



**Ombudsman for Children's Office  
Ireland**

**Submission for the 12<sup>th</sup> Session of the Working Group on Universal  
Periodic Review**

**March 2011**

**Ombudsman for Children's Office**  
**Ireland**  
**Submission to the United Nations Universal Periodic Review**  
**Twelfth session of the Working Group on the UPR**  
**Human Rights Council**  
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1. The Ombudsman for Children's Office (OCO) is an independent human rights institution established in 2004 under primary legislation to promote and monitor the rights of children in Ireland<sup>1</sup>. The Ombudsman for Children was appointed by the President of Ireland on the nomination of the Oireachtas (Parliament) and is accountable directly to the Oireachtas. This Office has dealt with over 4,400 complaints regarding the administrative actions of civil and public administration and has frequently submitted advice to Government on major legislation relating to the rights and welfare of children. The Ombudsman for Children is statutorily mandated to promote the principles and provisions of the UN Convention on the Rights of the Child (UNCRC) and aims to ensure that Ireland complies in full with its international human rights obligations.

2. This report has been prepared in light of the following considerations: trends in the complaints received by this Office; the outcome of investigations undertaken by this Office; the Ombudsman for Children's engagement with international human rights monitoring mechanisms; the substantial advice given by this Office to Government on legislative and constitutional change aimed at advancing children's rights; the Ombudsman for Children's direct consultation with representative groups of children; and research undertaken. It has been necessary to omit a number of issues due to submission constraints.

3. In the interests of non-duplication, this report does not address a number of issues affecting children that are dealt with in the UPR submission of the Irish Human Rights Commission (IHRC), namely those relating to: Travellers; the direct provision system for asylum seekers; the deportation of Irish citizen children's families; providing for choice in education provision; and social welfare. The Ombudsman for Children supports the recommendations made by the IHRC in its submission.

## **I. BACKGROUND AND FRAMEWORK**

### **A) Scope of international obligations**

4. In addition to ratifying and incorporating key human rights instruments to which it is not yet party<sup>2</sup>, Ireland should clarify its position in relation to the proposed 3<sup>rd</sup> Optional Protocol to the UN Convention on the Rights of the Child which will allow the UN Committee on the Rights of the Child to examine complaints regarding violations of the Convention.

### **B) Constitutional and legislative framework**

5. Since her first year in post, the Ombudsman for Children has consistently called for an amendment to the Irish Constitution to give greater protection to the rights of the child. To this end she has formally submitted her views on 4 occasions to the Oireachtas<sup>3</sup>. Her position has been supported by the both the UN Committee on the Rights of the Child and

the Council of Europe Commissioner for Human Rights<sup>4</sup>. The Ombudsman for Children welcomed an all-party Oireachtas (Parliamentary) Committee publication in February 2010 that endorsed the inclusion of the general principles of the UNCRC as the basis for the proposed amendment<sup>5</sup>. Although the Oireachtas Committee published a suggested wording for an amendment formulated by consensus, a referendum has not yet been held; however, a commitment to holding such a referendum is contained in the current Programme for Government<sup>6</sup>. **The Government should proceed at the earliest opportunity to hold a constitutional referendum on children's rights. However the Ombudsman for Children wishes to emphasise that she does not support a referendum at any cost and that such an amendment must make a difference to children's lives by including the general principles of the UNCRC.**

### **C) Institutional and human rights infrastructure**

6. Establishing a comprehensive framework for independent complaints-handling and the inspection of children's services is an essential element of guaranteeing that their rights are respected. Consistent, independent inspection and the impartial investigation of complaints are critical to maintaining standards, ensuring that the organs of the State are held to account and engendering a culture of respect for children's rights.

7. Due to exclusions contained in the Ombudsman for Children Act 2002, the Ombudsman for Children cannot receive complaints from or on behalf of certain children in detention<sup>7</sup> and there is ambiguity regarding her powers to investigate matters relating to the administrative actions of State agencies in the area of asylum and immigration<sup>8</sup>. In addition, state agencies with functions relevant to the rights and welfare of children established after the 2002 Act became operational have not been included within the Ombudsman for Children's remit, though the Act provides that the Government may include them by order<sup>9</sup>. **The current limitations to the investigatory remit of the Ombudsman for Children should be removed and ambiguities regarding its scope should be resolved; any newly-established public body that provides services to children or that is responsible for administrative decisions affecting children should also be included in the Ombudsman for Children's investigatory remit.**

8. The Health Act 2007 provides for the independent inspection by the Health Information and Quality Authority (HIQA) of all residential children's services, foster care services, as well as residential and respite services for children with disabilities. However, the relevant sections of the Health Act 2007 have not been commenced, meaning that non-statutory (private and voluntary) services are not subject to independent inspection by HIQA, while services for children with disabilities are not currently inspected at all. **All necessary legislative and other steps should be taken to allow the HIQA to carry out independent inspections of all residential and foster care services for children, including residential and respite services for children with disabilities.**

9. An audit of investigations carried out by the Ombudsman for Children's Office has highlighted the need for improved human rights training for the civil and public service. **The provision of human rights training to those designing and delivering services to children should be strengthened<sup>10</sup>.**

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

## A) Child welfare and protection

10. In 2010, this Office concluded an 18-month systemic investigation into the implementation of Ireland's national child protection guidelines, *Children First*<sup>11</sup>. The investigation found that the guidelines were being inconsistently applied and made a number of recommendations, including the need to: establish a national out-of-hours social work service; commence the independent inspection of child protection services; improve planning in order to match resources to need; and improve interagency cooperation between public bodies with responsibilities in this area. **Ireland's national child protection guidelines should be consistently implemented and the Government's ongoing review of the guidelines should incorporate the recommendations arising from the Ombudsman for Children's investigation.**

11. The majority of children who make complaints directly to the OCO are children in the care of the State<sup>12</sup>. The concerns that arise most often from the examination of these complaints are: the lack of an allocated social worker; the failure to include young people in the care planning process; difficulties in accessing placements appropriate to the young person's needs; access to therapeutic services, such as those addressing mental health needs or drug/alcohol difficulties; and the provision of aftercare services. **Children in care should have access to supports appropriate to their needs. Young people should have an unambiguous statutory right to support after they leave the formal care system**<sup>13</sup>.

12. Many of the issues highlighted above in relation to children in the care of the State were also raised in the report of the Commission to Inquire into Child Abuse (CICA) published in 2009, which chronicled the systematic abuse of thousands of children in residential institutions in Ireland over many decades<sup>14</sup>. The previous Government published an implementation plan to give effect to the recommendations of the CICA<sup>15</sup>; however, significant commitments under the plan have yet to be fulfilled. **The Government should indicate how it proposes to implement the recommendations of the Commission to Inquire into Child Abuse and indicate the timelines for achieving this.**

13. A system for reviewing serious incidents and deaths of children in care or known to child protection services was introduced in Ireland in 2010 as part of the Government's plan to implement the recommendations of the CICA<sup>16</sup>. However, this system does not provide institutional independence and should be enhanced in line with the Ombudsman for Children's recommendations on this issue submitted to the Government and to the Oireachtas<sup>17</sup>. **The scope and independence of Ireland's national child death review mechanism should be enhanced.**

14. Youth homelessness and access to crisis intervention services remain a significant problem in Ireland. Issues of particular concern arising from complaints received by the OCO are: the length of time young people spend accessing crisis intervention services; the difficulties in accessing onward placements addressing their needs; and accessing aftercare services<sup>18</sup>. **Specific targets should be set for tackling and eliminating youth homelessness in Ireland.**

## B) Youth Justice

15. The continuing detention of young people under the age of 18 in St. Patrick's Institution – a medium security prison that is a custodial rather than a care facility designed for

children - has been heavily criticised by the Ombudsman for Children and numerous domestic and international human rights monitoring mechanisms<sup>19</sup>. Although the Government has committed to ending the detention of young people in this highly inappropriate setting<sup>20</sup>, it should expedite the process and ensure the prioritisation of necessary resources. **The Government should end the detention of young people under the age of 18 in St. Patrick's Institution as soon as possible.**

16. Ireland has made progress with respect to diverting children away from the criminal justice system<sup>21</sup>. However, the concerns raised by the OCO and the UN Committee on the Rights of the Child regarding the statutory framework for the operation of the Garda (Police) Diversion Programme have not been addressed, particularly those relating to: the admission of children who have engaged in anti-social (as distinct from criminal) behaviour to the Programme; the potential criminalisation of children for breach of behaviour orders; and consideration of an admission of responsibility or admission to the Programme for sentencing in relation to future criminal proceedings against the child<sup>22</sup>. **The progress made to date should continue with respect to the use of community-based, restorative approaches and diverting young people away from the criminal justice system. The statutory framework governing this area should be brought into line with international standards.**

17. 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>23</sup>. However, the relevant section of the Act never came into force and it 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>24</sup>. The 2006 Act also provided that children as young as 10 could be admitted to the Garda Diversion Programme<sup>25</sup>. **The minimum 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**

18. Ireland has not yet prohibited all forms of corporal punishment, as required under its international obligations<sup>26</sup>. **The recommendations of the UN Committee on the Rights of the Child with respect to corporal punishment should be implemented and the common law defence of reasonable chastisement should be removed.**

### **D) Asylum-seekers and victims of trafficking**

19. Significant progress has been made in the care of separated children seeking asylum in Ireland since the Ombudsman for Children's intervention<sup>27</sup>. The transition to the provision of care predominantly through foster services should be monitored to ensure that adequate supports are in place locally for separated children. In addition, long-awaited legislative reform in the area of asylum and immigration should provide for a child-centred process of age assessment, the appointment of an independent guardian, asylum determination and service provision in line with international best practice<sup>28</sup>. The needs of child victims of trafficking must also be addressed. In particular, provision should be made in law for a recovery and reflection period, and leave to remain or residency in the country should not

be contingent on cooperation with criminal investigations<sup>29</sup>. **The Government should build on the progress made in the care of separated children and address the significant legislative, practice and policy gaps in the protection of separated children and child victims of trafficking.**

#### **E) Health services**

20. It is evident from the complaints examined by the OCO that there are geographical disparities in the provision of certain health services to children, including services for children with autism, child and adolescent psychiatry, speech and language therapy, physiotherapy and occupational therapy. **Geographical disparities in service provision should be addressed to ensure that children have access to services on a fair basis.**

21. Consensus exists on the need to reform mental health services in Ireland in line with the framework set out in the *Vision for Change* strategy document<sup>30</sup>. The admission of children to adult psychiatric units continues, despite universal agreement that the practice is inappropriate, and the availability of community-based mental health services is inadequate<sup>31</sup>. The Inspector of Mental Health Services has described the practice of admitting children to adult centres as ‘inexcusable, counter-therapeutic and almost purely custodial in that clinical supervision is provided by teams unqualified in child and adolescent psychiatry’<sup>32</sup>. Greater efforts should also be made with respect to mental health promotion and early intervention, as well as addressing the needs of young people that have a higher risk of experiencing mental health difficulties such as children in detention. **The Government should enhance its efforts to address the mental health needs of children by implementing the recommendations contained in *A Vision for Change*.**

#### **F) Education**

22. A significant proportion of complaints received by this Office relate to the handling of complaints internally by schools and allegations of inappropriate behaviour by members of staff towards children. Although the Ombudsman for Children can investigate such complaints, provision has been made in primary legislation for dealing with complaints of this nature at a more local level – particularly section 28 of the Education Act 1998 and Part V of the Teaching Council Act 2001 – but they have not yet become operational. **The existing statutory provisions in this area should be commenced and the related procedures for complaints-handling should be put in place.**

23. Access to supports for children with special needs is one of the largest categories of education-related complaints received by the Ombudsman for Children. Concerns have been raised with this Office regarding the provision of special needs assistants, resource teaching and the operation of the General Allocation Model of providing resource teaching hours at primary level. In addition, the Education for Persons with Special Educational Needs (EPSEN) Act 2004 - the statutory framework for providing services to children with special educational needs - has not been fully implemented, including the provisions relating to accessing individual education plans. **The Government should outline what steps it will take to implement the EPSEN Act, with clear timelines for achieving this.**

#### **G) Child poverty**

24. Child poverty remains a significant problem in Ireland. In 2009, 8.7% of children under the age of 18 in Ireland experienced consistent poverty, an increase on the figure for 2008

(6.3%)<sup>33</sup>. Poverty represents one of the most significant structural barriers to the realisation of children's rights and has a wide-ranging impact on their health, education and wellbeing. Children are more likely to experience poverty than adults are; in addition, already vulnerable groups of children suffering from social exclusion are disproportionately affected by it. **The Government should outline what strategies it will adopt to halt and reverse the increase in the number of children living in poverty.**

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

25. A number of systemic issues relating to decision-making by public bodies that can impede the realisation of children's rights have arisen during the course of the OCO's investigation work, including: the lack of child impact analyses undertaken in the design and delivery of public services to children; the failure to observe international and indeed domestic human rights obligations, such as those flowing from the European Convention on Human Rights (ECHR) Act 2003; and ignoring protracted industrial relations disputes. **Public bodies should carry out child impact analyses and consider Ireland's human rights obligations when framing policy or delivering services to children. Greater efforts should also be made to acknowledge and tackle industrial relations disputes that have a negative impact on children's services.**

26.

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

<sup>2</sup> See Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on Universal Periodic Review: Ireland*, (IHRC: March 2011), paragraphs 8 and 9.

<sup>3</sup> Ombudsman for Children's Office, *Submission to the All-Party Oireachtas Committee on the Constitution* (OCO:2005); *Advice on the Proposed Referendum on Children's Rights* (OCO: 2006); *Report to the Oireachtas on the 28<sup>th</sup> Amendment of the Constitution Bill 2007* (OCO: 2007); *Submission to the Joint Oireachtas Committee on the Constitutional Amendment on Children* (OCO: 2008);

<sup>4</sup> UN Committee on the Rights of the Child, *Concluding Observations on the Second Periodic Report of Ireland CRC/C/IRL/CO/2*, (2006), paragraph 25; Council of Europe Commissioner for Human Rights, *Report by the Commissioner for Human Rights on his Visit to Ireland CommDH(2008)9*, (2008), paragraph 44.

<sup>5</sup> Oireachtas Joint Committee on the Constitutional Amendment on Children, *Twenty-Eighth Amendment of the Constitution Bill 2007 - Proposal for a Constitutional Amendment to Strengthen Children's Rights*, (The Stationery Office: 2010), p. 21

<sup>6</sup> Government Programme for National Recovery 2011-2016 (March 2011), p. 18

<sup>7</sup> Section 11 of the Ombudsman for Children Act 2002 precludes the OCO from investigating complaints made by or on behalf of young people detained in St Patrick's Institution in Dublin.

<sup>8</sup> Section 11 of the 2002 Act states that the Ombudsman for Children shall not investigate actions taken in the administration of the law relating to asylum, immigration, naturalisation or citizenship.

<sup>9</sup> See section 10(7)(a)(i) of the 2002 Act. An example of such an organisation is the National Council for Special Education.

<sup>10</sup> The audit of the Ombudsman for Children's investigation reports – carried out by Dr Ursula Kilkelly – will be published later this year.

<sup>11</sup> Ombudsman for Children's Office, *A report based on an investigation into the implementation of Children First: National Guidelines for the Protection and Welfare of Children*, (OCO: 2010)

<sup>12</sup> See the annual reports of the Ombudsman for Children to the Houses of the Oireachtas at [www.oco.ie](http://www.oco.ie)

<sup>13</sup> Ombudsman for Children's Office, *Advice of the Ombudsman for Children in the Child Care (Amendment) Bill 2009*, (OCO:2010), section 4

<sup>14</sup> Commission to Inquire into Child Abuse, *Report of the Commission to Inquire into Child Abuse*, (The Stationery Office: 2009)

<sup>15</sup> Office of the Minister for Children and Youth Affairs, *Report of the Commission to Inquire into Child Abuse – Implementation Plan* (The Stationery Office: 2009)

<sup>16</sup> *Ibid.*, page 37

<sup>17</sup> Ombudsman for Children's Office, *Options Paper on the establishment of a child death review mechanism in Ireland* (OCO: 2009)

<sup>18</sup> Ombudsman for Children's Office, *Annual Report 2009*, (OCO: 2010)

<sup>19</sup> Ombudsman for Children's Office, *Young People in St Patrick's Institution* (OCO: 2011); UN Committee on the Rights of the Child, *Concluding Observations on the second periodic report of Ireland*, paragraphs 72 and 73; Council of Europe Commissioner for Human Rights, *Report by the Commissioner for Human Rights on his Visit to Ireland*, paragraphs 68-72

<sup>20</sup> Government Programme for National Recovery 2011-2016, p. 49

<sup>21</sup> See, for example, the *Annual Report of the Committee to Monitor the Effectiveness of the Diversion Programme 2009* (An Garda Síochána: 2010)

<sup>22</sup> Ombudsman for Children's Office, *Advice on the proposed changes to the Children Act 2001*, (OCO: 2006); UN Committee on the Rights of the Child, *Concluding Observations on the second periodic report of Ireland*, paragraphs 68-71

<sup>23</sup> Section 52 of the Children Act 2001

<sup>24</sup> See section 129 of the Criminal Justice Act 2006. This amendment to the Children Act 2001 did, however, provide that where a child under 14 years of age is charged with an offence, no further proceedings in the matter (other than any remand in custody or on bail) shall be taken except by or with the consent of the Director of Public Prosecutions.

<sup>25</sup> Section 125 of the Criminal Justice Act 2006

<sup>26</sup> UN Committee on the Rights of the Child, *Concluding Observations*, paragraphs 39 and 40

<sup>27</sup> See the Ombudsman for Children's Office, *Separated Children Living in Ireland*, (OCO: 2009). The practice of accommodating separated children in unregistered hostels without appropriate care staff was ended in 2010.

<sup>28</sup> See the Ombudsman for Children's Office *Advice on the Immigration, Residence and Protection Bill 2008* and its *Advice on the General Scheme of the Criminal Law (Trafficking in Persons and Sexual Offences) Bill*

<sup>29</sup> *Ibid.*

<sup>30</sup> *A Vision for Change: Report of the Expert Group on Mental Health Policy*, (The Stationery Office: 2006)

<sup>31</sup> For an overview of the progress achieved and steps remaining to be taken to fulfil the objectives of *A Vision for Change*, see Health Service Executive *Second Annual Child & Adolescent Mental Health Service Report 2009-2010* (HSE: 2010)

<sup>32</sup> Mental Health Commission, *Mental Health Commission Annual Report 2008 including the Report of the Inspector of Mental Health Services*, (MHC: 2009), p. 63

<sup>33</sup> Office of the Minister for Children and Youth Affairs, *State of the Nation's Children 2010*, (The Stationery Office: 2010), p. 160