



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

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FOREWORD



As Northern Ireland Commissioner for Children and Young People, my purpose is to ‘safeguard and promote the rights and best interests of children and young persons’, all of my work being underpinned by the UN Convention of the Rights of the Child (UNCRC). In ratifying the UNCRC more than 20 years ago, the UK government publicly agreed to be legally bound by it, and committed itself to promote, protect and fulfil the rights of children as outlined in the articles of the Convention.

The UNCRC is a legal human rights instrument, guaranteeing to every child a limited number of basic rights, irrespective of their age, capacity, race, religion, family background or socio-economic status. Children’s rights should ensure early intervention and prevention, through proactively providing all children with the basic building blocks they need at each stage of their development. They require a shift in thinking about children, away from being vulnerable subjects of charity, dependent on the goodwill of decision-makers, to ‘rights-holders’ i.e. people with rights which requires action from government.

In the two decades following the ratification of the UNCRC we have seen some positive developments in relation to implementing children’s rights in the UK, not least the establishment of Children’s Commissioners’ Offices in each of the four regions making up the UK. We have also seen positive examples of where children’s rights have been taken into account in designing and

delivering services, and in drafting legislation and strategies to coordinate delivery on their rights. Moreover, there are many examples of projects where children and young people have been meaningfully engaged in these processes.

However, regrettably, evidence and experience demonstrate that these examples are infrequent rather than typical.

Concerned at the limited progress, in 2010 I commissioned Professor Lundy and Dr Byrne to review how government had been strategically delivering on children’s rights. They did this by assessing the processes for delivering strategies and policies against the general measures for implementation outlined in the UNCRC and General Comments 2 and 5. This report identified a number of problems in delivering for children in Northern Ireland, including inconsistencies in how children’s rights were addressed in developing strategies, a lack of coordination and ‘joined up’ government, inadequate data and

research, and limited meaningful engagement with children and young people in making decisions on issues affecting them.

At the same time, we were observing important legislative developments in Wales and Scotland and became convinced that ambitious, robust child rights legislation was required in NI to ensure effective delivery for children in Northern Ireland. We worked with Professor Lundy and Dr Byrne at Queen's University and obtained a grant from the Economic and Social Research Council (ESRC) to work on a joint 'knowledge exchange' project designed to draw from best practice internationally to inform a paper, outlining the possible areas and content of a piece of child rights legislation that would be appropriate to the Northern Ireland context. I informed OFMDFM Junior Ministers Bell and Anderson of the project as it was initiated, and they agreed to consider the options paper on its completion.

The project has involved reviewing positive developments internationally and consideration of how the general measures of implementation contained in the UNCRC could be reflected in legislation. Working papers were produced for discussions together with a range of stakeholders in the NGO/voluntary sector and child rights academics. The debate, input and advice have greatly informed this options paper. The three working papers have been combined into companion reference document.

While this paper outlines options, I am convinced that robust and ambitious Child Rights legislation is crucial for a number of reasons:

1. To demonstrate a strong commitment on the part of the NI Executive to be held accountable for delivering improved outcomes for children and young people in Northern Ireland;
2. To facilitate a focus on the rights and best interests of children in developing policies, legislation and strategies; and
3. To ensure more effective 'joined up' delivery for children and young people;
4. To convey the broader societal message that we value and respect our children and young people.

We are grateful to the ESRC for their funding, and to those individuals and organisations who gave time and consideration to engaging with us in the development of this options paper. I am also very grateful to Dr Byrne and Professor Lundy for applying their redoubtable knowledge, intelligence and commitment to this important project. This paper now provides the basis for a wider debate on the detail of what should be included in child rights legislation, and we will be seeking to engage with a wide range of people and organisations including children and young people, parents, government officials and political representatives in discussions over coming months.

It states in the Universal Declaration of Human Rights that 'childhood is entitled to special care and assistance' and few would disagree. This proposed legislation, if developed with ambition and vision, could contribute towards making Northern Ireland one of the best places in the world to grow up. With this goal in mind we hereby invite reflection and debate on the shape of future child rights legislation for Northern Ireland.



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1.0 AIMS AND OBJECTIVES

This project is a collaboration between Queen's University Belfast and the Northern Ireland Commissioner for Children and Young People (NICCY) to enhance the implementation of children's rights in Northern Ireland. The project is a knowledge exchange and impact generating activity which seeks to build upon previous research carried out on behalf of NICCY by Queen's University Belfast and which identified significant barriers to effective delivery for children in Northern Ireland.¹ The objectives of the project were to:

- ▶ Develop a policy briefing and facilitate stakeholder engagement on legislative mechanisms for implementing children's rights in Northern Ireland; and
- ▶ Inform policy and practice with respect to the implementation of children's rights in Northern Ireland.

In particular, the project was intended to inform the development of children's rights legislation in Northern Ireland through stakeholder engagement, and critical analysis of the existing evidence base and literature around the implementation of the CRC in domestic law.

¹ Byrne, B. and Lundy, L. (2011) *Barriers to Effective Government Delivery for Children*. Belfast: Northern Ireland Commissioner for Children and Young People.



2.0 CONTEXT

The UK ratified the United Nations Convention on the Rights of the Child ('the CRC') in 1991, and the government is required to ensure that its policies and actions comply with it. Article 4 of the CRC requires States Parties to take 'all appropriate legislative, administrative and other measures for implementation' of the CRC. The Committee on the Rights of the Child has provided extensive advice in both its General Comment on the Implementation of the CRC² and in its Concluding Observations as to the structures, systems and approaches that must be put in place to ensure that the substantive rights and provisions are effectively and fully implemented.

For example, the Committee has stated that effective implementation of the Convention requires, inter alia: a comprehensive and continuous review of all domestic legislation and administrative guidance against the principles and standards of the Convention; a unifying, comprehensive and rights based national strategy rooted in the Convention; visible cross-sectoral coordination; a continuous process of child impact assessment; children's rights budgeting; disaggregated data and research; training and capacity building for all those involved in implementing the CRC; and engagement with children and young people. The Committee on the Rights of the Child has also emphasised that "States parties need to ensure, by all appropriate means, that the provisions of the Convention are given legal effect within their domestic legal systems."³, yet recognise that this "remains a challenge in many States parties".⁴

In its response to the UK's State party report in 2008, the Committee expressed concern at the lack of a body mandated to coordinate and evaluate a comprehensive and effective implementation of the Convention throughout the State party, including at local level. The Committee also expressed concern at the lack of consistent budgetary analysis and child rights impact assessment. Moreover, that the principles of the Convention were not duly taken into account in all pieces of legislation throughout the country and that the State party had not "incorporated the Convention into domestic law nor has ensured the compliance of all legislation affecting children with it".⁵ As such, the Committee recommended that "steps are taken across the UK State Party including in the devolved administrations to incorporate the Convention into domestic law". The UK is due to submit its State party report in January 2014 and attention is likely to be paid during the Committee's subsequent examination of this report to the steps that have been taken to progress implementation of the CRC in law.

There have been a number of legislative developments in respect of children's rights in the rest of the UK in recent years; most notably in Wales and Scotland. Wales adopted the Rights of Children and Young Persons (Wales) Measure in March 2011. The Measure requires Ministers of the Wales Assembly to have due regard to the requirements of the CRC and its Optional Protocols when making decisions about a provision to be included in an enactment, the formulation of a new policy and/or legislation, or a review of or change to an existing policy and/or legislation. Scotland is also in the process of introducing similar legislation.

² United Nations (2003), Committee on the Rights of the Child, *General Comment No. 5, General Measures of Implementation for the Convention on the Rights of the Child*, UN/CRC/GC/2003/5, Geneva: United Nations.

³ General Comment 5, note 2, para 19

⁴ General Comment 5, note 2, para 19

⁵ United Nations (2008), Committee on the Rights of the Child, *Concluding Observations to the United Kingdom of Great Britain and Northern Ireland*, Geneva: United Nations, para 10.

The Children and Young People Bill (Scotland) was introduced to Parliament on 17 April 2013 and will place a duty on Scottish Ministers keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the CRC requirements, and to take identified steps if deemed appropriate. It is accompanied by a duty to raise awareness and understanding of the rights of children and young people. Stage 1 of the Bill is due to be completed by 29 November 2013.

Whilst these developments represent progress, a number of limitations can be identified. The Welsh duty to have due regard applies only to Ministers and was not extended to public bodies more generally. Whilst the Welsh Measure requires Ministers to consult with a number of groups, including children and young people, there is no requirement for them to take these views into account. More generally, the duty requires Ministers only to have 'due regard' – a concept which is problematic due to the lack of precise meaning or scope of due regard in this context. The success of the due regard duty in its various legislative forms (for example: Equality Act 2010, Race Relations Act 1976; Disability Discrimination Act 1995; Sex Discrimination Act 2006) is mixed. Fredman for example has suggested that the way in which the due regard standard is formulated leaves the ultimate decision at the discretion of the decision-maker.⁶ As evidenced by case law, the duty does not necessarily require a change in policy provided that due consideration has been given. Experience under, for example, the duty on race, and the Section 75 duty in Northern Ireland, have highlighted the extent

to which the practice of 'due regard' can become a paperwork or 'tick box' exercise rather than facilitating institutional change as originally intended.⁷ Similar concerns can be identified with the Children and Young People Bill (Scotland) which only requires Scottish Ministers to 'keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements, and, if they consider it appropriate to do so, take any of the steps identified by that consideration' (emphasis added).

Freeman has argued that "the 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."⁸ In 2011, concerned at the apparent stasis in the implementation of children's rights in Northern Ireland,⁹ NICCY commissioned a research team at Queen's University Belfast to undertake an analysis of key structural barriers to effective government delivery for children and young people in Northern Ireland. The research, which comprised of in-depth documentary analysis of key strategies, policies and action plans of relevance to children and young people, and semi-structured interviews with policymakers, politicians and community and voluntary organisations, highlighted a number of significant barriers to the effective implementation of children's rights in Northern Ireland. In particular, while there is increasing reference to children's rights within government strategies, practice remains inconsistent and understanding of the CRC and its implications lacking.

⁶ Fredman, S. (2012) Breaking the Mold: Equality as a Proactive Duty, *American Journal of Comparative Law*, 60. 265-288, at p.272. See Working Paper 2 for further discussion.

⁷ Chaney, P. and Rees, T. (2004) *The Northern Ireland Section 75 Duty: An International Perspective* in E. McLaughlin and N. Faris (eds.) *A Review of the Section 75 Statutory Duty*, Belfast: OFMDFM; McLaughlin, E. (2005) *Mainstreaming Equality: The Statutory Equality Duties in Northern Ireland: The early years of implementation*, Equality and Social Inclusion Project: Working Paper 15; Rees, T. (1998) *Mainstreaming Equality in the European Union*, London: Routledge; Equality Commission for Northern Ireland (2007) *Reviewing the Effectiveness of Section 75 of the Northern Ireland Act 1998*, Belfast: ECNI.

⁸ Freeman, M. (2002) Children's Rights Ten Years After Ratification, in Franklin, B. (Ed.) *The New Handbook of Children's Rights*. London: Routledge, pp97-118, p.115.

⁹ Byrne, B. and Lundy, L. (2011) note 1.

There is no formal or statutory system of child impact assessment in place to predict the impact of strategies, policies or budgetary allocations on children and the enjoyment of their rights. Nor is there a statutory requirement for government departments to work together to undertake specific actions under the Ten Year Children and Young People's Strategy. While the recognition accorded to children's rights within the strategy was broadly welcomed, there has been general disappointment that the strategy has not provided the vehicle for full implementation of the CRC within Northern Ireland as had originally been envisaged.¹⁰ The research highlighted a need for action in implementing children's rights in Northern Ireland more effectively. Evidence suggests that legal implementation of the CRC, combined with effective monitoring and enforcement mechanisms can provide the required impetus and consistency to better protect children's rights.¹¹

This current project seeks to bring to the fore ways of implementing children's rights in Northern Ireland through legal measures, ultimately supporting government in realising their obligations under international human rights law in relation to children and young people.

¹⁰ Northern Ireland Commissioner for Children and Young People (2008) Children's Rights: Rhetoric or Reality. A Review of Children's Rights in Northern Ireland 2007/08. Belfast: NICCY.

¹¹ Lundy, L., Kilkelly, U., Byrne, B. and Kang, J. (2012) The UN Convention on the Rights of the Child: a study of legal implementation in twelve countries, London: UNICEF UK.



3.0 METHODS

The project explored the following questions:

- ▶ What options are available for implementing children's rights through legislative measures?
- ▶ What are the advantages and disadvantages of these options in implementing children's rights?
- ▶ Which options could work best in Northern Ireland, taking into account the broader Northern Ireland political context, systems and structures?

Specifically, the project has generated discussion and ideas with respect to the implementation of children's rights in law in two key ways:

1. *Development of 3 working papers on the following themes¹²*

- ▶ The implications of legislative developments in the rest of the UK for Northern Ireland (Working Paper 1)
- ▶ Understanding incorporation (Working Paper 2)
- ▶ Other general measures of implementation (Working Paper 3)

2. *Three workshops- one on each of the above themes - with key stakeholders in children's rights, including community and voluntary agencies, academics and the Equality Commission.*

The purpose of these workshops was to facilitate the exchange of ideas on the types of practical and/or legislative measures that could be taken to implement children's rights in Northern Ireland, including the possible content of children's rights legislation.

¹² These detailed working papers act as a complement to this document and provide further background information on the range of options set out in this paper and are available on our website.



4.0 OPTIONS FOR LEGAL IMPLEMENTATION OF THE CRC IN NORTHERN IRELAND

This section summarises options for implementing children's rights in law in Northern Ireland. These options are based on the review of the literature combined with input from the workshop discussions throughout the duration of the project and suggest examples of what children's rights legislation could potentially look like, if pursued in Northern Ireland. The sections below explore what the stated purpose of children's rights legislation could be before discussing options for its substantive content in the form of (i) full incorporation of the CRC in law and (ii) a range of complementary legal measures which can be used to support incorporation. The complementary measures discussed relate to:

- ▶ Child rights impact assessment
- ▶ Training and awareness
- ▶ Data collection
- ▶ Joined-up working
- ▶ Child budgeting
- ▶ Participation
- ▶ A National Strategy/Action Plan for children and young people

Taken together with full incorporation, these form a comprehensive package which can be used to inform the development of legislation. Options for legal implementation outside of children's rights legislation are highlighted, as appropriate, in light of current legislative frameworks or developments in Northern Ireland.

4.1 Purpose of Children's Rights Legislation

Rationale

As outlined above and throughout the accompanying Working Papers for this project, Article 4 of the CRC requires States parties to adopt a range of measures, including legal measures. The perceived benefits which flow from the development of children's rights legislation include: facilitating the development of a culture of respect for children's rights; children and young people more likely to be perceived as 'rights-holders'; acting as a lever in facilitating sustainable and systematic improvements in children's rights; providing opportunities for strategic litigation and legal redress; potential for improved outcomes for children; and the systematic consideration of children's rights across legislation and policy,¹³ ultimately leading to more effective implementation of the CRC in Northern Ireland.

Examples

There have been several legislative developments in respect of children's rights in the UK and Ireland in recent years, most notably in Wales and Scotland. The Rights of Children and Young Persons Measure (2011) in Wales for example, is considered 'to be the central plank of [the Welsh Assembly Government's] on-going commitment to progressive realisation of the UNCRC and its rights based approach to policy development in respect of children and young people.'¹⁴ Moreover, that the intention of the duty is to enshrine the CRC and its Optional Protocols as part of the framework for developing policies and strategies.¹⁵

¹³ Lundy, L., Kilkelly, U., Byrne, B. and Kang, J. (2012) *The UN Convention on the Rights of the Child: a study of legal implementation in twelve countries*, London: UNICEF UK.

¹⁴ Rights of Children and Young Persons (Wales) Measure (2011) Explanatory Memorandum, para 3.12.

¹⁵ Explanatory Memorandum, note 14, para 3.12.

In Scotland, one of the aims of the Children and Young People Bill is to 'Reflect in domestic law the role of the United Nations Convention on the Rights of the Child (UNCRC) in influencing the design and delivery of policies and services.'¹⁶

In 2012, the Irish Constitution was amended following a referendum to insert a new provision dealing with children's rights - Article 42A. The first section of Article 42A contains an explicit statement that '[t]he State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights.'¹⁷ However, most of the remaining provision is limited to placing a duty on the parliament to enact legislation on children's rights (especially the best interests principle and the right to be heard), rather than giving these principles direct constitutional expression.¹⁸

These recent developments in other parts of the UK and Ireland provide a timely basis upon which children's rights legislation for Northern Ireland can be developed.

What should the purpose of children's rights legislation in Northern Ireland be?

As elaborated above, there is a need to more effectively implement children's rights in Northern Ireland. As such, the overriding purpose of the legislation could be to strengthen the status of children's rights in Northern Ireland in law. Children's rights legislation could ensure that the CRC and its Optional Protocols become part of the overall framework for developing and implementing legislation, policies and strategies, and services.

There is a range of ways in which these aims can be achieved. Options are set out below, indicating what might be contained within various types of legislation.

4.2 Full Incorporation of the CRC into Domestic Law

Rationale

Incorporation is the process by which international obligations become part of the domestic legal order. In the context of this project, incorporation can be understood as the way and the extent to which the CRC is given legal effect in domestic law. The Committee on the Rights of the Child has highlighted incorporation as a key means of legal implementation within States Parties and expressed concern in both its 2002 and 2008 Concluding Observations that the CRC has not yet been incorporated in the UK. The Committee has emphasised that:

*'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 a conflict with domestic legislation or common practice.'*¹⁹

Examples

Lundy et al's study highlighted that full incorporation of the CRC was significant in and of itself.²⁰ The very process of incorporation raises awareness of children's rights and the CRC in government and civil society. In countries where there had been incorporation of the CRC (such as Belgium, Norway, and Spain), interviewees felt that children were more likely to be perceived as rights-holders and there was a culture of

¹⁶ Children and Young People (Scotland) Bill (2013) Explanatory Memorandum, para 4.

¹⁷ Article 42A, Constitution of Ireland, as amended (2012)

¹⁸ Lundy, L., Kil Kelly, U., Byrne, B. and Kang, J. (2012) note 11, p.51.

¹⁹ General Comment No. 5, note 2, para 20.

²⁰ Lundy, L., Kil Kelly, U., Byrne, B. and Kang, J. (2012), note 11.

respect for children's rights. In Norway, for example, the Human Rights Act of 21 May 1999 No.30 incorporated the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) and the ECHR into Norwegian law. The CRC was not initially part of this Act but was added in 2003 following recommendations from NGOs and the Committee on the Rights of the Child. Giving the CRC the force of domestic law has meant that it is now a key tool used to advance children's rights in both political and legal contexts.²¹

While incorporation provided opportunities for strategic litigation, its main value was thought to be in the general message it conveyed about the status of children and the knock-on effects for implementation of children's rights principles into domestic law and policy. Interviewees suggested that incorporation of the CRC acted as a 'hook' or 'leverage' in ensuring integration of CRC principles in domestic law and policy. It also acted as a springboard for the development of other measures to implement the CRC.²²

Legislative Options for Full Incorporation of the CRC in Northern Ireland

The approach adopted by the Committee, the workshop discussions and an analysis of experiences in other jurisdictions suggest that giving the CRC full and direct legal effect in domestic law should be a key objective and is the best way of fully implementing children's rights.

Full incorporation of the CRC could be a key objective of children's rights legislation. There are clear parallels here to the incorporation of the European Convention on Human Rights into domestic law via the Human Rights Act 1998.

Full incorporation of the CRC could also be achieved via a Northern Ireland Bill of Rights process. This process, which has brought together a range of key stakeholders over a sustained period of time, is ideally placed to incorporate the CRC alongside other rights supplementary to the European Convention on Human Rights. In this context, any proposed children's rights legislation would be complementary to ongoing work to incorporate the CRC via a Bill of Rights. This could take a form similar to the above.

Proposals for inclusion of children's rights in a Bill of Rights for Northern Ireland have taken multiple forms. The NIHRC's first report on the Bill of Rights produced in 2001 considered three possible approaches to the protection of children's rights in the proposed Bill of Rights:

- ▶ The direct incorporation of the provisions of the CRC
- ▶ The inclusion in the Bill of separately formulated rights reflecting those in the CRC but providing a higher level of protection on some issues; and
- ▶ A combination of the approaches in (1) and (2).

The most recent advice provided to the Secretary of State by the Northern Ireland Human Rights Commission in 2008 did not propose to incorporate the CRC as a whole, but focused on incorporating rights relating to: best interests; non-discrimination; right to participate in decision-making processes; deprivation of family environment; play; protection from violence, neglect and exploitation; protection from direct involvement in armed conflicts or civil hostilities; liberty and security; and education rights.²³ In its response, however, the Northern Ireland Office did not propose any new rights for children, stating that:

²³ Northern Ireland Human Rights Commission (2008) *Bill of Rights for Northern Ireland: Advice to Secretary of State*, Belfast: NIHRC p.51. <http://www.nihrc.org/documents/bill%20of%20rights/bill-of-rights-for-northern-ireland-advice-to-secretary-state-2008.pdf>

“The Government does not consider that the... proposals made by the NIHRC in [respect of children] meet the criterion set out in the Agreement that the provisions in a Bill of Rights should ‘reflect the particular circumstances of Northern Ireland...’. While the protection and welfare of children are of the highest importance in Northern Ireland, they are of equal importance across the rest of the UK.”²⁴ This is in spite of research which has demonstrated the negative impact of the conflict on many children and young people in Northern Ireland with respect to, for example, education, housing, mental health, poverty, health and leisure services.²⁵ Indeed, concern was expressed during workshops that children and young people in Northern Ireland may now in fact be enjoying fewer protections than their peers in the rest of the UK in light of the recent children’s rights developments in England and Wales.

4.3 Measures of Indirect Incorporation

The Committee on the Rights of the Child has made it clear that effective implementation of the CRC cannot be achieved by direct incorporation into national law alone. It has called upon countries to adopt a range of ‘general measures’ to support implementation. These include the development of particular processes, structures and institutions.²⁶ Indeed, research suggests that countries that adopt a range of measures have been most successful in relation to implementation of the CRC.²⁷ Thus, proposals for children’s rights legislation in Northern Ireland could consider including explicitly measures of implementation relating to:

- ▶ Child Rights Impact Assessment
- ▶ Training and Awareness
- ▶ Data Collection
- ▶ Joined-up Working
- ▶ Child Rights Budgeting
- ▶ Participation
- ▶ National Strategy/Action Plan for Children and Young People

These additional measures fall within the obligations of Article 4 of the CRC, articulated by the Committee in its General Comment No. 5. Establishing legislation in relation to these measures can be described as a form of indirect incorporation; in other words, as supplementary measures and/or strategies which are designed to support full and direct incorporation of the CRC but which do not, in themselves incorporate substantive articles of the CRC.

This section focuses on supplementary measures as they might appear in children’s rights legislation. Each of these measures were identified as important in working group discussions and were highlighted as key in the Lundy et al 2012 study.

²⁴ Northern Ireland Office (2009) *A Bill of Rights for Northern Ireland: Next Steps*. Belfast: Northern Ireland Office, p.62.

²⁵ See for example, Tomlinson, M. (2012) War, peace and suicide: The case of Northern Ireland *International Sociology*, 27, pp.464-48; Bell, John, (2012), ‘What about listening to us?’ *The views of young people at Belfast interfaces*, in *Shared Space: A research journal on peace, conflict and community relations in Northern Ireland*, Volume 15, pages 33-46, Belfast: Northern Ireland Community Relations Council (CRC). McGrellis, S. (2011) *Growing Up in Northern Ireland*, York: Joseph Rowntree Foundation; Leonard, M. (2007) ‘Trapped in Space? Children’s Accounts of Risky Environments’, *Children and Society*, 21(6), pp432-445. Horgan, G. and Kilkelly, U. (2005) *Protecting children and young people’s rights in the Bill of Rights for Northern Ireland: Why? How?* Belfast: Save the Children and Children’s Law Centre; Leitch, R and Kilpatrick, R (1999) *Inside the gate: schools and the troubles*. Belfast: Save the Children Fund; Smyth, M., Fay, M.T., Brough, J. and Hamilton, J. (2004), *The Impact of Conflict on Children in Northern Ireland*. Belfast: ICR.

²⁶ General Comment No.5, note 2.

²⁷ Lundy, L., Kilkelly, U., Byrne, B. and Kang, J. (2012) *The UN Convention on the Rights of the Child: a study of legal implementation in twelve countries*, London: UNICEF UK

4.3.1 Child Rights Impact Assessment

Rationale

The Committee has stated that ensuring that children's rights are respected in law and policy and implemented at all levels of government demands a continuous process of child impact assessment to predict the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights, and child impact evaluation, evaluating the actual impact of implementation.²⁸ There is no formal or statutory system of child rights impact assessment in place to predict the impact of strategies, policies and action plans or budgetary allocations on children and the enjoyment of their rights in Northern Ireland.

Section 75 of the Northern Ireland Act (1998) encompasses a positive duty under which public authorities are required to have due regard to the need to promote equality of opportunity across nine different groups. Each public authority must have an equality scheme in place, as both a statement of its commitment to the statutory duties and a plan for performance on the duties. Public authorities must also assess the equality impact of their policies and publish the outcome of such assessments. Public authorities also have a statutory duty to ensure that their decisions and actions are compatible with the European Convention on Human Rights and to act in accordance with these rights. However these do not require public bodies to assess the impact of a policy or strategy against the provisions of the CRC specifically and there has been widespread concern that Section 75 has not delivered for children in promoting equality of opportunity

or in identifying and remedying potential adverse impact.²⁹ Further, as highlighted above (see page 4), there have been some concerns as to the effectiveness of Section 75 more generally in facilitating substantive institutional change. A review of the Section 75 duty completed in 2007 suggests that what is needed is a step away from concentrating primarily on the process of implementing Section 75, towards achieving outcomes.³⁰

Examples

There are some good examples of child rights impact assessments being introduced in the legislative review process outside of the UK:

- ▶ In 1999, the Swedish Parliament passed a Government Bill concerning a national child rights strategy. Among other things, the strategy lays down that all Government decisions affecting children are to be subject to child impact assessment.³¹
- ▶ A system of child rights impact assessment was introduced in the Flemish Community in 1997 via an Act of the Flemish Parliament. A 2008 Decree extended this to a Youth and Child Impact Assessment, increasing the target group up to the age of 25.³²
- ▶ In Australia, the Human Rights (Parliamentary Scrutiny) Act 2011 introduces a requirement for Statements of Compatibility to accompany all new Bills. The Statement of Compatibility must contain an assessment of whether the Bill or legislative instrument is compatible with the seven core international human rights treaties which Australia has ratified, including the CRC.³³

²⁸ General Comment 5 (2003), note 2, para 35.

²⁹ Byrne and Lundy (2011), note 1.

³⁰ Equality Commission for Northern Ireland (2007) *Reviewing the Effectiveness of Section 75 of the Northern Ireland Act 1998*, Belfast: ECNI.

³¹ Lundy, L., Kilkelly, U., Byrne, B. and Kang, J. (2012), note 11, p.97.

³² Lundy, L., Kilkelly, U., Byrne, B. and Kang, J. (2012) note 11, p.39-40.

³³ Lundy, L., Kilkelly, U., Byrne, B. and Kang, J. (2012) note 11, p.30.

Child Rights Impact Assessment in Children's Rights Legislation

Children's rights legislation in Northern Ireland could include a positive duty, allowing for the identification of opportunities to generate positive impact and to promote children's rights. This could include a duty on public authorities to produce a child rights impact assessment with respect to all new or amended legislation; the formulation of new policy; and in any review of or change to an existing policy. Key elements of this duty could include:

- ▶ A duty on public authorities to promote children's rights.
- ▶ A duty on public authorities to undertake child rights impact assessment on existing policies and legislation.
- ▶ A duty on public authorities to explain how any identified negative impact will be addressed, the actions that will be taken to mediate this and the associated timescale.
- ▶ A child rights impact review, evaluating the actual impact of the policy or legislation.
- ▶ Involvement of children and young people in assessing potential or actual impact.
- ▶ Identification of who will be responsible for overseeing and/or enforcing this duty.
- ▶ Ensuring that it focuses not only procedural issues but also on end results or outcomes.
- ▶ A requirement for the impact assessment to be published and made publicly available.

Consideration could also be given to integrating a child rights impact assessment into the Section 75 equality impact assessment process through, for example, amending the existing duty.³⁴

In drafting such a duty, whether through children's rights legislation or through Section 75, close attention must be paid to ensuring that any outcome does not become a 'tick box' exercise, that it is appropriately resourced and enforced, and that those involved in any aspect of the process receive the appropriate training. The 'Review of the Section 75 Equality Duty' by McLaughlin and Faris, for example, identified a number of significant shortcomings which impeded extensive progress.³⁵ The authors suggested that only a minority of public bodies had truly engaged with the spirit in which the legislation was intended. Rather, formal compliance had been the 'norm' in the operationalisation of Section 75. A more recent review completed in 2007 suggests that the duty has effected substantial cultural change in the institutions of government and, in particular, in how public policy is made.³⁶ There appears to be less evidence however that the legislation has had the intended impacts and outcomes for individuals. The report suggests that what is needed is a step away from concentrating primarily on the process of implementing Section 75, towards achieving outcomes. These issues should be borne in mind in the development of child rights impact assessment.

³⁴ This option was identified through the working group discussions.

³⁵ McLaughlin, E. and Faris, N. (2004) *A Review of the Section 75 Statutory Duty*, Belfast: OFMDFM. See also Chaney, P. and Rees, T. (2004) 'The Northern Ireland Section 75 Duty: An International Perspective' in E. McLaughlin and N. Faris (eds.) *A Review of the Section 75 Statutory Duty*, Belfast: OFMDFM on consultation fatigue, the focus on process rather than outcomes, and the bureaucratic nature of the mainstreaming process.

³⁶ Equality Commission for Northern Ireland (2007) *Reviewing the Effectiveness of Section 75 of the Northern Ireland Act 1998*, Belfast: ECNI.

4.3.2 Training and Awareness

Rationale

The State has a duty under the CRC to develop training and capacity-building for all those involved in the process of implementing Convention rights and for all those working with and for children. The Committee on the Rights of the Child has stated that training needs to be systematic and ongoing with the purpose of emphasising the status of the child as a holder of human rights, increasing knowledge and understanding of the Convention and encouraging respect for its provisions.³⁷ Research highlights that there is a general lack of understanding of the CRC and its implications for the development and subsequent implementation of policy and legislation in Northern Ireland.³⁸ Systematic training on the CRC is not provided routinely to those who are directly involved in these processes.

Examples

In the rest of the UK, the Rights of Children and Young Persons (Wales) Measure (2011) places an obligation on Welsh Ministers to 'promote knowledge and understanding amongst the public (including children) of the Convention and the Protocols', while the Children and Young People (Scotland) Bill includes a duty on Scottish Ministers to 'promote public awareness and understanding (including appropriate awareness and understanding among children) of the rights of children.'

The need for training and awareness on the CRC itself was reiterated time and time again by interviewees in Lundy et al's (2012) study who recognised that, at every level, from legislation to case law and policy

development to service provision for children, effective implementation was contingent upon awareness of children's rights. For example, while the best interest principle has been widely incorporated in legislation, awareness of the CRC was perceived to be crucial to ensuring it was applied in a way that was rights compliant.³⁹

Training and Awareness in Children's Rights Legislation

Children's rights legislation could contain a duty on Government to promote knowledge, awareness and understanding of the CRC and its Protocols amongst their staff, professionals and the public, including children and young people. This could be worded in a range of ways. In Scotland for example, the Children and Young People (Scotland) Bill includes a duty on Scottish Ministers to 'promote public awareness and understanding (including appropriate awareness and understanding among children) of the rights of children.' The Rights of Children and Young Persons (Wales) Measure (2011) places an obligation on Welsh Ministers to 'promote knowledge and understanding amongst the public (including children) of the Convention and the Protocols'.

There could be clauses which have the following effects:

- ▶ All public officials involved in the development and implementation of legislation and policy to be provided with training on children's rights;
- ▶ All those involved in developing and providing services which impact on children (directly or indirectly) to be provided with training on children's rights;
- ▶ Training to be provided to those who work in the legal professions;

³⁷ General Comment 5, note 2, at para 19.

³⁸ Byrne and Lundy (2011), note 1.

³⁹ Lundy, L., Kil Kelly, U., Byrne, B. and Kang, J. (2012) note 11.

- ▶ Children's rights to be integrated into all professional training codes and educational curricula.⁴⁰
- ▶ Development of a comprehensive strategy for disseminating knowledge of the CRC amongst the public, including children and young people;
- ▶ Periodic evaluation of the effectiveness of children's rights training reviewing the knowledge and understanding of the CRC to be undertaken, as well as the extent to which it has contributed to developing attitudes and practices which actively promote enjoyment of children by their rights.⁴¹

4.3.3 Data Collection

Rationale

Sufficient and reliable data collection on children, disaggregated to enable identification of discrimination and disparities in the realisation of rights is an essential part of implementation of the Convention.⁴² An annual comprehensive report on the state of children's rights in the jurisdiction is recommended by the Committee on the Rights of the Child; such reports should be published, disseminated widely and debated in parliament and in public.⁴³

In Northern Ireland, data is not always sufficiently disaggregated and insufficient data exists in respect of vulnerable and marginalised groups of children. There is a limited amount of qualitative research conducted on the experiences of children and young people.⁴⁴ The lack of good quality baseline data in some instances can make meaningful assessment of progress against the strategies, policies and action plans particularly problematic.

Examples

Spain and Germany publish official annual state of children's rights reports and these were identified as useful.⁴⁵ Across the UNICEF study, interviewees highlighted that without comprehensive, consistent, up to date, disaggregated data it was very difficult to understand or track the impact of government policy on children. Interviewees also referred to the need for effective ways of evaluating whether government policy on children's issues was having its desired effects.⁴⁶

Data Collection in Children's Rights Legislation

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 Northern Ireland.

This report should include reliable qualitative and quantitative data on children, disaggregated to enable identification of discrimination between different groups of children.

As recommended by the Committee, such reports need to be published and disseminated widely and used to help identify and explain the causes and variation in the failure to implement children's rights.⁴⁷

⁴⁰ General Comment 5, note 2, at para 53.

⁴¹ General Comment 5, note 2, at para 15.

⁴² General Comment 5, note 2, at para 48.

⁴³ General Comment 5, note 2, at para 29.

⁴⁴ Byrne, B. and Lundy, L. (2011), note 1.

⁴⁵ Lundy, L., Kilkelly, U., Byrne, B. and Kang, J. (2012), note 11.

⁴⁶ Lundy, L., Kilkelly, U., Byrne, B. and Kang, J. (2012), note 11.

⁴⁷ General Comment 5, at para 29.

4.3.4 *Joined-up working and Collaboration*

Rationale

The Committee has emphasised that effective implementation of the Convention requires visible cross-sectoral coordination to realise children's rights across all government departments, between different levels of government and between government and civil society including children and young people themselves. The issue of coordination and 'joined-up working' across government departments emerged as a crucial theme in the 'Barriers to Government Delivery' study. For many interviewees in the study, the only effective solution to these ongoing issues lay in the establishment of a statutory duty to cooperate.

The importance of joined-up working is reflective of the reality that children's lives do not fall neatly into the realms of single government departments or thematic areas. However, in practice, coordination mechanisms can vary depending on the national context, with responsibility lying with particular ministries, individuals or networks. The effectiveness of coordination mechanisms can be countered by lack of sufficient authority and resources to drive a children's rights agenda across government, and/or a lack of clarity surrounding the exact mandate of coordination mechanisms.

Examples

There are interesting examples of duties to collaborate internationally. In Sweden, Parliament endorsed a new Strategy to strengthen child rights in December 2010 (Bill 2009/10:232).⁵⁰ This strategy consists of nine principles including that all legislation concerning children be formulated in accordance with the CRC, and that 'actors in different areas of activity that concern children are to strengthen the rights of the child through collaboration'. In New Zealand, there have been calls from stakeholders that a national action plan based on the ongoing development of a White Paper on Vulnerable Children should be underpinned by legislation such as a Children's Act and that it should include a mandate for cross-sectoral working, accountability and reporting.⁵¹

Joined up working and collaboration in children's rights legislation in Northern Ireland

Children's rights legislation in Northern Ireland could contain a statutory duty on Government Departments and public bodies to co-operate.

This section could contain a clause which allows public authorities to share resources and pool funding on cross-cutting issues.

A duty to co-operate may also be achieved through Steven Agnew's Private Members Bill which is currently being drafted. If successful this would introduce a statutory duty on all relevant government departments to collaborate in the planning, commissioning and delivery of services to children in Northern Ireland.⁵² An enabling power for departments to pool budgets, share staff and resources and jointly commission services was also being considered as part of this Bill.

⁴⁸ General Comment 5, at para 39

⁴⁹ Byrne and Lundy (2011), note 1.

⁵⁰ Bill 2009/10:232. See Lundy, L., Kilkelly, U., Byrne, B. and Kang, J. (2012) note 11, p. 97.

⁵¹ Auckland Regional Public Health Service (2012) feedback on the Green Paper for Vulnerable Children, <http://bit.ly/TB9J97>; Every Child Counts Submission on the Green Paper on Vulnerable Children (2012); ACYA (2012) Green Paper for Children Submission; Human Rights Commission Submission on the Green Paper on Vulnerable Children (2012); Office of Children's Commissioner (2012) The Green Paper on Vulnerable Children: Position of the Children's Commissioner, NZ.

⁵² The wording of the draft was not available at the time of writing.

4.3.5 Child Budgeting

Rationale

Article 4 requires States to fulfill children's economic, social, and cultural rights to the "maximum extent of their available resources". The Committee on the Rights of the Child has emphasized that this cannot be done without identifying and monitoring the actual resources available and allocated to children in national and other budgets.⁵³ Child budgeting can act as a powerful tool to monitor governments' commitment to children, increasing transparency and accountability.⁵⁴ Clearly documented and accessible information is an important prerequisite in developing children's budgeting, as is the existence of child-specific budget lines.⁵⁵ Ultimately, the process of budget analysis is a way to ensure that the rights of children are accounted for in public sector decision-making.

In its 2008 Concluding Observations to the UK, the Committee expressed concern that "the lack of consistent budgetary analysis and child rights impact assessment makes it difficult to identify how much expenditure is allocated to children across the State Party and whether this serves to effectively implement policies and legislation around them."⁵⁶ This is in spite of its 2002 recommendation that "the State Party undertake an analysis of all sectoral and total budgets across the State Party and in the devolved administrations in order to show the proportion spent on children."

Examples

In 2008 in India, the Finance Minister announced a separate statement on budget for children in his Finance Bill for the first time. The Ministry of Women and Child Development of the Government of India has used Budget for Children analysis (BfC) to argue for enhancement of resources for child protection and it has also been used in policy and legislation debates.⁵⁸ In South Africa, a National Treasury-hosted discussion with stakeholders on the potential impact of government's budgets on children's rights resulted in recommendations for changes to the budget process and content to promote a child-centred approach to budgeting.⁵⁹

Work on child budgeting has also been undertaken in Wales. In 2006, the Welsh Assembly Government commissioned an analysis of financial provision for children within its budget for 2004-05 in "response to a requirement to understand the resources which are spent on children, in order to inform policy development, and to comply with a responsibility under the United Nations Convention on the Rights of the Child to report on the amount and percentage of national budgets spent on children."⁶⁰ Subsequent analyses were carried out for the 2006-07 budget in Wales and a statistical bulletin was published in 2009 setting out estimates for the proportion to be spent on children in 2007-08 - 2010-11.⁶¹

⁵³ General Comment 5, note 2, para 51.

⁵⁴ Save the Children and HAQ: Centre for Child Rights, (2010) Budget for Children Analysis, Save the Children Sweden.

⁵⁵ Gore, R. (2004) Influencing budgets for children's rights, working paper, UNICEF, New York.

⁵⁶ UN Committee on the Rights of the Child (2008), note 5, paragraph 18

⁵⁷ UN Committee on the Rights of the Child (2002) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, paragraph 11

⁵⁸ Save the Children Sweden and HAQ (2010) Budget for Children Analysis: A Toolkit, Nepal: Save the Children, p.61.

⁵⁹ Lundy, L., Kil Kelly, U., Byrne, B. and Kang, J. (2012) note 11.

⁶⁰ Statistics for Wales and Welsh Assembly Government (2009) 'Financial Provision For Children Within The Welsh Assembly Government Budget', cited in Save the Children (2011) *Governance Fit for Children: To what extent have the general measures of implementation of the CRC been realised in the UK*, London: Save the Children UK, p.48.

⁶¹ Save the Children (2011), note 58.

In Zimbabwe, Save the Children, in partnership with the National Association of Non-Governmental Organisations (NANGO), initiated the Child Friendly National Budget Initiative (CFNBI). CFNBI has facilitated the formation of a child-led network, the Zimbabwe Child and Youth Budget Network (ZCYBN), to spearhead the participation of children (905 children comprising 455 girls, 450 boys and 286 adults – 2010 statistics) in the budget debate.⁶²

Child Budgeting in Children's Rights Legislation

There could be a duty in children's rights legislation in Northern Ireland which requires each government department to disaggregate and report on the amount and percentage of national budgets spent on children.

This could include a clause which requires this information to be published in a statistical bulletin or included in an annual state of children's rights report.

In determining budget allocations, regard should be given to the best interests of the child and to the principle of non-discrimination.

It is important that child budgeting work is undertaken in such a way that allows for comparisons to be made across jurisdictions.

Opportunities to involve children and young people and other groups in the child budgeting process should be enabled.

4.3.6 Participation

Rationale

Article 12 (1) CRC provides both for the right of young people to express their views on all matters concerning them and to have those views given due weight in accordance with their age and maturity. This right applies to all children without discrimination. The Committee has stated that involvement of and consultation with children must avoid being tokenistic and aim to ascertain representative views.⁶³

The 'Barriers to Government Delivery' report found that children are increasingly engaged in consultation processes. However, this level of engagement is not always reflected in the implementation phases and/or structures of the appropriate strategies, policies and action plans. Where child friendly versions of consultation documents are produced, they are not always of high quality. In some instances child friendly consultation documents have not been issued at the same time as adult versions of the document. Final versions of strategies, policies and action plans are not always produced in child-friendly formats and/or easily available.⁶⁴

Examples

Lundy et al (2012) found that child participation was widely recognised as an important aspect of the implementation of the CRC.⁶⁵ However, practice varied considerably. In Norway for example the principle has been implemented in domestic law and policy and there appears to be recognition that participation is required at all levels of decision-making.

⁶² Murowe, P. and Senyane, R. (2011) *The Challenges and Opportunities of Child Budgeting Work in Southern Africa*, Economic Governance Programme: IDASA.

⁶³ General Comment 5, note 2, para 12.

⁶⁴ Byrne, B and Lundy L (2011) note 1.

⁶⁵ Lundy, L., Kilkelly, U., Byrne, B. and Kang, J. (2012) note 11

For example, amendments in public administration law, civil case law, child welfare law and adoption law give children the right to express themselves in cases which concern them.⁶⁶

In Belgium in the French Community, for example, a Decree of 4 March 1991, provided for participation of children and young people. Under this Decree, “no assistance measures can be taken unless the views of the child are heard in advance”.⁶⁷ These countries had relatively good examples of children’s participation in individual decision-making in the areas of child protection and alternative care, and in private family law matters. In these instances, the legal requirements were perceived by some to have encouraged a culture of respect for children’s views.

Children’s Right to Participate in Children’s Rights Legislation

Should the CRC be given full and direct legal effect in domestic law, Article 12 of the CRC will thus become part of domestic law through this process. In this context, children’s rights legislation could expand upon the meaning of Article 12.

Children’s rights legislation could contain a duty on all public authorities to ensure that children are able to express their views in the development and implementation of policy and legislation. This clause could ensure that children have the right to have their views given due weight, in accordance with their age and maturity, in the development and implementation of policy and legislation. Policies and legislation, in both their draft and

final forms, should be available to children in accessible and age-appropriate forms.

Article 12 could be further specified in relation to the general measures proposed for inclusion in children’s rights legislation.

Clause(s) could be included to ensure that:

- ▶ Children are provided with the information they need to assist them in expressing their views.
- ▶ Children with disabilities are provided with disability appropriate assistance in expressing their views.⁶⁸
- ▶ Children are informed as to how their views have been interpreted and used and, where necessary, provided with the opportunity to challenge and influence the analysis of the research or consultation.
- ▶ Children are provided with clear feedback on whether and how their participation has influenced any outcomes.⁶⁹
- ▶ Wherever appropriate, children are given the opportunity to participate in follow-up processes or activities.⁷⁰
- ▶ Monitoring and evaluation of children’s participation, including children from marginalised groups, is undertaken, where possible, with children themselves.⁷¹

Outside of children’s rights legislation, a supplementary measure to more effectively facilitate children’s and young people’s involvement in consultation processes could also be explored in the context of Section 75 in conjunction with the Equality Commission.

⁶⁶ Lundy, L., Kilkelly, U., Byrne, B. and Kang, J. (2012) note 11, p.59-60.

⁶⁷ Lundy, L., Kilkelly, U., Byrne, B. and Kang, J. (2012) note 11, p.40.

⁶⁸ Article 7(3) Convention on the Rights of Persons with Disabilities

⁶⁹ Lundy, L., (2007) ‘Voice is not enough’: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child’, British Education Research Journal, 33(6)927-942.

⁷⁰ United Nations Committee on the Rights of the Child (2012) General Comment 12: *The right of the child to be heard*, Geneva: United Nations, CRC/C/GC/12, para 132.

⁷¹ General Comment 12, note 70, para 134.

4.3.7 A National Strategy for Children and Young People

Rationale

The Committee on the Rights of the Child has said that effective protection of children's rights requires a unifying, comprehensive and rights based national strategy rooted in the Convention.⁷² This should be developed through a process of consultation with children and young people and those living and working with them, and give particular attention to identifying and giving priority to marginalised and disadvantaged groups of children.⁷³ The Committee has stated that the strategy must be endorsed at the highest level of government and linked to national development planning and budgeting. Further, it must include a description of a sustainable process for realising the rights of children, setting real and achievable targets in relation to all rights in the Convention, and set out specific goals, targeted implementation measures and allocation of financial and human resources.⁷⁴ Save the Children has found that there was a wide range of approaches adopted at national level to the development and contents of National Strategies and Action Plans for Children, with common shortcomings relating to time-frames, measurable targets and indicators, lack of co-operation and coordination, and limited resources.⁷⁵

Examples

The UNICEF study highlighted that that an ambitious national strategy can drive implementation of the Convention in particular areas (e.g. participation rights in Ireland). Where national plans are used to establish infrastructure and to embed children's rights into administrative decision-making, they can have a clear impact on children's rights awareness and implementation.⁷⁶

In 1999, the Swedish Parliament passed a Bill endorsing a national strategy for implementing the CRC (Bill 1997/98:182). This Strategy included a requirement that: the CRC must inform all decision-making affecting children; Government employees whose work impacts on children and young people must be offered training aimed at enhancing their knowledge of the CRC; child impact assessments must be made in connection with all government decisions affecting children and that efforts must be made to promote the influence and participation of children and young people in community and traffic planning.⁷⁷ In December 2010, Parliament endorsed a new Strategy to strengthen child rights in Sweden (Bill 2009/10:232). This strategy consists of nine principles including that all legislation concerning children be formulated in accordance with the CRC.⁷⁸

⁷² General Comment 5 note 2, at para 28.

⁷³ General Comment 5, note 2, at para 29.

⁷⁴ General Comment 5, note 2 at para 32.

⁷⁵ Save the Children (2011) *Governance Fit for Children: To what extent have the general measures of implementation of the UNCRC been realised in five European Countries?* Stockholm: Save the Children.

⁷⁶ Lundy, L., Kilkelly, U., Byrne, B. and Kang, J. (2012), note 11 p.112

⁷⁷ Sweden Third State Party Report (2004) CRC/C/125/Add.1

⁷⁸ The other principles are that: the physical and mental integrity of the child will be respected in all circumstances; children will be given the opportunity to express their views in matters affecting them; children will receive information about their rights; parents will receive information about the rights of the child and be offered support in their role as parents; decision-makers and relevant professional groups must be knowledgeable about the rights of the child and put this knowledge into practice in relevant activities; actors in different areas of activity that concern children are to strengthen the rights of the child through collaboration; current knowledge about children's living conditions will form the basis of decisions and priorities affecting children; and that decisions and actions affecting children will be followed up and evaluated from a perspective of the rights of the child.

A National Strategy in Children's Rights Legislation

There could be a duty in children's rights legislation which requires the development of a Children's Rights Strategy.

Clauses could be included to ensure that

- ▶ The strategy is developed through a process of active engagement with children and young people, including children and young people from marginalised groups;
- ▶ The strategy is accompanied by an action plan which includes targets and set out specific goals, targeted implementation measures and allocation of financial and human resources.



5.0 IMPLEMENTATION, MONITORING AND ENFORCEMENT

Rationale

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."⁷⁹

Implementing, Monitoring and Enforcing Children's Rights Legislation

Implementation of children's rights legislation could be supported by:

- ▶ Designation of a central governmental authority with primary responsibility for coordination of implementation and related activities;
- ▶ Provision of funding to support implementation and monitoring activities;
- ▶ A programme of action to ensure that those with responsibilities for implementation, monitoring and enforcement fully understand their obligations;
- ▶ Education and training for community and voluntary organisations, children, including children from marginalised groups, and the general community;
- ▶ Ensuring that the legislation and associated materials are made widely available and produced in a range of age appropriate and accessible formats, including formats appropriate for disabled children and young people.

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

With respect to enforcement, children's rights legislation could ensure that there are effective, child-sensitive procedures available to children and their representatives.

These could include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance.⁸⁰ Effective remedies should also be in place.

⁷⁹ General Comment 5, note 2, at para 24

⁸⁰ General Comment 5, note 2, at para 24



6.0 SUMMARY

UK ratification means that implementing the CRC in and through law is an obligation which must be taken seriously. Various legal measures to implement the CRC have already been taken in the rest of the UK and in Ireland. It is thus timely to explore how steps to do so can be taken in Northern Ireland and to examine what these might look like in practice.

The particular circumstances of Northern Ireland and commitment to a Bill of Rights must be borne in mind. The latter is a key avenue through which the CRC could be fully incorporated. Until this occurs, the development of children's rights legislation, which encompasses both direct incorporation of the CRC and supportive measures of implementation should be a key objective, and complementary to that which emerges from the Bill of Rights process.

This paper sets out a range of options as to how children's rights can be implemented in law in Northern Ireland. These options could ideally be included in a comprehensive children's rights statute. However, as experience elsewhere shows, they might also be implemented on an ad hoc basis when opportunities present themselves. The options are presented in this paper to inform and support NICCY and others who are working towards full implementation of children's rights in Northern Ireland.



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