



## **Submission to the Joint Committee on Child Protection**

**August 2006**

### **Introduction**

The Children's Rights Alliance is a coalition of eighty non-governmental organisations concerned with meeting the needs and safeguarding the rights of children in Ireland. The aim of the Alliance is to secure the full implementation in Ireland of the principles and provisions of the UN Convention on the Rights of the Child.

The Alliance believes that the Criminal Law (Sexual Offences) Act 2006 is flawed and should be amended as a matter of priority. The Alliance welcomes the recognition by Government that comprehensive legislation is needed in this area. We welcome also the appointment in June 2006 of two independent legal experts as Special Rapporteurs on Child Protection.

The Alliance welcomes the appointment of the Joint Committee on Child Protection and is grateful for the opportunity to submit our views to the Committee. Whilst acknowledging the deadline extension granted by the Committee, the Alliance remains critical of the insufficient time allocated for the preparation of submissions to the Committee. The Alliance urges the Committee to afford sufficient time to enable an in-depth and thorough examination of the complex issues in this area to be undertaken.

The Alliance would like to commend the Minister for Children, Mr. Brian Lenihan, TD, for his decision to consult with young people on issues surrounding the age of consent in relation to sexual offences. Such consultation is in keeping with the requirements of Article 12 of the UN Convention on the Rights of the Child and with government policy under Goal One of the National Children's Strategy (2000). We urge the Committee to carefully consider the young people's views in their deliberations.

The Alliance would like to draw the Committee's attention to the submission by the Ombudsman for Children, Emily Logan, dated 1 June 2006, outlining her advice in relation to the Criminal Law (Sexual Offences) Bill 2006. The Ombudsman's recommendations were not taken on board in the final draft of the Bill, which was enacted on 2 June 2006. The Alliance is of the view that it was regrettable that the advice of the Ombudsman for Children was not taken into account and that sufficient time was not granted to adequately review the Bill.

This submission will respond to points 2, 3, 5 and 6 under the Committee's orders of reference.

## **2. Issues Surrounding the Age of Consent in relation to Sexual Offences**

Setting an age of consent in relation to sexual offences is a difficult task: the age set must provide protection for children against all abusive or exploitative sexual activity whilst simultaneously avoiding the criminalisation of young people who engage in peer underage consensual sexual activity.

The Alliance believes it is not appropriate for society to use criminal justice legislation to deter, through criminal prosecution, young people from engaging in consensual sexual activity. A more appropriate means of encouraging young people to be responsible in relation to sexual behaviour is through investing in education and youth programmes, including sexual health education and programmes that empower young people to make responsible decisions about their own behaviour. There is a need for increased resources and supports to encourage parents, teachers and youth workers to discuss issues of sexual behaviour and health with children and young people. In addition, the 'Stay Safe' Programme should be fully implemented: it is currently not available in up to 20% of primary schools.

The Alliance believes that no young person should be prosecuted for engaging in underage consensual sexual activity with a peer of similar age and where there is an equal match in relation to maturity and understanding of their behaviour. A two-year age gap should be set as a guideline. However, the Director of Public Prosecutions must be given some flexibility in relation to the age gap, to ensure a sensible approach to a young people a few days over the two-year gap. The DPP must be guided by the best interest of the young people involved.

There is a need for guidelines in relation to prosecutions. In making a decision as to whether or not the sexual activity is abusive and whether a prosecution should be taken the following criteria could be applied.

Consensual sexual activity could be defined to include:

- where both individuals consent to the activity
- where there is no more than a two-year age difference
- where both individuals had the capacity to make clear decisions
- where both individuals had the capacity to give consent
- where there is a similar level of maturity and understanding of the implications of behaviour
- where there was no incentive or gift offered in exchange for sexual activity
- where neither individual was in a position of economic dependence in relation to the other
- where neither individual was in a position of power, authority or trust.

Abusive sexual activity could be defined to include:

- where one individual did not consent to the activity
- where there is more than a two-year age difference
- where one individual did not have the capacity to make clear decisions
- where one individual did not have the capacity to give consent – for example, if one individual had an intellectual disability
- where there was a difference in maturity and in understanding of the implications of behaviour
- where an incentive or gift was offered in exchange for sexual activity
- where one individual was in a position of economic dependence in relation to the other
- where one individual is in a position of power, authority or trust.

### *Gender neutral approach*

Section 5 of the Criminal Law (Sexual Offences) Act 2006 provides that while girls under 17 years who engage in consensual sex are exempt from criminal prosecution (to avoid stigmatising teenage mothers), boys under 17 are not. This section is in breach of Article 14 of the European Convention on Human Rights and Article 2 of the UN Convention on the Rights of the Child, which provide for non-discrimination on the basis of gender. Ensuring that no young person under the age of 17 years can be prosecuted for consensual underage sexual activity will remove the need for Section 5.

### *Cross-examination*

The Alliance calls for all legal proceedings involving children to be reformed to ensure that they are age appropriate and child friendly. A court is an unfamiliar place to a child. The experience of giving evidence in court, with the accused present, can be stressful, intimidating and potentially traumatising; it may result in the 're-victimising' of the child. The aggressive cross-examination of a child witness, using adult terminology, particularly in sexual abuse cases, is inappropriate.

It is imperative that the procedures for giving evidence are reformed to ensure that children can testify in cases where they are the victim in a manner which minimises the trauma of this experience. The use of live television links from a separate room to the court should be encouraged. Appropriate training for the legal professional will be required to ensure that the giving evidence by television link meets the constitutional standards of a fair trial. Adequate facilities to provide television links are needed in courts in all parts of the country.

A further concern is the substantial delay between the time a child discloses that he or she has been abused and the trial date. Such a delay may hinder the child's recovery as therapeutic counselling is counteracted by the need for the child to remember every detail in preparation for the trial. The Alliance calls for the fast-tracking of all cases of statutory rape and child sexual abuse to minimise the time delay between the complaint and the trial.

### *Reporting Child Abuse*

There is need for a consistent interpretation by practitioners throughout the country of legislation relating to the age of sexual consent and sexual offences against children.

All those who interact with children and young people, in particular teachers, health professionals, social workers and youth workers, require guidance on how to respond to situations of underage sexual activity; how to distinguish between situations where the sexual activity is consensual and where it is abusive; and what are the appropriate procedures to follow for interacting with an Garda Síochána, the Health Service Executive, young people and their parents.

The current situation in relation to child protection is wholly unsatisfactory. The implementation of the *Children First Guidelines for the Protection and Welfare of Children*, published in 1999, has been sporadic and *ad hoc*, differing from region to region, with variations in the working relationship between statutory and non-statutory bodies. Indeed, some areas are currently not operating the *Children First* guidelines due to a lack of resources and a lack of capacity. Anecdotal evidence from service providers indicates that allegations and suspicions of child abuse may not be reported for a variety of reasons, thus posing the risk of further abuse

occurring. The Alliance welcomes the review of compliance with the *Children First* guidelines being carried out by the Office of the Minister for Children. The Alliance calls for the *Children First* guidelines on reporting child abuse to be put on a statutory basis. While the Alliance recognises that further consultation and debate will be needed on the complex issues arising from putting guidelines on a statutory basis, such as issues of confidentiality in counselling relationships and service provision, it strongly urges Government to move towards this end. Until guidelines on reporting child abuse are grounded in legislation, Ireland will not be in compliance with its obligations under the UN Convention on the Rights of the Child.

State funding is provided to both statutory agencies and non-government organisations working with children. A stipulation should be introduced by which funding is only granted if the organisation is fully implementing child protection guidelines.

Following the publication in 1999 of the *Children First* Guidelines, specific guidelines have been published for among others, the education, youth work and sport sectors.<sup>1</sup> The Alliance suggests that a review of the various sets of guidelines be undertaken to ascertain if there is scope for clarification and simplification.

#### *Access to services*

The age of consent for medical treatment is set at sixteen years by section 23 of the Non-Fatal Offences Against the Person Act, 1997. The Alliance seeks clarity on the legal position of professionals who provide a medical service to children under the age of 16 years, and also to those between the ages of 16 and 18 years. Clarity is also needed on whether professionals are under a constitutional duty to inform the child's parents that they are treating their child.

It is important that both young people and practitioners are aware of the appropriate action a service provider must, or can, take in response to a request for a service associated with underage sexual activity, such as the prescription of oral contraception, counselling, medical attention for sexual transmitted infections and access to information. Practice to-date has varied throughout the country.

There is a need for guidelines, training and awareness-raising in relation to the practical implementation of the legal age of consent, elaborating on, among other things, the issue of confidentiality and the circumstances under which children can access services without parental permission.

It is critical that criminal justice legislation does not deter young people from seeking advice or medical treatment in relation to their sexual health for fear that their sexual behaviour may be reported to social services or that they may face prosecution.

#### *Sexual Health Education*

The Alliance is concerned that young people do not have sufficient access to information on sexual health.<sup>2</sup> Sex education is taught through the curriculum in second-level schools. However, research has shown that as pupils get older an increasingly full school schedule is the biggest obstacle to the successful

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<sup>1</sup> For example, the Department of Education and Science (2002) *Code of Good Practice, Child Protection for the Youth Work Sector* and The Office of the Minister for Children (2006) *Ensuring the Safety and Welfare of Children/Young People, Child Protection Policy and Code of Behaviour for working with children/young people.*

<sup>2</sup> Paula Mayock and Tina Byrne (2005) *A Study of Sexual Health Issues, Attitudes and Behaviours: The Views of Early School Leavers.* Dublin: Crisis Pregnancy Agency. There was a general consensus among the young people interviewed in this study that school-based sex education was inadequate and that it failed to address the more difficult aspects of sexuality and sexual health.

implementation of Social, Personal and Health Education (SPHE) curriculum.<sup>3</sup> Additionally, the teaching of sex education is discretionary and non-standardised, and parents can exempt their children from the sexual health education element of the curriculum. The Alliance recommends that age appropriate, interpersonal relationship education, including sex education, should be extended to all primary and second-level schools and developed in the youth work sector.

### *Sexual Health*

More than 1,000 teenagers were diagnosed with sexually transmitted diseases in 2004. The rate of sexually transmitted infections has increased dramatically since 1995, with young women between the ages of sixteen and nineteen being particularly at risk.<sup>4</sup>

There are no adolescent-specific reproductive and sexual health services in Ireland. Echoing the 2005 *Concluding Observations* of the UN CEDAW Committee, the Alliance recommends that a national network of youth-friendly sexual health services be established.<sup>5</sup> The Alliance calls for a national sexual health education campaign targeting young people to be undertaken.<sup>6</sup>

## **3. Criminal Justice Procedures relating to the Evidence of Children in Abuse Cases**

Much work remains to be done to ensure that criminal justice procedures, particularly those relating to child abuse, are age-appropriate for children. Reforms are needed in the following areas:

- Provision of separate legal representation or legal support for child witnesses in criminal proceedings.
- Restriction, where and as appropriate, of access between a child and a parent who is being investigated or prosecuted for the duration of the investigation and trial, to ensure the child witness is not intimidated or at risk of further abuse. Although provisions are in place they are not deemed to be sufficient.
- Introduction of judicial reform to enable children under the age of seven years to give evidence in crimes in which they are the victim.
- Provision of child and family friendly facilities in the court buildings.
- Provision of age-appropriate information for children and their families on their rights and on the court and legal proceedings

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<sup>3</sup> Social, Personal and Health Education Support Service (2006) *The SPHE Story: An Example of Incremental Change in the School Setting*, Dublin.

<sup>4</sup> A high percentage of a sample of early school leavers aged 13 to 18 interviewed for a research study in Dublin had only a superficial understanding of sexually transmitted infections apart from HIV/AIDS. Among the young people there was also a sense of being invulnerable to STI infection. Paula Mayock and Tina Byrne (2005) *A Study of Sexual Health Issues, Attitudes and Behaviours*, Dublin: Crisis Pregnancy Agency.

<sup>5</sup> *Concluding Observations* (5 – 22 July 2005) of the UN Committee on the Elimination of All Forms of Discrimination against Women. “The Committee... urges the State party to further strengthen family planning services, ensuring their availability to all women and men, young adults and teenagers. See also Paula Mayock and Tina Byrne (2005) *A Study of Sexual Health Issues, Attitudes and Behaviours*.

<sup>6</sup> The study of early school leavers by Mayock and Byrne found that: “...young people did not necessarily perceive the adult world as affording the right to discuss sex. Many had few social supports when it came to accessing information and advice on sexual health issues, leaving them isolated in their efforts to behave responsibly in relation to sex and sexual health.” Paula Mayock and Tina Byrne (2004) *A Study of Sexual Health Issues, Attitudes and Behaviour: The Views of Early School Leavers*.

- Provision of television link facilities in all courtrooms where cases involving child abuse may be heard and appropriate training for the use of these facilities.
- Use of anatomically correct dolls, when appropriate, to help a young child communicate to the court, in sexual abuse cases where the child may not know the words or find describing events embarrassing.
- Provision of education for the judiciary and the legal profession in relation to child development, child sexual abuse and children's rights.

## **5. Desirability or otherwise of amending the Constitution to deal with the outcome of the 'C.C.' case and/or to provide for a general right of protection for children**

The Alliance believes that the Constitution must be amended to provide a general right of protection for children and that it is only through constitutional reform that children's rights can be fully realised in Ireland.

Article 41 of the Constitution recognises the marital family as "the natural, primary and fundamental unit group of society... possessing inalienable and imprescriptible rights". The constitutional status of the family has two main implications for children. First, the current constitutional position often places children's rights in second place to those of their parents. As a result, child-friendly family law is curtailed in its operation by constitutional limitations. Second, this constitutional provision limits the enactment of certain types of legislation concerning children.

In 1993, during the pivotal Kilkenny Incest Investigation, Catherine McGuinness, Senior Council (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."<sup>7</sup>

The Alliance calls for the explicit expression of children's rights in the Constitution and strongly urges against articulating children's rights solely in domestic legislation. There is a compelling argument against articulating children's rights only in legislation without first securing constitutional change. As the Constitution takes a clear position on children, legislation on its own would be impeded in its function without constitutional change. The approach taken to incorporate the European Convention on Human Rights and Fundamental Freedoms into domestic legislation could not be replicated, due to the existing constitutional blocks to subconstitutional legislation regarding children.

In 1996, the Constitution Review Group recommended that an express statement on the rights of children should be included in the Constitution. This proposed amendment enumerated a range of children's rights and stated that the best interests of the child should be the paramount consideration in all actions concerning children.<sup>8</sup> The Group's recommendation was endorsed by the Commission on the Family in 1998.<sup>9</sup>

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<sup>7</sup> *Kilkenny Incest Investigation: Report presented to Mr. Brendan Howlin TD, Minister for Health by South Eastern Health Board* (1993) Dublin: Stationery Office.

<sup>8</sup> *Report of the Constitution Review Group* (1996) Dublin: Stationery Office. The Group recommended that: "The proposed reconstituted Article 41 would 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

In January 2006, the All-Party Oireachtas Committee on the Constitution proposed new, weaker text for an amendment to Article 41 of the Constitution as follows: "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."<sup>10</sup>

While the Alliance welcomes the restatement by the All-Party Committee of the need to improve the constitutional status of children, the amendment it proposes is inadequate. The suggested amendment is a radical departure from the commitment made by the State when it ratified the Convention in 1992 and from the recommendations of various expert groups, including the recommendations of the Kilkenny Incest Investigation (1993), the amendment proposed by the Constitution Review Group (1996) and the *Concluding Observations* of the UN Committee on the Rights of the Child (1998).

The first sentence of the proposed amendment merely reinforces the existing constitutional requirement of equality for all citizens contained in Article 40.1<sup>11</sup> and does not improve the specific position of children within the Constitution. The second sentence calls only for 'regard' to be had to the child's best interests, rather than for the best interests to be paramount. Crucially, the proposed amendment requires that an individual child's welfare be under consideration before the 'best interests' provision will apply. The amendment therefore does not provide for the range of children's rights generally nor does it do so in a systematic manner. The adoption of the All-Party Committee's proposed amendment would not fulfil the full range of Ireland's obligations under the Convention.

The Alliance urges the Committee to examine in detail the type of constitutional amendment that would fully protect children's rights as individuals and reflect Ireland's obligations under the UN Convention on the Rights of the Child. The South African Constitution (1996) stands out as a model of international best practice in the constitutional recognition of children's rights.<sup>12</sup>

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- 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
  - e) 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."

<sup>9</sup> *Strengthening Families for Life, Final Report of the Commission on the Family* (1998) Dublin: Stationery Office.

<sup>10</sup> The All-Party Oireachtas Committee on the Constitution (2006) *Tenth Progress Report: The Family*, Dublin: Stationery Office, p. 124.

<sup>11</sup> Article 40.1 states: "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." *Constitution of Ireland*, Dublin: Stationery Office.

<sup>12</sup> 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 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."

The Alliance proposes that a constitutional amendment should be formulated that can both offer children protection from abuse and ensure that they are given recognition as individuals in their own right, both within and, when necessary, separate from the context of the family unit. A constitutional amendment, applying to all those under 18 years, should include the right of every child:

- to be protected from all forms of physical or mental abuse or exploitation, including sexual abuse;
- to know his or her parents, as far as practicable, subject to the proviso that such right should be subject to regulation by law in the interests of the child;<sup>13</sup>
- to be cared for by his or her parents or family, as far as practicable, or to appropriate alternative care when removed from the family environment;
- to have 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.

The successful passage of a referendum to amend the Constitution would need to be preceded by a vigorous public information campaign on why we need a constitutional amendment, on the UN Convention on the Rights of the Child and on Ireland's international obligation to incorporate its provisions. After constitutional change is secured, a comprehensive children's rights act should be introduced, enumerating the rights contained in the UN Convention.

## **6. Other recommendations on the protection of children as shall to the Committee seem appropriate**

### **Child Abuse Prevention**

In order for guidelines on reporting child abuse to be fully effective, they must be linked to and function within the context of a comprehensive, National Child Abuse Prevention Strategy. The Strategy would address the lack of coordination between existing programmes and services and tackle issues of neglect, bullying, and domestic violence and also would promote positive parenting and community awareness of child abuse. The Alliance welcomes the Government commitment in December 2005 to launch a nationwide awareness campaign child sexual abuse.

Training will be required on an ongoing and refresher basis. Training must reinforce compliance, meet the needs of new personnel and ensure that the message is not lost following an initial period of 'high awareness'. Ongoing training is key to ensuring there is no variation in the level of compliance throughout the country.

### **Assessment and counselling**

The Alliance has serious concerns about the long delays that occur in providing assessment of children following a report of suspected abuse or neglect. There is no central collation of waiting lists for social work assessment. However, anecdotal evidence points to significant delays in securing assessments.

Children who have been abused and their families have a right to high-quality support services under Article 39 of the UN Convention on the Rights of the Child.<sup>14</sup>

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<sup>13</sup> The Supreme Court decision in *IO'T v B* [1998] 2 IR 321 held that a child's right to know his or her mother was an unenumerated constitutional right which flows 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 could take precedence over the child's right.



The provision of timely, early counseling is a serious concern for Alliance members. While no official waiting lists exist, anecdotal evidence indicates that victims of abuse often wait several months for counseling. This is unacceptable, particularly in light of the brevity of childhood.

### **Vetting**

The Alliance welcomes the establishment of the Garda Central Vetting Unit to provide a police check for employees and volunteers who are working with or have access to children. However, we are concerned about ongoing delays preventing full implementation of the service. Garda Vetting of all those who have contact with children is key to preventing child abuse, and significant resources are needed for the Unit to be able to do this. Furthermore, retrospective vetting is needed in respect of employees and volunteers for whom vetting was not available at the time of their recruitment. There should also be regular assessments of progress in implementing the vetting system. The Alliance believes that an enhanced system of Garda Vetting must be put on a statutory basis in order for it to be an adequate child abuse prevention tool.

In addition to fully resourcing the Garda Vetting Unit, the Alliance would urge three changes to be made to the current vetting system. First, the Alliance would like to see the vetting procedure enhanced along the lines of the system in Northern Ireland (which checks for disciplinary procedures and other forms of 'soft information' as well as criminal convictions).<sup>15</sup> Second, more needs to be done to ensure that full background checks are carried out using records from other jurisdictions. Third, a system needs to be put in place whereby parents and young people can receive confirmation that groups or organisations have a vetting policy.

### **HSE services**

Anecdotal evidence again suggests that there are serious difficulties in recruiting and retaining an adequate number of qualified and experienced HSE staff to deal with issues of child abuse.

There are also significant management, administrative and operational deficiencies that inhibit the effective working of the services. These weaknesses are manifested in difficulties experienced in making first contact with HSE social work staff to report child abuse.

In order for the HSE to meet its statutory obligations, considerable resources will be needed to provide an adequate level of support staff (including social workers). In addition, there is need for adequate in-service support, supervision and training to ensure a high-quality service and the retention of staff.

The Alliance is deeply concerned that HSE social work services are not available outside office hours, with the exception of a service for homeless children in Dublin on weekdays.<sup>16</sup> The establishment of a twenty-four hour, seven-day a week social work service is key to preventing child abuse and supporting families and children.

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<sup>14</sup> State Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse...Such recovery shall take place in an environment which fosters the health, self-respect and dignity of the child.

<sup>15</sup> 'Soft information' is information regarding people who are identified as a risk to children but who do not have a criminal conviction for child abuse.

<sup>16</sup> The Crisis Intervention Service for homeless children is available from 6 p.m. to 4 a.m. for children under 12 years of age and from 8 p.m. to 6 a.m. for those aged 12 to 18, Monday to Friday. The day service is available from 9 a.m.

### **Social Services Inspectorate**

The Alliance welcomes the proposed establishment of the Health Information and Quality Authority (HIQA) and the Office of the Chief Inspector of Social Services within HIQA. The Alliance particularly welcomes the placement of the Office of Chief Inspector of Social Services on a statutory basis, under Part 3 of the Health Bill, 2006.

However, the Alliance is concerned about Head 39 of the Bill. The Alliance believes that all services should be inspected by a single inspectorate, namely the Office of the Chief Inspector of Social Services, under an agreed set of regulations and standards. The two-tier system of inspection currently in place, where inspections are carried out by both the HSE and Social Services Inspectorate (SSI), should not be formalised by this legislation; we thereby propose that Head 39 be deleted. The Alliance recognises that the success of the SSI has been based, in large part, upon its independence and transparency. The HSE inspections, by contrast, are not independent nor are their findings made readily available to the public.

The Alliance urges that the remit of the Office of the Chief Inspector of Social Services include all residential services for children, including residential care for separated children seeking asylum, Children Detention Schools and Centres, and homeless residential care for children (both unaccompanied and with their families), and the residential care provided for children and families under the direct provision system.

### **Domestic violence**

The State's response to domestic violence generally focuses on the parent who is abused and on the children mainly within the context of the family. The Alliance considers that the response should also include the provision of specific support services for children affected by domestic violence as abuse victims in their own right. The Alliance calls for the implementation on a national level of the recommendations made in *Listen to Me! Children's Experience of Domestic Violence*.<sup>17</sup> The report highlights the need for an expanded and coordinated approach to statutory and community-based child protection, and for services that can deliver timely supports to halt and ameliorate the detrimental effects of living with violence. It calls for a single service to oversee and make connections between different agencies that may or may not have a direct focus on domestic violence, and the further development of the role of An Garda Síochána and of schools. It also draws attention to the need for awareness raising initiatives directed towards service providers and the general public.

### **Migrant children**

There are several emerging child protection issues in relation to migrant children.

Registration of migrant children. There is no system of registering and tracking migrant children other than as dependants of their parents. If a child protection concern arises, there is no official documentation on these children – for example, where they have lived and with whom. The Alliance recommends that all migrant children be registered at their point of entry to the country, as are adults, and tracked through official documentation.

Deportation proceedings. Children (including Irish children of migrant parents) have been separated from their parents while deportation orders have been carried out.

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<sup>17</sup> Helen Buckley, Sadhbh Whelan and Stephanie Holt (2006) *Listen to Me! Children's Experience of Domestic Violence*, Dublin: Children's Research Centre, Trinity College Dublin and Mayo Women's Support Services.

This has raised serious child protection issues when the whereabouts and safety of a child has not been determined prior to the deportation of their parent/s.<sup>18</sup> Guidelines are needed to ensure that the level of trauma experienced by children during deportation proceedings is minimised and that child protection issues are fully taken into consideration.

Female genital mutilation. There is currently no specific legal protection against female genital mutilation (FGM).<sup>19</sup> Neither is there specific legislation to protect a child from being removed from Ireland to have the procedure carried out overseas. The Alliance strongly urges that legislation to address these issues be introduced. Education and awareness-raising among relevant service providers (Gardaí, teachers and medical personnel) and within communities where FGM may be practised should accompany the process of legislative change.

Interpreters. There is need for additional supports for migrant children, including the provision of interpreters in child protection investigations involving migrant children. Interpreters should be required to have training in child protection and in undertaking a child friendly interview.

Trafficking. There is very little information on the incidence of trafficking of children in Ireland. The Alliance is, however, deeply concerned about the incidence of separated children seeking asylum being reported missing from their HSE care placement. Of the approximately 2,000 separated children seeking asylum who have been taken into State care since 2000, 316 (that is 15.8%) have been reported missing from State care over the past five years. As of June 2005, there were up to forty ongoing investigations into possible trafficking of separated children seeking asylum.<sup>20</sup>

Anecdotal evidence suggests that a number of separated children seeking asylum have gone missing within the first twenty-four hours of entering the country. Although children may disappear from their hostel placements because they have been unofficially reunited with a family member, there is concern that many, if not most, of the children go missing for other reasons.

The Alliance believes that therapeutic and rehabilitative support services for victims of trafficking need to be developed. Critical among these measures is the provision of safe accommodation for the victims of trafficking. The current level of supervision in hostel accommodation or dormitory accommodation in reception centres is inadequate for the purpose of protecting children who have been victims of trafficking. In addition, all decisions regarding victims must be made in the best interests of the child; this may include the granting of residency in Ireland.

Anecdotal evidence indicates that there is inadequate investigation to verify the identity of people who present as family members and with whom separated children are united. This weak level of safeguards in relation to reunification of separated children with family members may be exploited by traffickers. Where a separated

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<sup>18</sup> Some parents, out of fear, have sent their children into hiding when deportation is imminent in the hope that their children will be able to stay in Ireland and have a better life. In some cases, parents have been deported even though officials did not know the whereabouts of the children. "Appeals for women to be let return to their children," *The Irish Times*, 28 March 2005; "Campaign highlights break up of families," *The Irish Times*, 31 March 2005; "Agents of State blamed for breaking up families," *The Irish Times*, 14 April 2005.

<sup>19</sup> In 2001, the then Minister for Health and Children told Dáil Éireann that FGM is an offence under the Non-Fatal Offences Against the Person Act, 1997 but that he was considering whether it would be appropriate to enact legislation specifically prohibiting the practice.

<sup>20</sup> Olivia Kelleher, "Warning of human trafficking in Ireland", *The Irish Times*, 13 June 2005.

child is united with a family member there is no follow-up by social services to that placement. The Alliance suggests that these children should be visited by a social worker shortly after their placement, and again within three months.

In July 2006, the Government published the draft Criminal Law (Trafficking in Persons and Sexual Offences) Bill. The Bill introduces specific offences of trafficking in persons for the purposes of their sexual and labour exploitation and for the removal of organs. However, the Bill does not put in place any provisions for the support, treatment or residency status of victims of trafficking or for the establishment of safe accommodation for victims. There are no provisions for victims who may wish to testify against a trafficker. Furthermore, the Bill does not establish the principle that decisions regarding victims of child trafficking must be made in the best interests of the child.

There are also some anomalies within the Bill: the penalties vary depending on the age of the child victim (whether they are below or above the age of 15 years) and the definition of a child under the offence of 'sexual grooming' is under 17 years. These anomalies should be addressed to ensure that in all its provisions relating to children the Bill employs the age of 18 years as its cut-off point.

The Alliance believes that the Bill on Trafficking will be a missed opportunity if it fails to put in place sufficient protections and supports to enable the State to ratify the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

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