

Submission by the Children's Rights Alliance to the Department of Health and Children on the Adoption Legislation Consultation Discussion Paper

August 2003

Introduction

The Children's Rights Alliance welcomes the opportunity to make a submission to the Department of Health and Children in response to the Adoption Legislation Consultation Discussion Paper. The Alliance believes there is a need for both consolidation and reform of the current legislation governing domestic and foreign adoption in Ireland.

The Alliance is a coalition of 74 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.

UN Convention on the Rights of the Child

The Minister for Health and Children must ensure that any new legislation governing adoption is in full compliance with the principles and provisions of the UN Convention on the Rights of the Child (CRC). In ratifying the Convention, Ireland agreed to ensure the full realisation by all children of all the rights stipulated in the Convention.

Adoption legislation and practice should reflect the four fundamental principles of the Convention:

- Respect for the best interests of the child (Article 3)
- The right of all children to life, survival and development (Article 6)
- Participation: the right of all children to express their views freely on all matters affecting them (Article 12)
- Non-discrimination: the right of all children to enjoy all the rights in the Convention without discrimination (Article 2).

More specifically, legislation and practice should incorporate the provisions of Article 21 which addresses the protection and promotion of children's rights in the context of adoption. The article establishes the paramountcy of children's best interests in all adoption arrangements and details minimum requirements for adoption procedures.

Article 21 states that:

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their

informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

The Alliance believes the 'best interests' principle should be clearly stated in law and recommends the following sentence be included in the forthcoming adoption legislation:

"In all matters relating to the operation of the system of adoption, the best interests of the child shall be the paramount consideration".

Additionally, three other articles of the CRC have direct relevance to the area of adoption:

- Right to identity: the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents (Article 7)
- Preservation of identity: the right of the child to an identity and to, if necessary, a re-establishment of the basic aspects of the child's identity - name, nationality and family relations (Article 8)
- The right to have contact with parents: the child has the right to maintain contact with both parents if separated from one or both (Article 9)

Adoption Legislation Consultation Discussion Paper

Section 1 - Issues common to domestic and foreign adoptions

All comments refer to both domestic and foreign adoptions.

Age limits for prospective adopters

1 *Should there be a common lower and upper age limit for prospective adoptive parents and, if so, what should it be?*

All decisions taken as part of the adoptive process must give paramount consideration to the best interests of the child. Any regulation that constrains the application of the 'best interests' principle could lead to a breach of the Convention.

This includes inflexible rules about the age requirements of adopters. It should also be noted that the introduction of a lower and upper age limit for prospective adoptive parents may contravene the provisions of the Equal Status Act 2000.

Post-adoption services

2 *What post adoption services should be provided and who should be entitled to them?*

Specialised post adoption services should be available to all adopted children to support them on a range of concerns related to their adoption, which may arise throughout their lives. Topics may include emotional, psychological and welfare matters, such as issues of identity, sense of loss and abandonment, family relations, multiple loyalties, as well as issues around contact with and access to their birth family and also access to medical and genealogical information.

The Alliance supports the recommendation in the consultation discussion paper that 'in the case of a child adopted from abroad, additional support may be required to deal also with issues surrounding culture, language and race'. This is particularly important in the post-adoption phase.

In all adoptions, specialist counselling should be available to adoptive parents pre- and post-adoption to ensure that they are sufficiently supported to enable them to act in a manner that respects the adoptive child's best interest.

The establishment and provision of adequate specialist support services will require an investment of resources.

The Adoption Board

3 *What are your views on the establishment of a specialist Adoption Court?*

4 *In the alternative, should the making of adoption orders be a matter for the District Court in line with other orders made for child welfare reasons?*

A specialist Adoption Court should be established to hear contested cases, affording it the opportunity to build up expertise in this complex field of family law.

Section 2 – Domestic adoption issues

Consent to the final adoption order

5 *Do you think there should be a specified period between the placement of the child with prospective adoptive parents and the signing of the final consent?*

The Alliance believes that it would be in the child's best interests if a statutory limit was placed on the time between the placement of the child with prospective adoptive parents and the signing of the final consent.

Non-marital father

6 *Do you think that the Adoption Board should be provided with the option to attach a condition to the adoption order that the non-marital father's access continue?*

7 *Should additional rights be given to an unmarried father in relation to the adoption of his child by a third party?*

8 *Alternatively, should the unmarried father be given preferential adopting rights?*

Under the CRC a child has the right to 'preserve his or her identity, including nationality, name and family relations'¹ and if separated from one or both parents the child has a right to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests². The present closed system of adoption and the relatively weak position of unmarried fathers hinders the child's vindication of these rights.

A condition whereby, post-adoption, a non-marital father's access continues with his/her child and the adopted parents would introduce a more open system of adoption. The Adoption Board's power to attach conditions to adoption orders should only be exercised where such conditions will uphold the 'best interests' principle.

Prescribed period with prospective adopters

9 *Would you be in favour of a prescribed minimum period during which the child must be in the care of the prospective adopters before an adoption order can be made?*

The Alliance believes that a prescribed minimum period would be in the best interests of the child.

Eligibility of adoptive parents

10 *Who should be eligible to be assessed for adoption?*

Anyone who wishes to and is in a position to provide a family for a child should be eligible to be assessed as prospective adoptive parents.

In the assessment of prospective adoptive parents, paramount consideration must be given to the best interests of the child.

A standardised assessment procedure should be established for all prospective adoptive parents (domestic and foreign) along the lines of the process outlined in *Towards a Standardised Framework for Inter Country Adoption Assessment Procedures (1999)*³.

Guardianship as an alternative to adoption

11 *Do you think that a special guardianship order should be introduced to provide permanence short of the legal separation involved in adoption?*

The Alliance supports the recommendation that a special guardianship order be established. This order would enable children to achieve permanence and stability while avoiding the need for the complete legal severance of links with the child's birth family which adoption implies.

The granting of a special guardianship order must respect the right of a child who is 'separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests'⁴.

Reform is needed in relation to the requirement that a parent must apply to adopt their own child if they marry and wish their spouse, who is not the child's birth parent,

¹ CRC Article 8

² CRC Article 9

³ V. O'Brien and V. Richardson (1999) *Towards a Standardised Framework for Inter-Country Adoption Assessment Procedures: A Study of Assessment Procedures in Inter-Country Adoption* (a report for Department of Health and Children) Dublin: Stationary Office.

⁴ CRC Article 9 (3)

to be considered the child's legal parent. The Alliance supports the consultation paper's recommendation that:

'legislation be introduced to permit a birth parent to retain her/his guardianship of the child while at the same time permitting her/his spouse to acquire guardianship rights over the child'.

Legislation in relation to rights and obligations of cohabitees would need to be introduced in order to safeguard the rights of children in cases of cohabitee partnership breakdown.

Adoption of children of marriage

12 *In what circumstances should children of marriage be considered eligible for adoption?*

The Alliance supports the recommendation of the Review Committee on Adoption Services that 'all children should be eligible for adoption irrespective of the marital status of their parents' (1984:12).

Article 2 of the CRC outlines the right of all children to enjoy all the rights in the Convention without discrimination of any kind. The current restriction on the adoption of Irish children of marriage discriminates against them on the basis of the marital status of their parents.

A number of children in long-term foster care currently cannot be adopted as they are children of marriage, and are thereby denied the opportunity to formalize their relationship with their foster family and to achieve the security of a permanent adoption.

To facilitate the adoption of Irish children of marriage, legislative reform is needed in relation to the definition of abandonment. The requirement to prove that abandonment will continue without interruption until the child has reached the age of 18 years creates an unwarranted constraint on the application of the 'best interest' principle.

Post adoption contact

13 *What provisions should be made for ongoing contact between adopted children and their birth family?*

Increasingly adoption in Ireland is reflecting a more open approach using voluntary agreements which enable continued contact between the adopted child and the birth family, and between the birth and adoptive families. Open adoptions of children from abroad are permitted under the amended 1991 Act.

The Alliance supports the introduction of a more open system of adoption on the grounds that it would facilitate the child's the right to know his or her origins and identity and would allow pre-planned and controlled access to birth parents. Such information and contact may assist adopted children to resolve issues of loss and permanent separation.

Contracts to control access and contact should include the provision that the child's views and wishes be taken into account, in accordance with the child's age and maturity, in the drawing up of contracts and in their re-negotiation (see Q. 17)

Section 3 – Foreign adoption issues

The Hague Convention

14 *What are your views on both the regulation of intercountry adoption and the proposals for the incorporation of the 1993 Hague Convention into Irish law?*

The Alliance supports the incorporation into domestic legislation of the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, in line with international best practice. We call for its incorporation without further delay to ensure the promotion of children's rights and prevention of abuses within the process of intercountry adoptions.

In relation to placement in care by the State, the Convention notes the 'desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background⁵.' The Convention further states that intercountry adoption should take place after domestic options for the child have been exhausted:

...inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

To further strengthen the protection of children's rights in the area of child trafficking, the Alliance calls for the immediate ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, which Ireland signed in September 2000.

Section 4 – Adoption Information and Post Adoption Contact

Adoption information and post adoption contact

15 *What are your views on the current proposals for search and reunion set out in the Adoption Information, Post-Adoption Contact and Associated Issues Bill General Scheme?*

16 *What provisions should be made for tracing and reunion services for intercountry adoption?*

The Alliance welcomes the introduction of a right to access to birth records, including their original birth certificate, in line with articles 7 and 8 of the UN Convention and article 40.3 of the Constitution.

Children nearing the age of eighteen years should be offered support in making the decision as to whether they wish to have their name placed on the contact or veto registers. Reassurance should be given to children that if they wish to place their name on a veto register they can re-visit this at any time in the future. Support in regard to making such a decision should be available whenever it is required.

It is particularly important that children do not find themselves under undue stress given that the period leading up to a child's eighteenth birthday is often characterized by stress in the form of transition from school to work or college, and from home to independent living. All children should be given the option of deferring this important decision without the necessity to give a reason for their deferral.

The Alliance reserves comment at this time on the application of any penalties on those adopted children who disregard a contact veto.

⁵ CRC Article 20(3)

Section 5 – Conclusion

17 *Your views are sought on any adoption issue not already mentioned in this consultation paper that you believe to be in need of reform.*

Voice of the Child

The Hague Convention provides that intercountry adoptions can only take place if the authorities of the State of origin 'have ensured, having regard to the age and degree of maturity of the child, that he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required' and that 'consideration has been given to the child's wishes and opinions...'⁶.

The UN Committee on the Rights of the Child has emphasized the importance of the child's right under Article 12 of the Convention to have his or her wishes considered in relation to adoption⁷. The Alliance believes children's ascertainable views must be central to any consideration of their 'best interests'. The Alliance thus recommends the appointment of a guardian *ad litem* during adoption proceedings in order to ensure that the child's interests are adequately represented⁸.

⁶ Article 4(d) Hague Convention

⁷ CRC Article 12(2) requires that the child is heard in any judicial or administrative proceedings, affecting the child, either directly, or through a representative or an appropriate body.

⁸ Children's Rights Alliance (1997) *Small Voices: Vital Rights*, Dublin: Children's Rights Alliance.