

IRELAND AND THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

REPORT BY THE ALIENATED CHILDREN FIRST (ACF) (FORMERLEY ALIENATED PERSON SUPPORT (APS)) GROUP OF IRELAND TO THE UN COMMITTEE ON THE RIGHTS OF THE CHILD ON IRELAND'S COMBINED THIRD AND FOURTH AND FIFTH PERIODIC REPORTS

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1. Introduction

The Alienated Children First group of Ireland (ACF) welcomes the opportunity to provide this report to the Committee on the Rights of the Child (the Committee) in advance of its forthcoming examination of Ireland's compliance with the Convention on the Rights of the Child (the Convention).

The ACF makes this submission in its capacity as Ireland's group representing children who are suffering denial of rights as a result of behaviours such as "contact failure" or Parental Alienation. Although the group exists since 2009 it has recently been extensively reformed as a Company Limited by Guarantee and applied for membership of the Children's Rights Alliance and is applying for Charities Registration with the Charities Regulator.

The ACF notes that Ireland is being examined before diverse UN treaty monitoring bodies on a periodic basis under the Universal Periodic Review (UPR) process.

The ACF recognizes significant progress in recent years in the State's progress in Constitutional Amendments particularly Article 42A and in the legislative changes including Children First 2015 and Children and Family Relationships Act 2015 and Family Mediation Act 2017 with regards to addressing the significant issues of Children's Rights in Family Law in Ireland. The ACF also encourages the State to take steps to promote awareness of its obligations under the Convention at governmental level, as well as at parliamentary level and to continue to promote legislation and administrative measures to promote the rights and the administrative protections required to protect the rights of children affected by Parental Alienation in all its forms.

2. General Measures of Implementation (Articles 4, 42 and 44(6))

The ACF specifically notes the issues raised and recommendations by the Irish Human Rights and Equality Commission in Section 2.3.3 of their submission to the 2015 Reporting Process

“The operation of the best interests principle in proceedings regarding guardianship, access, custody and care, as well as the constitutional obligation that in such proceedings “the views of the child shall be ascertained and given due weight”, may present a new set of practical and procedural challenges for the Irish Courts.”¹

In particular the ACF notes the IHREC recommendations with regards to the Special Rapporteur on Child Protection² and Child Care Law Reporting Project Final report Dublin, 2015³ on the review of existing practice in family law and court proceeding and their intended purpose to bring transparency to “assist in better operations of the [Children and Family Relations] Act.

The ACF notes that Ireland is far behind other jurisdictions such as the US and the UK in recognizing the need to protect children affected by “contact failure” and Parental Alienation. In particular the ACF draws the State’s attention to communication from the Minister of Justice and Equality (appendix 1)⁴ and we note the statement on this that although the World Health Organization has recognised Parental Alienation as a form of child abuse that the Minister considers there is not sufficient consensus or empirical evidence to base changes to existing policy.

This would appear to be a completely at odds to recent developments internationally and in this jurisdiction and we would specifically draw the State’s attention to the following:

- a. In April 2020 Judge Mary Larkin in Family Law Court in Ennis brought Parental Alienation into Irish Law by citing it in a relatively straight forward access denial case as widely reported (despite the straight jacket of the in-camera rule) in many sources including the authoritative Irish Law Society Gazette⁵

¹https://www.ihrec.ie/download/pdf/ireland_and_the_united_nations_convention_on_the_rights_of_the_child.pdf

² (from the IHREC 2015 submission “Recommendations set out in section 4.1.4 of Geoffrey Shannon, *Sixth Report of the Special Rapporteur on Child Protection*, January 2013. Available: <http://www.dcy.gov.ie/documents/Publications/SixthRapporteurReport.pdf> [accessed 20 November 2015] The Courts have also acknowledged this need for guidelines and, in their absence, some members of the judiciary have sought to formulate approaches. “

³ Child Care Law Reporting Project *Final report* Dublin, 2015, p 52 (recommendation 14.1). Available: http://www.childlawproject.ie/wp-content/uploads/2015/11/CCLRP-Full-final-report_FINAL2.pdf [accessed 9 December 2015].

⁴ Minister’s Reference DJE-MO-00166-2019 and Appendix 1

⁵ <https://www.lawsociety.ie/gazette/top-stories/judge-describes-case-as-parental-alienation/>

- b. In May Drs Conneely and O'Shea presented interim findings of 37% of cases before the court where the dispute was in relation to access, involved parental estrangement or parental alienation.⁶
- c. In March 2020 (just before Covid-19 Lockdown) Caidreamh (Family Practitioner Assessment and Therapeutic Services) arranged Karen Woodall and Nick Woodall (Parental Alienation subject matter expert academics from the UK) for an “Understanding and Working with Children and Families Affected by Parental Alienation – Practitioner Training”⁷ to “cover some very specialist topics in the area of parental alienation and reflective practice”
- d. In January 2018 in *BB v ZS Reynolds J.* cited parental alienation and noted with concern the harm caused to the child.⁸
- e. In the UK in-camera rules have been selectively relaxed to allow for awareness of Parental Alienation in particular cases (such as in the *S* case⁹ and the *H* case¹⁰ and the *A* case¹¹ and others)
- f. UK Research¹² commissioned by Cafcass (the UK equivalent of Tusla) was published in 2018 (before the Irish Conneely and O’Shea research) has been published reviewing family law cases involving Parental Alienation and resulted in updated procedures by Cafcass for dealing with Parental Alienation¹³

⁶ Drs Conneely and O'Shea carried out research observing family law cases in the District Court in 2017-2019 with consent from the Minister for Justice and Equality under regulation 2 (b) S.I. 337 of 2005. The researchers presented interim findings at a conference in May 2019, where they found that 37% of cases before the court where the dispute was in relation to access, involved parental estrangement or parental alienation. The researchers defined parental estrangement as "where there is conflict between the parents and the family law system contributes to the breakdown of the relationship between one parent and a child" and this presented in 13% of the cases where access was an issue. The researchers defined parental alienation as “where there is significant conflict between parents and the child is encouraged by one parent to align to that parent and reject the other” which presented in 24% of the cases where access was an issue. The researchers intend to publish their full findings 'Access in the District Court' by the end of 2020 including two important Irish High Court cases where parental alienation was discussed by Abbott J in *A.B. v C.D.* [2011] and *Binchy J* in *C.G. v B.G.* [2019]

⁷ <http://caidreamh.ie/upcoming-training-2019/>

⁸ *B.B. v Z.S.* [2018] IEHC 15, paragraph 27. Reynolds J “The retention of the child in this jurisdiction has now resulted in considerable parental alienation for the applicant, a position which simply cannot be endorsed by this Court”.

⁹ *Re S (Parental Alienation: Cult)* [2020] EWCA Civ 568
<https://www.familylawweek.co.uk/site.aspx?i=ed210729>

¹⁰ *Re H (Parental Alienation)* [2019] EWHC 2723 (Fam)
<https://www.familylawweek.co.uk/site.aspx?i=ed203996>

¹¹ *Re (A Child -Termination of Contact)* [2019] EWHC 132 (Fam)
www.familylawweek.co.uk/site.aspx?i=ed199338

¹² Review of research and case law on parental alienation - Julie Doughty, School of Law and Politics
 Nina Maxwell and Tom Slater, School of Social Sciences Cardiff University
<https://gov.wales/sites/default/files/publications/2018-05/review-of-research-and-case-law-on-parental-alienation.pdf>

¹³ Cafcass: Parental alienation - Cases where children are resisting or refusing spending time with a parent
<https://www.cafcass.gov.uk/grown-ups/parents-and-carers/divorce-and-separation/parental-alienation/>

The ACF accepts that there is still some discussion around the details and definitions of Parental Alienation but that should not prevent the State engaging with the issue in order to support the considerable number of children whose rights are affected by the issue in Ireland and addressing the lack of judicial guidelines and inter-departmental policies and procedures to protect and monitor children affected by the issue.

The ACF illustrates the need for urgency in this matter from

- the empirical evidence produced by Conneely and O'Shea referenced earlier
- the inconsistency of the State and Courts in dealing with the issue (from outright denial by the Minister to the precedent of the Family Law Judge in Ennis on a straight-forward denial of contact matter)
- the lack of guidelines and the wall of secrecy of the in-camera rule resulting in the "it depends on the judge" legal advice that most alienated parents receive in coming before the courts
- the anecdotal evidence that Tusla disengage with a rubber stamp "does not meet the criteria for involvement" response in most Parental Alienation cases in the absence of Irish research and policy in the area in stark contrast to the Cafcass approach outlined above
- the widespread anecdotal evidence that where access or contact orders are openly flouted (possibly in 37% of separation case as cited above) (a key indicator of Parental Alienation) that the state bodies, including the courts, the Gardai, Tusla, HSE health services and others are essentially powerless to intervene in the face of a determined alienating parent due to weakness and gaps in legislation, policy and procedures in dealing with the issue
- that Section 60 "enforcement orders" introduced in the Children and Family Relationship Act 2015 which are designed to address access order problems are completely ineffective as legal practitioners advise targeted parents against applying for them as the potential sanctions attached will reflect badly on the applicant targeted parents in the eyes of the court and will be counter productive in the eyes of most judges

Specific Questions / Recommendations

What are the State's plans to implement policies and procedures across the departments dealing with children affected by the issue and in particular the implementation in the family law and court context as outline by the IHREC in 2015 as outlined above?

How will the State give due consideration to the implementation shortcomings of the Section 60 of Children and Family Relationship Act 2015 with regards to issues of enforcement of access or contact orders and the reluctance of legal professionals to apply for enforcement orders and a more effective method of protect children's rights of contact and access?

3. Civil Rights and Freedoms ((articles 7, 8, 13–17, 19; 28(2); 37(a) and 39)

Children have rights to contact with parents and families including extended families. They also have rights to the “voice of the child” and for their views to be heard as appropriate as recently amended by Article 42A of the Constitution and enacted by legislation including Children and Family Relations Act 2015.

While progress has been made in the Constitutional and Legislative arena to implement these rights in Irish Law the follow-up policies and procedures are not in place and progress is not visible in these latter areas.

Parental Alienation and the failures and gaps in legislation, policy, procedures and lack of inter-agency arrangements deny targeted children these rights, often in contempt of Psychologist Section 47 Reports and Court Orders for access.

The ACF urges the state to review the legislation and in particular the policies and procedures in place to support it, in line with international best practice, in order to support Children who are denied these rights.

Specific Questions Recommendations:

How will the State compile empirical data on access and contact order implementation? What can the State implement to resolve the current strictures of the in-camera rule causing considerable efforts for limited, haphazard and laborious collection of data? Would the State consider proposals for Court orders regarding access could be registered with an agency, such as the Family Mediation Service or Tusla and their adherence audited periodically to identify failures and shortcoming in order to target early intervention in the best interests of the child?

What plans and procedures can the State implement to give effective service to the “voice of the child”? The long overdue reorganization of the Guardian ad Litem service is to be welcomed but the ACF ask how the State implement joined up, inter-disciplinary actions and policies between organisations such as CAMHS, Tusla and in the example above the Family Mediation Service to give some real effect and empirical data to the “voice of the child” in contact failures?

4. Basic Health and Welfare (articles 6; 18(3); 23; 24; 26 and 27(1–3))

There is considerable academic and other research on the long-term impact on the physical and psychological health of alienated children, including poorer educational outcomes, higher suicide rates, substance abuse rates, poorer employment, relational and life expectancy rates. As well as the impact on the children themselves the societal impact and the cost to health services, economic, housing and criminal costs of dealing with these negative impacts on the victims of alienation, merit immediate and significant engagement at policy level for the benefit of the wider community and the State as well as the children themselves.

Specific Questions / Recommendations:

What plans and policies will the State put in place for statutory bodies responsible for children’s health and welfare (such as the HSE, CAMHS, Social Services, Tusla (formerly the Child and Family Agency), psychologists involved in relevant court reporting such as Section 47 reports to have common definitions, training, awareness, appreciation and targeted policies to deal with situations where Parental Alienation is a factor or at risk of being a factor leveraging on the equivalents in other jurisdictions, such as Cafcass in the UK¹⁴?

5. Special Protection Measures (articles 22; 30; 38; 39; 40; 37(b–d); 32–36)

No submission.

6. Summary and Conclusion

In conclusion:

There is long established anecdotal evidence and despite the strictures of the in-camera rule, emerging empirical evidence that “contact failure” or Parental Alienation is a substantial problem for a significant number of children in Ireland

Claimed lack of empirical evidence does not justify the Minister’s “do nothing” position.

Despite positive recent developments in the Constitution and legislation the State is lagging considerably behind international best practice on follow through policy and implementation in this area.

¹⁴ Cafcass Parental Alienation <https://www.cafcass.gov.uk/grown-ups/parents-and-carers/divorce-and-separation/parental-alienation/>

The ACF recommends urgent and significant attention to address the issue of Parental Alienation and request engagement with the various government departments and statutory bodies.

Minister's Letter Exhibit (not dated by sent from the Department March 2020)

Minister's Reference: DJE-MO-00166-2019

Dear Mr. Anderson,

Thank you for your correspondence commencing with your email of 9 January 2019 addressed to the Minister for Health, Simon Harris, which was forwarded to the Minister for Justice and Equality,

Charlie Flanagan, and your follow up correspondence including your most recent email of 29 January, 2020, on the subject of parental alienation.

I sincerely apologise for the delay in issuing you with a substantive response to the matters you have raised in relation to this important topic.

The issue of parental alienation is highly complex. This complexity is taken into account in recommendation 36 of the Oireachtas Joint Committee on Justice and Equality Report on the Reform of the Family Law System. As you mentioned in your correspondence, the World Health Organisation (WHO) has recently included the term parental alienation in the 11th revision of the International Classification of Diseases (ICD). It is also important to note, however, that the primary purpose of the WHO International Classification of Diseases is to identify health trends and statistics and share health information globally. The inclusion of parental alienation on the WHO International Classification of Diseases does not equate with a legal definition of the phenomenon.

Consensus has not been reached by the medical profession on the issue and there is ongoing debate among professionals in both psychology and psychiatry regarding the classification of parental alienation. Some professionals advocate for its classification as a clinical disorder affecting children, while others raise concerns that taking this action could act as a means of masking other serious issues such as genuine allegations of child abuse.

Such divergent approaches to the concept contribute to the difficulty in precisely defining whether or not parental alienation is a clinical condition that can be diagnosed. Currently, there is no indication of a consensus being reached which would facilitate a resolution to this divisive issue. Accordingly, there is insufficient empirical evidence available upon which to base changes to existing policy or legislation to specifically address parental alienation.

On behalf of the Minister, I would like to thank you for your communication in relation to this matter and your contribution to the public discourse on this important issue.

I hope this response is of some assistance.

Yours sincerely,

Conor Cleary , Private Secretary to the Minister for Justice and Equality