Advancing Children’s Rights Through Advocacy

Capturing the Learning of The Atlantic Philanthropies Grantees in the Republic of Ireland

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PART I

THE CONTEXT
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Introduction

The adoption of the UN Convention on the Rights of the Child (CRC) recognised children as rights holders in international law. International NGOs who long campaigned for the Convention to be adopted played a direct role in its drafting and consequently have an explicit role in the monitoring of its implementation. In Ireland, civil society has had a hands on role in the delivery of children’s services in education, health and community settings. Voluntary and community organisations have a long history of providing supports to children and their families and the children’s sector has taken on a greater advocacy role in more recent times. Advocacy comes in different forms and has many benefits in moving from meeting the needs of an individual child to ensuring that the relevant law or system is reformed for all children to benefit. Advocacy is rarely defined but encompasses activities like political lobbying, law and policy reform, litigation, awareness-raising and public engagement, research and dissemination, capacity-building and community development and support. According to the Atlantic Philanthropies advocacy aims ‘to bring about a change in public policy or the law, its interpretation or its application, typically with the objective of correcting a perceived injustice or achieving specific legislative, legal or other change”. NGOs work collaboratively and thematically, engaging at local, national and international levels either to hold government to account and/or to effect change.

The Convention on the Rights of the Child brings with it a commitment, indeed an obligation, to undertake rights-based advocacy that is informed by children’s status as rights-holders, and their entitlements to health, family support, education, equal and just treatment not as a matter of charity, but of legal right. In addition, child rights based advocacy involves a process that is in itself rights-compliant, one in which children are involved and supported to claim their rights.

Against this backdrop, the Atlantic Philanthropies has invested heavily in the children and youth sectors in Ireland, through its Children and Youth Programme. Objective 2 of that programme is to advance children’s rights and 11 organisations have been supported by Atlantic to this end undertaking a range of activities including lobbying and law reform, supporting individual advocacy, empowering young people to engage in decision making.

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strengthening their information base on matters affecting their lives and undertaking research and monitoring activities. In the Republic of Ireland, 11 organisations have been funded under Objective 2 of the Children and Youth Programme to work to advance children’s rights.

This study aims to capture the learning of Atlantic’s Objective 2 grantees in advancing children’s rights. It documents how organisations work in this area, noting the progress they have made and the challenges that have been overcome or continue to exist. This report is divided into two parts. The first part explains the background and the context in which grantees work and looks at the historical backdrop of Ireland’s treatment of children. It highlights the work undertaken by the 11 grantees supported by the Atlantic Philanthropies and considers how Ireland measures against international standards, identifying progress made and progress still outstanding. The second part of the report captures the learning from this work. It draws on interviews and focus groups with staff and young people from these organisations to describe the experiences of grantees in advancing children’s rights. It considers: attitudes to children, children’s rights and advocacy, the value of child rights advocacy, understanding and awareness and engaging with children and young people. It uses the 2012 children’s referendum as a particular illustration of both the challenges and the potential of child rights advocacy.

This research was done in parallel with a similar study conducted by Queen’s University Belfast. Although the methodology used was similar, the differences in jurisdiction, research team expertise, in the number and range of grantees involved and the different social and political contexts mean that our findings – and thus our reports - naturally differ. At the same time, we have captured our learning together and our common understanding of children’s rights has informed all of the analysis. As our events have shown, grantees have much in common too and are keen to work together to strengthen their work. Our research is continuing with the process of identifying the experiences of child rights advocacy common to all Atlantic Philanthropies’ grantees in Ireland, north and south. This will form the basis of our next report.
1. Irish Childhood, Advocacy and the Children’s Sector

1.1 Childhood in Ireland

This section aims to provide a snapshot of children’s lives in modern Ireland through the presentation of available data, arranged thematically. In 2011, the most up-to-date comprehensive national statistics available at time of writing, there were 1,148,687 children under the age of 18 years living in Ireland: 587,782 boys and 560,905 girls, accounting for one-quarter (25 per cent) of the total population. This gives Ireland the highest percentage of children in the European Union (EU-27 average 19 per cent).

Children of ethnic and minority background

In 2011, there were 14,245 Traveller children in Ireland, an increase of 30.3 per cent since 2006. Traveller children accounted for 1.2 per cent of the total child population and 48.2 per cent of the total Traveller population. Almost one-third of Traveller children were under 5 years of age.

There were 93,005 foreign national children in Ireland (8.3 per cent of the total child population), an increase of 49.5 per cent since 2006. Of the 5,098 residents living in Direct Provision centres (state accommodation for those seeking asylum) 1,789 are children, and the average stay in Direct Provision is four years. Adults living in direct provision receive €19.10 per week and €9.60 for each child, a rate that has remained unchanged since 1999.

Between 2000 and 2008, a total of 5,688 referrals to the HSE Dublin Social Work team were made in relation to separated children. Of these referrals, 47 per cent were placed in the care of the state and 49 per cent were reunited with their families. 48 separated children sought asylum in 2012. In the years 2000 to 2008, 454 separated children went missing from care, and just 58 were subsequently accounted for.

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Children in the Care of the State

There are currently 6,160 children in the care of the HSE (now Child and Family Agency), an increase of 16 per cent since 2007. In 2011, there were 31,626 child welfare and protection reports to the HSE, an increase of 36 per cent since 2007. There were marked differences in the rates of reporting between Local Health Office (LHO) areas, with Roscommon recording 65.5 cases per 1,000 children, and Dublin South East with just 8.3 per 1,000 for example.

Education

The Leaving Certificate retention rate for children entering secondary school in 2006 was 90.2 per cent (i.e. out of the 54,917 children enrolled on 30th September 2006 in Year 1 of the Junior Cycle, 49,535 sat the Leaving Certificate by 2011 or 2012). This is a rise of 8 per cent on the 2002 entry retention rate. In 2010, 32.6 per cent of children aged 10-17 reported that students at their school participate in making the school rules, up 10 percentage points since 2006.

Basic Health and Welfare

Almost 6 per cent of children in Ireland have a disability, and 5.6 per 1,000 (6,449) children provide regular unpaid personal help for a friend or family member with a long-term illness, health problem or disability. Almost 2,000 of these children are under 9 years of age.

According to the latest Health Behaviour in School-aged Children (HBSC) survey, 46 per cent of Irish children have consumed alcohol, while 8.4 per cent have used cannabis. These figures increase with the age of the child.

In 2010, 91 per cent of children aged 10-17 reported being happy with their lives at present, but Traveller children and children with a disability and/or chronic illness were less likely to report being happy. When compared to other children, Traveller children, immigrant children and children with a disability and/or chronic illness are more likely to report that they are bullied at school and have fewer friends.

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8 An infamous case of child neglect and abuse in Roscommon was the subject of a HSE inquiry in 2009 (HSE 2009).
Children in Ireland rank 10th in overall well-being in the world, however, it has the highest rate of suicide in young females across Europe and the second highest rate of suicide in young males. Rates of admission to hospital by young people between the ages of 10 and 17 years for deliberate self harm is a ‘significant issue of concern.’ Ireland is also one of only five countries to experience an increase in bullying during the 2000s.

Poverty and employment

In Ireland, the average annual equivalised disposable income in 2011 was €21,440, representing a small decline (just over 3 per cent) on the 2010 value of €22,138, from a peak of €24,380 in 2008. Those in the highest equivalised income 20 per cent of the population continued to have an average income of 4.9 times that of those in the lowest equivalised 20 per cent. Since the start of the recession in 2007, the proportion of people living in households with no income from work has approximately doubled in Ireland and now accounts for approximately 18 per cent of households. This leaves children particularly vulnerable to poverty and deprivation, and reliant on government welfare supports. Youth unemployment has also increased dramatically in Ireland during the recession, of particular concern because of the risk of ‘scarring’ – where long term employment and earning prospects are damaged because of early unemployment experiences. Similarly, ‘scarring’ from early experiences of poverty and deprivation can impact on the later lives of children and young people coming through the recession, resulting in heightened needs for support during times of crisis. In the EU, the European Youth Guarantee commits member states to offer all under-25s a job, apprenticeship, traineeship, or continued education within four months of their leaving formal education or becoming unemployed. However, this scheme

would require resources in order to be implemented effectively, and the National Youth
Council of Ireland estimates the cost at €273m.\(^\text{18}\)

### 1.2 The Community and Voluntary Sector in Ireland

The presence of a strong NGO sector has been identified as one of the most important components of the effective realisation and fulfilment of children’s rights.\(^\text{19}\) Indeed, the UN Committee on the Rights of the Child has affirmed the vital role played by civil society organisations in the implementation of the UN CRC and has encouraged State parties to cooperate closely with NGOs, whilst concomitantly respecting their autonomy.\(^\text{20}\) In response to Ireland’s State report in 1998, the UN Committee expressed concern that the potential of the non-governmental sector to contribute to children’s rights policy had not been fully realised and encouraged the State to strengthen its efforts to develop a closer relationship with the sector.\(^\text{21}\)

Ireland has a particular socio-political history that has been described as a ‘once-subaltern social movement which has become state’,\(^\text{22}\) where independence was at least partly attributable to social movement activism. It might be assumed then, that civil society should continue to play a central role in shaping the state it had created, but Kirby argues that since independence, civil society became more, not less, dependent on the state.\(^\text{23}\) Concentrating on survival and unity, the new state quickly lost its revolutionary fervour, and by the time Fianna Fáil had established itself as ‘an explicitly state party’,\(^\text{24}\) radical social activism was being replaced with populist nationalism and economic advantage for the party’s supporters.\(^\text{25}\) Ó Broin and Kirby argue that, particularly over the past decade, the state has

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increased its efforts to control civil society through limiting its functions to service-provision, and by censoring and censuring efforts to influence policy or advocate for social change.\(^\text{26}\)

The economic boom of the 1990s and 2000s brought unprecedented levels of state funding for civil society organisations, and NGOs found they suddenly had money to develop and expand their activities, in what one commentator has described as the ‘rediscovery of civil society’.\(^\text{27}\) It was also during this period, in 1996, that the government included the community and voluntary sector into the social partnership process.\(^\text{28}\) The social partnership model promised recognition and input into important policy decisions, but in reality, ‘the structures of social partnership were largely designed and operated on the government’s terms’.\(^\text{29}\) It was in this period too that the Atlantic Philanthropies focused its efforts on support for advocacy, including in the area of child rights.

Evidence suggests that the tacit, underlying government control over community and voluntary sector activities still exists today. Research conducted on behalf of the Advocacy Initiative exposes a complex, inconsistent and fragmented advocacy relationship between the State and the community and voluntary sector.\(^\text{30}\) The research found State support for advocacy in some cases but concluded that this support has been compromised by a number of mitigating factors. Advocacy was found to be tolerated rather than actively encouraged and many organisations reported going to great lengths to design their advocacy to be acceptable or polite.\(^\text{31}\) The research also encountered a number of cases in which advocacy had been suppressed including cases in which some organisations received threats that access to government funding would be withdrawn if advocacy efforts continued.


A further example of State inhibition of advocacy is what is known as the “services paradigm”. This denotes the manner in which the State increasingly views itself as funding voluntary organisations to provide services, not advocacy.\(^{32}\) Though this attitude has never been formally articulated in government policy, it is often reflected in ministerial statements regarding the importance of protecting frontline services, with the implication being that the backline, which may include advocacy, is less important or in some cases expendable.\(^{33}\)

1.3 **The Children’s Sector - Objective Two Grantees**

Ireland has a large range of non-governmental organisations working for and with children. Reflecting the importance placed on services as discussed above, there is a strong tradition of service delivery by children’s organisations in Ireland. The principal organisations involved in the delivery of services are Barnardos and ISPCC, while a wide variety of organisations exist to provide support and advocate on behalf of children. Ireland’s ratification of the UNCHR in 1992 sparked the establishment of new organisations with a specific focus on children’s rights e.g. the Children’s Rights Alliance which was formed to advocate for the implementation of the Convention.\(^{34}\)

Within the wider context of the children’s sector, Atlantic has funded 11 organisations under the broad theme of advancing children’s rights. What follows is a snapshot of each organisation:

**Barnardos**: Barnardos is Ireland’s largest children’s charity, established in 1962. Barnardos vision is an Ireland where childhood is valued and all children and young people are cherished equally. Its mission is to challenge and support families, communities, society and government to make Ireland the best place in the world to be a child, with a specific focus on children and young people whose well-being is under threat. There are three strands to Barnardos’ work; providing services, campaigning and lobbying and engaging in the provision of training. Barnardos provides direct services to children and families in the Dublin region, in the midlands and the north east, in the south east and in the south, and nationally is involved in advocacy, communications and fundraising activities. It works

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\(^{34}\) More information on Children’s Rights Alliance history can be found at the following link: [http://www.childrensrights.ie/resources/history-childrens-rights-alliance](http://www.childrensrights.ie/resources/history-childrens-rights-alliance)
directly with children and their families, HSE/Child and Family Agency and other statutory funders, as well as with government ministers and policy makers. Barnardos has over 40 centres in Ireland providing services such as teen parenting programmes, a children’s bereavement service and child contact centres. Some of its notable achievements include the development and implementation of evidence-informed services, ongoing provision of quality services and working in partnership with other organisations in the “Yes for Children” campaign to achieve constitutional change with respect to children’s rights. Barnardos was funded by the Atlantic Philanthropies to run the Amplifying Voices of Children and Young People project which aims to strengthen the voice of children and young people on issues affecting them by supporting Barnardos to develop and demonstrate models of effective rights-based participation.

***ISPCC:** The ISPCC’s ethos is primarily presented and perceived as one of child protection, and its tag-line reads ‘Protecting children 24 hours a Day.’ The Dublin branch of the Society for the Prevention of Cruelty to Children was opened in 1889, with offices opening in Belfast and Cork in 1891. In addition to advocating for keeping children safe from exploitation and abuse, the organisation’s vision explicitly commits it to advocating for the rights of children, and to ensuring that their voices are heard. In order to implement its vision, the ISPCC engages in a wide range of initiatives, services and campaigns. Among them are the following:

- Childline
- Leanbh (children who are begging on streets)
- Missing Children’s Hotline
- Anti-Bullying campaign
- Internet safety lobbying
- Children First Guidelines
- Separated children
- Garda vetting campaign
- Lobbying against physical punishment
- Monitoring developments in child protection

In addition, in order to promote and support children’s right to be heard, the ISPCC integrates children and young people into its governance and research strategy. The
organisation has six Regional Children’s Advisory Committees, and a Junior Advisory Board. Two members from each regional CAC, which meet bi-monthly, are elected to represent their region on the National Junior Advisory Board (JAB) which meets 4 times a year. The ISPCC also operates an online forum for children and young people (Viewpoints), displays a ‘Use your Voice’ button on its website which links participants to current campaigns where they can have an input, and runs a National Children’s Consultation Programme. As part of the Consultation Programme, the ISPCC has consulted with children and young people and published findings on a wide range of issues such as mental health, attitudes to alcohol and experiences of the internet.\(^{35}\)

**Children’s Rights Alliance:** The Children’s Rights Alliance was established in March 1995 as a loose coalition around the children’s sector. Since then, the organisation has grown to become the recognised umbrella organisation for the children’s sector, with a membership of over 100 organisations. The CRA aims to improve children’s lives in Ireland through raising awareness of children’s rights and by campaigning for changes in laws, policies and services using the rights framework of the United Nations Convention on the Rights of the Child (CRC). This approach maintains the focus onto duty-bearers and rights holders, which facilitates children and young people themselves, without discrimination, to input into their own well-being and rights.

Since 2009, the CRA has published an annual Report Card which aims to monitor the Government’s performance in the area of children’s rights. These Report Cards are verified by an external assessment panel comprising experts in law, child well-being, business, economics, employment and other areas. Its 2012 evaluation highlighted the need for a clear rights focus (CRA 2012) and as a result, in 2013, Report Card Number 5 adopted an explicit rights-based approach to analyse key commitments under six themes: children’s Constitutional Rights; Right to Education; Right to Health; Right to an Adequate Standard of Living; Right to Protection from Abuse and Neglect; and Right to Equality and Non-discrimination.

Another important strand of the CRA’s work is its analysis of the Government’s annual Budget. In 2009 the CRA began publishing an annual analysis of the Budget, including developing pre-budget submissions ahead of each Budget and responses to the Budget in

terms of its impact on children. As part of the budgetary analysis, the CRA provides guidance and a budget factsheet for other member organisations. In 2010 the CRA commenced the Smart Budgeting Initiative which calculates how much of the State’s annual budget is actually spent on children, looking both at direct and indirect spending. The Smart Budgeting Initiative aims to make the case for smarter targeted investment strategies for delivering services to children and also mainstreams this work into other areas, e.g. the annual Report Card.

Successive evaluations of the CRA have noted significant impacts on influencing government policy decisions in relation to children’s rights, in particular the role played by the organisation in promoting a children’s rights, rather than a child protection focus, in the children’s rights referendum. The CRA are seen as having a strong ‘behind the scenes’ relationship with significant policy figures, and have been credited with having significantly influenced the Government’s decision to appoint a full Minister for children and to establish the Department of Children and Youth Affairs. The weekly Oireachtas Monitor which reports on children’s rights issues that are discussed in the Oireachtas brings these issues to members and wider audiences.

**Community Creations, SpunOut.ie:** Community Creations is an independent, youth led, national charity working to empower young people to create personal and social change. SpunOut is the flagship initiative of Community Creations, and has achieved numerous awards, including a Health Service Achievement Award, a Social Entrepreneurs Ireland Award, an Eircom Golden Spider Award, an Irish Internet Association/Enterprise Ireland Net Visionary Award, a Digital Media Award and a JCI Ireland Award. SpunOut.ie combines an interactive online community providing health and lifestyle information, signposting to support services, a youth media space, moderated discussion forums, and a platform for youth engagement, civic engagement, participation and advocacy. SpunOut’s goal is to enable young people to live happy, healthy lives and it aims to do this by giving easy access to relevant, reliable and non-judgmental advice to assist young in making informed decisions. Spun-Out provides information on a host of different topics from employment and education to mental and physical health.

**EPIC:** Empowering People in Care (EPIC), formerly known as the Irish Association of Young People in Care came into existence in 1999 with a small grant from the Department of Health and Children. In 2004, it became an independent organisation with its own
governance and management structure. In 2009 while developing a strategic plan, it engaged in a consultative process with young people, staff, board members and other external stakeholders. Following this consultation, the organisation changed its name to EPIC, reflecting its mission to empower people in care. EPIC is now an independent national organisation whose purpose is to give a voice to children and young people living in, or with experience of living in, the care of the state. A major part of its work involves advocacy – research and policy advocacy, and individual independent professional advocacy for children and young people in care.

A 2011 evaluation of EPIC (Rush 2011) considered progress in three main areas of EPIC’s work: advocacy; policy; and research. The evaluation focused primarily on public policy advocacy.

Contextualising EPIC’s ethos of child empowerment, the evaluation finds that EPIC successfully challenges the dominance of what is a still predominantly traditional setting of patriarchal familism in Ireland through its research and policy advocacy for children’s equality and rights, which in turn rests on the foundation of its independent professional advocacy service. The evaluation found a consensus among stakeholders that independent professional advocacy greatly enhances ‘the voice of the child’ within the care system, strengthening child-protection processes and improving individual and overall child well-being outcomes.

EPIC was found to have produced significant outputs in terms of research, networking, policy analysis, briefing papers, and organisational representation, as well as re-branding, re-naming and developing a new website. EPIC was active in campaigning for a ‘yes’ vote in the children’s rights amendment and was also found to have increased public and professional awareness of the ‘voice of the child’ through its networking, policy and advocacy activities. EPIC was seen by stakeholders as a niche provider of independent advocacy services to children and young people in care. The acceptance and promotion of a ‘voice of the child’ approach by the HSE signals a culture of change in relation to children’s participation in decisions that affect their lives, which may have been influenced by the close working relationship with the HSE that has been nurtured by EPIC.

EPIC’s Strategic Plan 2013-15 includes rolling out a new National Advocacy Service and constituting a Youth Board to advise and inform the Board on issues and themes for young
people in care. On May 7th, 2013, Minister for Children and Youth Affairs, then Frances Fitzgerald TD, launched EPIC’s Advocacy Service which provides direct 1:1 services exclusively to children leaving the care system.

**Stand up for Children:** Stand Up for Children was set up to influence policy makers and the public to pass the Children’s Amendment in the 2012 referendum. The campaign was managed by a newly appointed Board which created a structure whereby a number of organisations could work to the shared goal of achieving a ‘yes’ vote in the children’s referendum. The CEO acted as chair of a management group that agreed the strategy for the campaign.

The campaign employed a core staff of 14, which included six secondments from other organisations. Key delivery items from the budget were the establishment of a children’s law centre, a nationwide advertising campaign and a campaign bus which travelled to every county in Ireland.

**Start Strong:** Start Strong is a coalition of organisations and individuals seeking to advance early care and education as a right for all young children in Ireland. The organisation was initially formed as the Irish Childcare Policy Network in 2004 and became Start Strong in 2009. Start Strong is an evidence-based advocacy organisation, working to promote informed policy development and increased investment in young children. In November 2010, Start Strong published its vision for early care and education, Children 2020: Planning Now, for the Future. The report called on all political parties to commit to the development of a national plan for early care and education, to bring Ireland into line with most other European countries’ standards. It urged the Government to ensure that funding is linked to regulation of services, with regular, transparent inspection, and that services are delivered more effectively and efficiently through information and support networks for providers, parents, and families.

**Irish Penal Reform Trust:** The Irish Penal Reform Trust advocates a vision for the Irish penal system based on two core principles: firstly, respecting human rights in line with Ireland’s obligations under the Constitution and under the treaties to which the State is a party; and secondly, the principle of imprisonment as a last resort (IPRT 2011). It has engaged with children’s issues in respect of their detention successfully campaigning for the removal of 16 and 17 year olds from St Patrick’s Institution and its 2009 Report, Detention of Children in
Ireland: International Standards and Best Practice, set out how international standards could and should be implemented in practice.

In its 2013 report, Picking up the Pieces: The Rights and Needs of Children and Families Affected by Imprisonment, the IPRT utilises the CRC and ECHR rights framework to analyse the position of children and families affected by imprisonment. The report recommended that the Government must commit to safeguarding the rights of children and families affected by imprisonment. The need for a comprehensive and multi-faceted approach to the issues facing children affected by imprisonment was stressed, including the need for agencies to work together to provide coherent services. Among other things, this would entail the Prison Service gathering data on the numbers of children and families affected by imprisonment, as well as developing a charter of rights for the children, and another for the families, of prisoners.

In order to address the recommendations of the report, the Irish Prison Service set up an internal committee to develop a strategy in relation to the needs of prisoners’ families and children. In addition, the IPRT has begun working with other agencies such as the Gardaí, the Courts Services, the Department of Education and Skills, and the Department of Children and Youth Affairs to develop strategies to implement the other recommendations from the report. The inclusion of two Government departments suggests the development of an awareness of, and some level of commitment to, the rights of children affected by imprisonment.

**National Women’s Council of Ireland, The Y Factor:** The National Women’s Council of Ireland, founded in 1973, is a membership organisation that seeks equality between women and men. It has over 160 member organisations as well as individual members, from a diversity of backgrounds. The NWCI regularly publishes reports, submission and press releases on issues crucial to women, runs a wide variety of projects working with disadvantage, education, health, poverty and anti-racism for women. The organisation has representatives on a range of bodies that deal with women’s issues, equality, poverty, health, economics and social affairs and provides information on its website, through social media, by e-mail and post to its affiliates, members and individuals. The Y Factor was designed by young women and aims to empower young women and men to become advocates for gender equality. The project involves the design and delivery of participatory
learning modules in schools and youth groups across Ireland, as well as a variety of other events with a strong emphasis on social media.

**Northside Partnership, Young Community Leaders**: The Northside Partnership is a local company, funded by the Irish Government, charitable organisations and private sources, that works with local people, representatives from communities, the state, employers, trade unions and elected representatives. It aims to improve the opportunities for people and communities in north east Dublin to bring about positive changes in their own lives and in the life of their community.

Northside Partnership supports people looking for work, students, people starting their own business, children and families, young people, older people, parents and guardians, and childcare providers.

Northside Partnership inaugurated the Youth Community Leaders Programme in May 2011. The programme aimed to develop community leadership skills and values among a cohort of forty 16 – 25 year olds who were already involved in their communities from the Partnership’s priority districts in Dublin’s Northside. Two groups of young people (16-18 years and 19-25 years) formed the 2011/2012 YCL Pilot Programme group. The gender divide of the 40 participants was 37% male and 63% female. The YCL Programme Application Forms showed that the majority of the participants selected in the 16-18 years age group were either in the 5th or final year of their secondary education.

The training programme is accredited by NUI Galway at FETAC Level 6 on the National Framework of Qualifications. Training incorporated the following components: The Pacific Institute’s STEPS - a motivational programme; the Foróige Albert Schweitzer Leadership for Life Programme (ASLFL); Restorative Practices (values/personal development) training and dissemination; participant mentoring (provided by representatives of organisations in the area); Community Action Projects and the formation of a Young Community Innovators Group. Parallel to the training element, the programme also aimed to impact on the wider community leadership environment so that existing community leaders would begin to value young community leader volunteers as valuable assets and allies.

Twenty four participants completed the programme, and the results show evidence that participants strengthened, deepened and expanded their community involvement during the programme.
The Young Community Innovators group (a sub-group of YCL participants) formed in June 2012, and has since set up the YCI Facebook page and a Twitter account. The Young Community Innovators act as a valuable resource for organisations who wish to canvass the views of youth in the Northside community, for example, the local Drugs Task Force.

In September 2012, a further 40 young people began the Youth Community Leaders Programme 2. Key learnings from the pilot were incorporated into the structuring of the second programmes, which included the use of a structured, competency-based interview questionnaire, the involvement of YCL Pilot Programme graduates in the recruitment process, and the introduction of a September start date to avoid drop-out over the summer break. In addition, an alternative peer-mentoring model for the 2012/2013 YCL participants has been developed in response to negative feedback about the original mentoring element of the pilot.

Although positive short-term outcomes are evident, longer-term impacts will rely on the support of community leaders and the business community in developing a strategic funding plan.

**Social Entrepreneurs Ireland, Wave Change**: Social Entrepreneurs Ireland is a registered company with charitable status, funded by both private foundations and individuals. Social Entrepreneurs Ireland was founded as a programme of The One Foundation in 2004, and in January 2007, was set up as an independent organisation.

Social Entrepreneurs Ireland aims to foster the early stage development of a new generation of social entrepreneurs in Ireland by actively working in conjunction with the business, third level and voluntary sectors to support the development of a new social entrepreneurship movement. Wave Change is a Social Entrepreneurs Ireland Initiative for 18-25 year olds with a passion for social change. The ten month programme includes five weekend workshops, skills training, one to one coaching and networking with key influencers and decision makers.

1.4 **Advocacy in Ireland**

Any attempt to consider advocacy should be informed by an understanding of the concept of advocacy and the context or landscape in which it takes place. Reid remarks that advocacy is something we recognise when we see it, but lacks definition: “There is no agreement on which activities constitute advocacy, and no one source gives a full account of
the many kinds of activities and strategies groups use to leverage influence in the policy process.”  

One Irish report on advocacy defines it as “the process speaking on behalf of a person or resourcing him/her to speak out, with the aim of enhancing his/her ability to be heard when he/she is claiming an entitlement or expressing a need.” The Advocacy Initiative, a community and voluntary sector project established to promote understanding, awareness and effectiveness of social justice advocacy in Ireland, describes the concept as encompassing what may also be called ‘campaigning’ and ‘lobbying’ by voluntary and community organizations and their engagement with the institutions of the state on matters of policy and practice, but asserts that individual casework advocacy is also included. For Atlantic, advocacy means “aiming to bring about a change in public policy or the law, its interpretation or its application, typically with the objective of correcting a perceived injustice or achieving specific legislative, legal or other change.” It notes that advocacy encompasses an array of tactics such as research and dissemination, awareness-raising, capacity-building and lobbying.

Stachowiak provides a taxonomy of advocacy approaches, broadly classified as either global theories, which explain how change takes place, or tactical theories, which provide methods for bringing about particular changes. An example of a global theory of change, ‘Advocacy Coalition Framework’ argues that policy change happens through coordinated activity among a range of individuals with the same core policy beliefs when a sympathetic administration is in office. A tactical theory, ‘Messaging and Frameworks’ theory, proposes that change comes about not as a result of rational argument and reasoned choice-making, but rather is influenced by personal preferences and the ways in which messages are framed. Stachowiak suggests that tactical approaches may be used simultaneously or consecutively within a particular campaign which is guided by the chosen global theory.

Following a review of advocacy theories, Barkhorn et al have distilled some essential components of effective advocacy, which include functioning legislative, legal, and

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38 Harvey, B. Government Funding and Social Justice Advocacy (Dublin: Advocacy Initiative 2014) at p. 6.
40 Stachowiak Pathways for Change: 10 Theories to Inform Advocacy and Policy Change Efforts (Washington: Center for Evaluation Innovation, 2013) at p.16.
41 Sarah Stachowiak, Pathways for Change: 10 Theories to Inform Advocacy and Policy Change Efforts (Washington: Center for Evaluation Innovation, 2013) at p. 16.
regulatory institutions; strong leadership; a feasible solution to an existing demand; a support coalition, public audiences and insider champions; and a clear implementation path. The resulting framework can be used as a checklist, a set of standards, or as a way of predicting outcomes for successful campaigns. Such a framework may assist those planning or evaluating advocacy campaigns or projects towards more effective results.

However, notwithstanding attempts to define and theorise advocacy, a widely-held consensus among funders, theorists and practitioners is that advocacy often relies in practice on long-term commitments with uncertain outcomes, and research shows that efforts are often ad hoc, with funders and advocates alike relying on trust and intuition rather than evidence-based approaches in deciding how to frame their campaigns and tactics. For example, Atlantic Philanthropies describes its own approach to as an ‘arm’s-length approach to philanthropy, leaving grantees broad latitude to govern and manage their organisations.

Advocacy has become part of the repertoire of the majority of service providers intent on improving the policy conditions in which they promote their stakeholders’ interests. Nevertheless, those working in the community and voluntary sector may have widely differing understandings of what advocacy means, ranging from seeing advocacy as simply raising awareness among decision-makers, to explaining what a problem is and providing an evidence-based solution for it. These types of positions are related to public policy advocacy, but many people also associate advocacy with ‘voice’ whereby excluded groups find space to be heard on issues that affect them. As one participant in recent research by the Advocacy Initiative said, ‘social justice advocacy is about empowering the disadvantaged to become their own advocates. This is the only way to achieve real transformative change for marginalised groups.’

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Social innovation straddles both types of advocacy, i.e. public policy advocacy and individual advocacy, in that it empowers individuals or small groups to bring about wider social change through developing a programme or service in response to an unmet social need. A further view of advocacy is self-advocacy,\textsuperscript{47} i.e. work with or on behalf of individuals to help them to gain access to services and structures that are out of their reach, hopefully, but not necessarily bringing about broader social or policy change.

Children’s rights advocacy is often equated with giving children a ‘voice’ – involving children and young people in defining the issues and being involved in creating solutions,\textsuperscript{48} individually, by empowering individual children to negotiate power structures to realise their rights, or collectively, to influence decision-making that affects their lives and/or those of other children. Save the Children defines advocacy as ‘speaking out for children and empowering them to speak out for themselves.’\textsuperscript{49} Advocacy is also about changing structures so that children’s engagement is more effective, and ensuring that measures to realise their rights are implemented.

Against this backdrop, it is apparent that organisations supported under Objective two are diverse in size, approach and purpose and they employ a range of advocacy methods to advance children’s rights. The extent to which their work is informed by and focused on the rights of the child varies greatly. There are generally three categories here: At one level, organisations like the Children’s Rights Alliance, IPRT, (and less explicitly ISPCC, Startstrong and Barnardos) have as their core aim the implementation of the CRC although the nature of their rights based approach varies. The second category consists of organisations whose work can be seen through the rights lens, but it may not be undertaken explicitly to that end. For example, EPIC (which arguably falls into category one also) provides advocacy services which support young people to claim their rights, while Spunout somewhat similarly aims to empower and inform young people. A third category, including Northside Community Partnership, NCWI (the Y Factor), Social Entrepreneurs Ireland do not have rights compliance as a goal and so are not engaged in rights-based advocacy, but rather they aim to engage with and support young people to develop leadership capacity to advocacy


\textsuperscript{48} Save the Children Alliance, \textit{Advocacy Matters: Helping children change their world. An International Save the Children Alliance guide to advocacy}. (London: Save the Children 2007).

\textsuperscript{49} \textit{Ibid.}, p. 12.
for equality and social justice. The nature of these organisations and their relationship with children’s rights is further explored in part 2 below.

Advocacy is new to Ireland: the Advocacy Initiative traces the arrival in Ireland of the term ‘advocacy’ to the 1996 report by the Commission on the Status of People with Disabilities, *A Strategy for Equality*. ⁵⁰ Although it was the disability model which initially shaped advocacy services in Ireland, the concept was also used by the Department of Health and Children in the context of mental health in its Health strategy. ⁵¹ The Advocacy Initiative writes that the legitimisation of the advocacy concept by the government was a significant advancement which triggered a further semantic shift when organisations began to rename their ‘campaigns’ as ‘advocacy services’. ⁵²

The government gave further credence to the notion of advocacy in its white paper, *Supporting Voluntary Activity*, which aimed to define the relationship between the State and the voluntary sector. The paper endorsed the policy-making role of the community and voluntary sector as well as upholding its right to speak, laying down principles of independence and freedom of action, and setting out the role of such organisations in supporting social inclusion. ⁵³ It also promised to establish liaison units for the voluntary sector within each government department in addition to increased funding. Following the 2002 general election, however, its key commitments were renounced and rescinded, though its status as a piece of government policy remained intact. Harvey writes that this sudden turn marked the starting point in the decline of government promotion of advocacy within the voluntary sector. ⁵⁴ The enactment of the *Charities Act 2009* was heralded as “a very significant milestone for community and voluntary activity in Ireland” ⁵⁵ but has experienced significant delays in being brought into effect. This has left the sector largely unregulated or monitored except in some cases by the Companies Act and at times by the Revenue Commissioners. Perhaps as a result of this lacuna, advocacy has a history that has been tainted by corruption.

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⁵³ The Advocacy Initiative, *Funding Dissent: Research into the Impact on Advocacy of State Funding of Voluntary & Community Organisations*, (Dublin: The Advocacy Initiative 2013) p. 16
⁵⁴ Advocacy Initiative, *Are we paying for that? Government Funding and Social Justice Advocacy* p. 5
Social justice advocacy in Ireland will shortly be governed by the *Registration of Lobbying Act 2014* and charitable organisations will also be regulated by the *Charities Act 2009* as amended by the *Charities (Amendment) Act 2014*.

The *Registration of Lobbying Bill 2014* was drafted following the publication of the final Report of the Mahon Tribunal (the final Report of the Tribunal of Inquiry into certain planning matters and payments). That report had recommended the introduction of lobbying regulation and a code of practice governing the conduct of lobbying as a result of its findings, which included a lack of transparency and widespread bribery and corruption.

Following highly publicised controversy in relation to misuse of charitable funds to supplement salaries of senior officials in certain charitable organisations, delays in bringing into force the *Charities Act 2009* have been addressed by the drafting of the *Charities (Amendment) Bill 2014* and the establishment of the Charities Regulatory Authority in October 2014. The Authority is tasked with promoting public trust and confidence, and accountability and transparency across the sector. The *Charities Act* (as amended) provides for the advancement of human rights as a charitable purpose, as well as providing for the full implementation of unenacted provisions of the *Charities Act 2009*. This Act will also permit registered charities to promote political causes that relate directly to their charitable purpose.56

### 2. The Culture of Rights

#### 2.1 Introduction

Kilkelly identifies key barriers to children’s full enjoyment of their rights in Ireland as being historically linked to the low level of visibility of children in Irish society and its laws and policies, together with a lack of investment in and awareness of children’s needs and rights.57 Attitudes towards and beliefs about children and childhood are inextricably linked with the treatment they receive from society. Within that context, this section will trace the origin and evolution of the children’s movement before examining the resulting

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international framework which now influences domestic law and policy. It will then set out the historical and social context of children’s rights in Ireland.

2.2 Origin and Evolution of the Children’s Rights Movement

Evidence suggests that the concept of childhood is a relatively recent one, discovered in the 17th century. Prior to this, children were viewed as small adults and often assumed adult responsibilities. Children were considered to be the property of their parents and often had to endure appalling abuse and neglect. Indeed McCoy characterises childhood in this time as a “grim period”. However, by the time of the French Revolution, a shift had occurred in the perception of children, giving rise to greater freedom for children, warmer, more affectionate relationships between parents and their offspring and the recognition of children as a special status group. Some credit this to Rousseau whose seminal work, *Emile*, introduced the modern concept of childhood to the upper echelons of European society. Rousseau recognised the value of allowing children to be children, criticising those who sought to impose an adult role and insisting that childhood has its place in the order of human life.

This changing perception of childhood continued into the 19th century which marked greater separation from adults in recognition of the growing view of children as a special and vulnerable class in need of protection. This fostered the “child-saving” era, a movement which sought to assure the health and welfare of children and led to the development of juvenile justice and the establishment of compulsory education. The State and private and religious agencies began to intervene in family life to protect children. Child protection legislation also began to emerge and according to Freeman, children were seen as “objects

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of intervention rather than as legal subjects”. Hart contends that at the beginning of the 20th century the meaning of child-saving evolved through a growing belief that the protection of children was essential for the good of future society, but it was not until the latter half of that century that the child’s existing rather than potential person status received concrete support.

It was also in the 20th century that the children’s rights movement first came to international prominence. The adoption of the Declaration of the Rights of the Child, also commonly known as the Declaration of Geneva, by the United Nations General Assembly in 1924, represented the first attempt at creating a set of international standards for the treatment of children. Drafted by Eglantyne Jebb, founder of the Save the Children organisation, the document was borne out of concern for children’s health and welfare following the devastating effects of the Great War. Thus, the content of the Declaration focuses on the material needs of children rather than the bestowing of rights. It contains five basic principles including the belief that children must be the first to receive relief in times of distress, must be protected from all forms of exploitation and must be provided with means necessary for normal development. Although the Declaration’s provisions were not binding, Van Bueren writes that the instrument holds significance for a number of reasons; it established the concept of children’s rights on an international level and provided the first international recognition of the connection between child welfare and the rights of the child.

The atrocities perpetrated during and after the Second World War led to the adoption by the newly established United Nations of the Universal Declaration of Human Rights 1948, an international treaty which sets out a catalogue of human rights applying to all human beings. Though children are not expressly included within the scope of the Declaration, its application to all human beings implicitly embraces children. The next major development in the promotion of children’s rights came in the form of the Declaration on the Rights of the Child 1959. A revised and extended version of the 1924 Declaration, this document is more

rights-based, as Freeman notes “It is based on the premise that mankind owes to the child the best it has to give... Implicit in this premise is an emphasis on duties to children and hence children’s rights in the sense of claims.”

Building on the 1924 Declaration, the instrument reiterates the entitlement of children to special care and safeguards, including legal protection. It also guarantees to children the right to a name and nationality, to adequate nutrition, housing, recreation and medical services. Furthermore, it incorporates for the first time the “best interests of the child” principle. While the adoption of the 1959 Declaration can be accurately classified as a significant advancement in the international recognition of children’s rights, it has also been criticised for adopting a largely protective and paternalistic approach.

Though the Declarations are widely credited with establishing the concept of children’s rights, their non-binding status and lack of enforcement mechanisms meant that the laudable principles and provisions contained within the instruments did not translate into practice. The continuing, widespread mistreatment of children led to a move to formulate an international treaty which would secure the rights of the child through legally binding provisions. The starting point for the formation of such an instrument was the year 1979, designated as the “International Year of the Child” in order to mark the 20th anniversary of the 1959 Declaration and to raise awareness of children’s issues. In response to the Polish government’s view that a binding set of principles guaranteeing the rights of the child were required, the UN Human Rights Commission established an open-ended working group to draw up a new convention. The Convention took ten years to draft with input from the member states of the UN Human Rights Commission, non-governmental organisations and

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74 Principle 3, Declaration on the Rights of the Child, Adopted by UN General Assembly Resolution 1386 (XIV) of 10 December 1959.
75 Principle 4, Declaration on the Rights of the Child, Adopted by UN General Assembly Resolution 1386 (XIV) of 10 December 1959.
The resulting UN Convention on the Rights of the Child (UNCRC) was adopted by the UN General Assembly in 1989, exactly thirty years after the 1959 Declaration, and entered into force in record time in September 1990.\textsuperscript{82}

\subsection*{2.3 International Perspectives and Influences}

\textit{- UN Convention on the Rights of the Child}

Consisting of a preamble and 54 articles, the UNCRC is the most comprehensive and authoritative articulation of the rights of children. Contrary to the Declarations of 1924 and 1959, it encapsulates the modern perception of children as people in their own right, capable of holding and exercising fundamental rights. Thus, the Convention is described as providing “….a new vision of children.”\textsuperscript{83} As the most widely ratified instrument in international law, it enjoys unparalleled legitimacy and moral force within the global community.\textsuperscript{84} It further represents a strong international consensus on the way children should be treated in a wide range of areas and circumstances.\textsuperscript{85}

The Convention is extraordinarily wide in scope, impacting on children’s lives in a variety of areas including education (articles 28 and 29), health and material welfare (articles 6, 24 and 27) and family life (articles 3, 5, 18, 20, 21).\textsuperscript{86} In addition, the Convention laudably recognises the rights and needs of children in special and vulnerable circumstances such as refugee children (articles 7, 8, 10), children who have been subject to abuse and exploitation (articles 19, 30-34, 27), and children in conflict with the law (articles 37 and 40). Reflecting its broad latitude, Convention rights have often been classified according to the three ‘Ps’: provision (the right of the child to have his/her basic needs fulfilled), protection

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{81} Cohen, “The Role of Non-Governmental Organisations in the Drafting of the Convention on the Rights of the Child” (1990) 12(1) Human Rights Quarterly 137-147.
  \item \textsuperscript{84} The UNCRC has been ratified by 194 States. The only States who have failed to ratify the Convention are the US, South Sudan and Somalia.
  \item \textsuperscript{86} Kilkelly, \textit{Children’s Rights in Ireland: Law, Policy and Practice} (Sussex, [England] : Tottel, 2008) at p. 26
\end{itemize}
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(the right to be safeguarded from violence or harmful practices) and participation (the right of the child to be heard in matters affecting them).\textsuperscript{87}

A unique and innovative feature of the UNCRC is that it encompasses economic, social and cultural rights as well as civil and political rights.\textsuperscript{88} The inclusion of both sets of rights underscores the holistic nature of the Convention, meaning that the rights contained within it are indivisible and inter-related. As Detrick comments, “equal importance should be attached to each and every right recognised in the UNCRC because each one is fundamental to the dignity of the child.”\textsuperscript{89} Despite this holistic approach, the UN Committee on the Rights of the Child has singled out four provisions, known as the guiding principles, which serve to guide its implementation\textsuperscript{90}:

- Non Discrimination (Art 2): provides for the right of every child to enjoy his or her rights without discrimination of any kind.

- Best Interests of the Child (Art 3): requires that the best interests of the child be a primary consideration in all actions concerning him or her.

- Life Survival and Development (Art 6): recognizes the rights of the child in these fundamental areas.

- Respect for the views of the child (Art 12): provides that every child capable of forming a view on matters concerning him or her has the right to express that view freely and to have it given due weight in accordance with his or her age and maturity.

Taken together, the four principles embody the spirit and philosophy underpinning the UNCRC, namely the treatment of children as equal and autonomous human beings. Thus, implementation of these four key principles is essential to the achievement of the

\textsuperscript{87} Hammarberg, “UN Convention on the Rights of the Child and How to Make it Work” (1990) 12 Human Rights Quarterly 97 at p. 100.

\textsuperscript{88} Civil and political and economic, social and cultural rights have traditionally been separated e.g. International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.


\textsuperscript{90} UN Committee on the Rights of the Child, General Guidelines regarding the Form and Content of Initial Reports to be submitted by State Parties Under Article 44 (1) (a) of the Convention UN Doc CRC/C/5 paras 13-14 (30 October 1991).
Convention’s overall aim in bringing about a change in attitudes and approaches to children.91

In addition to substantive rights, the Convention contains a number of procedural provisions concerning its implementation (articles 42-45). Article 43 establishes the UN Committee on the Rights of the Child, an international and independent expert group tasked with monitoring the implementation of the UNCRC by State parties. States are required to submit periodic reports to the Committee outlining the measures adopted to give effect to Convention rights and detailing progress made in the effective realisation and implementation of those rights at domestic level. Having reviewed and examined the State party report and material submitted by NGOs and other relevant bodies, the Committee identifies a set of measures to be adopted by the State, commonly known as “concluding observations”, in order to improve compliance with Convention obligations. In addition to monitoring international implementation of the Convention, the Committee on the Rights of the Child holds biennial days of general discussion which seek to foster a deeper understanding of the contents and implications of the Convention as they apply to specific topics or areas.92 The Committee also issues general comments in which it expands on the meaning and scope of particular articles, expresses its views on the relationship between Convention provisions and highlights the priorities for States in implementing the Convention.93 This Committee engagement with children’s rights provides a rich source of guidance for State parties in fulfilling the Convention obligations.

However, as Freeman notes, the Convention alone is not sufficient in advancing and realising children’s rights...“we must not assume that a Convention formulated in the last third of the twentieth century will fit the needs of children of the new millennium. There is a need for revision, reform and innovation.”94 Reflecting the need to strengthen and supplement the Convention, three optional protocols have been adopted in recent times. The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, adopted by the UN General Assembly in 2000, defines for the first time the terms “sale of

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92 UN Committee on the Rights of the Child, *Day of general Discussion on Resources for the Rights of the Child: Responsibility of States 21 September 2007* para 1. General Discussion Days held by the Committee have focused on issues such as children and the media, children of incarcerated parents, the rights of indigenous children, the rights of all children in the context of international migration etc.
children”, “child pornography” and “child prostitution”. It requires State parties to criminalise these acts, provides for co-operative law enforcement mechanisms to prosecute offenders and establishes broad grounds for jurisdiction over such offences. The second optional protocol, also adopted in 2000, is concerned with the involvement of children in armed conflict. It aims to strengthen the protection afforded to child soldiers in the UNCRC by raising the minimum age requirement for direct participation in armed conflict and conscription from fifteen to eighteen. It further requires that States take all feasible measures to ensure that members of the armed forces under the minimum age are not directly involved in hostilities. The final optional protocol only came into force in April 2014, though the idea was originally proffered during the drafting stages of the UNCRC. This protocol brings the Convention in line with the other core international instruments by establishing an accompanying communications procedure. It provides the UN Committee on the Rights of the Child with the requisite competence to accept and consider complaints of rights violations from individual or group petitioners within State parties. The adoption of the communications procedure aims to strengthen the enforcement and implementation of the UNCRC at ground level and it is hoped that the resulting jurisprudence of the Committee will guide States, NGOs and others in interpreting the text of the Convention.

Other core international instruments to which Ireland is a party include the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which came into force in 1966. Both Covenants contain articles which refer specifically to children, however, as Van Bueren remarks, “merely

103 Articles 10 and 12 of the ICESCR both refer to children. In the ICCPR, children are mentioned in articles 14, 18(4), 23(4) and article 24.
because an international instrument is capable of being applied to children does not mean that it incorporates a coherent child-centred approach...”.

Nevertheless, the Covenants have been valuable in highlighting gaps and inconsistencies in Ireland’s implementation of children’s rights standards. Ireland has also ratified the UN Convention on the Elimination of Discrimination Against Women (CEDAW), the UN Convention on the Elimination of Racial Discrimination (CERD) and the UN Convention Against Torture (UNCAT). Though these standards are not directly aimed at children, they impact upon children’s lives in a variety of ways.

2.4 The Historical and Social Context of Children’s Rights in Ireland

“Childhood is both a biological reality and a social construct. It is defined not only by biology, but also by a particular society at a particular time in a particular way which represents the view that society has of childhood.”

Ireland has been slow to embrace children’s rights in law and policy, as well as practice. This failure to view children as rights holders has been attributed to political, social, religious and cultural influences. In order to trace the historical roots of children’s place in contemporary Ireland, this section examines the effect of these core influences on developing policy, practice and law. In particular, it examines the traditional absence of a strong children’s rights culture in light of the invisibility of children in Irish society and the dominant stature of the Catholic Church at both a political and community level. The broad purpose of this section is to provide a background context to the treatment of Irish children, against which more recent progress in implementing children’s rights can be benchmarked.

The Irish Constitution

By reflecting the status quo of the period in which it was written, the Constitution provides an insight into the position of children in society at a defining moment in Irish history. Drafted in 1937, the Irish Constitution was an opportunity for the emerging State to define itself and its values. Furthermore, despite the formal constitutional separation of Church and State, the Catholic Church acted as an important ‘post-colonial national symbol’ in the struggle to create

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105 See section on Ireland’s record of advancing children’s rights in Chapter 3.

a separate Irish identity from that of the British rulers. Thus, it is widely accepted that this institution played a key influential role in the framing of the Irish Constitution. In particular, according to Fitzgerald, “...the constitutional provisions on the family were largely drafted to avail the Catholic Church and to forward Christian values.”

Thus, reflecting these influences and prevailing societal attitudes, the Constitution is largely silent on children, affording them little or no protection in their own right under its provisions. Instead, it enshrines a paternalistic model of the family and grants the marital family unit significant legal protection. The family in Article 41.1.1° is described as “the natural primary and fundamental unit group of Society” and as a “moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.” This placement of the family at the top of the constitutional hierarchy has been criticised for overlooking the sometimes conflicting interests within families and conflating the rights of individual children with those of their parents. For instance, the rights of the child receive express recognition only in so far as it is provided in Article 42.5 that children’s rights should be given “due regard” in circumstances where the State endeavours to supply the place of the parents. Article 42 does refer to the education of children, but in the context that it is the right and duty of parents to provide for the religious and moral, intellectual, physical and social education of their children. Finally, Article 40(3) places an obligation on the State to protect and vindicate the personal rights of all citizens. However, the potential of this provision to be interpreted from a children’s rights perspective has not been fully realised.

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specific rights in the Constitution, “...reflects an underlying conceptualisation of all children as less deserving of consideration than the adult members of a family unit.”113

The invisibility of children in the Constitution of 1937 provides us with an insight into Ireland’s legacy of failing to recognise and protect the children’s rights. Although the limited constitutional protection afforded to children gave rise to repeated calls for reform from 1976, a Children’s Referendum was only held in 2012 (as discussed below).114 Thus, the narrow Catholic vision of the family enshrined in the Constitution, which contains limited references to children except in relation to their parents or the State,115 has had a significant effect on Irish social policy, law and society for many years.

A Culture of Protectionism

In Ireland, the troubled story of children’s lives during the decades following the enactment of the Constitution is now common knowledge. As a result of a number of highly publicised familial abuse cases, and a series of revelations in the media concerning the institutional and private abuse of children, unprecedented public and political attention was focused on the nature of Irish society and its oppression of children.116 In May 2009, the Government announced the establishment of the Commission to Inquire into Child Abuse which subsequently led to the publication of the Ryan Report.117 This seminal Report examined the abuse of children who resided in State funded institutions managed by religious orders during the period 1936 to 2000, including the nature, causes and extent of the abuse. Furthermore, the Ferns, Murphy (Dublin) and Cloyne Reports involved inquiries into clerical child abuse and focused on the appropriateness of the authorities’ responses to complaints and allegations made.118 The two major inquiries into child abuse in the family setting are the Kilkenny Incest

116 For example, the documentary series States of Fear by Mary Raftery, aired on RTE television between April and May 1999. See also M. Raftery, M. Sullivan and E. Sullivan, Suffer the Little Children: The inside Story of Ireland’s Industrial Schools (Continuum, 2001).
Investigation and the Roscommon Child Abuse Inquiry. These inquiries examined the State’s failure to identify and respond effectively to the ill-treatment of children by their parents.

According to Holohan, “[t]he abuse and exploitation of tens of thousands of children...constitute arguably the gravest and most systematic human rights violations in the history of this State.” The above inquiries, and the ensuing Reports, have played a key role in outlining the context within which the rights of these children were violated. In doing so, they highlight the social, cultural and political factors which contributed to the prevalence of sexual crimes against children and the systematic failure of the State and society to respond adequately to allegations of abuse.

As alluded to above, Catholicism is a key defining feature in the Ireland’s history. Until very recently, the Irish State and its citizens “…appeared to accept without serious question the immense power and the hierarchal authority of the Church in civil and intimate life.” Thus, it is broadly accepted that the extensive abuse of children by members of the clergy, and its subsequent cover-up, was facilitated by the widespread deferential and submissive attitude towards the Catholic Church. The privileged position afforded to the Church by the State meant that its actions or inactions were largely beyond reproach and resulted in the State’s failure to effectively respond to allegations with the necessary thoroughness, care and sensitivity. Furthermore, over the extensive period when institutional and institutionalised

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120 C. Holohan, In Plain Sight: Responding to the Ferns, Ryan, Murphy and Cloyne Reports (Dublin: Amnesty International Ireland, 2011) at p. 7.
121 A.M. McAlinden, “An inconvenient truth: barriers to truth recovery in the aftermath of institutional child abuse in Ireland” (2013) 33(2) Legal Studies 189 at pp. 203-4. McAlinden emphasises this point by highlighting the example that the State reversed plans to introduce health and social reforms, including the infamous ‘Mother and Baby Scheme’ in 1951, following staunch opposition from the Catholic Church. Also, McGuinness notes that the child welfare system that prevails in Ireland to date has its origins in the second half of the nineteenth century when the Churches began to take steps to protect children’s welfare by establishing residential institutions. By 1899, between seventy one industrial schools and the remaining workhouses, almost fourteen and a half thousand children were being ‘protected’ by these institutions. See C. McGuinness, “It is a long way from Kilkenny to here: Reflections on legal and policy developments before and since the publication of the Kilkenny Incest Investigation” in D. Lynch and K. Burns, eds., Children’s Rights and Child Protection: Critical Times, Critical Issues in Ireland (Manchester: Manchester University Press, 2012) at p. 47.
abuse was taking place in Ireland, the Irish public and civil society failed to appreciate the risks posed to children due to the existence of social denial and a ‘culture of disbelief’ concerning clergy sexual abuse. In particular, the Dublin Report suggests that the prominent and influential role of representatives of the Catholic Church in society was the core reason as to why the abuses were allowed to go unchecked. Finally, despite the significant role played by the media in exposing and discussing the child abuse scandals, the Ryan Report revealed that the media also has a history of being influenced by the power of the Catholic Church and censoring its material accordingly. Thereby, it contributed to the widespread silence on the occurrence of child abuse.

The reports also highlight long-standing systematic issues and appallingly low standards within the services with responsibility for the care, education and protection of children. A significant proportion of children in industrial schools were marginalised by status, poverty or ethnicity. However, the State failed to protect these vulnerable children, and to actively promote their rights and interests, on the basis of an arbitrary judgment that they were ‘morally suspect’. The low priority afforded to at risk and abused children is evident from the failure of the State to adequately resource the residential institutions, to properly assess the suitability of the staff working there and to implement effective accountability and complaints mechanisms. In relation to the cases of familial abuse, the failure of the authorities to intervene is attributed to an emphasis on maintaining the constitutionally protected family unit as opposed to the children’s best interests. The invisibility of these children was also reinforced by the absence of the voice of the child in inspection reports and

125 Commission of Investigation, Report into the Catholic Archdiocese of Dublin (Dublin: The Stationery Office, 2009) at p. 23. For example, the elevated position of priests in Irish society is highlighted by their former enjoyment of free public transport. C. Holohan, In Plain Sight: Responding to the Ferns, Ryan, Murphy and Cloyne Reports (Dublin: Amnesty International Ireland, 2011) at p. 171.
in court proceedings.\textsuperscript{130} This extended from the societal perception that children’s views could not be trusted. This perception was apparent to children themselves and resulted in many of them being too afraid to tell adults of the abuse they suffered.\textsuperscript{131}

This section outlines how the protection of children’s rights in Ireland has been historically impeded by a number of interlinking factors, including; the invisibility of children within the Constitution and its focus on the marital family unit; negative attitudes towards children and disrespect for their views; the hierarchal position of the Catholic Church in society; the prevalence of residential institutions run by religious orders with limited oversight from the State; and the lack of effective complaints mechanisms for child victims of abuse. Cumulatively, these factors created a society within which the oppression of children was accepted. Ireland is now emerging from the shadows of this history and its civil society is actively working to shape a positive future for all children by fully recognising and protecting their rights.


\textsuperscript{131} C. Holohan, \textit{In Plain Sight: Responding to the Ferns, Ryan, Murphy and Cloyne Reports} (Dublin: Amnesty International Ireland, 2011) at p. 207.
3. Progress in Implementing Children's Rights

3.1 Introduction

The purpose of this section is to present an assessment of the progress made in the protection of children’s rights in the Republic of Ireland, against the backdrop of the implementation of the Convention on the Rights of the Child (CRC) both nationally and internationally.

The implementation of children’s rights is the process by which rights set down on paper are made a reality in children’s lives. As a party to the CRC, and a plethora of other relevant treaties, the State is the primary duty bearer with respect to their implementation in Ireland; meaning that it is legally bound to develop laws and policies which promote the practical realisation of standards articulated in international children’s rights law.\(^{132}\)

Building on the international standards set out above, this section initially uses the guidance offered by the CRC Committee to identify the necessary features of a children’s rights framework. In doing so, it provides a benchmark against which the State’s progress in implementing children’s rights can be measured. Subsequently, an insight into the formal processes surrounding the State’s engagement with treaty monitoring bodies is provided, in order to document Ireland’s children’s rights record on the international stage. This discussion acts as a precursor to the following more in-depth analysis of the current state of implementation of children’s rights in Ireland. Thus, the crux of this chapter focuses on mapping progress at the national level by examining specific legal, administrative and other measures taken by the State to advance the rights of children. Throughout this assessment, a spotlight is also placed on the areas where Ireland’s children’s rights framework continues to fall short of international standards and on the remaining cultural, political and social barriers that are impeding further progress.

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\(^{132}\) See Article 4 of the CRC.
3.2 Developing a Children's Rights Framework

According to the CRC Committee, “[i]mplementation is the process whereby States parties take action to ensure the realization of all rights in the Convention for all children in their jurisdiction.”\textsuperscript{133} Indeed, it has highlighted that the most effective means by which children’s rights can be implemented involves the direct incorporation of the CRC into domestic law, allowing it to be invoked before the courts.\textsuperscript{134} The Committee also welcomes the express constitutional recognition of children’s rights, in light of the preeminent status of constitutional law in national legal orders and its capacity to pervasively influence law and policy.\textsuperscript{135}

Building on these measures, the principles and provisions of the CRC must be fully reflected in all of the laws, policies and practices within a State. This requires the development of a children’s rights perspective throughout Government, parliament and the judiciary, as well as the placement of standards enshrined in the CRC at the heart of the legislative process.\textsuperscript{136} Crucial to the advancement of children’s rights is also the availability of child-sensitive

\begin{shaded}
\textbf{Article 4: Convention on the Rights of the Child}

“\textit{States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources…}”
\end{shaded}


The implementation of the CRC must be supported by sufficient resources, permanent monitoring mechanisms, cross-sectoral coordination and responsive engagement with all sectors of society, including children.\footnote{Committee on the Rights of the Child, General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child (2003) UN doc. CRC/GC/2003/5 at <www.ohchr.org> (date accessed: 15 August 2014) at pp. 10, 14.} In particular, the CRC Committee has noted that States need to interact with civil society by encouraging and facilitating wide participation in, and scrutiny of, government policies.\footnote{Committee on the Rights of the Child, General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child (2013) UN Doc. CRC/GC/2003/5 at <www.ohchr.org> (date accessed: 15 August 2014) at p. 14.} Successful implementation also involves the dissemination of knowledge about the CRC and the development of systematic training and capacity-building for all those involved in the implementation process – government officials, parliamentarians and members of the judiciary – and for all those working with or for children.\footnote{Committee on the Rights of the Child, General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child (2013) UN Doc. CRC/GC/2003/5 at <www.ohchr.org> (date accessed: 15 August 2014) at pp. 12-13.} Furthermore, it requires the collection and application of reliable disaggregated data on children, and a continuous process of child impact assessments and evaluations, to inform law and policy development.\footnote{Committee on the Rights of the Child, General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child (2013) UN Doc. CRC/GC/2003/5 at <www.ohchr.org> (date accessed: 15 August 2014) at pp. 11-12.}

This authoritative guidance acts as a practical tool for States to facilitate their implementation of children’s rights principles at a domestic level. Indeed, a central theme of the guidance is an emphasis on the adoption of practical measures that allow children to enjoy their rights, as opposed to empty rhetoric on the international stage. Ireland is a dualist country, meaning that international standards can only become part of domestic law when they are incorporated by legislation. Thus, although Ireland has made extensive international promises, its genuine commitment to children’s rights can only be truly assessed on the basis of its implementation of a children’s rights framework that is effective in practice.
3.3 Ireland’s Relationship with International Monitoring Bodies

An important feature of the core international human rights treaties is that they create monitoring bodies, composed of committees of independent experts, mandated to examine State parties’ compliance with their treaty obligations. Thus, in relation to each treaty that it has ratified, Ireland is obliged to engage in a review process whereby it is required to report to a monitoring body on a periodic basis. As part of this examination, the committees engage with the State through both written format and dialogue. At the conclusion of the review process they issue Concluding Observations to identify measures that the State must adopt, in order to ensure its fulfilment of Convention obligations. Ireland has a growing relationship with these committees, having been reviewed under six core treaties and an Optional Protocol to the CRC.

<table>
<thead>
<tr>
<th>International Human Rights Instruments</th>
<th>Ratification</th>
<th>Reporting Process</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convention on the Rights of the Child (CRC)</td>
<td>28 September 1992</td>
<td>Ireland was reviewed by the Committee on the Rights of the Child in 1998 and 2006.</td>
</tr>
<tr>
<td>International Covenant on Civil and Political Rights (ICCPR)</td>
<td>8 December 1989</td>
<td>Ireland was reviewed by the UN Human Rights Committee in 1993, 2000, 2008 and 2014.</td>
</tr>
<tr>
<td>International Covenant on Economic, Social and Cultural Rights (ICESCR)</td>
<td>8 December 1989</td>
<td>Ireland was reviewed by the Committee on Economic, Social and Cultural Rights in 1999 and 2002.</td>
</tr>
<tr>
<td>Convention on the Elimination of All Forms of Racial Discrimination (CERD)</td>
<td>29 December 2000</td>
<td>Ireland was reviewed by the Committee on the Elimination of Racial Discrimination in 2005 and 2011.</td>
</tr>
<tr>
<td>Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)</td>
<td>11 April 2002</td>
<td>Ireland was reviewed by the Committee against Torture in 2011.</td>
</tr>
</tbody>
</table>

As per Article 44 of the CRC, Ireland is required to report to the Committee on the Rights of the Child every five years. See also Committee on the Rights of the Child, Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child (2010) UN doc. CRC/C/S8/Rev.2 at <www.ohchr.org> (date accessed: 21 July 2014).
By examining the dialogical processes at the heart of these international monitoring mechanisms, it is possible to trace the roots of a number of significant legal and policy advancements that have improved children’s lives. The committees’ comments in relation to the State’s treatment of children also provide a rich body of evidence on Ireland’s children’s rights record, including the progress achieved to date. Thus, the tables below document the cross-cutting and overarching issues that are repeatedly raised in the Concluding Observations relating to Ireland.

The intention is to inform this audit by highlighting the areas where the State has been persistently criticised by international bodies for its failure to take sufficient measures to protect and realise the rights of all children. These core issues raised by the treaty monitoring bodies include; implementation gaps in domestic legislation & policies; the fragmented approach of the State; the persistent violation of children’s fundamental rights; the multiple barriers faced by marginalised and vulnerable children; and the failure to adequately monitor and address violations of children’s rights.
### 1. Implementation Gaps in Domestic Legislation & Policies

**Issue raised by:**

- CRC Committee (1998)
- Committee on Economic, Social and Cultural Rights (1999)
- Committee on Economic, Social and Cultural Rights (2002)
- CRC Committee (2006)

**The Full Incorporation of the CRC into Domestic Law**

The CRC Committee (1998 & 2006) has expressed its regret that the Convention has not been fully incorporated into domestic law, including at a constitutional level.

**The Enactment of Legislative Provisions**

The CRC Committee (2006) has criticised the State for the slow pace at which legislative provisions relating to children are enacted, including parts of the Children Act 1997 and 2001. This has impeded the implementation of a legal framework that effectively protects children’s rights.

**Comprehensive Rights-Based Strategies**

The CRC Committee (1998) initially called upon the State to develop a comprehensive national strategy for children based on the provisions of the Convention. Although it subsequently welcomed the creation of the National Children’s Strategy, the Committee (2006) advised that a fully rights-based strategy must be evaluated and supported by specific budget allocations and timeframes.

With reference to the National Anti-Poverty Strategy and the National Health Strategy, the Committee on Economic, Social and Cultural Rights (1999 & 2002) has criticised Ireland for its failure to adopt national strategies that embody a human rights framework.
### 2. The Fragmented Approach of the State

#### Issue raised by:

<table>
<thead>
<tr>
<th>Human Rights Committee (1993)</th>
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</thead>
<tbody>
<tr>
<td>CRC Committee (1998)</td>
</tr>
<tr>
<td>Committee on the Elimination of Racial Discrimination (2005)</td>
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<tr>
<td>CRC Committee (2006)</td>
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<tr>
<td>CRC Committee (2008)</td>
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<tr>
<td>Human Rights Committee (2008)</td>
</tr>
<tr>
<td>Committee on the Elimination of Racial Discrimination (2011)</td>
</tr>
<tr>
<td>Committee against Torture (2011)</td>
</tr>
<tr>
<td>Human Rights Committee (2014)</td>
</tr>
</tbody>
</table>

#### Coordination

The CRC Committee (1998) has criticised the lack of coordination among government bodies in promoting and protecting the rights of the child. It has also raised concerns that the potential of the NGO sector to contribute to the development of children’s rights policy is not being fully realised in Ireland.

#### The Collection of Data

The CRC Committee (1998 & 2006) has voiced its concerns about the State’s failure to collect systematic and comprehensive data on children, disaggregated by age, sex, ethnicity and by rural and urban areas. This frustrates the ability of the State to monitor the implementation of the CRC and to analyse the situation of particularly vulnerable children in Ireland.

#### Training and Awareness-Raising

The CRC Committee (1998, 2006 & 2008) has repeatedly criticised the State for taking insufficient steps to promote awareness of children’s rights. In particular, it has noted the State’s failure to ensure the provision of human rights education in schools and systematic training on the Convention for all professionals working with and for children.

These criticisms have been echoed by the Human Rights Committee (1993), the Committee on the Elimination of Racial Discrimination (2011) and the Committee against Torture (2011). In particular, they have drawn attention to the failure of the State to mainstream human rights training for law enforcement professionals, the civil service and medical personnel.

#### The Provision of Resources
According to the CRC Committee (2006), efforts on the part of the State to implement the CRC have been impeded by its failure to accompany measures with sufficient and targeted resources. In particular, inadequate resources have frustrated the enactment of legislative provisions, the development of health care services and the ability of independent monitoring mechanisms to undertake their mandated functions.

The Committee on the Elimination of Racial Discrimination (2005 & 2011), the Committee against Torture (2011) and the Human Rights Committee (2008 & 2014) have all expressed grave concerns about the disproportionate budget cuts to independent institutions mandated to promote and monitor human rights and equality in Ireland.
## 3. The Persistent Violations of Children’s Fundamental Rights

### Issue raised by:

<table>
<thead>
<tr>
<th>Group</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>CRC Committee</td>
<td>1998</td>
</tr>
<tr>
<td>Committee on Economic, Social and Cultural Rights</td>
<td>1999</td>
</tr>
<tr>
<td>Committee on the Elimination of Racial Discrimination</td>
<td>2005</td>
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<tr>
<td>CRC Committee</td>
<td>2006</td>
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<tr>
<td>Human Rights Committee</td>
<td>2008</td>
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<tr>
<td>Committee on the Elimination of Racial Discrimination</td>
<td>2011</td>
</tr>
<tr>
<td>Committee against Torture</td>
<td>2011</td>
</tr>
<tr>
<td>Human Rights Committee</td>
<td>2014</td>
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</table>

### Respect for the Views of the Child

- The CRC Committee (1998 & 2006) has stressed that the right of children to express their views in all matters affecting them, and to have these views given due weight, is not adequately protected and realised in Ireland. According to the Committee, the views of children are often absent from the decision-making processes in families, schools, the health sector, communities and judicial or administrative proceedings. The failure of the State to implement effective procedures for hearing children on a legislative level has been identified as a key contributing factor in this regard.

### The Protection of Children from Harm

- The CRC Committee (1998 & 2006), the Human Rights Committee (2008) and the Committee against Torture (2011) have persistently raised their grave concerns that corporal punishment within the family, and in certain alternative care settings, is not prohibited on a legislative level and that the common law defence of ‘reasonable and moderate chastisement’ remains part of the domestic legal framework.

### The Best Interests of the Child

- The CRC Committee (2006) has emphasised that the State must take further measures to ensure that the principle of the best interests of the child is fully integrated into all legislation relevant to children and applied in all political, judicial and administrative decisions, as well as projects, programmes and services, that have an impact on children.
**Health and Health Services**

The CRC Committee (1998 & 2006) has criticised the State’s implementation of children’s right to health and healthcare on a number of grounds. Firstly, it has highlighted the low rate of breastfeeding in Ireland, the prevalence of adolescent health-related problems, the continuing practice of Female Genital Mutilation by some immigrant communities, the lack of a comprehensive legal framework that addresses the health needs of children and the failure of the State to provide targeted resources for the development and maintenance of quality health care services.

More specifically, the CRC Committee (1998 & 2006), the Committee on Economic, Social and Cultural Rights (1999) and the Human Rights Committee (2014) have also criticised the lack of adequate programmes and appropriate services addressing the mental health needs of children and the high incidence of teenage suicide in Ireland.

**The Right to Education**

The CRC Committee (2006), the Human Rights Committee (2008 & 2014) and the Committee on the Elimination of Racial Discrimination (2005 & 2011) have all noted with concern that the vast majority of Ireland’s primary schools are denominational schools that have adopted a religious integrated curriculum, thus depriving many children of the option to attend a secular school. They have also criticised the State’s failure to eliminate discrimination in school admissions by amending the existing legislative framework which allows denominational schools to refuse to admit students on the grounds of religion.

The CRC Committee (2006) has also been critical that the ‘de facto’ cost of education and materials in primary schools is in some instances the responsibilities of parents.
4. The Multiple Barriers Faced by Marginalised & Vulnerable Children

<table>
<thead>
<tr>
<th>Issue raised by:</th>
<th>Children Belonging to the Traveller Community</th>
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<tbody>
<tr>
<td>Human Rights Committee (1993)</td>
<td>The CRC Committee (1998 &amp; 2006) has expressed concern about the inadequate measures adopted by the State to secure the rights of children belonging to the Traveller community. It noted in particular the difficulties faced by these children in securing their fundamental rights to education, housing and health services.</td>
</tr>
<tr>
<td>CRC Committee (1998)</td>
<td>These concerns have also been raised by the Human Rights Committee (1993, 2008 &amp; 2014), the Committee on Economic, Social and Cultural Rights (1999) and the Committee on the Elimination of Racial Discrimination (2005 &amp; 2011). These Committees have criticised the failure of the State to take affirmative action to ensure the equal treatment of the Travelling community and its child members, including its persistent refusal to recognise this community as an ethnic minority.</td>
</tr>
<tr>
<td>The Committee on Economic, Social and Cultural Rights (1999)</td>
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<tr>
<td>Committee on the Elimination of Racial Discrimination (2005)</td>
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<tr>
<td>Committee on the Elimination of Discrimination against Women (2005)</td>
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<tr>
<td>CRC Committee (2006)</td>
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<tr>
<td>Human Rights Committee (2008)</td>
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<tr>
<td>Committee on the Elimination of Racial Discrimination (2011)</td>
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<td>Committee against Torture (2011)</td>
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<tr>
<td>Human Rights Committee (2014)</td>
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</table>

Children Living in Poverty

Both the Committee on Economic, Social and Cultural Rights (1999) and the CRC Committee (1998 & 2006) have highlighted the high incidence of child poverty and homeless children in Ireland. The latter also noted that further comprehensive measures to reduce poverty are necessary to ensure that all children are protected against the negative impact of economic hardship on their development.

Refugee and Asylum Seeking Children

The CRC Committee (1998 & 2006), the Human Rights Committee (2008 & 2014), the Committee on the Elimination of Racial Discrimination (2011) and the Committee against Torture (2011) have all noted the difficulties faced by refugee and asylum-seeking children in securing their fundamental rights.
These Committees have all expressed concerns about the inadequate support, guidance and protection provided to children during the asylum process, with a particular focus on unaccompanied children or children separated from their parents. Both the Committee on the Elimination of Racial Discrimination (2011) and the Human Rights Committee (2014) have also raised concerns about the prolonged accommodation of asylum-seekers in Direct Provision centres, including children, which is not conducive to family life.

**Child Victims of Trafficking**

The Committee on the Elimination of Discrimination against Women (2005) has raised concerns about the trafficking of girls into Ireland, the lack of information on the extent of this problem and the absence of a comprehensive strategy to combat it. The CRC Committee (2006) and the Human Rights Committee (2008) have also criticised the lack of measures in place to combat the trafficking of children and to ensure the physical and psychological recovery and social reintegration of victims of trafficking, including the provision of shelter, counselling and medical care.

**Children in Conflict with the Law**

The CRC Committee (1998 & 2006), the Human Rights Committee (1993 & 2014) and the Committee against Torture (2011) have emphasised the incompatibility of certain aspects of the juvenile justice system with international human rights standards. In particular, disappointment has been expressed about the low age of criminal responsibility, the introduction of Anti-Social Behaviour Orders, the protection of children’s privacy during legal proceedings and the treatment of children deprived of their liberty.

**Child Victims of Abuse and Neglect**
The CRC Committee (2006) has criticised the child protection services in Ireland and their lack of a child-centred approach. It has highlighted the failure of the State to provide a seven day, 24 hour service to families and children at risk, to develop a comprehensive child abuse prevention strategy and to ensure that all persons leaving the care system receive appropriate aftercare. The delays in accessing support services for child victims of violence, abuse and neglect has also been identified as a key issue.

**Children with Disabilities**

The Committee on Economic, Social and Cultural Rights (1999 & 2002) has noted with regret that people with disabilities, including children, face discrimination in various contexts, such as education.

The CRC Committee (1998 & 2006) has also focused attention on the lack of measures adopted by the State to secure the rights of children with disabilities, including their active participation in the community and their access to necessary health services and educational facilities. The legal framework in Ireland also inadequately addresses the specific needs of children with disabilities, particularly as not all of the relevant legislative provisions have been implemented.

**Children Belonging to the Roma Community**

Both the CRC Committee (2006) and the Human Rights Committee (2014) have criticised the lack of data available concerning the Roma community in Ireland. The latter has also expressed its concern at the instances of discriminatory acts against this community, including the forced removal of Roma children from their families into State care on the basis of their appearance.
## 5. The Failure to Adequately Monitor & Address Violations of Children’s Rights

### Issue raised by:
- Committee on the Elimination of Discrimination against Women (2005)
- CRC Committee (2006)
- CRC Committee (2008)
- Human Rights Committee (2008)
- Committee against Torture (2011)
- Human Rights Committee (2014)

### Independent Monitoring Mechanisms
- Although the establishment of an Ombudsman for Children’s Office in Ireland has been welcomed, the CRC Committee (2006 & 2008) and the Committee against Torture (2011) have criticised the State for placing limitations on the complaints that the Ombudsman can investigate. Such limitations undermine the mandate of the Office and can leave particularly vulnerable children without access to an appropriate mechanism for lodging complaints.

### Effective Investigations & Remedies
- The State has received extensive criticism due to its consistent failure to respond effectively and appropriately to violations of children’s rights. For instance, both the Committee on the Elimination of Discrimination against Women (2005) and the Human Rights Committee (2008) have raised concerns about the prevalence of violence against girls in particular, the low prosecution and conviction rates of perpetrators and the high withdrawal rates of complaints.

- The Human Rights Committee (2014) and the Committee against Torture (2011) have also highlighted the lack of prompt, independent, thorough and effective investigations into all allegations of abuse, mistreatment or neglect of children in the Magdalene Laundries, children’s institutions, and mother and baby homes. Both Committees noted with concern the failure of the State to identify all perpetrators of the violations that occurred, the low number of prosecutions, and the failure to provide full and effective remedies to victims, including appropriate compensation, restitution, rehabilitation and measures of satisfaction.
By using Ireland’s engagement with these monitoring mechanisms to build an evidence base, a comprehensive and accurate picture can be drawn of the children’s rights infrastructure in Ireland and its compliance with the State’s international obligations. Cumulatively, the overarching issues identified in the Concluding Observations prevent broad and sustainable progress in the State’s protection of children’s rights. Thus, in light of the above discussion, the following section uses information available at the domestic level to document whether the State has adequately responded to the issues raised and demonstrated its commitment to advancing children’s rights in Ireland.

3.4 Ireland’s Record of Advancing Children’s Rights

In reflection of the discussed social, cultural and political influences historically at play in Ireland, progress in the advancement of a children’s rights culture has been slow. A key impetus for change was the ratification of the CRC in the early 1990s, which coincided with the beginning of an unprecedented spate of child-focused reforms. In the absence of the wholesale incorporation of the CRC into Irish law, these reforms have primarily included a series of legal and policy developments that affect particular areas of children’s lives. Although such an approach can result in an implementation process that is somewhat piecemeal, the volume and range of legislative and policy reforms instituted under the CRC have nevertheless been significant.

However, despite these developments the State has been criticised for its failure to treat all children as rights-holders and to adopt a child rights-based approach in policies and practices. As highlighted by Kilkelly, this inaction can result in children being denied their rights or those rights being ignored or underplayed by decision-makers on the ground. Thus, the following sections focus on assessing progress by examining the current children’s rights framework in Ireland, including the laws, structures, policies and practices that are in place. Ultimately, they question whether the State has truly embraced a rights-based approach in relation to children and provide an accurate picture of the reality of children’s lives in Ireland.

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143 See the section on Historical and Social Context of Children’s Rights in Ireland
3.4.1 Implementation in Law

This section examines the status of children in Irish law, including the extent to which children’s rights have been given expression in statute or constitutional form.

Constitutional Change

As the State’s preeminent source of law, the Constitution is the essential place to start this analysis. As highlighted above, the focus on the family unit in the Irish Constitution has had a significantly dampening effect on the advancement of children’s rights, leading to repeated calls for reform since 1980. Following the tabling of an amendment in 2012, the people of Ireland voted in favour of explicit constitutional recognition of children’s rights. This result is challenged in the courts on the basis that a referendum information campaign by the Government materially affected the outcome and resulted in the “Yes” result. Thus, the explicit enshrinement of children’s rights in the Irish Constitution currently remains contingent on the Court’s determination of this legal challenge.

Notwithstanding this, the extent to which the amendment will advance children’s rights remains unclear. In expressly recognising children as rights holders and tackling the current constitutional imbalance in favour of parental rights, the wording voted upon undoubtedly represents a step forward for children’s rights in Ireland. Indeed, the amendment states that the State will recognise and affirm “the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights.” It also makes provision for children to be adopted or placed voluntarily for adoption, and adjusts the threshold for State intervention in the family unit to protect the rights of the child. Thus, it has been described as a vital step towards the full implementation of the CRC and the progression of a culture that actively protects and safeguards the rights of children.

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147 The people of Ireland voted 58% to 42% in favour of the Thirty-first Amendment. Turnout was low at 33.5%.
149 Justice McDermott in the High Court rejected the applicant’s petition to overturn the Referendum result in 2013. Subsequently, in June 2014 he dismissed a legal challenge by the applicant to the constitutionality of laws governing challenges to the results of referendums. This case is now being appealed to the Supreme Court. See M. Carolan, “Woman Loses Challenge to Referendum Laws” *The Irish Times* (20 June 2014).
However, taken as a whole the amendment falls short of fully incorporating the CRC into Irish law. For instance, while child participation rights and the best interests principle are both included, they are only explicitly guaranteed in specific judicial proceedings (concerning child care, adoption, guardianship, custody and access). These rights are not given constitutional protection but rather are dependent on the enactment of further legislation. Furthermore, as a result of the broad nature of the provisions, the extent to which the amendment will protect children’s rights remains contingent upon the way in which these provisions are interpreted by the Irish courts.

The Children’s Rights Alliance has stated that “[a]fter a decade of reeling from abuse scandals the referendum draws a line in the sand, offering a new legacy for children in Ireland.”\(^\text{151}\) However, by failing to incorporate the CRC or to embrace more fully with the concept of giving explicit expression to children’s rights the referendum can also be regarded as a missed opportunity.

*Children’s Rights in the Courts*

The failure of the State to incorporate the CRC into domestic law means that it cannot be directly enforced in Irish courts. However, on rare occasions it is used as a source of interpretative guidance in judicial decision-making, leading to scant references to the CRC in Irish jurisprudence.\(^\text{152}\) The Supreme Court and the High Court have discussed and referred to the CRC in cases concerning children’s rights to education,\(^\text{153}\) adoption,\(^\text{154}\) and the immigration status of a foreign mother with a child.\(^\text{155}\)

“The failure of the State to fully incorporate the provisions of human rights treaties into national law means that their provisions are not binding at national level or justiciable in Irish courts. This means that a child who is denied his or her right to access education in Ireland for example, cannot rely on the right to education under Article 28 of the UN Convention on the Rights of the Child in the courts.”\(^\text{156}\)

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\(^{156}\) Edel Quinn: *Taking stock of Ireland’s international human rights reporting obligations* 26th June 2013 at www.humanrights.ie.
The provisions of the Irish Constitution are frequently considered to be at odds with the provisions of the CRC, due to the precedence that they appear to afford to the family unit over the rights of the child. This inconsistency has been deemed to call into question the extent to which the CRC can influence judicial decisions in Ireland.\textsuperscript{157}

\textit{Legislative Activity}

Following Ireland’s ratification of the CRC, a number of children’s rights principles have been incorporated into domestic law on an issue by issue basis.\textsuperscript{158}

Since the early 1990s the legal framework relating to children has grown exponentially, with substantial pieces of legislation being enacted in the area of child protection (the Child Care Act 1991 as amended), youth justice (the Children Act 2001 as amended), education (the Education Act 1998, the Education Welfare Act 2000 and the Education for Persons with Special Educational Needs Act 2004) and adoption (the Adoption Acts 1952-1998).\textsuperscript{159}

\textbf{Adoption:} The \textit{Adoption Act 2010} incorporated the Hague Convention on Inter-Country Adoption and strengthened the legislative framework relating to adoption, including the protection of children’s rights to have their views heard and best interests assessed during the adoption process.

\textbf{Sexual Offences:} Ireland has been praised for its leadership in the protection of children’s rights on the basis of the provisions in the \textit{Sexual Offences (Jurisdiction) Act 1996} to prosecute in Ireland Irish citizens charged with committing offences against children abroad.\textsuperscript{160}

\textbf{Youth Justice:} The \textit{Children Act 2001}, as amended by the \textit{Criminal Justice Act 2006}, set out a statutory framework for the treatment of children in conflict with the law which is largely in line with international standards.\textsuperscript{161} By enshrining that the detention of a young offender should be a measure of last resort, the \textit{Children Act 2001} gives effect to the language used in Article 37 of the CRC. Furthermore, in line with Article 3 of the CRC, the Act was amended

\textsuperscript{157} CRIN: ACCESS TO JUSTICE FOR CHILDREN: IRELAND (2014): P. 1.
in 2006 to require judges to take the best interests of the child into account when dealing with criminal cases concerning children.

**Child Protection:** The best interests of the child are explicitly promoted in a number of substantive provisions relating to child protection. The *Child Care Act* 1991 requires that child protection and welfare services are delivered with regard to the best interests of the child,\(^{162}\) and that in making decisions around Care and Supervision Orders the court shall regard the best interests of the child as the first and paramount consideration.\(^{163}\) The *Child Care (Amendment) Act 2011* also provides that the best interests of the child must be upheld in all matters relating to the formulating and varying of Special Care Orders.\(^{164}\) The Child and Family Agency is also obliged under its establishing act to have regard to the best interests of the child in the delivery of its services and furthermore is obliged to regard the best interests of the child as the paramount consideration when dealing with an individual child in the context of a child protection or adoption matter.\(^{165}\)

However, several areas of Irish child law have been criticized for omitting significant aspects of children’s rights or falling short of the standards enshrined in the CRC, for example; some laws have important provisions that have never been commenced whereas the provisions of others could be enhanced to afford greater protection to children, some legislative provisions are not adequately resourced to enable their full operation in practice and some pieces of legislation have been amended post enactment weakening their protection of children’s rights.

**Youth Justice:** The *Children Act 2001* was amended in 2006 to lower the age of criminal responsibility in particular cases.

**Right to Identity:** There are outstanding gaps in the statutory recognition of the child’s right to know his or her identity. This provides limited protection for children conceived by assisted reproduction using donor gametes and children who are adopted – they do not

\(^{162}\) As per the Child Care Act (no. 17) of 1991 at sec 3.

\(^{163}\) As per the Child Care Act (no. 17) of 1991 at sec 24.

\(^{164}\) The Child Care (Amendment) Act Number 19 of 2011 under sec 23H.

\(^{165}\) The Child and Family Agency Act (No. 40) of 2013 at sec 9 states that the Agency shall, when making decisions in relation to the performance of its functions have regard to the best interests of the child in all matters and that, notwithstanding the generality of this obligation, the Agency shall, in performing its functions in respect of an individual child under the Child Care Act 1991 or the Adoption Act 2010, regard the best interests of the child as the paramount consideration.
enjoy a statutory right to know the identity of their natural parents. For example, the Adoption Act 2010 does not include provisions for information and tracing. Thus, comprehensive legislation needs to be introduced which vindicates the child’s right to know his or her identity. Surrogacy and assisted reproduction, both of which have significant consequences for children’s rights to identity and more generally currently operate without a legislative framework.

**Right to be Heard:** This provision has not been adequately incorporated into Irish legislation, with limited recognition in the context of child care proceedings and in criminal law proceedings under the Children Act 2001. Legislative provision to hear the wishes of children where it is ‘appropriate’ or ‘practicable’ to do so does not provide adequate protection of the child’s right to be heard.

**Education:** The Education for Persons with Special Needs Act 2004 provides the statutory framework for educational planning and the delivery of educational services to people with special educational needs, including children. However, a number of the main provisions in this Act have not yet been brought into force, although it is ten years since its enactment. This inaction has been linked to the lack of political will to ensure the full commencement of the legislation, despite its potential to protect the rights and needs of children with disabilities.

A study on the legal implementation of the CRC in Ireland has noted that “…the approach of the legislature has been inconsistent, with the result that Ireland has only witnessed partial and imperfect transposition of CRC principles in primary legislation.” Although there has been some integration of children’s rights, including the best interests principle, further progressive reform has been linked to the weak place children have occupied in the Constitution. As highlighted by Hayes, Irish legislation relating to children has tended to

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be protectionist in nature, aiming to protect children and to meet their needs with respect to accessing health and education.¹⁷²

### 3.4.2 The Development of Key Structures and Bodies

In the two decades following the ratification of the CRC, a number of key structures and bodies affecting children’s lives and, more particularly, children’s rights, have been established. In its 2006 Concluding Observations, the CRC Committee welcomed the following;

- The establishment of the National Children’s Office and the National Children’s Advisory Council in 2001;
- The appointment of an Ombudsman for Children in 2004; and
- The establishment of the Office of Minister for Children in 2005.

In the subsequent years a number of further positive measures have been undertaken, including;

- The Health Information and Quality Authority was established in May 2007 to monitor Ireland’s health and social care services;
- The Department of Children and Youth Affairs (DCYA) was given full Cabinet status in June 2011;
- The Irish Youth Justice service was established in 2005, and is located in the DCYA and staffed by officials from DCYA and the Department of Justice and Equality; and
- Tusla, the Child and Family Agency, was established on a statutory basis on January 1st, 2014. Tusla removes responsibility for child protection services from the HSE and brings together the hitherto separate functions of the HSE Children & Family Services, the Family Support Agency, and the National Educational Welfare Board (to be discussed further below).

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The Department of Children and Youth Affairs (DCYA): One significant step forward for children’s rights in Ireland in recent years is the establishment of the DCYA, headed by a Minister with full cabinet status, in June 2011. This Department has the responsibility for a wide range of law and policy developments that relate to children and young people as well direct service delivery. It enhances the potential for the realisation of children’s rights by bringing a dedicated focus on children and young people to the very highest level of government. [Notably, there has been a junior ministry and a departmental unit responsible for developing and implementing national policy in this area since 2000].

According to Kilkelly, the creation of this Department has raised the profile of children’s issues at the political level and on the public agenda, particularly in the area of child protection (if not in children’s rights) – Minister’s full cabinet status means that there is specific budget provision for children’s services.\(^\text{173}\)

It has responsibility for coordinating the work of other government departments in areas that impact on children and young people. Given that children’s rights do not exist within an administrative silo but need rather to be considered across government, it is significant that in addition to matters within their own executive control, the harmonisation of provision and policy across Departments has also been stated as integral to the mandate of the DCYA.\(^\text{174}\)

It is also significant that a dedicated Participation Unit – with significant expertise and experience in this area - has been established within the Department.

Ireland has faced extremely challenging economic circumstances in recent years that need to be taken into account when examining how budgeting has complied with the State’s obligations under the CRC. In this regard, the Government notes that in spite of the downturn, funding to the DCYA has increased and Department of Education only decreased slightly in recent years: however, the Government acknowledges that demographic changes must be taken into account in this regard.\(^\text{175}\)


\(^{174}\) Department of Children and Youth Affairs, Ireland’s Third and Fourth Consolidated Report to UN Committee on the Rights of the Child (Dublin: DCYA, 2013) at Para 211.

\(^{175}\) Department of Children and Youth Affairs, Ireland’s Third and Fourth Consolidated Report to UN Committee on the Rights of the Child (Dublin: DCYA, 2013) Para 219.
**Ombudsman for Children:** One of the principal independent institutions in Ireland in human rights terms is the Office for the Ombudsman for Children (OCO). Established as an independent office under the Ombudsman for Children Act 2002, the OCO has a broad statutory remit to investigate complaints against schools and public bodies, to advise Government on the development of policy and legislation relating to children, to consult with children and to disseminate knowledge of children’s issues: it also has a specific mandate to promote and monitor the rights of Children in Ireland (add provisions of the OCO Act 2002).

Since the establishment of the Office, the Ombudsman for Children has played an important role in highlighting the issues that affect particularly vulnerable children, including separated children, children in detention and children in contact with the child protection services. The Ombudsman has also advanced children’s rights by engaging directly with service providers and has enhanced the awareness of administrative decision-makers about the importance of employing a children’s rights perspective.176

The Ombudsman’s powers include the ability to investigate complaints made by, or on behalf of, children against public authorities, including schools, hospitals and child protection services, but not prisons or the asylum system.

There a number of exclusions to the Ombudsman’s investigatory powers however, including where the issue is already the subject of legal proceedings (s 11(1)(iii)) and where the child is involved in the immigration or asylum process (s 11(1)(e)(i)). Complaints regarding the treatment of children by An Garda Síochána are also excluded under Part 2 of Sch 1 of the Act – Check OCO Annual Report 2013.

The Ombudsman also has no authority to intervene in legal proceedings as an amicus curiae or third party intervenor.177

**Human Rights Commission:** The Human Rights Commission has a more general mandate to promote human rights in Ireland including the rights of children: in 2011, a decision was


made to amalgamate the previously separate Equality Authority that worked towards the elimination of unlawful discrimination with the Human Rights Commission.

3.4.3 Implementation in Policy

Even though providing for legal enforceability of children’s rights is essential to implementation, legal measures alone are not sufficient. The realisation of children’s rights also requires a range of policy measures to be affected at national level.

In Ireland, although the family unit has always been a major focus of state attention in law and social policy, there was little in the way of direct policy relating to children in Ireland before the UNCRC was ratified in 1992. Since then, although pockets of effort and some significant achievements have been noted, a number of critics have identified gaps in children’s rights policy implementation and accountability. For example, Kilkelly notes the low levels of awareness among administrators about the impact of their policies on children’s rights, and Buckley describes how systematic shortcomings continue to hinder progress in the development of ‘intelligent,’ evidence-based children’s services.

As highlighted by Hayes, the CRC offers a valuable framework within which to develop, monitor and evaluate policy for children. Ireland has largely adopted a child protection and welfare, as opposed to a child rights, framework in the area of policy.

The National Children’s Strategy


In 2000, *The National Children’s Strategy 2000–2010: Our Children – Their Lives*, was adopted. The Strategy identifies six principles to guide all actions to be taken and it proposes a more holistic way of thinking about children.”

The *National Children’s Strategy 2000–2010* stated as its goals that:

1. Children will be heard
2. Their lives will be better understood
3. Children will receive quality support and services.

Although the *National Children’s Strategy* was influenced by the UNCRC, it too has been criticised as not being rights based, and also as having weak mechanisms for implementation and accountability and lacking tie-in to specific budgetary allocations. Overall, a lack of governmental understanding of children’s lives and a lack of investment in specific areas of children’s needs has been noted, in addition to difficulty in obtaining disaggregated data on expenditure that relates solely to children, all of which impact on the realisation of their rights across a number of domains.

**Better Outcomes, Better Futures**

In April 2014, the Department of Children and Youth Affairs published *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People, 2014-2020*. At the launch, An Taoiseach Enda Kenny TD, said that Ireland had a ‘shameful legacy of past failings’ and ‘we want to right this legacy.’ The framework, he said, would provide ‘a roadmap for Government.’

The framework coordinates policy relating to children and young people up to the age of 24 years, across all government departments. The vision statement of the framework is explicitly rights-based: ‘Our vision is to make Ireland the best small country in the world in which to grow up and raise a family, and where the rights of all children and young people

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are respected, protected and fulfilled; where their voices are heard and where they are supported to realise their maximum potential now and in the future.’

The first guiding principle of the framework is that children and young people’s rights will be central to the development of laws, policy and services that affect their lives, and that they will be involved in policy and decision-making processes. Furthermore, the framework is committed to the principles of equality and non-discrimination in access to, and participation in public services.

More regressively, the framework also adopts instrumentalist language in making a case for its support, using a future-based, economic model of investment in children and young people stating that ‘Investment in children and young people is akin to a capital investment from which significant returns flow.’ This approach suggests that protecting children’s rights is not a goal in itself, but rather because it brings economic benefit.

**Further Policies – Positive Measures**

In child protection policy, the seminal Children First that deals with the identification and reporting of child neglect and abuse also notes that the best interests of the child should be accorded priority in such matters. The Health Services Inspectorate, HIQA that is responsible for the development and enforcement of standards in child protection, also incorporates the best interests principle in its standards in the area.

In the area of education, a number of policy initiatives operate to combat inequality and discrimination. The most important of these is the Intercultural Education Strategy 2010-2015. In relation specifically to traveller children in education, based on the Report and Recommendations for a Traveller Education Strategy published in November 2006, the Traveller Advisory and Consultative Forum was established in late 2009. In relation to preschool services, Diversity and Equality Guidelines for Childcare Providers was published in

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190 Relevant HIQA standards include *National Standards for Children’s Residential Centres; National Standards for Foster Care; National Standards for the Protection and Welfare of Children; and Standards and Criteria for Children Detention Schools:* these may be accessed at www.hiqa.ie.
2006 and funding has since been made available to fund equality and diversity training for pre-school providers.

In respect of the early survival and development of children, free maternity care is provided to pregnant women and infants under the Mother and Infant Scheme while the Public Health Nurse Service provides screening and support visiting 82.6% of children within 48 hours of their discharge from hospital and providing further visits where necessary. Mothers are entitled to 26 weeks paid maternity leave and a further 16 weeks unpaid leave; and a scheme for self-employed also provided under the Maternity Protection Act 1994. Parental leave can be taken by either parent for a total of 14 weeks for any child up to 8 years (or up to 16 where the child has a disability).

In a context however, where suicide and self-harm levels among children and young people in Ireland are a major concern with young males showing a particularly high prevalence of suicide, the implementation of Reach Out: National Strategy for Action on Suicide Prevention 2005-2014 is overseen by the National Office for Suicide Prevention (NOSP) that commissions research, delivers suicide intervention skills training and funds a variety of initiatives in the area.191

**Further Policies – Failure to Progress**

Despite the positive policies highlighted above, there are a number of gaps which need to be addressed. For example, there is no national policy dedicated to young carers and, although a number of policy developments related to health, disability, children and their families, are relevant, the notion of the young carer is largely absent in policy and research literature, resulting in the neglect of their rights and needs.”192

Dozens of reports have highlighted the fact that early childhood education and care is under-developed in Ireland, which has no history of comprehensive or universal provision. While the National Childcare Investment Programme 2006–2010, under the remit of the Office of the Minister for Children, offers funding in this area, it does not represent a

191 Details of the activities of the NOSP including suicide rates broken down by gender, age, etc. are available at www.nsop.ie.
coherent policy response towards early childhood education and care, which is driven by the child’s rights to development, care, education, health and wellbeing and play.”

Kilkelly writes that the area of mental health has been neglected for decades, leading to serious gaps in services and supports for children placing their lives as well as their health at serious risk. In 2002, a Minister with special responsibility for mental health was appointed, and in 2006, the mental health strategy *A Vision for Change* was adopted. This policy requires the establishment of child and adolescent mental health teams at local level, a commitment to introduce in-patient beds in every region and early intervention teams for children with autism. Meaningful progress has not been made in this area, and the rights of children (Arts 6, 24, CRC) continue to be placed at serious risk. Urgent implementation of these recommendations is necessary.

In addition, the Committee on the Rights of the Child has highlighted the need for multi-sectoral approaches to the promotion and protection of health among young people. Yet, serious policy failures, mainly due to poor co-ordination, have resulted in children’s right to health care being inadequately protected and promoted (Arts 3, 6, 24, CRC). While the Government has acknowledged that obesity has become a significant health problem for Irish children (some 300,000 are currently estimated to be overweight or obese), there is still an absence of joined-up thinking in relation to the implementation of the recommendations of the National Task Force on Obesity. For example, the Government has failed to address obesity as a matter of health promotion among young people and their families, or to address the barriers that prevent many young people from exercising or taking part in sport. It has also failed to ensure that all schools have the necessary equipment and resources to make physical education a central part of the curriculum. In relation to school involvement in tackling obesity, there has been a failure to put the necessary supports in place both in relation to nutrition/school means and physical education. Research by the Department of Public Health in the HSE, published in 2005, highlighted a number of barriers to children being active in schools.”

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3.5 Conclusion

Ireland has made clear progress in the implementation of children’s rights since ratifying the UNCRC, reflected in the adoption of two national strategies for children and young people,\textsuperscript{196} the establishment of a robust model of Ombudsman for Children in 2004, the creation of the Office of the Minister for Children and Youth Affairs in 2005, and the appointment of a full cabinet Minister with a new Department of Children and Youth Affairs (DCYA) in 2011. Investment in a longitudinal study on children’s lives – Growing up in Ireland – also represents a hugely important commitment to understanding children’s lives and promoting evidence-based policy. The more recent development of the Child and Family Agency is also seen as a watershed in improving the situation of children in Ireland,\textsuperscript{197} and the new policy framework marks a turning point in coordinated government strategy in law, policy and services for children and young people.\textsuperscript{198} It is notable that many of these recommendations arose from the process of engaging with international human rights bodies, notably the Committee on the Rights of the Child. Pressure brought to bear by national organisations, including many of the Objective 2 grantees, was key in bringing these changes about.

At the same time, Ireland can be criticised as a country where progress has been made in policy rather than legislative terms.\textsuperscript{199} The fact that many of the persistent recommendations of the treaty-monitoring bodies have not been given sufficient weight by the Government and that outstanding issues remain to be addressed suggests that a glass ceiling has been reached. The failure to tackle these remaining issues – some of which are connected to the cultural and social context - suggests a lingering resistance amongst politicians, policy-makers and the general public in accepting children as full human rights


\textsuperscript{197} Children’s Rights Alliance (27/2/13): ‘The Government has indicated that the agency will develop its service responsibility on a phased basis. At its commencement in 2013, the agency will be responsible for child welfare and protection services (including family support and alternative care); child and family-related services (including pre-school inspections, and domestic, sexual and gender-based violence services); the Family Support Agency; the National Education Welfare Board; and community-based psychology services. Additional services may be transferred after 2013 following further consideration. These services may include Child and Adolescent Mental Health Services, Public Health Nursing and Speech and Language Therapy. Children detention schools are also to be considered for inclusion after the initial transfers.’ http://www.childrensrights.ie/resources/new-child-and-family-support-agency-must accessed 8/8/13.

\textsuperscript{198} Op cit, DCYA 2014.

holders and attaching real value to the rights-based approach. Such resistance will continue to create a barrier to further progress.

A hugely important part of this process, therefore, is to document and understand how Ireland’s children’s rights organisations have effected the change highlighted above. It is equally important to understand why and where progress has not been made with a view to identifying the challenges and barriers that have to be addressed if the advancement of children’s rights in Ireland is to continue. This is as important for Ireland’s story on the international stage – a country needing to redeem its reputation in this area - as it is for Ireland’s children right here, right now.

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