

30 September 2009

To the Members of the Joint Committee on the Constitutional Amendment on Children

Dear Chair, Deputies and Senators,

The Children's Rights Alliance would like to acknowledge the commitment and hard work of the members of the Joint Committee on the Constitutional Amendment on Children over the past two years.

Under its terms of reference, agreed on 22 November 2007, the work of the Committee is to examine and consider the substance of the issues addressed in the Twenty-eighth Amendment of the Constitution Bill 2007, and to make appropriate recommendations. The Alliance called on the Committee to utilise this remit to broaden its thinking on the concept of children's rights. The Committee's first and second reports have reduced the number of issues under consideration. We note that the third and final aspect of the Committee's work is to develop recommendations on how to strengthen children's rights in the Constitution. This is an essential element of the Committee's work, and is of utmost importance.

The discussion by Committee members on 23 September 2009 raised some critical issues, which we would like to explore briefly. While recognising that the Committee has been set an important and complex challenge, we strongly believe that it is possible for the Committee to deliver a final report that maps out how the Constitution can be amended to give increased recognition to children's rights. We implore the Committee not to use 'complexity' as an excuse for inaction on strengthening children's constitutional rights.

The Committee was established to achieve political consensus on the wording of a proposed children's rights amendment. All of the political parties committed in their 2007 General Election manifestos to reform the Constitution to strengthen children's rights, and there has been much laudable discussion on the importance of children's rights during the Committee's deliberations. We now need to see these words move beyond rhetoric and become real, tangible actions. We echo the calls from Committee members that party politics be set aside and members work together to reach political consensus. Children's rights are too important and must be put before political agendas.

It was clearly stated at the time of the Committee's establishment in November 2007 that a key task would be to balance children's constitutional rights with the existing constitutional preference for, and protection of, the marital family. We firmly believe that it is possible to draft an amendment that will strengthen children's rights in the Constitution, without necessitating a change to Article 41 or inserting a conflict into the Constitution. A key aim of an amendment is to provide constitutional recognition for the rights of children as individuals (rather than members of a marital family), and to allow for a balancing by the courts of a range of rights (the rights of the child; the rights of the marital family; the personal rights of parents; and the rights of the State as guardian of the common good). The Alliance has detailed our thinking and recommendations for reform, including commentary on the wording of the 2007 Bill, in written and oral inputs to the Committee.

Comprehensive reform of Articles 41 and 42 requires a broad debate, encompassing the definition of the family and a host of family entitlement issues as well as children's rights. We urge the Committee not to lose sight of the fact that its current remit is the strengthening of children's constitutional rights. We implore the Committee not to use Article 41 as an excuse for inaction on children's rights. The Committee has at present an opportunity to advance children's rights by building on the 2007 wording and your learning over the past two years.

Debate and analysis take time, but unfortunately time is not on our side, as each and every day children are negatively affected by the current constitutional provisions. As you are well aware, calls for a constitutional amendment are not new: it was first discussed in the Oireachtas in 1976. Thirty years on, we continue to debate and put on the long-finger the need for constitutional reform. This November marks the twentieth anniversary of the UN Convention on the Rights of the Child; an entire generation of children has grown up since 1989 with the Convention as the backdrop to their rights, but without these rights being reflected in our fundamental law. The time has never been so fitting to acknowledge and copper fasten children's rights in our Constitution. We urge the Committee to recommend a proposed amendment that is likely to find favour with the public and that can be put before the people as a matter of urgency.

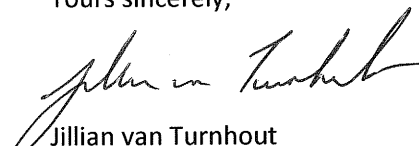
Strengthening children's constitutional rights is not a theoretical exercise; an amendment has the potential to make a real and positive difference to the lives of children in Ireland by removing a number of roadblocks that currently impede the realisation of their rights.

The final report of the Committee is the key opportunity to map out the future direction of children's constitutional rights. We implore the Committee to demonstrate their commitment to children's rights by proposing an amendment that will really make a difference to children. The Alliance believes that the amendment should, among other things, ensure that adoption is a care option offering permanency for several hundred children currently in long term foster care. In cases involving children, it should allow the courts when balancing competing interests to include the interests of the child, as an individual, in its deliberations. The amendment should create an equitable standard of protection for all children. It should empower the state to intervene in a proportionate manner to protect children when necessary; including the provision of supportive intervention at an earlier point than the threshold of parental failure, to prevent children from being left in damaging situations. It should provide a fresh start for jurisprudence on children's rights.

The final hurdle is fast approaching. We urge Committee members to take brave decisions now that will secure a better and safer future for children in Ireland for generations to come. Constitutional reform is essential to make Ireland one of the best places in the world to be a child and we ask members to now play their role to make this happen, and issue a recommendation on 16 October to hold a referendum without delay to strengthen children's rights in the Constitution.

In the meantime, the Alliance is always at hand to discuss issues, answer any questions or to support the Committee's deliberations.

Yours sincerely,



Jillian van Turnhout  
Chief Executive