



## UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD

### WRITTEN STATEMENT ALIENATED CHILDREN FIRST (ACF) DECEMBER 2022

“ACF note that we have had constructive cooperation with the key state parties including the Department of Justice, Tusla (the Child and Family Agency) the Office of the Ombudsman for Children and several NGOs in this area including One Family, Treoir and Men’s Aid.

ACF draw the Committee’s attention to recent statements in the Dail that publication of Department of Justice research on parental alienation has been delayed many times and several deadlines have been missed. In December 2022 it was announced that publication that was originally promised more than a year ago has now been delayed into 2023.<sup>1</sup>

ACF draw the committee’s attention to the recent publication of the Family Court Bill 2022 which is a very positive and welcome development but note that it is primarily jurisdictional in nature necessarily focusing on the required legislative procedures to remove family issue from the District and Circuit Courts. ACF suggest the Committee question why, given that parental alienation has been cited in 11 Irish High cases since AB v CD in 2011<sup>2</sup>, and in 20 European Court of Human Rights cases, notably IS and Other v Malta in 2019<sup>3</sup> reminding states of their “positive obligations” to protect the rights of children in high conflict separations including parental alienation, that this protection is not yet regulated in Ireland.

ACF ask that, given the Dail answer above referring to the implementation oversight committee, that the Committee raise the lack of transparency of the organisations included in this implementation, in particular the lack of inclusion or invitation to such affected victims parties and NGOs as ACF.

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<sup>1</sup> Reply to Dail Questions on Court Matters by Minister Heather Humphries, December 2022, <https://www.oireachtas.ie/en/debates/question/2022-11-09/106/?highlight%5B0%5D=parental&highlight%5B1%5D=alienation>

<sup>2</sup> AB v CD [2011] IEHC 543

<sup>3</sup> I.S. and Others v. Malta Application no. 9410/20 (<https://laweuro.com/?p=14231>)

The research commissioned by the Department of Justice on 'Approaches to the concept of parental alienation in other jurisdictions', commissioned and received in 2021 remains unpublished and ACF and other parties have been refused access to this by the Department in 2022 even under Freedom of Information requests. ACF asks the Committee to consider questions on what is contained in this research and to question missed commitments to publish it and why access to it is denied under Freedom of Information.

The Department of Justice have completed their Open Consultation on Parental Alienation<sup>4</sup> in June 2022. Selected submissions by NGO's and other parties have been published by the parties themselves. However the Department of Justice has further delayed and not as yet published any outcomes or findings from this consultation. While parental alienation remains on the Action Plan of the Department of Justice no specific actions are as available. ACF suggest the committee consider questions on what specific actions will be taken as a result of this consultation.

ACF's consultations with the Office of the Children's Ombudsman (OCO) have been positive and supportive. But the topic of children involved in high conflict family separations and protection from the emotional, psychological and financial impact of the current adversarial family law model is not yet included in the strategic plan or any specific actions by the OCO.

The Family Court Bill to reform the family court and make it less adversarial and more 'family friendly' is progressing and this is a significant and welcome development. However current unofficial reports estimate it is unlikely to be passed before 2024. There is likely to be further delays for the infrastructure, processes, procedures and training to be put in place to implement it. ACF and others express concerns that, as currently, resources for this may be available in Dublin and possibly one or two larger cities but that regional and more rural areas will not see the same level of support for family law and vulnerable children. ACF ask the Committee to question what practical measures such as qualifications, training and procedures for all concerned, child expert reporters, legal practitioners and judicial training, for the protection of children and adults caught in the

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<sup>4</sup> Department of Justice, 'Open Consultation on Parental Alienation'  
<[https://www.justice.ie/en/JELR/Pages/Parental\\_Alienation\\_Consultation](https://www.justice.ie/en/JELR/Pages/Parental_Alienation_Consultation)> accessed 2 August 2022.

trauma of parental alienation cases could be implemented in the interim short and medium terms in the best interests of affected children.

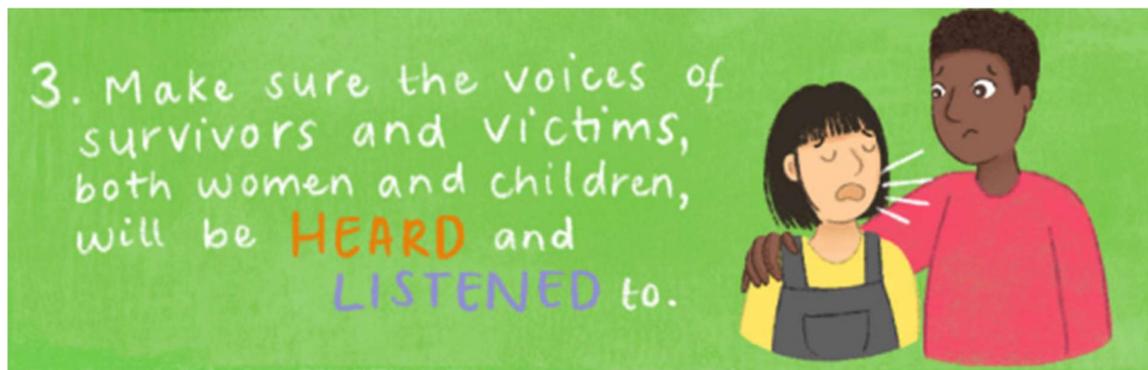
ACF's extensive consultation with Tusla (the Child and Family Agency) has been positive on movement on updating their procedures, processes, Handbook and engagement model informed by the approach of similar organisations in other jurisdictions, including the UK Child and Family Court Advisory and Support Service (CAFCASS). But progress has been slowed since 2021 awaiting the delayed unpublished Department of Justice research and Open Consultation. ACF suggest questions on how this can be improved in the short term.

ACF ask that the Committee consider what actions can be considered to reinforce Tusla undertaking further education and information on the impact on children affected by high conflict separations which is a positive development. ACF note that the current Tusla Handbook<sup>5</sup> whose procedures include four categories of abuse: physical, sexual, emotional/psychological and neglect. While the engagement models support three of these are well defined, the "challenges in understanding and evidencing" emotional or psychological abuse pose difficulties in addressing it and devising an engagement model. ACF note that Tusla and the government's "Better Outcomes" policy stresses the need for "early intervention" in child abuse to lessen the impact and stress that this should also underpin an engagement model for emotional or psychological supports for affected children. ACF notes that bringing definitions and engagement model within the exiting Handbook and procedures would then bring these children within the existing framework protections of the Children First 2015, the original Child Care Act and recent Child Care Act Amendment 2022, Section 19 Supervision Orders to support courts in making decisions in the best interests of children. ACF note the 11 High Court cases citing parental alienation and several high profile "court unreported" cases, where the impact has progressed to severe. ACF notes the emotional, psychological and financial impact of these. ACF ask the Committee to consider that Tusla should not be further delayed in taking these essential child protection measures

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<sup>5</sup> Tusla (2018) *Child Protection and Welfare Practice Handbook 2*, Dublin, Tusla, [https://www.tusla.ie/uploads/content/Tusla\\_Child\\_Protection\\_Handbook2.pdf](https://www.tusla.ie/uploads/content/Tusla_Child_Protection_Handbook2.pdf), last accessed 12 December 2022

ACF note's the positive reaction to the Domestic Violence Zero Tolerance strategy launched in 2022 and the many positive features with it. But we note that it does not give sufficient recognition or support for children and parents in emotional and psychological abuse in high conflict separations. While the Department of Justice is to be congratulated on producing a Child Friend Version<sup>6</sup> of the strategy document, ACF in particular draw the



Committee's attention to the gendered nature of the language which denies and cancels male victims of domestic violence, despite the Department's own research that male victims constitute between 30-40% of domestic violence victims, yet only 5% of male victims report to Gardai (police) and have problems being taken seriously.<sup>7</sup> ACF are concerned that the publishers have refused to correct this information despite being notified of it and it remains part of their child messaging on domestic violence.

ACF thanks the Committee for this opportunity to highlight issues on protection of children's welfare and rights in family separation, particularly high conflict separation, and how to address the plight of child and parents impacted by issues as highlighted in our previous submissions. We acknowledge the recent progress by government agencies, albeit slowly.

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<sup>6</sup> Department of Justice, 3rd National DSGBV Strategy - Child Friendly Version, Last updated on 8 July 2022, <https://www.gov.ie/en/publication/ba53e-zero-tolerance-3rd-national-domestic-sexual-and-gender-based-violence-strategy/>

<sup>7</sup> National Office for the Prevention of Domestic, Sexual and Gender base Violence, 2018, Dublin