



Propositions 1-4 on the Protection of Children

The ICCL Position
on the Minister for Children's
Second Briefing Document on
Proposed Wording to Amend the Constitution
(dated 9 February 2007)

12 February 2007

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About the Irish Council for Civil Liberties (ICCL)

The Irish Council for Civil Liberties (ICCL) is Ireland's leading independent human rights watchdog, which monitors, educates and campaigns in order to secure full enjoyment of human rights for everyone.

Founded in 1976, the ICCL has played a leading role in some of the most successful human rights campaigns in Ireland. These have included establishing an independent Garda Síochána Ombudsman Commission, legalising the right to divorce, securing more effective protection of children's rights, decriminalising homosexuality and the introduction of multi-ground equality legislation.

We believe in a society which protects and promotes human rights, justice and equality.

What we do:

- Advocate for positive changes in the area of human rights;
- Monitor government policy to make sure that it complies with international standards;
- Conduct original research and publish reports on issues as diverse as equal rights for all families, the right to privacy, police accountability and judicial accountability;
- Run campaigns to raise public and political awareness of human rights, justice and equality issues;
- Work closely with other key stakeholders in the human rights, justice and equality sectors.

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Introduction

On 30 January 2007, the Minister for Health and Children, Mr Brian Lenihan TD, circulated a first briefing document containing a number of propositions for wording to amend the Constitution in relation to children. The Minister engaged in a round of face-to-face consultations on the basis of those propositions. A delegation from the Irish Council for Civil Liberties (ICCL) met privately with the Minister on 5 February 2007, during which it indicated that the ICCL was deeply disappointed that the propositions concerned were restricted to measures involving the protection of children. The ICCL's delegation emphasised that the propositions concerned would not effectively embed children's rights in the Constitution.

On the following day, the ICCL's views were provided to the Minister in writing, in the form of two position papers, one covering propositions 1-4 and the other, proposition 5 (which raises different and distinct issues). Copies of those documents were also made available to opposition spokespersons, the Ombudsman for Children, the Children's Rights Alliance, and other interested parties.

On 9 February 2007, the Minister distributed a second briefing document on proposed wording. This paper updates the ICCL's previous comments in relation to propositions 1-4, by relating them directly to the Minister's new propositions.

Overall, the Minister's second briefing document would appear to take greater cognisance of the UN Convention on the Rights of the Child, 1989 (UNCRC). This is a positive development, which the ICCL welcomes. However, his proposals still do not include any express rights for children and no rationale is provided for maintaining the primacy of the marital family, even though this has consistently caused difficulties in recognising children's rights.

Therefore, in the view of the ICCL, the primary focus of this referendum remains the protection of children rather than the implementation of children's rights.

In this paper, the ICCL comments on Propositions 1-4 which, in their new form, are:

- Proposition 1: Rights of Children
- Proposition 2: Best Interests of [sic] Child in Court Proceedings
- Proposition 3: Protection of Children Taken into the Care System under Court Order
- Proposition 4: Voluntary Placement of Children for Adoption

As before, the ICCL's comments on the revised Proposition 5, which raises different and distinct issues, are the subject of a separate paper.

Proposition 1: Rights of Children

Proposition 1 refers to the rights of children. Under this heading, the Minister indicates that it is his and the Attorney General's view that Article 40's personal rights provisions apply to children. The Minister asserts that "these rights which relate to equality and the vindication of personal rights do not need explicit or exhaustive restatement".

The only specific amendment the Minister recommends is to Article 42.5 (see below).

Article 42.5 at present contains an implicit acknowledgement of "the natural and imprescriptible rights of the child". **The Minister proposes to make explicit the acknowledgement by the State that all children have natural and imprescriptible rights and to confirm that Article 42 applies to all children.**

According to the Minister, a previous reference to the duties of parents under this heading has been deleted because Article 42.1 "already recognises the rights and duties of parents in regard to their children." The Minister asserts that this general acknowledgement: "allows the rights of the individual child to be taken into account without interfering with the constitutional presumption about the primacy of the family as the unit within which the rights and welfare of the child are best exercised and met".

The Minister also makes clear that, in his view, this statement will apply equally to all children and remove "any residual doubt regarding the application of Article 42 to all children which might derive from the State's guarantee to protect the family based on marriage", without amending the concept of the family founded on marriage as the "natural, primary and fundamental unit group of society" (Article 41.1.1).

What will be the practical effect of Proposition 1?

The practical effect of Proposition 1 is that there would be a general recognition in the Constitution by the State that all children have "natural and imprescriptible rights".

What difficulties does Proposition 1 raise?

The wording now being proposed by the Minister in Proposition 1 no longer asserts that “all parents have the primary duty to respect” the rights of children. The ICCL had criticised this wording, on the basis that it would have “privatised” the responsibility for the care and protection of children within the family. This would have been inconsistent with the responsibility assumed by the State when it ratified the United Nations Convention on the Rights of the Child to “undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention” (see Article 4, UNCRC).

The ICCL welcomes this tacit acknowledgment by the Minister of the responsibility of the State in this area. However, it retains deep misgivings about the validity of the Minister’s claim that this Proposition will lead to the rights of all children being protected equally.

Proposition 1 now includes a recognition by the State that all children have “natural and imprescriptible rights”. However, this still falls far short of making express provision for children’s rights in the Constitution, a measure that has been called for by the Ombudsman for Children, and a range of other groups, including the Children’s Rights Alliance.

The whole rationale and purpose behind the UNCRC is to recognise that children require specific and distinct legal protection. Children are in a markedly different situation to adults, as their rights tend to be exercised on their behalf by their family. In other words, they are subject to other people’s will. Children are also economically dependent on their families and other actors and this is why they need additional child specific rights which recognise this inevitable imbalance of power. As children mature and develop, their capacity for autonomy increases, hence the UNCRC obliges states to put in place mechanisms which ensure that children are enabled to participate as members of society according to their age and development.

Moreover, it apparently remains the view of the Minister that the existing rights set out in Article 40 of the Constitution “apply equally to children” and “do not need explicit or exhaustive restatement”.

In the following sections, the ICCL highlights some of the difficulties that arise from the use of the language “natural” and “imprescriptible”, and reliance upon the existing provisions of Article 40 of the Constitution.

1. UNENUMERATED RIGHTS UNDER ARTICLE 40 ARE INCOHERENT AND INSUFFICIENT TO PROTECT CHILDREN

First, the ICCL believes that the list of unenumerated rights identified under Article 40 are insufficient to protect children's rights. As recognised by the Ombudsman for Children, there is a lack of clarity about the content and status of unenumerated children's rights.¹ Indeed, the Constitution Review Group has noted that the "list of unenumerated rights does not in any sense form a coherent code"² and only reflects particular cases which have come up before the courts. The Constitution Review Group recommends that these rights should be expressly recognised in the Constitution, together with other important rights and suggests relying on international standards as a guide for this endeavour.

Further, it is important to remember that the individual rights of the child are often subordinated by the primacy of the marital family. For example, in the child custody context, as Hogan and Whyte make clear:

The courts have developed a strong presumption that the rights and interests of the child are best served by giving custody to the parent. Unfortunately this approach has, on a number of occasions, led to decisions which arguably did not best serve the welfare of the child.³

The recent decision in the Baby Ann case demonstrates the Supreme Court's approach in these matters and highlights the inadequacy of Article 40 to protect children's rights.

2. THE LANGUAGE "NATURAL" AND "IMPREScriptIBLE" IS UNCLEAR AND WILL PRESENT INTERPRETATIVE PROBLEMS FOR THE JUDICIARY

Second, the language of the proposed amendment i.e. "natural and imprescriptible" is unclear and, in the absence of any further guidance, will present interpretative problems for the judiciary. This would seem to be at odds at odds with the Minister for Children's previous statements on constitutional

¹ Here the Ombudsman cites Hogan and Whyte in *JM Kelly: The Irish Constitution*, fourth edition, at p. 1417-1418. The Children's Rights Alliance also calls for express rights for children in the Constitution. Refer to Children's Rights Alliance (2006) *The Constitution and Children*, www.childrensrights.ie

² Constitution Review Group (1996) *Report of the Constitution Review Group*, Government Stationary Officer, at p. 257.

³ Hogan, G. W. and Whyte, G. F., *ibid*, at p. 1921.

change. For example, at a recent Barnardos conference he said that “the courts deserve clear guidance from us”.⁴

3. THE AMENDMENT SHOULD INCLUDE EXPRESS RIGHTS FOR CHILDREN

The amendment is missing the principal provisions (equality and non-discrimination; best interests of the child; right to life, survival and development) of the UNCRC, in respect of which the Constitution provides insufficient protection for the rights of children. These include:

- Equality and Non-Discrimination: Article 2.1 of the UNCRC provides that government agencies shall respect and ensure the rights of all children without discrimination, irrespective of the child’s or his/her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Article 2.2 requires government agencies to take appropriate measures to protect children against all forms of discrimination. Existing constitutional provisions on equality before the law (Article 40.1) compare unfavourably with Article 2 of the UNCRC. In effect, Article 40.1 **only prohibits arbitrary or invidious discrimination**, it arguably applies only to citizens and includes no explicit provisions outlawing discrimination on any ground against children. Its flaws have been catalogued by the Constitution Review Group, which recommended a complete overhaul of the provision. In addition, jurisprudence under this article is remarkably underdeveloped and since very little case law on the subject exists, it has not been established whether discrimination on the ground of age is prohibited. Unless the UNCRC’s principle of non-discrimination is incorporated, children’s rights to be free from discrimination will remain unprotected by the Constitution.
- Best Interests of the Child: The best interests formula of Article 3⁵ of the UNCRC is an interpretative principle aimed at reaching the best outcome for children in all actions concerning them. Such a provision is necessary since it directs courts and all other parties involved in the implementation of children’s rights to: (a) explicitly consider the manner in which a child’s

⁴ Address by Mr Brian Lenihan, T.D., Minister for Children, Barnardos conference on “Children’s Rights and the Constitution”, 6 November 2006.

⁵ “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

interests are affected by the issues at hand and (b) regard furtherance of the child's best interests as the objective which should be accorded primary weight.

The Minister's new proposals only refer to the best interests of the child in certain restricted circumstances, i.e. in court cases concerning custody, guardianship/access and adoption (Proposition 2), protection of children taken into care (Proposition 3) and voluntary placement for adoption (Proposition 4).

Therefore, the Minister's proposals still fail adequately to reflect the scope of Article 3 of the UNCRC, which makes it clear that in all actions concerning children, whether taken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child should be a primary consideration.

- Right to Life, Survival and Development: Under Article 6 of the UNCRC, every child has the inherent right to life and the State has an obligation to ensure the child's survival and development. This principle is elaborated further in the provisions of the Convention that safeguard children's socio-economic rights including the right to health⁶, the right to education⁷ and to an adequate standard of living.⁸ The need for inclusion of express protection for children's socio-economic rights is especially acute in light of relevant Irish case law. In *T.D. v Minister for Education and Others*, the Supreme Court overturned (by a 4:1 majority) a High Court order directing the State to adhere to its own time-scales for the building of special care and high-support units for children at risk.⁹ Many of the judges accepted that, in principle, the plaintiff's constitutional rights had been violated but nonetheless declined to grant the remedy sought. Such orders were said to fall outside the Court's competence, being exclusively matters for the Government as they implicated expenditure of resources. Insertion of a

⁶ Article 24, UNCRC.

⁷ Article 28, UNCRC.

⁸ Article 27, UNCRC.

⁹ The injunction in issue was the culmination of a series of cases involving failure to provide such accommodation; as a result some children had remained homeless, others were placed in temporary accommodation such as B&Bs or sent to units in the UK and further afield, while a number of boys and girls were even detained in adult prisons despite not having committed any criminal offence. In *D.G. v Ireland* (2002) ECHR 447 the ECtHR found that such practices violated Article 5 of the European Convention which safeguards the right to liberty.

guarantee along the lines of Section 28 of the South African Constitution¹⁰ would grant the Irish courts jurisdiction to remedy breaches of children's socio-economic rights. Moreover, children's socio-economic rights are also material in cases concerning state benefits paid to parents. However, experience before the Irish courts indicates that, in the absence of express constitutional recognition of these rights, judgments can neglect to consider the impact of impugned state policies on children.¹¹

- Respect for the Views of Children: Under Article 12 of the UNCRC, States Parties are to assure to children who are capable of forming their own views the right to express those views freely in all matters affecting them with the "views of the child being given due weight in accordance with the age and maturity" of the child. This provision of the Convention encourages adults to listen to and take into account the opinions of children when making decisions about their welfare and other matters. It does not give children authority over adults or interfere with the parents' rights and responsibilities. However, the Minister's proposals make no mention of this principle.

4. FAILURE TO AMEND ARTICLES ON THE FAMILY WILL PERMIT DISCRIMINATION AGAINST CHILDREN BORN TO NON-MARITAL FAMILIES

Fourth, the Minister suggests that the proposed amendment in Proposition 1 will "remove any residual doubt regarding the application of Article 42 to all children which might derive from the State's guarantee to protect the family based on marriage". However, if Articles 41¹² and 42.1¹³ are left intact, it will be open to the courts to continue to afford constitutional priority to the marital family, thus permitting discrimination against children born outside marriage in all other areas of life. For example, in *O'B v S*¹⁴, the Supreme Court held that exclusion of children

¹⁰ Refer to Appendix A.

¹¹ *Lowth v Minister for Social Welfare* [1999] 1 ILRM 5.

¹² Article 41.1.1 "The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law".

¹³ Article 42.1 "The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children".

¹⁴ [1984] IR 316 (Sup Ct). The Government subsequently addressed this issue through Section 29 of the Status of the Child Act, 1987. However, the importance of citing this case is to demonstrate the stance of the courts in relation to children in non-marital families.

whose parents are not married to each other from certain succession rights was permissible in light of the constitutional provisions that protect the position of the marital family. Therefore, constitutional articles on the martial family need to be amended.

ICCL Recommendations

Express Rights for Children in Article 40

- A genuine referendum on children's rights must include proposals to insert express rights for children in the Constitution. Proposals on children's rights should be reflective of the UNCRC. The ICCL believes that the Government should rely on Section 28 of the South Africa Constitution as a guide. **The ICCL believes that express rights for children should be included under Article 40.**

Replace Article 41 and 42.1 with a Broad Definition of the Family

- Articles 41 and 42.1 need to be replaced with a broader definition of the family which recognises the diversity of family life and does not subordinate the rights of children to the rights of the marital family.

Language of Amendments Should Not Rely on Ambiguous Natural Law Terms

- The language of the amendments should be clear and not rely on ambiguous natural law terms. The difficulties with natural law language in judicial interpretation have already been highlighted by the Constitution Review Group.¹⁵

¹⁵ Constitution Review Group, *ibid*, at p. 250.

Proposition 2: Best Interests of Child In Court Proceedings

Proposition 2 now deals with the best interests of children in court proceedings, in the following way:

It is proposed to permit the Oireachtas to provide by law that any proceedings before any Court concerning the custody, guardianship of [sic] access to or adoption of any child, the best interests of a child may be the paramount consideration.

What will be the practical effect of Proposition 2?

The practical effect of Proposition 2 is that the Oireachtas will be able to enact legislation indicating that the best interests of a child may be a paramount consideration in custody, guardianship or adoption matters.

What difficulties does Proposition 2 raise?

In contrast with the Minister's first briefing document, it is notable that this Proposition recognises that the best interests principle is central to the effective protection of children's rights during court proceedings.

However, rather than proposing to change the Constitution itself, this wording merely implies that the Constitution, as amended, will permit the Oireachtas to enact ordinary legislation to implement the best interests principle. The ICCL believes that, in order to ensure that the best interests principle will be a determining factor in any Court proceedings concerning the custody, access or adoption of a child it should be inserted into the Constitution itself.

Moreover, it is essential that provision be made that the best interests of the child *shall* rather than *may* be the primary consideration.

As the Ombudsman for Children stressed in her advice to the Minister, in relation to the matters of custody (Article 9.3, UNCRC), child protection (Article 9.1) and adoption issues (Article 21), the UNCRC expresses the best interests principle in the strongest possible terms, as a matter of necessity or as the paramount consideration.¹⁶ This approach should be reflected in the wording of this proposition.

¹⁶ Advice of the Ombudsman for Children on the proposed referendum on children's rights (22 December 2006) at page 5.

ICCL Recommendations

Rewording of Proposition 2

- Proposition 2 should be amended and replaced with the following text, to be included in the Constitution itself:

In any proceedings before any Court concerning the custody, guardianship or access or adoption of any child, the best interests of the child shall be the paramount consideration.

Amendment of Articles 41 and 42.1

- Articles 41 and 42.1 on the family may also need to be amended to exclude any residual possibility that the best interests of the child could be deemed subordinate to those of the marital family.

Proposition 3: Protection of Children taken into the Care System

Under this heading (Proposition 2 in the Minister's first briefing document), the Minister originally proposed to amend Article 42.5 to allow the State through "appropriate" and "proportionate" means to assume the place of parents. The term "proportionate" has been withdrawn because the Minister: "is concerned that the inclusion of "proportionate" is capable of misrepresentation as it changes the terms of the current protection which parents enjoy".

The Minister's second briefing document would suggest that it is now being proposed to leave untouched the current wording of Article 42.5 on this issue, namely:

In exceptional cases, where the parents of any child for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

The second part of the Minister's proposals relate to the adoption of children in long-term care.

It is proposed to empower the Oireachtas to provide by law for the adoption of a child in respect whom the State has, under court order, supplied the place of the parents over such substantial period of time as is prescribed by law and where the best interests of that child so require.

What will be the practical effect of Proposition 3?

The practical effect of Proposition 3 is that the existing wording of Article 42.5 will be retained

From a children's rights perspective, the current wording of Article 42.5 gives rise to a number of concerns. These are outlined in the following section ("What difficulties does Proposition 3 raise?").

Secondly, children in long-term care will become eligible for adoption. As regards this latter aspect, at the moment, there are a significant number of children in the care of the State who cannot be adopted for legal reasons and this amendment should remove these barriers.

What difficulties does Proposition 3 raise?

The difficulty with Proposition 3 is that, although he remains “open to persuasion”, the Minister has apparently decided against amending the current wording of Article 42.5 of the Constitution.

The removal of the term “proportionate”, which appeared in the Minister’s first briefing document is a retrograde step. The inclusion of this term could have been construed as a clear indication to the courts that they would be required to have regard to the relevant jurisprudence of the European Court of Human Rights (which is, in any case, an obligation upon the judiciary by virtue of the European Convention on Human Rights Act 2003).

Articles 41 and 42 establish the constitutional presumption that the welfare of the child is best met within the marital family. So strong is this presumption that the Courts will only have regard to the best interests of the child where the presumption in favour of the marital family has been rebutted or where the marital family does not exist.¹⁷ This approach is confirmed by the Kilkenny Incest Investigation¹⁸ and in subsequent case law. For example, in *North Western Health Board v H.W.*, the Health Board tried to identify the child’s right as superior to the parental rights, because the parents did not want to have a “heel prick” test performed on the child. However, the Supreme Court found against the Health Board and ruled that:

The failure of the parental duty which would justify and compel intervention by the State must be exceptional indeed. It is possible to envisage misbehaviour or other activity on the part of the parents which involves such a degree of neglect as to constitute abandonment of the child and all rights in respect of it.¹⁹

¹⁷ *N v Health Services Executive* [2006].

¹⁸ Kilkenny Incest Investigation (1993), Report presented to Mr Brendan Howlin T.D, Minister for Health by the South Eastern Health Board, at p. 31.

¹⁹ *North Western Health Board v H.W.* [2001] 3 IR 622.

More recently in *McK v The Information Commissioner*,²⁰ the Supreme Court dismissed an appeal by the Information Commissioner in relation to the withholding of information on a child. This case involved a parent who wished to have access to information on his daughter's illness. However, her legal guardians, an aunt and uncle, refused to allow him access and he appealed to the Information Commissioner.²¹

In deciding against the father, the Information Commissioner interpreted the Freedom of Information (FOI) legislation as requiring that the parent should establish that his access to the records was in the minor's best interests. When the case reached the Supreme Court, it ruled that the FOI acts must be interpreted in light of Articles 41 and 42.

The Commissioner erred in determining that release of the medical information would only be directed where there is tangible evidence that such release would actually serve the best interests of the minor.

It is presumed that his or her actions [the parents] are in accordance with the best interests of the child. This presumption while not absolute is fundamental.²²

What both cases illustrate is that when national authorities currently try to take account of the rights of the child, they are precluded by the courts because of Articles 41 and 42. Clearly, both cases point to the necessity to amend Articles 41 and 42.

In the view of the ICCL, Article 42.5 should be amended in order to reflect the far more exacting standards set out in the UNCRC, in particular Article 8 and Article 19. For example, Article 19 specifies that:

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

²⁰ [2006] IESC 2.

²¹ Many years before, there had been an allegation against the father of child abuse on his young daughter.

²² *McK v The Information Commissioner* [2006] IESC 2, at para 15.3

The ICCL is also disappointed that the threshold for taking a child into care will not be adjusted. This is confirmed by the Minister in his new briefing document:

The test for family failure remains at the existing threshold; it will neither be easier nor more difficult for a child to be taken into care. The proposed change will not result in any increase in the number of children being taken into care. The proposal will ensure that the response to such family difficulties is proportionate.

The Ombudsman for Children has already pointed out that the courts have developed a very strict test before taking a child into care i.e. “compelling reasons” and “exceptional circumstances”.²³ The Ombudsman recommended that this Article should be amended to expressly recognise the right of the State to intervene in the “best interests of the child”. Recognising that the courts will judge the best interests of the child to be in the marital family, Articles 41 and 42 would also need to be amended.

Moreover, the amendment as proposed in Proposition 1 indicates that Article 42 will apply to all children, including children from non-marital families. This actually raises the threshold of intervention for children born outside marriage. In reality, this means that children of non-marital families will be equally disadvantaged.

Lastly, the ICCL believes that the second part of Proposition 2 on the adoption of children in long-term care is a welcome development. However, it considers it to be important that enacting legislation on this issue specify that children in long-term care can be adopted after a reasonable period of time, having regard to the shortness of childhood, for instance, a period of five years.

ICCL Recommendations

Amendment of Article 42.5 to Reflect the UNCRC

- The ICCL believes that Article 42.5 should be amended to reflect Articles 8 and 19 of the UNCRC. The imprecise language “natural” and “imprescriptible” should be avoided and Article 42.5 should specifically state that the State will intervene in the “best interests of children”. This would re-calibrate the standard for state intervention to protect the most vulnerable children.

²³ Ombudsman for Children, *ibid*, at p. 11.

Proposition 4: Voluntary Placement of Children for Adoption

It is proposed that the Oireachtas may provide by law for the voluntary placement for adoption of any child subject to such conditions as may be laid down by law.

What will be the practical effect of Proposition 4?

The effect of Proposition 4 is to allow for all children to be made available for adoption, including a child of a marriage. This proposal is a positive development.

What difficulties does Proposition 4 raise?

The ICCL considers that, from a human rights standpoint, Proposition 4 is unproblematic.

Appendix A: Text of Section 28, South African Constitution

28. (1) Every child has the right

- a. to a name and a nationality from birth;
- b. to family care or parental care, or to appropriate alternative care when removed from the family environment;
- c. to basic nutrition, shelter, basic health care services and social services;
- d. to be protected from maltreatment, neglect, abuse or degradation;
- e. to be protected from exploitative labour practices;
- f. not to be required or permitted to perform work or provide services that
 - i. are inappropriate for a person of that child's age; or
 - ii. place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
- g. not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be
 - i. kept separately from detained persons over the age of 18 years; and
 - ii. treated in a manner, and kept in conditions, that take account of the child's age;
- h. to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
- i. not to be used directly in armed conflict, and to be protected in times of armed conflict.

(2) A child's best interests are of paramount importance in every matter concerning the child.

(3) In this section "child" means a person under the age of 18 years.