



The Twenty-Eighth Amendment of the Constitution

Submission to the Joint Committee on the Constitutional Amendment on Children

Concise Guide

2008





The Children's Rights Alliance is a coalition of over 80 non-governmental organisations (NGOs) working to secure the rights and needs of children in Ireland, by campaigning for the full implementation of the UN Convention on the Rights of the Child. It aims to improve the lives of all children under 18, through securing the necessary changes in Ireland's laws, policies and services.

Membership

The Alliance was formally established in March 1995. Its membership, from which Board Members are elected at the Alliance's AGM, consists of a diverse range of groups, including child welfare agencies and service providers; child protection groups; academics; youth organisations; family support groups; human rights organisations; disability organisations; parent representative organisations; community groups and other organisations interested in children's rights. The Alliance's policies, projects and activities are developed through ongoing collaboration and consultation with its member organisations.

Vision

Ireland will be one of the best places in the world to be a child

Mission

To realise the rights of children in Ireland through securing the full implementation of the UN Convention on the Rights of the Child

Strategic Aims

- Bringing about a shared vision that will realise and protect children's rights in Ireland
- Securing legislative and policy changes to give meaningful effect to the UN Convention on the Rights of the Child
- Securing the effective implementation of Government policies relating to children

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THIS GUIDE

This guide uses the same structure as the Alliance's full submission, in the sense that it follows the arrangement of the current proposed wording before the Joint Committee on the Constitutional Amendment on Children (which has been reproduced on the following page, for the reader's convenience).

Each section relates to the specific provision in the current proposed wording, as follows:

Natural and imprescriptible rights of all children	(Provision 1)
State intervention in family life	(Provision 2.1)
Adoption of children in long-term care	(Provision 2.2)
All children eligible for adoption	(Provision 3)
Best interests of the child	(Provision 4)
Soft information	(Provision 5.1)
Absolute and strict liability	(Provision 5.2 & 5.3)

Each section (from pp. 3-11) deals with the reasons put forward for the need for constitutional reform, followed by a brief summary of the Alliance's response and its key recommendations.

INTRODUCTION

The Children's Rights Alliance, a coalition of over 80 NGOs, submitted its observations to the Joint Committee on the Constitutional Amendment on Children on 31 January 2008. This is a concise version of the Alliance submission, primarily for member organisations but also for any individual interested to learn more about the proposed constitutional amendment.

The Alliance's full submission deals with each provision of the proposed wording of the constitutional amendment in turn, together with the relevant section of the Committee's Orders of Reference. The Committee is using the same wording (for the constitutional amendment) as that published for the Twenty-eighth Amendment of the Constitution Bill 2007 – namely Article 42(A), which can be found on p.2 of this guide.

The Alliance believes strongly that the Committee should consider the proposed amendment of the Irish Constitution as a 'children's rights' amendment and not, as it has been referred to in some quarters, as a 'child protection' amendment. In other words, the amendment must be broader than child protection alone.

In brief, the Alliance believes that the amendment should go further than the Twenty-eighth Amendment of the Constitution Bill 2007. It should include express rights for children, which would encapsulate the key principles of the UN Convention on the Rights of the Child (UNCRC), ratified by Ireland in 1992. In this regard, it should include a non-discrimination provision; the right of the child to be heard; the right to identity; and certain socio-economic rights. The amendment should ensure that 'the best interests of the child' is the paramount consideration in all actions concerning children. Furthermore, it should place a positive duty on the State to support vulnerable children and families.

Calls for a constitutional amendment are not new: it was first discussed in the Oireachtas over 30 years ago. Over recent years, the public has made it clear that they would like to see the constitutional position of children strengthened and that children be given more protection. The legal profession, academics and others working professionally with children, as well as political parties and non-governmental organisations, have also raised these concerns. A number of Supreme Court cases, over the past ten years, have also highlighted the inadequacy of the current constitutional recognition afforded to children's rights.

It should also be noted that the current provisions in the Constitution, relating to children, reflect the historical period in which it was written. The Ireland of 1937 was a time when it was commonly held that children should be 'seen and not heard'; corporal punishment in schools was the norm and the 'family' was a marital family headed by the father. The Constitution now needs to be amended to reflect some of the more evolved thinking on children's rights that has occurred over the past 70 years.

Strengthening the rights of children in the Constitution has the potential to have a real and positive impact on the lives of all children and their families in Ireland, now and in the future. It is important that the amendment complies with the UNCRC, is couched in rights-based language and is expressed in language that will be unambiguous for the legal profession.

The following sections detail the above position.

**THE WORDING OF THE 2007 BILL WHICH IS CURRENTLY BEING EXAMINED BY THE
JOINT COMMITTEE ON THE CONSTITUTIONAL AMENDMENT ON CHILDREN**

Article 42(A)

1. The State acknowledges and affirms the natural and imprescriptible rights of all children.

2. 1° In exceptional cases, where the parents of any child for physical or moral reasons fail in their duty towards such child, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

2° Provision may be made by law for the adoption of a child where the parents have failed for such a period of time as may be prescribed by law in their duty towards the child, and where the best interests of the child so require.

3. Provision may be made by law for the voluntary placement for adoption and the adoption of any child.

4. Provision may be made by law that in proceedings before any court concerning the adoption, guardianship or custody of, or access to, any child, the court shall endeavour to secure the best interests of the child.

5. 1° Provision may be made by law for the collection and exchange of information relating to the endangerment, sexual exploitation or sexual abuse, or risk thereof, of children, or other persons of such a class or classes as may be prescribed by law.

2° No provision in this Constitution invalidates any law providing for offences of absolute or strict liability committed against or in connection with a child under 18 years of age.

3° The provisions of this section of this Article do not, in any way, limit the powers of the Oireachtas to provide by law for other offences of absolute or strict liability.

NATURAL AND IMPRESCRIPTIBLE RIGHTS OF ALL CHILDREN

Why?

The proposed amendment contains a general statement which says that 'the State acknowledges and affirms the natural and imprescriptible rights of all children'. This is the Government's attempt to set out the rights of the child in our Constitution, as outlined in the Taoiseach's speech on 3 November 2006.

However, the Alliance believes that this statement will do little to strengthen children's rights in the Constitution, as it does not require the State to defend and vindicate them. Moreover, as this acknowledgement already exists elsewhere in the Constitution it adds little value.

In addition, there is no clear meaning of the term 'natural and imprescriptible rights' and very few judgements have expanded on its meaning and scope.

The Alliance Response

- The Alliance calls for this provision to be revised and strengthened and **proposes the following two options:**
 - Option 1: to insert a number of express rights for children into the Constitution to encourage the further development of children's rights and replace existing fundamental rights' provisions in the Constitution; or
 - Option 2: to insert a clause into the Constitution which would incorporate the UN Convention on the Rights of the Child (UNCRC) and ensure that it be translated into domestic legislation, such as a children's rights act.
- The **Alliance's preference is Option 1, the insertion of express rights.** The amendment should contain a number of express rights, namely: non-discrimination; right to be heard; right to identity; a provision to protect the survival and development of the child (survival rights) and certain specific socio-economic rights.
- Option 1 would **incorporate some of the key principles of the UNCRC** into the Constitution and also recognise the child as a 'person' with individual rights, to which separate consideration must be given. This would also **allow for the balancing of a range of rights**, including the rights of the child, the personal rights of parents and the rights of the family.
- The Alliance believes that, owing to the special and dependent position of children in society, there is a clear need to **insert a number of socio-economic rights** into the Constitution, particularly in light of the growing reluctance of the Supreme Court to recognise these rights. Socio-economic rights that should be inserted include:
 - the right to the highest attainable standard of health;
 - the right to an adequate standard of living, particularly with regard to nutrition, clothing and housing;
 - a provision recognising the rights of children with disabilities; and
 - a provision clarifying the right of all children to free primary education and extending this right to second level education.
- **The Alliance believes that this is possible and realistic.** In utilising the language of international human rights law, a balance could be struck between the role of the Executive (which formulates laws and policies and determines public expenditure), and the role of the courts (which ensures these rights are upheld).
- These provisions should place an obligation on the State to take measures, including the introduction of specific legislation, to achieve '**progressive realisation**' of these rights, which recognises that the State may not be able to achieve their full realisation within a short period of time. This would allow the judiciary to assess whether the State has been effective in its use of available resources.

STATE INTERVENTION IN FAMILY LIFE

Why?

The UN Convention on the Rights of the Child places a positive duty on the State to protect and support children and their families. The Alliance believes that the best way for the State to protect children is to support and work in partnership with families, and invest in early intervention and prevention initiatives. The amendment should ensure that the State is obligated to do this and is also empowered to put in place a robust child protection system.

Currently, the State's power under the Constitution to intervene in family life varies depending on the marital status of the child's parents. For example, when a court looks at the circumstances of a child of marital parents, it presumes that the child's best interests are served within his or her own family, while, in the case of a child of unmarried parents, a court focuses on what it deems to be in the welfare and best interests of the child. It is important to establish that all children are treated equally, regardless of their family structure.

The Alliance Response

- The Alliance believes that the best way for the State to protect children is by supporting and working in partnership with families through **early intervention and prevention initiatives**.
- A constitutional amendment should place a **positive duty on the State to adequately and comprehensively protect all children** who have been abused or who are at risk of abuse.
- The existing threshold for **State intervention should be proportionate**, available to all children and be used in the context of the best interests of the child principle. The inclusion of the term 'proportionate' would support best practice, where proceedings to take a child into care should only be embarked upon as a measure of last resort, after a range of other family supports and interventions have been considered or undertaken.
- Consideration should be given to **redrafting the phrase 'for physical or moral reasons' in relation to parental failure**, as it has been problematic in some cases where the State has endeavoured to intervene to protect the welfare and interests of the child. However, the Alliance believes that any proposed amendment should be worded carefully to ensure that this article continues to guard against State intervention (including the granting of an adoption order) solely on the grounds of the poverty of his or her parents.

ADOPTION OF CHILDREN IN LONG-TERM CARE

Why?

At present, given the rights afforded to the marital family under Article 41 of the Constitution, it is very difficult for a child born to married parents to be adopted in circumstances where the child has been abandoned by them. As a result, a child in this situation is unable to be adopted, and is potentially deprived of a 'second chance' of a stable and secure family life.

Despite having no regular access to their married parents, these children, under law, continue to 'belong' to them and are not 'free' for adoption. Indeed, they can only be 'freed' for adoption once their married parents are legally branded as 'failing' in their duties. This issue potentially affects several hundred children in foster care, who have grown up with little or no regular contact with their birth parents but are unable to be adopted by their foster parents. The result is that, to date, only a handful of adoptions of this kind have taken place.

The Alliance Response

- This reform is required to **comply with the UN Convention on the Rights of the Child**, specifically the right of the child to alternative care if they are deprived of their family environment and to receive these rights without discrimination of any kind.
- The Alliance recommends that the wording in the 2007 Bill – 'Provision *may* be made' – should be replaced with: 'Provision *shall* be made'. This would **require the Oireachtas to legislate on this issue** as opposed to merely providing it with the option to do so.
- In advance of the proposed referendum, **the heads of a Bill should be published** to address certain legislative issues, such as what constitutes a failure of duty on the part of the parents in respect of their child.
- Any new legislation must ensure that the key factor, in any adoption of this kind, should be that the parent has failed to maintain contact with their child for a specified period of time. This requires **a definition of 'abandonment'**. This is extremely important to allay any fears from parents who may feel inadequately supported to maintain a relationship with their child. Legislation should also provide that all such adoption orders **require a court hearing** in order for parents to be given the opportunity to challenge the proposed adoption. Moreover, a **Guardian *ad Litem*** should be appointed to represent the views and best interests of the child in all such proceedings.
- In the development of any such legislation, it is essential that a system be put in place to **ensure parents are adequately supported** to maintain contact with their children who are in care and, where appropriate, to play an active role in their lives.
- The Alliance believes there is a need to **introduce legislation to allow for open, or semi-open adoptions**, which would enable some level of contact between the child and his or her birth parents.

ALL CHILDREN ELIGIBLE FOR ADOPTION

Why?

At present, only children born to non-marital parents are eligible to be voluntarily placed for adoption by their parents. Reform is needed to ensure that all children, including those in marital families, are provided with a 'second chance' of family life. There is no public information on the numbers of children, within a marital family, who are currently affected by this issue, but examples may include the adoption of a child by the new spouse of a widowed parent or the adoption of a child at the request of the parents due to a serious disability or terminal illness.

Currently, such adoptions would be unconstitutional as they would be deemed incompatible with the inalienable nature of the marital family's constitutional rights under Articles 41 and 42.

The Alliance Response

- As also highlighted in the previous section on adoption of children in long-term care, this reform is required to **uphold the UN Convention on the Rights of the Child**, specifically the right of the child to alternative care if they are deprived of their family environment and to receive these rights without discrimination of any kind.
- As also highlighted in the previous section, the Alliance recommends that the wording in the 2007 Bill – 'Provision *may* be made' – should be replaced with: 'Provision *shall* be made'. This would **require the Oireachtas to legislate on this issue** as opposed to merely providing it with the option to do so.
- A **heads of a Bill should be published** in advance of the proposed referendum to address certain legislative issues, such as requiring the consent of both parents and ensuring that the paramount consideration in any such adoption would be the **best interests of the child**.

BEST INTERESTS OF THE CHILD

Why?

The best interests principle has operated as part of child and family law since the 1960s and is one of four overarching principles of the UN Convention on the Rights of the Child. In the UNCRC, it is presumed that a child's best interests are best served by being with their parents wherever possible, and that they have the 'primary responsibility' for their upbringing.

However, the courts have found themselves bound by Article 41 and Article 42 of the Constitution, which places the interests of the *marital family* above those of the child. Hence, in any conflict between the interests of the marital family and the interests of the child, the rights of the family take precedence. Consequently, the courts are unable, at the moment, to adopt the principle of the best interests of the child as the key principle guiding their decisions.

The Alliance Response

- The Alliance is of the firm opinion that **the best interests of the child should be the paramount consideration** in all actions concerning children, whether by legislative, judicial or administrative authorities. **This should not be restricted by the marital status of the child's parents.** Consequently, if a conflict arises between the interests of the family or the State and the interests of the child, the courts should balance the interests of all parties, but give paramount consideration to the child's best interests.
- The best interests of the child principle should take the form of a **direct constitutional principle or right**, rather than merely providing the Oireachtas with the option to enact legislation on the issue. In doing so, this would mean that it would have the same constitutional status as other provisions.
- Consideration needs to be given as to whether the existing Article 41, with its focus on the family based on marriage, will continue to present an obstacle in giving paramount consideration to the best interests of the child. Such consideration is also necessary in the context of inserting a non-discrimination provision, as recommended in our submission (see p.3 of this guide).
- The best interests of the child principle should **take into account the child's own views** and in accordance with the age and maturity of the child.

SOFT INFORMATION

Why?

At present, there is no system in Ireland for the collection and exchange, by relevant authorities, of soft information relating to employees and volunteers whose work includes substantial unsupervised access to children. Soft information is defined as relevant information, other than criminal convictions, that has come to the attention of the State authorities and indicates a concern over the suitability of an individual to have unsupervised access to children, such as an investigation for child abuse, being charged but found not guilty of child abuse or dismissal from work due to inappropriate behaviour towards a child.

In order to introduce a comprehensive vetting system, there have been numerous calls to allow the Garda Central Vetting Unit to release soft information. This would operate in addition to the current practice of releasing details of criminal convictions.

Legal opinion differs as to whether constitutional reform is necessary to provide for the collection and exchange of soft information in relation to the endangerment, sexual exploitation or sexual abuse of children.

The Alliance Response

- The Alliance **supports the introduction of a comprehensive child protection system that incorporates the use of 'soft information'** within its vetting process. However, it believes that **this information should not be distributed to the public**, on the lines of 'Sarah's Law' in the UK and 'Megan's Law' in the US.
- The wording of the constitutional amendment should strike a **proportionate balance** between protecting children and respecting the individual's right to fair procedures. In advance of a referendum, **the heads of a Bill should be published** outlining the proposed changes.
- Safeguards will need to be in place to ensure that the individual concerned is notified of the allegation, which forms the subject of the 'soft information' exchange of information. Moreover, **the individual concerned should also be given the opportunity to respond and to appeal their inclusion on a 'soft information' register** to an independent third party, such as a judge. This is necessary to ensure that the soft information used is accurate and to protect the individual's right to a good name. Measures must also be put in place to guard against malicious, unmerited or speculative allegations.
- It will be necessary to **establish an independent body**, with stringent controls, to govern the collection and exchange of soft information, in order to ensure public confidence in the vetting system.
- It will be necessary to ensure that **children receive an equivalent level of protection in both North/South jurisdictions**.

ABSOLUTE AND STRICT LIABILITY

Why?

Calls to include provisions in relation to absolute and strict liability in the Constitution came about as a result of the 2006 CC case, which involved a 19-year-old male being found guilty of statutory rape of a 13-year-old girl. The Supreme Court found the ruling, based on the 1935 Criminal Law Amendment Act, to be unconstitutional as it failed to allow for a defence of 'mistake as to age'. In response, the Oireachtas passed the Criminal Law (Sexual Offences) Act 2006, replacing the previous offence of unlawful carnal knowledge, commonly known as statutory rape, with the introduction of two new offences: defilement of a child under 15 years and defilement of a child under 17 years. The new 2006 Act now allows for a defendant to argue he or she honestly believed that the child had attained the relevant age.

This provision has since proven to be the most controversial in the media as it has been linked with the public outcry over the A case, which involved a 41-year-old man who had sought to quash his three year sentence for the statutory rape of a 12-year-old. However, the release of Mr A and others similarly convicted, related to the fact that the offence (of statutory rape), for which they were convicted, no longer existed. Furthermore, this has highlighted to the Alliance the fact that, when prosecuting such cases, there should be a distinction between the offence of statutory rape and other sexual offences committed against children.

This is a complex issue and the Alliance is continuing to draw up further recommendations, not included in its original submission, on how to best address the current gaps in this area of law. *Please refer to the glossary to establish the difference between the offence of unlawful carnal knowledge (statutory rape) and the offence of rape.*

The Alliance Response

- The Alliance wants to see a **robust child protection system** in place to protect children from all abusive or exploitative sexual activity. However, the Alliance believes that criminal justice legislation should not be used as a mechanism to deter young people from engaging in consensual sexual activity; **sexual health education** would be more appropriate.
- No child under 18 years of age should be prosecuted for an offence of strict or absolute liability. If they are prosecuted for an offence of 'statutory rape' the possibility of relying on **the defence of 'mistake as to age' should be open to them, as children under 18 years of age**. Obviously, this would not apply in cases where there is an additional abusive element or where there are questions as to whether the child consented, or had the capacity to consent. In such cases, **where there is an additional abusive element, prosecutions should be brought under legislation dealing with rape or sexual assault**. Moreover, **new offences should be considered** in order to deal with these particular situations.
- The Alliance believes that **provisions of the Criminal Law (Sexual Offences) Act 2006 need to be more tightly constructed to ensure that the defence is more difficult to assert**. The Act should be amended to ensure that: first, the burden of proving the defence of 'honest belief' clearly shifts onto the defendant to prove that he/she honestly believed that the child had reached the relevant age; second, to clearly state that such a belief must be reasonable; and third, that the defendant had taken every reasonable step to ascertain the age of the complainant.
- The 2006 Act includes broader offences, including buggery, aggravated sexual assault and Section 4 Rape and **consideration should be given to the appropriateness of including broader offences within the definition of 'defilement of a child'**. This confuses the offence of statutory rape with other offences which involve abusive elements additional to the fact that the child was under the age of consent. Such offences should be dealt with and prosecuted separately. Furthermore, **consideration should be given to the need to codify sexual offences against children and to create new offences where gaps in legislation currently exist**.

- Recommendations made in November 2006 by the Joint Committee on Child Protection, in relation to the criminal trial process, should be implemented as a matter of priority. These include ensuring that **all legal proceedings take place in an age appropriate and child friendly manner and that personal cross examination of child complainants, and child witnesses, is prohibited in sexual offence cases against a child.**
- The Criminal Evidence Act 1992 contains special provisions to protect children when giving evidence in violent cases, including sexual offences. Unfortunately, these have not been fully implemented or properly resourced. Indeed, the 1992 Act should actually be amended to **ensure facilities, such as video-link and any other protective measures, are provided to any witness under the age of 18.** The 2006 Act should also be amended to provide safeguards in relation to the type of evidence which may be introduced at trial, as well as the depth of questioning allowed during cross-examination.
- **All prosecution or defence lawyers and judges, involved in the cases of sexual offences against children, should receive training** to enable them to perform their respective functions in the manner least traumatic for child complainants and witnesses. Moreover, such **cases should take place as quickly as possible.**

GLOSSARY

Absolute/Strict Liability: These terms have been used interchangeably but there is no clarity as to the definitions of these terms, as they have different meanings in various jurisdictions, in case law, in academic texts and among lawyers. However, what is clear is that if, following a constitutional amendment, the State were to legislate for either strict or absolute liability in relation to sexual offences against a child, the defence of mistake as to age, provided under the Criminal Law (Sexual Offences) Act 2006, would be thereby removed.

Best interests of the child: This is one of the four general principles upon which the UN Convention on the Rights of the Child is based. Article 3 states: 'In all actions concerning children, the best interests of the child shall be a primary consideration'. It should be noted that other articles express this principle in stronger terms, such as a 'necessary requirement' or as the 'paramount consideration'. The principle itself has not been defined, which allows for a balancing of different interests and considerations — though some articles in the UNCRC do give guidance in applying the principle in some specific circumstances.

Child Protection: Refers to the protection of children from harm, neglect and abuse.

Children's Rights: While the fundamental rights of children are recognised as part of the general recognition of human rights in the Universal Declaration on Human Rights and subsequent UN human rights Covenants, the phrase 'children's rights' usually refers to those that are found in the UN Convention on the Rights of the Child and reflect the special needs and perspectives of the child. Children also have rights under domestic law.

Executive: The branch of government charged with putting into effect a country's laws and the administering of its functions.

Express rights: This refers to 'rights' which are explicit in the Constitution rather than implied or left to inference.

Guardian *ad Litem*: Provides children, involved in proceedings, with an independent voice in court. A Guardian *ad Litem* — literally meaning Guardian at Law — is not a lawyer but a person with expertise in working with children, usually with a social work qualification. Their role is to independently establish the wishes, feelings and interests of the child, ensure that the constitutional and statutory rights of the child are complied with, and ultimately make recommendations to the court on these matters.

Inalienable: Something that cannot be 'transferred', 'surrendered' or 'removed'.

Non-discrimination: A non-discrimination clause for children refers to the right of every child to enjoy all their rights without discrimination of any kind and irrespective of differences relating to race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or any other status.

Oireachtas: The Irish Parliament.

Orders of reference: The orders of reference is a list of tasks, duties and rules that an Oireachtas committee must observe in order to fulfil its remit.

Positive duty: Positive rights impose a 'positive duty' on the State to take active steps, including the provision of resources necessary to vindicate such rights.

Progressive realisation: Article 4 of the UN Convention on the Rights of the Child includes the concept of progressive realisation in relation to economic, social and cultural rights. 'Progressive realisation' recognises that States may not be in a position to guarantee these rights immediately, but that they should give priority to the most disadvantaged groups and take 'progressive' steps, over time, towards the full 'realisation' of these rights.

Proportionate: In order to assess whether an action is proportionate to its objectives, the courts have developed a proportionality test. For example, in child care proceedings, where the State has intervened in family life, the court will assess whether an appropriate balance has been struck between the interference with the right to family life and the aim of protecting the interests and the rights of the child.

Rape: Rape occurs where a man penetrates, or continues sexual intercourse with a woman and the woman is not consenting, and where the man knows she is not consenting or, being aware that she may not be consenting, does not abstain from or discontinue the act. It should be noted that this legal definition is gender specific.

Statutory Rape: Statutory rape is a descriptive, *non-legal* term which is used to refer to the offence of having sexual intercourse, or attempted sexual intercourse, with a girl under 17. Consent is not a defence to this offence. In legislation, this was formerly referred to as unlawful carnal knowledge under the Criminal Law Amendment Act, 1935. This has now been redefined as 'defilement of a child' in the Criminal Law (Sexual Offences) Act 2006, which also broadened the scope of the offence to include sexual offences against children which have an additional abusive element.

Right to be heard: The UN Convention on the Rights of the Child identifies children and young people as contributing participants to decisions affecting their own lives and to their communities and societies. This understanding is presented through a group of articles in the UNCRC that are often referred to as children's 'participation rights'. Principal among these is Article 12, which describes children's and young people's right to have a voice and to be heard.

Right to identity: Under Article 8 of the UN Convention on the Rights of the Child, the State has an obligation to protect and, if necessary, re-establish the basic aspects of the child's identity (name, nationality and family relations).

Rights-based language: This refers to language which reflects a 'rights based approach', which essentially integrates the standards and principles of the international human rights system into the plans, policies, procedures and processes of government.

Socio-economic rights: Socio-economic rights, a term often used interchangeably with 'economic, social and cultural rights', are the core conditions necessary to live with dignity and participate in society. These include the right to food and nutrition, to housing, to clean and safe water, and the right to social assistance and security. The UNCRC also includes a number of socio-economic rights, such as the right to the highest attainable level of health, to an adequate standard of living and to education.

Supreme Court: The Supreme Court is the court of final appeal. It has the power under the Constitution to decide on the constitutionality of a bill, referred to it by the President.

Survival rights: Article 6 of the UN Convention on the Rights of the Child states that every child has the inherent right to life and the state has an obligation to ensure the child's survival and development.

Twenty-Eighth Amendment to the Constitution Bill 2007: Although this Bill lapsed with the dissolution of the 29th Dáil in May 2007, the wording of the Bill is the current proposed wording before the Joint Committee. The Bill also includes the proposed wording for a new article (42A).

UN Convention on the Rights of the Child (UNCRC): The UN Convention on the Rights of the Child was adopted by the United Nations General Assembly on 20 November 1989 and entered into force on 2 September 1990. The basic premise of the UNCRC is that children (all human beings below the age of 18) are born with fundamental freedoms and the inherent rights of all human beings. It contains 40 substantive articles and 14 procedural articles relating to its implementation. These rights fall into four broad categories:

- subsistence rights (food, shelter and health care);
- development rights (education and freedom of thought, conscience and religion);
- protection rights (protection from abuse, neglect or exploitation); and
- participation rights (taking an active role in community and political life.)

The UNCRC has been ratified (a formal declaration of agreement) by more States than any other human rights instrument. Ireland ratified it in 1992. Each State must submit periodic reports to the UN Committee on the Rights of the Child on its progress in implementing the UNCRC. The UNCRC is not directly enforceable in Ireland as it has not been made part of our domestic law.



The Children's Rights Alliance is a coalition of over 80 non-governmental organisations (NGOs) working to secure the rights and needs of children in Ireland, by campaigning for the full implementation of the UN Convention on the Rights of the Child. It aims to improve the lives of all children under 18, through securing the necessary changes in Ireland's laws, policies and services.

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