Operationalising children’s rights: lessons from research

Ursula Kilkelly

Abstract

This article considers ways in which the implementation of children’s rights can be measured in law, policy and practice. It identifies best practice and lessons to be learnt when undertaking the process of auditing the implementation of children’s rights. It draws on the author’s experience of four different research projects whose task was to measure the extent to which children’s rights were being protected and promoted. The article highlights the value of rights-based research, which attempts to operationalise children’s rights by measuring their practical implementation with regard to international standards including the Convention on the Rights of the Child (CRC). It sets out the lessons to be learnt from such research, including how to develop appropriate and effective benchmarks, how to maximise existing standards to this end, and how to apply them in line with the general principles of the CRC.

Key words

children’s rights; youth justice; healthcare; law and policy; children’s rights proofing

Introduction

The United Nations Convention on the Rights of the Child (CRC) is the most highly ratified human rights instrument in international law and this wide acceptance of its standards is evidence of its universal appeal. Although there are varying views as to its potential benefits (McGoldrick, 1991; Lopatka, 1992), there is consensus that enforcement and implementation are key to maximising its potential to improve the lives of children and young people worldwide (Balton, 1990; Fottrell, 2000; Kilkelly & Lundy, 2006). Despite this, measuring implementation remains a major challenge internationally and nationally and while evaluation of different kinds is taking place, particularly by children’s organisations participating in the Convention’s reporting mechanism or seeking to improve implementation at national level (Geraghty, 1999; Children’s Rights Alliance, 2006), the process and method of such evaluation have received only modest attention.

The purpose of this article is to explain the rights-approach to measuring the implementation of children’s rights with reference to research in which the author was involved. Each piece of research sought to operationalise children’s rights in a practical manner insofar as it had the precise objective of considering the extent to which children’s rights are being protected and promoted in different areas of law, policy and practice. The lessons to be learnt from these experiences offer guidance to law and policy-makers and other researchers as to how rights-based studies might be undertaken and the uses to which they might be put. The article begins by stating the case for rights-based research. It then discusses the process of developing benchmarks against which law, policy and practice can be measured, and finally details best practice regarding how to apply those benchmarks in an appropriate and effective manner.

Monitoring the implementation of the CRC

The UN Committee on the Rights of the Child has responsibility for monitoring the implementation of the CRC at international level. It considers the reports of state parties on measures taken to implement the
Convention and reviews their progress in this regard at five-year intervals. However, the constraints of the reporting process mean that the Committee rarely succeeds in drawing precise conclusions in more than a few areas of the Convention. It is reliant on the information provided to it by state parties, which is often formal and legalistic and provides very little insight into the reality of children’s lives (Kilkelly, 1996). For this reason, the involvement of Non-Governmental Organisations (NGOs) in the process is vital in bringing the reality of children’s lives to the Committee’s attention. However, even where NGOs provide detailed and comprehensive information, the Committee has limited time and resources to undertake rigorous or comprehensive analyses of the extent to which particular children’s rights are enjoyed. For this reason, it focuses on measures of implementation, which hold the greatest potential for long-term effect and it is in this area that it has adopted its most influential General Comment (discussed below). This provides clear guidance to state parties on the measures to be taken to ensure full implementation of the CRC (UN Committee on the Rights of the Child, 2003) and it is a valuable tool in any rights-based analysis of law and policy.

**Some examples of rights-based research**

This article draws on four projects undertaken by the author that aimed to audit the implementation of children’s rights in different ways and areas. Two projects were undertaken in the youth justice system: the first, for the Northern Ireland Human Rights Commission (NIHRC), was designed to measure the extent to which the rights of children in detention are protected (Kilkelly & Moore, 2002; Moore & Convery, 2006); the second project, funded by the Irish Research Council for the Humanities and Social Sciences, undertook a children’s rights audit of the Irish Children’s Court (Kilkelly, 2005; 2006). The third project, commissioned by the Northern Ireland Commissioner for Children and Young People (NICCY) was designed to identify where children’s rights were being ignored or underplayed in law, policy and practice in Northern Ireland (Kilkelly et al, 2005). The final project, funded by the (Irish) Office of the Minister for Children aimed to measure the extent to which children are being heard in the healthcare sector (Kilkelly & Donnelly, 2006).

While these projects all varied in scope and breadth – for example, the NICCY research was a year-long project which interviewed over 1,100 children and young people and 300 professionals working with and for children, whereas the healthcare research involved 50 children and young people, 30 parents and 50 professionals – all had a common objective, namely to consider the extent to which children’s rights in the area under investigation were being protected and promoted. In each case, the research led to precise recommendations for change and, in the case of the NICCY research, proposed priorities for the Commissioner’s first strategic plan. Different methodologies were used for each project, although they all involved, as a minimum, a comprehensive review of the relevant literature and law and policy documentation. Three projects involved children and young people directly, and the Children’s Court project involved them indirectly by observing their behaviour in court. All projects also incorporated the views of those working with and for children either directly or indirectly. In addition, the NICCY project undertook interviews with policymakers, and the healthcare project interviewed those involved in the education of health professionals; both of these projects also involved interviews with parents. The methodology used for the Children’s Court project was observation of court proceedings in four different courts across the country over 50 days. This allowed the physical arrangements in the courtroom, as well as the behaviour and interaction of all the parties present, to be documented in 944 cases. Uniquely, also, the healthcare project incorporated an audit of the training and education curricula of health professionals in order to measure the extent to which children’s rights and skills around communication with children were included.

While the full details and findings of these research projects are set out in their individual publications, collectively they illustrate the variety of ways in which children’s rights standards can be used to audit law, policy and practice. They show that children’s rights proofing can be undertaken in a broad and comprehensive manner – such as in the NICCY project, which looked at every area of children’s lives – or in a focused manner – such as in the Children’s Court research, which looked exclusively at the extent to which the Court operated in line with international standards. Despite these differences, common lessons can be learnt from the accumulated experience of undertaking research designed to operationalise children’s rights.

**The legal basis for children’s rights proofing**

The Committee on the Rights of the Child has made it clear that children’s rights proofing and the development of indicators is central to the state’s
fulfilment of its duty to take all appropriate measures to implement the CRC. Thus, according to the Committee, Article 4 requires that mechanisms be put in place to monitor implementation of the CRC at national level and its General Comment on General Measures of Implementation provides guidance on how states should undertake this task (United Nations Committee on the Rights of the Child, 2003). In particular, it recommends that states keep under review the compatibility of law and policy with individual provisions of the CRC as well as holistically, and stresses that this process needs to be rigorous, continuous and both integrated into the machinery of every government department as well as having an independent quality. The Committee makes it clear that ensuring that the best interests of the child (protected under Article 3 of the CRC) are a primary consideration in all actions concerning children demands ‘a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation)” (United Nations Committee on the Rights of the Child, 2003). This process needs to be built into government at all levels and as early as possible in the development of policy. It has been recommended that every state consider how it can ensure compliance with the CRC in a way that further ‘promotes the visible integration of children in policy-making and sensitivity to their rights” (United Nations Committee on the Rights of the Child, 2003). In addition, the Committee notes the importance of collecting comprehensive and disaggregated data on every aspect of children’s lives and explains the need for such data to be evaluated in order to get a clear picture about the state of implementation. It has also been noted that only children themselves are in a position to indicate whether their rights are being fully recognised and realised and considers that ‘interviewing children and using children as researchers (with appropriate safeguards) is likely to be an important way of finding out, for example, to what extent... the crucial rights set out in Article 12, to have their views heard and given due consideration, are respected”. In addition, according to the Committee, the measurement of the implementation of children’s social, economic and cultural rights demands that children are visible in budgets and that the impact of economic and budgetary policy on the exercise of their rights is apparent. Finally, the Committee stresses the importance of adults working with and for children to receive ongoing training and education on children’s rights, and highlights the need for periodic evaluation of the effectiveness of training, reviewing not only knowledge of the CRC, but also ‘the extent to which it has contributed to developing attitudes and practice which actively promote enjoyment by children of their rights’.

Rights-based approaches to monitoring

Research across a number of jurisdictions has sought to undertake an evidence-based assessment of the extent to which children’s rights are being protected and promoted in specific areas of their lives (Child Rights Information Network, 2006). This has taken different forms and a variety of approaches have been used. National NGOs and human rights institutions have undertaken rights-based analyses in order to produce shadow or alternative reports to the Committee on the state’s progress in achieving full implementation. These are frequently of high quality but can suffer from the constraints of time, resources and scope given that their principal purpose is to inform the reporting process. Assisting many NGOs and indeed states parties in this regard is the UNICEF (2005) Guide to Implementation of the CRC, which includes summaries of the CRC provisions and their background, as well as a practical set of checklists designed to assist the process of measuring implementation. The limit of this document is its confinement to the CRC, which is an important but nonetheless a minimum set of standards for children’s rights. It suffers from the fact that, like the CRC, it is designed to be universally applicable and so its guidance is not tailored to specific countries and circumstances.

A further area of monitoring activity has been the development of social indicators for the measurement of children’s well-being (Ben-Arieh et al., 2001; UNICEF, 1998; Hanafin & Brooks, 2005; Bradshaw & Mayhew, 2005). These generally aim to measure the well-being of children in a holistic manner and on an ongoing basis. They typically use quantitative rather than qualitative data to measure well-being and their merits include their large scope and comparative nature. However, they are not always designed to assess the well-being of specific groups of children; nor do they include substantive recommendations as to how higher standards of well-being can be achieved. Most importantly, their analyses do not normally take place within the framework of the state’s legal obligations under the CRC and as a result, they do not measure the implementation of its standards (UNICEF, 1998 and 2002; Ledogar, 1993). These studies have many
positive features and open a window to policymakers on some aspects of children's lives. They also support the need for longitudinal studies of children's experiences. However, in general, well-being indicators are not a substitute for a rights-based framework within which the implementation of children's rights can be regularly, comprehensively and precisely measured. Children's rights auditing or auditing differs from these approaches in a number of significant ways. First, it is based on and designed to measure the highest children's rights standards. Based on the CRC, combined with other international standards, the authority of the benchmarks used is beyond question as a matter of international law. Second, the analysis takes place within a legal framework with clear statements about the rights of children and the treatment to which they are entitled; the responsibility of the duty-bearers to observe these standards is unequivocal. Third, this approach has the advantage that the standards, while based on universally accepted instruments, can be tailored to the specific area being audited and the particular social and legal context being examined. Fourth, the process of rights auditing extends beyond measuring children's well-being with reference to socio-economic factors and evaluates in a qualitative way how children are treated and the extent to which they enjoy all of their rights. While perhaps not unique to the rights-approach, it is nonetheless significant that such auditing is itself rights-compliant by being in the child's best interests, non-discriminatory and inclusive and incorporating the views of children and young people. Auditing can also be usefully directed at specific groups of children or the general child population. Comprehensive or targeted at specific issues, it is a flexible model for monitoring the implementation of children's rights and an important way to examine the extent to which children's rights have been implemented in law, policy and practice. It both facilitates independent verification at national level of the extent to which government agencies are meeting their international obligations and enables recommendations to be made as to how this situation can be improved.

Learning lessons from the auditing process

Experience shows that at least lessons can be learnt from the auditing process. The first of these concerns the identification of the benchmarks to be used as it is these standards that define the scope of the research and give it credibility.

(1) Identifying standards

The CRC framework

The process of choosing international measurements for the implementation of children's rights starts with the CRC for two reasons. First, the CRC enjoys legal and moral standing in international law; it has achieved almost universal ratification and has been ratified by the UK and 192 other countries. The duty and commitment to implement its standards are unequivocal, and using the CRC as the benchmark against which law, policy and practice are to be measured adds to the status of such research and the authority of its findings (Kilkelly et al, 2005; Kilkelly, 2006). Second, in addition to its legal quality, the CRC has an enviable comprehensive scope; among many detailed provisions, it includes civil and political rights, humanitarian rights and economic, social and cultural rights (McGoldrick, 1991). The unique breadth of its provisions means that its standards are applicable in almost all areas of the child’s life, including school (Arts 28 and 29), family life (Arts 3, 5, 18, 20, 21) and health and material welfare (Arts 6, 24, 27). In addition, it contains provisions on vulnerable children such as those whose parents have separated (Arts 3, 9), children who have been subjected to abuse and exploitation (Arts 19, 30–34, 39) refugee children (Arts 7, 8, 10) and children in conflict with the law (Arts 37, 40). It contains rights of relevance to very young children (such as Arts 7, 18, 31) as well as those more important to older children (Arts 13, 14, 17). It refers to the right of families to support from the state (Arts 5, 18) and specifies the duties on the state to respect and vindicate the rights of children individually and as members of a group (Arts 24, 29) (Kilkelly & Lundy, 2006).

The inadequacies of the CRC

The broad wording of some of the CRC's provisions means that they are flexible enough to be adapted for different contexts. However, this same characteristic may cause problems when the provision is being used as a benchmark. An example of this is Art 3, which requires that the best interests of the child shall be a primary consideration in all matters concerning the child. What is in the child’s best interests in any particular area is not defined in the CRC, with the result that this principle has the potential to mean all things to all people or, at the very least, that opinions as to whether and to what extent the principle has been implemented in areas such as child care, education and youth justice vary considerably (Kilkelly & Lundy, 2006).

Gaps in the content, vagueness in its provisions and internal contradictions between its standards
mean that some CRC provisions are not helpful for auditing purposes, whereas others simply provide too low a level of protection to be useful (Kilkelly & Lundy, 2006). For example, Art 23 recognises, in vague terms, the right of children with disabilities to enjoy a full and decent life, in conditions that ensure dignity, promote self-reliance and facilitate the child's active participation in the community. The extensive limits (eg. regarding resources, what is appropriate, the child's eligibility) placed on the rights of such children mean that this provision is a grossly inadequate representation of their rights (Kilkelly, 2002). Thus, Art 23 is of little concrete value when attempting to measure the extent to which the rights of children with disabilities to education, including special needs education, specialised health care and independent living are protected. The recent General Comment on Children with Disabilities should fill this gap in future research (UN Committee on the Rights of the Child, 2006).

Problems are also caused by the fact that some rights contained in the CRC are not child-specific. For example, Art 15 recognises the child's freedom of association and peaceful assembly in identical terms to other human rights treaties, which are associated with the freedom to protest and to join a trade union (Ovey & White, 2002). The fact that this provision, which is so important to children themselves, has not been adapted to take into account the child-specific form of the right, namely the right to the company of their friends or peer group, undermines its potential value. For example, children in the NICCY research complained about the lack of safe spaces for them to spend time with their friends (Kilkelly et al., 2005). In its current form, this is not strictly speaking what the ‘freedom of association’ is about.

Remedying gaps and shortcomings
While the gaps and shortcomings in the CRC may make it difficult to identify meaningful standards in certain areas, there are important and inventive ways to address this. These include maximising the potential of other CRC provisions, combining CRC standards, augmenting them with other international instruments and with the guidance of the Committee on the Rights of the Child.

The inter-related and inter-dependent nature of CRC rights means that inadequacies in one area may be ameliorated by reading these provisions together with those that offer more positive or unequivocal protection. For example, the complaint above regarding Article 15 can be addressed by reading Art 31, which protects the child's right to play and leisure, together with Art 12 (the right to be heard), Art 2 (non-discrimination) and Art 19 (the right to protection from all forms of abuse, injury and ill-treatment); this allows standards to be identified concerning the availability of safe play spaces as well as children's equal access to play and their involvement in the planning process – all of these issues were serious concerns of both children and those working with and for them in the NICCY research (Kilkelly et al., 2005). Thus, even quite vague provisions can be used for auditing purposes when considered in the light of other CRC imperatives. Moreover, as this example shows, the collective approach promoted by the Committee on the Rights of the Child helps to translate weak standards into more powerful auditing tools against which law, policy and practice can be measured effectively.

Similarly, with regard to the right to information about sexual health, which is absent from the CRC in express terms, this can be implied from the aims of education in Art 29, the right to appropriate information in Art 17 and the state's duty in Art 24(2)(f) to take appropriate measures to develop family planning education. Similar approaches may be taken to remedy the inadequacy of CRC provision in areas like disability. In addition, the fact that, according to Article 2, CRC rights are to be enjoyed by every child without discrimination (and Art 2 expressly refers to disability as a prohibited ground), means that this can be used to elaborate on the protection afforded to particularly vulnerable children.

Using the guidance of the Committee on the Rights of the Child
A further way to supplement CRC standards is with reference to the guidance of the Committee, which has published a growing body of documents interpreting and applying the CRC in specific contexts and areas. The most important of these are General Comments which relate to the aims of education (2001), the role of independent human rights institutions (2003), HIV/AIDS (2003), adolescent health (2003), general measures of implementation of the CRC (2003), treatment of unaccompanied and separated children outside their country of origin (2005), implementing child rights in early childhood (2005), the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and the rights of children with disabilities (2006). In addition, the Committee has held general Days of Discussion annually since 1992 addressing broader subjects about the application of the CRC or children's rights in specific contexts such as the child and the media, the girl child, the private sector as service provider, the rights of children
Operationalising children’s rights: lessons from research

without parental care and juvenile justice. While these do not enjoy the legal status of the General Comments, nonetheless they provide a useful source of information about the Convention’s application in specific contexts.

It is also useful when developing benchmarks for auditing purposes to draw upon the Committee’s work monitoring implementation of the CRC. Of greatest importance in this context are the Concluding Observations adopted following its consideration of each state report. Here, the Committee identifies areas of concern regarding the state’s efforts to implement the CRC and makes recommendations regarding further implementation. They do not represent a definitive list of the areas where domestic law and practice is inconsistent with the CRC, nonetheless they identify some of the problematic areas. Although not legally binding, they provide a useful means of supplementing the CRC when developing standards tailored to specific jurisdictions or areas of state activity. For example, during the Children’s Court research, the Committee’s Concluding Observations on Ireland were used to support concerns reached about the incompatibility between the youth justice system and the CRC (UN Committee, 1998). The Concluding Observations also have other uses in research; for example, they can be used to strengthen recommendations for reform and, as in the NICCY research, to prioritise issues of concern (Kilkelly & Lundy, 2006).

The Committee’s guidance to states on the reporting process is also useful in clarifying standards for auditing purposes. For example, according to its Reporting Guidelines, CRC rights are grouped together in eight categories, including: civil rights and freedoms; family environment and alternative care; basic health and welfare; education, leisure and cultural activities; and special protection measures. While these headings usefully group together CRC rights and reinforce their indivisibility, research shows that it is important to adapt them to the particular circumstances or research being undertaken. In the NICCY study, for example, some of these categories were used while others were changed to fit the Northern Ireland context. Thus, the issue of play and leisure was treated as a separate category of rights from education because both subjects had been raised as a matter of serious concern to children and young people and they are the responsibility of separate government departments (Kilkelly & Lundy, 2006).

**Emphasis on measures of implementation**

While some research projects will be large enough to support a comprehensive review of compatibility with children’s rights standards, some choose or only have the capacity to undertake smaller or more focused research. When undertaking small projects, it is important to establish and apply the standards that provide most return in terms of recommendations for greater levels of implementation. The UN Committee has faced this problem and accordingly recognised the need to focus on areas of added value where small changes, particularly in structural areas, can have a knock-on effect in the protection of children’s rights. In this regard, the Committee has provided its most unequivocal guidance in the form of its General Comment on General Measures of Implementation (UN Committee, 2003). This advises states on the measures that they are required to adopt under Article 4 of the CRC concerning mechanisms to coordinate and monitor implementation at national level, the legal status of the Convention in domestic law, the extent to which children’s rights can be invoked in the courts, the availability of data (including up-to-date and disaggregated data) the existence of advocacy and independent complaints mechanisms for children and the extent to which professionals working with and for children receive ongoing training and education on children’s rights.

As a result, the General Comment can be very useful when researching the implementation of children’s rights. Its terms are unequivocal, practical and accessible, which facilitates its use in the drawing up of standards. The process of applying these benchmarks is also straightforward because questions as to whether the legal and administrative structures advocated by the General Comment have been put in place are not difficult to answer. For these reasons, it is submitted that any audit of compliance with the CRC should take these standards into account. This was undertaken in each of the four research projects described above and resulted in clear, unequivocal recommendations for structural and systemic change. For example, in the Children’s Court research, conclusions were drawn regarding the extent to which those working in the system were trained, whether complaints mechanisms were available to address children’s concerns and whether the relevant law was *prima facie* compatible with the CRC.

**The importance of General Principles**

As the Committee’s guidance makes clear, four provisions sit top of the CRC hierarchy of rights being grouped together as General Principles (UN Committee, 1991). These are the child’s right to equal enjoyment of their rights (Art 2), the requirement that the best interests of the child be a primary consideration in all matters concerning the child (Art
3); the guarantee of the child’s right to life, survival and development (Art 6) and the duty to facilitate the child’s expression of his/her views giving them due weight in accordance with the child’s age and maturity in all matters concerning him/her (Art 12). Granting special status to these general principles means that they must apply in all areas and stages of the child’s life. They are thus an essential starting point in auditing processes and can usefully be taken either in isolation or together with other provisions when developing benchmarks against which to measure law, policy and practice. According to the Committee’s General Comment on Implementation, the General Principles must be given express protection in legislation. Moreover, the straightforward analysis of whether they are expressly set out in law and policy documentation is a very important barometer as to their likely implementation in practice.

Drawing on supplementary international standards
In some cases, inadequacies in CRC provision will not be remedied with this approach, for example where the relevant standards are completely absent in any form from the CRC. In some cases, these gaps may be filled by looking elsewhere for supplementary, higher and more detailed standards. This problem emerged during both the detention study and the Children’s Court project where the initial process of drawing up relevant standards highlighted the lack of detailed provision regarding children’s rights in detention and in criminal proceedings. In relation to the former, the gap was filled by relying on the UN Rules for the Protection of Juveniles Deprived of their Liberty, a non-binding instrument adopted by the General Assembly in 1990 and referred to in the Preamble to the CRC. This provided a comprehensive and thorough set of benchmarks against which law, policy and practice regarding children in detention in Northern Ireland could be measured (Kilkelly & Moore, 2002). The same dilemma arose in the drawing up of standards against which to measure the operation of the Children’s Court. In this regard, while the CRC contains standard due process rights, it does not make clear provision for the child’s right to understand the process. However, this right has been developed by the European Court of Human Rights, which, applying Article 6 of the European Convention on Human Rights, held that where a child is charged with an offence, steps must be taken to promote his ability to understand and participate in the proceedings. According to the Court, the concept of a child’s ‘effective participation’ in criminal proceedings presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake for him or her (Kilkelly, 2006). This case-law, together with the UN Standard Minimum Rules on the Administration of Juvenile Justice (the Beijing Rules) adopted by the General Assembly in 1985 and also referred to in the Preamble of the CRC, was thus used to supplement the CRC standards in the development of a modern set of benchmarks for this project (Kilkelly, 2005; 2006).

Overall, there is considerable scope for supplementing CRC standards with reference to other international instruments. For example, the European Court has extensive case-law on issues of alternative care and family life (Kilkelly, 2000) and there are also a variety of legal sources at regional (from both the European Union and the Council of Europe) and international levels (including the UN and the Hague Convention on Private International Law) that can be used to develop detailed, unequivocal standards for benchmarking purposes. The accessibility of the websites of these international organisations also makes these standards relatively easy to find (Office of the High Commissioner for Human Rights – www.ohchr.org; European Court of Human Rights – www.echr.coe.int; Hague Conference on Private International Law – www.hccih.net; Children’s Rights Information Network – www.crin.org).

(2) The importance of consulting with children and young people
Much has been written about the importance of consulting with children and developing models of participation (Treseder, 1997; Lansdown, 2001; Shier, 2001; Sinclair, 2004). While advocates of this approach cite consumerism and the therapeutic and educational benefits for young people themselves as reasons to involve them in decision-making processes, Art 12 of the CRC makes it a legal duty. The terms of the provision – which requires that children be facilitated to express their views on all matters that affect them and have them given due weight in accordance with their age and maturity – make it clear that this duty extends to research which affects them. Involving children and young people in research, directly or indirectly, is required to ensure compliance with the CRC itself, although the best interests of the child require that it is undertaken only within the defined parameters of ethical approval.

While the commitment to carry out research in line with children’s rights values – particularly non-discrimination and the child’s right to express themselves using age-appropriate media, to be heard and to have their views taken into account – is of central importance, it nonetheless represents a
challenge, which necessitates the design, pilot and employment of appropriate methods which allow children to express their views in keeping with their age and ability (Christensen & James, 2000; Hill, Laybourn & Borland, 1996). During the NICCY research, for example, the pilot revealed that, while the children were able to express their views through the chosen methods, whole-class discussion on the central themes of the research was necessary before beginning the task. Ultimately, therefore, the collection and analysis of these data was resource-intensive and took longer than anticipated (Kilkelly & Lundy, 2006). While Article 12 requires children’s views to be taken into account in research which affects them, therefore, ethical, practical and resource considerations combined must determine whether and to what extent children are directly involved (Kilkelly & Donnelly, 2006).

(3) Diverse approaches to measuring implementation

Further difficulties in the practical implementation of the CRC arise from the fact that in many areas its provisions set out what rights are to be guaranteed, not how. Both the Children’s Court and the healthcare studies highlighted the problems with measuring the implementation of children’s rights. For instance, although the essence of the Article 12 principle is well understood – it is designed to raise the profile of children, to ensure that they are viewed as people in their own right and to guarantee that they are respected – the fact that it is interchangeably referred to as the child’s right to a voice, the right to be heard or the right to participate highlights the lack of agreement about its precise meaning (Lundy, forthcoming). This can cause problems in attempting to measure the extent to which Article 12 is being implemented in practice. While measuring whether and to what extent children are listened to requires that children’s views are heard, a complete picture may also require the collation of other viewpoints and perspectives. During the healthcare project, for example, children and young people expressed different views about the extent to which health professionals listened to them, generally noting that those who had been specially trained (eg. paediatricians) were better at it than those who were not. However, it was only by speaking with parents and health professionals that a fuller explanation for the lack of communication between health professionals and children became clear: in particular, tension emerged between parents and health professionals regarding how much information children received about their treatment and what level of direct communication was appropriate. Health professionals also raised the practical problems of their lack of space and time for such consultation as well as the lack of adequate training on communicating with children (Kilkelly & Donnelly, 2006). The curriculum audit, which reviewed the extent to which the training and education of a range of health professionals complied with children’s rights standards, clarified this situation further by identifying the lack of specific training for health professionals in children’s rights, particularly on the child’s right to be heard. Overall, therefore, it was the combination of these perspectives that helped to create a true understanding of the extent to which Article 12 is being implemented in the healthcare setting and to make recommendations regarding how the situation might be improved.

The Children’s Court research also highlighted the importance of using varied methodologies in order to advance the understanding of the implementation of children’s rights. The decision was taken at the outset of this research not to consult with young people for a variety of reasons, including the available time and resources. The chaotic nature of the court system also suggested that identifying young people willing to participate would have been difficult. While it is recommended that any future research of this kind incorporate the views of young people directly, it is nonetheless clear from the research that the approach taken, namely observation of the court process, served effectively to highlight young people’s lack of understanding and participation. Young people’s direct communication with the judge and the solicitor was extremely limited, and most young people spent the time in the courtroom staring at the floor or straight-ahead, bored or without emotion (Kilkelly, 2005). Further, the physical layout of the courtroom posed a considerable obstacle to the child’s involvement in the legal process. These observations allowed practical recommendations to be made regarding the re-arrangement of the courtroom as well as the raising of awareness among judges and lawyers about enhancing the child’s participation and understanding of the process.

As these examples show, involving young people directly in research that concerns them is important, not least because children can provide a direct insight into the dissonance between law and policy and the way in which their rights are being implemented in practice (Kilkelly & Lundy, 2006). At the same time, not every project will have the resources required to do this in a meaningful way and a combination of approaches would appear to work best.
Conclusions

The development of children's rights indicators or proofing mechanisms is not an exact science and like any monitoring mechanism it suffers from the practical problems caused by the lack of available data and the frustrations of time and resources (Kilkelly & Lundy, 2006). The inadequacy and the absence of standards in certain areas can also frustrate the auditing process. However, while not perfect, the rights approach to researching children's issues has significant merit as a means of child-proofing law and policy and measuring the dissonance between theory and practice. When it is based on detailed and comprehensive international legal standards and incorporates a wide range of inventive methodologies, including consultation with a range of stakeholders, it has unique potential to contribute to a qualitative understanding of children's lives as well as the extent to which their rights are being protected and promoted. In addition, all areas of children's lives are susceptible to rights-auditing. The increasing guidance from the Committee on the Rights of the Child also means that the Convention's application in areas like early childhood, the private sector and immigration is clearer than before. Assistance from the Committee on the implementation of the CRC is also very useful in the development of benchmarks. The emphasis on training for professionals on children's rights, for example, gives a solid legal basis to the auditing of training and education curricula for their compatibility with children's rights, both general and specific. This approach is capable of replication across children's services.

A more serious difficulty relates to the fact that in some areas the lack of up-to-date, disaggregated data frustrates the auditing process and makes it difficult to measure the extent to which rights are being implemented. For example, in the NICCY research, the lack of data on ethnic minorities, homeless children and children as victims of crime, frustrated the drawing of conclusions in these areas (Kilkelly & Lundy, 2006). Difficulties are also posed by the fact that certain areas of children's lives are simply under-researched or poorly understood, making it difficult to measure to what extent children's rights are protected in these areas. In the Children's Court research, for example, the absence of data on young offenders in Ireland meant that there was no background against which the research could take place (Kilkelly, 2005; 2006). Lack of documentation can also frustrate the auditing process. For example, in the healthcare research, the audit of health professionals' training was frustrated by the use of the largely un-documented clinical model of education. Such an approach, where trainees learn 'on the job', is not conducive to analysis and requires supplementary methods (eg. interviews) to generate an understanding of the content of the educational curriculum (Kilkelly & Donnelly, 2006).

Other problems encountered in rights-based analyses are probably not confined to this methodology but may be exacerbated by the somewhat challenging nature of the analysis. Thus, experience has shown that research of this kind may encounter resistance from professionals who resent being scrutinised in this way. Adherence to professional and ethical standards is crucial to allay such fears and win the confidence of those working in the field. Other factors, like the political context and lack of time and resources, may restrict the scope of the project or limit the potential for its conclusions and recommendations to be taken seriously. Express support for the research from senior management and policy-makers in the area is vital to surmounting any problems that may arise and to its effective impact on the reform of the area in question.

The research outlined here demonstrates the advantages of using the CRC and related international standards to undertake children's rights-focused research in order to measure the extent to which these standards are being implemented in practice. It shows that children's rights proofing is an effective way to undertake this task and that the development of standards and rights-based indicators as part of this process will ensure that further studies designed to follow-up or measure progress made are all the easier. In this way it helps respond to the call for states to invest in research into children's lives and "to develop national and local capacities from a rights-based perspective" (UN Committee, 2005).
Summary of policy and practice implications

- Undertaking rights-based research to measure the extent to which children's rights are being protected and promoted is essential.
- Legal standards, including the UN Convention on the Rights of the Child, should be applied as benchmarks when undertaking this research. It is also necessary to look beyond the CRC in order to ensure the highest and most detailed standards are applied.
- Adopting a range of methodologies will maximise the understanding of children's experiences.
- The necessity and value of researching with children by providing them with the opportunity to be heard and giving due weight to their views in research should be acknowledged.
- Undertaking follow-up research and implementation studies is important.

Address for correspondence
Dr Ursula Kilkelly
Faculty of Law
University College
Cork
Ireland

Tel: 00 353 (0)21 490 3642
Fax: 00 353 (0)21 4270 690
Email: u.kilkelly@ucc.ie

About the author
Dr Ursula Kilkelly has published on children's rights in Irish, British and international journals and has carried out a number of research projects which aim to audit the implementation of children's rights in law, policy and practice. She is also author of The Child and the ECHR (Ashgate, 1999) and Youth Justice in Ireland (Irish Academic Press, 2006) and editor of ECHR and Irish Law (Jordans, 2004).

References


Kilkelly U & Moore L (2002) *In our Care: Promoting the rights of children in detention*. Belfast: NIHRC.


United Nations Committee on the Rights of the Child (1991) *General guidelines regarding the form and content of initial reports to be submitted by States Parties under article 44, paragraph 1(a), of the Convention. CRC/C/5*.


---

**End note**

* Case law is the law made by courts interpreting cases and laws as opposed to law made by legislatures.
As a loyal subscriber to the *Journal of Children’s Services*, Pavilion would like to offer you an **EXCLUSIVE 20% DISCOUNT** on *The British Journal of Leadership in Public Services*.

This multidisciplinary and multiagency journal brings together leaders, academics and policy-makers to disseminate and debate approaches to leadership and improving public services. It draws on the expertise and experience of the various public sector leadership bodies and showcases their shared learning and joint development initiatives.

Recent contents include:
- Daring to Dream: Learning the Lessons of Service Improvement for Application in Mental Health Services
- Faith in Systems or in People: Leadership, Change Strategies and Innovation In the Public Sector
- Value-based Leadership – A Third Sector View
- Learning from Leaders Abroad: Practical Examples of Leadership Around the World
- Contemporary Developments In Public Service Leadership

Look below to see how much you can save:

<table>
<thead>
<tr>
<th>SUBSCRIPTION</th>
<th>Normal Price</th>
<th>Your Price</th>
<th>Saving</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate multi-user online access</td>
<td>£395</td>
<td>£316</td>
<td>£79</td>
</tr>
<tr>
<td>Corporate single-user online access</td>
<td>£295</td>
<td>£236</td>
<td>£59</td>
</tr>
<tr>
<td>Individual*</td>
<td>£95</td>
<td>£76</td>
<td>£19</td>
</tr>
</tbody>
</table>

The *British Journal of Leadership in Public Services*, published quarterly, contains research and practice-based perspectives, viewpoint papers, interviews with leaders, updates on public sector leadership programmes and a review section.

**Subscribe Today**

Subscribe before 31 March 2007 to claim your **20% discount**. Order online at [www.pavpub.com/BJLPSAD](http://www.pavpub.com/BJLPSAD) or call 0870 890 1080 quoting BJLPSAD.

**Terms & Conditions:** *Individual subscriptions must be paid from a personal account and delivered to a home address. Offer is open to new subscribers to the journal only and is subject to availability.*
Child-Led Research: Questioning Knowledge. Over the last twenty years, childhood studies has challenged the schooled and developmental models of childhood. The children’s rights agenda has combined with academic childhood studies, to emphasise that children are and can be social more. Over the last twenty years, childhood studies has challenged the schooled and developmental models of childhood. Lessons from knowledge management for a future research agenda on children’s rights. Knowledge management (KM), understood as the multi-disciplinary approach to achieving social objectives by making the best use of knowledge, has been a relatively unexplored framework in children’s rights scholarship. However, paradigms more.