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A comparative analysis of how the rights of children as set out in the United Nations Convention on the Rights of the Child are made effective through their implementation in Kurdistan/Iraq and the United Kingdom

by

Nishitiman Mohammed

A thesis submitted to the University of Plymouth in partial fulfillment for the degree of

RESEARCH MASTERS

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A comparative analysis of how the rights of children as set out in the United Nations Convention on the Rights of the Child are made effective through their implementation in Kurdistan/Iraq and the United Kingdom

Nishitiman Mohammed

Abstract

The United Nations Convention on the Rights of the Child was unanimously adopted in 1989. It was hoped that the Convention would have a positive impact on all children however, despite a country ratifying the Convention and proclaiming to have laws in the interests of children it is still possible for that country to fail in the attempt to implement children’s rights effectively. This can clearly be seen in Kurdistan, Iraq where implementation of children’s rights remains limited.

With the continuing violence in Iraq, children’s rights have been somewhat neglected and as with many such situations children are the innocent victims. Ensuring and improving the rights of the next generation of Iraq is vitally important at a time when the country is going through important changes and re-generation.

This thesis gives information on the historical background of the UNCRC and looks at its substantive provisions in detail, it then goes on to compare the implementation of children's rights in Kurdistan and the UK. The thesis highlights methods of implementation in both countries and looks at ways in which some of the Convention’s articles are written into law. The thesis
concludes with recommendations on how Kurdistan can move forward to achieve better implementation of children’s rights.
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Finally I would like to thank my parents and my two beautiful angels Savia and Vania.
Dedication

I would like to dedicate this thesis to my two daughters Savia and Vania and to all the children in Kurdistan, especially those from under privileged backgrounds.
Author’s Declaration

At no time during the registration for the degree of Research Master has the author been registered for any other University award without prior agreement of the Graduate Committee.

This study was funded by the Ministry of Higher Education and Scientific Research, Kurdistan Regional Government, Iraq.

A Programme of advanced study was undertaken, which included six modules. Three modules were taken in term one; Social Research Design, Research Planning and Preparation and Human Rights Law (this module ran over the duration of terms one and two). In the second term, three additional modules were undertaken; Applying Techniques of Qualitative Data Analysis (1), Applying techniques of Qualitative Data Analysis (2) and Legal Research Methods.


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Signed............................................

Date............................................
List of Abbreviations

CAFCASS  Children and Family Court Advisory and Support Service
CRC      Convention on the Rights of the Child
ECHR     European Convention on Human Rights
EU       European Union
FGM      Female Genital Mutilation
GMC      General Medical Council
HRA      Human Rights Act
IDP      Internally Displaced Person
IGO      Inter-Governmental Organisation
KDP      Kurdish Democratic Party
KNA      Kurdistan National Party
KRG      Kurdistan Regional Government
KRP      Kurdistan Region Presidency
MDG      Millennium Development Goal
MP       Member of Parliament
NGO      Non-Governmental Organisation
OECD     Organisation for Economic Co-operation and Development
OPAC     Optional Protocol to the UNCRC on the Involvement of Children in Armed Conflict
OPSC     Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child Pornography
PSHCH    Personal, Social and Health and Citizenship education
PUK  Patriotic Union of Kurdistan
UK   United Kingdom
UN   United Nations
UNCRC United Nations Convention on the Rights of the Child
UNCHR United Nations Commission on Human Rights
UNICEF United Nation’s Fund for Children
USA  United States of America
WHO  World Health Organisation
Chapter One

Overview of Research into the Implementation of the Convention on the Rights of the Child in Kurdistan and the UK

Until relatively recently children have been seen as mere possessions under their parent's authority. The notion of children’s rights is seen by some as a radical idea and denied by others, the denial of such rights is based on the idea that giving children rights will cause conflicts of interest, particularly within the family.¹ Van Bueren states that such conflicts of interest are not caused by the possession of rights; it is more often that until individuals are afforded rights they may be forced to suffer intolerable treatment as there is no mechanism for them to challenge this treatment.² She goes on to say that whilst denying children rights may make the world more peaceful and less complicated it would not necessarily remove conflict.³ It is important that national leaders realise that children’s rights are important regardless of any difficulties faced in giving effect to them.

It was in the twentieth century that children’s rights and the concern for children’s welfare really began to evolve with any coherence. Following a number of non-legally binding international instruments and years of discussion and debate about the status of children and the need to extend rights to them, the United Nations General Assembly adopted the Convention on the Rights of the Child (UNCRC) in 1989. The Convention has great

historical relevance, as for the first time it introduced child-centred principles and rights.

The introduction of the Convention was a huge step forward for children, recognising them as autonomous human beings with inherent human rights. However the practical and effective implementation of these rights is dependent on many factors, including socio-economic and cultural factors including the capacity of the obligated countries’ legal systems. The Convention takes into account the cultural and financial diversity of State Parties which leads to huge variations in the measures that State Parties put in place to realise these rights for children.

Whilst this internationally legally binding instrument affords children of ratifying States certain rights it is the State that needs to work to implement these rights effectively. Perhaps unfortunately, it is the implementation that so often lets children down, and therefore that implementation needs to be understood and deficiencies addressed. This thesis will conclude with a series of reflections and recommendations on improvements that can be made by Kurdistan to the ways in which it implements the Convention.

The basic objective of the research is to be able to gain a greater understanding of the UNCRC and understand how specific children’s rights are implemented within various settings. It is my aim to be able to put forward recommendations that will bring about a change in how the rights of children are implemented in Kurdistan and to ensure that through these changes children are better protected and represented.
The objective for this thesis is to discover how the rights of children, as set out in the UNCRC, are made effective through their implementation in Kurdistan and the UK. In order to fulfil this objective it is necessary to determine what the UNCRC is, what the rights of children are as set out in the UNCRC, how these rights are made effective in both Kurdistan and the UK and what can be done to improve the implementation of children’s rights in Kurdistan.

The methodology adopted for this work included a number of different approaches, both qualitative and quantitative. This enabled the advantages of both styles to be utilized. As the thesis deals with legal measures and their implementation it was necessary to analyse specific instruments, in particular the UNCRC, this was done by way of a literature review. As well as the UNCRC a number of laws were looked at including, among others, the Children Act, laws regarding discrimination and the Constitution of Kurdistan.

Following on from the literature review a number of surveys were sent to organisations and people that are involved with working with or for children these included nursery workers, child minders, doctors, teachers, charity workers and politicians. Surveys were sent out to respondents in both Kurdistan and the UK. 100 surveys were sent out in Kurdistan and 46 were received back, a response rate of 46%, however in the UK of the 100 surveys distributed only 34 were completed, a response rate of 34%.

The survey that was designed (see appendix 1) consisted of two parts. The first part of the survey was made up of both open and closed questions, closed questions were used to ascertain whether policies are in place to implement particular Articles of the Convention and the open questions
allowed the respondent to elaborate on the policies in place and how their implementation could be improved, open questions allow the potential for data rich answers\textsuperscript{4}. The questions in the first part of the survey relate to what are perceived to be some of the more significant articles, and articles from each of the categories were considered. The second part of the survey was designed to allow the respondent to rate their perceived effectiveness of their implementation of policies. As well as gaining an understanding of the effectiveness of the policies from part one; part two of the survey was extended to include additional articles. One drawback of using surveys is that the response rate can be quite low\textsuperscript{5}, this was the situation faced during this research, with less than 50% of surveys being returned.

A number of interviews were also conducted with professionals that work either directly or indirectly with children. The interviews were face to face and took place at locations familiar to the participants. Each interview was recorded and lasted about 10-20 minutes. Participants were selected from a range of professions for example education, health, politics and charities. This ensured each category was given equal weighting. Interviews work well because the interviewer’s willingness to learn from the interviewee often prompts the latter to cooperate and give adequate information.\textsuperscript{6} Interviews are a very useful technique for gathering data that might possibly not be gained from observations or questionnaires.\textsuperscript{7} A list of questions was compiled prior to undertaking interviews (see appendix 2) although dependent on the interviewee and the answers given it was possible to change the questions. It


\textsuperscript{5} Ibid., p.339

\textsuperscript{6} Chatterjee, C., \textit{Methods of Research in Law}, (1997), p.31

was necessary to draw up a second set of interview questions (see appendix 3) in order to provide more clarity.

Once the interviews were completed and the surveys received back the data was analyzed and the implementation of children’s rights was compared, when comparing individual rights comments from both the open question part of the survey and from the interview were included within the results. Following on from this a number of recommendations were made.

When undertaking research it is important to consider ethics. Ethics is a branch of philosophy which is believed to have begun with Aristotle; ethics takes the actions of humans as its core subject. The key issue of ethics is the relationship between the individual and the social world. A number of ethical considerations were taken into account throughout the research. Ethical approval was sought from the Faculty Research Ethics Approval Committee (see appendix 4), only when this was granted was the research commenced. When collecting data the appropriate institutional ethical protocol was followed. When considering ethics it is important to look at how the research will benefit the research subject. Researchers have a responsibility of academic integrity and honesty, and a respect for other people.

Included with each survey that was sent out was a letter that explained the purpose of the research; that participation was voluntary; that the information being collected was purely for academic purposes; that all responses were confidential; and that on completion of the thesis all data collected would be

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destroyed. This information was also given to all interviewees. The surveys that were sent to Kurdistan were translated into Kurdish as was the accompanying letter (see appendix 5).

The thesis is made up of five chapters. The first chapter introduces the subject and gives details of the research carried out, including methods and ethics.

Chapter two is entitled *An Historical Background of the International Development of the Rights of the Child* and includes information on the Declarations that preceded the UNCRC, the UNCRC itself, the drafting process, criticism of the drafting process, adoption of the Convention and the significance of the Convention.

The third chapter looks at the significant provisions of the UNCRC, the optional protocols, general obligations on state parties and the reporting and monitoring process. The fourth chapter provides background information on both Kurdistan and the UK.

The final chapter is devoted to detailing the findings of the research, analysing the results, making comparisons between the implementation of the UNCRC in Kurdistan and the UK and finally putting forward recommendations for the improved implementation of child rights in Kurdistan.

The first stage of the research looks at how children’s rights have developed and in particular how the UNCRC came into being. This information is contained within the next chapter.
Chapter Two

An Historical Background of the International Development of the Rights of the Child

The recognition of children’s rights took a long route to achieving reality. Globally, for many years, children were viewed as property under the rule of their parent’s authority, notably the father. It was only in the twentieth century that children became recognisable as individuals. Records show that laws for the protection of animals were introduced long before the mention of children’s rights11. It has been internationally recognised that children play a unique and strategic role in the development of their immediate families and local communities. As former UN Secretary-General, Kofi Annan, noted in his foreword to the United Nations Children’s Fund’s State of the World’s Children Report 2005, ‘only as we move closer to realizing the rights of all children will countries move closer to their goals of development and peace’12.

1. Declaration of the Rights of the Child 1924

Children as independent rights holders are not a new concept to international law. One of the earliest international human rights instruments was the Declaration on the Rights of the Child passed by the League of Nations in 1924.13 This instrument was the first human rights declaration to be adopted

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by any inter-governmental organisation, and it preceded the Universal Declaration of Human Rights by more than two decades\textsuperscript{14}. The Declaration on the Rights of the Child 1924 was greatly concerned with protection and provision rather than actual rights. The 1924 Declaration claims that ‘mankind owes to the child the best it has to give’, this non-repayable humanitarian debt is echoed throughout following children’s rights declarations\textsuperscript{15}.

The Declaration states that men and women of all nations, recognising that mankind owes to the child the best it has to give, declare and accept it as their duty that, beyond and above all considerations of race, nationality or creed that:

1) The child must be given the means requisite for its normal development, both maternally and spiritually;

2) The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succoured;

3) The child must be the first to receive relief in times of distress;

4) The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation;

\textsuperscript{14} Van Bueren G., op. cit., p6.
\textsuperscript{15} Ibid., p.7
5) The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men.\textsuperscript{16}

Many commentators have noted the limitations of the Geneva Declaration; most notably it restricts children’s rights to a mere duty of protection rather than leading to the notion that children have specific liberties and rights\textsuperscript{17}.

The wording of the Declaration illustrates that it was not actually supposed to be binding to States and as such few States incorporated the 1924 Declaration into their domestic law. As a result of this, its impact on States and international organisations was limited and the significance today of the Declaration is largely symbolic\textsuperscript{18}. Although the Declaration was not binding it was significant in some respects. Whilst the Declaration was essentially an aspirational document, because it introduced basic principles on an international level, it did prepare the ground for the progressive development of international standards\textsuperscript{19}. Van Bueren backs this by saying that the 1924 Declaration established the concept of the rights of children and thus laid down foundations for a future international standard. She goes on to say that


\textsuperscript{19} Kubota, Y., 1989 cited in Heintze, H.j.,’ The UN Convention and the Network of International Human rights Protection by the UN’ in Freeman, M., and Veerman ,P., \textit{The Ideologies of Children’s Rights}, (1992) , p.73
the Declaration was the first international acknowledgement that child welfare was linked to child rights and that the Declaration brought the necessity of protecting children’s rights when acting on their behalf to the attention of States.\textsuperscript{20}

2. General Assembly Declaration on the Rights of the Child 1959

Following the Second World War new concerns were raised about human rights abuses, it was realised that there needed to be a more effective international framework that would set clear expectations and standards for governments, as a result of this, in 1945, the United Nations was established. The newly established United Nations was concerned with the rights of children from an early stage\textsuperscript{21}.

The United Nations created the Temporary Social Commission of the Economic and Social Council, the Social Commission’s intention was to draft a declaration that would be ‘as binding on the peoples of the world today as they were in 1924’.\textsuperscript{22} The Social commission had three possibilities before them; they could reaffirm the 1924 Declaration with a few alterations; they could maintain the form, structure and content of the 1924 Declaration and add amendments that would turn the document into a United Nations Charter of the Rights of the Child; or they could create a completely new document. The Social Commission voted in favour of the second option; creating a

\textsuperscript{20} Van Bueren, op. cit., p.8
\textsuperscript{22} UN Doc A/41/85.13 cited in Van Bueren G.,p.9
United Nations Charter of the Rights of the Child, which would embody the
main features of the new concept of child welfare.\(^{23}\)

Subsequently, in 1959 the declaration of the Rights of the Child was adopted
by 78 members of the United Nations General Assembly.\(^{24}\) In this Declaration
the Assembly called upon individuals, voluntary organisations, local
authorities and national governments to recognise the rights contained within
the Declaration and to take measures to promote them.\(^{25}\) In many respects
the 1959 Declaration goes further than its predecessor (the 1924 Declaration);
for example, for the first time it speaks in terms of the rights that children are
entitled to, rather than just referring to protection of children.\(^{26}\)

The Declaration of the Rights of the Child is made up of ten principles:

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

2) The child shall enjoy special protection, and shall be given
opportunities and facilities, by law and by other means, to enable him
to develop physically, mentally, morally, spiritually and socially in a
healthy and normal manner and in conditions of freedom and dignity. In

\(^{23}\) ECOSOC, 3\(^{rd}\) year, 7\(^{th}\) Session, Supplement no. 7, 31.cited in Van Bueren G.,p.9
\(^{24}\) Declaration of the Rights of the Child, proclaimed by the General Assembly
resolution 1386 (XIV) of 20 November 1959.( No. 16) at 19. [hereinafter 1959
Declaration]
\(^{26}\) Heintze, op. cit., p.72
the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

3) The child shall be entitled from his birth to a name and nationality.

4) The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate prenatal and postnatal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.

5) The child who is physically, mentally or socially handicapped shall be given special treatment, education and care required by his particular condition.

6) The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards maintenance of children of large families is desirable.

7) The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual
judgement, his sense of moral and social responsibility, and to become a useful member of society.

The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.

The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

8) The child shall in all circumstances be among the first to receive protection and relief.

9) The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.

The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

10) The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.27

There are many similarities between the 1924 Declaration and the 1959 Declaration such as a child’s need for protection, adequate nutrition, housing

27 Declaration of the Rights of the Child, op.cit.
and healthcare.\(^\text{28}\) There are also some differences such as the inclusion of rights regarding education and recreation.\(^\text{29}\) The 1959 Declaration, for the first time, states that a child’s best interests are paramount. \(^\text{30}\) The 1924 Declaration is aimed at ‘men and women of all nations’\(^\text{31}\) whereas the 1959 Declaration included, voluntary organisations, local authorities and governments as well as individuals.


Developing the United Nations Convention on the Rights of the Child was a lengthy process; it was the culmination of ten years of drafts and discussion.\(^\text{32}\) There were a number of reasons why the drafting process took so long, firstly working groups were open to all interested States which in itself held up the progress of the Convention, secondly the cold war slowed the pace of drafting. Delegates from certain countries also purposely used obstructive tactics, for example they would submit controversial proposals only to withdraw them later or they would submit large numbers of proposals which obviously would take a lot of time to consider.\(^\text{33}\)

The UN General Assembly proclaimed 1979 as the international Year of the Child; it was this that sparked the international community to develop a legally

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\(^{29}\) Ibid.


\(^{33}\) Office of the United nations High Comission for Human Rights, op.cit., p xxxviii
binding instrument on the rights of the child. The Permanent Representative of Poland to the United Nations Office at Geneva wrote to the Director of the Division of Human Rights suggesting that a convention should be adopted in order to celebrate the International Year of the Child.

The UNCRC which was adopted by the General Assembly of the United Nations on 20th November 1989 is the “most widely accepted human rights treaty ever”. The UNCRC is a vital document that has implications on both policy and practice. The Convention follows the model typically laid down by earlier human rights documents. The UNCRC is a comprehensive document that includes 42 articles that describe the civil, political, social, economic and cultural rights of children; there are three types of rights contained within the Convention, rights that include protection, participation and provision.

The first step in adopting the UNCRC is for a State to sign up to the Convention, secondly the State must ratify the Convention and the third step, which is essential, is for the State to implement the provisions of the

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34 Ibid., p.31.
35 Ibid.
To date all countries except the USA and Somalia have ratified the Convention.\textsuperscript{40} Somalia is not currently in a position to ratify the Convention as it has no government.\textsuperscript{41} The USA helped to write the Convention and signed it in 1989 but has not yet ratified it.\textsuperscript{42} Some of the reasons the USA has yet to ratify the Convention include the belief that it would undermine the rights of parents\textsuperscript{43}, it would allow children to sue their parents, it would undermine the ability of parents to teach their religion to their children and their choices of education for their children; and it would mean that the USA would have to prohibit corporal punishment\textsuperscript{44}. Another Concern is that many of the rights within the UNCRC fall under the authority of individual State Governments and not Federal Government.\textsuperscript{45}

\textsuperscript{44} Ibid., p.158.
4. Drafting the United Nations Convention on the Rights of the Child

1989

In 1979 when the drafting of the UNCRC began, no one, even those who had proposed a children’s rights treaty as part of the International Year of the Child, could have predicted how enthusiastically the world community would have embraced the Convention.\(^{47}\) The UNCRC itself presents a comprehensive and unified approach to children, specifying rights in all areas of life. This comprehensive approach is the result of long drafting process, a period of ten years, during which international participants deliberated.\(^{48}\)

When the drafting of the UNCRC began States did not regard the Convention as a high priority.\(^{49}\) From the drafting of the 1959 Declaration through to negotiations on The International Covenant on Civil and Political Rights, Poland had consistently raised issues concerning the binding rights of children.\(^{50}\) Poland is sensitive to the suffering and misery of children, this is as a result of both the first and second World Wars where Polish children suffered considerably, they were deprived of basic health care and access to education and thousands of Polish children lost their lives in Nazi concentration camps.\(^{51}\)


\(^{51}\) Office of the United Nations High Commissioner for Human Rights, op. cit.,p xxxvii
A draft Convention was submitted to the UN Commission on Human Rights (UNCHR) in 1978, this draft was submitted by Poland. The UNCHR received submissions from UN member States or States with observer Status, as well as non-governmental organisations (NGOs) and inter-governmental organisations (IGOs). The Commission then established a Working Group to revise the proposal. The Working Group was open for participation to member States of the UNCHR as well as non-member States and various NGOs. A revised draft (E/CN.4/1349) of the Polish draft was adopted at the UN Working group’s first meeting in 1979; this draft formed the basic working document. On 8th March 1989, following three major revisions, the Working Group presented the final text of the UNCRC to the United Nations General Assembly. The complete drafting process took ten years and ended in the UNCRC being unanimously adopted on 20th November 1989 (see appendix 6).

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5. Criticism of the Drafting Process

Despite the broad spectrum of international participation, both Harris-Short\textsuperscript{59} and Hannan\textsuperscript{60} have questioned the inclusiveness of the drafting process, especially the relative weight given to the views of non-western nations.\textsuperscript{61} Reportedly the Working Group was dominated by more developed, Western Nations such as Western European States, the USA, Canada, New Zealand and Australia.\textsuperscript{62} Developing nations were reportedly marginalised due to their limited resources, funding and training.\textsuperscript{63} As a result some scholars have raised their concerns that the UNCRC provisions ‘embody ethnocentric Western standards which are meaningless or irrelevant to much of the non-western world’.\textsuperscript{64}

For example, the prevailing ‘Western View’ is evident in the UNCRC’s outcome on the issue of child marriage. Whilst this concept is vehemently opposed by Western standards, child marriage is commonly practiced in many developing countries. Whilst the UNCRC does not explicitly prohibit child marriage, Articles 1, 2 and 24(3) have been interpreted to create an implied prohibition.

Other scholars have raised questions about the relevance of the provisions of the UNCRC to minority groups. According to the historical records of the

\textsuperscript{61} Harris-Short, op. cit., p. 305
\textsuperscript{62} Ibid., p. 316-317
\textsuperscript{63} Ibid., p. 328.
\textsuperscript{64} Ibid., p. 305
UNCRC drafting process, minority groups were not well represented. Most notably, at the Working Group meetings there were no independent representatives from Islamic, Hindu or Buddhist faiths.

Despite criticism over the ‘heavy Western influence’, the negotiation and drafting of the CRC included more developing countries and allowed for representation and contribution from more minority groups than any other UN convention in history. This drafting process lasted over ten years, and has been commended as a product of debate and consensus across a wide variety of cultural backgrounds, legal systems and political arenas.

6. The Adoption of the UNCRC

The UN General Assembly formally adopts international treaties, which are then signed and/or ratified by member states. On 20th November 1989, the UN General Assembly adopted the UNCRC, and on 2nd September 1990, after ratification by far more than the required twenty nations, the UNCRC took effect. The Convention’s adoption in 1989 signified the culmination of a

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65 Office of the United Nations High Commissioner for Human Rights, op. cit., p. 933-7
66 Harris-Short, op. cit., p321
long process of articulating and consolidating children’s rights in the international arena that began early in the 20th century.\textsuperscript{70}

7. Significance of the UNCRC

The UNCRC is not the first internationally recognised instrument pertaining to the rights of children, however it is significant for many reasons.\textsuperscript{71} It shows the international acceptance of the view that children’s rights are not adequately defined and protected by human rights treaties already in existence.\textsuperscript{72} The impact that the UNCRC has had on the status of children has been as profound as its consolidation of children’s rights.\textsuperscript{73} There are a number of reasons for this; the Convention separates childhood from adulthood, it asserts the family role in the lives of children, it ensures all children have rights regardless of circumstance, it recognises that children are individual members of the community and it identifies obligations to the child.\textsuperscript{74} The Convention also provides a common reference which can be used to assess progress and compare results.\textsuperscript{75} The full significance of the UNCRC reaches further than its legislative implications. It has helped to transform attitudes towards childhood; in effect the UNCRC has set out the \textit{terms of childhood}, detailing minimum standards that are due to every child under the age of 18 years.\textsuperscript{76}

\textsuperscript{73} Bellamy, C.,op.cit. , p.3
\textsuperscript{74} ibid, pp3-6
\textsuperscript{76} UNICEF, op. cit., p.3.
One distinguishing feature of the UNCRC is the fact that it achieved a dynamic shift in the way in which children are viewed. The introduction of the UNCRC saw the development of an understanding that children were the subject of rights rather than being objects that were in need of protection and attention as was described by the previous declarations of 1924 and 1959.\textsuperscript{77} The UNCRC gives recognition to the fact that children are capable of holding rights by including provisions that protect the right to freedom of thought, freedom of religion and freedom of association.

The UNCRC is a vital addition in the effort to improve the quality of life for the world’s people by providing international protection of their rights for these reasons; the fact that the Convention’s subject’s are children; the scope and content of the rights laid down within the convention; the potential impact the Convention could have on the world’s economic and social life; and the Convention’s potential impact on the domestic life of its parties including their laws, procedures, practices and institutions.\textsuperscript{78}

One of the hallmarks of the UNCRC is that it integrates a broad range of categories, including civil and political rights (e.g. to self-determination, and to protection from arbitrary arrest, torture and compulsory labour) and economic, social and cultural rights (e.g. to basic economic welfare, health care, education and freedom of religion).\textsuperscript{79} Unlike any previous bill of rights for

\textsuperscript{77} Institut International des Droits de Enfant (Jean Zermatten), \textit{The Best Interests of the Child: Literal Analysis, Function and Implementation – Working Report 2010}, p.2

\textsuperscript{78} Mower, op. cit., p.3

children, the Convention is both comprehensive and conceptually coherent.\textsuperscript{80} The Convention spells out that all children have the right to survival by way of appropriate healthcare, nourishment, clothing and shelter; it also supports the child’s right to an education, non-discrimination and to grow up in a safe environment.\textsuperscript{81} The UNCRC is the only internationally binding convention that wholly encompasses the principle of indivisibility, that is to say that every single right is equal; the rights to health and education are equal in every respect to the rights to freedom of religion or freedom of speech.\textsuperscript{82}

Article 4 of the UNCRC states that governments must “\textit{undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention}”. This means that governments face an obligation to ensure the introduction of pro-active measures that will ensure that the concepts of the UNCRC are made realities.\textsuperscript{83}

The magnitude of the UNCRC is due to its status as an international legally binding instrument.\textsuperscript{84} The Convention is unique among human rights instruments in the way that it stresses the need for international cooperation for the implementation of its provisions.\textsuperscript{85} The Convention not only signals the

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\textsuperscript{85} Jonsson, U., op.cit., p .44
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The UNCRC established a pioneering approach to human rights, it marked a departure from earlier instruments and from traditional ideas of child welfare, the Convention set a new vision of the child embodying a consensus that emerged in favour of the empowerment, as well as the protection, of children. The Convention has been hailed as the most authoritative standard-setting instrument in its field, it has also been described as being reflective of a cross-cultural perspective on children’ rights. If the attitude of international cooperation which has so far prevailed continues the UNCRC could become the trend-setter within the human rights arena.

8. Conclusion

It could be said that the UNCRC has been in the making since the early part of the 20th century. It began with the 1924 Declaration which has evolved into an all encompassing Convention. The Convention is a result of nations coming together with a common goal, to improve the lives of children and to establish children as an inherent part of society. The UNCRC is the singularly most valuable treaty in the armoury of human rights law that protects and

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87 Fottrell, D., op.cit., p.vii
88 LeBlanc, op. cit., p. xii.
90 McSweeney, op.cit., p.469.
defends the rights of children the world over. In the following chapter the provisions of the Convention will be looked at in more detail.

Chapter Three


1. The Structure of the UNCRC

The UNCRC is made up of 54 Articles and has been broken down into four sections; the preamble, and three main parts containing the Articles. This thesis deals with the implementation of the Convention and it is therefore important to look in detail at all of the provisions contained within it.

The preamble of the UNCRC details the Convention’s main principles and draws on standards laid down by other United Nations human rights treaties, including the Geneva Declaration 1924 and the Declaration of the Rights of the Child 1959. Embodied within the UNCRC and mentioned in the preamble are a number of guiding principles, including; non-discrimination, acting in the best interests of the child, the right to life, survival, and development, and the right to participate. These guiding principles or ‘rights’ are detailed individually within the UNCRC.

Articles 46 to 54 cover the formal provisions governing the entry into force of the Convention. The Articles contained within this part are procedural Articles about ratification and making amendments to the Convention.

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92 Mama, op. cit., p.179.
The rights contained within the second part, Articles 1 to 41, have been referred to as the substantive articles\textsuperscript{94}, these Articles cover general provisions, such as implementation measures, the definition of a ‘child’ and a comprehensive set of civil, social, economic, political and cultural rights to be afforded to all children. This part also details the obligations placed on UN member States to recognise, guarantee and promote these rights.\textsuperscript{95}

Procedures for monitoring the implementation of the Convention which includes things such as, making the Convention widely known\textsuperscript{96}, reporting obligations\textsuperscript{97} and co-operating with the UN\textsuperscript{98}, are contained within Articles 42 to 45.

2. Definition of the Child

It is within the UNCRC that children, for the first time, are recognised as complete human beings, with the integrity and the personality to fully participate in society.\textsuperscript{99} The idea of what constitutes ‘childhood’ and therefore defines a child is problematic.\textsuperscript{100} The concept of childhood varies greatly across cultural and social groups, and local understanding and values.\textsuperscript{101} On one hand, within the legal system, children are seen as independent individuals albeit with different legal rights and obligations, on the other hand,

\textsuperscript{94} Rehman, op. cit., p559.
\textsuperscript{95} Douglas, op.cit., p198.
\textsuperscript{96} UNCRC, art 42
\textsuperscript{97} Ibid., art 44
\textsuperscript{98} Ibid., art 45
\textsuperscript{100} Denov,op,cit., p3.
\textsuperscript{101} Denov, M., Child Soldiers: Sierra Leone’s Revolutionary United Front, (2010), p. 2.
from a psychological view point the same children are seen to be in the process of developing into adults.\textsuperscript{102}

In Article 1 of the UNCRC a child is defined as ‘every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier’\textsuperscript{103}. The Convention however, does not define the beginning of childhood; there is no clarity as to whether this begins at birth or at the moment of conception.\textsuperscript{104} In paragraph 9 of the preamble of the UNCRC it is noted that due to the physical and mental immaturity of children, they require special safeguards and care, before as well as after birth\textsuperscript{105}. This would imply that the UNCRC’s definition of a child would also extend to include an unborn child. This is controversial because although many preceding treaties have addressed the rights of the child none have indicated the inclusion of unborn children. There is confirmation of this point in Article 24(2)(d) of the UNCRC which places an obligation on state members to ‘ensure appropriate pre-natal and post-natal care for mothers’\textsuperscript{106}. The Article on the definition of the child caused many disagreements during drafting, some delegates believed the Convention should cover children from the moment of conception and others from birth, it was therefore decided to include ‘before as well as after birth’ in

\begin{footnotes}
\footnote{Willems, J. C.M., Developmental and Autonym Rights of Children: Empowering Children, Caregivers and Communities, (2000),p72}
\footnote{UNCRC, art 1}
\footnote{UNCRC, Preamble Paragraph 9}
\footnote{UNCRC, art 24(2)(d)}
\end{footnotes}
the preamble and within the Convention define a child as anyone under 18 years.\footnote{Office of the United Nations High Commissioner for Human Rights, op.cit., p xli.} This would enable individual States to make their own interpretation.

3. General Measures of Implementation

The range of measures necessary for the effective implementation of the UNCRC is vast and includes the development of specific structures and monitoring, training and other activities by all levels of Government, Parliament and judiciary.\footnote{United Nations Committee on the Rights of the Child, General Comment No 5 (2003): General Measures of Implementation on the Rights of the Child (arts 4, 42 and 44, para 6), CRC/GC/2003/5 (2003), Para 1} In order to make reporting more straightforward the UNCRC Committee developed guidelines on reporting and arranged all of the Articles into groups.

The first of these groups is referred to as general measures of implementation and comprises of Articles 4, 42 and 44(6). Article 4 of the UNCRC lays down the requirements of States Parties to implement the Convention.\footnote{Veerman, op.cit., p.295} Article 4, whilst indicating the overall implementation obligation placed on states Parties, is suggestive that there is a distinction between civil and political rights and economic, social and cultural rights, the UN Committee on the Rights of the Child however, have commented that these rights are so intricately intertwined that it is not possible to disentangle them.\footnote{United Nations Committee on the Rights of the Child CRC/GC/2003/5 ,op. cit., para 6} In Article 4 it is noted that States Parties should ‘take all appropriate legislative, administrative and other measures’ in order to implement the UNCRC.\footnote{UNCRC, art. 4}

Such measures include ensuring the Convention is given legal effect within
domestic law\textsuperscript{112} and having effective remedies in place to rectify rights violations\textsuperscript{113}.

Article 42 states that children should have an awareness of their rights.\textsuperscript{114} The Committee on the Rights of the Child continually pushes governments to inform all groups of the population about the principles of the UNCRC.\textsuperscript{115} The Committee has the opinion that if the adults around children are not aware of the rights contained within the Convention, then children’s rights will go unrealised.\textsuperscript{116} The Committee places special emphasis on the inclusion of learning about the Convention into the school curriculum to ensure that children are able to learn about their rights.\textsuperscript{117}

Reports should be made available to the public in the State Parties own country, this is mentioned in Article 44(6).\textsuperscript{118} Reports should be made accessible to everyone; this should be done by translating the reports into different languages, being adapted for people with disabilities and by being publicised in an appropriate form for children.\textsuperscript{119} Doing this provides ‘international accountability for how States treat children and their rights’.\textsuperscript{120} In

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\begin{itemize}
\item \textsuperscript{112} United Nations Committee on the Rights of the Child CRC/GC/2003/5 , op. cit., para 19
\item \textsuperscript{113} Ibid., para 24
\item \textsuperscript{114} Webb, E., op. cit., p. 430
\item \textsuperscript{116} United Nations Committee on the Rights of the Child CRC/GC/2003/5 , op. cit., para 66
\item \textsuperscript{117} Ibid., para 68
\item \textsuperscript{118} UNCRC, art. 44(6)
\item \textsuperscript{119} United Nations Committee on the Rights of the Child CRC/GC/2003/5 , op. cit., para 72
\item \textsuperscript{120} Ibid., para 71
\end{itemize}
accordance with Article 44(6) all States Parties should provide periodic reports regarding the steps they have taken to implement the UNCRC.\textsuperscript{121}


The traditional classification of the human rights provisions contained within the UNCRC usually sees the Articles being put into five categories; civil rights, political rights, economic rights, social rights and cultural rights.\textsuperscript{122} Rather than using these traditional categories and owing to the fact that the UNCRC provisions are interrelated the Committee groups them into six broad groups; General Principles; Civil Rights and Freedoms; Family Environment and Alternative Care; Basic Health and Welfare; Education, Leisure and Cultural Activities; and Special Protection Measures.\textsuperscript{123} For the reporting process this categorisation encourages coherent implementation, it reinforces the indivisibility of the rights within the UNCRC and it allows competent and specialised bodies to take part in the reporting process.\textsuperscript{124}

4.1 General Principles

To ensure a similar approach to the areas within the UNCRC the Committee on the Rights of the Child identified basic but essential values that are crucial


\textsuperscript{122} Rehman, op.cit., p558


to the realisation of children’s rights.\textsuperscript{125} The Committee have classified four UNCRC principles in particular that should be the basis of the implementation and analysis of the UNCRC.\textsuperscript{126} General Principles encompasses; Article 2: Non-discrimination, Article 3: Best interests of the child, Article 6: Right to life, survival and development and Article 12: Respect for the views of the child.\textsuperscript{127} These general principles confirm that children’s rights are inseparable and interdependent in a holistic approach which avoids hierarchy in the implementation of the provisions within the UNCRC.\textsuperscript{128}

4.1.1 Non-Discrimination

The Committee on the Rights of the Child has identified non-discrimination as one of the most important principles to be considered when implementing the UNCRC\textsuperscript{129}; this core principle is reflected in Article 2 of the Convention.\textsuperscript{130} Article 2 gives children the right to equality, no child may be discriminated against on the basis of race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status.\textsuperscript{131} The first paragraph of Article 2 provides that children should not only be protected

\begin{thebibliography}{99}
\bibitem{125} Pais, M. S., op.cit., p.9.
\bibitem{126} Unicef (2001, No.8), op.cit., p.5
\end{thebibliography}
from direct discrimination but also indirect discrimination. Direct discrimination is when a child is treated less favourably because they belong to a particular group. An example of this can be seen in a case brought against Birmingham City Council, where a court decided that girls had been discriminated against, this was because the council had provided more grammar school places for boys in boys schools than it had for girls in girls schools. Indirect discrimination occurs when a general rule sees someone from a particular group being treated unfavourably. This was what happened in the case of Sarika Angel Watkins-Singh, she brought a case against her school as they had a policy of no jewellery for pupils; this policy covered all pupils but was unfair for Sarika as she is Sikh and is required to wear the Kara (a Sikh bangle). It was decided by the court that this policy discriminated against Sarika.

Many organisations have policies in place specifically about non-discrimination as well as this there are a number of international instruments relating to discrimination, some of the core international treaties include the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1966, the International Covenant on Economic, Social and Cultural Rights 1966, International Convention on the Elimination

\^133\ [1989] IRLR 173.
\^134\ [2008] EWHC 1865.
of All Forms of Racial Discrimination 1965 and the Convention on the Elimination of Discrimination Against Women.\textsuperscript{135} In some countries female children are frequently discriminated against because of their gender. In 1995 the Committee on the Rights of the Child held a general discussion day with the aim of increasing awareness of the situation that girl children face, the discussion’s main focus was the general principle of non-discrimination and the need to ensure female children are able to enjoy all basic rights.\textsuperscript{136} The Committee drew a number of conclusions and made some recommendations as a result of this discussion day. It recommended that State Parties should adopt laws that would ensure a respect for the principle of equal rights and duties for both genders.\textsuperscript{137} The minimum age for marriage is an example of this, in some states the minimum age differs for boys and girls, States often refer to the fact that physically girls mature earlier than boys, however the Committee points out that social and mental development should also be considered.\textsuperscript{138} It was recommended that there needed to be a change in the way women were perceived in the media, advertising and educational textbooks in order to promote equality and combat stereotyping.\textsuperscript{139} The Committee also referred to the importance of

\textsuperscript{135} Office of the United Nations High Commissioner for Human Rights, \textit{International Law}, Available at http://www2.ohchr.org/english/law/ Accessed 13\textsuperscript{th} December 2012
\textsuperscript{138} \textit{Ibid.}, p.51.
\textsuperscript{139} \textit{Ibid.}, p72.
eradicating degrading and exploitive images of girls and women in the media as these images contribute to inequality and inferiority.\textsuperscript{140}

The Committee advised that States should make families aware of the role that they should play in promoting the dignity of girls as human beings and not just as daughters, sisters, mothers and wives.\textsuperscript{141} The Committee also expressed concern at the situation of working girls; children under 15 often participate in the same household duties as women, however this is not classed as ‘real work’ and therefore is not reflected in statistical data.\textsuperscript{142} It was recommended that States should improve the training given to healthcare professionals, with particular attention being paid to the specific health needs of children.\textsuperscript{143} A need for legislation to reflect the prohibition of harmful traditional practices was highlighted.\textsuperscript{144} The commitment of the international community to use the provisions of the UNCRC as an agenda for action to identify persistent forms of inequality and discrimination against girls and to abolish practices and traditions detrimental to the enjoyment of girl’s rights was undeniable.\textsuperscript{145}

4.1.2 Best Interests

Enshrined within the UNCRC is the primary consideration of the best interests of the child.\textsuperscript{146} The concept of best interests is the most fundamental principle within the Convention; it was included in the first version of the original Polish

\textsuperscript{140} Ibid., p50.
\textsuperscript{141} Ibid., p73.
\textsuperscript{142} Ibid., p51.
\textsuperscript{143} Ibid., p73.
\textsuperscript{144} Ibid., pp50-51.
\textsuperscript{145} Ibid., p48.
\textsuperscript{146} Hosking, G., and Ripper, M., ‘In the Best Interests of the (Silenced) Child’,(2012) 27 Australian Feminist Studies 171 at p171.
draft\textsuperscript{147}, and because of its importance it was kept throughout the drafting process. The concept pre-dates the Convention as it was also mentioned in the 1959 Declaration. The principle of the best interests of the child is contained within Article 3 of the UNCRC which states that the best interests of the child should be the primary consideration in all actions affecting children.\textsuperscript{148} Article 3 is of great importance due to it containing the general principle that underpins the application of all the rights contained within the Convention.\textsuperscript{149} All legislative, administrative and judicial bodies are required to apply the best interests of the child taking into consideration how children’s rights may be affected by their decisions.\textsuperscript{150} Putting it simply, the best interests of the child means considering the child before making any decisions affecting the child’s life; this principle has primarily been used to assist courts and other institutions in the process of decision-making.\textsuperscript{151}

The best interests of a child are most commonly applicable in family law especially in custody and divorce matters. In the case of \textit{TS v KS}\textsuperscript{152} a couple with three children divorced, the father who was Muslim wanted the children to be raised as Muslims and was opposed to the active promotion of Christianity, the mother a Christian wanted the children to be exposed to both Islam and Christianity. The court decided that whilst the father might have a religious obligation to raise his children as Muslims, it was an obligation placed on him and did not take into account the best interests of the children.

\begin{flushleft}
\textsuperscript{147}Quennerstedt, A., op. cit., p164.
\textsuperscript{148}UNCRC, art. 3.
\textsuperscript{149}McGoldrick, D., op. cit., p135.
\textsuperscript{152}KS v TS [2012] WL 4888757.
\end{flushleft}
The judge said that if the children were not allowed to participate in Christmas and Easter events at school this would single them out as different and may cause them distress. It was also stated that the fact the couple’s marriage certificate stated that the children were to be raised in the Islamic faith did not override the need to consider the children’s best interests as the paramount consideration.

‘Best Interests’ is a term that broadly describes the well-being of a child, this well-being is determined by various factors such as age, level of maturity, the child’s environment, circumstances and experiences.\textsuperscript{153} A definitive statement of ‘best interests’ has not been provided by the UNCRC but instead a framework that details the application of the principle is in place.\textsuperscript{154} This Article can be a challenge to States, especially when the child’s best interests clash with other social priorities.\textsuperscript{155} For example when a child requires expensive medical treatment, it is necessary to seek a fair solution within the given constraints whilst still respecting the principle of the best interests of the child.\textsuperscript{156}

\subsection*{4.1.3 Right to Life, Survival and Development}

A child’s right to life, survival and development is contained within Article 6 of the UNCRC, the Article states that all children have an inbuilt right to life and that State Parties have an obligation to ‘ensure to the maximum extent

\begin{itemize}
\item \textsuperscript{153} UNHCR, \textit{Determining the Best Interests of the Child}, (2008), p14
\item \textsuperscript{156} Hammarberg, T., \textit{The Principle of the Best Interests of the Child – What it Means and What it Demands From Adults}, 2008, p7
\end{itemize}
possible the survival and development of the child'. The right to survival and development is essential for the enjoyment of other rights. As with many rights contained within the UNCRC the right to life, survival and development is not a standalone right. The right to survival and development is closely related to a child’s right to enjoy the highest standards of health and suitable living standards. Measures taken by the UN to ensure survival include growth monitoring, oral rehydration and disease control, breastfeeding, immunisation, nutrition, birth spacing, and women’s literacy.

The primary healthcare approach which is backed by WHO and UNICEF emphasises the relation between essential healthcare, adequate nutrition, improved water and sanitation and hygiene and the community health partnerships. In September 1990 the World Declaration on the Survival, Protection and Development of Children was adopted at the World Summit for Children, this provided both general and specific commitments for child health that were related to the Conventions provisions. The Millennium Declaration was adopted in September 2000 and provides eight Millennium Development Goals (MDG) some of these goals relate to child survival and development, the Committee has consistently urged states to meet this goals. In September 2005 the Partnership for Maternal and Newborn and

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159 UNICEF (Special Edition), op.cit., p.9.
160 Ibid.
161 Ibid.
162 Hodgkin and Newell, op.cit., p.347
163 Ibid.
Child Health was launched to aid the fulfilment of MDGs for maternal and child health.\textsuperscript{164}

In a broad sense it can also be said that a child’s right to development is related to the right to education, as education should be aimed at developing children to their fullest potential.\textsuperscript{165} Education is a cornerstone in a child’s development as it has long term benefits for both the children and their families.\textsuperscript{166}

The right to survival establishes that preventative actions should be taken so as to ensure children their most basic needs. Article 6 makes the distinction that development is holistic and that the survival and development of children should not merely stand to prepare children for adulthood but also guarantee that a child’s early years are protected and that their rights are maintained.\textsuperscript{167}

4.1.4 Respect for the Views of the Child

One of the deep-seated values of the UNCRC is that children have a right to be heard and for their views to be taken seriously.\textsuperscript{168} Article 12 embodies this principle and states that in all matters concerning them children’s views and opinions should be taken seriously.\textsuperscript{169} Article 12 is unique in that it addresses

\begin{flushright}
\textsuperscript{164} Ibid., p.350
\textsuperscript{166} UNICEF (Special Edition), \textit{op.cit.}
\textsuperscript{168} United Nations, \textit{CRC General Comment No.12: Committee on the Rights of the Child, Fifty–First session,} (2009), CRC/C/GC/12, p.5
\textsuperscript{169} UNICEF, \textit{op. cit.}, p. 5.
\end{flushright}
both the legal and social status of children, who, whilst lacking full autonomy are the subject of rights.\textsuperscript{170}

Article 12 clearly defines children’s freedom of speech as a legal right that is acquired at a certain stage of development\textsuperscript{171}, however the text of Article 12 is rather general and there is no lower age limit stated meaning that this right should also apply to young children\textsuperscript{172}. The weighting that should be given to a child’s views is not detailed in legislation or guidance, nor is the age at which children should be expected to partake in formal decision making meetings.\textsuperscript{173}

It could be said that Article 12 is one of the most challenging articles contained within the UNCRC owing to the fact that it recognises both civil and political rights held by children and it increases the view of the child as a citizen.\textsuperscript{174} Whilst children are entitled to be listened to and have their views taken seriously in all matters that concern them\textsuperscript{175}, it is also important that the wishes of children, as to whether they participate in decision-making or not, be respected\textsuperscript{176}.

\begin{footnotesize}
\begin{enumerate}
\item United Nations, CRC/C/GC/12, op. cit., p.5
\item Quennerstedt, A., op.cit., p.166
\item Lansdown, G., and Karkara, R., ‘Children’s Right to Express Views and Have Them Taken Seriously’, (2006) 367 The lancet 690 at p 690
\end{enumerate}
\end{footnotesize}
In the UK, courts are required to reach decisions over a child’s upbringing by giving the child’s welfare their paramount consideration, in deciding what is in the child’s welfare or best interests the courts are directed by section 1 of the Children Act 1989 to consider ‘the ascertainable wishes and feelings of the child concerned’.

There are many examples of legal cases where a child’s views have been important when reaching a decision involving the child. In the case of *DY v LY* an American father wished to take his 11 year old son to reside in the USA, the judge decided to grant an order allowing this, the child had expressed the wish to go with his father and the judge stated that weight should be given to the views of the child. In *Re H (a child) Court of Appeal (Civil Division) (2011)* in which an 11 year old girls’ parents had separated and the girl remained with her mother but wished to reside with her father, the father made an application for residency. The hearing was due to take place in July 2011 but in March 2011 the girl moved in with her father at her request. An interim order was put in place that stated the girl should be returned to her mother; the father appealed against this order and as the girl had strongly expressed her feelings saying that if she had to return to her mother she would run away or take her own life the judge allowed the appeal and overturned the interim order allowing the girl to stay with her father.

### 4.2 Civil Rights and Freedoms

There are a number of articles that come under the heading of ‘civil rights and freedoms’, these include; the right to a name and nationality, preservation

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179 *Re H [2011] EWCA Civ 762.*
180 UNCRC, art 7
of identity, freedom of expression, freedom of thought conscience and religion, freedom of association and peaceful assembly, protection of privacy, access to appropriate information and prohibition against torture and the death penalty.

Children whose births are not registered are unrecognised within official records. Article 7 allows for the birth registration of all children, which is crucially important to children as it is an acknowledgement of their life, that they have parents and that they have a country of origin. As seen in Article 7 children have a right to a name and nationality. Article 8 goes further and implies that this identity should be preserved and safeguarded. The right to name and nationality is vital in accepting that every child is a person in their own right from the moment they are born.

Article 13 of the UNCRC points out the right of children to express themselves freely. The Committee on the Rights of the Child has highlighted that it is not enough to merely suggest that everyone has the right to freedom of expression; the Committee has indicated that a child’s right to freedom of expression should be manifested within law. Freedom of expression is a right that is historically noted in many international treaties on civil and political

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181 Ibid., art 8  
182 Ibid., art 13  
183 Ibid., art 14  
184 Ibid., art 15  
185 Ibid., art 16  
186 Ibid., art 17  
187 Ibid., art 37(a)  
188 Children’s rights Information Network, op. Cit.  
189 Mama, R. S., op cit..p 183  
191 Mama, op. cit.  
192 Ochaita and Espinosa op. cit.  
193 Children’s rights Information Network, op. Cit.
rights, it is not however commonly associated with the rights of children.\textsuperscript{194} Interpreting Article 13 with surrounding Articles gives a basis for the argument for a child’s right to participate ‘so that it can fully assume its responsibilities within the community’ as stated in the preamble to the UNCRC.\textsuperscript{195} It was never the intention of the drafters of the UNCRC to give children a right to political participation or to allow them to exercise their freedom of expression through political voting, giving children the right to vote and the attached responsibility is not wise as children can lack sufficient competence and are easily exploited and manipulated.\textsuperscript{196}

A child’s right to privacy is protected by Article 16, this is especially important as children often experience a lack of privacy in their relationships with others and how information about them is accessed and stored.\textsuperscript{197} Ensuring that children have the right to access information and materials from a wide range of sources is detailed in Article 17; this is an innovative right and points to the role played by mass media in the development of the rights of children.\textsuperscript{198} This Article suggests that the content of information and material circulated by the media should have a number of aims; it should develop the child’s personality, talents and abilities; develop a respect for human rights; develop respect for the child’s parents, the child’s cultural identity and the national values of the child’s country of residence and origin; prepare the child for a responsible life in a free society; and develop respect for the natural environment.\textsuperscript{199} The

\textsuperscript{194} Langlaude, S., \textit{op cit}, p33
\textsuperscript{196} \textit{Ibid.}, pp. 52-53.
\textsuperscript{197} Children's Rights Information Network, \textit{op. cit.}
\textsuperscript{198} Rehman, \textit{op. cit.}, p.572
\textsuperscript{199} Hodgkin and Newell, \textit{op.cit.}, pp.221-222
Committee regards Article 17 as a civil right and has frequently expressed concern that there is not enough attention paid to the implementation of children’s civil rights and freedoms.  

4.3 Family Environment

The importance of the role in which the family plays within children’s achievement and development can clearly be seen from the outset of the UNCRC. According to paragraph 5 of the preamble of the UNCRC the family is a ‘fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children’.

Article 5 of the UNCRC is concerned with parental guidance and the evolving capabilities of children. The Article indicates that children should be able to exercise their rights when they attain competence rather than on a particular birthday. The decision as to whether a child is competent or not can sometimes be problematic. McCabe looked at children’s cognitive and social development in regard to decision making, and Reder and Fitzpatrick have highlighted the influence of emotional factors. According to Rutter it is not possible to devise a test that could be used to measure competence as there is no universally acceptable level. The question of a child’s competence or capacity for decision-making is dependant on the context, type of decision making.

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200 Ibid., p220
201 UNCRC, Preamble para 5
202 Ibid., art. 5
203 Children’s rights Information Network, op.cit., p.4
and the individual circumstances. Article 5 also points to the Convention regarding children as active subjects of rights, and gives emphasis to the exercising of these rights by the child.

The separation of children from their parents is dealt with in Article 9. ‘Separated children’ are children who have been separated from both of their parents or from their legal guardian, but not necessarily from other relatives or family members. Article 9 contains two vital principles of children’s rights, namely that children should not be separated from their parents unless absolutely essential and in the child’s best interests and that procedures to separate children for this reason must be reasonable and unbiased.209 Reservations to this Article were entered by some countries on the grounds that it is not a judicial body that would decide on any separation but rather their social work authorities.210 ‘Family reunification’ of children whose parents are involved in leaving or entering a country is dealt with in Article 10 of the Convention.211 Under Article 11 ratifying States have an obligation to prevent the ‘illicit transfer and non-return of children abroad’212. This Article is primarily concerned with parental abductions and should not be confused with Article 35 which deals with the sale, trafficking and abduction of children, the main

207 Hodgkin and Newell, op. cit., p. 75
209 Hodgkin and Newell, op. cit., p. 121
210 Lerch, op. cit., p. 4.
211 UNCRC, art.10
212 Ibid., art. 11
distinction between these Articles is that Article 11 applies to children taken for personal gain and Article 35 deals with children taken for financial gain.\textsuperscript{213} 

Article 18 brings attention to the balance of responsibility between a child’s parents and that of the state, and emphasises the need for the state to support parents in fulfilling these responsibilities.\textsuperscript{214} 

The UNCRC Article 19 offers an inclusive idea of child protection that emphasises how important the prevention of maltreatment and violence against children is.\textsuperscript{215} It is a child’s right to be raised in a peaceful and loving environment that is free from violence.\textsuperscript{216} Owing to the difficulties encountered when trying to identify a flexible definition of child abuse that could be used across varying cultures and that is also internationally acceptable, it is unsurprising that the UNCRC does not include a precise definition.\textsuperscript{217} Whilst most definitions of child abuse differ, almost all definitions concur that child abuse is when a parent or other adult who is caring for a child fails to provide for the child’s basic needs or harms the child in some way.\textsuperscript{218} The Convention’s requirements and child rights approach offers one great advantage in that it expands child protection beyond child survival and also promotes and protects human dignity, well-being, health and development.\textsuperscript{219}

\textsuperscript{213} Hodgkin and Newell op. cit., p.143
\textsuperscript{214} UNCRC, art. 18
\textsuperscript{217} Littlewood, op. cit., p. 419.
\textsuperscript{219} Bennett, op.cit., p.787.
The UNCRC can improve the health, well-being and development of children by affecting the way health services are configured and delivered and by improving public health.\(^{220}\)

Children who are not able to reside with their families, either permanently or temporarily, are the subject of Article 20, this Article concerns children that are ‘deprived of his or her family environment’\(^{221}\) for a number of reasons, these could include circumstances such as death, displacement or abandonment or because the child has been removed from the family as a result of the State deciding this is in their best interests.\(^{222}\) Article 21 concerns the issue of adoption, in those countries that allow adoption it is stated that the child’s best interests should be paramount and that inter-country adoption should only be considered when there is no suitable placement in the child’s own country.\(^{223}\)

For children who have been placed in care, Article 25 ensures that the placement should be reviewed to ensure that the placement remains appropriate and that there is progress of the treatment or care provided.\(^{224}\) Article 27(4) places an obligation on the State to ensure the recovery of maintenance for the child from those who have financial responsibility for that child.\(^{225}\)

The impact of violence on children can have devastating, far-reaching effects but, with the right support services the consequences, can be mitigated and

\(^{220}\) Webb, E., op cit., p. 430  
\(^{221}\) UNCRC, art. 20  
\(^{222}\) Hodgking and Newell, op. cit., p.277  
\(^{223}\) Ibid., p.293  
\(^{224}\) Ibid., p. 379  
\(^{225}\) UNCRC, art .27(4)
the child’s future improved.\textsuperscript{226} Article 39 provides that State Parties should have in place appropriate measures to promote physical and psychological recovery and social reintegration of child victims; and that such recovery and reintegration should take place in an environment conducive to the health, self respect and dignity of the child.\textsuperscript{227}

As a result of the increasing number of children that are separated from their parents and the vulnerable situation faced by these children, the Committee on the Rights of the Child felt motivated to issue a General Comment on ‘The Treatment of Unaccompanied and Separated Children Outside their Country of Origin’.\textsuperscript{228}

\textbf{4.4 Basic Health and Welfare}

This group of rights addresses issues related to health, standard of living, social security, child care services and facilities, and the rights of disabled children. The definition of health is often vague, the classical definition offered by the WHO states that ‘health is a state of complete physical, mental and social well-being and not only the absence of disease and weakness’.\textsuperscript{229} This meant that when drafting the UNCRC a holistic approach was needed, it was not sufficient to merely address a child’s basic needs.

Article 6(2) requires States to ensure to the maximum extent possible the survival and development of children.\textsuperscript{230} Measures taken to implement the rights set out in article 6(2) may include raising life expectancy, combating

\begin{itemize}
  \item Children’s rights Information Network, op.cit., p.26
  \item UNCRC, art. 39
  \item United Nations CRC/GC/2005/6 (2005) ,op cit.,p.5
  \item UNCRC, art. 6(2)
\end{itemize}
infant and child mortality, ensuring adequate nutritious foods and clean drinking water are available, reducing disease and improving health.\textsuperscript{231} Children’s rights are not being completely protected if they are not provided with enough of whatever is essential for their survival and development.\textsuperscript{232}

Under Article 18(3) the State should ensure that children whose parents work should be able to benefit from child care services and facilities.\textsuperscript{233} It is important to meet the needs of children from working families and this right should not be underestimated.\textsuperscript{234}

All of the Articles contained within the UNCRC apply to every child without exception; therefore under the Convention, disabled children have exactly the same rights as all other children.\textsuperscript{235} It is important therefore that the UNCRC be considered in respect of all children with disabilities and that such children should be considered when looking at the implementation of rights.\textsuperscript{236} Whilst disabled children are in the minority it is important to realise that the number of children with disabilities is still outstanding. There are estimated to be 500-650 million people with disabilities worldwide, about 10\% of the population, 150 million of these people are children,\textsuperscript{237} sadly children with disabilities often face exclusion. Exclusion based on disability is increased by a lack of awareness of those people tasked with making policies that relate to this

\begin{itemize}
\item \textsuperscript{232} Briefings in Medical Ethics No. 9, 'The U.N. Convention on the Rights of the Child', (1991) 17 Journal of Medical Ethics 1 at p.2
\item \textsuperscript{233} UNCRC, art. 18(3)
\item \textsuperscript{234} Hodgking and Newell op.cit., p.239
\item \textsuperscript{235} Mepham, S., 'Disabled Children: The Right to Feel Safe',(2010) 16 Child Care in Practice 19 at p 20.
\end{itemize}
minority group and their needs. When the UNCRC was adopted in 1989, it was the first human rights treaty to specifically mention disability and contain a separate article which was exclusively dedicated to disabled children. Article 23 of the UNCRC focuses on children with disabilities and ensures that these children have a fulfilling life, participate within the community, ensures dignity and promotes self-reliance.

Article 24 of the Convention concerns State Parties recognising that children have a right to ‘enjoyment of the highest attainable standard of health’ and that appropriate measures are taken ‘to combat disease and malnutrition’ meaning that adequate nutrition, clean drinking water and basic health care should be provided. The article contains detailed elements of health and health care that should be recognised as a right. These elements include, reducing infant and child mortality, adequate nutrition, water and sanitation, the right to breastfeeding, and prenatal and postnatal care. The adoption of and widespread acceptance of the UNCRC gives substantial justification to the claim that all children have a right to adequate nutritious food. Whilst Article 24 is not as such a right to food it does state that malnutrition should

239 Committee on the Rights of the Child CRC/C/GC/9, op.cit., pp1-2
240 Sneddon and Monteith, op.cit. p.122.
241 UNCRC, art. 24
242 Ibid.
244 Jonsson, op. cit., p.45
245 Lewis, op cit, p.78
be combated. It should be highlighted that Article 24 includes an emphasis on primary healthcare and encourages a basic knowledge of child health.

Article 26 details the States obligation to ensure that children dependent on adults who are unable to provide for them have access to some form of financial support, paid either directly to the child or a responsible adult.

The UNCRC requires, under Article 27, that ‘States Parties recognise the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development’. The Convention recognises that an adequate standard of living is essential for child development, and has an in depth idea of such development which is holistic and includes whatever capacities are required for ‘human flourishing’.

4.5 Education, Leisure and Cultural Activities

The topics of education, leisure and cultural activities are covered by articles 28, 29 and 31. Within many significant human rights instruments education has always been enshrined as a human right. Education is considered to be one of society’s most important goals and has been identified as a key way to develop a humanistic society.

249 Hodgkin and Newell op. cit., p.385
250 UNCRC, art 27
251 Briefings in Medical Ethics No. 9, op. cit.
The first General Comment by the Committee on the Rights of the Child focussed specifically on the goals of a right to education, the right to education is pivotal in a child’s life.\textsuperscript{254} It is a sad reality that for many children worldwide, particularly in developing countries, economic barriers are an obstacle to accessing education; the requirement for children to contribute to the family income makes a joke of right to free education.\textsuperscript{255} The UNCRC gives details on the different sorts of education and the roles and rights of the child.\textsuperscript{256} As well as this the UNCRC includes obligations for governments to take steps to encourage regular attendance and reduce drop-out rates.\textsuperscript{257}

The main obligation that Article 28 of the UNCRC imposes on State Parties is the requirement to develop and maintain an effective educational system.\textsuperscript{258} The Convention recognises that every child has the right to free primary education and encourages the development of secondary education, this is important as access to education gives children important openings for later life.\textsuperscript{259} The UNCRC puts the obligation on ratifying countries to acknowledge that children have a positive right to education.\textsuperscript{260}

\begin{flushleft}
\footnotesize
\textsuperscript{255} Byrne, I., and Wilson, D., ‘Empowering the Next Generation: Securing the Right to Education in the New Millennium’, (2007) 15 \textit{Interights Bulletin} 165 at p.166.  \\
\textsuperscript{256} Cumming, J., and Mawdsley, R., D., ‘Student Rights and Parent Rights in Education in Australia’, (2005) 10 \textit{Australia and New Zealand Journal of Law and Education} 37 at p37.  \\
\textsuperscript{258} Sloth-Nielsen, J., and Mezmur, B. D., \textit{Free Education is a Right for Me: A Report on Free and Compulsory Primary Education}, (2007), p15.  \\
\textsuperscript{259} Manuchehr, T., ‘Education Right of Children During War and Armed Conflicts’, (2011) 15 \textit{Procedia Social and Behavioural Sciences} 302 at p. 303.  \\
\end{flushleft}
Article 29 specifies the purpose of the education provided by State Parties, the aim of education is to develop a child’s full range of abilities and talents.\(^{261}\) Education should enable a child to develop a personality, talents and abilities to their fullest potential.\(^{262}\) Paragraph 1 of Article 29 is of far-reaching importance, it insists on the need for education to be child-centred, child-friendly and empowering.\(^{263}\)

Article 31 relates to a child’s right to rest, leisure, play and recreational activities and to participate in cultural and artistic activities.\(^{264}\) Unfortunately despite the UNCRC, today’s children are faced with fewer opportunities to play than ever before.\(^{265}\) The right to play is sometimes referred to as the ‘forgotten right’ and is often viewed as a luxury by adults, play however is vitally important for a child’s development.\(^{266}\) In many developing countries a child’s right to play is often restricted owing to the fact that many children have to work to help their family.\(^{267}\)

### 4.6 Special Protection Measures

There are 11 articles that make up the Special Protection Measures category, the Committee on the Rights of the Child divides these Articles into 3 groups; children in situations of emergency, children in conflict with the law and children in conflict with the law and

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\(^{262}\) Hammarberg (1997), op. cit., p. 7.

\(^{263}\) UN Committee on the Rights of the Child (CRC), CRC General Comment No. 1: The Aims of Education, 17 April 2001, CRC/ GC/2001/1, p.2

\(^{264}\) UNCRC, art 31


\(^{266}\) Hodgkin and Newell op. cit., p. 469

\(^{267}\) Child Rights Information Network, op. cit., p. 22.
children in situations of exploitation (including physical and psychological recovery, and social reintegration (art 39)).

4.6.1 Children in Situations of Emergency

Article 22 pertains to the rights of refugee and asylum-seeking children, in particular their right to appropriate protection and humanitarian assistance.\(^{268}\) The Office of the United Nations High Commission for Refugees estimates that approximately half of the world refugees are children, Article 22 of the UNCRC emphasises that these children are entitled to all of the rights contained within the Convention.\(^ {269}\) The protection of children affected by armed conflict is addressed in Article 38.\(^{270}\) Under Article 38 State Parties are required to; respect the rules for international humanitarian law applicable to them in armed conflict, take measures to ensure that children under 15 do not take a direct part in armed conflict, do not recruit under 15 year olds into the armed forces and give priority to the oldest when recruiting 15-18 year olds, and also take measures to protect and care for children affected by armed conflict.\(^ {271}\) Children are not spared in armed conflict, in many of today’s conflicts children are the most severely affected owing to their significant vulnerability.\(^ {272}\) Children are also forced to face severe health issues, not only the immediate threat of bombs and bullets but also from disease, disrupted

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\(^{268}\) UNCRC, art. 22  
\(^{269}\) Hodgkin and Newell op. cit., p305  
\(^{270}\) UNCRC, art. 38  
\(^{271}\) Hodgkin and Newell op. cit., p 573  
food supplies and malnutrition.\textsuperscript{273} Of the children saved from armed conflict, a huge number will suffer from shortages of food and the breakdown of even the most basic health services.\textsuperscript{274} As conflict spreads to urban areas lethal weapons will claim increasing numbers of child victims.\textsuperscript{275}

4.6.2 Children in Conflict With the Law

Article 37 of the UNCRC addresses the right of children to be protected from; torture and other forms of cruel, inhumane or degrading treatment or punishment, capital punishment, life imprisonment, and unlawful deprivation of liberty. The Article also lays down conditions for arrest, detention or imprisonment of a child; this should conform with the law, only be used as a last resort, and be for the shortest time possible. Furthermore the Article sets out conditions for the treatment of children that are deprived of liberty; to be treated with humanity, respect and dignity, the child’s age should be taken into account, the child should be separated from adults unless this contradicts the child’s best interests, the child should be able to maintain contact with his/her family, the child should have access to legal assistance, and the child has the right to challenge any deprivation of liberty before a court and have a prompt decision on this matter.\textsuperscript{276} Under Article 39 of the Convention State Parties are required to take appropriate measures to encourage the physical and psychological recovery and social reintegration of child victims of any

\textsuperscript{276} UNCRC, art. 37.
form of neglect, abuse or exploitation.\textsuperscript{277} It is stated that such recovery and reintegration should occur in an environment that fosters the child’s health, self-respect and dignity.\textsuperscript{278}

Article 40 covers the rights of children who are alleged of, accused of or found to have broken the law, it covers their treatment from the moment an allegation is made, through to the investigation, arrest, charge, trial and sentence.\textsuperscript{279} The Article also requires State Parties to set a minimum age for criminal responsibility, provide measures for dealing with children who have broken the law without having to go through the judicial system and details minimum guarantees for the child.\textsuperscript{280}

4.6.3 Children in Situations of Exploitation (Including Physical and Psychological Recovery and Social Reintegration)

The UNCRC requires that State Parties should protect children from exploitation, the State should ensure that the control exerted over children by adults should be fair and show respect for children as people.\textsuperscript{281}

Article 30 of the UNCRC protects the rights of children from minority or indigenous groups; this right enables these children to enjoy their culture, religion and language.\textsuperscript{282} In its eleventh General Comment the Committee on the Rights of the Child highlights that the specific references to indigenous

\textsuperscript{277} UNCRC, art. 39.  
\textsuperscript{278} Hodgkin and Newell op. cit., p. 589.  
\textsuperscript{279} UNCRC, art. 40.  
\textsuperscript{280} Hodgkin and Newell op. cit., p. 602  
\textsuperscript{281} Melton, op. cit. p. 347.  
\textsuperscript{282} Hodgkin and Newell op. cit., p. 455
children in the UNCRC indicate that they require special measures so that they may fully enjoy all of their rights.\textsuperscript{283}

Child labour is addressed in Article 32, children should be protected from economic exploitation; State Parties should provide minimum ages for employment, regulate the hours and conditions of employment and have in place appropriate penalties to ensure effective enforcement.\textsuperscript{284} The provisions laid out within the UNCRC pertaining to child labour are universally supported; unfortunately child labour is still widespread in many parts of the world.\textsuperscript{285} Save the Children have adopted the definition that work is when a child undertakes activities in order to contribute to their own or the family economy.\textsuperscript{286} Under the UNCRC the prohibition of child labour is aimed at ensuring children are protected from activity that is hazardous to the child’s physical, moral and intellectual development.\textsuperscript{287} The UNCRC requires that States set a minimum age for employment but does not actually specify an age.\textsuperscript{288} This means that States can either choose to allow non-hazardous work or ban child labour by setting a high minimum age.\textsuperscript{289}

\textsuperscript{283} UN Committee on the Rights of the Child, \textit{General Comment No. 11: Indigenous Children and Their Rights Under the Convention}, Feb 2009, CRC/C/GC/11, p.2
\textsuperscript{284} Hodgkin and Newell op. cit., p.479
\textsuperscript{285} Weiner, M., ‘Child Labour in Developing Countries: The Indian Case, Articles 28a 32 and 36 of the UN Convention on the Rights of the Child’, (1994) 2 \textit{The International Journal of Children’s Rights} 121 at p121.
Children and drug abuse are covered by Article 33; States should take appropriate measures to ensure children are protected from the illicit use of drugs and prevent the use of children in the production of and trafficking of such substances.\(^{290}\) Illegal drug taking often comes hand in hand with crime; children who take drugs often take part in their production and distribution and may find themselves involved in other crime and exploitation.\(^{291}\)

Article 34 places an obligation on States to protect children from all forms of sexual exploitation, in particular sexual abuse, child pornography and prostitution.\(^{292}\) It is not the purpose of this Article to regulate the sex life of children rather to combat the sexual exploitation of children.\(^{293}\) It was not until the introduction of the UNCRC that sexual abuse of children became expressly prohibited by international law.\(^{294}\)

Today the trafficking of children has become one of the worst violations of children’s rights.\(^{295}\) Article 35 of the UNCRC requires that State Parties prevent the abduction, sale and trafficking of children.\(^{296}\) The trafficking of children has become more and more widespread, children are trafficked for a number of reasons, to work in sweatshops, for adoptions, as child soldiers and into the commercial sex industry, these children are not only exploited but

\(^{290}\) UNCRC, art. 33  
\(^{291}\) Hodgkin and Newell op. cit., pp. 505-506  
\(^{292}\) UNCRC, art. 34  
\(^{294}\) Ibid., p.46  
\(^{296}\) UNCRC, art. 35
they are also denied a childhood and potential future.\textsuperscript{297} Article 36 of the convention encompasses all other forms of exploitation.\textsuperscript{298}

5. Optional Protocols

The United Nations has recognised that some areas of the UNCRC are insufficient. In response to this, attached to the Convention are two optional Protocols, one dealing with children in situations of armed conflict and the other addressing the sale of children, children in the sex industry and child pornography.\textsuperscript{299} The two Optional Protocols were drafted around areas that State Parties felt ready to pledge greater commitment to than that which is given already in the Convention.\textsuperscript{300} Whilst both of these Optional Protocols operate under the UNCRC, they are also stand alone agreements under international law.\textsuperscript{301} The Optional Protocols require State Parties to report on implementation measures taken, the first of these reports should be submitted within two years following entry into force by the State Party.\textsuperscript{302}

5.1 Optional Protocol – Children in Armed Conflict

The tactics used in modern warfare are evolving and the characteristics changing, in today’s wars children find themselves increasingly becoming the

\textsuperscript{297} Bellamy, op. cit., p.90
\textsuperscript{298} UNCRC, art. 36
\textsuperscript{300} UNICEF (Special Edition), p.7
\textsuperscript{302} United Nations Committee on the Rights of the Child CRC/ C / 58/ Rev.2, op. cit., p.1
target of attacks and being recruited into the military.\textsuperscript{303} The Optional Protocol to the UNCRC on the Involvement of Children in Armed Conflict (OPAC) (see appendix 7) raises the minimum age that children can take a direct part in armed conflict from 15 to 18 years; it prohibits the forced recruitment of children and pressures governments to raise the minimum age for voluntary recruitment.\textsuperscript{304} Where non-governmental forces are concerned the protocol prohibits any recruitment or utilisation of children under 18 years and requires that State Parties criminalise any such practice.\textsuperscript{305} The adoption of OPAC is a huge step towards ending the recruitment and utilisation of children in armed conflict.\textsuperscript{306} OPAC was adopted in May 2000 and after ratification by the first 10 State Parties it entered into force and became legally binding in February 2002.\textsuperscript{307} To date 171 countries have ratified OPAC (see appendix 8).

### 5.2 Optional Protocol – Sale of Children, Child Prostitution and Child Pornography

There are two aims of the Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child Pornography (OPSC) (see appendix 9), the first is to improve international criminalisation and the second is to provide protection for child victims.\textsuperscript{308} OPSC was adopted in May 2000 and entered

\begin{itemize}
\item \textsuperscript{304} Bellamy, op. cit., p.47
\item \textsuperscript{305} Kuper, J., ‘Children and Armed Conflict: Some Issues of Law and Policy’ in Fottrell, D., Revisiting Children’s Rights 10 Years of the UN Convention on the Rights of the Child, (2000), p107
\item \textsuperscript{306} Coomaraswamy,op. cit., p.539
\item \textsuperscript{307} Ibid., p.537
\end{itemize}
into force in January 2002.\textsuperscript{309} The Protocol is made up of 17 articles that provide an extension to the UNCRC in order to protect children from being sold, prostituted or used for pornography.\textsuperscript{310} Originally the proposal for an optional protocol that related to child sexual exploitation was not actively supported by the Committee on the rights of the Child; ultimately it was a wish for more in-depth responsibilities for State Parties that led to OPSC being adopted.\textsuperscript{311} To date 176 countries have ratified OPSC (see appendix 10).

6. General Obligations on State Parties

Individual State Parties implement the Articles contained within the UNCRC in different ways. When the UNCRC is ratified by a State Party it does not automatically become part of that States domestic law, the State Party is placed under a contractual obligation to fulfil the minimum standards as laid out in the UNCRC.\textsuperscript{312} The Convention places the onus on the State Party to take ‘all appropriate measures’, and to ‘take legislative, administrative, social and education measures’.\textsuperscript{313} Neither the UNCRC nor the Implementation Handbook for the Convention on the Rights of the Child specifies what legislative or administrative measures should be taken, this is left for interpretation by the State Party.

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\textsuperscript{311} Hodgkin and Newell, op.cit.,p.669.

\textsuperscript{312} United Nations Committee on the Rights of the Child CRC/GC/2003/5 ,op. cit., para 1

\textsuperscript{313} UNCRC, art 4.
7. Reporting and Monitoring Process

A vital part of the UNCRC is the system in place for monitoring implementation. The Committee on the Rights of the Child is an internationally elected body that is responsible for reviewing reports submitted by State Parties.\(^\text{314}\) The Committee publishes its concluding observations and makes recommendations for the State Party to act upon.\(^\text{315}\) State Parties that have ratified the Convention are required to submit an initial report to the Committee within 2 years of ratification and then every 5 years.\(^\text{316}\)

8. Conclusion

The UNCRC lays down substantial provisions for children’s rights. The implementation of these provisions primarily rests with States Parties.\(^\text{317}\) The Convention offers encouragement by using wording such as ‘progressive realisation’, ‘to the maximum extent of available resources’ and ‘within the framework of international co-operation’, such phrases have particular importance to developing countries\(^\text{318}\) as a ‘one size fits all’ approach would not be practical, it would not be possible for the world’s poorest countries to deliver the same standards as the world’s most affluent countries. The UNCRC is more concerned with countries doing their best with the resources available to them.

\(^{315}\) Webb, op.cit., p.430
\(^{317}\) Mower, op.cit., p.61
\(^{318}\) Ibid., p.62
The wording of some Articles is vague, using phrases like ‘best effort’, ‘shall pursue’ and ‘highest attainable’, some governments may view this as a challenge and strive to provide the highest possible quality of life for its country’s children whereas some governments may use these phrases to divert the responsibility of poor child well-being, claiming it has been doing the its best.\textsuperscript{319} It would seem that whilst the Convention affords rights to all children the extent of the realisation and implementation of these rights is dependent on the child’s country of residence.

A country’s political willingness to ratify the Convention becomes less convincing when its ratification is accompanied by declarations and reservations. These declarations and reservations vary greatly, some are very specific and apply only to certain Articles whilst others are very general such as the one entered by Pakistan that states “the provisions of the Convention shall be interpreted in the light of Islam’s laws and values”.\textsuperscript{320} The true extent to which the Convention’s goals for the world’s children are realised is greatly dependent on the ability of the world’s nations to work both alone and united to overcome a number of conditions. Such conditions include the physical environment, armed conflict and economic factors.\textsuperscript{321}

In the following chapters the implementation of the UNCRC in both Kurdistan and the UK will be analysed and recommendations will considered.
Chapter Four

An Overview of Kurdistan and the United Kingdom

1. Kurdistan

Kurdistan literally means land of the Kurds.\footnote{Culcasi, K., ‘Cartographically Constructing Kurdistan Within Geopolitical and Orientalist Discourses’, (2006) 25 Political Geography 680 at p 681} The Kurdish region of Iraq is bestowed with many natural resources, such as fertile land, oil, gas, water and other natural minerals.\footnote{Fettah, Z., The KRG’s Economic Development Strategy, June 2009, Available at http://www.krg.org/a/d.aspx?l=12&s=03010800&r=145&a=18617&s=010000, Accessed 7th October 2012} In relation to other parts of Iraq the Kurdish area has been relatively peaceful and prosperous since the fall of Saddam Hussein.\footnote{Katzman, K., The Kurds in Post-Saddam Iraq, (2010), p. i}

1.1 History

From the beginning of the modern state of Iraq, the history of the Kurdish region has been one of underdevelopment, repression; both political and cultural; destruction; ethnic cleansing and genocide.\footnote{O’Leary, C., A., ‘The Kurds of Iraq: Recent History, Future Prospects’,(2002) 6 Middle East Review of International Affairs 17 at p17.}

1963 saw the Ba’th Party come into power and with it the first phase of an ethnic cleansing campaign that would span 25 years.\footnote{Ibid., p.25} This campaign was referred to as the Anfal campaign\footnote{Kurdistan, Report of the Sixth Fact Finding Delegation to Iraqi Kurdistan by the All-Party Parliamentary Group in February 2012, Iraqi Kurdistan – Reform, Renewal and Rejoining the International Community,(2012), p.6} these campaigns involved the use of chemical weapons against Kurdish civilians and resulted in the deaths of
almost 200,000 Kurds. The final stage of the Anfal campaign was in 1988; during this year alone 1,200 villages were destroyed. One of the most well known attacks is that of the attack on the Kurdish town of Halabja, Iraqi forces launched a devastating chemical attack on this town which caused the deaths of 5000 people over 2 days and many more over the following years.

The first Gulf War between Iran and Iraq was the longest running conventional war of the 20th century, it began in 1980 and ended in 1988. In 1990 the UN placed sanctions on Iraq in an attempt to force the withdrawal of Iraq from Kuwait. It is estimated that between 500,000 and 1.2 million Iraqi children died during the sanction years. The international community was shaken by the humanitarian crisis that resulted from the sanctions and began to work on behalf of the Kurds. This Humanitarian crisis brought about the UN Security Council Resolution 688 which condemned the repression of Kurds and ultimately led to a safe haven being established in Northern Iraq.

Following the 1991 Gulf War the Kurdistan Front, an alliance of political groups opposed to the Ba’athist regime, was faced with administration

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329 O’Leary, op. cit., p.26
331 O’Leary, op. cit.
333 O’Leary, op. cit.
difficulties and a double embargo. These difficulties led to the organisation of a general election, the aim of the election was to introduce an administration and to fulfill the people of Kurdistan’s wish to choose their own representatives.\textsuperscript{337} The first elections took place in May 1992 this election established the Kurdish Parliament which resulted in the creation of the Kurdish Regional Government.\textsuperscript{338} From 1992 the Kurdish Parliament began making its own laws and amendments to some of the existing Federal laws (see appendix 11). One example of legislation introduced by the Kurdish Parliament was the introduction of the death penalty as a sentence for the premeditated murder of a foreigner or employees of humanitarian organisations such as the UN.\textsuperscript{339} More recently there have been changes to laws on polygamy which mean that in Kurdistan the practice is illegal except in cases of chronic disease, infertility and recalcitrance, this differs from the federal law that allows polygamy with the permission of a qadi.\textsuperscript{340}

It was in 2003 that the United States launched a war against Iraq, which resulted in the overthrow of Saddam Hussein’s regime.\textsuperscript{341} Undoubtedly, it was the people of Kurdistan that got the most benefit from the toppling of Saddam Hussein, signs of economic, political and social development are easy to

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The situation in the Kurdish area of Iraq is now significantly different; it is a relatively stable area of an otherwise volatile region. Today facilities such as schools and hospitals, whilst not first world quality, are generally good when compared to regional standards. It has been reported that Turkish Kurds travel to Iraqi Kurdistan for medical treatment owing to the superior facilities the region offers.

In 2005 the Iraqi Constitution was signed into law, the Constitution legally authorises the political autonomy of the Kurdistan Region and its Government. The Constitution represents the first legal arrangement that sees the Government of Iraq relinquish some political, financial and economic authority, giving the KRG the right to exercise executive, legislative and judicial authority. Owing to the empowerment given by the Constitution the KRG, once an unrecognised local body, is now an internationally legitimised entity. The Kurdistan Region has also gained leverage within Baghdad.

The introduction of the Iraqi Constitution brought with it changes for the Kurdistan Region. Article 120 of the Iraqi Constitution (see appendix 12 for full constitution) states that each region should have its own constitution. In 2009 the Kurdistan Parliament approved the Draft Constitution of the Kurdistan Region – Iraq (see appendix 13). Within the Constitution of the Kurdistan

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343 Kurdish Human Rights Project and Bar Human Rights Committee, op.cit.,p.15
345 Paz, A., Oil and Political Authority: An Analysis of Relations Between the Government of Iraq and the Kurdish Regional Government, (2011), p.22
Region it is stated that all regional laws supersede federal law\textsuperscript{348} except for laws relating to the exclusive powers of the federal government as detailed in Article 110 of the Iraqi Constitution, this is backed up by Articles 115 and 121 of the Iraqi Constitution.

Article 8 of the Constitution of the Kurdistan Region refers to international treaties and agreements; it states that Kurdistan will be party to any treaty or agreements that the federal government enters into and that the KRG can enter into agreements with foreign states only if the Federal Government gives approval.\textsuperscript{349} Article 37 goes on to state that everyone has the right to enjoy the rights set out in any treaties, agreements, charters or declarations ratified and acceded to by Iraq.\textsuperscript{350}

1.2 Geography and Demographics

Kurdistan is an autonomous area of Iraq; it is one of the only areas that have been given international recognition as an autonomous federal entity.\textsuperscript{351} It is the only Iraqi Federal region that is recognised under Article 113 of the Iraqi Constitution.\textsuperscript{352} Kurdistan borders Syria to the West, Iran to the East and Turkey to the North.\textsuperscript{353} The capital city of Kurdistan is Hawler in Kurdish and Erbil in Arabic.\textsuperscript{354}

\textsuperscript{348} Constitution of Kurdistan Region, Article 3
\textsuperscript{349} Constitution of Kurdistan Region, Article 8
\textsuperscript{350} Constitution of Kurdistan Region, Article 37
\textsuperscript{352} CARA, op. cit.
\textsuperscript{354} Jimenez, J., and Kabachnik, P., 'The Other Iraq: Exploring Iraqi Kurdistan', (2012) 55 \textit{Focus on Geography} 31 at p.33
The KRG area of Kurdistan is made up of three governorates; Duhok, Erbil and Sulaymaniya\textsuperscript{355}, covers an area of 40,643 square kilometres\textsuperscript{356} and has a population of 5.5 million\textsuperscript{357}. The Kurdish people have however expanded their authority over a larger area\textsuperscript{358}; the entire area of Iraqi Kurdistan covers a region of 83,000 square kilometres, and is roughly the same size as Austria.\textsuperscript{359} According to Article 2 of the Constitution of the Kurdistan Region, and as can be seen in fig. i, the extended area of Kurdistan includes Sinjar, Kirkuk and Khanaqin, it is also stated that the political borders shall be determined in accordance with Article 140 of the Iraqi Constitution\textsuperscript{360}, Article 140 states that a referendum will take place no later than 31\textsuperscript{st} December 2007 to determine the will of citizens of disputed areas including Kirkuk\textsuperscript{361}, this referendum has not taken place and the fate of Kirkuk is still undecided and an ongoing source of disagreement between the KRG and Federal Government.

\textsuperscript{355} Tar and Lawrence op. cit., p.103
\textsuperscript{356} UK Border Agency, op. cit., p.11
\textsuperscript{357} Tar and Lawrence op. cit., p. 103
\textsuperscript{358} Ibid.
\textsuperscript{359} O’Leary, C., A., op. cit., p.17
\textsuperscript{360} Constitution of Kurdistan Region, Article 2
\textsuperscript{361} Iraqi Constitution, Article 140
The urban population of Kurdistan is increasing whilst there still remains a significant rural population. Kurdistan has a young population with an estimated 40% of people being under 15 years old.\textsuperscript{363}

The most predominant religion in Kurdistan is Islam, however Christianity and Yezidism are practiced and Assyrian and Chaldean Christians form a large minority.\textsuperscript{364}


\textsuperscript{363} Tar and Lawrence op. cit., p.103

\textsuperscript{364} Tar and Lawrence op. cit., p.104
1.3 Politics

It was during 2003-2011 that Iraq made the political transformation from the dictatorship of Saddam Hussein to a plural political system with competitive elections. The first post-Saddam elections were held in 2005.

Prior to 2003 the two main political parties in Kurdistan, the Kurdish Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK) were opposed to each other. Following the invasion of Iraq in 2003 these two parties took steps to strengthen a truce and to become unified. This was politically challenging but ultimately saw members of both the KDP and PUK entering into a Kurdish regional assembly under an Alliance List (a form of unity government).

By 2006 the Iraqi Constitution had been approved and the KDP and PUK settled on the joint administration of the Kurdistan Regional Government. This was agreed under the Kurdistan Regional Government Unification Agreement which was co-signed by Masoud Barzani and Jalal Talabani, the agreement facilitated the appointment of a KDP Prime Minister and a PUK Speaker of the Kurdistan National Assembly (KNA), and by agreement the two positions are alternated at subsequent elections. Under the Iraqi Constitution the KRG has a great deal of political autonomy over its own

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366 Ibid.
367 Kurdish Human Rights Project Bar Human Rights Committee, op. cit., p.24
369 Ibid., p.24
370 Ibid., p.24
The Parties that make up the coalition KRG are the KDP, PUK, Kurdistan Toilers Party, Kurdistan Socialist Democratic Party, Kurdistan Islamic Union, Kurdistan Communist Party, the Islamic Group and the Turkmen Brotherhood Party.\(^{372}\)

The Kurdistan Region Presidency (KRP) was put into effect as an institution by the KNA in 2005, the President of the Kurdish Region has the highest executive authority and is elected by secret ballot every four years.\(^{373}\) Mr Masoud Barzani was elected the first president in January 2005 and was re-elected in 2009.\(^{374}\) The President provides representation for the population of Kurdistan at both national and international level, and also oversees relations and coordination between the Region and the Iraqi federal authorities.\(^{375}\) He has responsibility approving the KRG Prime Ministers special appointments and promotions, and also the ratification of any laws passed by the KNA.\(^{376}\)

The KNA is the democratically elected parliament for the Kurdistan Region; the three main functions of the KNA are to look at proposals for new laws, to examine government policies and administration and to debate major issues of the day.\(^{377}\) Elections for the KNA are held every four years at a minimum.\(^{378}\) The KNA has immense power to debate and legislate on many policy areas including, health, education, security, the environment, natural resources,

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\(^{373}\) Ibid., p.2

\(^{374}\) Ibid.

\(^{375}\) Ibid.

\(^{376}\) Ibid.

\(^{377}\) Ibid.

\(^{378}\) Ibid., p3
housing, trade, industry and investment, social services, roads and transport and tourism.\textsuperscript{379}

The Iraqi Constitution outlines areas were the Federal and Regional Governments should share responsibility, areas such as regulating sources of electricity and its distribution; environmental policies; development and planning policies; public health policy and educational policy.\textsuperscript{380} The Constitution of the Kurdistan Region also refers to its relationship with the Federal Government detailing how the governments should share federal income and how the KRG should be involved in the administration of certain federal institutions.\textsuperscript{381}

The Federal and Kurdish governments’ working together in harmony is far from reality. There has been an increase in political tension between the two Governments; the tension is a result of a number of issues including the Kurdish authorities’ perception of their treatment and the long standing disagreement over disputed areas such as Kirkuk. Following the 2003 invasion Kurdish leaders took an active role in developing a new Iraq, the same leaders now feel that they have not received the benefits that they deserve for the effort they put in.\textsuperscript{382} With regard to the disputed areas the Kurds say that Kirkuk has and always will be a Kurdish city.\textsuperscript{383} The two Governments are involved in an ongoing dispute over who has control of

\textsuperscript{379} Ibid.
\textsuperscript{380} Iraqi Constitution, Article 114
\textsuperscript{381} Constitution of Kurdistan Region, Article 9
\textsuperscript{382} Tomas, N., and Villellas, A. \textit{The Kurdistan Autonomous Region: Risks and Challenges for Peace}, (2009), p.7
\textsuperscript{383} Judah, T., 'In Iraqi Kurdistan',( 2002-2003) 44 Survival 39 at p.44
Kirkuk and ultimately the region’s crude oil wealth.\textsuperscript{384} Kurdish authorities believe the Kurdish people have been unfairly treated by Baghdad; they have highlighted the fact that they championed the return of exiled Nouri al-Maliki (the current Iraqi Prime Minister) and feel that as a result they deserve better treatment.\textsuperscript{385} There are concerns over the democratic future of Iraq and it is feared that Iraq may slip back into dictatorship; Maliki is the main threat to the Iraqi democracy, President of the Kurdistan Region Masoud Barzani recently told the Washington Administration that Iraq was facing a serious crisis and that there was a threat of a one-man rule.\textsuperscript{386}

The Kurdish judiciary has also seen many changes over the last two decades. Following the withdrawal of funds and services to Kurdistan in 1991, the region was confronted with a legal vacuum which saw the closure of courts and other civil government institutions.\textsuperscript{387} In order to counteract this, the Judicial Authority Law was passed in 1992 this replaced Iraq’s 1979 judiciary law within the KRG.\textsuperscript{388} New courts were established and organised under the KRG Ministry of Justice.\textsuperscript{389} The aim of the 1992 Judicial Authority Law was to introduce an autonomous court that would act in the name of Kurdish people and that would have jurisdiction over everyone including Government officials.\textsuperscript{390} The courts applied Iraqi law that existed in 1991 except where

\textsuperscript{384} Special Inspector General for Iraq Reconstruction, \textit{Quarterly Report to the United State Congress},( 2012), p.60
\textsuperscript{385} Tomas and Villellas, op. cit.,p.7
\textsuperscript{386} Dodge, T., op. cit., p.149
\textsuperscript{387} Chapman, D. P., op. cit., p.207
\textsuperscript{388} Ibid.
\textsuperscript{390} Chapman, D. P., op.cit., p.207
such laws had been repealed or amended by the Kurdistan Parliament.\textsuperscript{391} Unless a law relates to the exclusive federal powers as detailed in Article 110 of the Iraqi Constitution, any new laws or amendments made after 23\textsuperscript{rd} October 1991 do not apply to Kurdistan unless endorsed by the Kurdistan Parliament.\textsuperscript{392}

In 2007 the KRG again reorganised its judiciary, the aim of the reorganisation was to give the judiciary independence from the executive; this was achieved by revising the procedure for the appointment of judges. Judges would only be able to serve until 65 which became the mandatory retirement age and they were not permitted to be party members or to be involved in political activity.\textsuperscript{393}

The Kurdish judiciary is made of primary courts (courts of original jurisdiction), secondary courts (appeal courts), the Court of Cassation (court of last resort), and the Kurdistan High Judicial Council which supervises the Judiciary.\textsuperscript{394} The Kurdish judiciary is making an effort to meet international standards\textsuperscript{395} but still faces many issues; one obstacle is culture, the courts face competition from traditional or tribal sources of authority\textsuperscript{396}; there is a shortage of suitably

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\item[\textsuperscript{393}] Chapman, D. P., op.cit., p208
\item[\textsuperscript{394}] Ibid., p.209
\item[\textsuperscript{396}] Chapman, D. P., op.cit., p213
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qualified personnel\textsuperscript{397}; and the KRG courts have a difficult relationship with the Iraqi courts and institutions\textsuperscript{398}.

1.4 Economy

The economy of Kurdistan is primarily dominated by the oil industry, agriculture and tourism\textsuperscript{399}, although construction and trade also contribute. Because the region is relatively peaceful Kurdistan has a more developed economy than other parts of Iraq.\textsuperscript{400} The region is developing quickly and progress is being made in industrialisation, housing and transportation.\textsuperscript{401} Kurdistan operates an open-door economic policy and has opened up to foreign investment.\textsuperscript{402}

Kurdistan, which is sometimes referred to as ‘the other Iraq’, is becoming more recognised as a tourist destination, that is distinct in many ways from the rest of Iraq. Due to the area being relatively safe, stable and peaceful there has been increased tourism-related investment.\textsuperscript{403} Tourism in the region is still being developed and there are some issues that need to be resolved before tourism becomes more prominent in its contribution to the economy.\textsuperscript{404}

1.5 Human Rights

Within Iraq itself the human rights situation remains fragile; this is because of the continuing transition from years of dictatorship and violence to peace and

\textsuperscript{397} Ibid.
\textsuperscript{398} Ibid., p.214
\textsuperscript{399} Tar and Lawrence, op. cit., p.104
\textsuperscript{400} Ibid.
\textsuperscript{401} Ibid.
\textsuperscript{402} Ibid.
\textsuperscript{403} USAID IRAQ, Kurdistan Region: Economic Development Assessment, (2008), p.78
\textsuperscript{404} Ibid.
democracy. The Government of Iraq has made an effort to implement measures that protect and promote the rights of Iraqi people, but the impact of these measures is limited. In Kurdistan however the human rights situation has been improving, although there are still some issues that remain.

In 2003 the Government of Iraq established the Ministry of Human Rights, the ministry’s aim was to end human rights abuses and to improve the human rights culture by way of education; the ministry also promotes and protects human rights by monitoring and evaluating the Government’s performance.

The Human Rights Ministry in Kurdistan was formed in 1999 and has responsibility for human rights education, monitoring and protection. Despite both Governments having ministries for human rights there are still many human rights issues that occur. Reported human rights issues include arbitrary or unlawful deprivation of life; extremist and terrorist bombings and executions, disappearances; torture and other cruel, inhumane or degrading treatment or punishment; poor conditions in pre-trial detention and prison facilities; arbitrary arrest and detention; denial of fair public trials; delays in resolving property restitution claims; insufficient judicial institutional capacity; arbitrary interference with privacy and home; limits on freedom of speech, press and assembly; extremist threats and violence; limits on religious freedom due to extremist threats and violence; restrictions on freedom of movement; large numbers of internally displaced persons (IDPs) and

406 Ibid.
407 Ibid.
409 Ibid.
refugees; lack of transparency and significant constraints on organisation’s and NGO’s investigations of alleged violations on human rights; discrimination against and societal abuses of women and ethnic, religious and racial minorities; trafficking in persons; societal discrimination and violence against individuals based on sexual orientation and gender identity; and limited exercise of labour rights.⁴¹⁰

The UN reports that during the first half of 2012 the level of violence in Iraq remained high and that the number of civilian casualties of conflict related incidents had increased, whilst there was a decline in the number of such incidents the incidents that did occur were more deadly and claimed more victims.⁴¹¹ In comparison during the same period Kurdistan experienced almost no insurgent violence.⁴¹²

In both Iraq and Kurdistan women and girls are subjected to numerous human rights violations; women and girls face discrimination, inequality, social exclusion and many types of violence including honour killings, domestic violence, rape, sexual exploitation and female genital mutilation (FGM).⁴¹³ The victims of these crimes are often regarded as guilty and shameful and women in distress are often thought of as mad.⁴¹⁴ The root causes of gender based

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⁴¹² Ibid., p. viii
⁴¹⁴ Von der Osten-Sacken and Uwer op. cit., p.11
violence and discrimination are patriarchal tribal traditions, chauvinistic religious interpretation and unreasonable societal expectations of women.\textsuperscript{415}

Between the two Constitutions there is one distinct difference, in Article 14 of the Iraqi Constitution it states that ‘Iraqi’s are equal before law without discrimination based on gender’ however the Constitution of Kurdistan Region goes a step further and states that ‘men and women shall be equal before the law’ highlighting the different view of the two Governments on the status of women. There are differences between Iraqi law and Kurdish law when it comes to the treatment of women. Within the Iraqi Penal code there are a number of Articles that discriminate against women; it could be viewed that domestic violence is sanctioned; laws relating to adultery favour men; crimes committed in the name of honour have many defences, which seems to sanction violence against female family members; and if a rapist marries his victim he can avoid punishment.\textsuperscript{416}

However in Kurdistan there are more laws that aim to protect women. The KRG has amended laws to bring them in line with the constitution and international standards, and efforts have been made to protect women and girls. In 2001 physical discipline by ‘male caretakers’ (i.e. fathers, brothers, husbands, uncles and male cousins) was prohibited, in 2004 laws were passed that prevented reduced sentences for honour killings\textsuperscript{417}, previously perpetrators of such crimes often went unpunished or received lenient sentences. 2007 saw the creation of the Commission on Violence Against

\begin{footnotes}
\item[415] Kurdish Human Rights Project Bar Human Rights Committee, op. cit., p.37
\item[416] Institute for International Law and Human Rights, \textit{Women and the Law in Iraq}, (December 2010), p9
\item[417] Australian Government AusAID, op.cit., p.9
\end{footnotes}
Women which was aimed at the protection of women and girls, the promotion of the rule of law and the streamlining of programming throughout different ministries.\textsuperscript{418} The Kurdistan Parliament passed a domestic violence law in 2011 that among other things provided a definition of violence against women; outlawed FGM; provided procedures for reporting violence against women and girls; and addresses prevention, protection and prosecution of violence against women and girls.\textsuperscript{419} The law also criminalises forced marriage, exchange marriage, marriage of minors, forced divorce, forced prostitution, suicide due to domestic violence, abortion arising from domestic violence, and battering children and family members.\textsuperscript{420}

While the situation of women in the rest of Iraq is getting worse the situation in Kurdistan is far better than it was a decade ago, the initiatives of women in Kurdistan are viewed as an example for the development of the rest of Iraq. This is only the beginning and it will take years until gender equality is realised but the important thing is that the Kurdish Government has taken the first step and the plight of women and girls is being addressed.\textsuperscript{421}

1.6 Obligations Under the UNCRC

Iraq, and therefore Kurdistan, ratified the UNCRC in June 1994.\textsuperscript{422} When ratifying the Convention, Iraq only entered one reservation which was relating to Article 14, it said that this was only applicable in certain cases and that any

\begin{footnotes}
\textsuperscript{419} Australian Government AusAID, op.cit, p.10
\textsuperscript{420} Bureau of Democracy, Human Rights and Labor, op.cit., p.34
\textsuperscript{421} Osten-Sacken and Uwe op. cit., p.13
\end{footnotes}
child that was born to parents who were not both Muslims, could when reaching majority choose between the Christian and Muslim faiths.\textsuperscript{423}

Iraq submitted its first report to the Committee on the Rights of the Child in August 1996 and the Committee issued its concluding comments in October 1998.\textsuperscript{424}

In June 2008 Iraq also ratified the two Optional Protocols to the Convention on the rights of children involved in armed conflict and the sale of children, child prostitution and child pornography.\textsuperscript{425}

\textsuperscript{423} Manara Network, op. cit., p.20
\textsuperscript{424} Ibid., p.18
\textsuperscript{425} Ibid.
2. United Kingdom

The United Kingdom (UK) is made up of a Great Britain (England, Scotland and Wales) and Northern Ireland, and is Europe’s oldest Constitutional Monarchy.

2.1 History

The UK has taken part in a number of conflicts most notably the two World Wars. World War I began in July 1914 and was expected to be over relatively quickly, this however was not the case, and the war did not end until November 1918. Britain joined the war on 4th August 1914 following a plea from Belgium for assistance. World War I was a political and social disaster, which cost the lives of 9 million soldiers and caused the suffering of millions more.

On 1st September 1939 Hitler invaded Poland, 2 days later both Britain and France declared war on Germany. The impact of World War II on the UK was gruelling; the physical damage sustained was greater than in any other conflict previously seen. In response to the threat of bombing children were evacuated en masse from major cities, with 690,000 children being evacuated

428 Turner, J., Britain and the First World War, (1988), p.2
432 Black, J., op.cit., p.140
from London alone. The war also hit the economy hard; export markets were lost and huge expenditure caused financial instability, Britain lost approximately a quarter of its wealth during the war. The biggest conflict in history, which lasted almost 6 years and cost the lives of 50 million people, finally ended in 1945.

In an attempt to avoid a repeat of the human rights abuses witnessed during World War 2, the Council of Europe brought in the European Convention on Human Rights (ECHR). Following on from the Conventions formulation in 1949 it was signed in Rome in 1950 and took effect in 1953.

The UK signed up to the ECHR in 1953; under international law this meant that the UK was bound by the Convention, although the rights contained within the Convention were not part of UK law, this was to change with the introduction of the Human Rights Act (HRA) in 1998; it came into force in October 2000. Given the drastic changes which were likely to occur in terms of the enforcement and protection of the Convention rights, the two year delay between the introduction of and the coming into force of the HRA was necessary. There needed to be a period of time in which the courts could become more accustomed to the rights that would inevitably be argued before them. There was also the need to provide additional training to judges and magistrates and to recruit more of them.

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433 Ibid., p.141
434 Ibid.
436 Ibid.
The HRA requires that all public bodies act in accordance with the rights set out in the ECHR, the Act also requires that legislation is interpreted in accordance with the convention where possible.440 The HRA takes specific articles from the ECHR and entrenches them as principles into UK law.441

2.2 Geography and Demographics

The UK is located in Western Europe; it lies between the North Sea and the Atlantic Ocean.442 The UK includes England, Scotland, Wales and Northern Ireland. The UK has land area of 244,820 square kilometres443, with England having the largest land area of the four countries.

In 2011 the population of the UK exceeded 62 million. As with many European countries, the UK has an increasingly ageing population, as a result of declining fertility rates and increased life expectancy.\footnote{Kramer, E., op. cit., p.13} There has also been a correlating decline in the population of under 16’s.\footnote{European Commission, \textit{Organisation of the Education System in the United Kingdom – England, Wales and Northern Ireland} (2009/2010), p.11.} With regard to religion, the UK is predominantly Christian although, other widely practiced faiths include Judaism, Islam, Sikhism and Hinduism.\footnote{Ibid., p.10}
2.3 Politics

The UK is a unitary state under a constitutional monarchy; Queen Elizabeth II is Head of State of the UK and also 15 other independent Commonwealth countries.\textsuperscript{448} Both legislative and executive power resides within a bicameral Parliament, which consists of the House of Commons and the House of Lords.\textsuperscript{449} The House of Commons is made up of 646 members.\textsuperscript{450} MPs perform a variety of functions including providing a check on the power of the executive, representing constituents, representing interest groups, representing and supporting their political party, and contributing to the effective working of Parliament.\textsuperscript{451} The main purpose of the House of Commons is to continually subject the Government’s conduct to rigorous, critical inquiry.\textsuperscript{452} The House of Lords is separate from and compliments the work of the House of Commons. It has three main functions; making laws, consideration of public policy and holding Government to account.\textsuperscript{453}

The three main political parties within the UK are the Labour Party, the Conservative Party and the Liberal Democrats.\textsuperscript{454} There is currently a coalition Government in power comprised of Conservative and Liberal Democrat Members of Parliament. The current Prime Minister is Conservative Leader David Cameron.

\textsuperscript{448} Kramer, E., op.cit.,p.10
\textsuperscript{450} Carroll, A. (2009), op.cit., p.137
\textsuperscript{451} Ibid.,p.133-134
\textsuperscript{452} Ibid., p.137
\textsuperscript{453} House of Lords , \textit{What the Lords Does}, Available at \url{http://www.parliament.uk/business/lords/work-of-the-house-of-lords/what-the-lords-does/} accessed on 5\textsuperscript{th} February 2013,
\textsuperscript{454} Kramer, E., op.cit.,p.10
In 1999 the British Government devolved some executive powers to Scotland, Wales and Northern Ireland. The process established a Scottish Parliament and a Welsh assembly; this followed an approved referendum by Scottish and Welsh voters in 1997. Devolution was later suspended in Northern Ireland in 2002, re-establishing direct rule from Westminster; devolution was again restored in 2007, with powers relating to policing and justice being devolved in 2010.

In general the introduction of the HRA, together with the influence of EU law and the ECHR, is seen as having enhanced and updated the UK’s constitutional system. However, there is some political hostility towards the HRA and right-wing media has often attacked the Act on the grounds that the HRA grants excessive protection to groups such as criminals, asylum seekers, illegal immigrants and other unpopular groups. Some have argued that the HRA does not support historic constitutional rights and liberties and the Conservatives have suggested a Bill of Rights to take the place of the HRA. The Home Secretary, Theresa May, suggested recently that the Conservative Party would, if it got the opportunity, scrap the HRA on the basis that it restricted the UK’s ability to act in its own interests, it has

455 United States Department of State – Bureau of European and Eurasian Affairs, Background Note: United Kingdom, (2012), p.5
456 European Commision (June 2010), op.cit.,p.2
458 Ibid., p. 12
also been suggested that the Conservatives would look at taking Britain out of the ECHR.\footnote{Sparrow, A., "Benefit Crackdown for Migrants: Politics Live Blog", 4 March 2013, Available at: \url{http://www.guardian.co.uk/politics/blog/2013/mar/04/benefit-crackdown-migrants-live-blog}, Accessed 20 March 2013}

\section*{2.4 Economy}

The UK’s economy is one of the largest in Europe. It is increasingly service-based but maintains industrial capacity in technology, pharmaceuticals and cars, and London is a world centre for banking and insurance.\footnote{Kramer, E., op. cit., p.11} The UK has a number of natural resources including coal, oil, natural gas, tin, limestone, iron ore, salt, clay, gypsum, lead and silica.\footnote{United States Department of State – Bureau of European and Eurasian Affairs, op. cit., p.3}

The British economy entered recession in 2008 which saw unemployment increase and governmental debt rise to among the highest in Europe.\footnote{New Zealand Trade and Enterprise, op. cit., p.8} Growth since the recession has been patchy due to poor credit growth, a decrease in real incomes and the poor economy in the UK’s major trading partners.\footnote{United States Department of State – Bureau of European and Eurasian Affairs, op. cit., p.7}

The UK is a member of the Organisation for Economic Co-operation and Development (OECD). The aim of the OECD is the promotion of policies that will improve both the economic and social well-being of people globally.\footnote{The Organisation for Economic Co-operation and Development, About the OECD, Available at \url{http://www.oecd.org/about/}, accessed 4th February 2013} The OECD’s Better Life Index shows that generally the UK is performing well
in relation to the population’s well-being and ranks among some of the top
countries.\textsuperscript{467}

2.5 Human Rights

The introduction of the HRA meant that anyone that believes they have
suffered a violation of their human rights, as set out in the ECHR, can take
their case to the ECHR; however this can only happen if the person has
exhausted all legal options in their own State.\textsuperscript{468} The HRA is important for a
number of reasons; all new laws that are passed by the UK Government must
be compatible with the HRA. Furthermore, all laws already in existence must
be applied in such a way so as to fit with the human rights contained within
the HRA; and all public authorities must respect the rights contained within the
HRA.\textsuperscript{469} The HRA has meant that it is now easier for individuals to pursue
cases of human rights violations and has placed an obligation on UK courts to
be mindful of human rights issues when considering cases brought before
them.

Since the introduction of the HRA, the UK has reaped the benefits of greater
transparency and immediacy of human rights protection.\textsuperscript{470} Yet, problems
remain; during 2011 there were a significant number of reported incidents of
sexual crime, including the sexual exploitation of children. Racial and ethnic

\textsuperscript{467} OECD Better Life Index: \textit{United Kingdom}, Available at
http://www.oecdbetterlifeindex.org/countries/united-kingdom/, accessed 4\textsuperscript{th}
February 2013
\textsuperscript{468} Amnesty International, \textit{Making Human Rights Real: Teaching Citizenship Through
Human Rights}, (2009), p.78
\textsuperscript{469} Ibid. p.87
\textsuperscript{470} Department for Constitutional Affairs Justice, Rights and Democracy , \textit{Review of
the Implementation of the Human Rights Act}, (July 2006), p.8
discrimination remains a problem in some areas,\textsuperscript{471} and violence against women is still an issue.

Racism has been an issue in the UK throughout its history; a relatively modern example was the not uncommon sight of signs banning black people during the 1960s.\textsuperscript{472} Racial discrimination is now illegal in the UK and this has been strengthened by recent legislation; the Equality Act 2010 harmonises equality legislation in the UK and offers new protections against discrimination and harassment.\textsuperscript{473} The Equality and Human Rights Commission have commented that there has been significant progress made in relation to race crimes; however there are still thousands of victims of racist attacks, harassment and abuse every week in the UK.\textsuperscript{474}

Every year at least 3 million women living in the UK experience some form of violence and many more are living in the shadow of previous abuse.\textsuperscript{475} Violence remains a key factor in the denial of women’s full participation in society.\textsuperscript{476} Women’s human rights are violated in all manner of ways including rape, domestic violence, FGM, sexual harassment, stalking, trafficking, honour crimes and forced marriage.\textsuperscript{477} Domestic violence has a far reaching impact; as well as the obvious physical and psychological ramifications for

\textsuperscript{472} Crystal, G., \textit{Civil Rights in the UK}, available at \url{http://www.civilrightsmovement.co.uk/civil-rights-uk.html}, accessed 01/02/13
\textsuperscript{473} Equality and Human Rights Commission, \textit{Submission to the United Nations Committee on the Elimination of Racial Discrimination on the UK’s 18\textsuperscript{th}, 19\textsuperscript{th} and 20\textsuperscript{th} Periodic Reports}, (July 2011), p.9
\textsuperscript{474} Bennetto, J., \textit{Police and racism: What has been achieved 10 years after the Stephen Lawrence Inquiry report?}, (2009), p32
\textsuperscript{475} Equality and Human Rights Commission, \textit{Better Public Services: Breaking the Silence on Violence Against Women},(2009), p.3
women, children that are forced to live with domestic violence are affected by fear and distress and in turn they may suffer from physical, emotional, learning, behavioural and developmental problems.\textsuperscript{478} Rape and sexual assault also have long term affects on women; however, whilst the Government has acknowledged the problem, little has been done to address it.\textsuperscript{479} Reports of rape have increased every year for the last 30 years, yet the number of convictions has remained more or less the same. As such, where a woman reporting a rape had a 1 in 3 chance of seeing her attacker convicted in the late 1970s, today that figure stands at 1 in 20.\textsuperscript{480}

Crimes in the name of ‘honour’ occur in the UK, albeit mostly within Islamic Asian or Middle Eastern communities\textsuperscript{481}, honour crimes can result in social exclusion, reduced access to education and employment, ill health and the potential loss of life.\textsuperscript{482} In the UK, honour killings are treated by law as homicide and therefore the Government response is good. However in the case of honour crimes that do not result in death there is often a lack of understanding in terms of the ‘honour’ dimension.\textsuperscript{483} The 2007 case of Banaz Mahmood highlights this. She contacted the police four times, stating that she feared her family would kill her; she was dismissed as being melodramatic and later died.\textsuperscript{484} In retrospect, had the UK police force better understood honour crimes and recognised the danger posed to Banaz Mahmood, she might well have lived. FGM is known to occur within communities in the UK;

\textsuperscript{479} Sen and Kelly, op.cit., p.17
\textsuperscript{480} Ibid.
\textsuperscript{481} Ibid., p.22
\textsuperscript{482} Sen, op.cit., p.23
\textsuperscript{483} Ibid., p.24
\textsuperscript{484} Sen and Kelly, op.cit., p.23
girls are also taken out of the country for the procedure. In 2003 the UK government passed the Female Genital Mutilation Act which prohibited FGM and also extended to any FGM that occurs outside of the UK and involves a UK resident or national.\textsuperscript{485} The effects of FGM on women are long lasting; women who are victims of FGM are twice as likely to die during childbirth and are more likely to give birth to still born babies.\textsuperscript{486} Despite the fact that the UK has ratified seven international treaties that all include provisions to combat violence against women,\textsuperscript{487} there are still many local authority areas that are extremely lacking. More than a quarter of local authorities have no specialist violence against women services,\textsuperscript{488} less than two thirds have a women’s refuge,\textsuperscript{489} and only one in four has a sexual violence service.\textsuperscript{490} Other human rights issues reported in the UK include reported deaths in prison, unequal pay between genders, child abuse, anti-semitic crimes, relations with travellers, people trafficking, homophobic crimes and limitations on the freedom to strike.\textsuperscript{491}

2.6 Obligations Under the UNCRC

The UNCRC was signed by the UK on 19\textsuperscript{th} April 1990 and ratified on 16\textsuperscript{th} December 1991; it entered into force on 15\textsuperscript{th} January 1992.\textsuperscript{492} The UK entered a number of reservations including reservations on immigration and

\textsuperscript{485} Sen, op.cit., p.30
\textsuperscript{486} Equality and Human Rights Commission, op. cit., p.12
\textsuperscript{487} National Violence Against Women Network, Addressing violence Against Women: Applying a human Rights Framework, p4
\textsuperscript{489} Ibid., p.44
\textsuperscript{490} Ibid., p.56
\textsuperscript{491} United States Department of State-Bureau of Democracy 2011,op.cit., p.1

3. Conclusion

There are many differences between Kurdistan and the UK, both demographically and constitutionally. Kurdistan has a much smaller population which is relatively young in comparison to the ageing population of the UK. The two countries also have substantially different religious profiles. Politically, Iraq is only just discovering democracy after decades of dictatorship whereas the UK has a well established history of free and fair elections and representative rule. Economically, Kurdistan is flourishing whilst the UK struggles to recover from recession.

The general state of Human Rights is also quite different in comparison. The abuses seen in Kurdistan are of a much more violent nature; for example, terrorist bombings, executions, torture and degrading treatment. There is also a difference in the awareness and perception of Human Rights. Abuses such

\[494\] House of Lords House of Commons Joint Committee on Human Rights, Children’s Rights Twenty-Fifth Report of Session 2008-09, Published Nov 2009, p.47
as poor detention facilities would simply not be allowed to occur in the UK but are common place all across Iraq. A universal problem, occurring across both countries and the world, is that of violence against women and girls; however, possibly as a result of a patriarchal society and societal norms, it is an issue that is commonplace in Kurdistan and one that is quite often tolerated, particularly in rural areas.

In relation to the UNCRC both countries ratified the Convention within a couple of years of each other; the UK entered far more reservations than Iraq, but both countries have signed up to the two Optional Protocols. In the following chapters the differences between implementation of the Convention in these countries will be considered.
Chapter Five

Results, Comparisons and Recommendations

As part of the research for this thesis I collected data from a variety of sources both in the UK and Kurdistan. I conducted surveys in both countries; of the surveys sent out in Kurdistan 46 were returned and of the surveys sent out in the UK 34 were returned. I also completed 9 interviews in the UK and 6 interviews in Kurdistan. The interviews were with a range of professionals including MPs, doctors, teachers, nursery workers and health visitors. In this chapter I will present my results, compare similarities and differences between the two countries and make my recommendations. I will present the results in terms of individual articles and make recommendations based on the groups of articles as determined in chapter three.

1. Results

1.1 General Principles

1.1.1 Non-Discrimination

In the UK 100% of the respondents stated that they had measures in place to ensure that children were not victims of discrimination compared to only 26% of the Kurdish respondents. An overwhelming majority of the Kurdish respondents felt that the policies on non-discrimination in place were not very effective. Whereas the overall feeling from UK respondents was that the policies were very effective, with 79% rating their policies as 9 or 10 on the scale of effectiveness.
From comments made by Kurdish respondents it is evident that there is some degree of discrimination against children, particularly within educational facilities, between children whose parents are poor and those whose parents are rich or in positions of power. One manager from the Ministry of Education commented that “there is always discrimination between poor children and
rich children\(^{496}\) (see appendix 14), a similar comment was made by a secondary school teacher who stated that there was discrimination between children whose parents were in power and those who were not. Another way children are discriminated against relates to a form of child benefit which is only available to children whose parents work for the Government. This is despite Article 20 of the Constitution of the Kurdistan Region which states that all forms of discrimination on the grounds of social background and social, political or economical status are prohibited.\(^{497}\)

In the UK on the other hand, most establishments have in place some form of equality and diversity policy which not only includes children but encompasses everyone. The UK has anti-discrimination legislation in place, primarily the Sex Discrimination Act 1975 and the Race Relations Act 1976 which prohibit discrimination on the grounds of sex, colour, race and nationality.\(^{498}\) The deputy manager of a children’s nursery in the UK commented that training opportunities were available to both staff and volunteers to aid with the development of anti-discriminatory and inclusive practices, it was also stated that the nursery had a named equalities coordinator. One UK child minder indicated that she used toys that reflected positive images of children and people from different cultures and of different abilities. Toys and resources that challenged stereotypical ideas of men and women were also provided.

\(^{496}\) Survey completed by a Manager within the Ministry of Education, August 2012
\(^{497}\) Constitution of Kurdistan , Article 20
\(^{498}\) United Nations Committee on the Rights of the Child CRC/C/11/Add.1., op, cit., para 78
1.1.2 Best Interests

With regard to policies relating to the best interests of the child just over half (54%) of Kurdish respondents said that they had policies that dealt with this although again the general consensus was that these policies were not very effective. This is compared to almost all (88%) of UK respondents having a policy in place dealing with the best interests of the child and these policies being rated as being quite effective.

![Fig. 3: Do you have a policy that relates to the best interests of the child?](image-url)
When questioned about the implementation of Article 3, which relates to best interests, one Kurdish MP said “I feel that this is not adequate, so to improve this principle the Government should make sure this principle should be reflected in legislation and the State should make sure children are put first in all decisions” (see appendix 15). This was a feeling backed up by a university lecturer who also added that as well as the State considering the best interests of a child the parents needed to consider this also as in his opinion a lot of children suffer as a result of their parents decisions.

The responses received suggest that things are much different in the UK; a representative from CAFCASS informed me that they worked in accordance with the Children Act. The legislation requires bodies to work in the best interests of the child so CAFCASS would be automatically in conformity with the UN Convention. In terms of implementation she said that they looked at various elements of what constitutes a child’s welfare, such as their health,

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499 Interview with Kurdish MP, August 2012
education, socialization, physical well-being and emotional well-being. A nursery manager stated “in early years we are encouraged to put the child at the centre of everything we do, we work around the unique child and everything we do is to help that child to develop to their fullest potential and to be happy and successful” (see appendix 16).

1.1.3 Right to Life, Survival and Development

Policies relating to Article 6, a child’s right to life, are seriously lacking in Kurdistan, 48% of Kurdish respondents said that they did not have a policy in place relating to this, compared to only 3% of UK respondents. In Kurdistan the effectiveness of those policies in place differs greatly from one establishment to another.

Fig. 5: Are policies in place to protect a child’s right to life?

![Bar chart showing the number of respondents in Kurdistan and UK for policies protecting a child’s right to life.]

- Yes: Kurdistan 19, UK 20
- No: Kurdistan 1, UK 22
- NA: Kurdistan 5, UK 13

500 Interview with UK Nursery Manager, January 2013
According to Article 19 of the Constitution of the Kurdistan Region everyone has the right to life, however policies and implementation of these policies is lacking. When referring to policies in place a Kurdish secondary school teacher commented that “the policy is ready but because of corruption it is not implemented” (Survey completed by a Kurdish Secondary School Teacher, August 2012).

In the UK it is fully accepted that every child has an inherent right to life; this is further supported by the comments of the UK respondents to the survey. A spokesperson for a children’s hospice informed me that they cared for children and teenagers with life limiting conditions and as such these children were not expected to reach adulthood, but it was the aim of the hospice to help every child to live to the fullest extent possible. A County Council Children’s Rights Policy Officer said that they had policies in place to

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501 Survey completed by a Kurdish Secondary School Teacher, August 2012
502 United Nations Committee on the Rights of the Child CRC/C/11/Add.1., op. cit., para 121
reduce the risk of accidental death and suicide among children in care and safeguarding child protection policies that applied to all children.

1.1.4 Respect for the Views of the Child

The data indicates that there is much room for improvement in Kurdish policy when it comes to allowing children to express their views. 67% of Kurdish respondents rated the effectiveness of their polices at 5 or below on a scale of 1 to 10, this is in dramatic contrast to 88% of UK respondents rating the effectiveness of their policies at 8 or above.

The interviewee from CAFCASS commented that “at CAFCASS we believe the child should have the right to be heard, to have their voice heard and to be consulted. If they are very young we can do this by observing their behaviour and the way they interact with other people. As they get older we would talk to them about what they think and what their perception is of the family situation. As they get older still they could perhaps write down what
their thoughts and feelings are. We protect them by making sure they have a voice and that that voice is relayed to people who are making decisions about them\textsuperscript{503} (see appendix 18).

1.2 Civil Rights and Freedoms

1.2.1 Preservation of Identity

The majority of Kurdish respondents stated that they had policies in place that allowed children to enjoy their culture, religion and language of origin, however once again there is a divide over whether or not these policies are effective and there were no examples given of any measures in place.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{Fig8.png}
\caption{Fig. 8: Do your policies/procedures allow a child to enjoy his or her culture, religion and language of origin?}
\end{figure}

\textsuperscript{503} Interview with a CAFCASS Employee, February 2013
The UK Government promotes the view that no unnecessary obstacles should be placed in the way of anyone who wishes to follow their own customs and religion. An NHS Patient and Liaison Advisor stated that all staff had access to a guide on the needs of different ethnic and religious communities which enables all staff members to meet the cultural and religious needs of their patients. One of the child-minders surveyed commented that all children in her care were encouraged to learn about different religions as well as their own and that she was happy to obey all cultural and religious requirements with regard to food and routine prayer times. It is the policy of one nursery that I surveyed to ensure that children that spoke languages other than English would be supported in the maintenance and development of their own language.

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504 United Nations Committee on the Rights of the Child *CRC/C/11/Add.1.*, op. cit., para 166
1.2.2 Prohibition Against Torture and the Death Penalty

Of those surveyed 3% of UK respondents did not have a policy in place to prevent torture, cruel, inhumane or degrading treatment whereas over a third (39%) of Kurdish respondents did not have a policy relating to this, of those policies in place there was some division over their effectiveness. The Constitution of the Kurdistan Region deals with this right in two separate articles; Article 19(3) states that the use of physical or mental torture and treating people inhumanely or disdainfully is not permissible\textsuperscript{505}; Article 27(5) states that all forms of violence and abuse in society, school and in the family is forbidden\textsuperscript{506}.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{fig10}
\caption{Fig. 10: Are policies in place to prevent torture, cruel, inhumane or degrading treatment?}
\end{figure}

\begin{table}
\centering
\begin{tabular}{lrr}
\hline
Response & Kurdistan & UK \\
\hline
Yes & 26 & 24 \\
No & 18 & 1 \\
NA & 9 & 2 \\
\hline
\end{tabular}
\caption{No. of Respondents}
\end{table}

\footnote{\textsuperscript{505} Constitution of Kurdistan, Article 19(3)}
\footnote{\textsuperscript{506} Ibid., Article 27(5)}
Many of the Kurdish respondents commented on this right; one member of the Directorate of Child Protection in Hawler commented that all staff had training in the prevention of torture, cruel, inhumane and degrading treatment; a Kurdish social worker pointed out that there was a helpline for children to call if they were suffering from torture, cruel, inhumane or degrading treatment; and a school manager commented that any member of staff guilty of these actions would face the courts and could have their employment terminated; however, in contrast a teacher from a different school said that there was a policy in place but that it was not implemented.

In the UK all child care settings are required to have some form of safeguarding policy in place. Regulations made under the Children Act gave effect to governmental policy that corporal punishment has no place within child care settings.\(^{507}\)

\(^{507}\) United Nations Committee on the Rights of the Child CRC/C/11/Add.1., op. cit., para 197
1.2.3 Freedom of Expression

When looking at the effectiveness of policies allowing children freedom of expression more than half of Kurdish respondents felt their policies were effective, giving them a rating of 6 or above. Article 19(10) of the Constitution of Kurdistan states that every person shall have the right to freedom of expression.508

Within British law, citizens (including children) are entitled to do any act unless it is specifically proscribed. This means children have the right to express themselves freely and will only be subject to restrictions in order to protect the rights of others.509

One area relating to freedom of expression in the UK where there is frequent conflict between schools, their pupils and their parents is that of school

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508 Constitution of Kurdistan, Article 19(10)
509 United Nations Committee on the Rights of the Child CRC/C/11/Add.1., op. cit., para 161
uniforms and personal appearance.\textsuperscript{510} Many schools have strict dress codes that relate to school uniform and other things such as jewelry and hair length. It is possible that in some instances limitations on dress and appearance may also breach the Race Relations Act for example when a child is not allowed to wear a piece of religious jewelry or the Sex Discrimination Act in cases where girls are not permitted to wear trousers.\textsuperscript{511}

\textbf{1.2.4 Access to Appropriate Information}

Whilst Kurdish establishments may have policies in place to protect children from unsuitable information and materials many of the Kurdish respondents did not rate their policies as being very effective, 41\% rated their polices as 5 or below.

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|c|c|c|c|c|c|}
\hline
\thead{Effectiveness Rating} & 1 & 2 & 3 & 4 & 5 & 6 & 7 & 8 & 9 & 10 & NA \\
\hline
\thead{No. of Respondents} \textsuperscript{UK} & 12 & 2 & 2 & 1 & 2 & 2 & 2 & 2 & 5 & 11 & 6 \\
\textsuperscript{Kurdistan} & 6 & 1 & 2 & 2 & 6 & 4 & 4 & 4 & 4 & 4 & 4 \\
\hline
\end{tabular}
\caption{On a scale of 1 – 10 (with 1 being the least effective and 10 being the most effective) how effectively would you rate your policies on protecting children from unsuitable information and material?}
\end{table}

Within the UK the Independent Television Commission specifies that broadcasters must show at least 10 hours a week of programs for children,

\textsuperscript{510} Newell, P., \textit{The UN Convention and Children’s Rights in the UK}, (1991), p. 51
\textsuperscript{511} \textit{Ibid.}, p. 52
including pre-school children. This should include a range of entertainment, drama and information programs.\textsuperscript{512} Broadcasting regulatory authorities have strict guidelines and codes of practice to ensure that children are protected from material which could harm their mental, moral or physical development\textsuperscript{513}. Guidelines cover the areas of violence, language and general taste and decency.\textsuperscript{514}

\textbf{1.2.5 Freedom of Thought, Conscience and Religion}

In Kurdistan there is also a lack of effectiveness in policies ensuring that children are not prevented from enjoying their right of freedom, thought, conscience and religion; and their right of freedom of association and peaceful assembly. If you compare this to the effectiveness of UK policy there is a drastic difference, 41\% of Kurdish respondents rated their policies at 5 or below where as all UK respondents rated their policies at 7 or above.

\textsuperscript{512} United Nations Committee on the Rights of the Child \textit{CRC/C/11/Add.1.}, op. cit., para 180
\textsuperscript{513} \textit{Ibid.}, para 184
\textsuperscript{514} \textit{Ibid.}, para 185
These rights are backed up by Articles 19(9), 19(17), 26 and 30(2) of the Constitution of the Kurdistan region however, it is not clearly defined whether these rights are specifically afforded to children.

### 1.2.6 Protection of Privacy

There is again a huge difference between policies in the UK compared to those in Kurdistan when looking at the effectiveness of policies to ensure children’s right to privacy. In the UK 85% of respondents rated their policies at 7 or above but only 39% of Kurdish respondents did the same.
There is no specific mention of a right to privacy in the Constitution of the Kurdistan Region; similarly there is no UK law that provides a statutory right to privacy. The HRA does however make Article 8 of the ECHR available to the UK courts in cases where a public authority fails to respect the right.

With technological advancements a child’s right to privacy is being increasingly limited. A number of things contribute to this lack of privacy including the increasing use of CCTV in schools, a growing trend in the use of webcams in nurseries that allow parents to view their children over password protected systems, electronic systems being used in schools to monitor children’s diet and parents being able to purchase software that allows them to track their children via their mobile phones.

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**Fig. 15:** On a scale of 1 – 10 (with 1 being the least effective and 10 being the most effective) how effectively would you rate your policies on children’s right to privacy?

<table>
<thead>
<tr>
<th>Effectiveness Rating</th>
<th>UK</th>
<th>Kurdistan</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>3</td>
<td>12</td>
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<td>10</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>NA</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
</table>

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515 Ibid., para 174
1.3 Family Environment and Alternative Care

1.3.1 Protection of Children Without Families

Children in Kurdistan that are deprived of a family environment are not well protected by policies, 74% of respondents stated that they did not have policies in place for children without families, this is a staggering number compared to only 15% of UK respondents not having policies in places.

**Fig. 16: Are there policies in place specifically for children that are deprived of a family environment?**

**Fig. 17: On a scale of 1 – 10 (with 1 being the least effective and 10 being the most effective) how effectively would you rate your policies on children that are deprived of a family environment?**
Many of the people surveyed in Kurdistan commented that there were Government run care homes for children that did not have families. The general feeling from UK respondents was that all policies were all encompassing and therefore would cover children deprived of a family environment. A safeguarding coordinator commented that the college he was employed by did not have a specific policy that related to children deprived of a family environment “but as an educational organisation we have duties towards such children and we are accountable for this.  

1.3.2 Illicit Transfer and Non-Return

Many establishments in Kurdistan do not have policies in place relating to child abduction and those that do rate their policies as not being effective with 48% rating the effectiveness of their policies at 3 or below.

![Fig. 18: Are measures in place to prevent or report actual or suspected child abduction?](image_url)

Survey Completed by Safeguarding Coordinator, January 2013
The majority of Kurdish respondents said that the Asaish would prevent child abduction. The Asaish acts under the KNA and KRG, and is the Kurdish police force or security force. Many UK respondents commented that they had some form of lost or missing child policy in place and that in the case of abduction or suspected abduction the police would be contacted.

A recent report in the Guardian tells of changes to the police procedure relating to missing children, children will now be categorized as either ‘missing’ or ‘absent’ and police will only deal with ‘missing’ children and not ‘absent’ children. The police believe this will allow them to target at risk children however; leading children’s charities are concerned that the move will put vulnerable children at unnecessary risk.\footnote{Laville, S., Crime Correspondent for The Guardian, \textit{Police Change Approach to Missing Children Cases}, Available at: \url{http://www.guardian.co.uk/uk/2013/mar/20/police-missing-children-new-procedure}, accessed 7th April 2013.}
In the UK there are certain laws pertaining to the abduction of children, statutorily the Child Abduction Act 1984, which makes it a criminal offence for a child to be removed from the jurisdiction of the UK without the consent of the person that has parental responsibility.\textsuperscript{519} As a residual means, kidnapping is also a common law offence. In cases where a child has been removed or taken to or from a Convention country then the Child Abduction Unit would offer considerable practical assistance.\textsuperscript{520}

1.3.3 Prevention of Abuse and Neglect

The majority of Kurdish respondents stated that they had policies in relation to preventing violence against children and almost half rated their policies at 6 or above. Considering the effectiveness of other policies this is encouraging although still appears lacking when compared to 97\% of UK respondents rating their policies at 8 or above.

\textsuperscript{519} Child Abduction Act 1984, Section 1  
\textsuperscript{520} United Nations Committee on the Rights of the Child CRC/C/11/Add.1., op. cit., para 310
The Kurdish respondents made a number of comments about violence against children, these included; a nurse who felt the Asaish were responsible for preventing violence; a social worker who said that their policy was reviewed annually to improve implementation; another social worker stated there was a helpline for children and that parents should be educated that violence
shouldn’t be used as a punishment; worryingly a school manager and a teacher from different schools said that whilst they had policies in place they did not implement them; a social worker and a school manager both commented that any staff guilty of violence against children would have their employment terminated.

In the UK much more is done to protect children from violence. Many of the survey respondents stated that they had various policies in place that dealt with this issue including policies on; behavior management; safeguarding; whistleblowing; physical contact; child protection; and anti-bullying. A spokesperson from a primary school stated that they had four trained child protection officers on the staff and a nursery manager commented that they record and investigate all non-accidental injuries.

Measures in place in the UK to prevent violence against children include; the requirement for anyone wishing to work with children being police checked before commencement of employment; the police having extensive powers of protection; social services holding a list of children at risk in any particular area; the prohibition of any physical punishment from all care settings; and although reasonable and moderate physical chastisement of a child by a parent is allowed any excessive punishment amounting to abuse is a criminal offence\textsuperscript{521}.

In the UK there is not one specific law to protect children, rather there are a number of laws which include the Prevention of Cruelty to Children Act 1889; the Children and Young Persons Act 1933; the HRA 1998; the Protection of

\textsuperscript{521} Ibid., para 335-336
Despite all of the laws in place many children still suffer in the UK and there have been many failures in social care leading to terrible consequences for children. In 1982 Jasmine Beckford’s name was removed from the child protection register with the requirement that social services should monitor her and her sister, in 1984 Jasmine died, a post mortem revealed that she had suffered chronic neglect and abuse whilst living at home. In 2000 3 year old Kennedy McFarlane was murdered by her mother’s boyfriend, it was reported her death could have been prevented if social workers had recognised the escalating danger she was in. Social workers were not the only people to blame in the case of Victoria Climbie who also died in 2000, in the lead up to her death she was examined by doctors who claimed her injuries were not caused by abuse and police investigating her situation decided no crimes were being committed. In 2002 2 year old Ainlee Walker was starved and tortured to death by her parents, Ainlee was abused despite involvement by the police, social services and health workers. Baby P died aged 17 months old in 2007, before his death he was released from care three times despite terrible injuries that were caused or allowed to occur by

his mother and two men. His mother concealed the extent of the danger he was in from police, social workers and health workers.\textsuperscript{526} All of this shows that regardless of the number of laws in place to protect children such laws are useless if they are not implemented effectively.

1.3.4 Parental Responsibilities

In Kurdistan it would appear that the effectiveness of policies concerned with parents taking part in their child’s welfare are very effective, with 72\% of respondents rating their policies at 7 or above.

![Fig. 22: On a scale of 1 – 10 (with 1 being the least effective and 10 being the most effective) how effectively would you rate your policies on parents taking part in their child's welfare?](image)

Whilst policies in this area appear effective one children’s rights protection worker in Kurdistan did comment that children do not have a very good relationship with their step-mothers owing to extreme discipline which suggests there is still room for improvement.

\textsuperscript{526} Jones, S., \textit{Sixty Missed Chances to Save Baby ‘Used as a Punchbag’}, The Guardian 12\textsuperscript{th} November 2008, available at \url{http://www.guardian.co.uk/society/2008/nov/12/child-protection-crime-baby-p}, accessed 8\textsuperscript{th} April 2013
Within the UK there is a strong onus placed upon parents taking an interest in their child’s welfare for example in schools there are regular parent’s evenings and today parents have a say in the way schools are run and in nurseries parents are encouraged to take part in some activities.

1.3.5 Recovery and Reintegration for Child Victims

Policies on promoting and facilitating the physical and psychological recovery and social reintegration of children who are victims of neglect, abuse or exploitation do not appear particularly effective in Kurdistan with 43% of respondents rating their policies at 5 or below in comparison all UK respondents rated their policies at 7 and above.

Of the people interviewed in the UK there was a general consensus that the counseling offered to child victims was readily available and delivered by highly trained staff. The deputy manager of a UK children’s centre commented
that “there is an endless amount of counseling available to children and very highly trained people to do that”\textsuperscript{527} (see appendix 20).

1.4 Health and Welfare

1.4.1 Children with Disabilities

Only 41\% of Kurdish respondents said that special care and assistance was available to children with disabilities. There is inconsistency within the effectiveness of policies relating to this, with some respondents giving their policies a rating of 10 and others giving a rating of 1. This same inconsistency can be seen in relation to policies that relate to discrimination of children with disabilities however, UK respondents felt their policies were very effective with 88\% rating policies at 8 or above.

\textsuperscript{527} Interview with the Deputy Manager of a UK Children’s Centre, February 2013
Article 25 of the Constitution of Kurdistan states that the government should ensure the welfare of all persons with disabilities and special needs. According to the respondents, the services for children with disabilities are seriously lacking. The general feeling was that the services available for children are inadequate, particularly in relation to transport services and
access to education. One university lecturer commented that when planning new buildings attention was not paid to the needs of people with disabilities. The poor transport services for children with disabilities leads to a lack of educational opportunities for these children as they are unable to travel to school, in fact it is commonplace for children with disabilities to remain trapped at home which leads to social exclusion and the inability to participate fully in society.

In the UK local authorities have to provide services to reduce the effects of disabilities on children and enable them to lead as normal a life as possible. Services provided include advice and counseling; preparing children for independence; respite care to provide both parents and the child a break; and full-time accommodation for children with severe disabilities. Within schools there is the provision for additional support for children with special educational needs and if necessary one to one support can be provided in order that children with disabilities can attend mainstream schools.

1.4.2 Health and Health Services

Kurdish respondents indicated a lack of policies that ensure children have access to adequate healthcare, 72% said they did not have a policy in place compared to only 9% of UK respondents. Those policies that are in place in Kurdistan do not appear to be very effective, with 57% of respondents rating their policies at 6 or below.

528 United Nations Committee on the Rights of the Child CRC/C/11/Add.1., op, cit., para 367
529 Ibid., para 370
Article 24(2) of the Constitution of the Kurdistan Region states that everyone has the right to obtain healthcare and medical treatment regardless of whether they are able to afford it or not. In Kurdistan there is a degree of free healthcare but it is not adequate and standards of healthcare vary greatly across the region. Many Kurdish people opt for private healthcare where they

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530 Constitution of Kurdistan, Article 24(2)
can but this can be expensive and still does not guarantee high standards. It is quite common for a doctor to see more than one patient at a time, sometimes as many as five patients at the same appointment. Standards even vary with the same doctor and private patients will get preferential treatment, non-private patients are often advised to return to see the doctor during his private surgery for better treatment, this leads to vast inequalities within the healthcare system.

In the UK the NHS is free to all and prescriptions for children are also free. In contrast in Kurdistan medicine is limited and patients sometimes have to source and purchase medicines themselves, which is extremely difficult for families on low incomes.

There is a long established programme of child health surveillance and family support in the UK with healthcare being delivered by doctors, nurses and health visitors. This begins with the midwife during pregnancy and birth and then is taken over by the health visitor shortly after birth. One of the health visitor’s main responsibilities is to ensure that children have the best possible start to life. There is no such facility in Kurdistan; expectant mothers are seen by a doctor on a monthly basis and weighed and measured, there is no maternity care and only patients that pay for ultrasound scans receive them unless there appears to be a problem with the pregnancy. Facilities for delivery are poor and as soon as the baby has arrived there is no postnatal care.

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531 United Nations Committee on the Rights of the Child CRC/C/11/Add.1., op. cit., para 391
532 Ibid., para 392-393
In Kurdistan there is some free dental care for children but once again standards are poor and many parents take their children to private dentists. Dental care in the UK is free for children under 18 years, and in primary schools children can have dental checkups via NHS access services that come into schools.

1.4.3 Social Security and Child Care Services & Facilities

Policies ensuring access to relevant benefits are also lacking and policies that are in place are mostly ineffective, 59% of Kurdish respondents only rated such policies at 1.

![Fig. 29: Do you have systems in place to ensure children and their parents have access to relevant benefits?](image-url)
In the UK there is a comprehensive system in place to provide financial support to families with children. At the foundation of this system is child benefit which is a non-contributory, non-means tested benefit available to anyone with children.\textsuperscript{533} A primary school teacher commented that they had a parent support adviser that would advise parents of any relevant benefits and if necessary assist with the application process. Kurdistan has no benefits system in place and the only benefits paid are for children whose parents work for the Government, but even this is a meager amount.

\begin{figure}
\centering
\includegraphics[width=\textwidth]{chart}
\caption{On a scale of 1 – 10 (with 1 being the least effective and 10 being the most effective) how effectively would you rate your policies on access to relevant benefits?}
\end{figure}

\textsuperscript{533} Ibid., para 446
1.4.4 Standard of Living

Policies on assisting children without adequate living conditions are viewed as being ineffective by the majority of Kurdish respondents, with 67% rating policies at 5 or below. Within the UK the Government provides access to affordable accommodation, sometimes free in cases where housing benefit covers the full cost of rent; this is provided through local councils. There is no similar provision in Kurdistan, despite the Constitution stating that ‘Everyone shall have the right to a standard of living adequate for a dignified life, including, food, clothing and housing’.\(^{534}\)

\(^{534}\) Constitution of Kurdistan, Art 24(1)
1.5 Education

1.5.1 Education

With regard to equal educational opportunities almost two thirds of Kurdish respondents stated they had policies in place unfortunately almost half the respondents did not feel these policies were very effective.

![Fig. 32: Are there measures in place to ensure all children have equal educational opportunities?](image)

![Fig. 33: On a scale of 1-10 (with 1 being the least effective and 10 being the most effective how do you rate your policies on equal educational opportunities?](image)
The Constitution of Kurdistan covers education and equal opportunities in education in Article 27(1); the article provides that education will be free at all levels and compulsory until the completion of the primary level.\textsuperscript{535} According to Article 2 of the KRG Education Law basic education is compulsory from the age of 6 and children should complete stages 1-9.\textsuperscript{536}

In 2009 the KRG passed an education law which in theory aims to provide fully for children’s education; in reality, this law is undermined by the fact that there is little or no implementation. One example of this is Article 11 which states that the number of children in a class will not exceed 40; in practice, the average number of pupils in a class is 50.\textsuperscript{537}

Despite the provisions set out in the Constitution many of the people I surveyed and interviewed felt that there was discrimination in education with only the poorest members of society sending their children to the free, state schools. There is a vast difference in the standard of education and facilities at state schools compared to private schools. A member of ‘Save the Children’ in Kurdistan commented that whilst education was free in Kurdistan the teaching methods, buildings, equipment and facilities were old fashioned and limited. The current method of education in Kurdistan is by way of memorization. Students memorize books and materials supplied by the teacher with little focus on actual understanding of the subject.\textsuperscript{538}

\begin{footnotes}
\item[Ibid., Article 27(1)]
\item[Kurdistan Regional Government Ministry of Education, Education Law 2009, Article 2]
\item[Manara Network for Child Rights., op. cit., p.42]
\item[Majeed, B., \textit{Defective Educational System in Kurdistan}, Awat, Feb 2012, p.1]
\end{footnotes}
In comparison, the UK provides free compulsory education for all children aged between 5 and 16 years; free nursery places are also available for children from the age of 2 although this is not compulsory. Children in the UK follow the National Curriculum which ensures that all children receive a broad and balanced education regardless of gender, which should enable them to make well-informed decisions about future education, training and employment.\textsuperscript{539} Schools in the UK have to meet certain standards regardless of whether they are state run or private, regular inspections are carried out to monitor these standards and as such every child is guaranteed to receive a decent standard of education.

Another distinct difference between the UK and Kurdistan is the support and provision within education available for children with disabilities and special needs. In the UK one-to-one support can be provided for children with special educational needs and there are schools designed to cater specifically for children with disabilities to enable them to achieve the same level of education as other children. There is no such provision available in Kurdistan. If a child fails to attain a particular level they will repeat that year. The only exception to this is during the first year when the child’s parents would be consulted as to whether they wanted the child to repeat the year or whether they wanted their child to go on to year 2; this results in children either having to watch all of their friends moving up to a new class or the child moving up to the next year and simply having to struggle with an even more difficult level of work. Children with disabilities often miss out on education altogether.

\textsuperscript{539} United Nations Committee on the Rights of the Child CRC/C/11/Add.1., op. cit., para 460
Policies relating to school attendance and dropout rates in Kurdistan are lacking; 41% of respondents said that there was no such policy in place; this is extremely high compared to 9% of UK respondents. Once again those policies in place do not appear to be effective and 46% of Kurdish respondents rated their policies less than 5 on the scale of effectiveness.

Fig. 34: Are steps in place to encourage school attendance and prevent school drop out?

![Bar chart with response options: Yes, No, NA. The chart shows a comparison between Kurdistan and UK.](image)

Fig. 35: On a scale of 1 – 10 (with 1 being the least effective and 10 being the most effective) how effectively would you rate your policies on encouraging school attendance and prevent school drop out?

![Bar chart with effectiveness rating options: 1 to 10. The chart shows a comparison between Kurdistan and UK.](image)
According to Article 28 of the KRG Education Law, teaching staff should work towards full attendance and should follow measures in regard to unjustified student absence, these measures involve contacting parents in the case of absences of up to 2 weeks and in the case of absences lasting more than 25 days the student should be failed.\(^{540}\) Once again this law does not appear to be implemented effectively. An employee from the Directorate of Special Care told me that if a child does not attend school then after a few weeks they will simply lose their place and that there were no measures in place to find out why the child had not attended. I also spoke to a Kurdish MP who said that some parents did not send their children to school as they were needed to work to help to provide for the family; he said that the Government did not have an adequate plan in place to help these families so that they were able to send their children to school.

In contrast the authorities in the UK place great importance on children of compulsory school age attending school and local education authorities are required by law to enforce regular school attendance.\(^ {541}\) The parent’s responsibility to ensure their child attends school is covered in Section 7 of the Education Act 1996.\(^ {542}\) Teachers from two separate schools told me that they offered rewards to pupils for attendance and one said that poor attendance would result in an automatic referral to the Education Welfare Officer. The Head of Diversity at another UK school commented that they followed government attendance procedures and had dedicated school attendance

\(^{540}\) Kurdistan Regional Government Ministry of Education, Education Law 2009, Article 28  
\(^{541}\) United Nations Committee on the Rights of the Child \(CRC/C/11/Add.1\), op. cit., para 486-488 
\(^{542}\) Education Act 1996, Section 7
officers. One Head Teacher stated that school registers were checked regularly by the Education Welfare Service and any child that was absent from school without good reason may be visited at home by the Education Welfare Officer. He also commented that parents could face court fines of up to £120 for not sending their children to school. The Education (Penalty Notices) (England) (Amendment) Regulations 2012 saw penalty notices payable by parents increase from September 2012, Current fines are £60 if paid within 28 days or £120 if paid within 42 days.543

Anti-bullying policies in Kurdistan are not rated as being very effective compared to similar policies in the UK. An overwhelming 82% of UK respondents rated their policies at 8-10 on the scale of effectiveness, compared to only 9% of Kurdish respondents.

Fig. 36: On a scale of 1 – 10 (with 1 being the least effective and 10 being the most effective) how effectively would you rate your policies on anti-bullying?

It is important to tackle bullying as children who are bullied can face issues with their physical and mental well-being, educational achievement and social development. On the other hand a child that bullies another child may be involved in crime or anti-social behavior later in life.⁵⁴⁴

Policies on ensuring that children are given responsibilities and opportunities to practice choice, decision making and independence are rated quite highly in the UK however; once again there is a lack of confidence in such policies in Kurdistan, as shown below.

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Fig. 37: On a scale of 1 – 10 (with 1 being the least effective and 10 being the most effective) how effectively would you rate your policies on Ensuring that children are given responsibilities and opportunities to practice choice, decision making and..?

<table>
<thead>
<tr>
<th>Effectiveness Rating</th>
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<th>Kurdistan</th>
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<td>NA</td>
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</tbody>
</table>

1.5.2 Leisure Recreation and Cultural Activities

There is a fairly even divide in Kurdistan when it comes to the perceived effectiveness of policies on environmental planning taking into account children’s play needs.

Play is an important part of growing up and the UK Government understands that good quality play benefits children’s all round development.\(^{545}\)

Unfortunately the Kurdistan Government does not place the same importance on play.

Policies relating to access to cultural and artistic events are rated quite highly within the UK with only 3% of respondents rating the effectiveness of such policies as 5 or below, there is a completely different perception of such policies in Kurdistan with a massive 59% of respondents rating their policies at 5 or below.

\(^{545}\) United Nations Committee on the Rights of the Child *CRC/C/11/Add.1.*, op. cit., para 508
The UK government is committed to ensuring the participation of children in artistic and cultural events. The Arts Council aims to cater for the needs of children in the field of arts and culture and Regional Arts Boards work to encourage cultural activity among children.546

The effectiveness of policies relating to children’s right to rest and leisure is rated as very effective within the UK with over three quarters of respondents rating their policies at 7 or above however, in comparison in Kurdistan just over a third rate their policies at the same level.

546 Ibid., para 519-522
Kurdish schools are open six days a week and the school week comprises of three mornings and three afternoon sessions each five hours long, lessons are 45 minutes in length with a 5 minute break in between. This schedule does not allow children time to rest and take part in leisure activities. In the UK every school day should be divided into 2 sessions with a break in the middle, this break allows children the time for relaxation and allows them to take part in leisure activities of their own.  

1.6 Special Protection Measures

1.6.1 Child Labour

Child labour policies are considerably lacking within Kurdistan, 80% of Kurdish respondents said they did not have a policy in place and 65% felt that policies in place were not very effective rating them at 5 or below. The UK on the other hand is a complete reversal of this; only 21% of UK respondents

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547 Ibid., para 524
stated they did not have a policy in place relating to child labour and of the policies in place all respondents rated them at 7 or above.

Child labour is fairly common in Kurdistan and there is no specific law within the Kurdistan Region related to child labour. There is however, the Iraqi Labour Law No. 71 of 1987, which was amended in 2004, which states the
minimum age that children can work is 15 years, generally this law is not enforced. A 2010 study by Kurdistan Save the Children showed that almost 55% of working children in Kurdistan were under the age of 15.

One UK MP that I interviewed told me “there are very strict laws and rules, we are a very advanced economy anyway and that’s the reason that we make sure that we look after our children to make sure that they are not going to be exploited, and if you are caught doing that then you can find yourself in an enormous amount of trouble which could potentially lead to prison” (see appendix 21).

In the UK no child under 13 can work, no child can work before 7am or after 7pm and no child can work for more than 2 hours a day except on a Saturday when a child can work up to 5 hours. Legal provisions surrounding child labour in the UK are covered by the Children and Young Persons Act 1933.

1.6.2 Sexual Exploitation

Almost all UK respondents stated that policies were in place to safeguard children from sexual abuse and exploitation and these policies are considered to be highly effective with 88% of those surveyed rating policies at 8 or above. It is a completely different story in Kurdistan however, only 52% of those surveyed had policies in place and only 22% rated their policies at 8 or above.

548 Iraqi Labour Law No. 71 of 1987
549 Manara Network for Child Rights, op.cit., p53
550 Interview with UK MP, November 2012
551 United Nations Committee on the Rights of the Child CRC/C/11/Add.1., op, cit., para 593
A secondary school teacher in Kurdistan commented that the school educated children in order to develop the knowledge and skills they needed to make them safe. A Kurdish MP stated that there was a Government run hotline that went some way to protecting children from sexual exploitation.
The UK Government considers the sexual abuse of children to be totally unacceptable and this is reflected in law where there are particularly severe sentences in relation to sexual offences against children.\(^{552}\) Whilst the UK views such abuse as unacceptable it still occurs. In 2007 an inquiry into the care of people with learning disabilities at a hospital and homes in south London revealed a catalogue of physical ill-treatment and sexual abuse.\(^{553}\) In 2010 evidence came to light that indicated systematic child abuse within the Catholic church around the world, Channel 4 news investigated and highlighted 37 cases that occurred in England and Wales.\(^{554}\) In 2012 police launched a criminal investigation into sexual abuse after identifying 200 potential victims of the late BBC presenter Sir Jimmy Saville and others. The police involvement was triggered following an ITV broadcast into Saville’s behavior; many women came forward and alleged that they had been abused whilst underage.\(^{555}\)

The deputy manager of an early years nursery commented that all staff and volunteers were carefully selected, screened, trained and supervised to ensure the safety of children. A member of staff from a residential special needs school said that the school had a sexual education policy which amongst other things taught pupils how to recognize and avoid exploitation and abuse.

\(^{552}\) *Ibid.*, para 610  
1.6.3 Rehabilitative Care

Policies on the recovery and social reintegration of children in the juvenile justice system are a bit inconsistent in Kurdistan with almost half of respondents stating that they do not have policies in place, and just over half rating their policies at 5 or less. The situation in the UK is better with only 18% of respondents saying they do not have a policy in place and nobody rating their policies at below 5.

Fig. 45: Are there measures in place to ensure appropriate recovery and social reintegration of children involved in the juvenile justice system?
A Kurdish school manager commented that whilst the school had a policy in place there was not enough done to help children in this situation. In the UK the Head of Diversity from one school said that they had policies in place relating to this issue and they would liaise with the police and social services. A college safe-guarding coordinator said that the college’s mission statement and values clearly supported recovery, rehabilitation and reintegration of children in such situations. It is worth noting that ‘values and ‘mission statements’ are just words and that in order to be completely effective adequate implementation needs to occur.

1.6.4 Drug Abuse

Only 33% of Kurdish respondents have a policy in place that relates to educating children about drugs, alcohol and tobacco and only a quarter rated policies at 7 or above. In comparison, 71% of UK respondents stated they had policies in place and nearly three quarters rated the policies at 7 or above.
A number of Kurdish respondents commented that children were educated about the side effects of drugs, alcohol and tobacco; these respondents mainly worked in schools or as social workers, so there is some degree of education evident. In the UK children are taught about drugs, alcohol and
tobacco as part of the national curriculum, which is delivered through PSHCE tutorials (Personal, Social and Health and Citizenship Education).

1.6.5 Children in Situations of Emergency

When considering policies relating to children in situations of emergency only 20% of those surveyed in Kurdistan rated the policies in place at 8 or above, this is in contrast to 82% of UK respondents.

![Fig. 49: On a scale of 1 – 10 (with 1 being the least effective and 10 being the most effective) how effectively would you rate your policies on children in situations of emergency?](image)

2. Recommendations

The data obtained suggests that there needs to be an overall improvement in the implementation of child rights in Kurdistan to bring it in line with better performing countries such as the UK. Whilst Iraq, and therefore Kurdistan, is a signatory to the UNCRC, implementation of the Convention is lacking. One of the main reasons behind this is the failure to implement policies that are already in place, evident in my results. Many of the people spoken to in Kurdistan confirmed that they had policies that related to specific Articles...
within the UNCRC but rather than being useful mechanisms for the realization of children’s rights, they seemed to merely ‘tick a box’ when it comes to fulfilling the state’s obligations.

In order to improve the quality of children’s rights in Kurdistan the Government’s overall commitment to fulfilling the rights of children needs to improve and there needs to be a change in society’s behavior and attitude towards children. This could be achieved by ensuring that there is an adequate legislative framework in place that is not only codified but implemented, enforced and monitored in practice. It should provide appropriate mechanisms and resources for people caring for, living with and working with children. Any framework should also ensure that both children and society as a whole are aware of such rights and should encourage the latter to support implementation by challenging societal behavior, attitudes and traditions that hinder the enforcement of children’s rights. These are general recommendations that will significantly contribute to improving the implementation of the UNCRC; also highlighted are a number of specific areas where improvement could be made. The recommendations for specific areas are ‘ideals’ and naturally these things will take time, considerable resources, the growth of a culture of rights and the support of an effective regulatory system.

2.1 General Principles

There needs to be an improvement in legislation, in particular legislation relating to non-discrimination of children and the best interests of the child. Whilst the Constitution of the Kurdistan Region, although not specifically
mentioned, would be applicable to children, there needs to be some form of legislation that caters specifically to the rights of children: a document similar in some ways to the UK’s Children Act. The drafting of child specific legislation would be underpinned by the child’s best interests and therefore would see adequate implementation of UNCRC Article 3, which as can be seen from figures 3 and 4, needs improvement. The UNCRC principle of non-discrimination should be written into the State’s Constitution in order to fully implement Article 2 of the Convention. Article 20 of the Constitution pertains to equality but does not specifically mention children; this should be amended and fully implemented. The Constitution should also include a reference to the child’s best interests being given primary consideration; this is particularly important as this would legally obligate the KRG to consider the best interests of children in all aspects of legislation and policy making.

2.2 Civil Rights & Freedoms and Family Environment

It is evident from the research (see fig. 5, 6, 10 and 11) that Articles 19 and 37(a) of the UNCRC which relate to protection from violence; and torture, cruel, inhumane and degrading treatment respectively need measures in place to improve their implementation. The societal view of children is very different in Kurdistan compared to the UK. In the UK, children are seen as having a need for protection whereas in Kurdistan children are effectively treated as second class citizens. For example physical punishment in the home and in schools, in some cases to a severe degree, is common place. In order to protect children the Government needs to ensure that corporal punishment is prohibited in schools and care settings and that there are

556 Constitution of Kurdistan, Article 20
appropriate consequences for anyone that physically punishes a child. There needs to be appropriate guidance and training for anyone who works with children, which should include training on how to effectively discipline children without the use of physical force. Parents should be advised on non-physical ways to chastise their children and excessive punishment should be viewed as abuse and as such should be punishable in a Court of Law. This is an important step as the negative consequences of corporal punishment outweigh the perceived positives; physical punishment is associated with physical abuse and long term antisocial behavior.557

The Kurdish Government has in place a helpline for children, which is a positive step; however, there need to be more resources available for children that suffer from abuse. Children need to be able to approach professionals such as teachers, police officers, health professionals etc, safe in the knowledge that their voices will be heard and that they will be helped rather than have their complaints ignored. In order for this to work successfully children need to be educated about their rights, and what constitutes acceptable and unacceptable behaviour towards them. There also needs to be appropriate training for adults so that they are better equipped to deal with any complaint made by a child. There needs to be a specific procedure in place for dealing with complaints of abuse; this includes how to talk to children about the abuse, how to report the complaint, how to investigate the abuse, and how to record and monitor complaints. There needs also to be effective consequences in place for perpetrators that act as a deterrent, there is little point in going through a procedure that has no repercussions for the person

committing the offence. There is also a great need for services that help with the rehabilitation of children that are victims of abuse. It has been highlighted in numerous European Declarations and plans of action how important assistance during recovery is. However by far the most important change that needs to occur is within society; there needs to be a shift in the way that children are viewed and the KRG should take steps to ensure that society is educated about the rights of children and the importance of affording all children these rights.

Children in Kurdistan would also benefit from a properly structured and regulated media service. Programs for children can provide an opportunity for the child to develop their personality, talents and mental and physical abilities. Currently there is a lack of suitable programming for children and many of the programs that are shown are not in the Kurdish language. The Kurdish Government should provide a channel dedicated to programs for children and should also ensure censorship of general programs, as at the moment children are able to view all media, regardless of its content.

2.3 Health and Welfare

All children with disabilities should have access to pre-school care, education, training, healthcare services, and recreation and play opportunities. This should be implemented without discrimination in order to help them achieve their full potential, to enable them to develop and to enable them to integrate within society.

Disability comes in a number of forms but includes long-term physical, mental, intellectual or sensory impairment that can hinder a person's full and effective participation in society. With regard to education children with physical disabilities are hindered before they even get to school. Getting to school is often not an option due to a lack of transport that is able to cope with wheelchairs and mobility aids. If these children were able to get to school in most cases they would be faced with outdated buildings that were not designed to accommodate people with disabilities. In order to rectify this, the government needs to supply transport that will enable all children to attend school; this includes buses and taxis designed for and suitable for people with disabilities. Existing schools need to be adapted so that they are suitable for use by everyone; this may include installing ramps, lifts, and disabled toilets, making corridors and doorways wider, and providing handrails. Any new schools that are built need to take into account the needs of children with disabilities at the planning stage.

Children with disabilities may also need more support within the classroom so that they are able to learn effectively. Schools should ensure that additional resources are made available; this might include a classroom assistant to help the child, which would be particularly useful for children with special educational needs. In some cases it may be appropriate for a child to have one-to-one support and there needs to be in place specific measures for assessing this need. In the case of deaf, blind or deaf-blind children education needs to be delivered in the most appropriate mode, which could include the use of Braille and sign language. Teachers and staff need to be appropriately

559 Convention on the Rights of Persons with Disabilities, Article 1
trained in these methods. There are some schools that provide specifically for these conditions but in addition to this there should be facilities for these children within mainstream schools to provide for equal opportunities.

Children with disabilities need to be able to access adequate healthcare in the same way all children do. These children and their families however, can often experience significant barriers when attempting to access health services. Children with disabilities may in addition need access to other services examples include early detection of disabilities; early intervention; psychological and physical treatment; physical aids such as prosthetic limbs, hearing aids, mobility devices and visual aids; and access to highly trained professionals. The KRG should ensure that such facilities are made available to all children.

The healthcare service in Kurdistan in general needs to be overhauled. There is a vast degree of variation among services and there needs to be more regulation to ensure that everybody has access to the same standard of care. Healthcare should be made available, in all cases, to children free of charge, as good health is vital to a child’s development. Children should be able to receive prescriptions free of charge and this should also be extended to all members of the family in the case of families on a low income. Providing free healthcare to adults on low incomes can be beneficial to children as parents suffering from illness are less able to care for their children adequately and having to pay for healthcare and prescriptions from a low family budget

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means that sacrifices have to be made elsewhere which could have a detrimental effect on the child.

As mentioned when attending GP appointments it is quite common for more than one patient to be seen at a time, this is the same for children and adults alike. This practice must change; all patients should be able to see the doctor in private; shared appointments mean that there is no patient/doctor confidentiality and as such patients may not feel open to discuss intimate health issues especially in the presence of strangers. According to the GMC confidentiality is key to the trust between doctors and patients, without confidentiality patients may be reluctant to seek medical assistance or may hold back information that is necessary for adequate care. Shared appointments may also be restrictive in terms of the time allocated to each patient’s problems.

Health services available to expectant mothers, newborn babies and pre-school children should also be reviewed. There needs to be in place a system similar to that of the UK. Expectant mothers should be seen by specially trained healthcare professionals throughout their pregnancy, given appropriate ante-natal care and should be offered regular scans, this care should be provided free of charge. Midwives should be better trained and the care provided during labour should be improved, since safe child-birth is vital for the health and well-being of both the mother and the baby. Women who receive antenatal care are more likely to have healthier babies, are less likely to deliver early and are less likely to have other serious pregnancy related

problems.\textsuperscript{562} Introducing these services and standards would ensure that each and every child has the best start in life.

The health of children in Kurdistan would benefit greatly from the introduction of a system similar to that of the UK’s system of health visiting. Health visitors would be able to ensure that children are properly cared for and that they are healthy. Baby clinics and home visiting should also be introduced so that parents had access to relevant healthcare for newborns and pre-school children. Home visiting has the added advantage of helping to reduce rates of child neglect and abuse.\textsuperscript{563}

\section*{2.4 Education}

Education in Kurdistan, both the system and facilities, would benefit greatly from improvement. There is a lack of schools within the Kurdistan region; of the schools available about 60\% are not suitable for use.\textsuperscript{564} The KRG needs to prioritise improvement of the schools already in use and where necessary, to build new schools. New buildings should be accessible and appropriate for the use of all students.

The teaching methods used within Kurdish schools need to be modernized so as to allow children to engage with the subjects they are learning. Some children do not learn well by simply reading and memorizing, using a range of teaching methods will enable children to learn in different ways and provide equal opportunities for all children to learn. As well as memorization teachers,
should encourage students to take part in activities and demonstrations, and outings should be organized as learning does not always need to be classroom based.

Children that have special educational needs should be provided with additional support to enable them to achieve the same level of education as their peers. This additional support could be offered full or part time and could either be on a one-to-one basis or involve a small group of children. In order to ensure that children receive the level of help they require, I would suggest groups of no more than 4 or 5 children to one special needs teacher. If children with special educational needs do not receive additional support then they may be forced to repeat a class, which can lead to low self-esteem and other psychological and social problems. High rates of repetition can create a large age gap between the youngest and oldest members of a class and at worse, repetition can lead to drop-out and no further education.

The Kurdish Government and schools need to work together to plan and enforce measures to ensure high levels of school attendance. Despite school attendance being mentioned in the KRG Education Law there is no implementation of this, and as a result, there are large percentages of school dropouts and low enrolment rates. Children drop out of school for a number of reasons including poverty, overlooking special educational needs, poor teaching, strict school discipline and forcing children to repeat years. If these areas were examined and tackled then there would most likely be an improvement in school attendance.
2.5 Special Protection Measures

The issue of child labour within Kurdistan needs to be addressed urgently. There are a high number of children under the age of 15 working, despite laws that state this should not happen. The Government needs to ensure that these laws are better enforced so that children are protected. Children that work are more likely to suffer from injuries from unsafe working conditions and will miss out on an education. Effective implementation of laws relating to child labour should include: inspections of a child’s working conditions; adequate record keeping and reporting on child employment; and appropriate penalties for non-compliance.

3. Conclusion

In order to improve the implementation of children’s rights the Kurdish Government will need to consider all of the recommendations within this thesis. Some of these issues can be resolved over time however, some require more immediate focus.

From figure 3 it is evident that there is a lack of policies in place that relate to the best interests of the child. The principles of Article 3 of the UNCRC need to be reflected within legislation so that the Kurdish Government is putting children at the heart of all decisions concerning them. The Committee on the Rights of the Child has indicated that this should be done in such a way so that the courts are able to use the best interests principle. Article 3 should be

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reflected in the social welfare institutions, courts of law and within administrative and legislative bodies.

One important area where there needs to be vast improvement is that of the rights of children with disabilities. In Kurdistan such children are disadvantaged in so many ways. The research highlights particular areas of concern including education, social exclusion and health care, only 41% of the respondents indicated that special care and attention was available to children with disabilities. Figure 26 highlights an inconsistency in the effectiveness of policies relating to children with disabilities. If implemented effectively Article 23 of the UNCRC, which pertains to the rights of children with disabilities, would also see improvements made to the implementation of Article 2 and Article 3. The Government adopting legislation specific to the rights of children with disabilities and disabled people in general would ensure that both Government and private organisations had to take responsibility for providing services and facilities suitable for children with disabilities.

Article 24 of the UNCRC recognises the right for children to enjoy the highest possible standard of health, and also adds that no child should be deprived of the right to access health care services. The Government needs to introduce a set of child-specific standards for healthcare services and ensure that these services are regulated, monitored and reviewed on a regular basis. These standards should apply to both state provided services and private services and all treatment available to private patients should also be available to patients accessing state services. The training of healthcare professionals should also be improved as this would see a general improvement in
healthcare services. In order to achieve this the Government should provide an increased health budget.

Article 26 of the UNCRC places an obligation on States to provide financially for children when necessary. The research highlights the significant lack of a benefits system in Kurdistan, only Government workers receive any form of additional payment based on whether they have children or not. The KRG should make available public funds in order to help children from low income families and children with disabilities. The benefits available should be means-tested so that payments are made only to those families' that are most needy. Provision of socially funded housing would ensure that children from poorer families had access to adequate, safe housing. Providing benefits would go some way to reducing child poverty and this has positive consequent effects for child health and educational attainment. Having an adequate benefits system in place would also see a reduction in the number of children working on the streets.

The research suggests that there is much room for improvement within Kurdistan’s education system. Most importantly, changes need to be made to the basic education system and facilities. There is an issue with equal educational opportunities (see fig. 32 and 33). There needs to be regulation of state and private schools so that children have an adequate standard of education regardless of whether their parents can afford private education. Within Kurdistan there is a lack of suitably trained teachers; this needs to be addressed to improve the quality of education. Qualified and well trained teachers are vital when it comes to providing children with good quality
education. Teachers need to be able to provide an inclusive environment that allows all children to develop to their fullest potential.

One of the biggest challenges in Kurdistan is the public and professional perception of children’s rights. Increasing the knowledge and awareness of the UNCRC among Government representatives, parents, teachers and society in general is the only way to ensure a better future for the next generation of Kurdistan.

By implementing the recommendations set forth in this thesis the Kurdish Government will work towards ensuring a better, brighter future for the children of Kurdistan. It is important that these changes are put into action not only for the children of Kurdistan but for Kurdistan as a whole. If children are helped out of poverty, given better education and provided with good health services Kurdistan will take substantial steps towards becoming a developed, civilized society that is enlightened by the principles of human rights.
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