the State party to establish jurisdiction in four circumstances: for offences committed in its territory; by a national or resident of the State party; where the victim is a national; and in circumstances where the State party would not extradite the alleged offender. Jurisdiction has been established in these circumstances; therefore, the recommendation in paragraph 36(d) does not appear still to be relevant.

With regard to recommendation (e) relating to the Tort Liability Act, an English translation of this act has not been found and therefore it is not possible to say whether this recommendation has been actioned or not.

As noted, for Norway, the comments and recommendations to amend legislation on the basis that it is not in line with the CRC, are still relevant. In addition, it is noticeable that the basis with the greatest number of comments and recommendations were relating to legislation that was not in line with another international instrument.

Portugal

As illustrated in figure 6.5 Portugal received comments or recommendations relating to legislative change under nine subheadings. Only three were identified as having a basis (or partial basis) for being not in line with the CRC or one of its Optional Protocols, identified as P-CR/5, 6 and 8. All three are noted still to be an issue or still have aspects of the recommendation outstanding, though two appear to be partially rectified. In line with Iceland and Norway, many of the recommendations were made under the basis of general comments and relating to other international instruments, or the basis for the recommendation was unclear.

⁵⁵² An issue in international extradition occurs when the offence for which a country wishes a person extradited to them for, is not an offence in the country where the person is. The element of double criminality is a requirement for many countries within their extradition laws.

Figure 6.5 Breakdown of comments received by Portugal regarding legislation.

CR Number	Cluster	Subheading	State Party	Comment		Basis for 'issue'				Situation now					
				Legislation	International Instrument	Not in line with CRC /OP	Issue with implementation not in line with GC	Not in line with other international instrument	Basis for recommendation unclear	Rectified	Did not need amending	Still an issue - CRC	Still an Issue Int. Instrument	Unknown if rectified	
P-CR/1	GMI	Legislation	Portugal	1											
P-CR/2	GP	Best interest of the child	Portugal	1			1				1				
P-CR/3	GP	Right to life	Portugal	1	1			1	1			1		1	
P-CR/4	GP	Respect for the views of the child	Portugal	1						1				1	
P-CR/5	VAC	Bullfighting	Portugal	1		1				1		1			
P-CR/6	FEAC	Adoption	Portugal	1						1					
P-CR/7	SPM	Economic exploitation, including child labour	Portugal	1	1	1		1		1		1			
P-CR/8	JJ	Administration of juvenile justice	Portugal	1		1	1					1			
P-CR/9	Additional	Ratification of international instruments	Portugal		1			1					1		
	Total			8	3	3	1	1	3	1	4	1	4	1	2

The three comments or recommendations relating to legislative changes identified as having a basis (or partial basis) for being not in line with the CRC or one of its Optional Protocols, (P-CR/5, 6 and 8) are set out below. The remaining comments and recommendations (P-CR/1, 2, 3, 4, 7, and 9) are set out in appendix A41-71.

Violence against Children- P-CR/5

Under the VAC cluster, Portugal received comments and recommendations relating to improving legislation under the subheading, 'Bullfighting':

The Committee, with a view to the eventual prohibition of the participation of children in bullfighting, urges the State party to take the necessary legislative and administrative measures in order to protect all children involved in bullfighting training and performances, as well as in their capacity as spectators. This may include increasing the minimum age of 12 years for such training, including in bullfighting schools and on private farms, and for the participation of children in bullfighting, as well as increasing the minimum age of 6 years for children allowed to attend such events as spectators.⁵⁵³

⁵⁵³ CRC CO Portugal 2014 (n 441) para 38.

Concerns regarding bullfighting are being raised under article 19(1):

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.⁵⁵⁴

Subsequent to the CO report, new legislation regarding bullfighting has been passed. In the newer State party report reference is made to Law No. 31/2015⁵⁵⁵, setting the minimum age for performers at 16. This legislation is titled '*Estabelece o regime de acesso e exercício da atividade de artista tauromáquico e de auxiliar de espetáculo tauromáquico*', as with other legislation, an official translation is not available. This title translates (CT) as 'The establishment of the regime of access and exercise of the activity of the bullfighting artist and auxiliary of bullfighting spectacle'. Chapter II, Article 3 relates to the 'Artists and assistants of the bullfighting show' and sets out the rules and restrictions including paragraph 3 which reads:

Os artistas tauromáquicos e os auxiliares devem ter a idade mínima de 16 anos.⁵⁵⁶

This translates (CT) as:

Bullfighting artists and auxiliaries must be at least 16 years of age.

However, paragraph 4 can be translated as:

The provisions of the previous paragraph do not apply to subparagraphs e) and i) of paragraph 1, since they are amateur activities, and the minor's participation is subject to authorization or communication to the Commission for the Protection of Children and Young People, pursuant to the provisions of Law 105/2009, of September 14, which regulates and amends the Labor Code, approved by Law no. 7/2009, of February 12, and proceeds to the first amendment of Law no. 4/2008, of February 7.

The subparagraphs mentioned are '*e) Forcados*' and '*i) Amadores de todas as categorias referidas nas alíneas anteriores*'. In Portuguese bullfighting there are a number of separate titled roles, the main role being on horseback, the '*Forcados*' mentioned in '*e*' face the bull on foot after the horseback riders fight the bull. Moreover, the second exclusion '*i*' translates (CT) as: '*Amateurs of all categories referred to in the preceding paragraphs*'. Therefore, the minimum age of participation of 16 does not appear to apply to amateur events. This possibly extensive

⁵⁵⁴ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 19(1).

⁵⁵⁵ [Portugal] - Lei n. 30/2015 Estabelece o regime de acesso e exercício da atividade de artista tauromáquico e de auxiliar de espetáculo tauromáquico 2015.

⁵⁵⁶ *ibid* Article 3(3).

exclusion is not referred to in the new State party report. What is noted is that between 2014-17 with permission of the Commission for the Protection of Children and Young People, only three 16-year-olds have performed in Bullfighting.

With regards to the recommendation to increase the age of spectators to 12, this has been achieved as reported in the new State party report:

On 14th February 2014, Decree-Law No. 23/2014 was published... This same Decree amends the previous legislation regarding the age classification for tauromachy [bullfighting] shows, which increased from 6 to 12 years of age.⁵⁵⁷

Portugal has, therefore, made amendments to its legislation regarding bullfighting, and in 2018 a bill was debated on banning bullfighting; however, this was rejected. The amendments made are in line with the Committee's recommendation as far as professional events go; however, whether the exclusions regarding amateur events are found to be acceptable, if the Committee is made aware of it, remains to be seen. Further, even the improvements in the legislation still leave children aged 12 and older able to witness bullfighting and those over 16 to participate, which is arguably still in contravention of article 19. Moreover, as the original comment from the Committee reads 'with a view to the eventual prohibition of the participation of children in bullfighting',⁵⁵⁸ even if these measures are currently deemed acceptable it is evident that the Committee will require further amendments in the future if Portugal does not voluntarily end children's participation in bullfighting.

Special Protection Measures – P-CR/7

For the SPM cluster Portugal received comments and recommendation under the subheading 'Economic exploitation, including child labour':

The Committee is concerned, however, that child labour is a residual reality in Portugal and that budget cuts to various programmes due to the financial crisis along with high rates of early dropout from schools could reverse the notable progress in relation to the elimination of child labour. The Committee is also concerned about legislation regulating the participation of children in performances and other activities of a cultural, artistic or advertising-related nature, in particular the excessive working time for children who are in compulsory education.⁵⁵⁹

⁵⁵⁷ [Portugal] - Decreto-Lei n. 23/2014 O regime jurídico dos espetáculos de natureza artística e da instalação e funcionamento dos recintos de espetáculos de natureza artística 2014.

⁵⁵⁸ CRC CO Portugal 2014 (n 441) para 38.

⁵⁵⁹ *ibid* 63.

The recommendations relating to this paragraph included:

- (c) Review legislation in relation to the participation of children in performances or other activities of a cultural, artistic or advertising-related nature to ensure that it does not lead to potential situations of child labour;
- (e) Ratify International Labour Organization Convention No. 189 (2011) concerning decent work for domestic workers.⁵⁶⁰

The relevant article within the Convention is Article 32 on Child Labour which reads:

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age or minimum ages for admission to employment;
 - (b) Provide for appropriate regulation of the hours and conditions of employment;
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.⁵⁶¹

In response to recommendation (c) in the new State party report Portugal responded:

In the last years, a specific programme focusing on the intervention in the prevention and control of discrimination and working conditions of vulnerable groups of workers, which includes monitoring of the working conditions of minors (<18 years) has been implemented.⁵⁶²

They also referred back to the information about bullfighting and the increase in age for participation. However, there is no reference to the legislation being reviewed or amended other than in relation to bullfighting; therefore it is presumed this has not changed, and the recommendation from the Committee is still relevant.

In response to recommendation (e) to ratify ILO Convention No.189 (2011) the new State party report replies:

⁵⁶⁰ *ibid* 64(c) and (e).

⁵⁶¹ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 32.

⁵⁶² Portugal, 'Fifth and Sixth Periodic Reports of State Parties - Portugal - UN Doc. CRC/C/PRT/5-6' (n 442) Response to para 64.

The International Labour Organization Convention No. 189 (2011) concerning Decent Work for Domestic Workers was approved for ratification by Resolution No. 42/2015 of the Assembly of the Republic and ratified by Decree No. 31/2015 of the President of the Republic, both published in the official journal (Diário da República) on 27th April 2015 (Series I, No. 81).⁵⁶³

With this ILO convention now ratified, this part of the recommendation is now fulfilled.

Juvenile Justice P-CR/8

Within the comments and recommendation regarding 'JJ' only one focused on amending legislation. The comment and following recommendation was:

The Committee is also deeply concerned that children aged 16 and 17 can by law be held in solitary confinement for up to 30 days.

66. (c) Prohibit and abolish the use of solitary confinement to punish children, and immediately remove all children held in solitary confinement.⁵⁶⁴

In response to this recommendation in the new State party report, Portugal replies 'A study on the prohibition and abolishment of the use of solitary confinement conducted by the MJ [Ministry of Justice] is ongoing'.⁵⁶⁵ Therefore, if the study was ongoing in 2017 legislative changes will not yet have been made; and this recommendation, therefore, is still valid.

As with Iceland and Norway, Portugal also received comments and recommendations to amend legislation on the basis that it was not in line with other international instruments. There were as many recommendations with this basis as with being not in line with the CRC.

[Recommendations relating to international human rights instruments](#)

After the comments and recommendations regarding clusters all three State party CO reports contained further headings such as 'Follow-up and dissemination'. Mostly these did not include recommendations for changes to legislation. However, all three State parties received recommendations under the subheading 'Ratification of International Instruments' This was in addition to reference to other international instruments contained within the individual recommendations within clusters.

⁵⁶³ *ibid.*

⁵⁶⁴ CRC CO Portugal 2014 (n 441) para 65 and 66(c).

⁵⁶⁵ Portugal, 'Fifth and Sixth Periodic Reports of State Parties - Portugal - UN Doc. CRC/C/PRT/5-6' (n 442) Responce to para 66.

As international instruments are clearly focused on by the Committee it is useful here to consider not only the international instruments mentioned at the end of the CO reports, but all 18 that are used as 'human rights indicators' by the OHCHR in their 'Status of Ratification of Human Rights Treaties' interactive map.⁵⁶⁶ If all three State parties have ratified these instruments they are listed below. Displayed in table 6.2 are the instrument where one or more of the top three State parties have not ratified. This table enable a comparison of the ratification of these instruments by the top three, and illustrates the prevalence of ratification of these international instruments overall, with Portugal having ratified the most: 17 out of 18.

There are 12 international instruments that all three have ratified:

1. International Convention on the Elimination of All Forms of Racial Discrimination
2. International Covenant on Civil and Political Rights
3. Optional Protocol to the International Covenant on Civil and Political Rights
4. Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
5. International Covenant on Economic, Social and Cultural Rights
6. Convention on the Elimination of All Forms of Discrimination against Women
7. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
8. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
9. Convention on the Rights of the Child
10. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
11. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
12. Convention on the Rights of Persons with Disabilities

⁵⁶⁶ United Nations Office of the High Commissioner for Human Rights, 'Human Rights Indicators - Status of Ratification of Human Rights Treaties' (2019) <<http://indicators.ohchr.org/>> accessed 2 February 2019.

Table 6.2 – Status of accession to Human Rights Instruments and year of ratification

An orange background indicates a State party has neither signed nor ratified and a blue background that a State party has signed but not ratified.

Human Rights Instrument: (Date into force)	Iceland	Norway	Portugal
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: 2013			R
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: 2006	S	R	R
Optional Protocol to the Convention on the Rights of the Child on a communications procedure: 2014			R
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families: 2003			
International Convention for the Protection of all Persons from Enforced Disappearance: 2010	S	S	R
Optional Protocol to the Convention on the Rights of Persons with Disabilities: 2008	S		R

This table demonstrates which State party has ratified which international instrument, the recommendations made by the Committee regarding these international instruments to Iceland, Norway and Portugal are included in appendix A-41-71.

6.5 Observations and chapter conclusions

Observations

Within this chapter the top three State parties have been considered in greater detail, primarily focusing on the recommendations by the Committee to amend legislation, despite the Convention being legally incorporated. As noted at in the beginning of 6.3, further analysis of the legislation of the top three State parties revealed that the grades received for the Definition of the Child (DOTC) cluster did not reflect the reality of the situation.

Definition of the Child

Under the DOTC cluster all three State parties did not receive comments nor recommendations from the Committee and therefore received a grade A. However, upon further investigation it is clear that they should not have done.

Article 1 of the Convention reads: 'For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.'⁵⁶⁷ The guidelines for periodic reports include that 'The State party should indicate the minimum age for marriage for girls and boys in its legislation'⁵⁶⁸ and in the GC No.20 'On the implementation of the rights of the child during adolescence' paragraph 40 under the subheading of 'Definition of the Child' reads that the Committee: 'reaffirms that the minimum age limit should be 18 years for marriage'.⁵⁶⁹

When the DOTC cluster was being graded, State parties with only one issue but which still allowed children under 18 to marry – such as the UK where child marriage with parental consent is allowed at 16 – received a grade C; unless, as for the case in Ireland, a declaration was made that the intention was to raise the age to 18, then a grade B was awarded.

Iceland

Though Iceland received a grade A for DOTC, according to the English translation of the Law in Respect of Marriage No.31/1993 available from the government website they should have received a recommendation as child marriage is still permitted. Under 'Chapter II Impediments to Marriage, A. Legal Age for Marriage, Article 7':

[Two individuals] may marry when they have both attained the age of 18 years. [The Ministry] may permit the marriage of younger persons, [provided that the view of the custodial parents regarding the marriage has been presented].⁵⁷⁰

The same act and article are translated on the Icelandic Human Rights Centre as:

A man and a woman may marry when they have both attained the age of 18 years. The Ministry of Justice may permit the marriage of younger persons.⁵⁷¹

⁵⁶⁷ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989.

⁵⁶⁸ UN Committee on the Rights of the Child, 'Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child UN Doc. CRC/C/58/Rev.3' (n 15) para 22.

⁵⁶⁹ UN Committee on the Rights of the Child, 'General Comment No.20 (2016) on the Implementation of the Rights of the Child during Adolescence- UN Doc. CRC/C/GC/20' (n 127).

⁵⁷⁰ [Iceland] - Law in Respect of Marriage No.31/1993, 1993.

⁵⁷¹ Icelandic Human Rights Centre, 'Icelandic Human Rights Centre (Mannréttindaskrifstofa Íslands)' (2018) <<http://www.humanrights.is/en/home>> accessed 21 January 2019.

In Iceland's first State party report under the subheading of 'Provisions which specify a minimum age for the acquisition of certain rights' paragraph 84 states that:

Under the Marriage Act, No. 31 of 1993, the age at which persons are free to marry in Iceland is 18. The Ministry of Justice may grant younger persons permission to marry. When marriage takes place, both spouses become legally competent, even if they have not reached the age of 18.⁵⁷²

However, no mention of the age of marriage was included in the initial CO report from the Committee, nor is this exception mentioned in later State party reports or CO reports.

In addition, the UN Statistical Division, under the 'Minimum Set of Gender Indicators', by country notes that for Iceland⁵⁷³ the minimum age for marriage with parental consent is less than 18. Further, when checking which of the possible indicators has available data regarding Iceland⁵⁷⁴, it is noted that data is not available for the number of women aged 20-24 who were married before the age of 18.

Law No.31/1993 appears not to have been amended recently; therefore children theoretically can still marry. Further, a minimum age is not given in the legislation, and the UN does not have data as to how many under 18 have married. The lack of data may be because the clause is rarely if ever used. However, the incorporation of the Convention into national law does not create a legal incompatibility as the Convention itself does not mention a minimum age of marriage, as this is elaborated on within a general comment.

Accepting that the Law in Respect of Marriage No.31/1993 article 7 is still in force and has not been amended as it would appear to be the case, then Iceland should have received at best a grade C for this cluster.

Norway

Norway did not receive any comments or recommendations at all for the DOTC cluster, resulting in a grade A. However, as with the case for Iceland, and in comparison to other State parties' CO reports, it would appear that they should have received recommendations. At the time of Norway's CO report (and as set out within the State party report) Norway's legislation

⁵⁷² Iceland, 'Initial Report of State Parties - Iceland - UN Doc. CRC/C/11/Add.6' (United Nations 1995) para 84.

⁵⁷³ United Nations Statistical Division, 'Demographic and Social Statistics -Gender Statistics - Minimum Set of Gender Indicators - Countries - Iceland' (2019) <<https://genderstats.un.org/#/countries>> accessed 23 January 2019.

⁵⁷⁴ United Nations Statistical Division, 'Demographic and Social Statistics -Gender Statistics - Minimum Set of Gender Indicators - Data Availability Iceland' (2019) <<https://genderstats.un.org/#/data-availability>> accessed 23 January 2019.

on marriage allowed 16 and 17-year-olds to marry with their parents' permission, from Chapter 1 'Conditions for contracting a Marriage':

No person under 18 years of age may contract a marriage without the consent of the persons or person having parental responsibility, and the permission of the county governor. The county governor may not grant permission if the applicant is under 16 years of age.⁵⁷⁵

However, in June 2018, the government, subsequent to petitions from school children, changed the legislation⁵⁷⁶ (*Lov om endringer i ekteskapsloven (absolutt 18-årsgrænse for å inngå ekteskap i Norge)*).⁵⁷⁷ There is currently no official translation of the latest version of this article. The Norwegian reads:

1a. Ekteskapsalder

Den som er under 18 år, kan ikke inngå ekteskap.⁵⁷⁸

This translates (CT) to:

1a. Marriage Age

Anyone under the age of 18 cannot enter into marriage.

At the date of the CO, therefore, Norway should not have achieved a grade A and only a grade C; subsequently this has changed and now a grade A would be accurate.

Portugal

Portugal also did not receive any comments or recommendations for the DOTC cluster resulting in a grade A. However, as with the case for Iceland and Norway, it would appear that they should have received recommendations. Portugal's legislation on marriage allows children of 16 and 17-year-olds to marry with their parents' permission. This legislative situation was set out within the initial State party report to the Committee in 1994:

The marriageable age, both for men and for women, is also 16 (Civil Code, art. 1601, para.(a)). However, the marriage of persons under 18 years of age requires the consent either

⁵⁷⁵ [Norway] - The Marriage Act (Lov om ekteskap) No.47/1991 (Amended up to and including 2009) 1991 Section 1a.

⁵⁷⁶ Emma Batha, 'Norway to Ban Child Marriage as It Seeks to Set a Global Example' (*Reuters (Online)*, 2018) <<https://www.reuters.com/article/us-norway-childmarriage-lawmaking/norway-to-ban-child-marriage-as-it-seeks-to-set-a-global-example-idUSKCN11N29D>>.

⁵⁷⁷ [Norway] - Lov om endringer i ekteskapsloven 2018 (absolutt 18-årsgrænse for å inngå ekteskap i Norge) 2018.

⁵⁷⁸ [Norway] - Lov om ekteskap No.47/1991 (Amended up to and including 2018) 1991.

of both parents exercising parental authority or of a guardian, or, in default of the latter, a court decision.⁵⁷⁹

Later State party reports⁵⁸⁰ note that there have been no updates to the Definition of the Child. Investigating the current legislation supports that this is still the situation. The relevant articles relating to marriage are in the Civil Code (*Código Civil*⁵⁸¹). Unfortunately, a translation of this act into English has not been found but an unofficial translation (CT) appears to confirm that the relevant sections have not been amended.

Article 1601 includes the age under 16 as an ‘absolute impediment’ to marriage (São impedimentos dirimentes, obstando ao casamento da pessoa a quem respeitam com qualquer outra: A idade inferior a dezasseis anos).⁵⁸² Article 1604 includes as a ‘potential impediment’ the lack of parental or guardian authorization for the marriage of a minor (A falta de autorização dos pais ou do tutor para o casamento do nubente menor).⁵⁸³

Portugal therefore should only have received a grade C for this cluster and not a grade A.

It has been demonstrated the Committee’s comments for the cluster Definition of the Child have not been consistent, as within the large sample some State parties received criticism and recommendation to amend legislation when children are permitted to marry with parental permission from 16 years of age. Within this grading system, this resulted in a grade C. The top three State parties all received a grade A as they did not receive criticism or recommendations; however, as established here, this was not accurate, and they should have only received a grade C at the time of the CO reports.

From the aspect of the average grades awarded by combining each cluster grade and then dividing by the number of clusters – as set out in chapter 4.3 – the importance of the grade of DOTC changing is that it could have a consequential effect of potentially changing the average grade.

If we then consider the top three State parties and how receiving a grade C rather than a grade A for DOTC affects the overall score and potentially the average grade.

⁵⁷⁹ Portugal, ‘Initial Reports of State Parties - Portugal - UN Doc. CRC/C/3/Add.30’ (United Nations 1994) para 16.

⁵⁸⁰ Portugal, ‘Second Periodic Reports of State Parties - Portugal - UN Doc. CRC/C/65/Add.11’ (n 439) para 53. Portugal, ‘Third and Fourth Periodic Reports of State Parties - Portugal - UN Doc. CRC/C/PRT/3-4’ (United Nations 2012) para 71.

⁵⁸¹ [Portugal] - Código Civil 1966 DL No.47344/66 (Amended up to and including February 2019) 1966.

⁵⁸² *ibid* Article 1601(a).

⁵⁸³ *ibid* Article 1604(a).

- ❖ Iceland's total score was originally calculated to be 84; adjusted for a grade C rather than a grade A in DOTC, this would be 82. An overall score of 82 means that their average grade would still remain a C.
- ❖ Norway's original total for the CO report of 2010 was originally calculated to be 79; adjusted for a grade C, this would be a score of 77, and therefore their average grade would remain a D. However, a score of 77 would place them equally with Sweden and Estonia, meaning that three State parties had achieved the third rank.
- ❖ Norway's total for the newer CO report from 2018 is calculated to be 80, adjusted for a grade C; this would be 78, reducing their average grade from a C to a D, but they would then retain the third-ranking alone. In addition, Norway has now changed this legislation and a grade A would now be accurate, retaining a total score of 80 and an average grade of C.
- ❖ Portugal's total score was originally calculated to be 83; adjusted for a grade C, this would be a score of 81. An overall score of 81 means that their average grade would still remain a C.

[Chapter conclusions](#)

Chapter 6 is focused on the research objective to investigate the legal framework of the better performing State parties to understand whether there are commonalities underpinning this better performance. The research questions focused on are, of the State parties achieving better implementation, what can be observed about their legal framework, and what can be learnt about the Committee's interpretation of the Convention by analysing their Concluding Observations reports? In chapter 5 the commonalities of the top 16 State parties were generally considered, in this chapter the legal frameworks of the top three State parties are focused on by assessing the comments and recommendations of the Committee regarding that legal framework and legislation. This attention to the Committee's comments and recommendations about the State party's legislation enables both research questions to be explored and the following conclusions to be drawn.

[Conclusion regarding cluster grading and DOTC](#)

The inconsistency in CO reports illuminated by the finding that the top three State parties received a grade A for DOTC when the Committee should have made comments and recommendations under this heading, appears to stem primarily from the changing remit the Committee has set itself over time. When these three State parties initially reported to the Committee, the Committee's guidelines on the reporting process and what they wanted to be

addressed within the report was narrower. Though in initial reports the State parties set out the legislation on marriage for children, this appears not to have been seen as such a critical issue at this date and it was not commented on in the CO reports. Then, because the reporting process has evolved so that the next State party report focuses on the last CO report, the age of marriage for children is therefore not mentioned as it was not highlighted as an issue in the earlier report. In conclusion then, this chapter has discovered that there may be an inherent weakness to the reporting system, due to the reliance on previous reports. This is considered further in the concluding chapter 8.

Recommendations for legal improvements

Within section 6.4, the comments and recommendations from the Committee to the top three State parties to amend legislation were considered, those with a basis due to being not in line with the Convention, one of its optional protocols, or not being in line with a general comment were set out in full. Recommendations relating to one of the other bases are set out in the appendix A-41-71.

Figure 6.6 demonstrates the totals for the top three State parties; it is noticeable that there are more recommendations based upon other international instruments than upon the CRC. Further, it is clear that the Committee makes comments and recommendations on a number of different basis, including implementation, or general comments, and in some instances the basis for the recommendation is not clear.

Figure 6.6 Breakdown of comments received by the top three State parties regarding legislation.

Cluster	Subheading	State Party	Comment		Basis for 'issue'					Situation now				
			Legislation	International Instrument	Not in line with CRC /OP	Issue with implementation	not in line with GC	Not in line with other international instrument	Basis for recommendation unclear	Rectified	Did not need amending	Still an issue - CRC	Still an Issue Int. Instrument	Unknown if rectified
Totals for all 3			24	11	9	4	4	11	6	9	8	7	8	4

This chapter, by the analysis of the comments and recommendations to amend legislation is revealing in that it demonstrates the widening of the interpretation or reach of the Convention by the Committee.

Of the three State parties considered within this chapter, Portugal is the only one with a monist system, meaning that once the Convention was ratified in 1990 and officially published it was fully incorporated into the domestic legal system. Whereas Norway did not incorporate until 2003 and Iceland in 2013, Portugal consequently has had longer working with full direct incorporation and yet each State party had three recommendations where the basis was that the national legislation is not in line with the Convention.

As all three have incorporated the Convention into national legislation, the need for comments and recommendations to amend legislation should be lower than for a State party that has not incorporated the Convention. Whether or not a State party with a lower overall grade, and which has not incorporated the Convention into national legislation receive more recommendations to amend legislation, will be explored by analysing the UK's CO report in contrast to the top three in chapter 7.

Chapter 7 – Focus on England and Wales

7.1 Introduction

Chapter 7 focuses on the research objective to explore the situation of children's rights in England and Wales based upon the first two objectives of creating a method to measure implementation of the UNCRC, and the investigation of the legal framework of the better performing State parties to understand whether there are commonalities underpinning this better performance. The research question focused on is the final question, what can the results of the analysis tell us about implementation of children's rights in the UK? In order to answer this research question, this chapter will investigate the recommendations from the Committee to amend the legislation of England and Wales in order to bring it into line with the Convention. The intention of this chapter is to use the results generated by the method created for this study to focus on the recommendations for legislative change in order to ascertain whether there are specific areas that require attention as a priority for change.

As noted, the UK is a complex State party within which there are multiple distinct legal systems, the largest is the jurisdiction of England and Wales which is currently still considered to be a single legal system. As a common law system, the recommendations by the Committee to amend legislation may be additionally relevant to how judges interpret and apply the law. Unlike Iceland, Norway and Portugal, focused on in chapter 6, the UK does not have full direct incorporation of the Convention into domestic legislation and therefore the expectation is that there will be more recommendations in comparison. This chapter will initially consider an overview of the UK and the status of England and Wales within the UK. Then the grades from the cluster analysis for the UK as a State party and for just England and Wales will be reviewed prior to considering in cluster order, the recommendations to amend legislation for England and Wales.

7.2 Overview of UK and the status of England and Wales within the UK

The UK, England and Wales, and international law

The UK as a State party is a complex collection of countries, dependencies and territories with different governments and legal systems. It includes England, Wales, Scotland, Northern Ireland, three Crown Dependencies and 14 Overseas Territories.

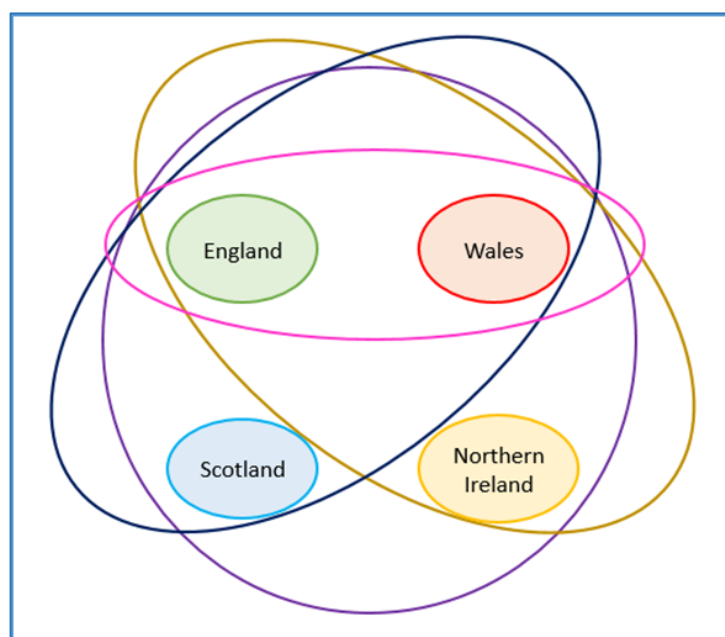
The CO report uses a number of different terms. The title of the report uses the term 'United Kingdom of Great Britain and Northern Ireland' and within the report refers to: 'UK'; 'National';

'four jurisdictions'; 'State party'; 'dependent territories'; 'crown dependencies'; 'overseas territories'; and 'territories'. In addition to England, Wales, Scotland and Northern Ireland, the CO report names: The Bailiwick of Jersey; Monserrat; Pitcairn; Cayman Islands; Turks and Caicos Islands; and the British Virgin Islands.

There were 12 references to only England, 14 to Wales, nine to England and Wales, 18 to Scotland and 32 to Northern Ireland.⁵⁸⁴

Considering just Great Britain and Northern Ireland, the UK has a bicameral parliament incorporating the UK government; Scotland, Wales and Northern Ireland also have their own governments. England does not. The relevance of this split relates to both legislation and government documents. Until recently it was accurate to describe the legal split as grouping England and Wales together, and the Lord Chief Justice is so for England and Wales. However, with increasing legislative powers devolved to Wales there are progressively more differences in the legislation. There are theoretically eight jurisdictional possibilities for pieces of legislation within the UK. This is demonstrated in a diagram in figure 7.1.

Figure 7.1 Diagram of legislative possibilities.



1. Green applies only to England
2. Red applies only to Wales
3. Light blue applies only to Scotland
4. Yellow applies only to Northern Ireland

⁵⁸⁴ Due in part due to the use of the name in the full title 'United Kingdom of Great Britain and Northern Ireland'.

5. Pink applies to England and Wales
6. Dark blue applies to England, Wales, and Scotland
7. Gold applies to England, Wales, and Northern Ireland
8. Purple applies to England, Wales, Scotland, and Northern Ireland

The way by which the ability to legislate has been devolved to Wales and Scotland differ in that as Driscoll described in 2016:

At the time of writing, the Welsh Assembly has legislative competence only in those areas expressly 'conferred' on it by the Government of Wales Act 2006 and listed in Schedule 7 thereto. The Scottish Parliament, by contrast, is empowered to legislate on all matters which have not been expressly 'reserved' in the Scotland Act 1998, Schedule 5.⁵⁸⁵

The UK is still categorised as a unitary state, but increasingly as Rees and Williams⁵⁸⁶ note it has been described as quasi-federal. Currently Scotland is considering a second referendum on independence, particularly if Brexit goes ahead, which poses the question: just how far is the UK from breaking up, and would a federal structure allow the UK to continue albeit with greater autonomy for the separate elements? As Nairn described in 1977 while focusing on Scottish independence:

There is no doubt that the old British state is going down. But, so far at least, it has been a slow foundering rather than the *Titanic* type disaster so often predicted.⁵⁸⁷

He further focuses on two questions one of which is 'why has the break-down begun to occur in the form of territorial disintegration rather than as the long-awaited social revolution'? Nairn was writing more than 40 years ago, and still independence and the breaking up of the UK is a current issue; one way to look at the increase in devolutionary powers is that of 'evolution rather than revolution' towards independence.

One of the difficulties facing the UK in the current political and constitutional upheaval is the lack of a written constitution with clear rules and procedures for constitutional change. Though the UK does not have a single written piece of legislation as a constitution, it does, however, have a number of acts that cover many of the aspects generally found within a written

⁵⁸⁵ Driscoll (n 84).

⁵⁸⁶ Osian Rees and Jane Williams, 'Framing Asymmetry: Devolution and the United Kingdom's Four Children's Commissioners' (2016) 24 *International Journal of Children's Rights* 408, 409.

⁵⁸⁷ Tom Nairn, *The Break-Up of Britain - Crisis and Neo-Nationalism* (NLB 1977).

constitution. In the *Thoburn* case Lord Justice Laws in discussing the European Communities Act 1972 stated his opinion on what he considers to be constitutional statutes:

In the present state of its maturity the common law has come to recognise that there exist rights which should properly be classified as constitutional or fundamental... And from this a further insight follows. We should recognise a hierarchy of Acts of Parliament: as it were "ordinary" statutes and "constitutional" statutes. The two categories must be distinguished on a principled basis. In my opinion a constitutional statute is one which (a) conditions the legal relationship between citizen and state in some general, overarching manner, or (b) enlarges or diminishes the scope of what we would now regard as fundamental constitutional rights. (a) and (b) are of necessity closely related: it is difficult to think of an instance of (a) that is not also an instance of (b). The special status of constitutional statutes follows the special status of constitutional rights.⁵⁸⁸

He names a number of examples in addition to the European Communities Act 1972, including:

- ❖ Magna Carta 1297 (25 Edw 1),
- ❖ the Bill of Rights 1689 (1 Will & Mary sess 2 c 2),
- ❖ the Union with Scotland Act 1706 (6 Anne c 11),
- ❖ the Human Rights Act 1998,
- ❖ the Scotland Act 1998
- ❖ the Government of Wales Act 1998

This list would now be longer with increasing power being devolved since Law's judgment in 2002, for instance with the inclusion of the Wales Act 2017.

As Douglas-Scott expresses, the issue with not having a coherent constitution has been highlighted in the current situation in that:

the Brexit process is rendered highly problematic by the lack of any coherent conception of the British Constitution. Different parties settle on interpretations of constitutional law that support their case, but often there is no determinative answer.⁵⁸⁹

Many constitutions not only set out rules for referendums and for future constitutional change, they also express explicitly the relationship between domestic and international law.

⁵⁸⁸ [UK] - *Thoburn v Sunderland City Council* [2002] EWHC 195 (Admin) Lord Justice Laws at [62].

⁵⁸⁹ Sionaidh Douglas-scott, 'Brexit, Article 50 and the Contested British Constitution' (2016) 79 *Modern Law Review* 1019.

One of the ways in which the complexity of the UK construction as a State party has relevance is, as noted in chapter 5, that Committee consider decentralisation as potentially problematic. Inconsistencies in implementation between, for instance, federal states have resulted in criticism and the CO reports are constructed to highlight deficiencies rather than highlight better practice. Whereas, again noted in chapter 5, a region with better practice can influence and encourage that better practice, though this better practice is not necessarily noted or commented on in the CO reports. It also means that some of the comments and recommendations may not apply to one of the sub-states even though appearing to be addressed to the UK as a whole or may not recognise the progress an individual region may have achieved.

[The UK's relationship to international law](#)

The UK has a strictly dualist relationship to international treaties; they are only part of UK law and binding on courts if they have been enacted into law by Parliament. The UK does not distinguish between self-executing and non-self-executing treaties. If a domestic law is created reflecting the terms of the treaty, then it is the national law, not the treaty that is invoked if relied upon. An example of a domestic law that creates rights in the same terms as a treaty is the Human Rights Act 1998⁵⁹⁰ (HRA 1998) which gives effect to a select list of rights from the European Convention for the Protection of Human Rights and Fundamental Freedoms⁵⁹¹ (known as the European Convention on Human Rights [ECHR]). The HRA also gives courts the ability to pronounce on the compatibility or incompatibility of legislation with the Convention; this is, as Neff describes, a 'declaratory action only, not entailing the overturning of the legislation in question'.⁵⁹² Neff expands on the interpretation of legal norms where the domestic legislation is based upon international treaties and refers to a judgment of Lord Scarman:

It matters not how the Convention has entered into our law. Once it is part of our law, its international character must be respected.⁵⁹³

Despite the UNCRC not being incorporated as a national act, by the fact that it has been ratified it does have the potential to exert influence over the courts. In one judgment Lord Diplock noted that:

⁵⁹⁰ [UK] - The Human Right Act 1998 c.42 1998.

⁵⁹¹ [Council of Europe] - Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (as amended up to and including 2010).

⁵⁹² Stephen Neff, 'United Kingdom', *International Law and Domestic Legal Systems* by Shelton, D. (2011) 620.

⁵⁹³ [UK] - *Fothergill v Monarch Airlines Ltd* [1981] AC 251 at [294] Lord Scarman.

there is a prima facie presumption that Parliament does not intend to act in breach of international law, including therein specific treaty obligations⁵⁹⁴

However, as Neff points out, this is a rebuttable presumption and in one instance Lord Donaldson 'unhesitatingly and unreservedly' rejected an argument that legislation created after the ratification of a Convention 'shall be subject to the limitation that it be consistent with the terms of the Convention', on the basis that to do so would:

involves imputing to Parliament an intention to import the Convention into domestic law by the back door, when it has quite clearly refrained from doing so by the front door.⁵⁹⁵

How then has the UNCRC been received by the Courts?

UNCRC in case law

Despite the Convention not being directly incorporated into domestic legislation as a ratified human rights treaty, the courts have still given it consideration and referred to it in judgments. In 2017 Gilmore analysed 130 family law cases where the Convention was cited.⁵⁹⁶ He highlights a judgment of Lord Hughes where the legal relevance of an article of the Convention was considered:

Article 3 UNCRC is contained in an international treaty ratified by the UK. It is binding on this country in international law. It is not, however, part of English law. Such a treaty may be relevant in English law in at least three ways. First, if the construction (ie meaning) of UK legislation is in doubt, the court may conclude that it should be construed, if otherwise possible, on the footing that this country meant to honour its international obligations. Second, international treaty obligations may guide the development of the common law. ... Thirdly, however, the UNCRC may be relevant in English law to the extent that it falls to the court to apply the European Convention on Human Rights ("ECHR") via the Human Rights Act 1998. The European Court of Human Rights has sometimes accepted that the Convention should be interpreted, in appropriate cases, in the light of generally accepted international law in the same field, including multi-lateral treaties such as the UNCRC.⁵⁹⁷

⁵⁹⁴ [UK] - *Salomon v Commissioners of Customs and Excise* [1967] 2 QB 116 at [143] Lord Diplock.

⁵⁹⁵ [UK] - *R v Secretary of State for the Home Department, Ex parte Brind and Others* [1991] 2 WLR 588 at [718] Lord Donaldson of Lynton.

⁵⁹⁶ Gilmore (n 87).

⁵⁹⁷ [UK] - *R (SG and others) v Secretary of State for Work and Pensions* [2015] UKSC 16 at [137] Lord Hughes.

Gilmore found that 25 of the 41 articles from Part 1 of the Convention were cited, the most frequent being article 12 'respect for the views of the child', followed by article 3 'best interests' and article 9 'separation from parents'. Critically Gilmore concludes that the Convention is being used in several ways, principally 'as a source for interpretation of the law'; additionally, he noted that:

The Convention has also been used in some cases to provide a children's rights context, against which to assess the claims of adults, usually parents, or to ground the court's general perspective on an issue.⁵⁹⁸

The final way Gilmore describes the Convention being used is 'to underline the content of existing domestic provisions which mirror its requirements'⁵⁹⁹ and observes that the use of the Convention in 'descriptive and interpretive' methods are due to the limitations created by the dualist approach to international law. Gilmore's analysis is focused on the Family Law Reports and the use of the Convention in family law cases. It would be illuminating to take his concept further and consider the use of the UNCRC in other types of cases, breaking down the results by legal area.

With regards to judicial decision in Wales, Hoffman describes how the Rights of Children and Young Persons (Wales) Measure 2011 (the 'Measure') has added a new basis for judicial review and notes:

Importantly, the Measure draws down the CRC into Welsh law so that judges deciding cases on compliance with the due regard duty may be called on to consider the meaning of rights under the CRC, as an aspect of forming a view on whether due regard has been had to it.⁶⁰⁰

As of yet this has not been relied upon. However, if or when it is, observing how the courts approach cases in Wales in comparison to England could be illuminating.

Having considered the status of the Convention and how it has been used in case law within the UK, the next consideration is the status of the National Human Rights Institution's (NHRI) for children.

⁵⁹⁸ Gilmore (n 87) 518.

⁵⁹⁹ *ibid.*

⁶⁰⁰ Hoffman (n 69).

Ombudspersons

In the UK, the term used for the Ombudspersons for Children is Children's Commissioner. Under the heading of 'Independent monitoring,' the Committee raised concerns and made recommendations which read:

the Committee is concerned that the powers of the Commissioners for ... Wales are still limited.

16. With reference to the Committee's general comment No. 2 (2003) on general measures of implementation, the Committee recommends that the State party:

(a) Further strengthen the independence of established Children's Commissioners, in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), and enable them, inter alia, to receive and investigate complaints from or on behalf of children concerning violations of their rights;⁶⁰¹

The main pieces of legislation in England and Wales relating to Children's Commissioners are:

- ❖ Children Act 2004 (CA 2004),
- ❖ Care Standards Act 2000 (CSA 2000)
- ❖ Children's Commissioner for Wales Act 2001 (CCWA 2001)
- ❖ Children and Families Act 2014 (CFA 2014)

In England, the Children's Commissioner was created under the S.1 CA 2004, with a primary function described as 'promoting and protecting the rights of children in England'.⁶⁰² Section 72 of CSA 2000 creates a Children's Commissioner for Wales; with S72A the principal aim 'in exercising his functions is to safeguard and promote the rights and welfare of children to whom this Part of the act applies.'⁶⁰³

Rees and Williams give a comprehensive analysis of the differences between the Commissioners of England, Wales, Scotland, and Northern Ireland, and in discussing that the Children's Commissioner for England is appointed by the Secretary of State and the Children's Commissioner for Wales by the First Minister they note that:

Some perceive government appointment as a defect in constitutional design, incompatible with the Paris Principles, and prefer appointment by and accountability to the respective parliamentary assembly.⁶⁰⁴

⁶⁰¹ CRC CO UK 2016 (n 201) para 15,16.

⁶⁰² [UK] - Children Act 2004 C.31 2004 s 1.

⁶⁰³ [UK] - Care Standards Act 2000 C.14 2000 s S72A.

⁶⁰⁴ Rees and Williams (n 586) 417.

This government appointment may be the issue relating to independence referred to in the Committee's recommendation. It is also unfortunately not clear how the Committee feel that the Children's Commissioner for Wales' powers are limited, for as Rees and Williams point out:

The Welsh Commissioner has the power to provide children and young people with assistance in certain proceedings where the proceedings relate to matters which have a more general application or relevance to the rights and welfare of children in Wales, and the power to provide assistance in making a complaint or representation in respect of public authorities defined in the legislation.⁶⁰⁵

Whereas:

The English Commissioner initially did not have any power in relation to individual cases, but following amendments enacted in 2014, can provide advice and assistance to children who live away from home or who receive social care and can make representations on behalf of a child to a person in England who is providing the child with accommodation or services, or otherwise exercising functions in relation to the child.⁶⁰⁶

Both Children's Commissioners for England and Wales are members of European Network of Ombudspersons for Children (ENOC). In order to be member, they must meet all the set criteria including that:

There are no provisions in the legislation which limit the institution's ability to set its own agenda in relation to this function, or which prevent it carrying out significant core functions suggested in the Paris Principles and ENOC's Standards.⁶⁰⁷

Both England and Wales, therefore, have Children's Commissioners that are sufficiently independent enough to satisfy the ENOC criteria. While as explored above they have some ability to assist in set circumstances, there has not been any substantial change to their powers since the CO report, and they are still not able to hear individual complaints as the Committee recommends. This can be contrasted to the situation in one of the other parts of the UK, Jersey, where the new Children's Commissioner can among other duties:

⁶⁰⁵ *ibid* 421.

⁶⁰⁶ *ibid*.

⁶⁰⁷ European Network of Ombudspersons for Children (ENOC), 'European Network of Ombudspersons for Children - Membership Information & Criteria' (2019) <http://enoc.eu/?page_id=274> accessed 23 May 2019.

investigate cases where the rights of children and young people have not been respected and suggest how things could be improved.⁶⁰⁸

Human rights rankings

In the human rights indices gathered for figures 5.11 and 5.12 in chapter 5, the UK has mixed results. Here in figure 7.2 the top three State parties, the UK and the lowest three state parties' indices are displayed. The results for the Human Rights Indices for the top sixteen are discussed further in chapter 5.6.

In the UN Human Development Index, the UK comes 14th. The highest rank within the 24 State parties which achieved grades C, D, and E (such as the UK) was Norway, which ranked 1st and the lowest was Jamaica, which ranked 97th. Of the top 24 State parties in this sample, only eight have a higher rank than the UK. The UK is ranked 25th in the UN Gender Inequality Index and classed as 'group 2' for the UN Gender Development Index; Switzerland was the highest ranked of the 24, ranking 1st and Jamaica the lowest at 95th. Ten of the top 24 rank higher than the UK in the GII, and 15 are ranked into group 2 for the GDI. (NB the number of State parties do not always add up to 24 as some are not included in some of the indices.)

Figure 7.2 The Human Rights Indices for the top and lowest three ranking State parties and the UK – the full figure is in chapter 5 at Figure 5.11 and 5.12, and appendix A-40.

Project Rank	A-Z		Av Grade	UN HDI Rank (2018)	UN Gender Inequality Index (2018)	UN Gender Development Index Group (2017)	The Economist Intelligence Unit's Democracy Index 2017	EU - DI - Classification	WHO - Child Mortality - per 1000 live births	WHO - Stunting among children %	WHO - Adolescent birth rate - per 1000 women aged 15-19 (2005-2014)	WHO - % of Gov. spending on health
1	Iceland	84	C	6	9	2	2	Full	2	0	7.1	15.7
2	Portugal	83	C	41	19	1	26	Flawed	3.6	0	10.5	11.9
3	Norway	79	D	1	5	1	1	Full	2.6	0	5	18.2
23	UK	61	E	14	25	2	14	Full	4.2	0	19.3	16.5
50	Senegal	44	G	164	124	4	74	Flawed	47.2	20.5	80	8
51	Israel	38	H	22	21	2	30	Flawed	4	0	10.2	11.6
52	Saudi Arabia	38	H	39	50	5	159	Authoritarian	14.5	9.3	17.6	8.2

The UK ranks 14th in the Economist Intelligence Unit Democracy Index with a classification of 'full democracy'. Nine State parties in the study sample of 52 State parties have higher ranks,

⁶⁰⁸ Government of Jersey, 'Children's Commissioner for Jersey' <<https://www.gov.je/Government/Departments/StrategicPolicy/RespondingtoIndependentJerseyCareInquiry/Pages/ChildrensCommissionerforJersey.aspx>> accessed 9 September 2019.

Norway 1st overall, and 11 others are classified as having a ‘full democracy’. Kazakhstan ranks lowest of the 24 with a rank of 141st and is classified as having an ‘Authoritarian’ system.

With regards to health, for the WHO figure of child mortality per 1000 live births, the UK’s figure is 4.2; ten of the 24 have lower figures than the UK, with the lowest a 2 for Iceland and the highest figure of 22.4 for Fiji. The UK has 0% stunting among children as do 15 other State parties; the worst figure in the top 24 is 10.7% for Uruguay. For the adolescent birth rate, the UK has a figure of 19.3 (per 1000 women aged 15-19 (2005-2014)), 16 of the top 24 have a lower figure with Switzerland having the lowest figure of 2, and Uruguay had the highest figure of 63.5. Finally, considering the percentage of government spending on health, the UK is recorded as 16.5%, with 14 of the 24 having higher spending, the highest being New Zealand with 23.4%. The lowest is Jamaica with 8.1%.

In chapter [2.4] the project by Gran to create a Children’s rights index in 2010 was discussed. This was based on whether State parties had legislation in line with eight of the articles of the Convention. Each article was scored from a 1 where there was no right to a 4 where the right exists. The total score range was from the minimum of a score of 8 to a maximum of 32. In that scale, the UK scored 27, by comparison, Iceland 24, Norway 28, and Portugal 25. The highest score in Gran’s index was 31 for Saint Kitts & Nevis, and the lowest score of was 13 for Somalia and Swaziland.⁶⁰⁹ As noted, this was potentially an exciting index, though limited to only eight of the Convention articles, and it is regrettable that it has not been updated or expanded to include more articles.

7.3 Review of the grades from the cluster analysis

Grades for the UK as a State party and for just England and Wales

For the Convention monitoring process, the UK as a State party refers to England, Wales, Scotland, Northern Ireland, three Crown Dependencies and 14 Overseas Territories. In order to be able to assess England and Wales alone, as a separate legal jurisdiction, all ten clusters were regraded, removing comments specific to other parts of the UK. First a spreadsheet was created recording each separate comment and allocating a ‘type’ such as whether it was a general comment or specific to a named piece of legislation, then the region that was specified was recorded. This spreadsheet is at appendix A-72, then the CO report was re-coded to remove comments to regions other than England and Wales, the recoded CO report is included in appendix A-73-110. This allowed the CO report to be re-graded, for some paragraphs, this did

⁶⁰⁹ Gran (n 70) 9,10.

not change the starting grade as under a particular heading even though there might be a concern raised regarding Scotland, there was also a concern raised regarding England. However, for some issues, where the whole concern or recommendation was regarding an element other than for England or Wales, this improved the score.

This is illustrated in the cluster ‘General Measure of Implementation’ as can be seen in figure 7.3. There were two subheadings of issues that were included under the whole of the UK but excluded under England and Wales: firstly, a comment about reservations to overseas territories and crown dependencies, and secondly a recommendation to Northern Ireland under the heading of Data Collection.

General Measures of Implementation

As can be seen in figure 7.3, when the UK CO report is regraded for just England and Wales the final grade is improved to a grade C.

Figure 7.3 Comparison of cluster grades for the UK and for England and Wales for GMI cluster.

State	18. R&D	19. (a) Legislation	(b) National Strategy	(c) Government coordination	(d) Budget	(e) International assistance	(f) Independent monitoring	(g) Dissemination - CRC	(h) Dissemination - reports	(i) Cooperation - Civil society	20. Business activities	Data Collection	Training - (Staff)	Total number if issues covered	Starting Grade	Corruption	21) GC No.2, No.5, No.16, (No	Budget (Total)	Gender - discrimination / issues	Previous Recommendations	Reiterates (remains)	Comment	Multiplier score (0-5)	Square on Matrix	Final Grade
UK	1	1	1	1	1	1	1				1	1		9	D		2	3			1		0	7	D
E&W		1	1	1	1	1	1				1			7	C		2	3			1		0	4	C

Definition of the Child

For the DOTC cluster, there were no references to individual parts of the UK. Therefore, there was no change to the cluster grade.

General Principles

For the GP cluster, under the subheading of types of discrimination, the discrimination of children born out of wedlock (discrimination - single parent) was specifically relating to ‘overseas territories’. Regrading reduced the number of issues, and the final grade improved to a grade D.

Figure 7.4 Comparison of cluster grades for the UK and for England and Wales for GP cluster.

	Final Grade	Square on Matrix	Multiplier score (0-5)	Comment	Juvenile justice	Reiterates (remains)	25. Legislation (inc.	27. GC No.14, No.12, No.11, Corruption	Starting Grade	Total number of issues covered	26. mortality / suicide / Infanticide	26. register of deaths and killings.	26. Capital punishment	23(d) Respect for views	23(c) Life, survival and	23(b) Best interests	Discrimination - Single parent	Discrimination - Sexual Orientation /	24. Discrimination - race /minorities / migrant	24. discrimination - disabilities	24. discrimination - gender	24. discrimination -disadvantaged	23(a) Non-discrimination	State
UK	E	10	1		1	1	3	2	D	9	1			1	1	1	1	1	1	1	1	1	5	UK
E&W	D	6	1						C	8	1			1	1	1		1	1	1	1	1	4	E&W

Civil Rights and Freedoms

For the CRF cluster, the recommendation under ‘Birth registration and nationality’ was directed at overseas territories only and therefore final grade for England and Wales improved to a grade C.

Figure 7.5 Comparison of cluster grades for the UK and for England and Wales for CRF cluster.

	Final Grade	Square on Matrix	Multiplier score (0-5)	Comment	Juvenile justice	Reiterates (remains)	Legislation,	Corruption	Starting Grade	Total number of issues covered	Reservations and Declarations	29 - Role of media with regards to promotion of child rights	28(g) Access to information from a diversity of sources and protection from material harmful to a child's well-being	28(f) Protection of privacy and protection of image	28 (e.) Freedom of association and peaceful assembly	28(d) Freedom of thought, conscience and religion	28(c) Freedom of expression, - right to seek, receive, impart information	28(b) Preservation of identity	28 (a) or (b) Discrimination (Medlock / gender / race /migrant / disadvantaged)	BR - block to education	BR - NOT free of charge	28(a) Birth registration, name and nationality (art. 7)	State
UK	D	6	1		1		2		C	4				1	1	1						1	UK
E&W	C	3	1						B	3				1	1	1							E&W

Violence against Children

For the VAC cluster, removing references to other parts of the UK did not completely remove the comments under any of the subheadings or affect the cluster grade. For instance, under ‘Torture and other cruel or degrading treatment or punishment’ the Committee was concerned about:

- (c) The use of physical restraint on children to maintain good order and discipline in young offenders’ institutions and of pain-inducing techniques on children in

institutional settings in England, Wales and Scotland, and the lack of a comprehensive review of the use of restraint in institutional settings in Northern Ireland,⁶¹⁰

Here, though there are specific references to Scotland and Northern Ireland, removing those references still leaves comments and concerns aimed at England and Wales, and does not affect the grade.

Family Environment and Alternative Care

Though there was a specific criticism and recommendation to Northern Ireland about ‘Adoption legislation’, and the number of issues therefore reduced, this reduction was not sufficient to change the starting grade.

Disability, Basic Health and Welfare

For the DBHW cluster, removing the criticism and recommendation to Northern Ireland regarding the illegality of abortion improved the grade from an E to a D.

Figure 7.6 Comparison of cluster grades for the UK and for England and Wales for DBHW cluster.

State	34. (art 23) children with disabilities -dignity, self-reliance, participation in the community, services,	34. Education and cultural activities (art. 6, para 2);	35. (a) Survival and development	35. (b) Health and health services, in particular primary health care (art. 24);	35. (c.) health challenges - communicable and non-communicable diseases;	35. (c.) promote physical and mental health and well-being of children (environmental)	35(d) Reproductive health rights of adolescents and measures to promote a healthy lifestyle	(e) Measures to protect children from substance abuse (art. 33).	36 (a) Social security and childcare services and facilities (arts. 26 and 18, para. 3);	36(b) Standard of living, support programmes with regard to nutrition, clothing and housing; reduce poverty (art 27)	Discrimination - gender	Discrimination - race	Abortion - illegal / unsafe / denial HIV/AIDS (& STI)	Total number of issues covered	Starting Grade	Corruption	GC No. 3 / 4 /9/ 15	Legislation,	Reiterates (remains)	Juvenile justice	Multipier score (0-5)	Square on Matrix	Final Grade
UK	1	1	1	1	5	1	1	1	1	1	1	1	1	13	E		1	3	2		0	11	E
E&W	1	1	1	1	5	1	1			1	1			12	D		1	3	2		0	7	D

Education, Leisure and Cultural Activities, Special Protection Measures, and Juvenile Justice clusters.

For the ELCA, SPM and JJ clusters, removing references to other parts of the UK did not completely remove any of the headings or affect the cluster grade.

Totals

The regrading of the UK CO report for just England and Wales displayed in figure 7.7 improved the overall score from 61 to 65; this left England and Wales however with the same average

⁶¹⁰ CRC CO UK 2016 (n 201) para 39(c).

grade overall as the whole of the UK, a grade E; nevertheless, it did improve and brought England and Wales to only just below the top sixteen.

Figure 7.7 Comparison of cluster grades for the UK and for England and Wales for all clusters.

State	TOTAL	Av Score	Spread	Av Grade	1 - GMI		2 - DOTC		3 - GP		4 - CRF		5 - VAC		6 - FEAC		7 - DBHW		8 - ELCA		9 - SPM		10 - JJ	
					Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score
UK	61	6.1	5	E	D	7	C	8	E	6	D	7	G	4	E	6	E	6	E	6	E	6	F	5
E&W	65	6.5	5	E	C	8	C	8	D	7	C	8	G	4	E	6	D	7	E	6	E	6	F	5

7.4 Review of recommendations to amend legislation by cluster for England and Wales

For this section, where the CO report is quoted, references to other parts of the UK have been edited out.

This review of the CO report focuses on where comments and recommendations to amend legislation have been received, where there is a recommendation only to review legislation, for instance 'Review the Immigration Act (2016) in order to ensure its compatibility with the Convention',⁶¹¹ these have not been included.

For each recommendation the basis upon which the Committee is making the recommendation is explored.

Recommendations to amended legislation by cluster

General Measures of Implementation

The spread of comments for the GMI cluster can be seen in figure 7.3. Within these there were references to legislation or the need for statutory change under three headings.

The first reference was under the heading 'Legislation' and reads:

7. The Committee recommends that the State party:

- (a) Expedite bringing in line with the Convention its domestic legislation, at the national and devolved levels... in order to ensure that the principles and provisions of the Convention are directly applicable and justiciable under domestic law.⁶¹²

This recommendation from the Committee is based in Article 4 of the convention and GC No.5.

⁶¹¹ ibid 77(g).

⁶¹² ibid 7.

The first sentence of Article 4 reads:

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.⁶¹³

In the first paragraph of GC No.5 the Committee expands on Article 4:

When a State ratifies the Convention on the Rights of the Child, it takes on obligations under international law to implement it. Implementation is the process whereby States parties take action to ensure the realization of all rights in the Convention for all children in their jurisdiction.⁶¹⁴

The Committee also is clear on how Article 4 should be interpreted regarding legislation.

Ensuring that all domestic legislation is fully compatible with the Convention and that the Convention's principles and provisions can be directly applied and appropriately enforced is fundamental.⁶¹⁵

It has to be accepted that despite the UK ratifying the Convention almost 30 years ago, England and Wales has still not directly incorporated the whole Convention into legislation, much of domestic legislation has not been brought into line with the Convention, and the changes to legislation that have taken place, have not been to such an extent as to make all the principles and provisions directly applicable. Therefore, this recommendation is still outstanding.

The second reference to changing legislation is under the heading 'Child rights impact assessment' and reads:

10. The Committee recommends that the State party:

- (a) Introduce a statutory obligation at the national and devolved levels to systematically conduct a child rights impact assessment when developing laws and policies affecting children, including in international development cooperation;
- (b) Publish the results of such assessments and demonstrate how they have been taken into consideration in the proposed laws and policies.⁶¹⁶

GC No.5 expands on this and explains that:

⁶¹³ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Art.4.

⁶¹⁴ UN Committee on the Rights of the Child, 'General Comment No.5 (2003) on the General Measures of Implementation of the Convention on the Rights of the Child - UN Doc CRC/GC/2003/5' (n 76) para 1.

⁶¹⁵ *ibid.*

⁶¹⁶ CRC CO UK 2016 (n 201) para 10.

Ensuring that the best interests of the child are a primary consideration in all actions concerning children (art. 3 (1)), and that all the provisions of the Convention are respected in legislation and policy development and delivery at all levels of government demands a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation). This process needs to be built into government at all levels and as early as possible in the development of policy.⁶¹⁷

This comment highlights an essential aspect of the interlinking of clusters; the articles covered by the GMI cluster are listed in the 'Guidelines on Periodic Reporting' as 'arts. 4, 42 and 44, para. 6',⁶¹⁸ which is repeated in GC No.5. However, here the need for Art.4 to be read taking into consideration the obligations created under Art.3(1) is recognised; further, within GC No.5 it is reflected how all of the articles from the 'General Principles' cluster are to be considered as keystones to implementation:

The Committee emphasizes, in particular, the importance of ensuring that domestic law reflects the identified general principles in the Convention (arts. 2, 3, 6 and 12).⁶¹⁹

In addition, in GC No.5, it is also emphasised that:

The Committee has found it necessary to emphasize to many States that decentralization of power, through devolution and delegation of government, does not in any way reduce the direct responsibility of the State party's Government to fulfil its obligations to all children within its jurisdiction, regardless of the State structure.⁶²⁰

This is particularly relevant to these issues as the situation as to Children's Rights Impact Assessments (hereafter CRIA) varies across the devolved areas of the UK, including being different in England and Wales. This is, in addition, a clear example where the English and Welsh approach to implementing children's rights has diverged in method.

⁶¹⁷ UN Committee on the Rights of the Child, 'General Comment No.5 (2003) on the General Measures of Implementation of the Convention on the Rights of the Child - UN Doc CRC/GC/2003/5' (n 76) para 45.

⁶¹⁸ UN Committee on the Rights of the Child, 'Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child UN Doc. CRC/C/58/Rev.3' (n 15).

⁶¹⁹ UN Committee on the Rights of the Child, 'General Comment No.5 (2003) on the General Measures of Implementation of the Convention on the Rights of the Child - UN Doc CRC/GC/2003/5' (n 76) para 22.

⁶²⁰ *ibid* 40.

Before considering the CRIA, it is necessary to reflect on the differing situation in Wales to England. In January 2011 the Rights of Children and Young Persons (Wales) Measure 2011 was passed. Section 1 creates a ‘duty to have due regard to Convention on the Rights of the Child’ and Section 2 sets out that:

2. The children's scheme

(1) The Welsh Ministers must make a scheme (“the children's scheme”) setting out the arrangements they have made, or propose to make, for the purpose of securing compliance with the duty under section 1.⁶²¹

In 2014 The Children’s Scheme was published,⁶²² this sets out the CRIA process and records that:

The process can range from thinking about the impact of decisions on children in the course of day-to-day work activity, through to the formal application of a structured impact assessment template accompanied by a record of the outcome and decisions.⁶²³

In 2017 a report commissioned by Unicef UK was published reviewing comparative practice across the UK,⁶²⁴ which highlights the different situation regarding CRIA between England and Wales. As noted above, England does not have a separate government, and the report reflects this in its review. In addition, the report’s Table 1 (figure 7.8) is titled CRIA in UK Government/England, highlighting that this is the situation not only for legislation for England, but for legislation created by the UK government.

Figure 7.8 Image of Table 1 reproduced from UNICEF UK Report.⁶²⁵

Material scope	Currently, ad hoc selection of Government Bills. In the future, the initial focus may be on DfE-led policies and legislation.
Personal scope	Not explicit but presumably children up to the age of 18
Tools	In development
Support & review	Team of 3 overseeing UNCRC developments
Publication	Currently, occasional when CRIA is undertaken on a Government Bill. Future CRIAs may be working documents rather than public documents, so may not be published, but any CRIA is FOI-able

⁶²¹ [Wales] - Rights of Children and Young Persons (Wales) Measure 2011 2011.

⁶²² Welsh Government, ‘Children’s Rights Scheme 2014’ (2014).

⁶²³ *ibid* 9.

⁶²⁴ Lisa Payne, ‘Child Rights Impact Assessment (CRIA): A Review of Comparative Practice across the UK’ (2017).

⁶²⁵ *ibid* 26.

In comparison, the report table for CRIA in Wales⁶²⁶ is much longer. Under ‘Material Scope’ section of Table 4, it is noted that:

Policies, legislation, Regulations, strategies – very broad approach under the due regard duty in the Measure. However, the annual budget is not subject to a CRIA, but an Integrated Impact Assessment which may or may not refer to children specifically.⁶²⁷

Further, under the ‘Publications’ section of the table, it is recorded that:

All CRIAs relating to legislation and regulations must be published. Other CRIA titles are listed on the Welsh Government’s CRIA Newsletter and must be made available upon request.⁶²⁸

For the UK Government/England, the report identified that only 5 CRIA or UNCRC consideration papers had been identified up to May 2017, whereas for Wales the report states that though:

There is nothing in the legislation saying CRIA is mandatory but the [Wales Measure] Implementation Team is aware of around 260 CRIAs having been done from 2012 to date. An interesting development is that Welsh Assembly Members have contacted the Children’s Commissioner for Wales for advice when developing a Private Member’s Bill, which is an indication of how mainstreamed the CRIA process has become.⁶²⁹

Returning to the Committee’s recommendations, CRIA are not yet a statutory obligation in either jurisdiction. However, they appear to be a functioning tool in Wales though there is clearly concern about whether they are fully embedded in the government process, as illustrated by a quotation used in the Unicef report from one of their ‘Interviewee from Wales’:

“We have reached a point where for certain individuals/teams, the CRIA process is familiar and we’re seeing some well-developed CRIAs. For others, they’re still at basic foundation level. We are trying to address those differences.”⁶³⁰

In addition, in Wales CRIA regarding legislation are published, and others are available, whereas not only does England not routinely carry out CRIA when they do, they are not published, though they can be requested under ‘freedom of information’. Therefore, while Wales is significantly closer to achieving the Committee’s recommendation, the precise

⁶²⁶ *ibid* 38.

⁶²⁷ *ibid* Table 4.

⁶²⁸ *ibid* Table 4.

⁶²⁹ *ibid* 41.

⁶³⁰ *ibid*.

recommendation is still relevant, and England is a long way from realising its obligation under Articles 3(1) and 4.

The third recommendation regarding a statutory change under the GMI cluster was found under the heading 'Coordination':

11. The Committee reiterates its previous recommendation that the State party ensure effective coordination of the implementation of the Convention throughout the State party. To that end, the Committee recommends that the State party:

(a) In each of the devolved administrations... establish an appropriate statutory body at a high interministerial level with a clear mandate and sufficient authority to coordinate all activities across relevant sectors related to the implementation of the Convention;⁶³¹

The concept of coordination is expanded upon within GC No.5, as:

The purpose of coordination is to ensure respect for all of the Convention's principles and standards for all children within the State jurisdiction; to ensure that the obligations inherent in ratification of or accession to the Convention are not only recognized by those large departments which have a substantial impact on children - education, health or welfare and so on - but right across Government, including for example departments concerned with finance, planning, employment and defence, and at all levels.⁶³²

However, what is meant by 'an appropriate statutory body at a high interministerial level' is purposely left for State parties to develop effective coordination:

The Committee believes that, as a treaty body, it is not advisable for it to attempt to prescribe detailed arrangements appropriate for very different systems of government across States parties.⁶³³

Neither England nor Wales currently has a Minister for Children, and it cannot be said that there is a 'Statutory body at a high interministerial level'. This recommendation is, therefore, still relevant.

⁶³¹ CRC CO UK 2016 (n 201) para 11.

⁶³² UN Committee on the Rights of the Child, 'General Comment No.5 (2003) on the General Measures of Implementation of the Convention on the Rights of the Child - UN Doc CRC/GC/2003/5' (n 76) para 37.

⁶³³ *ibid* 38.

Definition of the Child

For the DOTC cluster, the committee made a single recommendation regarding legislative changes:

that the State party raise the minimum age of marriage to 18 years across all devolved administrations⁶³⁴

The current legislation for England and Wales relating to age is the Marriage Act 1949 C.76, sections 2 and 3(1), and the Matrimonial Causes Act 1973 S11 (a)(ii) Section 2 of the 1949 Act states that:

2. Marriages of persons under sixteen.

A marriage solemnized between persons either of whom is under the age of sixteen shall be void.⁶³⁵

In addition, the Matrimonial Causes Act 1973 Section 11 (a)(ii) sets out that a marriage where either party is under the age of sixteen is void. The Marriage Act of 1949 continues under section 3(1) to consider what is required for a marriage of a child aged 16 or older:

(1) Where the marriage of a child, not being a widower or widow or a surviving civil partner, is intended to be solemnized on the authority of certificates issued by a superintendent registrar under Part III of this Act, the consent of the appropriate persons shall be required:⁶³⁶

In some books, the heading of S.3(1) is wrongly amended to read persons under eighteen rather than the original age of twenty-one, however, this is technically not correct as the wording of headings within statutes are not changed and the understanding that this section now refers to someone under the age of 18 comes from the use of the word 'child' and Section 78 titled 'Interpretation':

(1) In this Act, except where the context otherwise required, the following expressions have the meanings hereby respectively assigned to them, that is to say-
"child", except where used to express a relationship, means a person under the age of eighteen,⁶³⁷

⁶³⁴ CRC CO UK 2016 (n 201) para 20.

⁶³⁵ [UK] - Marriage Act 1949 C.76 1949.

⁶³⁶ *ibid* 3(1).

⁶³⁷ *ibid* 78(1).

The Act originally used the word 'infant' in S.3(1) and S.78 this was interpreted as "infant" means a person under the age of twenty-one years'.⁶³⁸ In 1969 the Family Law Reform Act in Section 2(1)(c) amended the definition of the word infant to mean a person under eighteen years. The word 'infant' was amendment to the word 'child' by the Family Law Reform Act 1987.

S.3 of the Marriage Act 1949 goes on to specify who can give consent for the marriage of a child, essentially someone with parental responsibility, and sets down that if this consent is not given the child can appeal to the High Court.

Regrettably, the most recent figures from the Office for National Statistics are not particularly recent; they show that for 2011 in England and Wales, 90 sixteen-year-old and 184 seventeen-year-old girls (total of 274), and 11 sixteen-year-old and 59 seventeen-year-old boys (total 70) were married.⁶³⁹

Legislation relating to marriage is an example of where the statute books have become overly complex with far too many separate pieces of legislation relating to aspects of marriage, and it can be argued that it is an area of law ripe for clarity, consolidation and possibly codification.

With regards to the current law, on the 5th September 2018 a private members bill was introduced on 'Marriage and Civil Partnership (Minimum Age) Bill 2017-19' under the ten-minute rule; a date has not currently been set for a second reading. However, a similar bill in 2016 started in the House of Lords and passed to the House of Commons was not even read during the session, and due to Parliament having prorogued, did not proceed.

As previously noted, a minimum age of marriage is not mentioned in the Convention. It is found in GC No.20, para.40:

The Committee reminds States parties of the obligation to recognize that persons up to the age of 18 years are entitled to continuing protection from all forms of exploitation and abuse. It reaffirms that the minimum age limit should be 18 years for marriage.⁶⁴⁰

The recommended legislative change by the Committee under this cluster has not been achieved, and while it does appear that some MP's want to see a legislation change, the lack of media coverage of the Bill does not bode well for its prospects, a stark contrast to Norway

⁶³⁸ [UK] - Marriage Act 1949 C.76 Original Version as enacted.

⁶³⁹ Office for National Statistics, 'Dataset - Age at Marriage and Previous Marital Status 2011' <<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/marriagecohabitationandcivilpartnerships/datasets/ageandpreviousmaritalstatusatmarriage>>.

⁶⁴⁰ UN Committee on the Rights of the Child, 'General Comment No.20 (2016) on the Implementation of the Rights of the Child during Adolescence- UN Doc. CRC/C/GC/20' (n 127) para 40.

as noted in chapter 6, where children themselves lobbied for the change in law. This recommendation therefore is still outstanding.

General Principles

The spread of comments for the GP cluster can be seen in figure 7.4. Within these, there were comments regarding legislative changes under three subheadings. Firstly, under Non-discrimination the Committee noted their concern that:

(a) A number of provisions under the Equality Act (2010) exempt children from the protection against age discrimination ...

22. The Committee recommends that the State party:

(a) Consider the possibility of expanding legislation to provide protection of all children under 18 years of age against discrimination on the grounds of their age.⁶⁴¹

The main article in the Convention relating to non-discrimination is, article 2; the wording of this article focuses on discrimination of categories of children, not of children as a group. It reads:

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.⁶⁴²

Further, the guidelines on periodic reporting expand on discrimination being about specified categories of children:

Information complementing that contained in the common core document should be provided on special measures taken to prevent discrimination (art. 2) and to ensure that children in disadvantaged situations are able to enjoy and exercise their rights. Information should be provided, when appropriate, on measures to combat gender-based discrimination and to ensure the full enjoyment of their rights by children with disabilities, children belonging to minorities and indigenous children.⁶⁴³

⁶⁴¹ CRC CO UK 2016 (n 201) para 21,22.

⁶⁴² United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article.2(1).

⁶⁴³ UN Committee on the Rights of the Child, 'Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child UN Doc. CRC/C/58/Rev.3' (n 15) para 24.

The evolution of non-discrimination has been with the inclusion of other categories of children who might be discriminated against; for instance, within the UK's CO, the committee continues its concerns noting that:

(c) Many children in certain groups, including Roma, gypsy and traveller children, children of other ethnic minorities, children with disabilities, children in care, migrant, asylum-seeking and refugee children and lesbian, gay, bisexual, transgender and intersex children, continue to experience discrimination and social stigmatization, including through the media.⁶⁴⁴

Here, the list of categories being identified as vulnerable to discrimination is longer than in the original Convention, which included the catch-all of 'other status' allowing this increase. Arguably, though the Convention itself and the general comments, none of which focus on article 2, do not specifically mention age discrimination against children, the Convention as a whole can be read as a document protecting the rights of the category of humans classified as children. However, it is not expressly specified. Further, with regards to UK legislation, Freeman expresses:

The Equality Act 2010 bans discrimination on more or less every conceivable ground, except discrimination against those under 18 years of age.⁶⁴⁵

In the particular case of the Equality Act, it was an act consolidating a number of pieces of legislation implementing EU Directives. Freeman also quotes the government response to the consultation on the Equality Bill:

We have considered the arguments which were put forward for prohibiting age discrimination against children as well as adults. However, we continue to believe that age discrimination legislation is not an appropriate way to ensure that children's needs are met.⁶⁴⁶

Not only has the Equality Act 2010 not been amended to include age discrimination against children, there was at the time of the creation of the act a clear intention not to include age discrimination against children; therefore, the Committee's concern is still outstanding. As the legislation has not been amended, the question remains on what grounds the Committee is making the recommendation as article 2 does not expressly cover this issue.

⁶⁴⁴ CRC CO UK 2016 (n 201) para 21.

⁶⁴⁵ Freeman, 'The Human Rights of Children' (n 45).

⁶⁴⁶ United Kingdom, 'The Equality Bill – Government Response To The Consultation' (2008) para 3.33.

The second set of references to the need to amend legislation comes under the subheading 'Best interests of the child':

26. The Committee regrets that the right of the child to have his or her best interests taken as a primary consideration is still not reflected in all legislative and policy matters and judicial decisions affecting children, especially in the area of alternative care, child welfare, immigration, asylum and refugee status, criminal justice and in the armed forces.

27. With reference to its general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, the Committee recommends that the State party, in all parts of its territory:

(a) Ensure that this right is appropriately integrated and consistently interpreted and applied in all legislative, administrative and judicial proceedings and decisions and in all policies, programmes and projects that are relevant to and have an impact on children;⁶⁴⁷

While it is clear that this relates directly to article 3 and the best interest of the child, the first difficulty with this concern and recommendation is that it is expressed without being clear which 'legislative and policy matters and judicial decisions' do not include as a primary consideration the best interest of the child. For instance, matters of alternative care and child welfare, two of the areas mentioned, are covered by the Children Act 1989 which has as its first section:

1. Welfare of the child

(1) When a court determines any question with respect to—

(a) the upbringing of a child; or

(b) the administration of a child's property or the application of any income arising from it, the child's welfare shall be the court's paramount consideration.⁶⁴⁸

In this instance, the wording of the legislation uses 'paramount' rather than 'primary', which attributes a greater level of consideration than recommended.

Additionally, with regards to Criminal Justice in the 'Sentencing Children and Young People Definitive Guideline', under 'Section one: General approach' the first point of the 'Sentencing principles' reads:

⁶⁴⁷ CRC CO UK 2016 (n 201) para 26,27.

⁶⁴⁸ [UK] - Children Act 1989 C.41 1989.

When sentencing children or young people (those aged under 18 at the date of the finding of guilt) a court must have regard to:

- the principal aim of the youth justice system (to prevent offending by children and young people); and
- the welfare of the child or young person⁶⁴⁹

With regard to the welfare of the child and young person the sentencing guidelines refer to Section 44(1) of the Children and Young Persons Act 1933 in that:

Every court in dealing with a child or young person who is brought before it, either as . . . an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.⁶⁵⁰

It would appear that the issue here is that ‘having regard to the welfare of the child or young person’ falls short of the best interests of the child being a primary consideration.

It has already been noted that though Wales does use CRIA, England (UK Government) generally does not and therefore it is possible to see that the recommendation for the right to be ‘appropriately integrated’ is relevant regards policies. Further, even though it is not clear precisely which legislation and policy matters the Committee is referring to in their comment nevertheless it has to be accepted that although the UK has versions of ‘best interests’ tests in some of the primary legislation relating to children, this is not the same wording and arguably not as comprehensive as the Convention requires. Therefore, this recommendation is still outstanding.

Under the heading ‘Respect for the views of the child’, the Committee noted their concern that:

- (b) The reforms concerning the reduction of legal aid in all four jurisdictions appear to have a negative impact on the right of children to be heard in judicial and administrative proceedings affecting them;⁶⁵¹

And made the corresponding recommendation to:

⁶⁴⁹ Sentencing Council (UK), ‘Sentencing Children and Young People - Definitive Guidelines’ (2017) para 1.1 <<https://www.sentencingcouncil.org.uk/wp-content/uploads/Sentencing-Children-and-Young-People-definitive-guideline-Web.pdf>>.

⁶⁵⁰ [UK] - Children and Young Persons Act 1933 C.12 1933.

⁶⁵¹ CRC CO UK 2016 (n 201) para 30.

(b) Assess the impact and expedite the review of the reforms on legal aid in England, Wales ... in order to ensure that such reforms do not negatively affect children's access to justice, and guarantee effective participation of children in such assessment and review;⁶⁵²

This recommendation is based on the obligations created under Article 12:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.⁶⁵³

In addition, in GC No.12 on the Right to be Heard (2009) notes that:

Article 12 imposes an obligation on States parties to introduce the legal framework and mechanisms necessary to facilitate active involvement of the child in all actions affecting the child and in decision-making, and to fulfil the obligation to give due weight to those views once expressed.⁶⁵⁴

The UK government has undertaken a review on legal aid, specifically on the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO") which was published in February 2019.⁶⁵⁵ This included in the overview of the information that:

This review was set up with the aim of assessing the extent to which LASPO achieved its objectives of delivering significant savings to the cost of the scheme by focusing legal aid on the highest priority cases.⁶⁵⁶

However, this review has been met with disappointment, including from the Bar Council, whose response is published on their website:

⁶⁵² *ibid* 31.

⁶⁵³ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 12.

⁶⁵⁴ UN Committee on the Rights of the Child, 'General Comment No.12 (2009) on the Right of the Child to Be Heard - UN Doc. CRC/C/GC/12' (n 187).

⁶⁵⁵ Ministry of Justice, 'Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)' (2019) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777038/post-implementation-review-of-part-1-of-laspo.pdf>.

⁶⁵⁶ *ibid* 5.

The Bar Council is disappointed with the Government's postimplementation review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO"), published today. When the Bar Council gave evidence to the Ministry of Justice (MOJ) last year on the impact of the LASPO cuts to legal aid we identified five priorities to help reverse the decline in legal aid provision over almost six years. Few have been addressed... we consider that this is a wasted opportunity. The 500-page report offers little of substance to ease the impact of LASPO on vulnerable individuals seeking justice.⁶⁵⁷

Also published in February was the legal support action plan setting out some of the changes proposed from the review. Two of the reforms relating to children were summarised under 'Government action' points:

We will bring forward proposals to expand the scope of legal aid to include separated migrant children in immigration cases – by Spring 2019.⁶⁵⁸

We will bring forward proposals to expand the scope of legal aid to cover special guardianship orders in private family law – by Autumn 2019.

We will continue to work with The Law Society to explore an alternative model for family legal aid.⁶⁵⁹

It is, therefore, too early to know precisely what these proposals are or how they will affect children's access to justice or adult's access to justice in cases involving children. As to the recommendation to 'guarantee effective participation of children in such assessment and review', while Annex C to the report lists the organisations and individuals engaged with as part of the review process, which includes Coram Children's Legal Centre, The Children's Society, and CAFCASS among others, whether or not this form of participation meets the Committee's recommendations may be commented on in the future. Even though progress is being made on this issue it is too early to be able to say that the concern has been rectified and therefore the recommendation is considered to be still outstanding.

Civil Rights and Freedoms

The spread of comments for the CRF cluster can be seen in figure 7.5. Within these there were comments regarding legislative changes for three subheadings

⁶⁵⁷ The Bar Council, 'LASPO Review: Bar Council Reaction' (2019) <<https://www.barcouncil.org.uk/media-centre/news-and-press-releases/2019/february/laspo-review-bar-council-reaction/>> accessed 6 May 2019.

⁶⁵⁸ Ministry of Justice, 'Legal Support: The Way Ahead. An Action Plan to Deliver Better Support to People Experiencing Legal Problems' (2019) 13.

⁶⁵⁹ *ibid.*

Under the sub-heading of 'Freedom of thought, conscience and religion' was the following concern and recommendation:

35. The Committee is concerned that pupils are required by law to take part in a daily religious worship which is "wholly or mainly of a broadly Christian character" in publicly funded schools in England and Wales, and that children do not have the right to withdraw from such worship without parental permission before entering the sixth form.

36. The Committee recommends that the State party repeal legal provisions for compulsory attendance at collective worship in publicly funded schools and ensure that children can independently exercise the right to withdraw from religious worship at school.⁶⁶⁰

The relevant article of the Convention is Art.14, which reads that:

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.⁶⁶¹

The requirement to take part in daily Christian worship without being able to withdraw without parental permission breaches all three sections of article 14 and is found in section 70 and schedule 20 of The School Standards and Framework Act 1998.⁶⁶² This act is still in force, and therefore this comment and recommendation to England and Wales is still outstanding.

The second set of comments under CRF was under the subheading 'Freedom of association and peaceful assembly':

37. In order to fully guarantee children's right to freedom of movement and peaceful assembly, the Committee recommends that the State party:

⁶⁶⁰ CRC CO UK 2016 (n 201) para 35,36.

⁶⁶¹ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 14.

⁶⁶² [UK] - The School standards and Framework Act 1998 C.31 1998.

(a) Prohibit the use in public spaces of acoustic devices used to disperse gatherings of young people (so-called “mosquito devices”);⁶⁶³

This recommendation is based on Article 15:

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.⁶⁶⁴

GC No.20 on the implementation of the rights of the child during adolescence (2016) discusses the importance of association with peers describing it as ‘a major building block in adolescent development’⁶⁶⁵ and notes:

States should guarantee that adolescents’ right to freedom of association and peaceful assembly in all its forms is fully respected.⁶⁶⁶

In the recommendation a specific piece of legislation is not named. Nevertheless, the language used is requesting the State party to ‘prohibit’ an action, therefore, implying that new legislation is necessary as they are not prohibited by the current legislation. Currently, manufacturers advertise the devices as ‘100% legal to own and use’.⁶⁶⁷ In a recent position statement regarding Mosquito devices,⁶⁶⁸ the Children & Young People’s Commissioner for Scotland has reiterated his campaign for the devices to be banned and lists five of the Convention articles (articles 2, 3, 15, 19, and 31) which in their analysis Mosquito devices infringe. This recommendation is, therefore, still relevant.

The final subheading for CRF including recommendations to change legislation is under ‘Right to privacy’, and recommends that the State party:

⁶⁶³ CRC CO UK 2016 (n 201) para 37.

⁶⁶⁴ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989.

⁶⁶⁵ UN Committee on the Rights of the Child, ‘General Comment No.20 (2016) on the Implementation of the Rights of the Child during Adolescence- UN Doc. CRC/C/GC/20’ (n 127) para 44.

⁶⁶⁶ *ibid* 45.

⁶⁶⁷ Compound Security Systems, ‘Anti-Loitering Devices’ (2019)

<<https://www.compoundsecurity.co.uk/security-equipment/mosquito-mk4-anti-loitering-device>> accessed 10 May 2019.

⁶⁶⁸ Children & Young People’s Commissioner Scotland, ‘Position Statement: Mosquito Devices’ (2017) <<https://www.cypcs.org.uk/news/in-the-news/position-statement-the-use-of-mosquito-devices-in-scotland>>.

- (a) Prohibit the use of non-statutory stop-and-search checks against children;
- (b) Ensure that the statutory use of the stop-and-search checks is proportionate, taking into consideration the age and maturity of the child, and non-discriminatory;⁶⁶⁹

Although the first element paragraph 38(a) does not specify that it relates only to a specific part of the UK, it does not relate to England and Wales; it relates to Scotland where the Human Rights Commission has called for non-statutory stop and search to be ended:

There should be no non-statutory stop and search. This is already the case in England and Wales, where the practice was ended some considerable time ago.⁶⁷⁰

The second element of recommendation 38(b) is about the implementation of legislation rather than the existence of Convention compliant legislation. The Home Office does publish statistical bulletins⁶⁷¹ on police powers, including the use of stop and search powers; however, these do not include data on stop and search by age group. These figures show a marked reduction in the use of stop and search, and as noted by the Equality and Human Rights Commission from late 2016 police officers received new training on stop and search from the College of Policing.⁶⁷² It remains to be seen if this new training will meet the Committee's expectations. Nevertheless, the recommendation is regarding implementation and not legislation amendments.

Violence against Children

For the VAC cluster, there were comments regarding legislative changes under four subheadings. The first is under 'Torture and other cruel or degrading treatment or punishment':

With reference to the Committee's general comment No. 13 (2011) on the right of the child to freedom from all forms of violence, and to target 16.2 of the Sustainable Development Goals, the Committee urges the State party to:

- (a) Prohibit the use on children of electrical discharge weapons, such as Tasers, ... and any other harmful devices and systematically collect and publish age-disaggregated data on their use in order to monitor the implementation of such prohibition;

⁶⁶⁹ CRC CO UK 2016 (n 201) para 38.

⁶⁷⁰ Scottish Human Rights Commission, 'Commission Calls for End to Non-Statutory Stop and Search' (2015) <<http://www.scottishhumanrights.com/news/commission-calls-for-end-to-non-statutory-stop-and-search/>> accessed 10 May 2019.

⁶⁷¹ Home Office, 'Police Powers and Procedures, England and Wales, Year Ending 31 March 2017' (2017) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/658099/police-powers-procedures-mar17-hosb2017.pdf#page=19>.

⁶⁷² Equality and Human Rights Commission, 'New Stop and Search Training and Guidance for Police' (2016) <<https://equalityhumanrights.com/en/our-work/news/new-stop-and-search-training-and-guidance-police>> accessed 10 May 2019.

(b) Abolish all methods of restraint against children for disciplinary purposes in all institutional settings, both residential and nonresidential, and ban the use of any technique designed to inflict pain on children;⁶⁷³

These recommendations are based on GC No.13 and on articles 19 'protection from violence, abuse and neglect, and article 37 'protection from torture, or other cruel, inhuman or degrading treatment'. For paragraphs 40(a) and (b) the use of the language 'prohibit' and 'abolish' are taken to be an indication that the Committee considers that the matters need to be legislated on.

Regarding the first element of the recommendations 40(a) about the use of Tasers, on the College of Policing website their 'Authorised Professional Practice – Armed Policing – Conducted energy devices (CED) (Taser)⁶⁷⁴ information includes as a risk factor 'children and people of small stature' and also recommends 'consideration of voluntary referral' to the IPCC (Independent Police Complaints Commission)⁶⁷⁵ 'where a CED is used on young people (under 18)'. This, therefore, evidences that this has not been prohibited.

As to the second element of the recommendation 40(b) to abolish restraint of children and the use of pain-inducing techniques, the House of Lords and House of Commons Joint Committee on Human Rights published a report in April 2019 titled 'Youth detention: solitary confinement and restraint'⁶⁷⁶ which includes in its conclusions that pain-inducing restraint should be prohibited and recommended that:

the use of restraint for the purposes of 'discipline and good order' in Young Offenders' Institutes [sic] be prohibited in all but the most exceptional circumstances,⁶⁷⁷

In addition, it is reported that the Youth Justice Board Chair having been asked to lead a review into pain-inducing restraint is due to report in summer 2019.⁶⁷⁸

⁶⁷³ CRC CO UK 2016 (n 201) para 40.

⁶⁷⁴ College of Policing, 'Armed Policing. Conducted Energy Devices (Taser)' (2018) <<https://www.app.college.police.uk/app-content/armed-policing/conducted-energy-devices-taser/>> accessed 10 May 2019.

⁶⁷⁵ Now the IOPC Independent Police Complaints Commission.

⁶⁷⁶ House of Lords - House of Commons - Joint Committee on Human Rights, 'Youth Detention: Solitary Confinement and Restraint' (2019)

<<https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/994/994.pdf>>.

⁶⁷⁷ *ibid* 33.

⁶⁷⁸ May Bulman, 'Ministers under Pressure to Ban Use of Pain-Inducing Restraint and Solitary Confinement on Children in Detention' *The Independent*, (2019)

<<https://www.independent.co.uk/news/uk/home-news/restraint-solitary-confinement-children-young-people-prison-human-rights-committee-a8874626.html>>.

Both elements of this recommendation, therefore, have not seen changes since the CO report, though there are indications that they may be progress towards changes to the second element relating to restraint in the not-too-distant future. Nevertheless, these recommendations are still outstanding.

The second subheading under VAC with recommendations for legislative changes is ‘Corporal punishment’:

41. With reference to its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and its previous recommendations, the Committee urges the State party, in all devolved administrations, overseas territories and Crown dependencies, to:

- (a) Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as “reasonable chastisement”;
- (b) Ensure that corporal punishment is explicitly prohibited in all schools and educational institutions and all other institutions and forms of alternative care;⁶⁷⁹

The wording in the Convention regarding punishment under article 37 is that:

States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. ⁶⁸⁰

In addition, obligations arise under article 19:

- (1). States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence,⁶⁸¹

Neither of these explicitly mention corporal punishment. However, in 2006 GC No.8 was published where even the title includes corporal punishment: ‘The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment’. The GC starts by noting that:

⁶⁷⁹ CRC CO UK 2016 (n 201) para 41.

⁶⁸⁰ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article.37.

⁶⁸¹ *ibid* Article.19.

This general comment focuses on corporal punishment and other cruel or degrading forms of punishment, which are currently very widely accepted and practised forms of violence against children.⁶⁸²

Further, it goes on to express that:

The Committee is issuing this general comment to highlight the obligation of all States parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children and to outline the legislative and other awareness-raising and educational measures that States must take.⁶⁸³

As to the recommendation under paragraph 41(a) to prohibiting corporal punishment including repealing legal defences, this has not changed in England and though it has not changed (at the time of writing) in Wales, a Bill to abolish the defence of reasonable punishment was introduced in March 2019. In 2015 in a report commissioned by the NSPCC it was noted that:

As of June 2015, the UK is one of only five countries within the European Union which have not yet committed to a ban on all physical punishment.⁶⁸⁴

One of these five, France is reported to be in the process of considering a bill to prohibit all corporal punishment,⁶⁸⁵ potentially leaving the UK in an even smaller group of European states who have not banned all physical punishment.

Whether the current legislation in the UK is in breach of the Convention depends on the interpretation of whether corporal punishment is 'cruel, inhuman or degrading treatment or punishment'. The evidence suggests that it is:

Over the past decade, a vast body of research has accumulated on the consequences of physical punishment for children's health and development, as well as their later-life health and wellbeing.⁶⁸⁶

Even if the continuation of corporal punishment is not an actual breach of the Convention wording itself, the Committee could not be clearer that: 'In the view of the Committee, corporal

⁶⁸² UN Committee on the Rights of the Child, 'General Comment No.8 (2006) The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment - UN Doc. CRC/C/GC/8' (n 204) para 1.

⁶⁸³ *ibid* 2.

⁶⁸⁴ Anja Heilmann, Yvonne Kelly and Richard G Watt, 'Equally Protected? A Review of the Evidence on the Physical Punishment of Children' (2015) 9 <<https://learning.nspcc.org.uk/research-resources/2015/equally-protected/>>.

⁶⁸⁵ Global Initiative to End All Corporal Punishment of Children, 'Global Report 2018: Progress towards Ending Corporal Punishment of Children' (2019) 16 <<https://endcorporalpunishment.org/resources/global-progress-publications/global-report-2018/>>.

⁶⁸⁶ Heilmann, Kelly and Watt (n 684) 7.

punishment is invariably degrading'.⁶⁸⁷ Therefore, the legislation in England and Wales is currently not in line with the interpretation expressed in GC No.8 and the recommendation is still outstanding.

The second element of the recommendation 41(b) to 'ensure that corporal punishment is explicitly prohibited in all schools' relates to article 28.2:

States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.⁶⁸⁸

To understand the recommendation in paragraph 41(b), it is necessary to refer to the State party report from 2014 which is in itself responding to an earlier CO report (italics as original report):

All schools in *England, Northern Ireland, Scotland, and Wales* are banned by law from using any form of corporal punishment. There are some unregistered independent settings, providing part-time education, that are not covered by this ban. However, work is under way to develop a code of practice which will send a clear message about the expected standards that *all* settings should meet, and to highlight that assault of children is unlawful in any setting. Physical punishment has also been banned in child minding, other early years provision, local authority foster care and children's homes, either by statute or through codes of conduct.⁶⁸⁹

The issue then is with the sentence 'There are some unregistered independent settings, providing part-time education, that are not covered by this ban.' The question, therefore, is what precisely is meant by this. In both England and Wales in 2015-2016 a call for evidence was undertaken focusing on out-of-school education settings. In England in 2018 this was reported on; in this report, the term is clarified as:

When referring to out-of-school education settings, we mean any institution providing tuition, training or instruction to children aged under 19 in England that is not a school, college, 16-19 academy or registered childcare provider.⁶⁹⁰

⁶⁸⁷ UN Committee on the Rights of the Child, 'General Comment No.8 (2006) The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment - UN Doc. CRC/C/GC/8' (n 204) para 11.

⁶⁸⁸ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 28.2.

⁶⁸⁹ United Kingdom, 'Fifth Periodic Report of State Parties - United Kingdom - UN Doc. CRC/C/GBR/5' (2014) para 87.

⁶⁹⁰ Department for Education, 'Out of School Education Settings. Report on the Call for Evidence Conducted November 2015 to January 2016' (2018) 3

In response to the question 'Do you agree that the prohibited activities should focus on corporal punishment,' 57.6% of responders replied 'yes'. However, the report concludes:

we have decided not to pursue the model proposed in our call for evidence but instead intend to develop further the evidence base for a national approach, including future legislation where gaps in existing powers are identified.⁶⁹¹

In Wales, the government website reports the consultation closing in 2016 with the update that 'The responses to this consultation are currently being reviewed. Details of the outcome will be published here in due course.'⁶⁹² This has not been updated.

As of the date of writing, this gap in the legislation appears not to have been dealt with. If the UK government prohibited corporal punishment in all settings, there would not be a gap in the legislation. However, while the legislative gap exists this recommendation will remain outstanding.

The third subheadings under VAC with recommendations for legislative change is 'Violence, abuse and neglect' where the recommendations read:

43. With reference to its general comment No. 13 (2011) and target 16.2 of the Sustainable Development Goals, the Committee recommends that the State party:

(a) Revise the Children and Young Persons Act (1933) in order to protect all children under 18 years from child abuse and neglect;

(e) Consider ratifying the Convention on preventing and combating violence against women and domestic violence.⁶⁹³

The first element of this recommendation is in regard to the Children and Young Persons Act 1933 as section 1 reads (emphasis added):

1 Cruelty to persons under sixteen

If any person **who has attained the age of sixteen years** and has responsibility for any child or **young person under that age**, wilfully assaults, ill-treats (whether physically or otherwise), neglects, abandons, or ... that person shall be guilty of an offence...⁶⁹⁴

<<https://www.gov.uk/government/consultations/out-of-school-education-settings-registration-and-inspection>>.

⁶⁹¹ *ibid* 19.

⁶⁹² Welsh Government, 'Out-of-School Education Settings' (2016) <<https://gov.wales/out-school-education-settings>> accessed 28 May 2019.

⁶⁹³ CRC CO UK 2016 (n 201) para 43.

⁶⁹⁴ [UK] - Children and Young Persons Act 1933 C.12.

This means that children (young people) aged 16, and 17 are not protected under this section, which is particularly surprising as under section 107 dealing with 'Interpretation' reads:

(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say,-

...

"Child" means a person under the age of fourteen years;

...

"Young person" means a person who has attained the age of fourteen and is under the age of eighteen years.⁶⁹⁵

Not only does this raise issues that the legislation is not in line with article 19, but also with article 1 and the definition of a child. This legislation applicable to both England and Wales has not been changed since the recommendation and therefore the recommendation is still outstanding.

As to the second element 43(e), the recommendation to ratify the Convention on preventing and combating violence against women and domestic violence, generally known as the Istanbul Convention (IC), the UK became a signatory in 2012. In 2017 the Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017⁶⁹⁶ was enacted. This Act requires the Secretary of State to report to the houses of parliament on an annual basis from November 2017 on the steps necessary to enable the UK to ratify the convention and the timescale expected to do so, and on the progress made towards ratification. The second report under this Act published in October 2018 concludes:

The Government takes its international commitments very seriously and will only ratify when we are absolutely satisfied that the UK complies with all articles of the Convention. As set out above, the draft Domestic Abuse Bill to be published later this session will include provisions necessary for compliance with the extraterritorial jurisdiction requirements of the Convention in England and Wales.

The Government will set out a timetable for ratification in line with the requirement of section 1 of the Preventing and Combating Violence Against Women and Girls (Ratification of Convention) Act 2017 when all the legislative provisions necessary for compliance have been enacted.⁶⁹⁷

⁶⁹⁵ *ibid.*

⁶⁹⁶ [UK] - Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017.C18 2017.

⁶⁹⁷ Home Office, 'Ratification of the Council of Europe Convention on Combating Violence Against Women and Girls and Domestic Violence (Istanbul Convention) – 2018 Report on Progress' (2018) 18

The UK's treatment of this Convention, that ratification cannot take place until the UK is fully in compliance, is quite different from the approach taken to the CRC. One of the reasons for such a differing approach that is posited is due to the Istanbul Convention having very clear obligations and containing a legal framework that sets out minimum standards. In any event, the UK has not yet ratified this convention, and the recommendation, therefore, remains outstanding.

The final recommendation for legislative changes under VAC is under the subheading 'Sexual exploitation and abuse' and reads:

The Committee recommends that the State party, including devolved governments,
(f) Consider ratifying the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.⁶⁹⁸

This Convention was ratified in June 2018 and is recorded as entered into force in October 2018.⁶⁹⁹ Therefore, this recommendation is no longer outstanding.

Family Environment and Alternative Care

For the FEAC cluster, though there were criticism and recommendations for improvement none of these were regarding legislative changes.

Disability, Basic Health and Welfare

The spread of comments for the DBHW cluster can be seen in figure 7.6; within these, there were comments regarding legislative changes under two subheadings. Under the subheading 'Mental health' the following comment and recommendation were received:

(g) Children under the age of 16 years are excluded from protection under the Mental Capacity Act (2005) in England and Wales, ...including with regard to medical treatment without consent.

61. The Committee recommends that the State party:...

(e) Review current legislation on mental health to ensure that the best interests and the views of the child are taken duly into account in cases of mental health treatment of

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752315/CCS207_CCS0918513168-001_Domestic_Violence_Istanbul_Convention_2018_Accessible__002_.pdf>.

⁶⁹⁸ CRC CO UK 2016 (n 201) para 45.

⁶⁹⁹ Council of Europe, 'Chart of Signatures and Ratification of Treaty 201 -Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. CETS No.201' (2010) <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/201/signatures?p_auth=Q3jWgqBu> accessed 13 May 2019.

children below the age of 16 years, in particular with regard to hospitalization and treatment without consent.⁷⁰⁰

The health of the child is covered under article 24 of the Convention:

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right...⁷⁰¹

GC No.15 'on the right of the child to the enjoyment of the highest attainable standard of health', expands on this article. It recognises the 'indivisibility and interdependence' of rights and notes that with regards to Articles 3 'the best interest of the child' that:

This principle must be observed in all health-related decisions concerning individual children or children as a group. Individual children's best interests should be based on their physical, emotional, social and educational needs, age, sex, relationship with parents and caregivers, and their family and social background, and after having heard their views according to article 12 of the Convention.⁷⁰²

The general comment also notes:

The Committee recognizes that children's evolving capacities have a bearing on their independent decision-making on their health issues. It also notes that there are often serious discrepancies regarding such autonomous decision-making, with children who are particularly vulnerable to discrimination often less able to exercise this autonomy. It is therefore essential that supportive policies are in place and that children, parents and health workers have adequate rights-based guidance on consent, assent and confidentiality.⁷⁰³

Taking into consideration the guidance in GC No.15, it appears that the issue with the Mental Capacity Act not applying to children under the age of 16 is in part due to the fact that there is no specific statute setting out how children's evolving capacity is to be taken into account and included in decisions about health provisions. Case law has developed a test as to whether a

⁷⁰⁰ CRC CO UK 2016 (n 201) para 60,61.

⁷⁰¹ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 24.

⁷⁰² UN Committee on the Rights of the Child, 'General Comment No.15 (2013) on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (Art. 24)' (2013) para C.

⁷⁰³ *ibid* F.

child is 'Gillick Competent'⁷⁰⁴. Fundamentally, the Mental Capacity Act is concerned with situations where those who would normally be assumed to have capacity do not, and the safeguarding then necessary in those circumstances, whereas due to the case law approaching the situation from the opposite point of view, being focused on when a child might have developed the requisite capacity to consent, it does not include 'safeguards' prior to the point of developing capacity. Though there is currently a bill proceeding through parliament to amend the Mental Capacity Act, this does not propose to extend the protection to children under 16. Therefore, this recommendation is still outstanding.

The second recommendation for DBHW is under the subheading 'Environmental health' and reads:

With reference to target 1.5 of the Sustainable Development Goals, the Committee recommends that the State party, including the devolved administrations in relation to devolved matters:

(a) Set out a clear legal commitment, with appropriate technical, human and financial resources, to scale up and expedite the implementation of plans to reduce air pollution levels, especially in areas near schools and residential areas;⁷⁰⁵

The relevant part of the Convention to this recommendation is Article 24(2)(c):

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;⁷⁰⁶

The sustainable development goal referred to reads:

By 2030, build the resilience of the poor and those in vulnerable situations and reduce their exposure and vulnerability to climate-related extreme events and other economic, social and environmental shocks and disasters.⁷⁰⁷

⁷⁰⁴ [UK] - *Gillick v West Norfolk and Wisbech AHA* [1986] AC 112; [1985] 3 WLR 830;

⁷⁰⁵ CRC CO UK 2016 (n 201) para 69.

⁷⁰⁶ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 24(2)(c).

⁷⁰⁷ United Nations, 'Sustainable Development Goals: About the Sustainable Development Goals' <<https://www.un.org/sustainabledevelopment/sustainable-development-goals/>> accessed 13 May 2019.

In 2018 a draft Clean Air Strategy was opened for public consultation with a resulting Clean Air Strategy 2019 being published. This strategy recognises that:

Air pollution is the top environmental risk to human health in the UK, and the fourth greatest threat to public health after cancer, heart disease and obesity.⁷⁰⁸

The executive summary notes the intention from the government that:

We will bring forward provisions on air quality in 2019. This will include an up to date legislative framework for tackling air pollution at national and local level, tying this into the development of the new environmental principles and governance framework to be outlined in the Environment Bill.⁷⁰⁹

In December 2018 the Secretary of State for Environment, Food and Rural Affairs presented a Draft Environment (Principles and Governance) Bill, which purports to set a course towards introducing a full Environment Bill in 2019 'which will also contain specific measures to drive action on today's crucial environmental issues: cleaning up our air'.⁷¹⁰ The draft bill includes the proposal for a new Office for Environment Protection to 'scrutinise environmental policy and law, investigate complaints, and take action where necessary to make sure environmental law is properly implemented.'⁷¹¹ The bill generally extends to England, Wales, Scotland and Northern Ireland, with a few provisions only extending to England and Wales. These bills and strategies appear to 'set out a clear legal commitment' to improving air pollution levels. Whether the final legislation and implementation achieve this remains to be seen; nevertheless, at the time of writing this is not yet legislation and therefore the recommendation is still outstanding.

Education, Leisure and Cultural Activities

For the ELCA cluster, in order to understand the first comment regarding legislative changes it becomes necessary to consider earlier CO reports and State party reports because as explored in chapter 6.5 with regards to the definition of the child cluster, this study has shown that in some instances the continuing cycle of reporting can create complications or indeed errors. In chapter 6.5 this was relating to the changing focus of the Committee's concerns. Here the

⁷⁰⁸ Department for Environment Food & Rural Affairs, 'Clean Air Strategy 2019' (2019) 4 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/770715/clean-air-strategy-2019.pdf>.

⁷⁰⁹ *ibid* 12.

⁷¹⁰ Department for Environment Food & Rural Affairs, 'Draft Environment (Principles and Governance) Bill' (2018) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766849/draft-environment-bill-governance-principles.pdf>.

⁷¹¹ *ibid*.

investigation of the Committee's comments demonstrates that the reliance on a continuing cycle of reports where one report replies to another, can also be problematic as misunderstandings can create confusion and undermine the recommendations.

For the ELCA cluster, the comments regarding legislative changes were under the subheading of 'Education, including vocational training and guidance' with the recommendations to:

- (c) Ensure that children have the right to appeal against their exclusion and are provided with legal advice, assistance and, where appropriate, representation for those without means;
- (d) Abolish the use of isolation rooms;
- (g) Make children's rights education mandatory.⁷¹²

The first element of these recommendations relates to a concern the Committee noted that 'only children with disabilities have the right to appeal against their exclusion'.⁷¹³ Article 28 of the Convention reads:

1. States Parties recognize the right of the child to education...
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.⁷¹⁴

Neither the Convention nor GC No.1 (2001) the aims of Education,⁷¹⁵ nor GC No.20 (2016) on the implementation of the rights of the child during adolescence specifically mentions school exclusion. However, GC No.12 on the right of the child to be heard (2009) does mention school exclusions:

The right to be heard applies both to proceedings which are initiated by the child, such as complaints against ill-treatment and appeals against school exclusion.⁷¹⁶

It would appear that due to school exclusions being an ongoing topic in the 'conversation' between the State party reports and the CO reports, that there might have been a misunderstanding. In the State party report (2014) which refers back to the previous CO report, the situations in England and Wales are represented separately; importantly these comments

⁷¹² CRC CO UK 2016 (n 201) para 73(c),(d),(g).

⁷¹³ *ibid* 72(b).

⁷¹⁴ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989.

⁷¹⁵ UN Committee on the Rights of the Child, 'General Comment No.1 (2001) on the Aims of Education - UN Doc. CRC/GC/2001/1' (n 239).

⁷¹⁶ UN Committee on the Rights of the Child, 'General Comment No.12 (2009) on the Right of the Child to Be Heard - UN Doc. CRC/C/GC/12' (n 187).

are under the subheading, 'Right to appeal against exclusions and right to appeal to SEN tribunals':

In *England*, revised statutory guidance makes clear that excluded pupils should be supported to participate at all stages of the exclusion process. Since September 2012, parents have been able to make a claim of disability discrimination to the First-tier Tribunal in relation to a permanent exclusion.⁷¹⁷

The Department for Education statutory guidance last updated in 2017 states that 'the legislation governing the exclusion process remains unchanged'.⁷¹⁸ In addition to allegations of disability discrimination being brought to the First-tier Tribunal (Special Educational Needs and Disability), it is noted that claims of other forms of discrimination can be made to the County Court. It is also recorded that:

Where parents dispute the decision of a governing board not to reinstate a permanently excluded pupil, they can ask for this decision to be reviewed by an independent review panel.⁷¹⁹

Further, that:

An independent review panel does not have the power to direct a governing board to reinstate an excluded pupil. However, where a panel decides that a governing board's decision is flawed when considered in the light of the principles applicable on an application for judicial review, it can direct a governing board to reconsider its decision.⁷²⁰

It would appear therefore, that a misunderstanding has occurred, by the UK report highlighting the change in law to allow parents to appeal to the SEND tribunal in cases where they believe that there has been disability discrimination, which is an increase in the ability to review exclusions rather than, as it would appear the Committee has interpreted it, a statement of the only circumstances that allow an appeal.

In addition, in the State party report in relation to Wales it noted that:

⁷¹⁷ United Kingdom (n 689) para 204.

⁷¹⁸ Department for Education, 'Exclusion from Maintained Schools, Academies and Pupil Referral Units in England. Statutory Guidance for Those with Legal Responsibilities in Relation to Exclusion' (2017) 6 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/641418/20170831_Exclusion_Stat_guidance_Web_version.pdf>.

⁷¹⁹ *ibid.*

⁷²⁰ *ibid* 7.

In *Wales*, the Education (Wales) Measure 2009 makes provision for children in Wales to have a right to appeal in respect of SEN or to make a claim in respect of disability discrimination in schools.⁷²¹

Again, it appears that the Committee has taken this to mean that there are no powers to appeal against school exclusions; however, as noted, the subheading for the section covered both right to appeal against exclusion and right to appeal to SEN tribunals. The information regarding Wales was an update about SEN appeals and not about school exclusions because under 'The Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003'⁷²² regulation 6, the 'Functions of governing body in relation to excluded pupils' covers what actions the governing body must take, including giving notice in writing of a number of matters including under regulation 6(6)(b):

- (ii) his or her right to appeal against the decision,
- (iii) the person to whom he or she should give any notice of appeal,
- (iv) that any notice of appeal must contain the grounds of appeal, and
- (v) the last date on which an appeal may be made.⁷²³

It is possible therefore to appeal school exclusions in Wales. Once again, this situation of apparent misunderstanding has highlighted one of the flaws in the current monitoring system by each report referring to the last report; it is possible for information to be left out or misunderstood. Therefore, for both England and Wales the concern appears to be incorrect and the legislation does not need to be amended.

Regarding the element of recommendation 73(d) to 'abolish the use of isolation rooms', firstly it is not clear on what basis the Committee is making this recommendation. Article 28 (2) does read:

States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.⁷²⁴

From this recommendation, should it be concluded that the Committee considers that isolation is not 'a manner consistent with the child's human dignity and in conformity with the present

⁷²¹ United Kingdom (n 689) para 205.

⁷²² [Wales] - The Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003 NO.3227 (W.308) 2003.

⁷²³ *ibid* Regulation 6(6).

⁷²⁴ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 28(2).

Convention'? In the GC No.1 'on the aims of education', the only references to discipline is focused on corporal punishment; the use of isolation as a discipline measure is not mentioned.

The most recent Department for Education report on 'Behaviour and discipline in schools' for England from 2016 notes that:

Schools can adopt a policy which allows disruptive pupils to be placed in an area away from other pupils for a limited period, in what are often referred to as seclusion or isolation rooms.⁷²⁵

Further that:

Schools should ensure that pupils are kept in seclusion or isolation no longer than is necessary and that their time spent there is used as constructively as possible.⁷²⁶

There does not appear to be as clear guidance for Wales. In the guidance 'Practical Approaches to Behaviour Management in the Classroom' under the heading 'Examples of sanction being used in schools', both 'Removal from the group/class' and 'Withdrawal from a particular lesson or peer group'⁷²⁷ are noted but whether this removal is into isolation is not mentioned. However, in a BBC news report, it is noted that:

The BBC sent Freedom of Information requests to more than 1,000 secondary schools and academy chains across the UK asking how they use isolation and around 600 responded.

It learned that more than 200 schools in England used isolation booths, with 12 in Wales and six in Scotland but none in Northern Ireland.⁷²⁸

Isolation has not been abolished, and while there is controversy over its use, this tends to focus on overuse⁷²⁹ or inappropriate use.⁷³⁰ Nevertheless, despite the basis for the Committee's

⁷²⁵ Department for Education, 'Behaviour and Discipline in Schools. Advice for Headteachers and School Staff' (2016) para 42

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/488034/Behaviour_and_Discipline_in_Schools_-_A_guide_for_headteachers_and_School_Staff.pdf>.

⁷²⁶ *ibid* 43.

⁷²⁷ Welsh Government, 'Practical Approaches to Behaviour Management in the Classroom.' (2012) 65 <<https://gov.wales/sites/default/files/publications/2018-12/practical-approaches-to-behaviour-management-in-the-classroom-a-handbook-for-classroom-teachers-in-primary-schools.pdf>>.

⁷²⁸ Noel Titheradge, "'Hundreds of Pupils Spend Week in School Isolation Booths'" 12th November 2018 BBC News' (*BBC News*, 2018) <<https://www.bbc.co.uk/news/education-46044394>> accessed 14 May 2019.

⁷²⁹ BBC News, "'I Was Put in a School Isolation Booth More than 240 Times".' (2019) <<https://www.bbc.co.uk/news/education-47898657>> accessed 14 May 2019.

⁷³⁰ *ibid*.

recommendation being unclear, isolation is still in use and therefore the recommendation is still outstanding.

The final element of recommendation 73(g), was to 'Make children's rights education mandatory'. Articles 29(1)(b) and Article 42 read:

Article 29

1. States Parties agree that the education of the child shall be directed to:

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.⁷³¹

GC No.1 (2001) on the aims of education includes:

Human rights education

15. Article 29 (1) can also be seen as a foundation stone for the various programmes of human rights education called for by the World Conference on Human Rights.⁷³²

It is perhaps a surprising omission from Article 29 and the corresponding general comment that specifically education about children's rights and the Convention itself are not included as an aim of education.

Both England and Wales are in line with the Convention and include human rights as a part of the national curriculum, for instance:

Pupils should be taught about:

- local, regional and international governance and the United Kingdom's relations with the rest of Europe, the Commonwealth, the United Nations and the wider world
- human rights and international law.⁷³³

⁷³¹ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 29(1)(b), Article 42.

⁷³² UN Committee on the Rights of the Child, 'General Comment No.1 (2001) on the Aims of Education - UN Doc. CRC/GC/2001/1' (n 239) para 15.

⁷³³ Department for Education, 'Citizenship Programmes of Study: Key Stages 3 and 4. National Curriculum in England' (2013)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/239060/SECONDARY_national_curriculum_-_Citizenship.pdf>.

In addition, in Wales under the Rights of Children and Young Persons (Wales) Measure 2011:

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.⁷³⁴

The Children's Commissioner for Wales has published a children's rights approach for education:⁷³⁵

A Children's Rights Approach is a principled and practical framework for working with children, grounded in the UN Convention on the Rights of the Child.

It's about placing the UNCRC at the core of a child's experience of education and at the core of school planning, teaching, decision-making, policies and practice.

The model set out in this guide has been developed for education settings in Wales and is applicable across the educational sector, to both statutory and non-statutory provision.⁷³⁶

This approach is not mandatory. Therefore, for both England and Wales, this recommendation is still outstanding.

Special Protection Measures

For the SPM cluster the comments regarding legislative changes were under the subheading of 'Asylum-seeking, refugee and migrant children':

77. With reference to its general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, the Committee recommends that the State party:...

(b) Establish statutory independent guardians for all unaccompanied and separated children throughout the State party;⁷³⁷

GC No.6 sets out that:

States are required to create the underlying legal framework and to take necessary measures to secure proper representation of an unaccompanied or separated child's best interests. Therefore, States should appoint a guardian or adviser as soon as the

⁷³⁴ [Wales] - Rights of Children and Young Persons (Wales) Measure 2011 s 5.

⁷³⁵ Children's Commissioner for Wales, 'The Right Way: A Children's Rights Approach for Education in Wales.' (2017) <<https://www.childcomwales.org.uk/wp-content/uploads/2017/05/The-Right-Way-Education.pdf>>.

⁷³⁶ *ibid.*

⁷³⁷ CRC CO UK 2016 (n 201) paras 76(g), 77(b),(g).

unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State, in compliance with the Convention and other international obligations.⁷³⁸

In 2014 the House of Lords and House of Commons Joint Committee on Human Rights noted that:

We are persuaded that providing children with a guardian could support children more effectively in navigating asylum, immigration and support structures and help them to have their voices heard. We therefore support establishing pilot programmes in England and Wales to examine the case for guardianship in more depth.⁷³⁹

Instead of piloting a program for guardians, the government decided in 2014 to pilot a scheme in England and Wales of 'specialist advocates'. The role was described as follows:

Independent of the local authority, the specialist advocate will act as a single point of contact throughout the care and immigration process and will be responsible for promoting the child's safety and wellbeing,⁷⁴⁰

The House of Lords report in 2016 on unaccompanied migrant children in the EU included an excerpt of oral evidence from Edward Timpson MP about the result of the pilot scheme:

There are some very positive elements to the pilot that we undertook that we want to learn from and reflect upon, but we also know that that pilot was inconclusive in determining whether the outcomes for those particular children had improved as a consequence of having that additional person involved in their lives. We also know that the prospect of them going missing from care did not reduce as a consequence of that guardian supporting them. So we are not convinced that this is the right way to go.⁷⁴¹

⁷³⁸ UN Committee on the Rights of the Child, 'General Comment No.6 (2005) on the Treatment of Unaccompanied and Separated Children Outside Their Country of Origin - UN Doc. CRC/GC/2005/6' (n 248) para 33.

⁷³⁹ House of Lords - House of Commons - Joint Committee on Human Rights, 'Human Rights of Unaccompanied Migrant Children and Young People in the UK - First Report of Session 2013-14' (2013) 5 <<https://publications.parliament.uk/pa/jt201314/jtselect/jtrights/9/9.pdf>>.

⁷⁴⁰ Home Office, 'Government Response to the First Report from the Joint Committee on Human Rights Session 2013-14 HL Paper 9/HC 196: Human Rights of Unaccompanied Migrant Children and Young People in the UK' (2014) 19 <https://www.parliament.uk/documents/joint-committees/human-rights/UMC_Report_Govt_Response_Cm_8778.pdf>.

⁷⁴¹ House of Lords - European Union Committee, 'Children in Crisis: Unaccompanied Migrant Children in the EU - 2nd Report of Session 2016-2017, HL Paper 34.' (2016) para 305 <<https://publications.parliament.uk/pa/ld201617/ldselect/lducom/34/34.pdf>>.

A statutory system of guardians has not been put in place despite UNICEF UK and The Children's Society conducting a cost and benefits analysis in 2014 that concluded:

a system of legal guardianship for separated children in England and Wales could deliver significant financial savings across a three-year period.⁷⁴²

This recommendation, therefore, is still outstanding.

Juvenile Justice

For the JJ cluster the comments regarding legislative changes were under the subheading of 'Administration of juvenile justice':

With reference to its general comment No. 10 (2007) on children's rights in juvenile justice, the Committee recommends the State party to bring its juvenile justice system, including in all devolved administrations ... fully into line with the Convention and other relevant standards. In particular, the Committee recommends that the State party:

- (a) Raise the minimum age of criminal responsibility in accordance with acceptable international standards;
- (b) Ensure that children in conflict with the law are always dealt with within the juvenile justice system up to the age of 18 years, and that diversion measures do not appear in children's criminal records;
- (c) Abolish the mandatory imposition of life imprisonment for children for offences committed while they are under the age of 18;
- (d) Establish the statutory principle that detention should be used as a measure of last resort and for the shortest possible period of time and ensure that detention is not used discriminatorily against certain groups of children; ...
- (f) Immediately remove all children from solitary confinement, prohibit the use of solitary confinement in all circumstances and regularly inspect the use of segregation and isolation in child detention facilities.⁷⁴³

The relevant sections of the Convention are articles 40 and 37; in addition to the GC No.10 mentioned above, the Committee has released a draft version of what is proposed to be the new GC No. 24, to replace GC No.10.

⁷⁴² UNICEF UK and The Children's Society, 'Protecting Children through Guardianship: The Costs and Benefits of Guardianship for Unaccompanied and Separated Migrant Children' (2014) 10 <<https://www.unicef.org.uk/publications/Guardianship-cost-benefit-analysis/>>.

⁷⁴³ CRC CO UK 2016 (n 201) para 79.

Considering each element of the recommendation, in turn, firstly 79(a), to raise the minimum age of criminal responsibility. Article 40 only says:

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;⁷⁴⁴

The Convention itself does not prescribe what that minimum is. GC No.10 reads:

it can be concluded that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. States parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level.⁷⁴⁵

In the draft revised GC No.24 the Committee expresses their change of view:

In the original general comment No. 10 (2007), the Committee had considered 12 years as the absolute minimum age. However, the Committee finds that this age indication is still low. States parties are encouraged to increase their minimum age to at least 14 years of age. At the same time, the Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age. The Committee recommends that State parties should under no circumstances reduce the minimum age of criminal responsibility, if its current penal law sets the minimum age of criminal responsibility at an age higher than 14 years.⁷⁴⁶

In the last state party report, prior to these recommendations, the situation was clearly set out as it was said that:

⁷⁴⁴ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 40.

⁷⁴⁵ UN Committee on the Rights of the Child, 'Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child UN Doc. CRC/C/58/Rev.3' (n 15) para 32.

⁷⁴⁶ UN Committee on the Rights of the Child, 'Draft - General Comment No.24 (201x), Replacing General Comment No. 10 (2007) Children's Rights in Juvenile Justice' (2018) para 33. Subsequent to this chapter being written General Comment No.24 was published in September 2019. It does include the recommendation that 'States parties are encouraged to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age' and that the Committee 'commends States parties that have a higher minimum age, for instance 15 or 16 years of age.' UN Committee on the Rights of the Child, 'General Comment No.24 (2019) on Children's Rights in the Child Justice System' (2019) para 22.

The position of the UK Government in relation to the age of criminal responsibility in England and Wales has not changed since the last periodic review. The UK Government believes that children aged 10 are able to differentiate between bad behaviour and serious wrongdoing and it is right that they should be held to account for their actions.⁷⁴⁷

Justice is not an area where powers have been devolved to Wales; consequently, the same legislation applies to England and Wales.⁷⁴⁸ Regarding the minimum age of criminal responsibility, the legislation had not changed since 1967 when section 50 of the Children and Young person Act 1933 (CYPA 1933) was amended; this is still in force as:

50. Age of criminal responsibility.

It shall be conclusively presumed that no child under the age of ten years can be guilty of any offence.⁷⁴⁹

This illustrates that age of criminal responsibility is an area that the UK government as covering England and Wales (in comparison, Scotland is in the process of raising the age of criminal responsibility),⁷⁵⁰ government has given clarity in its position that there is not an intention to increase the age of criminal responsibility despite many organisations, experts and academics backing an increase, as Goldson notes:

In many respects, the intellectual argument for raising the minimum age of criminal responsibility in England and Wales has been won. Resistance, however, derives ultimately from political imperative rather than criminological rationality.⁷⁵¹

It is surprising however that this recommendation is not based on the Convention itself but on the current GC, and the current evidence points to the Committee changing its own guidance, which will mean that the UK will be even further out of step with the recommendation, which remains outstanding.

⁷⁴⁷ United Kingdom (n 689) para 248.

⁷⁴⁸ Subsequent to this chapter being written the Commission on Justice in Wales Report included in the executive summary that they 'have unanimously concluded that the people of Wales are being let down by the system in its current state' and that 'Justice should be determined and delivered in Wales so that it aligns with its distinct and developing social, health and education policy and services and the growing body of Welsh law.' Commission on Justice in Wales, 'Commission on Justice in Wales Report' (2019) <[https://gov.wales/sites/default/files/publications/2019-10/Justice Commission ENG DIGITAL_2.pdf](https://gov.wales/sites/default/files/publications/2019-10/Justice%20Commission%20ENG%20DIGITAL_2.pdf)>.

⁷⁴⁹ [UK] - Children and Young Persons Act 1933 C.12.

⁷⁵⁰ Severin Carrell, 'MSPs Vote to Raise Criminal Responsibility Age to 12 in Scotland' *The Guardian* (2019).

⁷⁵¹ Barry Goldson, "'Unsafe, Unjust and Harmful to Wider Society": Grounds for Raising the Minimum Age of Criminal Responsibility in England and Wales' (2013) 13 *Youth Justice* 111.

The second element of recommendation 79(b) is to 'ensure that children in conflict with the law are always dealt with within the juvenile justice system up to the age of 18 years'. Though Article 40 (3) reads:

States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law,⁷⁵²

In itself, article 40(3) does not require the establishment of juvenile justice systems; GC No.10 goes into more detail of the views of the Committee:

In order to ensure the full implementation of the principles and rights elaborated in the previous paragraphs, it is necessary to establish an effective organization for the administration of juvenile justice, and a comprehensive juvenile justice system...

92. A comprehensive juvenile justice system further requires the establishment of specialized units within the police, the judiciary, the court system, the prosecutor's office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child.

93. The Committee recommends that the States parties establish juvenile courts either as separate units or as part of existing regional/district courts. Where that is not immediately feasible for practical reasons, the States parties should ensure the appointment of specialized judges or magistrates for dealing with cases of juvenile justice.⁷⁵³

The draft GC No.24 includes the same paragraphs at 118,119; it also states that:

every person under the age of 18 years at the time of the alleged commission of an offence has the right to be treated in accordance with the rules of juvenile justice, in a specific and specialized system, different from the criminal one applicable to adults.⁷⁵⁴

In England and Wales, the Youth Court is created and regulated by a number of statutes, most importantly CYPA 1933 and the Crime and Disorder Act 1998 (CDA 1998). Section 45(1)(b) of CYPA 1933 reads:

45 Constitution of Youth courts.

⁷⁵² United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989.

⁷⁵³ UN Committee on the Rights of the Child, 'General Comment No.10 (2007) Children's Rights in Juvenile Justice - UN Doc. CRC/C/GC/10' (n 249).

⁷⁵⁴ UN Committee on the Rights of the Child, 'Draft - General Comment No.24 (201x), Replacing General Comment No. 10 (2007) Children's Rights in Juvenile Justice' (n 746) para 37.

- (1) Magistrates' courts ...
- (b) sitting for the purpose of - (i) hearing any charge against a child or young person, or (ii) exercising any other jurisdiction conferred on youth courts by or under this or any other Act, are to be known as youth courts.⁷⁵⁵

And Section 46(1) reads:

- (1) Subject as hereinafter provided, no charge against a child or young person, and no application whereof the hearing is by rules made under this section assigned to youth courts, shall be heard by a magistrates' court which is not a youth court.⁷⁵⁶

However, S.46(1) goes on to give the exceptions, including:

- (a) a charge made jointly against a child or young person and a person who has attained the age of eighteen years shall be heard by a magistrates' court other than a youth court.⁷⁵⁷

Further, under CDA 1998, section 47:

Powers of youth courts.

- (1) Where a person who appears or is brought before a youth court charged with an offence subsequently attains the age of 18, the youth court may, at any time - (a) before the start of the trial ... remit the person for trial to a magistrates' court (other than a youth court).⁷⁵⁸

In addition, S.51A(2)CDA 1998 includes the circumstance when a juvenile case is to be sent to a Crown Court:

Where a child or young person appears or is brought before a magistrates' court ("the court") charged with an offence and any of the conditions mentioned in subsection (3) below is satisfied, the court shall send him forthwith to the Crown Court for trial for the offence.⁷⁵⁹

The conditions mentioned include a specific list of offences such as homicide and firearms offences. Finally, in certain circumstances, sentencing should be dealt with by the Crown Court rather than the Youth Court. Under S.3B of Powers of Criminal Courts (Sentencing) Act 2000:

⁷⁵⁵ [UK] - Children and Young Persons Act 1933 C.12.

⁷⁵⁶ *ibid.*

⁷⁵⁷ *ibid.*

⁷⁵⁸ [UK] - Crime and Disorder Act 1998 C.37 1998 s 47(1)(a).

⁷⁵⁹ *ibid* S.51A(2).

Committal for sentence of young offenders on summary trial of certain serious offences

(1) This section applies where on the summary trial of an offence mentioned in section 91(1) of this Act a person aged under 18 is convicted of the offence.

(2) If the court is of the opinion that - (a) the offence; or

(b) the combination of the offence and one or more offences associated with it, was such that the Crown Court should, in the court's opinion, have power to deal with the offender as if the provisions of section 91(3) below applied, the court may commit him in custody or on bail to the Crown Court for sentence in accordance with section 5A(1) below.⁷⁶⁰

Section 3C⁷⁶¹ allows for committal of a youth for sentencing to the Crown Court where the test for dangerousness is met which sets out the circumstances for 'Extended sentence for certain violent or sexual offences: persons under 18'.⁷⁶² Therefore, the UK system allows children to be tried and sentenced in the Adult court depending on co-accused being adults or due to the nature of the offence and resulting sentencing powers. This has not changed since the last report, and therefore the recommendations are still outstanding.

The next element of the recommendation was 79(c) to 'abolish the mandatory imposition of life imprisonment for children for offences committed while they are under the age of 18'. The relevant part of article 37 reads (emphasis added):

States Parties shall ensure that: (a) ... Neither capital punishment nor life imprisonment **without possibility of release** shall be imposed for offences committed by persons below eighteen years of age;⁷⁶³

In addition, GC No.10 reads (emphasis added):

No child who was under the age of 18 at the time he or she committed an offence should be **sentenced to life without the possibility of release or parole**. For all sentences imposed upon children the possibility of release should be realistic and regularly considered.

...

Given the likelihood that a life imprisonment of a child will make it very difficult, if not impossible, to achieve the aims of juvenile justice despite the possibility of release, the

⁷⁶⁰ [UK] - Powers of Criminal Courts (Sentencing) Act 2000 C.6 2000 s 3B.

⁷⁶¹ *ibid* 3C.

⁷⁶² [UK] - Criminal Justice Act 2003 C.44 2003 s 226B.

⁷⁶³ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 37(a).

Committee strongly recommends the States parties to abolish all forms of life imprisonment for offences committed by persons under the age of 18.⁷⁶⁴

This guidance does not change in the new draft GC No.24.

Under UK law a child can be given a life sentence in two circumstances, firstly where they have committed an offence for which the sentence is fixed by law or, secondly where they have been found to be a 'dangerous offender':

If a child or young person is found to be a dangerous offender they can be sentenced to extended detention or detention for life.⁷⁶⁵

This is under S.226 of the Criminal Justice Act 2003 (CJA 2003), and S.235 specifies that:

A person sentenced to be detained under section 226, 226B or 228 is liable to be detained in such place, and under such conditions, as may be determined by the Secretary of State or by such other person as may be authorised by him for the purpose.⁷⁶⁶

The sentencing guidelines set out the factors that should be taken into consideration and records that:

The court is required to set a minimum term which must be served in custody before parole can be considered.⁷⁶⁷

Where a child is convicted of murder then S.90 of the Powers of Criminal Courts Sentencing Act (PCCSA 2000) and S.269 of CJA 2003 become relevant:

S.90 Where a person convicted of murder or any other offence the sentence for which is fixed by law as life imprisonment appears to the court to have been aged under 18 at the time the offence was committed, the court shall (notwithstanding anything in this or any other Act) sentence him to be detained during Her Majesty's pleasure.⁷⁶⁸

S.269 Determination of minimum term in relation to mandatory life sentence

⁷⁶⁴ UN Committee on the Rights of the Child, 'General Comment No.10 (2007) Children's Rights in Juvenile Justice - UN Doc. CRC/C/GC/10' (n 249) para 77.

⁷⁶⁵ Sentencing Council (UK), 'Sentencing Children and Young People - Definitive Guidelines' (2017) para 6.57.

⁷⁶⁶ [UK] - Criminal Justice Act 2003 C.44.

⁷⁶⁷ Sentencing Council (UK) (n 765) para 6.59.

⁷⁶⁸ [UK] - Powers of Criminal Courts (Sentencing) Act 2000 C.6.

(1) This section applies where after the commencement of this section a court passes a life sentence in circumstances where the sentence is fixed by law.

(2) The court must, unless it makes an order under subsection (4), order that the provisions of section 28(5) to (8) of the Crime (Sentences) Act 1997 (referred to in this Chapter as “the early release provisions”) are to apply to the offender as soon as he has served the part of his sentence which is specified in the order.⁷⁶⁹

Subsection 4 referred to applies only to offenders aged 21 or over at the time of the offence and therefore cannot be used for children. The sentencing guidelines also note that:

Detention at Her Majesty’s pleasure

This is the mandatory sentence for any child or young person found guilty of committing a murder. The starting point for the minimum term is 12 years.⁷⁷⁰

The UK then is not in breach of article 37(a) as there is a possibility for release for life sentences for those under 18. However, it is the ‘strong recommendation’ within GC No. 10 that the UK is not in line with, therefore the recommendation is still outstanding.

The next element of the recommendation 79(d) was to ‘establish the statutory principle that detention should be used as a measure of last resort and for the shortest possible period of time’; this relates to article 37(b):

The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;⁷⁷¹

This is reinforced in GC No.10 where even in the first paragraph, there is a reference to use of deprivation of liberty as a last resort and which later repeats that:

article 37 (b) explicitly provides that deprivation of liberty, including arrest, detention and imprisonment, should be used only as a measure of last resort and for the shortest appropriate period of time, so that the child’s right to development is fully respected and ensured.⁷⁷²

The UK sentencing guidelines state that:

⁷⁶⁹ [UK] - Criminal Justice Act 2003 C.44 s 269.

⁷⁷⁰ Sentencing Council (UK) (n 765) para 6.60.

⁷⁷¹ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 37(b).

⁷⁷² UN Committee on the Rights of the Child, ‘General Comment No.10 (2007) Children’s Rights in Juvenile Justice - UN Doc. CRC/C/GC/10’ (n 249) para 11.

Domestic and international laws dictate that a custodial sentence should always be a measure of last resort for children and young people and statute provides that a custodial sentence may only be imposed when the offence is so serious that no other sanction is appropriate.⁷⁷³

The question, then, is what are the domestic laws referred to? Section 152 of CJA 2003 covers 'General restrictions on imposing discretionary custodial sentences' and expresses that:

- (1) This section applies where a person is convicted of an offence punishable with a custodial sentence other than one - (a) fixed by law, ...
- (2) The court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified for the offence.⁷⁷⁴

Further, S.153 titled 'Length of discretionary custodial sentences: general provision' reads:

- (1) This section applies where a court passes a custodial sentence other than one fixed by law or ... imposed under section 2224A, 225 or 226.
- (2) Subject to the provisions listed in subsection (3), the custodial sentence must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.⁷⁷⁵

These two sections are relevant for all sentencing, not just when sentencing those under 18. The name of custodial type sentences for those under 18 is a 'detention and training order', under S.100 PCCSA 2000:

- (1) Subject to sections 90 and 91 above, sections 226 of the Criminal Justice Act 2003, and subsection (2) below, where—
 - (a) a child or young person (that is to say, any person aged under 18) is convicted of an offence which is punishable with imprisonment in the case of a person aged 21 or over, and
 - (b) the court is of the opinion that subsection (2) of section 152 of the Criminal Justice Act 2003 applies or the case falls within subsection (3) of that section, the sentence that the court is to pass is a detention and training order.⁷⁷⁶

⁷⁷³ Sentencing Council (UK) (n 765) para 1.3.

⁷⁷⁴ [UK] - Criminal Justice Act 2003 C.44 s 152.

⁷⁷⁵ *ibid* 153.

⁷⁷⁶ [UK] - Powers of Criminal Courts (Sentencing) Act 2000 C.6 s 100.

With regard to custodial sentences, the sentencing guidelines set out that:

If a custodial sentence is imposed, the court must state its reasons for being satisfied that the offence is so serious that no other sanction would be appropriate and, in particular, why a YRO with ISS or fostering could not be justified.

Where a custodial sentence is unavoidable the length of custody imposed must be the shortest commensurate with the seriousness of the offence. The court may want to consider the equivalent adult guideline in order to determine the appropriate length of the sentence.⁷⁷⁷

Therefore, there is statute referring to the principle that custodial sentences ‘only be imposed when the offence is so serious that no other sanction is appropriate’⁷⁷⁸ and that ‘the custodial sentence must be for the shortest term’.⁷⁷⁹ The legislation in England and Wales then does not expressly use the language that the convention does ‘that detention should be used as a measure of last resort and for the shortest possible period of time’. This situation raises a number of questions: Why has the government chosen to use a different phrase and not expressly use the UNCRC language in legislation relating to sentencing of under 18-year-olds? Further, is this use of language a genuine difference, or are the Committee being pedantic? It also raises the question that if the UK government genuinely intends to meet its obligation for a treaty it has ratified, then why has it not brought legislation wording in line with the treaty? Taking an inference from the Committee making this recommendation, that they do perceive a difference in the meaning of the language used, the recommendation, therefore, is still outstanding.

The final element of the recommendation 79(f) to ‘Immediately remove all children from solitary confinement, prohibit the use of solitary confinement in all circumstances and regularly inspect the use of segregation and isolation in child detention facilities’ relates to articles 19, 37 and to GC No.13, and 10. Article 19 starts by saying that:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence.⁷⁸⁰

⁷⁷⁷ Sentencing Council (UK) (n 765) 46.

⁷⁷⁸ [UK] - Criminal Justice Act 2003 C.44.

⁷⁷⁹ *ibid.*

⁷⁸⁰ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 19.

GC No.13 under the heading of ‘legal analysis of article 19’ expands on the term ‘mental violence’:

“Mental violence”, as referred to in the Convention, is often described as psychological maltreatment, mental abuse, verbal abuse and emotional abuse or neglect and this can include: ... (f) Placement in solitary confinement, isolation or humiliating or degrading conditions of detention;⁷⁸¹

GC No. 10 is also relevant, stating that:

disciplinary measures in violation of article 37 of CRC must be strictly forbidden, including corporal punishment, placement in a dark cell, closed or solitary confinement,⁷⁸²

The recent report from the Joint Committee on Human rights on ‘Youth Detention: solitary confinement and restraint’ is particularly relevant; they clarify the terminology they are using as:

Where isolation from normal human contact exceeds 22 hours per day, we use the term ‘solitary confinement’, as defined in international law; where this lasts for over 15 days, it is defined as “prolonged solitary confinement”. This is contrary to human rights law in all circumstances.⁷⁸³

The report documents that:

We acknowledge that short-term separation has a role to play in allowing ‘cooling off’ after difficult incidents, and longer-term separation is sometimes necessary for medical observations and treatment, although it poses risks. Separation is not appropriate for other purposes. We conclude that the use of separation from human contact is harmful to children if used for more than a few hours at a time and, beyond that, it can amount to inhuman or degrading treatment that is a breach of children’s rights.⁷⁸⁴

They further note that:

⁷⁸¹ UN Committee on the Rights of the Child, ‘General Comment No.13 (2011) The Right of the Child to Freedom from All Forms of Violence - UN Doc. CRC/C/GC/13’ (n 205) para 21,21(f).

⁷⁸² UN Committee on the Rights of the Child, ‘General Comment No.10 (2007) Children’s Rights in Juvenile Justice - UN Doc. CRC/C/GC/10’ (n 249) para 89.

⁷⁸³ House of Lords - House of Commons - Joint Committee on Human Rights, ‘Youth Detention: Solitary Confinement and Restraint’ (n 676) Summary p3.

⁷⁸⁴ *ibid* 45.

The UK Government has repeatedly insisted that solitary confinement is not used for young people and children in the UK.⁷⁸⁵

However, they acknowledge that:

We agree with the Government that the guidelines for separation in YOIs and STCs do not permit solitary confinement; ... There are supposed to be safeguards in place, and decisions to isolate a child in a YOI have to be reviewed after 72 hours, and then every 21 days. However, formal isolation of children in YOIs and other forms of separation in YOIs and STCs can sometimes 'drift' into situations of severe isolation, which may be prolonged, and which bring the risks associated with solitary confinement.⁷⁸⁶

Critically they continue that:

Evidence over several years shows that incidents of separation can 'drift', so that children end up in what amounts to solitary confinement (at least 22 hours per day without meaningful contact) which may be prolonged (at least 15 days' duration). This breach of children's rights is not a policy decision by the Government, but it is within the power of Government to prevent it.⁷⁸⁷

The rules and regulations relating to segregation are summarised in a report from the Children's Commissioner as Rule 36 of the Secure Training Centre Rules⁷⁸⁸ and Rule 49 of the Young Offender Institution Rules.⁷⁸⁹ This report includes a table showing the number of instances of separation over a 6-month period (01/01/2018 to 30/06/2018) in YOIs, which is reproduced at figure 7.9.

⁷⁸⁵ *ibid* 52.

⁷⁸⁶ *ibid* 54.

⁷⁸⁷ *ibid* 55.

⁷⁸⁸ [UK] - Secure Training Centre Rules 1998 SI No.472 1998.

⁷⁸⁹ [UK] - The Young Offender Institution Rules 2000 SI No.3371 2000.

Figure 7.9 Image of the table from the 'Report on the Use of Segregation in Youth Custody in England' by the Children's Commissioner showing Young Offenders Institutions.⁷⁹⁰

Institution	Number of children segregated	Number of episodes of segregation	Average length of segregation	Number of episodes lasting more than 1 week	Longest segregation
Cookham Wood	66	70	9 days	44	89 days
Feltham	81	127	18 days	94	100 days
Parc	5	5	8.6 days	3	12 days
Werrington	60	98	15.1 days	55	75 days
Wetherby	102	137	19.1 days	110	79 days
Across the YOI estate	314	437	16.15 days	306	100 days

Within the conclusion of the report, it is noted that:

The average length of episodes of segregation has doubled from 8 to 16 days between 2014 and 2018, with 70% of episodes of segregation now lasting more than 1 week. In every YOI in England, the longest recorded episode during the first half of 2018 was 75 days or longer. The potential long-term damage this could cause to an already vulnerable group of children is of deep concern to the Children's Commissioner. Additionally we are very concerned that the structures in place around external governance mean that a child can be separated for 21 days before there is any external oversight. The Commissioner is therefore calling for strengthened transparency and accountability around the use of segregation across the youth justice system.⁷⁹¹

Finally, as already noted under VAC, it is reported that the Youth Justice Board Chair has been asked to lead a review into solitary confinement and pain-inducing restraint, which is due to report in summer 2019.⁷⁹²

It is, therefore, possible to conclude that solitary confinement is not explicitly prohibited. Clearly the guidelines are not good enough as solitary confinement occurs at an alarming rate when the government 'repeatedly insisted that solitary confinement is not used for young people and children'. This recommendation, therefore, is still outstanding.

⁷⁹⁰ Children's Commissioner, 'A Report on the Use of Segregation in Youth Custody in England' (2018) 5 <<https://www.childrenscommissioner.gov.uk/wp-content/uploads/2018/10/Segregation-report-final.pdf>>.

⁷⁹¹ *ibid* 7.

⁷⁹² Bulman (n 678).

Optional Protocol on the sale of children, child prostitution and child pornography

Under the section regarding the OPSC, the Committee made specific comments relating to legislation:

the Committee remains concerned that:

(a) No measures have been taken to ensure that all children up to 18 years of age are protected from all types of offences covered by the Optional Protocol and to ensure that domestic legislation throughout the State party, including at the devolved level, enables it to establish and exercise extraterritorial jurisdiction, without the dual criminality criterion, over all offences covered by the Optional Protocol;

(d) While the acts adopted in 2015 provide further protection to children up to 18 years of age from offences covered by the Optional Protocol, the Sexual Offences Act (2003) in England and Wales have not been revised to provide full and equal protection to all children under 18 years of age.⁷⁹³

The first element 82(a) splits into two parts, the first linking with element (d). Its relevance for this element is related to the concept of dual criminality, as if an act is not recognised as an offence then extradition could fail. Regarding the establishment and exercise of extraterritorial jurisdiction without dual criminality, extradition is expressly dealt with under the OPSC Article 5:

1. The offences referred to in Article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in those treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Protocol as a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.⁷⁹⁴

Extradition in England and Wales is currently dealt with under the Extradition Act 2003 (EA 2003); this act sets up three categories of territories for extradition purposes. Category 1 (S.1 EA 2003) are territories designated by the Secretary of State; currently these are all within the 'European Arrest Warrant Scheme' and this allows for a streamlined extradition process.

⁷⁹³ CRC CO UK 2016 (n 201) para 82.

⁷⁹⁴ United Nations, 'Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Treaty Collection, Chapter IV Human Rights Document 11c, New York 25th May 2000' (n 31) Article 5(1),(2).

Category 2 territories are those with which the UK has regular extradition relations, and the 3rd category includes 'Parties to international Conventions'⁷⁹⁵ and 'Special extradition arrangements'.⁷⁹⁶ Category 2 territories, for instance, are subject to double criminality, including under S.137 which creates the condition that:

S. 137(3)(b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom.⁷⁹⁷

Dual criminality then is still part of the extradition legislation for England and Wales in some circumstances, and therefore this element of the concerns and recommendations is still outstanding.

With regards to the second element 82(d) regarding the protection of all children under 18 and specifically mentioning the Sexual Offences Act 2003 (SOA 2030), it would appear that there may be some misunderstanding or confusion regarding the SOA 2003 and the legislation creating the age of consent to sexual activity in England and Wales. The Convention itself does not cover the issue of the age of sexual consent, and GC No.20 (2016) on the implementation of the rights of the child during adolescence paragraph 40 reads:

States parties should take into account the need to balance protection and evolving capacities, and define an acceptable minimum age when determining the legal age for sexual consent. States should avoid criminalizing adolescents of similar ages for factually consensual and non-exploitative sexual activity.⁷⁹⁸

The Committee then does not give a guideline age that it considers appropriate for the age of consent; however, from the guidance to 'avoid criminalizing adolescents of similar ages', it can be inferred that they do not oppose an age of consent under 18. The age of consent is relevant, because in the legislation for England and Wales, the law is written not to create an age of consent but rather to criminalize sexual activity with a child under a certain age. These offences, relating to the age of the person engaged in sexual activity, are some of the offences within the SOA 2003. Sections 9-14 create offences if a person aged over 18 engages in specified activities with children under 16; this is set at 16 and not at 18 so that a 16-year-old can consent to sexual activity. In addition, by restricting this offence to those aged 18 and over,

⁷⁹⁵ [UK] - Extradition Act 2003 c. 41 2003 s 193.

⁷⁹⁶ *ibid* 194.

⁷⁹⁷ *ibid* 137(3)(b).

⁷⁹⁸ UN Committee on the Rights of the Child, 'General Comment No.20 (2016) on the Implementation of the Rights of the Child during Adolescence- UN Doc. CRC/C/GC/20' (n 127) para 40.

it does as recommended in GC No.20 'avoid criminalizing adolescents of similar ages for factually consensual and non-exploitative sexual activity'. Other offences from SOA 2003, such as S.16 'Abuse of position of trust: sexual activity with a child' and S. 47 'Paying for sexual services of a child' define the age of a child as under 18. In addition, S.45 increased the protection of children from indecent photographs as it amended parts of the Protection of Children Act 1978 to increase the age of the offence from 16 to 18.

On this basis, therefore, the recommendation made by the Committee appears to be a misunderstanding, and the legislation in England and Wales appears to be in line with both the Convention and the GC No.20. However, it highlights again that the UK legislation is not always as clear and simple as it could be.

Optional Protocol on children in armed conflict

Under the section regarding OPAC, in relation to recommendations to amend legislation, the committee recommended that the State party:

- (a) Consider reviewing its position and raise the minimum age for recruitment into the armed forces to 18 years in order to promote the protection of children through an overall higher legal standard;⁷⁹⁹

This is a curious recommendation as article 38 of the Convention reads (emphasis added):

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of **fifteen years** do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of **fifteen years** into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.⁸⁰⁰

In addition, the OP reads:

Article 1

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Article 2

⁷⁹⁹ CRC CO UK 2016 (n 201) pt 85(a).

⁸⁰⁰ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 38(2)(3).

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.⁸⁰¹

The UK has not changed the age of recruitment into the armed forces since this recommendation; the current relevant legislation is the Armed Forces Act 2006, which sets out that:

(1) The Defence Council may by regulations make provision with respect to the enlistment of persons in the regular forces (including enlistment outside the United Kingdom).

(2) The regulations may in particular make provision -

...

(c) prohibiting the enlistment of persons under the age of 18 without the consent of prescribed persons,⁸⁰²

The army website under the title 'How old do I need to be to join the regular army?' responds:

To join as a soldier, you must:

- You must be at least 16 years old to join the Army as a soldier.
- You can start your application when you're 15 years and 7 months.
- If you're under 18, you'll also need parental consent to join.⁸⁰³

This situation is an example of where the original Convention is now out of line with current concerns being raised by the Committee, as plainly they are proposing changes where the UK legislation (England and Wales) is not out of line with the wording in the Convention nor even the OPAC. Nevertheless, the recommendation is still outstanding.

Other recommendations

Under the heading of 'Ratification of the Optional Protocol on a communications procedure', the Committee made the recommendation:

⁸⁰¹ United Nations, 'Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. Treaty Collection, Chapter IV Human Rights Document 11b, New York 25th May 2000' Article 1,2.

⁸⁰² [UK] - Armed Forces Act 2006 c. 52 2006 s 328.

⁸⁰³ The British Army, 'AGE - You Can Join the Army as a Soldier from Age 16, and as an Officer from 18.' (2019) <<https://apply.army.mod.uk/how-to-join/can-i-join/age>> accessed 21 May 2019.

in order to further strengthen the fulfilment of children's rights, ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.⁸⁰⁴

In 2015 (after the State party report but before the CO report was published) the Joint Committee on Human Rights concluded that:

We believe that the Government should ratify the Optional Protocol to the United Nations Convention on the Rights of the Child which would give children the right of individual petition to the UN Committee on the Rights of the Child. The Government's view that it needs to wait to see how ratification of similar Optional Protocols for the UN Convention on the Rights of Persons with Disabilities and the Convention on Ending Discrimination Against Women works holds no water. Moreover, the Office of the Children's Commissioner for England lacking any power of individual investigation of complaints means that children in England are less well provided for in terms of access to possible recourse to justice than children in Northern Ireland, Scotland and Wales. This makes the need for the Optional Protocol more real and not just powerfully symbolic of the Government's commitment to the Convention.⁸⁰⁵

The UK has not ratified the OPCP; therefore, this recommendation is still outstanding.

Ratification of international human rights instruments

Under the heading 'Ratification of international human rights instruments' the Committee recommended:

the State party, in order to further strengthen the fulfilment of children's rights, ratify the core human rights instruments to which it is not yet a party, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and the Optional Protocol to the International Covenant on Civil and Political Rights.⁸⁰⁶

⁸⁰⁴ CRC CO UK 2016 (n 201) para 88.

⁸⁰⁵ House of Lords - House of Commons - Joint Committee on Human Rights, 'The UK's Compliance with the UN Convention on the Rights of the Child' (2015) para 38.

⁸⁰⁶ CRC CO UK 2016 (n 201) para 89.

None of these treaties have been signed or ratified. The UK has signed and ratified 13 of the 18 International Human Rights Treaties;⁸⁰⁷ the above four and the OPCP to the UNCRC are the five still outstanding, meaning that this recommendation is still outstanding.

7.5 Chapter conclusions

Chapter 7 focuses on the research objective to explore the situation of children's rights in England and Wales, and it does this based upon the first two objectives of creating a method to measure implementation of the UNCRC, and the investigation of the legal framework of the better performing State parties to understand whether there are commonalities underpinning this better performance. The research question focused on is the final question, what can the results of the analysis tell us about implementation of children's rights in the UK. In order to answer this research question, this chapter has explored where the Committee has made comments and recommendations to amend legislation in order to bring it into line with the Convention.

Conclusions regarding the recommendations for legal improvements

Figures 7.10 and 7.11 summarise the recommendations for legal improvements. They show which cluster and subheading each element of comments and recommendations relate to legislative changes and their corresponding paragraph number. This spreadsheet is similar to the ones used in chapter 6 for the top three State parties; however, due to different categories being identified from analysing England and Wales, it has some differences. Due to the size of the spreadsheet the figure has been split into two.

The first four columns, shown in dark pink, describe the details of the comment or recommendation and record whether it includes:

- ❖ A comment on legislation;
- ❖ A specific piece of legislation is named;
- ❖ An international instrument is mentioned;
- ❖ A general comment document is named.

The second set of columns shown in yellow, describe the basis for the recommendation and records whether it fits into one or more of the following categories:

- ❖ Not in line with the Convention of one of the Optional Protocols;
- ❖ An issue with implementation;

⁸⁰⁷ United Nations Office of the High Commissioner for Human Rights, 'Status of Ratification of 18 International Human Rights Treaties' (2019) <<http://indicators.ohchr.org>> accessed 21 May 2019.

- ❖ Not in line with a GC;
- ❖ Not in line with a different international instrument;
- ❖ The basis for recommendation is unclear.

The final set of columns shown in blue, represents the current situation which can be characterised as:

- ❖ The recommendation has been undertaken (Rectified);
- ❖ The legislation did not need amending;
- ❖ There is still an issue that is not in line with the Convention or a GC;
- ❖ The concern raised is still an issue with regards to an international instrument;
- ❖ There is still an issue where the basis is unclear;
- ❖ The situation is unclear as to whether it has been rectified or is still an issue.

Figures 7.10 and 7.11 Spreadsheet demonstrating the breakdown of the recommendations for legal improvements.

Cluster	Sub-heading	Paragraph No.	Legislation General	Legislation - Named	International Instrument	Gen Comment No.	Not in line with CRC /OP	Issue with implementation	Not in line with GC	Not in line with other int. instrument	Basis for recommendation unclear	Rectified	Did not need amending	Still an issue - CRC/GC/OP	Still an Issue Int. Instrument	still an issue - unclear basis	Unknown if rectified
GMI	Legislation	7a	1			1	1							1			
GMI	Child rights impact assessment	10a,b	1					1						1			
GMI	Coordination	11a	1					1						1			
DOTC	Definition of the Child	20	1					1						1			
GP	Non-Discrimination	21a,22a		1							1						1
GP	Best interests of the child	26,27a	1			1	1	1						1			
GP	Respect for the views of the child	30b, 31b	1				1							1			
CRF	Freedom of thought, conscience and religion	35,36	1	1			1							1			
CRF	Freedom of association and peaceful assembly	37a	1				1							1			
CRF	Right to privacy	38a,b	1									1					
VAC	Torture and other cruel or degrading treatment or punishment - Tasers	40a	1			1	1	1						1			
VAC	Torture and other cruel or degrading treatment or punishment - restraint and pain inflicting techniques	40b	1			1	1	1						1			
VAC	Corporal punishment - Family	41a	1			1		1						1			
VAC	Corporal punishment - Education	41b	1			1		1						1			
VAC	Violence, abuse and neglect - CYPA'33	43a		1		1	1	1						1			
VAC	Violence, abuse and neglect - ratify	43e			1	1			1							1	
VAC	Sexual exploitation and abuse	45f			1			1			1						
DBHW	Mental health	60g 61e		1				1						1			
DBHW	Environmental health	69	1		1		1		1					1	1		
ELCA	Education, including vocational training and guidance - appeal exclusions	73c	1					1				1					
ELCA	Education, including vocational training and guidance - isolation rooms	73d	1							1							1
ELCA	Education, including vocational training and guidance - Children's rights education	73g	1							1							1
SPM	Asylum-seeking, refugee and migrant children	77b	1			1		1						1			
JJ	Administration of juvenile justice - minimum age	79a	1			1		1						1			
JJ	Administration of juvenile justice - within JJ system	79b	1			1		1						1			
JJ	Administration of juvenile justice - mandatory life sentence	79c	1			1		1						1			
JJ	Administration of juvenile justice - last resort	79d	1			1	1	1						1			
JJ	Administration of juvenile justice - solitary confinement	79f	1			1	1	1						1			
OPSC	extradition	82a	1				1							1			
OPSC	all children under 18	82d		1								1					
OPAC	Follow-up to the Committee's previous CO - on OP Children in Armed Conflict	85a		1						1							1
OPCR	Ratification of the Optional Protocol on a communications procedure	88			1			1							1		
	Ratification of international human rights instruments	89			1			1							1		
Total			24	6	5	13	12	0	18	5	4	1	3	22	4	4	0

Figure 7.11 includes the totals of the columns. There are a total of 33 separate recommendations on legislative changes for England and Wales. Six of these specifically named a piece of legislation, with 24 more generally focused on legislation. Five were in reference to

an international instrument. These were generally references to the need to ratify conventions or optional protocols; one, was a reference to Sustainable Development Goals. Thirteen of the comments and recommendations specifically referred the UK to a general comment document, and in 18 GC documents appeared to be either the basis, or a part of the basis for the recommendation. Twelve of the recommendations were identifiable as being undoubtedly based on the Convention. The basis for the recommendation was unclear in 4 of the recommendations.

Twenty-two of the recommendations remain outstanding, with only one being rectified by the ratification of a Convention. Conversely, there were three that upon investigation appeared to not need amending.

In comparison to the top three State parties in chapter 6, England and Wales received as many recommendations to amend legislation as the top three combined. Considering that the top three have full direct legal implementation of the Convention at national levels this is understandable. Further, highlighted within this analysis are situations whereby not having full direct implementation, and additionally, using different language to the Convention when elements of the Convention have been purported to be incorporated, the UK is even further from the Convention framework of rights than it claims to be. The language used is important for a number of reasons. Not only can the semantics of language and the interpretation thereof take up considerable time, it can also be the basis for many a legal argument. Where there is an international instrument deliberately trying to coordinate and set standards as to rights that can be understood globally, to then deliberately change the wording of those rights or not amend legislation as to bring the wording into line, undermines that standardisation process.

One of the important features illuminated by researching each element of the recommendations for legislative change was the state of UK legislation. Trying to find the relevant piece of legislation, searching through many acts with the same name is incredibly difficult and, as the then Lord Chief Justice in 2016 described in a speech:

And may I turn to our criminal law. As many of you know, ..., it is contained in a maze of innumerable, ..., impenetrable, statutes and common law developments over the centuries, which it is difficult to defend as entirely rational. It is in my view long overdue clarification and simplification. We ought to be able to look to a single document that sets out the nature of criminal conduct, in other words, a modern code.

What I propose, as Bentham did, is that the rule of law and the law itself should be set out with clarity and certainty so that it can be reasonably and readily well-known in advance.⁸⁰⁸

If it is accepted that describing a country as a binary option of civil or common law does not wholly do justice to the reality of a spectrum of legal systems, then could it be accepted that clinging to legal historical facts as if they define a legal system is unhelpful. Just because the UK has not had a single written constitution does not mean that it does not need one. Just because the UK has not brought legislation together into clear codes does not mean that it would not be improved greatly by doing so and to do so would not necessarily undermine the common law nature of the system.

The CO report for the UK was published in 2016, and understandably the UK has had less time than either Iceland (CO report 2012) or Portugal (CO report 2014) to rectify issues raised by the Committee. Also, as noted with Norway's CO report having been published in 2018, it was not surprising none of the issues had been rectified. Iceland however had rectified five issues, and Portugal four, in comparison to one for England and Wales.

It is not possible to ignore the timing of the CO report for the UK. Unfortunately, the report was published in July 2016, soon after the European referendum. Due to the outcome of that vote, since then a significant proportion of government and civil service time and effort has been taken up with Brexit amongst other issues, focusing on the resulting necessary legal and administrative changes. International obligations such as children's rights appear to be receiving less government attention than ever and the situation in the UK deteriorating. For instance, in responding to the recent UN Special Rapporteur's report on poverty in the UK, the Director of Advocacy, Unicef UK:

We are concerned that the UN Special Rapporteur's findings show that the fifth wealthiest country is failing to fully comply with its obligations under the UN Convention of the Rights of the Child (CRC) – to provide children and families with enough to eat and a safe place to live.

Children who are hungry, tired and worried do not learn well. Poverty is a trap that jeopardises their right to a happy, healthy and fulfilled future and locks children into a cycle of deprivation.

⁸⁰⁸ Lord Thomas, 'Speech by The Right Hon. Lord Thomas of Cwmgiedd, Lord Chief Justice of England and Wales at a Dinner for Her Majesty's Judges' (2016) para 14,15 <<https://www.judiciary.uk/wp-content/uploads/2016/07/lcj-mansion-house-july-2016.pdf>>.

In 2019, the year of the 30th anniversary of the CRC, it is vital that the government acts now and recommits to ending child poverty as a national priority, and sets out a new, ambitious strategy to achieve this.⁸⁰⁹

The analysis in this chapter has focused on where there are recommendations to create or amend legislation, which form only a small proportion of the overall recommendations where issues with implementation make up the greater part of the report.

Conclusions regarding the monitoring process

One of the conclusions that can be drawn from this chapter relates to a conclusion in chapter 6. In this chapter, the first recommendation for the ELCA cluster demonstrated that the cyclic nature of the monitoring process can enable misunderstandings of complex processes where the State party in one report is responding to a previous comment rather than making a more general comment. This concern about the monitoring process, though different to the concern raised in chapter 6, illustrated with the DOTC cluster, where the cyclic nature of the reports meant that evolving interpretations of issues by the Committee were not included, again raises issues with the format of State party reports being written to only respond to previous criticisms in the CO report.

Conclusions regarding clusters

One of the intentions of this chapter was to use the results created by the innovative method in conjunction with understanding the basis for recommendations for legislative change, in order to identify the areas, clusters, most in need of reform in England and Wales. This chapter does enable conclusions to be drawn as to which clusters in England and Wales are in greatest need of legal reform or improvements in implementation. In section 7.3 the clusters were regraded for England and Wales, figure 7.7 displaying the grades for all clusters and the overall total. In three clusters, England and Wales received a grade C, this is the highest grade that England and Wales received. These clusters were, GMI, DOTC, and CRF. In a further two clusters England and Wales received a grade D, GP, and DBHW. Then for grade E there were three clusters, FEAC, ELCA, and SPM. The two lowest grades were for JJ which received an F and for VAC which received a G. In both instances these grades were not changed when regrading from the UK to only England and Wales. This chapter, therefore, indicates that there are the two clusters, VAC and JJ, where the Committee's comments indicate that England and Wales (and the UK as a whole) are particularly poor on implementing children's rights.

⁸⁰⁹ UNICEF, 'Unicef UK Responds to UN Special Rapporteur's UK Poverty Report' (2019) <<https://www.unicef.org.uk/press-releases/unicef-uk-responds-to-un-special-rapporteurs-uk-poverty-report/>> accessed 30 May 2019.

In addition, though England and Wales (and the UK) received a grade C for DOTC, as 25 State parties received a grade A, this places the UK's grade below average. The issue creating this low grade, allowing children to marry, is relatively straightforward. However, as noted in a number of sections in this chapter, the age limits and concepts of what is a 'child' differs in different legislation. Some of these differences may have clear rationale underpinning them, however, it appears that a review of all legislation that includes age definitions, with the intention of clarification and standardisation where possible would be beneficial.

The UK is next invited to submit its combined sixth and seventh report in January 2022 'and to include therein information on the follow-up to the present concluding observations.'⁸¹⁰ As observed both here and in chapter 6, this continuing 'conversation' between State party and the Committee, while having many positive aspects can lead to misunderstandings, or where the Committee has expanded on the Convention in a general comment since the last report, the danger is that the State party responds to the last report and not the updated general comment.

⁸¹⁰ CRC CO UK 2016 (n 201) para 92.

Chapter 8 – Conclusions

8.1 Introduction

In this chapter, the conclusions that have evolved throughout the study are brought together under separate headings. Firstly, in section 8.2 conclusions regarding the results from the grading of Concluding Observations (CO) reports are considered, including the conclusion that the method of grading the CO reports worked and created a detailed data source. In addition, the conclusion that the first three clusters alone predict the overall grade is explored. The next section 8.3 considers the Convention, the Committee's CO reports and the reporting process. Throughout this study the Committee's structure of clusters of articles has been used, here the conclusions about these clusters and the proposals for improvements are discussed. Also considered is the conclusion that because the Committee increasingly considers issues outside the articles of the Convention, the Convention is no longer stand alone, that it has to be read in conjunction to the general comments and also the guidelines on periodic reporting. In this section the conclusion that it is problematic that the monitoring process has become a cycle of each report responding to the last report is explored. Section 8.4 on the legal incorporation of the Convention explores the conclusion that though incorporation is central to the implementation process, it is important to be cautious about making assumptions if the incorporation was automatic rather than deliberate. Finally, in section 8.5 the conclusion is drawn that the UK has the necessary resources and capabilities to achieve better implementation than it currently is. Further how the UK could improve the incorporation and implementation of the Convention is explored.

Research aim, objectives, research questions and original contribution to knowledge

In the introduction the overarching aim of the thesis was described as developing a method to enable it to be known which State parties are achieving better implementation of children's rights. The research objectives of the study were introduced and were described as threefold, firstly to create a method to measure implementation of the UNCRC and to test this by analysing a sample of State parties. Secondly, to investigate the legal framework of the better performing State parties to understand whether there are commonalities underpinning this better performance. Finally, to explore the situation of children's rights in England and Wales based upon the results from the first two objectives. The research questions were developed to be:

- ❖ Is it possible to infer State party implementation of children's rights by analysing Concluding Observations reports by the Committee on the rights of the child?
- ❖ Is it possible to assess which State parties are achieving better implementation?

- ❖ Of the State parties achieving better implementation, what can be observed about their legal framework?
- ❖ What can be learnt about the Committee's interpretation of the Convention by analysing their Concluding Observations reports?
- ❖ What can the results of the analysis tell us about implementation of children's rights in the UK?

The original contribution to knowledge of this thesis echo the threefold research objectives and form areas of new knowledge for each research question.

Starting with the first research question and considering the first area of original contribution to knowledge, as to whether it was possible to infer State party implementation of children's rights by analysing Concluding Observations reports by the Committee on the rights of the child, chapters 3 and 4 focused on this research question, chapter 3 setting out the method that was used to attempt to answer this question and chapter 4 discussing the results from the analysis. The method described in chapter 3 is in its own right a methodological contribution as it has not been done before. The results displayed in chapter 4 enable the response to the question that yes, it is possible to use the CO reports in this manner and a number of conclusions were able to be drawn which are explored further in sections 8.2 (grading CO reports) and 8.3 (the Convention, CO reports and reporting process).

Chapters 3 and 4 also focus on the second research question and area of original contribution to knowledge, whether it is possible to assess which State parties are achieving better implementation. Chapter 4 presented the results from the cluster analysis, enabling the response to the question that it is possible to compare State parties' implementation and identify which are achieving better implementation (via the lens of the Committee's comments) and to grade the concerns raised by the Committee. This method of assessing State party implementation is new and has been developed for this study. Within this chapter sections 8.2 (grading CO reports) and 8.3 (the Convention, CO reports and reporting process) expand on the observations drawn both from utilising the method to answers this question and the findings from the process.

The third research question and area of original contribution to knowledge, of the State parties achieving better implementation, what can be observed about their legal framework, was the primary focus of chapters 5 and 6. The main finding was regarding the top performing State parties having a higher rate of full direct legal incorporation that the remaining states. In addition, a new observation from this study was that intentional incorporation rather than automatic incorporation was an indicator of better implementation of children's rights. In addition, it became clear that simple assumptions about monist systems and automatic

incorporation could not be made and can be incorrect. In this chapter the conclusions revealed from attempting to answer this question are expanded on in section 8.3 (the Convention, CO reports and reporting process) and 8.4 (legal incorporation).

The fourth research question and area of original contribution to knowledge, what can be learnt about the Committee's interpretation of the Convention by analysing their Concluding Observations reports, and the results answering this question are interweaved throughout chapters 4, 5, 6 and 7. In chapter 4 as each cluster was focused on, the results of the contextual content analysis revealed the issues with the more frequent comments. This investigation of area of focus by the Committee has not been done before in this way. Later chapters explored the Committee's interpretation to specific elements related to their recommendations to amend legislation. The chief conclusion related to this research question is that the Convention has to be read in conjunction with the guidelines on reporting and the various general comments which since 2001 (12 years after the Convention was published) have expanded on the Committee's interpretation to such an extent that the Convention should no longer (if it ever could) be considered on its own. Additional new conclusions surrounding the construction of the clusters are made including that juvenile justice should be a separate cluster as it is treated within this study, also that the DBHW (disability, basic health and Welfare) cluster is too large and should be separated into two. Further, that the cyclical nature of the reporting process means that issues can be overlooked. In this chapter, conclusions related to the Committee's interpretation of the Convention are explored particularly in sections 8.3 (the Convention, CO reports and reporting process) and 8.4 (legal incorporation).

The fifth and final research question and area of original contribution to knowledge, what can the results of the analysis tell us about implementation of children's rights in the UK draws its answer from a combination of all the chapters, though this research question is the focus in chapter 7. While the full answer is detailed and complex it can be summarised. Taking into consideration the economic, social and democratic recourses available within the UK, children's rights have not been satisfactorily implemented. The UK could and should have done more to embed a rights respecting legal framework. That alone is not a new observation, what is new is that this observation is based upon a new method of comparative analysis. Further, this innovative research has revealed that the two clusters are more urgently in need of attention within the UK, VAC (violence against children) and JJ (juvenile justice). In addition, it has highlighted how significant an issue discrimination is for the UK. In this chapter, conclusions related to the UK's implementation of children's rights are explored more fully in sections 8.5 (conclusions regarding how the UK can improve the incorporation and implementation of the Convention).

This chapter brings together the answers to the research questions, formed from the research objectives in addition to other observations and conclusions that can be drawn from the data generated by the analysis method. The original aim to develop a method to enable it to be known which State parties are achieving better implementation of children's rights has been achieved. It has been possible to grade the sample of 52 State parties and identify which State parties are achieving better implementation of children's rights.

8.2 Conclusions regarding the results from the grading of the Concluding Observations reports

Methodological contribution

This study has evolved from an initial reflection that there did not appear to be a way to tell which State parties were achieving better implementation of children's rights. The overarching aim was to develop a method to do so.

One of the criticisms of content analysis is the difficulty reflecting nuance. The development for this study of a matrix and multiplier system enabled an interpretivist approach and meant that the degree of seriousness of the Committee's comments and recommendations could be reflected within the grading process. Because the multiplier was a second stage to the initial content analysis for each cluster, the spread and frequency of issues the Committee referred to could be recorded. The method is detailed in chapter 3 and chapter 4 explores the results from this method.

The overarching conclusion regarding the grading method is that not only did it work, it achieved more than expected. This method of grading clusters gave a wealth of data and did so in a number of ways. Not only did the data convey how well State parties were doing in comparison to each other, how the reporting process has developed was also visible, as was the prevalence of Committee comments on separate topics and issues.

Thematic analysis of issues

The method was designed to enable an analysis of State party implementation of the UNCRC. In addition to doing this, it enabled an analysis of the types of issues the Committee commented on under each cluster. These results are displayed in chapter 4. It also meant that it was possible to investigate specific issues such as legislation in more depth (discussed further in 8.3) and observe how some issues, such as discrimination, were prevalent throughout the cluster format discussed in 4.2.

Cluster analysis

The civil rights and freedoms cluster is one example that demonstrates that this method is analysing and grading the comments from the Committee and not necessarily the reality of children's rights in a State party. Five State parties achieved a grade A for this cluster, although for at least two of these State parties this grading seems questionable. Considering news reports and other media reports, it is difficult to believe that the Committee does not have some issues with the civil rights and freedoms granted to children in State parties such as Columbia and Kazakhstan. These results demonstrate that though a framework, for instance legal incorporation, may be in place that should enable the implementation for children's rights it is not a given that those rights will be implemented. The results from this cluster are a reminder that this method gives an indication, not an absolute measurement.

Analysis of issues raised by the Committee

One of the conclusions that can be drawn from this study is that the Committee increasingly comments on and makes recommendations on issues outside of the articles of the Convention. In chapters 6 and 7, the comments and recommendation specifically related to the legislation of the top three graded State parties (Iceland, Norway and Portugal) and to England and Wales, were considered. One of the unexpected results was the distribution of the basis for the recommendation. In chapter 6 five bases were identified, for instance, not being in line with the Convention.

In chapter 6 (top three State parties), there were more recommendations by the Committee that related to other international instruments, or where the basis for the recommendation was not clear, than the number of recommendations that were based upon an issue not being in line with this Convention. Only nine comments directly related to an issue that was 'not in line' with the Convention or an OP, and four were identified as issues with implementation. However, in a further four, the basis for the issue was, not being in line with a General Comment, in 11 the basis was not being in line with another international instrument, and in six the basis for the recommendation was unclear.

In chapter 7 (England and Wales), 12 comments directly related to an issue that was 'not in line' with the Convention or an OP. However, in a further 18, the basis for the issue was not being in line with a General Comment' in five the basis was not being in line with another international instrument, and in four the basis for the recommendation was unclear.

Over time the Committee has clearly widened the remit of the Convention in the CO reports. Whether this is a problem or not, depends on whether the Convention is considered to be

either, as Garbarino describes, an 'aspirational document' or a 'legally binding mandate'⁸¹¹ or both. The concern is that if the Convention is to be treated as a legally binding mandate then changing the criteria under which State parties are assessed is problematic. Criticising a State party without being clear how that criticism relates to the Convention creates a situation of uncertainty, whereby State parties will be submitting reports without knowing against what standard they are to be assessed. The problem here is not so much that the Convention is being interpreted over time to continue to be relevant to that point in time, this is essential for continuing relevance, but that where interpretation changes or additional concerns are incorporated, understanding of the new interpretation and the basis for new concerns or criticisms in CO reports need to be clear. Currently, it is not always so.

Chapter 6 and the focus on the top three State parties also highlighted the interconnectivity of the CRC with other international instruments and demonstrated the attention that the Committee gave within its recommendations to amend legislation to be in line with other international instruments with 11 of the recommendations being made on this basis and in chapter 7 for England and Wales, five of the recommendation were on this basis.

Predictive clusters

One of the unexpected conclusions that can be drawn is that the grades achieved for the first three clusters, which cover fundamental aspects of the convention, appear to be predicative of the final average grade a State party achieved. This original observation would not have been possible without the grading method created for this study. The construction of clusters by the Committee into which the articles of the Convention are categorised is of itself interesting. There is arguably a noticeable divide between the first three clusters and the remaining clusters.

The first three clusters cover fundamental aspects of the Convention:

- ❖ GMI - General Measures of Implementation
- ❖ DOTC - Definition of the Child
- ❖ GP - General Principles

Then the remaining clusters can be described as thematic by types of issues:

- ❖ CRF - Civil rights and freedoms
- ❖ VAC - Violence against children
- ❖ FEAC - Family environment and alternative care

⁸¹¹ Garbarino (n 50).

- ❖ DBHW - Disability, basic health, and welfare
- ❖ ELCA - Education, leisure, and cultural activities
- ❖ SPM - Special protection measures

This construction of the clusters in this way leads to the question of whether the grades received for the first three clusters or the GP cluster alone, were predictive of the final average grade for all 10 clusters (including the Juvenile Justice cluster created for this study).

Taking the average score of the first three clusters:

- ❖ In 35% (18) of the State parties – this was the same as the final total average.
- ❖ In 92% (48) of the State parties – this was either the same as the final average total score or plus or minus only one grade.
- ❖ In only 8% (4) of the State parties – the grade of the first three clusters was different from the final average score by two grades.
- ❖ No State parties had a score for the first three clusters more than two grades different to the final average score.

Taking the average score of only the General Principles cluster:

- ❖ In 48% (25) of the State parties – this was the same as the final total average.
- ❖ In 87% (45) of the State parties – this was either the same as the final average total score or plus or minus only one grade.
- ❖ In 13% (7) of the State parties – the grade of the GP cluster was different from the final average score by two grades.
- ❖ No State parties had a score for the GP cluster more than two grades different to the final average score.

The spreadsheet demonstrating this is in appendix A-111. In this instance the exact score for the GP cluster was the same as the final average grade more frequently than for the first three clusters combined 48% to 35%. However, the average score for the first three clusters plus or minus one grade was closer to the final average grade more often, in 92%. Interestingly, in neither of the potential predictive sets were there any State parties where the final average grade was more than two plus or minus the prediction.

What this simple analysis indicates is that with a more detailed analysis of a larger sample, it appears that it would be possible to say that the average score of the first three clusters or even the GP alone is able to give a reasonably good prediction of the grade a State party would

achieve overall. In a similar vein, Gran⁸¹² uses only eight rights (seven from the UNCRC) to create his Children's Rights Index. In this instance, what appears to be possible is to assess only the first three clusters in order to achieve an indication of the implementation of the Convention based on the Committee's CO reports. This observation of a link between the first three clusters and the final average score would need to be explored further and tested on a larger sample to increase confidence in the predictive nature of the first three clusters or the GP cluster. Nevertheless, it is an intriguing observation of the format of the clusters created by the Committee, and a potential shorter method for assessing and comparing Convention implementation.

8.3 Conclusions regarding the Convention, the Committee's Concluding Observations reports and the reporting process

One of the conclusions that can be drawn from this study is that elements of the Convention, and the monitoring process including the clusters created by the Committee are out of date or not sufficiently clear and would benefit from restructuring. In this section, consideration will be given to some of the changes that could be made to the Convention itself or the reporting process including the cluster construction, because as Freeman describes:

The United Nations Convention on the Rights of the Child was a great achievement... The Convention itself is an imperfect instrument and a new Convention or Protocols needs to address many children whose rights are currently neglected... Rights themselves need rethinking, and so does the reporting and implementation process.⁸¹³

Freeman is not alone in considering the Convention both a 'great achievement' and an 'imperfect instrument'. This article was published in 2000, the same year that the first two optional protocols were adopted and opened for signatures. More recently, McGillivray observes that:

Science fictions are rapidly becoming fact. Rights thinking has failed to keep pace with developments profoundly affecting children and the conduct of their childhood.⁸¹⁴

The world as it is now is a very different one than existed or could have been predicted in the late 1970s and 80s when the current Convention was created. However, taking into

⁸¹² Gran (n 70).

⁸¹³ Michael Freeman, 'The Future of Children's Rights' (2000) 14 *Children & Society* 277.

⁸¹⁴ Anne McGillivray, 'The Long Awaited: Past Futures of Children's Rights' (2013) 21 *International Journal of Children's Rights* 209.

consideration how unlikely a new children's rights convention is given the current global political climate, or even if one was created as Alderson observes, it could be next to useless:

if a new and perhaps more clear and radical UNCRC were to be published, in today's divided world few governments are likely to ratify it so that it would be weak and useless in its work of activity defending children's rights.⁸¹⁵

If a new Convention then is unlikely or, worse, potentially damaging to children's rights, then consideration of what can be done in the current situation, such as improvements by alterations to the clusters and the guidelines on periodic reporting, or to the creation of an additional optional protocol on 'enhanced children's rights' are relevant.

Changes to the cluster system

Starting with potential improvements to the cluster system, the first three clusters are covering fundamental aspects: General Measures of Implementation, Definition of the Child and General Principles. Regarding GMI and their potential as a 'framework to facilitate the realisation of child rights', Collins argues (original emphasis):

The GMIs contribute the necessary focus for child rights progress and learning with attention to *what* actors should consider as objectives and also *how* they carry out their efforts.⁸¹⁶

The variety of separate aspects the GMI cluster covers can be observed in the guidelines on periodic reporting where the information requested covers a larger section of text than the other clusters and includes 11 sections. In this analysis, four additional themes were created as columns in the issues (Data collection, and training of staff) and multipliers (Corruption and gender discrimination) sections of the spreadsheet as shown in figure 4.1.

One of the issues considered in greater depth in chapter 4 was 'legislation'. Paragraph 19(a) of the guidelines reads:

In this section, the State party should provide relevant and up-to-date information in relation to the Convention and the Optional Protocols, if applicable, on the following:

(a) Measures taken to review and bring domestic legislation and practice into full conformity with the Convention and the Optional Protocols. States parties to OPAC and OPSC should

⁸¹⁵ Priscilla Alderson, 'Common Criticisms of Children's Rights and 25 Years of the IJCR' (2017) 25 International Journal of Children's Rights 307, 313.

⁸¹⁶ Collins (n 145) 349.

provide details of relevant penal and other applicable legal provisions for each Optional Protocol;⁸¹⁷

Considering the emphasis that has been put on the legal incorporation of Convention, in this study 39 of 52 CO reports had comments on legislation being 'harmonised' or brought in to 'conformity' with the Convention (table 4.2). The potential issue with paragraph 19(a) is that it allows answers that are not clear on the legal status of children's rights, for example, from the 2014 State party report of the UK:

Several pieces of legislation since 2008 have introduced significant rights-enhancing measures. ... The UK Government has introduced a Child Poverty Act to underpin the Government's aim to end child poverty. The Children and Families Act 2014 puts the best interests of children at the heart of the family justice and alternative care systems and in arrangements to support children with special educational needs.⁸¹⁸

The response by the UK arguably does not give information on 'Measures taken to review and bring domestic legislation and practice into full conformity with the Convention and the Optional Protocols'. Therefore, would more clarity be achieved if the guidelines on reporting ask a series of clear questions in regard to legislation and the incorporation and ability to use the Convention in the legal system? For example (not necessarily exhaustive):

1. Has the CRC been incorporated (integrated) fully in national law?
2. If so at what level (is it ordinary statute)? If not, which articles are, and which are not covered by domestic legislation?
3. If not incorporated, can children/individuals bring a case to court/tribunal on the basis of a right being breached?
 - a. Against a government body
 - b. Against an individual/organisation who has a duty to respect rights – e.g. against an employer
4. Can children/individuals complain/report to a national organisation (governmental or independent such as ombudsperson) that a child's right in line with the convention has been breached, and have this complaint investigated?
5. Are judges expected to take the UNCRC into consideration in any case that relates to a decision about a child, and include how it has been considered in the judgment?

⁸¹⁷ UN Committee on the Rights of the Child, 'Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child UN Doc. CRC/C/58/Rev.3' (n 15) para 19(a).

⁸¹⁸ United Kingdom (n 689) para 9.

This list is merely an example of the types of questions that could be asked. It is easy to argue that a list of specific questions is too much detail for a single part of one of many clusters. However, considering the focus the Committee itself has put on legal incorporation and its critical role in understanding how children's rights are implemented within a national system, perhaps a more prescriptive list of questions on the legal status of the Convention is now needed. Further, in researching this study it was surprisingly difficult to answer the question of whether the Convention had been incorporated; this information was not necessarily readily available in the State party reports or core documents.

As previously noted in chapter 3.5, the DOTC cluster is unusual as it has only one article, article 1:

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.⁸¹⁹

It is covered by a single paragraph in the guidelines:

In this section, the State party should provide relevant and up-to-date information with respect to article 1 of the Convention concerning the definition of the child in its domestic laws and regulations. If the age of majority is below the age of 18 years, the State party should indicate how all children benefit from protection and enjoy their rights under the Convention up to the age of 18 years. The State party should indicate the minimum age for marriage for girls and boys in its legislation.⁸²⁰

In the case of DOTC, if the Convention was to be rewritten then arguably article 1 should be far simpler, such as, for the purposes of the present Convention, a child meaning every human being from birth to the age of eighteen years, removing the 'loophole' that Grover refers to 'that undercut the guarantee of universal rights for all children'.⁸²¹ In addition, it could be further argued that the Committee should be asking for information from State parties who do not recognise adulthood at 18, how/if the Convention is extended to those within their State who are 18 or older but not yet 'adult' in their jurisdiction. The guidelines also ask for information on an additional issue, that of child marriage, which arguably if the Convention was rewritten should be an article of its own prohibiting marriage of any child.

⁸¹⁹ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989.

⁸²⁰ UN Committee on the Rights of the Child, 'Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child UN Doc. CRC/C/58/Rev.3' (n 15) para 22.

⁸²¹ Grover (n 111) 260.

The article 'Does exactly what it says on the Tin?' by Hanson and Lundy undertakes a detailed discussion of the GP cluster; they note:

The concept of "general principles" is questioned rarely, a position that is surprising given the fact that they were not envisaged at any stage by the drafters when they concluded their work just a few years prior.⁸²²

They question both the name of the cluster as being misleading on the basis that they are neither 'general' nor are they 'principles', proposing instead that the cluster should be called "Cross-cutting standards". They also propose that the cluster should be moved to the end of the cluster assessment process so that their interaction throughout the clusters can be assessed, rather than having been dealt with as the third cluster then neglected throughout the other clusters. An alternative could be proposed whereby the GP cluster is initially considered as the third cluster and then at the end the GP cluster is reconsidered with emphasis on what has been revealed in individual thematic clusters. Also, crucially relevant is their concept that art.6 'right to life' should not be in this cluster, and they prefer the inclusion of art.5:

Article 5 on the child's evolving capacities has been formulated in direct relation to the other rights recognised in the CRC and has also been widely used by many child rights actors in a cross-cutting role.⁸²³

Article 5 is currently in the family environment and alternative care (FEAC) cluster; as noted in chapter 4, the results of the cluster analysis showed only five comments under article 5 and none of those included aspects of the evolving capacities. Perhaps moving article 5 and adding a clear request for information on 'evolving capacities', would mean that more attention was paid to article 5.

With regards to article 6, and which cluster it should be in, if removed from GP, one suggestion would be to change the name of the second cluster DOTC to, for instance, 'core concepts' and have both article 1 and 6 together, as they both deal with foundation concepts of what a child is, and the essential, starting point of the right to life, survival and development as Nowak points out:

Without the respect and adequate protection and fulfilment of the right to life, all other rights of the Convention become meaningless.⁸²⁴

⁸²² Hanson and Lundy (n 62) 286.

⁸²³ *ibid* 301.

⁸²⁴ Nowak (n 193).

Article 6 (2) relating to survival and development is also currently included in the disability, basic health and welfare cluster (DBHW); theoretically here then it would be an option to just include art.6 (1) right to life as a core concept or to have article 6(2) included in both clusters.

With regards to Article 3, the guidelines on reporting do not specify a paragraph number. However, the short title used 'best interest of the child' appears to only refer to the first paragraph, with paragraphs 2 and 3 being apparently excluded and not listed as encompassed in any of the other clusters. Considering the wording of these paragraphs, their exclusion from DBHW and even from the violence against children (VAC) cluster is a concerning omission. Paragraphs 2 and 3 read:

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.⁸²⁵

Arguably the cluster system needs not only to be updated, but also to be checked to ensure that there are no elements of articles that have been excluded, whether they were never allocated to a cluster in the first place or a cluster has evolved to exclude them.

Considering then the six thematic clusters, the evolution of clusters can be observed with the older CO reports having paragraphs relating to VAC in other clusters, mainly in the civil rights and freedoms (CRF) cluster, with the progression to a separate standalone cluster. From this analysis, two other clusters stand out as potentially benefiting from splitting into smaller clusters. The first is special protection measures (SPM), which was identified as covering too many very different issues at the beginning of this study. As discussed in chapter 3, there were reasons for splitting SPM and creating a specific cluster for Juvenile Justice. This study has shown that JJ is a significantly large and complex enough topic to warrant its own cluster, in addition UNICEF, describe Juvenile Justice as being an area 'most closely linked with law reform' and note that much of the legislation enacted still 'falls short of international standards'.⁸²⁶ Therefore, creating a separate cluster for JJ would be a positive development. In addition, from the analysis process, it was observed that DBHW is also arguably too large and

⁸²⁵ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989.

⁸²⁶ UNICEF Innocenti Research Center (n 36) 81.

covers too many issues even if the number of articles it covers is not that great (7 articles). It might be suggested that it should be split into 'disability and health' and 'environment and welfare', which should include a greater focus on social and economic rights such as the number of children in living in poverty or who are homeless or living in emergency accommodation.

A number of clusters within the guidelines on periodic reporting have issues not linked to articles in the Convention. One, already mentioned, is the inclusion of child marriage in the DOTC cluster.

In order to consider the clusters system, a visual representation of how the Convention is broken down into clusters is useful and immediately raises the observation that if the Convention were to be rewritten, then doing so reordering the articles into their clusters would be a potential improvement.

Figures 8.1 and 8.2 demonstrate how the clusters are made up of articles in a very different order from the Convention and demonstrates where articles are included in more than one cluster, whether in its entirety or split by subparagraphs into separate clusters.

Figure 8.1 Key to clusters or articles

Key
General measures of implementation
Definition of the Child
General Principles
Civil rights & Freedoms
Violence against Children
Family Environment and alternative care
Disability, basic health and welfare
Education, leisure and cultural activities
Special protection measures

Figure 8.2 CRC coloured to show article allocation to cluster.

Article		Article	
1	Definition of the Child	26	Social Security
2	Non-discrimination	27 (1-3)	Adequate standards of living
3	Best interests of the child	27 (4)	Adequate standards of living
4	Implementation of the convention	28	Right to education
5	Parental guidance/evolving capacity	28 (2)	Education - prohibit - corporal punishment
6	Life, survival and development	29	Goals of education
6 (2)	Life, survival and development	30	Children from minority or indigenous groups
7	Birth registration, name, nationality, care	30	Cultural rights of children
8	Protection and preservation of identity	31	Leisure, play and culture
9	Separation from parents	32	Child labour
10	Family reunification	33	Drug abuse
11	Abduction and non-return of children	33	Drug abuse
12	Respect for the views of the child	34	Sexual exploitation
13	Freedom of expression	34	Sexual exploitation
14	Freedom of thought, belief and religion	35	Abduction, sale and trafficking
15	Freedom of association	36	Other forms of exploitation
16	Rights to privacy	37 a	Inhumane treatment and detention
17	Access to information from the media	37 (b-d)	Inhumane treatment and detention
18 (1-2)	Parental responsibilities and state assistance	38	War and armed conflicts
18 (3)	Parental responsibilities and state assistance	39	Recovery from trauma and reintegration
19	Protection from violence, abuse and neglect	39	Recovery from trauma and reintegration
20	Children unable to live with their family	40	Juvenile justice
21	Adoption	41	Respect for higher national standards
22	Refugee children	42	Knowledge of rights
23	Children with a disability	43	
24	Health and health services	44	Timely reports
24 (3)	Prohibit - harmful practices	44.6	Timely reports
25	Review of treatment and care		

Within the guidelines on periodic reporting there are references to both issues linked to articles and some that are not specifically linked to an article. For example, under VAC, paragraph 30, points (a) to (e) each end with a reference to an article, whereas point (f) does not refer to an article:

- (e) Measures to promote the physical and psychological recovery and social reintegration of child victims (art. 39);
- (f) The availability of helplines for children.⁸²⁷

Table 8.1 sets out the cluster and the non-attributed issue and the paragraph number from the guidelines on periodic reporting. Excluded from this table are clusters GMI and DOTC because they are constructed differently in the guidelines, with GMI requesting the provision of relevant information which is broken down into significant detail and DOTC is a single paragraph as already discussed.

⁸²⁷ UN Committee on the Rights of the Child, 'Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child UN Doc. CRC/C/58/Rev.3' (n 15) paras 30(e)-(f).

Table 8.1 The issues included in the guidelines on periodic reporting not listed as relating to a specific article of the Convention.

Cluster	Issues (paragraph reference)
CRF	If appropriate, information may also be provided on the particular role of the media with regard to the promotion and protection of child rights. (29)
VAC	The availability of helplines for children (30)(f)
FEAC	Measures to ensure the protection of children with incarcerated parents and children living in prison with their mothers (32)(j)
DBHW	Efforts to address the most prevalent health challenges, to promote the physical and mental health and well-being of children and to prevent and deal with communicable and non-communicable diseases; (35)(c)
DBHW	Reproductive health rights of adolescents and measures to promote a healthy lifestyle; (35)(d)
ELCA	Education on human rights and civic education (38)(d)
SPM	Children in street situations (40)(c)
SPM	Children in situations of exploitation, including measures for their physical and psychological recovery and social reintegration (40)(d)
SPM/JJ	The training activities developed for all professionals involved with the system of juvenile justice, including judges and magistrates, prosecutors, lawyers, law enforcement officials, immigration officers and social workers, on the provisions of the Convention, the Optional Protocols as applicable, and other relevant international instruments in the field of juvenile justice, including the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex); (40)(e)(v)

In this table SPM paragraph (40)(d) does not appear to be linked to article 39, though it appears as though it should, and paragraph (40)(e)(v) arguably is covered by article 42. However, in the guidelines, they are not represented as linking to a specific article and article 42 is not listed as part of SPM. It is only listed as within the GMI cluster when the case could be made that it is a

cross-cluster article and can be read as underpinning the need for education and training ‘by appropriate means’ of adults working in roles with children. Article 42 reads:

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.⁸²⁸

Perhaps, therefore, article 42 should be included in other clusters such as JJ (SPM).

Table 8.1 illustrates that the Convention is out of date and that the Committee is widening its remit. Ideally, these items would be covered in a new Convention. On the one hand, it can be argued that it is positive that the Committee is bringing the Convention up to date; on the other hand, it is a difficult concept legally that State parties are being required to submit information on and are being judged on issues that do not even appear in the Convention. The problem is that now the Convention is no longer (if it was ever) a standalone treaty; it needs to be read in conjunction with the various general comments (GC) and in conjunction with the guidelines on periodic reporting.

One way of dealing with this would be to create a new optional protocol that instead of focusing on a single theme such as the involvement of children in armed conflict, focuses on new concerns and the reimagining of concerns for the modern-day, an ‘Enhanced Convention’ optional protocol where not only new issues could be included, but also where the Committee has revised its thinking and is now proposing a higher standard. This would give State parties the opportunity to be clear that they intend to implement these additional interpretations of children’s rights.

An alternative method would be that under GMI State parties are asked to confirm which GC they accept as the current interpretation of children’s rights and are prepared to implement rights to that level and interpretation.

These observations and conclusions regarding the cluster system are able to be drawn together because the innovative methodology enables a fresh perspective for considering the CO reports. Since each cluster, one at a time, was considered across all the State parties, these concerns about the cluster system became apparent.

Continuous cycles

One of the problems observed in this study and an original finding is that because of the cycle of State party reports being constructed to respond specifically to the last CO from the

⁸²⁸ United Nations, ‘The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989’ (n 364).

Committee, and not necessarily taking into account the updated views of the Committee regarding interpretation or information requested in the guidelines on reporting, it is possible that issues may be missed. An example of this is discussed in chapter 6.5 where Iceland, Norway and Portugal had all received a grade A for DOTC, however at the time of their reports they all permitted child marriage and therefore they should not have received a grade A. At the date that they first reported (for instance Iceland 1995), the age of marriage was set out; however, this was not commented on nor was a recommendation made to change this in the first CO report, as at this stage the Committee generally only commented on exceptionally low ages for marriage. Therefore, because the Committee had not raised the issue as a concern, it was not included in the next State party report.

The identification of this problem with the reporting process raises the question as to whether the cycle needs to start afresh after a set number of years or reporting cycles. For instance, at the end of a CO report the Committee could be clear that while the next State party report needs to respond to the last CO, the State party is being requested to specifically address each element of the guidelines on periodic reporting, in line with the current interpretation and information in the general comments and produce a full updating report.

[The new 'simplified reporting procedure'](#)

The details of the new simplified reporting procedure are set out in chapter 2, fundamentally the new reporting cycle starts with the Committee sending 'a request for specific information' with up to 30 questions (List of Issues Prior to Reporting – LOIPR); the State party's replies to the questions are their report. With regards to the concern raised above about issues being missed due to the process of new reports being based on old reports, the new simplified reporting procedure is arguably in more danger of this. However, as described above this can be ameliorated if at set points in the cycle, for instance, every third or fourth cycle a fresh new cycle is started with the State party addressing all clusters based upon the most up-to-date general comments available.

This change in the reporting process will undoubtedly make it difficult to compare CO reports across this system change. How difficult it will be remains to be seen. However, this evident change in process affords an opportunity to take stock of the current situation, to assess all State parties on their most recent available CO report under the current (old) procedure and create a global ranking of children's rights. While it would mean that some State parties are being assessed on considerably old information, highlighting and publicising that may encourage them to reengage with the reporting process.

8.4 Conclusions regarding the legal incorporation of the Convention

Legal status of the Convention

One of the conclusions from this study is the importance of deliberate legal incorporation of the Convention in order to create a framework that enables implementation of rights.

In chapter 5.3, the legal incorporation at the time of the State party reports was considered. It was revealed that half of the top sixteen had full direct legal incorporation with 63% having achieved or announced the intention to achieve full direct incorporation at the date of writing (see figures 5.7, 5.8 and 5.9). One of the striking features of the top three State parties considered in greater detail in chapter 6 was that all three had full direct legal incorporation of the Convention by the date of this analysis, though at the time of the CO report Iceland had partial direct incorporation. All of the top three having legal incorporation and 63% of the top 16 compares to the remaining 36 State parties, of which only 17% had full direct incorporation based upon CO reports and core documents.

Highlighted in chapter 5 was the complicating factor of monist and dualist systems. It became clear that assuming incorporation on the basis of a State party appearing to be monist can be inaccurate. For instance, France is frequently referred to as monist and on this basis, it is assumed that the UNCRC has been incorporated. However, France is a State party to whom the concept of whether or not articles are considered 'self-executing' is relevant. Here, in this study, despite France being considered monist it has been recorded as having only partial direct incorporation based, in part, upon the comment and recommendation of the Committee that:

The Committee is concerned that only a very limited number of the provisions of the Convention are recognized as self-executing and that its principles and rights are not duly included in national legislation.

The Committee reiterates its recommendation to the State party that it ensure the applicability of all the provisions of the Convention on the whole territory of the State party and that the Convention can be invoked by individuals in national courts at all levels.⁸²⁹

It was also noticeable that deliberate incorporation rather than automatic appeared to create more meaningful incorporation with better implementation. Nevertheless, full direct incorporation affected the grades received, because full direct incorporation reduced the need for the Committee to make recommendations to amend legislation. Two further lines of investigation evolve from these findings. Firstly, it would be interesting to investigate the remaining 17% (6) State parties with full direct incorporation and consider whether the

⁸²⁹ CRC CO France 2016 (n 221) para 7 and 8.

incorporation was automatic or deliberate, also to understand why despite full direct incorporation their grade for implementation is still below a particular level. Secondly, it would be interesting to fully expand this study from 52 State parties to all State parties that have ratified the Convention. The aim would be to do so without assuming monist or dualist systems, but based upon their information to the UN, in the form of State party reports and Common Core Documents (CCD) as well as national legislation and constitutions, to create a clear chart of whether incorporation is actually automatic or deliberate, direct or indirect, full or partial, and what legal hierarchy is attributed to the Convention and incorporating legislation.

One of the observations from the realisation that incorporation can vary even in fundamentally monist states is that State parties should be asked for clarity in their CCD as to the legal status and hierarchal level of all the core human rights instruments. In order to ease understanding across different systems, a table format could be created that State parties are asked to complete and include in their CCD.

Acknowledging once again that this study assesses the comments of the Committee and infers implementation from this rather than assessing actual implementation, and therefore if the Committee believes full direct incorporation to be imperative, then their comments and ultimately the grading will reflect this. Nonetheless, this study demonstrates how full direct incorporation has consequences for all areas of implementation, as McCall-Smith describes:

A growing body of literature supports the potential for full, direct incorporation as it can also ensure a rights-based approach to governance impacting children in many distinct ways.⁸³⁰

She also expresses that:

Incorporation is a crucial step because unincorporated treaties otherwise become 'dead letters' as without some form of incorporation there is often a failure to implement the obligations contained in the treaties at any level.⁸³¹

As can be seen in chapter 4.2 and 4.3 within the focuses on comments relating to legislation, there are clear concerns from the Committee about incorporation and legislation being (as exemplified in table 4.2) 'in conformity with the principles and provisions of the Convention', whereby 39 of the 52 State parties received comments on legislation being 'harmonised' or 'in conformity' with the Convention. This study, like others before it, though utilising a new method of comparative analysis, concludes that though full direct legal incorporation of the

⁸³⁰ McCall-Smith (n 82) 427.

⁸³¹ *ibid* 428.

UNCRC is not a panacea, immediately providing full implementation of children's rights, it is undoubtedly an incredibly valuable tool in the process of implementing children's rights. Its importance is not constrained only to a piece of legislation to be used as necessary; rather, by being incorporated, it sends a clear message as to the government's view on children's rights and raises the profile of children's rights both within organisations and the public domain. It is difficult to imagine, in the present-day world, how full implementation of children's rights can be achieved without full direct legal incorporation in one form or another. Therefore, this study adds its voice to the growing chorus supporting the Convention being 'incorporated' or replicated at the domestic level.⁸³² Further, it questions whether in some monist State parties where the Convention has been automatically incorporated but not fully realised, further domestic legislation echoing the Convention would strengthen its position.

General comments

One of the aspects that needs to be considered with regards to legal incorporation is the changing interpretation of the Convention, not necessarily by the State party that has incorporated the Convention, but by the Committee, with the interpretation being recorded in the general comments. One of the issues already noted is the ageing of the Convention and the expansion by the Committee of the scope to include issues not included initially and the development of the interpretation within general comments. How then can this be dealt with legally? If a State party has fully directly incorporated the Convention into domestic law, how is this shifting interpretation dealt with, or is it not? Is interpretation frozen at the time of incorporation?

One option for dealing with this, as already noted, is to request that within the GMI cluster that State parties confirm which GC they accept as interpretive of the Convention.

8.5 Conclusions regarding how the UK can improve the incorporation and implementation of the Convention

Before considering the implementation of children's rights in the UK, it is necessary to reflect on some of the fundamental issues regarding the UK that this study has highlighted.

UK Government and devolution

Because of the way that devolution and increasing independence has occurred both historically and recently, the result is that there is now a situation where Wales, Scotland and Northern

⁸³² For instance, Kilkelly (n 190); Daly, McDermott Rees and Curtis (n 83); Lundy, Kilkelly and Byrne (n 78).

Ireland all have their own governments in one form or another whereas England does not. Children's rights are not necessarily given the same focus in the different political administrations. In addition, the approach to children's rights varies between all of the constituent elements of the UK as a State party (including the Crown Dependencies and Overseas Territories). The UK as a State party is becoming more complex, not less, making a single set of reports increasingly problematic.

Another relevant aspect of devolution that it is necessary to consider is whether the concept of the legal jurisdiction of England and Wales is now a legal fiction with increasing legislation applying to Wales alone being passed. If it is not already a legal fiction, then at some point in the (near) future it will be, and at that point it will be necessary to recognise the Welsh legal system as unique and separate to the English legal system. Strength can be found by learning from and celebrating the differences as well as respecting the similarities.

Further, it is overdue that the government listened to the legal experts such as the Law Commission and for instance the then Lord Chief Justice, Lord Thomas that it is past time that specific areas of law are codified as he described the current state of criminal law as a 'maze' and 'impenetrable' and argued that it was 'long overdue clarification and simplification'.⁸³³

[Children's rights in the UK](#)

One of the conclusions drawn from this study is that the UK appears to be in an economic and democratic position where it should be able to achieve far greater implementation and realisation of children's rights. Discussing rights in a changing world, Driscoll damningly concludes that:

The current status of children's rights in the UK reflects the remnants of a paternalistic culture and an ambivalent commitment to the concept of children as rights holders... To date, the UK Government has not demonstrated a commitment to children's rights commensurate with its economic standing.⁸³⁴

In this study, the UK government has been shown to have significant issues with the implementation of children's rights and is a long way off considering children to be active citizens. It is not the worst State party by far; however, of the 12 State parties identified as North, West or South European in the UN Geoscheme (physical location not political affiliation), the UK was the lowest ranked. This study was purposely international, and therefore there were

⁸³³ Lord Thomas (n 808).

⁸³⁴ Driscoll (n 84) 346.

State parties from each region which were not included; one option for future studies would be to compare all the State parties in a set region such as the whole of Europe (Geoscheme).

Contemplating first general human rights, the UK's ranking in overall human rights indicators was compared in chapter 7.2; here in figure 8.3, the UK is compared to the top and lowest two grades. Not shown in this table but relevant nonetheless is the UK economy global rank regarding GDP (Gross Domestic Product). In 2018 the UK was ranked 5th by the World Bank in their World Development Indicators,⁸³⁵ they and other organisations predict that by the end of 2019 the UK will have slipped to 7th. Even with this change, the UK will still have a significant economic standing. Comparing being ranked 5th (or even 7th) for the economy to indices shown in the figure 8.3, being ranked only 14th in the Human Development Index and the Economist's Intelligence Units Democracy Index, or 25th in the Gender Inequality Index, is concerning.

Figure 8.3 The UK, in comparison to the top and lowest two grades – full spreadsheet available in appendix A-40

Project Rank	A-Z	Av Grade	UN HDI Rank (2018)	UN Gender Inequality Index (2018)	UN Gender Development Index Group (2017)	The Economist Intelligence Unit's Democracy Index 2017	EIU - DI - Classification	WHO - Child Mortality - per 1000 live births	WHO - Stunting among children %	WHO - Adolescent birth rate - per 1000 women aged 15-19 (2005-2014)	WHO - % of Gov. spending on health	
1	Iceland	84	C	6	9	2	2	Full	2	0	7.1	15.7
2	Portugal	83	C	41	19	1	26	Flawed	3.6	0	10.5	11.9
3	Norway	79	D	1	5	1	1	Full	2.6	0	5	18.2
4	Estonia	77	D	30	27	1	30	Flawed	2.9	0	15.6	13.5
4	Sweden	77	D	7	3	1	3	Full	3	0	5.1	19.8
6	Germany	74	D	5	14	2	13	Full	3.7	1.3	7.8	19.6
7	Croatia	73	D	46	29	1	58	Flawed	4.3	0	11.8	14
7	Malta	73	D	29	45	2	17	Full	6.4	0	13.1	15.6
7	Poland	73	D	33	32	1	53	Flawed	5.2	0	14	10.7
7	Switzerland	73	D	2	1	1	9	Full	3.9	0	2	22.7
11	Ireland	72	D	4	23	1	6	Full	3.6	0	9.2	13.4
23	UK	61	E	14	25	2	14	Full	4.2	0	19.3	16.5
46	Cameroon	47	G	151	141	5	126	Authoritarian	87.9	31.7	119	4.3
47	Albania	46	G	68	52	2	77	Hybrid	14	23.1	19.7	9.4
47	India	46	G	130	127	5	42	Flawed	47.7	38.4	28.1	5
49	Algeria	45	G	85	100	5	128	Authoritarian	25.5	11.7	12.4	9.9
50	Senegal	44	G	164	124	4	74	Flawed	47.2	20.5	80	8
51	Israel	38	H	22	21	2	30	Flawed	4	0	10.2	11.6
52	Saudi Arabia	38	H	39	50	5	159	Authoritarian	14.5	9.3	17.6	8.2

Further, comparing the UK's results to the top two grades is revealing, and it stands out that the Gender Development Index Group is only a '2' (the individual indices are described in chapter 5.6) and the adolescent birth-rate is higher than all of the State parties in the top two grades. Only one of the top 16 State parties has a World Bank GDP ranking higher than the UK,

⁸³⁵ The World Bank, 'World Development Indicators, Gross Domestic Product 2018' (2018) <<https://databank.worldbank.org/data/download/GDP.pdf>>.

Germany, and yet four State parties' governments, including Germany, manage to spend a greater percentage on health.

UK cluster grades

Considering the grades that the UK and England and Wales achieved for each cluster in figure 8.4, immediately two of the thematic clusters, VAC and JJ, stand out due to their low score, a grade G for VAC and grade F for JJ being the two lowest scores the UK received. While in total the UK has five grade Es, specifically a grade E for GP is concerning due to the importance of the GP cluster. This low score is influenced by the scoring on the issue of discrimination, as discussed in chapter 4.2, where the UK had the joint 5th worst score across all clusters for discrimination. The importance of the GP clusters and in this particular instance, discrimination, is due to its interwoven nature, being relevant and influencing all other clusters. Non-discrimination is a fundamental principle of all human rights, let alone children's rights.

Figure 8.4 Cluster grades for the UK, and for England and Wales

State	TOTAL	Av Score	Spread	Av Grade	1 - GMI		2 - DOTC		3 - GP		4 - CRF		5 - VAC		6 - FEAC		7 - DHW		8 - ELC		9 - SPM		10 - JJ		
					Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	
UK	61	6.1	6.0	5	E	D	7	C	8	E	6	D	7	G	4	E	6	E	6	E	6	E	6	F	5
E&W	65	6.5	6.0	5	E	C	8	C	8	D	7	C	8	G	4	E	6	D	7	E	6	E	6	F	5

These scores then indicate that there are three areas, discrimination, violence against children, and juvenile justice, to which the UK needs to give urgent attention. If the UK managed to improve the implementation and realisation of children's rights in these areas, then undoubtedly the UK's score, and far more importantly, the actualisation of children's rights would improve.

Legal incorporation

It has already been noted that this study concludes that full direct legal incorporation, as demonstrated by the top 3, is an important if not essential step for working towards achieving implementation of children's rights. The UK in totality, Great Britain, Northern Ireland, the Crown Dependencies, and Overseas Territories, 'ideally' should fully incorporate the UNCRC. Again 'ideally', this should be at a level superior to ordinary statute or in a similar manner to the Human Rights Act (HRA) where both primary and subordinate legislation 'must be read and given effect in a way which is compatible with Convention rights'.⁸³⁶ Discussion of the HRA, unfortunately, leads to a discussion on the use of the word 'incorporation' and the question of

⁸³⁶ [UK] - The Human Right Act 1998 c.42 s 3(1).

whether or not the HRA incorporates the European Convention for the Protection of Human Rights and Fundamental Freedoms⁸³⁷ (referred to as the European Convention on Human Rights – ECHR), which it is frequently referred to as doing in academic work. Additionally, the practitioners’ text *The Family Court Practice* describes the ‘scope’ of the HRA and notes that (emphases added):

Articles not listed ... are specifically excluded and are not formally **incorporated** into UK law.⁸³⁸

This statement implies that the other articles are incorporated. However, some Judges have disagreed with this use of the word in judgments, for example:

Although people sometimes speak of the Convention having been incorporated into domestic law, that is a misleading metaphor. What the Act has done is to create domestic rights expressed in the same terms as those contained in the Convention. But they are domestic rights, not international rights. Their source is the statute, not the Convention.⁸³⁹

Further, the situation is described in a legal textbook as:

The Human Rights Act 1998 (HRA) does not incorporate the European Convention on Human Rights (ECHR) into English law but gives ‘further effect’ in the UK to the content of the rights therein.⁸⁴⁰

Without becoming overly concerned with the use of the word ‘incorporates’ and whether or not the HRA ‘incorporates’ parts of the ECHR into domestic law, because what it undeniably does is create domestic law ‘expressed in the same terms’. Nevertheless, it would appear that scholars of children’s rights use the term ‘incorporation’ differently to some judges and would describe that what the HRA does is incorporate the articles included in its schedule into domestic law. Throughout this thesis ‘incorporation’ has been used to include both domestic acts that ‘echo’ international instruments in order to give rise to those rights domestically as well as acts that explicitly express that they ‘incorporate’ a named international instrument, such as the example of the Norwegian Human Rights Act 1999 where section 2 expressly states (CT):

⁸³⁷ [Council of Europe] - Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (as amended up to and including 2010).

⁸³⁸ The Rt Hon Lord Wilson of Culworth, His Honour Judge Cleary and The Rt Hon Lady Justice Black (eds), *The Family Court Practice* (Family Law - Jordan Publishing Ltd 2013).

⁸³⁹ [UK] - *Re McKerr* [2004] UKHL 12 Lord Nicholls of Birkenhead paragraph 26 see also; [UK] - *R (on the application of Al-Jedda) v Secretary of State for Defence* [2007] UKHL 58.

⁸⁴⁰ Howard Davis, *Human Rights Law Directions* (4th edn, Oxford University Press, 2016) 67.

The following conventions shall have the force of Norwegian law insofar as they are binding for Norway.⁸⁴¹

The list that follows includes the UNCRC and the first two optional protocols.

This subtle difference in the use of the word ‘incorporation’ may have no importance whatsoever. Unfortunately, it may if the argument is being made to the UK government that it should ‘incorporate’ the UNCRC using the same method as the HRA and the point is made that there are judgments expressing that the HRA has not been incorporated.

If full direct incorporation of the UNCRC in legislation is unlikely, what are other steps that can be taken to improve the implementation of children’s rights?

From the HRA the UK has a structure of ‘statements of compatibility’ for all new proposed legislation; in addition, courts can make a declaration of ‘incompatibility’. These two elements of procedure could be expanded to the UNCRC, or better yet they could be expanded to all human rights treaty obligations, whereby a statement of compatibility with all of the human rights treaty obligations for any proposed legislation would be required. Further, a Court should have the ability to issue a statement of incompatibility if it is satisfied that a provision of legislation is incompatible with any ratified human rights convention right, including the UNCRC.

[Optional Protocol on a Communications Procedure and Children’s Ombudspersons’ powers of investigation](#)

The UK has not signed the OPCP; in the 2014 State party report the UK stated:

The UK has not signed the Optional Protocol on a communication procedure. The UK already has strong and effective laws under which individuals may seek enforceable remedies in the courts or tribunals if they feel that their rights have been breached. Nonetheless, the Government recognises that ratifying the Optional Protocol may add further protection for children in respect of their rights and will continue to keep this under review in light of emerging information about procedures and practice.⁸⁴²

At the time of the UK response, the OPCP was still in its early days and waiting to see how it is used was an understandable stance. However, enough time should have passed by now since

⁸⁴¹ [Norway] - (Human Rights Act) Lov om styrking av menneskerettighetenes stilling i norsk rett (menneskerettsloven) LOV-1999-05-21-30 (Amended up to and including 2014).

⁸⁴² United Kingdom (n 689) para 17.

the OPCP's inception, and the UK should be in a position to make a decision. In addition, it was pointed out by the Joint Committee on Human Rights that the:

Office of Children's Commissioner for England lacking any power of individual investigation of complaints... makes the need for the Optional Protocol more real and not just powerfully symbolic of the Government's commitment to the Convention.⁸⁴³

This raises the issue of the differences in the powers and duties of the Children's Commissioners in the UK. As detailed by Rees and Williams, 'The powers of the four commissioners to deal with individual cases vary considerably.' They note that:

There is a great deal of disagreement as to whether casework is a necessary part of the role of an independent children's rights institution. In particular, it has been argued that casework can take up too much of an office's resources that would be better spent on proactively promoting children's rights.⁸⁴⁴

They also explain how case work has been beneficial to the role of Commissioners. As the Convention has not been incorporated into domestic legislation, children have little ability to complain of a breach of their rights unless that breach is covered by other legislation, which makes it even more critical that Children's Ombudsperson should have the powers of individual investigation of complaints. One clear option is that Children's Commissioners should have powers to investigate individual complaints in their own jurisdiction. An alternative option, so as not to 'take up too much resources' of the individual offices, would be to consider the creation of an additional UK wide truly independent Ombudsperson (appointed not by governments but by the current Children's Commissioners). The office of such a UK wide Children's Ombudsperson would be to work in conjunction with the individual Children's Commissioners, but the primary (only) function would be the investigation of complaints. It is worth noting that this would not be entirely an innovative approach. In Australia each state or territory has its own children's commissioner with varying powers; there is then a National Children's Commissioner⁸⁴⁵ (NCC) for the whole of Australia, though in the Australian model the NCC does not have investigative powers as that function is undertaken by the Human Rights Commission⁸⁴⁶.

⁸⁴³ House of Lords - House of Commons - Joint Committee on Human Rights, 'The UK's Compliance with the UN Convention on the Rights of the Child' (n 805) para 38.

⁸⁴⁴ Rees and Williams (n 586).

⁸⁴⁵ Australian Human Rights Commission, 'About the National Children's Commissioner' <<https://www.humanrights.gov.au/our-work/about-national-childrens-commissioner>> accessed 7 September 2019.

⁸⁴⁶ Australian Human Rights Commission, 'Australian Human Rights Commission (AHRC)' <<https://www.humanrights.gov.au>> accessed 7 September 2019.

[A new full review of children's rights, the relevant legislation and the implementation of the Convention](#)

The current monitoring process being created in a cyclical form whereby each report is in response to the previous has both strengths and weaknesses, some of which have been highlighted in this study. Currently, the reporting process of the State party report in the UK is not widely publicised, whereas the alternative reports produced for instance by NGOs and Children's Commissioners are more widely available. As Woll described, the reporting process could be considered an opportunity:

Used in the optimum manner, however, the reporting process can create an opportunity for governments, NGOs (non-government organizations), children and young adults, and other members of civil society, including media, to engage in a spirited discussion about priorities, successes and challenges, and to create agendas for change. Indeed, the reporting process could be used as a catalyst for domestic review, debate and policy change.⁸⁴⁷

Further, as Kilkelly contends:

Compatibility between national legislation and the Convention requires a comprehensive, continuous and rigorous process of review.⁸⁴⁸

Considering where the UK is within the reporting cycle, according to the last CO report the next report was due in January 2022. However, as the UK has now accepted the simplified reporting procedure, the LOIPR is expected from the Committee in February 2021 with the State party report due in February 2022.

This report is due just over 30 years since the UK ratified the Convention. Could this not be used as an incentive to do more than merely reply to the Committee's questions? Could this opportunity be used to initiate a full review, engaging the media, children, the public, as well as NGO's and ask, what can be done to improve the lives of children's and create a better country, not just for today but for the future as well? As Freeman expresses:

The case for children's rights will prevail. We have to believe this because out of it will emerge a better world for children and this will redound to the benefit not only of children but of all of us.⁸⁴⁹

⁸⁴⁷ Lisa Woll, 'Reporting to the UN Committee on the Rights of the Child: A Catalyst for Domestic Debate and Policy Change?' (2000) 8 *The International Journal of Children's Rights* 71.

⁸⁴⁸ Kilkelly (n 190) 325.

⁸⁴⁹ Michael Freeman, 'Why It Remains Important to Take Children's Rights Seriously' [2007] *International Journal of Children's Rights* 5.

8.6 Areas for future research and summary of conclusions

This study has highlighted a number of areas for future research, firstly increasing the study size to include as many State parties as possible, starting with the most recent full CO reports and working backwards until the CO report format is sufficiently different so that comparison is not possible. An alternative to this would be to focus on State parties from Europe and those which vote with WEOG (Western Europe and Other Group) which, on the basis of their similarities, would create a particularly fascinating comparison.

Another area for research from this study would be to expand the research on incorporation to create a full list of all State parties and their level of incorporation (including if and when that has changed). This list would not assume automatic incorporation by monist State parties; it would be confirmed from the State party reports and Core Documents, and automatic full direct incorporation would be a separate category to where State parties had chosen full direct incorporation.

A quite different area of research that would assist in understanding the legal implementation in the UK would be to expand on Gilmore's work discussed in chapter 2 and chapter 7, where he analysed 130 family law cases where the UNCRC was cited. The proposal would be to search for and analyse reference to the UNCRC in all types of case judgements within the UK for a time period. This would enable an understanding of the circumstances the Convention is referred to and of the types of case.

Summary of conclusions

Finally, this study adds to the knowledge and understanding of both the reporting process connected to the Convention and the implementation of children's rights. In summary, this study has demonstrated that it is possible to compare CO reports to give an indication of the levels of implementation of children's rights. This comparison enables State parties to understand their progress in implementing children's rights and to identify areas where they are struggling. It has enabled conclusions to be drawn as to commonalities among the better performing State parties, for instance, intentional full legal incorporation, and commonalities among the worst performing State parties, for instance, significant issues with discrimination. Critically, this study has demonstrated that the Convention can no longer be considered as a standalone document, it is necessary for it to be read in conjunction with the general comments produced by the Committee for the current interpretation to be understood. In addition, it has highlighted a problem with the structure of the reporting process allowing a continuous cycle of reports responding to previous reports, as issues can be missed due to the evolving nature of

the interpretation of the Convention. With the creation of a new simplified reporting process this would be an opportune time to undertake as full a review as possible of all State parties reports under the old system to enable as comprehensive an understanding of international implementation of children's rights to date.

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Reservations and Declarations to the UNCRC - Correct February 2017

Overview	
Total number of R & D	151
Total number of Reservations	84
Total number of Declarations	67
Number of General R & D	21
Number of General Reservations	13
Number of General Declarations	8
Number of Countries with R & D	59

Results
State with most R&D = Singapore
State with most Objections to R&D = Somalia
Article with most R = A14 with 12
Article with most D = A14 with 7
Article with most R & D = A14 with 19

NB: Only Objections to remaining R & D are counted

Articles with R & D			
Article	R	D	Total
General	13	8	21
1	1	3	4
2	4	2	6
3	1	1	2
4	0	0	0
5	0	0	0
6	2	2	4
7	3	2	5
8	0	0	0
9	1	1	2
10	3	1	4
11	0	0	0
12	0	3	3
13	1	5	6
14	12	7	19
15	2	4	6
16	2	4	6
17	2	2	4
18	0	0	0
19	0	1	1
20	3	0	3
21	9	3	12
22	1	2	3
23	0	0	0
24	1	3	4
25	0	0	0
26	1	0	1
27	0	0	0
28	3	1	4
29	1	0	1
30	1	2	3
31	0	0	0
32	2	2	4
33	0	0	0
34	0	0	0
35	0	0	0
36	0	0	0
37	7	2	9
38	2	5	7
39	0	0	0
40	6	1	7
41	0	0	0
42	0	0	0
43	0	0	0
44	0	0	0
45	0	0	0
46	0	0	0
47	0	0	0
48	0	0	0
49	0	0	0
	84	67	151

	State Parties with R & D	Objections by:
1	Afghanistan	
1	Albania	
4	Algeria	
2	Andorra	1 Netherlands
4	Argentina	
1	Australia	
1	Bahamas	
2	Bangladesh	2 Ireland, Portugal,
5	Belgium	
1	Botswana	2 Germany, Netherlands
4	Brunei Darussalam	6 Austria, Denmark, Germany, Netherlands, Norway, Portugal,
2	Canada	
1	China	
1	Colombia	
4	Cook Islands	
1	Croatia	
1	Cuba	
1	Denmark	
2	Ecuador	
3	France	
2	Guatemala	
8	Holy See	
1	India	
1	Iran	7 Finland, Germany, Ireland, Netherlands, Norway, Portugal, Sweden,
1	Iraq	
1	Ireland	
3	Japan	
3	Jordan	2 Ireland, Sweden,
5	Kiribati	3 Austria, Netherlands, Portugal,
3	Kuwait	2 Ireland, Portugal,
1	Liechtenstein	1 Netherlands
4	Luxembourg	
6	Malaysia	7 Austria, Finland, Germany, Ireland, Netherlands, Portugal, Sweden,
3	Maldives	
1	Mali	
1	Mauritania	
2	Monaco	
1	Morocco	
6	Netherlands	
3	New Zealand	
2	Oman	5 Finland, Germany, Netherlands, Norway, Sweden,
6	Poland	
2	Qatar	7 Finland, Germany, Italy, Netherlands, Norway, Portugal, Slovakia,
2	Republic of Korea (South Korea)	
1	Samoa	
1	Saudi Arabia	7 Austria, Denmark, Ireland, Netherlands Norway, Portugal, Sweden,
10	Singapore	5 Belgium, Finland, Germany, Netherlands, Norway
4	Somalia	19 Austria, Belgium, Bulgaria, Czechia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Netherlands, Norway, Poland, Portugal, Republic of Moldova, Romania, Sweden, UK
2	Spain	
1	Swaziland	
4	Switzerland	
2	Syrian Arab Republic	6 Finland, Germany, Italy, Netherlands, Norway, Sweden,
1	Thailand	1 Ireland
1	Tunisia	2 Germany, Ireland
3	Turkey	3 Ireland, Netherlands, Portugal,
4	United Arab Emirates	1 Netherlands
4	United Kingdom (GB & NI)	
1	Uruguay	
2	Venezuela	
151		



1

	United Nations	CRC/C/ISL/CO/3-4
	Convention on the Rights of the Child	Distr.: General 23 January 2012 Original: English

2

Committee on the Rights of the Child

3

Fifty-eighth session

4

19 September – 7 October 2011

5

Consideration of reports submitted by States parties under article 44 of the Convention

6

Concluding observations: Iceland

7

1. The Committee considered the combined third and fourth periodic report of Iceland (CRC/C/ISL/3-4) at its 1648th and 1649th meetings (see CRC/C/SR.1648 and 1649), held on 23 September 2011, and adopted, at the 1668th meeting, held on 7 October 2011, the following concluding observations.

8

I. Introduction

9

2. The Committee welcomes the submission of the third and fourth periodic report as well as the written replies to its list of issues (CRC/C/ICE/Q/3-4/Add.1) and commends the frank and self-critical nature of both the report and the replies to the list of issues, which allow a better understanding of the situation of children in the State party. The Committee expresses appreciation for the very constructive and open dialogue held with the cross-sectoral delegation of the State party.

10

II. Follow-up measures undertaken and progress achieved by the State party

11

3. The Committee welcomes/notes as positive the adoption of the following legislative measures:

12

(a) The amendments to the Child Protection Act No. 80/2002 in 2011;

13

(b) The new Media Act No.38/2011;

14

(c) The amendments to the Primary School Act No. 91/2008 in 2011;

15

(d) The Act on Education and Career

..Welcomes / Appreci
Legislation



		16
		17
..Welcomes / Appreci	○	18
Legislation		
		19
		20
		21
		22
..Welcomes / Appreci	○	23
★	○	
		24
		25
		26
		27
..Welcomes / Appreciate	○	28
		29
		30
		31
		32
		33
..Positive	○	

Counsellors No. 35/2009;

(e) The Preschool Act No.90/2008, the Primary School Act No.91/2008 (2008) and amendments thereto in 2011 and the Secondary School Act No. 92/2008;

(f) The Act concerning Education and Recruitment of Teachers and School Administrators in Preschools, Primary Schools and Secondary Schools No. 87/2008;

(g) The amendments to the Penal Code raising the minimum age of sexual consent from 14 to 15 years in 2007;

(h) The Youth Act No. 70/2007;

(i) The Act No.22/2006 on payments to parents of chronically ill or severely disabled children and its amendment by Act No. 158/2007; and

(j) The Children's Act No. 76/2003.

4. The Committee also welcomes the ratification of or accession to:

(a) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 2000 (June 2010); and

(b) The Council of Europe Convention on Cybercrime, (January 2007).

5. The Committee also welcomes the following institutional and policy measures:

(a) The Action Plan to improve children's and young people's situation 2007-2011;

(b) The quality standards for placement of children outside the homes from 2008 and 2011;

(c) The Plan of Action for Child Protection in Iceland 2008-2010;

(d) The Plan of Action regarding Immigration Policy in 2008;

(e) The regulation by the Ministry of Health and Social Security in 2008 exempting children below the age of 18 from health care and hospital fees; and

(f) The Health Policy Action Plan from 2008.

III. Factors and difficulties impeding the implementation of the Convention

6. The Committee takes note of the deep financial crisis undergone by the State party since the crash of its banking system in 2008, which had a severe impact on its ability to maintain the level of public investment and employment, which in turn impacted on children and their families, especially on lower income families. However, the Committee notes with appreciation the State party's

..Positive		
		34
		35
		36
..Welcomes / Appr		37
..Concern		
..RED		
..YELLOW		38
..Art 4		
Recommend		
		39
..Welcomes / Ap		40
..Regret		
..Art 4		
..Reservations		41
..RED		
Recommend		
		42
Legislation		43
..Art 4		
..Concern		
..Welcomes /		

fiscal efforts to protect the rights of children, especially regarding special protection measures, and that it intends to redress the budget cuts to social investment, including education and health, as its financial and economic situation steadily continues to improve.

IV. Main areas of concern and recommendations

A. General measures of implementation (arts. 4, 42 and 44, paragraph 6, of the Convention)

The Committee's previous recommendations

7. The Committee welcomes efforts by the State party to implement the Committee's concluding observations on the State party's second periodic report. Nevertheless, the Committee notes that some of those concluding observations **have not been sufficiently addressed**.

8. The Committee **urges** the State party to take all necessary measures to address those recommendations from the concluding observations of the second periodic report that have not yet been implemented or sufficiently implemented, including the remaining declaration on article 37, lack of a data collection system, high dropout rate of immigrant children from school, and existence of the double criminality requirement, and to provide adequate follow-up to the recommendations contained in the present concluding observations.

Reservations

9. The Committee welcomes the withdrawal of the reservation concerning article 9 of the Convention in February 2009. The Committee regrets, however, that the State party has not withdrawn its reservation concerning article 37.

10. The Committee **reiterates** the recommendation made in its previous concluding observations (CRC/C/15/Add.203, para. 5) that the State party guarantee by law the separation of detained children and adults, in accordance with article 37 (c) of the Convention and withdraw its reservation concerning article 37.

Legislation

11. The Committee appreciates the legislative actions that are being undertaken by the State party to strengthening the constitutional, legal and normative framework related to the implementation of the Convention. The Committee recommends that, once the reservation concerning article 37 has been

Legislation		
..Art 4		
..Concern		
..Welcomes / Appr		44
Recommend		45
..Positive		
..Regret		
..Art 4		46
Recommend		
Financial resources		
		47
..Positive		48
..Regret		
..Art 4		49
..YELLOW		
Recommend		
		50
..Welcomes / Appr		51
..Concern		
..RED		
..Art 4		
Recommend		52

withdrawn, the State party take the necessary steps to incorporate the Convention and its Optional Protocols into its domestic laws.

Coordination

12. The Committee notes the establishment of a consultative committee that worked from 2007 to 2011 on planning policies related to children and adolescents and examination of the Committee's recommendations. However, the Committee regrets that there is still no permanent entity mandated to carry out intersectoral coordination of the implementation of the Convention.

13. **The Committee recommends that the State party undertake measures to establish an effective permanent mechanism for coordinating the implementation of child rights policies by all the relevant bodies and institutions at all levels. This mechanism should be provided with the necessary human, technical and financial resources to implement child rights policies that are comprehensive, coherent and consistent at national, regional and municipal levels.**

National Plan of Action

14. The Committee notes the Action Plan to improve children's and young people's situation 2007–2011, providing for the establishment of the consultative committee mentioned in paragraph 12 above. The Committee also notes that there has been a decision to develop a new plan of action for the years to come, but regrets that such a plan has not yet been adopted.

15. **The Committee encourages the State party to adopt as soon as possible a new national plan of action on children that covers all provisions enshrined in the Convention on the basis of evaluation of the 2007–2011 plan. The Committee also recommends that the State party provide a specific budget allocation and adequate follow-up mechanisms for full implementation of the Plan and ensure that it is equipped with an evaluation and monitoring mechanism to regularly assess progress achieved and identify possible deficiencies.**

Independent monitoring

16. While welcoming the increase in resources provided to the Ombudsman for Children in 2007, the Committee notes the State party's information that the Ombudsperson is not entitled to receive individual complaints. It is also concerned that there is a complicated system of complaints mechanisms established under various Government agencies.

17. **The Committee recommends that the State party consider giving the Ombudsman for Children the competence to handle individual complaints and**

BLUE - Gen Com t		
..Art 4		
Recommend		
..YELLOW		
Financial resources		
..Welcomes / Appr		53
..Concern		54
..Art 4		55
..YELLOW		
Recommend		
..Welcomes / Appr		56
..Regret		57
..Art 4		58
Recommend		
..Art 42		59

ensure that this mechanism is effective and accessible to all children, especially to children in vulnerable situations, as well as raise the public's, especially children's awareness of such complaints procedure. Drawing attention to its **general comment No. 2 (2002)** on the role of independent national human rights institutions in the promotion and protection of the rights of the child, the Committee **also** calls upon the State party to ensure that this complaints mechanism be provided with the necessary human, technical and financial resources to ensure its independence and efficacy.

Allocation of resources

18. The Committee recognizes the difficult financial and economic situation faced by the State party since 2008 and appreciates the efforts made to avoid direct effects on services protecting children and families in situations of vulnerability. The Committee, however, expresses its concern at extensive budget cuts to the education and health sectors and that, despite efforts, the rate of families with children below the low-income threshold, in particular single parent families, has increased.

19. **The Committee recommends that, with economic and financial recovery as experienced since 2010, the State party reverse cuts to the education and health sectors and increase its investment in job creation, especially for single heads of household, social security and special protection in a sustained manner. It further recommends that the State party introduce budget tracking from a child right's perspective with a view to monitoring and evaluating budget allocations for children and take into account the Committee's recommendations resulting from its 2007 day of general discussion on resources for the rights of the child - responsibility of States.**

Data collection

20. The Committee notes with appreciation the data provided by the State party on various areas concerning children. However, it regrets that the system of data collection does not cover all areas of the Convention, and that there are insufficient mechanisms for the processing, evaluation and assessment of such data.

21. **The Committee encourages the State party to develop a comprehensive system for collecting, processing and analysing data as a basis for assessing progress achieved in the realization of child rights. The data should be disaggregated by age, sex, geographic location, ethnicity and socioeconomic background to facilitate analysis of the situation of all children.**

Dissemination, awareness-raising and training

..GREEN	60
..Positive	
..Regret	
..Art 42	
..YELLOW	61
Recommend	
..YELLOW	
..Welcomes / Appreci	62
..Art 4	63
Recommend	64
	65
..Welcomes / Appr	66
..Art 3	67
..Concern	

22. The Committee notes with appreciation that since 2008 the State party has celebrated an annual Children's Day. The Committee **also** welcomes the establishment of a home page for the Convention by the Government Agency for Child Protection, and seminars, information sessions, forums and conferences on child protection and child rights held for personnel of child protection committees and staff of treatment homes. However, the Committee regrets lack of information as to whether children's rights are included in the school curricula and whether law enforcement officials, health professionals, teachers, health workers, and social workers are particularly included as targets of such training and seminars or if there are any other measures taken to disseminate information to such groups on the Convention and the Committee's deliberations.

23. **The Committee recommends that the State party include children's rights in its school curricula. It **also** recommends the reinforcement of adequate and systematic training of all professional groups working for and with children, **in particular**, law enforcement officials, teachers, health workers, social workers and personnel working in all forms of alternative care.**

International cooperation

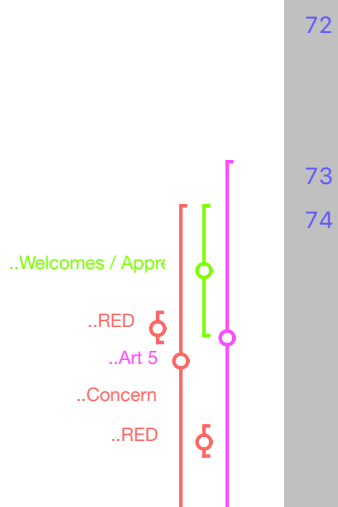
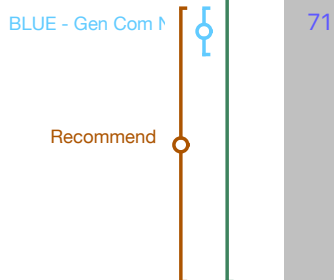
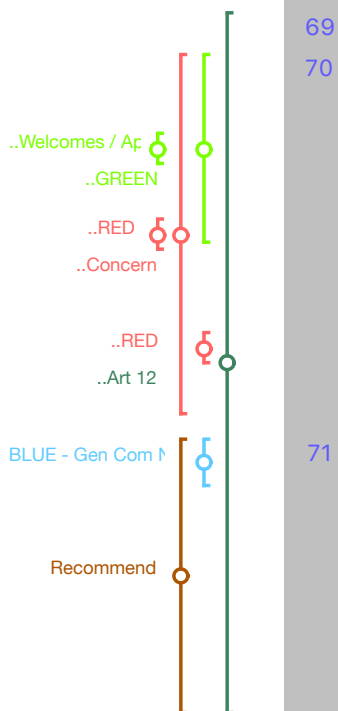
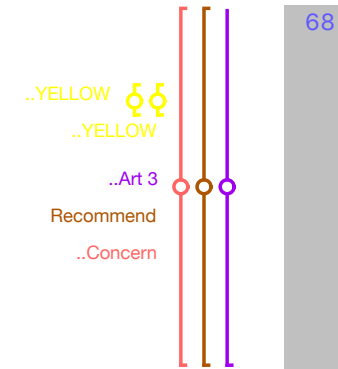
24. The Committee welcomes the strong efforts by the State party to contribute to international cooperation. The Committee notes, however, that with the difficult economic climate in the country its contributions to international assistance have been reduced.

25. **The Committee encourages the State party to maintain and, if possible, increase, despite the current crisis, its level of international cooperation. The Committee encourages the State party to meet and, if possible, surpass its target of reaching 0.7 per cent of gross national product by 2015. In doing so, the Committee suggests that the State party take into account the concluding observations of the Committee on the Rights of the Child for the recipient country.**

B. General principles (arts. 2, 3, 6 and 12 of the Convention)

Best interests of the child

26. The Committee welcomes information that the concept of the best interest of the child is generally taken into consideration in the assessment of a child's need for welfare and public services. The Committee, however, is concerned that the best interests principle may not be fully taken into account in certain individual cases, especially with regard to ensuring parents' access to the child.



27. The Committee recommends that the State party ensure that, in all cases concerning parents' access to the child, the best interest of the child is always given priority. It further recommends the State party to strengthen its efforts to ensure that the principle of the best interests of the child is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings, and in all policies, programmes and projects relevant to and with an impact on children. The legal reasoning of all judicial and administrative judgments and decisions should also be based on this principle.

Respect for the views of the child

28. The Committee notes the State party's indication that the Children's Act secures the right of children to form their own opinions and to express them. The Committee also appreciates that under the Youth Act municipal authorities may establish youth councils to advise authorities on youth affairs. Nevertheless the Committee remains concerned that there is no legal requirement that such councils be established nor any procedures and regulations governing the functioning of such councils, leaving them at the discretion of municipalities. The Committee is also concerned that all children may not have equal opportunity to express their views.

29. In the light of the Committee's general comment No. 12 (2009) on the right of the child to be heard, the Committee recommends the State party to adopt regulations governing the functioning, role and mandate of youth councils and to ensure that children's views are given due consideration in courts, schools, relevant administrative and other processes concerning children and in the home, including children with disabilities, immigrant children or children in other vulnerable situations.

C. Family environment and alternative care (arts. 5, 18, paras. 1–2, 9–11, 19–21, 25, 27, para. 4, and 39 of the Convention)

Family environment

30. The Committee takes note of the adoption in 2007 of a four-year action plan which includes child-rearing counselling and parent-management training and welcomes the measures to support parents in nurturing their children. The Committee, however, remains concerned that social benefits aimed at families in poverty, including single-headed families, are inadequate and that this has a negative impact on the development of children in such families. It is also concerned that in cases of family disputes, there is insufficient funding for

Textual analysis – steps for coding CO reports

To begin the encoding process, there are separate language searches undertaken using MAXQDA's lexical search function, which enables codes to be attached to either individual words or to whole sentences or paragraphs.

The lexical searches undertaken were:

1. To encode under *welcomes/appreciates*, the following words were searched for and where found the whole paragraph encoded (welcome, welcomes, welcoming, appreciates, appreciation, appreciating).
2. To encode under *positive*, the following words were searched for and where found the whole paragraph encoded (positive, notes, noting).
3. To encode under *concern*, the following words were searched for and where found the whole paragraph encoded (concern, concerning).
4. To encode under *regret*, the word regret was searched for and where found the whole paragraph encoded.
5. To encode under *red highlight*, the following words were searched for and where found only the single word encoded which would visually highlight them in the text with the colour red as well as applying a red coding stripe. (Also, reiterate, recall, recalls, recalling, repeated, deeply, deep, seriously, remain, failed, previously, furthermore, urgent).
6. To encode under *recommend*, the following words were searched for and where found the whole paragraph encoded (recommend, encourage).
7. To encode under a *yellow highlight*, the following words were searched for and where found only the single word encoded which would visually highlight them in the text with the colour yellow as well as applying a yellow coding stripe (urges, in particular, prioritise, priority, immediate, expeditiously, expedite).
8. To encode under *girl*, which is visualised in the coding stripe as a blue star with a grey stripe the single word girl was searched for and the whole paragraph encoded.
9. To encode under a *magenta highlight*, the words 'girl and girls' were searched for and only the single word encoded which would visually highlight them in the text with the colour magenta.

10. To encode under *female*, which is visualised in the coding stripe is a grey star with a grey stripe the following words were searched for and where found the whole paragraph encoded (woman, women, female, mother).
11. To encode under *intersex*, the word intersex was searched for and where found the whole paragraph encoded.
12. To encode under *child marriage*, the word marriage is searched for and where found the whole paragraph encoded.
13. To encode under *racial minorities*, which is visualised in the coding stripe as a red star with a grey stripe the following words were searched for and where found the whole paragraph encoded (minority, minorities, indigenous, aboriginal, caste).

Having started the coding process using specific lexical searches, the next stage was to carefully read the document editing and adding to the codes identified. With each section of text under a subheading, there are a number of steps that were taken with regard to positive language, negative language, recommendations and the encoding of additional codes.

Where the lexical search has encoded under *positive language*, the next steps were to check and refine the codes:

1. Where the coding stripe for *welcomes/appreciates* covers the whole paragraph, this has to be reduced to only the positive section of the paragraph including any negative conjunction (e.g. however) to show the continuation of the paragraph once retrieved.
2. It is necessary to check whether there are two green coding stripes where a paragraph contains two or more words identified as positive, then the first or main word will be used for the main code and the second will be encoded as a *green* highlight to show that it is either an enhancer or a multiplier.
3. Further, check for additional enhancers or multipliers encode the individual word as a *green* highlight.

4. Check any words highlighted as *red* or *yellow* in case they should be *green* because they are a positive multiplier or enhancer, when necessary recode to a *green* highlight.

These steps are repeated for sections in which the lexical search has encoded under *negative language*, or under *recommend* with the relevant colour attributions.

In addition to the language codes above all coding stripes need to be double-checked and the text considered for additional codes, these steps are:

1. Check all other codes to ensure that they correctly cover the right amount of text, for instance is a reference to child marriage only a short section of a paragraph and therefore, only specific parts of the paragraph need to have this coding stripe, or is it necessary to expand coding stripe to cover sub-paragraphs that are still relevant to the code. Further, any coding stripe of *child marriage* needs to be double-checked to ensure that it is a reference to child marriage rather than marriage in general.
2. Each paragraph should have the primary CRC article that it refers to as a coding stripe, where the concluding observations report has a subheading listing which articles follow some paragraphs will be written so that they cover more than one article and will need multiple coding stripes.
3. Where on occasion it is not clear which article the Committee is referring to the whole section is to be encoded to *Unknown Art*.
4. References to legislation are to be encoded under the code *legislation*.
5. References to criminal justice are to be encoded under the code *criminal justice*.
6. References to the reporting process are to be encoded under the code *Art 44*.
7. It is necessary to look for specific language or terminology that relates to racial minorities, where a particular term is report specific, (e.g. 'Mauri' in the New Zealand report) then a lexical search of that report to encode to the red star of *racial minorities* can be undertaken.

[Grading CO reports - examples of grades using the CRF and DOTC clusters.](#)

To fully explain the grading method, at least one example is given for each grade.

Grade A

The starting point of the matrix is grade A. Where this is achieved, it signifies that the Committee has not raised any issues or made recommendations to improve to the State party. In the CRF cluster, five State parties achieved this grade and in the DOTC cluster twenty-five.

Grade B

For the DOTC cluster grade B can be achieved where there is only one issue raised, and there is a clear declaration to remedy. Two State parties achieved this grade.

An example of a grade B would be Ireland - the CO for Ireland reads:

Definition of the child (art. 1)

25. The Committee notes the statement by the State party during the dialogue that amendments to the Family Law Act, 1995 are in the process of being undertaken to remove exceptions to the minimum age of 18 for marriage. It is concerned, however, that pending such amendments, children under the age of 18 years still may marry.

26. The Committee recommends that the State party expeditiously amend its Family Law Act, 1995 to remove all exceptions that allow marriage under the age of 18 years.¹

The only issue raised is the age of marriage; there is no gender difference, and the State party has reported that they are in the process of amending the legislation which would bring them into line with the Committee's recommendations.

What is not specified here, is that the exception mentioned, which allows children to marry at 16 years old with parental consent, is not that far from the Committee's recommended age of 18.

On the matrix, this would place Ireland in the box '2'.

¹ CRC CO Ireland 2016, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland, UN Doc CRC/C/IRL/CO/3-4' (United Nations 2016) paras 25–26.

Grade B

For the CRF cluster, an example of a grade B would be Sweden. Comments were made under the issue identified in paragraph 28 (g) 'Access to information from a diversity of sources and protection from material harmful to a child's well-being (art. 17)', This gives a starting point of grade B, box 2 on the matrix. The CO comment and recommendation reads:

Access to appropriate information

23. While noting with appreciation the measures taken by the State party to inform children and their parents on the use of information and communications technology (ICT), such as the "Digital Tourist" touring conference or the yearly "Safer Internet Day", the Committee is concerned that insufficient training is provided to pupils at schools and parents on the risks connected to the use of ICT.

24. In the light of the recommendations resulting from the day of general discussion on digital media and children's rights, the Committee recommends that the State party:

- (a) Increase its efforts to develop regulations to protect the privacy of children, and adequately train children, teachers and families on the safe use of ICT, in particular on how children can protect themselves from paedophiles, from being exposed to information and material harmful to their well-being, and from online bullying;
- (b) Undertake awareness-raising among children on the severe effects online bullying can have on their peers;
- (c) Strengthen the mechanisms for monitoring and prosecuting ICT-related violations of children rights.²

There were no explicit multipliers such as 'reiteration', and the recommendations use language such as 'increase its efforts', and 'strengthen the mechanisms' rather than recommendations for significant change, giving a multiplier score of 0. On the matrix, this would leave Sweden in box 2, a grade B.

Grade C

An example of a grade C would be for Ireland for the CRF cluster. Right to identity, and freedom of thought, conscience and religion, and one sub-issue of discrimination

² CRC CO Sweden 2015, 'Concluding Observations on the Fifth Periodic Report of Sweden, UN Doc CRC/C/SWE/CO/5' (United Nations 2015) paras 23–24.

are covered in the CO report giving an initial score of 3 issues – a starting point of grade B. The CO document for Ireland under the issue of the right to identity reads:

Right to identity

33. The Committee is concerned about:
- (a) Insufficient attention to the rights and interests of children born as a result of assisted reproduction technologies, in particular with the involvement of surrogate mothers;
 - (b) Lack of measures to ensure that children fathered by Catholic priests are able to access information on the identity of their fathers;
 - (c) The Civil Registration (Amendment) Act 2014 not providing adequate clarity on the family name to be given to children that are born out of wedlock.
34. The Committee recommends that the State party:
- (a) Ensure that children born through assisted reproduction technologies, in particular with the involvement of surrogate mothers, have their best interests taken as a primary consideration and have access to information about their origins; in doing so, the State party should consider providing surrogate mothers and prospective parents with appropriate counselling and support;
 - (b) Ensure measures to assist children fathered by Catholic priests in upholding their right to know and be cared for by their fathers, as appropriate, and ensure that they receive the necessary psychological treatment;
 - (c) Undertake measures, including possible amendments to legislation, to ensure that children born out of wedlock have legal certainty in respect of their family name and that those measures are taken with a view to minimizing the stigma or discrimination that could be faced by such children.³

The recommendation to legislative amendments in addition to the nature of the issue regarding ‘Freedom of thought, conscience and religion’ indicated a situation demonstrating a further gap from the Committee’s recommendations. Therefore the multiplier score was 1; this moved Ireland from box 2 to box 3 on the matrix, awarding a grade of C.

³ CRC CO Ireland 2016 (n 1) paras 33–34.

Grade D

An example of a grade D for the CRF cluster is from the Russian Federation CO report. The comment and recommendation regarding birth registration reads:

Birth registration

28. The Committee is seriously concerned about reports that children born to Roma, refugee and asylum-seeking mothers with non-Russian passports or without identity documents are denied birth registration and are issued with only a hospital certificate indicating merely their sex, height and weight. The Committee is concerned that this practice gives rise to a new generation of undocumented persons, whose rights are limited in all areas of life.

29. The Committee urges the State party to ensure that all children born in its territory, irrespective of the status of their parents, are registered on the same terms

as children born to Russian citizens and are issued with a standard birth certificate.⁴

In this instance, though only one issue is raised, the sub-issue of discrimination is included giving an initial score of 2, a starting grade of B; however, the language used in the report (seriously concerned) and the severity of the issue of being 'denied birth registration' gives a multiplier score of 2. This multiplier moves the Russian Federation from box 2 on the matrix to box 5 and a grade D.

Grade E

An example of a grade E for the DOTC cluster is from the CO for Malta which reads:

Definition of the child (art. 1 of the Convention)

26. The Committee is concerned that in numerous areas of legislation, such as the provision of child welfare services and support, the State party does not provide for the coverage of children above the age of 16 years, resulting in a de facto definition of the child being a person under 16 years of age in these cases. Furthermore, the Committee is concerned that the age of marriage is set at 16 years.

27. The Committee urges the State party to take all necessary measures to harmonize the definition of the child in its national legislation and the

⁴ CRC CO Russian Federation 2014, 'Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Russian Federation, UN Doc CRC/C/RUS/CO/4-5' (United Nations 2014) paras 28–29.

implementation thereof with the Convention. Furthermore, the Committee urges the State party to raise the minimum age of marriage to 18 years.⁵

In this instance there are three issues: child marriage, the age of majority, and state support, giving a starting grade of D. However, though the level of the gap from the Committee's recommendations is not that far clear recommendations for legislation change are being made, giving a multiplier score of 1 and placing them in matrix box 10 a grade E.

Grade F

An example of a grade F for the CRF cluster is from the CO report for Chile, where three issues, and a sub-issue regarding discrimination were raised. One of the issues in the CO reads:

Freedom of association and peaceful assembly

36. The Committee is deeply concerned about the repressive manner adopted by the State party to address the 2011-2012 demonstrations by students demanding changes in the education system and the abusive use of detention measures.

37. The Committee urges the State party to:

(a) Develop and monitor the implementation of police protocols and procedures on dealing with public protests that are compliant with human rights standards and the Convention in particular;

(b) Issue guidance to the police and the Prosecutor's Office to ensure all detentions are in strict accordance with the law.⁶

The combination of language such as 'deeply concerned about the repressive manner', the recommendations to amend legislation and nature of the issues gave a multiplier of 3 moving the grade from box 4 to box 13 and a grade F.

Grade G

An example of a grade G for the CRF cluster is from the CO report for Azerbaijan, where the total number of issues was 5, giving a starting point of a grade C. However, due to the seriousness of issues including corruption, and the distance from the

⁵ CRC CO Malta 2013, 'Concluding Observations on the Second Periodic Report of Malta, UN Doc CRC/C/MLT/CO/2' (United Nations 2013) paras 26–27.

⁶ CRC CO Chile 2015, 'Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Chile, UN Doc CRC/C/CHL/CO/4-5' (United Nations 2015).

Committee's recommendations evidenced by phrases and language, a multiplier score of 4 was awarded.

As an example of the language used and level of change recommended, one issue from the CO reads:

Birth registration

38. The Committee is concerned about the significant proportion of births that remain unregistered, both among newborn infants as well as persons currently under the age of 18. The Committee is particularly concerned about the situation of children born to parents in situations of socio-economic marginalization and/or living in remote regions, as well as to mothers who have been subject to underage marriage and are consequently often not officially registered as married. Furthermore, it is concerned at the prevalence of corruption in the birth registration process and the resulting inadequacy and inconsistency in the provision of registration services in the State party, particularly in its rural and outlying territories.

39. The Committee recommends that the State party undertake all necessary measures to ensure the availability of universal birth registration for all children regardless of the circumstance of birth, and/or the marital and/or migration status of the child's parent(s). It also recommends that the State party consider taking specific measures to facilitate birth registration for children of underage mothers and/or mothers in rural areas. Furthermore, the Committee also recommends that the State party take specific measures, including legislative measures, to combat corruption among authorities responsible for the provision of birth certificates.⁷

The multiplier score of 4 takes Azerbaijan from box 4 to box 18, and a grade G.

Grade H

An example of a grade H for the CRF cluster is from the CO report for Algeria, where three issues and two sub-issues were addressed, including one of the sub-issues twice and a recommendation to withdraw a declaration. This issue score was therefore 7 a starting grade of D.

⁷ CRC CO Azerbaijan 2012, 'Concluding Observations on the Combined Third and Fourth Periodic Report of Azerbaijan, UN Doc CRC/C/AZE/CO/3-4', (United Nations 2012) paras 38–39.

As an example of the language used and level of change recommended, one issue from the CO reads:

Freedom of thought, conscience and religion

41. The Committee remains concerned that the right of the child to freedom of thought, conscience and religion is not fully respected as reflected in the State party's interpretative declaration to article 14 of the Convention. The Committee is also concerned that the restricted conditions for professing another religion than Islam as set in Act No. 06-09 of 17 April 2006 and the attacks and violence against religious minorities which take place in the State party undermine the effective enjoyment of the right of the child to freedom of thought, conscience and religion.

42. The Committee reiterates its recommendation (CRC/C/15/Add.269, para. 38) that the State party ensure full respect of the right of the child to freedom of thought, conscience and religion. To this end, the State party should consider withdrawing its interpretative declaration to article 14 of the Convention, and ensure conformity of its laws with the Convention. The Committee also urges the State party to take all the necessary measures to end all forms of violence and harassment of religious minorities.⁸

This example of the use of 'remains concerned', implies the Committee has previously mentioned this concern. Additionally, the seriousness of the issues described for instance 'attacks and violence against religious minorities' gave a multiplier score of 4, moving the State party from box 7 to box 23 and a grade H.

Grade H

An example of a Grade H for the DOTC cluster is from the CO report for Saudi Arabia, which reads:

Definition of the child (art. 1)

13. The Committee is seriously concerned that the State party does not intend to change the fact that judges have the discretion to determine the age of majority. The Committee is particularly concerned that judges frequently authorize the marriage of girls who have attained puberty. It also notes with deep concern that efforts to set a minimum age for marriage were successfully challenged in

⁸ CRC CO Algeria 2012, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Algeria, UN Doc CRC/C/ALG/CO/3-4' (United Nations 2012) paras 41–42.

December 2014 by the highest-ranking religious leader, who declared being in favour of marriages involving girls as young as 9 years old.

14. The Committee draws the attention of the State party to the fact that the exception contained in article 1 of the Convention cannot be interpreted as authorizing child marriage, a practice internationally recognized as harmful to children. The Committee urges the State party to set, as a matter of priority, the minimum age of marriage at 18 years for both girls and boys.⁹

In this example, there are multiple issues, such as an undefined age of majority, child marriages with strong gender differentiation, and legislation issues. This gives a starting grade of E; additionally, there are clear indications of no intention to change some of these issues, as well as the use of strengthening language by the Committee 'seriously concerned', 'particularly concerned', and 'urges the State party to set, as a matter of priority'. Therefore, the multiplier is at least a 4 and moves the State party from box 11 to box 23 and a grade H.

⁹ CRC CO Saudi Arabia 2016, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Saudi Arabia, UN Doc CRC/C/SAU/CO/3-4' (United Nations 2016) paras 13–14.

General measures of implementation

State	Issues											Multiplier factors							Final Grade				
	18. R&D	19. (a) Legislation	(b) National Strategy	(c) Government coordination	(d) Budget	(e) International assistance	(f) Independent monitoring	(g) Dissemination- CRC	(h) Dissemination - reports	(i) Cooperation - Civil society	20. Business activities	Training - (Staff)	Data Collection	Total number of issues covered	Starting Grade	Corruption	21. GC No.2, No.5, No.16, (No.19)	Budget (Total)		Gender - discrimination / issues	Previous Recommendations	Reiterates (remains)	Multiplier score (0-5)
Albania		1	1	1	1		1	1			1	1	8	C		1	3		1	4	2	9	E
Algeria	1	2	1	1	1		1	1		2	1	1	12	E	1	1	3	1	1	5	3	23	H
Australia	1	2	1	1	1	1	1	1		1	1	1	13	E		1	3		1	6	1	15	F
Azerbaijan		2	1	1	1		1	1		1	1	1	11	D	1	1	3	1	1	7	2	14	F
Bhutan		1	1	1	1		1	1		1	1	1	9	D		4	1		3	1	10	E	
Brazil			1	1	1	1	1	1		2	1	1	11	D		3	3	1	2	1	10	E	
Cameroon		1	1	1	1		1	1		1	1	1	8	C	1	4	5	1	2	2	9	E	
Canada	1	1	1	1	1	1	1	1		1	1	1	12	E		1	3		1	6	1	15	F
Chile		1	1	1	1		1				1	1	7	C		3	2	1	2	2	9	E	
China	1		2	1	1		1			2	1	1	10	D		2	1	1	5	2	14	F	
Columbia		1	1	1	1					1	1	1	7	C	1	1	3	1	1	2	9	E	
Croatia		3	1	1	1		1	1		1	1	1	11	D	1	2	4		5	2	14	F	
Dominican Rep.		2	1		1		1			1		1	6	C	1	1	1	1	3	2	9	E	
Estonia		1	1	1	1		1	1		2		1	10	D		3	3		4	1	10	E	
Ethiopia		2		1	1		1	1		1		1	9	D		2	1	1	3	2	9	E	
Fiji			1	1	1		1	1	1			1	7	C		2	3	1		0	4	C	
France		1	1	1	1		1	1			1	1	8	C		1	1	1	5	1	6	D	
Gambia (The)		1	1	1	1		1	1		2	1	1	11	D	1	2	3	1	4	3	19	G	
Germany		2	1	1		1	1	1		1	1	1	11	D		3	3	1	6	1	10	E	
Ghana		1	1	1	1		1				1	1	7	C	1	3	3	1	3	3	13	F	
Iceland	1	1	1	1	1	1	1	1			1	1	10	D		1	4	1	1	0	7	D	
India	1	2	1		1		1	1		2	1	2	13	E	1	3	3	1	3	3	23	H	
Ireland		3	1	1	1		1	1			1	1	11	D		3	4	1	4	1	10	E	
Israel		1	1	1	1		1	1		2		1	10	D		1	2	1	1	3	19	G	
Jamaica		1	1	1	1		1	1			1	1	8	C		1	3	1	4	1	6	D	
Japan	1	2	1		1	1	1	1		2	1	1	13	E		1	2	1	4	2	20	G	
Kazakhstan		2	1		1		1				1	1	7	C		3	3	1	1	2	9	E	
Malta		2	1	1	1		1	1			1	1	9	D		1	5	1	4	1	10	E	
Mexico		2	1	1	1					2		1	7	C	1		3	1	1	2	9	E	
Mongolia		1	1	1	1		1	1			2	1	10	D		4	2		5	2	14	F	
Morocco	1	3	1	1	1		1			2	1		11	D	1	2	4	1	5	3	19	G	
Nepal		1	1	1	1		1	1		1		1	9	D	1	1	3	1	4	2	14	F	
New Zealand	1	1	1	1	1		1				1	1	9	D		4	3		6	1	10	E	
Norway	1	1		1	1	1	1	1				1	8	C			1	1	1	0	4	C	
Poland	1		1	1	1							1	5	C		1	2	1	2	0	4	C	
Portugal		1	1	1	1		1	1		1		1	9	D		2	4	1	1	0	7	D	
Romania		1	1	1	1		1	1		1		1	9	D	1	1	3	1	2	2	14	F	
Russian Fed.		2	1	1	1		1	1		1	1	1	10	D		1	3	1		2	14	F	
Saudi Arabia	1	4		1	1		1			2		1	11	D	1	1	1	1	6	4	23	H	
Senegal		2	1	1	1		1	1		1	1	1	10	D		3	4	1	3	2	14	F	
Serbia		3	1	1	1		1	1		1		1	11	D		3	3	1	4	1	10	E	
Seychelles		1	1	1	1		1		1	1	1	1	10	D		2	2	1	3	1	10	E	
South Africa			1	1	1		1	1		1	1	1	8	C	1	3	2	1	2	2	9	E	
Suriname		1	1	1	1		1	1		1	1	1	9	D	1	3	2		2	14	F		
Sweden		2		1	1		1						5	C		1	1	1	3	1	6	D	
Switzerland	1	1	1	1	1		1	1			1	1	10	D		3	2		3	1	10	E	
Timor-Leste		2	1	1	1		1					1	7	C		2	2	1	3	2	9	E	
Turkey	1	1	1	1	1		1	1	1	1	1	1	12	E		1	4	1	4	2	20	G	
UK	1	1	1	1	1	1	1				1	1	9	D		2	3		1	0	7	D	
Uruguay		1	1	1	1	1				1	2	1	9	D		2	3	1	2	1	10	E	
Viet Nam		2	1	1	1		1	1		1		1	10	D	1	1	3	1	8	3	19	G	
Zambia		2	1	1	1		1	1			1	1	10	D	1	1	4	1	4	2	14	F	
Total	15	75	49	48	51	9	47	35	3	44	29	36	46			18	99	142	7	43	171		
Frequency	15	47	48	48	51	9	47	35	3	33	28	35	45			18	50	52	7	43	49		

Definition of the child (art. 1)

State	DOTC / Majority	Marriage / Sexual Exploitation	Juvenile Justice	State Support	Total number of issues covered	Starting Grade	Corruption	GC No.	Gender Discrimination	Legislation	Reiterates (remains)	Multiplier score (0-5)	Square on Matrix	Final Grade
Albania			1	1	2	D			1	1	1	2	14	F
Algeria					0	A							1	A
Australia					0	A							1	A
Azerbaijan					0	A							1	A
Bhutan		1			1	B			1	1		2	5	D
Brazil					0	A							1	A
Cameroon		1			1	B				1	1	2	5	D
Canada		1	1		2	D						0	7	D
Chile		1			1	B				1		1	3	C
China					0	A							1	A
Columbia					0	A							1	A
Croatia					0	A							1	A
Dominican Rep.					0	A							1	A
Estonia		1			1	B				1		1	3	C
Ethiopia					0	A							1	A
Fiji	1				1	B				1		1	3	C
France					0	A							1	A
Gambia (The)		1			1	B				1		3	8	E
Germany					0	A							1	A
Ghana					0	A							1	A
Iceland					0	A							1	A
India					0	A							1	A
Ireland		1			1	B				1		0	2	B
Israel	1		1		2	D				1		2	14	F
Jamaica					0	A							1	A
Japan		1			1	B			1		1	2	5	D
Kazakhstan					0	A							1	A
Malta	1	1		1	3	E				1		0	11	E
Mexico					0	A							1	A
Mongolia					0	A							1	A
Morocco					0	A							1	A
Nepal	1				1	B				1		2	5	D
New Zealand		1			1	B				1		1	3	C
Norway					0	A							1	A
Poland					0	A							1	A
Portugal					0	A							1	A
Romania		1			1	B				1		1	3	C
Russian Fed.					0	A							1	A
Saudi Arabia	1	1			2	D			1	1		3	19	G
Senegal		1			1	B			1	1		3	8	E
Serbia	1	1			2	D				1		1	10	E
Seychelles		1			1	B			1	1	1	3	8	E
South Africa		1			1	B			1	1		3	8	E
Suriname		1			1	B			1	1	1	3	8	E
Sweden					0	A							1	A
Switzerland					0	A							1	A
Timor-Leste	1	1			2	D			1	1		2	14	F
Turkey		1			1	B				1		2	5	D
UK		1			1	B				1		1	3	C
Uruguay		1			1	B				1		0	2	B
Viet Nam	1				1	B				1		1	3	C
Zambia	1	1			2	D				1		1	10	E
Total	9	22	3	2			0	0	9	25	5			

State	General principles											Starting Grade	Total number of issues covered	Corruption	25. Legislation (inc. Administration)	27. GC No.14, No.12, No.11.	Reiterates (remains)	Juvenile justice	Multiplier score (0-5)		Final Grade		
	23(a) Non-discrimination	24. discrimination -disadvantaged	24. discrimination - gender	24. discrimination - disabilities	24. discrimination - race /minorities / migrant	Discrimination - Sexual Orientation /	Discrimination - Single parent	23(b) Best interests	23(c) Life survival and development	23(d) Respect for views	26. Capital punishment								26. register of deaths and killings.	26. mortality / suicide / infanticide		26. register of deaths and killings.	26. mortality / suicide / infanticide
Albania	3		1	1	1			1	1	1			1	7	C		1	4	2	3	13	F	
Algeria	5	1	1	1	1		1	1	1	1				8	C		1	3	3	4	18	G	
Australia	2				1	1		1	1	1				5	C		1	2	2	2	9	E	
Azerbaijan	2	1		1				1	1	1		1		6	C		2	2		3	13	F	
Bhutan	5	1	1	1	1		1	1	1	1				7	C		2	2		2	9	E	
Brazil	5	1	1	1	1	1		1	1	1		1	2	10	D		2	2	1	3	19	G	
Cameroon	6	1	1	1	1	1	1	1	1	1				8	C		2	3	3	2	9	E	
Canada	4	1	1	1	1	1		1	1	1				6	C		1	2	1	2	9	E	
Chile	4		1	1	1	1		1	1	1				6	C		2	3		1	6	D	
China	3		1	1	1			1	1	1		1	2	9	D		2	3	1	3	19	G	
Columbia	5	1	1	1	1	1		1	1	1		1		9	D	1	2	3	1	5	23	H	
Croatia	2	1			1			1	1	1				4	B		3	2	1	1	3	C	
Dominican Rep.	5	1	1	1	1	1		1	1	1		1		9	D		2	4	1	2	14	F	
Estonia								1	1	1				2	B		2	2		0	2	B	
Ethiopia	4	1	1	1	1			1	2	1		1		9	D		2	3	2	3	19	G	
Fiji	4	1	1	1	1									4	B		1			1	3	C	
France	5	1	1	1	1	1		2	1	1		1		10	D		2	2	2	1	10	E	
Gambia	5	1	1	1			1	1	1	1				7	C		2	2	1	3	13	F	
Germany	2			1	1			1						3	B		1	1	1	1	3	C	
Ghana	4	1	1	1	1			1	1	1		1		8	C		2	4	3	4	18	G	
Iceland								1	1	1				2	B		1	1	1	1	3	C	
India	4	1	1	1	1			1	1	1		1		7	C		2	2	1	4	18	G	
Ireland	2				1	1		1	1	1				4	B		2	3	1	2	5	D	
Israel	1				1			1	1	1		1		5	C		2	4	3	5	23	H	
Jamaica								1	1	1		1		4	B		2	2	1	1	5	D	
Japan	4		1	1	1		1	1	1	1		1		8	C		1	3	2	3	13	F	
Kazakhstan	3	1		1	1			1	1	1				5	C		2	3		2	5	D	
Malta	1				1			1	1	1				3	B		2	2	2	2	5	D	
Mexico	5	1	1	1	1	1		1	1	1		3		11	D		2	4	1	4	23	H	
Mongolia	4	1		1	1	1		1	1	1		1		8	C		2	3	3	4	18	G	
Morocco	4	1	1	1			1	1	1	1				6	C		2	2		3	13	F	
Nepal	3	1	1	1	1			1	1	1				5	C		1	3	2	2	9	E	
New Zealand	3			1	1	1		1	1	1		1		7	C		2	1	2	2	9	E	
Norway	2			1	1			1	1	1				4	B		2	2		1	3	C	
Poland	4		1	1	1	1								4	B		1			1	3	C	
Portugal	2				1	1		1	1	1				5	C		1	2	1	1	0	4	C
Romania	5	1	1	1	1	1		1	1	1		1		9	D		2	3	3	3	19	G	
Russian Fed.	4	1		1	1	1		1						5	C		1	3		4	18	G	
Saudi Arabia	6	1	1	1	1	1	1	1	1	1	1			10	D		2	3	3	5	23	H	
Senegal	4	1	1	1	1			1	1	1		1		8	C		2	3	2	4	18	G	
Serbia	4	1		1	1	1		1	1	1		1		8	C		2	3	1	3	13	F	
Seychelles	4	1	1	1	1			1	1	1				6	C		1	3	2	2	9	E	
South Africa	5	1	1	1	1	1		1	1	1		1		9	D		1	1	1	2	15	F	
Suriname	3	1			1	1		1	1	1				5	C		2	3		1	6	D	
Sweden	3	1			1	1		1	1	1		1		7	C		2	3	3	2	9	E	
Switzerland	4	1		1	1	1		1	1	1				6	C		2	2	1	1	6	D	
Timor-Leste	3	1		1	1		1	1	1	1				5	C		2	1		2	9	E	
Turkey	4	1	1	1	1			1	1	1		1		8	C		1	3	4	3	13	F	
UK	5	1		1	1	1	1	1	1	1		1		9	D		2	3	1	1	10	E	
Uruguay	3	1	1	1				1	1	1				5	C		2	2	1	2	9	E	
Viet Nam	4	1	1	1	1			1	1	1		1		8	C		1	3	2	4	18	G	
Zambia	5	1	1	1	1		1	1	1	1				7	C		2	2		3	13	F	
Total	183	36	30	41	45	23	10	50	28	48	1	2	28			1	81	128	70	19			
Frequency	49	36	30	41	45	23	10	49	27	48	1	2	24			1	47	52	39	15			

Civil Rights and Freedoms

State	28(a) Birth registration, name and nationality	BR - NOT free of charge	BR - block to education	28 (a) or (b) Discrimination (Medlock/gender/race/migrant/disadvantaged)	28(b) Preservation of identity	28(c) 'F' of expression - right seek, receive, impart info.	28(d) Freedom of thought, conscience and religion	28 (e) Freedom of association and peaceful assembly	28(f) Protection of privacy and protection of image	28(g) Access to info. from diversity of sources + protection from harmful material	29 - Role of media regards to promotion of child rights	Reservations and Declarations	Total number of issues covered	Starting Grade	Corruption	Legislation,	Reiterates (remains)	Juvenile justice	Multiplier score (0-5)	Square on Matrix	Final Grade
Albania	1	1	1	1						1			5	C		1			2	9	E
Algeria	1		1	2	1		1					1	7	D		1	2		4	23	H
Australia	1	1		2	1			1	1				7	D		2	1	1	2	14	F
Azerbaijan	1			1			1		1	1			5	C	1	1		1	4	18	G
Bhutan	1			1			1			1			4	C		1			1	6	D
Brazil	1			1									2	B		1	1		2	5	D
Cameroon	1	1		3	1								6	C		2	1		2	9	E
Canada	2			2	1								5	C		3			2	9	E
Chile	2			2	1			1					6	C		2			3	13	F
China	1	1		2			1						5	C		1	1	1	4	18	G
Columbia													0	##					0	1	A
Croatia	1			1					1				3	B		2	1		2	5	D
Dominican Rep.	2			2					1				5	C		1			3	13	F
Estonia	1			1									2	B					0	2	B
Ethiopia	1					1	1	1					4	C		1			3	13	F
Fiji	1	1		1									3	B			1		1	3	C
France	2			1				1	1	1			6	C		3	4		2	9	E
Gambia (The)	1			2		1				1			5	C			2		2	9	E
Germany	1				1								2	B			1		1	3	C
Ghana	1			2	1					1			5	C		1	1		2	9	E
Iceland													0	##						1	A
India	2			2	1		1						6	C		2			2	9	E
Ireland				1	1		1						3	B		1			1	3	C
Israel	1		1	2	2								6	C		1			4	18	G
Jamaica	1	1											2	B					1	3	C
Japan	1			1									2	B		1	1		1	3	C
Kazakhstan													0	##						1	A
Malta	1			1									2	B		1			0	2	B
Mexico	1			2									3	B		1	1		1	3	C
Mongolia	1			1					1	1			4	C		2	1		1	6	D
Morocco	2	1		3									6	C		2	1		3	13	F
Nepal	2			2									4	C		1	1		3	13	F
New Zealand				1	1				1	1			4	C		2			1	6	D
Norway							1		1				2	B					1	3	C
Poland	1			1	1		1						4	C					0	4	C
Portugal													0	##						1	A
Romania	1								1	1			3	B			1		1	3	C
Russian Fed.	1			1									2	B					2	5	D
Saudi Arabia	1			3		1	1						6	C		1	3	1	4	18	G
Senegal	2	1	1	1									5	C		1			2	9	E
Serbia	1		1	1									3	B		1			1	3	C
Seychelles	1			1									2	B		1	1		0	2	B
South Africa	1		1	1									3	B		1			2	5	D
Suriname	1			1									2	B					0	2	B
Sweden									1				1	B					0	2	B
Switzerland	2				1				1				4	C			1		1	6	D
Timor-Leste	1	1		1									3	B		1	1		2	5	D
Turkey	1			1				1		1		1	5	C			1		3	13	F
UK	1						1	1	1				4	C		2		1	1	6	D
Uruguay													0	##						1	A
Viet Nam	1			2	1								4	C		2	1		2	9	E
Zambia	1			2									3	B			1		1	3	C
Total	52	9	6	59	15	3	11	6	10	12	0	2			1	47	31	5			
Frequency	43	9	6	39	14	3	11	6	10	12	0	2			1	33	24	5			

Violence against children

State	30(a) Abuse and neglect (art. 19)	Domestic Violence & honour-based V (GC.18)	Freedom from all forms of violence (art. 19, GC.13)	30(b) Measures to prohibit/eliminate harmful practices...	Child Marriage & polygamy (GC.18)	FGM (GC.18)	Irreversible surgery - intersex	30(c) Sexual exploitation and sexual abuse	30(d) not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, including corporal punishment	Juvenile justice (GC.8)	Schools (punishment & Bullying) (GC.8)	Home / family	30(e) promote the physical/psychological recovery/reintegration	30(f) The availability of helplines for children.	Violence against disabled	Violence in workplace	Gangs & organised crime	Executions (including extrajudicial) of children	Total number of issues covered	Starting Grade	Corruption	GC No. 8.13.18	Legislation	Referates (remains)	VAC - included in CRF	Multiplier score (0-5)	Square on Matrix	Final Grade	
Albania	1	1	1	1	1			2	3	1	1	1	1	1					11	E		3	4	1		3	23	H	
Algeria	1	2							3	1	1	1	1						7	C		2	2	1	1	3	13	F	
Australia	1	1							3	1	1	1	1		1				7	C		2	2	1	1	1	9	E	
Azerbaijan	1	1	1						2	1	1	1	1						6	C		3	1	2	1	2	9	E	
Bhutan	1			1	1				4	1	1	1	1	1		1			9	D		2	3	1			2	14	F
Brazil				1	1			2	3	2			2				1	1	10	E		3	5			5	23	H	
Cameroon	1	1		2	1	1		1	3	1	1	1	1	1					10	E		4	3	5		3	23	H	
Canada	1		1	1	1			1	1		1	1	1		1				7	C		2	3			2	9	E	
Chile			1	1			1	1	3	1		2	1	1					8	D		3	3	1			2	14	F
China			1					1	2	1			2						6	C		1	1			2	9	E	
Columbia		1	1	1	1	1		1	2	1		1	1			1			8	D		2	4			3	19	G	
Croatia	1	1	1					1	1		1	1	1						6	C		2		1		1	6	D	
Dominican Rep.		1	1	1	1			1	2		1		2	1					9	D		2	6	1		3	19	G	
Estonia			1					1	2		1	1	1						5	C		2				1	6	D	
Ethiopia			1	3	2	1		1	3	1	1	1	1		1				10	E		4	3			3	23	H	
Fiji		1	1					1	2		1	1	2	1					8	D		1	3	1		2	14	F	
France			1	2	1	1	1	1	2		1	1	2		1				9	D		3	2	1		1	10	E	
Gambia (The)		1	1	1		1		1	3	1	1	1	1	1					9	D		3	5	1		2	14	F	
Germany			1	1		1		1	1			1	1						5	C			3			2	9	E	
Ghana	1	1		2	1	1		1	1			1	2						8	D		3	2	1		3	19	G	
Iceland																			0	##							1	A	
India	1			1	1			1	3	1	1	1		1					7	C		2	2	2		3	13	F	
Ireland	1			1			1						1						3	B				1		1	3	C	
Israel			1	1					4	2	1		1						7	C		2	1	2		5	23	H	
Jamaica	1	1						1	2		1	1	2						7	C		2	2	1		2	9	E	
Japan	1		1					1	2			1	1						6	C			1		1	1	6	D	
Kazakhstan	1			1	1			1	4	1	2	1	1		1				9	D		4	1	1		3	23	H	
Malta	1		1					1	1			1	1						5	C		1	1	3		1	6	D	
Mexico		1	1	1	1			1	2	1	1		2			1			9	D		1	3			4	23	H	
Mongolia	1							1	2		1	1	1		1				5	C			2			2	9	E	
Morocco	1	1		2	2			1	3	1	1	1	1						9	D		2	4	1		4	23	H	
Nepal	1	1		4	2		1	1	3	1	1	1	2				1		13	F		3	5	5		4	23	H	
New Zealand	1			2	1		1	1	2	1					1				7	C		1		3		2	9	E	
Norway			1	2	1	1		1											4	B					1	1	3	C	
Poland			1	1	1			1	2	1	1		1						6	C		3				1	6	D	
Portugal	1	1							1			1	1						4	B		3		1		1	3	C	
Romania	1			1	1			1	1						1				5	C		2				1	6	D	
Russia Fed.		1	1	1	1			1	3	1	1	1							7	C		2	2	3		4	18	G	
Saudi Arabia	1	1		1	1			1	3	1	1	1					1		8	D		1	3	1		5	23	H	
Senegal	1			2	1	1		1	3	1	1	1	2						9	D		3	3	1		3	19	G	
Serbia	1	1	1	1	1				2		1	1	1		1				8	D		2	2	1		2	14	F	
Seychelles									3	1	1	1							3	B				1	1	1	3	C	
South Africa			1	5	2	1	1	1	2		1	1			1				10	E		3	3			4	23	H	
Suriname	1	1		1	1			1	3	1	1	1	2	1					10	E		2	1	3		2	20	G	
Sweden	1	1	1					1	2	1	1		1	1	1				9	D		2				1	10	E	
Switzerland	1		1	2		1	1		1										5	C		3		1		1	6	D	
Timor-Leste	1	1						1	2		1	1	1						6	C		2	1	1		2	9	E	
Turkey				1	1				4	2	1	1							5	C			1		1	3	13	F	
UK	1	1	1	3	1	1	1	1	3	1	1	1			1				11	E		4	1	1		2	20	G	
Uruguay	1	1	1					1	1	1			1						6	C		1		1		2	9	E	
Viet Nam			1						2	1		1	1						4	B		2		1	1	2	5	D	
Zambia	1	2		1	1			1	1	1			2						8	D		2		1		2	14	F	
Total	31	27	28	53	31	12	8	41	113	33	35	38	51	11	11	1	3	3	373		0	102	88	60	8				
Frequency	31	25	28	34	27	12	8	39	49	30	34	37	39	11	11	1	3	3	52		0	44	34	38	8				

Family environment and alternative care

State	32(a) Family environment and parental guidance - consistent with evolving capacities (art. 5)	32(b) Parents' common responsibilities,	Assistance to parents and provision of childcare services (art. 18)	32(c) Separation from parents (art. 9)	32(d) Family reunification (art. 10)	32(e) Recovery of maintenance for the child	32(f) Children deprived of a family environment	Poverty	Quality of facilities / treatment of children	32(g) Periodic review of placement (art.25)	32(h) Adoption (national & intercountry)(art.21)	32(i) Illicit transfer and non-return (art. 11)	32(j) ... children with incarcerated parents and living in prison with their mothers.	Domestic Violence	Discrimination - Gender	Discrimination - Race / religion	Leaving 'care'	Family/law proceedings	Total number of issues covered	Starting Grade	Corruption	GC No. 7 and Guidelines for alternative care	Legislation,	Referates (remains)	Juvenile justice	Multiplier score (0-5)	Square on Matrix	Final Grade
Albania		1	1			1	2	1	1	1	1			1	1		1	10	E			1			2	20	G	
Algeria		1									1	1						8	D			4	3		4	23	H	
Australia			1				1		1	1	1		1			1	1	8	D			2	2		1	10	E	
Azerbaijan		1	2				2	1			1						1	7	D			2	2		2	14	F	
Bhutan		1					1		1	1	1				1			5	C						2	9	E	
Brazil			1				2	1	1	1	1		1					5	C		1	1			3	13	F	
Cameroon			2			1	2	1	1	1	1							7	D		1	2	3		4	23	F	
Canada			1				2	1	1	1	1					1	1	7	D			1			2	14	F	
Chile		1	1				1		1	1	1							5	C		1	1			1	6	D	
China				2			2		1	1	1				1			7	D			2			4	23	H	
Columbia			1				2	1	1	1	1							5	C		1		2		2	9	E	
Croatia		1	2				2	1	1	1	1					1		7	D		1	1			1	10	E	
Dominican Rep.			1	1			3		1	1	1		1			1		9	D		1	1	1		3	19	G	
Estonia		1	1		1	1	1		1	1	1			1		1		8	D		1	1	1		1	10	E	
Ethiopia			1				2		1	1	1							5	C		1	1	1		3	13	F	
Fiji							2		1	1	2							5	C		1	1			2	9	E	
France	1				1		2	1	1	1	1			1			1	7	D						1	10	E	
Gambia (The)		1				1	2	1	1	1	1				1			7	D		1	2	1		3	19	G	
Germany	1		1		1		1		1									4	C		1	1			1	6	D	
Ghana			1				2	1	1	1	1							5	C		1		1		3	13	F	
Iceland			1														1	2	B						1	3	C	
India			1				2	1	1	1	2		1					7	D		1	3	1		4	23	H	
Ireland							2		2		1						1	5	C		1	1			1	6	D	
Israel			1		1		2		1							1		5	C				1		4	18	G	
Jamaica			1				2		1	1	1				1			6	C		1	1			2	9	E	
Japan	1	1	1				2	1	1	1	1							7	D		1	1			2	14	F	
Kazakhstan							1				2						1	4	C		1	1	1		3	13	F	
Malta			1				1										1	3	B		1		2		1	3	C	
Mexico			1				2			1	1		1					6	C		1	1			3	13	F	
Mongolia	1		1	1			2		2	1	1							7	D		1		1		2	14	F	
Morocco		1	2				3	1	1	1	2				2	1		12	F			3			4	23	H	
Nepal			1				2		1	1	1							5	C		1	1	1		3	13	F	
New Zealand			1				2		1	1	1					2		6	C		1		2		2	9	E	
Norway	1		1				1		1				1				1	5	C		1				1	6	D	
Poland			2	1			1										1	5	C						1	6	D	
Portugal			1				1		1	1	1						1	5	C						1	6	D	
Romania			1				1		1	1	1					1		6	C		1		1		2	9	E	
Russian Fed.				2			2		2	1	1		1			1		8	D		1	1			3	19	G	
Saudi Arabia		1	1				2		1	1	1				4	1		10	E		1	1			2	20	G	
Senegal		1	1				2		1	1	1			1				7	D		1	1			3	19	G	
Serbia							2		2							1	1	4	C		1	1	2		2	9	E	
Seychelles		1					1			1								3	B		1	1	2		2	5	D	
South Africa			1				3		1	1								5	C			1			2	9	E	
Suriname			1				3	1	1	1	1				1			7	D		1	1			1	10	E	
Sweden							1										1	2	B						1	3	C	
Switzerland			1				2		1	1	2		1					7	D		1		1		2	14	F	
Timor-Leste			1				3	1	1	1	1							6	C		1	1			2	9	E	
Turkey							1		1	1				1	1			4	C		1				2	9	E	
UK			1				2	1	1	1	1		1				1	6	C		1				2	9	E	
Uruguay			1				2		1	1	1		1	1				7	D		1		1		2	14	F	
Viet Nam							2		1	1	1			1	1			6	C		1	1			2	9	E	
Zambia			1				2		1	1	1							5	C						3	13	F	
Total	5	13	43	7	4	4	91	16	47	36	42	1	10	6	22	12	17	1		1	36	42	35	0				
Frequency	5	13	38	5	4	4	50	16	43	36	37	1	10	6	14	11	17	1		1	36	31	24	0				

Disability, basic health and welfare

State	34. children with disabilities, participation in the community, services,	34. Education and cultural activities	35 (a) Survival and development	35. (b) Health and health services - primary	35. (c) health challenges - communicable and non-communicable diseases;	35. (c) promote physical and mental health + wellbeing (environment)	35(d) Reproductive health rights of adolescents + promote healthy lifestyle	(e) protect children from substance abuse	36 (a) Social security and childcare services	36(b) Standard of living, nutrition, clothing + housing, reduce poverty	Discrimination - race	Discrimination - gender	HIV/AIDS (& STI)	Abortion - illegal / unsafe / denial	Total number of issues covered	Starting Grade	Corruption	GC No. 3 / 4 / 9/ 15	Legislation,	Relaterates (remains)	Juvenile Justice	Multiplier score (0-5)	Square on Matrix	Final Grade
Albania	3	1	1	1	1	1	1	1	1	1	1	1	1	1	12	D		3		1		2	14	F
Algeria	1	2	1	1	1		1			1		1	1		10	D		2		3		3	19	G
Australia	2	1		2		1	1			2	1		1		11	D		2		5		1	10	E
Azerbaijan	2	1	1	2	1		1						1		9	C	1	2	1	1		3	13	F
Bhutan	1	2		2		1	1	1		2			1		11	D		2	2			2	14	F
Brazil	2	1	1	1		2	1	1		1	1	1	1	1	14	E		4	4	3		3	23	H
Cameroon	3	1	1	1	1	1	1	1	1	1			1	1	14	E		4	1	1		3	23	H
Canada	1	1				3				1	1				7	C		1				1	6	D
Chile	1	1		1		1	1	1		1	1	1		1	10	D		2	1	2		1	10	E
China	1	2		1		2	1			1		1	1		10	D		1	2	2		3	19	G
Columbia	1	1	1	1		2	1	1			1		1	1	11	D		4	1	5		2	14	F
Croatia	1	1		1		1	1	1					1		7	C		4				0	4	C
Dominican Rep.	1	1	1		1	1	1	1					1	1	9	C		4	1			2	9	E
Estonia	2	1		1				1							5	B		2	1	1		2	5	D
Ethiopia	1	1	1	1	1		2	1					1		9	C		4		4		3	13	F
Fiji	2	1	1	1		3	1	1		1	1	2	1		15	E		4				3	23	H
France	3	2	1	1	1	1	1	1	1	1					13	E		3	1			2	20	G
Gambia (The)	2	1	1	1	1	1	1			1			1	1	11	D		4	2			3	19	G
Germany	1	1		1		3		1		1	1	1			10	D		3	1			1	10	E
Ghana	1	1	1	1	1	1	1	1		2			1	1	12	D		4	1	4		2	14	F
Iceland	1					3	1	1			1				7	C		1		1		0	4	C
India	1	1	1	2	2	1	1			1		1	1	1	13	E		3	2			3	23	H
Ireland	1	1		1		2	3			2	1		1		12	D		3	1	3		1	10	E
Israel	1	1		1		2	1			4	1				11	D		3		3		4	23	H
Jamaica	1	1	2			4	1			1			1		11	D		4	1			2	14	F
Japan	1	1		1		2			1	1		1	1		9	C		2	1	1		1	6	D
Kazakhstan		1		1	1	2	1			1					7	C		3		4		2	9	E
Malta						2	1	1					1		5	B		1		2		0	2	B
Mexico	2	1	1	1		3	1	1		1	1	1		1	14	E		5	1	1		2	20	G
Mongolia	1	1		1	1	5	1			1					11	D	1	3	1	7		4	23	H
Morocco	2	1	1	1			1	1		1	1		1		10	D		3	1	2		2	14	F
Nepal	2	1	1	1		2	1			1		1	1	1	12	D		3	1	4		3	19	G
New Zealand	2	1		1	1	3	1			1	1				11	D		3	2	3		2	14	F
Norway				1		1		1		1					4	B				1		0	2	B
Poland	1	1		1		2	1			1	1		1		9	C		3	4			1	6	D
Portugal	1	1		1		2	1	1		1					8	C		5	1			0	4	C
Romania	1	1	1	1	1	2	1	1		1	1		1		12	D		3		2		2	14	F
Russian Fed.	2	1		2			1	1		1	1		1		10	D		2	3			3	19	G
Saudi Arabia	1	1				1	1						1	1	6	C		3	1	2		3	13	F
Senegal	2	1	1	1	1	3	1	1		1				1	13	E		3		4		3	23	H
Serbia	1	1		1		4	1	1	1	1	1				12	D		3	2	2		1	10	E
Seychelles	1	1				2	1	1		1			1		8	C		1		4		1	6	D
South Africa	1	1	2	1	1	4	1	1	1	1	1	2			17	##		4	3			4	23	H
Suriname	2	1	1			5	1	1		1	1	2			15	E		4	1			2	20	G
Sweden	1	1		1		1				1	2				7	C		2	1	2		0	4	C
Switzerland	2	1		1		3	1			1					9	C		3	1	2		1	6	D
Timor-Leste	1	1	1	1		4	1	1		1			1		12	D		4	2			1	10	E
Turkey	1	1	1			1	1						1		6	C		2				2	9	E
UK	1	1		1		5	1	1		1	1		1		13	E		1	3	2		0	11	E
Uruguay	1	1		1		1	1	1		1	1		1		9	C		4	1	3		3	13	F
Viet Nam	1	1	1	1		2	1	1	1	1	1		1		12	D		3	2	2		3	19	G
Zambia	1	1	2	1	1	2	1				2	1	1		13	E		4	2	1		3	23	H
Total	69	53	28	48	18	100	49	31	5	48	25	14	31	19			2	150	54	93	0			
Frequency	49	49	25	43	17	45	46	31	5	41	24	12	29	19			2	51	34	37	0			

Education, leisure and cultural activities

State	38 (a) right to education, training and guidance	Free schooling	Funding	Discrimination - Gender (F)	Discrimination - race, religion, cast (not art 30)	Discrimination - Disability	38(b) aims and quality of education:	Quality of building etc.	Quality of Teaching / teacher training groups	38(c) Cultural rights - indigenous and minority groups	38(d) Education on human rights	38(e) Rest, play, leisure, cultural + artistic activities	Literacy rates / non attendance / drop out	Regional variation (including rural)	Corporal punishment / Bullying / Peer violence / sexual harassment in school	Total number of issues covered	Starting Grade	Corruption	GC No. 1 (2001), No. 7 (2005), No. 9 (2006), No. 11 (2009), and No. 17 (2013)	Legislation,	Referrals (remains)	Juvenile justice	Multiplier score (0-5)	Square on Matrix	Final Grade
Albania	5	1	1	1		1	2	1	1	1				1		9	D	1	1	1			3	19	G
Algeria	4	1		2			1		1	1				1	1	8	D		1		2		2	14	F
Australia	1	1			1		1		1	1	1			1	1	6	C		1		2		1	6	D
Azerbaijan	1		1				2		2				1			4	B	1		1			3	8	E
Bhutan	3		1	1	1							1	1	1	1	8	D		1	2			2	14	F
Brazil	4	1	1	1	1		2	1	1				1	1		8	D		1		1		2	14	F
Cameroon	4	1	1	1	1		2	1	1					1	1	9	D			1			3	19	G
Canada	5	1	1		2	1	2		2						1	8	D		1				2	14	F
Chile	2			1			3	1	1		1	1		1	1	9	D		2				1	10	E
China	4		1		3		2	1	1	1				1	1	9	D			1			2	14	F
Columbia	5		2	1	1	1	2	1	1	1	1			1	1	11	E		1	1	1		3	23	H
Croatia	4		1		1	1	1		1			1	1		1	8	D		2		1		1	10	E
Dominican Rep.	4		1	1	1	1	2	1	1		1	1	1	1		10	D		2				1	10	E
Estonia	4		1		1	1	1		1	1						6	C						0	4	C
Ethiopia	5	1		1	1	1	1	1		1			1	1		9	D			1	1		2	14	F
Fiji	4	1	1	1			1	1						1	1	7	C		1		1		1	6	D
France	4		1		1	1	1		1				1	1	1	8	D					1	1	10	E
Gambia (The)	3	1		1			2		2			1	1	1		8	D		3		2		2	14	F
Germany	2		1		1		1		1					1		4	B		1	1			1	3	C
Ghana	5	1	1	1		1	1		1				1	1		8	D						2	14	F
Iceland	2				1	1							1		1	4	B		1		1		1	3	C
India	5	1		1	1		3	1	2				2			10	D						3	19	G
Ireland	2			1		1	1		1			1				4	B				1		1	3	C
Israel	3	1			1		4	2	1	2			1			10	D		1	1	1		3	19	G
Jamaica	2		1				2		1		1		1	1	1	8	D		1				1	10	E
Japan	1		1				1			1	1	1	1		1	7	C						1	6	D
Kazakhstan	1				1					1						2	B		1				2	5	D
Malta	1						1		1				1			3	B						1	3	C
Mexico	5			1	1	1	1		1		1			2		9	D		1		1		2	14	F
Mongolia	5		1	1	1	1	2	1	1			1		1	1	10	D		1		1		2	14	F
Morocco	5		1	1		1			1				1	1		7	C			2			2	9	E
Nepal	5	1	1	1	1				1				1	1		7	C		1	1			2	9	E
New Zealand	4	1			2	1					1					5	C		1		1		1	6	D
Norway	1				1		1		1	1				1	1	5	C						1	6	D
Poland	3				2	1	1			1				1		6	C			2			1	6	D
Portugal	3		1	1								1	1			5	C		1				0	4	C
Romania	5	1	2		1			1	1	1				1	1	9	D		2	1			1	10	E
Russian Fed.	6	1			4										1	7	C		1	1			3	13	F
Saudi Arabia	3			3			2		1		1	1				7	C		1	1			3	13	F
Senegal	5	1		2			1		1		1			3	1	12	E		1	1			3	23	H
Serbia	7		2	1	1	2			1				2	2		11	E		1	2			1	15	F
Seychelles	3			1		1	2		2				1			6	C		1		1		2	9	E
South Africa	4	1	1	1	1		2	1	1	1			1	1	1	10	D		1		5		3	19	G
Suriname	4	1	1	2			3	1	2					1	1	9	D		1	2			2	14	F
Sweden																0	##							1	A
Switzerland											1					1	B						0	2	B
Timor-Leste	5	1	1	1	1	1	2	1	1	1			1	1	1	11	E		1				1	15	F
Turkey	3	1		1	1		1		1	1			1	1	1	9	D						2	14	F
UK	6				2	2					1	1				8	D		1				1	10	E
Uruguay	3	1	1		1		2		2			1	1	1		8	D		2				1	10	E
Viet Nam	5	1	1	1	2		1		1	1	1		1	1		10	D		1		1		2	14	F
Zambia	3	1	1	1			3	1	2				1		1	8	D						3	19	G
Total	##	24	32	33	43	20	66	18	46	18	11	13	39	35	17	3		2	42	18	29	1			
Frequency	50	24	29	28	33	18	39	17	38	17	11	13	34	34	17	3		2	35	15	20	1			

Special protection measures

State	40(a) Children - seeking refugee protection, asylum-seeking, migrant	Free legal aid - for children	Access to education / health etc. (migrant/refugee)	40(b) Children belonging to minority or indigenous group	40(c) Children in street situations:	40(d) Children in situations of exploitation - physical and psychological recovery	(i) Economic exploitation, inc. child labour - +min. ages	(ii) Child in illicit production, trafficking of drugs	(iii) Sexual exploitation and sexual abuse (art. 34):	recovery and reintegration - of trafficked / sexually exploited children	(iv) Sale, trafficking and abduction (art. 35):	(v) Other forms of exploitation (art. 36):	40(f) Children in armed conflicts, inc. recovery + reintegration	Child Helpline	Total number of issues covered	Starting Grade	Corruption	GC - No. 6 (2005), No. 10 (2007), and No. 11 (2009)	Legislation,	Referees (remains)	Juvenile Justice	Multiplier score (0-5)	Square on Matrix	Final Grade
Albania	2	1		2	1	5	1	1	1	1	1			11	E	1	1	2	1	4	23	H		
Algeria	2	1	1	1	2	4	1		1	1	1		1	13	E		3	2	1	4	23	H		
Australia	2													2	B		1	1		0	2	B		
Azerbaijan	2	1			1	1	1						1	6	C		2			1	6	D		
Bhutan	1	1		1		5	1		1	2	1			8	D		2	3		2	14	F		
Brazil	1	1	1	2	1	5	2		1	1	1			10	D		1	2		3	19	G		
Cameroon	1	1	1	1	1	3	1		1	1		2		10	D		2	3	2	3	19	G		
Canada	2					2	1				1	2	1	7	C		1	2	2	2	9	E		
Chile	1	1		1	1	2	1				1	1		7	C		1	4	3	2	9	E		
China	2	1				4	1		1		2			7	C	1	2	1		3	13	F		
Columbia	1	1		1	1	6	1	1	1	2	1	1	2	12	E		1	5	1	4	23	H		
Croatia	1	1	1											3	B		1			0	2	B		
Dominican Rep.	2	1			1	4	2			1	1			8	D		1	1		3	19	G		
Estonia	1	1	1			1					1			3	B		2	1		0	2	B		
Ethiopia	1	1			1	5	2		1	1	1			8	D		2	1		4	23	H		
Fiji	1				1	3	1		1	1	1			5	C		3			2	9	E		
France	1	1	1			3			1	1	1	1		7	C		1	1		1	6	D		
Gambia (The)	1				1	3	1			1	1			5	C		2			2	9	E		
Germany	2	1				1					1	1	1	5	C		1	1	2		1	6	D	
Ghana	1				1	6	1		1	2	1			8	D		4	3		2	14	F		
Iceland						4	1		1	1	1		1	5	C		3	2		1	6	D		
India	1	1		1	1	3	1		1		1			8	D		1	1	1	3	19	G		
Ireland	2	1	1		1							2		7	C		1	2		2	9	E		
Israel	1	1				1						1		5	C		1	2		3	13	F		
Jamaica	1				1	5	1		1	1	1	1		7	C		1	1		1	6	D		
Japan	1			1		4			1	2	1			6	C		1	1		1	6	D		
Kazakhstan	1	1				3	1		1	1		1		6	C		1	5	1	2	9	E		
Malta	1	1		1		3	1		1	1	1		1	7	C		3	2		2	9	E		
Mexico	2		1		1	5	1		2	1	1	1	1	11	E		1	5	1	2	20	G		
Mongolia						4	1		1	1	1	1		6	C	1	2	2		3	13	F		
Morocco	1	1		1	1	4	1		2		1			9	D		4	2		2	14	F		
Nepal	2	1		2		3	1		1		1			8	D		1	6	2	2	14	F		
New Zealand	1			1		2	2					2		6	C		1	4	2	2	9	E		
Norway	1				1	3			1	1	1			5	C		1			1	6	D		
Poland	1	1		1	1	6			3	2	1	1		11	E		2	3	2	2	20	G		
Portugal	1					1	1							2	B		1	1		0	2	B		
Romania	1	1			1	3	1			1	1			6	C		1	2	2	1	6	D		
Russian Fed	1			1	1	5	1		2	1	1			8	D		1	1		1	10	E		
Saudi Arabia	1				1	5	1		1	1	2	1	1	8	D		1			3	19	G		
Senegal	1	1			2	7	1	1	2	1	2	1	1	12	E		4	2		2	20	G		
Serbia	1			1	1	5			2	2	1	1	1	9	D		1	4	3	1	2	14	F	
Seychelles						4	1		1	1	1		1	5	C		2			2	9	E		
South Africa	1			1	1	1	1		1	1	1		1	5	C		2	3		2	9	E		
Suriname					1	4	1		1	1	1			5	C		2			2	9	E		
Sweden	2	1				2			1		1	1	1	6	C		2	3		2	9	E		
Switzerland	1	2											1	4	B			2		1	3	C		
Timor-Leste					1	5	1		2	1	1			6	C		2			1	6	D		
Turkey	1	1		1		3	1		1		1	1	1	7	C		1	3		3	13	F		
UK	1	1				2			1		1	2		6	C		1	2	2	1	2	9	E	
Uruguay	1		1		1	1	1							4	B		1	2		1	3	C		
Viet Nam				1		5	1		2		2	1	1	7	C		4	3	1	3	13	F		
Zambia	1	1			1	4	1		1	1	1			7	C		3	1		2	9	E		
Total	58	28	10	5	24	29	170	42	3	2	44	32	46	0	31	4	3	28	114	72	9			
Frequency	46	27	10	5	21	27	48	38	3	2	34	27	42	0	25	4	3	25	47	37	9			

Juvenile Justice

State	Issues														Multipliers					Final Grade			
	40 (E)(i) Administration of juvenile justice	The existence of specialized and separate courts	The applicable minimum age of criminal responsibility:	(ii) Children deprived of their liberty - legal and other assistance	(iii) sentencing- prohibition of capital pun. and life imprisonment	(iv) Alternative sanctions / measures to detention	(v) Training for professionals involved with juvenile justice,	Training re Child Victims and Witnesses of Crime	Treatment - child victims and witnesses	Il-treatment - police / in detention	Detained with adults	Detention facilities (access to education)	Discrimination	Deaths in custody	Total number if issues covered	Starting Grade	Corruption	GC No. :10 (2007) children's rights in juvenile justice	Beijing / Riyadh / Havana Rules		Legislation,	Reiterates (remain's)	Multiplier score (0-5)
Albania	1	1		1		1			1	1	2			9	D		1	3		1	2	14	F
Algeria	1		1		1	1	1		1		1	1		8	D		1	3			2	14	F
Australia	1	1	1			1			1	1				6	C		1	3		1	2	9	E
Azerbaijan				1		1	1	1		1	1			7	C		2	2	2		3	13	F
Bhutan		1	2		1		1							5	C		1				2	9	E
Brazil		1	1	1	1	1					1	1	1	8	D		1		1		3	19	G
Cameroon	1	1	1	2		1		1		1	1	1	1	11	E	1			2	3	23	H	
Canada	1		1	1					1		1	1		6	C		1	3	1		1	6	D
Chile		1	1	1		1		1		1				6	C		1		2		1	6	D
China	1		1	2		1		1	1	1		1		9	D		1		1		3	19	G
Columbia			1	1		1		1		1	1			7	C		1	1			3	13	F
Croatia			1		1		1			1	1			5	C		1				1	6	D
Dominican Rep.		1		2		1			1	1	1	1		8	D		1		1		2	14	F
Estonia			2	1		1				1	1			4	B				1		1	3	C
Ethiopia			2	1			1				1			5	C		1	1	1		3	13	F
Fiji		1	1	1	1						1			5	C		1	2			3	13	F
France		1	2	1					1		1	1		7	C			1	1		2	9	E
Gambia (The)		1		1		1	1	1			1			6	C				1		2	9	E
Germany				1		1								2	B						1	3	C
Ghana		2		2		1		1		1	1			8	D				1		3	19	G
Iceland	1							1			1			3	B		1	3	1		1	3	C
India		1	1	2		1		1			1	1		8	D		1	1			3	19	G
Ireland			1	1							1	1		4	B		1	1	1		2	5	D
Israel	1			3					1	1	1	1		8	D				1	1	5	23	H
Jamaica				1	1	1	1	1		1	1	2		9	D		1	1			3	20	G
Japan		1	1	2		1				1	1	1		8	D		1	3	1		2	14	F
Kazakhstan		1		2			1	1						5	C		1		1		2	9	E
Malta		1	1			1		1						4	B		1	3		1	2	5	D
Mexico	1			2		1					2			6	C				1		3	13	F
Mongolia		1		2		1		1			1	1		7	C				1	1	2	9	E
Morocco	1			2		1	1	1						6	C						2	9	E
Nepal	1			1				1			1	1		5	C			2	1	1	3	13	F
New Zealand			1	1							1	1	1	5	C		1			1	3	13	F
Norway				1		1	1	1			1	1		6	C		1	3			1	6	D
Poland				3		1								4	B		1		1		2	5	D
Portugal	1							1				1		4	B		1	3			1	3	C
Romania		1		2		1		1						5	C		1			1	2	9	E
Russian Fed.		1		2		1	1	1		1	1			8	D		1	3	1		2	14	F
Saudi Arabia	1		1	2	1		1		1		1	1	1	10	E		1	3	1	1	5	23	H
Senegal		1		2		1	1	1			1	1		8	D		1		1	1	2	14	F
Serbia		1		2		1		1	1	1	1			9	D		1		1	1	2	14	F
Seychelles			1	1		1			1		1	1		6	C		1	3			2	9	E
South Africa			1	1				1	1		2			6	C		1		1		2	9	E
Suriname	1			2		1	1		1		1	1		8	D		1				1	10	E
Sweden	1			2				1			1			5	C		1		1	1	1	6	D
Switzerland			1	2				1		1	1			6	C				1		1	6	D
Timor-Leste	1	1	1	1		1	1	1			1			8	D		1				2	14	F
Turkey	1			3		1				1	1	1		8	D		2	3			4	23	H
UK		1	1	1	1				1	1	1	1	1	9	D		1				2	14	F
Uruguay		1		2		1	1	1			1			7	C		1		2		2	9	E
Viet Nam		1		1		1	1				1			5	C		1	3	1	1	3	13	F
Zambia			1	2		1			1		1	1		8	D		1			1	3	19	G
Total	17	25	22	75	4	36	16	27	4	16	14	35	40	8	1		1	41	46	33	25		
Frequency	17	24	20	48	4	36	16	27	4	16	14	35	36	8	1		1	40	16	30	22		

General Principles - Comments

State	No. of Issues	Starting Grade	Corruption	GC	Legislation	Retributes	Juvenile Justice	Comment	Multiplier score	Matrix Sq.	Final Grade
Albania	7	C		1	4		2	Girls, children from minority groups, from rural areas, disabilities – continue to be victim of serious discrimination, in particular re-education, social protection, health and adequate housing. Major legislation, penal code, code the pin procedure, code of administrative procedures, – do not uphold best interest principal. Disregard the best interests in adoption procedures, and in dealing with children in conflict with law. Deeply concerned persistence of "blood feuds" and killing of children. Concerned, overall participation in youth Parliament's remains limited to certain categories of children, excluding minority, rural, disabilities. right to be heard in criminal proceedings through legal representative, right be heard rarely respected. Traditional, cultural attitudes limit right to be heard, children feel views not taken into account.	3	13	F
Algeria	8	C		1	3	1	3	Persistence of legal provisions that discriminate against girls and women, limited measures to change societal discriminatory and patriarchal attitudes, persistent discrimination faced by children with disabilities, living in poverty, born out of wedlock, in conflict with the law, street children, from rural areas, and refugee children. General principle of best interest of child, not incorporated in all legislation concerning children, not applied in all administrative and judicial proceedings or policies. Deep concern – girls and women pregnant out of wedlock, attacked with impunity, social rejection and stigmatisation. Limited sustainable actions undertaken to change societal attitudes towards children, RIGHT OF CHILD TO HAVE VIEWS RESPECTED negatively affected by requirement that child has to obtain authorisation of Guardian, right to be heard in all judicial and administrative proceedings remains largely ineffective.	4	18	G
Australia	5	C		1	2	2	1	Racial discrimination in general remains a problem, discrimination faced by aboriginal and Torres Strait Islander children. Punitive nature of Northern Territory emergency response bill 2007. Absence of federal legislation protecting against discrimination on the basis of sexual orientation or gender identity. Principal of the best interest of the child not widely known, were consistently applied in all legislative, administrative and judicial proceedings. Continues to be inadequate for to take into account the views of children who are below the age of 15 and/or of aboriginal or Torres Strait Islander descent.	2	9	E
Azerbaijan	6	C			2	2		Discrimination frequently experienced by children in vulnerable situations, disabilities. Inadequate application of principle of best interests, lack of understanding among law professionals. Deeply concerned at high rate of infant mortality, definition of a live birth is not consistent with internationally recognised WHO definition. In majority of schools opportunity for children to participate in decision-making remains limited. In judicial proceedings views of the children are not taking into account, having regard to age and maturity.	3	13	F
Bhutan	7	C		2	2	1		Take measures to end instances of discrimination in practice against girls, children with disabilities, of ethnic origin of single parents and undocumented children – amend legislation to ensure child custody decisions are made on the basis of the best interest of the child, ensure writers are properly integrated and consistently interpreted and applied in all legislative, administrative and judicial proceedings – strengthen efforts to reach all children and provide with the opportunity to be involved in programs for children's participation.	2	9	E
Brazil	10	D			2	2	1	Structural discrimination against indigenous and Afro Brazilian children, children with disabilities, sexual orientation, street situations, rural and marginalised urban areas. Several states have removed strategies aimed at eliminating discrimination based on gender, sexual orientation and race. Patriarchal attitudes and gender stereotypes underpinned the discrimination against girls. State party has one of the highest rates of child homicide in the world .Gender-based violence remains widespread. Children's participation in school councils is low – their views are seldom taken into account in decisions that affect them.	3	19	G
Cameroon	8	C		2	3	3		Persistent discrimination against children in marginalised and disadvantaged situations, girls, disabilities, HIV, etc. Lack of overall strategy to combat discrimination. Rejection of identity of lesbian, gay, bisexual, transgender, intersex children and discrimination and stigmatisation suffered.	2	9	E
Canada	6	C		1	2	1	2	Continued prevalence of discrimination on the basis of ethnicity, gender, socio-economic background, national origin and other grounds. – Overrepresentation of aboriginal and African Canadian children in criminal justice system. Principal best interests of the child is not widely known, appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings. In adequate mechanisms for facilitating meaningful and empowered child participation in legal policy and environmental issues.	2	9	E
Chile	6	C		2	3			Girls continue to be subjected to gender-based discrimination due to traditional attitudes, also persistent discriminatory attitudes against indigenous children, disabilities and migrant children – negative attitudes against different sexual orientations, transgender and intersex. Concerned best interests of the child does not apply in all areas, including decisions sensing parents – not full consideration in all areas of policy-making. Legal system does not explicitly recognise children's right to be heard in all matters affecting them, – children not considered rights holders in act on associations and civic participation is – absence of formal structure of children's participation in development of national and regional and local policies.	1	6	D

Appendix

State	No. of issues	Starting Grade	Corruption	GC	Legislation	Referrals	Juvenile Justice	Comment	Multiplier score	Matrix Sq.	Final Grade
China	9	D			2	3	1	Violation of the rights and discrimination against Tibetan and Uighur and Falun Gong practitioners – persistence of discrimination against children with disabilities, of migrant workers, refugees, infected with HIV. Pervasive discrimination against girls and women, persistent patriarchal attitudes, sex selective abortions and female infanticide and abandonment of girls remain widespread. Best interests of the child is not always fully reflected and incorporated in child -related accident policies. Alarming escalation of self immolation by Tibetan children, detention and imprisonment of Tibetan children accused of inciting self immolations. Lack of effective and broad mechanisms in all areas of jurisdiction to promote and facilitate respect for the views of all children and children's participation in all matters affecting them.	3	19	G
Columbia	9	D	1	2	3	1	1	Structural discrimination against indigenous, Afro Colombian displaced children, disabilities, living with HIV, due to sexual orientation, transgender and intersex, rural, marginalised – persistent patriarchal attitudes and gender stereotypes discriminate against girls and women. Reports writer best interest not consistently applied in practice. Insufficient measures taken to protect children's rights to life, many children victims of killing and disappearances including by government agents – armed conflict, organised crime, corruption, drugs, poverty and marginalisation – children continue to be used by adults to commit crimes. Children rarely consulted in relevant administrative or judicial proceedings.	5	23	H
Croatia	4	B		3	2	1		Defector discrimination against children in marginalised and disadvantaged situations continues to be prevalent. Best interests as a primary consideration is not applied consistently, lack of systematic training and guidance for relevant authorities. Children's views not adequately take into account in all matters affecting them including judicial and administrative proceedings, traditional attitudes towards children continue to place restrictions on respect for their views.	1	3	C
Dominican Republic	9	D		2	4	1	1	Persistent discrimination against and gender stereotyping of women and girls contributing to high prevalence of gender-based violence – prevalence of discrimination against children of Haitian origin including right to education, continuous discrimination and violence against children with disabilities, HIV, straight situations, LGBT and intersex children. – Insufficient measures taken to ensure that opinions of children are duly considered in all relevant administrative and judicial processes.	2	14	F
Estonia	2	B		2	2			No best interest impact assessment of national legislation and guidance to assess best interest of the child is limited - in practice there is a tendency by judges to hear only children who are older than 10 - children feel opinion has no influence at national level.	0	2	B
Ethiopia	9	D		2	3	2		continuous discrimination of girls, children with disabilities, children belonging to ethnic minorities, children in poverty, Street, HIV, Noma – best interests of the child are not adequately considered with respect to decisions concerning adoption family reunification legal proceedings alternative care and early marriage – high rates of poverty affecting children resulting in deprivation of right to survival and development – traditions and cultural attitudes continue to limit full implementation of the right of the child to be heard.	3	19	G
Fiji	4	B			1			children from ethnic minorities, living with HIV, disabilities often faced with stigma and discrimination – prevalence of patriarchy attitudes deep-rooted perceived gender roles and existing laws and regulations discriminate against girls.	1	3	C
France	10	D		2	2	2		persistence of discrimination on grounds of sex, gender, disability national origin, socio-economic origin or other grounds – best interests of the child not sufficiently integrated in practice, hearing of a child in legal proceedings is subject to written request, judges have dismissed such requests on the grounds that they are poorly written.	1	10	E
Gambia (The)	7	C		2	2	1	1	persistent application of legal and social discrimination against girls, discrimination against children born out of wedlock, children with disabilities, socio-economic, sexual orientation – lack of explicit reference in legislation to the right to have best interest taken as primary consideration – limited respect for the views of the child.	3	13	F
Germany	3	B		1	1	1		children with disabilities, or migration background continue to face discrimination particularly regarding education and healthcare, principal of best interest of child not fully incorporated into federal legislation.	1	3	C
Ghana	8	C		2	4	3		discrimination against girls, children with disabilities, migrants, HIV, street children still exist in practice – despite legal recognition right to have best interest taken into account as primary consideration not adequately or systematically interpreted or applied by administrative, legislative and judicial bodies – children with disabilities are still often exposed to inhumane and degrading treatment – high levels of neonatal, infant and under 5 mortality – views of children are rarely taken into account in decisions made at the family level and it in administrative and judicial proceedings.	4	18	G
Iceland	2	B		1	1	1		best interest principle may not be fully taken into account in certain individual cases especially with regard to ensuring parents access to the child – all children may not have equal opportunity to express their views.	1	3	C
India	7	C		2	2	1		persistent discrimination against children from scheduled castes and tribes, disabilities, HIV, refugee children. – Pervasive discrimination against girls, persistent patriarchal attitudes and deep-rooted stereotypes, cultural influences perpetuate preference for boys and sex selective abortions, female infant side and abandonment of girls remain widespread – children generally not perceived as rights holders and participation in public sphere and opportunities to have voices heard in family, schools, community are insufficient.	4	18	G
Ireland	4	B		2	3	1		structural discrimination against Traveller and Roma children, discrimination against LGBT and intersex children– right to have best interest taken as primary consideration yet to be fully implemented as obligation in all relevant legislation and administrative procedures – parents must bear the cost of an expert to hear the views of the child in family law proceedings.	2	5	D

State	No. of Issues	Starting Grade	Corruption	GC	Legislation	Reliterates	Juvenile Justice	Comment	Multiplier score	Matrix Sq.	Final Grade
Israel	5	C		2	4	3		adoption of numerous discriminatory laws primarily affecting Palestinian children in all aspects of the life also affecting Arab Israeli, Bedouin, Ethiopian, and children of migrant workers and asylum seekers – implementation of 2 separate legal systems and institutions amounted to de facto segregation – right to have best interest taken as a primary consideration has not been integrated consistently in all legislative administrative and judicial proceedings – children on both sides of the conflict continued to be killed and injured with children living in the OP T disproportionately represented, hundreds of Palestinian children have been killed and thousands injured – migrant and asylum seeking children are rarely heard in proceedings concerning them, participation of children in decision making progress is still not a widespread practice.	5	23	H
Jamaica	4	B		2	2	1	1	high rate of crime and violence and number of children who are murdered, climate of fear and insecurity threat of violence linked to gangs impedes children from enjoying childhood and adolescence – traditional cultural practices do not readily accommodate and recognise the views of the child.	2	5	D
Japan	8	C		1	3	2		children born out of wedlock still do not enjoy the same rights as children born in marriage – societal discrimination persists against children from ethnic minorities, non-Japanese nationality migrant workers and children with disabilities. The right of best interests not formally and systematically integrated into all legislation – concerned at suicides committed by children and adolescents– formal regulations set high age limit and give little weight to children's views.	3	13	F
Kazakhstan	5	C		2	3			while noting legislation that prohibits discrimination against children in vulnerable situations - discrimination against children with disabilities, rural areas, residing in areas of environmental disaster, noncitizen and from poor families persists, especially with regard to education and health care – legislation does not contain definition of discrimination –lack of proper understanding and practical application of best interest of the child.	2	5	D
Malta	3	B		2	2	2		serious instances of discrimination against children in irregular migration situations – best interests of the child not being systematically incorporated in all relevant legislation – effective implementation of legislation recognising the right of children to express their views in relevant legal proceedings is not systematically practised.	2	5	D
Mexico	11	D		2	4		1	prevalence of discrimination against indigenous, Afro Mexican and migrant children, children with disabilities, LGBT and intersex children, children and street situations and living in poverty rural areas,– persistent patriarchal attitudes and gender stereotypes discriminate against girls resulting in high prevalence of violence against women and girls – best interests of the child not consistently applied in practice – armed violence, drug trafficking and fight against organised crime has resulted in the killings of numerous children including extrajudicial killings – high number of disappearances of children especially girls, very high numbers of femicide – high number of children killed in traffic accidents – children's opinion are not consistently heard a judicial and administrative proceedings.	4	23	H
Mongolia	8	C		2	3	3		growing and persistent inequality – increasing instances of discrimination against children in marginalised and disadvantaged situations, migrant, disabilities, ethnic, LGBT – ensure right to have best interest takers primary consideration is appropriately integrated and consistently interpreted and applied on all legislation – seriously concerned about risks to life, survival and development of children caused by injury and accidents in particular Burns, car accidents, horse racing.	4	18	G
Morocco	6	C		2	2			discrimination against girls and children born out of wedlock, persistent disparity between regions and between rural and urban areas, persistent discrimination against children with disabilities – practice of early and forced child marriages, placement of children in residential institutions and custom jewel measures for children in conflict with the law still contradict the best interest of many children, the right has not been incorporated in legislation concerning children and is therefore neither applied –	3	13	F
Nepal	5	C		1	3	2		discrimination based on gender, lineage, ethnicity, religion, social standing and disability remains prevalent, gender discrimination still highly prevalent – neither constitution or any other legislation refers the best interest of the child.	2	9	E
New Zealand	7	C		2	1	2		disparities in access to education, health services and standard of living by Maori and Pacifica children – amend legislation to include explicit requirement to comply with the obligation of the right of the child to have best interest taken as primary consideration – protect children from no accidental injuries and prevent youth suicide – ensure the right of the child to be heard in cases affecting them.	2	9	E
Norway	4	B		2	2			minority and indigenous children feel stigmatised and maltreated and children with disabilities complained that their rights are not respected – the principle of primary consideration of the best interest of the child is not yet applied in all areas affecting children – the child's rights to be heard is not fully implemented or effectively practised in all phases of decisions about arrangements for child's lives in particular childcare and immigration cases, children have the right to be heard regarding health issues only after the age of 12.	1	3	C
Poland	4	B			1			no comprehensive law on prohibition of discrimination, gender stereotypes persist, discrimination faced by children belonging to ethnic and other minority groups, migrants, disabilities, LGBT – incidents of racial violence and abuse including hate speech are increasing	1	3	C
Portugal	5	C		1	2	1	1	immigrants, foreigners, ethnic and racial minorities continue to face discrimination – discrimination against LGBT adolescents– lack of a uniform process to determine best interests of the child – respect the views of the child is not adequately implemented in practice.	0	4	C
Romania	9	D		2	3	3		Roma children, children with disabilities, asylum seeking, LGBT intersex, children from rural areas continue to face discrimination with regard to access to education, health care – girls continue to be subject to multiple gender-based discrimination – ensure new legislation is assessed against children's best interests – address underlying causes of infant child and maternal mortality – ensure children's view are given due consideration in family schools courts.	3	19	G
Russian Federation	5	C		1	3			No anti-discrimination legislation has been adopted, no definition of racial discrimination has been legally established – discrimination continues to be prevalent against minority groups, Roma children, migrant children, stateless, girls – increasing number of children joining nationalist movements which are involved in hate crimes against minority groups – recent legislation prohibiting propaganda of unconventional sexual relationships, and targeting and persecution of LGBTI community – legislation refers to legitimate interests of the child not the best interests of the child.	4	18	G

Appendix

State	No. of issues	Starting Grade	Corruption	GC	Legislation	Referates	Juvenile Justice	Comment	score	Mark Sq. Multiplier	Final Grade
Saudi Arabia	10	D		2	3	3	1	State party still does not recognise girls as full subjects of rights and continues to severely discriminate against them in law and in practice and to impose on them a system of male guardianship – persistent discrimination against children of Saudi mothers and non-Saudi fathers, LGBT children and intersex children, children with disabilities, born out of wedlock, children of migrant workers and religious minorities – the right of the child to have best interest taken as primary consideration is not always respected in matters relating to family law or in position of norms and religious traditions – children above 15 years of age tried as adults and can be sentenced to death for offences committed under the age of 18 (trials falling short of due process and fair trial, concerns regarding torture) persistence of traditional attitudes towards children in society in particular towards girls limit their right to express their views and to have views taken into account.	5	23	H
Senegal	8	C		2	3	2		Discrimination against certain groups of children still exist in law and in practice, no measures taken to combat and change discriminatory laws, attitudes and practices – right to have best interest taken as primary consideration remains insufficiently addressed and inconsistently interpreted and applied – reduction in child mortality rate is not even across the country, significant geographic disparities, neonatal mortality rate has been increasing – traditional societal attitudes appear to limit children's free expression of their views minimum age of 15 for a child to be heard in court.	4	18	G
Serbia	8	C		2	3	1		Persistent discrimination against Roma children, children with disabilities, migrant, refugee, minority children, children living in remote areas, street situations, with HIV, LGBT – re-best interests of the child continuing misunderstanding with respect to meaning and responsibilities particularly among judiciary and non enforcement of family judgements – infant mortality rate remains above EU average – traditional practices and cultural attitudes impede full realisation of the rights of children to express their views freely.	3	13	F
Seychelles	6	C		1	3	2		Absence of legislation combating discrimination against girls, children disabilities, children from poor families and ethnic minorities – ensure that the principle of the best interests of the child is adequately integrated and consistently applied in all legal provisions – children have limited opportunities to express their views freely.	2	9	E
South Africa	9	D		1	1	1		Discrimination faced by girls, children with HIV, disabilities, indigenous children, stateless children, migrant and refugee children, street situations, LGBT and intersex children and children with albinism in accessing basic services and child protection services and their heightened exposure to violence abuse and harassment – infant and child mortality rates remain high – participation of children in public decision-making is not systematically guaranteed.	2	15	F
Suriname	5	C		2	3			Intensify efforts to eliminate discrimination against children from Amerindian and Maroon children of Haitian migrants children living with HIV, LGBT and intersex children – strengthen efforts to ensure best interest of the child right is appropriately integrated and consistently applied – ensure effective implementation of legislation recognising the right of the child to be heard.	1	6	D
Sweden	7	C		2	3	3		Discrimination still faced by children from disadvantaged and marginalised families and children from migrant families including African and Afro Swedish children – the term race has been deleted in new antidiscrimination act, no explicit legal provision prohibiting inciting racial hatred – LGBT children experiencing bullying intimidation and violence – in adequate weight given to the best interest of the child especially in asylum procedures – respect the views of the child insufficiently implemented in practice – increasingly high rate of suicide among persons with disabilities including children.	2	9	E
Switzerland	6	C		2	2	1	1	Discrimination continues to be prevalent against children in marginalised and disadvantaged situations including migrant, refugee, children with disabilities children without papers, hate speech against LGBT and intersex – concept of 'well-being' being used not best interests, therefore best interest not incorporated into all federal and cantonal legislation – respect the views of the child is not systematically insured and implemented in practice cantonal disparities exist.	1	6	D
Timor-Leste	5	C		2	1			Certain groups of children face discrimination with access to education and other services, children of returnees, not in possession of baptism certificate, born out of wedlock, conceived from sexual relations among family members, and children with disabilities – insufficient information regarding state party efforts to ensure best interest taken into account as primary consideration – traditional and cultural practices do not readily accommodate and recognise the views of the child.	2	9	E
Turkey	8	C		1	3	4		Principle of non-discrimination is not fully implemented with children belonging to minorities, children with disabilities, girls, refugees and asylum seeking children, children in rural areas – lack of information on the application of the principle of the best interests of the child in case of domestic violence and family disintegration – gender-based violence including honour killings and social pressure resulting in suicide continue – overall implementation of respect the views of the child is insufficient in family institutional legal and administrative proceedings and community.	3	13	F
UK	9	D		2	3	1	1	Many children continue to experience discrimination, Roma, ethnic minorities, disabilities, in care, migrant, LGBT and intersex children – right to have best interest taken as primary consideration is still not reflected in all legislative and policy matters – infant and child mortality including suicide is linked with level of social and economic deprivation – children's views are not systematically heard in policy-making issues that affect them	1	10	E
Uruguay	5	C		2	2	1		Discriminatory attitudes and social exclusion still affect some sections of child population, children of disabilities, girls from rural and remote areas, economically disadvantaged families – adolescents often portrayed as criminals in the media therefore subject to discrimination in law and practice – write the child have best interest taken as a primary consideration is not as respected –	2	9	E
Viet Nam	8	C		1	3	2		Laws and practices continue to discriminate against children, continued stigmatisation and discrimination of children with disabilities, disparities in service health education ethnic minorities, discrimination against girls including practice of aborting female foetuses – best interests of the child principle not yet included in all legislation affecting children and knowledge of principle remains inadequate – lack of sufficient awareness of the importance of the respect for the views of the child and lack of systematic application.	4	18	G
Zambia	7	C		2	2			Principle of non-discrimination is not adequately implemented the children belonging to vulnerable groups, girls, children with disabilities, religious minorities, living with HIV, migrant, born out of wedlock – principle of best interests of the child is not considered under customary law and by religious leaders – views of the child are not solicited or taken into account in various settings.	3	13	F

GMI - Legislation Issues

State	19: (a) Legislation	Positive comment	Recalls - reiterates	Legislation in 'conformity' with CRC	Implementation / judicial decision	Specific Act mentioned	Lack of comprehensive child rights act	Budget / resources	Lack of progress re legislation	Need for review of existing laws	Inconsistencies	Status of CRC / treaties	Regional differences (e.g. federation)	Monitoring / evaluation of acts / rights	Civil society involvement	Child involvement	Availability of redress / remedies	Need for Child rights to supersede other legislation	Gender discrimination in law	Case law accessible to the public	Totals
	47	37	21	39	25	23	17	16	12	11	10	9	7	6	5	5	5	4	2	1	
Albania	1	1			1	1				1	1						1	1			6
Algeria	1	1		1		1			1						1	1		1	1		7
Australia	1	1	1	1			1				1	1	1				1				6
Azerbaijan	1	1		1	1		1			1		1									5
Bhutan	1			1		1				1											3
Brazil																					0
Cameroon	1		1	1		1	1														3
Canada	1	1	1	1			1				1		1								4
Chile	1	1	1	1		1	1		1												4
China																					0
Columbia	1	1		1	1	1		1						1							5
Croatia	1	1	1		1			1	1		1			1	1	1	1			1	9
Dominican Rep.	1	1	1	1	1			1		1				1	1	1	1				8
Estonia	1	1			1	1		1						1							4
Ethiopia	1		1	1			1			1											3
Fiji																					0
France	1		1	1								1									2
Gambia (The)	1	1		1	1	1		1						1							5
Germany	1	1	1			1						1	1					1			4
Ghana	1	1	1	1	1																2
Iceland	1	1		1	1																2
India	1	1		1						1	1		1								4
Ireland	1	1		1	1	1		1	1	1											6
Israel	1	1		1					1												2
Jamaica	1	1	1	1	1	1		1		1											5
Japan	1	1	1	1		1	1														3
Kazakhstan	1	1	1	1	1	1						1					1				5
Malta	1	1		1		1	1	1		1						1	1				5
Mexico	1	1		1	1	1					1		1			1	1				7
Mongolia	1	1		1	1	1		1													3
Morocco	1	1	1	1	1		1	1	1			1							1		7
Nepal	1	1		1	1	1	1														4
New Zealand	1		1	1		1	1														3
Norway	1	1		1																	1
Poland																					0
Portugal	1	1		1	1																2
Romania	1			1	1			1													2
Russian Fed.	1	1		1	1																2
Saudi Arabia	1			1	1		1			1					1	1					6
Senegal	1	1	1	1	1	1	1	1	1		1										7
Serbia	1	1	1	1			1	1			1										4
Seychelles	1	1	1	1		1			1												3
South Africa																					0
Suriname	1			1	1				1												3
Sweden	1	1		1			1					1							1		4
Switzerland	1	1		1							1		1								3
Timor-Leste	1	1	1	1			1		1												3
Turkey	1	1			1	1	1	1		1		1		1							7
UK	1			1									1								2
Uruguay	1				1							1									2
Viet Nam	1	1	1	1	1	1		1	1		1										6
Zambia	1	1	1	1		1	1		1												4

State	GMI	DOTC	GP						CRF				VAC			FEAC		DBHW				ELCA		SPM		JJ									
			Disadvantaged	Gender	Race, minorities, migrant, religion, caste	Sexual Orientation /gender identity	Single parent	Discrimination re birth registration or nationality	Wedlock	Gender	race /migrant/ religion	disadvantaged	Gender - child Marriage	Gender - FGM	Sexual Orientation /gender identity	Gender	Gender	Gender	Race, minorities, migrant, religion, caste	3(art 23) children with disabilities	Race, minorities, migrant, religion, caste	Refugee (art. 22) migrant,	migrant/refugee- access education / health	Discrimination	gender	race	disadvantaged	Total	Gender	Race	Disabilities	Disabilities frequency	disadvantaged	Single parent	Sexual Orientation /gender identity
Albania		1		1	1	1	1	1	1	1	1								3	1	1	1	1					17	5	6	6	4	0	0	
Algeria	1		1	1	1	1	1	1	1	1	1								1	2	1	2	1					22	10	5	4	3	1	2	0
Australia				1	1	2	2	2	2	2	1								2	1	2	2	1					12	0	8	3	2	0	0	1
Azerbaijan				1	1	1	1	1	1	1	1								2	1	2	2	1					9	0	3	4	3	2	0	0
Bhutan		1	1	1	1	1	1	1	1	1	1								2	1	1	1	1					16	5	4	4	3	1	2	0
Brazil			1	1	1	1	1	1	1	1	1								3	1	2	1	1					16	4	6	4	3	1	0	1
Cameroon			1	1	1	1	1	1	1	1	1								1	1	1	1	1					19	4	5	5	3	2	2	1
Canada				1	1	2	2	2	2	2	1								1	1	2	1	1					17	2	9	4	4	1	1	0
Chile				1	1	2	2	2	2	2	1								1	1	1	1	1					15	4	6	3	3	0	0	2
China				1	1	1	1	1	1	1	1								1	1	2	1	1					17	4	9	4	3	0	0	0
Columbia			1	1	1	1	1	1	1	1	1								1	1	1	1	1					15	4	5	4	4	1	0	1
Croatia			1	1	1	1	1	1	1	1	1								1	1	1	1	1					9	0	5	3	3	1	0	0
Dominican Rep.			1	1	1	2	2	2	2	2	1								1	1	2	1	1					16	3	7	3	3	2	0	1
Estonia				1	1	1	1	1	1	1	1								1	1	1	1	1					8	1	3	4	3	0	0	1
Ethiopia	1		1	1	1	1	2	1	1	1	2								1	1	1	1	1					15	6	4	4	4	1	0	0
Fiji			1	1	1	1	1	1	1	1	1								2	1	1	1	1					13	4	4	4	3	1	0	0
France			1	1	1	1	1	1	1	1	1								2	1	1	1	1					18	2	6	7	4	1	0	2
Gambia (The)			1	1	1	2	2	2	2	2	1								2	1	1	1	1					15	5	1	4	3	2	2	1
Germany				1	1	1	1	1	1	1	1								1	1	2	1	1					11	2	6	3	3	0	0	0
Ghana			1	1	1	2	2	2	2	2	1								1	1	1	1	1					13	4	3	4	4	2	0	0
Iceland				1	1	1	1	1	1	1	1								1	1	1	1	1					4	0	2	2	2	0	0	0
India			1	1	1	2	2	2	2	2	1								1	1	1	1	1					14	4	5	3	3	2	0	0
Ireland				1	1	1	1	1	1	1	1								1	1	2	1	1					11	0	6	2	2	0	1	2
Israel				1	1	2	2	2	2	2	1								1	1	1	1	1					11	0	8	2	2	0	1	0
Jamaica				1	1	1	1	1	1	1	1								1	1	1	1	1					4	1	1	2	2	0	0	0
Japan	1		1	1	1	1	1	1	1	1	1								1	1	1	1	1					11	4	3	3	3	0	1	0
Kazakhstan			1	1	1	1	1	1	1	1	1								1	1	1	1	1					8	1	4	2	2	1	0	0
Malta				1	1	1	1	1	1	1	1									1	1	1	1					4	0	4	0	0	0	0	0
Mexico			1	1	1	2	2	2	2	2	1								2	1	1	2	1					18	4	6	5	4	2	0	1
Mongolia			1	1	1	1	1	1	1	1	1								1	1	1	1	1					10	1	3	4	4	1	0	1
Morocco	1		1	1	1	3	3	3	3	3	1								2	1	1	1	1					21	7	5	5	4	2	2	0

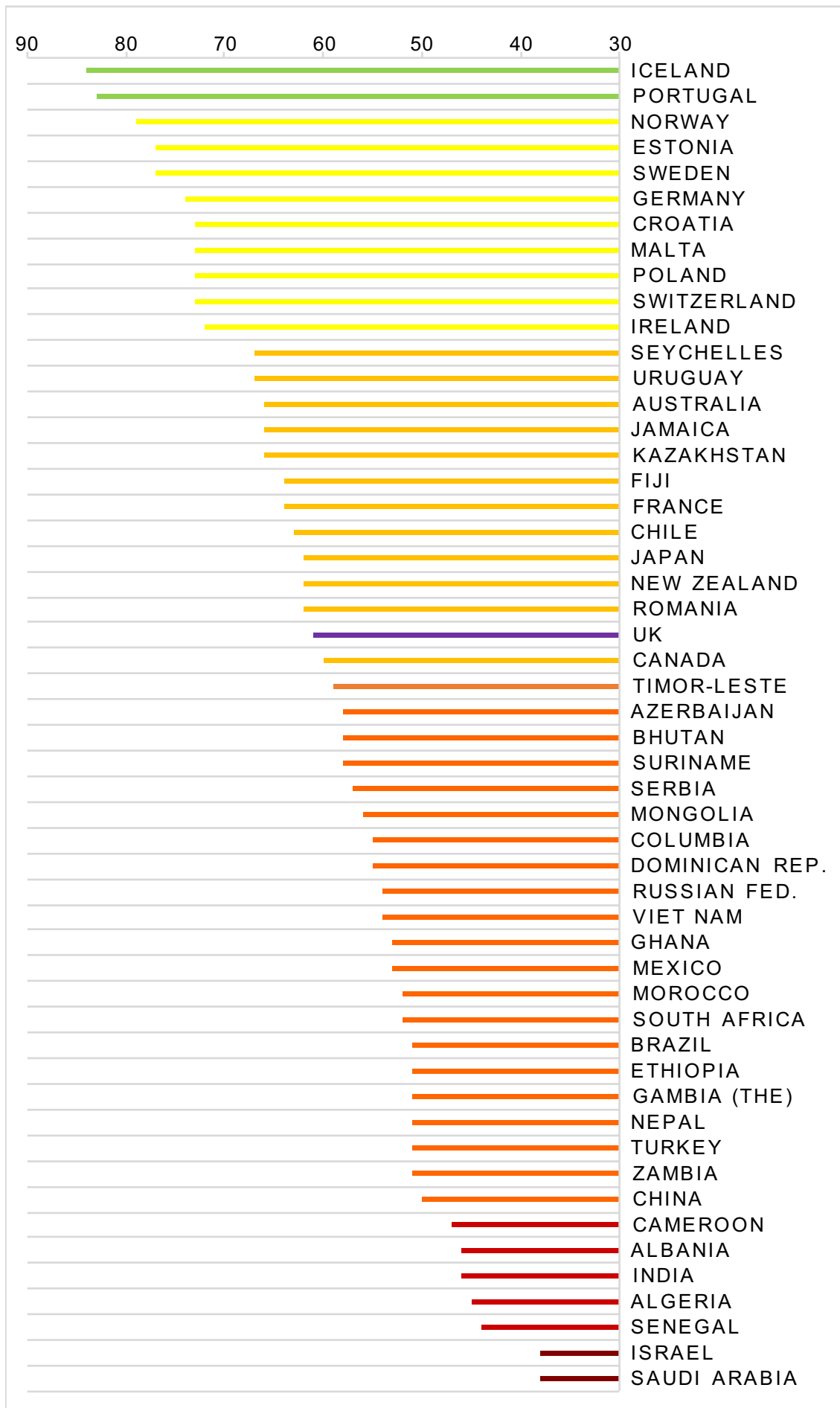
State	GMI	DOTC	GP					CRF				VAC			FEAC		DBHW			ELCA		SPM		JJ			Total	Race	Disabilities	Disabilities frequency	disadvantaged	Single parent	Sexual Orientation /gender identity					
			Disadvantaged	Gender	Disabilities	Race, minorities, migrant, religion, caste	Sexual Orientation /gender identity	Wedlock	Discrimination re birth registration or nationality	Gender	race /migrant/ religion	disadvantaged	Gender - child Marriage	Gender - FGM	Sexual Orientation /gender identity	Gender	Gender	3(art 23) children with disabilities	Race, minorities, migrant, religion, caste	34. Education and cultural activities	Race, minorities, migrant, religion, caste	Gender	Disabilities	Race, minorities, migrant, religion, caste	Refugee (art. 22) migrant,	migrant/refugee-access education / health								Discrimination	gender	race	disadvantaged	
Nepal			1	1	1	1	1	1	1	2																					18	5	6	4	3	1	1	1
New Zealand																															17	1	9	5	4	0	0	2
Norway																															6	2	3	1	1	0	0	0
Poland																															3	2	6	4	4	0	0	1
Portugal																															7	1	3	2	2	0	0	1
Romania																															3	2	6	3	3	1	0	1
Russian Fed.																															16	1	9	4	3	1	0	1
Saudi Arabia																															24	12	5	3	1	2	1	1
Senegal																															17	8	3	4	3	2	0	0
Serbia																															15	2	6	5	4	1	0	1
Seychelles																															10	3	1	4	4	1	1	0
South Africa																															17	7	4	3	3	1	0	2
Suriname																															3	5	3	3	2	1	0	1
Sweden																															11	0	7	2	2	1	0	1
Switzerland																															2	1	4	4	3	1	0	2
Timor-Leste																															11	2	2	4	4	2	1	0
Turkey																															3	4	4	3	3	2	0	0
UK																															18	2	7	5	4	1	1	2
Uruguay																															8	1	3	3	3	1	0	0
Viet Nam																															13	3	5	3	3	2	0	0
Zambia																															15	5	4	3	3	2	1	0
Total	7	9	36	30	41	45	23	10	45	23	10	8	22	12	53	69	51	25	25	14	33	43	20	58	28	8	1	7	0	1696	160	252	183	157	49	21	31	
Frequency	9	11	38	31	42	46	24	11	46	24	11	9	16	12	50	51	25	25	13	30	34	19	48	28	10	2	8	1										

Cluster Totals

Clusters

State	TOTAL	Av Score	Spread	Av Grade	Clusters																						
					GMI	DOTC	GP	CRF	VAC	FEAC	DBHW	ELCA	SPM	JJ	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	Grade	Score	
Albania	46	4.6	4	G	E	6	F	5	F	5	E	6	H	3	G	4	F	5	G	4	H	3	F	5			
Algeria	45	4.5	8	G	H	3	A	10	G	4	H	3	F	1	5	H	3	G	4	F	5	H	3	F	5		
Australia	66	6.6	6	E	F	5	A	10	E	6	F	5	E	1	6	E	6	E	6	D	7	B	9	E	6		
Azerbaijan	58	5.8	6	F	F	5	A	10	F	5	G	4	E	1	6	F	5	F	5	E	6	D	7	F	5		
Bhutan	58	5.8	3	F	E	6	D	7	E	6	D	7	F	5	E	6	F	5	F	5	F	5	F	5	E	6	
Brazil	51	5.1	8	F	E	6	A	10	G	4	D	7	H	3	F	5	H	3	F	5	G	4	G	4	G	4	
Cameroon	47	4.7	5	G	E	6	D	7	E	6	E	6	H	3	F	5	H	3	G	4	G	4	H	3	H	3	
Canada	60	6	3	E	F	5	D	7	E	6	E	6	E	6	F	5	D	7	F	5	E	6	D	7	D	7	
Chile	63	6.3	3	E	E	6	C	8	D	7	F	5	F	5	D	7	E	6	E	6	E	6	D	7	D	7	
China	50	5	8	F	F	5	A	10	G	4	G	4	E	6	H	3	G	4	F	5	F	5	G	4	G	4	
Columbia	55	5.5	8	F	E	6	A	10	H	3	A	10	G	4	E	6	F	5	H	3	H	3	H	3	F	5	
Croatia	73	7.3	6	D	F	5	A	10	C	8	D	7	D	7	E	6	C	8	E	6	B	9	D	7	D	7	
Dominican Rep.	55	5.5	7	F	E	6	A	10	F	5	F	5	G	4	G	4	E	6	E	6	G	4	F	5	F	5	
Estonia	77	7.7	4	D	E	6	C	8	B	9	B	9	D	7	E	6	D	7	C	8	B	9	C	8	C	8	
Ethiopia	51	5.1	8	F	E	6	A	10	G	4	F	5	H	3	F	5	F	5	F	5	H	3	F	5	F	5	
Fiji	64	6.4	6	E	C	8	C	8	C	8	C	8	F	5	E	6	H	3	D	7	E	6	F	5	F	5	
France	64	6.4	7	E	D	7	A	10	E	6	E	6	E	6	E	6	G	4	E	6	D	7	E	6	E	6	
Gambia (The)	51	5.1	4	F	G	4	E	6	F	5	E	6	F	5	G	4	G	4	F	5	E	6	E	6	E	6	
Germany	74	7.4	5	D	E	6	A	10	C	8	C	8	E	6	D	7	E	6	C	8	D	7	C	8	C	8	
Ghana	53	5.3	8	F	F	5	A	10	G	4	E	6	G	4	F	5	F	5	F	5	F	5	G	4	G	4	
Iceland	84	8.4	4	C	D	7	A	10	C	8	A	10	A	10	C	8	C	8	C	8	D	7	C	8	C	8	
India	46	4.6	8	G	H	3	A	10	G	4	E	6	F	5	H	3	H	3	G	4	G	4	G	4	G	4	
Ireland	72	7.2	4	D	E	6	B	9	D	7	C	8	C	8	D	7	E	6	C	8	E	6	D	7	D	7	
Israel	38	3.8	3	H	G	4	F	5	H	3	G	4	H	3	G	4	H	3	G	4	F	5	H	3	H	3	
Jamaica	66	6.6	7	E	D	7	A	10	D	7	C	8	E	6	E	6	F	5	E	6	D	7	G	4	G	4	
Japan	62	6.2	4	E	G	4	D	7	F	5	C	8	D	1	7	F	5	D	7	D	7	D	7	F	5	F	5
Kazakhstan	66	6.6	8	E	E	6	A	10	D	7	A	10	H	3	F	5	E	6	D	7	E	6	E	6	E	6	
Malta	73	7.3	4	D	E	6	E	6	D	7	B	9	D	7	C	8	B	9	C	8	E	6	D	7	D	7	
Mexico	53	5.3	8	F	E	6	A	10	H	3	C	8	H	3	F	5	G	4	F	5	G	4	F	5	F	5	
Mongolia	56	5.6	8	F	F	5	A	10	G	4	D	7	E	6	F	5	H	3	F	5	F	5	E	6	E	6	
Morocco	52	5.2	8	F	G	4	A	10	F	5	F	5	H	3	H	3	F	5	E	6	F	5	E	6	E	6	
Nepal	51	5.1	5	F	F	5	D	7	E	6	F	5	H	3	F	5	G	4	E	6	F	5	F	5	F	5	
New Zealand	62	6.2	4	E	E	6	C	8	E	6	D	7	E	6	E	6	F	5	D	7	E	6	F	5	F	5	
Norway	79	7.9	4	D	C	8	A	10	C	8	C	8	C	1	8	D	7	B	9	D	7	D	7	D	7	D	7
Poland	73	7.3	7	D	C	8	A	10	C	8	C	8	D	7	D	7	D	7	D	7	G	4	D	7	D	7	
Portugal	83	8.3	4	C	D	7	A	10	C	8	A	10	C	8	D	7	C	8	C	8	B	9	C	8	C	8	
Romania	62	6.2	5	E	F	5	C	8	G	4	C	8	D	7	E	6	F	5	E	6	D	7	E	6	E	6	
Russian Fed.	54	5.4	7	F	F	5	A	10	G	4	D	7	G	4	G	4	G	4	F	5	E	6	F	5	F	5	
Saudi Arabia	38	3.8	3	H	H	3	G	4	H	3	G	4	H	3	G	4	F	5	F	5	G	4	H	3	H	3	
Senegal	44	4.4	4	G	F	5	E	6	G	4	E	6	G	4	G	4	H	3	H	3	G	4	F	5	F	5	
Serbia	57	5.7	4	F	E	6	E	6	F	5	C	8	F	5	E	6	E	6	F	5	F	5	F	5	F	5	
Seychelles	67	6.7	4	E	E	6	E	6	E	6	B	9	C	1	8	D	7	D	7	E	6	E	6	E	6	E	6
South Africa	52	5.2	5	F	E	6	E	6	F	5	D	7	H	3	E	6	H	3	G	4	E	6	E	6	E	6	
Suriname	58	5.8	6	F	F	5	E	6	D	7	B	9	G	4	E	6	G	4	F	5	E	6	E	6	E	6	
Sweden	77	7.7	5	D	D	7	A	10	E	6	B	9	E	6	C	8	C	8	A	10	E	6	D	7	D	7	
Switzerland	73	7.3	6	D	E	6	A	10	D	7	D	7	D	7	F	5	D	7	B	9	C	8	D	7	D	7	
Timor-Leste	59	5.9	4	F	E	6	F	5	E	6	D	7	E	6	E	6	E	6	F	5	D	7	F	5	F	5	
Turkey	51	5.1	5	F	G	4	D	7	F	5	F	5	F	1	5	E	6	E	6	F	5	F	5	H	3	H	3
UK	61	6.1	5	E	D	7	C	8	E	6	D	7	G	4	E	6	E	6	E	6	E	6	F	5	F	5	
Uruguay	67	6.7	6	E	E	6	B	9	E	6	A	10	E	6	F	5	F	5	E	6	C	8	E	6	E	6	
Viet Nam	54	5.4	5	F	G	4	C	8	G	4	E	6	D	1	7	E	6	G	4	F	5	F	5	F	5	F	5
Zambia	51	5.1	6	F	F	5	E	6	F	5	C	8	F	5	F	5	H	3	G	4	E	6	G	4	G	4	

State party cluster average grade results



Human Rights Rankings

Project Rank	A-Z	Project score	Av Grade	UN HDI Rank (2018)	UN Gender Inequality Index (2018)	UN Gender Development Index Group (2017)	The Economist Intelligence Unit's Democracy Index 2017	EIU - DI - Classification	WHO - Child Mortality - per 1000 live births	WHO - Stunting among children %	WHO - Adolescent birth rate - per 1000 women aged 15-19 (2005-2014)	WHO - % of Gov. spending on health
1	Iceland	84	C	6	9	2	2	Full	2	0	7.1	15.7
2	Portugal	83	C	41	19	1	26	Flawed	3.6	0	10.5	11.9
3	Norway	79	D	1	5	1	1	Full	2.6	0	5	18.2
4	Estonia	77	D	30	27	1	30	Flawed	2.9	0	15.6	13.5
4	Sweden	77	D	7	3	1	3	Full	3	0	5.1	19.8
6	Germany	74	D	5	14	2	13	Full	3.7	1.3	7.8	19.6
7	Croatia	73	D	46	29	1	58	Flawed	4.3	0	11.8	14
7	Malta	73	D	29	45	2	17	Full	6.4	0	13.1	15.6
7	Poland	73	D	33	32	1	53	Flawed	5.2	0	14	10.7
7	Switzerland	73	D	2	1	1	9	Full	3.9	0	2	22.7
11	Ireland	72	D	4	23	1	6	Full	3.6	0	9.2	13.4
12	Seychelles	67	E	62	-	-	-	-	13.6	7.9	61.2	9.7
12	Uruguay	67	E	55	57	1	18	Full	10.1	10.7	63.5	20.8
14	Australia	66	E	3	23	2	8	Full	3.8	2	14.2	17.3
14	Jamaica	66	E	97	95	1	38	Flawed	15.7	5.7	45.7	8.1
14	Kazakhstan	66	E	58	43	1	141	Authoritarian	14.1	8	36.4	10.9
17	Fiji	64	E	92	79	-	81	Hybrid	22.4	0	27.5	9.2
17	France	64	E	24	24	1	29	Flawed	4.3	0	6.2	15.7
19	Chile	63	E	44	72	2	26	Flawed	8.1	1.8	51.5	15.9
20	Japan	62	E	19	22	1	23	Flawed	2.7	7.1	4.4	20.3
20	New Zealand	62	E	16	34	2	4	Full	5.7	0	19.1	23.4
20	Romania	62	E	52	68	1	64	Flawed	11.1	0	38.9	12.8
23	UK	61	E	14	25	2	14	Full	4.2	0	19.3	16.5
24	Canada	60	E	12	20	1	6	Full	4.9	0	12.6	18.8
25	Timor-Leste	59	F	132	-	5	43	Flawed	52.6	50.2	50	2.4
26	Azerbaijan	58	F	80	71	3	148	Authoritarian	31.7	18	47.2	3.9
26	Bhutan	58	F	134	117	5	99	Hybrid	32.9	33.6	28.4	8
26	Suriname	58	F	100	99	2	50	Flawed	21.3	8.8	65.3	11.8
29	Serbia	57	F	67	40	1	66	Flawed	6.7	6	22	13.9
30	Mongolia	56	F	92	65	1	60	Flawed	22.4	10.8	26.7	6.7
31	Columbia	55	F	90	87	1	53	Flawed	15.9	12.7	84	18.1
31	Dominican Rep.	55	F	94	103	1	55	Flawed	30.9	7.1	90	17.4
33	Russian Fed.	54	F	49	53	1	135	Authoritarian	9.6	0	26.6	9.5
33	Viet Nam	54	F	116	67	1	140	Authoritarian	21.7	24.6	36	14.2
35	Ghana	53	F	140	131	4	52	Flawed	61.6	18.8	65	6.8
35	Mexico	53	F	74	76	2	66	Flawed	13.2	12.4	70.9	11.6
37	Morocco	52	F	123	119	5	101	Hybrid	22.6	14.9	32	6
37	South Africa	52	F	113	90	1	41	Flawed	40.5	23.9	54	14.2
38	Brazil	51	F	79	94	1	49	Flawed	16.4	7.1	64.8	6.8
38	Ethiopia	51	F	173	121	5	129	Authoritarian	59.2	38.4	71.2	15.7
38	Gambia (The)	51	F	174	149	5	113	Hybrid	68.9	25	88	15.3
38	Nepal	51	F	149	118	4	94	Hybrid	35.8	37.1	71	11.2
38	Turkey	51	F	64	69	4	100	Hybrid	13.5	9.5	29	10.5
38	Zambia	51	F	144	125	3	85	Hybrid	64	40	145	11.3
45	China	50	F	86	36	2	139	Authoritarian	10.7	9.4	6.2	10.4
46	Cameroon	47	G	151	141	5	126	Authoritarian	87.9	31.7	119	4.3
47	Albania	46	G	68	52	2	77	Hybrid	14	23.1	19.7	9.4
47	India	46	G	130	127	5	42	Flawed	47.7	38.4	28.1	5
49	Algeria	45	G	85	100	5	128	Authoritarian	25.5	11.7	12.4	9.9
50	Senegal	44	G	164	124	4	74	Flawed	47.2	20.5	80	8
51	Israel	38	H	22	21	2	30	Flawed	4	0	10.2	11.6
52	Saudi Arabia	38	H	39	50	5	159	Authoritarian	14.5	9.3	17.6	8.2

[Review of recommendations to amend legislation by cluster for Iceland, Norway and Portugal](#)

This section of the appendix contains the comments and recommendations to amend legislation, where the basis for the recommendation does not directly relate to the Convention as identified in chapter 6.3 and figures 6.3, 6.4 and 6.5. These recommendations are set out in cluster order and the individual recommendation is identified by the CR number used in the figures.

[General Measures of Implementation](#)

The spread of issues headings for which the top three received comments are shown in figure A6.1. For this cluster, in order to demonstrate the contrast between high and low scoring State parties and the distribution of the issues - one of the lowest grades for this cluster - is included below the top three.

Figure A6.1. Issues headings for General Measures of Implementation cluster including a comparison of a State party with the lowest grade for the cluster

State	Issues													Multiplier factors									
	18: R&D	19: (a) Legislation	(b) National Strategy	(c) Government coordination	(d) Budget	(e) International assistance	(f) Independent monitoring	(g) Dissemination- CRC	(h) Dissemination - reports	(i) Cooperation - Civil society	20: Business activities	Training - (Staff)	Data Collection	Total number of issues covered	Starting Grade	Corruption	21: GC No.2, No.5, No.16, (No.19)	Budget (Total)	Gender - discrimination / issues	Previous Recommendations	Reiterates (remains)	Multiplier score (0-5)	Square on Matrix
Iceland	1	1	1	1	1	1	1	1			1	1	10	D		1	4		1	1	0	7	D
Portugal		1	1	1	1		1	1	1		1	1	9	D		2	4		1	1	0	7	D
Norway 2010	1	1		1	1	1	1	1			1	1	8	C			1		1	1	0	4	C
Norway 2018			1		1		1		1		1	1	6	C		2				1	0	4	C
	1	2	1		1	1	1		2	1	1	2	13	E	1	3	3		1	3	3	23	H

Portugal – P-CR/1

For the GMI cluster, under the subheading of ‘Legislation’ Portugal received a positive comment on their adoption of legislation ‘to ensure further conformity of domestic legislation’¹ and the recommendation that:

The Committee encourages the State party to continue to take steps to ensure that domestic legislation is fully compatible with the principles and provisions of the

¹ CRC CO Portugal 2014, ‘Concluding Observations on the Combined Third and Fourth Periodic Reports of Portugal, UN Doc CRC/C/PRT/CO/3-4’ (United Nations 2014) para 9.

Convention and ensure the effective implementation of child-related laws at the national, provincial and municipal levels.²

While this is a recommendation relating to legislation, it is not advocating specific change.

General Principles

The spread of issues headings for which the top three received comments are shown in figure A6.2.

Figure A6.2 Issue headings for cluster General Principles

State	23(a) Non-discrimination	24. discrimination -disadvantaged	24. discrimination - gender	24. discrimination - disabilities	24. Discrimination - race /minorities / migrant	Discrimination - Sexual Orientation / gender identity	Discrimination - Single parent	23(b) Best interests	23(c) Life, survival and development	23(d) Respect for views	26. Capital punishment	26. register of deaths and killings.	26. mortality / suicide / infanticide	Total number of issues covered	Starting Grade	Corruption	27. GC No.14, No.12, No.11,	25. Legislation (inc. Administration)	Reiterates (remains)	Juvenile Justice	Multiplier score (0-5)	Square on Matrix	Final Grade
Iceland								1		1				2	B		1	1	1		1	3	C
Portugal	2				1	1		1	1	1				5	C		1	2	1	1	0	4	C
Norway 2010	2		1		1			1		1				4	B		2	2			1	3	C
Norway 2018	3		1		1	1		1		1				5	C		1	1			0	4	C

Norway – N-CR/1 and N-CR/2

Norway received comment and recommendations relating to legislation under two subheadings for this cluster, the first, N-CR/1, under ‘Best interests of the child’ where the Committee:

recommends that the State party strengthen its efforts to:

...

(b) Ensure that this right is appropriately integrated and consistently interpreted and applied in all legislative, administrative and judicial proceedings and decisions, as well as in all policies, programmes, projects and international cooperation relevant to and having an impact on children.³

The second, N-CR/2, is under ‘Respect for the views of the child’:

² ibid 9–10.

³ CRC CO Norway 2018, ‘Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Norway, UN Doc CRC/C/NOR/CO/5-6’ (United Nations 2018).

While noting with appreciation that the State party's legal framework is, to a large extent, in line with the principles enshrined in article 12 of the Convention, the Committee recommends that the State party:

(a) Increase its efforts to strengthen compliance in practice with the child's right to be heard...⁴

Both of these recommendations are not for changes in the legislation, but the improvement in the implementation of the legislation. Therefore, in these two instances the legislation itself is not the issue and does not need amending.

Portugal – P-CR/2, P-CR/3 and P-CR/4

For the GP cluster, Portugal received comments on legislation under three subheadings, firstly, P-CR/2, under 'Best interests of the child' about the 'lack of a uniform process to determine the best interests of the child, as well as the lack of guidance to relevant authorities'⁵ and the recommendation was to:

strengthen its efforts to ensure that this right is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings as well as in all policies, programmes and projects relevant to and with an impact on children⁶

These comments regarding legislation, therefore, do not constitute a recommendation for a change to legislation; rather, the application of the legislation needing to be improved. However, within the second recommendation, P-CR/2, under the subheading 'Right to life, survival and development' there was the following recommendation to amend legislation and regulations in paragraph 30:

(b) Strengthen the legal framework for the safety of children in swimming pools, including the obligation to have a protective fence, in keeping with European legislation in that regard. The legal framework should cover all swimming pools, including private pools in apartment complexes, hotels and resorts;

(c) Ensure that building regulations adequately protect children by reducing the risk of falls on building and construction sites;⁷

⁴ *ibid.*

⁵ CRC CO Portugal 2014 (n 1) para 27.

⁶ *ibid* 28.

⁷ *ibid* 30(b)&(c).

The 'European legislation' referred to appears to be a European Standard (EN 15288⁸) from the European Committee for Standardization. In Portugal, it is the *Instituto Português de Qualidade* (IPQ) that has a responsibility to implement European Standards as national standards. In the most recent State party report (2017) Portugal responded only to paragraph 30(a) and (b) but not to (c). Regarding (b) they said:

The Portuguese Institute of Sport and Youth has competences on public swimming pool projects pursuant to Decree-Law no. 141/2009, of June 16, as amended by Decree-Law No. 110/2012, of 21 May. According to Point 6.1.1.4 of NP EN 15288-2 (Safety requirements for operation) areas where access has to be restricted (eg. personnel areas, engine rooms) must be properly marked and unauthorized access prevented, including where the facilities or part of the facilities are out of service (eg. closed / closed during repairs). In this case, the installation of a system suitable for preventing unauthorized access, namely of children (eg. a fence, a cover, an alarm system) may be considered.

Portuguese Standard NP 4500, 2012, entitled "*Pools and other water plans: fences and access protection*", as well as safety requirements and test methods¹ also contribute to improving the safety of children and reduce accidents in swimming pools.⁹

Unfortunately, it is not clear from this answer whether the Portuguese Standards are now in line with the European Standards. In addition, at the start of 2019 a new updated version of EN 15588 has been released with the expectation that National Standards agencies will update their relevant national standard by July 2019, therefore Portugal is likely to need to undertake further updates.

In the most recent State party report, Portugal gave no response to recommendation (c) regarding building regulations as to whether any changes have been made; the presumption is therefore that this area has not changed. Both of these recommendations have been made under Article 6; in order to do so the Committee is

⁸ European Committee for Standardization, 'EN15288 Swimming Pools - Part 1: Safety Requirements for Design (2009) & Part 2: Safety Requirements for Operation (2010)'.

⁹ Portugal, 'Fifth and Sixth Periodic Reports of State Parties - Portugal - UN Doc. CRC/C/PRT/5-6' (United Nations 2017) Responding to para 30(b).

using the second paragraph to be able to consider additional regulations and standards.

Article 6 reads:

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.¹⁰

What will be critically important to see is whether there is a reduction in the high levels of accidents and cases of drownings that the Committee was concerned about in the CO report of 2014.

The third subheading within the 'General Principles' cluster, P-CR/3, under which Portugal received a recommendation is 'Respect for the views of the child' to:

Strengthen its efforts, including in respect of legislation, to ensure that the right of the child to be heard applies to all judicial, including civil and penal matters, and administrative proceedings affecting children and that due weight is given to those views in accordance with the age and maturity of the child concerned;¹¹

Portugal's reply to this recommendation is lengthy and includes the following regarding legislation:

The right of the child to be heard and express her/his views freely has been fortified, inter alia, through legal reforms in the area of civil guardianship and sponsorship (Law 141/2015, 8 September Civil, articles 4, 5, 21, 23, 24, 38, 39 and 49), protection of children and youth in danger (Law 142/2015, 8 November, article 4, 58, 84 and 85), adoption (Law 143/2015, 8 September, articles 3, 36 and 54), educational guardianship (Law 4/2015, 15 January, articles 45, 47, 77, 84 and 94) and victims' rights (Law 130/2015, 4 September, article 22). Other initiatives include the drafting of an online inquiry on the right of children to be heard in judicial proceedings, including civil proceedings and juvenile justice, the organization of seminars and the translation of General comment No. 14.¹²

¹⁰ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 6.

¹¹ CRC CO Portugal 2014 (n 1) para 32(a).

¹² Portugal (n 9) Response to para 32.

Whilst it appears that improvements to the Portuguese legislation have been undertaken, as English translations of the original or updated versions of these laws are not available it is difficult to be sure of just how much change there has been. However, it is possible to consider via an example of a single item from the list by using computerised translation. As previously noted, this is done with caution as the complexity of the Portuguese sentence structure causes difficulty with computerised translations. Therefore, the example chosen relates to only one relatively short article in a piece of legislation. Law 130/2015 is titled *Estatuto da Vítima* which unofficially translates (CT) to 'Statute of Victims'; article 22 is titled *Direitos das crianças vítimas* which translates (CT) to 'Rights of Child Victims'. The text of article 22(1) in Portuguese is:

1 - Todas as crianças vítimas têm o direito de ser ouvidas no processo penal, devendo para o efeito ser tomadas em consideração a sua idade e maturidade.¹³

This can be translated (CT) as:

All child victims have the right to be heard in criminal proceedings, having regard to their age and maturity.¹⁴

There are a further five subsections to Article 22 setting out: that the child can be accompanied by parents or have an adult appointed; that the child has a right to privacy from public identification; and, if a child's age is uncertain but there are reasons to believe that they are a child, then they are presumed to be a child.

In this example, the right of the child victim to be heard is plainly set out and is in compliance with the Convention. It is not possible to either be sure or to presume whether other elements of legislation have been strengthened; this is partly as the Committee was not explicit as to which items of legislation needed strengthening. Future CO reports would be expected to give further insight into whether the legislation has been sufficiently strengthened.

¹³ [Portugal] - Lei n. 130/2015 Estatuto da Vítima (Statute of Victims) 2015.

¹⁴ Translated using Collins Dictionary online translator - <https://www.collinsdictionary.com/translator>

Civil Rights and Freedoms

The spread of issues headings for which the top three received comments are shown in figure A6.3.

Figure A6.3 Issue headings for cluster Civil Rights and Freedoms

State	28(a) Birth registration, name and nationality (art.7)	BR - NOT free of charge	BR - block to education	28 (a) or (b) Discrimination (Wedlock /gender / race /migrant / disadvantaged)	28(b) Preservation of identity	28(c) Freedom of expression, - right to seek, receive, impart information	28(d) Freedom of thought, conscience and religion	28 (e.) Freedom of association and peaceful assembly	28(f) Protection of privacy and protection of image	28(g) Access to information from a diversity of sources and protection from material harmful to a child's well-being	29 - Role of media with regards to promotion of child rights	Reservations and Declarations	Total number of issues covered	Starting Grade	Corruption	Legislation,	Reiterates (remains)	Juvenile justice	Multiplier score (0-5)	Square on Matrix	Final Grade
Iceland													0	#N/A					1	A	
Portugal													0	#N/A					1	A	
Norway 2010						1			1				2	B				1	3	C	
Norway 2018	1												1	B		1		0	2	B	

Norway – N-CR/3

For the CRF cluster Norway received a recommendation under the sub-heading of 'Nationality':

The Committee, taking note of target 16.9 of the Sustainable Development Goals, on providing legal identity for all, including birth registration, and in line with the recommendation made by the Human Rights Committee (CCPR/C/NOR/CO/7, para. 35), recommends that the State party:

(b) Provide in the law a specific definition of statelessness, in line with international standards.¹⁵

In order to fully understand this comment and recommendation, it is necessary to consider the two additional references that the Committee has made. Firstly, target 16.9 of the Sustainable Development Goals is: 'By 2030, provide legal identity for all, including birth registration'¹⁶. Further, the document CCPR/C/NOR/CO/7 referred to is the Concluding Observations by the Human Rights Committee, which monitors the

¹⁵ CRC CO Norway 2010, 'Concluding Observations on the Fourth Periodic Reports of Norway, UN Doc CRC/C/NOR/CO/4' (United Nations 2010) para 15(b).

¹⁶ United Nations Department of Economic and Social Affairs Statistics Division, 'Sustainable Development Goals' (2019) <<https://unstats.un.org/sdgs/>> accessed 2 February 2019.

implementation of the International Covenant on Civil and Political Rights (CCPR). The paragraph referred to, para. 35, reads:

The State party should include a legal definition of stateless persons in its legislation, and establish legal and other safeguards to ensure that all children born in the State party are entitled to a nationality at birth, even if it is not the nationality of the State party, as stated in general comment No. 17 (1989)¹⁷ on the rights of the child. It should also provide for a specific procedure to determine statelessness, in line with international standards.¹⁸

The question therefore is, what are the definitions of nationality, and what if any are the procedures relating to the determination of statelessness?

Norway is a State that attributes nationality using principles of '*jus sanguinis*' (by blood) rather than '*jus solis*' (by the soil), as the Nationality Act sets out in Chapter 2, Section 4. Acquisition by birth:

A child becomes a Norwegian national at birth if his or her father or mother is a Norwegian national. If the father dies before the child is born, it is sufficient that the father was a Norwegian national when he died.

A foundling who is found in the realm is a Norwegian national until it is otherwise established.¹⁹

The translation of the Nationality Act dates from 2007, and though the act has been amended since then, it appears that the text of this section remains the same. The acquisition of nationality is dealt with by Section.7 and statelessness is dealt with under Section.16. However, this does not define statelessness, but merely clarifies which parts of S.7 are waived for stateless persons. Further, Norway has made some recent changes to its rules on nationality as in December 2018 when it was announced that dual nationality would for the first time be permitted; however, it is expected that it

¹⁷ UN Human Rights Committee, 'CCPR General Comment No.17: Article 24 (Rights of the Child)' (1989).

¹⁸ UN Human Rights Committee, 'Concluding Observations on the Seventh Periodic Reports of Iceland, UN Doc CCPR/C/ISL/CO/5' (United Nations 2012) para 35.

¹⁹ [Norway] - Norwegian Nationality Act No.51/2005 (Lov om norsk statsborgerskap (Statsborgerloven)) 2005.

will take at least a year for the legislative changes to be introduced²⁰. Even though Norway has made recent changes to its legislation on nationality, a definition of statelessness is still absent from the legislation, and as a result, this recommendation is outstanding. However, this recommendation is relating to an international instrument and not directly to the CRC.

Violence against Children

The spread of issues headings for which the top three received comments are shown in figure A6.4.

Figure A6.4 Issue headings for cluster Violence against Children

State	30(a) Abuse and neglect (art. 19);	Domestic Violence & honour based violence (GC.18)	Freedom from all forms of violence (art. 19, GC.13)	30(b) Measures to prohibit and eliminate all forms of harmful practices, including, but not limited to, FGM and early/forced marriages (art. 24, para. 3);	Child Marriage & polygamy (GC.18)	FGM (GC.18)	Inversible surgery - intersex	30(c) Sexual exploitation and sexual abuse (art. 34);	Irreversible surgery - intersex	30(d) The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, including corporal punishment (arts. 37 (a), 28, para.2);	Juvenile justice (GC.8)	Schools (punishment & Bullying) (GC.8)	Home / family	30(e) Measures to promote the physical and psychological recovery and social reintegration of child victims (art. 39);	30(f) The availability of helplines for children.	Violence against disabled	Violence in workplaces	Gangs & organised crime	Executions (including extrajudicial) of children	Total number of issues covered	Starting Grade	Corruption	GC No. 8,13,18	Legislation	Reiterates (remains)	VAC - included in CRF	Multiplier score (0-5)	Square on Matrix	Final Grade
Iceland																				0	#N/A						1	A	
Portugal	1	1						1				1	1							4	B	3		1		1	3	C	
Norway 2010			1	2	1	1	1													4	B				1	1	3	C	
Norway 2018	1			2	1	1		2			1	1		1						6	C	1	1			1	6	D	

Norway – N-CR/4

The comment received by Norway for the VAC cluster was under the subheading ‘Sexual exploitation and abuse’:

The Committee notes with appreciation the measures taken by the State party to prevent and combat the sexual exploitation and abuse of children, including by strengthening the legal regime on child sexual abuse and exploitation in the new Penal Code. The Committee is concerned, however, that current plans of action are not sufficiently focused on the dangers arising online to children. It is especially concerned about:

²⁰ Norwegian Directorate of Immigration (UDI), ‘Dual Citizenship Will Be Allowed in Norway’ (2019) <<https://www.udi.no/en/important-messages/news-regarding-dual-citizenship/>> accessed 4 February 2019.

(b) The lack of free consent not being at the centre of the definition of rape in section 291 of the Penal Code, which applies to children above 14 years of age, regarding which the Committee on the Elimination of Discrimination against Women and the Human Rights Committee have already raised concerns (CEDAW/C/NOR/CO/9, para. 24 (g), and CCPR/C/NOR/CO/7, para. 15 (b));²¹

The corresponding recommendation was:

Amend section 291 of the Penal Code to ensure that the lack of free consent is at the centre of the definition of rape;²²

The question then becomes – how is rape defined currently in S.291? The translated version of the Penal Code reads:

Section 291. Sexual assault

A penalty of imprisonment for a term not exceeding 10 years shall be applied to any person who

- a) obtains sexual activity through violence or threatening conduct,
- b) engages in sexual activity with a person who is unconscious or for other reasons incapable of resisting the act, or
- c) through violence or threatening conduct makes a person engage in sexual activity with another person, or perform acts corresponding to sexual activity on himself/herself.²³

The translation was last consolidated and recorded as correct as at 01/01/2017; though there has been six amendments to the act since that date, none of these amends S.291. Further, upon using computer translation on S.291 in the current Norwegian version '*Lov om straff (straffeloven) 291. Voldtekt*', the text reads the same, confirming that this section has not been amended.

Within the CRC, article 34 is the primary article dealing with sexual exploitation and sexual abuse, creating an obligation that:

²¹ CRC CO Norway 2018 (n 3).

²² *ibid.*

²³ [Norway] - The Penal Code (*Lov om straff (straffeloven)*) (Translation amended up to and including 01/01/2017) 2005.

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.²⁴

The CRC does not separately cover rape, or encourage a specific definition of rape. However, Norway does have obligations arising under other 'multilateral agreements' as noted in the CO from the Committee on the Elimination of Discrimination against Women, and the Human Rights Committee paragraphs 24 and 25, where the recommendation was made to:

Adopt a legal definition of rape in the Penal Code that places lack of free consent at its centre, in line with the Committee's general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, the Vertido case (communication No. 18/2008), and the State party's obligations under the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention);²⁵

Norway has ratified the Council of Europe Istanbul Convention on preventing and combating violence against women and domestic violence, where Chapter V 'Substantive law' specifies that under article 36 on 'Sexual violence, including rape':

1. Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:
 - a) engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;
 - b) engaging in other non-consensual acts of a sexual nature with a person;
 - c) causing another person to engage in non-consensual acts of a sexual nature with a third person.

²⁴ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989.

²⁵ UN Committee on the Elimination of Discrimination against Women, 'Concluding Observations on the Ninth Periodic Reports of Norway, UN Doc CEDAW/C/NOR/CO/9' (United Nations 2017).

2. Consent must be given voluntarily as the result of the person’s free will assessed in the context of the surrounding circumstances.²⁶

Therefore, not only does Norway have an obligation to amend its Penal Code as recommended, under the Istanbul Convention, the way that Art.34 of the CRC is worded, ‘States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent...’ arguably reinforces this obligation. As this amendment has not taken place, this comment and recommendation remain relevant, though it relates to an international instrument and not directly to the CRC.

Family Environment and Alternative Care

The spread of issues headings for which the top three received comments are shown in figure A6.5.

Figure A6.5 Issue headings for cluster Family Environment and Alternative Care

State	Final Grade	Square on Matrix	Multiplier score (0-5)	Juvenile Justice	Reliterates (remains) Legislation.	GC No. 7 and Guidelines for alternative care	Corruption	Starting Grade	Total number of issues covered	Family law proceedings	Leaving care ¹	Discrimination - Race / religion	Discrimination - Gender	Domestic Violence	32(i) ... protection of children with incarcerated parents and children living in prison with their mothers.	32(j) Illicit transfer and non-return (art.11)	32(k) Adoption (national & intercountry)(art.21)	32(g) Periodic review of placement (art.25)	Quality of facilities / treatment of children	Poverty	32(f) Children deprived of a family environment (art. 20)	32(e) Recovery of maintenance for the child (art. 27, para. 4)	32(d) Family reunification (art. 10)	32(c) Separation from parents (art. 9)	Assistance to parents and provision of childcare services (art. 18)	32(b) Parents' common responsibilities.	32(a) Family environment and parental guidance in a manner consistent with the evolving capacities of the child (art. 5)
Iceland			1	3	1			2	B		1												1				
Portugal			1	6				5	C		1							1	1	1			1				
Norway 2010			1	6				5	C		1				1				1				1				
Norway 2018			1	6				5	C			1			1			1				1					

Iceland – I-CR/4

For the FEAC cluster, Iceland received a recommendation related to legislation under the subheading of ‘Family Environment’, which reads that the Committee:

recommends that the State party ratify the Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations, the Convention on the Law Applicable to Maintenance Obligations and the Convention on

²⁶ [Council of Europe] - Istanbul Convention 2011 - Convention on preventing and combating violence against women and domestic violence. Treaty CETS No.210 Article 36.

Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children.²⁷

These three conventions are from the Hague Conference on Private International Law (HCCH), which comprises 82 States as members including Iceland. Considering these conventions in turn, and additionally noting Norway and Portugal's status:

- ❖ The Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations, is from 1958 and entered into force in 1961. As of January 2019 Iceland has not ratified nor is a signatory to this Convention, Norway ratified this convention in 1965 and Portugal in 1973.
- ❖ Convention on the Law Applicable to Maintenance Obligations, is from 1973 and entered into force in 1977. As of January 2019 Iceland has not ratified nor is a signatory to this Convention, Norway has the same status as Iceland whereas Portugal ratified this Convention in 1975.
- ❖ The Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, is from 1996 and entered into force in 2002. As of January 2019, Iceland has not ratified nor is a signatory to this Convention. Both Norway and Portugal ratified this convention in 2011.²⁸

Therefore, these recommendations are still unchanged. Understandably these HCCH conventions are not mentioned within the text of the CRC, nor are they mentioned in the guidelines on periodic reporting for this cluster, nor in the specified General Comment, GC No.7 (2005). The Committee appears to be making reference to them under article 27(4) which is specifically included under paragraph 32(e) in the guidelines on periodic reporting. Art.27(4) reads:

States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a

²⁷ CRC CO Iceland 2012, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Iceland, UN Doc CRC/C/ISL/CO/3-4' (United Nations 2012) para 31.

²⁸ HCCH, 'Hague Conference on Private International Law - Conventions, Protocols and Principles'.

State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.²⁹

Consequently, the Committee's recommendation uses a wide interpretation of the Convention to allow them to construe the article in such a manner to be able to recommend ratification of other international conventions. What appears to be absent here is any comment on why they consider Iceland's reciprocal enforcement procedures to be lacking. Iceland ratified the 2007 Lugano Convention (Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters) in 2011³⁰ (superseding the 1988 Lugano Convention to which they were a party), allowing reciprocal enforcement of maintenance orders between these contracted parties. However, this convention is only between the contracted parties including Iceland³¹. Therefore, as Iceland is a member of the HCCH, which includes 82 States plus the European Union, ratifying the HCCH conventions would be preferable as it would enable Iceland to have reciprocal enforcement agreements with many more State parties throughout the world.

Portugal – P-CR/6

For the FEAC cluster Portugal received comments and recommendations under the subheading of 'Adoption' after welcoming new legislation the Committee:

expresses concern regarding certain aspects of the adoption system and legislation, including the possibility of returning an adopted child without taking the child's best interests sufficiently into consideration, the lengthy process involved for adoptions, the lack of sufficient information and preparation to prospective adoptive parents, and adequate post-adoptive support to adoptive parents.

The Committee recommends that the State party review current legislation and policies on adoption with a view to ensuring that the best interests of the child should be of paramount consideration, and that relevant legislation and policies

²⁹ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 27(4).

³⁰ European Union, 'Lugano Convention 2007 - Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters'.

³¹ EUROPA, 'EUROPA - Treaties Office Database - Lugano Convention 2007' (2017) <<http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?edirect=true&treatyId=7481>> accessed 29 January 2019.

are in line with the Convention on the Rights of the Child, the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption. The Committee also recommends that the State party ensure that the return of children takes place in exceptional cases only and with due regard to the principle of the best interests of the child; strengthen coordination among social services, family courts and others involved in the adoption process with a view to streamlining the process; provide adequate information and preparation to prospective adoptive parents, and post-adoptive support to adoptive parents.³²

In the new State party report, Portugal addresses this recommendation:

The adoption regime has been revised by Law 143/2015, 8 September, in accordance with Portugal's international obligations and taking the best interests of the child as a primary consideration.

...

Return of children takes place only in exceptional cases, whenever the interests of the child are put into question or the technical evaluation concludes that there is no sufficient bonding. The Vocational Training Plan for Adoption, attended by the adoptive parents, and the Plan of Preparation of the Child for the Adoption intend to prevent these situations.³³

On the basis of this response the new legislation now places the child's best interest as the primary consideration as recommended by the Committee, including for situations when the child is returned which is stated to be exceptional. However, data confirming how infrequently an occurrence is considered to be 'exceptional' is not given. Nevertheless, these changes appear to address the Committee's concerns.

Disability, Basic Health, and Welfare

The spread of issues headings for which the top three received comments are shown as in figure A6.6.

³² CRC CO Portugal 2014 (n 1) paras 43–44.

³³ Portugal (n 9) Response to para 44.

Figure A6.6 Issue headings for cluster Disability, Basic Health, and Welfare

State	34 (art 23) children with disabilities - dignity, self-reliance, participation in the community, services.	34. Education and cultural activities	35 (a) Survival and development (art. 6, para 2);	35 (b) Health and health services, in particular primary health care (art. 24);	35 (c.) health challenges - communicable and non-communicable diseases;	35 (c.) promote physical and mental health and wellbeing of children (environmental)	35 (d) Reproductive health rights of adolescents and measures to promote a healthy lifestyle	(e) Measures to protect children from substance abuse (art. 33);	36 (a) Social security and childcare services and facilities (arts. 26 and 18, para. 3);	36 (b) Standard of living, support programmes with regard to nutrition, clothing and housing, reduce poverty (art 27)	Discrimination - race	Discrimination - gender	HIV/AIDS (& STI)	Abortion - illegal / unsafe / denial	Total number of issues covered	Starting Grade	Corruption	GC No. 3 / 4 / 9 / 15	Legislation,	Relaterates (remains)	Juvenile justice	Multiplier score (0-5)	Square on Matrix	Final Grade
Iceland	1				3	1	1				1				7	C		1		1		0	4	C
Portugal	1	1		1		2	1	1		1					8	C		5	1			0	4	C
Norway 2010				1		1		1		1					4	B				1		0	2	B
Norway 2018	1	1		1		2				1					6	C		2				0	4	C

Iceland – I-CR/5

For the DBHW cluster under the subheading of ‘Children with disabilities,’ Iceland received the following recommendation to:

- (d) Ratify the Convention on the Rights of Persons with Disabilities and its Optional Protocol without delay³⁴

The convention mentioned is a UN convention: the Convention on the Rights of Persons with Disabilities (CRPD)³⁵ and its Optional Protocol³⁶, which Iceland signed in March 2007. Subsequent to the CO report they ratified the Convention September 2016³⁷. They also signed the OP in 2007, but, have not as yet ratified it³⁸. This OP is a communications protocol and Article 1 reads:

A State Party to the present Protocol ("State Party") recognizes the competence of the Committee on the Rights of Persons with Disabilities ("the Committee") to

³⁴ CRC CO Iceland 2012 (n 27) paras 34–35.

³⁵ United Nations, ‘The Convention on the Rights of Persons with Disabilities, Treaty Collection, Chapter IV Human Rights Document 15, New York 13th December 2006’.

³⁶ United Nations, ‘Optional Protocol to the Convention on the Rights of Persons with Disabilities, Treaty Collection, Chapter IV Human Rights Document 15a, New York 13th December 2006’.

³⁷ United Nations, ‘Status of Treaty, Chapter IV Human Rights Document 15, The Convention on the Rights of Persons with Disabilities, New York 13th November 2006’, (United Nations Treaty Collection ed, 2019) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en> accessed 29 January 2019.

³⁸ United Nations, ‘Status of Treaty, Chapter IV Human Rights Document 15a, Optional Protocol to the Convention on the Rights of Persons with Disabilities, New York 13th November 2006’, (United Nations Treaty Collection ed, 2019)

<https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&clang=_en> accessed 29 January 2019.

receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of the provisions of the Convention.³⁹

As noted in 6.2 and shown in table 6.1, Iceland has neither signed nor ratified the Communications OP to the Convention on the Rights of the Child. In their report for the Universal Periodic Review in 2016, Iceland reported that the CRPD was: 'expected to be ratified later this year.'⁴⁰

Further, they included the information that:

A legislative proposal with the aim of incorporating the CRPD into to the Social Services Act and the Act on the Affairs of Disabled People is in a public consultation process.⁴¹

However, neither the optional protocol nor the rationale behind not signing the communications OP were mentioned. There may not be sufficient evidence to draw an inference from this non-ratification of an OP; however, as it is again a communications procedure OP that Iceland has chosen not to ratify, it does raise questions as to whether there is a general reticence with regards to communications procedures, or whether the Icelandic legal or political system has fundamental conflicts with incorporating such external procedures.

Considering this recommendation relating to legislation, whilst Iceland has now ratified the convention and was giving consideration to incorporating it in domestic legislation, as the OP has not been ratified this recommendation has only been partially alleviated.

[Education, Leisure and Cultural Activities](#)

The spread of issues headings for which the top three received comments are shown as in figure A6.7.

³⁹ United Nations, 'Optional Protocol to the Convention on the Rights of Persons with Disabilities, Treaty Collection, Chapter IV Human Rights Document 15a, New York 13th December 2006' (n 36).

⁴⁰ Iceland, 'National Report Submitted for Universal Periodic Review - Iceland - UN Doc. A/HRC/WG.6/26/ISL/1/1' (United Nations 2016) para 10.

⁴¹ *ibid* 60.

Figure A6.7 Issue headings for cluster Education, Leisure and Cultural Activities

State	38(a) The right to education, including vocational training and guidance (art. 28);	Free schooling	Funding	Discrimination - Gender (F)	Discrimination- race, religion, cast (not art 30)	Discrimination - Disability	38(b) The aims of education (art. 29) with reference also to the quality of education;	Quality of building etc.	Quality of Teaching / teacher training	38(c) Cultural rights of children belonging to indigenous and minority groups (art. 30);	38(d) Education on human rights and civic education;	38(e) Rest, play, leisure, recreation and cultural and artistic activities (art. 31);	38(f) Education on human rights and civic education;	Regional variation (including rural)	Bullying / Peer violence / sexual harassment in school	Corporal punishment	Total number of issues covered	Starting Grade	Corruption	GC - No. 1 (2001); No. 7 (2005); No. 9 (2006); No. 11 (2009); and No. 17 (2013)	Legislation,	Referates (remains)	Juvenile Justice	Multiplier score (0-5)	Square on Matrix	Final Grade
Iceland	2				1	1							1	1			4	B			1	1	1	3	C	
Portugal	3		1	1									1	1			5	C					0	4	C	
Norway 2010	1				1				1	1				1	1		5	C					1	6	D	
Norway 2018	2			1	1		1	1				1					5	C		2			0	4	C	

None of the top three State parties received any comments or recommendations relating to legislative changes under the ELCA cluster.

Special Protection Measures

The spread of issues headings for which the top three received comments are shown in figure A6.8.

Figure A6.8 Issue headings for cluster Special Protection Measures

State	40(a) Children - seeking refugee protection (art. 22); unaccompanied asylum-seeking, internally displaced, migrant, and children affected by migration;	Access to education / health etc. (migrant/refugee)	Free legal aid - for children	40(b) Children belonging to a minority or an indigenous group (art. 30);	40(c) Children in street situations;	40(d) Children in situations of exploitation, including measures for their physical and psychological recovery and social reintegration;	40(e) Children in street situations;	Illegal labour activities (not drugs)	(i) Economic exploitation, including child labour (art. 32), with specific reference to applicable minimum ages;	(ii) Use of children in the illicit production and trafficking of narcotic drugs and psychotropic substances (art. 33);	(iii) Sexual exploitation and sexual abuse (art. 34);	(iv) Sale, trafficking and abduction (art. 35);	(v) Other forms of exploitation (art. 36);	(vi) Sexual exploitation and sexual abuse (art. 34);	Child Helpline	Total number of issues covered	Starting Grade	Corruption	GC - No. 6 (2005), No. 10 (2007), and No. 11 (2009)	Legislation,	Referates (remains)	Juvenile Justice	Multiplier score (0-5)	Square on Matrix	Final Grade
Iceland						4	1				1	1	1			5	C			3	2	1	6	D	
Portugal	1					1	1									2	B		1	1			0	2	B
Norway 2010	1			1		3					1	1	1			5	C		1				1	6	D
Norway 2018	1	1		1		4					1	1	1			7	C		4	1			1	6	D

Iceland – I-CR/6 and I-CR/7

Within the SPM cluster, Iceland received specific comments and recommendations under three subheadings relating to legislation one of which, I-CR/8 is covered in chapter 6.

Under the subheading of ‘Children affected by armed conflict’ the comment and recommendation, I-CR/6, read:

The Committee notes that article 114 of its Penal Code states that anyone recruiting persons within the State party for foreign military service is subject to criminal liability (two years' imprisonment). The Committee, however, regrets that the Penal Code does not address explicitly recruitment of children, which should entail even harsher punishment.

The Committee reiterates its previous recommendation that in order to strengthen the national and international measures for the prevention of the recruitment of children for armed conflict and their use in hostilities, the State party:

- (a) Explicitly prohibit by law the recruitment of children under the age of 18 years into foreign armed forces/groups and their direct participation in hostilities;
- (b) Explicitly prohibit by law the violation of the provisions of the Optional Protocol on the involvement of children in armed conflict;
- (c) Establish extraterritorial jurisdiction for these crimes when they are committed by or against a person who is a citizen of or has other links with the State party.⁴²

The Penal Code of 1940⁴³ has been amended numerous times including more recently than the CO report; however, the most recent government available translation does not show any amendment to Art.114. Further, Iceland itself does not have a military, and therefore this is the primary legislation reference to age and military recruitment. When Iceland incorporated the CRC into domestic legislation, the act included the incorporation of the two OP it had ratified. The relevant section of the OP on the involvement of Children in armed conflict is article 4:

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.
2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.⁴⁴

⁴² CRC CO Iceland 2012 (n 27) paras 48–49.

⁴³ [Iceland] - The General Penal Code (Hegningarlögum) No.19/1940 (Amended up to and including 1.44/2015) 1940.

⁴⁴ United Nations, 'Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. Treaty Collection, Chapter IV Human Rights Document 11b, New York 25th May 2000'.

There is no General Comment on this topic, and the guidelines on periodic reporting do not discuss penalties for recruitment of persons under the age of 18. Considering the OP, Iceland's legislation is in accordance with both the Convention and the OP; the recommendations of the Committee, in fact, go further than either the Convention or the OP.

The second recommendation, I-CR/7, under SPM was under the subheading of 'Economic exploitation, including child labour':

The Committee recommends that the State party:

- (a) Make amendments to its legislation in order to harmonize the age of ending compulsory education and the minimum age of employment;
- (b) Monitor the situation and detect children working at too early an age and motivate them to finish secondary education; and
- (c) Take steps to guarantee that children are protected against bad working conditions and inappropriate work arrangements, including working long hours, taking on responsibilities above and beyond those commensurate with their age, work accidents and harassment.⁴⁵

Starting with the CRC, Article 32(2) set out that:

States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.⁴⁶

Article 32 of the Convention refers to 'having regard to the relevant provisions of other international instruments'. The current most relevant instruments are two from the International Labour Organisation, which are:

⁴⁵ CRC CO Iceland 2012 (n 27) para 51.

⁴⁶ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989 Article 32(2).

- ❖ ILO Convention No.182 on the worst forms of child labour 1999 - Iceland ratified this in 2000⁴⁷
- ❖ ILO Convention No.138 on the minimum age for admission to employment and work 1973 - Iceland ratified this in 1999⁴⁸

The ILO convention No.138 includes in article 2(3) that the basic minimum age for work:

shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.⁴⁹

Further, in article 7(1) regarding younger children it states that:

National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is--

- (a) not likely to be harmful to their health or development; and
- (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.⁵⁰

The relevant Icelandic legislation is found in 'Regulation No.426/1999 regarding the work of children and adolescents' which contains details on the types of work, and hours of work permitted depending on age. For instance, Article 27 starts by setting out that:

The work time of children aged 13-15 years or of those in compulsory schooling may be two hours per school day or 12 hours per week in instances of work that takes place during the school period, yet outside of the regular school hours.⁵¹

⁴⁷ International Labour Organisation (ILO), 'Ratifications of C182 - Worst Forms of Child Labour Convention No.182/1999 (in Force 2000)' (1999)
<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO> accessed 31 January 2019.

⁴⁸ International Labour Organisation (ILO), 'Ratifications of C138 - Minimum Age Convention, No.138/1973 (in Force 1976)' (1973)
<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283:NO> accessed 31 January 2019.

⁴⁹ International Labour Organisation (ILO), 'C138 Minimum Age Convention, No.138/1973 (in Force 1976)' Article 2(3).

⁵⁰ *ibid* Article 7(1).

⁵¹ [Iceland] - Regulation No.426/1999 regarding the work of children and adolescents, 1999 Article 27.

The first article of the regulation clarifies terminology, specifying that an adolescent is someone aged 15 to 18 and is no longer in compulsory schooling; and a child as someone who is under 15 or who is still in compulsory schooling.

The next question therefore is, what are the ages for compulsory schooling? Article 3 of the Compulsory School Act 2008 reads:

The duration of compulsory schooling shall generally be ten years, but may be shortened in accordance with Article 32. School attendance is mandatory for all children, in general between the ages of 6 and 16.⁵²

Article 32 includes:

A pupil may be permitted to graduate from compulsory school before completing 10 years of compulsory schooling, provided that the pupil meets compulsory school graduation requirements as described by the final learning outcomes contained in the National Curriculum Guide.⁵³

Neither article 3 nor article 32 appear to have been amended since the original version of this act in 2008.

Returning to the first part of the recommendation to 'Make amendments to its legislation in order to harmonize the age of ending compulsory education and the minimum age of employment' the age of ending compulsory education is 16 unless they meet graduation requirements earlier, and the relevant age for employment is 15 and no longer in compulsory schooling, which is in line with the ILO convention. Therefore, Iceland's legislation does appear to be harmonised as the earliest a child can be fully employed is 15 if they have completed compulsory schooling. Further, their legislation regarding light work for under 15-year-olds is also in line with the ILO convention.

As to the implementation of legislation and the second and third element of the recommendation, the information regarding issues with children working appears to stem from the State party report which included the comment that:

⁵² [Iceland] - Compulsory School Act (Lög um grunnskóla) No.91/2008 (Amended up to and including 78/2016) 2008 Article 3.

⁵³ *ibid* Article 32.

It is quite common that young persons work long hours and take more responsibility than their age and development give occasion to, obviously that is inevitably very stressful. It is obvious that high rates of work accidents, incidents and harassment among young persons may partly be traced to the fact that this group often works under bad conditions and inappropriate work arrangements.⁵⁴

Clearly, there are issues with the implementation of regulations and safeguards for children undertaking work; however, as it is the State party themselves who have highlighted this, hopefully this is an area that is already being focused on for improvement.

The third recommendation is in relation to legislation not being in line with the Convention and is covered in chapter 6.

Norway – N-CR/5

For the cluster ‘Special Protection Measures’, Norway received the following recommendation under the subheading ‘Children belonging to minority groups and indigenous children’:

With reference to its general comment No. 11 (2009) on indigenous children and their rights under the Convention, the Committee recommends that the State party:

- (a) Enforce the right of all Sami children of school age to Sami-language education and ensure that the new Education Act significantly strengthens their rights, regardless of their residency status;⁵⁵

The Convention under article 30 states that:

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.⁵⁶

⁵⁴ Iceland, ‘Third and Fourth Periodic Reports of State Parties - Iceland - UN Doc. CRC/C/ISL/3-4’ (United Nations 2010) para 185.

⁵⁵ CRC CO Norway 2018 (n 3).

⁵⁶ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989.

The current Education Act in Norway originates from 1998 and has been amended up to, and including 2018. The Committee may have referred to proposals for a new act; however, an English translation is not currently available, and how this may change the situation is unclear. Chapter 6 of the current Act relates to the Education of Sámi (some documents use the spelling Sami) children. For instance, Section 6-2 reads:

In Sami districts all children at the primary and lower secondary level have the right to receive their education both in Sami and through the medium of Sami.

Outside Sami districts, if at least ten pupils in a municipality wish to receive instruction in and through the medium of Sami, they have the right to such education as long as there remain at least six pupils in the group.

...

Outside Sami districts, Sami children at the primary and lower secondary level have the right to receive Sami instruction. The Ministry may issue regulations concerning alternative forms of such instruction when it cannot be provided by suitable teachers at the school attended by the children.⁵⁷

Though the English translation of this act is only amended up to 01/08/2010, and the official Norwegian Act⁵⁸ has been amended further including up to 01/10/2018, section 6-2 does not appear to have been amended.

The recommendation in itself is to 'enforce' the current legislation and to ensure new legislation strengthens rights. Therefore, though this is a relevant recommendation regarding amendments to legislation, it is not a situation whereby it can be said that Norwegian legislation is not in conformity with the Convention.

Juvenile Justice

The spread of issues headings for which the top three received comments are shown in figure A6.9.

⁵⁷ [Norway] - The Education Act - Law on primary and secondary education (Lov om grunnskolen og den vidaregåande opplæringa (opplæringslova)) (Translation amended up to and including 01/08/2010) 1998 Chapter 6, Section 6-2.

⁵⁸ [Norway] - Lov om grunnskolen og den vidaregåande opplæringa (opplæringslova) 1998 (Amended up to and including 01/10/2018) 1998.

Figure A6.9 Issue headings for cluster Juvenile Justice

State	40 (E)(X) Administration of juvenile justice courts	The applicable minimum age of criminal responsibility.	The existence of specialized and separate courts	(i) Children deprived of their liberty - measures of last resort / legal and other assistance	(ii) The sentencing of children - prohibition of capital punishment and life imprisonment	(iii) Physical and psychological recovery and social reintegration	Alternative sanctions / measures to detention	(iv) Training for all professionals involved with the system of juvenile justice.	Training re Child Victims and Witnesses of Crime	Treatment - child victims and witnesses	Ill-treatment - police / in detention	Discrimination	Deaths in custody	Total number of issues covered	Starting Grade	Corruption	GC No. 10 (2007) children's rights in juvenile justice	Beijing / Riyadh / Havana Rules	Legislation,	Reiterates (remains)	Multiplier score (0-5)	Square on Matrix	Final Grade
Iceland	1							1			1			3	B		1	3	1		1	3	C
Portugal	1							1		1		1		4	B		1	3			1	3	C
Norway 2010				1		1	1	1			1	1		6	C		1	3			1	6	D
Norway 2018	1			1		1					1			4	B		1		1	1	1	3	C

Iceland – I-CR/10

There were two recommendations that relate to ‘Juvenile Justice’, the first I-CR/9 is covered in chapter 6, the second recommendation, I-CR/10 related to ‘juvenile justice’ was under the subheading of ‘Child victims and witnesses of crimes’:

The Committee also recommends that the State party ensure, through adequate legal provisions and regulations, that all children victims and or witnesses of crimes, e.g. children victims of abuse, domestic violence, sexual and economic exploitation, abduction, and trafficking and witnesses of such crimes, including those perpetrated by State and non-State actors, are provided with the protection required by the Convention and that it take fully into account the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime. The Committee recommends the State party to encourage courts to make use of the Children’s House for obtaining testimonies from children.⁵⁹

Within the Convention, the sole reference to victims is under article 39:

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim...⁶⁰

The ‘Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime’⁶¹ were issued by the Economic and Social Council in 2005 and noted that:

⁵⁹ CRC CO Iceland 2012 (n 27) para 58.

⁶⁰ United Nations - The Convention on the Rights of the Child, Treaty Collection, Chapter IV Human Rights Document 11, New York 20th November 1989.

⁶¹ United Nations Economic and Social Council, ‘Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, Vienna 23-27 May 2005 UN Doc. E/CN.15/2005/L.2/Rev.1’.

The Guidelines should be implemented in accordance with relevant national legislation and judicial procedures as well as take into consideration legal, social, economic, cultural and geographical conditions. However, States should constantly endeavour to overcome practical difficulties in the application of the Guidelines.⁶²

The Children's House (*Barnahus*)⁶³ mentioned in the recommendation is a:

child-friendly, interdisciplinary and multiagency centre whereby different professionals work under one roof in investigating suspected child sexual abuse cases and providing appropriate support for child victims in line with the Children Advocacy Centre model.⁶⁴

This up-to-date information demonstrates that the Barnahus is still for specialised use with children where there are allegations of sexual abuse; its use does not appear to have been widened to all child victims and witnesses of crime. However, that is not to say that similar techniques are not used, but that information as to how other classes of child victim and witnesses are interviewed and protected is not readily available translated into English.

Therefore, unfortunately, it is not possible to be clear why the Committee made the recommendations to ensure through legal provisions that child victims and witnesses 'are provided with the protection required by the Convention and that it take fully into account the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime'. Nonetheless, while it is clear that the Committee is of the opinion that Iceland can improve the situation, and with their early innovation of the Barnahus, it appears that they are cognisant of the need to protect child victims and witnesses.

[Recommendations relating to international human rights instruments](#)

After the comments and recommendations regarding clusters all three State party Concluding Observation reports contained further headings such as 'Follow-up and

⁶² *ibid* I.2.

⁶³ Barnaverndarstofa, 'Barnaverndarstofa - Government Agency for Child Protection' <<http://www.bvs.is/english>> accessed 1 February 2019.

⁶⁴ Barnaverndarstofa, 'The Children's House in Iceland – "Barnahus"' <<http://www.bvs.is/media/almenningur/Barnahus,-an-overview.pdf>> accessed 1 February 2019.

dissemination'. Mostly these did not include recommendations for changes to legislation. However, all three State parties received recommendations under the subheading 'Ratification of International Instruments'.

Iceland – I-CR/11

Iceland received the following recommendation under the subheading 'Ratification of International Instruments':

The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Convention on the Rights of Persons with Disabilities, Convention for the Protection of All Persons from Enforced Disappearance, Optional Protocol to the Convention against Torture and Optional Protocol to the Convention [sic] on Economic, Social and Cultural Rights.⁶⁵

Considering each of these conventions, covenants, and optional protocols in turn:

- ❖ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families – Iceland has not signed nor ratified this convention.
- ❖ Convention on the Rights of Persons with Disabilities – Iceland signed this convention in 2007 and ratified in 2016.
- ❖ Convention for the Protection of All Persons from Enforced Disappearance – Iceland signed in 2008; however, it has not been ratified.
- ❖ Optional Protocol to the Convention against Torture – Iceland signed this OP in 2003; however, it has not been ratified.
- ❖ Optional Protocol to the Covenant on Economic, Social and Cultural Rights - Iceland has not signed nor ratified this convention.

Of the above five instruments, only one has now been ratified; therefore the recommendations are still outstanding for four of these instruments.

⁶⁵ CRC CO Iceland 2012 (n 27) para 59.

Norway – N-CR/8

The Committee firstly recommended that Norway ratify the OP on a communications procedure, then made recommendations regarding the ratification of international human rights instruments:

The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, consider ratifying the following core human rights instruments to which it is not yet a party:

- (a) International Convention for the Protection of All Persons from Enforced Disappearance;
- (b) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.⁶⁶

As demonstrated in table 6.4, Norway has signed the International Convention for the Protection of All Persons from Enforced Disappearance, but it has not ratified it. Additionally, Norway has neither signed nor ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In the State party report of 2016 it is confirmed that a decision has been made not to ratify this treaty⁶⁷.

As revealed in chapter 6, table 6.2, there are two other Human Rights Instruments that Norway has not ratified:

- ❖ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, 2013
- ❖ Optional Protocol to the Convention on the Rights of Persons with Disabilities, 2008

Both of these are communication procedures, and as noted in 6.2 Norway has generally not assented to communications procedures.

The recommendations made by the Committee are therefore still relevant.

⁶⁶ CRC CO Norway 2018 (n 3).

⁶⁷ Norway, 'Fifth and Sixth Periodic Report of the State Party - Norway - UN Doc. CRC/C/NOR/5-6' (United Nations 2016) para 7.

Portugal – P-CR/9

The only additional recommendation made to Portugal was under the subheading of ‘Ratification of international human rights instruments’ and reads:

The Committee recommends that the State party, in order to further strengthen the fulfilment of children’s rights, ratify the core human rights instrument to which it is not yet a party, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.⁶⁸

Portugal’s response to this recommendation was:

Portugal is not considering the ratification of this Convention, as it partially follows under the scope of EU competences. The national standard of protection afforded to migrants and their families goes beyond the standards laid down therein.⁶⁹

This Convention is the only one in table 6.2 that Portugal has not signed nor ratified. Though Portugal states that national standards go beyond the Convention, as it has not been signed nor ratified the Committee’s recommendation is still relevant.

Additional Recommendations

Iceland

The final comments made by the Committee to Iceland note that:

The Committee invites the State party to submit its fifth and sixth periodic report by 26 May 2018 and to include in it information on the implementation of the present concluding observations.

The Committee also invites the State party to submit an updated core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting.⁷⁰

As of January 2019, a new State party report has not been published as received by the Committee. The core document has also not yet been updated since 1993, a year after Iceland ratified the CRC.

⁶⁸ CRC CO Portugal 2014 (n 1) para 67.

⁶⁹ Portugal (n 9) Responce to para 67.

⁷⁰ CRC CO Iceland 2012 (n 27) paras 63–64.

Norway – N-CR/10

In addition to the comments and recommendation under the cluster headings, there are headings relating to the two optional protocols Norway has ratified, N-CR/9 relating to the optional protocol on the sale of children is covered in chapter 6.

Under the subheading of the optional protocol on Children in armed conflict, N-CR/10, the Committee recommended that the State party:

- (a) Raise the minimum age of volunteers joining the Home Guard from 16 years of age to 18 years of age;⁷¹

This recommendation has been made in previous CO reports and in the previous State party report the reply was:

Norwegian authorities do not see that it is required or necessary to raise the minimum age of volunteers in the Home Guard Youth from 16 years to 18 years in order to fully respect the spirit of the Optional Protocol or in order to ensure full protection to children under all circumstances. The reason for this is that the law regulating the Home Guard (the Home Guard Act) states that volunteers who have not reached the age of 18 shall not be given practical training or participate in combat-related activities, and they shall be exempt from service should the Defence be involved in hostilities (see the Home Guard Act, section 6, first paragraph). Pursuant to the Act's section 4, first paragraph, the Home Guard Youth shall not be liable for military service.⁷²

In addition to this, in the most recent State party report it is explained that under 18s are not subject to compulsory military service, cannot be given official duties, would be excused from service if Norway is at war, and are 'not subject to the military punishment and disciplinary system.'⁷³

Norway's statement that it is not necessary to raise the age in order to respect the spirit of the OP appears justified as the first two articles of the OP are as follows:

Article 1

⁷¹ CRC CO Norway 2018 (n 3).

⁷² Norway, 'Forth Periodic Report of the State Party - Norway - UN Doc. CRC/C/NOR/4' (United Nations 2009) para 647.

⁷³ Norway (n 67) para 361.

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.


Article 2

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.⁷⁴

The recommendation from the Committee, therefore, goes further than either the wording of the Convention or the Optional protocol.

⁷⁴ United Nations, 'Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. Treaty Collection, Chapter IV Human Rights Document 11b, New York 25th May 2000' (n 44).

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United Nations	CRC/C/GBR/CO/5
 Convention on the Rights of the Child	Distr.: General
	12 July 2016
	Original: English

Committee on the Rights of the Child

Concluding observations on the fifth

periodic report of the United

Kingdom of Great Britain and

Northern Ireland¹*

Key:
Yellow highlight = References to UK, Great Britain, State Party, national

I. Introduction

1. The Committee considered the fifth periodic report of the **United Kingdom** of **Great Britain** and Northern Ireland (CRC/C/GBR/5) at its 2114th and 2115th meetings (see CRC/C/SR.2114 and 2115), held on 23 and 24 May 2016, and adopted the following concluding observations at its 2132nd meeting (see CRC/C/SR.2132), held on 3 June 2016.

2. The Committee welcomes the submission of the fifth periodic report of the **State party** and the written replies to the list of issues (CRC/C/GBR/Q/5/Add.1), which allowed for a better understanding of the situation of children's rights in the **State party**. The Committee expresses appreciation for the constructive dialogue held with the multisectoral delegation of the **State party**.

3. Where not otherwise stated, the recommendations in each part of the present observations are addressed to the Government of the **United Kingdom** of **Great Britain** and Northern Ireland and, where relevant mandates fall under their jurisdiction, to the governments of the devolved administrations in **Wales**, Scotland and Northern Ireland and the governments of the overseas territories and the Crown dependencies.

II. Follow-up measures undertaken and

Key:
Red highlight = Reference to Wales - or to devolved administrations

UK, N, GB, SP
UK, N, GB, SP

UK, N, GB, SP
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Wales

UK, N, GB, SP	9
..Ratify	10
..Ratify	11
..Ratify	12
UK, N, GB, SP	13
..Law	14
UK, N, GB, SP	15
UK, N, GB, SP	16
UK, N, GB, SP	17
..Law	18
UK, N, GB, SP	19
..Law	20
UK, N, GB, SP	

Key:
Blue highlight and blue icon = References to 'law', 'legislation', 'act'

progress achieved by the State party

4. The Committee welcomes the ratification of or accession to international instruments, including the extension of its ratification of the Convention to the Bailiwick of Jersey, and the progress achieved by the State party in various areas related to children's rights and the adoption of a number of new laws and institutional and policy measures since its previous review.

III. Main areas of concern and recommendations

Key:
Pink highlight and red icon = References to 'ratification' and 'accession' to international instruments

A. General measures of implementation (arts. 4, 42 and 44 (6))

Reservations

5. The Committee regrets that the State party maintains its reservations with regard to the applicability of some of the articles of the Convention to its overseas territories and Crown dependencies, namely the reservations on:

Key:
Crossed out text = reference to an area of the UK not being England and Wales












- (a) Article 22 to the Cayman Islands;
- (b) Article 32 to all its dependent territories, except Pitcairn;
- (c) Article 37 (c) to all its dependent territories.

6. The Committee, in the light of the 1993 Vienna Declaration and Programme of Action, recommends that the governments of the said overseas territories and Crown dependencies consider the withdrawal of all their reservations to the Convention.

Legislation

7. The Committee recommends that the State party:

- (a) Expedite bringing in line with the Convention its domestic legislation, at the national and devolved levels and in the overseas territories and the Crown dependencies, in order to ensure that the principles and provisions of the Convention are directly applicable and

	21	justiciable under domestic law;
		(b) Expedite the enactment of a bill of rights for Northern Ireland, agreed under the Good Friday Agreement.
	22	Comprehensive policy and strategy
UK, N, GB, SP 	23	8. The Committee recommends that the State party:
UK, N, GB, SP 	24	(a) Revise the United Kingdom-wide strategy entitled <i>Working Together, Achieving More</i> (2009) to cover all areas of the Convention and ensure its full implementation;
Key: Green Highlight = references to England	25	(b) Adopt comprehensive action plans for the implementation of the above-mentioned strategy in England and Northern Ireland;
England 	26	(c) In Scotland, ensure the full implementation of the action plan entitled <i>Do the Right Thing</i> (2009) and the National Action Plan for Human Rights (2013-2017);
UK, N, GB, SP 	27	(d) In Wales, ensure the full implementation of the Programme for Children and Young People (2015).
Wales 	28	9. In doing so, the Committee recommends that the State party allocate sufficient human, technical and financial resources, set up clear timelines and a monitoring and evaluation framework for the implementation of the strategy and the action plans and pay special attention to children belonging to the most vulnerable groups.
UK, N, GB, SP 	29	Child rights impact assessment
UK, N, GB, SP 	30	10. The Committee recommends that the State party:
UK, N, GB, SP 	31	(a) Introduce a statutory obligation at the national and devolved levels to systematically conduct a child rights impact assessment when developing laws and policies affecting children, including in international development cooperation;
	32	(b) Publish the results of such assessments and demonstrate how they have been taken into consideration in the proposed laws and policies.
	33	Coordination
	34	11. The Committee reiterates its previous

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recommendation that the **State party** ensure effective coordination of the implementation of the Convention throughout the **State party**. To that end, the Committee recommends that the **State party**:

(a) In each of the devolved administrations, overseas territories and the Crown dependencies, establish an appropriate statutory body at a high interministerial level with a clear mandate and sufficient authority to coordinate all activities across relevant sectors related to the implementation of the Convention;

(b) Allocate sufficient human, technical and financial resources to the said coordinating bodies for their effective operation;

(c) Strengthen coordination and evaluation of the implementation of the Convention at the **national** level.

Allocation of resources






12. The Committee is seriously concerned at the effects that recent fiscal policies and allocation of resources have had in contributing to inequality in children’s enjoyment of their rights, disproportionately affecting children in disadvantaged situations.

13. In accordance with article 4 of the Convention and targets 10.2 and 10.4 of the Sustainable Development Goals, the Committee urges the **State party** to allocate the maximum extent of available resources for the implementation of children’s rights, with a special focus on eradicating child poverty and reducing inequalities within and across all jurisdictions. In that endeavour, the Committee recommends that the **State party**:







(a) Utilize a child-rights approach in the elaboration of the State budget, by implementing a tracking system for the allocation and use of resources for children throughout the budget;

(b) Ensure transparent and participatory budgeting through public dialogue, including with children;

(c) Define budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social measures and make sure that those budgetary lines are protected even in situations of economic recessions;

44		(d) Regularly conduct child rights impact assessments of budget and economic decision-making processes and outcomes, including austerity measures, in areas that are directly or indirectly related to children's rights;
45		(e) Establish mechanisms to monitor and evaluate the adequacy, efficacy and equitability of the distribution of resources allocated to the implementation of the Convention.
46	Data collection	
47		14. The Committee recommends that the Government of Northern Ireland expedite the finalization of a child rights indicator framework, covering all areas of the Convention and taking into account the conceptual and methodological framework set out in the Office of the United Nations High Commissioner for Human Rights publication entitled "Human Rights Indicators: A Guide to Measurement and Implementation".
48	Independent monitoring	
49	UK, N, GB, SP 	15. The Committee welcomes the increased independence of the Children's Commissioners in the four devolved administrations of the State party and the many initiatives that they have taken to ensure the promotion and protection of the rights of the child. Nevertheless, the Committee is concerned that the powers of the Commissioners for Northern Ireland and Wales are still limited and that the Commissioner for Scotland has not started exercising its mandate to conduct investigations on behalf of individual children.
50	Wales  UK, N, GB, SP  UK, N, GB, SP 	16. With reference to the Committee's general comment No. 2 (2003) on general measures of implementation, the Committee recommends that the State party:
51	UK, N, GB, SP 	(a) Further strengthen the independence of established Children's Commissioners, in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), and enable them, inter alia, to receive and investigate complaints from or on behalf of children concerning violations of their rights;
52		(b) Allocate to the Commissioners in all jurisdictions the necessary human and financial resources in order to carry out their mandate in

Key:
Yellow Icon =
reference to General
Comment

			53		an effective and coordinated manner.
			54	International cooperation	
UK, N, GB, SP					17. In the context of international development cooperation, the Committee is concerned about the State party's funding of low-fee, private and informal schools run by for-profit business enterprises in recipient States. Rapid increase in the number of such schools may contribute to substandard education, less investment in free and quality public schools and deepened inequalities in the recipient countries, leaving behind children who cannot afford even low-fee schools.
UK, N, GB, SP			55		18. The Committee recommends that the State party ensure that its international development cooperation supports the recipient States in guaranteeing the right to free compulsory primary education for all, by prioritizing free and quality primary education in public schools, refraining from funding for-profit private schools and facilitating registration and regulation of private schools.
			56	Children's rights and the business sector	
			57		19. With reference to its general comment No. 16 (2013) on State obligations regarding the impact of business on children's rights, the Committee recommends that the State party:
UK, N, GB, SP			58		(a) Integrate an explicit focus on children's rights, including the requirement for businesses to undertake child-rights due diligence, in the revised version of its first National Action Plan on Business and Human Rights;
UK, N, GB, SP			59		(b) Establish and implement regulations to ensure that the business sector, including in the context of public procurement, complies with the rights of the child.
			60	B. Definition of the child (art. 1 of the Convention)	
UK, N, GB, SP			61		20. The Committee recommends that the State party raise the minimum age of marriage to 18 years across all devolved administrations, overseas territories and Crown dependencies.
			62	C. General principles (arts. 2, 3, 6 and 12 of the Convention)	

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UK, N, GB, SP	68
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UK, N, GB, SP	72
..Law	73

Non-discrimination

21. The Committee is concerned that:

(a) A number of provisions under the Equality Act (2010) exempt children from the protection against age discrimination and, in Northern Ireland, the proposed legislation on age discrimination excludes children under 16 years of age;

(b) Counter-terrorism measures do not enjoy public confidence owing to the lack of transparency and are widely perceived to have a discriminatory or stigmatizing effect on children, in particular Muslim children;

(c) Many children in certain groups, including Roma, gypsy and traveller children, children of other ethnic minorities, children with disabilities, children in care, migrant, asylum-seeking and refugee children and lesbian, gay, bisexual, transgender and intersex children, continue to experience discrimination and social stigmatization, including through the media.

22. The Committee recommends that the State party:









(a) Consider the possibility of expanding legislation to provide protection of all children under 18 years of age against discrimination on the grounds of their age;

(b) Strengthen the oversight mechanism, including regular independent reviews, to assess and ensure that the implementation of the counter-terrorism and counter-extremism measures, including the Prevent Strategy (2011), will not have a discriminatory or stigmatizing impact on any group of children;

(c) Strengthen its awareness-raising and other preventive activities against discrimination and stigmatization and, if necessary, take temporary special measures for the benefit of children in vulnerable situations.

23. The Committee recalls its previous recommendation that the State party take urgent measures to address the “intolerance of childhood” and general negative public attitude towards children, especially adolescents, within society, including in the media.

24. The Committee is concerned that, despite some improvements, legal discrimination against certain

		
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children remains in overseas territories.

25. The Committee recommends that the Government of the United Kingdom further encourage the governments of the overseas territories to fully abolish discrimination under the law against children who are “non-belongers”, including migrant children, and children born out of wedlock.

Best interests of the child

26. The Committee regrets that the right of the child to have his or her best interests taken as a primary consideration is still not reflected in all legislative and policy matters and judicial decisions affecting children, especially in the area of alternative care, child welfare, immigration, asylum and refugee status, criminal justice and in the armed forces. Furthermore, in some overseas territories, there is no legal provision to guarantee this right.

27. With reference to its general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, the Committee recommends that the State party, in all parts of its territory:

(a) Ensure that this right is appropriately integrated and consistently interpreted and applied in all legislative, administrative and judicial proceedings and decisions and in all policies, programmes and projects that are relevant to and have an impact on children;

(b) Develop procedures and criteria to provide guidance to all relevant persons in authority for determining the best interests of the child in every area and for giving it due weight as a primary consideration.














Right to life, survival and development

28. The Committee is concerned that:

(a) Research indicates that the infant and child mortality in the State party, including suicide, is linked with the level of social and economic deprivation;

(b) Mechanisms for reviews of any unexpected death or serious injury involving children have not been established or operationalized in most parts of the State party.

29. The Committee recommends that the State party:

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(a) Address underlying determinants of infant and child mortality, including social and economic deprivation and inequality;

(b) Introduce automatic, independent and public reviews of unexpected death or serious injury involving children, including in custody, care and mental health-care institutions in all the territory of the State party.

Respect for the views of the child

30. The Committee is concerned that:

(a) Children’s views are not systematically heard in policymaking on issues that affect them;

(b) The reforms concerning the reduction of legal aid in all four jurisdictions appear to have a negative impact on the right of children to be heard in judicial and administrative proceedings affecting them;









(c) Youth parliaments have not been established or operationalized in Northern Ireland, Wales, Montserrat, Turks and Caicos or Jersey;

(d) Many children feel that they are not listened to by their social workers, reviewing officers, paid carers, judges, personnel working with children in conflict with the law or other professionals in matters affecting them, including in family proceedings.

31. With reference to its general comment No. 12 (2009) on the right of the child to be heard, the Committee recommends that the State party:

(a) Establish structures for the active and meaningful participation of children and give due weight to their views in designing laws, policies, programmes and services at the local and national levels, including in relation to discrimination, violence, sexual exploitation and abuse, harmful practices, alternative care, sexual and reproductive education, leisure and play. Particular attention should be paid to involving younger children and children in vulnerable situations, such as children with disabilities;

(b) Assess the impact and expedite the review of the reforms on legal aid in England, Wales and Scotland and conduct child rights impact assessment of the proposed reforms in Northern Ireland and Jersey, in order to ensure that such reforms do not negatively affect children’s access to justice, and guarantee effective

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participation of children in such assessment and review;

(c) Expedite the establishment of youth parliaments in all devolved administrations and territories as permanent forums for children’s effective engagement with national legislative processes on issues that affect them;

(d) Ensure that children are not only heard but also listened to and their views given due weight by all professionals working with children.

32. The Committee notes increasing demands from children for a right to vote from the age of 16 years and that, in Scotland, voting age has been extended to 16 and 17 year olds for local and Scottish Parliament elections.

33. The Committee encourages the State party and devolved administrations to conduct consultations with children on the voting age. Should the voting age be lowered, the Committee recommends that the State party ensure that it is supported by active citizenship and human rights education in order to ensure early awareness of children that rights are to be exercised as part of citizenship, with autonomy and responsibility, and that the measure does not lend itself to undue influence.

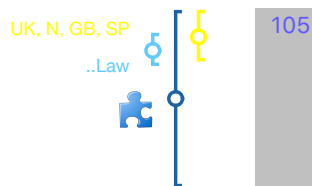
D. Civil rights and freedoms (arts. 7, 8 and 13-17)

Birth registration and nationality

34. The Committee recommends that the State party encourage its overseas territories to revise the local legislation and the British Nationality Act in order to guarantee the right of migrant children, in particular those children born in the territories, to a birth certificate.

Freedom of thought, conscience and religion

35. The Committee is concerned that pupils are required by law to take part in a daily religious worship which is “wholly or mainly of a broadly Christian character” in publicly funded schools in England and Wales, and that children do not have the right to withdraw from such worship without parental permission before entering the sixth form. In Northern Ireland and Scotland, children do not have right to withdraw from collective worship without parental permission.



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36. The Committee recommends that the **State party** repeal **legal** provisions for compulsory attendance at collective worship in publicly funded schools and ensure that children can independently exercise the right to withdraw from religious worship at school.

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Freedom of association and peaceful assembly

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37. In order to fully guarantee children's right to freedom of movement and peaceful assembly, the Committee recommends that the **State party**:



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(a) Prohibit the use in public spaces of acoustic devices used to disperse gatherings of young people (so-called "mosquito devices");

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(b) Collect data on measures used against children, including children aged 10-11 years, to deal with antisocial behaviours and for the dispersal of crowds, and monitor the criteria and proportionality of their use.

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Right to privacy



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38. The Committee recommends that the **State party**:

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(a) Prohibit the use of non-statutory stop-and-search checks against children;

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(b) Ensure that the statutory use of the stop-and-search checks is proportionate, taking into consideration the age and maturity of the child, and non-discriminatory;

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(c) Regularly collect, analyse and publish data relating to the use of stop-and-search checks on children, disaggregated by age, sex, disability, geographic location, ethnic origin and socioeconomic background.

115

E. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

116

Torture and other cruel or degrading treatment or punishment

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39. The Committee is concerned about:

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(a) The use by the police of Tasers and, in the case of Northern Ireland, attenuating energy projectiles against children in the four devolved administrations;

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(b) The increased use of restraint and other restrictive interventions against children in custodial

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settings in **England** and **Wales** and the lack of data on the use of restraint in other parts of the **State party**;

(c) The use of physical restraint on children to maintain good order and discipline in young offenders' institutions and of pain-inducing techniques on children in institutional settings in **England**, **Wales** and Scotland, and the lack of a comprehensive review of the use of restraint in institutional settings in Northern Ireland;

(d) The use of restraint and seclusion on children with psychosocial disabilities, including children with autism, in schools.

40. With reference to the Committee's general comment No. 13 (2011) on the right of the child to freedom from all forms of violence, and to target 16.2 of the Sustainable Development Goals, the Committee urges the State party to:

(a) **Prohibit the use on children of electrical discharge weapons, such as Tasers, attenuating energy projectiles (in Northern Ireland) and any other harmful devices and systematically collect and publish age-disaggregated data on their use in order to monitor the implementation of such prohibition;**

(b) **Abolish all methods of restraint against children for disciplinary purposes in all institutional settings, both residential and non-residential, and ban the use of any technique designed to inflict pain on children;**

(c) **Ensure that restraint is used against children exclusively to prevent harm to the child or others and only as a last resort;**

(d) **Systematically and regularly collect and publish disaggregated data on the use of restraint and other restrictive interventions on children in order to monitor the appropriateness of discipline and behaviour management for children in all settings, including in education, custody, mental health, welfare and immigration settings.**

Corporal punishment

41. With reference to its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and its previous

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recommendations, the Committee urges the **State party**, in all devolved administrations, overseas territories and Crown dependencies, to:

(a) Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all **legal** defences, such as “reasonable chastisement”;

(b) Ensure that corporal punishment is explicitly prohibited in all schools and educational institutions and all other institutions and forms of alternative care;

(c) Strengthen its efforts to promote positive and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, with a view to eliminating the general acceptance of the use of corporal punishment in child-rearing.

Violence, abuse and neglect

42. The Committee welcomes the introduction of a new domestic abuse offence to capture coercive and controlling behaviour in intimate and familial relationships, as introduced in the Serious Crime Act (2015) in **England** and **Wales**. However, the Committee is concerned at:

(a) The high prevalence of domestic violence and gender-based violence against women and girls, and the negative impact that those forms of violence have on children, whether as victims or witnesses;









(b) The Children and Young Persons Act (1933), which defines a child as a person under the age of 16 for the purpose of the criminal law on child abuse and neglect;

(c) The lack of due respect for the views of children in responses to violence against children and in family law proceedings.

43. With reference to its general comment No. 13 (2011) and target 16.2 of the Sustainable Development Goals, the Committee recommends that the **State party**:

(a) Revise the Children and Young Persons Act (1933) in order to protect all children under 18 years from child abuse and neglect;

(b) Strengthen the systematic collection of data and recording of information on violence against children, including domestic violence,

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gender-based violence, abuse and neglect, in all settings, and the sharing of information and referral of cases among relevant sectors;

(c) Increase the number of social workers and strengthen their capacity to address violence against children;

(d) Give due weight to the views of children concerned in the responses to violence, including in criminal and family law proceedings;

(e) Consider ratifying the Convention on preventing and combating violence against women and domestic violence.

Sexual exploitation and abuse

44. The Committee welcomes the measures taken to address child sexual exploitation and abuse, including the “WePROTECT” model national response and strong child and civil society participation in the development of a multisectoral action plan and relevant guidance and tools in Wales, and in the independent inquiry on the phenomenon in Northern Ireland. However, the Committee is concerned about:

(a) Recent allegations of widespread child sexual exploitation and abuse by high profile figures, by organized gangs and in institutional settings;

(b) The increasing risk of online child sexual exploitation and abuse;




















(c) The insufficient respect for the views of children in efforts to prevent, detect and respond to such exploitation and abuse;

(d) The low rate of prosecution of child sexual exploitation and abuse.

45. The Committee recommends that the State party, including devolved governments, overseas territories and Crown dependencies:

(a) Systematically collect and publish comprehensive and disaggregated data on child exploitation and abuse, including through mandatory reporting, in all settings;

(b) Develop and implement comprehensive multisectoral strategies on child exploitation and abuse, including online, to ensure effective prevention, early detection and intervention, at the national and devolved levels, in overseas

		territories and Crown dependencies;
152		(c) Implement the recommendations of the Marshall Inquiry into child sexual exploitation in Northern Ireland;
153		(d) Further develop comprehensive services to support children who are victims or at risk of sexual exploitation and abuse;
154	..Law  	(e) Strengthen the capacity of law enforcement authorities and the judiciary to detect and prosecute child sexual exploitation and abuse, and grant effective remedies to the child victims;
155	..Ratify  	(f) Consider ratifying the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.
156		Harmful practices
157	..Law     England    Wales    	46. The Committee welcomes the enactment of the Serious Crime Act (2015) in England and Wales, which enables the courts to issue protection orders to protect potential or actual child victims of female genital mutilation. However the Committee is concerned at:
158	UK, N, GB, SP 	(a) The significant number of children who are affected by harmful practices, including female genital mutilation, and the forced marriage of girls and boys aged 16 and 17 years in some parts of the State party;
159		(b) Cases of medically unnecessary surgeries and other procedures on intersex children before they are able to provide their informed consent, which often entail irreversible consequences and can cause severe physical and psychological suffering, and the lack of redress and compensation in such cases.
160	  UK, N, GB, SP 	47. With reference to its general comment No. 18 (2014) on harmful practices, the Committee recommends that the State party:
161		(a) Take effective measures to ensure that marriage of children aged 16 and 17 years takes place only in exceptional circumstances and is based on the full, free and informed consent of the concerned children;
162		(b) Continue and strengthen preventive and protection measures to address the issue of harmful practices, including the collection of data, the training of relevant professionals, awareness-raising programmes, the provision of

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protection and care to the child victims and the prosecution of those found guilty of perpetrating such acts;

(c) **Ensure that no one is subjected to unnecessary medical or surgical treatment during infancy or childhood, guarantee bodily integrity, autonomy and self-determination to children concerned and provide families with intersex children with adequate counselling and support;**

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(d) **Provide redress to the victims of such treatment;**

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(e) **Educate medical and psychological professionals on the range of sexual, and related biological and physical diversity and on the consequences of unnecessary interventions for intersex children.**

Freedom of the child from all forms of violence

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48. The Committee is concerned that:

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(a) Bullying, including cyberbullying, remains a serious and widespread problem, particularly against lesbian, gay, bisexual, transgender and intersex children, children with disabilities and children belonging to minority groups, including Roma, gypsy and traveller children;

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(b) In Northern Ireland, children face violence, including shootings, carried out by non-State actors involved in paramilitary-style attacks, and recruitment by such non-State actors.

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49. **The Committee recommends that the State party:**

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(a) **Intensify its efforts to tackle bullying and violence in schools, including by teaching human rights, building the capacities of students and staff members to respect diversity at school, improving students' conflict-resolution skills, monitoring regularly the incidences of bullying at school and involving children in the initiatives and monitoring aimed at eliminating bullying;**

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(b) **In the light of the recommendations resulting from the day of general discussion on digital media and children's rights, train children, teachers and families on the safe use of information and communication technologies, raise awareness among children on the severe**

effects that online bullying can have on their peers and increase the involvement of social media outlets in the efforts to combat cyberbullying;

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(c) Take immediate and effective measures to protect children from violence by non-State actors involved in paramilitary-style attacks and from recruitment by such actors into violent activities, including through measures relating to transitional and criminal justice.

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F. Family environment and alternative care (arts. 5, 9-11, 18 (paras. 1 and 2), 20-21, 25 and 27 (para. 4))

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Family environment

UK, N, GB, SP 

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50. The Committee acknowledges that there are good practices in the State party and the devolved administrations in providing childcare to those who need it. However, the Committee is concerned about the negative effect of the high cost of childcare on children and their family environment.

UK, N, GB, SP 

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51. The Committee recommends that the State party and the devolved governments conduct a rigorous child rights impact assessment of the recent reduction of funding for childcare and family support and adjust the family support policy in order to make childcare services available to all those who need it.

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Children deprived of a family environment

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52. The Committee is concerned about:

England 
Wales 

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(a) The increase in the number of children in care in England, Wales and Northern Ireland and the high rate of children in care in Scotland;

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(b) Cases where early intervention measures have not been carried out in a timely manner, parents have not been provided with adequate family support and the best interests of the child have not been properly assessed in the decision of taking a child into care. Children have reportedly been removed from their biological families owing to the family's economic situation or because a foster family may provide a more beneficial environment for the child;

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(c) The frequent changes of social workers for children in care, and children often experiencing more than two family placements in a year, which

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negatively affects all aspects of their life;

(d) Children placed at a distance from their biological families, which prevents them from keeping in contact, and siblings being separated from each other without proper reason;

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(e) The practice of children being placed in secure accommodation in Northern Ireland;

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(f) Children leaving foster care or residential care not receiving proper support and counselling, including on their future plans, and often having to live far away from their former carers;

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(g) The adoption procedure in Northern Ireland remaining outdated and not in line with the Convention.

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53. Drawing the **State party's** attention to the **Guidelines for the Alternative Care of Children (General Assembly resolution 64/142, annex)**, the Committee emphasizes that conditions directly and uniquely attributable to poverty should never be the sole justification for removing a child from parental care. The Committee recommends that the **State party:**

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(a) Intensify its efforts to render appropriate assistance to parents and **legal** guardians, including informal kinship carers, in the performance of their child-rearing responsibilities;

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(b) Ensure that the removal of children from their families is always subject to thorough investigation, is in accordance with the best interests of the child and is only used as a measure of last resort;

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(c) Wherever possible, find a placement for the child that will facilitate contact with his or her biological parents and siblings;

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(d) Ensure that secure accommodation in Northern Ireland is only used as a measure of last resort and for the shortest possible period of time, address the reasons for repeated or lengthy stays in such accommodation and develop alternatives to secure accommodation;

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(e) Take all measures necessary to provide stability for children in care, including efforts to retain social workers and to avoid unnecessary changes in placement;

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(f) **Inform and consult with children from an early stage on plans for their care and transition and provide sufficient support for care leavers, including for accommodation, employment or further education;**

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(g) **Expedite the approval and enactment of the Adoption and Children Bill in Northern Ireland.**

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Children of incarcerated parents

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54. The Committee is concerned that, due to insufficient cooperation between the courts and the child protection authorities, a parent may be sentenced to imprisonment and directly incarcerated while his or her children are left alone without proper care.

UK, N, GB, SP 

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55. **The Committee recommends that the State party:**

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(a) **Ensure that child protection authorities are always informed when a person who has a child or children is imprisoned, in order to avoid situations where children are left unattended;**

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(b) **Take into account the best interests of the child as a primary consideration when sentencing parents, avoiding, as far as possible, sentences for parents that lead to their being separated from their children.**

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G. Disability, basic health and welfare (arts. 6, 18 (3), 23, 24, 26, 27 (1)-(3) and 33)

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Children with disabilities

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56. The Committee is concerned that:

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(a) Many children with disabilities do not see that their views are given due weight in making personal decisions in their life, including choice of support and future;

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(b) Many children with disabilities are still placed in special schools or special units in mainstream schools and many school buildings and facilities are not made fully accessible to children with disabilities;

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(c) Provision of the support for transition to adulthood is often neither sufficient, timely nor well-coordinated, and does not ensure fully informed decision by children with disabilities.



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57. **With reference to its general comment No. 9**

UK, N, GB, SP 

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(2006) on the rights of children with disabilities, the Committee recommends that the **State party** adopt a human rights-based approach to disability, set up a comprehensive strategy for the inclusion of children with disabilities and:

(a) Ensure full respect of the rights of children with disabilities to express their views and to have their views given due weight in all decision-making that affects them, including on access to and choice of personal support and education;

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(b) Set up comprehensive measures to further develop inclusive education, ensure that inclusive education is given priority over the placement of children in specialized institutions and classes and make mainstream schools fully accessible to children with disabilities;

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..Law 


(c) Provide children with disabilities with a comprehensive and integrated package of services for transition to adulthood, from a sufficiently early stage, by coordinating **legislation**, policy and programmes across relevant sectors, and ensure fully informed decisions by children with disabilities on their personal choice in the transition, by involving them in the design of services and by providing advice and information on available options.

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Health and health services

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58. The Committee is concerned at the inequality in access to health services and health outcome, negatively affecting Roma, gypsy and traveller children, children belonging to other ethnic minorities, migrant children, children living in poverty and in deprived areas, children in care and in custody, children living with HIV/AIDS and lesbian, gay, bisexual, transgender and intersex children.



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UK, N, GB, SP 

59. With reference to its general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, the Committee recommends that the **State party**, the governments of the devolved administrations, overseas territories and Crown dependencies develop comprehensive and multisectoral strategies on child health:

(a) With the allocation to the maximum extent of available resources and a robust monitoring mechanism;

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(b) **With a strong focus on eliminating inequalities in health outcome and in access to health services;**

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(c) **Addressing underlying social determinants of health.**

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Mental health

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UK, N, GB, SP 

60. The Committee welcomes the significant efforts undertaken both at the **national** and the devolved levels to improve mental health services. The Committee is nevertheless concerned that:

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UK, N, GB, SP 

(a) The number of children with mental health needs is increasing across the **State party**, including those related to alcohol, drug and substance abuse;

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(b) The number of child suicides has been steadily increasing in Northern Ireland in the past 10 years;

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England 

(c) Children with mental health conditions are often treated far away from home (**England** and Scotland), do not receive adequate child-specific attention and support, are placed in adult facilities or may even be detained in police custody owing to a shortage of places in mental health clinics;

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England 
Wales 

(d) The new shortened waiting period targets established or planned in **England**, **Wales** and Scotland may not be realized in practice owing to a lack of infrastructure (number of specialists and clinics/centres);






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(e) The significant investments in improving mental health services will not necessarily lead to an improvement in the quality of services;

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(f) Therapeutic community-based services have not been sufficiently developed;

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England 
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Wales 
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(g) Children under the age of 16 years are excluded from protection under the Mental Capacity **Act** (2005) in **England** and **Wales**, and under the Mental Capacity **Act** (2016) in Northern Ireland, including with regard to medical treatment without consent.

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UK, N, GB, SP 

61. **The Committee recommends that the **State party**:**

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(a) **Regularly collect comprehensive data on child mental health, disaggregated across the life course of the child, with due attention to children in vulnerable situations and covering key underlying determinants;**

UK, N, GB, SP 

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(b) **Rigorously invest in child and adolescent mental health services and develop strategies at the national and devolved levels, with clear time frames, targets, measureable indicators, effective monitoring mechanisms and sufficient human, technical and financial resources. Such strategy should include measures to ensure availability, accessibility, acceptability, quality and stability of such services, with particular attention to children at greater risk, including children living in poverty, children in care and children in contact with the criminal justice system;**

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(c) **Expedite the prohibition of placing children with mental health needs in adult psychiatric wards or police stations, while ensuring the provision of age-appropriate mental health services and facilities;**

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(d) **Support and develop therapeutic community-based services for children with mental health conditions;**

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(e) **Review current legislation on mental health to ensure that the best interests and the views of the child are taken duly into account in cases of mental health treatment of children below the age of 16 years, in particular with regard to hospitalization and treatment without consent.**

UK, N, GB, SP 

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62. The Committee welcomes the publication by the National Institute for Health and Care Excellence of new guidelines for the diagnosing and management of attention deficit and hyperactivity disorder and related disorders. The Committee is, however, concerned that:

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(a) The actual number of children that are given methylphenidate or other psychotropic drugs is not available;

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(b) There has reportedly been a significant increase in the prescription of psychostimulants and psychotropic drugs to children with behavioural problems, including for children under 6 years of age, despite growing evidence of the harmful effects of these drugs.

UK, N, GB, SP 

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63. **The Committee recommends that the State party:**

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(a) **Regularly collect data on the amount and regularity of psychotropic drugs (Ritalin, Concerta, etc.) being prescribed to children, and**

make the data transparent;

(b) **Ensure that the prescription of drugs is used as a measure of last resort and only after an individualized assessment of the best interests of that child, and that children and their parents are properly informed about the possible side effects of such medical treatment and about non-medical alternatives;**

(c) **Establish a system of independent expert monitoring of diagnoses of or related to attention deficit and hyperactivity disorders, and undertake a study on the root causes of their increase, also aimed at improving the accuracy of diagnoses.**

Adolescent health

64. The Committee notes with appreciation the steady decrease in teenage pregnancies in the **State party** during the period under review. However, the Committee is concerned that:

(a) The rate of teenage pregnancies is still higher than the average for the European Union, and higher in more deprived areas;

(b) Relationships and sexuality education is not mandatory in all schools, its contents and quality varies depending on the school, and lesbian, gay, bisexual, transgender and intersex children do not have access to accurate information on their sexuality;

(c) In Northern Ireland, abortion is illegal in all cases, except where continuance of the pregnancy threatens the life of the mother, and is sanctioned with life imprisonment.

65. **With reference to its general comments No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child and No. 15 (2013), the Committee recommends that the **State party**:**

(a) **Develop and adopt a comprehensive sexual and reproductive health policy for adolescents, with particular attention to reducing inequalities and with participation of adolescents;**

(b) **Ensure that meaningful sexual and reproductive health education is part of the mandatory school curriculum for all schools, including academies, special schools and youth detention centres, in all areas of the **State party**.**

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Such education should provide age-appropriate information on: confidential sexual and reproductive health-care services; contraceptives; the prevention of sexual abuse or exploitation, including sexual bullying; the support available in cases of such abuse and exploitation; and sexuality, including that of lesbian, gay, bisexual, transgender and intersex children;

(c) Decriminalize abortion in Northern Ireland in all circumstances and review its legislation with a view to ensuring girls' access to safe abortion and post-abortion care services. The views of the child should always be heard and respected in abortion decisions.

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Nutrition

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66. The Committee is concerned about:



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(a) The high prevalence of overweight and obesity among children in many parts of the State party;

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(b) The lack of comprehensive data on child food security, while some research indicates that currently available programmes, such as free school meal programmes, may not be effectively responding to child hunger;

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(c) The extremely low rate of breastfeeding, the fact that only one per cent of women maintained exclusive breastfeeding for six months in 2010, and the inadequate regulation of marketing of breast-milk substitutes.



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67. The Committee recommends that the State party:

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(a) Systematically collect data on food security and nutrition for children, including those relevant to breastfeeding, overweight and obesity, in order to identify the root causes of child food insecurity and malnutrition;

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(b) Regularly monitor and assess the effectiveness of policies and programmes on child food security and nutrition, including school meal programmes and food banks, and programmes addressing infants and young children;

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(c) Promote, protect and support breastfeeding in all policy areas where breastfeeding has an impact on child health,

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..Law 	265
 	

including obesity, certain non-communicable diseases and mental health, and fully implement the International Code of Marketing of Breast-milk Substitutes.

Environmental health

68. The Committee is concerned at the high level of air pollution, which directly affects child health in the State party and contributes to the negative impact of climate change affecting various rights of the child, both in the State party and in other countries.

69. With reference to target 1.5 of the Sustainable Development Goals, the Committee recommends that the State party, including the devolved administrations in relation to devolved matters:

(a) Set out a clear legal commitment, with appropriate technical, human and financial resources, to scale up and expedite the implementation of plans to reduce air pollution levels, especially in areas near schools and residential areas;

(b) Place children's rights at the centre of national and international climate change adaptation and mitigation strategies, including through its new domestic climate strategy, and in the framework of its international climate change programmes and financial support.











Standard of living

70. The Committee is seriously concerned that:

(a) The rate of child poverty remains high, disproportionately affects children with disabilities, children living in a family or household with a person or persons with a disability, households with many children and children belonging to ethnic minority groups, and affects children in Wales and Northern Ireland the most;

(b) The Welfare Reform and Work Act (2016), which amends the Child Poverty Act (2010), repealed the statutory target on the eradication of child poverty by 2020 and the statutory obligation of the Government of the United Kingdom and the Governments of England, Scotland and Wales to produce child poverty strategies;

(c) Recent amendments to the Tax Credits Act (2002), the Welfare Reform Act (2012) and the

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Welfare Reform and Work Act (2016) have limited the entitlement to child tax credits and social benefits (the “household benefit cap” and the “bedroom tax”), regardless of the needs of the households;

(d) During the period of review, the number of homeless households with dependent children increased in England and Northern Ireland, as did the number of homeless families, including those with infants, staying in temporary accommodation, in all four jurisdictions;

(e) In Scotland, adequate and culturally sensitive accommodation for Roma, gypsy and traveller children remains insufficient.

71. The Committee draws the attention of the State party to target 1.2 of the Sustainable Development Goals, on poverty reduction, and urges the State party to:

(a) Set up clear accountability mechanisms for the eradication of child poverty, including by re-establishing concrete targets with a set time frame and measurable indicators, and continue regular monitoring and reporting on child poverty reduction in all parts of the State party;

(b) Ensure clear focus on the child in the State party’s poverty reduction strategies and action plans, including in the new “Life Chances Strategy”, and support the production and implementation of child poverty reduction strategies in the devolved administrations;

(c) Conduct a comprehensive assessment of the cumulative impact of the full range of social security and tax credit reforms introduced between 2010 and 2016 on children, including children with disabilities and children belonging to ethnic minority groups;

(d) Where necessary, revise the mentioned reforms in order to fully respect the right of the child to have his or her best interests taken as a primary consideration, taking into account the different impacts of the reform on different groups of children, particularly those in vulnerable situations;

(e) Strictly implement the legal prohibition of prolonged placement of children in temporary accommodation by public authorities in England, Wales and Scotland, and enact similar legislation



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in Northern Ireland;

(f) **Take necessary measures to reduce homelessness and to progressively guarantee all children stable access to adequate housing that provides physical safety, adequate space, protection against the threats to health and structural hazards, including cold, damp, heat and pollution, and accessibility for children with disabilities;**

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(g) **In Scotland, introduce a statutory duty for local authorities to provide safe and adequate sites for travellers, while ensuring meaningful participation of Roma, gypsy and traveller communities, including children, in planning and decision-making processes.**

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H. Education, leisure and cultural activities (arts. 28, 29, 30 and 31)

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Education, including vocational training and guidance

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72. The Committee welcomes the gradual closing of inequality gaps in education attainment and the decreasing use of exclusion from school. However, the Committee is concerned that:

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(a) Substantial inequalities persist in educational attainment, particularly for boys, children living in poverty, Roma, gypsy and traveller children, children with disabilities, children in care and newcomer children;

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(b) Among children subject to permanent or temporary school exclusions, there is a disproportionate number of boys, Roma, gypsy and traveller children, children of Caribbean descent, children living in poverty and children with disabilities and, with the exception of Scotland, only children with disabilities have the right to appeal against their exclusion;

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(c) Children with disabilities, in particular children with psychosocial disabilities and other “special educational needs”, are often subject to the practice of “informal” exclusion or “taught off-site” to control their behaviour;





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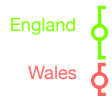



(d) Isolation rooms are used for disciplining children;

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(e) In Northern Ireland, segregation of schools by religion persists;

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	284	(f) Many children living in poverty, particularly boys, do not meet the expected level of language development at the preschool level, which has a negative impact on their primary education, hindering their development throughout their life.
UK, N, GB, SP 	285	73. The Committee recommends that the State party:
	286	(a) Enhance its efforts to reduce the effects of the social background or disabilities of children on their achievement in school and to guarantee the right of all children to a truly inclusive education in all parts of the State party, including for newcomer children without experiences of formal education. In this regard, closely monitor and, if necessary, regulate the establishment and management of academies and free schools in England and abolish the practice of unregulated admission tests to post-primary education in Northern Ireland;
UK, N, GB, SP 		
England 		
	287	(b) Use the disciplinary measure of permanent or temporary exclusion as a means of last resort only, forbid and abolish the practice of “informal” exclusions and further reduce the number of exclusions by working closely with social workers and educational psychologists in school and using mediation and restorative justice;
	288	(c) Ensure that children have the right to appeal against their exclusion and are provided with legal advice, assistance and, where appropriate, representation for those without means;
..Law 		
	289	(d) Abolish the use of isolation rooms;
	290	(e) In Northern Ireland, actively promote a fully integrated education system and carefully monitor the provision of shared education, with the participation of children, in order to ensure that it facilitates social integration;
	291	(f) Taking note of target 4.2 of the Sustainable Development Goals, on access to quality early childhood development services, allocate sufficient human, technical and financial resources for the development and expansion of early childhood care and education, based on a comprehensive and holistic policy of early childhood development, with special attention to the children in the most vulnerable situations;

	292	(g) Make children's rights education mandatory.
	293	Rest, leisure, recreation and cultural and artistic activities
	294	74. The Committee welcomes the initiative of the government of Wales to adopt a play policy and integrate children's right to play systematically in relevant legislation and other relevant policies. However, the Committee is concerned about:
	295	(a) The withdrawal of a play and leisure policy in England , and underfunding of play and leisure policies in Northern Ireland, Scotland and Wales ;
	296	(b) Insufficient places and facilities for play and leisure for children, in particular those accessible for children with disabilities and children in marginalized and disadvantaged situations, and public space for adolescents to socialize.
	297	75. With reference to its general comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts, the Committee recommends that the State party, including the governments of the devolved administrations:
	298	(a) Strengthen its efforts to guarantee the right of the child to rest and leisure and to engage in play and recreational activities appropriate to the age of the child, including by adopting and implementing play and leisure policies with sufficient and sustainable resources;
	299	(b) Provide children, including those with disabilities and children in marginalized and disadvantaged situations, with safe, accessible, inclusive and smoking-free spaces for play and socialization and public transport to access such spaces;
	300	(c) Fully involve children in planning, designing and monitoring the implementation of play policies and activities relevant to play and leisure, at the community, local and national levels.
	301	I. Special protection measures (arts. 22, 30, 32, 33, 35, 36, 37 (b)-(d) and 38-40)
	302	Asylum-seeking, refugee and migrant children
	303	76. The Committee welcomes the decision made by

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UK, N, GB, SP		313
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the **State party** in December 2010 to end the detention of children for immigration purposes. Nevertheless, the Committee is concerned that:

(a) Reliable data on asylum-seeking children, including those whose age is disputed, remain unavailable;

(b) Not all unaccompanied children have access to an independent guardian or **legal** advice in the course of immigration and asylum procedures;

(c) Under the “Assessing Age” asylum instruction of the Home Office, children can be assessed as adults based on their physical appearance;

(d) Children can be detained in the course of asylum processes, including in short-term holding facilities upon entry into the **State party**, and age-disputed children seeking asylum can be detained in adult facilities;

(e) Unaccompanied and separated refugee children within and outside of the **State party** face restrictions on family reunification;

(f) Asylum-seeking, refugee and migrant children and their families face difficulty in gaining access to basic services, such as education and health care, and are at high risk of destitution;





(g) The Immigration **Act** (2016) removed the entitlement of unaccompanied children in care with an irregular or unresolved immigration status to leaving care support and adopted the “deport first, appeal later” scheme, which allows migrants to appeal against the refusal of their stay only from outside of the **United Kingdom**, including in cases where such deportation might undermine family unity for migrant children;





(h) Children are returned to the country of origin or habitual residence without adequate safeguards.

77. With reference to its general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, the Committee recommends that the **State party:**

(a) **Systematically collect and publish disaggregated data on the number of children seeking asylum, including those whose age is disputed;**

(b) **Establish statutory independent guardians for all unaccompanied and separated children**

			throughout the State party ;
		315	(c) Conduct age assessments only in cases of serious doubt through multidisciplinary and transparent procedures, taking into account all aspects, including the psychological and environmental aspects of the person under assessment;
		316	(d) Cease the detention of asylum-seeking and migrant children;
		317	(e) Review its asylum policy in order to facilitate family reunion for unaccompanied and separated refugee children within and outside of the State party , including through implementation of the European Union Dublin III Regulation;
UK, N, GB, SP			(f) Provide sufficient support to migrant, refugee and asylum-seeking children to access basic services;
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..Law			(g) Review the Immigration Act (2016) in order to ensure its compatibility with the Convention;
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		320	(h) Ensure that children are returned only where there are adequate safeguards, including a formal best-interests determination, effective family tracing, including individual risk and security assessments, and appropriate reception and care arrangements.
		321	Administration of juvenile justice
		322	78. The Committee notes that the Government of Scotland is open to raising the minimum age of criminal responsibility and that an advisory group was established in 2016 to explore these issues and develop recommendations for consultation. The Committee also notes that the Criminal Justice Bill of Montserrat, due to be enacted in 2016, will raise the minimum age from 10 to 12 and reform the juvenile justice system to protect the rights of children accused of committing offences, and that the Virgin Islands, with assistance of the United Nations Children's Fund (UNICEF) Caribbean, plans to develop a comprehensive juvenile justice strategy. However, the Committee is concerned that:
		323	(a) The minimum age of criminal responsibility remains 8 years in Scotland and Turks and Caicos Islands and 10 years for the rest of the State party ;
UK, N, GB, SP			(b) Some children are tried in adult courts;
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		325	(c) Life imprisonment of children, in the form of

 <p>Wales</p>	<p>326</p> <p>327</p> <p>328</p> <p>329</p>	<p>“detention at Her Majesty’s pleasure” in England and Wales, “detention during the pleasure of the Secretary of State” in Northern Ireland and “detention without limit of time” in Scotland, is mandatory for murder committed while the offender was under the age of 18;</p> <p>(d) The number of children in custody remains high, with disproportionate representation of ethnic minority children, children in care and children with psychosocial disabilities, and detention is not always applied as a measure of last resort;</p> <p>(e) There are occasions where children are held in the same places of deprivation of liberty for adults;</p> <p>(f) Access to education and health services, including mental health services, is insufficient for children in custody;</p> <p>(g) Segregation, including solitary confinement, is sometimes used for children in custody, including in young offenders’ institutions.</p>
 <p>UK, N, GB, SP</p>	<p>330</p>	<p>79. With reference to its general comment No. 10 (2007) on children’s rights in juvenile justice, the Committee recommends the State party to bring its juvenile justice system, including in all devolved administrations, the overseas territories and the Crown dependencies, fully into line with the Convention and other relevant standards. In particular, the Committee recommends that the State party:</p>
 <p>UK, N, GB, SP</p>	<p>331</p>	<p>(a) Raise the minimum age of criminal responsibility in accordance with acceptable international standards;</p>
 <p>..Law</p>	<p>332</p>	<p>(b) Ensure that children in conflict with the law are always dealt with within the juvenile justice system up to the age of 18 years, and that diversion measures do not appear in children’s criminal records;</p>
	<p>333</p>	<p>(c) Abolish the mandatory imposition of life imprisonment for children for offences committed while they are under the age of 18;</p>
	<p>334</p>	<p>(d) Establish the statutory principle that detention should be used as a measure of last resort and for the shortest possible period of time and ensure that detention is not used discriminatorily against certain groups of children;</p>

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(e) **Ensure that child detainees are separated from adults in all detention settings;**

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(f) **Immediately remove all children from solitary confinement, prohibit the use of solitary confinement in all circumstances and regularly inspect the use of segregation and isolation in child detention facilities.**

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Child victims and witnesses of crimes

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80. The Committee is seriously concerned that children who are victims or witnesses of crimes have to appear in court to be cross examined.









UK, N, GB, SP 

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81. **The Committee recommends that the State party introduce, as a standard, video recording of the interview with a child victim or witness during investigation and allow the video recorded interview as evidence in court.**

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Follow-up to the Committee's previous concluding observations and recommendations on the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography

..Ratify 
 ..Law 
 ..Law 
 ..Law 

 ..Law 
 Wales 
 England 
 UK, N, GB, SP

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82. The Committee welcomes the **ratification** of the Council of Europe Convention on Action against Trafficking in Human Beings, and new **legislation** in this area, including the Modern Slavery Act (2015), the Human Trafficking and Exploitation Act (Northern Ireland) (2015), the Human Trafficking and Exploitation Act (Scotland) (2015), and the introduction of an independent statutory guardian for all unaccompanied children in Northern Ireland and Scotland, and for all potential child victims of trafficking in **England** and **Wales**. The Committee also notes the commitment of the **United Kingdom** in the fight against all forms of violence against children, including sexual abuse, exploitation and trafficking of children. Nevertheless, the Committee remains concerned that:

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..Law 

 UK, N, GB, SP

(a) No measures have been taken to ensure that all children up to 18 years of age are protected from all types of offences covered by the Optional Protocol and to ensure that domestic **legislation** throughout the **State party**, including at the devolved level, enables it to establish and exercise extraterritorial jurisdiction, without the dual criminality criterion, over all offences covered by the Optional Protocol;

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(b) The system for identification and referral of

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UK, N, GB, SP 	348
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  ..Law	
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..Law  	351

victims of the offences covered by the Optional Protocol and children who are at risk of being victims of such offences is weak;

(c) Child victims of trafficking can still be prosecuted for the crimes that they are forced to commit in the context of trafficking, and the right to a statutory guardian for child victims of trafficking has not been fully operationalized in the State party;

(d) While the acts adopted in 2015 provide further protection to children up to 18 years of age from offences covered by the Optional Protocol, the Sexual Offences Act (2003) in England and Wales and the Sexual Offences (Northern Ireland) Order (2008) have not been revised to provide full and equal protection to all children under 18 years of age.

83. The Committee recommends that the State party fully implement the recommendations contained in its concluding observations on the initial report of the State party, on the Optional Protocol on the sale of children, child prostitution and child pornography (CRC/C/OPSC/GBR/CO/1), in particular that the State party:






(a) Ensure that all children up to 18 years of age are protected from all types of offence covered by the Optional Protocol and that domestic legislation throughout the State party, including in its devolved administrations, enables it to establish and exercise extraterritorial jurisdiction, without the dual criminality criterion, over all the offences covered by the Optional Protocol;








(b) Strengthen the National Referral Mechanism for identifying trafficked and exploited children, which is embedded in existing child protection procedures;

(c) Establish mechanisms and procedures to protect the rights of child victims of offences covered by the Optional Protocol, including by establishing a clear obligation of non-prosecution, and ensure that they are treated as victims rather than criminals by the law enforcement and judicial authorities;

(d) Operationalize the provision of a competent and statutory guardian during the criminal justice process;

(e) Revise its legislation to ensure that all

		352	children up to 18 years of age are protected from all types of offence covered by the Optional Protocol.
		353	Follow-up to the Committee's previous concluding observations and recommendations on the Optional Protocol on children in armed conflict
		354	84. The Committee remains concerned that:
UK, N, GB, SP		354	(a) The State party maintains the wide scope of its interpretative declaration on article 1 of the Optional Protocol, which may permit the deployment of children to areas of hostilities and their involvement in hostilities under certain circumstances;
		355	(b) The minimum age for voluntary recruitment as 16 years has not been changed and child recruits makes up 20 per cent of the recent annual intake of United Kingdom Regular Armed Forces;
UK, N, GB, SP		356	(c) The Army Board endorsed increasing the recruitment of personnel under 18 years old to avoid undermanning, and children who come from vulnerable groups are disproportionately represented among recruits;
		357	(d) Safeguards for voluntary recruitment are insufficient, particularly in the light of the very low literacy level of the majority of under-18 recruits and the fact that briefing materials provided to child applicants and their parents or guardians do not clearly inform them of the risks and obligations that follow their enlistment;
		358	(e) In the army, child recruits can be required to serve a minimum period of service up to two years longer than the minimum period for adult recruits.
UK, N, GB, SP		359	85. The Committee recommends that the State party:
		360	(a) Consider reviewing its position and raise the minimum age for recruitment into the armed forces to 18 years in order to promote the protection of children through an overall higher legal standard;
	 ..Law	361	(b) Reconsider its active policy of recruitment of children into the armed forces and ensure that recruitment practices do not actively target persons under the age of 18 and ensure that military recruiters' access to school be strictly limited;
		362	(c) In recruiting persons under the age of 18,

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strengthen its safeguards required by article 3 of the Optional Protocol, in order to ensure that the recruitment is genuinely voluntary and based on fully informed consent of the recruit and their parents and legal guardians, and ensure that recruitment does not have a discriminatory impact on children of ethnic minorities and low-income families;

(d) Ensure that the minimum period of service applied to children who enlist into the army is no longer than that applied to adult recruits.

86. The Committee notes with concern that, according to the Joint Doctrine Publication 1-10 for Captured Persons (second edition, October 2011), only children under the age of 15 years benefit from special protection.

87. The Committee recommends that the State party implement its previous recommendation on the Optional Protocol, on captured child soldiers (CRC/C/OPAC/GBR/CO/1, para. 29), for all children under 18 years old.

J. Ratification of the Optional Protocol on a communications procedure

88. The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

K. Ratification of international human rights instruments

89. The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the core human rights instruments to which it is not yet a party, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and the Optional Protocol to the International Covenant on Civil and Political Rights.

	370	L. Cooperation with regional bodies
UK, N, GB, SP	371	90. The Committee recommends that the State party cooperate with the Council of Europe on the implementation of the Convention and other human rights instruments, both in the State party and in other Council of Europe member States.
UK, N, GB, SP	372	V. Implementation and reporting
	373	A. Follow-up and dissemination
UK, N, GB, SP	374	91. The Committee recommends that the State party take all appropriate measures to ensure that the recommendations contained in the present concluding observations are fully implemented. The Committee also recommends that the fifth periodic report, the written replies to the list of issues of the State party and the present concluding observations be made widely available in the languages of the country.
UK, N, GB, SP	375	B. Next report
UK, N, GB, SP	376	92. The Committee invites the State party to submit its combined sixth and seventh periodic reports by 14 January 2022 and to include therein information on the follow-up to the present concluding observations. The report should be in compliance with the Committee's harmonized treaty-specific reporting guidelines adopted on 31 January 2014 (CRC/C/58/Rev.3) and should not exceed 21,200 words (see General Assembly resolution 68/268, para. 16). In the event that a report exceeding the established word limit is submitted, the State party will be asked to shorten the report in accordance with the above-mentioned resolution. If the State party is not in a position to review and resubmit the report, translation thereof for the purposes of consideration by the treaty body cannot be guaranteed.
UK, N, GB, SP		
UK, N, GB, SP		
UK, N, GB, SP	377	93. The Committee also invites the State party to submit an updated core document, not exceeding 42,400 words, in accordance with the requirements for the common core document in the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and

treaty-specific documents (HRI/GEN/2/Rev.6, chap. I) and paragraph 16 of General Assembly resolution 68/268.

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* Adopted by the Committee at its seventy-second session (17 May-3 June 2016).

Predictive Clusters

Average for 3 clusters v 10

State	All 10 clusters	3 Clusters	= Same	10 = '1 less'	10 = '1 higher'	10 = 2 less	10 = 2 higher
Albania	G	F		1			
Algeria	G	F		1			
Australia	E	D		1			
Azerbaijan	F	E		1			
Bhutan	F	E		1			
Brazil	F	E		1			
Cameroon	G	E				1	
Canada	E	E	1				
Chile	E	D		1			
China	F	E		1			
Columbia	F	E		1			
Croatia	D	D	1				
Dominican Rep.	F	D				1	
Estonia	D	D	1				
Ethiopia	F	E		1			
Fiji	E	C				1	
France	E	D		1			
Gambia (The)	F	F	1				
Germany	D	C		1			
Ghana	F	E		1			
Iceland	C	C	1				
India	G	F		1			
Ireland	D	D	1				
Israel	H	G		1			
Jamaica	E	C				1	
Japan	E	F			1		
Kazakhstan	E	D		1			
Malta	D	E			1		
Mexico	F	E		1			
Mongolia	F	E		1			
Morocco	F	E		1			
Nepal	F	E		1			
New Zealand	E	E	1				
Norway	D	C		1			
Poland	D	C		1			
Portugal	C	C	1				
Romania	E	F			1		
Russian Fed.	F	E		1			
Saudi Arabia	H	H	1				
Senegal	G	F		1			
Serbia	F	F	1				
Seychelles	E	E	1				
South Africa	F	F	1				
Suriname	F	E		1			
Sweden	D	D	1				
Switzerland	D	D	1				
Timor-Leste	F	F	1				
Turkey	F	F	1				
UK	E	D		1			
Uruguay	E	D		1			
Viet Nam	F	F	1				
Zambia	F	F	1				
Total			18	27	3	4	0
% of 52	52	%	35%	52%	6%	8%	0%
Same or one different			48				
% of 52			92%				

GP cluster v 10

State	All 10 clusters	GP	= Same	10 = '1 less'	10 = '1 higher'	10 = 2 less	10 = 2 higher
Albania	G	F		1			
Algeria	G	G	1				
Australia	E	E	1				
Azerbaijan	F	F	1				
Bhutan	F	E		1			
Brazil	F	G			1		
Cameroon	G	E				1	
Canada	E	E	1				
Chile	E	D		1			
China	F	G			1		
Columbia	F	H				1	
Croatia	D	C		1			
Dominican Rep.	F	F	1				
Estonia	D	B				1	
Ethiopia	F	G			1		
Fiji	E	C				1	
France	E	E	1				
Gambia (The)	F	F	1				
Germany	D	C		1			
Ghana	F	G			1		
Iceland	C	C	1				
India	G	G	1				
Ireland	D	D	1				
Israel	H	H	1				
Jamaica	E	D		1			
Japan	E	F			1		
Kazakhstan	E	D		1			
Malta	D	D	1				
Mexico	F	H				1	
Mongolia	F	G			1		
Morocco	F	F	1				
Nepal	F	E		1			
New Zealand	E	E	1				
Norway	D	C		1			
Poland	D	C		1			
Portugal	C	C	1				
Romania	E	G				1	
Russian Fed.	F	G			1		
Saudi Arabia	H	H	1				
Senegal	G	G	1				
Serbia	F	F	1				
Seychelles	E	E	1				
South Africa	F	F	1				
Suriname	F	D				1	
Sweden	D	E			1		
Switzerland	D	D	1				
Timor-Leste	F	E		1			
Turkey	F	F	1				
UK	E	E	1				
Uruguay	E	E	1				
Viet Nam	F	G			1		
Zambia	F	F	1				
Total			25	11	9	4	3
% of 52	52	%	48%	21%	17%	8%	6%
Same or one different			45				
% of 52			87%				

Key	
P = Prediction	
A = Actual average Grade	
A = P	
A = 1 grade lower than P	
A = 1 grade higher than P	
A = 2 grades lower than P	
A = 2 grades higher than P	