



The Constitution and Children

A Position Paper on the Proposed Referendum on Children's Rights

January 2007

The Children's Rights Alliance is a coalition of over eighty non-governmental organisations, which aims to secure the implementation in Ireland of the UN Convention on the Rights of the Child. The Alliance was formally established in March 1995. The work of the Alliance is concerned with the rights and welfare of all children in Ireland from birth up to eighteen years of age.

This Position Paper was prepared by Maria Corbett of the Children's Rights Alliance. The Alliance gratefully acknowledges the contribution made to the preparation of the document by the staff, Board, member organisations and friends of the Alliance, as well as the input of other non-governmental organisations.

This Position Paper is available electronically on the Alliance's website.

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INTRODUCTION

This Position Paper outlines the position of the Children's Rights Alliance in relation to the proposed referendum to amend the Constitution of Ireland to strengthen children's rights. The Paper was drawn up following consultation with member organisations of the Alliance and others with expertise in the area of children's rights and welfare.

On a number of occasions in recent years, the Irish public has made clear its concern about the present position of children in the Irish Constitution and its desire that greater constitutional protection be afforded to children. This public concern mirrors that which has been expressed over several years by lawyers, academics, social workers and others working professionally with children, as well as by political parties and non-governmental organisations, regarding the inadequacy of the current constitutional recognition afforded to the rights of children. Reports such as that of the Kilkenny Incest Investigation¹, the Constitution Review Group² and the All-Party Oireachtas Committee on the Constitution³ have recommended constitutional change.

The UN Committee on the Rights of the Child in 1998, and again in 2006, called for constitutional change to "reinforce the status of the child as a full subject of rights". Ireland ratified the UN Convention on the Rights of the Child in 1992 and in so doing the State confirmed to the international community its commitment to implementing the rights contained in the Convention.⁴ In the fifteen years since ratification, Ireland has introduced a number of reforms in legislation, policy and practice, which serve to advance the implementation of the Convention. However, during that period, it has also been increasingly recognised that the full implementation of the Convention will only take place if its principles and provisions are incorporated into domestic legislation and integrated into practice and service provision; this in turn will require an amendment to the Constitution.

Since its establishment in 1995, the Children's Rights Alliance has voiced its concern about the State's ability to protect and promote the rights of children, given the present constitutional position. Thus, it has held as a central objective the achievement of constitutional reform.

In its Shadow Report, *From Rhetoric to Rights: Second Shadow Report to the United Nations Committee on the Rights of the Child*, presented to the UN in March 2006, the Alliance singled out constitutional change as the key reform needed to enable Ireland to implement the Convention in full.⁵

On 20 September 2006, during the examination in Geneva of Ireland's progress in implementing the Convention on the Rights of the Child, the Minister for Children, Brian Lenihan TD, informed the United Nations Committee on the Rights of the Child that:

*I have embarked on an examination, on an article by article basis, of the provisions of the Constitution as they impact on children. ... Any change to the Constitution would involve a referendum. Time and again, the Irish people have demonstrated their strong attachment to our constitution by rejecting government efforts to change it. Therefore, there is a heavy onus on the Government to approach this issue carefully so that a good formula is devised which would ensure that the best interests of children prevail in matters which impact on them, and at the same time would meet with required public support.*⁶

¹ *Kilkenny Incest Investigation* (1993) Dublin: Stationery Office.

² *Report of the Constitution Review Group* (1996) Dublin: Stationery Office.

³ The All-Party Oireachtas Committee on the Constitution (2006) *Tenth Progress Report: The Family*, Dublin: Stationery Office, p. 124.

⁴ United Nations Convention on the Rights of the Child (1989) (<http://www.ohchr.org/english/law/crc.htm>).

⁵ Children's Rights Alliance (2006) *From Rhetoric to Rights: Second Shadow Report to the United Nations Committee on the Rights of the Child*, Dublin: Children's Rights Alliance.

⁶ Statement by Minister for Children, Brian Lenihan TD, at the examination of Ireland's Second Periodic Report to the United Nations Committee on the Rights of the Child, Geneva, 20 September 2006.

On 3 November 2006, the Taoiseach, Bertie Ahern TD, announced that the Government intended to hold a referendum to amend the Constitution so as “to put the rights of children in a central place in our Constitution. In that way, the Irish people can show the value we attach, in the words of the 1916 proclamation, to cherishing all the children of the nation equally.”⁷

The Taoiseach outlined both the rationale for the proposed referendum and what he hoped the amendment would achieve:

It is very clear our country has frequently failed to respect and protect many of its children. ...

It appears increasingly clear that the inadequate recognition in our constitutional law of the rights of children as individuals has to be addressed. That is an essential first step in creating a new culture of respect for the rights of the child.

I believe that the fundamental law of our land, the Constitution, should fully reflect our commitment to valuing and protecting childhood. I believe we should make provision in our Constitution for children to be protected from maltreatment, neglect or abuse. I would also like to see the Constitution have a specific provision which requires that in relevant circumstances, the welfare of the child should be the paramount consideration. And we need to explicitly set out rights of the child in our Constitution.

*The People's constitution must protect the People's children.*⁸

The Taoiseach requested the Minister for Children, Brian Lenihan TD, to “initiate a process of consultation and discussion with the other Dáil parties and with all relevant interest groups”. Following this announcement, Minister Lenihan invited the Children’s Rights Alliance to undertake consultation with the non-governmental sector to inform the Government’s formulation of wording for a constitutional amendment.

A consultation was carried out by the Alliance during November and December 2006; this involved discussions with individuals and organisations with expertise on children’s rights; the preparation of a Briefing Paper on children’s rights in the Constitution; a consultative meeting with members of the Alliance; a consultative meeting for other NGOs and interested individuals; and an invitation to Alliance members and other organisations to submit written comments.

This Position Paper represents the synthesis of the findings of the consultation process.

- **Section 1** is an analysis of the constitutional provisions in relation to children that are of relevance in the context of the proposed referendum.
- **Section 2** details the calls for constitutional reform that have been made in a number of official reports.
- **Section 3** is a summary of the fourteen recommended principles that the Alliance believes should underlie the constitutional amendment.
- **Section 4** provides a rationale for the recommended principles.
- **Section 5** contains the Alliance’s concluding comments on the need for a constitutional amendment to strengthen children’s rights.

The Position Paper also contains six appendices which provide relevant background material.

- **Appendix I** summarises additional issues that were raised during the consultation process undertaken by the Alliance in November and December 2006.
- **Appendix II** contains an extract from the speech by An Taoiseach, Bertie Ahern TD, in which he announced plans to hold a constitutional referendum on children’s rights.
- **Appendix III** gives the text of the constitutional provisions identified by the Alliance as pertaining to children.

⁷ Speech by An Taoiseach, Mr. Bertie Ahern TD, Eve of Ard Fheis Event, City West Hotel, Dublin, 3 November 2006. See Appendix II for full text of the speech.

⁸ *Ibid.*

- **Appendix IV** contains an introduction to the key provisions of the UN Convention on the Rights of the Child.
- **Appendix V** reproduces the text of the four general principles of the UN Convention.
- **Appendix VI** lists the member organisations of the Children's Rights Alliance.

Following publication of this Position Paper, the Alliance will continue to engage with the Government, political parties and civil society organisations in order to promote the constitutional change necessary to strengthen the protection and promotion of children's rights in Ireland.

1. THE CONSTITUTION AND CHILDREN

Bunreacht na hÉireann – The Constitution of Ireland was enacted in 1937.⁹ The Constitution is the fundamental law of the State; through its fifty articles it sets out how Ireland should be governed and details the fundamental rights to which every citizen is entitled.

The Constitution is the primary and highest source of domestic law and as such gives direction to the Oireachtas for the framing of legislation, and to the courts as to the parameters for judicial judgment, including the balancing of competing rights and interests. Furthermore, the Constitution aims to outline our societal values – to make visible issues of importance to society and to be a statement of our cultural identity and aspirations.

Children have certain rights under the Constitution. Some of these are the rights granted to all individuals, such as the entitlement to acquire citizenship (Articles 2 and 9), and the entitlement to a range of fundamental rights, such as the right to equal treatment, freedom of expression, association and assembly (Article 40). Children also have an express right to free primary education (Article 42.4).

Constitutional Articles under Review

The Alliance has identified provisions contained in Articles 40, 41 and 42 and in Articles 15 and 28 that warrant examination in relation to children in the context of the proposed referendum to strengthen children's rights.¹⁰

Article 40	Personal rights
Article 41	The Family
Article 42	Education
Articles 15 & 28	The National Parliament and The Government (right to raise and maintain armed forces)

Article 40

Article 40 provides for a series of fundamental rights for all citizens, including “where appropriate” children.¹¹ These rights include the right to equal treatment before the law, personal liberty, inviolability of one's dwelling, and the right to freedom of expression, association and assembly.

It also provides, in Article 40.3.1, for the protection of unenumerated personal rights. This provision has been interpreted by the courts as giving rise to rights not expressly stated in the Constitution.¹² For example, the courts have judged that a child has the right:

- “to be fed and to live, to be reared and educated, to have the opportunity of working and of realising his or her full personality and dignity as a human being”¹³
- “to have decisions in relation to guardianship, custody or upbringing, taken in the interests of his/her welfare”¹⁴
- “to be placed and maintained in secure residential accommodation so as to ensure, so far as practicable, his or her appropriate religious and moral, intellectual, physical and social education”.¹⁵

⁹ *Bunreacht na hÉireann – Constitution of Ireland* (1937) Dublin: Stationery Office.

¹⁰ See Appendix III for the text of these provisions.

¹¹ *In re Article 26 and the Adoption (No. 2) Bill 1987* [1989] IR 656 the court found that a child is entitled, where appropriate, to the rights contained in Articles 40 to 44.

¹² A series of judgments, building on *Ryan v Attorney General* [1965] IR 294, have declared a series of ‘unenumerated’ rights.

¹³ *G. v. An Bord Uchtála* [1980] IR 32, at 56.

¹⁴ *F.N v. C.O.* [2004] 4 I.R. 311; [2004] IEHC 60.

¹⁵ *TD v Minister for Education* [2001] 4 IR at 259.

Unenumerated personal rights are not absolute: they can be limited or restricted through judicial interpretation or legislation.¹⁶ In recent years, the Supreme Court has shown reluctance to enforce unenumerated rights (in particular, where the right is a socio-economic right) and has tended to revert in its judgments to reliance on the express rights of the Constitution, in many instances, citing the need to respect the separation of powers as the basis for its decision.¹⁷ Furthermore, in the event of a conflict between the express or unenumerated rights which children have under Article 40.3 and the rights of the family (i.e. married parents) under Articles 41 and 42, the courts have found that the rights of the family prevail.

Article 41

Article 41 outlines the rights of 'the family'. The State "guarantees to protect the family in its constitution and authority as the necessary basis of social order and as indispensable to the welfare of the Nation and the State".

Article 41.1 states that:

The State recognises the family as the natural, primary and fundamental unit group of society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

The courts in their interpretation of the rights set out in Article 41 have deemed that:

- 'the family' means the family based on marriage¹⁸
- the rights of the family belong not to individual members of the family, but to the family unit as a whole¹⁹
- same sex marriages are not recognised within the definition of the family in the Constitution.²⁰

Article 42

Article 42 outlines the right to 'education'. The courts have determined that 'education' in this context has a broad meaning and includes the general upbringing of children.²¹

Article 42.1 includes a statement of the rights and duties of parents in relation to their children:

The State acknowledges that the primary and natural educator of the child is the family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.

This article, along with the provisions of Article 41, means that the Constitution grants rights to the marital family in relation to their children that are:

- 'inalienable' – absolute, not transferable to another power and incapable of repudiation
- 'imprescriptible' – can not be lost by the passage of time
- 'antecedent and superior to all positive law' – above all law created through legislation or judicial decisions.

However, under Article 42.5, the State is given the power in exceptional circumstances to limit these family rights and to intervene in family life with a view to protecting the rights and interests of children. Article 42.5 states:

In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their 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 for the natural and imprescriptible rights of the child.

¹⁶ Express rights can also be qualified through judicial interpretation.

¹⁷ See Murphy, J. in *TD v Minister for Education* [2001] at 316; *Sinnott v. Minister for Education* [2001] IESC 63; [2001] 2 IR 545; Judgment of Geoghegan, J. in the Supreme Court in *N. & anor. -v- Health Service Executive & ors.* [2006] IESC 60.

¹⁸ *Murray v. Ireland* [1985] I.R. 532; *Murray v Ireland* [1991] ILRM 465.

¹⁹ See Costello, J. in *Murray v. Ireland* [1985]; also Geoffrey Shannon (2005) *Child Law*, Dublin: Thomson Round Hall, p. 2.

²⁰ See Dunne, J. in *Katherine Zappone and Ann Louise Gilligan v Revenue Commissioner* (unreported), 14 December 2006.

²¹ *In re The Adoption (No 2) Bill 1987* [1989] IR 656.

The manner in which the courts have interpreted Article 42.5 has created a high threshold for State intervention in child welfare matters.

The State has long had the power under legislation to intervene in family life where there is evidence of abuse or neglect of children; it currently does so under the provisions of the Child Care Act, 1991 and the Children Act, 2001. However, several high profile cases of child abuse have served to highlight the failure on the part of the State to intervene effectively at an early stage where the situation of a child at risk had come to the attention of the public authorities.²²

The approach of the courts to child welfare cases has been influenced by the definition of 'parental failure' set out in the Adoption Act, 1988. Section 3 of the Act provides that the adoption of a child of married parents can occur only where the High Court is satisfied:

- that there has been a failure by parents in their duty towards the child for physical or moral reasons for the previous twelve months,
- that the failure is likely to continue without interruption until the child reaches eighteen years,
- and that the failure constitutes an abandonment on the part of the parents of all parental rights, whether under the Constitution or otherwise.²³

These strict conditions for the adoption of a child of married parents arise from the need to ensure that adoption legislation is not in breach of the constitutional rights of the family under Articles 41 and 42.

Following the enactment of the 1988 Act, the courts have used its test of 'parental failure' as a starting point in child welfare cases not involving adoption,²⁴ thereby setting down strict parameters for State intervention in marital family life on behalf of children.

Implications of Current Constitutional Position in Article 41 and Article 42

Articles 41 and 42 provide constitutional protection for the marital family and create the principle of parental autonomy in relation to children. These articles form a constitutional hierarchy where the family, bestowed as it is with "inalienable and imprescriptible rights", resides at the apex.²⁵ Children have few autonomous rights under the Constitution; their rights, in many instances, arise as a result of their membership of a family, as defined in constitutional case law.

The Supreme Court has interpreted Articles 41 and 42 to mean that there is a constitutional presumption that the child's interests are best served within the marital family.²⁶

Given the current constitutional provisions, in any conflict between the interests of the marital family and the interests of the child, the rights of the family will take precedence. Hence, the provisions of Articles 41 and 42 preclude the courts from adopting the principle of the best interests of the child as the key principle guiding their decisions.

Children of Unmarried Parents

As already noted, the courts have interpreted 'the family' to mean the family based on marriage. The rights of children of marital and non-marital families are not treated in the same manner in the Constitution. A child born to married parents derives his or her rights from the provisions of Articles 41 and 42, whereas a child born to parents who are not married to one another derives his or her rights from the personal rights provision under Article 40.3.

²² For example: *Kilkenny Incest Investigation* (1993), Dublin: Stationery Office; *Sophia McColgan and Desmond Moran v. The North Western Health Board*, heard in the High Court in 1998; *Kelly – A Child is Dead: Report of a Committee of Inquiry* (1996) Interim Report of the Joint Committee on the Family, Dublin: Stationery Office.

²³ Adoption Act, 1998, Section 3(1)(6)(I). See also Geoffrey Shannon (2005) *Child Law*, Dublin: Thomson Round Hall, p. 309.

²⁴ *McK v The Information Commissioner* [2006] I.E.S.C. 2 (unreported, January 24, 2006).

²⁵ Geoffrey Shannon (2005) *Child Law*, Dublin: Thomson Round Hall.

²⁶ *J.H.* [1985] 375; *H.W v. North Western Health Board* [2001] 3 IR 622; Judgment of Hardiman, J. in the Supreme Court in *N. & anor. -v- Health Service Executive & ors* [2006] IESC 60.

The courts have made varying judicial interpretations of the constitutional protection afforded to children of parents who are not married to each other. For example, the Supreme Court has ruled that while an unmarried mother is automatically the guardian of her child, the relationship of mother and child does not constitute a 'family' within the terms of the Constitution.²⁷ The Court has also ruled that a father of a child born outside marriage has "no natural right to either the custody or society of his child" and that while the relationship between a father and a child born outside marriage could be acknowledged, it should not be treated as on a par with the rights of the father in a constitutional (i.e. marital) family.²⁸

Article 15 and Article 28

Article 15.6 provides that the right to raise and maintain military or armed forces is vested exclusively in the Oireachtas. There is no prohibition on the conscription or voluntary recruitment into the armed forces of those under eighteen years.

Article 28.3 provides for the introduction of emergency powers. There is no prohibition on the use of those under eighteen years in the armed forces in an emergency situation.

²⁷ *G. v An Bord Uchtála* [1980] IR 32.

²⁸ *The State (Nicolaou) v An Bord Uchtála* [1996] IR 567; *K. v W.* [1990] I.L.R.M. 121; [1990] 2 I.R. 437; *W O'R v EH.* [1996] 2 IR 24. The State was found to have breached Articles 6 and 8 of the ECHR in *Keegan v Ireland* (1994) 18 E.H.R.R. 342.

2. CALLS FOR CONSTITUTIONAL REFORM

A number of official reports have recommended reform to strengthen the constitutional protection afforded to children's rights.²⁹ The key recommendations are as follows:

In **1993**, the Committee which undertook the **Kilkenny Incest Investigation** 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. We do not ourselves feel competent to put forward any particular wording and we suggest that study might be made of international documents such as the United Nations Convention on the Rights of the Child.³⁰

The Chair of the Committee, Catherine McGuinness, Senior Counsel (later a Supreme Court Judge), observed that:

... 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.³¹

In **1996**, the **Constitution Review Group** recommended that an express statement of the rights of children should be included in the Constitution. The Group proposed that a range of children's rights be enumerated in the Constitution and further proposed that the best interests of the child should be the paramount consideration in all actions concerning children.

Specifically, the Review Group recommended a redrafting of Article 41 to include:

an express guarantee of certain rights of the child, which fail to be interpreted by the courts from the concept of 'family life', which might include:

- a) the right of every child to be registered immediately after birth and to have from birth a name*
- b) the right of every child, as far as practicable, to know his or her parents, subject to the proviso that such right should be subject to regulation by law in the interests of the child*
- c) the right of every child, as far as practicable, to be cared for by his or her parents*
- d) the right to be reared with due regard to his or her welfare.³²*

It was also recommended that a revised Article 41 provide for:

an express requirement that in all actions concerning children, whether by legislative, judicial or administrative authorities, the best interests of the child shall be the paramount consideration.³³

In relation to specific changes to be made to Articles 41 and 42, the Review Group recommended that constitutional reform should "remove the adjectives 'natural', 'inalienable', 'imprescriptible' from Articles 41 and 42" and that "Article 42.1 should be amended to apply to all non-marital parents, provided they have appropriate family ties and connections with the child in question."³⁴

²⁹ At European level, the Council of Europe has recommended that States guarantee children's rights through explicit recognition in constitutional texts (See Council of Europe, Parliamentary Assembly (1996), *Recommendation 1268 on a European Strategy for Children*). Children's rights are also recognised in the Charter of Fundamental Rights of the European Union (Article 24).

³⁰ *Kilkenny Incest Investigation: Report presented to Mr. Brendan Howlin TD, Minister for Health by South Eastern Health Board* (1993) Dublin: Stationery Office.

³¹ *Ibid.*

³² *Report of the Constitution Review Group* (1996) Dublin: Stationery Office, pp. 336–7.

³³ *Ibid.*, p. 337

³⁴ *Ibid.*, p. 348.

In **1998**, the **Commission on the Family** endorsed the recommendations for constitutional reform in regard to children's rights which had been made by the Constitution Review Group. The Commission recommended that public policy in relation to the family 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 wellbeing.³⁵

In January **2006**, the **All-Party Oireachtas Committee on the Constitution** proposed the following text for an amendment to Article 41 of the Constitution:

*All children, irrespective of birth, gender, race or religion, are equal before the law. In all cases, where the welfare of the child so requires, regard shall be had to the best interests of the child.*³⁶

Implementation by Ireland of the UN Convention on the Rights of the Child

In June **2006**, the Ombudsman for Children and the Irish Human Rights Commission included recommendations for constitutional change in their respective written submissions to the UN Committee on the Rights of the Child.³⁷

The report of the **Ombudsman for Children** recommended:

*A statement of express rights for children and an express requirement that in all actions concerning children the best interests of the child must be the paramount consideration should be inserted into the Constitution. Efforts should also be undertaken to fully incorporate the UNCRC at domestic level.*³⁸

The submission by the **Irish Human Rights Commission** recommended:

*At the constitutional level, the IHRC supports the recommendations of the Ombudsman for Children that there should be express recognition in the Constitution of the principle of the best interests of the child, as set out in Article 3 of the CRC. Any proposal to incorporate the principle of the best interests of the child into the Constitution should also incorporate the principles set out in Article 12 and Article 2 of the CRC.*³⁹

In **1998**, and again in **2006**, the **UN Committee on the Rights of the Child** in its *Concluding Observations* (on the reports by the Irish State on its implementation of the UN Convention on the Rights of the Child) recommended that the State take further action to ensure the status of the child as a rights-holder and to incorporate the Convention on the Rights of the Child into Irish domestic law.

The 1998 *Concluding Observations* stated:

*The Committee recommends that the State Party 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.*⁴⁰

³⁵ *Strengthening Families for Life, Final Report of the Commission on the Family* (1998) Dublin: Stationery Office.

³⁶ The All-Party Oireachtas Committee on the Constitution (2006) *Tenth Progress Report: The Family*, Dublin: Stationery Office, p. 124.

³⁷ These submissions were made in relation to the examination by the UN Committee of Ireland's Second Report on the implementation of the Convention.

³⁸ Ombudsman for Children (2006) *Report of the Ombudsman for Children to the UN Committee on the Rights of the Child on the Occasion of the Examination of Ireland's Second Report to the Committee*, Dublin: Ombudsman for Children.

³⁹ Irish Human Rights Commission (2006) *Irish Human Rights Commission Submission to the UN Committee on the Rights of the Child on Ireland's Second Periodic Report under the UN Convention on the Rights of the Child*, Dublin: Irish Human Rights Commission.

⁴⁰ *Concluding Observations of the Committee on the Rights of the Child, Ireland*, UN Doc. CRC/C/15/Add.85 (1998).

The 2006 *Concluding Observations* stated:

... the Committee regrets that some of the concerns expressed and recommendations made have not yet been fully addressed, in particular those related [to] the status of the child as a rights-holder and the adoption of a child rights-based approach in policies and practices. The Committee urges the State party to make every effort to address the recommendations issued in the concluding observations on the initial report which have not yet been fully implemented...

The Committee expresses regret that the Convention has not been incorporated into domestic law as recommended by the Committee in its previous concluding observations. The Committee encourages the State party to take further action to incorporate the Convention into domestic law.

In light of article 12 of the Convention, the Committee recommends that the State party:

- (a) Strengthen its efforts to ensure, including through Constitutional provisions, that children have the right to express their views in all matters affecting them and to have those views given due weight in particular in families, schools and other educational institutions, the health sector and in communities.⁴¹*

⁴¹ *Concluding Observations of the Committee on the Rights of the Child, Ireland, UN Doc. CRC/C/IRL/CO/2 (2006).*

3. SUMMARY OF RECOMMENDED PRINCIPLES TO UNDERLIE AN AMENDMENT

Based on the consultation process undertaken in November and December 2006, and on the recommendations of various official reports, the Alliance has drawn up the following fourteen principles, which it believes should be reflected in the proposed amendment.

1. **Express Rights for Children:** The amendment should include a statement that the State values and respects childhood, and will facilitate children to reach their full potential.
2. **Equality and Non-Discrimination:** The amendment should aim to ensure that all children will be treated equally and that direct or indirect discrimination of any kind will be prohibited in all actions concerning children.
3. **Best Interests:** The amendment should include an express requirement that in all actions concerning children the best interests of the child shall be the paramount consideration.
4. **Right to be Heard:** The amendment should provide for the right of every child to be heard in matters that affect him or her and to have his or her views given due weight in accordance with age and maturity.
5. **Societal Position and Authority of Parents and the Family:** The amendment should respect the societal position and authority of parents and the family.
6. **Right to Family Life and Continuity of Care:** The amendment should include the right of every child to be cared for by his or her parents or family, or to appropriate alternative care and protection when either temporarily or permanently deprived of his or her family environment, and to continuity in his or her upbringing.
7. **Protection from Abuse:** The amendment should expressly state the right of every child to be protected from all forms of physical, emotional and sexual abuse or exploitation.
8. **Duty of the State to Intervene to Uphold the Child's Rights:** Article 42.5 should be recalibrated to enable the State to fulfil its duty to intervene when necessary to uphold the child's rights.
9. **Adoption of Children of Marital Families:** The amendment should empower the Oireachtas to enact laws that will allow for the adoption of children irrespective of the marital status of the child's parents.
10. **Right to Identity:** The amendment should provide for the right of every child to have his or her identity protected, and to know his or her parents, as far as is practicable.
11. **Definition of the Child:** The amendment should define a child as any person up to eighteen years of age.
12. **The Language of Rights and Compliance with the UN Convention:** The amendment should use the language of rights and be fully compliant with the UN Convention on the Rights of the Child.
13. **Unambiguous Language:** The amendment should be expressed in clear language that will be unambiguous within a legal context and, as far as possible, will be relevant both now and in the future.
14. **Exclusion from Armed Forces:** The amendment should prohibit the conscription or recruitment of those under eighteen years into the armed forces.

4. RATIONALE FOR THE RECOMMENDED PRINCIPLES

The Alliance recommends that the following principles should be adopted by the Government in drafting the wording of the constitutional amendment to strengthen children's rights.

Principle 1: Express Rights for Children

The amendment should include a statement that the State values and respects childhood, and will facilitate children to reach their full potential.

The current provisions in the Constitution in regard to children reflect the historical period in which it was written. The Ireland of 1937 was a time when it was commonly held that children should be 'seen and not heard'; the 'family' was a marital family headed by the father; and there was concern that, in the context of the rise of communism and fascism in Europe, the State could pose a threat to individual rights.

Given the economic, social and cultural changes that have occurred over the past seventy years, the Constitution now needs to be amended to reflect modern thinking on children. Children are no longer viewed as the property of their parents – they are recognised as members of society in their own right, and their participation in society must be respected in line with their age and maturity.

In his statement announcing the referendum, the Taoiseach stated that:

I believe that the fundamental law of our land, the Constitution, should fully reflect our commitment to valuing and protecting childhood. ...Our objective should be to have, in our fundamental law, provisions which are as strong and as effective as that possessed by any other country in the world. We should be second to none in giving effect to our commitment to truly value childhood.⁴²

The amendment should reflect society's belief that childhood is to be valued and protected and so it should include an express statement that children have individual rights. The constitutional rights of children should be expressed in language that is unequivocal and justiciable.

The amendment should also reflect Irish society's aspirations for its children by including an express statement that the State will facilitate children to reach their full potential. This will require that, in addition to the right to education, which is already provided for in Article 42.4, there should be a recognition of the child's right to health, housing, social supports and play and recreation.

These economic, social and cultural rights are fundamental to a child's development. Enabling children to reach their full potential requires that they have access to a comprehensive range of public services. Access to such services can have a significant impact on the quality of life experienced by a child and his or her subsequent life chances. In this context, it should be noted that Article 4 of Convention on the Rights of the Child requires that with regard to economic, social and cultural rights: "States Parties shall undertake such measures [of implementation] to the maximum extent of their available resources...."

In relation to the drafting of a provision for express rights, the South African Constitution (1996) stands out as a model of international best practice in the constitutional recognition of children's rights.⁴³

⁴² Speech by An Taoiseach, Mr. Bertie Ahern TD, City West Hotel, Dublin, 3 November 2006 (see Appendix II).

⁴³ The South African Constitution (1996), Chapter 2, Clause 28 states: "(1) Every child has the right to a name and a nationality from birth; to family care or parental care, or to appropriate alternative care when removed from the family environment; to basic nutrition, shelter, basic health care services and social services; to be protected from maltreatment, neglect, abuse or degradation; to be protected from exploitative labour practices; not to be required or permitted to perform work or provide services that are inappropriate for a person of that child's age, or place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development; not to be detained except as a measure of last resort, in which case, in

The constitutional amendment should reflect Ireland's obligations under the Good Friday Agreement, which provides that all those living on the island of Ireland shall enjoy the same rights and an equivalent level of rights protection.

Principle 2: Equality and Non-Discrimination

The amendment should aim to ensure that all children will be treated equally and that direct or indirect discrimination of any kind will be prohibited in all actions concerning children.

The amendment should aim to ensure that all children are treated equally regardless of the child's or his or her parent's status or circumstances. This provision will promote equality in relation to accessing existing constitutional rights and provide for the prohibition of all forms of discrimination in actions concerning children, whether by legislative, executive, judicial or administrative authorities.

The amendment should give effect to the requirement of Article 2 of the UN Convention on the Rights of the Child that all children within the jurisdiction are entitled to rights without discrimination of any kind, "irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status." The amendment should also reflect the further requirement of Article 2 which places a positive obligation on the State to promote equality.

Of particular importance in the Irish context is that the amendment should prohibit discrimination based on the marital status or sexual orientation of the child's parents – it should ensure that the constitutional rights of all children are protected, irrespective of the form of family in which they live.

The amendment should prohibit discrimination based on the child's or his or her parent's disability, socio-economic status, age, cultural identity or membership of the Traveller Community, in line with the provisions of existing equality legislation.⁴⁴

Furthermore, the amendment should prohibit discrimination based on the legal status within Ireland of the child or his or her parents. The Alliance believes that the rights enshrined in the Constitution must be applicable to all children living within this jurisdiction. In this context, it should be noted that the child protection and child welfare provisions of Irish law do not make any exclusions on the basis of the citizenship of a child or his or her parents.

The promotion of equality and the prohibition of discrimination are particularly important given that over the past decade Ireland has become a country of significant inward migration with a consequent increase in the number of EU national and non-EU national children living in this jurisdiction.

Definition of the Family

A consistently raised issue during the consultation process undertaken by the Alliance was the need to reform the definition of the family under Article 41. Family diversity is a reality in Ireland: one child in three is now born to parents who are not married to one another; there has been an increase in the number of children whose parents are separated or divorced; many children live in reconstituted families, with non-biological parents and step-siblings. Many participants in the consultative process were of the view that the express recognition of the rights of the child and of all families will require a reformulation of Article 41.

addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be kept separately from detained persons over the age of 18 years, and treated in a manner, and kept in conditions, that take account of the child's age; to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and not to be used directly in armed conflict, and to be protected in times of armed conflict. (2) A child's best interests are of paramount importance in every matter concerning the child. (3) In this section 'child' means a person under the age of 18 years."

⁴⁴ The Equal Status Act, 2000 and the Employment Equality Act, 1998 prohibit discrimination on nine grounds: gender; marital status; family status; age; disability; race; sexual orientation; religious belief; and membership of the Traveller Community.

Principle 3: Best Interests

The amendment should include an express requirement that in all actions concerning children the best interests of the child shall be the paramount consideration.

The 'best interests' principle is one of four overarching principles of the UN Convention (Article 3) and is a key principle for the Alliance.⁴⁵

The principle of 'best interests' of the child represents a holistic view of what is best for children and, depending on the age and maturity of the child, should incorporate the child's own views (see Principle 4 below). It is preferable to the use of the more narrow and limited concept of 'welfare'. Furthermore, it is also the accepted criterion for any assessment of State intervention in family life under Article 8 of the European Convention on Human Rights.⁴⁶

The child's best interests are normally best protected by the parents of that child, but where a court is faced with a decision regarding a child's welfare it must have the power to, and moreover be obliged to, put the child's best interests at the centre of the case. The 'best interests' principle, coupled with the inclusion of express rights for children (Principle 1) and clear equality and non-discrimination guarantees (Principle 2), would act as a guide to the court in how to balance competing rights in any conflict between the interests of the family or the State, and the interests of the child.

The 'best interests' principle is not new to Irish domestic law: it has operated as part of child and family law since the 1960s. Under Section 3 of the Guardianship of Infants Act, 1964, a court is obliged to regard the welfare of the child as the first and paramount consideration in any proceedings before it, including the custody, guardianship and upbringing of an infant. Section 3 of the Child Care Act, 1991 (as amended) provides that, in the performance of its functions, the Health Service Executive "having regard to the rights and duties of parents, whether under the Constitution or otherwise shall regard the welfare of the child as the first and paramount consideration". In addition, Section 24 provides that in any court proceedings under this Act in relation to the care and protection of a child, the court shall regard the 'welfare' of the child as the first and paramount consideration.

However, when applying this 'welfare' test the courts have found themselves bound by Article 41 and Article 42 of the Constitution which place the interests of the constitutional (i.e. marital) family above those of the child.⁴⁷

The Alliance believes that in a conflict between the interests of the family or the State and the interests of the child, the courts should be able to balance the interests of all parties, including the child, and should have as their starting point the principle of the best interests of the child, rather than the requirement to prove parental failure. The courts should be obliged to give paramount consideration to the child's best interests and this requirement should not be restricted by the marital status of the child's parents.

Inserting the 'best interests' principle into the Constitution will require that the best interests of the child be considered in all matters concerning children. The principle is of particular importance in family law decisions concerning a child in State care or a child subject to adoption proceedings; cases where a child's welfare or health is substantially at risk; and cases concerning guardianship, access, custody and continuity of upbringing.

The application of the principle should extend to asylum and immigration proceedings. This would reflect Ireland's current international and European human rights obligations, specifically under the Convention on the Rights of the Child and Article 8 of the European Convention on Human Rights. Experience from other jurisdictions has shown that consideration of the child's

⁴⁵ Several other articles in the Convention refer to the best interests of the child including Article 21 on adoption.

⁴⁶ Ursula Kilkelly (2004) "Child and Family Law" in Ursula Kilkelly (ed.) *European Convention on Human Rights and Irish Law*, Bristol: Jordan Publishing.

⁴⁷ *G. v. An Bord Uchtála* [1980] IR 32, at 56.

best interests would not prevent the effective functioning of asylum processes or unduly limit the State's power to control immigration,⁴⁸ nor would it automatically negate the State's ability to deport unsuccessful asylum seekers or undocumented migrants – including migrant families with children.⁴⁹ The situation, under existing constitutional and European Convention on Human Rights jurisprudence, is that each case must be determined on its own merits. It is also important to note that in relation to separated children seeking asylum (unaccompanied minors), Ireland has followed international best practice by adopting the policy of not deporting those under the age of eighteen years.

Principle 4: Right to be Heard

The amendment should provide for the right of every child to be heard in matters that affect him or her and to have his or her views given due weight in accordance with age and maturity.

In line with Article 12 of the UN Convention on the Rights of the Child, a child should have the right to have his or her voice heard in matters affecting him or her. This is one of the four overarching principles of the Convention and is critical to the development of a societal approach to respecting the rights of the child.

Hearing children's voices is particularly important within the legal and care systems, in school settings and in health and social services. This principle is closely linked to the principle of the 'best interests' of the child (Principle 3), and the protection of children from abuse – given the importance of listening to children who have experienced abuse (see Principle 7 below).

Enshrining this principle in the Constitution would provide an impetus to the implementation of current legislative provisions for hearing the views of children and for the continued development of administrative practices to facilitate children's participation.⁵⁰ It would also impact on the attitudes of society as a whole, and in particular those working with children, to create an environment conducive to enabling the voice of the child to be heard.

The need for significant change in this area is evidenced by the current gaps and inadequacies in relation to children being heard in legal and administrative proceedings that affect them.⁵¹ For example, there has been a failure to develop and implement a comprehensive Guardian *ad Litem* service. The provision in the Children Act, 1997 to enable the appointment of a Guardian *ad Litem* in private family law proceedings has not yet been commenced, thereby denying children a voice in highly contentious custody and access cases affecting them.⁵² Furthermore, whilst a Guardian *ad Litem* can be appointed in public law cases (care proceedings and child protection cases), the appointment is not automatic. There is also a lack of statutory guidance as to the role and functions of a Guardian *ad Litem*.

Another example of the inadequate recognition of the right of the child to be heard is to be found in the situation of children who can be detained by court order in Special Care Units. Such children – who can be detained for a period of up to six months, with the possibility of an unlimited extension – are not entitled to legal representation at hearings or reviews concerning their care order.⁵³

⁴⁸ For example, in Canada and the US. See Siobhan Mullally (2005) "Citizenship and Family Life in Ireland: Asking the Question 'Who Belongs?'" in *Legal Studies* 25(4).

⁴⁹ See Shane Coleman, "Children's Referendum Unlikely Before Election", *The Sunday Tribune*, 19 November 2006.

⁵⁰ Valuable work has begun in this area including the establishment of Comhairle na nÓg, Dáil na nÓg and Coiste na dTeachtaí. However, participation activities need to be integrated into public policy making.

⁵¹ Children may have their voice heard in legal proceedings affecting them by either direct input, independent legal representation or through the appointment of a Guardian *ad Litem*.

⁵² The Children Act, 1997 inserted a new section, section 28, into the Guardianship of Infants Act, 1964.

⁵³ Special Care Orders are provided for in Section 16 of the Children Act, 2001 which amends the Child Care Act, 1991. Special Care Orders are made in circumstances where "the behaviour of the child is such that it poses a real and substantial risk to his or her health, safety, development or welfare, and the child requires special care".

Principle 5: Societal Position and Authority of Parents and the Family

The amendment should respect the societal position and authority of parents and the family.

The Alliance believes it is possible to give greater protection to children without diminishing the very important role of the family: the rights of the family and the rights of the child are not mutually exclusive.

Furthermore, the Alliance believes this amendment has the potential to strengthen families by improving the entitlements of children and placing an onus on the State to support children and their families. Indeed, the majority of judicial actions to secure children's rights are initiated on the child's behalf by the child's parents or carers in an attempt to ensure that their child has access to State assistance – for example, educational or therapeutic supports.

The courts interpret the legal status of individuals on the basis of the weight given to their rights under the Constitution. As the rights of children are not explicitly stated in the Constitution, it is often not possible for them to be taken into account by the courts. The inclusion of express rights for children will provide the courts with the power to balance a range of rights – the personal rights of parents; the rights of the child; the rights of the family; and the rights of the State (as guardian of the common good) – but it will not create an automatic supremacy of rights.

The proposal to include the 'best interests' principle will, however, provide that in a case where the wishes of parents are in conflict with the interests of the child, the courts will be able to base their judgment on what is deemed to be in the best interests of the child. This will remove the automatic presumption under the current constitutional provisions that the best interests of the child lie within the marital family. The Alliance believes that the removal of this automatic presumption is necessary to uphold the rights of the child and that it will not unduly undermine the current strong protection given to the family by the Constitution.

Principle 6: Right to Family Life and Continuity of Care

The amendment should include the right of every child to be cared for by his or her parents or family, or to appropriate alternative care and protection when either temporarily or permanently deprived of his or her family environment, and to continuity in his or her upbringing.

In line with Article 7 of the UN Convention on the Rights of the Child, the amendment should recognise the right of the child to be cared for by his or her parents, in so far as this is practicable. This would provide an impetus for the further development of a range of child and family support services. Under the Child Care Act, 1991, the State is empowered to provide support to families and children in regard to whom they have concerns, but there is no statutory entitlement to these supports, and their development has been patchy and inadequate.⁵⁴

The amendment should also aim to recognise and protect the principle of continuity of care. This principle is recognised in Article 20.3 of the Convention, and its importance derives from the child's need to experience stability and continuity in arrangements for his or her care, particularly during the early years.

The amendment should likewise recognise the right, contained in the Convention, of a child to have account taken of his or her "ethnic, religious, cultural and linguistic background", when alternative care arrangements are being made. In Ireland, this has particular relevance for children in the Traveller Community, as well as for children from the diverse range of ethnic groups who now live in Ireland.

⁵⁴ Section 3 (3) of Child Care Act, 1991 provides that the Health Service Executive shall "provide child care and family support services, and may provide and maintain premises and make such other provision as it considers necessary or desirable for such purposes".

Principle 7: Protection from Abuse

The amendment should expressly state the right of every child to be protected from all forms of physical, emotional and sexual abuse or exploitation.

In announcing the referendum the Taoiseach stated that we should “amend our Constitution so that it enshrines the very highest possible standards of protection for children”.⁵⁵

In line with the requirements of Articles 19 and 34 of the UN Convention, the amendment should include the right of the child to be protected from all forms of abuse.

Child protection is covered by a number of legislative provisions.⁵⁶ The definitions used in existing legislation highlight the range of issues covered by the term abuse. The Child Care Act, 1991 includes in its definition assault, ill-treatment, neglect, sexual abuse, avoidable impairment or neglect of the child's health, development or welfare.

The Children Act, 2001 makes it an offence “for any person who has the custody, charge or care of a child wilfully to assault, ill-treat, neglect, abandon or expose the child, or cause or procure or allow the child to be assaulted, ill-treated, neglected, abandoned or exposed, in a manner likely to cause unnecessary suffering or injury to the child's health or seriously to affect his or her wellbeing.”⁵⁷

In this context the Act defines the offence of neglect of a child as arising when a parent or care giver:

- (a) fails to provide adequate food, clothing, heating, medical aid or accommodation for the child, or
- (b) being unable to provide such food, clothing, heating, medical aid or accommodation, fails to take steps to have it provided under the enactments relating to health, social welfare or housing.⁵⁸

The Children Act, 2001 defines a child's health or wellbeing as referring to “the child's physical, mental or emotional health or wellbeing;”⁵⁹ and ill-treatment of a child as “any frightening, bullying or threatening of the child, and ‘ill-treat’ shall be construed accordingly.”⁶⁰

Adding to these legislative safeguards in relation to child abuse by providing constitutional recognition for the right of a child to protection from abuse would provide the basis for ensuring an adequate and comprehensive State response to children who have been abused and those at risk of abuse. It would also place an onus on the State to take all measures, through the criminal justice system and through support, care and therapeutic services, to prevent abuse and to respond to the needs of victims of abuse.

Principle 8: Duty of the State to Intervene to Uphold the Child's Rights

Article 42.5 should be recalibrated to enable the State to fulfil its duty to intervene when necessary to uphold the child's rights.

There is a need to recalibrate Article 42.5 to enable the State to fulfil its duty to intervene when deemed necessary in order to uphold children's rights.

Normally, the best interests of a child are promoted by and within his or her family. Unfortunately, in some cases families can be unintentionally, or in rare instances intentionally,

⁵⁵ Speech by An Taoiseach, Mr. Bertie Ahern TD, City West Hotel, Dublin, 3 November 2006 (see Appendix II).

⁵⁶ Provisions are also contained in the Child Trafficking and Pornography Acts, 1998–2004, section 3, which prohibit sexual exploitation and the use of children in prostitution and pornographic performances and materials.

⁵⁷ Children Act, 2001, Section 246 (1).

⁵⁸ *Ibid.*, Section 246 (5).

⁵⁹ *Ibid.*, Section 246 (6).

⁶⁰ *Ibid.*, Section 246 (7).

damaging places for children. In cases where children require protection, the State must be adequately empowered to undertake its duty to intervene to support and assist families or, as a measure of last resort, to remove a child from his or her family.

It is important to note that the majority of children (57%)⁶¹ who are in the care of the State are under a 'Voluntary Care Order' – their parents have consented to their care placement and continue to exercise parental authority.⁶² A smaller number of children are in the care of the State under a 'Statutory Care Order' – their parents have been deemed to have failed in their duty of care to their child and the State has assumed parental authority over the child up to the age of eighteen years.⁶³

An amendment to reflect the duty of the State to intervene to uphold children's rights would place an onus on the State to undertake initiatives to prevent abuse and to proactively support vulnerable children and families. In some instances, children enter State care as a result of their parents' inability to care for them – this may be as a result of physical or mental illness, addiction, or due to their inability to provide an adequate home environment for the child (through, for example, poverty or homelessness). The State should take all possible actions to support such families so as to enable them care for their children in their home environment. Furthermore, when a child is placed in care, the State should take all actions necessary to ensure that the child is able to return to his or her family at the earliest opportunity, with the proviso that this is in the child's best interest.⁶⁴

To recalibrate Article 42.5, the Alliance suggests that the phrase "for physical or moral reasons" be removed so as to ensure that the courts can intervene appropriately in exceptional circumstances where the welfare of the child is at risk.

Principle 9: Adoption of Children of Marital Families

The amendment should empower the Oireachtas to enact laws that will allow for the adoption of children irrespective of the marital status of the child's parents.

Arising from the Convention on the Rights of the Child, all children have a right to alternative family care if the need arises, regardless of the marital status of their natural parents.

The amendment should address the barriers within the legal system that, in many instances, stand in the way of the adoption of children of parents who are married to one another. As previously noted, the Adoption Act, 1988 provides for the adoption of children of married parents but, as a result of the constraints of existing constitutional provisions, this legislation only allows such adoptions following the establishment of parental failure that is deemed to be permanent (see p. 6). Addressing this issue is particularly important for the several hundred children who have been in long-term foster care for a significant period but who can not be adopted by their foster families.

Principle 10: Right to Identity

The amendment should provide for the right of every child to have his or her identity protected, and to know his or her parents, as far as is practicable.

Children have the right to their identity and to know their origins, regardless of the marital status of their parents, the manner in which they were conceived or whether they were placed in State care or adopted.

⁶¹ Department of Health and Children (2004), *Preliminary Analysis of Child Care Interim Dataset 2004*, Table 6.2: Legal Basis for Care of Children in Care: Percentage Breakdown, Dublin: Department of Health and Children.

⁶² Section 4 of the Child Care Act, 1991.

⁶³ Section 18 of the Child Care Act, 1991.

⁶⁴ *K. and T. v Finland*, judgment of 27 April 2000, (2001) ECHR 465.

Articles 7, 8, 29, 30 and 31 of the UN Convention state the right of a child to have his or her identity respected and to know the identity of his or her birth parents, as far as possible. Understanding their family and cultural identity is of huge significance to children, particularly in their teenage years, and can have a profound impact on their psychological development and stability. The right to identity also entitles a child to relevant genetic and health information.

The Supreme Court decision in *IO'T v B* [1998] held that a child's right to know his or her mother was an unenumerated constitutional right which flowed from the natural and special relationship between a mother and her child, but that the mother's right to privacy was also a constitutional right and took precedence over the child's right.⁶⁵

The insertion of the right to identity into the Constitution would bring forward reforms in legislation and practice which currently impede a child's rights to have their identity preserved and to know their parents. In the first instance, this relates to the registration of parents' names on their child's birth certificate. Currently, whereas children of married parents are registered under both the father's name and the mother's maiden name, children of parents who are not married are registered under the mother's name with the registration of the father's name being optional.⁶⁶ There is no specific legislation governing birth registration of children born through assisted human reproduction, involving donors or surrogate mothers. There is also a need to reform the adoption system to provide for the introduction of an 'open or semi-open' system of adoption.⁶⁷

It is recognised that in some instances, including adoption cases, it may be desirable, in the child's interests, to regulate the time and manner in which a child should be entitled to information concerning their identity. Consequently, this issue needs to be subject to regulation by law in the interests of the child. The *Report of the Commission on Assisted Human Reproduction* recommended that on reaching maturity (i.e. at eighteen years) a person should acquire entitlement to access information as to the identity of the donor(s) involved in his or her conception, the identity of his or her surrogate mother or, where relevant, the genetic parents. Similarly, the *Adoption Legislation Consultation Discussion Paper* recommended that, from the age of eighteen years, a person should have the right to his or her birth certificate, personal information from files and relevant information about birth parents.⁶⁸

In summary, while it is accepted that a child may not be entitled to access information regarding their identity until adulthood, the specific measures and procedures that will enable the exercise of the right to identity will need to provide for the appropriate collection and retention of information during the time the person is still a child. The constitutional recognition of the child's right to identity would be an important factor in bringing about necessary legislative and administrative reform.

Principle 11: Definition of the Child

The amendment should define a child as any person up to eighteen years of age.

The Constitution does not contain a definition of the child. Article 16 does, however, set eighteen years as the age for entitlement to vote.

Article 25 provides that in any interpretative conflict of its provisions between the two official languages (Irish and English), the national language (Irish) version will prevail. The correlative in the Irish version of the word 'child' in the English version is 'leanbh', which is generally assumed to refer to an infant or young child.

⁶⁵ *IO'T v B* [1998] 2 IR 321. See also *Odievre v France*, 42326/98 [2003] ECHR 86.

⁶⁶ The Alliance has called for legislative reform, with the caveat that in cases where this is demonstrably not in the best interests of the child an exception should be made. Such legislative change should be accompanied by a public information campaign. Children's Rights Alliance (2006) *From Rhetoric to Rights*, Dublin: Children's Rights Alliance.

⁶⁷ See Geoffrey Shannon (2005) *Child Law*, Dublin: Thomson Round Hall.

⁶⁸ Geoffrey Shannon (2003) *Adoption Legislation Consultation Discussion Paper*, section 4, Adoption Information and Post-Adoption Contact, p. 23 (available at www.dohc.ie/publications/adoption_legislation_consultation.html).

In the Sinnott case, Justice Hardiman referred to ‘leanbh’ as carrying the connotation of age rather than membership of a family, such as ‘offspring’ or ‘descendant’ – terms that may apply to a person of any age. The judgment ruled against use of the definition of a child based on membership of a family, but did not specify at what age childhood ends.⁶⁹

The amendment should clearly define a child as a person under eighteen years, in line with Article 1 of the UN Convention on the Rights of the Child and with the definition used in the *National Children’s Strategy*,⁷⁰ and in the provisions of legislation affecting children such as the Child Care Act, 1991 and the Children Act, 2001.

This provision should not preclude the enactment of legislation which, recognising children’s evolving capacities, provides them with increased rights, even before the age of eighteen years.

Furthermore, the provision should not preclude the enactment of legislation to enable the State to provide support and protection for vulnerable adults based on their experience as a child, such as aftercare services for those who have left State care⁷¹ and services for persons with a disability who require either additional support in their transition to adulthood and independence, or ongoing support due to a developmental disability.

Principle 12: The Language of Rights and Compliance with the UN Convention

The amendment should use the language of rights and be fully compliant with the UN Convention on the Rights of the Child.

It is vital that the amendment is drafted in the language of rights – in other words, language that states in explicit terms the rights to which children are entitled. The amendment must contain provisions that are justiciable.

Using the language of rights will ensure that the interests of children will be on a par with those of persons whose rights are already explicitly recognised in the Constitution. Without a rights-based approach, no framework will exist to allow failures to protect children’s rights to be challenged in the courts or elsewhere.⁷²

To ensure compatibility with the Convention on the Rights of the Child and consistency with best practice elsewhere, it is important that the language of the amendment is harmonised with, and modelled on, the language of the Convention.

Ireland ratified the Convention without reservation in 1992. The Convention, which is the most widely ratified of all human rights treaties, presents the minimum standards a State Party should meet in protecting the rights of children.⁷³ Article 4 of the Convention places an obligation on the State to undertake all measures necessary “for the implementation of the rights recognized in the present Convention”.

Article 29.6 of the Irish Constitution states: “No international agreement shall be part of domestic law of the State save as may be determined by the Oireachtas”. As a consequence, international conventions are not binding under Irish law unless they are specifically incorporated into domestic legislation. As its provisions and principles have not been incorporated into domestic law, the Convention does not form part of Ireland’s domestic legal system and therefore can have only a persuasive, rather than a binding, effect on the courts.

⁶⁹ *Sinnott v. Minister for Education* [2001] IESC 63; [2001] 2 IR 545.

⁷⁰ *The National Children’s Strategy: Our Children – Their Lives* (2000) Dublin: Stationery Office.

⁷¹ Section 45 of the Child Care Act, 1991 enables the provision of aftercare services.

⁷² Ursula Kilkelly (2006) *Briefing Paper on Children’s Rights in the Context of the Proposal for Constitutional Change* (available at www.ucc.ie/law).

⁷³ See Appendices IV and V for further information on the Convention.

In 1998, and again in 2006, the Committee on the Rights of the Child recommended that Ireland incorporate the UN Convention on the Rights of the Child into its domestic law to ensure that children's rights were effectively protected.⁷⁴ The Committee has also highlighted 'enforcement' as the key to the implementation of children's rights. This means putting in place an effective remedy to ensure that every child whose rights are violated has the opportunity to have them vindicated in an effective way, including through the legal process.⁷⁵

Principle 13: Unambiguous Language

The amendment should be expressed in clear language that will be unambiguous within a legal context and, as far as possible, will be relevant both now and in the future.

Any amendment must fit within the current style and use of language in the Constitution so as to ensure coherence and preserve the integrity of the overall text. The amendment should be concise and use clear language that can be readily understood by the general public.

The language should be unambiguous within a legal context to ensure that the legislature and courts are given clear direction as to its meaning. This will also reduce the likelihood of any unforeseen or unintended consequences of the amendment through the process of judicial review. As far as possible, the language should also be timeless so that it will be relevant both now and in the future.

Principle 14: Exclusion from Armed Forces

The amendment should prohibit the conscription or recruitment of those under eighteen years into the armed forces.

Article 15.6 of the Constitution states that: "The right to raise and maintain military forces or armed forces is vested exclusively in the Oireachtas". There is no constitutional prohibition on the conscription, recruitment or deployment of young people under eighteen years in the armed forces.

Article 28 provides for the introduction of emergency powers, and Article 28.3.3 provides that legislation passed by the Oireachtas or any other acts of Government in time of war or armed rebellion are immune from constitutional challenge. This Article does not prohibit the use of those under eighteen years in the armed forces in an emergency situation. Furthermore, under Article 28.3.3 emergency powers can be invoked in situations where the State itself is not participating in a war, but where the Oireachtas has deemed the State's 'vital interests' to be affected.

At present, the minimum age for voluntary recruitment in Ireland is seventeen years, with a minimum age of sixteen years for apprentices.⁷⁶ Current regulations and practice can not guarantee that young people under eighteen years will not participate in hostilities, become a target of attack⁷⁷ or be sent to serve aboard. The fact that these occurrences are unlikely is irrelevant: the possibility exists and there is no constitutional barrier to a future policy change in response to different circumstances.

⁷⁴ UN Committee on the Rights of the Child (1998) *Concluding Observations of the Committee on the Rights of the Child, Ireland*, UN Doc. CRC/C/15/Add.85 and UN Committee on the Rights of the Child (2006) *Concluding Observations of the Committee on the Rights of the Child, Ireland*, UN Doc. CRC/C/IRL/CO/2.

⁷⁵ UN Committee on the Rights of the Child (2003) *General Comment No. 5, General measures of implementation of the Convention on the Rights of the Child* (arts. 4, 42 and 44, para. 6), CRC/GC/2003/5, 27 November 2003.

⁷⁶ Optional Protocol to the UN Convention on the Rights of the Child on the involvement of children in armed conflict (2000), Declarations and Reservations (<http://www.unhcr.ch/html/menu2/6/crc/treaties/declare-opac.htm> and http://www.ohchr.org/english/countries/ratification/11_b.htm#reservations).

⁷⁷ For example, in the military providing 'Aid to the Civil Power' (assistance by the armed forces to the police in maintaining law and order).

The Alliance recognises that the Constitution does not prohibit the introduction of legislative reform to prohibit recruitment and conscription of those under eighteen years into the armed forces. Nevertheless, the fact that the Constitution does not explicitly require the exclusion of those under eighteen years is a gap that should be closed. One method of addressing this issue would be through the inclusion of a definition of the child in the Constitution as being all persons under eighteen years. Articles 15 and 28 would then have to be read in conjunction with such an amendment.

5. CONCLUDING COMMENTS

Strengthening the rights of children in the Constitution is not a theoretical exercise: it has the potential to have a real and positive impact on the lives of all children and their families in Ireland now and in the future.

The need for change in the current constitutional provisions which affect children has been recognised in a series of official reports and is also evident in the large number of cases concerning child welfare that have come before the Supreme Court, especially over the last ten years. The intention to hold a referendum to amend the Constitution is therefore a significant and welcome development.

The amendment should make children's rights visible within the Constitution and reinforce Ireland's commitment to truly valuing childhood and respecting children.

It should aim to fill gaps that currently exist in the constitutional protection of children's rights: to grant children, as individuals, constitutional recognition in their own right; to give explicit recognition to the paramount importance of the principle of 'best interests of the child', so that both the legislature and the courts are given guidance in balancing competing rights; and to ensure that children are treated equally, regardless of the type of family in which they are living.

In recognition of their special, and sometimes vulnerable, status, the constitutional amendment should also aim to ensure that children are entitled to the right to know and be cared for by their parents; to be protected from abuse; and to have their voice heard in matters that affect them.

Amending the Constitution to uphold the rights of children will facilitate the introduction of new legislation and the modernisation of the family law system. It will promote the provision of services to support children and families. It will also provide a mechanism to end 'roadblocks' within the legal system that stand in the way of children who cannot be cared for by their own parents having a stable environment in which to grow and develop. Constitutional, and consequent legislative, change will promote attitudinal change that will impact on the operation of the legal system, the provision of services and administrative practices.

Moreover, the amendment of the Constitution will provide an important impetus to further progressing the implementation in Ireland of the UN Convention on the Rights of the Child and of the European Convention on Human Rights.

Reforming the Constitution is a fundamental step in creating an Ireland where children are respected and protected. However, a constitutional amendment is only one step – *albeit* of critical importance: to make real the rights enshrined in the Constitution will require significant legislative change and additional investment of resources and services to ensure that all children in Ireland are safe, secure, educated, protected, and enabled to reach their full potential.

APPENDICES

APPENDIX I: ADDITIONAL ISSUES RAISED DURING CONSULTATION PROCESS

During the consultation process undertaken by the Children's Rights Alliance in November and December 2006, a number of issues wider than the question of the recognition of children's rights in the Constitution were raised. These are summarised below:

Article 38 – Strict Liability

Article 38 covers the right to a fair trial of an accused person; this has relevance to children not only when they are accused of a crime but also in cases where a child, as a victim or witness, can be cross-examined prior to and during criminal proceedings.

The consultation did not explore in detail the implications of amending Article 38 to enable the enactment of laws of absolute criminal liability in respect of sexual activity with children. While the Alliance member organisations recognise the importance of a robust child protection system, the Alliance has not examined in detail the question of constitutional change to introduce strict liability legislation in this area.

The Alliance has not undertaken consultation with its members in relation to the age of sexual consent. However, the Alliance holds that while there is clearly a need for revised legislation in the area of statutory rape, the age of consent does not require to be, and should not be, inserted into the Constitution.

Article 38 and Article 40 – Introduction of a Comprehensive Vetting System

The Alliance supports the introduction of a comprehensive child protection vetting system that incorporates 'soft information'. The Alliance is not aware of any published legal opinion as to whether it is deemed necessary from a constitutional perspective to amend Article 40.3.2, which guarantees that the State will protect "from unjust attack ...[the] good name of every citizen", before such a system can be introduced.⁷⁸ It is therefore not in a position to comment on whether there is need for a constitutional amendment to empower the Oireachtas to enact laws that will qualify the right to protection of a person's good name in the interests of putting in place a comprehensive vetting system in relation to those who work with children.

Other issues

A number of other issues were raised during the consultation but were not explored in depth and the Alliance is not in a position to adopt a policy stance in relation to them. These issues include:

- Guaranteeing that the child's constitutional right to physical integrity should be further protected by an explicit prohibition of both male circumcision and female genital mutilation.
- Amending provisions in Article 42.2 to remove religious instruction from state-controlled and state-funded schools.

Implementation of Children's Rights

Other issues raised relate to specific instances where children's rights are not being respected or upheld. However, the Alliance believes that an effective response to these issues is not impeded by existing constitutional provisions, but, rather, by a lack of political will and/or resources.

⁷⁸ The issue of legal opinion on the need for constitutional reform in this area was referred to during a Dáil debate (see response of An Taoiseach to a question from Mr. Enda Kenny, TD in *Parliamentary Debates Official Report, Dáil Éireann*, Vol. 628, No. 1, Wednesday, 22 November 2006, p. 5 –available at: <http://debates.oireachtas.ie/Xml/29/DAL20061122.PDF>).

**APPENDIX II: Extract from Speech by An Taoiseach, Bertie Ahern TD,
Eve of Ard Fheis Event, City West Hotel, Dublin, 3 November 2006**

On 3 November 2006, the Taoiseach, Bertie Ahern TD, announced the Government's intention to hold a referendum to strengthen children's rights in the Constitution. Reproduced below is the section from his speech where he made that announcement.

An integral part of being a country which is willing to be forward-looking has to be a willingness to learn lessons from our history. This is one of the reasons why I have been willing to support efforts to fully examine deeply troubling issues which in some cases have been many decades old. It was why in 1999 I apologised for past abuse of children in the State's care and set up an investigation into child abuse.

It is very clear that our country has frequently failed to respect and protect many of its children. Some of the worst cases of institutional abuse arose partly because of an environment in which the interests of children were often not recognised or were systematically ignored.

It is not enough for us to look at a terrible picture of past abuse and deplore it - we have to be willing to understand its full lessons. And we must learn from these experiences by developing a new culture of recognition and protection of the rights of the child - the most vulnerable member of our community.

It appears increasingly clear that the inadequate recognition in our constitutional law of the rights of children as individuals has to be addressed. That is an essential first step in creating a new culture of respect for the rights of the child.

I believe that the fundamental law of our land, the Constitution, should fully reflect our commitment to valuing and protecting childhood. I believe we should make provision in our Constitution for children to be protected from maltreatment, neglect or abuse. I would also like to see the Constitution have a specific provision which requires that in relevant circumstances, the welfare of the child should be the paramount consideration. And we need to explicitly set out rights of the child in our Constitution. (*emphasis added*)

The People's constitution must protect the People's children.

This is an issue which has been considered in different forums in recent years. Many have urged constitutional reform. Both at home and abroad, there is a demand for greater recognition of children's rights. And we need now to complete the process of reform.

By studying international comparisons and experiences and considering the careful reflections of various committees in this State, we can develop and amend our Constitution so that it enshrines the very highest possible standards of protection for children. Our objective should be to have, in our fundamental law, provisions which are as strong and as effective as that possessed by any other country in the world. We should be second to none in giving effect to our commitment to truly value childhood. That is why I believe we should have a constitutional referendum to put the rights of children in a central place in our constitution. In that way, the Irish people can show the value we attach, in the words of the 1916 proclamation, to cherishing all the children of the nation equally.

I have requested Minister Brian Lenihan to initiate a process of consultation and discussion with the other Dáil parties and with all relevant interest groups in the coming weeks. We aim to achieve a consensus on the wording of an appropriate constitutional amendment. My priority is to find a wording for our constitution that will reflect the desire of the Irish people to establish robust safeguards for the rights and liberties of all the children of our nation.

APPENDIX III: EXTRACT FROM *BUNREACTH NA HÉIREANN – CONSTITUTION OF IRELAND*

FUNDAMENTAL RIGHTS

Personal Rights

Article 40

1. All citizens shall, as human persons, be held equal before the law.
This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.
2. 1° Titles of nobility shall not be conferred by the State.
2° No title of nobility or of honour may be accepted by any citizen except with the prior approval of the Government.
3. 1° The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.
2° The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.
3° The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.
This subsection shall not limit freedom to travel between the State and another state.
This subsection shall not limit freedom to obtain or make available, in the State, subject to such conditions as may be laid down by law, information relating to services lawfully available in another state.
4. 1° No citizen shall be deprived of his personal liberty save in accordance with law.
2° Upon complaint being made by or on behalf of any person to the High Court or any judge thereof alleging that such person is being unlawfully detained, the High Court and any and every judge thereof to whom such complaint is made shall forthwith enquire into the said complaint and may order the person in whose custody such person is detained to produce the body of such person before the High Court on a named day and to certify in writing the grounds of his detention, and the High Court shall, upon the body of such person being produced before that Court and after giving the person in whose custody he is detained an opportunity of justifying the detention, order the release of such person from such detention unless satisfied that he is being detained in accordance with the law.
3° Where the body of a person alleged to be unlawfully detained is produced before the High Court in pursuance of an order in that behalf made under this section and that Court is satisfied that such person is being detained in accordance with a law but that such law is invalid having regard to the provisions of this Constitution, the High Court shall refer the question of the validity of such law to the Supreme Court by way of case stated and may, at the time of such reference or at any time thereafter, allow the said person to be at liberty on such bail and subject to such conditions as the High Court shall fix until the Supreme Court has determined the question so referred to it.
4° The High Court before which the body of a person alleged to be unlawfully detained is to be produced in pursuance of an order in that behalf made under this section shall, if the President of the High Court or, if he is not available, the senior judge of that Court who is available so directs in respect of any particular case, consist of three judges and shall, in every other case, consist of one judge only.

5° Nothing in this section, however, shall be invoked to prohibit, control, or interfere with any act of the Defence Forces during the existence of a state of war or armed rebellion.

6° Provision may be made by law for the refusal of bail by a court to a person charged with a serious offence where it is reasonably considered necessary to prevent the commission of a serious offence by that person.

5. The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law.

6. 1° The State guarantees liberty for the exercise of the following rights, subject to public order and morality:

i. The right of the citizens to express freely their convictions and opinions. The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State.

The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law.

ii. The right of the citizens to assemble peaceably and without arms.

Provision may be made by law to prevent or control meetings which are determined in accordance with law to be calculated to cause a breach of the peace or to be a danger or nuisance to the general public and to prevent or control meetings in the vicinity of either House of the Oireachtas.

iii. The right of the citizens to form associations and unions.

Laws, however, may be enacted for the regulation and control in the public interest of the exercise of the foregoing right.

2° Laws regulating the manner in which the right of forming associations and unions and the right of free assembly may be exercised shall contain no political, religious or class discrimination.

The Family

Article 41

1. 1° The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.
2° The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.
2. 1° In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.
2° The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.
3. 1° The State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.
2° A Court designated by law may grant a dissolution of marriage where, but only where, it is satisfied that
 - i. at the date of the institution of the proceedings, the spouses have lived apart from one another for a period of, or periods amounting to, at least four years during the five years,
 - ii. there is no reasonable prospect of a reconciliation between the spouses,
 - iii. such provision as the Court considers proper having regard to the circumstances exists or will be made for the spouses, any children of either or both of them and any other person prescribed by law, and
 - iv. any further conditions prescribed by law are complied with.3° No person whose marriage has been dissolved under the civil law of any other State but is a subsisting valid marriage under the law for the time being in force within the jurisdiction of the Government and Parliament established by this Constitution shall be capable of contracting a valid marriage within that jurisdiction during the lifetime of the other party to the marriage so dissolved.

Education

Article 42

1. The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.
2. Parents shall be free to provide this education in their homes or in private schools or in schools recognised or established by the State.
3. 1° The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.
2° The State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social.
4. The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.
5. In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their 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 for the natural and imprescriptible rights of the child.

THE NATIONAL PARLIAMENT

Article 15

6. 1° The right to raise and maintain military or armed forces is vested exclusively in the Oireachtas.

THE GOVERNMENT

Article 28

3. 1° War shall not be declared and the State shall not participate in any war save with the assent of Dáil Éireann.

APPENDIX IV: UN CONVENTION ON THE RIGHTS OF THE CHILD⁷⁹

Children's rights are contained in many treaties, including the International Covenant on Civil and Political Rights (ICCPR)⁸⁰, the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁸¹ and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁸² Children's rights have also been the subject of the case law of the European Court of Human Rights.

However, the UN Convention on the Rights of the Child is the most detailed and comprehensive human rights instrument dealing with children. The Convention is also the most widely accepted instrument in international law, being ratified by 192 states; Ireland ratified it in 1992. Although there is no court in which it can be enforced, it is nevertheless binding international law. In many countries, and before international courts, the Convention is relied on as the definitive source of children's rights and its provisions are frequently relied upon to explain the rights children hold in many areas. The Convention's wide acceptance and use confirms its legal standing and moral weight; these are derived from the enormous consensus that exists around children's rights issues internationally.

The Convention represents a set of minimum standards only. Many states should expect to guarantee higher levels of protection for their children.

General Principles

According to the UN Committee on the Rights of the Child, the Convention has four 'general' or 'overarching' principles which inform the implementation of all other children's rights.

Non-Discrimination:	All rights guaranteed by the Convention must be available to all children without discrimination of any kind (Article 2)
Best Interests:	The best interests of the child must be a primary consideration in all actions concerning children (Article 3)
Survival and Development:	Every child has the right to life, survival and development (Article 6)
Right to be Heard:	The child's view must be considered and taken into account in all matters affecting him or her (Article 12)

The Convention contains 42 substantive articles on a wide range of rights and issues relating to children. Its provisions are often divided into the three categories: Provision, Protection and Participation.

Provision: this category includes rights relevant to the provision of resources and services to meet children's basic needs

It includes the following rights:

- The right to a standard of living adequate to ensure the child's development (Article 27);
- The right to the highest attainable standard of health and health care (Article 24);
- The right to education (Articles 28 and 29);
- The right to play, rest and leisure (Article 31).

⁷⁹ Material in this section is reproduced with kind permission from Dr. Ursula Kilkelly of University College Cork, the material is from her forthcoming book on children's rights.

⁸⁰ International Covenant on Civil and Political Rights, 1966.

⁸¹ International Covenant on Economic, Social and Cultural Rights, 1966.

⁸² UN Convention on the Elimination of All Forms of Discrimination Against Women, 1979.

Protection: this category encompasses rights relevant to the protection of children from all forms of harm and exploitation. It includes:

- The right to protection from all forms of harm, neglect and abuse (Article 19) and the rights of victims of such abuse to treatment, counselling and support (Article 39);
- The right to protection from the use of illicit drugs (Article 33);
- The right to protection from economic exploitation and sexual exploitation (Articles 32 and 34);
- The right of children without family care to special protection and the right to alternative care including adoption (Articles 20 and 21);
- The right of particularly vulnerable children, including refugee children and children with disabilities, to have special protection (Articles 22 and 23).

Participation: this category represents the rights children have to participate in decisions made about them and to contribute to society by expressing their views. These rights include:

- The child's right to express his or her views and have them given due weight in accordance with the child's age and understanding in all decisions made about them (Article 12);
- The child's right to be represented in legal proceedings (Article 12 para 2);
- The child's right to express his or her opinion using a variety of means of expression according to the child's capacity (Article 13);
- The child's right to freedom of religion and freedom of association (Article 14 and Article 15) and the right to access appropriate information conducive to the child's well-being (Article 17);
- The right to privacy (Article 16).

The Convention and the Importance of the Family

The Convention is very clear about the importance of the family to children. Its Preamble (the introductory section) recognises that children have the right to grow up in a safe, loving family environment. Several articles in the Convention draw attention to the rights to parents in relation to their children and the need for a range of supports for families. The following provisions are of particular significance:

- Every child has the right to know and be cared for by his or her parents; children should only be separated from their parents following judicial determination that this is in the best interests of the child (Articles 8 and 9);
- Children who are deprived of their family environment have the right to special support from the state and alternative care (Article 20);
- Parents have the right to the support of the state in their child-rearing duties (Article 18);
- The principle of evolving capacity means that parents of young children exercise their rights on their behalf but then pass this responsibility gradually onto children as their capacity allows. This provision also entitles parents to guide children in the exercise of their rights (Article 5).

APPENDIX V: GENERAL PRINCIPLES OF THE UN CONVENTION

According to the UN Committee on the Rights of the Child, the Convention has four 'general' or 'overarching' principles which inform the implementation of all other children's rights. Below is the full text of these principles:

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. 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.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 12

1. 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.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

APPENDIX VI: CHILDREN'S RIGHTS ALLIANCE MEMBER ORGANISATIONS

Amnesty International	Irish National Teachers Organisation
Ana Liffey Children's Project	Irish Penal Reform Trust
The Ark, A cultural centre for children	The Irish Refugee Council
Arrupe Society	Irish Traveller Movement
Association of Secondary Teachers Ireland	Irish Youth Foundation
ATD Fourth World	ISPCC
Barnardos	Jack & Jill Children's Foundation
Barretstown	Jesuit Centre for Faith and Justice
Border Counties Childcare Network	Junglebox FDYS
CARI	Kids' Own Publishing Partnership
Catholic Guides of Ireland	Kilbarrack Youth Project
Catholic Youth Care	La Leche League of Ireland
Childminding Ireland	Lifestart National Office
Children in Hospital Ireland	Mary Immaculate College
CityArts	Matt Talbot Community Trust
City of Dublin YMCA	Mothers Union
Crosscare Aftercare Unit	Mounttown Neighbourhood Youth Project
Crosscare Drug Awareness Programme	National Association for Parent Support
DIT – School of Social Sciences and Legal Studies	National Children's Nurseries Association
Dublin Rape Crisis Centre	National Parents Council (Primary)
Dunlaoghaire Refugee Project	National Parents Council (Post-Primary)
Educate Together	National Youth Council of Ireland
Education Department UCD	One Family
Enable Ireland	O.P.E.N.
Focus Ireland	Parentline
Forbairt Naíonraí Teo	Pavee Point
Foróige	The Psychological Society of Ireland
Home Start National Office Ireland	Resident Managers Association
Hope Voluntary Housing Association	Society of St. Vincent de Paul
IAYPIC	South West Wexford Community Development
Inclusion Ireland (formerly Namhi)	St. Nicholas Montessori College
Integrating Ireland	St. Nicholas Montessori Society
IPPA, the Early Childhood Organisation	Step by Step Child and Family Project
Irish Association of Hospital Play Staff	Sugradh
Irish Association of Social Workers	Tallaght Partnership
Irish Association of Suicidology	Treoir
Irish Centre for Human Rights, NUI Galway	UNICEF Ireland
Irish Congress of Trade Unions	Youth Initiative in Partnership
Irish Council for Civil Liberties	Youth Work Ireland (National Youth Federation)
Irish Foster Care Association	
The Irish Girl Guides	Affiliated Member Organisation:
Irish National Organisation of the Unemployed	Children's Law Centre (Northern Ireland)

RECOMMENDED PRINCIPLES TO UNDERLIE AN AMENDMENT

Express Rights for Children

Equality and Non-Discrimination

Best Interests

Right to be Heard

Societal Position and Authority of Parents and the Family

Right to Family Life and Continuity of Care

Protection from Abuse

Duty of the State to Intervene to Uphold the Child's Rights

Adoption of Children of Marital Families

Right to Identity

Definition of the Child

The Language of Rights and Compliance with the UN Convention

Unambiguous Language

Exclusion from Armed Forces