

# Opening Statement to JOC on Implementation of Good Friday Agreement

January 2017



The Children's Rights Alliance unites over 100 members working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services.

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Ag Eisteacht  
Alcohol Action Ireland  
Alliance Against Cutbacks in Education  
Amnesty International Ireland  
ASH Ireland  
Assoc. for Criminal Justice Research and Development (ACJRD)  
Association of Secondary Teachers Ireland (ASTI)  
ATD Fourth World – Ireland Ltd  
Atheist Ireland  
Autism Network Ireland  
Barnardos  
Barretstown Camp  
Bedford Row Family Project  
BeLonG To Youth Services  
Care Leavers' Network  
Catholic Guides of Ireland  
Child Care Law Reporting Project  
Childhood Development Initiative  
Children in Hospital Ireland  
COPE Galway  
Cork Life Centre  
Crosscare  
Dental Health Foundation of Ireland  
Department of Occupational Science and Occupational Therapy, UCC  
Disability Federation of Ireland  
DIT – School of Social Sciences & Legal Studies  
Down Syndrome Ireland  
Dublin Rape Crisis Centre  
Dun Laoghaire Refugee Project  
Early Childhood Ireland  
Educate Together  
EPIC  
EQUATE  
Extern Ireland  
Focus Ireland  
Foróige  
Future Voices Ireland  
Gaelscoileanna Teo  
GLEN - Gay and Lesbian Equality Network  
Immigrant Council of Ireland  
Inclusion Ireland  
Independent Hospitals Association of Ireland  
Inspire Ireland  
Institute of Community Health Nursing  
Institute of Guidance Counsellors  
Irish Association for Infant Mental Health  
Irish Association of Social Workers  
Irish Centre for Human Rights, NUI Galway  
Irish Congress of Trade Unions (ICTU)  
Irish Council for Civil Liberties (ICCL)  
Irish Foster Care Association  
Irish Girl Guides  
Irish Heart Foundation  
Irish National Teachers Organisation (INTO)  
Irish Penal Reform Trust  
Irish Primary Principals Network

Irish Refugee Council  
Irish Second Level Students' Union (ISSU)  
Irish Society for the Prevention of Cruelty to Children  
Irish Traveller Movement  
Irish Youth Foundation (IYF)  
Jack & Jill Children's Foundation  
Jesuit Centre for Faith and Justice  
Jigsaw  
Kids' Own Publishing Partnership  
Law Centre for Children and Young People  
Lifestart National Office  
Mental Health Reform  
Migrant Rights Centre Ireland  
Mounttown Neighbourhood Youth and Family Project  
MyMind  
National Childhood Network  
National Organisation for the Treatment of Abusers (NOTA)  
National Parents Council Post Primary  
National Parents Council Primary  
National Youth Council of Ireland  
One Family  
One in Four  
Parentstop  
Pavee Point  
Peter McVerry Trust  
Rape Crisis Network Ireland (RCNI)  
Realt Beag  
SAFE Ireland  
Saoirse Housing Association  
SAOL Beag Children's Centre  
School of Education UCD  
Scouting Ireland  
Sexual Violence Centre Cork  
Simon Communities of Ireland  
Social Care Ireland  
Society of St. Vincent de Paul  
Sonas Domestic Violence Charity  
Special Needs Parents Association  
SpunOut.ie  
St. Nicholas Montessori College  
St. Nicholas Montessori Teachers' Association  
St. Patrick's Mental Health Services  
Step by Step Child & Family Project  
Suas Educational Development  
Sugradh  
Teachers' Union of Ireland  
Terenure Rugby Football Club  
The Ark, A Cultural Centre for Children  
The Guardian Children's Project  
The Prevention and Early Intervention Network  
The UNESCO Child and Family Research Centre, NUI Galway  
Traveller Visibility Group Ltd  
Treoir  
UNICEF Ireland  
youngballymun  
Youth Advocate Programme Ireland (YAP)  
Youth Work Ireland

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## Opening Statement

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The Children's Rights Alliance welcomes the opportunity to address the Joint Oireachtas Committee on the Good Friday (Belfast) Agreement. The Alliance is a national movement uniting over 100 organisations to make Ireland one of the best places in the world to be a child. We change the lives of all children by making sure that their rights are respected and protected in our laws, policies and services.

It is the Children's Rights Alliance's view that the outcome from the UK's referendum on European Union (EU) membership poses profound implications for the future of the Union itself, and critically, for peace and security on the island of Ireland. We have been working on the implications of Brexit with colleagues in Northern Ireland, in particular, the Children's Law Centre. We are also working with our colleagues on the National Advisory Council for Children and Young People on this issue (National Youth Council of Ireland, ISPCC, Barnardos, Scouting Ireland, Early Childhood Ireland). It is also a key focus for the Minister for Children and Youth Affairs and her officials in the Department of Children and Youth Affairs.

In our presentation to the Committee today we will outline our views on the implications of Brexit for children's rights in the context of North-South cooperation.

### **(1) Good Friday Agreement and the European Convention on Human Rights (ECHR)**

You will be well aware that an assumption of continued membership of the European Union permeates the Good Friday Agreement, something that was not considered in the decision to hold the referendum in first place. You will also know that the human rights and equality provisions of the Good Friday (Belfast) Agreement have copper fastened many policing and institutional human rights reforms North and South. But it is the signature and ratification of the European Convention on Human Rights (ECHR) by the UK Government which was seen as a really important win because it meant that the UK had to introduce the Human Rights Act 2000 (which gave further effect to the ECHR in the UK). The ECHR was important because many of the human rights abuses that happened in Northern Ireland (internment, shoot-to-kill, torture, inhuman and degrading treatment, non-prosecution of non-state actors for killings) in a context where there was no human rights instruments to hold the Government to account. By ratifying and giving further effect to the ECHR, the British Government was putting in place a legal framework that would help protect all peoples from any further abuses.

The other important point from the Good Friday Agreement is the obligation to have equivalent rights North and South. Again this was seen as an important instrument to guarantee peace and prosperity on the island of Ireland. In response the Irish Government finally gave further effect to the ECHR through the ECHR Act 2003. Ireland was one of the last countries in the Council of Europe to do so.

What is of grave concern to us is that the fact that at different junctures, Prime Minister Theresa May, and others in her Government have called for the UK's withdrawal from the ECHR. The ECHR will be more important in the context that the EU Charter of Fundamental Rights is likely to no longer apply with the UK's withdrawal from the European Union. The Charter only applies to the implementation of EU law where the ECHR is much broader. Governments are held accountable under the Charter to the European Court of Justice. Governments are held accountable ultimately under the ECHR to the European Court of Human Rights in Strasbourg.

We believe that it is very important for the Irish Government and politicians North and South in the lead up to Brexit to ensure that Ireland does not accept the UK's withdrawal from the ECHR. This should be a non-negotiable item. The ECHR and human rights instruments in the Good Friday Agreement cannot become a casualty of Brexit. Brexit may create major instability for Northern Ireland particularly in the border counties and pose challenges for Westminster. This is precisely the time that human rights instruments are needed to put limitations on potential excessive state actions, and indeed, actions by dissident paramilitaries.

Lastly, we believe that the Irish and UK Governments will face major opposition to any change regarding the ECHR from opposition parties, the human rights bodies and the community and voluntary sector.

## (2) Child Poverty

Another key priority for us is child poverty. We believe that child poverty rates North and South will be seriously impacted by Brexit. We will not go into the economic forecasts around the common market. However, we do know with Brexit that Northern Ireland will not receive additional social inclusion monies and peace funding from the European Union. If Ireland is hit by another economic shock, we would be greatly concerned about the impact of austerity measures. In the last recession, children bore the brunt of the austerity measures both North and South. In Northern Ireland a quarter of children lived in relative income poverty in 2014-15. In the South, the numbers of children in consistent poverty increased from over 9 per cent to nearly 12 per cent and this is despite the fact that Ireland is one of the countries in the OECD area that pays the highest benefit payments. One of the key reasons for high child poverty rates in the South is the fact that we do not invest enough in early intervention and free, accessible, equitable public services.

The EU Recommendation Investing in Children outlines a roadmap for lifting children out of poverty. The Irish Government is putting a whole of government approach in place to reduce our child poverty rates by lifting 97,000 children out of consistent poverty. What will happen to this target if the economy suffers?

While the Good Friday Agreement does not specifically mention the issue of poverty, it clearly reaffirms the commitment of both Governments to protect economic, social and cultural rights which includes the right to an adequate standard of living. This important right addresses issues of food poverty, housing and material deprivation. We believe that any British-Irish Agreement must include a focus on tackling child poverty North and South as a human rights issue, and set out clear indicators and actions for reducing the number of children living in poverty.

### **(3) Citizenship, Legal Rights and Entitlements of Children in the UK and Ireland**

As you know citizenship is dealt with under the Good Friday agreement and people born in the North have the right to identify themselves and be accepted as Irish or British or both. The Good Friday Agreement makes clear that they have the right to dual citizenship which “is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland”. Clearly this means that people living in Northern Ireland cannot be denied their Irish citizenship (EU citizenship) if they identify as an Irish national. It is critical that the negotiations between the Governments of Ireland, the UK and the European Union recognise the special status of Northern Ireland in this regard and the fact that the Agreement protects this right.

There are other issues for children and young people living in both jurisdictions. The Common Travel Area and EU free movement rights have ensured that Irish children living in the UK and British children living in Ireland have generally been able to access services on an equal footing. Using most recent figures from Eurostat it is apparent there are 117,000 British citizens living in Ireland and 337,000 Irish citizens living in the UK. We would be concerned that a hard-Brexit will impact on the rights and legal entitlements of children living in Ireland and the UK. We are also concerned about the implications for specific groups of vulnerable children. For example, children are sent from the Republic to the UK for care and medical services; children are sent South from Northern Ireland for medical services. Traveller children can move with their families between the UK and Ireland. What implications will Brexit have for them? The answer of course is to preserve the Common Travel Area and to ensure the rights of children and young people are protected in both jurisdictions. Again, a British/Irish Agreement should include a specific obligation to preserve the Common Travel Area and to protect the rights of Irish and UK nationals in both countries.<sup>1</sup>

### **4) Child Protection, Custody, Family Law, Divorce and International Child Abduction**

The EU has developed many different legal instruments governing aspects of children’s lives in the EU.<sup>2</sup> In this section, we focus on child protection and custody, family law, divorce and international child abduction. Member States are under an obligation to protect children from violence and hold primary responsibility for establishing comprehensive child protection systems. Particularly relevant here are fields where the EU has scope to reinforce child protection across borders and in transnational situations. For example, the Directive 2011/93/EU on Child Sexual Abuse and Exploitation deals provides that measures, mechanisms and protocols should be in place for cross-border cases (Principle 7). It has been relied upon by Member States to investigate and prosecute with a transnational element. EU law is also important for protecting children in migratory situations or who are at risk of trafficking.<sup>3</sup> Brussels II deals with child custody, family law, divorce and international child abduction, and it is the primary legal instrument used by Ireland and the UK in cross-border custody, family law, divorce and international abduction matters.

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<sup>1</sup> This recommendation relates specifically to children with Irish and British nationalities. However, the UN Convention on the Rights of the Child provides that all children should be treated equally. This means that children from other EU countries resident in the UK, and indeed, children from the UK in other European countries should not be disenfranchised by Brexit. They should be treated equally in accessing all rights and entitlements in the jurisdiction that they are in.

<sup>2</sup> The Children’s Coordinator of the European Commission has compiled the list of relevant law (available here: [http://ec.europa.eu/justice/fundamental-rights/files/acquis\\_rights\\_of\\_child.pdf](http://ec.europa.eu/justice/fundamental-rights/files/acquis_rights_of_child.pdf)).

<sup>3</sup> The Dublin Regulation (604/2013/EU), the Eurodac Regulation (603/2013/EU), the Asylum procedures directive (2013/32/EU), the Reception Conditions Directive (2013/33/EU), anti - trafficking directive (2011/36/EU), the EU action plan on unaccompanied minors (COM(2010)213 final), Council Conclusions on the education of children with a migrant background (26 November 2009)

For the Children’s Rights Alliance and its members, this is a fundamental area of law that must be investigated to determine the full implications of the UK’s withdrawal from the European Union. The key would be to keep the UK in an integrated child protection system, and indeed, signed up to instruments such as Brussels II. In the event that this is not possible a British/Irish Agreement should specifically outline key commitments in the fields of child protection and family law.

The Special Rapporteur on Child Protection, Professor Geoffrey Shannon, is an expert on child protection and Brussels II. We would suggest that the Irish Government is well-placed to task the Special Rapporteur with investigating the implications of Brexit on cross-border child protection issues, the investigation and prosecution of crimes committed against children, and on custody, family law, divorce and international child abduction under Brussels II.

## **(5) Information, Networking and Exchange**

We welcome the proposal of the Minister for Children and Youth Affairs to hold a public event on 30 January 2017 on the implications of Brexit. We also welcome the Government’s and Taoiseach Enda Kenny’s leadership in spearheading Ireland’s response to Brexit. However, the effort must be much broader. Children and young people must be consulted throughout the European Union on the implications of Brexit for them and their views should be central to decision-making. Our independent human rights institutions, the Irish Human Rights and Equality Commission and the Ombudsman for Children, and their ability to work with bodies over the border and across the water will be important here. We believe that politicians in all five jurisdictions (England, Scotland, Wales, Northern Ireland and Ireland) and politicians throughout the European Union must work together to ensure the best possible outcome for children. There are also opportunities for all five jurisdictions to link with other European counterparts through key mechanisms such as Eurochild (an NGO based in Brussels, the Alliance is the lead Irish member). In short, we all have a responsibility to agree a common position and use our own avenues of influence to bed down what is best for children and young people.

## **Recommendations**

- We should push for a soft-Brexit where the UK remains in international EU agreements and instruments that are fundamental for the protection of children and young people. An additional bilateral British-EU or British-Irish Agreement can cover specific areas.
- We should argue that Northern Ireland is ‘a special case’ deserving special consideration from the European Union, the Irish, British and other EU Member States. In this regard, all aspects of the Good Friday Agreement must remain intact. The ECHR must not become a casualty of Brexit. Repeal of the ECHR and the Human Rights Act should in no way be tolerated.
- Children and young people must be consulted throughout the European Union on the implications of Brexit for them and their views should be central to decision-making.
- Child poverty should be a key focus of negotiators and a focus of a future British/Irish Agreement. Both the Irish and UK Government should commit to reducing the numbers of children living in poverty in Northern Ireland and the Republic of Ireland with clear targets for monitoring this.
- The rights of citizens in Northern Ireland to hold both Irish and British citizenship must be recognised and protected.
- The Common Travel Area should be maintained between Ireland and UK and the rights of Irish children resident in the UK, and the rights of British children resident in Ireland should be specifically protected. As a general principle in the negotiations around Brexit, children of EU nationals living in the UK, and children of British nationals living throughout the EU should not be disenfranchised by Brexit. All children have the same rights under the UN Convention on the Rights of the Child. They should not be discriminated against on the basis of their parentage.

- The Special Rapporteur on Child Protection, Professor Geoffrey Shannon should be asked to investigate the implications of Brexit on cross-border child protection issues, the investigation and prosecution of crimes committed against children and on custody, family law, divorce and international child abduction under Brussels II.

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