



Children's Rights in Brief

#1

The UN
Convention on
the Rights of
the Child



ombudsman
do leanaí
for children





Introduction

The Ombudsman for Children's Office (OCO) is an independent statutory body, which was established in 2004 under the Ombudsman for Children Act 2002 (2002 Act). Under the 2002 Act, as amended, the OCO has two core statutory functions:

- to promote the rights and welfare of children up to 18 years of age; and
- to examine and investigate complaints made by or for children about the administrative actions of public bodies, schools and voluntary hospitals that have, or may have, adversely affected a child.

This briefing is the first in a series that the OCO is producing to raise awareness of children's rights under the [United Nations Convention on the Rights of the Child](#) (UNCRC). We are creating this series in line with our duties:

- to encourage public bodies to develop policies, practices and procedures designed to promote the rights and welfare of children (section 7(1)(b) of the 2002 Act); and
- to collect and disseminate information on matters relating to children's rights and welfare (section 7(1)(c) of the 2002 Act).¹

Three Takeaways

1. Having ratified the UNCRC in 1992, Ireland is obliged to respect, protect and fulfil the rights of children contained in the UNCRC for all children in Ireland.
2. Children's rights are fundamental entitlements and freedoms that children have because they are children. Children's rights are universal, inalienable, indivisible and interdependent.
3. Broad measures that need to be pursued to implement children's rights in practice include: legislation, national strategy, coordination, monitoring and assessment, data collection, adequate resourcing, and awareness raising and training.

¹ This briefing, and other briefings in this series, provide information on children's rights under the UNCRC. The briefings are not legal advice and should not be understood as legal advice.

The United Nations Convention on the Rights of the Child

International human rights standards, including the UNCRC, recognise children as rights holders in their own right. Children's rights are fundamental entitlements and freedoms that children have because they are children. Children's rights are:

- o **universal** – they apply to all children without exception;
- o **inalienable** – they belong to every child and they cannot be given or taken away;
- o **indivisible** – they should be understood as inseparable from one another; and
- o **interdependent** – children's enjoyment of a particular right is dependent on them being able to enjoy their other rights.

Adopted by the UN General Assembly on 20 November 1989, the UNCRC is well established as the most comprehensive international agreement on children's rights. The UNCRC defines a child as a "human being below the age of 18 years" and recognises that children are entitled to special care, assistance and protection due to their age and stage of development. Ireland signed the UNCRC in 1990 and ratified it in 1992.

There are also three Optional Protocols² to the UNCRC, which complement its content:

- o [The Optional Protocol on the involvement of children in armed conflict.](#)³
- o [The Optional Protocol on the sale of children, child prostitution and child pornography.](#)⁴
- o [The Optional Protocol on a communications procedure.](#)⁵

² [UNICEF](#) notes that an Optional Protocol may be on any topic relevant to the original treaty. An Optional Protocol is used to further address something in the original treaty, to address a new or emerging concern, or to add a procedure for the operation and enforcement of the treaty.

³ Ireland ratified the Optional Protocol on the involvement of children in armed conflict in 2002.

⁴ Ireland signed the Optional Protocol on the sale of children, child prostitution and child pornography (OPSC) in September 2000. As of 30 November 2023, the State has not yet ratified this Optional Protocol. Ireland is the only EU Member State, and one of 20 countries globally, that has not ratified the OPSC.

⁵ The Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OPIC) allows children in Ireland or a representative to submit an individual communication, otherwise known as a complaint, to the Committee with a claim that the State has violated any of the child's rights in the UNCRC. Complainants must have first exhausted all relevant remedies that are available in the State before submitting a complaint. Ireland ratified the OPIC in 2014.

Children's rights

The UNCRC defines what rights children have. The 42 rights contained in the UNCRC cover all aspects of a child's life and set out the civil, political, economic, social and cultural rights that all children everywhere are entitled to. The UNCRC also sets out that States have the primary responsibility for realising children's rights under the UNCRC.

The UNCRC promotes a holistic view of children's lives and needs. Children's rights under the UNCRC can be grouped under the following headings:

- **Survival rights** concern children's basic needs and include children's rights to nutrition, adequate housing, clothing, clean water and access to health care services.
- **Development rights** include children's rights to information, education, play, leisure and cultural activities, and freedom of thought, conscience and religion.
- **Protection rights** focus on children's rights to protection from all forms of harm, abuse and exploitation and include children's right to supports to recover from abuse or exploitation they have experienced.
- **Participation rights** include children's rights to freedom of expression and peaceful assembly as well as children's right to be heard, and to have due weight given to their views, in all matters affecting them, in accordance with their age and maturity.

Four rights in the UNCRC are considered vital to realising all other children's rights in the UNCRC. Known as the UNCRC's '[general principles](#)', these four rights are:

- children's right not to be discriminated against on any grounds (Article 2);
- children's right to have their best interests treated as a primary consideration in all actions affecting them (Article 3);
- children's right to life, survival and development (Article 6); and
- children's right to express their views freely in all matters affecting them and to have due weight given to their views, in accordance with their age and maturity (Article 12).

The Committee on the Rights of the Child

The Committee on the Rights of the Child (the Committee) is a body of independent experts on children's rights that monitors States' progress with implementing the UNCRC and its Optional Protocols by periodically examining the actions individual States are taking to fulfil children's rights under the Convention. This Committee also publishes [General Comments](#) about children's rights under the UNCRC in order to guide States on how to interpret and implement the UNCRC. These general comments cover a wide range of rights and provide authoritative guidance.

Obligations to implement the UNCRC

When a State ratifies the UNCRC, as Ireland has done, it takes on obligations under international law to implement it. Implementation is the process whereby States take action to realise all rights in the UNCRC for all children in their respective jurisdictions. Article 4 of the UNCRC requires States to take "all appropriate legislative, administrative and other measures" to implement children's rights contained in the UNCRC.

Article 4 outlines States' overall implementation obligations. In doing so, it distinguishes between [civil and political rights](#) and [economic, social and cultural rights](#).⁶ In relation to economic, social and cultural rights, Article 4 requires States to "undertake such measures to the maximum extent of their available resources." This refers to the principle of progressive realisation, which means that, even where the available resources are demonstrably inadequate, the obligation remains for States to take deliberate, concrete, and targeted steps to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.⁷ Therefore, whatever the economic situation, States are required to undertake all possible measures towards realising children's rights, paying special attention to children who are most at risk of not having their rights protected and fulfilled.

6 There is no simple or authoritative division of human rights, including children's rights, into two distinct categories. The enjoyment of economic, social and cultural rights is intertwined with the enjoyment of civil and political rights. United Nations Office of the High Commissioner, [Key concepts on ESCRs - Are economic, social and cultural rights fundamentally different from civil and political rights?](#)

7 UN Committee on Economic, Social and Cultural Rights (1990), [General Comment No. 3: The nature of States parties' obligations](#), E/1991/23, paras. 2 and 11.

Ireland and the UNCRC

Having ratified the UNCRC in 1992, Ireland has an obligation under international law to respect, protect and fulfil the rights of children set out in the Convention:

- The obligation to **respect** means that States must refrain from interfering with or restricting children's enjoyment of their rights.
- The obligation to **protect** requires States to protect children from infringements of their rights by third parties (for example, companies).
- The obligation to **fulfil** means that States must take positive action to promote, support and provide for children's enjoyment of their rights.

International treaties like the UNCRC do not become part of Irish law unless they are incorporated into national laws by the Oireachtas. To date, Ireland has taken a piecemeal approach to incorporating specific articles of the UNCRC into Irish law.⁸ Examples relevant to Article 3 (best interests of the child) and Article 12 (respect for the views of the child) are:

- [Article 42A.4.1°](#) of the Constitution of Ireland requires the introduction of legislation to ensure that the best interests of the child is the paramount consideration in proceedings relating to child protection and care, adoption, guardianship, custody and access. [Article 42A.4.2°](#) requires the introduction of legislation to ensure that in these proceedings, and as far as practicable, the views of the child are ascertained and given due weight, having regard to the age and maturity of the child.
- The [Children First Act 2015](#) requires Tusla, the Child and Family Agency, to regard the best interests of the child as the paramount consideration.
- Similarly, the [Guardianship of Infants Act 1964](#), as amended, requires the court to regard the best interests of the child as the paramount consideration in family law proceedings.
- The [Domestic Violence Act 2018](#) says that a court may seek to hear the views of the child when certain types of orders are being sought on behalf of the child.

The Committee has examined Ireland's progress to implement children's rights under the UNCRC on four occasions to date – in [1998](#), [2006](#), [2016](#) and [2023](#). The Committee's most recent examination of Ireland took place in January 2023 and the Committee published its [Concluding Observations](#) in February 2023. These observations set out the Committee's assessment of the State's progress as well as the Committee's recommendations about what measures the State should take to further advance the realisation of children's rights. The Concluding Observations are an important reference point for Government Departments and State agencies to identify additional measures they can take to advance children's rights in Ireland.

⁸ Ursula KilKelly, Laura Lundy, Bronagh Byrne (2021), Incorporating the UN Convention on the Rights of the Child into National Law, p. 186.

Implementing children's rights in practice

To guide States with implementing their obligations to children under the UNCRC, the Committee has identified a number of broad measures that States need to pursue to implement children's rights in practice. Outlined in the Committee's [General Comment Number 5](#), these general measures include:

- **Legislation** – Working to incorporate the UNCRC into domestic law and reviewing existing national legislation to ensure it complies with the UNCRC;
- **Redress** – Putting in place effective, child-friendly procedures for children to pursue remedies for breaches of their rights;
- **Strategy** – Developing and implementing a comprehensive national strategy or plan of action for children that is rooted in and builds on the UNCRC;
- **Coordination** – Putting in place mechanisms to support coordinated action to implement children's rights among Government departments and State agencies, between central and other levels of government, and between Government and civil society;
- **Monitoring and assessment** – Monitoring, including independent monitoring, of progress to implement children's rights, as well as assessing the potential impact and evaluating the actual impact of measures on children and their rights;
- **Data** – Establishing effective and comprehensive systems to collect, disaggregate and analyse data on children;
- **Resources** – Ensuring that public budgets contribute to the realisation of children's rights in a structured and systematic way, allocating sufficient resources (including financial resources) to implement these rights, and monitoring and evaluating the adequacy of allocations made; and
- **Awareness raising and training** – Implementing measures to raise awareness of children's rights and the UNCRC, including among children, and to provide training on children's rights to all those involved in implementing the UNCRC (e.g. government officials, parliamentarians and members of the judiciary) and all those working with and for children.

In its [Concluding Observations](#) for Ireland in February 2023, the Committee references these general measures and makes recommendations about how the State should mobilise these measures by taking specific actions. For example, in relation to training, the Committee has recommended that the State should ensure “systematic training on children's rights, the Convention and its Optional Protocols, and a child rights-based approach to actions and decisions affecting children for all professionals working for and with children” (para. 12(b)).

Children's rights in other United Nations treaties

While the UNCRC is the primary international treaty relating to children's rights, Ireland has signed and ratified other UN treaties that concern children and their rights. These treaties include:

- [Convention on the Elimination of All Forms of Racial Discrimination](#)
- [International Covenant on Civil and Political Rights](#)
- [International Covenant on Economic, Social and Cultural Rights](#)
- [Convention on the Elimination of All Forms of Discrimination against Women](#)
- [Convention on the Rights of Persons with Disabilities](#)

Children's rights under other treaties such as these also need to be considered when making decisions or taking actions that impact on children.



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