

LEGAL MEASURES FOR IMPLEMENTING CHILDREN'S RIGHTS: OPTIONS FOR NORTHERN IRELAND

DR BRONAGH BYRNE AND PROFESSOR LAURA LUNDY

Queens University Belfast



AIMS AND OBJECTIVES

A COLLABORATIVE PROJECT BETWEEN QUEEN'S UNIVERSITY BELFAST AND NICCY

- To inform the development of children's rights legislation in Northern Ireland through
 - Stakeholder engagement
 - Critical analysis of the existing evidence base
- Ultimately, to enhance the implementation of children's rights in Northern Ireland.

CONTEXT

- Article 4 UNCRC
 - States required to take ‘all appropriate **legislative**, administrative and other measures for the implementation of the CRC’
- Legislative developments in rest of UK and Ireland
 - Rights of Children and Young Persons (Wales) Measure (2011)
 - Children and Young People Bill (Scotland) (2013)
 - Constitutional Amendment, Ireland (2012)
- Identified barriers to effective government delivery for children and young people in Northern Ireland (Byrne and Lundy 2011)
- Study for UNICEF UK on legal implementation in twelve countries (Lundy, Kilkelly, Byrne and Kang 2012)

“[T]he lives of children will not change for the better until the obligations [the CRC] lays down are taken seriously by legislatures, governments and all others concerned with the daily lives of children” (Freeman 2002, 115)

METHODS

- Development of 3 working papers on the following themes.
 1. The implications of legislative developments in the rest of the UK for Northern Ireland
 2. Understanding incorporation
 3. Other general measures of implementation
- Three workshops with key stakeholders in children's rights, including community and voluntary agencies, academics, the Equality Commission and NICCY.

INCORPORATION OF THE CRC INTO DOMESTIC LAW

- Incorporation is the way in which CRC is given legal effect in domestic law.

‘Incorporation should mean that the provisions of the Convention can be directly invoked before the courts and applied by national authorities and that the Convention will prevail where there is conflict with domestic legislation or common practice.’ (Committee on the Rights of the Child (2003) General Comment 5, para 20)

CONSTITUTIONAL INCORPORATION

- Given constitutional expression of children's rights can be viewed as commitment at the highest level.
 - **Spain** (1979): 'Children shall enjoy the protection provided for in the international agreements safeguarding their rights'
 - **South Africa** (1996): Strident and comprehensive provision for children's rights
 - **Belgium** (2000): Integrity and CRC principles protected
 - **Ireland** (2012): Constitutional amendment on State's duty to vindicate rights of the child and parliamentary duty to legislate on principles
- In Northern Ireland, the Bill of Rights process is a key means of achieving this.

FULL INCORPORATION THROUGH DOMESTIC LAW

- Many countries have taken steps to incorporate the CRC into domestic legislation.
 - **Belgium** – automatically upon ratification
 - **Norway** - Human Rights Act 1999 No.30
 - **Spain** – automatic upon ratification
- In Northern Ireland, this could take the form of a Children's Rights Act.

BENEFITS OF INCORPORATION

- Culture of respect for children's rights
- More likely to be perceived as rights holders
- Potential for improved outcomes for children and young people
- Opportunities for strategic litigation and legal redress
- Acts as a 'lever' or 'hook' in facilitating sustainable and systematic improvements in children's rights.

INTEGRATION OF SOME CRC RIGHTS INTO DOMESTIC LAW

Article 3 (best interests principle) most likely to be included.

- In Norway, the best interests principle is integrated in the Immigration Act (2008) (Section 38) and interviewees considered this a particularly important achievement given that competing public interest considerations make it difficult to advocate for children's rights in the area of immigration.

Article 12 (right to have views given due weight) next most common provision.

- In Germany, the *Act on Proceedings in Family Cases and in Matters of non-contentious litigation* obliges judges to listen to the child where this may have implications for a decision in family court proceedings, and each child who has reached the age of 14 may exercise a right of complaint in all matters affecting them without the participation of his/her legal representative.

ADDITIONAL MEASURES TO SUPPORT FULL INCORPORATION

- **Wales** Rights of Children and Young Persons Measure
- **Scotland** Children and Young People Bill
- **Belgium** Duty to undertake child impact assessment
- **Australia** Statements of Compatibility



PLACING GENERAL MEASURES INTO LAW

CHILD RIGHTS IMPACT ASSESSMENT

- Effective implementation requires a ‘continuous form of child impact assessment and evaluation’ (GC5, para 35).
- No formal or statutory system of child rights impact assessment in NI
- E.g. Belgium, Sweden, Australia
- Children’s rights legislation could include a duty on public authorities to produce a child rights impact assessment with respect to:
 - All new or amended legislation
 - Formulation of a new policy
 - Any review of or change to existing policy

TRAINING AND AWARENESS

- State has a duty to develop training and capacity building for all those involved in implementing children's rights
- Systematic training on CRC not provided to those involved in developing/implementing policy and legislation in NI.
- E.g. Scotland, Wales
- Children's rights legislation could contain a duty on Government to promote knowledge, awareness and understanding of the CRC and its Protocols amongst staff, professionals and the public, including children and young people.

DATA COLLECTION

- Sufficient, reliable and disaggregated data is an essential part of implementation. (GC 5, para 48)
- Insufficient disaggregated data; limited qualitative research in NI
- E.g. Spain, Germany
- Children's rights legislation could include a duty on OFMDFM or other appropriate body to publish an annual comprehensive report on the state of children's rights in NI

JOINED UP WORKING

- Visible cross-sectoral coordination crucial in realising children's rights
- Identified as a crucial barrier to government delivery in NI
- E.g. Sweden, New Zealand
- Children's rights legislation could contain a statutory duty on Government departments and public bodies to co-operate.

CHILD BUDGETING

- Art. 4 CRC requires States to fulfil children's economic, social and cultural rights to the 'maximum extent of available resources'
- No systematic child budgeting in NI
- E.g. Wales, India, Zimbabwe, South Africa.
- Children's rights legislation could include a duty which requires each government department to disaggregate and report on the amount and percentage of national budgets spent on children.

PARTICIPATION

- Grounded in Art. 12 CRC.
- Children not always engaged in implementation phases/structures; child friendly versions not always produced.
- E.g. Belgium, Norway
- Children's rights legislation could expand upon the meaning of Art.12

NATIONAL STRATEGY

- Effective protection of children's rights requires a unifying, comprehensive and rights based national strategy rooted in the Convention.
- E.g. Sweden.
- There could be a duty in children's rights legislation which requires the development of a Children's Rights Strategy.

IMPLEMENTATION, MONITORING AND ENFORCEMENT

- For children’s rights legislation to have real meaning, effective enforcement and review mechanisms must be put in place.
- The Committee on the Rights of the Child has emphasized that, “For rights to have meaning, effective remedies must be available to redress violations.” (GC5, para 24)
- Implementation could be supported by a range of measures.
 - Education, training and awareness
 - Designation of central government authority with responsibility for coordination
 - Programme of action

MONITORING AND ENFORCEMENT

MONITORING

- Implementation of children's rights legislation will also require monitoring
- Potential options for monitoring include NICCY and/or the Committee for OFMDFM.

ENFORCEMENT

- Children's rights legislation could ensure that there are effective, child-sensitive procedures available to children and their representatives
- These could include:
 - Provision of child-friendly information and advice,
 - Advocacy, including support for self-advocacy,
 - Access to independent complaints procedures and to the courts
 - Effective remedies should also be in place.

SUMMARY

- Given what is happening elsewhere, it is timely to consider what steps can be taken in NI
- Bill of Rights remains the key *modus operandi* for achieving full incorporation in Northern Ireland
- Incorporation can also be achieved through bespoke children's rights legislation
- Must be accompanied by a range of supplementary measures and a robust infrastructure designed to monitor, support and enforce implementation.