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Observatory on Human Rights of Children

Annual Lecture 2020

Never Let a Good Crisis Go to Waste: Children’s Rights during COVID-19

It is an enormous pleasure to be speaking to you this afternoon. Many thanks for the kind invitation. The Observatory – and indeed the School of Law at Swansea – has done such hugely important child rights work, both in the Welsh context and beyond. It is particularly lovely to be hosted by Simon Hoffman and Jane Williams whose work I admire enormously.

On 11 March, the WHO Director General declared that COVID-19 could be classified as a pandemic. On 3 April, UNICEF referred to the pandemic as a ‘child rights crisis’. On 16 April, a UN report stated that while ‘children are not the face of this pandemic … they risk being among its biggest victims’. That report, [launched](https://www.un.org/en/un-coronavirus-communications-team/protect-our-children) by no less than UN Secretary General António Guterres, made clear that, although children had thusfar been largely spared the direct health effects of COVID-19, the pandemic – and state responses thereto – posed severe risks to children. These risks identified included: a sharp predicted increase in child poverty globally; huge losses in child learning worldwide due to school closures and digital exclusion; risks to child safety posed by lockdown and ‘shelter in place’ measures; and implications for child health and survival due to factors such as reduced household income, disruption of non-COVID-19-related child health services and the mental health toll of the pandemic. All of this has come to pass – and more.

By 2 April, UNESCO was reporting that over 91.3% of enrolled learners from pre-primary to tertiary education levels globally were being affected by the closure of schools and other education institutions. At that point, there were country-wide closures in 194 states. As of yesterday, there were 130 country-wide closures of schools with 56.6% of registered learners worldwide affected. On 13 May, UNICEF [stated](https://www.unicef.org/press-releases/covid-19-devastates-already-fragile-health-systems-over-6000-additional-children)  that the impact of COVID-19 on health systems and services meant that an additional 6,000 children could die every day from preventable causes. In that same month, Save the Children and UNICEF were stating that the economic fallout of the [COVID-19](https://www.savethechildren.net/news/covid-19-number-children-living-household-poverty-soar-86-million-end-year) pandemic could push up to 86 million more children into household poverty by the end of 2020 - an increase of 15 per cent. Closer to home, only last week, the EHRC issued its [submission](https://www.equalityhumanrights.com/sites/default/files/childrens_rights_in_great_britain_0.pdf) to the UN Committee on the Rights of the Child which made clear that ‘The coronavirus (COVID-19) pandemic is having, and will continue to have, an unprecedented and profoundly negative impact on children’.

The bad news keeps coming.

This lecture starts from the premise that COVID crisis poses huge challenges and opportunities in terms of children’s rights. I will start by addressing the positives for child rights. I will then move on to the child rights negatives and to discuss how the COVID crisis has been used to undermine child rights. I’ll finish with some thoughts about how the child rights community – children and young people themselves, advocates, scholars and practitioners – can and should use the COVID context to advance children’s rights

So, the positives! This may seem like a surprising jump-off point but it’s important to flag what has gone right from a child rights perspective during COVID.

First, despite initial complaints by many – including myself – children have not ultimately proven to be the invisible victims of this pandemic. From April on, children have been a consistent focus of international and national COVID efforts. Here in the UK, school closures and the impacts of lockdown triggered a huge societal, political and media focus on the position of children. And more recently we have seen growing awareness and advocacy around the of the impacts of COVID on particular groups of children. For instance, children in detention, children in care and children with family members in prison.

Second, COVID has made clear how strong the concept and discourse of child rights have become. This is evident at the international level in, for instance, the integration of rights frameworks into the work of UN and Council of Europe actors responding to COVID. More interestingly, it has also been a feature of national political, media and societal discourse. A key example of this has been the widespread discussion around the child’s ‘right to education’ in the context of school closures. The Telegraph, for instance – not historically known as an enthusiastic fan of human rights, let alone child rights – has featured a number of pieces where child rights arguments have been deployed with regard to the pandemic. We have also seen COVID serving as a motivator for domestic actors who have historically been reluctant to use rights language to do so: one important example is the children’s commissioner for England whose emphasis on rights language and argumentation has increased sharply during the COVID period.

There’s no question but some of this deployment of rights language has not always been accurate. For instance, we see a number of those who have recently embraced ‘child rights’ in the area of psychology and public health focusing advancing understandings of child rights that are based, at best, on a partial understanding of what child rights entails. This is not cause for criticism or a cue for turning up of noses on the part of those more experience and expertise with regard to child rights – rather it highlights the importance of child rights experts contributing towards child rights capacity-building for those working outside those disciplines that have historically dominated the area of child rights. Ultimately, good faith errors in handling the rights framework by those new to the child rights party does not lessen the fact that children’s rights is being adopted both as analytical framework and approach on the part of a growing range of hugely important actors who are dedicated to improving the lived experience of children. And COVID has undoubtedly accelerated this.

Third, we’ve seen that our international child rights mechanisms have largely proven fit for purpose from a crisis perspective – on 8 April the UN ComRC issued its [covid statement](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CRC/STA/9095&Lang=en) outlining priority areas for states in their response to COVID – as well as giving an important steer on the parameters of child rights-compliant state responses to COVID. The same day also saw the African Committee on the Rights and Welfare of the Child had issue its [Guiding Note on Children’s Rights during COVD-19](https://www.acerwc.africa/Latest%20News/guiding-note-on-childrens-rights-during-covd-19/). This is an absolute rapid response especially when compared to the financial and economic crisis where human rights bodies’ responses were often slow and inadequate. COVID seen human rights bodies rising to the new child rights challenges posted by COVID-19, dealing with complex legal problems such as the scope of permissible limitations on rights under the UN Convention on the rights of the Child – a hitherto underexplored area. We see international human rights bodies and advocates and children’ themselves carrying out complex analyses in order to work out the balance to be struck between the rights of children and others in the COVID context, for instance with regard to children’s rights to freedom of assembly and association during a public health crisis. We also see long overdue work on digital exclusion as an equality issue and on the child rights implications of online platforms for child-led advocacy and child rights defender work.

Fourth, we’ve also seen how tools like CRIA can be used by state decision-makers and civil society to assess and critique government action. [Scotland/wales]. There has been little or no CRIA action at the UK-wide level. However, Scotland has [issued](https://www.gov.scot/binaries/content/documents/govscot/publications/transparency-data/2020/11/child-rights-and-wellbeing-impact-assessments-list/documents/child-rights-and-wellbeing-impact-assessments-list/child-rights-and-wellbeing-impact-assessments-list/govscot%3Adocument/Published%2BChild%2BRights%2Band%2BWellbeing%2BImpact%2BAssessment%2B-%2BOctober%2B2020.pdf) several COVID-related child rights and wellbeing impact assessments of COVID related measures and legislation, not least on the [Coronavirus Bill Scotland](https://www.gov.scot/publications/coronavirus-scotland-bill-child-rights-welfare-impact-assessment/), another on the [Coronavirus (Scotland)(No. 2) Bill](https://www.gov.scot/publications/coronavirus-scotland-no-2-bill-child-rights-welfare-impact-assessment/),**.** The Scottish Government’s approach wasn’t perfect. Some of the CRWIA were rushed and unsubstantive. Crucially, a number of earlier ones didn’t involve **direct consultation or engagement with children and young people about the relevant proposals or legislation– a fact that was justified on the basis of the “**emergency nature of the current situation”. This was in sharp contrast to the excellent independent CRIA produced by the Scottish Commissioner for Children and Young People in July 2020. However, it is clear as the CRWIA evolve that the Scottish government upped its game – both in terms of engaging with information on children’s views and more broadly. **In an August** [**statement**](https://www.togetherscotland.org.uk/media/1671/coronavirus-act-scotland-2020-un-committee-on-the-rights-of-the-child-covid-19-statement-06-august-2020.pdf)**, the Scottish government used the areas highlighted in the ComRC’s statement as the basis for outlining** its approach to the COVID-19 response. This was updated in October 2020. In Wales- where, frankly, given the existence of the Rights of Children and Young Person’s (Wales) [Measure](https://www.legislation.gov.uk/mwa/2011/2/contents) 2011 and the long-standing practice of CRIA, we would have expected more, there was a slow start CRIA-wise. And this was despite huge efforts made to ensure a CRIA of COVID-related measures were carried out not least by Observatory members. Serious questions need to be asked about why equality impact assessments that demonstrated harm to children’s rights did not trigger children’s impact assessment. That said, in the last 4 months we’ve seen CRIA of a range of COVID-related measures including [education](https://gov.wales/provision-education-response-covid-19-impact-assessment) and housing policy contexts. So, while the tools are not being used perfectly, they are being used – and there is evidence of good faith learning on the part of state actors wielding them over the course of the COVID period.

Fifth, here in the UK, the crisis has made clear the value-added of devolved nation political and legal commitment to children and child rights. The rights of children in England – who do not benefit from enhanced devolved protection in terms of child rights – have undoubtedly been more vulnerable in the COVID context than those of their counterparts in Wales and Scotland. It is particularly notable and commendable that the huge pressures imposed by COVID was not used as an excuse by the Scottish Government to roll back on its commitment to full and direct incorporation of the UNCRC into Scottish law.

But there is no doubt that there has been an overwhelming amount of negatives for children and their rights during COVID. Interruptions in education, reduced access to food, mental health impacts, strong evidence of increased levels of child abuse and domestic violence during and after lockdown, rising deprivation in households with children, the impacts of poor housing, the loss of social opportunities and reduced contacts with loved ones, increased exposure to the risk of online harm. All of these translate into child rights issues. The pandemic and state responses thereto have directly and indirectly impacted : the right to a standard of living adequate for the child’s development, including adequate **housing** & **food under Article 27 of UNCRC, the r**ight to freedom from all forms of **violence**, **injury** or **abuse**, neglect or negligent treatment, maltreatment and **exploitation** (Article 19), the right to freedom of **association** and **assembly** (Article 15), the right to play (article 31), the right to the highest attainable standard of health, the rights of disabled children, children in care, children in detention, the right to education. It has been a child rights bloodbath – and a bloodbath that has had a disproportionate impact on socially vulnerable children - those children who were already disadvantaged within society. Let me be clear: there is no question but the measures taken by the UK and devolved governments in response to COVID-19 have been primarily motivated by urgent public health concerns, not a desire to harm children. However, this crisis has laid bare and exacerbated pre-existing long-time structural inequalities and social vulnerabilities in the UK.

Furthermore – and here I hark back again to my lecture title! – there can be no question but the crisis has also been viewed as an opportunity to advance measures that are not consistent with child rights. As many in the audience will know, COVID-19 has served as the basis for the Government to make a number of ‘emergency’ changes with regard to service provision for children in England. These changes were made with [minimal consultation](file:///Users/simonhoffman/Downloads/nd%20without%20complying%20with%20the%20usual%2021%20day%20rule%20of%20being%20published%20three%20weeks%20before%20coming%20into%20force) and without complying with the usual rule of being published three weeks before coming into force. [Changes](https://www.theguardian.com/society/2020/apr/28/children-in-care-at-risk-since-coronavirus-crisis-say-campaigners) to social care regulations – [laid before](https://article39.org.uk/scrapsi445/) parliament on 23 April and in force from 24 April - significantly downgraded the legal protections for children in care. Other changes significantly [relaxed and amend](https://www.specialneedsjungle.com/coronavirus-ehcp-laws-temporarily-relaxed-as-las-told-to-just-do-their-best/)ed local authorities’ legal duties with regard to education, health and care needs assessments and plans for children with special educational needs and disabilities. Some of these measures have now been reversed – largely due to assertive and effective campaigning on the part of children’s rights actors. However, these erosions and removals of statutory duties will have long-term implications for protection and provision for some of the most vulnerable children in the UK. Even where the changes turned out to be short-term, their implications for the large number of children affected by them will undoubtedly be longterm, and quite possibly life-long.

I talked about not wasting a good crisis: importantly, some of these temporary changes were clearly in line with longer term efforts on the part of government – a particularly glaring example of this has been in the area of social care where the changes were consistent with efforts on the part of government that predated the pandemic to impose what one child rights advocate termed “mass deregulation in children’s social care.” This week we saw the Court of Appeal find that the Secretary of State for Education acted unlawfully in failing to consult bodies representing children in care, including the Children’s Commissioner for England, before introducing the social care regulations. The facts outlined in the judgment makes clear that there was a deliberate decision made not to consult advocacy groups or lawyers’ organisations or any agency or charity involved with children’s rights, nor, at that stage, with the Children’s Commissioner despite the Secretary of State effectively carrying out an informal consultation over a three week period in which others were able to input on potential amendments. The case also makes clear the dangers of the mis-use of CRIA: in this instance the CRIA carried out by the Department’s Children’s Rights Team effectively concluded that the proposed changes would not lead to the infringement of children’s rights under the UN Convention – a conclusion that, at best, suggests a dubious level of competence on the part of that team. The Court strongly disagreed with the description of the amendments as ‘minor’, stating rather that; on the whole they ‘were unquestionably substantial and wide-ranging and, when implemented, had the potential to have a significant impact on children in care’. It went on to say that ‘contrary to what was said in the Child Rights Impact Assessment produced by the Department’s Children Rights Team on 15 April 2020, the amendments manifestly had the potential to change the substance of the services being provided to children in care.’ Reading, the judgment, and knowing the sorry history of government efforts to reduce social care services for vulnerable children over the last 5 years, it is hard not to see this as an example of the COVID crisis being instrumentalised to undermine children’s rights protections.

We are also seeing children being instrumentalised during COVID. As school closures went on, we saw more and more MPs, policy actors and media commentators urging the reopening of schools, even where this potentially imperilled the rights of education workers, the broader community and indeed potentially the rights of children themselves. One of the most worrying ways in which this appeared was in the apparent [rejection](https://committees.parliament.uk/event/1264/formal-meeting-oral-evidence-session/) of the legitimate concerns of education worker unions in England with regard to safe school reopening. In some instances, we have seen effectively seen politicians and the media pit children and their right to education and mental health against the concerns of education workers and public health experts with regard to school opening. Such an approach ignores the fact that c**hildren are embedded in their communities. They and their rights do not exist in isolation from other right-holders** and should not be considered in isolation from them. A school reopening that is ostensibly justified in terms of children’s rights/interests but which ignores children’s location within their communities and the implications of that reopening for the rights of those who teach, care and share society with them would reflect a partial and flawed understanding of what human rights – and children’s rights – require. In some instances, such ostensibly child-centred arguments have clearly served as more palatably proxies for arguments based on the economy. Whatever their motivation, they have served to present the interests of children, education staff and trade unions as conflictual – something that is not exactly palatable in a national context in which trade unions have historically not been perceived positively by government anyway. Children’s rights are not trumps that cannot be used to trump or undermine the human rights of others. Efforts to deploy them as such is disingenuous and must be challenged by child rights advocates.

I want to finish by highlighting how we – the child rights community – should ensure that we do not ‘waste’ the pandemic. How can we use the covid crisis to strengthen child rights?

The first point to make is that while the exact time and form of the COVID-19 crisis was not foreseeable, many of its social, economic, educational and other effects on children – and poor children in particular – certainly were.

While COVID has thrown up key challenges from a child rights perspective that we in the UK have not come across before – for instance, mass testing, mask-wearing, lockdown and shelter at home arrangements and digital exclusion in the education context – this has occurred against a broader backdrop in which children’s rights have been long been sidelined and marginalised. Austerity and its negative child rights impacts are entrenched and longterm. Absolute and relative child poverty was on the rise in the UK long before COVID. Our response to COVID cannot be blind to this broader backdrop and the challenges that the current legal, social and political settlement poses to child rights. In a time when huge amounts of funding for academia and the third sector has been ‘covidised’, it is crucial that we keep our eye on the bigger picture. Beyond its direct public health-related impacts, COVID’s effects in most instances relate to problems that long pre-dated March 2019 – and which are set to outlast this most recent crisis for child rights. Poor children in England’s need for free school meals during holidays didn’t start with COVID even if that has been in the context where that issue has received the greatest attention – and action.

I want to focus on two key areas. The first is that of economic policy. COVID has made clear the ongoing invisibility of children and their rights when it comes to domestic and supranational economic policy. This is reflective of the long-standing issue of child (rights) blind neoliberal economic paradigm. There is a huge risk that COVID will exacerbate this risk given that the financial and economic crises which focused far more critical attention on that paradigm certainly didn’t temper that paradigm meaningfully. When it comes to COVID responses, while there’s much talk at the international level of human rights, this policymaker engage with human rights, including child rights, dries up rather dramatically when dealing with the nitty-gritty of recovery discussions focused on economic policy specifically. It is crucial that scholars and advocates challenge this child rights and economic policy disconnect – at both the international and the domestic level and there is huge scope for this in the UK. NHRIs, academics, thinktanks like the IFS – all of these entities have done work on children and economic policy. There is huge scope for collaborative advocacy focused on economic policy decision-making at the local, devolved and national levels. We must build partnerships between those working on children’s rights, those working on economic policy and children and young people. It will take time, it will take significant energy and resources but it is work that must be done if child rights are to serve as a meaningful framework for economic policy-making that affects children.

The second issue I want to address is that of the structural injustice and inequalities that children face, and which are exacerbated where children are part of disadvantaged social group. These are inequalities of financial resources, opportunities and power that COVID has served to underline and exacerbate. If we are serious about bring children’s rights and concerns to the forefront of law and policy in the UK post-COVID, we have to move beyond criticising others for failing to take children, their views and their rights on-board to critiquing our own practice and to make sure that we, as adults, do not replicate such injustice and inequalities in our dealings with and/on behalf of children. This will require a huge change in attitudinal and methodological terms but without it, we cannot hope to accord children the respect in our work with and for them that is required by children’s rights.

The COVID crisis may be nearing its end but on the horizon we can see other crises fast approaching - the global climate crisis, the UK Brexit crisis. And we are lurching towards that horizon. It is imperative that we in the children’s rights community – advocates, scholars practitioners, children and young people and their allies – make sure that we do not let the lessons and opportunities afforded by the COVID crisis to go to waste. Because those who whose actions undermine children’s rights certainly won’t.