



Cherishing Childhood

Submission to the
Oireachtas Committee on Child Protection

August 2006

Foreword

The responsibility of the state to protect children and the development of policy and legal reform in the area of child protection is of fundamental importance and as such it should be informed by open and inclusive decision-making. A fully inclusive Committee is essential to the achievement of socially effective and realistic recommendations.

For this reason, Sinn Féin will begin by expressing our disappointment at the exclusive make-up of the Oireachtas Committee on Child Protection. In the wake of Mr. A's release the government made a commitment to the public that an "All-Party Oireachtas Committee" would be established to address all the issues arising. This Committee is not "All-Party" as initially indicated.

We are extremely disappointed in the decision of the members of the Committee to commence their work in the absence of both Sinn Féin and the Green Party which together represent a large swathe of public opinion. In the 2004 European Elections Sinn Féin won 342,256 votes representing 14.7% of the vote in Ireland making it the third largest party on the island. By limiting participation in the Committee and denying ourselves and the Green Party places on it the establishment parties are refusing the significant public that we each represent a voice in the crucial field of child protection policy development

This exclusion can only serve to limit the potentially positive progress that can be made by this Committee in terms of understanding the failures in current child protection policy and formulating constructive recommendations.

Introduction

Sinn Féin affirms that all children have the right to the protections enshrined in the United Nations Convention on the Rights of the Child and that the provisions of the Convention must underpin all laws and policies relating directly or indirectly to children.

As such, Sinn Féin believes that:

- ∞ Every child has the right to be protected from all forms of physical, emotional or mental violence, inhuman or degrading treatment or punishment, injury or abuse (including sectarian and racial abuse), neglect, bullying, maltreatment or exploitation, including sexual exploitation or abuse.
- ∞ All children born on the island are citizens, and as such have the right to remain in Ireland, in the care and company of their parent(s), regardless of the national origin of the parent(s).
- ∞ Children have the right to be heard, to be consulted in all matters affecting them and to access information about their person.
- ∞ The child's best interest will be the paramount consideration in every matter concerning the child.
- ∞ The state will provide adequate support and assistance to parents and other primary carers to enable all children, insofar as is possible, to grow up and

thrive in a stable and safe environment where the child is valued and encouraged to attain their full potential.

- ∞ All children will have access to childcare and crèche facilities of a high standard.
- ∞ Education is a right. All children will have access to free education.

Sinn Féin urges the Committee to factor the possibility of a future All-Ireland Charter of Rights into its deliberations. Civil society is already starting to pursue the recognition and delivery of rights on an all-island basis, and – together with Sinn Féin who have embarked on a course of public consultation on this issue – is well advanced on this approach. The right to be free from sexual abuse is a fundamental human right therefore the protections of this right are relevant to the equivalence provisions of the Good Friday Agreement. Strand III of the Agreement stipulates that the Irish government must introduce human rights and equality protections at least equivalent to those pertaining to the 26 counties. The Committee should keep this in mind particularly with regard to a sex offender’s register and the vetting of employees and volunteers working with children. The submission shall return to these points later.

Our submission begins by making the case for Constitutional reform, it then advocates a number of changes to criminal law and criminal justice procedures measures. Finally it makes other recommendations for the protection of children as per the terms of references of the Committee.

The desirability of amending the 1937 Constitution

Sinn Féin believes that the absence of an explicit expression of the rights of children from the 1937 Constitution is a fundamental failure that must be urgently redressed.

The Constitutional balance between the rights of the family as a unit and the rights of individual members favours the family disproportionately, in a manner potentially in conflict with the International Convention on the Rights of the Child, and the consequent implications of this for the rights of children.

We note that

“In the Kilkenny incest case Mrs Justice Catherine McGuinness suggested 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 rights of parents than to the rights of children’ the report recommended an amendment to the Constitution which would include a specific and overt declaration of the rights of born children”¹

Mrs Justice Catherine McGuinness was charged with heading up an investigation into the Kilkenny incest case to examine why action was not taken sooner by the health

¹ Kennedy, Finola. Cottage to Crèche: Family Change in Ireland. (Institute of Public Administration, 2001) page 123-124.

services to halt the serious physical and sexual abuse of a girl by her father over a 16 year period from 1976 to 1992. Over the years when the abuse occurred the victim had had a number of hospital admissions for the treatment of serious physical injuries and had been in contact with health professionals, general practitioners, social workers and public health nurses. The report noted that

“The health services are governed by the Constitution, in particular by its provisions dealing with the rights of the family, of parents and of children”².

The implication of Justice McGuinness’ comments are that the health services’ failure to make a timely intervention (i.e. to remove the child from the abusive environment) was influenced by the constitutional provisions in relation to the family which state that it is

“the natural primary and fundamental group of Society, and as moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law”³.

Because children’s rights are not specifically recognised in the constitution this creates a situation which favours maintaining the family unit rather than giving precedence to the health and well being of the child. The report further notes that

“The Constitutional right of the child seems to render it constitutionally impermissible to regard the welfare of the child as the first and paramount consideration in any dispute as to its upbringing or custody between parents and third parties such as health boards without first bringing into consideration the constitutional rights of the family”⁴.

The absence of explicit recognition of the rights of children, in a separate article, means that the Constitution is in direct conflict with human rights obligations entered into by the state. The outworking of this unacceptable anomaly is that the State is directly implicated in failing to provide the fullest international human rights protections for Irish children. The Constitution should both reflect and guarantee the fullest protection of children's rights as decreed in international law.

Sinn Féin argued in a submission to the All-Party Oireachtas Committee on the Constitution in January 2005 that the Constitution should be amended to include an article on the rights of the child. The highly respected and experienced children’s charity Barnardos also proposed that the Constitutional be amended⁵. The Committee on the Constitution’s report fell far short of what we had advocated and we sincerely hope that this Committee will not make the same mistake.

The Oireachtas All-Party Committee on the Constitution concluded that a new section should be inserted in Article 41 dealing with the rights of children as follows:

² Kilkenny Incest Investigation. May 1993 Page 25.

³ Article 41.1.1

⁴ Kilkenny Incest Investigation. Page 31.

⁵ ‘Submission by Barnardos to the Oireachtas Committee on the Constitution’, February 2005.

“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 interest of the child.”

This falls far short of what we and many others, including Barnados, the Law Society and, importantly, the Ombudsman for Children, were seeking.

We had argued in our submission that the balance between the rights of the family as a unit and the rights of individual members favours the family disproportionately, in a manner potentially in conflict with the International Convention on the Rights of the Child, and the consequent implications of this for the rights of children – in particular in relation to child protection. We cannot see how the proposed wording addresses this issue highlighted specifically in the Kilkenny Incest Report as noted in our submission while the constitution continues to state in article 41.1.1 that *“the natural primary and fundamental group of Society, and as moral institution possessing inalienable and imprescriptable rights, antecedent and superior to all positive law”* and while it continues to lack a specific comprehensive article on the rights of the child.

The position adopted by the Committee was stringently opposed by Sinn Féin. The Fianna Fáil, Fine Gael, PD majority on the committee coalesced to oppose a comprehensive article on the rights of the child.

Sinn Féin proposes that the rights of the child be inserted as a new article as follows:

- 1. The State guarantees to cherish all the children of the nation equally. All children, in addition to the individual rights guaranteed to all persons in this Constitution, are entitled to the special care and assistance essential to childhood. Each child has the right to reach his or her potential as an individual and as a member of the community.*
- 2. The State shall ensure, as far as is possible, that every child, for the full and harmonious development of his or her personality, shall grow up in a family environment, in an atmosphere of happiness, love and understanding.*
- 3. The State shall 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 responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.*
- 4. Children have the right to be heard, to be consulted in all matters affecting them and to access information about their person.*
- 5. In all actions concerning children undertaken by or on behalf of the State the best interests of the child shall be the primary consideration.*

Criminal Law

Sinn Féin facilitated the passage of the Criminal Law (Sexual Offences) Act 2006 as an emergency measure. However we are of the view that the situation remains unsatisfactory. In particular we hold that the current situation whereby, for example, a 16-year-old boy who has consensual sexual relations with a 16-year-old girl is guilty

of a crime is untenable. Sexual assault and exploitation involve an abuse of power. The relevant criminal law must be amended to distinguish between that and the consensual sexual activity between young people where no such abuse of power occurs. Unnecessarily criminalising children flies in the face of the most basic guiding child protection principles. It is imperative that the Committee seek expert legal advice and formulate recommendations to address this issue and the related gender inequality that the Criminal Law (Sexual Offences) Act 2006 involves.

The Punishment of Incest Act 1908 should be amended to reflect the diversity in modern family forms.

The Rape Crisis Network Ireland have produced a series of recommendations for reform of criminal law as it relates to sexual offences and the Committee should give these serious consideration⁶.

Criminal Justice Procedures

The Garda Siochana are the only agency in the state with statutory responsibility for the investigation of child abuse. As such it is imperative that each and every Garda receives comprehensive child protection training to a level adequate to equip them for dealing with child protection issues. Currently only a select few Gardai have received such training. This training should be compulsory for all new and existing Gardai, it should be developed, resourced and rolled out as a matter of urgency. In addition at least one Garda in each policing district should receive specialised training in responding to sexual abuse cases and these Gardai should be responsible for the investigation of offences involving sexual violence.

Due to the nature of the impact of sexual offences on victims, both children and adults, the justice system should include every measure possible that avoids further distressing victims and enhances their recovery. In the courts this should include video link facilities, screens, a court accompaniment service and separate waiting areas etc.

The Rape Crisis Network Ireland, with much experience in the field, have argued strongly on the need for specialised training for the legal profession⁷. A core of prosecutors should be established who should undergo specialised training on sexual violence and on the trial of sexual offences. The prosecutions of such offences should be undertaken by these prosecutors. Likewise, the judiciary should undergo compulsory specialised training.

Programmes for the rehabilitation of Sex Offenders should be resourced so that where appropriate when sentencing judges can include an obligation to undertake same. And the Probation and Welfare Service should be resourced to undertake pre-release risk assessments and post-release supervision of sex offenders.

⁶ RCNI 'Agenda for Justice: Towards Ending Injustice for Survivors of Sexual Violence', November 2005.

⁷ Ibid.

Procedures should be put in place to ensure that victims and/or their families are notified of the release of the perpetrator and of any conditions attached.

The Sex Offenders Act 2001 did not introduce a register comparable to the centralised lists that exist in the 6 counties. The operation of this Act should be urgently reviewed and an effective all-Ireland sex offenders register established without delay.

There is a need for the Court Service to gather and publish a useful breakdown of statistics relating to sentencing patterns for sexual offences. Those currently available are far from adequate.

The Rape Crisis Network Ireland have also produced a series of recommendations for reform of criminal justice procedures as they relate to sexual offences and the Committee should give these serious consideration⁸.

Age of consent

CSO figures from 2005 provide an indication of the numbers of children below the age of consent who are sexually active. In 2005, babies were born to 224 girls under the age of consent i.e. 17. 42 of these births were to girls aged 15 or younger. Under the current law the 224 fathers, even if they are under-age themselves and no abuse of power has occurred, are potentially guilty of a serious criminal offence by reason only of having engaged in sexual acts. Of course these CSO figures refer only to sexual acts resulting in pregnancies – the number of children potentially criminalised under the existing system is vastly greater. Clearly there is a gap between the age of consent for the purposes of criminal law and the social reality that exists.

Sinn Féin welcomes the appointment of the two Child Protection Rapporteurs Professor Finbarr McAuley and Geoffrey Shannon who are to examine legal developments in other countries and consult organisations and young people on the age of consent. Sinn Féin would urge that this consultation process be both expansive, representative and inclusive and that due regard be given to the views of young people and to the realities in Ireland today.

Other Recommendations for the Protection of Children

Children First

In 1999 the Department of Health and Children published ‘Children First: National Guidelines for the Protection and Welfare of Children’. The guidelines were republished last year and they constitute an overview of the state’s working procedures for the protection of children from abuse. Children First represents a good model for the protection of children by this state but only if it is fully resourced and implemented.

Currently, as a result of under-resourcing and staffing shortages, it is not being implemented in all Health Service Executive areas. Implementation failures have

⁸ Ibid.

been identified by a number of Child Protection Officers (CPO). The introduction of the post of CPO in the youth work sector resulted from the recommendations of Children First, which included a role description. It is the responsibility of these CPOs to ensure child protection concerns in their organisations are reported to the relevant authorities, so they are uniquely placed to identify deficiencies in the implementation of the guidelines by the key state bodies.

The issues identified by these CPOs and relayed to Sinn Féin include:

- ∞ inabilities to make contact with the ‘designated persons’ in the Health Service Executive and the frequent failure of the designated persons to return calls;
- ∞ mis-information from social work department staff;
- ∞ lack of follow-through despite explicit provisions for same;
- ∞ great pressure/onus being placed on CPOs by social workers and the need for consistent boundaries between the two to be observed;
- ∞ lack of consistency in terms of responses between individual social workers and across HSE areas; and
- ∞ difficulties assisting children and their families to access practical supports.

These issues are resulting in real and current failures to protect children and this constitutes ongoing neglect of children by the state. This inexcusable failure on the part of the government to implement its own guidelines is not the fault of social workers rather it is the decision at government level to under resource and over-stretch these hard-working and caring individuals beyond their limits.

The ‘Children First: National Guidelines for the Protection and Welfare of Children’ must be fully resourced and implemented so that all the agencies covered including the Garda Síochána, the Health Service Executive, schools, voluntary and youth work organisations are enabled to fulfil the role outlined for them. Sinn Féin urges the Committee to demand the full resourcing and implementation of Children First. To help ensure that this happens Sinn Féin also urges the Committee to advocate that the Children First National Guidelines be placed on a statutory footing. Both Barnardos⁹ and the ISPCC¹⁰ have also argued the case for this move.

Garda vetting

In this state for every employee working with children there are at least 20 volunteers. In September 2004 Minister of State with Special Responsibility for Children Brian Lenihan announced that the Garda Síochána’s vetting services would be extended to cover volunteers who work with children. This promise has yet to be delivered. Indeed in November 2005, in the wake of the Ferns report, Fianna Fail Minister for Education Mary Hanafin indicated that volunteers will not be vetted and the reasoning she offered was to protect volunteerism. This notion is at stark odds with the reality that the main source of demand for vetting of volunteers is the voluntary sector itself. The government’s ongoing failure to deliver this essential effort towards the prevention of child abuse is simply unacceptable.

⁹ Pers. Com.

¹⁰ ISPCC ‘Another Brick from the Wall’, November 2005.

Sinn Féin proposes that Garda vetting be made available to cover all adults working with substantial access to children including the voluntary sector, as a matter of urgency and that adequate resources be provided to ensure the vetting is conducted in a timely manner.

Education and awareness

The 1937 Constitution provides that all offences must be clear and foreseeable. In the spirit of this there is a duty on the government to take steps to ensure that the public and young people in particular are aware of the age of consent for the purposes of criminal law. The Committee should examine approaches to realising this e.g. a public advertising campaign.

Sinn Féin also proposes that age appropriate education be provided in schools to all children to ensure that every child understands from a very young age what is acceptable behaviour and to empower children to assert their right to be free from abuse.

Child trafficking and asylum seeking children

A 2005 'Trafficking in Persons' report has estimated that approximately 600,000 to 800,000 men, women, and children are trafficked across international borders each year. Approximately 80 per cent are women and girls and up to 50 per cent are minors. Trafficking for sexual exploitation of women and children must not be seen simply as a problem faced elsewhere in the world, it is happening here.

Sinn Féin is shocked by the state's deplorable treatment of unaccompanied minors entrusted to its care. All children regardless of their, or their parents, country of origin have the right to be protected from harm. According to media reports since 2000 at least 250 asylum seeking children in Ireland have gone missing. Many of these were in Health Board/Health Service Executive care. Research from other countries demonstrates a link between human trafficking, children going missing from care and sexual exploitation. Some of these children are still missing with little or no response from the authorities. Even the Garda missing persons list does not include all of these children.

The Government have been unable to account for this failure and refuse to answer questions on the matter. These children, who are often in need of intensive social work interventions, are frequently housed in private hostel accommodation that falls outside the remit of the Social Services Inspectorate. The HB/HSEs have made numerous requests for further resources to address this situation, which they recognise as grossly inadequate care. Successive Ministers for Health repeatedly refused these requests.

Sinn Féin urges the Committee to call on the Irish and British Governments to accede to the Palermo Protocol - that is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organised Crime (2000).

Sinn Féin urges the Committee to demand that the Irish Government take all appropriate emergency measures to address the shamefully high rate of disappearance of unaccompanied children from Health Service Executive care.

Sinn Féin proposes that serious consideration be given to the recommendations contained in the International Organisation for Migration report *Trafficking in Unaccompanied Minors in Ireland* (2004) including:

- Unaccompanied children should not be placed in centres outside the provisions of the 1991 Child Care Act;
- Greater resources should be made available to social work departments to reduce the unaccompanied child to social worker ratio; and,
- The introduction of measures to monitor and ensure the ongoing welfare of repatriated children.

Protecting deported children

The decision of the government to refuse the non-EU national parents of Irish children the right to reside in the state has meant that numbers of Irish children have been effectively forced to go to their parents' country of origin. The Committee should explore mechanisms by which the state can ensure that the rights of these children are protected in those countries.

Other forms of child abuse

Child protection must not be limited to protecting children from sexual abuse. It is incumbent upon the state to ensure the well being of the whole child. And the Committee should examine a broad range of issues determining the well-being of children in Ireland. In fact the most frequent instances of child abuse involve neglect.

Neglect is often, but by no means always, linked with poverty. Published in 2005, the EU Survey on Income and Living Conditions shows that one in seven children in the 26 Counties - almost 150,000 - are living in consistent poverty. They suffer economic hardship on a weekly basis that excludes them from the quality of life and the opportunities for their future enjoyed by a majority of children. A further significant minority of 242,000 children - some 23.9% of young people in the State - are at risk of poverty (otherwise known as relative income poverty). They live in households which have less than 60% of the State-wide median income.

To go some way towards addressing this poverty Sinn Féin proposes:

- ∞ Major early childhood care and education programme, including Universal pre-school session of 3.5 hours per day, five days a week for all children in the year before they go to school
- ∞ Increase maternity leave to 26 weeks paid, 26 weeks unpaid
- ∞ Increase revenue for Equal Opportunities Childcare Programme
- ∞ Improved standards and inspection of childcare facilities and national pay scale for childcare workers
- ∞ Increase Child Benefit
- ∞ Extend medical card cover to all under 18
- ∞ Range of measures to address educational disadvantage and ensure equality of access
- ∞ Funding and strategy to help prevent anti-social behaviour by young people.

- ∞ Tax reform including abolition of speculator-friendly/property-based tax breaks.

Youth Justice

In the area of Youth Justice while advances have been made in terms of child protection commitments for example in the Children Act 2001 many of the commitments contained in this act have recently been rolled back on via the Criminal Justice Act 2006. This situation must be reversed.

The state's report (July 2005) to the UN Committee on the Rights of the Child on its implementation of that Convention the government disingenuously stated: "*The most important development on juvenile justice comes with the enactment of the Children Act, 2001. This represents a major shift in how children in the juvenile justice and welfare systems will be treated.*" The central principles underpinning the Children Act 2001 are prevention, diversion, rehabilitation, restorative justice, and detention as a punishment of last resort. In Sinn Féin's view the Criminal Justice Act 2006 rolls back on the crucial child protection commitments made in the Children Act 2001. Many of the positive provisions of the Children Act 2001 will not in fact govern how children in this state will be treated.

For example, the Children Act 2001 prohibited the reporting of personal information about children facing criminal proceedings that might lead to the identification of a child in question. The ASBOs provisions contained in the Criminal Justice Act 2006 involve the elimination of these protections by allowing the court to lift the reporting restriction in certain circumstances. This contravenes Article 40 of the Convention on the Rights of the Child which recognises the absolute right of the child to his or her privacy to be protected at all stages of proceedings. It is also runs contrary to Rule 8 of the Beijing rules which stresses the need to protect the privacy of young offenders and prohibits the publication of any information that might identify the child. This gives rise to a variety of child protection concerns.

In its concluding observations in 1996 the UN Committee on the Rights of the Child criticised this state for its low age of criminal responsibility. Following this the government made a commitment to raise the age of criminal responsibility from 7 to 12 years. This commitment was expressed in the Children Act 2001 which made provisions for the reform. The government refused to operationalise this part of the Act, however. And now the Criminal Justice Act 2006 sets the age of criminal responsibility for serious crimes at 10 years – effectively lowering the age of criminal responsibility for these crimes by 2 years. The Irish Youth Justice Alliance have asked the question "*what will be achieved by bringing a child of ten years to court, detaining him/her with older teenagers without treatment, therapy or re-education?*"¹¹ We support the Alliance's argument that such children need the support of specially trained professionals and of rehabilitative and therapeutic programmes to address their complex needs and prevent them from re-offending.

The Criminal Justice Act 2006 also shifts responsibility for the detention of children under 16 years from the Department of Education and Science to the Department of

¹¹ IJYA 'Submission to Oireachtas Committee on Justice, Equality, Defence and Women's Rights', March 2006.

Justice, Equality and Law Reform. While we welcome the outcome that all children under 18 will fall under one department we believe the Department of Justice to be the wrong choice. The 'Report on the Youth Justice Review' published by the Department of Justice last July states that the service with responsibility for children in detention "*would be best located in a care and social services setting, as is the practice in many other jurisdictions*". The government must resource a more appropriate Department to undertake this responsibility, for example the Department of Health and Children.

The relevant provisions of the Criminal Justice Act 2006 run counter to the central logic of the Children Act 2001 which by the Minister of State for Children's own admission is an Act that "*is regarded as setting a framework for a modern and progressive youth justice system [and] reflects best international practice*". It took thirty years to draft the Children Act 2001, the government refused to resource it for five years and then rolled back on the child protection commitments contained. This situation must be rectified.

A further issue of grave concern to Sinn Féin is the continued use of Saint Patrick's Institution for the detention of children. The use of St. Pat's has been prolonged despite the fact that the practice of detaining children in St. Pat's runs contrary to international human rights provisions and universally accepted child protection guidelines. And this fact has been identified by the Inspector of Prisons and the Council of Europe Committee for the Prevention of Torture. Indeed the Whittaker Report on St. Pat's stated over 10 years ago "*... that rehabilitation is not possible as the physical and environmental conditions are such as to nullify any personal development programmes. The facilities and services required could not be provided even in a renovated St. Patricks*".

Sinn Féin proposes that the Committee demand the urgent closure of St. Patrick's Institution.

Conclusion

There are daily reminders of the threat posed by sexual predators to our children. A certainty stemming from the release of Mr. A, the Ferns Inquiry and previous inquiries in the 1990's is that lessons must be learnt and commitments fulfilled if children are to be protected.

Children's rights are human rights. The Good Friday Agreement obliges the Irish Government to introduce protections at least equivalent to those in the Six Counties. A number of measures were introduced in the Six Counties in the wake of the Ian Huntley inquiry including the Protection of Children and Vulnerable Adults Order. This puts an onus on the Irish Government to introduce and strengthen similar measures here. But ultimately we should be looking to harmonise upwards and introduce an all-Ireland child protection framework that is evidence-based, human rights compliant and reflective of international best practice. To this end children's organisations have been calling for an all-Ireland conference on child protection.

Amongst other measures, this Sinn Féin submission advocates constitutional reform, specialised training for Gardaí, prosecutors and the judiciary, an effective all-Ireland sex offenders register with pre-release risk assessment and post release supervision. The Children First National guidelines must be fully resourced, implemented and placed on a statutory footing. Garda vetting must be put in place and adequately resourced for all employees and volunteers working with children. We are also calling for a major consultation initiative on the age of consent that gives due consideration to the views of young people themselves and that has regard to the realities in Ireland today and the experiences of other countries.

Of course sexual abuse is not the only form of child abuse. In fact the most frequent instances of child abuse involve neglect and we also propose a range of measures that would go some way towards addressing the unjustifiably high rate of child poverty in the Twenty Six Counties.