

Review of the Child Care Act 1991

July 2020

Alliance of Birthmothers Campaigning for Justice Review of Child Care Act 1991

The Alliance of Birthmothers Campaigning for Justice (ABC) was established at a meeting in Athlone in June 2019 to advocate on behalf of Birthmothers who have difficulties in their engagement with Tusla, the Gardai and the Family Law Courts.

We were assisted by the then Fianna Fáil spokesperson on Children and Youth Affairs, Deputy Anne Rabbitte, Dr Cliona Sadlier, Executive Director of the Rape Crisis Network, Mary Louise Lynch, Survivors Informing Services and Institutions (SISI) and Maura Butterly a retired social worker.

An audit carried out by Dr Geoffrey Shannon former Special Rapporteur on Child Protection found that communication between Tusla and the Gardai is poor with limited levels of inter-agency cooperation and coordination between them, falling far short of international best practice. Ireland does not have a specialised family or children's court system, though such systems are commonplace across Europe and in common law jurisdictions.

<https://assets.gov.ie/27444/92175b78d19a47abb4d500f8da2d90b7.pdf>

The Birthmothers represented by ABC are the victims of this deeply flawed system. This was highlighted in our 13,000 page report THE TRIAD RULES that was circulated to every member of the 32nd Dáil.

In response to a written question from Deputy Micheál Martin, the then Minister, Katherine Zappone acknowledged 24 September 2019, receiving the report. Minister Zappone did not dispute any of the content and referred to a number of its recommendations in her written reply. <https://www.oireachtas.ie/en/debates/question/2019-09-24/494/>

ABC's response to The Child Care Act 1991 review.

We believe that a review of the The Child Care Act 1991 must take into consideration the lived experience of Birthmothers and their children.

Approximately 6000 children are in foster care in Ireland at any given time involving approximately 2000 Birthmothers.

Domestic Violence

The majority of Birthmothers who contact ABC whose children have been removed by TUSLA are victims of domestic violence.

Even when the perpetrators of domestic violence are convicted and sent to prison TUSLA refuses to return the children to their Birthmothers.

The two principle excuses used by TUSLA to hold onto children are firstly, the mother stands guilty of failing the children and caused damage by allowing them to be exposed to the violence making her an unfit parent and secondly the violence inflicted on her has reduced her capacity to parent her children.

No data has been compiled in Ireland on the removal of children from Birthmothers who are victims of domestic violence. We can assume that what is happening in Ireland is similar to that being documented in the United Kingdom where data shows that domestic violence has outstripped parental mental illness or drug and alcohol misuse as the most common underlying factor behind children being placed in state care.

https://www.researchgate.net/publication/263523564_Maternal_outcasts_Raising_the_profile_of_women_who_are_vulnerable_to_successive_compulsory_removals_of_their_children_-_a_plea_for_preventative_action

Birthmothers are caught in a catch 22 situation. The recently published Women's Aid report for 2019 says that Ireland is not meeting its commitment under the Council of Europe's Istanbul Convention and "only has one third of the recommended refuge space, which is not enough to meet the needs of women and children escaping domestic violence. Moreover, refuges are not available in every county."

https://www.womensaid.ie/assets/files/pdf/womens_aid_annual_impact_report_2019_-_embargoed_29820.

TUSLA has responsibility for providing refuge spaces and their response to Birthmothers who are victims of domestic violence is to remove their children rather than provide sufficient refuge spaces.

Women's Aid has pointed out in several reports that custody and access arrangements in family law proceedings often disregard the impact of domestic violence on children. As a result, both the children and their mother remain at risk of abuse during the hand-over period during access. <http://www.irishhealth.com/article.html?level=4&id=26618>

ABC supports Women's Aid's recommendation that there be no contact with abusive fathers until contact is safe.

Recommendation

ABC recommends that the Child Care Act 1991 review is cognisant of the fact that the legislation as it stands is facilitating 'victim blaming' of Birthmothers and the removal of their children into state care.

Failure to deal with child sex abuse.

Maud de Boer-Buquicchio the UN Special Rapporteur on the sale and sexual exploitation of children presented her report on her visit to Ireland May 2018 to the UN Human Rights Council in Geneva in March 2019. https://ec.europa.eu/ireland/news/ireland-un-human-rights-expert-calls-for-national-strategy-to-protect-children-from-sexual-violence_en

The Special Rapporteur says she "is concerned about the fragmented nature of the Government's approach to the issue of sexual violence against children." There is no "government-wide efforts to prevent and respond to child sexual abuse and exploitation."

She is also concerned about the absence of regularly gathered, comprehensive data on the scope and different forms of sexual abuse and exploitation of children in Ireland. Tusla, The Gardai and officials from the Department of Justice and the Department of Children and youth affairs told her during her visit to Ireland that they are aware that there are no proper records being kept of child sex abuse.

She says that child sexual abuse and exploitation are likely to be underreported.

She noticed that the conviction rates for child sex abuse in Ireland are extremely low.

Ms. de Boer-Buquicchio identified "a culture of silence around issues of childhood sexual abuse" as one of the root causes of the low conviction rates of child sex abuse. This "sends a message that consequences are unlikely to follow the abuse of children."

She noted that Ireland still hasn't ratified the Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) which means Ireland cannot be prosecuted under the convention for its failures to protect children from sexual abuse.

The following infographic illustrates what's happening in the family law courts in relation to the prosecution of child sex abuse. <https://www.broadsheet.ie/2020/02/20/the-silencing/>

On 7 September 2020 Armenia became the 47th state to have completed the ratification of the Council of Europe's Convention on Protection of Children against Sexual Exploitation and Sexual Abuse ("Lanzarote Convention"). Ireland is now the only member state of the COE not to ratify the convention.

Recommendation

ABC recommends that the Child Care Act 1991 review is cognisant of the fact that the recommendations made by the UN Special Rapporteur Maud de Boer-Buquicchio in her report must be considered, particularly enhancing the capacity of CASATS and scaling up specialized forensic examination and treatment services for children so that they are available nationwide.

The Family Law Courts

Dr. Geoffrey Shannon a leading authority on Child Law and Family Law told the Oireachtas committee on justice and equality in March 2019 that “there is a distinct lack of provision in Ireland for hearing children.”

Dr Shannon said: “Courts in Ireland have a duty to listen to children and to give due weight to their wishes under the UN Convention on the Rights of the Child and also under domestic law.

Ireland must invest the resources to ensure its court system is fit for purpose.” He said that there was no clear guidance for judges meeting children in family law proceedings and that no data was collected on the extent to which judges sought children’s views.

https://www.oireachtas.ie/en/debates/debate/joint_committee_on_justice_and_equality/2019-03-13/3/

It is universally recognized that the child welfare and protection system in Ireland is largely adversarial.

Dr Kenneth Burns, Senior Lecturer in Social Work. School of Applied Social Studies also appeared before the Oireachtas Committee and stated: “In essence, any person involved in in camera proceedings in the field of child protection, private family law or elsewhere risks being held in contempt of court every time he or she discusses the proceedings with anyone other than his or her legal representative or the other parties to the proceedings.”

He continued: “This lack of consistency and the significant differences between court culture and practice are problematic for several reasons.

First, all participants should expect a degree of predictability in court proceedings.

Second, citizens participating in court proceedings which involve State intervention in family life should not experience significantly different models of practice, depending on their address.

Third, there is some concern that in courts where an adversarial approach is dominant a focus on the welfare of the child can be lost. There is also concern that this model is not conducive to facilitating children’s participation and can lead to significant delays in decision-making and significant extra court time for

professionals.”https://www.oireachtas.ie/en/debates/debate/joint_committee_on_justice_and_equality/2019-03-13/3/

ABC has observed that there’s black spots across the country where Birthmothers in certain areas of major cities and also in certain counties are at higher risk of having their children taken into care. We have identified Cork City, Limerick City and County Mayo as the areas that appear to have a disproportionate number of children taken into state care.

Recommendation

ABC recommends that the Child Care Act 1991 review is cognisant of the fact that that the law as it now stands excludes the voice of the child in court and that the in camera rule is resulting in major inconsistencies in outcomes for Birthmothers and their children.

ABC is calling for the recommendations made in the Houses of the Oireachtas Joint Committee on Justice and Equality Report on Reform of the Family Law System October 2019 be incorporated into the Child Care Act.

https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-10-24_report-on-reform-of-the-family-law-system_en.pdf

Soft Coercion

The preliminary findings of the Voluntary Care in Ireland Study by Kenneth Burns, Conor O’Mahony, and Rebekah Brennan of the School of Applied Social Studies and School of Law at UCC has found that Birthmothers whose children have been placed in care voluntarily have experiencing “soft coercion” where they are told that if they refuse to sign a voluntary care agreement, a court order will be obtained.

<https://www.google.ie/amp/s/www.irishexaminer.com/news/arid-30959870.html%3ftype=amp>

This issue has also been raised by leading Human Rights lawyer Gareth Noble, Child Law Solicitor with KOD Lyons. https://www.newstalk.com/podcasts/highlights-from-the-pat-kenny-show/concerns-placement-children-care-without-court-orders?utm_source=twitter&utm_campaign=article&utm_medium=web

ABC has observed that Birthmothers who have contacted us whose children were taken under voluntary care orders have for many years been trying to get their home despite the fact that such orders are meant to be temporary.

We haven’t encountered a single mother where a reunification plan was followed to reunite her with her children. In fact only a tiny minority of Birthmothers have been given a reunification plan.

Recommendation

ABC recommends that the Child Care Act 1991 review ensures that a reunification plan will always be in place that sets out clear targets, timelines and guidelines for the reunification of children with their Birthmothers.

Access

The recent lockdown exposed the arbitrary rules on access applied across the country. We observed that social workers in the same office applied different rules. In one office we noted how one social worker insisted that all access had to take place outdoors and was weather dependent while her colleague in the same office allowed access to take place indoors.

Access to their children and sibling access has been identified by ABC as one of the primary concerns of Birthmothers.

Recommendation

ABC recommends that the Child Care Act 1991 review establish clear rules on access between Birthmothers and their children in state care and sibling access also. The law must be framed in such a way that there's no room for ambiguity and access must be regular and consistent.

The removal of Newborn Babies from their mothers.

It is reported that TUSLA placed 127 unborn children on its Child Protection Notification System over the previous 18 months up to August 2020 including 48 for the first six months of 2020 <https://www.businesspost.ie/health/tusla-puts-127-at-risk-unborn-children-on-protection-system-09971d80>

Removing a newborn baby from its mother is a barbaric practice that should only occur if there is evidence that the mother is going to murder the baby.

No data is available on this practice. ABC has observed that most of the newborn babies are removed from mothers in Cork City, Limerick City and Mayo and a small select number of social workers are involved.

The special bond between a Birthmother and newborn baby is broken forever when separated at birth and can never be fully restored if and when reunification occurs.

Recommendation

ABC recommends that the Child Care Act 1991 review ensures that newborn babies will never be removed from their Birthmothers except in extreme cases where it has been

established by a team of expert professionals (not social workers) that the baby's life is in imminent danger.

Independent appeals process

TUSLA has set out 10 "Children First Principles".

https://www.tusla.ie/uploads/content/4214-TUSLA_Guide_to_Reporters_Guide_A4_v3.pdf

Successive HIQA reports show that these principles are not being followed.

At present there is no independent appeals process if Birthmothers have difficulties with TUSLA

Recommendation

ABC recommends that the Child Care Act 1991 review provides for the establishment of an independent appeals process that will deal exclusively with complaints about TUSLA in a fast efficient way.

The Child Care Act review must embody Children First Principles.