



## Submission to United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association

July 2021

We welcome the opportunity to respond to the Special Rapporteur's call for inputs on the promotion and protection of human rights in the context of peaceful protests during crisis situations. This submission focuses on the challenges faced by children and young people to enjoy these rights in Scotland and draws on our publication on children human rights defenders (CHRDs).<sup>1</sup> It sets out the special protections afforded to children's human rights defenders in the context of peaceful protests and makes necessary recommendations on how to protect and promote their human rights in this context. It further highlights how CHRDs' right to peaceful protests have been challenged in the environmental and public health emergency contexts in Scotland. It provides guidance to States, businesses, international organisations, and law enforcement on how to better engage with CHRDs in these contexts to ensure that their rights are respected, protected, and fulfilled and they can defend human rights without infringement of their own human rights.

### Children and young people as human rights defenders and legal protections

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

Children and young people have led causes to protect and promote human rights throughout history, including through climate, anti-racism, immigration, and gun reform movements all over the world. In Scotland, thousands of children and young people campaign nationwide for different causes on a daily basis. They have been particularly active in the context of the climate crisis, in response to the Scottish Qualification Authority's awarding of academic results due to the Covid-19 pandemic,<sup>3</sup> and against music tuition fees in schools in 2019. Most notably, children and young people have been at the centre of the years-long campaign for the incorporation of the UN Convention on the Rights of the Child (UNCRC) into domestic Scots law.

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<sup>1</sup> Children and Young People's Commissioner Scotland (CYPCS), 2019, *Promote, Protect, Defend: A report on children and young people as human rights defenders in Scotland* [viewed 12.07.21]. Available from: <https://cypcs.org.uk/wpcypcs/wp-content/uploads/2020/02/promote-protect-defend-child-human-rights-defenders.pdf>

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

<sup>3</sup> See more below under Health emergencies.

A human rights defender (HRD) is anyone who acts to protect or promote their human rights or the rights of others.<sup>4</sup> HRDs are protected under international law, and States – including the United Kingdom (UK) – that have signed the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms<sup>5</sup> must protect HRDs. Children are human rights defenders and entitled to the same protections as adults. When exercising their right to protest, CHRDs are exercising their rights to peaceful assembly and association, freedom of expression, information, thought, conscience and religion, and participation, among others.

### *Children and young people as CHRDs*

The UN Committee on the Rights of the Child has recognised children as ‘promoters and defenders of children’s rights,’<sup>6</sup> it requires States to ensure that adequate laws and other safeguards exist to protect and promote the work of human rights defenders<sup>7</sup> and highlights the need to guarantee CHRDs rights to peaceful assembly and association ‘protect adolescent rights defenders, particularly girls, who often face gender-specific threats and violence’.<sup>8</sup> The role of CHRDs has been more broadly recognised on a global level by human rights bodies and experts, including by the UN Special Rapporteur on the situation of human rights defenders, the UN Special Rapporteur on Human Rights and the Environment,<sup>9</sup> the UN Committee on Economic, Social and Cultural Rights,<sup>10</sup> the UN Human Rights Council,<sup>11</sup> and the Office of the UN High Commissioner for Human Rights,<sup>12</sup> the Council of Europe Commissioner for Human Rights,<sup>13</sup> among others. Further information on CHRDs can be found in the Child Rights Connect Implementation Guide.<sup>14</sup>

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<sup>4</sup> UN General Assembly, 1999, *UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* [viewed 28.0721]. Available from: <https://undocs.org/A/RES/53/144>

<sup>5</sup> Ibid.

<sup>6</sup> UN Committee on the Rights of the Child, 2001, *General Comment No. 1 (2001), Article 29 (1): The Aims of Education* [viewed 28.0721]. Available from: <https://undocs.org/CRC/GC/2001/1>, para. 20.

<sup>7</sup> UN Committee on the Rights of the Child, 2013, *General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)* [viewed 28.0721]. Available from: <https://undocs.org/CRC/C/GC/15>, para. 95.

<sup>8</sup> UN Committee on the Rights of the Child, 2016, *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence* [viewed 28.0721]. Available from: <https://undocs.org/en/CRC/C/GC/20>, para. 45.

<sup>9</sup> UN Office of the High Commissioner for Human Rights, March 2019, *UN human rights experts applaud children fighting climate change*. Available from: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24393&LangID=E>; January 2018, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*. Available from: <https://undocs.org/A/HRC/37/58> [both viewed 28.07.2021].

<sup>10</sup> UN Committee on Economic, Social and Cultural Rights, 2016, *Statement on human rights defenders* [viewed 28.07.21]. Available from: <https://www.undocs.org/E/C.12/2016/2>.

<sup>11</sup> UN Human Rights Council resolutions [40/11](#), [45/30](#) and [46/7](#)..

<sup>12</sup> UN Office of the High Commissioner for Human Rights, January 2020, *Report of the United Nations High Commissioner for Human Rights, Realising the rights of the child through a healthy environment* [viewed 28.07.21]. Available from: <https://undocs.org/A/HRC/43/30>

<sup>13</sup> Council of Europe, Commissioner for Human Rights, 2018, *20 years on from the adoption of the UN Declaration on Defenders: The protection of human rights defenders is non-negotiable* [viewed 28.07.21]. Available from: <https://www.coe.int/en/web/commissioner/-/20-years-on-from-the-adoption-of-the-un-declaration-on-defenders-the-protection-of-human-rights-defenders-is-non-negotiable>

<sup>14</sup> Child Rights Connect, 2020, *The Rights of Child Human Rights Defenders: Implementation Guide* [viewed 28.07.21]. Available from: <https://www.childrightsconnect.org/wp->

Despite strong legal and policy protections, CHRDs continue to face barriers to the full realisation of their rights on an equal basis. They should not face discriminatory attacks, reprisals for peaceful protest, nor be silenced, discouraged, or punished, including in crises. CHRDs are rights-holders, partners, and key activists, and should have the same recognition afforded to adults. They should be engaged meaningfully in decisions and processes affecting them, which in turn provides crucial support to their human rights advocacy.

The international legal framework provides strong protections for CHRDs when exercising their right to protest. The United Nations Convention on the Rights of the Child (UNCRC)<sup>15</sup> - the most widely-ratified international human rights treaty – enshrines the freedoms of peaceful assembly and association,<sup>16</sup> freedom of expression,<sup>17</sup> information,<sup>18</sup> of thought, conscience and religion,<sup>19</sup> and participation,<sup>20</sup> among others, as do other core international human rights treaties.<sup>21</sup> States can only restrict these rights when it is necessary in a democratic society, in pursuance of a legitimate aim, and in accordance with the law. Crucially, any restrictions must be lawful, necessary, proportionate, and time-limited. Furthermore, such restrictions must be actively reviewed on an ongoing basis. States can restrict these rights on the grounds of national security or public safety, public order, the protection of health, of morals, or of the human rights and freedoms of others. The argument of restriction of these rights on the grounds of “morals” in the case of children and peaceful protests has been rejected as incompatible with the right to freedom of association and because it was operating from an assumption of children acting against their own interests.<sup>22</sup>

The right to protest is particularly important for children and young people as their ability to express their views and influence legal and policy decision-makers is often restricted. Children and young people are often not consulted in a meaningful way about legal and policy decisions concerning them and children under the age of 16 in Scotland cannot vote.<sup>23</sup> Furthermore, the UN Committee on the Rights of the Child has emphasised the importance of participating in community life in terms of development as full members of society.<sup>24</sup>

Overall, States have a positive obligation to protect and enable peaceful protests. This means that in enforcing the law in the context of protests, police officers and other State

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<sup>15</sup> <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>16</sup> UNCRC, art.15.

<sup>17</sup> UNCRC, art. 13.

<sup>18</sup> UNCRC, art. 13.

<sup>19</sup> UNCRC, art. 14.

<sup>20</sup> UNCRC, art.12.

<sup>21</sup> Including, *inter alia*, International Covenant on Civil and Political Rights; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Convention on the Rights of Persons with Disabilities; and European Convention on Human Rights.

<sup>22</sup> Daly, Aoife, 2013, *Demonstrating positive obligations: children's rights and peaceful protest in international law*, George Washington International Law Review, 45, p. 811.

<sup>23</sup> In Scotland, children and young people aged 16 and over can vote in national and local elections in Scotland. The voting age for UK elections is 18.

<sup>24</sup> UN Committee on the Rights of the Child, 1996, *Summary Record of the 277th Meeting: Republic of Korea* [viewed 28.07.21]. Available from: <https://www.undocs.org/CRC/C/SR.277%20>, para. 50.

representatives must both ensure and enable the rights to freedom of peaceful assembly, association, participation, and freedom of expression. State authorities have a duty to ensure that peaceful protests can be held with disruption, including redirecting traffic and blocking off streets to allow protests to take place.<sup>25</sup> The police play an essential role in ensuring that protestors as well as the general public remain safe during peaceful protests.

Law enforcement agencies should also communicate with organisers in order to facilitate protests and should not intimidate or hinder those wishing to undertake peaceful protests. Information, guidance, regulations, and law concerning the protests must be easily available and accessible for all members of the public. For children and young people, this means it must be age-appropriate, in accessible language, and easy to access.

Concerning children and young people in particular, States must take all necessary measures to ensure the rights, protection, and safety of all CHRDs when they exercise their rights to peaceful protest – both online and offline – and to create an enabling environment. The UN Committee on the Rights of the Child has found that there are obligations on States to facilitate CHRDs’ right to protest, protect the safety of children in this context, educate officials on children’s protest rights, and to encourage children to form associations and refrain from requiring children to seek parental consent to join associations.<sup>26</sup> Limits on the exercise of children’s right to protest may exist for their protection in certain circumstances due to their being vulnerable in certain situations, including protests. The best interests of the child must always be a guiding principle in any action taken by the State or a State official, such as a police officer, during a protest. This means they must ensure that children and young people get the necessary protection and care. Special considerations of age and evolving capacities, and risks of harm or conflict when assessing children’s right to exercise these rights. CHRDs should not be subject to surveillance, intimidation, restriction of their activities or discrimination, including on the basis of age.

States must also ensure that CHRDs are protected from reprisals and violence. The UN Committee on Economic, Social and Cultural Rights has highlighted the importance of accountability and the need to ensure that HRDs are effectively protected against any and all forms of abuse, violence and reprisal that they might experience while carrying out their work to promote the realisation of human rights.<sup>27</sup> Where such acts occur, prompt investigation and accountability measures, where applicable, must be undertaken.

Arrest or detention of a CHRD should only happen as a matter of last resort. CHRDs should be released and taken home to their parents/carers as soon as possible. As with adults, they should never be subject to ill-treatment. They should be treated in accordance with their age, with dignity, and in a rights-respecting manner. If detained, children should always be

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<sup>25</sup> Furthermore, the European Court of Human Rights has found that obstructing traffic arteries and occupation of public buildings constitutes peaceful protest. European Court of Human Rights, April 2021, *Guide on Article 11 of the European Convention on Human Rights: Freedom of assembly and association* [viewed 28.07.21]. Available from: [https://www.echr.coe.int/Documents/Guide\\_Art\\_11\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_11_ENG.pdf), 10.

<sup>26</sup> For example, UN Committee on the Rights of the Child, March 2012, *Concluding Observations: Myanmar* [viewed 28.07.21]. Available from: <https://www.undocs.org/CRC/C/MMR/CO/3-4>, 216

<sup>27</sup> UN Committee on Economic, Social and Cultural Rights, 2016, *Statement on human rights defenders*.

separated from adults, unless in the best interests of the child. They are entitled to the right to family contact and prompt access to legal or other assistance, and to challenge their detention in court before a judge and to receive a speedy decision. CHRDs also have the right to effective remedy in case of violation of their human rights.

At domestic level, Aoife Daly argues that international human rights law should be used to “achieve greater facilitation of children in effectively enjoying their right to protest.”<sup>28</sup>

In March 2021, the Scottish Parliament voted unanimously to directly incorporate the UNCRC into Scots law through the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill.<sup>29</sup> While the Bill does not include matters reserved to the United Kingdom’s (UK) Parliament, it takes a maximalist approach and requires Child Rights Impact Assessments (CRIAs) to be conducted on strategic decisions. The Commissioner will be able to take more direct action when children’s rights are not realised, including in the context of protests, with new powers to take proceedings if a public authority is acting incompatibly with the UNCRC. The Scottish Government has also committed to incorporate four other human rights treaties into domestic law – the UN International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the UN Convention on the Rights of Persons with Disabilities (CRPD) along with the right to a healthy environment and rights for older people.<sup>30</sup> This significantly strengthens the ability for all stakeholders – including children and young people – to hold the Government accountable when their rights are not realised.

There is an inconsistent approach to the definition of a ‘child’ in Scots law. In some settings, a ‘child’ is defined as someone under 16, meaning 16- and 17-year-olds are considered as adults and are denied some of the human rights and child protection safeguards to which they are entitled.

### **Challenges for CHRDs in Scotland in exercising their right to protest**

Children and young people have the same right to peacefully protest as adults, yet they face particular barriers and challenges. These barriers and challenges are exacerbated in times of crisis. Practical changes, such as meaningful engagement and accessible communication are required as well as significant attitudinal change from adults, including law-makers, policy-makers, judges, law enforcement officials, teachers, and families.

A group of young people advising the Commissioner on CHRDs in 2019 made a series of recommendations on how to engage with CHRDs and what supports they need to defend their human rights. They described adults’ attitudes and discourse around CHRDs’ efforts to defend

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<sup>28</sup> Daly, Aoife, 2013, *Demonstrating positive obligations: children's rights and peaceful protest in international law*, p. 811.

<sup>29</sup> *United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill* [viewed 04.12.20]. Available from: <https://beta.parliament.scot/bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill>. The Bill should enter into effect within six months.

<sup>30</sup> Scottish Government, 2021, *New Human Rights Bill* [viewed 24.06.21]. Available from: <https://www.gov.scot/news/new-human-rights-bill/>

the climate as “scare-mongering” and noted that the attitudes of many teachers and adults need to change for them to be empowered.<sup>31</sup>

The power imbalance between adults as duty-bearers and children as rights-holders can significantly affect CHRDs’ ability to mobilise and defend rights. CHRDs are dependent on duty-bearers in many settings – at home, school, wider community, and on the international stage – and can have limited power to challenge them. The climate strikes, which have seen adults join child-led protests and recognise CHRDs’ advocacy, have shown how this could change. Governments and international agencies now need to effect systemic change to ensure this can be achieved.<sup>32</sup> Awareness of unequal power structures – including those that perpetuate discrimination against the most marginalised groups – can prevent the reinforcement of such imbalances and help power-holders understand how to best protect and support CHRDs.

CHRDs can use the media to demand and achieve change. However, such public exposure can include risks. The media must protect CHRDs from reprisals. Traditional print and broadcast media must follow clear industry standards applicable in their domestic jurisdiction. In the UK, this includes the OFCOM Code<sup>33</sup> and the IPSO Editors’ Code of Practice.<sup>34</sup>

Social media is central to CHRDs’ advocacy and provides an important platform for CHRDs to organise and take action. However, it is also a space where significant reprisals can take place and they often face online abuse and attack. Governments must ensure that social media companies are properly regulated to keep children safe online, including through legislation that gives companies providing online services a legal responsibility to keep users safe, forcing companies to remove harmful material quickly, and imposing sanctions for non-compliance. In the UK, proposed Online Safety legislation must meet these standards.<sup>35</sup>

Challenges of the shift to digital activism, which has increased in the context of the Covid-19 pandemic, also include age-restricted or age-based membership of different social media platforms, concerns around protection of the right to privacy in the online context, access to appropriate information, and bullying and reprisals online. Children, particularly those affected by poverty or in rural areas, may not have access to digital devices or an internet connection to be able to exercise their peaceful assembly and association rights online. Technology has also benefited children and young people and allowed them to engage in protests in more widespread and effective ways.

The UN Committee on the Rights of the Child’s General Comment no. 25 on children’s rights in relation to the digital environment provides guidance for protecting and promoting children’s

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<sup>31</sup> CYPSCS, 2019, *Promote, Protect, Defend*.

<sup>32</sup> See more below.

<sup>33</sup> Ofcom, December 2020, *The Ofcom Broadcasting Code (with the Cross-promotion Code and the On Demand Programme Service Rules)* [viewed 28.07.21]. Available from: <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>

<sup>34</sup> Independent Press Standards Organisation, 2021, *Editors’ Code of Practice* [viewed 28.07.21]. Available from: <https://www.ipso.co.uk/editors-code-of-practice/>

<sup>35</sup> UK Government, Department for Digital, Culture, Media & Sport, *Draft Online Safety Bill* [viewed 28.07.21]. Available from: <https://www.gov.uk/government/publications/draft-online-safety-bill>

rights online.<sup>36</sup> Governments should also implement recommendations from the European Network of Ombudspersons for Children’s statement on “Children’s Rights in the Digital Environment”<sup>37</sup> and the Council of Europe’s 2018 Guidelines to respect, protect and fulfil the rights of the child in the digital environment.<sup>38</sup>

CHRDs also lack safe spaces to mobilise and lead change, both online and offline. Safe spaces should be a standard part of decision-making, which will also help bridge the gap between children and decision-makers. Scotland’s Everyday Heroes Participation Project<sup>39</sup> could be used a model for the creation of safe spaces for CHRDs.

In terms of reporting crimes, the complaints forms and reporting procedures for children and should be updated to ensure they are accessible and age-appropriate.<sup>40</sup>

## Environmental crises

One context in which children and young people have protested – both online and offline – in Scotland and the UK has been in recognition of and response to the climate emergency. These protests have been collective and individual and involved various initiatives, groups, and movements.<sup>41</sup> Starting in 2018 and prior to the pandemic, children nationwide staged in-person “school strikes,” walking out of primary and secondary schools to call for climate action.<sup>42</sup> In doing so, they exercised their peaceful assembly and association rights, protesting in the streets and in front of Parliament and other public buildings. They have used social media for mobilisation, promoting their protests and calls, and awareness-raising of the climate crisis. Peaceful protests have been central to the success of their advocacy and to their transformation of the climate change dialogue.

Examples of children’s initiatives to advance climate justice in Scotland include [Children’s Parliament](#) work,<sup>43</sup> Young Friends of the Earth Scotland’s Just and Green Recovery

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<sup>36</sup> UN Committee on the Rights of the Child, 2021, *General Comment no. 25 on children’s rights in relation to the digital environment* [viewed 28.07.21]. Available from: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f25&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f25&Lang=en)

<sup>37</sup> ENOC, 2019, *Position Statement on “Children’s Rights in the Digital Environment* [viewed 06.12.20]. Available from: <http://enoc.eu/wp-content/uploads/2019/10/ENOC-2019-Statement-on-Childrens-Rights-in-the-Digital-Environment.pdf>.

<sup>38</sup> Council of Europe, 2018, *Guidelines to Respect, Protect and Fulfil the Rights of the Child in the Digital Environment*, Recommendation CM/Rec(2018)7 of the Committee of Ministers [viewed 06.12.20]. Available from: <https://edoc.coe.int/en/children-and-the-internet/7921-guidelines-to-respect-protect-and-fulfil-the-rights-of-the-child-in-the-digital-environment-recommendation-cmrec20187-of-the-committee-of-ministers.html>.

<sup>39</sup> Children worked with people in power to influence Scotland’s Equally Safe Delivery plan (2017-2021). [viewed 28.07.21]. Available from: <https://everydayheroes.sps.ed.ac.uk/>

<sup>40</sup> CYPSCS, 2019, *Promote, Protect, Defend*. p. 36

<sup>41</sup> These include, *inter alia*, the Scottish Youth Climate Strikes, [Fridays for Future Scotland](#), the [Scottish Youth Parliament](#), the [Scottish Children’s Parliament](#), the [UK Student Climate Network](#), the [UK Youth Climate Coalition](#), and the [Choked-Up Campaign](#).

<sup>42</sup> Fridays For Future Scotland [viewed 28.07.21]. Available from: <https://climatestrike.scot/>

<sup>43</sup> Children’s Parliament, *Climate Change* [both viewed 28.07.21]. Available from: <https://www.childrensparliament.org.uk/our-work/past-work/climate-change/>; <https://www.childrensparliament.org.uk/climate-change-for-the-climate-assembly/>.

Campaign,<sup>44</sup> Scottish Youth Parliament's work,<sup>45</sup> the 2050 Climate Group<sup>46</sup> and YouthLink Scotland activity.<sup>47</sup>

At the time of the 2019 school strikes, the Commissioner received reports about school pupils being threatened with detention or other punishments for going on climate strike.<sup>48</sup> Then-UK Prime Minister Theresa May also criticised young people for causing disruption, stating they needed to be in school to become the future professionals who can help solve climate change.<sup>49</sup>

The Children and Young People's Commissioner Scotland wrote to Directors of Education of every local authority in Scotland urging them to support children taking part in the global action against climate change on Friday 20th September. He highlighted that, under Article 29 of the UNCRC, children have the right to human rights education and environmental education. He called on education directors to support children exercising their rights to freedom of peaceful assembly and association, freedom of expression, information, and participation in the context of the school strikes for the climate and stated they should not be punished for doing so.<sup>50</sup> The office also issued supportive public messaging. The Commissioner and some of our young advisers, supported the climate strikes and joined the demonstration.

Human rights defenders should not face reprisals for peaceful protest – no matter their age. Detention after school, deducting rewards or grades, and suggesting that engaging in peaceful protest will negatively affect a child's future, amount to punishment. Language used to shame, pressure or influence children is relative. A school pupil can view having a reward or grade revoked or facing detention as very distressing. All restrictions, including those enacted on emergency grounds such as related to the Covid-19 pandemic, must be proportionate.

## Health emergencies

The Covid-19 pandemic has posed new challenges to CHRDs in the exercising of their peaceful protest rights. As governments enacted emergency measures to protect public

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<sup>44</sup> This highlights young people's voices through an 80+ group coalition, including through workshops and blogging [viewed 22.06.21]. Available from: <https://foe.scot/just-and-green-recovery-scotland/>

<sup>45</sup> Including the *Pack it up, Pack it in* campaign focused on reducing pollution levels which contribute to climate change through reducing single-use packaging and waste, and improving recycling in Scotland. [viewed 22.06.21]. Available from: <https://syp.org.uk/campaign/pack-it-up-pack-it-in/>

<sup>46</sup> A youth-run and volunteer-led organisation to empower young people to take climate action towards a just and sustainable society through projects such as a Leaders Network, a young Leader Development Programme, and policy engagement [viewed 22.06.21]. Available from: <https://www.2050.scot/>

<sup>47</sup> Including work to support Scotland's youth to engage with the upcoming COP-26 negotiations [viewed 22.06.21]. Available from: <https://www.youthlinkscotland.org/programmes/learning-for-sustainability/cop26/>

<sup>48</sup> CYPSCS, September 2019, *Climate change is a human rights issue: Commissioner supports children on #ClimateStrike* [viewed 22.06.21]. Available from: <https://cypcs.org.uk/news-and-stories/climate-change-is-a-human-rights-issue-commissioner-supports-children-on-climatestrike/>

<sup>49</sup> The Independent, February 2019, *Theresa May criticises schoolchildren protesting against looming climate disaster for wasting lesson time* [viewed 22.06.21]. Available from: <https://www.independent.co.uk/news/uk/politics/theresa-may-climate-change-school-pupils-protest-lesson-time-teachers-a8781046.html>

<sup>50</sup> CYPSCS, September 2019, *Children's Commissioner urges education leaders to support children taking part in climate strikes* [viewed 22.06.21]. Available from: <https://cypcs.org.uk/news-and-stories/childrens-commissioner-urges-education-leaders-to-support-children-taking-part-in-climate-strikes/>

health, including lockdowns, physical distancing requirements, bans on non-essential movement and travel, and suspension of meetings and events, children faced some of the greatest restrictions on peaceful assembly and association ever. Throughout the pandemic, children and young people have consistently demonstrated their commitment to obey the rules in order to protect public health.

In March 2020, the UK implemented an emergency response to contain Covid-19, including the UK-wide Coronavirus Act.<sup>51</sup> The governments implemented lockdown measures, allowing no movement outside the home except in limited circumstances. While these exceptions relaxed somewhat, the lockdown continued for several months. The UK and devolved governments imposed shorter, differentiated restrictions from September 2020 to control the virus. Scotland re-entered lockdown on January 5, 2021, and remained in lockdown until April 26, 2021. Since then, the government has applied a “levels-based” system across the country, applying measures based on the severity of the situation by region.<sup>52</sup>

The response to the pandemic has required the urgent introduction of emergency legislation at United Kingdom and Scottish government level including: the Coronavirus Act 2020,<sup>53</sup> the Coronavirus (Scotland) Act 2020,<sup>54</sup> the Coronavirus (Scotland) (No 2) Act 2020,<sup>55</sup> and Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020.<sup>56</sup> The UK and Scottish Governments should ensure that the introduction of emergency legislation is lawful, necessary, proportionate and time-limited, and actively review it on an ongoing basis. These laws must be repealed or replaced as soon as they are no longer necessary.

In Scotland, protests were never directly banned under legislation. However, at varied stages throughout the pandemic, the Scottish Government has restricted the number of people who can gather in both indoor and outdoor settings. For example, during the lockdown starting January 5, 2021, only two people from a maximum of two households could meet outdoors for sport or recreation until March 12, 2021.

In Scotland, CHRDs largely shifted their protests online. The shift to online protests has led CHRDs to exercise their rights to peaceful assembly and association in a different setting, which poses different challenges. Digital activism has included protesting by sharing photos of themselves holding placards on social media, participation in online webinars and events, and increased digital dissemination of messages and campaigns. It has ensured that child-led protests have continued, including in times of crisis. However, digital activism involves additional risks, as detailed above.

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<sup>51</sup> *Coronavirus Act 2020* [viewed 09.12.20]. Available from: <https://www.legislation.gov.uk/ukpga/2020/7/enacted>

<sup>52</sup> Scottish Government, 2021, *Coronavirus (COVID-19) protection levels: what you can do* [viewed 22.06.21]. Available from: <https://www.gov.scot/publications/coronavirus-covid-19-protection-levels/>.

<sup>53</sup> *Coronavirus Act 2020* [viewed 09.12.20]. Available from: <https://www.legislation.gov.uk/ukpga/2020/7/enacted>

<sup>54</sup> *Coronavirus (Scotland) Act 2020* [viewed 22.06.21]. Available from: <https://www.legislation.gov.uk/asp/2020/7/contents>

<sup>55</sup> *Coronavirus (Scotland) (No 2) Act 2020* [viewed 22.06.21]. Available from: <https://www.legislation.gov.uk/asp/2020/10/contents/enacted>

<sup>56</sup> *Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020* [viewed 22.06.21]. Available from: <https://www.legislation.gov.uk/ssi/2020/344/contents>

When Covid-19 case numbers were lower and regulations eased, children protested individually or in small groups respecting distancing requirements. CHRDs conducted protests for the climate emergency, against educational measures, and in support of the Black Lives Matters Movement.

In August 2020, children and young people exercised their right to protest in response to the manner in which academic results were handled by the Scottish Qualifications Authority. Secondary school examinations were cancelled in the 2019/2020 year and students were awarded grades based on teacher estimates, which were then moderated by computer-generated algorithms. After widespread protests by children and young people, results were changed to teachers' estimated grades. Students also experienced challenges with no direct access to appeals processes where they disagreed with the estimated grade.

Prior to and throughout the protests, Police Scotland, the national police force of Scotland, engaged with children and young people and respected their right to protest. The policing approach has been founded on the principle of policing by consent. This means that police engaged with protests in a positive and constructive manner and their powers were to be used as a last resort where people were "defying very clear and sensible advice, which is designed to protect them from no harm." Police have used a four-pronged approach:

- Engage: establish whether the individual is aware of the government request; establish individual circumstances and how quickly someone can comply
- Explain: public health risks
- Encourage: voluntary compliance
- Enforce: in the case of non-compliance and only as a last resort.<sup>57</sup>

In practice, this has meant that police have allowed protests to proceed and have met with protestors in advance of the event. During the protest, the police have issued reminders to protestors to wear masks and to physically distance, but broadly they have not actively enforced government guidance and there have been low levels of arrests. In contrast to policing of protests in other parts of the UK, this has meant that protests have continued in a peaceful manner and individuals, including children and young people, have largely been able to exercise their right to protest peacefully, and in the case of the exam results situation, achieve change.

However, this non-enforcement approach raises some human rights issues, including the risk of exposure to public health risks and/or violence as well as lack of application of child protection safeguards. For example, children and young people have been present at some of the controversial gatherings throughout the pandemic, including football celebrations and Black Lives Matters and immigration protests, where violence has occurred and distancing and mask-wearing measures not observed. Whilst some of these children may have been exposed to violence, and even abuse during these events, we have been unable to establish a link between the events and any child protection or 'wellbeing' concerns being reported by Police Scotland.

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<sup>57</sup> Police Scotland, *FAQs - Police Powers* [viewed 28.07.21]. Available from: <https://www.scotland.police.uk/about-us/covid-19-police-scotland-response/faqs-police-powers/>

One of the concerns affecting the right of people, including children human rights defenders, to gather peacefully to protest, includes a lack of clarity around the laws, regulations and guidance related to the Covid-19 pandemic. Such laws, regulations, and guidance and the accompanying government messaging and communications have sometimes been broad and vague, meaning it is often unclear which actions were illegal, which were advised against, and which were explicitly allowed. There has also been a lack of timely and widespread dissemination of clear information concerning the new laws, regulations, and guidance, and corresponding police powers. In September 2020, we heard directly from young students left anxious and distressed by the confusion about restrictions and changing guidelines, targeted at them where many felt terrified to leave their student accommodation for fear of disciplinary action. In advance of the return to the new academic session this year, it is essential that Scottish Government and further/higher education institutions communicate directly, accurately and early with students with a definitive position on the law, and any revised guidance.

The shift to online learning and consequent negative impact on children and young people's education has also affected CHRDs' activism. Children and young people have told the Commissioner's office that, while they would like to engage in activism, they do not wish to miss any more school, having missed so much critical education time since March 2020.

Finally, under the UK-wide Coronavirus Act 2020,<sup>58</sup> 16- and 17-year-old Scottish children are at risk of being charged, arrested, detained and convicted of criminal offences and may be liable for up to one year's imprisonment. This is particularly problematic should there be arrests in the context of protests. The Scottish Government must amend all necessary legislation in Scots law to ensure that all under-18s are defined and recognised as children.

## Recommendations

*"What we need is for people to listen, support and empower us. Don't just put us on the kid's table and then ignore us. Give us a seat at the table where decisions are being made about our futures and our lives. And if bureaucratic structures mean that's not possible, then it's time for a new table. One where everyone has a voice, no matter their age."<sup>59</sup>*

The importance of children's and young people's views and their role as human rights defenders to the realisation of children's human rights but also to society cannot be underestimated. Peaceful protest is central to their human rights advocacy. As such, States should demonstrate a renewed commitment to upholding CHRDs' rights to freedom of peaceful assembly and association, participation, freedom of expression, freedom of thought, conscience and religion, and freedom of information in all settings, including times of crisis. Children should be afforded the same rights as adults to peaceful protest and activism, without fear of reprisal. Therefore, we recommend that States take the following steps:

- Amend all legislation to ensure that under-18s are recognised as children;
- Publicly recognise the role of children and young people as human rights defenders;

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<sup>58</sup> *Coronavirus Act 2020*.

<sup>59</sup> CYPSC, 2019, *Promote, Protect, Defend*, p. 8

- Encourage and support children and young people to mobilise and play a central role in defending human rights through creating an enabling environment;
- Ensure that the human rights of children are respected, protected, and fulfilled and any restrictions on peaceful protest rights are lawful, necessary, proportionate and time-limited. Actively review such restrictions on an ongoing basis. This includes consulting with civil society and other actors throughout the process.
- Ensure that all laws, regulations, and guidance created in time of public emergency are widely and clearly disseminated in a timely manner. This includes in age-appropriate and accessible language.
- Embed human rights and human rights defender education in the national curriculum at primary and secondary level;
- Protect CHRDs who engage in activism and peaceful protest - both online and offline. This includes protection from possible violence and reprisals;
- Create safe spaces online and offline for CHRDs to mobilise, share stories, and influence people in power;
- Take online and offline abuse of CHRDs very seriously and establish and promote child-friendly and accessible complaints mechanisms with and for all CHRDs;
- Sign and ratify the Third Optional Protocol to the UNCRC on a complaints procedure;
- Support and empower CHRDs, including through implementing meaningful, ongoing participation in decision-making processes concerning them. Further practical steps include choosing timings that suit children, being honest about what can be delivered, listening to CHRDs' calls, and remaining in touch and providing feedback;
- Ensure that professionals interacting with children and young people have specialised children's rights training to ensure that they engage in a rights-respecting manner;
- Ensure children have the necessary digital access to be able to exercise their rights to peaceful assembly and association.

The police should:

- Engage with children and young people in a constructive manner, including prior to and throughout protests to ensure that their human rights are respected, protected, and fulfilled.
- Ensure that all police officers have specialised children's rights training and understand the particular obligations accorded to them concerning CHRDs at protests.
- Where suspected violations of children's human rights have occurred in the context of protests, conduct an inquiry and, if found to be true, ensure that those responsible are held accountable. This includes establishing and promoting child-friendly and accessible complaints mechanisms with and for CHRDs.

Businesses should:

- Protect and promote children's human rights in the context of their operations, and ensure they do not violate their peaceful protest rights; and
- Engage meaningfully with children concerning the impact of their operations on children and young people's human rights.

International institutions should:

- Recognise the core role that individuals play as agents of change and partners in defending human rights, and ensure that peaceful protest rights are respected, protected, and fulfilled in all settings, including during crisis situations.
- Affected communities, including children, should be able to attend and participate in such institutions' meetings, processes, and programmes on an equal and safe basis without fear of reprisals.
- All multilateral human rights institutions should ensure meaningful engagement with and participation of CHRDs in international level decision-making processes concerning them. This includes the provision of safe spaces for children and ways to engage in an accessible, child-friendly manner, both online and offline.
- Public participation goes to the heart of the United Nations Framework Convention on Climate Change and children must be able to exercise their peaceful protest rights, including at COP-26 in Scotland this year.