



**Ombudsman for Children's Office  
Ireland**

**Submission for the 25<sup>th</sup> Session  
of the Working Group on Universal Periodic Review**

**September 2015**

**Ombudsman for Children's Office (OCO)**

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**Ombudsman for Children's Office**  
**Ireland**  
**Submission to the United Nations Universal Periodic Review**  
**25<sup>th</sup> Session of the Working Group on the UPR**  
**Human Rights Council**  
**April/May 2016**

1. The Ombudsman for Children's Office (OCO) is an independent human rights institution established in 2004 under primary legislation<sup>1</sup> to promote and monitor the rights and welfare of children in Ireland. The Ombudsman for Children is appointed by the President of Ireland on the nomination of the Oireachtas (Parliament) and is directly accountable to the Oireachtas. This Office has dealt with over 11,000 complaints regarding the administrative actions of civil and public administration and has frequently submitted advice to Government on legislation relating to children's rights and welfare. The Ombudsman for Children is mandated to promote the UN Convention on the Rights of the Child (UNCRC) and aims to ensure that Ireland complies with its international human rights obligations.

2. This report has been prepared in light of trends in complaints received by this Office; the outcomes of investigations by the Office; the Ombudsman for Children's engagement with international human rights monitoring mechanisms; the Office's advice to Government on legislative change aimed at advancing children's rights; the Office's work to consult with and highlight the concerns of children; and research undertaken. Due to submission constraints, it has been necessary to omit a range of issues.

**I. BACKGROUND AND FRAMEWORK**

**A) Scope of international obligations**

3. Ireland's ratification of the Third Optional Protocol to the UNCRC in September 2014 is welcome. The State has not yet ratified all of the major international human rights treaties and instruments that the UN Committee on the Rights of the Child has recommended States become party to.<sup>2</sup> **The State should ratify all of the major human rights instruments and other instruments that it has been recommended States become party to.**

**B) Constitutional and legislative framework**

4. A referendum to amend Ireland's Constitution in order to include a new article on children and their rights was passed in November 2012. Although the amendment was limited in some important respects, the inclusion of the best interests principle and children's right to be heard at a constitutional level is a significant development. The UNCRC has not been incorporated fully into Irish law. Of particular importance from the OCO's perspective is the need to place a legal obligation on public bodies to respect the principles of the Convention. **The State should proceed with the necessary steps to incorporate the Convention fully into Irish law and introduce specific legal provisions to ensure that its obligations under the UNCRC are respected in the context of administrative proceedings and decision-making.**

**C) Institutional and human rights infrastructure**

5. Establishing a comprehensive framework for independent complaints-handling and inspection of children's services are essential elements for ensuring children's rights are respected. In 2012, the Ombudsman for Children's Office submitted a review of the operation of the Ombudsman for

Children Act 2002 to the Oireachtas. The Office's report contained a range of recommendations for enhancing the legislation underpinning the OCO's work.<sup>3</sup> The Office welcomes measures taken to date to give effect to some of these recommendations. A number of issues, however, remain outstanding. **The Ombudsman for Children's funding should come directly from the Oireachtas and other outstanding recommendations regarding the Ombudsman for Children's remit contained in the Office's 2012 review should be implemented.**

6. An audit of investigations carried out by the OCO in 2011 indicated deficits in awareness among public bodies of children's rights as recognised by international instruments and highlighted the need for improved human rights training for the civil and public service.<sup>4</sup> **Children's rights education and training should be mainstreamed to build capacity in this area among professionals, including those involved in relevant areas of civil and public administration.**

## II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

### A) Child welfare and protection

7. The establishment of a dedicated Child and Family Agency (Tusla) with statutory responsibility for child protection and welfare services is welcome. However, Tusla is not meeting its own target timelines for screening and assessment in respect of a substantial number of child protection referrals.<sup>5</sup> **Tusla must be provided with adequate resources to be able to meet its targets as regards the timely assessment of child protection referrals to its services.**

### B) Youth Justice

8. Initiated in 2012, the phased cessation to the detention of 16 and 17 year old boys in adult facilities is nearing completion. **Measures required to finalise this process should proceed without delay to ensure that young people under 18 can only be detained at the new National Children Detention Facility at Oberstown.**

9. One objective of *the National Youth Justice Action Plan 2014-2018* is to continue to support the Courts Service to ensure the use of detention as a last resort. One of the deliverable outcomes identified was to explore new alternatives for the Courts that could result in a reduction in the need for remands to detention.<sup>6</sup> **The State must ensure that detention on remand is used in exceptional circumstances only and that appropriate alternatives are explored, developed and appropriately resourced.**

10. The Children Act 2001 raised the age of criminal responsibility in Ireland from 7 to 12, with a rebuttable presumption that children under 14 are incapable of committing an offence.<sup>7</sup> However, this relevant section never came into force and was later amended by the Criminal Justice Act 2006. The effect of this amendment was to make the age of criminal responsibility 10 for certain serious crimes and 12 for other offences, and to remove the rebuttable presumption regarding the capacity of children under the age of 14.<sup>8</sup> **The age of criminal responsibility should be raised to 12 for all offences and the rebuttable presumption that children under the age of 14 cannot commit an offence should be restored.**

### C) Corporal Punishment

11. Ireland has not yet prohibited all forms of corporal punishment, as required under its international obligations.<sup>9</sup> Taking into account a recent decision of the Council of Europe's European Committee of Social Rights that the current situation in Ireland is a violation of Article 17 of the European Social Charter,<sup>10</sup> **previous recommendations of the UPR Working Group and of the UN**

**Committee on the Rights of the Child<sup>11</sup> with respect to corporal punishment should be implemented and the common law defence of reasonable chastisement should be removed.**

#### **D) Asylum and Immigration**

12. The General Scheme of the International Protection Bill 2015, and its stated overall purpose to introduce a single application procedure for international protection applicants, is welcome. Implementation of the legislation should mitigate some of the challenges faced by accompanied and unaccompanied children in Ireland. In its observations on the General Scheme, the OCO emphasised that **provisions of the International Protection Bill affecting accompanied and unaccompanied children need to uphold the principles and provisions of the UNCRC and provide for a child-centred, rights-based approach to the treatment of accompanied and unaccompanied children throughout the process.**<sup>12</sup>

13. In June 2015, a Working Group established by the Minister for Justice and Equality and the Minister of State with special responsibility for New Communities, Culture and Equality published its *Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers*.<sup>13</sup> The Office welcomes the constructive measures recommended by the Working Group for improving key areas of children's lives. **The Government should ensure that actions are taken to progress implementation of recommendations made in the Report of the Working Group on the Protection Process.**

#### **E) Child Poverty**

14. Child poverty remains a significant problem, with the proportion of children living in consistent poverty increasing from 6.8% in 2008 to 11.7% in 2013.<sup>14</sup> Ireland's *National Policy Framework for Children and Young People* contains a child-specific target to lift 70,000 children out of consistent poverty by 2020, a reduction of at least two-thirds on the 2011 level.<sup>15</sup> However, the Government's recent report on progress made to achieve the national social target for poverty reduction noted that the increase in the number of children living in consistent poverty between 2011 and 2013 means that at least 101,000 children need to be lifted out of poverty to meet the target population in 2020.<sup>16</sup> Moreover, the target set out in the *National Policy Framework* envisages that as many as 37,000 children could be left living in consistent poverty by 2020. **The State's implementation plan for a whole-of-Government approach to tackle child poverty<sup>17</sup> should revise the poverty reduction target for 2020 to take account of the increased number of children living in consistent poverty and to reduce further the target population, currently set at two thirds of the 2011 level.**

#### **F) Homelessness**

15. In August 2015, 1,496 children in 707 families were homeless in Ireland.<sup>18</sup> Reflecting the current homelessness crisis, the OCO has seen an increase in complaints from families in this situation. Cases examined by the OCO highlight concerns regarding significant delays in accessing social housing and the impact of inappropriate, temporary or emergency accommodation on children, where they may reside on a long-term basis. The accommodation provided impacts negatively on family life and children's development. **Delays in the provision of social housing must be tackled and emergency housing support provided to families must be appropriate to children's needs.**

#### **G) Health Services**

16. Commitments in *A Vision for Change* (the Government's reform programme for mental health services) have not been met in full. In particular, targets for the number of multi-disciplinary CAMHS teams and the number of inpatient beds available in dedicated child and adolescent facilities have not been met.<sup>19</sup> As a result, children are still being admitted to adult psychiatric wards. Out-of-hours services for young people presenting with mental health difficulties and specific services for young

people with eating disorders are insufficient. **Child and adolescent mental health services should be significantly improved to meet the needs of young people.**

#### H) Education

17. Access to supports for children with special needs is among the largest categories of education-related complaints to the OCO. Significant parts of the *Education for Persons with Special Educational Needs (EPSEN) Act 2004* have not been commenced, including provisions relating to the preparation of individual education plans for children with identified educational needs.<sup>20</sup> The Government has indicated that it intends to bring into effect aspects of the EPSEN Act on a non-statutory basis initially.<sup>21</sup> However, it has not provided a specific timeline or commitment to bring the remaining parts of the EPSEN Act into operation. **The Government should affirm its commitment to implementing the EPSEN Act 2004 in full and set out the concrete, measureable steps it proposes to take to bring this about.**

18. The majority of schools in Ireland (94%) are denominational and publically funded.<sup>22</sup> Schools have an exemption under equality legislation as regards their admission policies. Where the school is an environment that promotes certain religious values, the school may admit students with a particular religious denomination in preference to others. Schools may also refuse to admit as a student a person who is not of that denomination and it is proved that the refusal is essential to maintain the ethos of the school.<sup>23</sup> This discriminatory feature of the current system for school admissions has not been addressed in the Education (Admission to Schools) Bill 2015. **Measures should be taken to remove all discriminatory features of the current system for school admissions, including with respect to giving preference to students on the basis of their religion.**

### III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

#### A) Budget

19. The UN High Commissioner for Human Rights noted in December 2014 that no Government can claim to be fulfilling children's rights to the maximum extent of its available resources unless it is able to identify the proportion of its budgets allocated to children. This implies that budgets should be presented in such a way that specific allocations to children can be identified.<sup>24</sup> Ireland is emerging from a severe economic crisis that has had a wide-ranging, negative impact on children's enjoyment of their rights. **As Ireland moves into a period of greater economic stability, the Government should proceed with the development of cross-Government estimates for expenditure on children.**

20. The UN Committee on the Rights of the Child has called for States to undertake ex-ante and ex-post child impact assessments and evaluations of budgetary and fiscal processes so that the likely impact of decisions on children's rights may be understood and how far the best interests of the child has been a primary consideration in decision-making.<sup>25</sup> **The current framework for integrated social impact assessments<sup>26</sup> should be expanded to encompass a fuller form of analysis, rooted in the UNCRC, which examines the impact of fiscal and budgetary decisions on children's enjoyment of their rights.**

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<sup>1</sup> Ombudsman for Children Act, 2002

<sup>2</sup> The State has signed but not yet ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; the Optional Protocol to the International Convention on Economic, Social and Cultural Rights; the Optional Protocol to the Convention Against Torture; the Convention on the Rights of Persons with Disabilities; and the Convention for the Protection of All Persons from Enforced Disappearance. The State has indicated that it has no immediate plans of becoming party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families or to the Convention against Discrimination in Education.

<sup>3</sup> UN Committee on the Rights of the Child, *Consideration of Reports Submitted by State Parties under Article 44 of the Convention – Concluding Observations: Ireland*, CRC/C/IRL/CO 2 (29 September 2006), paragraphs 13 – 15

<sup>4</sup> Kilkelly, U., *A Children’s Rights Analysis of Investigations* (Dublin: OCO, 2011)

<sup>5</sup> In Quarter 3 of 2014, 20% of initial assessments were completed within the target of 21 days of receipt of the referrals. Of the total number of child abuse referrals, 62% received a preliminary enquiry within 24 hours. TUSLA, *Quarter 4 2014 National Performance Activity Report*, p.20 and p.22.

<sup>6</sup> Irish Youth Justice Service, *Youth Justice Action Plan 2014—2018*, (Dublin: Department of Justice and Equality/Department of Children and Youth Affairs, 2013), objective 4.2

<sup>7</sup> Section 52 of the Children Act 2001

<sup>8</sup> Section 129 of the Criminal Justice Act 2006

<sup>9</sup> UN Committee on the Rights of the Child, *Consideration of Reports Submitted by State Parties under Article 44 of the Convention – Concluding Observations: Ireland*, CRC/C/IRL/CO 2 (29 September 2006), paragraphs 39 and 40

<sup>10</sup> *Resolution CM/ResChS (2015)9 Association for the Protection of All Children (APPROACH) Ltd v. Ireland, Complaint No. 93/2013*, adopted by the Committee of Ministers on 17 June 2015 at the 1231st meeting of the Ministers’ Deputies

<sup>11</sup> *Report of the Working Group on the Universal Periodic Review - Ireland A/HRC/19/9* (21 December 2011), at 107.41

<sup>12</sup> Ombudsman for Children’s Office, *Initial Observations of the Ombudsman for Children on the General Scheme of the International Protection Bill 2015* (Dublin: OCO, 2015)

<sup>13</sup> Working Group, *Working Group Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers. Final Report June 2015* (Dublin: June 2015)

<sup>14</sup> Department of Social Protection, *Social Inclusion Monitor 2013* (Dublin: Department of Social Protection, 2015), pp.30-33

<sup>15</sup> Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: the National Policy Framework for Children and Young People 2014-2020* (Dublin: DCYA, 2014), p.93

<sup>16</sup> Department of Social Protection, *Social Inclusion Monitor 2013* (Dublin: Department of Social Protection, 2015), p.30

<sup>17</sup> Dáil Éireann, Debates, Vol. 870, 5 March 2015, Parliamentary Question 9403/15

<sup>18</sup> These are the figures for the week 24-30 August 2015. These figures represent as 73% increase in the number of children who are homeless in Ireland since January 2015 (865 children during the week of 19-25 January up to 1496 children for the week 24-30 August) and a 76% increase in the number of families who are homeless in Ireland since January 2015 (401 families during the week of 19-25 January up to 707 families for the week 24-30 August). See Department of the Environment, Community and Local Government, *Homeless Persons – August 2015*.

<sup>19</sup> Children’s Mental Health Coalition, *Meeting the mental health support needs of children and adolescents: a Children’s Mental Health Coalition view* (Dublin: Children’s Mental Health Coalition, 2015), p.30

<sup>20</sup> Dáil Éireann, Debates, Vol. 870, 3 March 2015, Parliamentary Question 8776/15

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<sup>21</sup> Dáil Éireann, Debates, Vol. 868, 18 February 2015, Parliamentary Question 7252/15

<sup>22</sup> Dáil Éireann, Debates, Vol. 873, 1 April 2015, Parliamentary Question 13449/15

<sup>23</sup> Section 7 of the Equal Status Act 2000. For further details, see Ombudsman for Children's Office, *Advice of the Ombudsman for Children on the General Scheme of the Education (Admission to Schools) Bill 2013*, (Dublin: OCO, 2013), Chapter 3 and Oireachtas Joint Committee on Education and Social Protection, *Report on the Draft General Scheme of an Education (Admission to Schools) Bill 2013*, (Dublin: Houses of the Oireachtas, March 2014), Section 4.1.3

<sup>24</sup> United Nations High Commissioner for Human Rights, *Towards Better Investment in the Rights of the Child*, A/HRC/28/33 (December 2014), paragraph 35

<sup>25</sup> UN Committee on the Rights of the Child, *General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child (2003)*, CRC/GC/2003/5, paragraph 45

<sup>26</sup> Social impact assessment is an evidence-based methodology to estimate the likely distributive effects of policy proposals on poverty and social inequality. For the last number of years, the Department of Social Protection has published integrated social impact assessments of the annual Budget (Dáil Éireann, Debates, 3 February 2015, Parliamentary Question [2179/15]). The Government has further committed itself to carrying out a social impact assessment of the main social welfare and tax measures for 2016 and subsequent years before the publishing of Budgets.