

Children's Rights Impact Assessments in times of crisis: learning from COVID-19

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Abstract

Policy responses to COVID-19 have illuminated how children and young people's human rights were all too often side-lined by adult concerns. With mounting queries during the first 'lockdown' in Scotland (March 2020), the Children and Young People's Commissioner Scotland asked the Observatory of Children's Human Rights Scotland to undertake an independent Children's Rights Impact Assessment of COVID-19 emergency public health measures on children and young people in Scotland. The resulting analysis proved not only productive for immediate policy advocacy but had broader lessons about how States Parties can respect, protect and fulfil children and young people's human rights at times of crisis and disaster. This requires challenging adult approaches and orientations to policy, so all of children and young people's rights to provision, protection and participation are met, especially groups of children and young people who may be at particular risk of rights' violations. This editorial outlines the process and substantive learning from the independent CRIA, from a range of experts, including children and young people

Key words: children's rights; impact assessments; participation; children; pandemic; COVID-19

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Early on in the COVID-19 pandemic, the United Nations Committee on the Rights of the Child¹ warned of 'the grave physical, emotional and psychological effects of the COVID-19 pandemic on children', reinforcing States Parties' duties to uphold and protect children's human rights in such times of crisis. Almost two years on from the onset of the pandemic, we are continuing to see ongoing impacts on the lives, and rights, of children and young people² across the world. How States Parties responded in the initial 'crisis' of the pandemic have been subject to scrutiny by children's rights advocates³ and, importantly, children and young people themselves.⁴ Such scrutiny has lessons not only for COVID-19 as it continues to reverberate around the world but also more generally in terms of how to ensure children's human rights remain central in times of crisis and disaster.

This special journal issue draws together learning from undertaking an independent Children's Rights Impact Assessment (CRIA) in Scotland. This was done for the Children and Young People's Commissioner Scotland (henceforth, the Commissioner) on key policy measures in response to the pandemic, from the Westminster and Scottish Governments. It involved experts within and outwith academia on particular policy areas, the Observatory of Children's Human Rights Scotland, with children and young people contributing their own summary and recommendations. The resulting analysis was then used by the Commissioner to challenge and progress children's human rights in the crisis responses to COVID-19 in Scotland.

Here, we provide an introduction to the special journal issue. We start with key information about CRIAs and the independent CRIA undertaken. We include reflections from the Commissioner's Young Advisers,⁵ on COVID-19 and the policy responses to it, which were collected by the Commissioner's Office especially for this editorial. Throughout, we bring out particular contributions from the special journal issues' articles, to facilitate learning from the process and outcomes of the independent CRIA.

An introduction to CRIAs

I think it's [CRIAs] the only way you [can] guarantee that things are looked at through a lens that has young people at its heart. (Young Adviser, Commissioner's Office)

CRIAs are a General Measure of Implementation advocated for by the United Nations Committee on the Rights of the Child⁶ to ensure decisions that impact children and young people do not compromise their human rights and rather seek to promote their rights being realised. Authors in this special journal issue reference the European Network of Ombudspersons for Children's (ENOC) definition:

A Children's Rights Impact Assessment examines the potential impacts on children and young people of laws, policies, budget decisions, programmes and services as they are being developed and, if necessary, suggests ways to avoid or mitigate any negative impacts.⁷

Helpfully summarised by Payne,⁸ CRIAs are most often used *ex ante* (i.e. as a policy is developed, to assess potential human rights issues) while, after the policy is enacted and implemented, Children's Rights Impact Evaluations (CRIE) should be undertaken. While CRIAs look ahead to the potential, intended children's human rights impacts of a law, service or budget allocation, a CRIE looks at the actual outcome of such a measure after its implementation. CRIEs serve as a reminder that ongoing monitoring and evaluation is needed to ensure children's human rights are being upheld continuously and consistently. The independent CRIA had aspects of both: it was undertaken after measures had been implemented but still early in terms of having substantial evidence on their impacts.⁹

CRIAs, as with other forms of equalities and human rights impact assessment, seek to guide and support duty-bearers to meet their obligations to respect, fulfil and protect children's rights and actively involve children and young people in doing so. As McCall-Smith reflects in this special issue, the concept of rights impact assessments – whether specifically for children's rights or human rights more broadly - by States Parties is gathering international interest but their application and adoption remains inconsistent. ENOC identified a host of process issues, in its review and recommendations for embedding CRIAs.¹⁰ These range from ensuring clear leadership and accountability for CRIAs, to involving children and young people in CRIAs and ensuring those undertaking CRIAs are suitably informed and trained. One of the Young Advisers from the Commissioner's Office reflects on the critical challenge that CRIAs are supposed to provide in policy-making:

I just feel like it's not meant to be like a tick box exercise. It's meant to be something that actually challenges your decisions and therefore the ones that are most important are like the most needed. Like the ones where you find out something doesn't respect rights and I just think we can't trust the good faith of public bodies who just suddenly decide that

they're going to do something particularly when it might like not come out. Well that's when you need it the most; that's why it needs to be mandatory.

CRIAs have potential to advance children's rights but to do this they need to be applied critically and meaningfully in policy and community contexts and to act as a lever for change.

Undertaking the Independent CRIA

The Commissioner for Children & Young People Scotland commissioned the Observatory of Children's Human Rights Scotland¹¹ to undertake an independent CRIA.¹² As further detailed in the article by Tisdall and Morrison, the Observatory established a working group of experts, within and outwith academia, to lead the research and analysis required. Further, the Observatory reached out to non-governmental organisations and others in civic society working with children, young people and their families across Scotland, to inform the independent CRIA process at critical stages of gathering evidence and review. The experts each undertook a CRIA on selected emergency legal and policy measures legislated for and introduced in Scotland by the Westminster and Scottish Parliaments between April and June 2020, as a response to the pandemic. Many of these measures were specifically related to the 'lockdown' that was enforced, where children and adults were required to stay in their residences and mobility was restricted in public places. Each expert approached their assessment with a specific children's rights-based thematic focus - including physical and mental health, education, child protection, criminal justice, play and poverty. The expert team drew from existing social research evidence, emerging data and carrying out research with key informants, producing – in a matter of weeks – extraordinary insights into the measures' impacts on children and young people, and the realisation of their human rights in such times of crisis.

To ensure the independent CRIA submitted to the Commissioner reflected the interdependency and indivisibility of children's rights, the Observatory developed an overarching, cross-cutting analysis, weaving together key findings from each of the thematic CRIAs in its overview. This allowed for further consideration not included in the thematic CRIAs and to consider a range of different groups who might be particularly disadvantaged by the measures. The independent CRIA in its entirety has since been used to positively influence ongoing legislative and policy-making processes, and inform growing international interest in, and implementation of, CRIAs more broadly.

Such interest in the process and outcomes of the independent CRIA paved the way for this special journal issue. The articles in this issue are authored by those involved in the independent CRIA and address substantively, the human rights issues for children and young people in crisis situations including the rights' breaches and unintended consequences that occurred as a result of the emergency measures adopted. Substantive areas are covered by authors: children and young people experiencing domestic abuse (Morrison and Houghton); rights to rest, play and leisure (Casey and McKendrick), education and schooling (Colucci-Gray); children and young people's mental health (MacLachlan and McMellon) and health more generally due to school closures (Picton-Howell); children in conflict with the law (Dyer and colleagues); and children who are at risk of neglect and abuse (Mitchell).

The articles look to the procedural lessons and limitations of undertaking the independent CRIA, which include:

- undertaking CRIAs on multiple emergency measures simultaneously, when CRIAs are usually done on one specific legislative or policy development;
- considering all relevant human rights instruments, plus interpretive documents like General Comments, to assess the measures' impacts;
- making assessments on new, unfamiliar emergency measures;
- having limited access to quantitative and qualitative evidence gathered during the first few months of the pandemic as well as a lack of children's rights-based pre-pandemic evidence to draw from;
- effectively ensuring the indivisibility and interdependency of children's human rights were accounted for in the assessments i.e. recognising that the emergency measures were protecting fundamental rights to health, survival and development while highlighting the gaps in upholding other human rights;
- ensuring CRIAs, and human rights impact assessments more broadly, address the relationality of rights and tensions that can exist between rights holders;
- having limited information about the pandemics' and measures' impacts for certain groups - such as Gypsy/ Traveller communities, children with disabilities, children from asylum seeking families, and children from Black, Asian and Minority Ethnic backgrounds - although pre-pandemic evidence would suggest their rights could be at particular risk due to some of the measures introduced;

- lacking disaggregated statistics and evidence generally, which would allow consideration of different groups of children and young people. This is a particular issue within a small population, as in Scotland, where some groups may be a small proportion of a population. Thus investment is necessary to have a sufficient sample in most general surveys.

This special issue features reflections from ten- and eleven-year-old members of the Children's Parliament in Scotland (see McMellon and colleagues). The children's weekly written contributions for the *Corona Times Journal* – a digital publication supported by the Children's Parliament¹³ during the first lockdown in Scotland – became an important source of emerging evidence for the academics undertaking the independent CRIA.

Across the independent CRIA, findings highlight that children and young people's views and experiences had not been meaningfully sought in developing emergency measures, nor even in the few CRIAs undertaken by the Scottish Government on certain measures. Children and young people themselves have stated why it is critically important to involve them in such decisions being made; an example is provided by one of the *Corona Times*' journalists:

...some adults think that children don't know much about this stuff because they don't know what's going on scientifically behind it. But children have some really great ideas and I think children can be a lot more open minded than adults so they can think about and share things that adults haven't even considered. (Member of Children's Parliament, aged 11)

The journalists also remind us that, although emergency measures were developed in a time of crisis when it seemed to adults that there was opportunity to gather children and young people's views and perspectives, children's experiences of that period is one of not having much to do and, often, boredom coupled with anxiety. The *Corona Times Journal* shows that there was much potential to ascertain the views of children and young people.

Looking ahead

The Independent CRIA was undertaken between May and June 2020, with the findings published in July 2020. As many of the authors in this special issue highlight, the independent CRIA captures those particular moments in time. As experienced globally, several dominant variants of the COVID-19 pandemic have necessitated the ongoing

adaptation of emergency measures at local and national levels, with practices such as quarantine, routine handwashing and sanitising, wearing of face coverings, and physical distancing continuing to be employed widely. Additional vocabulary such as ‘track and trace’, ‘pinged’, ‘red list’, ‘double vaxxed’, and ‘vaccine passports’ have become common parlance alongside efforts to vaccinate the adult population and extensions down the age range for children and young people.

And yet, despite the independent CRIA highlighting the value of applying a consistent, methodical framework to ensure the adoption of a children’s rights-based approach to emergency decision-making at the beginning of the pandemic, their use within the ongoing development, and adaptation, of COVID-19 measures continues to be inconsistent. Even though children and young people’s views and experiences develop over time, there continue to be limited opportunities and avenues for children and young people to directly inform the ongoing development of such measures. One of the Young Advisers from the Commissioner’s Office stated this firmly:

I think it’s important because they should try to speak to young people themselves and, if not, look at stuff they’ve recently spoken about. It can’t be stuff in the past that they’ve spoken to young people about because young people’s lives are always changing, and it would show that they’re not hiding anything. It would show that they’re open and want to approach young people to speak to them rather than let’s say using data putting it together and not wanting to speak to young people because they know that young people might feel that’s it not fair.

As Tisdall and Morrison point out in their article, persistent constructions of children as vulnerable and best protected in their families led to systematic disadvantages for certain groups of children and young people – and failed to meet all their human rights to protection, provision and participation. Reconsidering children and young people as social actors, and challenging systematic discrimination and oppression, will better ensure their rights are respected.

As Dyer and colleagues conclude in this special issue, there needs to be a marked shift away from fulfilling children’s rights being perceived as ‘optional’ for mechanisms such as CRIAs to be adopted routinely and effectively. With Scotland set to incorporate the UNCRC into

domestic legislation, CRIAs will become a core mechanism for duty-bearers to apply a children's rights-based approach routinely to their governance.

¹ UN Committee on the Rights of the Child, *CRC COVID-19 Statement*, (2020), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CRC/ST/A/9095&Lang=en (accessed May 11, 2020).

² This editorial generally uses 'children and young people' to refer to those up to the age of 18. The UNCRC applies to children under the age of 18, unless legal majority is obtained earlier (Article 1).

³ For example, see special journal issue of *International Journal of Children's Rights*, 29, no. 2, June 2021.

⁴ For example, see COVIDUnder19 <https://www.tdh.ch/en/projects/covidunder19> (accessed December 17, 2021) and Patricio Cuevas-Parra, 'Co-Researching with Children in the Time of COVID-19', *International Journal of Qualitative Methods*, 19 (2020): 1-12, [10.1177/1609406920982135](https://doi.org/10.1177/1609406920982135)

⁵ For more information on the Young Advisers, see <https://www.cypcs.org.uk/get-help/young-people/young-advisers/> (accessed December 17, 2021).

⁶ UN Committee on the Rights of the Child, *General Comment No. 5 General measures of implementation of the Convention on the Rights of the Child* (2003), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f5&Lang=en (accessed December 17, 2021).

⁷ European Network of Ombudspersons for Children (ENOC), *A Guide on How to Carry out CRIA*, (2020), <http://enoc.eu/wp-content/uploads/2020/12/ENOC-Common-Framework-of-Reference-FV.pdf>, p. 11 (accessed June 4, 2021).

⁸ Lisa Payne, 'Child Rights Impact Assessment as a policy improvement tool', *The International Journal of Human Rights* 23, no. 3 (2019): 408-424.

⁹ We thus largely refer to CRIAs in this editorial and in the special journal issue more generally.

¹⁰ European Network of Ombudspersons for Children (ENOC), *A Guide on How to Carry out CRIA*, (2020), <http://enoc.eu/wp-content/uploads/2020/12/ENOC-Common-Framework-of-Reference-FV.pdf> (accessed June 4, 2021).

¹¹ See www.ed.ac.uk/education/observatory (accessed December 12, 2021).

¹² See <https://www.cypcs.org.uk/coronavirus/independent-impact-assessment/> (accessed December 12, 2021).

¹³ Founded in 1996, Children's Parliament is Scotland's centre of excellence for children's human rights, participation and engagement. All participating children become Members of Children's Parliament (MCPs). Unlike other parliamentary bodies, Children's Parliament is not an elected body. Rather it is a participatory one, engaging with children across a range of settings in order to include as many children as possible, many of whom face barriers to participation. See <https://www.childrensparliament.org.uk/> (accessed December 12, 2021) for general information and <https://www.childrensparliament.org.uk/tag/corona-times-journal/> (accessed December 12, 2021) for archives of the *Corona Times Journal*.