

Report of the Ombudsman for Children to the UN Committee  
on the Rights of the Child on the occasion of the examination of  
Ireland's Second Report to the Committee

**April 2006**

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# List of contents

Glossary of terms	5
1. Introduction	7
2. General measures of implementation	9
2.1 <i>Legal status of children – the Irish Constitution</i>	
2.2 <i>Mandate and independence of the Ombudsman for Children</i>	
2.2.1 <i>Limitations and exclusions in the mandate</i>	
2.2.2 <i>Independence</i>	
3. Definition of the child	19
3.1 <i>Age of criminal responsibility</i>	
4. General principles	20
4.1 <i>Participation of children and young people</i>	
4.2 <i>Recruitment of staff working with children – vetting</i>	
5. Civil rights and freedoms	26
5.1 <i>Corporal punishment within the family</i>	
6. Family environment and alternative care	28
6.1 <i>Child abuse</i>	
6.2 <i>Children in the care of the State</i>	
7. Basic health and welfare	34
7.1 <i>Children with special needs or disabilities</i>	
7.2 <i>Child and adolescent mental health services</i>	
7.3 <i>Child poverty</i>	
8. Education	40
8.1 <i>Progress achieved</i>	
8.2 <i>Issues of concern identified in complaints received</i>	
8.3 <i>Literacy levels and school drop out rates</i>	

9. Special protection measures	45
9.1 <i>Children in situations of emergency: separated children seeking asylum (SCSA)</i>	
9.2 <i>Children in conflict with the law</i>	
Conclusion	54
Appendix 1	
Complaints received – statistics	55

## Glossary of terms

### *All-Party Oireachtas Committee on the Constitution*

A Parliamentary Committee charged with bringing forward the recommendations of the Constitutional Review Group.

### *An Garda Síochána*

The National Police Service.

### *Coiste na dTeachtaí*

A representative group elected from the Dáil na nÓg, serving a one year term, which meets with key policy makers throughout the year regarding children's issues.

### *Comhairle na nÓg*

These are youth councils which have been set up in all 34 City and County Development Boards in Ireland. They provide 12-18 year olds with a forum to discuss and debate topics that are relevant to them.

### *Constitution Review Group*

A review group set up by the government in 1995 to examine the Irish Constitution and identify those areas where constitutional change may be desirable or necessary with a view to assisting the All-Party Oireachtas Committee on the Constitution in its work.

### *Dáil na bPáistí*

Dáil na bPáistí is a children's parliament set up to provide a national forum for 7-12 year olds.

### *Dáil na nÓg*

A Youth Parliament for 12-18 year olds which meets annually and consists of representatives of the Comhairle na nÓg's.

### *Garda*

Police officer. Gardaí, plural of Garda.

### *Health Service Executive*

The Health Service Executive (HSE) was established on 1st January 2005 when it assumed responsibility for the Health Service in Ireland. It is responsible for providing Health and Personal Social Services.

*Joint Oireachtas Committee on Health and Children*  
Parliamentary Committee on Health and Children.

*Oireachtas*  
National Parliament.

*Joint Oireachtas Committee on Justice, Equality, Defence and Women's Rights*  
Parliamentary Committee on Justice, Equality, Defence and Women's Rights.

# 1. Introduction

In its Concluding Observations on Ireland's Initial Report, published in 1998, the UN Committee on the Rights of the Child (the Committee) made 17 substantive recommendations calling for changes in law, policy and/or practice in the State.

Since that time, the State has made significant progress in implementing a number of these recommendations including through the development of the first National Children's Strategy, the establishment of the National Children's Office and more recently the Office of the Minister for Children; the development of child well-being indicators, and the establishment of an independent monitoring mechanism that is the Ombudsman for Children. However, much remains to be done in order to address fully the concerns expressed by the Committee in 1998. Indeed, in its report, the State has acknowledged that 'putting children at the heart of policy and practice is a new way of working and is at an early stage of development'.<sup>1</sup>

In this report, submitted to the Committee in the context of the examination of Ireland's Second Report to the Committee, I reflect on the advances made since 1998, on new issues and on outstanding concerns.

A fundamental issue is the legal status of children under the Irish Constitution. Notwithstanding the Committee's calls in 1998 for this issue to be addressed, children are still not recognised as individual rights holders under the Constitution. The inferior legal status of children under the Constitution is at the root of many of the difficulties still faced by children, particularly those most vulnerable, in Ireland today.

Given that my Office is only operational since May 2005, this report aims to bring to the attention of the Committee concerns expressed by children and their families, either through the complaints function of my Office or through direct contact with children. My report does not take the form of a shadow report, but rather focuses on particular areas of concern in respect of which my Office has a unique perspective to contribute.

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<sup>1</sup> Ireland's Second Report to the UN Committee on the Rights of the Child, at para 3.



I hope that this report, the first from an Ombudsman for Children in Ireland, will be of assistance to the Committee in understanding the national context relating to children's rights and will inform the pre-sessional meeting to be held in June and the State examination in September 2006.

## 2. General measures of implementation

### 2.1 Legal status of children – the Irish Constitution

*“The Committee recommends that the State party take all appropriate measures to accelerate the implementation of the recommendations of the Constitutional Review Group for the inclusion of all the principles and provisions of the Convention and the implementation of the Child Care Act of 1997, thereby reinforcing the status of the child as a full subject of rights”.<sup>2</sup>*

In January 2006, the All-Party Oireachtas Committee on the Constitution published its 10th progress report.<sup>3</sup> Amongst the recommendations in its report was a recommendation that the following clause be inserted into the Constitution:

*“All children, irrespective of birth, gender, race or religion, are equal before the law. In all cases where the welfare of the child so requires, regard shall be had to the best interests of that child.”*

This clause provides that children should be treated equally and that only where their **welfare** so requires, should regard be had to their best interests.

This is a big step back from the recommendations of the Constitutional Review Group of 10 years ago. As the Committee is aware, the Constitutional Review Group recommended the addition of an express guarantee of certain rights of the child and an express requirement that in all actions concerning children, the best interests of the child must be the paramount consideration.

It also does not take into account the view expressed by the Committee in 1998 that “the welfare policies and practices prevailing in the State party do not adequately reflect the child rights-based approach enshrined in the Convention”.<sup>4</sup>

At the time of going to print, the recommendations of the All-Party Oireachtas Committee on the Constitution have been referred by the Government Cabinet to the Minister for Children and to other relevant Government Departments for comments. During this period of consideration, I will work to promote the view, set out in my submission to the All-Party Oireachtas Committee on the Constitution in January 2005,

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<sup>2</sup> Concluding Observations of the Committee on the Rights of the Child: Ireland, 04/02/98, CRC/C/15/Add.85, at para 24.

<sup>3</sup> Tenth Progress Report: The Family, All-Party Oireachtas Committee on the Constitution, January 2006.

<sup>4</sup> Concluding Observations of the Committee on the Rights of the Child: Ireland, 04/02/98, CRC/C/15/Add.85, at para 7.

that the original recommendations of the Constitution Review Group be implemented.<sup>5</sup> A copy of this submission has been forwarded to the UN Committee.

It is important to note that the concept of express rights for children is not simply an academic point. The lack of an express statement of children's rights in the Constitution – the primary legal instrument in the State – has wide-ranging and real consequences. It affects the manner in which civil servants develop policy and proposals for legislation. It limits the extent to which the Courts can act in the best interests of children and, perhaps most significantly, it serves to maintain a social culture in which children's lives and opinions are not valued to the same extent as those of adults.

#### *Incorporation of the UN Convention on the Rights of the Child*

Although steps have been taken to incorporate many of the principles of the UN Convention on the Rights of the Child (CRC) in domestic legislation, there are no plans at present to formally incorporate the CRC. This issue, although a separate matter, has a bearing on the legal status of children in the State.

For instance, the All-Party Oireachtas Committee on the Constitution noted in its report that, due to the fact that relevant international human rights treaties have not been incorporated at constitutional level, 'children's rights therefore remain inferior and subordinate to parental rights'.

#### *Recommendation*

A statement of express rights for children and an express requirement that in all actions concerning children the best interests of the child must be the paramount consideration should be inserted into the Constitution. Efforts should also be undertaken to fully incorporate the CRC at domestic level.

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<sup>5</sup> Ombudsman for Children: Submission to the All-Party Oireachtas Committee on the Constitution, 2005.

## 2.2 Mandate and independence of the Ombudsman for Children

### 2.2.1 Limitations and exclusions in the mandate

#### *Background*

I am concerned that certain of the limitations and exclusions provided for in the Ombudsman for Children Act, 2002, concerning my powers of investigation, may preclude my Office from executing effectively its role and functions as set out in the Act.

These exclusions are set out in Section 11 of the Ombudsman for Children Act, 2002 (hereafter the Act) and in Part 2 of the Schedule to the Act. The limitations and exclusions of greatest concern are those which apply to:

- children in certain places of detention;
- An Garda Síochána, the administration of the law relating to asylum, immigration, naturalisation or citizenship and a provision providing for the exercise of a Ministerial veto on investigations and the Defence Forces.

It is important to note at the outset that these exclusions and limitations apply only to the investigation function set out in the Act. They do not apply to the policy, research, advocacy or other functions.

I am concerned that these limitations and exclusions will remove from my investigatory remit some of the most vulnerable children and young people in the State. Section 7(1) of the Act provides that *'The Ombudsman for Children shall promote the rights and welfare of children...'* I consider this an obligation to promote the rights of all children equally. To exclude any group or class of children from the reach of the Ombudsman for Children's investigatory powers by virtue of, for example, their detention in a place not covered by the Act, is to go against the primary objective of the Act: the establishment of an Ombudsman to promote the rights and welfare of all children.

The exclusion of certain groups of children from the investigatory remit also goes against both the letter and spirit of the UN Convention on the Rights of the Child. The Committee has stated that children's rights institutions should proactively reach out to all groups of children in particular the most vulnerable and disadvantaged, such as children in care or detention, refugee and migrant children and other groups. In particular, institutions should have the right of access, in conditions of privacy, to children in all forms of alternative care or other places.<sup>6</sup>

I raised my concerns about the limitations and exclusions in the Act in my first Annual Report to the Oireachtas. This is a matter I will pursue with the Oireachtas with a view to the removal or amendment of the provisions concerned.

A summary of my key concerns is set out below.

#### *Exclusion of children in certain places of detention*

Section 11(1)(e) of the Act provides that the Ombudsman shall not investigate an action "taken in the administration of the prisons or other places for the custody or detention of children" other than the children detention centres and the secure care centres.<sup>7</sup> As such, children detained in prisons and Garda stations are outside of the Ombudsman for Children's investigatory mandate.

The UN Convention on the Rights of the Child provides that detention or imprisonment of a child should be used only as a measure of last resort and for the shortest appropriate period of time.<sup>8</sup> The Convention also provides that children deprived of their liberty should not be held together with adults and that they should have the right to prompt access to legal and other appropriate assistance.<sup>9</sup>

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6 UN Committee on the Rights of the Child, General Comment No 2(2002): The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child, CRC/GC/2002/2.

7 Section 11(e)(iii) provides that places for the custody or detention of children certified under Part IV of the Children Act, 1908 are within the remit of the Ombudsman for children. In effect, all institutions which fall under the aegis of the Department of Education and Science and the Department of Health and Children are included under the Act. All relevant institutions which fall under the aegis of the Department of Justice, Equality and Law Reform are excluded.

8 UN Convention on the Rights of the Child, Article 37(b).

9 UN Convention on the Rights of the Child, Article 37(c) and (d).

I am concerned that, at present, significant numbers of children are detained in St Patrick's Institution (a prison for young men up to 21 years of age) and other adult prisons throughout the State and that I am currently precluded from acting on complaints received from such children insofar as they relate to matters pertaining to their detention.<sup>10</sup>

The intention expressed by the Oireachtas in relation to this exclusion during the passage of the Ombudsman for Children Bill, 2002 is significant. In response to mounting calls for the removal of this exclusion, Section 11(2)(a), providing for the removal of the exclusion at the discretion of one Minister with the consent of another, was inserted into the Bill by way of amendment.<sup>11</sup> Commenting on this provision, the Minister of State at the Department of Health and Children stated:

*"I believe that these children (children in detention) will be included which is why the words "shall cease to have effect" are included in the amendment. Young people in such institutions will be included, which I am certain that we and the Ombudsman will ensure. It is just not practical to do immediately and I want to set up the office without any delay".<sup>12</sup>*

Children detained in adult prisons do have access to the Inspector of Prisons in Ireland. However, one of the core principles that led to the establishment of an Ombudsman for Children was the principle that children require specific and tailored services when it comes to the investigation of complaints and other matters. The existence of other monitoring mechanisms should not therefore be used by the State as a means to defend the exclusions in my mandate. Indeed the Inspector of Prisons has himself noted that the exclusion 'seems to be an extraordinary and deliberate exclusion of our most vulnerable children from her mandate'.<sup>13</sup>

#### ***Exclusion concerning An Garda Síochána***

Part 2 of Schedule 1 of the Act excludes a number of public bodies from the ambit of the Ombudsman's investigatory powers under the Act. I am concerned about the exclusion of two of these bodies; An Garda Síochána and the Defence Forces (see below).

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<sup>10</sup> 166 children aged from 15 to 17 were detained in prisons in Ireland in 2004. The latest statistics for 2005 put the number of detentions so far this year at 147 (as at May 2005).

<sup>11</sup> Section 11(2)(a) provides that the exclusion concerning children in certain places of detention "shall cease to have effect on and after such date as may be specified in an order made by the Minister (for Health and Children) with the consent of the Minister for Justice, Equality and Law Reform".

<sup>12</sup> Dáil Éireann – Volume 552 – 24 April, 2002, Ombudsman for Children Bill, 2002, Second Stage.

<sup>13</sup> See Report of the Inspection of St. Patrick's Institution by the Inspector of Prisons and Places of Detention 2004-2005, at page 74, para.9.3.

An Garda Síochána has a key role to play in both protecting children and young people against criminal activity and in dealing with children caught up in such activity. As regards child protection, the Gardaí are charged with protecting children and young people against criminal assaults, other offences and abuse in the home and elsewhere.

The Children Act, 2001 sets out an important role for the Gardaí as regards children involved in offending behaviour, including the operation of Garda diversion programmes and other measures. An Garda Síochána is in contact with some of the more vulnerable children in our society on a daily basis and possesses a wide range powers in dealing with such children, including the power to detain.

Given this central role played by An Garda Síochána, I am concerned that my Office is precluded from investigating any action taken by An Garda Síochána.

I welcome the recent establishment of the Garda Ombudsman Commission and look forward to working together with the institution when it has become operational. However, for the reasons set out above, I consider that the existence of other monitoring mechanisms should not be used by the State as means to defend the exclusions in my mandate.

*Exclusion concerning the administration of the law relating to asylum, immigration, naturalisation or citizenship*

The Act precludes the Ombudsman for Children from investigating an action 'taken in the administration of the law relating to asylum, immigration, naturalisation or citizenship'. In response to concerns raised regarding this exclusion in the Parliamentary debates on the Bill in 2002, the Minister of State at the Department of Health and Children stated that:

*"Children seeking refugee status or asylum can go to the Ombudsman for Children in relation to that process. It is only the decisions that are excluded".<sup>14</sup>*

The Minister of State expanded on her view that the intention of this provision was to exclude only decisions relating to status and to prevent any duplication of the refugee appeals process.

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<sup>14</sup> Seanad Éireann – Volume 169 – 21 February 2002, Ombudsman for Children Bill, 2002, Second Stage.

*"If, however, there are problems in relation to delays, the provision of accommodation, nutrition, housing, etc, those issues are covered. This provision is only to ensure there is not a duplication of the actual process of the administration of the law... I have checked this carefully with the Department of Justice, Equality and Law Reform. Its intention is that only the final decision is covered, in other words, the administration of the law and not the provision of services surrounding their being in this country".<sup>15</sup>*

Notwithstanding these assurances, commentators have warned that, on a plain reading, this provision goes well beyond excluding complaints about official decisions regarding refugee status or citizenship claims.<sup>16</sup>

This is a matter that needs to be clarified, for example, by amending the Act to provide that only decisions on status are excluded.

#### ***Ministerial veto***

Section 11(4) of the Ombudsman for Children Act provides that 'Where a Minister of the Government so requests in writing.....the Ombudsman for Children shall not investigate, or shall cease to investigate, an action specified in the request..'. This provision is also contained in the Ombudsman Act 1980 under which the Ombudsman (established under that Act) operates.

I consider that this provision fundamentally contradicts Section 6(1) of the Act, which provides that 'The Ombudsman for Children shall be independent in the performance of his or her functions under this Act'.

When queried about the inclusion of this provision in the Ombudsman for Children Bill, the Minister of State advocated its retention on the basis that it gave protection to the Minister and to the Ombudsman: the Minister could prevent an investigation into any matter for which he or she would be accountable to the Oireachtas and avoid any interference in the role of the Minister; the Ombudsman was protected because any request to stop any investigation had to be made in writing.

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<sup>15</sup> Seanad Éireann – Volume 169 – 27 February 2002, Ombudsman for Children Bill, 2002, Second Stage.

<sup>16</sup> See Child Law, Geoffrey Shannon, 2005, at page 260 and "The Ombudsman for Children: An Analysis of the Strengths and Weaknesses of the Irish Model", Frank Martin, *Administration*, vol.52, No 1 (Spring 2004), at page 57.



I am of the view that things have moved on since this provision was recommended by an Oireachtas Committee on Administrative Justice in the late 1970's and thereafter included in the Ombudsman Act 1980.

The Ombudsman for Children's Office is a specialised national human rights institution to which the UN Principles Relating to the Status and Functioning of National Human Rights Institutions for the Protection and Promotion of Human Rights (otherwise known as the Paris Principles) apply. As such, this Ministerial veto power should be removed from the Act, in order to ensure that the Act complies with the requirement of independence set out in the Paris Principles.

It is worth noting that the Ministerial veto provision contained in the Ombudsman Act 1980 has never been used. However, for as long as it remains in the Ombudsman for Children Act, this provision will have an adverse impact on the way in which the independence of my Office is perceived.

#### *Exclusions concerning the Defence Forces*

The Ombudsman for Children is precluded from investigating any action undertaken by the Defence Forces as per the Schedule to the Act and Section 11(1)(b) of the Act which states that the Ombudsman for Children shall not investigate an action which affects 'national security or military activity'. As children aged 17 can be and are recruited into the Irish Army, I am concerned that actions taken with respect to these children lie outside my remit.

#### *Recommendation*

The exclusions and limitations in the Act which apply to: children in certain places of detention; An Garda Síochána; the Defence Forces and the provision providing for the exercise of a Ministerial veto on investigations should be removed. The limitation concerning the administration of the law relating to asylum, immigration, naturalisation or citizenship should be amended in order to provide that only decisions on status are excluded.

### 2.2.2 Independence

*“While the Committee welcomes the decision to establish a Social Services Inspectorate as a supervising mechanism, it remains concerned about the lack of an independent monitoring mechanism such as an Ombudsperson or a Child Rights Commissioner who would be accessible to children and would deal with complaints of violations of their rights and provide remedies”.<sup>17</sup>*

The independence of the Ombudsman for Children is provided for in Section 6(1) of the Act, which provides that ‘The Ombudsman for Children shall be independent in the performance of his or her functions under this Act’.

Two matters impinge on this independence. The first is the public administrative arrangements for the financing and staffing of the Office and the second, the Ministerial veto on investigations provided for in the Act (as described above).

At present, the Office has no independent Oireachtas ‘vote’. This means that monies do not come to the Office directly from the Oireachtas and the Department of Finance, but via the Department of Health and Children, a Government Department with responsibility for matters relating to children. In respect of financial and staffing arrangements for the Office, the Ombudsman for Children must first obtain the consent of the Minister for Health and Children, as per Sections 17 and 21 of the Act. On the other hand, the Ombudsman for Children is directly accountable, under the Act, to the Oireachtas in respect of role and functions and to the Public Accounts Committee of the Oireachtas for expenditure.

This arrangement, whereby the Ombudsman for Children exercises full independence except as regards accounting and staffing matters, impinges on the independence of the Office in two ways. Firstly, an Office such as this must not only be independent but be seen to be independent. The current arrangement has a negative effect on how the Office is perceived with regard to it being an independent voice in promoting the rights and welfare of children. Secondly, a number of operational difficulties have been experienced as a consequence of these staffing arrangements. Essentially, the Government assumed my Office would be staffed by Government civil servants, whereas, because of the highly specialised nature of the work, I need to openly advertise

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<sup>17</sup> Concluding Observations of the Committee on the Rights of the Child: Ireland, 04/02/98, CRC/C/15/Add.85, at para. 9.

positions. Senior civil service unions have conceded that the unique nature of working with children requires particular skills and I have been successful in recruiting the first three senior members of staff through open competition. However, this matter has arisen again in subsequent planned recruitment cycles and has significantly slowed down progress in developing the capacity of the Office. At the date of submission of this report, I am still awaiting agreement for the recruitment of staff to three additional posts, first sought in November 2004, and five additional staff posts submitted in the business plan in November 2005.

Although no issues have arisen to date as regards the autonomy of internal expenditure of the Office, under the current arrangements, the potential for such issues to arise in the future does exist.

*Recommendation*

To secure the independence of the Ombudsman for Children's Office, the Office should be provided with its own 'vote'. There are already a number of statutory organisations in Ireland with their own 'vote', including the Public Services Ombudsman.

The Ombudsman must, in addition, be given independence in the recruitment of her staff.

## 3. Definition of the child

### 3.1 Age of criminal responsibility

'In relation to the definition of the child (Article 1 of the CRC), the Committee is concerned at the various low age-limits set in the domestic legislation of the State party.'<sup>18</sup>

My views relating to proposed changes to the age of criminal responsibility in Ireland are dealt with in section 8.2 below.

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<sup>18</sup> Concluding Observations of the Committee on the Rights of the Child: Ireland, 04/02/98, CRC/C/15/Add.85, at para. 13.

## 4. General principles

### 4.1 Participation of children and young people

*“Regarding the implementation of article 12 of the Convention, the Committee is concerned that the views of the child are not generally taken into account, including within the family, at schools and in society. The Committee is also concerned that procedures for hearing children are not fully considered in the legislation.”<sup>19</sup>*

The concept of children’s right to be heard enshrined in the *UN Convention on the Rights of the Child* (‘CRC’) has a twofold significance. Firstly, Article 12 identifies children under eighteen years as rights-holders, with a right to their own voice and to have their voice heard. Secondly, the status of Article 12 as one of the CRC’s four general principles emphasises that children’s right to be heard is a mechanism for the promotion and protection of children’s other rights and, moreover, one through which children can be empowered to contribute to the implementation of their rights.

#### *Activities of the State*

Since the Committee examined Ireland’s Initial Report in 1998, steps have been taken to progress children’s participation in relevant areas of decision-making. While it is the case that initiatives supportive of hearing young voices were underway prior to the National Children’s Strategy, the Strategy’s publication in 2000 is identifiable as an important juncture. Echoing the language of Article 12, the first of the Strategy’s three National Goals placed children’s participation in decision-making on the Irish State’s national public policy agenda for the first time. It has since provided a stimulus for the creation and development of some opportunities for children to be heard at national, local and organisational level and in relation to the development and delivery of policies and services affecting them. Among the initiatives that have been instituted in recent years are:

- the establishment of mechanisms to enable children to feed their views into national and local level public policy-making processes, namely Dáil na nÓg, Comhairle na nÓg, Dáil na bPáistí and Coiste na dTeachtaí;<sup>20</sup>

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<sup>19</sup> Concluding Observations of the Committee on the Rights of the Child: Ireland, 04/02/98, CRC/C/15/Add.85, at para. 15.

<sup>20</sup> An independent *Review of Comhairle na nÓg and Dáil na nÓg* was commissioned by the National Children’s Office (now Office of the Minister for Children (OMC)) and undertaken by Tony Murphy in 2005. I welcome the commitment demonstrated by the OMC to evaluate these core initiatives under the Strategy and the Review’s recommendations on how these fora and other mechanisms for children’s participation might be supported to become more effective vehicles for children’s meaningful participation in local and national level decision-making.

- the publication of national guidelines for statutory and non-statutory agencies on supporting children’s involvement in their work;<sup>21</sup>
- consultation with and involvement of children in the development of several relevant national policies or equivalents, including Ireland’s first national play policy; the Children’s Advertising Code; and the National Set of Child Well-Being Indicators; and
- the Office of the Minister for Children’s publication of the Student Council Resource Pack and Diary and the forthcoming Giving Children and Young People a Voice resource for post-primary Civic, Social and Political Education, which aim to progress the establishment of effective student councils in post-primary schools and to promote the potential linkage between student councils and the Dáil na nÓg and Comhairle na nÓg.

I welcome the model of participation used in the recruitment and appointment process for my position.

I also welcome the efforts of the statutory and non-statutory agencies working at national and local level to establish and develop these and other mechanisms through which children might contribute to the shaping of policies, procedures, practices and services that interest and affect them.

These initiatives must be viewed, however, as first steps. The State Report gives express recognition to the fact that ‘putting children at the heart of policy and practice’ is ‘at an early stage of development’.<sup>22</sup> While recognising the early developmental stage of this activity, there are a number of matters, which should be considered at this stage.

Firstly, the range of areas of children’s lives examined through participation activities to date has been focussed around what might be termed the softer issues such as play or recreational spaces. I believe this range should be extended. For example, in January this year, the Minister for Justice, Equality and Law Reform published proposals for changes to the Children Act, 2001. These proposals deal with ‘at risk children’ and children who come into conflict with the law (see section 8.2 for further information).

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<sup>21</sup> National Children’s Office, Children’s Rights Alliance, National Youth Council of Ireland, *Young Voices: Guidelines on how to involve Children and Young People in your Work* (Dublin: June 2005).

<sup>22</sup> Ireland’s Second Report to the UN Committee on the Rights of the Child 2005, p.2, para. 3.

One of the proposals was the introduction of so called ‘anti-social behaviour orders’ or ‘ASBOs’. These are civil court orders which prohibit a child from engaging in ‘anti-social behaviour’. Breach of an order is a criminal offence. In child-proofing these proposals, I made the point that, given the potential impact of the ASBO proposals on the lives of ‘at risk’ children and children who come into contact with the criminal justice system, a consultation with children and young people on the proposals, prior to their advancement, would be appropriate and desirable. However, I am not aware of any such plans and it is envisaged that the proposals will be enacted by mid-summer.<sup>23</sup>

Secondly, **the range of State bodies and other bodies** involved in participation activities should be extended across central Government and each tier of administration, including local level authorities and area-specific authorities in sectors such as health and education. This will require the provision of appropriate funding and training for agencies to develop their capacity to design, implement and evaluate their work to support children’s participation in line with best practice.

Thirdly, as noted by the Committee in 1998, **procedures for hearing children are not fully considered in national legislation**. In addition, where provision is made, there is insufficient clarity regarding the operation of the provision. An example of such a provision, is the Guardian ad Litem service provided for in the Child Care Act, 1991. The State Report notes the existence of this provision and goes on to note that ‘there is little hard information on the use of Guardian *ad Litem*s by the Courts’. It also notes that a review of the Guardian *ad Litem* Service was conducted, however, the outcome of this review has yet to be acted upon.<sup>24</sup>

Finally, the **absence of express provision for children’s rights in the Constitution** impacts adversely on the development of a culture within which children’s right to be heard is respected. This matter is dealt with above at section 1.1.

#### *Activities of the Ombudsman for Children*

Under the *Ombudsman for Children Act, 2002*, the Ombudsman for Children has a statutory mandate to:

- give due consideration, having regard to the age and understanding of the child, to his or her wishes in so far as is practicable in the performance of her function

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<sup>23</sup> See section 8.2 of this report for further information on these proposals and my advice in relation to them.

<sup>24</sup> Ireland’s Second Report to the UN Committee on the Rights of the Child, 2005, p. 74, para. 335 and para. 337.

to examine and investigate complaints made against public bodies, schools and voluntary hospitals (Section 6.2);

- establish structures to consult regularly with groups of children that she considers to be representative of children and to give their views due weight in accordance with their age and understanding in the performance of her function to promote the rights and welfare of children (Section 7.2).

The involvement of children in the recruitment of the first Ombudsman for Children was welcome. The participation of children in the recruitment of the senior management team was among the initial steps subsequently taken to support children's participation in the work of the Office. Additional areas of work in which children have been involved to date include the design of our participation space and our website. A Youth Advisory Panel has been established to advise and support me in the exercise of my functions. Since taking up my position, I have met with and sought the views of children living in diverse circumstances across Ireland. My Office has also hosted a range of educational and other activities supportive of children's rights and participation.

My Office has been fully operational for less than one year. Therefore we are in the early days of development. In order to build a solid foundation for the development of our participation activities, the Children's Research Centre at Trinity College Dublin has been commissioned to assist in the development of a model of participation for the Office. The final report of the research will be completed in July 2006.

Apart from the implementation of the recommendations of this research, I also plan to develop an education programme for children and young people regarding my Office and the UN Convention on the Rights of the Child. I also plan to give children throughout the country an opportunity later this year to identify priority areas for the work of the Office in the period 2006-2009, and to develop regional participation structures to ensure the Office has a strong presence outside of Dublin. Finally I intend to further develop partnership arrangements with organisations working with marginalised and vulnerable children to ensure that these children have a meaningful involvement in the future work of the Office. My experience at this early stage is that many adults are apprehensive about the concept of children's participation and a smaller number have expressed scepticism about its value.



### *Recommendation*

Express provision for children's rights should be inserted into the Constitution. This would set the scene within which the right to participate could be realised in law, policy and practice and a culture of listening to children could further develop.

The range of areas of children's lives examined through participation should be expanded and efforts should be taken to ensure that the views of all children, including specific groups of children, are heard. Funding, training and supports should be provided to State agencies and service providers at all levels to develop participation activities.

I welcome the evaluation and dissemination activities undertaken by the Department of Health and Children to date and would encourage all State Departments and agencies to evaluate and disseminate information about their participation activities in order to promote shared learning and enhance the efficacy of participation work.

### **4.2 Recruitment of staff working with children – vetting**

In February 2004, the report of the Working Group on Garda Vetting was published. The report recommended that all organisations recruiting and selecting persons who would have substantial unsupervised access to children should avail – and should be entitled to avail – of the vetting services of the Garda Central Vetting Unit.<sup>25</sup> The report also made recommendations for legislative change and the allocation of additional personnel to the vetting unit.

### *Staffing*

At the end of 2005, additional staffing for the Vetting Unit was provided. While this is a welcome development, the delay in the provision of the staff was regrettable. The result is that, over two years on from the publication of the Working Group Report, the Vetting Unit has only recently become operational.

### *Access to vetting*

As noted in the State Report, at present vetting clearance is required only in respect of candidates seeking employment in the health services.<sup>26</sup> There is no general requirement on all organisations recruiting and selecting persons who would have substantial unsupervised access to children to vet candidates for employment, as recommended by the Working Group in 2004. For instance, candidates seeking employment in privately

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<sup>25</sup> Working Group on Garda Vetting Report, 2004, at page 4.

<sup>26</sup> Ireland's Second Report to the UN Committee on the Rights of the Child, 2005, at para. 298.

run residential care centres do not have to be vetted, nor does an employer in this sector have an entitlement to avail of Garda vetting.

An Implementation Group, established to implement the recommendations of the 2004 Working Group, is currently planning the phased expansion of the vetting service to other sectors outside of the health sector. During 2006, the Implementation Group will select a number of organisations in the education and sport sectors with a view to making vetting services available to them.

In my view, progress with regard to the provision of Garda vetting has been too slow. It is unacceptable that organisations seeking to vet candidates for employment in the child sector have no entitlement to avail of Garda vetting nor is there any statutory obligation on them to seek such vetting.

*Recommendation*

Steps should be taken to expedite the implementation of the recommendations of the Working Group on Garda Vetting.

## 5. Civil rights and freedoms

### 5.1 Corporal punishment within the family

*“The Committee is concerned about the lack of prohibition in legislation of corporal punishment within the family. In the view of the Committee, this contravenes the principles and provisions of the Convention”.*<sup>27</sup>

*“The Committee suggests that the State party take all appropriate measures, including of a legislative nature, to prohibit and eliminate the use of corporal punishment within the family. The Committee also suggests that awareness-raising campaigns be conducted to ensure that alternative forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention”.*<sup>28</sup>

It is regrettable that, in the years since 1998, progress has not been made with regard to the removal of the defence of ‘reasonable chastisement’ and the prohibition of corporal punishment within the family. This is despite both the recommendation of the Committee in 1998 to provide for such a prohibition and the 2005 ruling of the Council of Europe’s Committee of Social Rights, which held that Ireland’s failure to ban corporal punishment was a violation of Article 17 of the European Social Charter.<sup>29</sup>

In its report, the State notes ‘the specific issue of a prohibition in legislation of corporal punishment within the family is one that is being kept under review. It is the Government’s view that there will be an appropriate time for the introduction of an outright ban, which would be widely accepted and endorsed by all of society’.<sup>30</sup>

As a State party to the CRC and the Revised European Social, Ireland is under a binding obligation to prohibit all forms of corporal punishment in its law and to educate and inform the public on this subject.

The Council of Europe promotes awareness as a means to end corporal punishment rather than the criminalisation of parents. The development of parenting programmes, also noted in the State Report, is welcome. However, such programmes and other awareness raising measures will only achieve limited success so long as the defence of reasonable chastisement is retained in the domestic law of the State.

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<sup>27</sup> Concluding Observations of the Committee on the Rights of the Child: Ireland, 04/02/98, CRC/C/15/Add.85, at para. 16.

<sup>28</sup> Concluding Observations of the Committee on the Rights of the Child: Ireland, 04/02/98, CRC/C/15/Add.85, at para. 39.

<sup>29</sup> European Committee of Social Rights, Decision on the Merits, Complaint No. 18/2003, World Organisation against Torture v. Ireland.

<sup>30</sup> Ireland’s Second Report to the UN Committee on the Rights of the Child, 2005, p. 10, para. 41.

*Recommendation*

While the development of education programmes for parents is welcome, this alone will not change attitudes to corporal punishment within families. Political and community leadership is required in order to bring the practice of corporal punishment within families to an end. Corporal punishment should be prohibited in law and awareness raising activities and additional supports for parents should be provided.

The Irish Government has a duty, and a legal responsibility to protect all of its citizens. Our children are equal citizens and the Government is no less responsible for ensuring their protection. Immediate steps must be taken to introduce legislation that reflects the way children should be valued by Irish society.

## 6. Family environment and alternative care

### 6.1 Child abuse

*“The Committee also believes that cases of abuse and ill-treatment of children, including sexual abuse within the family, should be properly investigated, sanctions applied to perpetrators and publicity given to decisions taken, with due regard to the principle of respect for the child’s privacy”.*<sup>31</sup>

Child abuse remains a reality for many children living in Ireland today. According to the SAVI report of 2002, the vast majority of abused children are abused by persons known to them<sup>32</sup>.

In January 2006, I submitted a report and subsequently met with the Joint Oireachtas Committee on Health and Children on complaints received by my Office about Child Protection in Ireland.<sup>33</sup> A copy of this report has been forwarded to the Committee.

The report contains a summary and analysis of 61 complaints affecting 94 children submitted to my Office by members of the public, children and adults. In the complaints, the complainants indicated concerns about the way in which reports of child abuse, in all its forms, have been handled by the relevant authorities. The report highlights the issues of concern raised by the complainants and makes recommendations aimed at addressing the difficulties identified.

The complaints describe the experiences of 94 children and young people all under 18 years of age. In terms of geography the complaints are evenly spread across the country with a slightly higher incidence in the Dublin and Southern regions.

Of the 61 complaints:

- 29 concerned reports of abuse by immediate or extended family members;
- 22 concerned reports of abuse by members of the local community;
- 8 concerned reports of abuse of children in the care of the State; and
- 2 complainants did not wish to disclose this information.

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<sup>31</sup> Concluding Observations of the Committee on the Rights of the Child: Ireland, 04/02/98, CRC/C/15/Add.85, at para. 39.

<sup>32</sup> The SAVI report (Sexual Abuse and Violence in Ireland), Hannah McGee, Rebecca Garavan, Mairéad De Barra, Joanne Byrne and Ronán Conroy, Royal College of Surgeons in Ireland, at page 177: “in four-fifths of cases of child sexual abuse, the perpetrator was known to the abused person”.

<sup>33</sup> Report of the Ombudsman for Children to the Oireachtas (Parliament) Joint Committee on Health and Children on Complaints Received about Child Protection in Ireland, January 2006.

The task of investigating reports of child abuse lies with the Health Services Executive (HSE) which has statutory powers in this regard. While my Office does not have a direct protection role in this respect, I do have a role in ensuring that public bodies charged with the protection of children act appropriately. I am also required, under the Ombudsman for Children Act, 2002 to promote the rights and welfare of children and to ensure that legislation, policy and practice in the State are adequate.

The main issues highlighted in the complaints received by my Office are:

- difficulties in accessing services;
- a lack of information and awareness about child protection services;
- delays and regional inconsistencies regarding interventions;
- a lack of adequate support after disclosures of abuse;
- a lack of respect for the voice of the child;
- a perceived lack of accountability; and
- a reluctance to intervene particularly in the context of a family.

These issues have been highlighted by many other organisations and child protection experts in Ireland. Indeed, the HSE responded to the report by acknowledging that these difficulties and obstacles exist and by undertaking to address them internally.

In November 2005, following the publication of a damning report about clerical sexual abuse in Ireland, the Minister for Children announced a review of 'Children First', the national child protection guidelines in Ireland, and an awareness raising campaign on child sexual abuse.<sup>34</sup> However, in my report, I noted that reviews of the guidelines have already been undertaken and I recommended a comprehensive evaluation of child protection services provided by the HSE. I also recommended that the planned awareness raising campaign be extended to cover all forms of child abuse.

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<sup>34</sup> The Ferns Report, delivered to the Minister for Health and Children, October 2005.

Both of these recommendations have been taken on board by the Government. I understand that the awareness raising campaign is to be extended to all forms of child abuse and, in March of this year, the Minister for Children announced a national review of compliance with the 'Children First' guidelines by State Bodies and NGOs. The review will consider the following issues: structures and processes; service provision; outcomes and performance indicators; and standards and best practice. These are welcome developments.

#### *Recommendation*

The outcomes of the planned review of child protection services should be followed up without delay and appropriate resources and supports made available to improve child protection services in the State. We have yet to create a culture or environment where children feel safe to disclose the trauma of abuse. We have yet to hear the voice of children who have been through our child protection systems. The cultural attitude to child abuse in Ireland requires broader education regarding all forms of child abuse and education of the public that child familial child abuse is sadly a reality for children living in Ireland.

### 6.2 Children in the care of the State

The most recent figures published by the State in relation to the numbers of children in care are from December 2002. On 31 December 2002, there were 4,921 children in care. 78.33% of these children were in foster care and 11.38% were in residential care. 28.27% of the children were in care for 5 years or more, 38.55% were in care for between 1 and 5 years, while 33.18% were in care for less than 1 year.<sup>35</sup>

The State has undertaken a number of measures to improve the standard of care provided to children in the care of the State. One of these measures was the establishment of the Irish Social Services Inspectorate (ISSI) in 1999 to inspect social services in Ireland. The ISSI has not yet been established on a statutory basis however, I understand that there are plans to establish the ISSI on a statutory basis by way of legislation to be enacted this year.

The ISSI conducts inspections into residential childcare services managed by the HSE under statutory powers contained in *Section 69 of the Child Care Act, 1991*. It has a mandate to examine the situation of children in residential care, but not those in foster care.

The ISSI is authorised to enter any premises maintained by the HSE under the Act and examine the state and management of the premises and the treatment of children

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<sup>35</sup> Preliminary Analysis of Childcare Interim Dataset 2002 and 2003, published by the Childcare Legislation Unit, Department of Health and Children.

accommodated in the premises. It can examine such records and interview such members of staff as they see fit. It has also assisted in the development of national standards for children's residential centres, foster care services and special care units.

In its annual reports and frequent inspection reports, the ISSI has noted that the quality of care in residential care centres has improved since inspections commenced in 1999. It has commended the majority of care centres for the day-to-day care of children and young people. However, it has also highlighted several recurring issues of concern. It is important that these issues be brought to the attention of the Committee. A summary of the principal concerns follows below.

#### *The inequity of standards in children's residential centres across the HSE regions*

The ISSI has stated that a significant issue arising from the first five years of inspections has been the inequity in the range and quality of services in different residential care centres. The quality of services provided to children is dependent upon the community care area and the HSE region that the child lives in on coming into care. It has highlighted examples of excellence that exist in some regions and has expressed the hope that the recent establishment of a unified HSE might aid the replication of models of good practice nationwide<sup>36</sup>.

#### *The inequity of resources available to children's residential centres across the HSE regions*

In addition to differences in the quality of care services provided, the ISSI has noted its concern that some centres within some regions have access to greater resources.<sup>37</sup> A recent report by the ISSI on an inspection of high support units nationwide also points to regional variation regarding the standard of care and facilities.<sup>38</sup>

#### *Poor management practices in centres*

In its most recent annual report, the ISSI noted that a fifth of all of its recommendations for that year related to staffing issues and the need for the improvement of management practices. These recommendations focused on recruitment practices such as vetting of candidates for staff positions, the supervision of staff, staff qualifications and training needs, high staff turn over and an over-reliance on agency staff. The ISSI noted that children in care need confident and stable managers and staff and that the poor management practices identified did not support consistent care for vulnerable

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<sup>36</sup> ISSI Annual Report 2004; p62.

<sup>37</sup> ISSI Annual Report 2004; p62.

<sup>38</sup> ISSI: The Management of Behaviour: Key Lessons from the Inspection of High Support Units, April 2006.



children.<sup>39</sup> These concerns mirror the concern expressed by the Committee in 1998 about the lack of adequate and systematic training on the principles and provisions of the Convention for professional groups working with and for children, including health professionals and personnel working in residential centres for children.<sup>40</sup>

*The need for better management of challenging behaviours*

In its inspection reports, the ISSI has noted that staff in some centres experience significant difficulties in managing children's behaviour. This has been evidenced by the manner in which sanctions, physical restraint and single separation have been used. For example, during one of their inspections, the ISSI found that the criteria for the use of single separation in the centre varied depending on the manager deciding on the case.<sup>41</sup>

The ISSI also found that high support units and special care units had high levels of use of physical restraint and it raised concerns regarding the use of physical restraint in some instances.<sup>42</sup>

*The need for better planning for children at local and regional levels.*

In its annual report for 2004, the ISSI reflected on the fact that five years had passed since they first noted the poor quality of care planning and that it was unacceptable that good quality care planning is still not in place for all children. In over half of the care centres inspected, care plans were not up to standard. They were out of date or did not involve key people (including young people), they lacked key information or they did not examine the child's need to remain in care or the appropriateness of the current placement.<sup>43</sup>

In a recent cluster inspection (an inspection of more than one centre), the issue of the appropriateness of placements was raised again by the ISSI. It was particularly concerned that the local HSE area concerned had failed to implement its own policy of not placing young people under 12 years in residential care. In addition, children in the area had remained in residential care for numbers of years despite their care plan objective to secure a family placement.<sup>44</sup>

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<sup>39</sup> ISSI Annual Report 2004; p63.

<sup>40</sup> Concluding Observations of the Committee on the Rights of the Child: Ireland, 04/02/98, CRC/C/15/Add.85, at para. 11.

<sup>41</sup> ISSI Inspection Report 137; p3.

<sup>42</sup> ISSI: The Management of Behaviour: Key Lessons from the Inspection of High Support Units, April 2006.

<sup>43</sup> ISSI Annual Report 2004; p8.

<sup>44</sup> ISSI Inspection report 152, Cluster Report of 13 CRC's; p6.

*The need for strengthening of arrangements for children leaving care*

The ISSI has noted that assistance for young people leaving care continued to be provided in an uneven and unpredictable manner. It has recommended that the Child Care Act 1991, Section 45(1) be amended to establish the provision of aftercare as a statutory responsibility of the HSE.<sup>45</sup>

*All centres should comply with fire safety regulations*

In its annual report of 2004, the ISSI noted its grave concern that one third of the centres it inspected could not provide written confirmation of compliance with fire safety regulations. It has recommended that fire drills take place more regularly in some of the centres and that staff attend training in fire safety and evacuation.

I have met a number of children in the care system. A number of children in care have expressed fear at the notion of being out of care at the age of eighteen. These children though chronologically reach majority require genuine support for leaving years of institutional care. They do not have the social aptitude or resilience of those who have been supported by families. We need to adopt a more supportive approach to assisting these children with the transition of leaving care.

*Recommendation*

The ISSI should be established on a statutory basis without delay. Its recommendations, many of which have not been implemented should be adhered to. Of particular concern is the need for strengthening of arrangements for children leaving care. It is strongly recommended that the Child Care Act of 1991, Section 45(1) be amended to establish the provision of aftercare as a statutory responsibility of the HSE.

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<sup>45</sup> ISSI Annual Report 2004; p48.

## 7. Basic health and welfare

### 7.1 Children with special needs or disabilities

The Ombudsman for Children's Act, 2002 was commenced in its entirety on 25 April 2004. The Ombudsman for Children's Office received 177 complaints between 25 April 2004 and 25 April 2005. The number of complaints received by the Office in the first ten months of the second year of operation (25 April 2005 to the 28 February 2006) has nearly doubled and now stands at 315.

20% of the complaints received by my Office from April 2005 to the end of February 2006 related to access to services for children with special needs or disabilities (see appendix 1 for further statistical information).

59% of these complaints related to education. Issues raised included: the allocation of special needs resources and access to appropriate professional special needs assessment; school transport for children with special needs; and the handling of bullying of children.

32.2% of the complaints related to health services. Issues raised included: access to services such as speech & language therapy and occupational therapy and the adequacy of care facilities for children with severe disabilities or psychiatric difficulties.

The remaining complaints touched on a range of services including housing provision (accessibility issues), social welfare payments in respect of children with disabilities and the placement of children with disabilities and behavioural difficulties in detention centres. Many complainants spoke about the complexities involved in accessing services and the lack of an integrated approach to service provision. They also expressed concern at the lack of respect for the voice of the child in service provision.

My Office provided assistance to these complainants and many of these situations have been resolved to the satisfaction of the complainants. A number of these complaints remain under active examination by my Office.

This unique source of data available to my Office has highlighted the difficulties faced by children and families in accessing appropriate services for children with disabilities. A summary of the recurring themes in the education-related complaints follows below.

### *Education of children with special needs*

Access to special needs assistants, resource teachers and adequate supports for children in schools were the main areas of concern. Complainants reported:

- a lack of information about the services available (including any appeals procedures) and entitlements;
- delays in the delivery of supports or services;
- insufficient resources and a failure to match the extensive needs of young people with disabilities. For example the National Educational Psychologist Service (NEPS) is accessible to only 50% of primary schools and 75% of secondary schools;<sup>46</sup>
- a lack of flexibility in accommodating special circumstances; and
- a lack of empathy.

The enactment of the Education for Persons with Special Needs Act, 2004 and the establishment of a National Council for Special Education (NCSE) and recruitment of Special Needs Organisers (SENO) at local level are welcome measures. However, the Education for Persons with Special Needs Act, 2004 has not yet been fully enacted. The appeals board for children or their advocate to contest decisions made by the NCSE and local SENOs provided for in the Act has not yet been established.

In addition, the new mechanisms provided for under the Education for Persons with Special Needs Act, 2004 are not properly resourced. There also appears to be a low level of awareness of their existence, role and functions and of how to access their services.

The failure to provide services has led to much litigation on this issue. In 2005, 91 legal actions concerning provision for children with special needs were brought against the Department of Education and Science. Only one of these progressed to trial. The cost of settling cases outside of Court cost the State €1,285,752 in 2005. This figure does not include the costs of the State's legal defence which is borne by the Attorney General's Office.<sup>47</sup>

As regards participation, there is very little evidence that children with special needs are involved in decisions being made with regard to their education. This is despite Section 15 of the Education for Persons with Special Educational Needs Act, 2004 which provides for such consultation.

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<sup>46</sup> Response of the Minister for Education and Science to a Parliamentary question [5559/06], February 2006.

<sup>47</sup> Response of the Minister for Education and Science to a Parliamentary question [3172/06], February 2006.

### *Recommendation*

The Education for Persons with Special Educational Needs Act, 2004 should be fully implemented and the mechanisms provided for under the Act should be fully resourced. Efforts should be made to promote awareness about the supports and services available to children with special needs and how to access those supports. Children should be involved in all relevant decisions, as per Section 15 of the Act and State's obligations under the CRC.

### 7.2 Child and adolescent mental health services

*"The Committee is concerned about the lack of a national policy to ensure the rights of children with disabilities and the lack of adequate programmes and services addressing the mental health of children and their families".<sup>48</sup>*

*"The Committee also encourages the State party to pursue further efforts to ensure the implementation of integrated mental health programmes and approaches and to make available the necessary resources and assistance for these activities".<sup>49</sup>*

The inadequacy of current child and adolescent mental health service provision is well recognised in the State. The gaps in service provision were highlighted in two recent publications: the report of the Expert Group on Mental Health Policy and the position statement on psychiatric services for children and adolescents in Ireland produced by the Irish College of Psychiatrists.<sup>50</sup>

In Ireland, children and families with mental health difficulties continue to struggle with the stigma which is still attached to mental illness. We have a long history of a society that is not open about the issue of mental ill health. As a result many families live through mental health difficulties in silence and are reluctant to be open about their concerns for their children's health.

Some of the principal gaps in service provision are the lack of health promotion around mental health, early intervention services and the lack of any dedicated services for children aged 16 years or over who are currently treated within the adult services

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<sup>48</sup> Concluding Observations of the Committee on the Rights of the Child: Ireland, 04/02/98, CRC/C/15/Add.85, at para 20.

<sup>49</sup> Concluding Observations of the Committee on the Rights of the Child: Ireland, 04/02/98, CRC/C/15/Add.85, at para 38.

<sup>50</sup> A Vision for Change: Report of the Expert Group on Mental Health Policy, 2006 and A Better Future Now: Position Statement on Psychiatric Services for Children and Adolescents, Irish College of Psychiatrists, 2005.

framework. Children are therefore being failed on a number of fronts; intervention is not provided in a child's early years when difficulties first present. Then, when child and adolescent emergency cases do present, there is no dedicated service to assist the child.

I am particularly concerned that children of 16 years of age or over who require in-patient treatment are admitted to adult psychiatric wards. My Office has been contacted directly by children who were placed in facilities where all of the other patients were adults. On these occasions the children had previously been sexually abused by an adult. These children have described their feelings of fear and distress caused by the environment in adult facilities. This practice should be brought to an end.

Children with mental health problems are a particularly vulnerable group. The stigma mentioned above can make it very difficult for children's voices to be heard both within the services setting and outside of it. It is, therefore, important that these voices be brought to the attention of the Committee by others on their behalf.

In this regard, I wish to commend the recommendations of the Expert Group on Mental Health Policy to the Committee for its consideration. The Expert Group on Mental Health Policy was appointed by the Minister of State at the Department of Health in 2003. Its terms of reference were: to prepare a comprehensive mental health policy framework for the next ten years; to recommend how the services might best be organised and delivered; to indicate the potential cost of its recommendations and to consult widely in its work. The Group adopted a rights-based approach to its work and consulted widely in its work. I understand that the Group's report has been forwarded to the Committee.

#### *Recommendation*

Immediate steps must be taken to support children and families with mental health difficulties. Steps should be taken to address the gaps in child and adolescent mental health service provision, including by implementing the recommendations of the Expert Group on Mental Health Policy.

### 7.3 Child poverty

*“While acknowledging the existence of a National Anti-Poverty Strategy, the Committee is particularly concerned about the incidence of child poverty and homeless children in the State party and encourages it to strengthen measures and programmes for the protection of the rights of the most vulnerable children”.<sup>51</sup>*

The high level of child poverty in Ireland is a cause for concern. This issue has been highlighted by a number of organisations in Ireland including the End Child Poverty Coalition which has done much to raise awareness about the issue and has called for State action to address the problem.

In terms of its international record, Ireland has one of the highest rates of poverty among developed countries, ranking third highest in the UN Human Development Index of 2005, which measures the extent of poverty in 18 OECD countries.<sup>52</sup>

According to the EU Survey on Income and Living Conditions (EU-SILC), 14.6% of children were living in poverty in Ireland in 2003.<sup>53</sup> The annual EU-SILC Survey was first conducted in Ireland in 2003. It replaces the Living in Ireland Survey (LIIS) which was conducted in Ireland up to 2001. In its report, the State cites the LIIS survey. This explains the difference between the statistics cited in this report and the State report.

The EU-SILC survey uses the following indicators for identifying poverty: a household with incomes below 60% of the national median income and experiencing enforced basic deprivation of one or more of the items listed below:

- no substantial meal for a least one day in the past two weeks due to lack of money;
- without heating at some stage in the past year due to lack of money;
- experienced debt problems arising from ordinary living expenses;
- unable to afford two strong pairs of shoes;
- unable to afford a roast once a week;

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<sup>51</sup> Concluding Observations of the Committee on the Rights of the Child: Ireland, 04/02/98, CRC/C/15/Add.85, at para 21.

<sup>52</sup> UN Human Development Index 2005.

<sup>53</sup> Central Statistics Office, Ireland EU Survey on Income and Living Conditions (EU-SILC) First Results 2003, Dublin 2005.

- unable to afford a meal with meat, chicken or fish (or vegetarian equivalent) every second day;
- unable to afford new (not second-hand) clothes; and
- unable to afford a warm waterproof coat.

The survey also found that 23.9% of all children in Ireland were 'at risk' of poverty. This term 'at risk' is used interchangeably with 'relative poverty'. What both of these terms refer to is households where the income is less than 60% of the national median income.

In its report, the State (citing LIIS figures) noted that 23.4% of children were at risk of poverty in Ireland in 2001. The State also acknowledges that for people on lower incomes and their children, improvements in income and living standards have lagged well behind the rapid increases in households generally.<sup>54</sup>

Given the economic growth and prosperity enjoyed by the State in recent years, as documented in the State report, this high incidence of child poverty is unacceptable.

#### *Recommendation*

In accordance with its obligations under the CRC, the State must enhance current efforts aimed at tackling child poverty.

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<sup>54</sup> Ireland's Second Report to the UN Committee on the Rights of Child, 2005, at para. 619.



## 8. Education

### 8.1 Progress achieved

*“The Committee also appreciates the high level of education and advanced health system established in the State party”.*<sup>55</sup>

*“The Committee recommends that the State party strengthen its efforts to ensure that children from vulnerable and disadvantaged groups, including children belonging to the Traveller community, children living in poverty and refugee children, benefit from positive measures aimed at facilitating access to education, housing and health services”.*<sup>56</sup>

Since the Committee produced its concluding observations in 1998, there has been significant progress in relation to law, policy and practice in the education sector. These measures are outlined in the State Report<sup>57</sup>. Some of the most significant advances are:

- the Education Act, 1998 which provides greater clarity regarding the functions of and operational management of schools and provides for the creation of student councils at post-primary level;
- the Education (Welfare) Act, 2000 which has gone some way in tackling absenteeism and early school leaving. The Act is rooted in an empowering and holistic approach to the issue of absenteeism and establishes greater accountability for schools in relation to early drop-out rates and absenteeism; and
- the Education for Special Educational Needs Act, 2004 which, while not fully implemented, aims to improve the coherence, accessibility and transparency of both mainstream and special education systems for children with special needs.

A number of public bodies and organisations have been established to further the educational agenda. These include: the National Educational Welfare Board and the National Council for Special Education. The role of the Welfare Board, and its local Educational Welfare Officers (EWO), is *inter alia*, to liaise between a child, his/her parents and the school or any other relevant stakeholders where issues of concern arise.

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<sup>55</sup> Concluding Observations of the Committee on the Rights of the Child: Ireland, 04/02/98, CRC/C/15/Add.85, at para.3.

<sup>56</sup> Concluding Observations of the Committee on the Rights of the Child: Ireland, 04/02/98, CRC/C/15/Add.85, at para. 3.

<sup>57</sup> Ireland’s Second Report to the UN Committee on the Rights of the Child, 2005, at Chapter VII, from page 131.

The National Educational Psychological Service, established in 1999, provides support for children with special needs through both a whole school approach and individual assessment and work. As noted above, the service is available to only 50% of primary and 75% of post-primary schools.

The National Council for Curriculum and Assessment, established under the Education Act 1998, has made important contributions to the shaping of the curriculum in early primary and post-primary education. Some of its recent initiatives to support parents' involvement in their child's education are to be welcomed.

These new bodies and measures have been enhanced by a range of additional measures and specially targeted initiatives to tackle educational disadvantage and early school leaving, as detailed in the State Report. These advances are to be welcomed. However, concerns about educational service provision remain. Many of these concerns have been addressed in the complaints received by my Office.

## 8.2 Issues of concern identified in complaints received by my Office

My Office is the first independent monitoring body with a specific mandate to review complaints about actions taken by schools.<sup>58</sup> This statutory complaints function gives my Office access to first-hand data on the experience of children in the educational system and an understanding of the structure and culture operating in Irish schools.

Notwithstanding the advances made in the education sector over recent years, complaints received by my Office and reports produced by other organisations, indicate that major challenges still exist for some children seeking to achieve their full potential through education.<sup>59</sup>

177 complaints were received by my Office between April 2004 and April 2005. The number of complaints received in the first ten months since April 2005 is 315.<sup>60</sup> Issues regarding education represented 51.4% of the complaints received in the first period and 37% of the complaints received in the second period. For further statistics on the complaints received by my Office to date, see Appendix 1. Although the sample of complaints received regarding education is relatively small, they raise important issues which, I think, should be brought to the attention of the Committee.

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<sup>58</sup> See Ombudsman for Children Act, 2002, Section 9.

<sup>59</sup> See, for example, "School Report", Barnardos, 2006.

<sup>60</sup> Figures as at 28 February 2006.

The three principal issues raised in the complaints received are outlined below.

*The handling of bullying – 17.2% of complaints on education-related matters*

My Office does not investigate the substantive issue of bullying but rather the manner in which a school handled the situation. Many of the complaints about the handling of bullying are brought directly to my Office by the children concerned themselves, rather than by an adult on their behalf.

Complainants have raised concerns about the way complaints of bullying were dealt with by the school, often with children being confronted or being taken out of class in a very public manner to discuss their complaint. Complainants also described a lack of compassion and understanding about the impact of bullying on children and an attitude of acceptance that bullying is just 'part of growing-up'.

*Allocation of special needs resources – 16.4% of complaints on education-related matters*

See section 6.1 above for information on this issue.

*School transport – 12.1% of complaints on education-related matters*

The Department of Education and Science provides school transport for children living a certain distance from school and meeting a number of additional criteria. School transport is a key service in rural Ireland. A School Transport Independent Appeals Board has been established to review complaints and appeals from persons who are not happy with decisions taken by the Department of Education and Science. My Office can ultimately investigate those decisions.

The main issues raised regarding school transport concern:

- the quality and safety of the buses, especially for children with special needs;
- supervision on and off the bus; and
- disputes about access to and entitlements to avail of school transport.

In addition to three main areas of concern identified in the complaints received, a number of common themes arose in other education related complaints. These are described below.

### *The voice of the child*

The voice of the child is often not respected within internal school complaints procedures. As a result, the immediate family remains the main complainant on behalf of the child. Where a child does not have access to such an advocate their complaint is often never raised or is not addressed.

Some schools have clearly made tremendous efforts to encourage a culture of participation within their institution. Under the Education Act, 1998, post-primary schools are encouraged to create and assist student councils. The recent report of the Task Force on Student Behaviour (to which the Ombudsman for Children made a submission) highlighted the significant role of participation in creating 'an ethos of mutual regard and co-operation between student and staff'.

However, a number of challenges remain:

- Under Article 27 of the Education Act, 1998, there is no obligation on schools to establish a student council and there is no clarity as to their influence in respect of school decisions. At primary level, there is not a great deal of clarity on the procedures to be established to facilitate students' involvement.
- Codes of behaviour. The development of codes of behaviour without consulting children is an issue of concern. The Education Welfare Act, 2000 only provided that teachers and parents must be consulted on the development of codes of behaviour. There is no obligation to consult with the student themselves.
- The grievance procedures relating to schools under Section 28 of the Education Act, 1998 have not yet been agreed and prescribed by the Minister. This has led to discrepancies in complaint handling across schools.

### *Internal complaints procedures – Boards of Management*

A number of complainants have described a lack of trust in some schools' Boards of Management to deal with the substance of their complaints. There appears to be a lack of clarity and transparency about the composition, role, functions and procedures of some Boards of Management at community level. This reflects a widely held view that as the role of Boards of Management becomes more complex and the social and educational environment in which they operate becomes more challenging, there is a need for additional funding and support to ensure they have the capacity to deal satisfactorily with the multitude of issues that arise.

Many complainants were also fearful of the authority of educational professionals and felt unable or unwilling to pursue a complaint in the absence of transparent complaints procedures and appropriate supports such as third party representation or mediation services.

### 8.3 Literacy levels and school drop out rates

Concerns regarding literacy levels and school drop out rates have been raised by a number of organisations in the State, including Barnardos which recently published its review of Government performance in the education sector.<sup>61</sup> According to the Department of Education and Science, around 1 in 3 children in disadvantaged areas experience literacy and numeracy difficulties.<sup>62</sup> According to the Economic and Social Research Institute (ESRI), 18% of children leave school without the Leaving Certificate (the final school exam in Ireland).<sup>63</sup> A large proportion of those early school leavers are from disadvantaged areas. Traveller children and children with disabilities continue to experience difficulties in successfully transferring from primary to post primary schools and in completing second level education.

#### *Recommendation*

Adequate resources must be made available to the recently established mechanisms charged with tackling educational disadvantage and providing for children with special needs. School Boards of Management should receive appropriate support and training to develop their capacity in terms of complaints procedures. School Boards of Management should be encouraged to develop transparent complaints procedures and supports should be provided to those who experience difficulties in bringing complaints. The meaningful participation of children in school life should be actively promoted.

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<sup>61</sup> Barnardos, School Report 2006.

<sup>62</sup> Department of Education and Science, National Assessment of English Reading in 2004, Education Research Centre, Dublin, 2006.

<sup>63</sup> ESRI, Annual School Leavers Survey 2004, Dublin (published in 2006).

## 9. Special protection measures

### 9.1 Children in situations of emergency

#### *Separated children seeking asylum (SCSA)*

*“With respect to the principle of non-discrimination (Article 2 of the Convention) the Committee is concerned by the disparities with regard to access to education and health services. While recognizing the steps already taken, the Committee notes with concern the difficulties still faced by children from vulnerable and disadvantaged groups, including children belonging to the Traveller community, children from poor families and refugee children, as to the enjoyment of their fundamental rights, including access to education, housing and health services.”<sup>64</sup>*

Separated children are children under 18 years of age who are outside their country of origin and separated from both parents or their previous legal/customary primary care giver.<sup>65</sup>

Under the Child Care Act, 1991 and the Refugee Act, 1996 (as amended), the HSE is responsible for the total care needs of separated children who seek asylum in the State. The HSE’s responsibilities include; providing immediate and ongoing care placements, social, medical and psychological services, liaison with educational and youth services and tracing relatives, providing assessments and reunification where safe and possible. The HSE is also responsible for supporting a child through the asylum process.

The Separated Children Seeking Asylum (SCSA) service of the HSE is primarily responsible for the delivery of services to separated children seeking asylum. It receives referrals primarily from the Office of the Refugee Applications Commissioner and immigration officials at ports of entry. According to figures received from the SCSA Service, 630 separated children seeking asylum arrived in the State in 2004 and just over 600 arrived in 2005. Of these numbers, just over half were reunited with family members in the State. The vast majority of separated children are accommodated in residential centres in the Greater Dublin area. Others are accommodated in counties Cork and Clare.

In December 2005 and January 2006, I visited four of the accommodation centres in Dublin where separated children are placed and met with members of the SCSA Service who facilitated the visits and were very helpful in providing information about current

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<sup>64</sup> Concluding Observations of the Committee on the Rights of the Child: Ireland, 04/02/98, CRC/C/15/Add.85, at para. 14.

<sup>65</sup> Definition set out: Separated Children in Europe Programme, Statement of Good Practice, published by Save the Children and UNHRC, 2004.

service provision and the challenges they face in their work. The visits undertaken were initial visits and I plan on undertaking additional visits with the aim of engaging with the children and young people in the centres and listening to what they have to say.

I have a number of concerns in relation to the services provided to separated children seeking asylum in the State and these are set out below.

### *Non-discrimination*

The Separated Children in Europe Programme Statement of Good Practice, produced by Save the Children and UNHCR, states that 'Separated children are entitled to the same treatment and rights as nationals or resident children. They should be treated as children first and foremost. All considerations of their immigration status should be secondary'.<sup>66</sup>

In Ireland, separated children seeking asylum are treated differently. The vast majority are accommodated in 'hostel' accommodation. The hostels are privately owned and are operated and run by staff without any childcare training (some hostels may have one or two trained members of staff). These hostels do not meet the standards required of the residential care centres, where Irish children are placed (see section 5.2 above).

There are 10 centres for the accommodation of separated children seeking asylum in the Greater Dublin Area. Of these, only 1 is a registered residential care centre. A total of 188 children (including 16 babies whose mothers are separated children) were accommodated in the 10 centres in November 2005.

In December 2005, I visited two of the hostel accommodation centres and the only registered residential care centre. The difference between the two types of centre was stark. The residential care centre, which accommodates 6 children, was staffed with 4 qualified staff at the time of my visit. The centre was a house and had homely feel. There were photos of the children in the kitchen and reception room and space to play in the gardens outside. In contrast, I visited a hostel where 24 children were accommodated. Only 2 care staff were on duty, of which only one was trained child care professional. That is one trained member of staff for 24 children.

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<sup>66</sup> Separated Children in Europe Programme, Statement of Good Practice, published by Save the Children and UNHCR, 2004, at p. 7.

The inferior care provided to separated children seeking asylum is unacceptable and places the State in breach of its obligation to prevent discrimination under the CRC and the European Convention on Human Rights. These arrangements are also not in keeping with the requirement set out in the Statement of Good Practice that those working with separated children should receive appropriate training on the needs and rights of separated children.<sup>67</sup>

#### *Right to participate*

The Statement of Good Practice provides “The views and wishes of separated children should be sought and taken into account whenever decisions affecting them are being made. Measures should be put in place to facilitate their participation in line with their age and maturity”.<sup>68</sup>

I am not aware of any initiatives undertaken within the hostel accommodation centres to facilitate the participation of children in decision making.

#### *Appointment of a guardian or adviser*

Article 20(1) of the CRC states “A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State”. Based on the provisions of the CRC, the EU Directive on Reception and a number of other instruments, the Statement of Good Practice provides that “as soon as a separated child is identified, an independent guardian or adviser should be appointed – in a long-term perspective – to advise and protect separated children”.

Separated children seeking asylum in Ireland do not have access to an independent guardian or adviser. Given the isolated and confusing circumstances many of these children find themselves in, and the importance of any decisions they may take with regard to their application for asylum, such access should be provided.

#### *Recommendation*

Immediate steps should be taken to bring practice, policy and procedures relating to service provision to separated children seeking asylum into line with the Statement of Good Practice relating to separated children and the State’s international human rights obligations.

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67 Separated Children in Europe Programme, Statement of Good Practice, published by Save the Children and UNHRC, 2004, at p. 10.

68 Separated Children in Europe Programme, Statement of Good Practice, published by Save the Children and UNHRC, 2004, at p. 8.



## 9.2 Children in conflict with the law

*“The Committee is concerned about the low age of criminal responsibility and the treatment of children deprived of their liberty...”<sup>69</sup>*

*“The Committee recommends that the State party take all available measures to ensure the prompt enactment of the Children Bill of 1996, especially in relation to the administration of the juvenile justice system, with due regard to the principles and provisions of the Convention and other relevant international standards...”<sup>70</sup>*

### *Delay in the full implementation of the Children Act, 2001*

The Children Bill of 1996 was enacted in 2001. Since that time, there have been significant delays in the implementation of the Children Act, 2001. The first commencement order relating to the Act was made in April 2002. Under this order, certain parts of the Act were commenced. Three subsequent commencement orders, implementing additional provisions of the Act, were made 2003 and 2004. The Act is still not fully commenced.<sup>71</sup>

The Children Act, 2001 deals with children who come into contact with the criminal law. It incorporates many of the international human rights standards dealing with children and the administration of justice. The introduction of the Act in 2001, at the close of three decades of debate and reports about youth justice issues in Ireland, was a welcome development.

The delay in the full implementation of the Children Act, 2001 is very problematic. There is not proper provision in legislation for children who come into contact with the law. In addition, the Children Act was designed in a holistic fashion and should operate as a whole. Piecemeal implementation has caused a range of difficulties.

Among the key measures yet to be implemented are: a provision raising the age of criminal responsibility from 7 to 12 years of age; a provision which would allow a Court to refer a child before it to the HSE; and 8 out of the 10 community sanctions provided for in the Act.

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69 Concluding Observations of the Committee on the Rights of the Child: Ireland, 04/02/98, CRC/C/15/Add.85, at para. 23.

70 Concluding Observations of the Committee on the Rights of the Child: Ireland, 04/02/98, CRC/C/15/Add.85, at para 40.

71 In Ireland, Commencement Orders (which are Statutory Instruments) must be made by the Minister responsible for a piece of legislation before that legislation can take effect. The Commencement Orders relating to the Children Act, 2001 are: S.I. No. 151 of 2002, S.I. No. 527 of 2003, S.I. No. 468 of 2004 and S.I. No. 548 of 2004.

### *Proposed changes to the Children Act, 2001*

In December 2005, 78 proposed amendments to the Children Act, 2001 were formally referred to my Office by the Minister for Justice, Equality and Law Reform.

In accordance with my statutory function, I submitted my advice on the proposals to the Minister.<sup>72</sup> A copy of this advice has been forwarded to the Committee.

In my advice, I stated my view that the legislative framework provided by the Children Act, 2001 was adequate. What is needed is full implementation of the existing Act, which focuses on the diversion of children away from the criminal justice system. I am concerned that the effect of the proposed changes to the Children Act, 2001 will be to bring children closer to the criminal justice system. The proposed changes indicate a shift away from diversionary and welfare measures towards the penalisation of children. This shift in emphasis runs contrary to the principles and provisions of the CRC and the guidance set out in other relevant international standards such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

My advice also set out my views on the compliance of the proposals with Ireland's international human rights obligations and the probable effect of the proposals on the lives of children. A brief summary of the key points raised in my advice follows below.

#### *Age*

Section 52 of the Children Act, 2001 provides that no child under the age of 12 years is capable of committing an offence (as noted above, this Section of the Act has not been commenced). It also provides for a rebuttable presumption that children under the age of 14 years are incapable of committing an offence (incorporating the common law *doli incapax* rule).

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<sup>72</sup> Section 7(4) of the Ombudsman for Children Act, 2002 provides that I shall, at the request of a Minister, give advice on any matter relating to the rights and welfare of children, including the probable effect on children of the implementation of any proposals for legislation.

The Government proposes the following changes to the rules relating to age:

- a child under 12 years of age shall not be charged with an offence;
- a child aged 10 or 11 years can be charged with murder, manslaughter, rape, rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990 or aggravated sexual assault;
- proceedings shall not be taken against a child under the age of 14 years save by or with the consent of the Director of Public Prosecutions (the DPP does not have to give reasons for his decisions); and
- a child aged 10 or 11 years, who cannot be prosecuted because they are below the age of criminal responsibility, shall be admitted to the Garda Diversion Programme.

The most fundamental of these changes is the abolition of the *doli incapax* rule and the removal of all language related to capacity. The proposals provide, in effect, that children aged 10 years and older have criminal capacity, but that proceedings will not be brought against them save in certain instances. This indicates a significant shift away from the notion of capacity that lies at the heart of Section 52 of the Act as currently drafted – the notion that a child aged under 14 years is incapable of committing an offence because he or she did not have the capacity to know that the act or omission concerned was wrong.

In my advice to the Minister for Justice, Equality and Law Reform, I stated my view that these proposals were not in compliance with international human rights standards. I noted that while the Committee has not set an exact minimum age for the attachment of criminal responsibility, it has criticised jurisdictions in which the minimum age is 12 or less.<sup>73</sup>

#### *Transitional provisions regarding the detention of boys aged 16 and 17 years old*

Currently in Ireland, boys age 16 and 17 years are detained in St Patrick's Institution. St Patrick's Institution is a prison. It is a closed, medium security place of detention for males aged 16 to 21 years of age, serving sentences up to life.<sup>74</sup>

It is proposed that the Children Act, 2001 will be amended to provide that all detained children under the age of 18 years will be detained in Children Detention Schools. However, it is also proposed that a 'transitional' provision will be inserted in the Act

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<sup>73</sup> See the UN Committee's Concluding Observations on the Initial Reports of Australia and the United Kingdom.

<sup>74</sup> Irish Prison Service annual report, 2004, page 60.

to provide for the continued detention of boys in St Patrick's Institution, pending the construction or acquisition of premises for their detention. I have been informed that such premises will not become available until 2010.

In my advice, I noted that this proposal is not in compliance with international human rights standards. Of additional concern is the fact that I cannot investigate complaints from children held in St Patrick Institution because of an exclusion in the Ombudsman for Children Act, 2002 (see section 1.2.1 above).

#### *Inspector of children detention schools*

Sections 185-189 of the Children Act, 2001 provide for an Inspector of the Children Detention Schools (these Sections were never commenced).

It is now proposed that the Inspector function set out in the Act be divided between two bodies: an 'authorised person' and an 'Inspector'.

As regards the functions of the 'authorised person', the proposed changes include the following:

- an increase in the minimum period between inspections from 6 months to 12 months;
- the removal of the investigation function (and the vesting of this function in the Inspector);
- the removal of a provision that the Inspector can raise issues of concern arising out of an inspection with the school authorities or the Minister; and
- the removal of a provision that the Inspector shall have regard to the morale of the staff and child detainees.

As regards the Inspector function, the proposed changes to the Act involve a watering down of both the powers and the independence of the Inspector. It is proposed that the provision for a standing Inspectorate in the Act be removed and replaced with a provision that the Minister can appoint an Inspector on a case by case basis where he (the Minister) is satisfied that a matter of concern brought to his attention should be investigated.

The person appointed as 'Inspector' could be a civil servant who would carry out the inspection as part of his or her normal duties.

In my advice, I noted that these proposals are not in compliance with international human rights standards including the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

#### *Anti-social behaviour orders*

It is proposed that provision for anti-social behaviour orders be inserted into the Children Act. Under the proposals, a child engaged in 'anti-social behaviour' can, after the exhaustion of a number of preliminary procedures, be served by a Court with an anti-social behaviour order. An anti-social behaviour order is a civil order, however, breach of an order is a criminal offence.

'Anti-social behaviour' is defined in the proposals as behaviour that 'caused or, in all the circumstances, was likely to cause to one or more persons who are not of the same household as the child (a) harassment, (b) serious fear, intimidation or distress, or (c) persistent danger, injury, damage, loss, fear, intimidation or distress resulting in the serious impairment of the enjoyment of life or property by that person or persons'.

The probable effect of these proposals will be to bring children closer to the criminal justice system. Under the proposals, children engaged in anti-social behaviour can be admitted to the Garda Diversion Programme, a programme for children who have admitted to criminal behaviour. In addition, children who breach an anti-social behaviour order will be guilty of a criminal offence.

In my advice, I expressed the view that these proposals run contrary to the central ethos of the Children Act, 2001 – that being the diversion of children away from the criminal justice system. I also stated my view that the proposals were contrary to international human rights standards.

I have welcomed the work of the Government's Youth Justice Task Force and its report on the Youth Justice Review published in January 2006. The Youth Justice Task Force has brought much needed leadership and vision to the youth justice arena. In particular, I welcome the proposals and recommendations set out in the Task Force's Report which focus on the need for a unified and well coordinated youth justice service.

However, the proposed changes to the Children Act, 2001, set out go far beyond the changes recommended in the report on the Youth Justice Review.

It is my view that the Children Act, 2001 already contains the legislative measures needed to deal with 'at risk' children and children who come into contact with the criminal justice system. The approach taken in the Act, focusing on preventative measures and restorative justice mechanisms is the right approach and the one which best protects the rights of children and young people in conflict with the law in line with Ireland's legal obligations.

*Recommendation*

The Children Act, 2001 should be implemented in full. The Government should take on board my advice concerning the proposed changes to the Act and drop those proposals which are not in compliance with international human rights standards.

## Conclusion

Given that my Office has been operational only since May 2005, this report is limited in scope. Its primary aim is to bring to the attention of the Committee concerns expressed by children and their families and/or guardians, either through the complaints function of my Office or through direct contact with children.

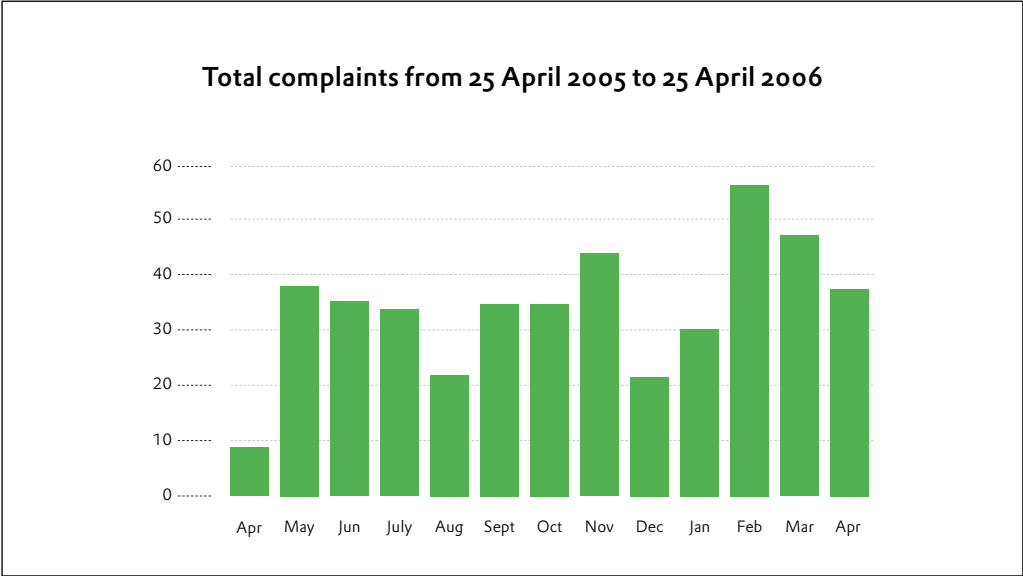
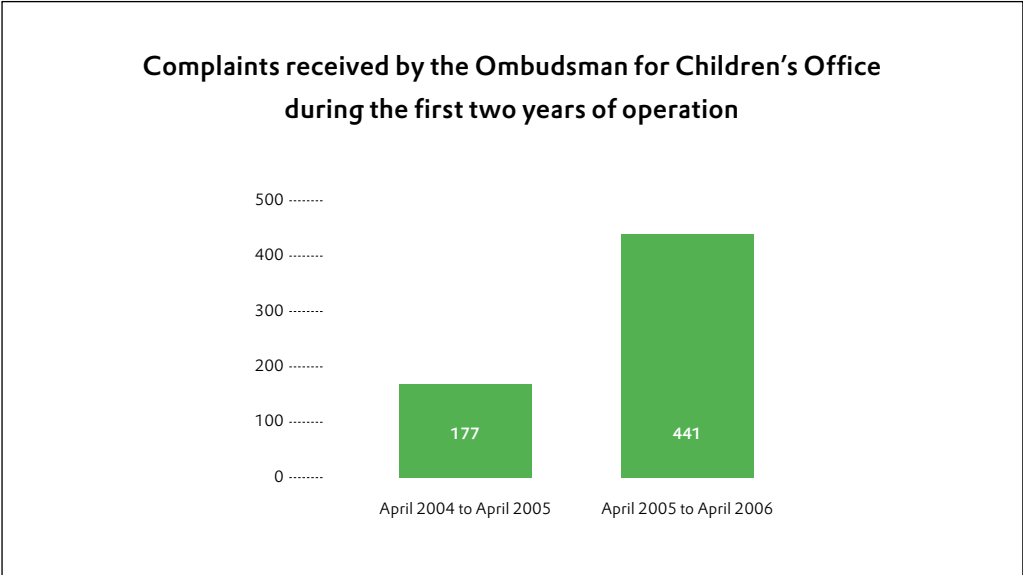
I would like finally to communicate to the Committee that, in relation to the complaints function, it has been the experience of the Office, across all thematic areas, that a high number of complainants reported a lack of respect for the voice of the child. Children themselves reported that when they had made some attempts to complain or suggest changes about a service/facility or about a situation that causes them concern, their attempts were disregarded or their views not taken seriously. It was only when their parents or advocate intervened that the issue was dealt with as a complaint. Although not usual, in some circumstances, the child was even disciplined for voicing their opinion. As a result, the immediate family remains the main complainant on behalf of the child, which raises a difficulty when the child does not have access to such an advocate.

As the demand for our complaints service increases (see Appendix 1 for statistics), we will use the UN Convention on the Rights of the Child as the basis of our work and will emphasise, in particular, the right to participate to ensure that children's voices are heard at all levels.

I look forward to meeting with the Committee in Geneva to discuss the themes raised in this report and hope that it will inform both the pre-sessional meeting to be held in June and the State examination in September 2006.

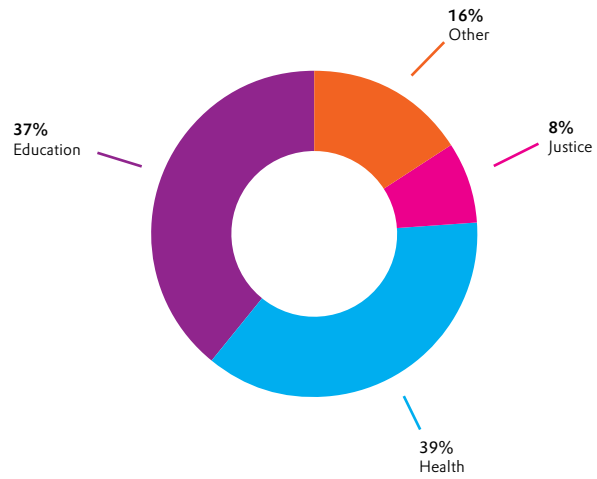
# Appendix 1

## Complaints received – statistics





### Issues raised through complaints in %



### Nature of complaints in education in %

