



Enabling Participation in Youth Justice: the Lundy Model in practice

QUEEN'S UNIVERSITY BELFAST | **CENTRE FOR CHILDREN'S RIGHTS**

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Outline

Children's rights, participation
and youth justice

The Lundy model

Putting it into practice

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A lexicon for children's rights

“It appears to be perfectly acceptable to deny that children are, should or can be rights-holders when there are very few who would publicly assert that they do not “believe” in human rights. The problem for child rights advocates and the academic community, as I see it, is that the reluctance of some to accept the notion that children have rights has generated a revised or alternative lexicon for talking about children’s rights that is increasingly problematic. In short, child rights discourse is being substituted, truncated and diluted to a status that I have previously dubbed, child rights “lite” ”

Lundy, Laura. "A lexicon for research on international children's rights in troubled times." *The International Journal of Children's Rights* 27.4 (2019): 595-601.

UNIVERSAL HUMAN RIGHTS?

“sometimes you will use rights-based language, because it is the ... best way to achieve change. Other times you might not articulate it with rights-based language because you have a better chance of persuading and achieving a change, by articulating it in a different way” (NGO representative)



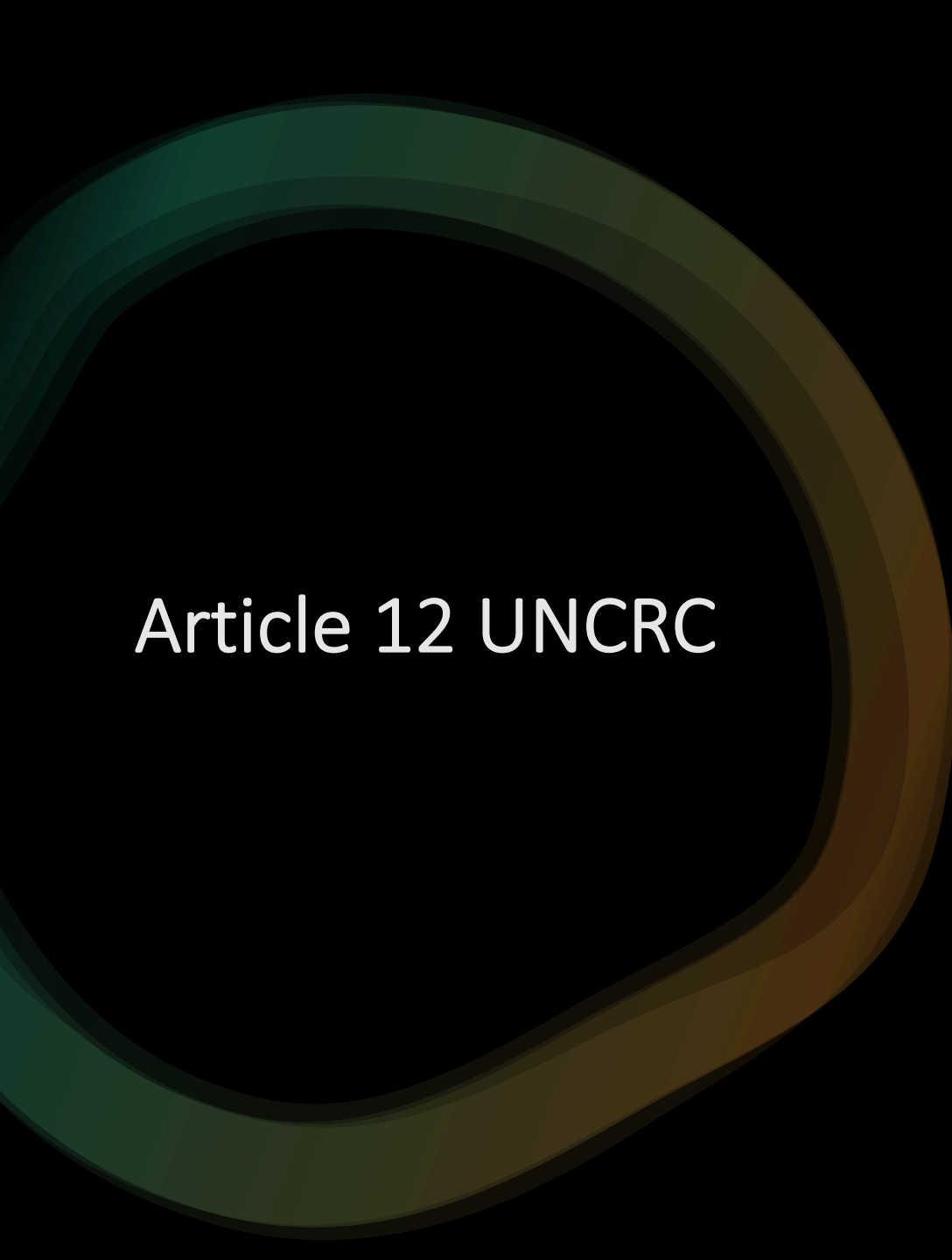
The deserving
and the
undeserving



A human rights vision for prisoners: “prison as and not for punishment”

Human rights proponents would argue that the deprivation of liberty should be restricted to an *ultimum remedium* . . . Assuming a deprivation of liberty is justified as a sanction to the violation of moral norms, this deprivation should not go any further than the necessary isolation from society. This means that other fundamental rights should remain unimpeded, like the right to family, life, labour, education, free expression and gathering etc. (Bal, 1994: 90)

Livingstone, S. (2000). Prisoners' rights in the context of the European Convention on Human Rights. *Punishment & Society*, 2(3), 309-324.



Article 12 UNCRC

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child,

the views of the child being given due weight in accordance with the age and maturity of the child.”

A right in itself and a
means of realizing all
other rights



UN Global Study on Children Deprived of their Liberty (2019)

Kilkelly, Lundy, Forde, McAlister,
Kelleher, Templeton

'We think our views are not important for them'. (M/13-15/1:APG)

Some children described experiences of having their requests denied by the judge with no reason given for the denial.

'They didn't hear my point of view, instead the prosecutor was asking me questions and write down his own answers without listening to me'. (F/12-18/1:AFG)

A few children described how complaining about their situation could sometimes make things worse for them and they understood that adults may collude with each other, especially if the complaint referred to abuses by staff.

'If you complained, you were punished. They could lock you or not give food'. (M/F/18/4:EEG)

'If we go to the principal and make a complaint, he is not listening to us. Cause they are colleagues among themselves, and of course he is not taking our side'. (M/17/1:EEG)

*“It’s not the gift of adults. It’s
the right of the child”*

(Lundy 2007)

A disconnect between law,
children's experiences and
adults' understanding



Criminal Justice: Children in the criminal justice system feel that their voices are rarely heard (NGO Representative). With particular regard to the court experience, the representative commented that for young people the court is still an "adult construct" and a place where "very often they don't understand what's going on" and they have "no real sense of their having been real participants in that process". Another NGO representative noted that young people have no say in most of the decisions made about them when in custody, leaving them to "just fit into the regime". For example, a common complaint is that they are not allowed to cut their hair very short when this is their normal style. The issue for them, therefore, is that they cannot choose – "this is about their own identity and everything else about their identity has been taken away from them" (NGO Representative).

What
does
Article 12
require?

The Voice of the Child?

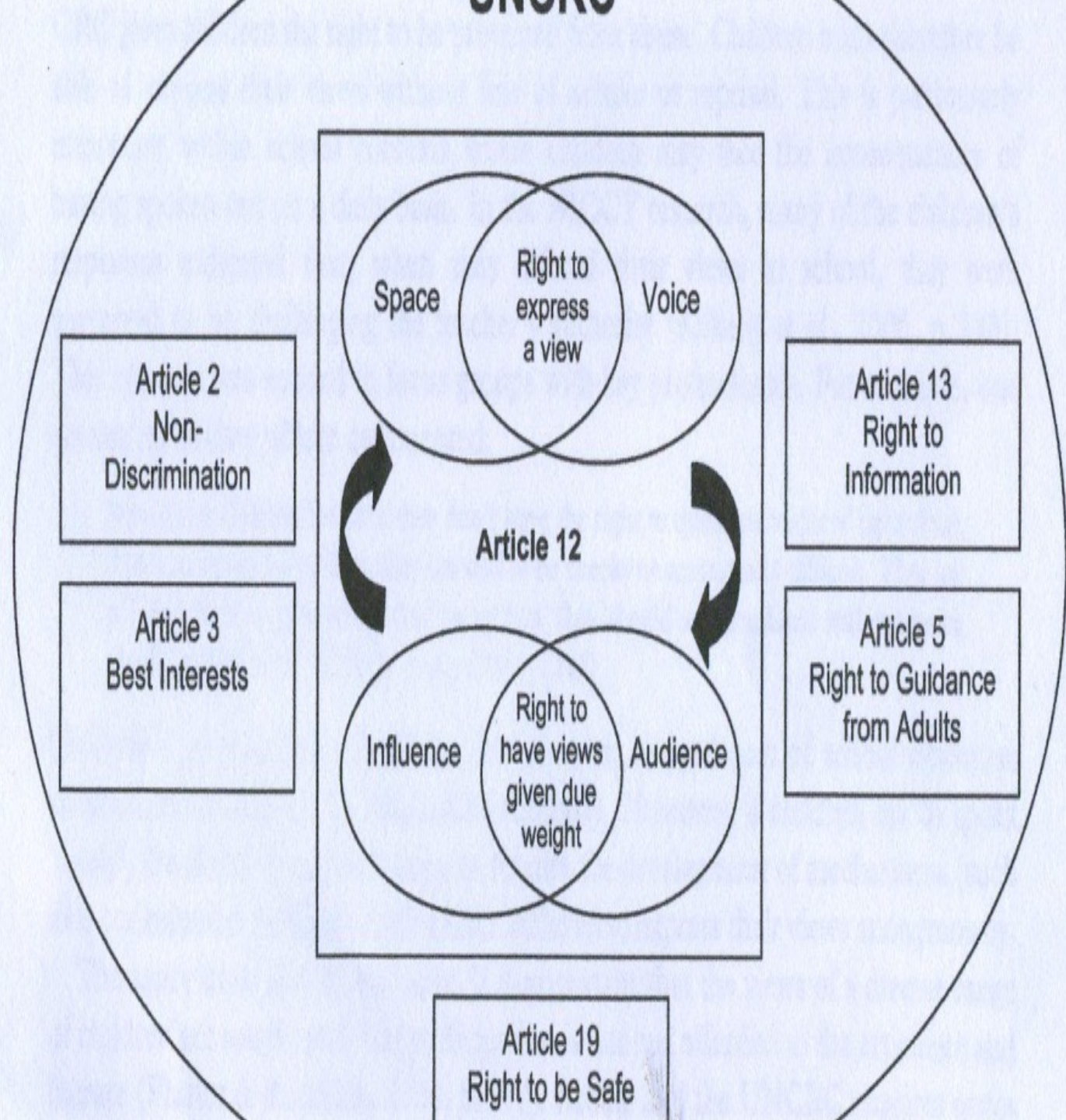
The Right to be Heard?

The Right to Have a Say?

“Each of these abbreviations is an imperfect summary and can potentially undermine its implementation.”

Voice is not enough...

Lundy (2007)



Lundy Model

This model provides a pathway to help conceptualise Article 12 of the UNCRC. It focuses on four distinct, albeit interrelated, elements. The four elements have a rational chronological order.



“Voice” is not enough

- **SPACE:** Children must be given the opportunity to express a view
- **VOICE:** Children must be facilitated to express their views
- **AUDIENCE:** The view must be listened to.
- **INFLUENCE:** The view must be acted upon, as appropriate.

people have a voice in decision-making. It can be applied to many everyday situations including those that occur in classrooms, childcare settings, and youth and sports clubs, as well as to activities conducted as part of youth projects, games, arts and creative initiatives.

Please do not use this checklist for developing policies, plans, services, programmes, governance, research and legislation – use the Planning Checklist on page 18.

Please make sure that the ways you involve children and young people in decision-making are age-appropriate and accessible for all, whether in person or online.



Participation Framework

National Framework for Children and Young People's Participation in Decision-making



The Irish National Child and Youth Participation Framework



Planning and evaluation checklists

Evaluation Checklist

This checklist is a guide for the self-evaluation and external evaluation of policies, plans, services, programmes, governance, research and legislation at national, local and organisational level.



Checking with children that they felt that their voice was listened to

Children and Young People's Feedback Form (for individuals)

Boy

Girl

Other

I dont know

___ Age

Tick the number of stars you would give to everything below. Five stars is the best.

SPACE	★	★★	★★★	★★★★	★★★★★
I was listened to from the start					
I felt comfortable giving my opinions					
I felt safe giving my opinions					

VOICE	★	★★	★★★	★★★★	★★★★★
I got the chance to give my opinions					
I got enough information to help me give my opinions					
I got support to have my voice heard					
I understood what was being discussed					
I could give my opinions whatever way I wanted					
I had enough time to talk					

AUDIENCE	★	★★	★★★	★★★★	★★★★★
I know who wants to hear my opinions					
I know why they want my opinions					
They were honest about what they would try to do with my opinions					

INFLUENCE	★	★★	★★★	★★★★	★★★★★
I know where my opinions are going next					
I know how I will be told about what happens to my opinions					
I think what I said today will be taken seriously					

Is there anything else that would have helped you in giving your opinions?

Making 'meaningful engagement' a meaningful term

In 2007, trying to articulate the concept of influence, I settled, as others do, on **feedback**:

"... make it uncomfortable for adults to solicit children's views and then ignore them..."

Lundy, 2007

The Four F
Framework
for
Feedback
(Lundy,
2018)

Fast

Full

Child-friendly

Followed-up

A Framework for Feedback

What did you agree with ?

What, if anything, surprised you and why?

Did you disagree with anything? If so, what and why?

Has it influenced your views in any way? If so, how?

What have you decided?

What is happening next and when will it happen?



Putting it into practice in youth
justice

Incorporating in law

United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill [AS PASSED]

Incorporating the UN Convention on the Rights of the Child into National Law

Parliament to incorporate in Scots law rights and obligations set out in the United Nations Convention on the Rights of the Child; to make related provision in relation to the Convention; and for connected purposes.

Corrigan, Kilkelly, Lundy and Byrne (eds.)

PART 1

THE UNCRC REQUIREMENTS

Meaning of “the UNCRC requirements” and related expressions
“the UNCRC requirements” and related expressions

“the Convention” means the United Nations Convention on the Rights of the Child, as adopted and opened for signature, ratification and accession by the General Assembly resolution 44/25 of 20 November 1989,

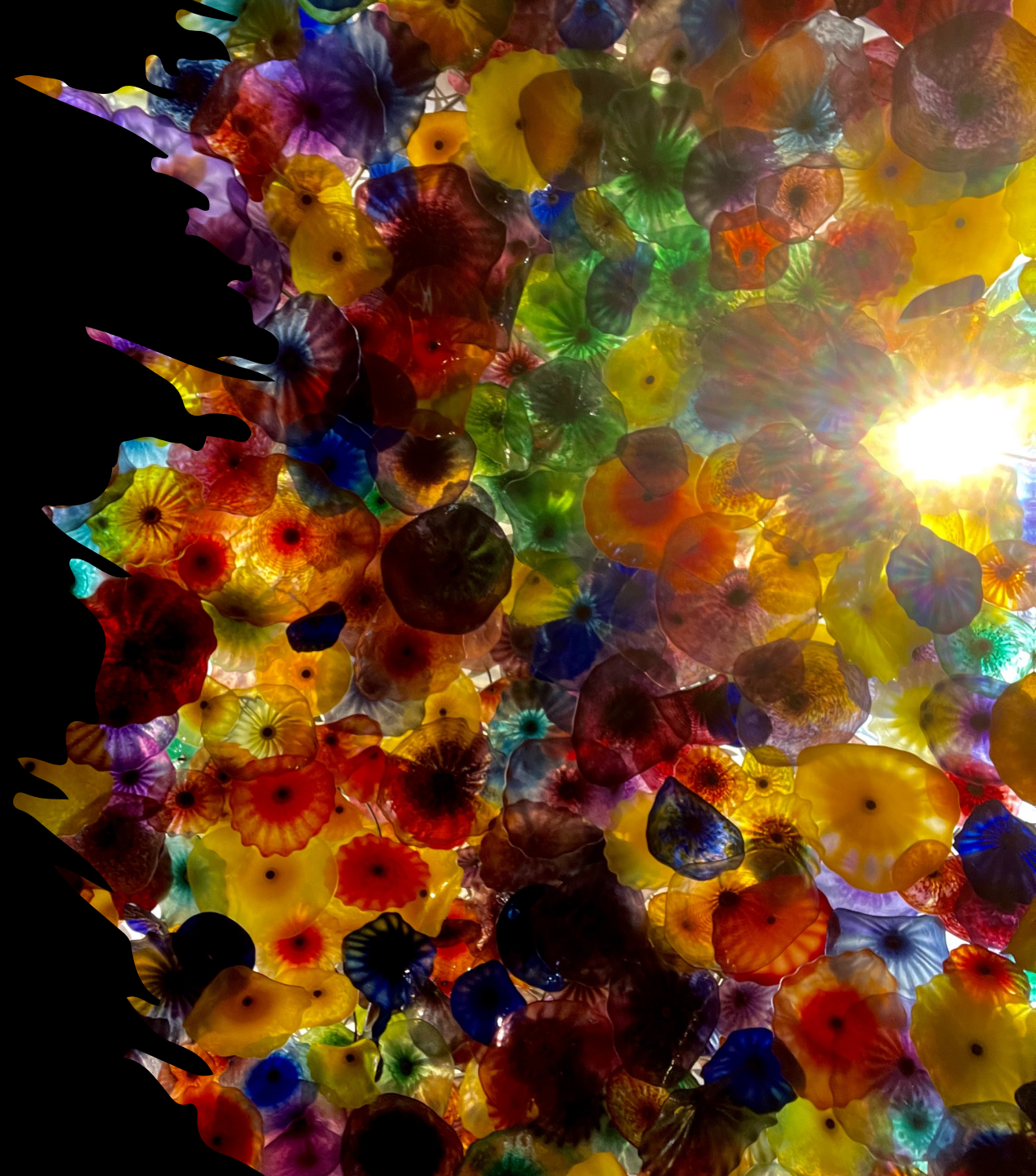
“the first optional protocol” means the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict,

“the second optional protocol” means the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

In this Act, “the UNCRC requirements” means the rights and obligations set out in the Convention, the first optional protocol and the second optional protocol.



A crucible of child
rights conversation



The gap between law and reality



Children's Rights Policy

Table 1. Features of a general approach to childhood policy versus a children's rights-based approach using a six-P framework.

	General approach to childhood policy	Children's rights-based approach
Principles	<ul style="list-style-type: none"> No reference or very limited reference to CRC. Articles of CRC not explicit. 	<ul style="list-style-type: none"> Explicit and consistent reference to CRC. Policy aligned to CRC standards.
Process	<ul style="list-style-type: none"> No impact assessment. Impact assessment but not aligned to rights. 	<ul style="list-style-type: none"> Child rights impact assessment on potential impacts. Child rights impact evaluation on actual impacts.
Participation	<ul style="list-style-type: none"> May not involve children and young people in development and implementation. Involvement of children and young people may not be meaningful. 	<ul style="list-style-type: none"> Children and young people involved in development and implementation. Children and young people's views given due weight.
Partnership	<ul style="list-style-type: none"> Unclear structures for partnership working. Silo working. 	<ul style="list-style-type: none"> Clear structures and oversight mechanisms. Holistic approach.
Public budgeting	<ul style="list-style-type: none"> Spending on children and young people is subsumed within headings of expenditure generally or within the family unit. Children and young people are not involved in decision-making around spending 	<ul style="list-style-type: none"> Spending on children and young people is explicit. Children and young people are involved in decision-making around spending.
Publicity	<ul style="list-style-type: none"> Only adult versions of consultation documents and/or final policies available. One size fits all approach to 'child friendly' policy 	<ul style="list-style-type: none"> Age appropriate version. Accessible to range of groups of children and young people.

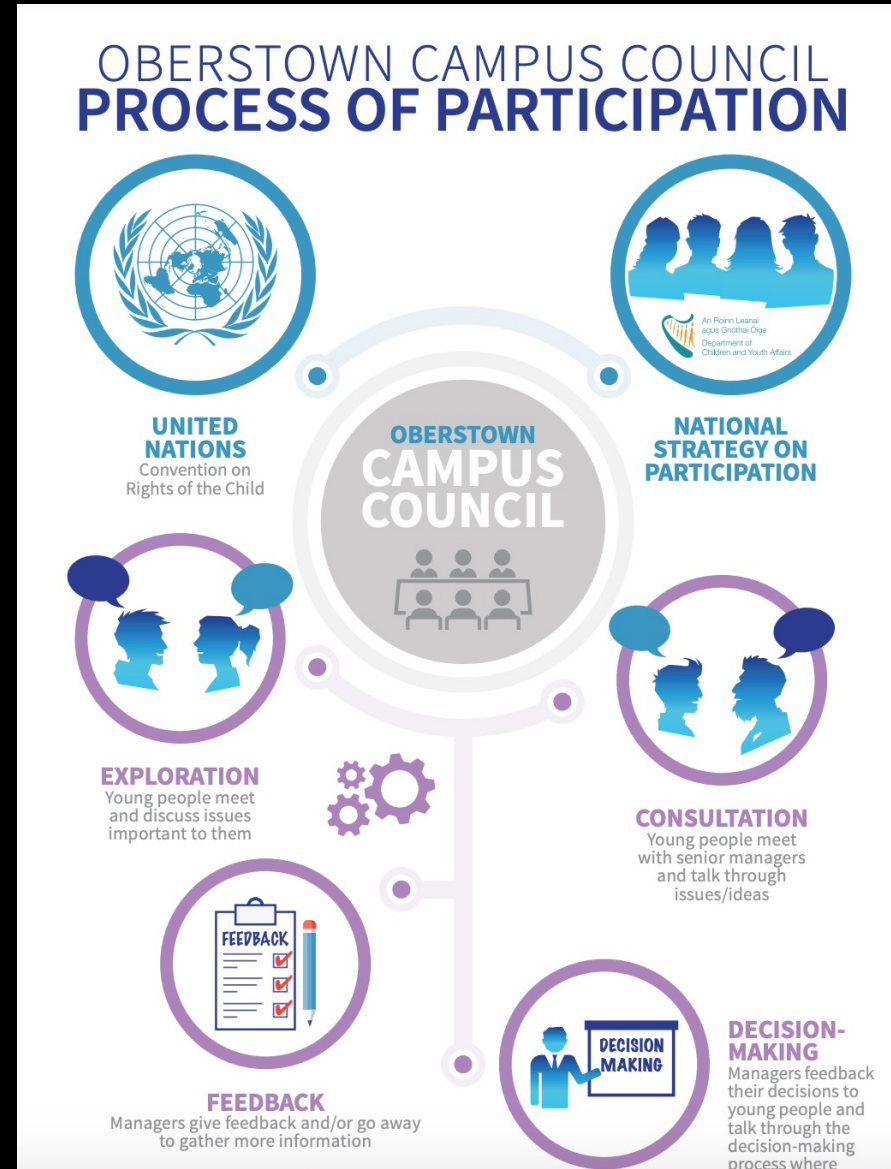
Byrne, B., & Lundy, L. (2019). Children's rights-based childhood policy: A six-P framework. *The International Journal of Human Rights*, 23(3), 357-373.

Strategy- with agreed actions and reviews

5.9 (5.13.2)	The Joint Policing Committees will engage with Comhairle na nÓg and other young people's organisations when local crime and community safety issues are discussed.	DJE	DCYA AGS	✓	✓
5.10	The Data Protection Commission will consult with children and young people on the processing of children's personal data and the rights of children as data subjects under the General Data Protection Regulation.	DJE	DPC (Data Protection Commission)	✓	✓
5.11	Explore how to consult with children and young people on addressing gender stereotyped norms.	DJE	DCYA	✓	✓
5.12	Consult with young people who are engaged with various points of the Youth Justice System to inform the development of the new Youth Justice Strategy.	DJE	DCYA	✓	✓
5.13	Establish a permanent consultation mechanism with young people engaging with Garda Youth Diversion Programmes (GYDPs) with a view to informing the future development of the GYDPs.	DJE	DCYA	✓	✓

Youth detention

- Kilkelly, U., & Bergin, P. (2021). *Advancing Children's Rights in Detention: A Model for International Reform*. Policy Press.





ARTICLE 12: I HAVE THE RIGHT TO BE LISTENED TO, AND TAKEN SERIOUSLY

Have you remembered...

SPACE

VOICE

AUDIENCE

INFLUENCE



Creating child-friendly versions of written documents: *A guide*

The right to seek, receive and impart information is key

Sample strategy

Sample law



The European Union (EU for short) is a group of 27 countries that work together

A Directive is an EU law that tells governments what they must do and put into law in their own country

Things that this law says governments must do:



have a
look to the



child needs to be



court trials for children usually take place without members of the public allowed to attend.



set it up so that children's questioning is by video.



make sure children can attend and speak to the court and that their families can be with them.



DID YOU KNOW?

The full name of this law is: DIRECTIVE (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings



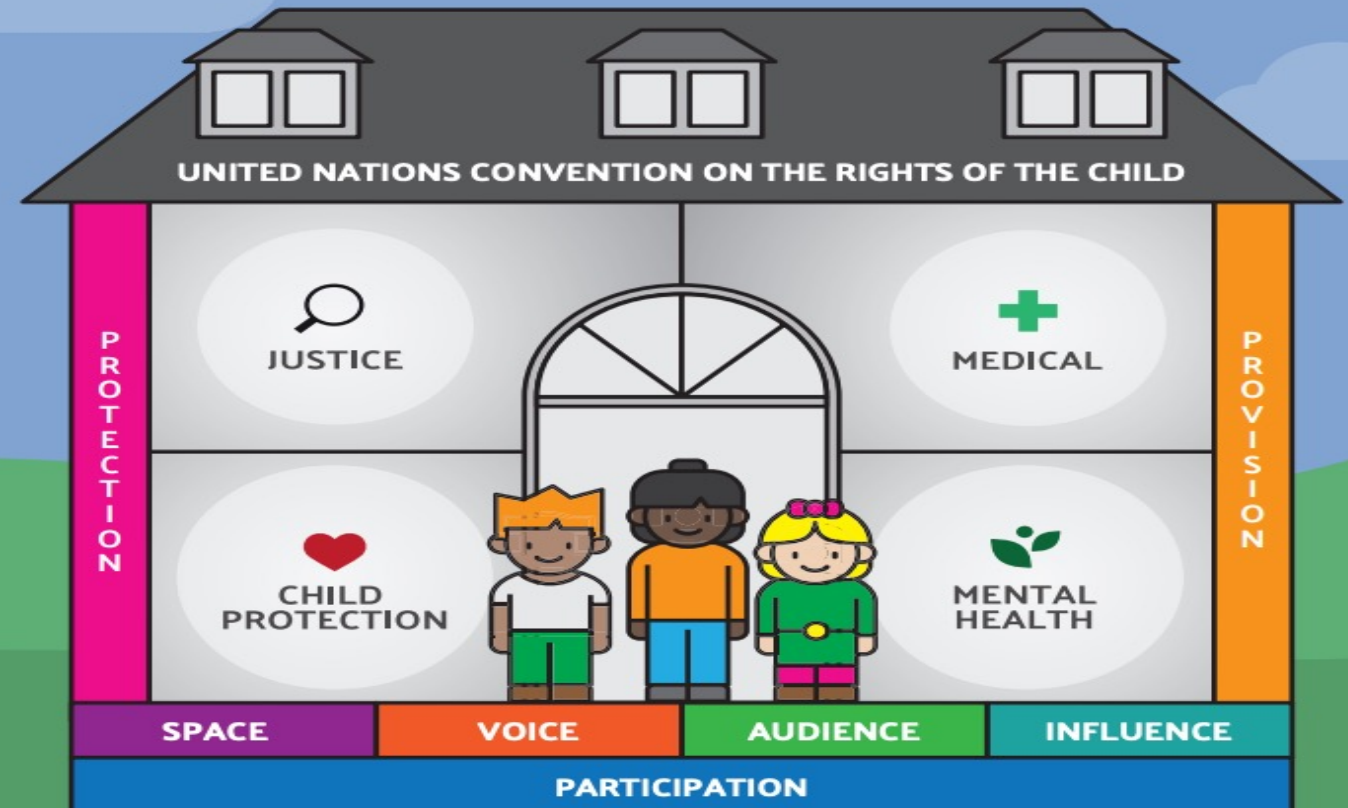
These are some more things that this law says Governments must do:

- keep children out of detention unless there is no other option.
- not keep children in detention with adults unless it is in their best interests.
- make sure that children in detention have contact with their families.
- make sure that children can complain if they are unhappy with their treatment.
- support children to go back to their families and communities as soon as possible.
- teach lawyers, judges and police officers about this law, children's rights and how to best to speak to children.
- collect good information about what is happening to children so that they can check that the law is being put into practice.

DID YOU KNOW?

Detention is when a child is not allowed to live at home for a while. A court will have decided that they must live in a place that they are not allowed to leave (like a jail or residential centre for young people) for a certain time.

Children's Participation in Barnahus



Barnahus

With Dr Mary Mitchell and
Dr Louise Hill for the
European Promise Network



A False Dichotomy

Participation v Protection

Autonomy v Welfare

Best interests v Right to be
heard

Article 3 v Article 12

Individual
and
collective
participation

A right of
individual children

A right of groups
of children

Participation *and* (not versus) Protection



“

Vulnerability should not eclipse agency

”

(Lundy, 2018)