

Report of the Ombudsman for Children on the occasion of the  
examination of Ireland's First Report under the Optional Protocol  
to the CRC on the involvement of Children in Armed Conflict

**October 2007**

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# 1. Introduction

In July 2007, I received an invitation from the Committee on the Rights of the Child to submit information relevant to the situation in Ireland as regards the Optional Protocol to the UN Convention on the Rights of the Child on the involvement of children in armed conflict. This report is submitted to the Committee further to that invitation.

The format of the report follows the format of the Concluding Observations on State party reports issued by the Committee under this Optional Protocol to date. The report seeks to address the matters raised by the Committee in those Concluding Observations.

I hope that this report will be useful to the Committee and remain at the Committee's disposal should I be able to assist in any additional way.

## 2. Recruitment of children into the Defence Forces

### 2.1 Roles of the Defence Forces

The roles of the Defence Forces, as approved by the Government are:<sup>1</sup>

- to defend the State against armed aggression; this being a contingency, preparations for its implementation will depend on ongoing Government assessment of the security and defence environment;
- to aid the Civil Power (meaning in practice to assist, when requested, the Garda Síochána, who have primary responsibility for law and order, including the protection of the internal security of the State);
- to participate in multinational peace support, crisis management and humanitarian relief operations in support of the United Nations and UN mandate, including regional security missions authorised by the UN;
- to provide a fishery protection service in accordance with the State's obligations as a member of the European Union; and
- to carry out such other duties as may be assigned to them from time to time, eg search and rescue, air ambulance service, Ministerial air transport service, assistance on the occasion of natural or other disasters, assistance in connection with the maintenance of essential services and assistance in combating oil pollution at sea.

### 2.2 Age of Recruitment

Children aged 16 years can join the Defence Forces as an apprentice and children aged 17 years can be recruited into the Defence forces. There are a number of entry routes.

#### *Permanent Defence Force (PDF)*

##### *General Service Recruitment*

Children aged 17 years can become recruits in the PDF. They undertake approximately 16 weeks of initial training. After that period they will either be approved or discharged from the Defence Forces. If approved, they become a two star private or seaman. After a further 8 week course they become a three star private or seaman and are assigned to a unit within the PDF. Recruits are enlisted for a fixed term of 5 years in the PDF followed by a further period of 7 years in the reserve.<sup>2</sup>

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<sup>1</sup> "Information and Rules Cadetships in the Defence Forces 2007 for Graduates, School Leavers and Serving Personnel", JN9211/Deco6/25,000, at p 11.

<sup>2</sup> Information from the Defence Forces website: [www.military.ie](http://www.military.ie)

### *Cadetship*

A child 'not less than 17' can apply for a 'Cadetship' in the Army (line), Army Equitation, Air Corps (pilots) and Naval Service. Cadets (not already serving in the PDF) are enlisted as private for general service for the duration of the cadetship. Those who successfully complete their cadetship are appointed to a commissioned rank. The duration of a cadetship is approximately 15 months minimum (for Army Cadets) and 2 years for the Air Corps and Naval Service Cadets.

### *Apprentices*

Children, from the age of 16, can become an apprentice. Apprentices receive 4 years of training in respect of their chosen technical trade and military training.

### *Reserve Defence Force (RDF)*

Children, from the age of 17 years can join the RDF.

The State report notes that the minimum age for general service enlistment to all branches of the Irish Defence Forces is 17 years of age and that military regulations allow for the recruitment of 'apprentices' at age 16. The report goes on to note, at paragraph 20, that "in recent years, about 22% of the personnel intake into the Permanent Defence Forces has been under 18 years of age."<sup>3</sup>

## 2.3 Enlistment, discharge and liability to render service

The rules regarding the enlistment and discharge of defence forces personnel are set out in the Defence Act, 1954. Once enlisted, the only lawful way to leave the Defence Forces is to be discharged by completion of service or otherwise.<sup>4</sup> Discharge provisions are set out in Part IV of the Defence Act, 1954. Section 73 provides that a man may be discharged from the Permanent Defence Force or the Reserve Defence Force by the Minister or an Officer authorised by the Minister for prescribed reasons. A "man" is a member of the Defence Forces other than an Officer.<sup>5</sup>

There are provisions for the speedy discharge of personnel for a period of up to three months after their enlistment.<sup>6</sup>

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<sup>3</sup> Initial Report of Ireland to the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, CRC/C/OPAC/IRL/1, February 2007.

<sup>4</sup> Defence Act, 1954, Section 58(5).

<sup>5</sup> Defence Act, 1954, Section 2(1).

<sup>6</sup> Defence Act, 1954, Sections 74-77.

Chapter III of the Defence Act, 1954 sets out the provisions in relation to the service of members of the Defence Forces. Every officer and man of the PDF and every officer of the RDF is liable at all times to render military service within the State and, if he is employed on a State ship or service aircraft, to render military service outside the territorial seas of the State.<sup>7</sup>

With respect to men of the RDF, Section 90 provides for the calling out of reservists in aid of the civil power by direction of the Minister at any time. In times other than times of emergency, Section 88 provides for the calling out of reservists who have entered into an agreement to be called out on permanent service. Section 87 of the Defence Forces Act 1954 provides for the calling out of reservists on permanent service during a period of emergency and further to a proclamation by the Government.

#### 2.4 Liability to Military Law

The Constitution and Part V of the Defence Act, 1954 set out provisions in relation to military law. Persons liable to military law include: an officer or man of the PDF at all times; an officer of the RDF when on duty; a man of the RDF when called out on permanent service or in aid of the civil power or employed on military service under the orders of an officer.

Both officers and men of the RDF are liable to military law when attending training, in uniform or undergoing treatment in a military hospital. Finally, a person not otherwise subject to military law is liable to military law when accompanying a portion of the Defence Forces on active service.<sup>8</sup>

The offences against military law are set out in the Act, including in Chapter II of Part IV of the Act.

They include:

- offences by commanders when in action;
- offences in relation to support of the enemy;
- mutiny;
- disobedience;

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<sup>7</sup> Defence Act, 1954, Sections 85 and 86.

<sup>8</sup> Active service refers to a period of emergency or engagement with an enemy – see Section 5 of the Defence Forces Act, 1954.



- insubordinate behaviour;
- disorderly behaviour;
- desertion; and
- absence without leave.

Chapter III sets out powers of arrest and detention and provides for the establishment of a court of inquiry in relation to a man absent without leave for a period of twenty-one days. Chapters IV and V set out the rules relating to trials by court-martial. Section 192 of the Act provides that the most serious offences shall be tried by the civil courts, except where the offences were committed on active service. It also provides for the making of Ministerial regulations limiting the exercise of court-martial jurisdiction to where the consent of a civil authority has been obtained. These limitations on Court-martial jurisdiction do not apply in relation to an offence committed while serving outside the State with an International United Nations Force.<sup>9</sup> Chapter VI sets out the punishments awardable by Courts-martial for Offences against Military Law.<sup>10</sup>

Chapter X of the Act sets out a number of offences by members of the RDF. These include; failure to attend at a particular time and place, insubordinate behaviour and non-attendance at training or on permanent service or in aid of the civil power. There is provision for the detention of reservists in respect of certain of the offences set out in Chapter X.

## 2.5 Training

In its concluding observations in respect of other State reports, the Committee has expressed an interest in the training delivered to children in the defence forces and any weapons training in particular. The training provided for Army Cadet (Line Officers) and Army Equitation Cadets is described in excerpts from a Defence Forces publication which follows below.

“The purpose of cadet training is to develop character and leadership skills and instil a sense of duty and responsibility in the cadets. To benefit from that training, which is conducted in an environment of strict discipline, the cadet needs mental acuity and physical agility. The course of training in the Cadet School, Military College, DFTC, Curragh Camp is of approximately fifteen months duration for all applicants. During

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<sup>9</sup> Defence (Amendment) (No 2) Act, 1960.

<sup>10</sup> Note that this list include the death penalty, however, the death penalty was prohibited in Ireland by constitutional referendum in 2002.

this time the cadet is instructed in weapons handling (to instructor level), tactics (conventional, internal security and counter-insurgency), arms and foot drill, military engineering, human resource management, communications skills, military law, computer training in office information systems and academic studies which include leadership, psychology, Irish and military history, politics and economics. Cadets are required to take an active interest in sport, to which special attention is given and for which provision is made in the curriculum. The Cadet School provides facilities for Gaelic football, hurling, rugby, soccer, athletics, swimming, basketball and equitation. A module of the course is undertaken in the Defence Forces Physical Culture School where each Cadet is required to qualify as a Physical Training Leader.<sup>11</sup>

The training provided for Air Corps Cadets is described as follows.

“Air Corps Cadets undergo a course of training of approximately two years duration divided into two stages. Stage 1 of training takes place at the Cadet School, Military College, DFTC, Curragh Camp and takes approximately nine months. The cadet receives a basic military training including instruction in Weapons Training, Tactical Operations, Map Reading, Communications Skills and First Aid. On successfully completing Stage 1 of training, the cadet will be posted to the Air Corps, Casement Aerodrome, Baldonnel, Dublin 22 for Stage II – flying training. This course progresses from elementary and basic to advanced flying and lasts a period of approximately fifteen months. During the term of the cadetship the character of the cadet is trained and moulded with the object of developing his/her powers of leadership, initiative and general ability.”<sup>12</sup>

The training provided for Naval Service Cadets involves initial training at the Cadet School, Military College, DFTC, Curragh Camp and subsequent training at the Naval Base, Haulbowline, Co. Cork and onboard ship. We understand that the initial training involves basic military training.<sup>13</sup>

The training provided for general service recruits is noted at paragraph 2.2 above.

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<sup>11</sup> “Information and Rules Cadetships in the Defence Forces 2007 for Graduates, School Leavers and Serving Personnel”, JN9211/Deco6/25,000, at p 12.

<sup>12</sup> “Information and Rules Cadetships in the Defence Forces 2007 for Graduates, School Leavers and Serving Personnel”, JN9211/Deco6/25,000, at p 13.

<sup>13</sup> “Information and Rules Cadetships in the Defence Forces 2007 for Graduates, School Leavers and Serving Personnel”, JN9211/Deco6/25,000, at p 14.

Section 93 of the Defence Forces Act, 1954 provides for the voluntary attendance of reservists for training. Army reserve personnel receive initial training in weapons training, marksmanship, foot and arms drill and field craft.<sup>14</sup>

*Comment*

In its Concluding Observations on other State parties, the Committee has addressed matters related to the status and training of children in the armed forces.

In the range of circumstances set out above, members of the Defence Forces under the age of 18 are subject to Military Law, liable to render military service and may not leave the Defence Forces except where discharged. These provisions may be of concern to the Committee.

In addition, the involvement of members of the Defence Forces under the age of 18 in weapons training may be of concern to the Committee, particularly in light of the Committee's recent recommendation that a state party raise the minimum age of volunteers participating in firearms training to 18 years of age.<sup>15</sup>

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<sup>14</sup> See the website of the Defence Forces at: [www.military.ie](http://www.military.ie)

<sup>15</sup> See UN Committee on the Rights of the Child, Concluding Observations on Sweden, CRC/C/OPAC/SWE/CO/1, 2007 at para 15.

## 3. Involvement of children in hostilities

### 3.1 Deployment outside of the State

The State report notes that “all military personnel who are under 18 years of age are specifically precluded from any service abroad under the terms of the policy of the Irish Defence Forces as enunciated in Defence Forces Administrative Instructions”.<sup>16</sup> The Administrative Instructions, Part 26, paragraph 210 provides: “Under no circumstances shall a man who has not attained his eighteenth birthday by the first day of the month during which the unit (or any part of it) will proceed overseas, be selected for overseas service”.

Notwithstanding these administrative instructions, there is legal provision for the deployment of members of the Defence Forces overseas and these provisions do not exclude those members under 18 years of age.

The Defence Forces (Amendment) Acts of 1960 and 1993 introduced provision for service outside the State with International United Nations Forces. Section 2 of the 1993 Act provides for liability of certain members of the PDF for such service. These include all officers and men of the PDF appointed or enlisted after the passing of the Act. A child under the age of 18 can be a “man of the PDF”, see paragraph 2.2 above.<sup>17</sup>

In line with these provisions, the booklet: “Information and Rules Cadetships in the Defence Forces 2007 for Graduates, School Leavers and Serving Personnel”, JN9211/Deco6/25,000, notes at page 10: “All Defence Forces personnel may, under the terms of the Defence Amendment Act 1993, be required to serve overseas”.

#### *Comment*

Article 1 of the Optional Protocol requires that State Parties take “all feasible measures” to ensure that children do not take part in armed hostilities. In its Concluding Observations on other State Reports, the Committee has called for explicit prohibition by law of the recruitment of children under the age of 18 years into armed forces and their direct participation in hostilities.<sup>18</sup> I consider that a measure more robust than an administrative instruction should be introduced to preclude children from taking a direct part in hostilities abroad.

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<sup>16</sup> Initial Report of Ireland to the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, CRC/C/OPAC/IRL/1, February 2007, at para 7.

<sup>17</sup> As noted earlier, a “man of the PDF” is a member of the PDF other than an Officer.

<sup>18</sup> See UN Committee on the Rights of the Child, Concluding Observations on Guatemala, CRC/C/OPAC/GTM/CO/1, 2007 at para 6.

### 3.2 Involvement in hostilities within the State

The State report notes that, in theory, persons under the age of 18 could be exposed to hostilities within the State. The only foreseeable circumstances of such an eventuality identified by the State in its report are an attack on a military barracks or during the course of the army providing aid to the civil power.

#### *Comment*

Notwithstanding the limited possibilities for engagement in such hostilities, the lack of an explicit ban on involvement of children in hostilities may be of concern to the Committee.

## 4. Measures adopted with regard to disarmament, demobilisation and social reintegration

### 4.1 Support for former child soldiers in Ireland

In its Concluding Observations on other State Reports, the Committee has emphasised:

- the need for early identification of refugee, asylum-seeking and migrant children who may have been involved in armed conflicts;
- the provision of immediate, culturally sensitive and multidisciplinary assistance for their physical recovery and their social reintegration;
- training for persons working with refugee, asylum-seeking and migrant children coming from countries affected by conflict; and
- the collection of data on children who may have been victims of hostilities in their home country.

The Committee has also pointed to its General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin in this connection.

In its Report, the State notes that "Ireland does not have information on specific numbers of former child soldiers residing in Ireland and therefore does not have information on specific cases of rehabilitation and social reintegration of persons from a domestic point of view".<sup>19</sup> The lack of such data may have an adverse impact on early identification of such children and service provision in relation to them.

With respect to support for children who were involved in armed conflict, as noted in the State Report, the Health Service Executive (HSE) provides services including a psychology service for refugees and asylum seekers run by the HSE. Information on this and other psycho-social supports for separated children seeking asylum are noted in a report published by the Irish Refugee Council in 2006.<sup>20</sup> The report recommends the extension of access to some of the services mentioned in the report.

I have a number of concerns about support to separated children seeking asylum and other children who may have been involved in hostilities. These include the standard of care provided to separated children seeking asylum in hostels where they are accommodated,

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<sup>19</sup> Initial Report of Ireland to the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, CRC/C/OPAC/IRL/1, February 2007, at para 7.

<sup>20</sup> Making Separated Children Visible, the Need for a Child-Centred Approach, Dr Nalinie Mooten for the Irish Refugee Council, 2006.

and the lack of access to an independent guardian or advisor to such children.<sup>21</sup> I raised these issues in my report to the Committee of April 2006 submitted on the occasion of the examination of Ireland's Second Report under the CRC. In particular, I am concerned about the very low number of trained child care professionals working at the hostels where separated children seeking asylum are accommodated and the lack of adequate access for separated children to social workers. The standard of care in the hostels, which for the most part are privately owned and run by staff without any child care training, do not meet the standards required of residential centres for children in Ireland.

In addition, I am concerned that there is no 24 hour social work service in Ireland. As such, a child presenting with social work needs on a Friday evening may not get access to social work services until the following week.

As regards the need for early identification of refugee, asylum-seeking and migrant children who may have been involved in armed conflicts, I have requested information on this point from the relevant authorities in Ireland and hope to be in a position to provide information to the Committee at a later stage.

#### *Comment*

Immediate steps should be taken by the authorities in Ireland to ensure that children who have been involved in hostilities receive the support they require and to ensure that, in practice, the State meets the requirements of the Committee's General Comment No.6 and the Statement of Good Practice relating to Separated Children.

#### **4.2 Provision for support to former child soldiers in third countries**

The State Report sets out a range of initiatives and activities undertaken by the State to address the problem of children in armed conflict outside of the State and to provide support to former child soldiers in third countries. These initiatives and activities are welcome.

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<sup>21</sup> I note that the Committee has commented on the lack of national guardian systems as a matter of concern, see for example, Concluding Observations on the initial report of Norway, CRC/C/OPAC/NOR/CO/1, July 2007, at para 18.

## 5. General measures of implementation

### 5.1 Extra-territorial jurisdiction

Article 29(8) of the Constitution provides “The State may exercise extra-territorial jurisdiction in accordance with the generally recognised principles of international law”.

The relevant domestic legislation in this area is contained in the International Criminal Court (ICC) Act 2006 and the Geneva Conventions Act 1962, as amended by the Geneva Convention (Amendment) Act 1998 and the 2006 Act. Specifically, Section 12 of the 2006 Act provides for extraterritorial jurisdiction in relation to a range of offences.

It would appear from section 12 (1) of the 2006 Act that an Irish national accused of conscripting or enlisting children under the age of 15 into either national armed forces or other armed groups or of using them to participate actively in hostilities would be criminally liable, regardless of where the act took place (see sections 7 and 9 of the 2006 Act and Article 8.2 [b][xxvi] and [e][vii] of the Rome Statute).

Section 12(2) provides for the extension of this jurisdiction to persons of other nationalities who have carried out an act which is an offence under subparagraphs (a) or (b) of Article 8.2 of the Rome Statute and section 3 of the 1962 Act as amended. This has the effect of limiting the range of offences which attract criminal liability for non-Irish nationals to grave breaches of the Geneva Conventions and their Protocols and to international armed conflict situations. The definition of a grave breach of the Conventions and Protocols as set out in section 3 of the 1962 Act as amended is quite broad but we are uncertain as to how this has been interpreted and whether or not it could include offences relating to the conscription or recruitment of child soldiers.

Section 12 of the 2006 Act is silent on the issue of the location of the alleged perpetrator. In practical terms, however, there may be a distinction between those present in the State and those outside the State in so far as the practicalities of extradition under the 2006 Act and the Extradition Acts 1965 to 2001 are concerned.

In light of the above, our understanding in relation to offences committed abroad is that:

- An Irish national who has recruited children under the age of 15 into an armed group or used them to participate actively in hostilities would be guilty of an offence and could be prosecuted in Ireland. If the crime took place in a country that was not a State Party to the Rome Statute, the Irish authorities might be expected to pursue such an individual given the principle of complementarity on which the ICC operates (see



Article 17 of the International Criminal Court Act 2006 and the ICC Rome Statute).

- A non-Irish national accused of the same offence and present in Ireland could not be prosecuted in this State unless the act was considered a grave (as opposed to a minor) breach of the Geneva Conventions and their Protocols and the offence took place in the context of international armed conflict. If such an individual could not be proceeded against in Ireland, it is our understanding that he/she could nonetheless be surrendered to the International Criminal Court under Part III of the 2006 Act.
- A non-Irish national accused of the same offence but not present in Ireland could theoretically be proceeded against in this State only if that act were considered a grave breach of the Geneva Conventions and their Protocols and the offence took place in the context of international armed conflict. As such an individual would have no connection with Ireland, it is unlikely that the Irish authorities would pursue the matter and it would fall to the International Criminal Court to act.

*Comment*

In its Concluding Observations on other State Parties, the Committee has recommended the establishment of extra-territorial jurisdiction for violations of the Optional Protocol.<sup>22</sup> The restrictions on the exercise of extra-territorial jurisdiction in relation to non-Irish nationals set out above may fall short of what is required under the Protocol.

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<sup>22</sup> See the Committee on the Rights of the Child, Concluding Observations on Italy, CRC/C/OPAC/ITA/CO/1 at para 12, and Concluding Observations on Iceland, CRC/C/OPAC/ISL/CO/1 at para 7.

## 6. International assistance and cooperation (including the question of small arms, the protection of victims and financial assistance)

In its Concluding Observations on the reports of other State Parties, the Committee has addressed the issue of export controls on small arms and light weapons<sup>23</sup> While I gather that there are no manufacturers of complete small arms based in Ireland and that few small arms and components are exported directly from Ireland, some concerns have been expressed concerning the adequacy of the current and proposed export control regime.<sup>24</sup>

In February of this year, the Government published the Control of Exports Bill. The Bill was drafted in response to the recommendations outlined in a review of the export control regime relating to military and dual-use goods carried out on behalf of the Department of Enterprise, Trade and Employment in 2004<sup>25</sup> and to fulfil Ireland's obligations under the relevant European instruments.<sup>26</sup>

To my knowledge, there is no explicit legal prohibition on exporting small arms and light weapons to countries where children under the age of 18 take a direct part in hostilities either under the current or proposed legislation. However, the export control regime does contain general human rights and security criteria for the granting of licences which could, in principle, be used to deny a licence to export small arms and light weapons to such a country.<sup>27</sup>

### *Comment*

In light of the Committee's previous comments on this matter, the current and proposed legal provisions may fall short of the requirements of the Optional Protocol.

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<sup>23</sup> See for example the Concluding Observations on the initial reports of Canada (CRC/C/OPAC/CAN/CO/1), Belgium (CRC/C/OPAC/BEL/CO/1), Italy (CRC/C/OPAC/ITA/CO/1) and Switzerland (CRC/C/OPAC/CHE/CO/1).

<sup>24</sup> See the report *Controlling a Deadly Trade*, Amnesty International, Irish Section (August 2007) which can be accessed at [www.amnesty.ie](http://www.amnesty.ie)

<sup>25</sup> The report may be viewed at <http://www.entemp.ie/publications/trade/2004/exportmilitarydualuse.pdf>

<sup>26</sup> Council of the European Union Joint Action of 22 June 2000 and Common Position 2003/468/CFSP of 23 June 2003.

<sup>27</sup> For an overview of the current export control regime, see the Department of Enterprise, Trade and Employment's User Guide and Customers' Charter entitled *Export Controls on Military and Dual-Use Goods in Ireland* at <http://www.entemp.ie/publications/trade/2006/guidetoexportFINAL.pdf>

## 7. Exclusions in the OCO Act

I am concerned that my Office is specifically precluded from investigating the actions of the Defence Forces. Children in the Defence Forces are therefore excluded from the protection of my mandate. This exclusion is set out in Schedule 1, Part 2 of the Ombudsman for Children Act, 2002, and under 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'.

In its Concluding Observations on Ireland's Second Report to the UN Committee on the Rights of the Child under the Convention on the Rights of the Child, the Committee recommended that the State party, together with the Ombudsman for Children, review and propose amendments to the specific provisions which limit the scope of the Ombudsman's Office investigative powers with a view to eliminating possible gaps which may result in a violation of children's rights.

In this connection, it is important to note that the Ombudsman for the Defence Forces was established recently under the Ombudsman (Defence Forces) Act 2004. The establishment of this Office is very much to be welcomed. It should be noted that the Ombudsman cannot investigate:

- any matter concerning the organisation, structure and deployment of the Defence Forces;
- an action that concerns the administration of military prisons or places of detention; and
- an action which relates to or affects security or a military operation.

### *Comment*

In light of both the Concluding Observations of the Committee recommending adequate access for children to independent complaints and investigation mechanisms<sup>28</sup> and in light of Article 3 of the Optional Protocol which recognises that "under the Convention persons under the age of 18 years are entitled to special protection", the Committee might consider recommending a review of the exclusion in the Ombudsman for Children Act, 2002. Any matters which might subsequently fall within the remit of both my Office and that of the Ombudsman for the Defence Forces could be provided for in a memorandum of understanding.

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<sup>28</sup> See UN Committee on the Rights of the Child, Concluding Observations on Guatemala, CRC/C/OPAC/GTM/CO/1, 2007 at para 17.





