

**Ombudsman for Children’s Office**

**Ireland**

**Presentation to the Pre-session on Ireland for the 25th Session of the Working Group on Universal Periodic Review**

**(SPEAKING NOTES)**

**31 March 2016**

**Ombudsman for Children’s Office**, **Ireland**

**Presentation to the United Nations Universal Periodic Review**

**Pre-Session on Ireland, Geneva 31 March 2016**

**25th Session of the Working Group on the UPR**

**Human Rights Council**

It is my pleasure to address you here today as Ombudsman for Children in Ireland. My Office is an independent human rights institution established in 2004 to promote and monitor the rights and welfare of children in Ireland. The 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.

I want to begin by saying that the realisation of children’s rights in Ireland has shown progress but still have a considerable distance to travel and I believe it would be a shame to come this far to ONLY come this far. Due to time constraints this piece will only focus on some of our recommendations.

1. **Incorporation of the UNCRC**

The UNCRC has not been incorporated fully into Irish law. A new article in relation to children was inserted into the Constitution in 2015, following a referendum in 2012. While the amendment is an important development in recognising children as rights holders, it falls significantly short of constitutional incorporation of the key principles of the UNCRC. The new provision in relation to best interests and voice of the child only applies in very specific judicial proceedings.[[1]](#endnote-1)

In this regard, the State should follow the recommendations of UN Committee on the Rights of the Child made in February 2016. Firstly, and of particular importance from the perspective of the OCO, **a legal obligation should be placed on public bodies to respect the key principles of the UNCRC in all relevant administrative proceedings or decision making processes**. Secondly, **procedures and criteria should be developed to ensure that the best interests principle is appropriately integrated and consistently interpreted by public bodies.**

1. **Impact of the Recession on Children and retrogressive measures**

**2.1 Child poverty**

A 2014 UNICEF Report found that Ireland saw one of the largest increases across OECD countries, in child poverty between 2008 and 2012.[[2]](#endnote-2)The report estimated that Irish families lost the equivalent of a full decade of progress during these years. Children living in consistent poverty rose from 6.3% in 2008 to 11.7% in 2013.[[3]](#endnote-3) Children in certain situations are particularly at risk of poverty**.[[4]](#endnote-4) It is imperative that the effects of retrogressive measures on the most vulnerable children are assessed and that child poverty targets prioritise specific measures to alleviate the cascading effect of poverty in relation to these most vulnerable children.**

* 1. **Homeless children and families**

The number of families experiencing homelessness has increased dramatically.

* January 2016 - 884 families recorded as homeless with 1,830 children living in emergency accommodation.[[5]](#endnote-5) The number of homeless children rose by 90% during 2015 and children now account for almost one-third of the homeless population.
* Complaints examined by my Office highlight concerns
  + regarding significant delays in accessing social housing,
  + the impact of inappropriate, temporary or emergency accommodation on children, where they may reside on a long-term basis, and
  + the accommodation provided often appears to impact negatively on family life and children’s development.

**Emergency accommodation provided to families should be appropriate to the child’s needs and meet child protection standards. Efforts must be increased to address the delay in the provision of social housing for families.**

* 1. **Health and mental health services**

The UN Committee on the Rights of the Child raised concerns that the state of health of children in single-parent families, children living in poverty and Traveller and Roma children in Ireland is significantly lower than the national average. **The State should address socio-economic disadvantages which constitute root causes for exclusion from access to health services for children in these circumstances.**[[6]](#endnote-6)

Child and Adolescent Mental Health Services (CAMHS) multi-disciplinary community teams have significantly less staffing than recommended and waiting lists for CAMHS are significant.[[7]](#endnote-7) Approximately one quarter of children under-18 requiring in-patient support in 2015 were admitted to adult wards.[[8]](#endnote-8) There are significant inadequacies in relation to mental health promotion while, in primary care, children’s access to specialist mental health support is hampered by inadequate interagency communication and collaboration.[[9]](#endnote-9) **A new comprehensive government strategy to address the mental health needs of children and young people is urgently required to ensure effective, timely and co-ordinated mental health care for children accompanied by a time-framed implementation plan with a strong commitment in relation to the resources required.** Children and young people with experience of mental health problems should be involved in its development and implementation.

**2.4. Child welfare and protection**

Although the establishment of a Child and Family Agency (Tusla) with statutory responsibility for child protection and welfare services is welcome, the Agency is not meeting its own target timelines for screening and assessment in respect of a substantial number of child protection referrals.[[10]](#endnote-10)

**All necessary resources need to be put in place immediately to enable Tusla to meet its targets and to respond effectively to any increase in reporting which is likely to arise when the Children First Bill comes into operation.[[11]](#endnote-11)**

The services dealing with children who are victims of abuse and crime are not adequate.[[12]](#endnote-12) There are significant waiting lists for accessing therapeutic counselling and support services for child victims, in particular for victims of sexual abuse. The State’s only 24-hour service providing forensic examinations of children aged 14 and under who have been sexually assaulted[[13]](#endnote-13) or raped has recently been closed and its future is uncertain.[[14]](#endnote-14) **The State should address the inadequacies that exist within services for child victims of abuse and crime by providing timely access to appropriate therapeutic and support services. Access to 24-hour forensic examinations for children who have been sexually assaulted should be provided as a matter of urgency.**

1. **Asylum and Immigration**

At the end of December 2015 there were more than 1,200 asylum seeking children living in the Direct Provision system. [[15]](#endnote-15) While the average length of stay is three years and four months, almost 15 per cent of residents have been living in the system for more than seven years.[[16]](#endnote-16) I welcome the recent Government commitment, after many years, to allow the OCO to investigate complaints from, and on behalf of, children in the Direct Provision System. **However, the State should take immediate steps to progress full implementation of the *Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers,[[17]](#endnote-17)* which was published in June 2015, particularly recommendations to address child poverty, child welfare and child protection concerns and to ensure families have access to private living space and cooking facilities.**

1. **Education and the elimination of religious discrimination**

I refer to summary recommendations below.

1. **Youth Justice** **and the age of criminal responsibility**

I refer to summary recommendations below.

1. **Services for children with disabilities**

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. Additionally, key provisions of the Disability Act 2005, which provides a structure for the identification and delivery of individual health, education and personal social services for people with disabilities, have also not been implemented. The failure to implement this statutory framework means access to services remain ad hoc and inconsistent across the country.[[18]](#endnote-18) **The state should affirm its commitment to implementing the EPSEN Act 2004 and the Disability Act 2005 in full and set out the concrete, measureable steps it proposes to take to bring this about.**

1. **Child rights approach to Budgets and the need for child rights impact assessments**

I refer to summary of recommendations below.

**Summary of Recommendations:**

1. **Incorporation of UNCRC**

**The State should:**

* **Place a legal obligation on public bodies to respect the key principles of the UNCRC in all relevant administrative proceedings or decision making processes.**
* **Develop procedures and criteria to ensure that the best interests principle is appropriately integrated and consistently interpreted and applied in all legislative, administrative and judicial proceedings and decisions as well as in policies, programmes and projects that are relevant to and have an impact on children.**
* **Carry out an audit examining the extent to which legislation affecting children’s enjoyment of their rights complies with its obligations under the Convention.**

1. **Impact of the Recession on Children Retrogressive Measures**

* **The State’s implementation plan for a whole-of Government approach to tackle child poverty should revise the poverty reduction target to take account of the increased number of children affected by poverty. Specific measures should be introduced to alleviate the multiple effects of poverty on particularly vulnerable children.**
* **Emergency accommodation provided to families should be appropriate to the child’s needs and meet child protection standards. Efforts must be increased to address the delay in the provision of social housing for families.**
* **The State should address socio-economic disadvantages which constitute root causes of exclusion from access to health services, particularly in relation to children living in poverty, Traveller and Roma children and children in single-parent families.**
* **A new comprehensive government strategy to address the mental health needs of children and young people is urgently required to ensure effective, timely and co-ordinated mental health care for children accompanied by a time-framed implementation plan with a strong commitment in relation to the resources required.**
* **The Child and Family Agency (Tusla) must be provided with adequate resources to be able to meet its targets as regards timely assessment of child protection referrals to its services and to ensure it can respond effectively when the Children First Act 2015 is commenced.**
* **The State should address the inadequacies that exist within services for child victims of abuse and crime by providing timely access to appropriate therapeutic and support services. Access to 24-hour forensic examinations for children who have been sexually assaulted should be provided as a matter of urgency.**

1. **Asylum and Immigration**

**The State should:**

* **Strengthen provisions of the International Protection Act 2015 as it applies to both accompanied and unaccompanied children to ensure that it upholds the principles and provisions of the UNCRC.**
* **Take immediate steps to progress full implementation of the *Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers[[19]](#endnote-19),* which was published in June 2015, particularly recommendations to address child poverty, child welfare and child protection concerns and to ensure families have access to private living space and cooking facilities.**

1. **Education and the Elimination of Religious Discrimination**

* **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.**

1. **Youth Justice and age of criminal responsibility**

**The State should:**

* **Reinstate the provisions regarding the age of criminal responsibility as established under the Children Act 2001.**
* **Bring its juvenile justice system fully in line with the UNCRC and other relevant international standards, ensuring in particular that detention is a measure of last resort, for the shortest possible period of time and that conditions comply with international standards, particularly in relation to access to education and mental health services.**

1. **Services for Children with Disabilities**

* **The state should affirm its commitment to implementing the EPSEN Act 2004 and the Disability Act 2005 in full and set out the concrete, measureable steps it proposes to take to bring this about.**

1. **Child rights approach to Budgets and the need for child rights impact assessments**

**The State should:**

* **Implement a tracking system for the allocation and use of resources for children, throughout the budget across all the departments and at all levels of government.**
* **Include children’s rights impact assessments in the framework for integrated social impact assessments to ensure that fiscal and budgetary decisions are compliant with obligations under the Convention.**

1. The best interests and voice of the child principle in Article 42A only apply in judicial proceedings taken by the State in relation to child care and also to judicial proceedings concerning adoption, guardianship, custody and access. [↑](#endnote-ref-1)
2. UNICEF, *Innocenti Report Card 12, Children of the Recession*, Florence, 2014,p. 8. [↑](#endnote-ref-2)
3. Central Statistics Office, Consistent poverty rate by demographic characteristics and year (CSO), 2010-2014 [↑](#endnote-ref-3)
4. Children in certain situations are particularly at risk of poverty (Children’s Rights Alliance*, Report Card 2016,* p. 69), including Traveller and Roma children, children in jobless households, children with a disability, homeless children (The Office of Social Inclusion, *National Action Plan for Social Inclusion 2007-2016* (Stationary Office 2007), p. 31-35.) and children living in direct provision centres (Health and Information Quality Authority, Report on Inspection of Protection and Welfare Services Provided to Children Living in Direct Provision Accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1)(c ) of the Health Act 2007, (HIQA, 25 May 2015)p. 14. [↑](#endnote-ref-4)
5. Department of the Environment, Community and Local Government, Homelessness Report January 2016. [↑](#endnote-ref-5)
6. Concluding Observations on the combined third and fourth periodic reports of Ireland, CRC/C/IRL/CO/3-4, para. 49. [↑](#endnote-ref-6)
7. The *HSE CAMHS Annual Report 2012-2013* states community based CAMHS services have 44.6% of the staffing level recommended *in A Vision for Change* (the current Government mental health policy document published in 2006). In November 2015, there were 2,273 children waiting for a first appointment with CAMHS, of which 1,177 children were waiting longer than 3 months and 207 children waiting longer than one year. (Health Service Executive, *November Performance Report* (Health Service Executive 2015) p. 10-11). [↑](#endnote-ref-7)
8. Between January and November 2015, 331 young people received acute inpatient mental health care. Of these 241 were admitted to child and adolescent mental health units directly and 90 (27.2%) were initially admitted to an adult unit. Of the 90 children admitted to Adult Approved Centres up to November 2015, 65.6% (59) of these discharged within a week and 41.1% (37) either the same day or within 3 days. Health Service Executive, *November Performance Report* (HSE 2015, p.11. [↑](#endnote-ref-8)
9. Children's Mental Health Coalition, *Meeting the mental health support needs of children and adolescents*, Dublin, April 2015. <http://www.childrensmentalhealth.ie/meeting-the-mental-health-support-needs-of-children-and-adolescents/>. The HSE published a standard operating procedure which aims to ensure that the delivery of services by child and CAMHS teams is carried out in a consistent and transparent manner. (HSE, *Child and Adolescent Mental Health Services Standard Operating Procedure,* June 2015.) While a welcome development, this does not address many of the inadequacies in the design and delivery mental health provision for children and adolescents in Ireland. [↑](#endnote-ref-9)
10. In Quarter 3 of 2015, 12% (20% during the same period in 2014) of initial assessments were completed within the target of 21 days of receipt of the referrals. Of the total number of child welfare concern referrals, 64% (62% during the same period in 2014) received a preliminary enquiry within 24 hours. TUSLA, *Quarter 3 2015, Quarterly management, Data Activity Report*, p. 30. [↑](#endnote-ref-10)
11. The Government introduced legislation to underpin the implementation of Children First in April 2014, Ireland’s Child Protection Guidelines, which will place an obligation on mandated persons to make child protection referrals to Tusla, among other things. However, the legislation has not yet been commenced. [↑](#endnote-ref-11)
12. Ireland has opted into the EU Victims’ Directive, the transposition date of which was 16th November 2015. However, the Criminal Justice (Victims of Crime) Bill 2015 as proposed does not include certain provisions of the Directive, such as Article 8 which deals with the mandatory provision of confidential victim support services free of charge. [↑](#endnote-ref-12)
13. Galway-based Child and Adolescent Sexual Assault Treatment Service (CASATS). This service was also the link to other agencies which provided on-going therapeutic support to the child after examination. [↑](#endnote-ref-13)
14. “*State’s only 24-hour service for abused children closes”*, Irish Times, January 4th 2016. <http://www.irishtimes.com/news/ireland/irish-news/state-s-only-24-hour-service-for-abused-children-closes-1.2483607> [↑](#endnote-ref-14)
15. Children’s Rights Alliance, Report Card 2016, p. 112. [↑](#endnote-ref-15)
16. Reception and Integration ‘Monthly Statistics Report – September 2015- <http://www.ria.gov.ie/en/RIA/RIA%20Monthly%20Report%209-2015.pdf/Files/RIA%20Monthly%20Report%209-2015.pdf>, accessed 15 March 2016. [↑](#endnote-ref-16)
17. Working Group on the Protection Process (2015) *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) [↑](#endnote-ref-17)
18. The Government has indicated that it intends to bring into effect aspects of the EPSEN Act on a non-statutory basis initially. However, it has not provided a specific timeline or commitment to bring the remaining parts of the EPSEN Act into operation. The OCO has identified geographical disparities and fragmentation of services as being a challenge facing children with disabilities in Ireland. The Health Service Executive is implementing a model of provision called Progressing Disability Services for Children and Young People (0-18) which aims to address some of the deficits at issue in the OCO’s investigatory work. [↑](#endnote-ref-18)
19. Working Group on the Protection Process (2015) *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). [↑](#endnote-ref-19)