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## Children's Rights, Whose Right?: a Review of Child Policy Development in Ireland

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**Children's Rights - Whose right?**  
**A review of child policy development in Ireland**

By

Nóirín Hayes

Introduction.....	11
1.1 Background.....	11
1.2 Aim of Paper.....	13
Making Children Visible: International Perspectives and Influences.....	16
2.1 Background.....	16
2.2 The UN Convention on the Rights of the Child.....	19
2.3 The Convention as an Agent for Action.....	24
2.4 Children, Policy and Europe.....	28
2.5 Summary.....	31
Contemporary Irish childhood.....	31
3.1 Background.....	32
3.2 Childhood in Ireland.....	34
3.3 Giving Voice to Children.....	39
3.4 Summary.....	42
Policy Development and Children in Ireland.....	43
4.1 Background.....	43
4.2 Children and the Irish Constitution:.....	45
4.3 Children and the Family:.....	47
4.4 Children and the Law.....	50
4.5 Children and the Church.....	53
4.6 Children and Education.....	56
4.7 Summary.....	58
Tracking Children in Irish Policy Development.....	60
5.1 Background.....	60
5.2 Children and the National Agreements.....	63
5.3 The National Children’s Strategy.....	66
5.3.1 Measuring Achievement- the Structures.....	69
5.3.2 Measuring Achievement – the Actions.....	72
5.4 Summary.....	74
Childcare: A Policy Illustration.....	76
6.1 Background.....	76
6.2 Childcare and Gender Equity.....	77
6.3 Childcare and Educational Disadvantage.....	80
6.4 Summary.....	83
From Rhetoric to Action: Recommendations for Implementation.....	85
7.1 Background.....	85
7.2 From Welfare to Rights.....	87
7.3 The Impact of the Convention on Irish Child Policy.....	89
7.4 Moving Forward.....	93
7.4.1 Strengthening Government Structures for Children.....	94
The National Children’s Office.....	97
7.4.2 Promoting and Protecting Children’s Rights.....	98
7.4.3 Participation of Children in Policy Making.....	101
7.5 Conclusion.....	104

## ABBREVIATIONS:

BIC	Best Interests of the Child
CORI	Conference of Religious of Ireland
CRA	Children's Rights Alliance
CRG	Constitutional Review Group
CSO	Central Statistics Office
D.I.T.	Dublin Institute of Technology
ESRI	Economic and Social Research Institute
EU	European Union
GAL	Guardian <i>ad Litem</i>
ICT	Information and Communication Technology
ISPCC	Irish Society for the Prevention of Cruelty to Children
NCAC	National Children's Advisory Council
NCO	National Children's Office
NCS	National Children's Strategy
NDP	National Development Plan
NESC	National Economic and Social Council
NESF	National Economic and Social Forum
NGO	Non-governmental Organisation
NRC	National Research Council (US)
NYCI	National Youth Council of Ireland
PCW	Programme for Competitiveness and Work
PESP	Programme for Economic and Social Progress
PNR	Programme for National Recovery
PPF	Programme for Prosperity and Fairness
SMI	Strategy Management Initiative
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child

UNICEF United Nations Children's Fund (originally United Nations  
International Children's Emergency Fund)

USSS Union of Secondary School Students

## **Executive summary**

The last decade has seen an increase in policy development relating to children and childhood in Ireland. Taking the United Nations Convention on the Rights of the Child (UNCRC) as a framework, this Blue Paper asserts that both children and Irish society would benefit if policy development for children were to move from the current welfare-based model towards a rights-based model. Such a shift would recognise children as a discrete social unit to be considered as parallel to, rather than embedded within, the family unit. In 1992 the Irish Government ratified the Convention. The Convention offers a valuable framework within which to develop, monitor and evaluate policy for children.

This paper is not advocating the uncritical acceptance of rights as a mechanism for the development of policy for children. Rather it presents an argument for considering the UNCRC as an organisational framework to foreground children's issues and to highlight the unique nature of children's needs and rights. The Convention can act as a mirror against which the duties and obligations of adults and of the State – and their response to these obligations – can be reflected. Policy debate in the field of disability has identified a government trend to polarise rights and duties in Ireland. An example is the revoked Disability Bill, 2002 which has been criticised by a number of groups for not being rights-based. In the discussions and debates on the Bill, governmental responses presented the view that there were two ways to address disability and the role of the State. One was a duty-based response and the other a rights-based response. The Bill was characterised by government as duty-based. This paper argues – particularly in the context of policy development for children – that polarising duties or obligations in opposition to rights is a fruitless exercise as it creates a context of conflict between parties. Policy that is constructed in the spirit of balance between rights and obligations is more likely to generate integrated responses that are sensitive to individual needs and rights in the context of capacity of the State to respond. Balancing rights and obligations in policy development and associated legislation would reflect the partnership approach to policy planning that has been characterised as so central to our economic success.

The argument is made for a rights-based approach to policy development that would respect children as a specific social group, that would recognise the complex and diverse nature of children and that would consider all children as the primary focus and target as necessary. In addition it is argued that a rights-based approach would ensure, proactively, that the best interests of the child are taken as paramount in all matters relating to them. It would facilitate the participation of children, according to their age and maturity, in matters affecting them within their families and society. Such an approach to child policy development would reflect the Convention by explicitly incorporating the Convention, by mapping targets to specific articles within the Convention and by creating monitoring mechanisms matched to the international mechanisms that exist for the Convention.

In arguing this case, the paper reviews the position of children in contemporary Irish society. It finds that ideologically childhood is seen as belonging within the family but that empirically, childhood is becoming more managed and controlled by institutions outside the family. It suggests that Irish society should review its approach to children as individuals, and to children within the family, in the light of the social and economic changes that have occurred so rapidly over the last two decades.

Irish policy development is reviewed in relation to its sensitivity to, and impact on, children and childhood. Taking the major institutions of society, it reviews children and the family, children and the church, and children and education. The constitutional and legal position of children is outlined. While the language of policy and legislation has changed, the underpinning values, conceptualising children as passive and dependent, have largely remained the same. The review suggests that a protectionist welfare approach continues to dominate policy development in Ireland. This approach characterises children as dependents in need of protection and/or problems in need of solutions. Children are seen as the responsibility of their parents with the State offering only limited support to parents in their parenting role. While this may afford some support to certain children and families it shows limited recognition of children as a group with rights of equal value to those of adults. Children are an invisible entity in much policy-making. They are affected by the

outcomes of policies that are developed to meet the needs and rights of others, such as women, employers and trade unions.

In 2000 the Irish National Children's Strategy (NCS) was published. The Strategy is an important policy statement for children in Ireland. It is presented as child-centred and identifies the participation of children as a central theme for the implementation of the strategy. While it is not a rights-based strategy, it does mark the beginning of a shift towards considering rights in policy development and implementation by strongly reflecting the Convention.

All policy impacts, to a greater or lesser extent, on children. In the light of changes in Irish society that have impacted on the family and childhood and, given the fact that Ireland has ratified the Convention without reservation, it is proposed that an explicit rights-based approach to policy should be developed through leadership and discussion, to acknowledge and address the rights and needs of contemporary Irish children. To make any serious advance towards a rights-based approach to policy and practice a three-pronged, parallel action is proposed. The three areas identified for change and development are governance; the protection and promotion of children's rights; and the participation of children in matters affecting them. To progress the move towards a rights-based policy approach, a number of specific recommendations are made.

*Governance:* A senior Minister without portfolio who, for a fixed period, would lead on particular cross-cutting issues should be appointed. This Minister would be responsible for overcoming the difficulties associated with budgets, planning and cross-departmental responsibilities and would, in the first instance, take over the implementation and development of the systems and structures necessary for progressing the Children's Strategy and strengthening children's rights. The Minister should report directly to the Cabinet Committee on Children.

The brief of the National Children's Office (NCO) should be strengthened. It should develop indicators and procedures derived from the Convention to assess the impact of policy decisions on children for use by all government departments. It should develop mechanisms, across all departments, for the systematic collection and



analysis of data on children. The NCO should place a report, annually, before the Oireachtais in the form of a report for approval. Finally, the remit of the NCO should be widened to include proactive links with international developments in the area of children, children's rights and policy-making.

*The protection and promotion of children's rights:* An Office of Ombudsman for Children should be established. A Bill to allow for the establishment of an Office of Ombudsman for Children was published in February 2002 and passed in April 2002. The Bill states that the Office will be independent and will report to the Oireachtas. It identifies two main functions for the Office. The first is to promote the rights and welfare of children. The second function of the Office is to examine and investigate complaints against public bodies, schools and voluntary hospitals.

While the passage of the Bill is a positive move on behalf of children's rights it does have some limitations. In particular the Bill fails to expressly acknowledge the responsibility of the Office to protect children's rights as well as to promote them. The UN Committee on the Rights of the Child in its report on the Irish National Report was critical of the failure to provide a mechanism for the promotion and protection of children's rights. With amendments the Bill could ensure that all children – including refugees, asylum-seekers and children in detention - would have access to the Ombudsman for Children and that the Ombudsman would be fully independent and empowered to promote and protect the rights of children.

*Participation of children in policy making:* An Advisory, or Reference Group of children should be established - by children with the assistance of adults - with direct links to the National Economic and Social Council (NESC) and the National Economic and Social Forum (NESF). Mechanisms should be developed to give children a direct voice in future national partnership agreements, and the government should allocate funding to research and evaluate mechanisms to enhance the real participation of children in matters affecting them at local, regional and national level.

Finally, it is recommended that the Education Act be amended to allow for the establishment of student councils at both primary and secondary level and that the role of these councils be strengthened. A proactive education for citizenship and

rights education should become part of the national curriculum at both primary and secondary level and training programmes on the UNCRC should be developed and incorporated into the education and training of those working with and for children.

This paper argues the case for a re-evaluation of the place of children in Irish policy-making and recommends a move from the reactive welfare model of child policy to a pro-active rights-based model. Such a move is necessary to ensure that the status and rights of children are given due regard in modern Ireland. The UNCRC is presented as a framework within which such a move could be planned, implemented and evaluated. To effect such a move a parallel action plan is proposed so that the government, society in general and children in particular are all active participants in the process.

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*'Children's future is the present'*<sup>1</sup>

## 1

### Introduction

#### 1.1 Background

Contemporary Ireland is reviewing itself. Whether it is a function of our recent economic success and associated security; our success on the world stage in fields as diverse as popular music, business, politics, literature and poetry; our reputation as the young/fun place of Europe or simply the nature of *fin de siecle*, the media is awash with letters, articles and debates about where Ireland is heading in the 21st century; whether we are an economy or a society; how we can save what is perceived as the best of old Ireland in the new; whether we can define what was the best of the old, or whether, indeed, such a best ever really existed. Questions have been raised in these debates about the degree to which we cherish children in Ireland and whether we ever really did. There is an unprecedented level of media discussion about the relationship between the State and the family, in particular with respect to child-rearing. It is an exciting and interesting time to consider Ireland and Irish society's treatment of children. The unintended consequences of policy, practice and progress can first become evident in the quality of life, and the behaviour, of children. Children and their well-being can be taken as a barometer for the health of a society (Council of Europe, 1996a).

Children represent almost one-third of the population of Ireland. They represent the future of Ireland but are dependent on the present for experiences that will enhance that future. Children are a vulnerable social group. They are spoken on behalf of but rarely have an opportunity to speak for themselves. It is the very nature

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<sup>1</sup> This quote is taken from the final page of Corsaro, W.A. (1997) *The Sociology of Childhood* (London:Pine Forge Press/Sage Publications)

of childhood, that nature which warrants cherishing, protection and support, that deprives children of the means to assert themselves and argue for their rights. Estimates vary, but it is conservative to suggest that 25 per cent of Irish children live in poverty (Nolan, 2000). There has been a visible increase in the number of homeless children and children living in hostels and Bed and Breakfast facilities in Irish cities and towns (Focus Ireland, 2000; Ireland, 2001b). There is an unacceptable level of illiteracy and early school-leaving in Ireland (Lynch, 1998; Archer, 2001). Leisure and recreational facilities for children are limited, for example Webb (1997) found that 46 per cent of local authorities do not, as a matter of policy, provide playground facilities.

Ireland ratified the UNCRC in 1992. This Convention details the special rights of children including the right to participate in a democracy in ways that reflect their age and maturity. The Convention affirms the primacy of the family and does not propose rights for children at the expense of others. It does, however, aim to enhance the position of children in society by drawing attention to the particular nature of children's rights and society's obligations to children in this regard.

In the document *Re-righting the Constitution* (1998), the Irish Commission for Justice and Peace note that rights are moral claims before they are legal entitlements and the position regarding the Constitutional rights of children in Ireland is the subject of some debate (CRG, 1996). A central concern of advocates for children's rights is that the rights given to the family as a unit may create a situation where the individual rights of the child are not explicitly taken into account. This can result in children experiencing an indifference to, and a lack of respect for, their opinions on issues that directly affect them. While this may be more evident as a concern when considering the older child it is nonetheless relevant for younger children and reflects an underlying conceptualisation of all children as less deserving of consideration than the adult members of a family unit. Respecting the rights of children does not give them the right to make unilateral decisions at odds with those of the family but it does give them a right to be explicitly considered and consulted in matters affecting them. The Convention highlights the special nature of children's rights and challenges societies to strive for a balance, across all ages, with respect to rights and obligations.

## 1.2 Aim of paper

This paper considers the position of children in contemporary Irish society and reflects on how Irish policy-making has responded to changing needs. It reviews policy development and, in particular, explores the impact of the Convention. It outlines the value of the Convention as a framework for policy development and evaluation and questions whether Irish policy makers have embraced a rights-based approach in relation to children.

In Ireland the primary responsibility for children is viewed as the private realm of families. Historically the family has been a separate and complementary institution to the State and, unless children are at risk or posing a serious problem, the State does not intervene. This complementarity is evident in legislation and policy and has led to the formation of a number of pressure groups that speak on behalf of the rights of families with respect to their children. As society becomes more complex, however, there is increased interdependency across institutions. This results in increased expectations of and demands on the State to provide for the well-being of all its population. At the same time, individuals reject overly intrusive intervention by the State into private affairs. Van Hoof (1984) suggests that these new circumstances pose a dilemma for prioritising rights *qua* rights, particularly economic, social and cultural rights. He contends that this dilemma is best resolved by locating the argument for rights within the context of obligations and identifies four layers of state obligation to its population. These are an obligation to respect rights; an obligation to protect rights; an obligation to ensure rights; and an obligation to promote rights.

This paper asserts that there is a changing relationship between the family and the State in Ireland. It asserts that the traditional focus on the family as the sole institution responsible for children reflects an unacceptable complacency. This should be replaced by a pro-active approach by the State, in partnership with families to move beyond simply respecting and protecting children's rights towards ensuring and promoting them. It suggests that the ratification of the Convention, while placing obligations on Ireland to re-assess policy and practice with respect to children also affords a moral imperative for re-assessing how we regard children and childhood. It contends that the Convention also offers a framework within which to re-evaluate the

changing relationship between the State and the family and to monitor child policy. It proposes augmenting family policy with a rights-based approach to child policy.

The aim of this paper is to present a view of how Irish child policy should be focused and demonstrate the value of a shift from the current welfare-based to a rights-based model of policy development. It approaches this task by addressing the question of what childhood means, considering current Irish policies impacting on children and reviewing how policy has changed. Specifically, the paper takes the topical policy issue of childcare as an illustrative study. Drawing on the extensive literature that has emerged following the publication of the Convention and a review of child policy issues at the national and international level, the author presents an argument for change and makes recommendations for how these changes could be implemented. The structure of the paper is as follows.

The next chapter presents a brief overview of international developments in the field of children's rights. It outlines the key features of the Convention. It describes the mechanisms established for monitoring implementation and presents some data on how other countries have responded to ratification.

Chapter 3 considers contemporary Irish childhood. It notes that, ideologically childhood is seen as belonging within the family, but empirically, childhood is becoming more managed and controlled by institutions outside the family. It suggests that Irish society needs to review its approach to children in the light of the social and economic changes that have occurred so rapidly over the last two decades.

In Chapter 4 Irish policy development is reviewed in relation to its sensitivity to, and impact on, children and childhood. Taking the major institutions of society it reviews children and the family, children and the church, and children and education. In addition the constitutional and legal position of children is outlined and it is argued that while the language of legislation has changed, the underpinning values, conceptualising children as passive and dependent, have remained the same. Particular attention is given to the National Children's Strategy (NCS).

While acknowledging that policy development is a dynamic process, often influenced by external factors over which there may be little control, Chapter 5 tracks the rise of interest in children as a policy issue. This is done by reference to the various partnership agreements arrived at between the Government and the social partners. It notes how the policy issues of gender equality and educational disadvantage have been particularly influential in placing children on the policy agenda.

Taking policy development in childcare as an illustration, Chapter 6 highlights the reactive and fragmented nature of policy in this area. It argues that the absence of a mechanism to consider policy from the child's perspective, to consult with, or to give voice to, children has led to a situation whereby other interest groups speak on behalf of children. Policy is developed for children and not, in any sense, with children. This has rendered children largely invisible in policy terms, embedded under other policy agendas such as those of education, health or the family.

Chapter 7 argues that, in Ireland, the dominant discourse with respect to children is of a social group that is passive and dependent and for whom adults speak. The ratification of the Convention in 1992 has given Ireland a framework within which to move beyond a protectionist approach to children towards a rights-based approach. The chapter concludes with a proposal outlining a three-pronged, parallel implementation proposal to improve governance with respect to children; to promote and protect children's rights; and to facilitate children's participation across a wide range of policies that impact on the quality of their lives.



## **Making children visible: international perspectives and influences**

### **2.1 Background**

At the beginning of the twentieth century Ellen Key (1900) of Sweden called for the new century to be recognised as the ‘century of the child’. Scandinavian countries have been to the forefront, internationally, in the consideration of the status and rights of children. For instance, Sweden was one of the first countries to ban corporal punishment of children by parents on the grounds that, among other things it violated the integrity of the individual child. In 1981 Norway became the first country to appoint an independent Ombudsman for Children. Scandinavian countries continue to be vocal advocates for children and their rights. Knutsson (1997) has traced the history of the rise in international awareness of the rights of children to the work of Eglentyne Jebb who founded the Save the Children organisation. She was motivated by her belief that, in the context of conflicts, there was no such thing as an ‘enemy child’. She drafted a declaration - known as the Geneva Declaration on the Rights of the Child - on the rights of the child. This was a short and simple document which was adopted by the League of Nations in 1924. In 1948 it was revised, the same year that the UN General Assembly adopted the Universal Declaration of Human Rights. While it was acknowledged that children were included as constituents within the UN Declaration on Human Rights they were seen to have specific rights which derived from their dependency.

In 1959 the UN Declaration on the Rights of the Child was published. A declaration is simply a statement of intent and has no binding powers and so has limited direct impact. This 1959 declaration had 10 principles on the special needs of children as a group. It marked the start of a movement to make children more visible as a constituency. Another milestone on the journey towards the Convention was the nomination, by the UN, of 1979 as the International Year of the Child. This gave many countries, including Ireland, an opportunity to review and revise the national status of children but also led to a more general focus on how policies, national and

international, impact on the quality of life of children everywhere. The decade between the International Year of the Child and the publication, in 1989, of the UNCRC was one of much international debate and discussion regarding advocacy for children. In September 1990 a World Summit for Children was held in New York which raised the profile of the world's children as an issue for serious policy consideration. Among other things the Summit agreed a World Declaration on the Survival and Development of Children and launched the Plan of Action for the implementation of this declaration. In addition, a number of leaders, including the Taoiseach on behalf of the Irish government, signed the UNCRC. Ireland ratified the Convention, without reservation, in September 1992 and the Convention came into force in Ireland in October 1992.

The Convention is a comprehensive agreement on the rights of children which has been ratified by every nation of the UN with the exception of the US and Somalia. As is the case with other international treaties and conventions, there is an obligation on those parties who have ratified the Convention to implement it as fully and effectively as possible. To this end a monitoring process has been established to evaluate the progress of countries in fulfilling the obligations which arise from ratification.

The fact that a Convention outlining the rights of children was considered necessary is a reflection of the degree to which the violation of children's rights in contemporary society has been recognised. Attention to the special nature of children's rights arose from a number of perspectives including the need to identify children as having a named right to protection during times of war or famine. The general debate about the need for a statement of human rights following the end of the Second World War drew attention to the wider issues surrounding the concept of rights, particularly in relation to implementation, monitoring and evaluation.

Verhellen (1992) suggests that there are a number of different motives for the increased attention to children's rights. One of the most powerful factors influencing the debate, he argues, is the discovery that instead of loving and protecting children many adults actually cause children harm. This is evidenced by the rising awareness of the level of child pornography, the exploitation of children by business and during

conflict, the rise in reported child abuse cases and the general issue of the acceptance of certain levels of violence against children, as in the case of corporal punishment. These topics were slow to come to public attention. For instance, it was not until the 1960s that the concept of child sexual abuse attracted public attention. The realisation that some adults, either directly or indirectly, have neglected their responsibilities to protect and care for children has forced adults to look at the way adult society, in general, relates to children. Out of this attention has emerged an interest in the rights of children. Verhellen believes that adults dominate and control children rather than treating them with respect as individuals. He argues that one way in which adults have dominated children is through child protection laws, which he sees as a form of social control. Protection has, he argues, been used as a way of managing and controlling children through dis-empowering them, a view supported by Woodhead (1997). Verhellen also considers that adults manage and control children through education laws, which he characterises as socialisation instruments where children are objects rather than participants in the process of their education. Such laws were introduced as a response to the image of children as passive ‘adults-in-waiting’ at the turn of the twentieth century. They have led to the increased segregation of children from mainstream society into institutions designed for them by adults. This creation of apparently separate worlds has, to a degree, made children more vulnerable to adult control and exploitation because they are designed, by adults, for children and children themselves become invisible to the outside.

Although there is a lot of general information about children it is often difficult to locate and access. The relative invisibility of children at policy level becomes evident when one attempts to gather statistical information about children. Such information is generally embedded within national health, education or social welfare statistics or within data collected on families. On some topics data are collected in a way that excludes certain groups of children. In Ireland, for example, data on child poverty excludes reference to all children over 14 years of age, all children of the Travelling community, all children in institutional care, homeless children and children of refugees (O’Flynn, 1998). While many children, particularly in an economically successful country like Ireland, experience a positive childhood this type of invisibility, even where unintentional, has the potential to conceal

exploitation and abuses. It has created a need for a more explicit statement of children's rights and a vehicle for ensuring that these rights are met.

## **2.2 The UN Convention on the Rights of the Child**

The Convention is an international convention that frames many of the aspects of children's rights being advocated over the last number of years. A notable feature is that non-governmental organisations (NGOs) were included as active participants from the drafting phase through to the implementation and monitoring process. Boyden (1997: 216) notes that, at the outset, not all child interest groups were supportive of the Convention and notes that:

UNICEF [United Nations Childrens Fund].... initially reluctant to endorse children's rights, has now thrown its weight behind the instrument.

Interestingly, UNICEF in Ireland has been active in support of children's rights and was a founder member of the Children's Rights Alliance (CRA) - an alliance formally established in 1995 to promote the implementation of the Convention in Ireland (CRA, 1997, 1998).

The Convention is made up of a series of Articles, which cover children's *civil rights*, for example in relation to their treatment under the law their *social, economic and cultural rights*, for example in relation to an adequate standard of living and their *rights to protection*. It does not explicitly address the political rights of children. The Convention can be studied under eight broad areas, which are pro-active, and child-centred. They are:

- I General Measures of Implementation
- II Definition of the Child
- III General Principles
- IV Civil Rights and Freedoms
- V Family Environment and Alternative Care
- VI Basic Health and Welfare
- VII Education, Leisure and Cultural Activities
- VIII Special Protection Measures.

Under the Convention, the child is defined as a person under the age of 18 years. This definition has been incorporated into Irish legislation in, for instance, the Child Care Act, 1991 and the Ombudsman for Children Bill, 2002. Some authors, such as Franklin, (1992: 105) have noted that this definition of the child is not without its difficulties, as it can represent a population that includes:

members of the armed forces, taxi drivers, building workers, student nurses and young people with children of their own.

This challenges policy-makers to give careful attention to the diverse nature of childhood in the framing of policies impacting on children.

The Convention has been characterised by some as an idealistic document with a Western ethos dominating (Freeman, 1992; Boyden, 1997; Steiner and Alston, 2000). It has been criticised as reflecting a view of children that is compatible with a Christian democratic perspective in regarding children as individuals with rights equal to but different from adults. However, it is a Convention that was drafted by an international team of representatives from both developed and developing countries. There is scope in such a wide-ranging Convention for contextualising rights in terms of the cultural realities for children and their families. As in the wider arena of human rights, it can be argued that the cultural debate does not invalidate the Convention, but rather offers new perspectives on it. The Convention is phrased in sufficiently general terms to allow for different cultural and religious interpretations and a careful analysis shows that it is a complex but sensitive instrument that does allow for diversity in its interpretation.

For instance, one of the articles which has attracted international debate is Article 32 which relates to economic exploitation. It states that:

States Parties<sup>2</sup> recognise the right of children to be protected from economic exploitation and from performing any work that is likely to be hazardous or to

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<sup>2</sup> This term is used throughout the Convention to refer to the ratifying body.

interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. (Article 32.1)

In the Irish context this seems fairly straightforward as there is little empirical evidence of state exploitation of children and there are both education and employment laws to ensure that children's rights under this Article are not infringed. Achieving the full implementation of this Article will be more difficult in some settings. For many economies, as was the case in Ireland in the past, it is necessary for children to work - they have an important economic contribution to make to their families. This should not be seen, simplistically, as infringing on their rights unless there is manifest evidence of exploitation. The Convention recognises this when it calls on governments to ensure the 'progressive realisation' of rights to put in place mechanisms to move towards full implementation. Whatever its limitations, the Convention is an impressive manifesto on behalf of children. While protecting children, it moves away from a paternalistic approach to children as passive objects to be done unto, towards the recognition that children are individuals and deserve to be listened to and respected as such. It is a mechanism for the protection of children's rights rather than simply the protection of children. This has the important result of providing children with the right to have an active role as participants in decisions that affect them directly.

There are four Articles regarded as 'general principles' that are basic to the implementation of the Convention. These are:

- Article 2, which states that all the rights guaranteed by the Convention must be available to all children without discrimination of any kind;
- Article 3, which states that the best interests of the child must be a paramount consideration in all actions concerning children;
- Article 6, which states that every child has the right to life, survival and development; and
- Article 12, which states that the child's view must be considered and taken into account in all matters affecting him/her.

The Convention also identifies the primacy of the family in relation to children. Article 5 states that State Parties shall

respect the responsibilities, rights and duties of parents.... to provide in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

In general the Convention recognises that children's rights must be promoted as well as protected and places responsibility for this, in most cases, with parents. The State, too, is identified as having responsibilities to children and families in various situations such as the role of the State in providing an adequate standard of living for children and families; in protecting children's health and well-being; and in protecting children from violence and exploitation. While there may be times when parental rights will take precedence over the child's, the Convention requires States Parties to place the Best Interests of the Child (BIC) as a paramount consideration. Countries are encouraged to amend legislation and procedures to ensure a real balance of rights, where disputes may arise.

The importance of Article 3, BIC, has been much debated. Alston (1994)<sup>3</sup> edited a volume of writings specifically concerned with the development of Article 3. In his review of the history of the Article he points out that in the 1959 Declaration on the Rights of the Child the 'best interests' principle was identified as 'the paramount consideration'. However, in the Convention it became 'a primary consideration' at Article 3 although it is referred to as 'the paramount consideration' in Article 21. In his introductory comments Alston (1994: 2) notes that the Convention is not a simple instrument and that it:

is sometimes presented (or more accurately, misrepresented) as being a uni-dimensional document that reflects a single, unified philosophy of children's rights and contains a specific and readily ascertainable recipe for resolving the

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<sup>3</sup> Alston

inevitable tensions and conflicts that arise in a given situation among the different rights recognised. .

As with any complex instrument, there is potential for internal tensions and conflicts within the Convention. Freeman (1992) has also drawn attention to this, particularly in respect of the possible tension between Article 3 and Article 12. Article 3 states that:

in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. (Article 3.1).

There is a potential problem with this article as it can - in a weak form - be interpreted as portraying children as passive and allowing for a subjective determination of what is in 'the best interests of the child'. This open-endedness can "legitimate practices in some cultures which are positively damaging to children" (Parker, 1994: 28). It can be interpreted within a limited protection/welfare context, which can be controlling and dis-empowering of children rather than being extended out to embrace the more pro-active interpretation allowed for by a rights-based interpretation. A conservative interpretation of Article 3, found to be a common interpretation by policy-makers, places it in conflict with Article 12, which states that States Parties shall:

assure to the child who is capable of forming his or her own views the right to express these views freely, on all matters affecting the child, the views of the child being given due consideration in accordance with the age and maturity of the child. (Article 12.1).

Some interpretations of Article 12 raise the concern that such a right gives too high a degree of autonomy to the child. However, these tensions can be a source of positive debate and discussion on what a society really wants for its children. Such discussion can assist signatories in considering what the Convention means in terms of its implementation and wider legislation and policy-making.



### **2.3 The Convention as an Agent for Action**

The quality of children's lives is not necessarily improved by giving them explicit rights. However, naming children's rights as worthy of consideration can act as a drive to improving the quality of life of children as it is an important step in placing them as a constituency on the political agenda. The Convention has captured the imagination of the world. Since 1989 there has been a rapid growth in the number of specialised institutions established to promote and protect children's rights. These exist in over 25 countries throughout the world, primarily, though not exclusively, in Western countries and Latin America. More than 35 countries have either passed new laws or amended existing ones in line with the Convention standards. A number of countries have devised campaigns to promote awareness about the Convention and 13 have incorporated it into school curricula. Over 20 countries have developed training materials for legal officials and judges in the principles of the Convention (The Innocenti Digest, 2001).

For the Convention to be more than mere rhetoric, its implementation by the various States Parties needs to be monitored<sup>4</sup>. Under Article 44 of the Convention, States Parties are required to submit national reports to the UN Committee on Children's Rights describing progress towards implementation. In addition to the national reports received, the UN Committee also considers submissions from relevant NGOs in its assessment of a country's performance. This gives a strong voice to those NGOs advocating children rights and allows the Committee to assess governmental reports in the light of information provided by the NGO sector.

An initial national report must be submitted two years after ratification and further reports every five years thereafter. The UN Committee on the Rights of the Child undertakes examination of these reports. This Committee is made up of ten international experts on children's rights. On receipt of the national and NGO reports, the UN Committee holds a pre-sessional hearing where NGOs and international organisations are invited to present information about the performance of the country under consideration. At the conclusion of this hearing the Committee forwards a 'list

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<sup>4</sup> Parts of this section draw on the CRA publication 'Children's Rights: Our Responsibilities' (1998)

of issues' to the government concerned. This list identifies specific issues, under the different articles, where further information is required. Governments are requested to respond to this list, in writing, to the Committee one month in advance of the plenary hearing. At the plenary hearing the Committee rigorously reviews the country's national report and, using a question and answer format, analyses the country's progress in implementing the Convention. A statement of the Committee's findings and recommendations for action are then forwarded to the country as Concluding Observations. In addition a Summary Record of the plenary session is issued. Both the Concluding Observations and the Summary Record are public documents and countries are expected to publicise them widely to encourage discussion and planning for the actions proposed.

A synthesis of the concluding comments made by the review committee to different countries to date indicates that there are common areas where improvement is possible (Ruxton, 1998). In particular the Committee notes the need for State Parties to:

- improve co-ordination, at national and local level, of policy-making bodies;
- increase budgetary allocation to supporting children's rights;
- improve the position regarding the rights of minority children and unaccompanied minors;
- develop special training programmes in children's rights for all professionals working with children; and
- increase public awareness - and particularly the awareness of children - of the Convention.

Although it presents a radically new way of considering children and their rights in society, the Convention is not a hugely radical instrument in terms of structural or administrative impact. In framing children's rights it does not propose any substantial changes to the basic structure of existing institutions, rather, it proposes the extension of access to these institutions to children. Central to this aspect of the Convention is the principle of participation (Article 12).

In a review of the first ten years of the Convention Save the Children produced a report (1999) that confirmed the importance of the Convention as a seminal piece of

international legislation. In particular, it noted that children's rights are certainly more visible as an issue now than they were a decade ago. The Convention has played a valuable role in increasing governmental accountability and bringing about legislative and institutional reform. It carries a moral authority obliging governments to work towards the fulfilment of children's rights. However, the report found general failure to disseminate adequate information about the Convention to children and the wider public and concluded that (Save the Children, 1999: 288):

The CRC has been radical in seeking to change the way in which children are viewed. Yet in reality the notion of children as individuals in their own right is still largely unrealised.

The report also noted the limitations of the Convention. In particular, realising the Convention in practice is recognised as an ongoing process involving changes in attitude, approach and working methods at various levels at community and national level. In October 1999 the Office of the High Commissioner for Human Rights, with the UN Committee on the Rights of the Child, hosted a conference to mark the tenth anniversary of the Convention and review the achievements and challenges. The main objective of the meeting was to review the impact of the Convention, with the primary focus on lessons learnt from implementation efforts at the national level (Office of the High Commissioner for Human Rights, 1999). In an address to the meeting a founder member of the Committee outlined key challenges for taking child rights "from lip service to political action". These include exploring the implications of Article 3 (BIC) including the need to assess the impact of decision-making on child rights; and implementing Article 4 by allocating the 'maximum' extent of available resources to the implementation of child rights, including the need for budgetary processes at national level, and for international financial institutions, to give increased attention to child rights. In addition he argued that it was necessary to move away from "charity to solidarity". To do this it would be necessary to look more seriously at Article 19, the prevention of child abuse including resistance to banning corporal punishment; and at Article 12 to encourage child participation, not through one-off events or symbolic gestures, but at the local level, for every decision and on an everyday basis.

These are real challenges and are reflected in the limited level of implementation of the Convention at a national level. Despite the fact that 191 nations have ratified the Convention only one – Sweden – has articulated an explicit strategy for its implementation (Save the Children, 1999). In their report on the follow-up to the world summit for children (Sweden, 2001), Sweden noted that since ratification in 1990 “careful and systematic work has been in progress to disseminate and encourage knowledge of the Convention and to harmonise Swedish law with its requirements” (Sweden, 2001:4). To steer implementation a number of initiatives were agreed. A parliamentary committee was appointed in 1996 to clarify “the expression of the spirit and meaning of the UNCRC in Swedish legislation and case law” (Sweden, 2001:5). The Committee stressed the vital necessity of implementing the Convention “at all levels of society, i.e. centrally as well as regionally and locally” (Sweden, 2001:5). In addition the Swedish parliament – the Riksdag –unanimously passed a *Strategy for Implementation in Sweden of the UN Convention on the Rights of the Child* in 1999. As part of the strategy ten key actions were identified. These were:

- the UNCRC shall be an active instrument, permeating all decision-making within the Government Offices that affects children;
- the child perspective shall to a suitable extent be included in the terms of reference of Government Commissions;
- national government decisions affecting children shall be subjected to impact analysis;
- the UNCRC should in various ways be included in training programmes for professional groups destined to work with children;
- national government employees whose work has implications for children and young persons shall be offered in-service training on the UNCRC;
- municipalities and county councils should similarly offer in-service training to their personnel;
- municipalities and county councils should establish systems for monitoring the realisation of children’s best interests in local government activity;
- the activities and organisation of the Office of the Children’s Ombudsman shall be reviewed in order to strengthen its role in implementing the UNCRC;
- the influence and participation of children and young persons in urban and traffic planning are to be developed; and

- child statistics are to be developed.

In reviewing progress on the strategy, the national report noted that implementation had been delayed by the impact of the economic crisis in the 1990s. However, some progress was made and strengthened by the establishment of a co-ordinating function located within the Ministry of Health and Social Affairs. This function is specifically to assist “in the drafting and examination of Government decisions (Bills, terms of reference, remits etc.) and generally accelerating and developing work on children’s issues within the Government Offices” (p.6). In addition, the strengthened Swedish Office of the Children’s Ombudsman has developed training measures and methods and tools for giving effect to the UNCRC, e.g. child plans and child impact analyses in co-operation with municipalities, county councils and national authorities.

The report notes that children in Sweden generally have a good life. However, there has been no explicit ‘child policy’ for children until recently. In a government report presented to the Riksdag in September 2000 - *Children Here and Now*- the importance of responsive and adaptive public child policy was stressed (Sweden, 2000). The Government stated that it is essential “that children’s situations and the child policy pursued should be described at regular intervals, to form the basis of a wide-ranging discussion of children’s issues” (p.3).

## **2.4 Children, Policy and Europe**

The adoption of the Convention initiated renewed debate on the place of children in society. The Convention calls for a coherent policy for the period of childhood itself, rather than the accumulation of individual measures that affect children without being set in a policy framework. The growing interest in children and their status and role in society was also influential in the development of the Council of Europe’s Childhood Policies Project. In 1989 and 1990 the Conference of European Ministers responsible for Family Affairs initiated discussion on the issue of children and their visibility in policy. In 1991 a four-year project was approved and it took place during 1992-1995. The Project afforded an opportunity to carry out research into the impact of changes in society and family structure on children. It brought together the

recommendations of different projects relating to children that had been carried out under the auspices of the Council of Europe over the previous thirty years. Ireland did not participate in the Council of Europe Childhood Policies Project.

The Co-ordinating Committee of the Council of Europe Childhood Project identified two major themes for the Project: 'Children and Families' and 'Children and Society' (Council of Europe, 1996b). Under these major themes, three distinct studies were supported. They were: an exploration of children's effective participation in family and social life; working directly with children to assess the impact of day-care on their lives; and working with children in residential care.

The Convention was a unifying factor underpinning the design and progress of the Project. In particular the three principles of participation, prevention and protection guided the direction of the studies. A core belief of the Project was that adults must move away from viewing children as the passive targets of rights towards recognising and treating them as active holders of rights.

In keeping with the three principles, there was active participation of children from the start of the Project. At the mid-project conference in 1994, the following issues of importance were identified by the participating children and presented to the conference for consideration. Some issues were specific to the conference and others were of a more general nature:

- children and cultural diversity, including the promotion of the rights of refugee and immigrant children;
- systematic measures to combat xenophobia and racism;
- steps to prevent domestic violence and to eradicate physical punishment;
- impact on children of poverty and unemployment;
- child friendly means of handling young law offenders: possible reforms of the administration of juvenile justice;
- media and the rights of the child, promoting the idea of rights, participation of children in the media, protection against abuse and violence; and
- prior reflection by adults attending [the conference] concerning their own attitudes towards sharing an event with children and, in particular, their readiness to seek out and learn from the opinions of children.

The Project concluded that social change bears more heavily on children than adults. It noted that children are often affected first by change and their behaviour highlights for adults that there has been some effect. However, this realisation is, the Project argued, often too late for a significant population of children. To increase society's sensitivity to the impacts of policy and change on children the Project recommended that children, rather than families, be made the unit of observation of policy-makers. Family policy should be complemented by a specific childhood policy that would not only be for children, but would be drafted with them. This was recommended so that children would become visible to policy-makers as, under many current systems, statistics about children are embedded in those relating to the family or to wider issues such as health or education. At the conclusion of the Project the Council of Europe were invited, in co-operation with UNICEF, to agree on a plan of action for developing and implementing a European Strategy for Children.

The Parliamentary Assembly of the Council of Europe adopted the report on a European Strategy for Children in January 1996 (Council of Europe, 1996c). It identified a number of objectives for policy-makers including the need to choose an appropriate methodology for the application of children's rights. It argued for a proactive policy approach to children's rights, making them a political priority with all the budgetary implications that entails. Children must be assisted in becoming a visible community with a voice using, where appropriate, existing structures such as schools. This could be assisted by more systematic collection of information, particularly detailed, comparable statistics that would make it easier to identify gaps in service provision and allow for prioritised planning.

The strategy report also proposed the drawing up of 'child impact statements' in connection with all legal texts, which would assess whether or not children's best interests were respected. Freeman first proposed the idea of 'child impact statements' in 1987 (Freeman, 1992). He stressed the importance for those formulating policy of considering the impact of their policies on children. He deliberately focused on policy rather than the narrower focus of legal texts, which is proposed in the strategy. He did so because it is rare that consideration is given to how policies formulated at government, regional and local levels impact on children. This is all the more so when the immediate focus of the policies is not children.

The report on a European Strategy further recommended a comprehensive, co-ordinated and multi-disciplinary approach to the development of any strategy for children at all decision-making levels and the appointment of a commissioner or ombudsman for children with an associated, independent office to promote and protect children's rights. In April 2000 the Parliamentary Assembly adopted a recommendation to set up a European Ombudsman for Children and called on all member states of the Council of Europe to appoint a national children's ombudsman (Council of Europe, 2000).

## **2.5 Summary**

During the latter part of the twentieth century policy and legislative attention turned to the constituency of children and their rights. In 1959 the UN Declaration on the Rights of the Child was published. The year, 1979 was nominated UN Year of the Child. The UNCRC was published in 1989 and a World Summit on Children was held in 1990. Ireland ratified the Convention in 1992. The Convention addresses the civil, social, economic and cultural rights of children and their rights to protection. It recognises the importance of promoting as well as protecting children's rights and places responsibility for this, in the main, with parents. Europe has also increased consideration of child policy and children rights. A Council of Europe's Childhood Policies Project was approved in 1991 and concluded in 1995. A European Strategy for Children was adopted by European Ministers in 1996.

The remainder of this paper considers how Ireland has responded to the growth of attention to children as a social unit. The next chapter offers a brief review of contemporary Irish childhood.

## **3**

### **Contemporary Irish childhood**



### **3.1 Background**

It is said that the childhood years are the ‘best years of our lives’. Not everyone agrees with this dominant view of childhood and attempts have been made to explode what Franklin (1992) considers a myth by suggesting that a cursory examination of the circumstances in which children live tells a different story. Franklin identifies an ageism with respect to children, which places them distinctly in a position of dependency on and domination by adults. This has, he argues, led to situations where children have been exploited, abused and damaged as well as protected and educated.

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. Historically, child development research has created a vision of development as a progression from a state of dependency - childhood - towards the preferred state of autonomy - adulthood. Judging children’s development in terms of adult constructs creates a situation whereby children are seen as less able, less reasonable and less strong than adults. Children have been characterised more by what they cannot do than in terms of what they can do (Hayes, 1993). This contributes to the pervasive view of children as being passive dependents progressing towards the dominant role of adult. They are not considered to be rational beings, rather they are seen as immature and dependent on others, usually their parents. While young children are manifestly dependent on adults for much more than is necessary to their survival, they are also active agents in the developmental process and contribute to that process, in ways that adults may find difficult to articulate. Research in child development has, by the nature of its focus, separated out the individual child as the unit for study. In this regard it has been criticised as not giving due consideration to the interactive context and social nature of development.

Influential theorists of the twentieth century such as Freud, Erikson and Piaget have left us with an image of the individual child making sense of the world and travelling towards adulthood alone. The prevailing ideology of the individual child, with a common, definable pattern of development, has created a perception of all children as possessed of a universal biological and psychological makeup - the universal child. This ‘universal child’ has dominated much of child-related policy in

education, health, and welfare and has also informed legal decisions made on behalf of children. In addition it has influenced many 'self-help' programmes aimed at assisting adults in their role as parents by presenting development as a series of set milestones that each child achieves at a set time. This approach ignores unique individuality, the complex inter-relatedness of life, the importance of social interactions and the socio-cultural context of development. It fails to take account of children as complex, active human beings with rights who deserve to be protected as participating partners in the process, instead seeing them only as needy, passive, dependent recipients.

Recent research in both psychology and sociology has seen a move away from the traditional approach of studying children in isolation from the complex contexts in which they develop. Increasingly, more attention is being given to understanding childhood and children in a wider socio-cultural context where children themselves are seen as active participants (Vygotsky, 1978; Bronfenbrenner, 1979, 1993; Quortrup, 1994). Woodhead (1997) has noted that, in psychology in particular, the simplistic interpretation of universalist developmental theories, where all children are measured against some notional 'real' or universal child, is gradually being eclipsed by a more comprehensive 'cultural psychology'. Such developments emphasise the individuality of the child while highlighting the need to conceptualise development in the wider context of the individual's experiences and the contribution of the child to those experiences. Children are embedded in their environments and they affect and are affected by them. Researchers are urged to study children within the reality of their experiences as active members of a family and society.

Studies into the well-being of children have noted that well-being has both an objective and subjective component. The objective conditions for well-being are easier to identify and include adequate pre-natal and peri-natal care; stable and secure childhood; adequate access to childcare, health and education and absence of material poverty. The subjective elements of well-being, however, are difficult to identify, and require creative methodology including the participation of children themselves (Hill and Tisdall, 1997; Hogan, 1997). To what extent do children of the modern, industrialised West experience environments that contribute positively to their well-being? Sociological studies (James and Prout, 1997; Corsaro, 1997) have illustrated

the growing tendency in modern society to marginalise children into spaces designed for them by adults. Such segregation restricts the opportunities for inter-generational contacts and complex socialisation, which occurs as a result of social interactions and the modelling behaviour of adults. The paradox is one of adults protecting children by excluding and restricting them and, in the process, limiting their opportunities for development and socialisation. A more refined balance between protection and over-protection is necessary for the positive development and socialisation of children. To overprotect is to constrain children and to limit their opportunities to develop the skills necessary to cope with, and succeed in, everyday contemporary life. While it is necessary to provide certain services for children alone - as it is for adults alone - children should grow up in the midst of society, not separated out of family and society into specialised, age stratified units designed to occupy, entertain or educate them.

### **3.2 Childhood in Ireland**

The task of reviewing the experiences of Irish children is difficult because of the limited statistical data available on them as a specific group. There is no annual report published that brings together general details about Irish children. Data can be collected from the annual reports and statistical summaries from government departments and NGOs. However, there are gaps in the data available and they are often collected using different age-bands for different information. As a result painting a definitive picture of what it is like to be a child in Ireland at the beginning of the twenty-first century is a real challenge.

Drawing on the limited sources available this section presents data about children in Ireland as they progress from birth through to adulthood. Data have been compiled across a range of themes including basic demography, family life, childcare arrangements, education, lifestyle factors and disadvantaged status. The picture of childhood presented here is undoubtedly far from comprehensive, but it does reveal a snapshot of the experiences of Irish children in the current age. Census data for 1996 indicate that there are just over one million children in Ireland. This represents 33 per cent of the total population of Ireland (CSO, 1998b). Division by age is presented in Table 1 below.

*Table 1: Number of Children aged 0-19 in Ireland (1996)*

	0-4	5-9	10-14	15-19	Total
Number	250,394	282,943	326,087	339,536	1,198,960
Per cent	20.88	23.59	27.19	28.31	99.97

*Source:* Central Statistics Office (1998), *Census of Population 1996*, Volume 2, Dublin: CSO

The Irish birth rate is higher than the EU average (Department of Health and Children, 2000). The Total Fertility Rate for 1999 is recorded as 1.89 (Fahey & Russell, 2001) a drop from 2.36 in 1986 and 3.98 in 1971 (Nic Giolla Phádraig, 1991). There has been a steady rise in recorded births outside marriage. In 1978 less than 5 per cent of births were outside marriage and in 2000 this figure had risen to 32 per cent of births (Fahey & Russell, 2001). The infant mortality rate for Irish children is similar to the EU average but the infant mortality rate for Travellers is 2.5 times that of the average population (BHC, 2002). Infant health services are universally available in Ireland and there is an 86 per cent uptake of infant immunisation. However, only 34 per cent of Irish children are breastfed with a lower rate among disadvantaged groups (BHC, 2002).

The family has been recognised as the most stable environment for positive child development (Council of Europe, 1996). The report of the Commission on the Family (1998) endorsed this and went on to point out that, in Ireland, the marital family is still the preferred unit. This reflects a culture-specific understanding of the needs of children, their need for emotional security in an environment of trust, the pattern of their development and the way they learn. It reflects a view of childhood that has been strongly reinforced by the Catholic Church and supported by the Irish Constitution, a view that emphasises the importance of the family unit in child development. Close family networks are still quite strong in Ireland with 41 per cent of grandparents reporting that they engage in activities with their grand-children and 71 per cent providing some level of care (BHC, 2002).

A key factor impacting on Irish childhood, particularly in the early years, is the increased participation of women in the workforce over recent years. The female participation rate increased from 34.1 per cent in 1992 to 48.6 per cent in 2001. Over

50 per cent of women living with a husband/partner in a family unit with children were in employment in the fourth quarter of 2001. Almost 60 per cent of mothers with children in the 5-14 age group were in employment in 2001 as were 50 per cent of male lone parents and 44 per cent of female lone parents (CSO, 2002). In March 2001 maternity leave in Ireland was extended to 18 weeks. Maternity Benefit is payable for a continuous period of 18 weeks irrespective of whether the mother returns to work following the leave. Payment is calculated by dividing the gross income by the number of weeks actually worked. Paternity leave is three days which may be taken from the time of birth up to four weeks after the birth. The Parental Leave Act 1998 makes provision for unpaid leave for fathers and mothers to look after young children for up to 14 weeks which must, in the main, be taken not later than the day on which the child concerned attains the age of five years.

By European standards Ireland has a very low level of publicly supported childcare services. Provision takes a variety of forms and there are limited data on numbers of services and numbers of children attending (Hayes, 2001). A study carried out on behalf of the National Childcare Strategy (Goodbody Economic Consultants, 1998) found that, overall, the most widely used form of childcare among mothers working outside the home is childminding in the minder's own home. Of the 88 per cent of mothers working full time with children under five years, 40 per cent used a minder in their own home (family day-care) and 14 per cent used pre-schools/nurseries. For children between five and nine years of age, 68 per cent of mothers working full-time indicated that they used no form of childcare. Of those who did use childcare, 60 per cent used a minder in the child's home. This survey was the first national survey of childcare usage which gathered data from parents themselves. However, it had limitations. For instance, it did not distinguish between full-time and part-time care arrangements and the ages were banded rather than by year, yet it does provide the first picture of childcare usage at a time when female labour market participation rates were just beginning to rise significantly. The report gives no details of how children of working mothers where no childcare arrangements are in place spend their after-school-time and this is an area needing future research and consideration.

The rate of economic and social change in Irish society over the last decade has been such that the impact on families and children is only beginning to be assessed. As society diversifies so too do families. Concern has been expressed about the impact of increased differentiation of family types on children and childhood (Knutsson, 1997). Research into children's well-being (Costello, 1999) indicates that the aspects of family life most supportive of positive development in children have less to do with a particular family structure and more to do with the quality of family relationships and the level of stress within the family. The rapid rate of change in Irish society seems to be creating a sense that family life is becoming increasingly more fraught and stressful with damaging consequences for children (Commission on the Family, 1998). This may be gauged by, among other things, the increased and sustained demands from parents for support, in the form of family-friendly work practices and childcare services, to facilitate their role as the primary child carers in society. The Government recognises that family policy needs to be responsive to the changing demands and has published a variety of documents promoting family friendly initiatives.<sup>5</sup> In parallel with this attention to research and policy developments, there has been a rise in the availability and use of phone-line support services for parents and for children (ISPCC, 1999)<sup>6</sup>.

Fifty-two percent of Irish four-year olds attend primary school and 99.8 per cent of children aged five to fourteen years participate in full-time education. Eighty-two per cent of 17 year olds are in full-time education and leave school on completion of the Leaving Certificate examination (Department of Education and Science, 2000). McCoy and Williams (2001) note that 15.3 per cent of children leave school on completion of the Junior Certificate and 3.2 per cent leave school without completing any state examination. Forty-six per cent of those who leave school enter third-level education. In 1999/2000 there were 5,600 Traveller children attending primary school, 962 in mainstream post-primary, 120 in special junior education centres and 661 attending senior traveller training workshops (Ireland, 2000c).

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<sup>5</sup> <http://www.familyfriendly.ie/trendspage>

<sup>6</sup> Examples include 'Childline', run by the Irish Society for the Prevention of Cruelty to Children (ISPCC) and 'Parentline' run by the Organisation for Parents under Stress. In addition authors such as David Elkind (1988) in *The Hurried Child* address the impact of family stress on parenting and the quality of children's lives.

Analysis of lifestyle factors in Irish children show that 22 per cent of them report that they are 'very healthy' while 67 percent report that they are 'quite healthy'. One in five children between the ages of nine and seventeen years are current cigarette smokers and over two-thirds of sixteen year olds report that they have been drunk in the last twelve months - this is higher than the average among 30 European countries (BHC, 2002). There are 43 national youth organisations affiliated to the National Youth Council of Ireland (NYCI). These organisations provide a variety of leisure and recreational services for members. They include youth clubs, uniformed youth organisations such as the scouts and the guides and youth wings of political parties. Over 500,000 young people are members of these groups. Lifestyle research suggests that children exercise less as they get older and one in five children between the ages of nine and seventeen years report that they watch television for four or more hours a day. In addition Ireland has the highest penetration of Sony Play Stations in the world after Japan (Ireland, 2000c). Children in disadvantaged areas have been shown to exercise less than children who are financially better off. Increasing the opportunities for sport and leisure activities is recognised as important to physical and mental well-being and reduces the level of anti-social behaviour. It is of note that research carried out by Webb (1997) found that 46 per cent of local authorities do not, as a matter of policy, provide playgrounds. Some 16 per cent of Irish children in the age-range 15-17 years work and almost 31 per cent of these are in full-time employment. The Protection of Young Persons (Employment) Act 1996 was enacted to protect young workers. Children under 16 years of age may not work after 8p.m. and must have two days off in seven. Those aged between 16 and 17 years may not work after 11p.m. and must have two days off in seven.

A significant number of Irish children continue to live in poverty with 26 per cent of children living below the 50 per cent relative income poverty line in 1997 as compared to 18.5 percent in 1980 (Nolan, 2001). According to a Eurostat survey cited by Nolan (2001) Ireland has the highest rate of child poverty compared to the EU member states included in the study. In December 1996 there were 3,668 children in care of whom 76 per cent were in foster care (Department of Health and Children, 2000). This compares to 2,534 children in care in 1983 of whom 56 per cent were in foster care (Nic Giolla Phádraig, 1991: 17). The increase in the number of children in care over this time is greater than the figures suggest as there has been a parallel

decline in the birth rate. In 1996, 14,000 referrals were made to the garda juvenile offices in respect of offences by young people under 18 years of age (BHC, 2002). In September 2000 there were 119 young people aged under 16 years in Department of Education Special Schools for Young Offenders. There were 98 young people aged between 16 and 18 years in places of detention. There were 560 children recorded as homeless in Ireland, 281 males and 279 females. There was a disproportionate representation of travellers and young people who had spent time in care within this group (Ireland, 2001b). Particularly disadvantaged groups in Ireland include Traveller children (Kenny, 2001), children of refugees and asylum seekers (Moran, 1999), children who are in legal custody, subject to abuse or neglect, homeless children (Kelleher and Kelleher, 1998; Williams and O'Connor, 1999) and children with disabilities (CRA, 1998).

### **3.3 Giving voice to children**

Sustaining and improving the quality of life for all Irish children is not an easy task. They are not a politically powerful group and do not have a clear and specific voice. In a positive development in the recent past policy-makers are giving increased support and attention to research into children's lives. Increasingly researchers, both policy and academic, are including children directly in research on topics of relevance to them. This trend is raising valuable ethical and methodological questions for researchers, policy-makers and those working with children (Davie, Upton and Varma, 1996; Hill, 1998; Hennessy, 1999). It is also providing an opportunity for the voice of children to be heard.

In a study carried out by the ISPC in 1996 over 50 per cent of the children surveyed believed that they should be allowed decide for themselves when they go to bed, what to eat and who to have as friends. Almost 80 per cent believed they should be allowed decide what to wear and how to style their hair (cited in the Ireland, 2000c). In preparing for the National Children's Strategy, the Strategy Team consulted with children. Analysis of the issues children identified as important to them indicates a prevalence of certain themes. These include play and recreational facilities, the environment, health, well-being and safety, education and social issues. When asked what they thought the world might be like in 2010 their responses were a mix of practical and imaginative but "whatever their views about the world, the young



people tended to be positive about their own futures” (Ireland, 2000b: 15). In 1999 the National Youth Council of Ireland (NYCI) carried out a survey of second level students examining their views on student participation in school decision making. The study found that, in schools that had School Councils, 79 per cent had been established by the school principal and 8 per cent were the result of a student initiative. In the schools with councils 25 per cent of students found them ‘very useful’, 44 per cent ‘somewhat useful’ and 31 per cent ‘not very useful’. The survey also found that 48 per cent of those surveyed had part-time work and, of those, 54 per cent worked for eleven or more hours per week. If allowed to vote the study found that 74 per cent would vote and 26 per cent would not. However, data reported in the NCS indicate that Ireland has the lowest rate of young voter participation in the EU at 40 per cent compared, for instance, to the UK at 75 per cent (Ireland 2000c: 19). This disparity requires further investigation.

The needs and rights of many vulnerable and troubled children are articulated by parents or pressure groups, speaking on their behalf. For some children, for example those with learning disabilities, it seems that pressure for policy action to meet their rights for education, is best achieved when parents or pressure groups resort to litigation. A review of recent court cases will provide examples of a number of rulings demanding that the State meet its obligations, under the Constitution, to educate all children and to provide safe and appropriate alternative care environment to those who need it (Martin, 2000). In many ways this reflects the dominant discourse about children in Ireland which regards them as the private responsibility of their families, where parents are viewed as the primary voice of children and children are perceived as passive dependents. The result of this is that unless there are serious problems or risk of problems, families tend to be left alone to cope with the strains of modern parenting with limited state support. Policy has developed in reaction to problems and not as part of a wider vision for children. A consequence of this is the development of isolated and fragmented services in place of integrated and inclusive services. Indeed, many government initiatives are targeted at resolving a particular problem in the short-term rather than deriving from a discourse on the rights and needs of all children.

For the majority of children, however, agendas and interests other than the needs and rights of the children drive many of the policy issues that impact directly on them. For instance, the National Women's Council of Ireland has led a campaign pressing for a childcare policy to allow women access to training, education and employment. Unions are seeking childcare services and tax relief for parents so that their members can access the work available, employers are calling for childcare support so that they can fill positions arising as unemployment reaches its lowest level in decades. In addition pressure for childcare is coming from the community/voluntary sector who characterise it as a requirement for parents in poverty so that they can access training and employment and provide more effectively for their children. While not negating the right of any of the above groups to call for the support and development of the childcare sector, it is remarkable that there has been little or no debate on the issue from the perspective of the needs and rights of children themselves.

Children attract the attention of the media in Ireland, as elsewhere. They are often used by the advertising media to represent the purity, innocence or safety of a particular product, place or action. However, many media reports on children and childhood highlight the needs of different groups of children, the lack of services and supports for them and their families. This attempt to raise important issues of policy may, inadvertently, give a biased view of children and childhood as problematic and, in the process, give a negative view of children. Any review of contemporary newspapers or news reports will produce details of lack of, or deficiencies in, appropriate education and childcare facilities for children; court cases highlighting insufficient and inappropriate services for troubled and troublesome children; concerns about the increasingly visible homelessness among children; debate about the high percentage of Irish children born to families headed by a lone parent; lack of play facilities for children and the increased impact of traffic on their freedom of movement; references to both family and institution-based abuse of children; concerns about the exposure of our youngest children to drug abuse; the rise in suicide, particularly among young men; increased incidences of juvenile crime and reports of the high rate of child poverty, particularly in urban areas.

Childhood in Ireland is not in crisis when compared to some of the tragic circumstances of children in countries impoverished through war and/or famine. However, childhood has been neglected as a policy issue. Children are rarely considered in terms of how wider policy developments impact on them. This neglect needs to be remedied because there are critical features of childhood that are at risk in modern society brought about by increased mobility, access to media and global communications. Changes in family structures, demographic realities, new technologies and new children's cultures are opening up new and different childhoods for children and adults.

### **3.4 Summary**

Children represent one-third of the total population of Ireland. Reviewing contemporary Irish childhood is difficult because of the limited data available and the embedded nature of these data. Children represent a specific social group and, as such, have a right to expect policy-makers to consider them separately from other groups. This right has been recognised by Ireland with the ratification of the UNCRC. Respecting children as human beings means that children are not seen as adults in waiting, mere objects of protection, but as subjects and bearers of rights. Policies supporting families in their child-rearing responsibilities will be enriched by taking into account the immediate needs and rights of children. Recognising and taking account of the, often unintended, consequences of policy decisions that are impacting directly on Irish children would assist society in supporting childhood and family life in a balanced way. Most of all, child sensitive policy-making will provide a society that children experience as respecting and valuing them for what they are, as well as what they will become, that protects them in a way that takes account of their right to participate in decisions about their protection, and that enables them to become the adults of tomorrow by meeting their needs and rights today.

## Policy Development and Children in Ireland

### 4.1 Background

Public policy is influenced by a variety of sources, both internal and external to society. External factors include the influence of international agents such as the UN, the EU or the Council of Europe. In relation to policy development and children the most notable recent international influence is the UNCRC. Irish policy in relation to children has also been influenced by our membership of the EU through agreed recommendations and directives and also through the funding initiatives, that have been available since joining. This can be seen in the impact of equality legislation on the development of childcare services and aspects of maternity and parental leave. However, policy-makers are also influenced by national factors such as the state of the economy, the level of employment or unemployment and particular local or special interest issues which can have a disproportionate impact depending on the security of a government's majority. Such factors often guide the policy changes that are made by new governments when presenting a proposed agenda for action. Reviewing the history of a particular policy development can present that development in an ordered and linear way, which may conceal the organic, and sometimes unpredictable, process that policy-making can be. A change in policy direction may come slowly over time but appear sudden in the end, particularly where the considerations leading to a given policy have taken place outside the public view.

One influence on policy development that is well recognised in Ireland is the 'pressure group'. Historically successful pressure groups for children have tended to address particular aspects of policy. For instance, there are powerful lobby groups on behalf of children with learning disabilities (National Association for Mentally Handicapped, Ireland); the rights of parents to have their children educated in multi-denominational schools (Educate Together); Traveller children (Pavee Point); children in poverty (Barnardos; Combat Poverty Agency; the ISPCC). In 2001 another group emerged – the USSS – which was formed in response to the impact of a

series of intermittent strikes by secondary school teachers during the academic year 2000/2001. This group is particularly interesting as it was formed by fifth and sixth year school students from around the country and mobilised quickly through use of media and mobile phones. In some cases, Ireland has had to be forced to meet its constitutional obligations to consider the rights of children in response to rulings from the High Court and Supreme Court. Recent examples include cases relating to access to appropriate education for children with special needs and access to appropriate residential, therapeutic support for troubled children (McGuinness, 1998).

The motivation for making or changing policy will influence the form that policy takes. For instance, there has been significant recent investment in information and communication technology (ICT) education. Such investment reflects as much the need for an emerging computer competent workforce as any belief that we owe it to children to equip them, through education, with skills in technology. Externally influenced or imposed policy changes, such as the recently introduced parental leave legislation in response to a directive from the EU, may be introduced in a limited way, particularly if they are at odds with a prevailing ideology. On the other hand, a policy that is led by a particular governmental vision will tend to be more readily introduced, implemented and supported. There is increased attention to the needs and rights of older people evident in recent policy documents. Given the projected demographic changes predicted there has been a commitment to investing money in pension funds and the Department of Health and Children has recently extended free medical care to older people. This latter issue has generated some debate among medical practitioners and social policy analysts about the value of giving free medical care to all over-70s while giving no consideration to the rights of children to receive free medical care (Nolan and Russell, 2001).

Irrespective of the impetus for policy change, policy-making is a dynamic process. To be most effective the process needs to be less reactive and linked to an overall national development priority. National Development Plans, informed by the work of organisations such as the National Economic and Social Council (NESC), provide a mechanism for improved, integrated policy development. In addition, the Strategic Management Initiative (SMI) and associated developments in Irish public policy management have recognised this fact. A key principle of the SMI is

consultation with and participation of customers, on a structured basis in relation to particular strategic issues.

In 1993 the establishment of the CRA brought a number of groups together to focus attention on the UNCRC and the promotion and protection of children's rights. CRA was not the first organisation to come together on behalf of children in Ireland. Both CARE and Children First, founded in 1974, were two active voluntary groups which together in the 1970s advocated greater cohesion and focus for policy with respect to children. In 1976 CARE and Children First, along with the Irish Association of Social Workers and the ISPCC, organised a protest march to Leinster House, the seat of the Dáil, the Irish Parliament. There, a Proclamation on Children's Rights was read out and later handed to the then Taoiseach, Mr. Liam Cosgrave (Mollan, 1979). They were also important players in demanding improved services for children in the care of the state and contributed to the publication, in 1980, of the influential Child Care Task Force report which acted as the precursor to the Child Care Act, 1991. In addition these voluntary groups used the fact the 1979 was nominated as UN International Year of the Child to good effect. This presented an important opportunity for raising awareness about the needs and rights of children among policy makers and practitioners in Ireland as elsewhere (Knuttsen, 1999; Mollan, 1979). Indeed, in 1979 Charles Mollan, a founder member of Children First, expressed the hope that the steering committee, established to co-ordinate activities for the International Year of the Child in Ireland, would be expanded to become a permanent Irish Children's Council. (Mollan, 1979)

#### **4.2 Children and the Irish Constitution:**

A key influence on policy-making in Ireland is the Irish Constitution (1937). It has been particularly influential, and to some extent conservative, in respect of policy development related to children and their rights. The Constitution is considered the basis for the values in Irish society while reflecting the values of the period during which it was written. It emphasises civil and political rights rather than social, economic and cultural rights, reflecting the spirit of the time of its development (Steiner and Alston, 2000). The Constitution of Ireland recognises the family "as the

natural primary and fundamental unit group of Society” (Article 41.1.1). Article 42.5 provides that

in exceptional circumstances, where the parents for physical or moral reasons fail in their duty towards children, 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 to the natural and imprescriptible rights of the child. (Article 45.2)

McGuinness (1998) has noted that Article 42.5 is the only reference to the rights of the born child in the Constitution. The recognition accorded the rights of the child in Article 42.5 does not refer explicitly to the rights of all children and may be seen as limited to children where the family has, somehow, failed in their childrearing responsibilities. The limiting of stated constitutional rights to vulnerable or troubled children rather than all children has given rise to a number of calls for constitutional review. These include the Task Force on Child Care Services (1980) and the Kilkenny Incest Investigation Team (1993) which noted that the:

high emphasis on the rights of the family in the Constitution may consciously or unconsciously be interpreted as giving higher value to the rights of parents than to the rights of children. (p.56).

The report of the Kilkenny Team went on to recommend an alteration to Articles 41 and 42 of the Constitution to include an explicit statement on the constitutional rights of all children. In 1996 the Constitution Review Group (CRG) recommended an amendment of the Constitutional definition of the family to recognise the diversity of family types now prevalent in Ireland, some of which are headed by parents who are, by definition, children themselves. The CRG also recommended that the Constitution should include an express obligation to treat the best interests of the child as a paramount consideration in any action relating to children. Lynch (1996: 628) comments that:

if the Constitution is to provide protection for the family, what is essential is that it provides protection for the core caring and support-related activities.....

the notion of protecting the institution of family *qua* institution without regard for its substantive work seems to signify a very narrow and limited approach.

A number of commentators have noted that Ireland lacks a clearly defined family policy (Kiely and Richardson, 1995; Fahey, 1998; Cleary, NicGhiolla Phadraig and Quin, 2001). Regulations and supports for family and family life are drawn from a range of different areas of policy covering resource distribution and regulation of family matters (Fahey, 1998). Until recently intervention by the State into family life was justifiable only under certain circumstances such as extreme neglect or abuse and confined, in the main, to providing financial support. The Child Care Act, 1991 marked an important turning point in this non-interventionist approach. It highlighted the value of preventative services and, under Section 8 of the Act, the Health Boards were charged with the responsibility of providing/supporting childcare and family support services. However, the Act did not define 'family support' and this lack of clarity may be a limitation to its effectiveness (Gilligan, 1995).

Ireland's ratification of the UNCRC in 1992 also marks a turning point in policy approach regarding the role of the State. For example, Article 18 makes a clear statement regarding the State's role in providing appropriate assistance to parents of all children in their childcare responsibilities as a right for children. It notes that:

States Parties shall render appropriate assistance to parents and legal guardians in the performance of their childrearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

(Article 18.2)

#### **4.3 Children and the Family:**

Much of the debate about children's rights has centred on the potential tension between the rights of parents and the rights of children. The UNCRC explicitly acknowledges the primacy of the family but argues that the unique nature of children requires that a clear statement of their rights be made. It is not intended to undermine the authority of parents, but to equip them, and others, with a powerful tool for ensuring that the rights of children are not neglected. Archard (1993) writes that it is



reasonable to concede authority to parents so that they may bring up their own children in a way they consider appropriate. He notes, however, that parents do not own their children but

the fact that one's children are one's own needs to be properly acknowledged in any talk of rights and duties (Archard, 1993: 12).

Families may not always be the safest place, emotionally or physically, for children. There is ample evidence that parents and guardians can be the abusers of children, not only in the characteristic ways we see in media reports but also by being over-ambitious and demanding of their children to a degree where they can damage and undermine the rights of children. Not all children are being neglected or abused but many are living in families where their care and protection is inadequate either due to the stress of living in poverty or as a result of ineffective parenting. It is important to note that ineffective parenting is not necessarily linked to poverty and occurs across all economic groups.

Authors commenting on childhood in Ireland have noted that, in general, families are emphasised as the unit for the protection of children and are only assisted in this responsibility where there is evidence of serious disadvantage or where parents have manifestly failed to provide for their children (Fahey, 1998; Gilligan, 1995; Greene, 1994). Yet many parents find it very difficult to provide adequately for their children where there is, for instance, serious material poverty or where it is not possible to access adequate housing or secure employment. The housing crisis, particularly in Dublin in recent years, has impacted across a wide spectrum of social groups (Allen, 1999). Lack of affordable housing in the capital has created a situation where, increasingly, young families have to move outside the greater Dublin region while commuting into Dublin for work. This places pressure on family life with, among other things, the increase in travel time taking away from family time rather than work time. In addition, rising house prices in cities have increased pressure on both parents to work in order to afford a house. This, coupled with the limited availability and high cost of childcare, has added to the stress of parenting and impacts on the quality of life of the family and the individuals within the family. In more serious cases, the shortage of social housing and the limited rental options

available may be contributing to an increase in family homelessness. It has been argued that there has been a failure by the State to adequately recognise and respond to the interdependence between family life and society. The capacity of parents to provide for their children is often dictated by factors over which they may have limited control (Hayes, 1995).

The Report of the Commission on the Family, *Strengthening Families for Life* (1998), is an important policy document relating to children and families in Ireland. The Commission, which was appointed by the Minister of Social Welfare in 1995, published an interim report in 1996 and a final report in 1998. The final report is a comprehensive review of family life in Ireland and addresses such issues as supporting families in their responsibilities and promoting the continuity and stability of family life. The terms of reference of the Commission were, among others, to raise awareness about issues affecting the modern Irish family, to assess the impact of social and economic factors on families and to recommend measures to strengthen the capacity of families to fulfil their responsibilities in a changing world.

The Commission identified six principles guiding its work and deemed necessary for any successful family policy. The principles were:

- a recognition of the family as the fundamental unit providing stability and well-being in Irish society;
- caring for and nurturing all family members as the unique and essential family function;
- continuity and stability identified as major requirements in family relationships;
- an equality of well-being is recognised between individual family members;
- a recognition that family membership confers rights, duties and responsibilities; and
- a recognition of a diversity of family forms and relationships.

The policy approach recommended by the Commission is one that is preventive and empowering, building on family strengths and enhancing self-esteem. It recommends prioritising investment in the care of young children, supporting parental choices in care and education while providing practical support to facilitate balancing work commitments and family life. It called for a comprehensive programme to support positive parenting as a core feature of family policy. The

establishment, in 1999, of the Family Affairs Unit within the Department of Social, Community and Family Affairs (DSCFA) marked a commitment by government to integrated family policy. Its aims include to pursue the findings of the Commission, undertake research and promote awareness. In 2001 the DSCFA announced the establishment of a Family Support Agency to progress the development of a co-ordinated approach to family policy.

The Commission on the Family Report (1998) endorses the position of the CRG in its recommendation for a wider definition of family. It also recommends that public policy on family affairs should reaffirm the commitment of most Irish people to marriage while recognising that children are individuals within the family with rights to adequate support, care and promotion of their well being. While referring to the rights of children within the report it is noteworthy that the language of the Commission continues in the tradition of portraying children as passive dependents while identifying adults as protecting them and working on their behalf. Taking the family as the unit for consideration in policy and legislative issues may not be sufficiently refined a focus to take account of the increased diversity of family types in Ireland. Neither does it address the differing needs and rights of individual members. Explicitly identifying the individual as the unit of consideration will not weaken the family and may, in fact, enhance the family unit as a whole.

#### **4.4 Children and the Law**

Irish legislation in respect of children has tended to be protectionist in nature, aiming to protect children and to meet their needs with respect to access to health and education. The 1908 Children's Act was the dominant legislative instrument relating to children throughout the twentieth century. It was not until 1991 that the Child Care Act replaced elements of the 1908 Act and the full enactment of the Children Act 2001 will finally place the 1908 Act into legal history. McGuinness (1998) notes that statute law as regards children can be divided into the private law aspect covered in the various Family Law statutes and the public law aspect which is, in the main, covered by the Child Care Act, 1991. She notes that the foundation of modern statute law is the Guardianship of Infants Act, 1964. This Act established in Irish law the principle of paramount welfare of the child in any relevant proceedings. The Status of Children Act, 1987 is an important Act as it abolished the legal discrimination against

‘illegitimate’ children and, by so doing, can be regarded as acknowledging the rights of children to equal treatment irrespective of their birth history.

Historically Irish law has endeavoured to protect children from direct involvement in parental disputes. One of the negative results of this protective focus has been that the views of children were not considered in cases that had the potential to impact profoundly on their future. This view began to be challenged when the Child Care Act, 1991 was implemented. The Child Care Act has, as a central principle the best interests of the child. While this has been welcomed and is in line with other legislation impacting on children, Parker (1994) cautions that there is a danger that a particularly conservative definition of the best interests of the child may be taken in law and policy development. He writes that:

[A] t the same time as the best interests standard is deepening its hold on domestic and international instruments, we hear that it provides a convenient cloak for bias, paternalism and capricious decision making (Parker, 1994: 34).

The Child Care Act introduced into Irish legislation the concept of the child as a part of the legal proceedings affecting them with the same rights to relevant information as all other parties. The Act also empowers the courts to appoint a solicitor or Guardian *ad Litem* (GAL) for a child in such circumstances. A GAL is someone who is appointed ‘a guardian for a law suit’. This is a temporary appointment, which ends when the court proceedings are finished. There are no parameters to guide the courts or individuals so appointed. Of particular note is that the appointment of a GAL is at the discretion of the courts, that it only applies in certain circumstances and that no effort has been made by statutory bodies in Ireland to ensure best practice in relation to the service (CRA, 1997). Shannon (1999) suggests that it is conceivable that a child may, under this legislation, have neither a GAL nor any other representation in proceedings affecting him or her. Such a situation is at odds with the State’s obligations under Article 12 of the UNCRC. This gives participatory rights to children in issues which have a direct impact on them and could be seen as an example of the what Parker (1994) calls the ‘convenient cloak’. The Guardianship of Infants Act 1964 recognised that a court may take the wishes of a child into account and, in order to ascertain these wishes, the court may interview

the child. The Children's Act 1997 was enacted to amend the Guardianship of Infants Act 1964 to take into account the wishes of children in guardianship, custody and access decisions affecting their welfare, and for safeguarding the interests of children. Section 11 of the Guardianship of Infants Act 1964 as inserted by section 9 of the Children Act 1997 states that:

In considering whether to make an order ... the court shall have regard to whether the child's best interests would be served by maintaining personal relations and direct contact with his or her father and mother on a regular basis. (Section 11d)

The language of this section reflects Article 9 of the UNCRC, which states that:

States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests (Article 9.3).

The Act also enables a child who wishes to be present during the hearing of proceedings to attend unless, having regard to the age of the child or the nature of the proceedings, the Court is satisfied that it would not be in the child's best interest to accede to the request. McGuinness (1998) notes that amendments to the Guardianship of Infants Act 1964 have remained constant, with welfare defined as the religious and moral, intellectual, physical and social welfare of the infant and notes the omission of references to the emotional welfare of the child. Martin (2002) suggests that this omission has been unintentionally rectified with the passing of the Protection of the Persons Reporting Child Abuse Act 1998.

It has been noted that an uneasy compromise exists between the welfare principle outlined at section 3 of the 1964 Act and articles 41 and 42 of the constitution (GAL report, 2001). Amending the Constitution to include the welfare principle and to provide an express guarantee of certain other rights deriving from the UNCRC was recommended in the report of the Constitution Review Group (1996). In deciding cases which impact directly on children, reports may be sought by the

Courts from probation officers, psychiatrists, psychologists and other professionals. These reports are seen as providing a neutral method of ascertaining children's welfare while in an indirect way allowing the voice of the child to be heard. However, these reports represent an adult view of the best interests of the child rather than a direct reflection of the views or wishes of the child. In 2001 a Law Society report, *Giving Children a Voice* reviewed the position in respect of children and the law and called on the government to establish and fund an independent guardian *ad litem* service (Law Society of Ireland, 2001).

A new aspect of children's rights in public law, noted by McGuinness (1998) is evident in a series of judicial review cases asserting the child's constitutional right to proper care for his/her welfare and proper education. Fahey (1998) has argued that recent legislation impacting on children suggests a move towards strengthening Article 40 of the Constitution, asserting the rights of all citizens as equal, over Article 41 which protects marriage, the recognised basis of the Constitutional definition of family. It is, he suggests, a move away from the protection of the social unit of the family, towards a concern for individual rights as the basis for social policy development. Indeed, it could be argued that the quality and level of protection and support for the family unit should be informed by the changing needs and rights of the members within the family unit. A focus on the individual as part of another sub-group, such as children, is not necessarily detrimental to the good of the social unit, the family. Shannon (2001) notes that the incorporation of the European Convention on Human Rights, under the European Convention on Human Rights Bill 2001 will have a positive impact on the manner in which the law and health boards view children. He cautions, however, that incorporation at sub-constitutional level will ensure that child rights remain subordinate to parental rights.<sup>7</sup>

#### **4.5 Children and the Church**

The close relationship between the Roman Catholic Church (or "the Church"), family and general social policy in Ireland was highlighted in the widely publicised case that came to be known as, the Mother and Child crisis. This crisis arose on the passing of

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<sup>7</sup> The European Convention on Human Rights Bill 2001 was one of the pieces of legislation that failed to be passed before the dissolution of the Dáil (the Irish parliament) in April 2002.

the Health Act, 1947. The Archbishops and Bishops wrote as a group to the Taoiseach expressing serious reservations and grave disapproval. A review of the letter, quoted by Whyte (1980) and the wider debate of the time highlights the churches view that children were the responsibility of their parents and not the State. Particular concern was noted with respect to sections 21-28 of the Act where the public authority was given the right, and duty, to provide for the health of all children, to treat their ailments, to educate them in regard to health, to educate women in regard to motherhood and to provide all women with gynaecological care. The Bishops letter in particular pointed out that to claim such powers for the public authority was entirely and directly contrary to Catholic teaching on the rights of the family, the rights of the Church in education, the rights of the medical profession and of voluntary institutions. Whyte (1980: 333) goes on to point out that during the period 1959-1970 the:

... Catholic social movement in Ireland became more involved in empirical investigation, so denunciation of excessive State intervention died away... investigation showed that in many ways the State in Ireland stepped in not too much but too little.... Bishops, too, began to call for an increase, not a decrease, in State intervention

Nic Giolla Phadraig (1991) points out that the influence of the Church on the State is evident in articles of the Irish Constitution directly concerned with families and children. She identifies three key articles - Article 41 "The Family", Article 42 "Education" and Article 44 "Religion". Specifically in relation to the family, she notes that the model for family in the Constitution reflects Catholic moral teaching and she tracks the influence of the Church on policy development. On the issue of divorce she refers to the attempt, in 1986 to amend Article 41, 3.2 which read; "No law shall be enacted providing for the grant of a dissolution of marriage." The amendment was to permit the introduction of divorce legislation. The Church was opposed to the amendment and it was defeated by a two-to-one margin. Following the defeat of the 1986 amendment special provisions were brought in to address the problems of a no-divorce situation and these included allowances for deserted wives, mediation schemes for separating persons and legislation to regularise the status and

entitlements of non-marital children. In 1998 a second amendment was approved by a margin of 51 per cent to 49 per cent and legislation for divorce was introduced.

Although the power of the Church as an agent in policy development may be declining, due to a combination of factors including falling vocations and the publicity surrounding a number of scandals, it still influences, informs and comments on social policy through such organisations as the Saint Vincent de Paul and the Conference of Religious of Ireland (CORI). Hornsby-Smith and Whelan (1994) note the emergence of a 'New Catholicism' in Ireland, which he characterises as comprising an informed appreciation of the value of the supernatural; an outlook that questions the Church's right to speak with absolute authority on patterns of personal morality or to speak out on government policy while, at the same time, accepting that the Church should speak out on social issues. In relation to children's rights, specifically, it was the Council for Social Welfare, a Commission of the Catholic Bishops' Conference, which hosted the first public conference on children's rights in Ireland and produced a book of proceedings (Council for Social Welfare, 1991). The conference marked the first anniversary of the publication of the UNCRC

The relationship between the Church and children has come under particularly close scrutiny in the last decade. This attention has resulted from a number of child abuse scandals involving both institutions run by the Church and individual priests and religious. The debates surrounding these scandals directed attention to the nature of society in Ireland up to the 1960s and 1970s which appears to have been particularly repressive to children (Raftery and O'Sullivan, 1999).

Historically, the Church has always had a strong impact on children through the denominational nature of the Irish education system. However, primary and secondary education is also strongly influenced by the State through a national curriculum and national examination process. In addition there is, at primary school, a common national training for all teachers. Nic Ghiolla Phádraig (1991: 34) has noted that through the Constitution:

the State restricts the power of religious denominational schools (Article 44) by requiring that no child shall be required to attend religious instruction at



that school. Very few children exercise this right. ...As long as the management of schools remains effectively in Church control, teaching appointments will be largely contingent on perceived conformity to Church dogma and the religious atmosphere may persist albeit in a weaker form.

#### **4.6 Children and Education**

Investment in education since the 1960s has been seen as one of the key factors impacting on the recent economic success in Ireland. Hyland (1998) identifies the Second Programme for Economic Expansion of 1963 as the first public acknowledgement by the Irish government that expenditure on education was an investment in Ireland's future and agrees that, in the main, the economic gains from educational investment have been striking. In general it has been found that higher levels of educational achievement are associated with higher wage earning capacity and lower likelihood of unemployment. She goes on, however, to identify structural weaknesses in the educational system which have led to a situation whereby a population of children have clearly been failed by the system. In addition to structural difficulties in education there is also differential funding across levels of education. Investment in Irish education continues to favour third level over primary in terms of expenditure per student (OECD, 2001). This is an example of policy favouring children who are almost adult over younger children at the poorly resourced primary level. This tendency was reinforced by the decision in the mid-nineties to introduce free third-level education at a time when there was little public expenditure on pre-primary education.

A report issued by CORI (Reynolds and Healy, 1999) notes that 25 per cent of school leavers do not have educational qualifications, which would equip them for success in the labour market. Early school leaving has been a cause for concern at a policy level in education for over a decade. In 1999, 81.6 per cent of students left the secondary-school system having completed the Leaving Certificate, 15.3 per cent left on completion of the Junior Certificate and the remaining 3.2 per cent left without sitting an official examination (McCoy and Williams, 2001). Under Article 28(1) of the UNCRC, States Parties are obliged to take measures to encourage regular attendance at school and to reduce drop-out rates. A number of initiatives have been

undertaken to combat this problem including the Education (Welfare) Act 2000. Indeed, by the mid-nineties, the Government had begun to invest strategically in different levels of education from modest pre-school interventions through to increased commitment to lifelong learning initiatives. The rationale for such targeted developments was located in both the social and economic cost of failing to do so. Policy-makers have recognised that investing in overcoming educational failure is worthwhile, because without such investment the economy and society eventually pays for it in other ways such as social welfare, justice and health costs.

O'Sullivan (1993) argues that Irish educational policy shifted from considering educational development in terms of the needs of the individual learner towards seeing it as an economic investment in the future following the 1965 Department of Education report, *Investment In Education* (Ireland, 1965). He notes the shift from the personal development paradigm of education towards the human capital paradigm. From the point of view of the child, this shift in focus was an important one as it moved the location of educational aims away from the immediate impact on the individual child towards the future needs of society. The educational needs of children and the potential requirements of employers and society became competing elements in directing curricular development and assessment goals.

In 1998 the Department of Education and Science published the Education Act. The aim of this Act was to regularise practices and procedures, which had developed over time within the primary and secondary education sector. In line with the principle of Article 12 of the UNCRC the Act includes welcome moves towards improving children's participation in their education. Section 28 of the Act provides for the establishment of student councils. However, this move is limited as it only refers to school councils at second-level schools with no reference in the Act to such councils at primary school. Furthermore, student democratic rights are set out in conditional terms. Boards of Management and/or School Principals have the discretion to determine whether such councils should be established and also control over their terms of reference. Students themselves have made a move for greater participation in education policy through the formation of the USSS in 2001.

Devine (2001) makes a strong case for the capacity of Irish children to articulate their views about education in a constructive way within the school system. She identifies the need for schools to address the participation of children by focusing on the 'nested layers' within the school. These layers make up the school community and include the school, the class and the individual student. She identifies the proposed school councils as an important mechanism for allowing children experience democracy in practice, through which she argues, they will "incorporate concepts of equality, difference and respect into their world view" (Devine, 2001: 172).

#### **4.7 Summary**

This review illustrates the degree to which children are viewed as passive dependents in Irish society. They are seen to be the responsibility of their families. They are not encouraged to become active agents in services influencing them, such as education. Neither have they been included in policy-making, even where it impacts directly on them. Nonetheless, there is evidence of increasing attention to children, by adults and children, as bearers of rights. Such moves should lead to increased participation of children and greater respect for their views.

Reactive policy responses to problems or pressure from vocal groups leads to fragmented solutions. On the other hand, policy that has been planned in a strategic and consultative way with targeted is more likely to be integrated and capable of responding to the particular needs of different groups as they arise. This would be more cost effective in the long run as it would act to prevent certain problems and leave more resources to address the more difficult problems that will inevitably arise in a complex, modern society. An analogy from industry might illustrate the point. In producing a product it is recognised that a fault identified at the design phase is easily and cheaply fixed; a fault identified on the production line is ten times more expensive. If a fault is not identified until the product is in the field, the repair costs are many more times expensive and most expensive of all where a fault, identified in the field, causes problems or damage outside itself. One could argue, therefore, that a more balanced approach to policy developments impacting on children, one that is more child-centred and less problem-focused, would lead to expenditure being more

evenly distributed across support, prevention and intervention and, ultimately, more effective for children and their families.

## Tracking Children in Irish Policy Development

### 5.1 Background

Ireland has experienced a period of unprecedented economic growth over the last decade. This has resulted from, among other things, a strategic partnership approach to economic policy development. Recent negotiations on partnership agreement between government, employers, unions and the community pillar have moved to a more explicit and defined social focus. Evidence of this trend can be seen in the current partnership agreement, the *Programme for Prosperity and Fairness* [PPF] (Ireland, 2000e), where monitoring mechanisms for actions under the Operational Framework of the agreement have been strengthened.

Historically Ireland has had a centralised, hierarchical, departmentally-driven approach to policy development. This may have been successful when dealing with straight forward and general policy issues, such as basic health and education, in a relatively homogenous society. It is insufficient, however, when developing comprehensive national policy on the range of complex, inter-related issues that make up modern Ireland. Such policy-making can no longer be effectively carried out by individual departments acting in isolation from each other. Many of the key issues needing attention are, in fact, cross-cutting issues. These are issues that cut across a wide range of departments and draw on, in different ways and to different degrees, the budgets from these departments. The organisational and leadership challenge of any structure dealing with complex cross-cutting issues, in particular with respect to the implementation of recommendations and budgetary allocation and control should not be underestimated. This has, to some extent, been recognised. As part of the SMI outlined in *Delivering Better Government* (Department of the Taoiseach, 1996), a number of important proposals for public sector reform have been identified to move towards a more co-ordinated approach to management within the government and civil service. The Public Service Management Act (1997) is a welcome attempt to improve the management of the structures of the civil service through the publication

of departmental strategy plans, which, *inter alia*, identify the areas of linkage across different departments. Furthermore, the Act allows for the designation of positions, or nomination of persons, to take responsibility for particular issues and related decisions. It is appropriate to conceptualise children as a cross-cutting issue. Their invisibility in statistical terms camouflages the fact that there are aspects of policy specific to children in many departments.

Responsibility for policy related to children and childhood is spread across a number of government departments in Ireland. This has resulted in policies impacting on children developing separately and in a somewhat fragmented way. The need for some degree of co-ordination with respect to policies about children was recognised by the Government in 1994. At this time a Minister of State to the Departments of Health, Education and Justice was appointed. This Minister had special responsibility for aspects of policy impacting on children at risk or in need of protection and care. The Human Rights Unit at the Department of Foreign Affairs noted that the appointment brought together under a single Minister, responsibility for child protection, youth homelessness, school truancy and children in trouble with the law, areas which in the past, had been the responsibility of three Government Ministers (Ruxton, 1998). Although it was a junior ministry, this appointment had equal status across the three departments. The position, however, was clearly directed at the protection and welfare of vulnerable children and not at the development of a co-ordinated response to the rights of all children.

Children are becoming more visible in policy. A review of the key reports shows the gradual appearance of references to services for children in need of protection or for disadvantaged children. Service development for families in need of childcare also emerges as a focus for consideration. *The Green Paper on Economic and Social Development* (Ireland, 1976) made the following point:

Within the constraints of available resources, steps to streamline and improve the social services, which remain largely a piecemeal response to individual needs rather than a planned system to ensure social justice... society, including government and the social partners, have a duty to protect the old, the poor, the sick and *disadvantaged children* (emphasis added) who, because

of personal circumstances and inflation depend on the community to act on their behalf (p38/39).

The governmental economic plan for 1983-1987, *The Way Forward* states that:

Selfish attitudes and the pursuit of sectional interests must give way to a more responsible approach which recognise our vital common interest in averting the economic and social dangers which threaten us. By unity in action and resolve, we can seize the opportunities which this Economic Plan outlines to ensure a secure future for ourselves and our children (Ireland, 1982: 11).

Action to meet these aims for social justice was, however, constrained by the economic circumstances as illustrated by the following:

[W]e cannot afford in our society, with our limited resources, to operate social policies which are wasteful or are not primarily directed to those genuinely in need (p.111).

Implicit in this sentence is the subjective determination of what constitutes *genuine need* and it reflects the move towards government-led targeted support for particular sectors of the population. This approach is the model of social service development most common in Ireland where the State supports a small number of universal supports such as child benefit alongside a large number of selective services and intervention projects. In periods of economic recession such an approach is understandable and, while unimaginative in terms of long-term needs, it is defensible. However, the value of a targeted approach is limited where targeting is fragmented or where it occurs in the absence of a solid policy foundation of universal support for all children. For example, making available special opportunities and incentives to help educate young children in disadvantaged circumstances is a laudable social policy goal. It is, however, of limited value if children emerge from a particular initiative as a result of their age and there are no associated, integrated supports or services available to them or their families thereafter. What is required is a strategy, which recognises the need for varied types of inter-linked family supports, provided at

various levels of intervention, to support all children and families to a greater or lesser degree. In this way those in need of targeted provision can access it as necessary in the context of a broadly supportive policy environment.

In addition to focussing on targeted populations, policy documents and reports tend to emphasise service support over the requirements of the individual. For instance, the *Kennedy Report* (1970) and the subsequent report of the Task Force on Child Care Services (1980) addressed the provision of services necessary to provide for troubled and vulnerable children rather than on the needs and rights of children themselves. This focus on the services rather than on the children was noted at the time. Indeed there was a forceful minority report submitted with the final Task Force report on this point. It outlined the views of the authors that there was a weakness in the recommendations particularly with respect to the lack of balance between the targeted service focus and the rights of children (O’Cinneide and O’Dalaigh, 1980).

## **5.2 Children and the National Agreements**

The relationship between economic development and social support has been acknowledged in various public documents since the 1970s. The NESC document *Strategy for Development* (1989) flagged a possible tension of focus between the economic and social aims and found it necessary to note that:

Social policies are an essential and integrated element in the strategy for economic and social development proposed by the Council. The difficult economic conditions provide a new opportunity to pursue the goal of social equity, rather than a rationale for abandoning that goal. Social equity, and its expression in the form of extensive social services is not fundamentally antagonistic to economic growth and efficiency ... the welfare state is not, in general, a cause for economic decline (NESC, 1989: 27).

National wage agreements, later known as Partnership Agreements, were initiated to assist economic growth and development in the 1980s. The principle was that if government, business and unions agreed on economic and social strategies and wage agreements for a given period it would ensure industrial stability. This would, in turn, contribute to economic and social development. Strategy was guided by,



among other things, the emerging potential of EU funding to support farming and contribute to combating disadvantage and promoting equality.

*The Programme for National Recovery* [PNR] (Ireland, 1987) marked the beginning of a series of national agreements for economic and social development based on consultation and agreed targets. Consultation for this agreement did not include any involvement from the community and voluntary sector. *The Programme for Economic and Social Progress* [PESP] (Ireland, 1991) extended the consultation process by accepting submissions from the community/voluntary sector. These submissions were considered by the Central Review Committee, located within the Department of the Taoiseach. Including the community/voluntary sector in the consultation process brought wider issues of social policy to the negotiating table. It also gave voice to a number of marginalised groups.

The PESP document, under the heading of Health, made a commitment to the implementation, over seven years, of the Child Care Act 1991, marking an overhaul of the legislative system with respect to children. Initially the process of implementation was slow and resources were limited. However, in 1993 the Kilkenny Incest Report was published and it raised the issue of the state responsibility to protect children within the wider community (Kilkenny Incest Investigation Team, 1993). There was an outcry in respect of the poor level of resources allocated to the development and support for childcare services and this speeded up the allocation of the funds necessary to implement the Child Care Act. The Child Care Act clarified and extended the role of the State in child welfare and protection. The Act defined the child, in line with the Convention, as anyone under the age of eighteen years. The State, through the Health Boards, was given the responsibility to be pro-active in promoting the welfare of children and their families rather than merely reactive to particular situations. Section 7 of the Act gave a new and wider responsibility to the State in the regulation and supervision of pre-school services for all children rather than restricting regulation to services developed for children considered 'at risk'. There is no doubt that the publication of the Kilkenny Incest Report, and the impact of its recommendations, hastened the full implementation of the Child Care Act. This Act, in turn, moved policy focus from the more paternalistic, reactive approach to child protection to a more accountable, pro-active approach which encouraged the

development of preventive, family support services and the regulation of certain children's services which were previously considered outside the remit of the public sector.

*The Programme for Competitiveness and Work* [PCW] (Ireland, 1994) also engaged with the community/voluntary sector by way of submissions. However, concern was expressed that the economic and social partnership approach to policy formation could not tackle the problems of social exclusion and equality without direct representation at the negotiations from the voluntary/community sector. This led to their participation in the next agreement forum. The active presence of what is called the Community and Voluntary Pillar at the Partnership 2000 (1996b) negotiations was highly significant for many sectors, but particularly so for children.

Children do not feature in *Partnership 2000* [P2000] (Ireland, 1996b) as a constituency for specific policy consideration in themselves. They become visible only in respect of wider policy issues such as social inclusion (Chapter 4) and equality (Chapter 5). Attention is directed at the expansion and development of certain services for children. For example, under the heading of combating educational disadvantage, there are commitments to extending the Breaking the Cycle education initiative and to developing an early years intervention project for disadvantaged three to four year olds. Under the heading of equality there is a commitment to support measures to develop the childcare sector so that parents, particularly women, have less barriers to accessing the labour market.

Increased references to the development of services for children were qualified by reference to continued support for the traditional family. The incoming Government, in their *Action Programme for the Millennium* (Department of the Taoiseach, 1997), recognised the need to facilitate access to the labour market for women through developing childcare services. It clearly located its support for developing childcare services within the context of the tradition of the family in Ireland. This strategy committed the Government to protecting the family through political, economic, social and other measures to support the stability of the family. The report noted that Government would

...be more conscious, in our decision making process, ... be more sensitive to children and childcare issues, and ... be caring to the needs of children in all our dealings with them and their parents (Department of the Taoiseach, 1997: 17).

The publication of the *Programme for Prosperity and Fairness* [PPF] (Ireland, 2000) marked a more extensive commitment to social policy than previous agreements. Children, and policies impacting on them, are also more evident than in previous agreements. This is noticeable in the context of the document's commitment to the development of a National Framework for Family Friendly Policies to enhance the opportunity to reconcile work and family life, and contribute to the effective and efficient operation of the enterprise. Once again, however, children are included as an adjunct to other policy issues rather than as group in their own right. This is in contrast to other identified social groups such as older people. In the context of rights, it is noteworthy that the PPF makes no reference to the rights of children while, the section on Older People notes that the Equality Authority has established an Advisory Committee covering the rights of older people. The policy areas where children are referred to include the traditional section on education as well as social inclusion, healthcare, lifelong learning and family-friendly policies. The two main policy documents impacting on children identified within the PPF are the National Childcare Strategy and the National Children's Strategy. Functional responsibility for the co-ordination and implementation of the childcare strategy was given to the Department of Justice, Equality and Law Reform. The development of the NCS was noted and identified as a key policy development which, "when completed, will underpin child protection and child care services generally" (Ireland, 2000: 95). In addition the PPF states that "The National Children's Strategy ... will provide a holistic view of the interests and needs of children." (Ireland, 2000: 119).

### **5.3 The National Children's Strategy**

The NCS is an important policy documents relating to children published in Ireland. The announcement of the intention to publish a strategy came as something of a surprise. A review of the factors leading to it suggests that the UNCRC was an important influencing factor. In 1997 the UN Committee on the Rights of the Child submitted a 'List of Issues' to the Government in advance of the plenary hearing of

the Irish National report by the Committee. Among the queries raised by the Committee was one relating to the implementation of the Convention. In response, the Government indicated that there was no immediate intention to draft a national children's strategy. However, in October 1998, the Minister for Health and Children announced, in a speech delivered to the annual CRA conference that, in response to the UN Committee Recommendations (CRA, 1998), his department was co-ordinating the production of a National Children's Strategy. An inter-departmental group was established in 1999. The National Children's Strategy was published in November 2000. The Strategy articulates a vision of an Ireland:

where children are respected as young citizens with a valued contribution to make and a voice of their own; where all children are cherished and supported by family and the wider society; where they enjoy a fulfilling childhood and realise their potential. (Ireland, 2000c: 4).

It is an ambitious ten-year strategy with six operational principles which emerged "from consultation and which reflect the UN Convention on the Rights of the Child." (Ireland, 2000c: 10). It stipulates all actions to be taken within the context of the Strategy will be:

- Child Centred – the best interests of the child shall be a primary consideration and children's wishes and feelings should be given due regard;
- Family Oriented – the family generally affords the best environment for raising children and external intervention should be to support and empower families within the community;
- Equitable – all children should have equality of opportunity in relation to access, participation in and derive benefit from the services delivered and have the necessary levels of quality support to achieve this. A key priority in promoting a more equitable society for children is to target investment at those most at risk;
- Inclusive – the diversity of children's experiences cultures and lifestyles must be recognised and given expression;
- Action Oriented – service delivery needs to be clearly focused on achieving specified results in agreed standards in a targeted and cost-effective manner; and

- Integrated – measures should be taken in partnership, within and between relevant stakeholders be it the State, the voluntary/community sector and families; services for children should be delivered in a co-ordinated, coherent and effective manner through integrated needs analysis, policy planning and service delivery (Ireland, 2000c: 10).

The development of the NCS reflects the recommendations of the SMI. Its development was placed under the direction of an inter-departmental group chaired by the Secretary General of the Department of Health and Children. The day-to-day work on the Strategy was progressed by a cross-departmental team under the leadership of the Department of Health and Children. The team worked in close contact with a non-governmental advisory group, a research and information panel, a health board liaison group and a panel of international experts.

The stated intention behind developing the NCS was to be as inclusive as possible. A central part of the development of the NCS has been the wide-ranging consultation process. Invitations for submissions through the national press sought contributions from parents and others who care for and work with children. In addition, a targeted consultation was carried out with children and young people with the assistance of various schools and voluntary organisations throughout the country and with the support of the CRA and the National Youth Council of Ireland (NYCI). Children also wrote or e-mailed the Minister of State with responsibility for Children to give their suggestions, comments and observations on growing up in Ireland.

An evaluation of the process suggests that it was insufficiently planned. While welcome it was not substantive consultation and can only be regarded as a small beginning (Hayes, forthcoming).

In line with the SMI, the NCS argues that the improved co-ordination of children's policy development and service delivery will bring major benefits by:

- harnessing varied ideas and wisdom in designing new services;
- providing a clearer focus;
- avoiding duplication and identifying gaps;
- incentivising joint action in service development and delivery; and
- improve communication leading to less confusion.

The NCS has identified three national goals for children. These are:

Goal 1 – Children will have a voice in matters which affect them and their views will be given due weight in accordance with their age and maturity;

Goal 2 – Children’s lives will be better understood; their lives will benefit from evaluation, research and information on their needs, rights and the effectiveness of services; and

Goal 3 – Children will receive quality supports and services to promote all aspects of their development.

While the principles and goals read well, there are some inconsistencies within the strategy document itself. For instance, the principle that all actions will be ‘equitable’ suggests – by referring to targeting investment – a belief that the existing level of service provision to children is, in general, acceptable. This is an assumption, which is open to question. The principle that all actions will be ‘integrated’ does not name children as stakeholders in the list given despite the prominence of the concept of giving children a voice within the strategy. The language of the NCS reflects an adult-centred rather than a child-centred perspective. One can see the management of the child participation process by the adult, where the report outlines that giving voice to children means, in practice:

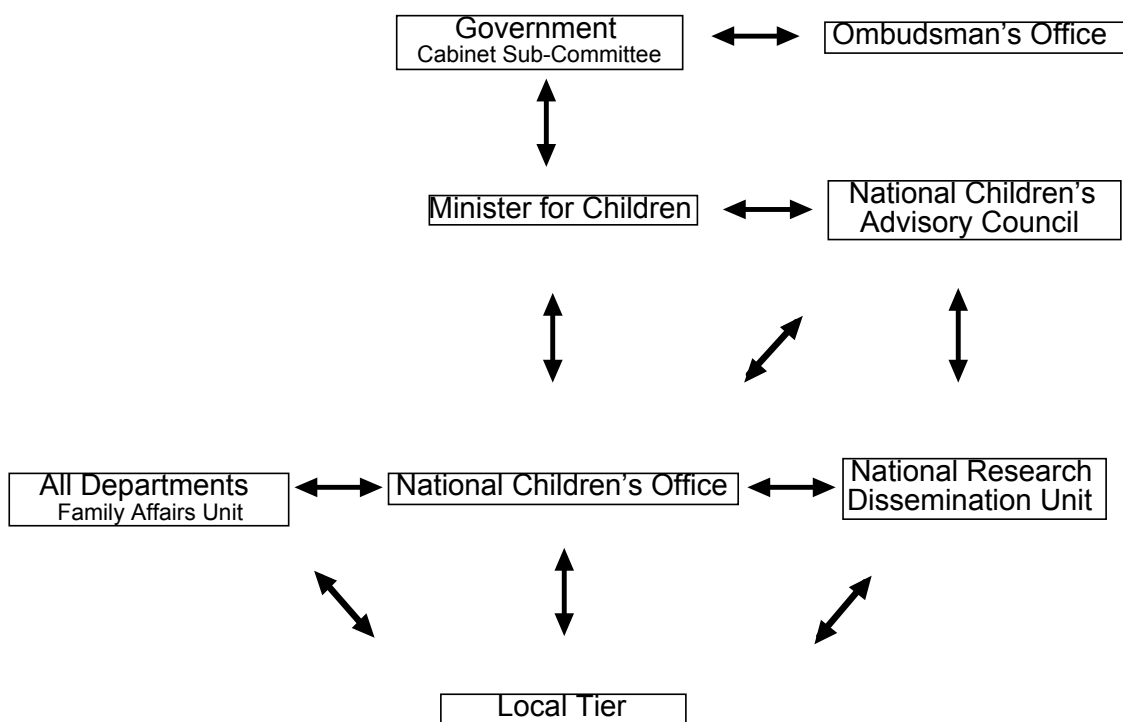
- encouraging children to express their views and demonstrating a willingness to take these views seriously;
- setting out clearly for the child the scope of such participation by them to avoid misunderstanding;
- providing children with sufficient information and support to enable them to express informed views; and
- explaining the decisions taken, especially when the views of the child cannot be fully taken into account (Ireland, 2000c: 30).

### *5.3.1 Measuring Achievement - Structures*

It is still too early to evaluate the impact of the NCS or the degree to which the stated intentions have translated into actions. The NCS document itself outlined a timetable for action and identified clear aims and objectives. The effectiveness of the Strategy will be determined by the structures that are developed to facilitate its

implementation. A framework for change is proposed and the elements include (i) managing the change through new national structures and (ii) delivering the change through improved local structures. The precise mechanism for co-ordinating children's policy development and service delivery has yet to be outlined. The NCS does, however, outline an 'engine for change' (see Figure 1) which allocates an important role to political leadership.

**Figure 1**  
**THE ENGINE FOR CHANGE**



Source: Ireland (2000c), *National Children's Strategy*, Dublin: Stationery Office.

The Minister of State for Children has the main political responsibility for the implementation of the NCS. This Minister reports to a Cabinet Committee on Children, which is chaired by the Taoiseach. The Cabinet Committee comprises the Tanaiste, ministers from eight departments concerned with children, the Minister of Finance and the Office of the Attorney General. Forming a Cabinet Committee, rather than a sub-committee, as the oversight mechanism for the NCS is a strong signal as to the political commitment to it. This Committee met three times during 2001.

The hub of the proposed engine for change is the National Children's Office (NCO). It was established as an independent unit under the Public Service Management Act (1997), responsible for the management of cross-departmental issues relating to children. It has a Board made up of the Assistant Secretaries from the departments represented on the Cabinet Committee. The Department of Health and Children chair this Board. The Department of Health and Children, with its change of name from the Department of Health, acquired an enhanced responsibility in respect of children. According to O'Dwyer (1998: 40 - 42) it was a name change of considerable significance placing on the department:

a responsibility to develop, monitor and review (on behalf of the government) an overall strategy in relation to children... and will require the development and implementation of much better processes than have heretofore been available to the department to influence policies and practices of other departments...[T]he main requirement is to see other departments as essential partners in achieving improvements for the good of the whole community.

The NCO has a number of specific tasks including the preparation of an annual work programme, ensuring that co-ordination and integrated action can take place by identifying priority cross-cutting issues to be progressed on a two to three year cycle, monitoring implementation of the strategy in departments and public agencies and promoting capacity-building through encouraging and supporting training initiatives. The Director supports and advises the Government and Minister of State on the implementation of the Strategy, promotes the role of the Office, guides the work of the Office and maintains consultation with the National Children's Advisory Council. Since its announcement in November 2000 there has been some delay in accessing the resources necessary to fully establish the NCO. In the interim the Office, with an acting Director, was established. Early in 2002 funds were released for the appointment of a Director and for the full staffing of the office.

The National Children's Advisory Council (NCAC) is made up of representatives from the NCO, the social partners, the research community and children themselves. It is responsible for advising the Minister on all aspects of children's lives, on the co-ordination and delivery of the NCS, on monitoring and



evaluation of implementation, on mechanisms for consulting with children and undertaking and advising on research and training. The NCAC met five times during 2001.

One of the ambitions of the NCS is to include children in developments and to facilitate their participation in the process. In September 2001, the NCO held a Dáil na nÓg or Children's Parliament, chaired by the Minister for Children. The children attending this Dáil were aged from nine to seventeen years old. They were selected from those involved in the original consultation for the NCS and there were representatives from each county. The event has been evaluated and the report will be used to advise future initiatives at local and national level. The exact mechanism for linking the outcomes from the Dáil na nÓg with the national Dáil and other policy-making groups have yet to be determined.

At a local level the County and City Development Boards are identified as key structures for the implementation and delivery of the NCS. These bodies comprise representatives from local government, local development agencies, the state sector and the social partners. Their functions include the identification of gaps and overlaps in general service provision and the securing of coherent service delivery arrangements by agencies operating locally. The Boards and their associated sub-structures provide the opportunity for children's views to be included in their considerations. The NCO will facilitate these groups in methods for including children in policy development.

In parallel with these developments the NCS also commits to the establishment, by legislation, of an Office of Ombudsman for Children. This will be an independent office providing children with a significant new voice at national level. Following some delay, the Bill to establish the Office was published in February 2002 and passed just before the dissolution of the Dáil (the Irish parliament) in April 2002.

### *5.3.2 Measuring achievement – Actions*

The NCO is charged with the responsibility for embedding the NCS goals in current policy development and service delivery. There are ten specific actions identified with

no timeline. They include a review by the NCO of all departmental strategy statements. Other actions are somewhat aspirational.

There have been delays in funding the NCS and its initiatives. Given the limited resources available to the NCO in its first year and the very general nature of some of the commitments it is difficult to assess the achievements made.

Nevertheless, some specific commitments *are* made in the document. Additional funding will be provided for the implementation of the three national goals. Under Goal One this funding is to be for local networks to support Dáil na nÓg and funding for local bodies to support children's involvement in their structures. Some developments have occurred under this Goal and the first local 'Dáil', or Comhairle na nÓg was held in the Minister's constituency in spring 2002. Under Goal Two funding has been made available for research projects linked to the aims of the NCS, including a Longitudinal Study of children. The theme selected for achieving progress under Goal Three was play and recreation. This emerged as a key issue for children during the pre-publication consultation period and the Dáil na nÓg. The NCO has established a working group with representatives from a number of departments, local government and the health boards to progress this action. The NCAC has also included play and recreation policy, action and research as a priority in its work programme.

In addition to supporting actions under the three goals, the NCS commits to "communicating the message" (Ireland, 2000c: 95). This commitment was hindered during 2001 by the travel restrictions imposed by the Foot and Mouth crisis. As a result the NCO and the Minister were only able to visit five counties. Visits followed the same format – a radio interview with the Minister, a conference for local representatives of the statutory and community/voluntary groups and a local Forum for Children. No evaluation of these visits has yet been published. A second commitment under this heading is the establishment of a website to facilitate dissemination of information and awareness raising. There has been no development under this initiative and indeed, there is, to date, no electronic link to the NCO through either the Government or Department of Health and Children sites.

While the appointment of a Cabinet Committee as the oversight mechanism suggests government commitment to the NCS, the lack of resources, the lack of any electronic link to the office or any website for children and the delay in the publication of the Ombudsman's Bill seems to belie this.

To what extent can the NCS be considered to represent a shift in paradigm with respect to children and policy-making? The NCS is an important policy statement for children in Ireland. It marks the beginning of a shift towards using rights-based language in policy development and implementation by strongly reflecting the UNCRC. It is presented as child-centred and identifies the participation of children as a central theme for the implementation of the NCS. The NCS offers "a means to listen to children, to think about, and to act more effectively for children...[it is]... a major initiative to progress the implementation of the Convention in Ireland" (Ireland, 2000c: 6).

It is a policy document influenced by the UNCRC. It offers a mechanism to work "together to ensure that every child is afforded the respect and quality of life needed to develop and sustain within them a spirit of optimism, pride and confidence"(Ireland, 2000c: 8). However, it is not a rights-based strategy. It does not incorporate the principles and provisions of the UNCRC directly. Certain key articles from the UNCRC are explicitly referenced within the NCS but the fourteen objectives identified to address the three National Goals are general rather than specific and are not mapped to specific articles of the UNCRC.

#### **5.4 Summary**

Partnership agreements have had an impact on Irish policy for children, particularly since the direct involvement of the community/voluntary groups at the negotiation stage. While partnership agreements have been identified as key to economic growth in Ireland they have not been without their difficulties. Consensus and shared understanding can only be partially achieved if there is insufficient discussion of the wider social and economic aspects of an agreement. With respect to children, singular attention to service development for targeted groups without addressing the more complex, interdependent impacts of wider policy is a limited policy perspective. It has been argued that the partnership approach has not been as positively influential

in terms of wider social policy as on economic policy (NESF, 1997; Zappone and McNaughton, 1999). The partnership approach is a powerful agent of change but perhaps the mechanism is insufficiently sensitive to deeper ideological issues that need to be considered in, for instance, the development of child policy and family policy. Such issues include the tension between the Constitution, legislation, policy and the lived experience.

The publication of the NCS is an important milestone in child policy development in Ireland. It has been slow to start and its impact over the first year has been limited due to insufficient funding and delays in consolidating the structures for implementation. The status of the NCS following the 2002 general election will be a test of the degree to which the Strategy is truly embedded in current policy developments.

There are a number of policy issues that could be taken as illustrative of the difficulties there are in including and making children visible in policies affecting them directly - not to mention the indirect and unintended impact of general policy. These policy issues include child income support; child poverty; children with special needs; and childcare. For the purpose of this paper childcare has been selected to illustrate the complexity of policy formation with respect to children in Ireland. Childcare - the shared care of children between parents and early childhood services - has been chosen because of its current high profile as a policy topic.

## **Childcare: A Policy Illustration**

### **6.1 Background**

Quality early childhood care and education appears crucial to the development of children, both the quality of care received at home and in various, out-of-home childcare settings (Sylva, 1995; NRC, 2000). Post-industrial and advanced capitalist societies provide a variety of options that allow parents to choose childcare arrangements that are most appropriate to their children's ages and individual styles, their own economic and social circumstances, and the values and attitudes they hold. Historically, in Ireland, childcare has been seen as the private responsibility of the family, most particularly the responsibility of the mother. Any childcare supports that developed did so within the private or the community sector. State involvement has been limited to grant support by Health Boards to services which provided sessional childcare/pre-school care to children considered 'at risk' and who, without such interventions, would need residential care. The numbers of families and children availing of these services was relatively small and confined to a limited number of disadvantaged urban areas. State support for after-school services has been very limited and this remains an unregulated sector.

In a paper prepared for the Economic and Social Research Institute on policy options in childcare, Fahey (1998b) identified a number of reasons for the inaction of governments on the topic of childcare over the years. These included a concern about the cost of any comprehensive policy and the difficulty of delivering a policy involving a large number of departments. He went on to note that:

...in the background there are many economists who would query whether it makes economic sense for the state to get involved in this area at all, on the basis that if paid childcare were a good thing from an economic point of view, the laws of supply and demand would come into play to ensure that it was delivered (Fahey, 1998b: 70).

This emphasis on the economic value of childcare in market terms misrepresents and underestimates the value of quality early childhood experiences to society as well as to children and their families. Research from the US has shown that an investment of \$1 per child in high quality early childhood services yields a saving of \$7 by the time the child reaches 23 years of age (Schweinhart & Weikart, 1997). In other words high quality childcare that is affordable, accessible and stable has a beneficial social and psychological impact on young children and a direct positive, economic impact on society. Investing in childcare makes good economic sense.

Children have a right to childcare under Article 18 of the UNCRC, which states, *inter alia*, that:

States Parties shall ... render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children ... take all appropriate measures to ensure that children of working parents have the right to benefit from child care services and facilities for which they are eligible. (Article 18.2; 18.3).

## **6.2 Childcare and gender equity**

The need for policy reform in the area of childcare became evident when a series of different influencing factors came together to give a critical momentum to the debate. Internationally the most influential pressure came through Europe. European influence on the issue of the relationship between the Irish State and the family began back in the 1970s with employment equality legislation. The requirement that EU countries treat men and women equally with respect to pay and opportunities led to changes in employment policy which, along with other factors, contributed to a gradual increase in the number of Irish women working outside the home. Initially the childcare requirements of this group were met informally through family or neighbourhood child-minding but gradually, as numbers increased, the call for state support of childcare became a political issue.

A critical factor in moving childcare to centre stage as a policy issue in Ireland has been the increased participation of women in the workforce, which is being actively encouraged more recently because of the buoyant economy and general labour shortages. A growing demand led to a flurry of committees and reports during the 1980's and 1990's. One response from government was the establishment of a Working Party on Child Care Facilities for Working Parents, which reported to the Minister of Labour in 1983. A Committee on Minimum Legal Requirements and Standards for Daycare Services was established under the Department of Health and it reported in 1985. The report was never published nor acted upon. A second Working Group on Childcare Facilities for Working Parents reported to the Minister for Equality and Law Reform in 1994. Childcare was also included as an issue in other reports not directly related to the needs of working parents, such as the Second Report of the Commission on the Status of Women (1993). Despite the variety of reports and recommendations there was a very limited response at a political or practical level. Indeed, childcare services in Ireland remained unregulated until January 1997.

In addition to the various reports there was also an increase in the funding available for developments in childcare. Although children, as a group, do not come within the legal competence of the EU, childcare was one of the sectors eligible for European funding under a number of different programmes including the equality initiatives such as the New Opportunities for Women programme. Such funding led to the establishment of a number of pilot childcare projects at local and community level. These initiatives coincided with the work of the European Childcare Network which highlighted, among other things, the very low level of state support for childcare in Ireland when compared to all other European countries (EU, 1995). Such information led to increased calls on the Government for support and development of the sector, particularly among those who saw the potential value of childcare to disadvantaged children and their parents. By the early 1990s the impact of European reports, the recommendations from different working groups and the availability of funding began to yield a more concerted approach by interest groups in Ireland for policy action in relation to childcare. At this time, as a result of growing economic prosperity, there was an emerging drop in the unemployment rate that began to give rise to a shortage of workers. This led to employer organisations and

unions adding their voice to demands for childcare, an identified barrier to the full participation of women in the labour force.

In reviewing the period from the demand for action and action itself one is struck by the lapse of time. It has been proposed that one of the difficulties with progressing the childcare agenda is that it challenges a particular ideological position with respect to the relationship between the State and the perceived private responsibility of the family for children (Hayes, 2001). For instance, the issue of discriminatory taxation of families where women work in the home and families in which women work in paid employment to facilitate tax relief for parents on their childcare costs has led to heated debate. The debate has, however, centred on women and not on children. While the issues raised are important they relate to a separate policy issue. As such it deserves careful policy analysis. It is not however, directly germane to the development and co-ordination of childcare services. The merging of these two policy areas in the debates about childcare confuses and clouds the issue and reflects the way one policy issue can influence another in an unhelpful way.

The momentum that gathered on the issue of childcare in the mid-1990s ensured that it was included within the *Partnership 2000* agreement (Ireland, 1996b) as an area that needed to be addressed at policy level. In 1997, as a response to the *Partnership 2000* agreement, a widely representative working group, which included childcare providers as well as employers, unions and statutory representatives, met under the direction of the Department of Justice, Equality and Law Reform, to produce a national strategy for childcare. The terms of reference of the group restricted attention to the childcare needs of working parents. This focus guaranteed a fragmented policy response to childcare, as it did not allow for consideration of the wider issue of childcare for all children and their parents. This was a serious limitation. This group considered the wide range of childcare services for children from birth to 12 years of age. This brought the sector of after-school, as well as pre-school, childcare into the policy arena for the first time and also included reviewing the services offered by private child-minders.

The final, agreed, report of the Working Group was published in February 1999 and proposed a comprehensive, seven-year strategy for the management and



development of the childcare sector (Department of Justice, Equality and Law Reform, 1999). This period coincides with the period of the *National Development Plan* (NDP) 2000-2006 (Ireland, 2000d). The focus of the report of the Working Group was the need for immediate attention to the supply and demand side crises in childcare evident in Ireland at the time. On publication, the report was welcomed by parents and providers. However, the Government was somewhat cautious about accepting the recommendations in isolation from other policy documents. As a result its publication led to the formation of an inter-departmental group, under the direction of the Department of Justice, Equality and Law Reform, to review the recommendations alongside those of the Report of the Commission on the Family (1998) and the Report of the National Forum on Early Childhood Education (1998). In July 1999 a National Childcare Co-ordinating Committee was established, again under the Department of Justice, Equality and Law Reform, to commence the implementation of aspects of the NCS. The NDP allocated over €400m to facilitate the development of the childcare sector. Establishing a co-ordinating committee, rather than the management board recommended by the Working Group, was a weak response to the co-ordination needs of the sector and limited the potential influence of implementation on the quality of services and their direct impact on children. The current situation where there are thirty-five County Childcare Committees but no national management body creates difficulties for the support and monitoring of the quality of service developments. The rights of children to quality early childhood care and education have been compromised by expediency and the pressure to increase childcare places for working parents.

### **6.3 Childcare and Educational Disadvantage**

Recognition by parents and professionals of the broad educational value of quality childcare experiences for children themselves led to increased private provision and to calls for a co-ordinated and integrated childcare strategy for all children (Hayes, 1995). In 1994 the Department of Education initiated a pilot pre-school intervention project, the Early Start, in 40 disadvantaged areas nationwide. The Early Start preschools were located in primary schools and catered for three-year olds only. This project was launched with little or no consultation with existing private and community/voluntary providers of early childhood services. This development

energised the informal childcare sector, which felt undervalued and neglected.<sup>8</sup> It led to improved co-operation and co-ordination between the private, voluntary and community providers. It acted as a catalyst for uniting the sector as one voice for service providers to make demands for government action.

In 1998 the Department of Education and Science held a Forum on Early Childhood Education. The Forum was hosted at a period when:

many social, economic and technological developments, internationally and in Ireland, have emphasised the significance of quality education for all within a lifelong educational framework. Many international agencies have highlighted the importance of early education in this context. (National Forum for Early Childhood Education, 1998: 1).

Following the Forum, the Department of Education and Science produced a White Paper on Early Childhood Education, *Ready to Learn* (1999). It focused on the early educational needs of children from birth to six years, the compulsory school age in Ireland. The White Paper covered the whole spectrum from:

the development of very young children in the home, supports to parents concerning how best to help their children learn, a wide range of supports for private providers and voluntary/community groups and a strategy to enhance the quality of infant education in primary schools. (Department of Education and Science, 1999: vii).

The White Paper acknowledged the importance of co-ordination across the sector. However, within the White Paper itself there are some proposals that seem to contradict this. For instance there are proposals, in areas such as training, qualification and inspection, which could duplicate those made by the Working Group on Childcare, a Working Group of which the Department of Education and Science was a member. As evidence of the fragmented nature of policy response to the same

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<sup>8</sup> Through involvement with a number of early childhood projects, including the DIT/NOW (Dublin Institute of Technology/New Opportunities for Women) childcare training project, the author has found that this sense of being undervalued did create a certain energy and focus which has led to the childcare sector moving to a more co-ordinated and visible sector in the latter years of the 1990's

policy issue across government departments, it is interesting to note that the White Paper on Early Education was launched at the same time and on the same day as the inaugural meeting of the National Childcare Co-ordinating Committee.

To implement the recommendations of the White Paper, the Department of Education and Science proposed the establishment of an Early Childhood Education Agency. A pilot initiative managed by the Dublin Institute of Technology (D.I.T.) and Saint Patrick's College in partnership with the Department of Education and Science was agreed in 2001. Under this project a Centre for Early Childhood Development and Education will be established to implement the recommendations of the White Paper. It represents an important co-ordinating initiative linking the various elements involved in working with young children up to age six years.

The fact that two government departments would produce two separate strategies for childcare/early childhood education in the same year is an example of the difficulty that policy-makers seem to have when addressing policy issues that concern, in the main, the same-population children. The PPF continues this trend by locating co-ordination of responsibility for childcare with the Department of Justice, Equality and Law Reform while identifying the Department of Education and Science as responsible for developing early childhood education. Where there is no clear lead department in the sector the likelihood of inefficiency and overlap is increased. Contradictory departmental strategies, impacting on the same population, lead to confusion in terms of policy responsibility. This, in turn, leads to a fragmented policy response in relation to the same policy issue, in this case the development and support of early childhood services for children.

Strong government leadership is necessary to reconceptualise the childcare issue. The structures established such as the National Childcare Co-ordinating Committee and the Centre for Early Childhood Development and Education working in co-operation will facilitate progress towards an integrated policy for services for young children in Ireland. Such co-ordination should minimise overlap and maximise attention to quality services for children, which are accessible, affordable and efficient. For such co-ordination to happen there needs to be strong and clear leadership and direction at government level as well as within the sector. Cohesion in

this area will allow for co-ordination and development of this aspect of child policy in line with the developments occurring in the area of family policy.

#### **6.4 Summary**

Policy commitments relating to childcare in Ireland seem to be compounded by an un-addressed conflict between the traditional ideology of the family in Ireland and the economic necessity to attract women into the workforce (Hayes, 2001). This conflict between state and family responsibility for children may also account for the fact that there appears to be resistance by government to take account of policy impact on children, even when the policy issue has a direct impact on them. The ‘childcare problem’ has been around as a serious issue for parents and children in Ireland since the mid-1970s. It is precisely because there has been insufficient debate about the nature of the impact of changes in the economic and social systems on families and their children that there has been such an uncoordinated, reactive and fragmented response to addressing the issue. A childcare policy directed from the perspective of the rights of the child would recognise it as a service of potential value to all children rather than simply an intervention strategy for the disadvantaged. It would focus on the quality of the provision for all children rather than addressing childcare as a service for parents who wish to, or need to, return to the labour market. While our economic prosperity has come rather suddenly there has been ample time to predict the rise in demand and need for high quality, accessible childcare. As long as children remain an invisible constituency, hidden within data about family, health or education, there is little likelihood that a forward-looking, coherent policy framework for childcare will evolve.

The Irish response to the issue of childcare is not unique. International literature on childcare policy suggests that there is no society or country in which the basic direction for childcare has not been driven by economic factors. How to care for children is an age-old problem and individuals and societies have developed a number of different solutions. Historical, economic, ideological and demographic realities shape the variety of solutions available to individuals, families and societies. International experience on policies relating to childcare, however, has been that the best quality non-parental care is provided for children when it is child-centred,

supported and regulated by government agencies in the context of a cohesive and comprehensive approach to childcare policy which is integrated with family policies.

From the above review it is clear that there has been much progress in developing the childcare/early childhood education sector in Ireland over the last few years, particularly in relation to funding and supply. However, the fact that policy is being driven by different agendas, under the direction of different government departments continues to hinder the development of an integrated policy for the support of high quality early childhood services for all young children.

The NCO has been given a key role in drawing together different departments on complex cross-cutting issues with a view to developing and implementing integrated policy. Its potential in the childcare area was noted in the PPF (Ireland, 2000e). The NCO has the potential to bring about the cohesion necessary to provide national leadership in the context of meeting local needs which has so far been absent. The Children's Strategy identifies developments within this sector as vital. Objective A of the NCS reads that "Children's early education and developmental needs will be met through quality childcare services and family-friendly employment measures" (Ireland, 2000c: 50). The ability of the NCO to address this challenging policy issue will be a barometer of its success.

## **From rhetoric to action: recommendations for implementation**

### **7.1 Background**

This review of the position of children in Irish society suggests that a protectionist welfare approach dominates, an approach where children have been perceived as dependents in need of protection or as problems in need of solutions. Children are seen as primarily the responsibility of parents and the State offers only limited support to parents in their parenting role. While this may afford some support to certain children and families it shows a limited recognition of children as a group with rights of equal value to those of adults. Policies have been developed without any explicit consideration of their impact on children: children are a powerless, statistically invisible group. There is insufficient co-ordination across government departments in respect of children, service development has been reactive, fragmented and narrowly conceived, leading to gaps in provision and inefficiencies. The framework of the UNCRC offers a mechanism for a more balanced and integrated approach. It regards children within the family life as bearers of rights and responsibilities in line with their age and maturity, in the same way as adult members of the family have rights and responsibilities.

Analysis carried out for this paper shows that the approach to policy-making for children in Ireland is reactive and welfare-driven. It emphasises the care and protection of vulnerable and troubled children. The approach is one of selective service development to combat specific problems. This reflects, to some degree, the influence of the Constitution, the Church and the dominant discourse with respect to children which characterises them as immature, passive dependents and, in the main, the private responsibility of their parents. A broad interpretation of welfare does not necessarily exclude ideas of individual rights, and associated empowerment. However, a welfare paradigm can be limiting rather than empowering. An example of this is the iteration in the Report of the Commission on the Family (1998) that children should be seen as individuals within the family while conceptualising them

as having rights to adequate support, care and the promotion of their well being rather than rights as individuals. The language used here emphasises the dependency of children and does not explicitly take account of their rights as individuals within families and society. The language is also adult-centred in the NCS. This can be seen where reference is made to adults “explaining to the child” and “setting out clearly for the child” the parameters for their participation (Ireland, 2000c: 30). This supports the view that children continue to be conceptualised as dependent and passive with respect to their care, protection and well-being which is at odds with a rights-based view which, at an intent level, would be captured by the use of more active language.

A welfare approach to child policy considers children’s *needs* on their behalf rather than in consultation and partnership with them. It addresses identified problems by allocating resources to meet immediate material needs or by allocating money to support services. A rights-based approach to policy development, on the other hand, considers children’s *rights* and seeks to change the basis from which inequality derives through, for instance, giving children the right to participate - in accordance with their age and maturity - in the making of the many decisions that affect them. Woodhead (1997: 80-81) argues that approaching policy from this latter perspective

... breaks through the web of paternalistic protectionist constructions that emphasise children as powerless dependents separated off from adult society and effectively excluded from participation in shaping their own destiny.

Why would a shift towards a rights-based approach to policy development and implementation be of more benefit to children than the current approach? A rights-based approach is more than simply a focus on the rights of individual children. It recognises that children’s rights cannot be divorced from their social context. It is an approach that affords the opportunity to consider children as a social unit with collective rights. This move towards considering collective rights brings with it the associated focus on the positive obligations of the State to the group. Such obligations require that the State not only acknowledges and respects rights, but also protects, ensures and promotes them (Taylor, 1986; van Hoof, 1984). The moral imperative for action is therefore strengthened and the prioritisation of policy in respect of meeting children’s rights and needs can follow. Moving towards a rights-

based approach will require a significant review of child policy. It will require a shift away from the current situation where the family is regarded as the primary social unit. The proposed approach would recognise children as a social unit with collective rights to be considered in parallel to the rights of the family unit.

## **7.2 From Welfare to Rights**

Significant policy changes require a paradigm shift. Healy and Reynolds (1999) define a paradigm as a model or framework from which analysis, decisions and actions flow. It contains core beliefs and assumptions. A paradigm will continue to dominate while the values and assumptions go unchallenged. To effect a shift in paradigm it is necessary to identify aspects of the current paradigm that need alteration. A shift from the reactive, welfare paradigm to a pro-active rights-based approach is now necessary in Ireland. A rights-based approach would facilitate the active participation of children in decision-making and would have all children as the primary focus rather than targeting specific groups. Furthermore, a rights-based approach would enhance and augment families in their role as child-rearers rather than the interventionist strategies for family support associated with a welfare model. This approach would not necessarily lead to a diminution in targeted support but rather facilitate efficient targeting in the context of an integrated, supportive policy for all children. The effectiveness of such a policy shift would need to be monitored. This could be done through mapping policy targets to specific articles in the UNCRC. This would be strengthened by the development of effective mechanisms for drafting strategic Child Impact Statements. Such statements would use indicators derived from the UNCRC to judge how policy is impacting or might impact on the lives of children.

While a rights-based paradigm for considering children is well argued at international level it has not been widely debated at a national level despite the fact that Ireland ratified the Convention on the Rights of the Child without reservation in 1992. At international level the debate has been complex and has included extensive discussion about the balance between rights and obligations and the relationship between social policy, children's rights and the family. Unless careful consideration is given to the implications of a rights-based approach to policy development and practice in Ireland there is a danger that there will be no real shift in paradigm. It is



possible that the language of the welfare model will be replaced by a rights-based language. This would yield no alteration to procedures regarding policy planning and implementation, criteria for resource allocation and evaluation of policy. There is a danger that rhetoric rather than action will dominate.

In analysing other paradigm shifts in Irish policy it is possible to identify key factors or individuals which contributed to or assisted the shift. For instance, in the 1960s, a significant paradigm shift with respect to economic policy in Ireland occurred. This shift has been attributed, in part, to the report *Economic Development* (Ireland, 1958) by Dr. T.K. Whittaker, Secretary at the Department of Finance. In conversation with broadcaster John Quinn, Dr. Whittaker suggested that one of the reasons his report was influential in changing the direction of economic policy was that he had the full support of senior Department of Finance officials for his proposals (Quinn, 1997). In education, the publication of *Investment in Education* (Ireland, 1965) has been identified as an important catalyst in the policy shift. It resulted in the personal development paradigm giving way to a human capital paradigm, defended in terms of its long-term economic potential. Both these examples have features in common. They both focus on the economic value of a proposed shift in policy and they both come from within the civil service. In other situations identifying the features that lead to a paradigm shift is more difficult. For example, the growth in attention to gender equality reflects the impact of the national women's movement and a greater awareness about equality among people in general: it also owes much to the influence of European recommendations and directives. In addition it has been influenced by recent economic factors which have led to a national need to look at the relatively low level of labour force participation by Irish women relative to their European counterparts.

The Child Care Act 1991 is an important agent in the move to broaden the welfare policy approach by identifying prevention and family support as critical features of child welfare policy. It arose as a response to an accumulation of influencing factors and recommendations over a period of twenty years. The ratification of the UNCRC in 1992 could well be the most important catalyst towards a rights-based approach to child policy as it affords a clear and agreed framework for policy development, implementation and evaluation. The publication of the NCS

marks a further shift with explicit use of the language of rights within the text. It is too soon to determine whether or not there has been a real paradigm shift with respect to children. The delay in funding and staffing of the NCO and the delay in the publication of legislation for an OOC suggests that there is still some way to travel.

Judging by other examples where a significant shift has occurred, policy-makers may have to see an economic advantage for any significant shift to become manifest. Convincing policy-makers of the economic value of moving to a rights-based approach to child policy development is difficult. This is largely because the effect of investment in children and childhood is not immediate but is manifest as a notional 'saving' in the future, which is often difficult to quantify in economic terms and does not have an immediate return.

### **7.3 The impact of the UNCRC on Irish Child Policy**

To some extent then, the first step in the move towards a rights-based approach to policy analysis in Ireland commenced with the ratification of the UNCRC on September 20<sup>th</sup>, 1992. When countries ratify the UNCRC they commit to reviewing and harmonising domestic legislation to bring both legislation and practice into full conformity with the principle of the UNCRC. In preparing the *First National Report* (Ireland, 1996c) which was co-ordinated by the Department of Foreign Affairs, all relevant Departments were obliged to reflect on how the laws and policies within their sphere of competence fulfilled the Convention obligations (Ruxton, 1998). Indeed, this report was one of the first to give an overview of the status of Irish children. Read in conjunction with the report from the CRA, *Small Voices; Vital Rights* (1997) the reader is provided with a valuable basis from which to monitor Ireland's progress in meeting its obligations under the UNCRC. In addition, the recommendations in the Concluding Observations of the UN Committee on the Rights of the Child (CRA, 1998) provide a valuable framework for future action in furthering the implementation of the UNCRC.

The plenary hearing on Ireland's First National Report was held in January 1998. It was attended by an Irish Government delegation and by representatives from the NGO sector. On January 23rd 1998, following nine hours of discussion and

questioning, the UN Committee issued its Concluding Observations on the state of children's rights in Ireland. Among the principal recommendations was that Ireland:

- adopt a comprehensive National Strategy for Children, incorporating the principles and provisions of the Convention;
- amend the Constitution of Ireland to accord specific recognition to the rights of children and to encompass all the principles of the Convention;
- consider the establishment of an independent monitoring body, such as an Office of Ombudsman for Children;
- strengthen co-ordination between government bodies dealing with children's rights;
- ensure the development of closer relationships between the statutory and non-governmental sectors;
- take immediate steps to address the problem of child poverty and ensure that all families have adequate resources and facilities; and
- systematically promote and facilitate children's participation in decisions and policies affecting them (CRA, 1998: 5).

Ireland has been slow to respond to its obligations under the UNCRC. The Government was not pro-active in raising awareness about the UNCRC, either among adults or children, at the time of ratification. It has, however, supported the work of the CRA and other non-governmental organisations in this regard and contributed resources to the development of various awareness-raising campaigns. At the level of governance there is, as yet, no overt mechanism for assessing the degree to which different legislative instruments are in accordance with the obligations of the state under the UNCRC. There has been limited development with respect to administrative and structural changes deriving, explicitly, from a response to the Convention in the way in which policy is planned, co-ordinated, implemented, monitored and evaluated.

Children's rights have not informed child policy development in Ireland until very recently. Analysis of public policy documents affecting Irish children suggests that the Irish Government is, in the main, limiting its responsibilities to children in terms of a very particular population of vulnerable and troubled children. In the recent past there have been a number of positive and innovative initiatives developed, with exchequer and European Union funding, to address such problems as educational disadvantage, childcare, drug abuse and child abuse. Many of these initiatives have

been at a pilot level only, targeted at a very defined population of children and their families and not well integrated into the mainstream. This often reflected an expedient response designed to access funding available under particular terms rather than a response to evaluated projects, which might lead to sustainable, infra-structural developments. While it makes good sense to pilot certain initiatives in order to test them out, evaluate and refine them, they are by their nature temporary. Staffing, for instance, is usually on the basis of short-term contracts. This creates a structural insecurity that can compromise the quality of the project in the longer term. Having identified successful project models it is necessary to create mechanisms to mainstream those that are effective so that they have a secure basis. Maintaining projects involving children at a 'pilot' level without integrating mechanisms to the mainstream is a short-term approach to improving the quality of life for children.

This limited approach by Government to its obligations to children may reflect a particular interpretation of the Irish Constitution with regard to individual rights and State responsibility. However, it is not in line with the spirit of the UNCRC, which is intended as a framework of rights for all children (Article 2). While a targeted approach responding only to the needs and rights of vulnerable children might be acceptable in a period of economic restraint it is a disappointment given the recent healthy state of the Irish economy. Irish policy and legislation recognises the principles outlined in Article 3 - the best interests of the child and Article 6 - the right to development. However, this review of policy illustrates a limited, although growing, commitment to the principles of Article 2 and Article 12. Article 2 relates to the fact that the UNCRC is a Convention for *all* children and not just a selection of children. The publication of the NCS for all children in Ireland marks a change in this focus and makes a commitment to improving the quality of life of all children, while prioritising the needs of certain groups.

Article 12 of the UNCRC provides for the participation of children in decisions that impact on them. It is generally agreed that there is, internationally, a need to improve child participation and to develop initiatives to facilitate this such as school councils, youth parliaments and a general attitude of partnership with children (Ruxton, 1999). In Ireland there is a limited history of including children in policy-making, even where it is directly relevant to them. Indeed it is interesting to note the

response of the Government to the queries of the UN Committee on the Rights of the Child on this issue<sup>9</sup>. Following the receipt of the National Report, the Committee asked the Government, with regard to Article 12, to provide further information on policies and measures to increase the participation of children in the education system. The Government response to this query focused on initiatives to improve the participation rate, in education, of children at risk of school failure or of leaving school early. This response suggests a limited understanding of the extent and potency of Article 12. We have progressed considerably since then and a central goal of the NCS is to give voice to children.

A rights-based approach to children would respect children as a specific social group; would recognise the complex and diverse nature of children and would include all children as the primary consideration and target only as necessary. It would ensure, proactively, that the best interests of the child be taken as paramount in all matters relating to children and lead to the development and assessment of policy planning and implementation to empower children. It would facilitate the participation of children, according to their age and maturity, in matters affecting them within their families and society. A rights-based policy approach would reflect the UNCRC by explicitly incorporating the UNCRC, by mapping targets to specific articles of the UNCRC and creating monitoring mechanisms matched to the international mechanisms that exist for the UNCRC.

Moving the paradigm that guides child policy development from a protectionist, welfare focus to a rights-based focus requires a change of attitude among policy makers and the public in general. This shift, in a sense, began with the signing of the UNCRC. However, ratifying the UNCRC is not sufficient in itself. The concept of children's rights is abstract and not readily accessible to the general public. Acknowledging this, the UNCRC, in Article 42, obliges states parties, on ratification, "to undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike." Furthermore, the protection of children's rights requires that these rights be incorporated into law. In

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<sup>9</sup> Copies of the questions and responses were available at the oral hearing of the Irish National Report by the UN Committee on the Rights of the Child held in Geneva, January 1998.

addition, it requires the creation of effective, integrated administrative structures at national, regional and local level to plan, implement, monitor and evaluate policy.

The argument in this paper is that all policy impacts, to a greater or lesser extent, on children as individuals and as a social unit group. Changes in Irish society have impacted on the family and on childhood. Noting that Ireland ratified, without reservation, the UNCRC, I propose that an explicit rights-based approach to children's policy should be developed, through leadership and discussion, to acknowledge and address the rights and needs of contemporary Irish children. The guidelines to governments for the production of the national reports required by Article 44 of the UNCRC and published by the UN Committee on the Rights of the Child, offer an implementation guide to establishing policy sensitive and alert to children's rights. These guidelines would provide a useful baseline against which to evaluate the NCS. They would create a context for a strengthening of the rights-based approach to policy development. The guidelines propose that States Parties:

- adopt comprehensive overall strategies and action plans;
- ensure that legislation is fully compatible with the Convention;
- develop structures for co-ordinating policies relevant to children;
- establish permanent mechanisms for the co-ordination, monitoring and evaluation of policy;
- ensure systematic gathering of data on children (including budgetary analysis) as a basis for policy-making;
- implement the economic, social and cultural rights of children to the maximum extent of available resources;
- establish an independent body to promote and protect the rights of the child;
- and
- take initiatives in co-operation with civil society.

#### **7.4 Moving forward**

To make any serious advance towards a rights-based approach to policy and practice for children it is necessary to take a three-pronged, parallel approach. The three areas where change and development should be considered are: governance, the protection and promotion of children's rights and the participation of children. Changes in these three spheres should occur simultaneously. It is recommended that existing

government structures should be reviewed with a view to creating stronger structures on behalf of children as a social group, that a mechanism for promoting and protecting children's rights, which would also monitor and evaluate policy on behalf of children, be established and that initiatives to include children as participants in policy making and review be identified and supported. Each of these recommendations is considered in more detail in the following sections.

#### *7.4.1 Strengthening Government Structures for Children*

It is appropriate to conceptualise children as a 'cross-cutting' issue. Their invisibility in statistical terms camouflages the fact that there are aspects of policy specific to children in many departments. The childcare debate has identified the complexity of this with up to twelve different government departments sitting on a recent inter-departmental group considering childcare. More thought needs to be given to the organisation and leadership of any structure dealing with complex cross-cutting issues, in particular with respect to the implementation of recommendations and budgetary allocation and control.

The publication of the NCS heralds a new opportunity for a co-ordinated approach to policy for Irish children. It is not a rights-based strategy but it does acknowledge the importance of the Convention and has identified certain responsibilities in this regard. As a ten-year strategy with general, rather than specific, targets there is a danger that it could be more aspirational than effective. Nevertheless, the NCS itself has proposed a monitoring process whereby a Cabinet Committee, a National Children's Advisory Council (NCAC) and the NCO will act as ongoing monitoring mechanisms. In addition there will be an independent evaluation every three years. The proposed structures for implementing the NCS also offer hope that it will be effective. Under these structures, the NCO will have a pivotal co-ordinating role. It will manage cross-departmental issues and create links to local level public bodies. The Director of the Office will, among other things, advise the Minister of State and the Government on the implementation of the NCS. One of the weaknesses of the NCS is that it is managed at the level of Minister of State rather than Cabinet Minister.

A strong, rights-based approach to policy for children and the differential impact of policies on the quality of their lives in contemporary Ireland requires a more stable, comprehensive and permanent government structure to inform policy-makers about the status and rights of all children. There are a number of options.

First, a number of groups have called for the establishment of a Minister for Children at cabinet level. The argument in favour of this is based on the belief that a Minister of State, as a junior minister, would not have as powerful a voice for children at the cabinet table, particularly with respect to prioritising budget allocations, as a full minister would. There is a fundamental difficulty with this proposal. Given the involvement of other 'senior' departments in the affairs of children, such as the Departments of Health and Children, Education and Science and Social Community and Family Affairs, a new departmental brief would be likely to have, as the junior Minister previously had, a focus on disadvantaged children and children with special needs. This would only further fragment the position with respect to developing a rights-based approach to planning and policy for all children. This paper does not favour the appointment of a Minister for Children.

Second, some countries have established a Department of Child and Family Affairs. Current departmental structures in Ireland appear, paradoxically, to separate out the child from the family. This may reflect the policy view that there are two distinct groups of children in Ireland. The first group of children are those in need of the care and protection of the State and are the responsibility of the sections of the Departments of Health and Children, of Education and Science and of Justice, Equality and Law Reform. Other children, as the primary responsibility of their family, come under the remit of the Department of Social, Community and Family Affairs and are, largely, invisible as an identifiable group. In the establishment of a Department of Child and Family Affairs all children should be recognised as a separate group in their own right, with equal rights to consideration in policy development and legislation, as is the case with regard to the family group. Given that families are traditionally regarded as the voice of children and data about children have often been embedded in family information, or more particularly information about mothers, a shift to giving children an equal voice would be critical. This is



unlikely to happen with the establishment of a Department of Child and Family Affairs.

Because of these limitations, this paper advocates two other linked policy options. The first is to strengthen the Cabinet Committee on Children. Currently the Committee is charged with monitoring the progress of the NCS and reviewing how effectively government departments are integrating their efforts and resources to deliver the key priorities. The terms of reference of the Committee should be revised and strengthened to reflect those of the first Cabinet Committee for Children established in 1995. Its remit was more explicitly focused on children's rights. It was charged with overseeing how the concept of children's rights could be developed in conformity with the rights and obligations contained in the Convention on the Rights of the Child and how this could be incorporated into domestic laws and policies (Ruxton, 1996, p.32). As members of a Cabinet Committee are peers with responsibility for specific aspects of child policy, or policy that impacts on children, there could be difficulty addressing overall policy issues about children. This would be the case particularly where strategy or decisions might result in structural changes with respect to departmental responsibility and budgetary control. This weakness might be overcome by giving management responsibility for the implementation of the NCS to a senior Minister rather than a junior Minister, as is currently the case.

In this context consideration should be given to the appointment of a senior Minister without portfolio who would - for a fixed period - lead on particular cross-cutting issues such as children. As a senior cabinet Minister, this person would be responsible for identifying and resolving the difficulties associated with budgets, planning and cross-departmental responsibilities on cross-cutting issues. S/he would have the power to carry through on organisational or structural change as necessary. It is proposed that this senior Ministry should, in the first instance, take over the implementation and development of the systems and structures necessary for progressing the NCS and strengthening children's rights in line with our obligations under the Convention. This senior Minister would report directly to a strengthened Cabinet Committee on Children as proposed above.

## **The National Children's Office**

In addition to the strengthening of the Cabinet Committee and the appointment of a Minister without Portfolio, the role of the NCO should be strengthened. The Office has a pivotal role in the implementation of the Children's Strategy. It is staffed by civil servants who are nominated to the team and are not acting as representatives of their departments. The NCO has direct, structural links to the NCAC, the Minister of State and key departments. The role of the NCO is to prepare and progress a work programme, co-ordinate and integrate action on key crosscutting children's issues and monitor the implementation of the Strategy. In addition it is responsible for preparing Ireland's National Reports on the UNCRC for submission to the UN Committee.

Apart from the above, the NCO has the potential to take a central role in making children more visible in policy-making. To further this role, the NCO could develop procedures regarding the impact of policy on children. These could be used by government departments in the formulation of policy generally. The NCO would monitor proposals to ensure that they did not infringe children's rights. There is, however, a danger that a blanket requirement for, let us say, the child-proofing of all policy would merely result in a rubber-stamping process. To avoid this, the NCO should develop a system of clear indicators derived from the UNCRC. These indicators would be applied to policy and budgets to yield "child impact statements" (Freeman, 1992). They would not be restricted to the more obvious areas of development but would also address related policy areas such as housing or traffic policy.

The UN Committee on the Rights of the Child noted that Ireland had limited statistical data in relation to children that added to their invisibility in policy-making. The NCO should develop mechanisms, across departments, for the systematic gathering of data on children. This data should be disaggregated so that children, as a unit, become visible for policy analysis and, more particularly, budgetary analysis. Efforts should be made to harmonise the age range at which different statistics on children are collected to facilitate evaluation of policy and budgetary actions.

Currently the NCO reports, through the Minister of State for Children and the Cabinet Committee, to the Government. It is recommended that the NCO should

report to Government through the proposed senior Minister rather than through a Minister of State. It is also recommended that the NCO place an annual report before the Oireachtas in the form of a report for approval. This would lend weight to the commitment of all parties to taking the NCS – and by extension - children’s rights seriously in Ireland.

The NCO, although not a children’s rights instrument, could have an important role in locating the children’s rights debate in a wider, international context. It should engage actively with developments that are happening at an international level in the area of policy and children. In particular the Office could ensure that its programme for action is in line with the European Strategy for Children. Opportunities to share the results of developments with respect to child policies under the Council of Europe and the UN should be supported through conferences, seminars and information sharing. Such initiatives would enrich the debate on emerging child policy in Ireland.

#### *7.4.2 Promoting and Protecting Children’s Rights*

Of course, the NCO is primarily responsible for the implementation of the NCS. However, it does not and could not also promote and protect children’s rights. An Office of Ombudsman (or Commissioner) for Children such as that proposed by the UN Committee on the Rights of the Child (CRA, 1998), should be responsible for the promotion and protection of children’s rights and for the implementation of the Convention.

In 1996, with the assistance of a grant from the Department of Health, the CRA published the results of a study exploring options concerning an appropriate mechanism for the promotion and protection of children’s rights. The report, *Seen and Heard*, was a collaborative study between the CRA and representatives from the Departments of Health, Education and Justice. The report studied a variety of mechanisms across a range of countries. It concluded that there is a need for a body to promote and protect children’s rights in Ireland which would ensure that the voice of all Irish children would be heard in the policy and administrative process and which would create an environment favourable to the protection of children’s rights. The report recommended that “... the Irish government should take a decision to

establish such a body and should put in place procedures to develop detailed proposals for its operation” (Cousins, 1996: 70).

The CRA report recommended that the proposed body be responsible to the Oireachtas with its own financial vote. It further identified a number of key principles that would be necessary to ensure that such a body would have real powers to work and speak on behalf of all children. These include recommendations that the proposed body:

- be established on a statutory basis;
- be independent of any government department;
- set in place procedures to assist consultation with children;
- be enabled to make decisions in relation to complaints, which would not be legally binding; and
- have, where necessary, the right to take legal action before the Irish or European courts.

A Bill to allow for the establishment of an Office of Ombudsman for Children was published in February 2002 and passed in April 2002 (Ireland, 2002).<sup>10</sup> The Bill states that the Office will be independent and will report to the Oireachtas. It identifies two main functions for the Office. The first is to promote the rights and welfare of children. Under this function, the Office will advise the minister on the development and co-ordination of policy relating to children, encourage public bodies to develop policies, practices and procedures designed to promote the rights and welfare of children and monitor and review legislation and the operation of the Act. In addition the Office will set up procedures to consult with children and may undertake, promote and publish research. The second function of the Office is to examine and investigate complaints against public bodies, schools and voluntary hospitals.

There are a number of deficiencies in the Bill as presented. In particular the Bill fails to expressly acknowledge the responsibility of the Office to protect

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<sup>10</sup> This follows a recommendation in the NCS (Government of Ireland, 2000).

children's rights as well as to promote them. The UN Committee on the Rights of the Child in its report on the Irish National Report was critical of the failure to provide a mechanism for the promotion and protection of children's rights.

There are a number of exclusions contained in the Bill. These exclusions constrain the Ombudsman from conducting investigations into various actions in respect to different groups of children. Section 7(5) precludes the Ombudsman from considering persons under the age 18 years who are enlisted members of the Defence Forces as children, Section 11 (1)(e)(I) refers to exclusions regarding refugees, asylum-seeker and immigrant children and Section 11 (1)(e)(iii) refers to exclusions of children in detention. These exclusions are contradictory to the principles of the Convention expressed in two key articles of the Convention, Article 2(non-discrimination) and Article 12 (participation).

The proposed Office of the Ombudsman is to be established as independent of Government and to report directly to the Oireachtas. However, under Section 11(4) of the Bill, Ministers have unlimited authority to stop investigations. This limits the degree to which the Office of the Ombudsman can be seen as independent. Without unambiguous independence the Office of the Ombudsman will be compromised and may not be able to fulfil its fundamental tasks.

Finally, the Bill proposes an amendment to Section 5 of the Ombudsman Act 1980. This amendment precludes the Ombudsman<sup>11</sup> from investigating any complaint that may be examined by the Ombudsman for Children. While it is necessary that there is clarity in relation to the remit of each office there is some concern that the Office of Ombudsman for Children might – if not adequately resourced – be overwhelmed by its complaint function. This could lead to a failure to meet its responsibilities in regard to the key promotional function. First and foremost the Office of Ombudsman for Children should be seen as a children's Ombudsman Office, there to promote and protect their rights.

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<sup>11</sup> Ireland has a general Ombudsman whose role is to investigate complaints about administrative actions, delays or inaction adversely affecting persons or bodies in their dealings with government departments, local authorities, health boards and the postal service.

While the passage of the Bill is a positive move on behalf of children's rights it does have some limitations, including a lead-in time of up to two years. With amendments the Bill could ensure that all children – including refugees, asylum-seekers and children in detention - would have access to the Ombudsman for Children and that the Ombudsman would be fully independent and empowered to promote and protect the rights of children.

A final issue in relation to children's rights is how children are treated in the Irish Constitution. In 1996 the Constitution Review Group reported to Government. It recommended, *inter alia*, that the Constitution include an express obligation to treat the best interests of the child as a paramount consideration in any action relating to children. Specifically it recommended that the Constitution be amended to (i) include the welfare principle and (ii) provide an express guarantee of certain other children's rights deriving from the UN Convention. In their Concluding Comments the UN Committee on the Rights of the Child recommended that Ireland:

take all appropriate measures to accelerate the implementation of the recommendations of the Constitution Review Group for the inclusion of all the principles and provisions of the Convention.... thereby reinforcing the status of the child as a full subject of rights (CRA, 1998: 8).

The NCS records the above recommendation and notes that an all Party Oireachtas Committee on the Constitution is currently considering the Report of the Constitution Review Group. The Committee has been requested on behalf of the Government to prioritise its consideration of the issue of the constitutional underpinning of individual children's rights. (Ireland, 2000c: 35).

It is recommended that the NCO continue, through the Cabinet Committee, to call for the speedy implementation of the recommendations of the CRC that the Constitution be amended to allow for the inclusion of all the principles and provisions of the UNCRC.

#### *7.4.3 Participation of Children in Policy-Making*

One of the more radical aspects of the UNCRC is the stress it lays on the importance of the participation of children, in accordance with their age and maturity, in issues impacting directly on them. We do not have a history of such participation in Ireland and there is a need to consider how best it can be facilitated. The proposed Office of Ombudsman for Children will have an important role here. However, it is also necessary to consider how to include the voice of children directly in the process of participatory democracy. As a group, children are often represented by organisations with other, wider, interests. Youth is represented through youth organisations but they speak on behalf of only a particular age-range of children. The NCO hosted the first Comhairle na nÓg in January 2002. Membership of this Comhairle, or Forum, was drawn up by the NCO, with the assistance of local schools and voluntary organisations who nominated children to attend. This model Comhairle was attended by the Chief Executive Officers of the various City and County Development Boards. In the long-run the NCS envisages the City and County Development Boards as the mechanism for giving children a local voice that feeds into a national voice for children. The degree to which these Boards are supported and advised on the techniques for facilitating the participation of children will determine how successful this mechanism will be. The evaluations of the current NCO initiatives on children's participation at local and national level should yield recommended mechanisms for future participation. In the spirit of the UNCRC these mechanisms should allow local and national fora to be formed by children for children with the assistance of adults.

Consideration should be given to ways of including the wider social group of children at both NESC and NESF level, perhaps through the establishment of an Advisory Group of children. At a presentation in February 2002 the Commissioner for Children and Young People in New South Wales (TCD, 2002) outlined how she worked closely with a Young Persons Reference Group as advisors to her in her work. This group of twelve is appointed annually, funded by the Commission and trained in communication and media skills. They range in age from 12-17 and represent a cross-section of the population. It is recommended that an Advisory or Reference Group of children be established - by children with the assistance of adults - with direct links to the NESC and NESF. Additional mechanisms should also be developed and evaluated to give children a direct voice in future national partnership agreements. The NCO should continue to research and evaluate mechanisms to

enhance the real participation of children in matters affecting them at local, regional and national level.

Mechanisms should also be established for ensuring that children's rights are taken into account in partnership negotiations, or whatever replaces them, through appropriate NGO representation. No explicit account was taken of the views of children with respect to the impact, on them, of the equality agenda in Partnership 2000. The resulting report on childcare (Department of Justice, Equality and Law Reform, 1999) did make reference to the fact that any developments must, as a matter of principle, take account of the needs and rights of children. However, no mechanisms or procedures were suggested to move from the aspiration to the fact.

Recognising that children have rights raises the issue of giving them the opportunity to assert those rights. It also raises questions about the general balance between participatory and representational democracy and the need to include children as active participants. If children are to become active participants in a democracy they need opportunities to learn how to participate. This should be part of their general life experiences and opportunities to participate in the management of institutions such as schools, where they are the primary users, should be made available. Such opportunities will assist children in recognising, and believing that they are respected as individuals and that their views and opinions will be given attention. The education system is also an important conduit for raising awareness among children about their own rights and responsibilities and the wider issue of the rights of others through, for instance, political education. In addition it is important that professionals working for and with children should have training on the implications of the Convention on their practice.

Finally, this paper recommends that the Education Act 1998 be amended to allow for the establishment of student councils at both primary and secondary level and that the role of these councils be strengthened. A pro-active education for citizenship and rights education should become part of the national curriculum at both primary and secondary level and training programmes on the UNCRC should be



developed and incorporated into the education and training of those working with and for children.

### **7.5 Conclusion**

This paper has argued the case for a re-evaluation of the place of children in Irish policy-making and recommended a move from the reactive welfare model of child policy to a pro-active rights-based model. Such a move is necessary to ensure that the status and rights of children are given due regard in modern Ireland.

The UNCRC offers a framework within which such a move could be planned, implemented and evaluated. It offers an organisational framework to foreground children's issues and to highlight the unique nature of children's rights and needs. The UNCRC can act as a mirror against which the duties and obligations of adults and of the State – and their response to these obligations – can be reflected.

While there has been a noticeable increase in reference to children's rights in policy documents and comment over the last decade in Ireland we cannot afford to be complacent. There is still a distance to travel before Irish legislation, policy and practice moves away from conceptualising children as passive dependents in need of protection towards developing strategies that encourage the protection of the rights of all children with their active involvement in the process.

To effect such a move, a parallel action plan is proposed so that the Government, society in general and children in particular are all active participants in the process.

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