



**Supplementary Submission by the Ombudsman for Children
to the UN Committee on the Rights of the Child
further to the Replies of Ireland to the Committee’s List of Issues
concerning Ireland’s combined Third and Fourth Periodic Reports**

11 December 2015

Introduction

The Ombudsman for Children’s Office (OCO) is an independent human rights institution, which was established in 2004 under primary legislation 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 accountable directly to the Oireachtas.

In October 2015, Ireland’s State Party submitted its replies to the list of issues, which the UN Committee on the Rights of the Child prepared in relation to Ireland’s combined Third and Fourth Periodic Reports to the Committee and published in June 2015.

Following his submission of an alternative report to the UN Committee on the Rights of the Child in April 2015, the Ombudsman for Children has prepared the current supplementary submission for the attention of the Committee. Taking into account the considerable amount of information submitted to the Committee in respect of Ireland, the purpose of this current submission is to offer a brief update to the Committee on a number of recent developments concerning children’s rights in Ireland. In providing information in relation to these developments, the Ombudsman for Children is not suggesting that other matters relating to the rights of children in Ireland are less significant or meriting of attention and consideration.

1. Independent complaints-handling mechanism on matters regarding asylum, immigration, naturalisation and citizenship

- List of issues: Part I Paras 1 and 13
- Report of the Ombudsman for Children, April 2015: Paras. 2.7.1, 2.7.4 and 10.2.3
Recommendation 59
- **Update** – As the Ombudsman for Children highlighted in April 2015 in his alternative report to the UN Committee, the Ombudsman for Children Act 2002 contains an exclusion that prevents the OCO from investigating the actions of public bodies where those actions

involve the administration of the law regarding asylum, immigration, naturalisation and citizenship. In keeping with the longstanding view of the Ombudsman for Children, the recent Working Group Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers¹ included recommendations that the statutory remit of the Ombudsman for Children's Office to investigate complaints should include services provided to residents in Direct Provision accommodation centres, including transfer decisions following a breach of House Rules, and that recourse to the OCO should be available to persons who are dissatisfied with the final outcome of the Reception and Integration Agency (RIA) complaints procedure. This matter has yet to be addressed.

2. International protection process

- List of issues: Part I Paras. 10, 13, 14, and 18
- Report of the Ombudsman for Children, April 2015: Para. 10.2
Recommendations 58, 59 and 60
- **Update** - The International Protection Bill 2015² is currently proceeding through the Oireachtas (Ireland's parliament) and responds to 26 of the 170 recommendations of the aforementioned Report of the Working Group on the Protection Process. While providing for the best interests principle in a limited way, the legislation as it currently stands does not include a clear articulation of the general principles of the UNCRC, including children's rights to have their views taken into account and their best interests treated as a primary consideration in all actions concerning them in the context of the protection process.³

3. Child poverty

- List of issues: Part I Para. 2
- Report of the Ombudsman for Children, April 2015: Para. 8.4
Recommendation 46
- **Update** – Published on 26 November 2015, the *Survey on Income and Living Conditions 2014*⁴ includes the following data as regards poverty rates among children in Ireland in 2014:

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|-------------------------------|------|
| - At Risk of Poverty Rate (%) | 18.6 |
| - Deprivation Rate (%) | 36.1 |
| - Consistent Poverty Rate (%) | 11.2 |

¹ Working Group Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers Final Report, June 2015, para. 4.135, at http://www.justice.ie/en/JELR/Pages/Working_Group_on_Improvements_to_the_Protection_Process

² International Protection Bill 2015, at <http://www.oireachtas.ie/documents/bills28/bills/2015/10215/b10215s.pdf>

³ Ombudsman for Children, *Initial Observations on the General Scheme of the International Protection Bill 2015*, July 2015, at http://www.oco.ie/wp-content/uploads/2014/03/OmbudsmanforChildren_Submission_GSInternationalProtectionBill2015.pdf

⁴ Central Statistics Office, *Survey on Income and Living Conditions 2014*, November 2015 at <http://www.cso.ie/en/statistics/socialconditions/>

4. Homelessness

- List of Issues: Part II (c) Para.133
- Report of the Ombudsman for Children, April 2015: Para. 8.5
Recommendation 47
- **Update** – The number of families becoming homeless continues to increase. The most recent available data from the Department of Social Protection indicates that 738 families with 1,571 children were homeless in Ireland in September 2015.⁵

5. Child protection

- List of issues: Part I Para. 6(c)
- Report of the Ombudsman for Children, April 2015: Para. 6.1
Recommendations 24, 25, 26, 27, 28
- **Update** – The Children First Bill 2015 was signed into law on 19 November 2015. However, it has not been fully commenced. The provisions of the legislation will only come into force when brought into effect by regulation of the Minister for Children and Youth Affairs. The Minister is expected to sign Commencement Orders on a phased basis.⁶ As indicated in his report to the UN Committee earlier this year, the Ombudsman for Children is of the view that it is imperative that all necessary resources be put in place to ensure that social work departments can respond effectively to any increase in reporting consequent upon the introduction of the legislation and that the impact of the legislation on child protection services and practice must be subject to a formal review.

6. Corporal punishment

- List of issues: Part III Para. 2(a)
- Report of the Ombudsman for Children, August 2015: Para. 6.2
Recommendation 29
- **Update** – Passed on 21 October 2015, an amendment to the Children First Bill 2015 removes the common law defence of reasonable chastisement contained in the Non-Fatal Offences Against the Person Act 1997. The commencement order on the removal of this defence was signed by the Minister for Children and Youth Affairs on 10 December 2015.⁷ As a consequence, a person who administers corporal punishment to a child will no longer be

⁵ Department of Environment, Community and Local Government, *Homeless Persons September 2015*, at <http://www.environ.ie/en/DevelopmentHousing/Housing/SpecialNeeds/HomelessPeople/>

⁶ See Department of Children and Youth Affairs, at http://www.dcy.gov.ie/viewdoc.asp?fn=%2Fdocuments%2FChildren_First%2FChildrenFirstLegislation.htm and Tusla Child and Family Agency, at <http://www.tusla.ie/children-first/children-first-bill-2014>

⁷ Merrion Street Irish Government News Service, at http://www.merrionstreet.ie/en/Gallery/Images/Minister_Reilly_signs_commencement_order_for_the_removal_of_the_defence_of_Reasonable_Chastisement.html

able to rely on the defence of reasonable chastisement in the courts. The Ombudsman for Children welcomes this significant development.

7. Education

- List of issues: Parts I Para. 5 and Part III Para. 5
- Report of the Ombudsman for Children, August 2015: Paras. 4.1.3-4.1.6 and 5.5
Recommendations 15, 23
- **Update** - The Education (Admission to Schools) Bill 2015 was published in April 2015. It is disappointing that this important piece of legislation appears unlikely to be enacted during the lifetime of the current Dáil⁸. However, the Ombudsman for Children welcomes the recent statement by the Minister for Education and Skills that the provision within the Equal Status Act 2000, which permits schools to admit students of a particular religious denomination in preference to others, needs to be addressed.⁹

8. Juvenile justice

- List of issues: Part I Para. 15 and Part III Para. 2(g)
- Report of the Ombudsman for Children, April 2015: Para. 10.3
Recommendations 61, 62, and 63
- **Update** – On 3 December 2015, the Minister for Justice and Equality published the Prisons Bill 2015, which provides for the closure of St Patrick’s Institution.¹⁰ At present, 17 year old boys detained on sentence continue to be placed in Wheatfield Prison, an adult prison. On 10 December 2015, there were thirteen 17 year olds in Wheatfield.¹¹ Furthermore, 17 year olds detained on remand may still be placed in St Patrick’s Institution. While these are temporary measures, the Ombudsman for Children is concerned about delays in the expansion of capacity at the national detention facility in Oberstown, which is required in order to achieve a complete cessation to the practice of detaining young people under 18 years of age in prison.

⁸ Dáil Éireann, Debates, 9th December 2015, Parliamentary Question 44117/15

⁹ The Irish Times, ‘Bishops tell Minister not to ‘interfere’ with ethos of schools’, 9 December 2015, at www.irishtimes.com/news/education/bishops-tell-minister-not-to-interfere-with-ethos-of-schools-1.2460605 (accessed 9/12/2015).

¹⁰ Department of Justice and Equality, ‘Minister Fitzgerald publishes Prisons Bill 2015 to provide for the complete closing of St Patrick’s Institution’, at <http://www.justice.ie/en/JELR/Pages/PR15000625>

¹¹ Irish Prison Service, Daily Prisoner Population, at <http://www.irishprisons.ie/index.php/information-centre/statistics/daily-custody-figures>

9. Gender recognition

- List of issues: Part 11, (a), 111
- Report of the Ombudsman for Children, April 2015: 5.2
Recommendation 20
- **Update** – The Gender Recognition Act 2015 was enacted in July. Although the Act does provide a mechanism by which 16 and 17 year olds could obtain a Gender Recognition Certificate, this mechanism is onerous and maintains an inappropriate requirement for medical approval prior to obtaining a Certificate. It is also of concern that young people under 16 years are excluded entirely from the ambit of the Act. The Ombudsman for Children is of the view that a review of the Gender Recognition Act 2015 must consider the rights of children under 18 years of age, including children under 16 years of age about whom the current legislation is silent. The commitment by the Minister for Children and Youth Affairs to consult with transgender young people so that their views can inform a future process to review the Act is welcome.¹²

¹² Gender Recognition Act 2014, at <http://www.oireachtas.ie/documents/bills28/acts/2015/a2515.pdf>; Seanad Éireann, Children First Bill 2015, Committee Stage, 24 September 2015, at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/DebatesWebPack.nsf/takes/seanad2015092300002#N531>