

## Information Note on Global Constitutional Provisions for Children

8 October 2009

This Briefing Note contains extracts from 24 constitutional texts from countries around the world regarding their provisions on children's rights. National constitutional texts, among other things, provide for a range of fundamental rights belonging to individuals, including children. Many also provide express rights for children and families.

Although this list is by no means exhaustive, it provides a flavour of how issues relating to children's rights are addressed by other countries. The extracts below, from a range of constitutional texts, include provisions relating to the relationship between the state, family and the child. Other provisions covered relate to child protection, children in care, adoption, child and family support, education, and health. In addition, provisions address issues relating to marriage and the non-discrimination of children from non-marital families. Some constitutions address issues of particular pertinence to their country or region, such as armed conflict or child labour.

In Ireland, the Joint Committee on the Constitutional Amendment on Children is currently debating strengthening children's rights in the Constitution and is due to issue their final report on 16 October 2009. This Briefing Note highlights practice in other jurisdictions and how countries across the globe have grappled with similar issues to those under discussion by the Joint Committee.

It should be noted that many of the jurisdictions listed below operate under a civil law system; Ireland on the other hand, operates under a common law system. The alphabetical list below contains direct quotations. Information for this paper was primarily sourced from <http://confinder.richmond.edu/> It should also be noted that the wording contained in these extracts is not endorsed by the Alliance. The aim of the Information Note is to draw attention to how other Constitutions address children's rights.

### **BULGARIA – Constitution of the Republic of Bulgaria (1991)**

#### Chapter 2: Fundamental Rights and Obligations of Citizens

##### Article 47: Parents, Children

- 1) The raising and upbringing of children until they come of legal age shall be a right and obligation of their parents and shall be assisted by the state.
- 2) Mothers shall be the object of the state and shall be guaranteed prenatal and postnatal leave, free obstetric care, alleviated working conditions, and other social assistance.
- 3) Children born out of wedlock shall enjoy equal rights with those born in wedlock.
- 4) Abandoned children shall enjoy the protection of the state and society.
- 5) The conditions and procedure for the restriction or suspension of parental rights shall be established by law.

### **CONGO – Constitution for the Republic of Congo (2006)**

#### Title II: Fundamental Rights and Liberties

##### Article 37: Education

- 1) Every person shall have the right to education. All instruction shall be placed under the surveillance and control of the State. The State shall strive for equal access to education and professional instruction.

- 2) Public instruction shall be free. Fundamental instruction shall be obligatory.
- 3) Scholarship shall be obligatory until the age of sixteen years.
- 4) The right to create private schools shall be guaranteed. Private school shall be submitted to the approval of the State and regulated by law.

#### Article 38: Family

- 1) The State shall have the obligation to assist the family in its mission as guardian of the morality and traditional values recognized by the community.
- 2) The State shall have the duty to assure the protection of the Rights of the mother and infant as stipulated in the International Declarations and Conventions.

#### Article 39: Marriage

- 1) Marriage and the family shall be under the protection of the State. The law shall fix the juridical conditions of marriage and the family.
- 2) Legal marriage shall only be contracted before the organs of the State. It shall only be concluded with the free and clear consent of the future spouses.

#### Article 40: Children, Parents, Child Equality

- 1) Parents shall have rights and responsibilities regarding their children. Children shall have rights and duties toward their parents.
- 2) Children, whether born in or out of wedlock, shall have the same rights.

#### Article 41: Child Education, Child Support

- 1) Children shall only be separated from their family, which shall be responsible for their education, in virtue of the law.
- 2) The mother and the child shall have the right to aid and assistance of the State.

#### Article 42: Child Protection, Child Nationality

- 1) Every child, without a single discrimination based on race, color, sex, language, religion, national, social or ethnic origin, fortune or birth, shall have the right, on the part of his family, society, and the State to measures of protection which stem from his condition as a minor.
- 2) Every child shall be declared to the Civil State after his birth within a time period fixed by law and have a name.
- 3) Every child shall have the right to acquire a nationality.

#### Article 43: No Child Exploitation or Labor

- 1) The State shall protect all children and adolescents from economic and social exploitation.
- 2) Child labor of those under 16 years shall be prohibited.

#### Article 44: Youth Employment

- The act of employing those under 18 years of age in those occupations of a nature compromising their morality or their health putting their lives in danger or hindering their normal development shall be sanctioned by law.

#### Article 45: Parental Liabilities

- The law shall sanction insufficiencies of parents in the matter of education and the protection of their children.

<b>CZECH REPUBLIC – Constitution of the Czech Republic (1992)</b>
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### Chapter 1 – Basic Provisions

#### Article 10: Human Rights Treaties

- Ratified and promulgated international accords on human rights and fundamental freedoms, to which the Czech Republic has committed itself, are immediately binding and are superior to law.

## **ESTONIA – The Constitution of the Republic of Estonia (1992)**

### Chapter 2 – Fundamental Rights, Liberties, and Duties

#### Article 27: Protection of Family

- 1) The family being fundamental for the preservation and growth of the nation, and as the basis for society, shall be protected by the state.
- 2) Spouses shall have equal rights.
- 3) Parents shall have the right and the responsibility for the raising and care of their children.
- 4) The protection of parents and children shall be determined by law.
- 5) The family shall be responsible for the care of dependent members.

## **FINLAND – Constitution of the Finland (1999)**

### Chapter 2 Basic rights and liberties

#### Section 6 Equality

- 1) Everyone is equal before the law.
- 2) No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.
- 3) Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development.
- 4) Equality of the sexes is promoted in societal activity and working life, especially in the determination of pay and the other terms of employment, as provided in more detail by an Act.

## **GERMANY – Basic Law for the Federal Republic of Germany (1949)**

### Chapter 1 – Basic Rights

#### Article 6: Marriage and the family; children born outside of marriage

- 1) Marriage and the family shall enjoy the special protection of the state.
- 2) The care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them. The state shall watch over them in the performance of this duty.
- 3) Children may be separated from their families against the will of their parents or guardians only pursuant to a law, and only if the parents or guardians fail in their duties or the children are otherwise in danger of serious neglect.
- 4) Every mother shall be entitled to the protection and care of the community.
- 5) Children born outside of marriage shall be provided by legislation with the same opportunities for physical and mental development and for their position in society as are enjoyed by those born within marriage.

## **GHANA – The Constitution of the Republic of Ghana (1992)**

### Chapter 5 – Fundamental Rights and Freedoms

#### Article 28: Children's Rights

- 1) Parliament shall enact such laws as are necessary to ensure that -
  - a) every child has the right to the same measure of special care, assistance and maintenance as is necessary for its development from its natural parents, except where those parents have effectively surrendered their rights and responsibilities in respect of the child in accordance with law;
  - b) every child, whether or not born in wedlock, shall be entitled to reasonable provision out of the estate of its parents;

- c) parents undertake their natural right and obligation of care, maintenance and upbringing of their children in co-operation with such institutions as Parliament may, by law, prescribe in such manner that in all cases the interest of the children are paramount;
  - d) children and young persons receive special protection against exposure to physical and moral hazards; and
  - e) the protection and advancement of the family as the unit of society are safeguarded in promotion of the interest of children.
- 2) Every child has the right to be protected from engaging in work that constitutes a threat to his health, education or development.
  - 3) A child shall not be subjected to torture or other cruel, inhuman or degrading treatment or punishment.
  - 4) No child shall be deprived by any other person of medical treatment, education or any other social or economic benefit by reason only of religious or other beliefs.
  - 5) For the purposes of this article, "child" means a person below the age of eighteen years.

### **HUNGARY – The Constitution of the Republic of Hungary (1949)**

#### Chapter 1 — General Provisions

##### Article 16

- The Republic of Hungary pays special attention to the secure existence, education and training of young people and protects the interests of youth.

### **INDIA – Constitution of India (1950)**

#### Part III: Fundamental Rights

##### Article 24: Prohibition of employment of children in factories, etc.

- No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

##### Article 29: Protection of interests of minorities

- 1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
- 2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

### **ITALY – The Constitution of the Italian Republic (1948)**

#### Basic Principles

##### Article 2: Human Rights

- The Republic recognizes and guarantees the inviolable rights of man, both as an individual and as a member of the social groups in which his personality finds expression, and it imposes the performance of unalterable political, economic, and social duties.

#### Title II — Ethical and Social Relations

##### Article 30: Education

- 1) It is the duty and right of parents to support, instruct and educate their children, even those born out of wedlock.
- 2) The law states the way in which these duties shall be fulfilled should the parents prove incapable.
- 3) The law ensures full legal and social protection for children born out of wedlock consistent with the rights of the members of the legitimate family.
- 4) The law lays down rules and limitations for ascertaining paternity.

#### Article 31: Family

- 1) The Republic facilitates, by means of economic and other provisions, the formation of the family and the fulfillment of the tasks connected therewith, with particular consideration for large families.
- 2) It safeguards maternity, infancy, and youth, promoting and encouraging institutions necessary for such purposes.

### **LATVIA – Constitution of the Republic of Latvia (1922)**

#### Chapter VIII — Fundamental Human Rights

##### Article 110: Marriage, Family, Parents, Children

- The State shall protect and support marriage, the family, the rights of parents and rights of the child. The State shall provide special support to disabled children, children left without parental care or who have suffered from violence.

### **LITHUANIA – Constitution of the Republic of Lithuania (1992)**

#### Chapter 3 — Society and the State

##### Article 38

- The family shall be the basis of society and the State. Family, motherhood, fatherhood and childhood shall be under the protection and care of the State. Marriage shall be concluded upon the free mutual consent of man and woman. The State shall register marriages, births, and deaths. The State shall also recognise church registration of marriages. In the family, the rights of spouses shall be equal. The right and duty of parents is to bring up their children to be honest people and faithful citizens and to support them until they come of age. The duty of children is to respect their parents, to take care of them in their old age, and to preserve their heritage.

##### Article 39

- The State shall take care of families that raise and bring up children at home, and shall render them support according to the procedure established by law. The law shall provide to working mothers a paid leave before and after childbirth as well as favourable working conditions and other concessions. Under age children shall be protected by law.

### **NAMIBIA – The Constitution of the Republic of Namibia (1990)**

#### Chapter III — Fundamental Human Rights and Freedoms

##### Article 15: Children's Rights

- 1) Children shall have the right from birth to a name, the right to acquire a nationality and, subject to legislation enacted in the best interests of children, as far as possible the right to know and be cared for by their parents.
- 2) Children are entitled to be protected from economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education, or to be harmful to their health or physical, mental, spiritual, moral, or social development. For the purposes of this paragraph children shall be under the age of sixteen (16) years.
- 3) No children under the age of fourteen (14) years shall be employed to work in any factory or mine, save under conditions and circumstances regulated by Act of Parliament. Nothing in this paragraph shall be construed as derogating in any way from Paragraph (2).
- 4) Any arrangement or scheme employed on any farm or other undertaking, the object or effect of which is to compel the minor children of an employee to work for or in the interest of the employer of such employee, shall for the purposes of Article 9 be deemed to constitute an arrangement or scheme to compel the performance of forced labour *{labor}*.
- 5) No law authorising preventive detention shall permit children under the age of sixteen (16) years to be detained.

## **PAKISTAN – The Constitution of Pakistan (1973)**

### Part II: Fundamental Rights and Principles of Policy; Chapter 2: Principles of Policy

#### Article 35: Protection of family, etc.

- The State shall protect the marriage, the family, the mother and the child.

#### Article 36: Protection of minorities.

- The State shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services.

## **PHILIPPINES – The 1987 Constitution of the Republic of the Philippines (1987)**

### Article II: State Policies

Section 13: The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

### Article XV: The Family

Section 1: The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

Section 2: Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

Section 3: The State shall defend:

- (1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood;
- (2) The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development;
- (3) The right of the family to a family living wage and income; and
- (4) The right of families or family associations to participate in the planning and implementation of policies and programs that affect them.

Section 4: The family has the duty to care for its elderly members but the State may also do so through just programs of social security.

## **POLAND – The Constitution of the Republic of Poland (1997)**

### Chapter 2 — The Freedoms, Rights, and Obligations of Persons and Citizens Personal Freedoms and Rights

#### Article 48

- 1) Parents shall have the right to rear their children in accordance with their own convictions. Such upbringing shall respect the degree of maturity of a child as well as his freedom of conscience and belief and also his convictions.
- 2) Limitation or deprivation of parental rights may be effected only in the instances specified by statute and only on the basis of a final court judgment.

Section 2 — Rights and Safeguards; Chapter I—Personal Rights, Freedoms, and Safeguards

Article 36: Family, Marriage, and Filiation

- 1) Everyone has the right to found a family and marry on terms of complete equality.
- 2) The requirements for and effects of marriage and its dissolution by death or divorce are regulated by law without distinction as to the form in which the marriage is or was contracted.
- 3) Spouses have equal rights and duties with respect to their civil and political capacity as well as the maintenance and upbringing of their children.
- 4) Children born out of wedlock may not for that reason be the subject of discrimination; discriminatory designations of filiation may not be used by the law or by Government departments.
- 5) Parents have the right and the duty to bring up and maintain their children.
- 6) Children are not to be separated from their parents unless the latter fail to perform their fundamental duties towards the former, and then only by judicial decision.
- 7) Adoption is regulated and protected in accordance with the law.

Chapter II — Social Rights and Duties

Article 67: Family

- 1) The family, as a fundamental element of society has the right to protection by society and the State and to the creation of all conditions permitting the personal self-fulfillment of its members.
- 2) The State has the duty of protecting the family, in particular by:
  - a) Promoting the social and economic independence of family units;
  - b) Promoting the establishment of a national network of assistance to mothers and children, a national network of day care centers and facilities for aiding the family, and a policy for the old;
  - c) Cooperating with parents in the education of their children;
  - d) Promoting by all necessary means the wider knowledge of family planning methods and setting up legal and technical structures permitting planned parenthood;
  - e) Adjusting taxes and social security benefits in line with family responsibilities;
  - f) Determining, after hearing associations representing families, and carrying out an overall and integrated family policy.

Article 69: Childhood

- 1) Children have the right to the protection of society and the State with a view to their full development.
- 2) Children, particularly orphans and abandoned children, are entitled to special protection by society and the State against any form of discrimination and oppression and against abuses of authority in the family and other institutions.

Article 70: Young People

- 1) Young people, especially young people at work, receive special protection for the purpose of effective enjoyment of their economic, social, and cultural rights, notably with respect to:
  - a) Education, vocational training, and culture;
  - b) Access to a first job, work, and social security;
  - c) Physical education and sports;
  - d) The use of leisure-time.
- 2) The prime objective of youth policy is to develop in young people their character, a liking for unfettered creation, and a sense of service to the community, as well as to create the prerequisites leading to their effective integration in active life.
- 3) In conjunction with the families, schools, businesses, neighborhood organizations, cultural associations, and trusts, recreational and cultural groups, the State promotes and assists the youth organizations in pursuing the above-mentioned objectives, as well as the international exchanges of young people.

## **ROMANIA – The Constitution of Romania (1991)**

### Title II – Fundamental Rights, Freedoms, and Duties; Chapter 1—General Provisions

#### Article 20: Precedence of Human Rights

- 1) Constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to.
- 2) Where inconsistencies exist between the covenants and treaties on fundamental human rights Romania is a party to and internal laws, the international regulations shall take precedence.

#### Article 45: Children, Youths

- 1) Children and the young shall enjoy special protection and assistance in the pursuit of their rights.
- 2) The State shall grant state allowances for children and benefits for the care of sick or disabled children. Other forms of social protection for children and the young shall be established by law.
- 3) The exploitation of minors, their employment in activities that might be harmful to their health or morals, or endanger their life and normal development are prohibited.
- 4) Minors under the age of fifteen may not be employed for any paid labor.
- 5) The public authorities are bound to contribute to secure the conditions towards the free participation of young people in the political, social, economic, cultural, and sporting life of the country.

## **SINGAPORE – The Constitution of the Republic of Singapore (1963)**

### Part X: Citizenship: Title 1 – Acquisition

#### Article 124: Registration of Minors

- 1) The Government may if satisfied that a child under the age of 21 years
  - a) is the child of a citizen of Singapore; and
  - b) is residing in Singapore, cause such child to be registered as a citizen of Singapore on application being made therefor in the prescribed manner by the parent or guardian of such child.
- 2) The Government may, in such special circumstances as it thinks fit, cause any child under the age of 21 years to be registered as a citizen of Singapore.

## **SLOVENIA – The Constitution of the Republic of Slovenia (1991)**

### Part II – Human Rights and Fundamental Freedoms

#### Article 56: Rights of Children

- 1) Children shall enjoy special protection and care. Children shall enjoy human rights and fundamental freedoms consistent with their age and maturity.
- 2) Children shall be guaranteed special protection from economic, social, physical, mental or other exploitation and abuse. Such protection shall be regulated by law.
- 3) Children and minors who are not cared for by their parents, who have no parents or who are without proper family care shall enjoy the special protection of the state. Their position shall be regulated by law.

## **SOUTH AFRICA – Constitution of the Republic of South Africa (1996)**

### Chapter 2 – Bill of Rights

#### Article 28: Children

- 1) Every child has the right -
  - a) to a name and a nationality from birth;

- b) to family care or parental care, or to appropriate alternative care when removed from the family environment;
  - c) to basic nutrition, shelter, basic health care services and social services;
  - d) to be protected from maltreatment, neglect, abuse or degradation;
  - e) to be protected from exploitative labour practices;
  - f) 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;
  - g) 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;
  - h) 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
  - i) 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.

<b>SPAIN – Spanish Constitution (1978)</b>
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#### Title 1 – Basic Rights and Duties

##### Article 10: Human Dignity, Human Rights

- 1) The dignity of the person, the inviolable rights which are inherent, the free development of the personality, respect for the law and the rights of others, are the foundation of political order and social peace.
- 2) The norms relative to basic rights and liberties which are recognized by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements on those matters ratified by Spain.

#### Chapter 3 – Guiding Principles of Economic and Social Policy

##### Article 39: Family, Children

- 1) The public authorities shall assure the social, economic, and legal protection of the family.
- 2) The public authorities shall assure the complete protection of children, who are equal before the law regardless of their parentage and regardless of the marital status of their mothers. The law shall make it possible to investigate paternity.
- 3) Parents must provide their children, born in or out of wedlock, with assistance of every kind during the time they are minors and in other cases where it is legally proper.
- 4) Children shall enjoy the protection provided in international agreements which safeguard their rights.

##### Article 48: Participation of Youths

- The public authorities shall promote the conditions for the free and effective participation by the young in political, social, economic and cultural development.

<b>TURKEY – Constitution of the Republic of Turkey (1982)</b>
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#### Chapter 3 – Social and Economic Rights and Duties

##### Article 58: Protection of the Youth

- 1) The state shall take measures to ensure the training and development of the youth into whose keeping our state, independence, and our Republic are entrusted, in the light of contemporary science, in line with the principles and reforms of Atatürk, and in opposition to ideas aiming at the

- destruction of the indivisible integrity of the state with its territory and nation.
- 2) The state shall take necessary measures to protect youth from addiction to alcohol and drugs, crime as well as gambling, and similar vices, and ignorance.

Article 61: Persons Requiring Special Protection in the Field of Social Security

- 1) The state shall protect the widows and orphans of those killed in war and in the line of duty, together with the disabled and war veterans, and ensure that they enjoy a decent standard of living.
- 2) The state shall take measures to protect the disabled and secure their integration into community life.
- 3) The aged shall be protected by the state. State assistance to the aged, and other rights and benefits shall be regulated by law.
- 4) The state shall take all kinds of measures for social resettlement of children in need of protection.
- 5) To achieve these aims the state shall establish the necessary organisations or facilities, or arrange for their establishment by other bodies.

<b>UGANDA – The Constitution of the Republic of Uganda (1995)</b>
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Chapter 4 – Human Rights and Freedoms

Article 43: Rights of children

- 1) Subject to laws enacted in their best interests, children shall have the right to know and be cared for by their parents or those entitled by law to bring them up.
- 2) A child is entitled to basic education which shall be the responsibility of the State and the parents of the child.
- 3) No child shall be deprived by any person of medical treatment, education or any other social or economic benefit by reason of religious or other beliefs
- 4) Children are entitled to be protected from social or economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical. mental spiritual, moral or social development.
- 5) For the purposes of clause (4) of this article, children shall be persons under the age of sixteen years.
- 6) A child offender who is kept in lawful custody or detention shall be kept separately from adult offenders.
- 7) The law shall accord special protection to orphans and other vulnerable children.