

Strengthening Children's Rights in the Constitution

January 2012

Where can I learn more?

On the Children's Rights Alliance web site you can access information on the UN Convention on the Rights of the Child, download our submissions to the Government and Joint Committee on the Constitutional Amendment on Children, and listen to our Children's Rights Podcast Series. Go to www.childrensrights.ie today!

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The Children's Rights Alliance is a coalition of over 90 non-governmental organisations (NGOs) working to secure the rights of children in Ireland, by campaigning for the full implementation of the UN Convention on the Rights of the Child. It aims to improve the lives of all children under 18, through securing the necessary changes in Ireland's laws, policies and services.

This is an in-house publication.

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Our vision is that Ireland will be one of the best places in the world to be a child

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Why Do We Need to Change the Constitution?



The Irish Constitution was written in 1937, at a time when children were 'seen and not heard'.

The public was rightly shocked and angered by the findings of the Ryan Report, published in May 2009, which exposed systematic abuse of children living in institutions throughout the country, that spanned half a century. The societal attitudes that allowed this abuse to continue must be challenged and overcome.

Today, society views children differently; we appreciate that children have rights and that they should be respected as individuals in their own right. The Children's Rights Alliance, a coalition of over 90 non-governmental organisations (NGOs) working for the rights of children in Ireland, believes that the Constitution needs to reflect this view of children.

Strengthening children's rights in the Constitution would do just that; it would also reinforce this new societal view of children and set down a marker for us all: that every childhood counts and we have a duty to respect and protect children.

What is the Constitution?

The Constitution of Ireland (*Bunreacht na hÉireann*) is the fundamental law of the country, and came into effect on 29 December 1937.

The then Fianna Fáil government, led by Éamon de Valera, initiated the current 1937 Constitution as a replacement for the 1922 Constitution of the Irish Free State.

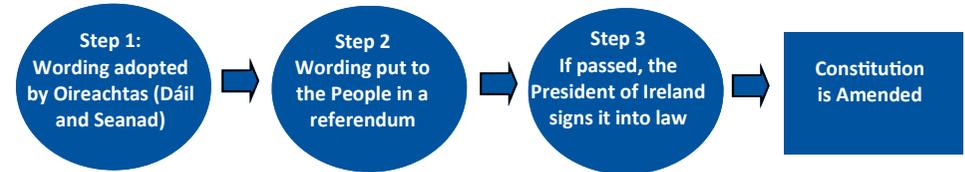
The current Constitution establishes an independent Republic with a system of representative democracy, and a popularly elected President. It also creates separate roles for the Oireachtas, the Government and the Judiciary; and guarantees a range of basic personal rights, ranging from freedom of expression to the right to the protection of private property.

The text of the Constitution has 50 articles, which can be changed only by referendum. Rights under the Constitution can be expanded upon by the courts.

Thirty-two constitutional amendments have been put to the People in referendums, on a range of issues from divorce to membership of the European Union. Twenty-three of the thirty-two referendums have been successful; most recently in relation to judges' pay in October 2011.

How is the Constitution Amended?

Any part of the Constitution can be amended. The proposed wording of the amendment must first be adopted by both Houses of the Oireachtas, before a referendum can be put to the People. If the People pass the referendum, the constitutional amendment comes into effect once the President of Ireland signs it into law.



Joint Committee on the Constitutional Amendment on Children

The Joint Committee on the Constitutional Amendment on Children (chaired by Deputy Mary O'Rourke) was established in November 2007 to deepen political consensus on the wording for a constitutional amendment to strengthen children's rights. In all, it met 62 times over a period of 27 months (despite an original timeline of four months). The Committee published three reports. Its third and final report, from 16 February 2010, contained all-party agreement on a proposed wording for an amendment to strengthen children's constitutional rights. The achievement of all-party consensus is significant.

Will there be a Referendum?

The new Programme for Government pledges to hold a referendum along the lines recommended by the Joint Committee. The Taoiseach, the Minister for Children and Youth Affairs and Minister for Justice and Equality have each given a clear political commitment to the holding of such a referendum.

The Minister for Children and Youth Affairs, Frances Fitzgerald TD, has committed to review the wording for the amendment put forward by the Joint Committee and wording produced by the previous Coalition Government. The Minister will be advised by the Attorney General in her deliberations.

Three million has been earmarked in the past three Budgets for the holding of a children's rights referendum. The Alliance continues to call on the Government to act on the Joint Committee's recommendations and set a date for a referendum to strengthen children's rights as a matter of priority.

Does Giving Children More Rights Mean Parents Have Fewer Rights?

Children's rights and parents' rights are not mutually exclusive; they are inextricably linked. Strengthening children's rights in the Constitution is not about giving children the right to divorce their parents. In the UN Convention, it is stated clearly that a child's best interests are served by being with their parents wherever possible, and that a child's parents have 'primary responsibility' for their child's upbringing. Parents will regularly do all that they can to uphold the rights of their children; they will knock on as many doors as necessary to ensure that their children's needs are met and that their children get the services they deserve.



However, not all children are as fortunate. And when parents endanger their children's welfare, we, the public, expect the State to act. A robust amendment would, in these rare occasions, help ensure that the State can take action and provide the necessary support which these children and families so desperately need.

The *Kilkenny Incest Investigation* into a deplorable child abuse case recommended that: "... consideration be given by the Government to the amendment of Articles 41 and 42 of the Constitution so as to include a statement of the constitutional rights of children. the very high emphasis on the rights of the family in the Constitution may consciously or unconsciously be interpreted as giving a higher value to the right of parents than to the rights of children."

Catherine McGuinness SC, Report of the Kilkenny Incest Investigation

Will This Amendment Really Make a Difference?

A robust children's rights amendment will ensure that children in Ireland benefit in real and concrete ways. Strengthening children's rights in the Constitution – the fundamental law of the land – will mean that children, at long last, will be visible in the Constitution.

The amendment could allow the State to take proper account of children's rights to put their best interests at the heart of decisions affecting children, and to listen to the voice of the child. It could also acknowledge a child's right to know their identity and to be protected from abuse.

A children's rights amendment could provide the State with the necessary tools to develop the very best care, adoption and child protection systems. For example, at present, the Constitution hinders the adoption of children whose parents are married. This effects up to 2,000 children currently in long term foster care, who have grown up with little or no regular contact with their married birth parents

A children's rights amendment could create an equal level of protection for all children, regardless of the marital status of the child's parents. The amendment could empower the State to intervene in a proportionate way to protect children and this would allow for the provision of supportive interventions.

Each and every day, children are badly served by the current Constitution. Vulnerable children depend on adults to safeguard their rights and ultimately their future. But without a constitutional amendment, the State's hands are tied.



What Does the UN Convention on the Rights of the Child have to do with the Irish Constitution?

The United Nations Convention on the Rights of the Child is a comprehensive, internationally binding agreement on the rights of children (defined from birth to 18 years of age) adopted by the UN General Assembly in 1989. It incorporates children's:

- participation rights (such as respect for the views of the child);
- survival and development rights (such as the right to housing, health care and education); and
- protection rights (from abuse and exploitation).

Ireland ratified the UN Convention on the Rights of the Child in 1992. The UN Committee on the Rights of the Child oversees States' progress in implementing the Convention. In 1998 and 2006, the Committee recommended that Ireland incorporate or give further effect to the principles of the UN Convention into its domestic law. Ireland cannot incorporate some of the UN Convention provisions until it reforms its Constitution.



I would say there can be little doubt that the silence of the Constitution in relation to children has had considerable impact on law making, on Government policy and on the practice of social work and among other caring professions. And so it seems that there is a pressing need to express constitutionally, the Convention of Children's Rights in the Constitution.

Lucy Smith, Rapporteur for Ireland, UN Committee on the Rights of the Child, State Hearing - September 2006

Is This Just Political Correctness Gone Mad?

Calls for a constitutional amendment are not new: it was first discussed in the Oireachtas over 30 years ago. Fresh impetus to the debate came on 3 November 2006, when the then Taoiseach, Bertie Ahern TD, announced his intention to amend the now outdated Constitution to strengthen the rights of children. All of the main political parties have also committed to making children visible in the Constitution, both in the 2007 and 2011 General Election manifestos.

Many professionals working directly with children, including legal practitioners and social workers, also support the need for constitutional reform for children. Over the past 20 years, a number of court cases and inquiries have highlighted how the current Constitution is failing to protect children and their rights.

It is not political correctness gone mad: it is the right thing to do.

[There will be]... "A referendum to amend the Constitution to ensure that children's rights are strengthened, along the lines recommended by the All-Party Oireachtas committee."

**2011 Programme for Government
(Fine Gael and Labour Coalition Government)**

"The Green Party will hold without delay a Referendum on the Rights of the Child, placing the best interests of the child at the heart of our Constitution."

The Green Party 2011 Manifesto

"Sinn Féin is committed to: a Constitutional referendum to enshrine fully the rights of children in the Constitution."

Sinn Fein 2011 Manifesto

"Fianna Fáil will focus on the number of specific areas where we believe amendment is desirable [..including..] An amendment to strengthen the rights of children."

Fianna Fáil 2011 Manifesto