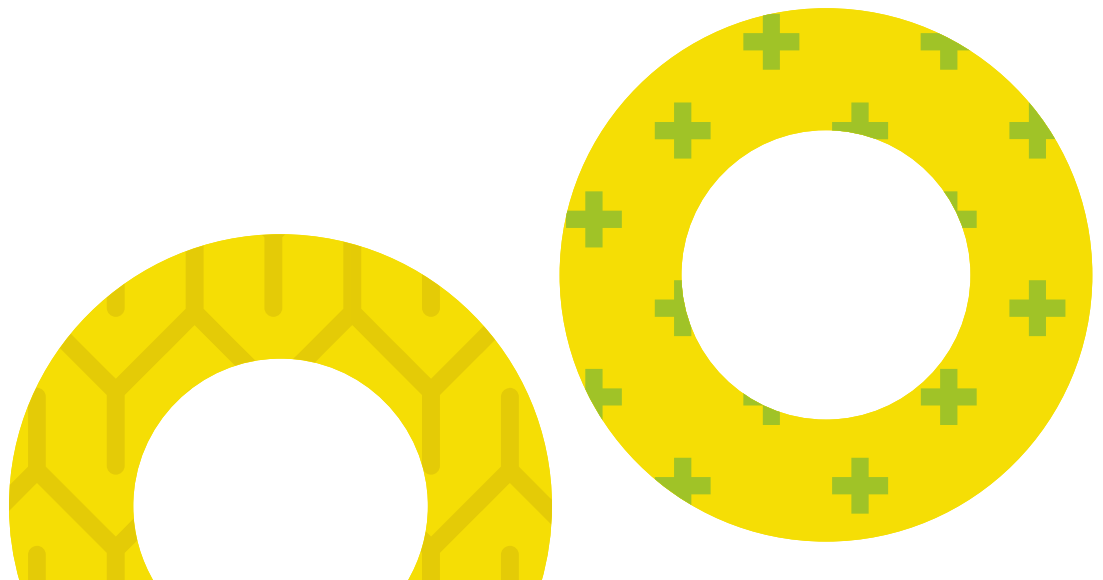


**Ombudsman for
Children's Office**

1 July 2020



**Submission to the UN Committee
on the Rights of the Child on the
List of Issues Prior to Reporting for
the fourth periodic examination of
Ireland**



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INTRODUCTION

The [Ombudsman for Children's Office](#) (OCO) is an independent statutory body, which was established in 2004 under the [Ombudsman for Children Act 2002](#) (2002 Act). The OCO has two overall statutory functions:

- to promote the rights and welfare of children up to 18 years of age
- to independently examine and investigate complaints made by or for children about the administrative actions of schools, hospitals and public bodies that have, or may have, adversely affected a child.

The current Ombudsman for Children, Dr Niall Muldoon, was appointed by the President of Ireland in February 2015 and is directly accountable to the Oireachtas (Ireland's parliament) for the exercise of the OCO's statutory functions.

The purpose of this submission is to provide the UN Committee on the Rights of the Child (Committee) with information to inform its preparation of the List of Issues Prior to Reporting (LOIPR) for the fourth periodic examination of Ireland.

The OCO has prepared this submission having regard to several factors, including:

- the Committee's Concluding Observations in 2016 following its examination of the combined third and fourth periodic reports of Ireland¹
- the OCO's statutory remit under the 2002 Act, as amended, and associated strategic priorities²
- issues affecting children's rights in Ireland that the OCO has engaged with in recent years in the context of implementing our statutory duties.

The OCO has prepared this submission during a time when Ireland, like many countries, has been confronted with a crisis due to the Covid-19 pandemic. As of 30 June 2020, there have been 25,473 confirmed cases of Covid-19 and 1,736 Covid-19 related deaths in Ireland.³

The socio-economic impact of Covid-19 is very significant. The budget deficit for 2020 has been estimated at up to €30 billion. Given the significant challenges that the State faces as regards mitigating the adverse socio-economic effects of the pandemic, the OCO believes that the State needs to be able to demonstrate in its report to the Committee in 2021 what child rights-based measures it is taking to ensure that children's rights are being fulfilled to the maximum extent of the State's available resources.

The crisis caused by Covid-19 has amplified existing inequalities experienced by particular groups of children in Ireland. Among these groups are children belonging to ethnic minorities, including

¹ UN Committee on the Rights of the Child (2016), [Concluding observations on the combined third and fourth periodic reports of Ireland](#), CRC/C/IRL/CO/3-4.

² OCO (2016), [Strategic Plan 2016-2018](#) and OCO (2019), [Strategic Plan 2019-2021](#).

³ See data from the Department of Health regarding [latest updates on Covid-19 \(Coronavirus\)](#).

Traveller and Roma children; children with disabilities; and children experiencing homelessness. The OCO is of the view that the State should also be able to detail in its report to the Committee in 2021 what measures it is taking to mitigate persistent barriers that certain children face to enjoying their rights.

This submission has also been prepared against the backdrop of a protracted Government formation process following a General Election on 8 February 2020. A new coalition Government was formed on 27 June 2020 following confirmation on 26 June that the [Programme for Government](#) (Programme) negotiated by Fianna Fáil, Fine Gael and the Green Party had attracted sufficient support. Among the notable developments arising from the formation of the new Government is that the remit of the Department of Children and Youth Affairs (DCYA) has been expanded and it is now the Department of Children, Disability, Equality and Integration.⁴

The Programme includes a range of commitments concerning children. Among the commitments that the OCO welcomes are commitments to:

- work towards ending the admission of children to adult psychiatric units⁵
- end the current Direct Provision system⁶
- ensure that the housing needs of the Traveller community are met by local authorities⁷
- reduce waiting times for assessment of needs and prioritise access to services for people with disabilities.⁸

As the new Government has only just been formed, the Programme and commitments contained in it are untested. Therefore, while the OCO will continue to monitor relevant developments, this submission focuses on the current situation for children and their rights.

⁴ While several Ministerial portfolios have changed with the formation of the new coalition Government, this submission references Government Departments according to the remits and corresponding names they had immediately prior to these changes being announced on 27 June 2020. For example, reference is made to the Department of Children and Youth Affairs (DCYA) rather than to what is now the Department of Children, Disability, Equality and Integration. A full list of the Ministerial portfolios arising from the formation of the new Government is available [here](#).

⁵ [Programme for Government. Our Shared Future](#) (2020), p.48.

⁶ [Programme for Government. Our Shared Future](#) (2020), p.76.

⁷ [Programme for Government. Our Shared Future](#) (2020), p.77.

⁸ [Programme for Government. Our Shared Future](#) (2020), p.78.

GENERAL MEASURES OF IMPLEMENTATION (arts. 4, 42 and 44(6))

1. Legislation

Positive developments in legislation affecting children's rights since 2016 include commencement in full of the [Children First Act 2015](#), amendment of the [Family Law Act 1995](#) to remove an exemption to 18 being the minimum legal age for marriage,⁹ and enactment of the [Education \(Admission to Schools\) Act 2018](#).

However, the State has not implemented the Committee's recommendation in 2016 as regards assessing the extent to which legislation affecting children's rights complies with the Convention.¹⁰ Furthermore, systematic consideration of children's rights is not sufficiently evident in the State's approach to legislating for matters affecting children.

Ireland's legal framework concerning children and their rights remains deficient, including in key areas such as housing, mental health and disability. Persistent legislative shortfalls, and delays in addressing them, are serious concerns. For example, Ireland still does not have a clear, consistent legal framework that addresses children's consent to and refusal of medical treatment. In the absence of measures to amend the [Criminal Justice Act 2006](#), the age of criminal responsibility remains 10 for certain serious crimes and 12 for other offences. Proposals to amend the [Gender Recognition Act 2015](#) to simplify the gender recognition process for 16 and 17 year olds have not been implemented yet and it is unclear whether or not the law's problematical silence regarding gender recognition for children under 16 will be retained.¹¹

The OCO invites the Committee to ask the State to clarify:

- a) when it intends to complete a comprehensive assessment of the extent to which legislation affecting children's rights complies with the Convention**
- b) what measures it is taking to address shortfalls in legislation affecting children's rights and to ensure relevant legislation upholds children's rights.**

2. Comprehensive policy and strategy

In line with the Concluding Observations in 2016,¹² the Department of Children and Youth Affairs (DCYA) published a national indicator set¹³ in 2017 to measure progress under [Better Outcomes, Brighter Futures](#) (BOBF), Ireland's national policy framework for children and young people. [Annual](#)

⁹ Section 45(1)(e) of the [Domestic Violence Act 2018](#).

¹⁰ UN Committee on the Rights of the Child (2016), [Concluding observations on the combined third and fourth periodic reports of Ireland](#), CRC/C/IRL/CO/3-4, para. 11.

¹¹ OCO, [Press Release](#), 10 December 2019; Review Group (2018), [Review of the Gender Recognition Act 2015](#); Department of Employment Affairs and Social Protection (2019), [Gender Recognition Act 2015: Report to the Oireachtas under Section 7 of the Act](#).

¹² UN Committee on the Rights of the Child (2016), [Concluding observations on the combined third and fourth periodic reports of Ireland](#), CRC/C/IRL/CO/3-4, para.12.

¹³ Department of Children and Youth Affairs (2014), [An Indicator Set for Better Outcomes, Brighter Futures - The National Policy Framework for Children and Young People 2014-2020](#).

[reports](#) and a mid-term review¹⁴ of the implementation of this framework highlight positive developments. Similarly, annual reports on the [National Strategy on Children's and Young People's Participation in Decision-Making 2015-2020](#) (Participation Strategy) illustrate progress on implementing commitments.

However, the OCO is concerned that the indicator set, like BOBF itself, is not based on or driven by the Convention. Furthermore, progress reports on BOBF and the Participation Strategy focus on implementation structures and actions rather than on impacts and outcomes. With BOBF and the Participation Strategy due to conclude in 2020, evaluation of the outcomes they have achieved for children and their rights is necessary. Such an evaluation would usefully inform work to develop successors to BOBF and the Participation Strategy that are directed towards implementing the Convention.

The OCO invites the Committee to ask the State to advise on:

- a) the impact that implementation of commitments made in BOBF and the Participation Strategy has had on progressing the realisation of children's rights**
- b) the State's plans for developing successors to BOBF and the Participation Strategy, including proposed measures to ensure that successors to BOBF and the Strategy are directed towards implementing the Convention.**

3. Coordination

The OCO welcomes structures, mechanisms and initiatives put in place to facilitate coordination on cross-sectoral issues affecting children at the national, regional and local levels. In this regard, just as the position of Minister for Children and Youth Affairs as a full Cabinet post has been vital to sustaining a focus on children at the highest level of Government, so the DCYA has been key to progressing necessary improvements in coordination. As noted in the introduction to this submission, the remit of the DCYA was expanded following the formation of a new coalition Government on 27 June 2020 and it is now the Department of Children, Disability, Equality and Integration.¹⁵

Despite widespread understanding that coordination is essential to addressing cross-sectoral issues effectively, the OCO is concerned about the persistence of fragmented, system-oriented practices. Through our examination and investigation of complaints, we see the damaging consequences that deficits in coordination have, including on vulnerable children with complex needs. Our investigation of a complaint made on behalf of a child in foster care with a disability is one case in point.¹⁶ Disagreement among State agencies as to which agency has responsibility (including financial

¹⁴ Department of Children and Youth Affairs (2018), [Mid-term Review of Better Outcomes, Brighter Futures - The National Policy Framework for Children and Young People 2014–2020](#).

¹⁵ Prior to the formation of the new Government, there were suggestions that the DCYA might not be retained. In this regard, the Ombudsman for Children expressed serious concerns about suggestions that the DCYA might be abolished or subsumed into a larger Government Department. See Fiach Kelly, [‘Ombudsman warns against any downgrading of Department of Children’](#), in The Irish Times, 13 May 2020; Ailbhe Conneely, [‘Children’s Ombudsman writes to party leaders over potential abolition of Department’](#), RTE News, 12 June 2020; OCO, [Press Release](#), 12 June 2020.

¹⁶ OCO (2018), [Molly’s Case: How Tusla and the HSE provided and coordinated supports for a child with a disability in the care of the State](#); OCO (2019), [Molly One Year On](#); OCO (2020), [Molly Two Years On](#).

responsibility) for children in certain circumstances and delays in implementing measures to strengthen coordination even where the need to do so is accepted are among our ongoing concerns.

The OCO invites the Committee to ask the State for information about:

- a) the range and effectiveness of measures to support a coordinated approach at national, regional and local levels to cross-sectoral issues affecting children's rights**
- b) additional measures, including legislative measures, that the State proposes to implement to strengthen coordination, having particular regard to vulnerable children, including children with complex needs.**

4. Allocation of resources

Recent annual budgets have included some new or improved budgetary measures directed towards children. However, the OCO is concerned that existing processes for allocating, monitoring and assessing resources for children are not sufficiently aligned with a child rights approach.

BOBF committed the Government to exploring the development of cross-Government estimates for expenditure on children.¹⁷ This work has not been completed.¹⁸ Furthermore, while the OCO welcomes indications that the DCYA is starting to examine the scope for introducing child rights impact assessment,¹⁹ it is concerning that steps have not been taken to date to expand the existing framework of integrated social impact assessments to include ex-ante and ex-post child impact assessments of the impact of fiscal and budgetary decisions on children's rights. Separately, the extent to which the [Equality Budgeting](#) initiative introduced in 2018 can support child-proofing of measures via different dimensions of equality is unclear at this stage.

The annual budget for 2020 was developed "in the shadow of Brexit".²⁰ Upcoming annual budgets will be devised in light of the Covid-19 pandemic. With a budget deficit of up to €30 billion estimated for 2020,²¹ the need for child rights-based measures to ensure that children's rights are being fulfilled to the maximum extent of the State's available resources is particularly acute given the impact of the pandemic on the State's finances and its corresponding capacity to mitigate the adverse socio-economic consequences of the pandemic, including for children.

The OCO invites the Committee to ask the State to provide information about measures taken and envisaged in relation to resources for the rights of the child, having particular regard to:

- a) specific recommendations that the Committee made to Ireland in this respect in 2016²²**
- b) the current and longer term impact of the Covid-19 pandemic.**

¹⁷ Department of Children and Youth Affairs (2014), [Better Outcomes, Brighter Futures – The National Policy Framework for Children and Young People 2014-2020](#), p.43.

¹⁸ Information provided to the OCO by the DCYA on 25 June 2020.

¹⁹ Information provided by the DCYA on 26 May 2020.

²⁰ Simon Carswell, ['Budget 2020: Donohoe unveils €1.2bn package to cope with Brexit'](#), in The Irish Times, 8 October 2019.

²¹ Pat Leahy, ['Coronavirus: Varadkar and Donohue warn over borrowing for Covid-19 downturn'](#), in The Irish Times, 22 May 2020; Robert Short, ['Significant stimulus plan needed to revive economy after Covid-19 – IFAC'](#), RTE News, 27 May 2020; Irish Fiscal Advisory Council, [Fiscal Assessment Report, May 2020](#).

²² UN Committee on the Rights of the Child (2016), [Concluding observations on the combined third and fourth periodic reports of Ireland](#), CRC/C/IRL/CO/3-4, para.16.

5. Data collection

Data is collected on a diverse range of matters concerning children and measures have been developed that identify data gaps and support improved data access and use – for example, the [indicator set](#) for BOBF, the ‘Outcomes4Children’ [national data and information hub](#) and the DCYA’s statistical database.²³ However, Ireland’s data collection system remains fragmented and incomplete: it does not cover all areas of the Convention or facilitate monitoring and analysis of the situation of all children.²⁴

The OCO is concerned about ongoing deficiencies in data collection, including with regard to vulnerable children. In some cases, there are no official statistics regarding certain groups of children and only estimates are available (e.g. Roma children²⁵ and undocumented children²⁶). In other cases, official statistics are disputed (e.g. young carers under 18²⁷).

Measures to address known shortfalls in data collection and disaggregation can be slow to progress. For example, official monthly reports on homelessness still do not offer a sufficiently comprehensive, disaggregated profile of children experiencing homelessness.²⁸ Regularly gathered, comprehensive data on the scope and different forms of sexual abuse and exploitation of children is not yet available.²⁹ Two years on from the OCO’s investigation of a complaint concerning a child in foster care with a disability, the Health Service Executive (HSE) and the Child and Family Agency (Tusla) have not reached agreement on how to determine which children in care with a disability fall into the categories of moderate disability and profound disability.³⁰

The OCO invites the Committee to ask the State to outline actions taken and proposed to:

- a) improve the collection, disaggregation and analysis of quantitative and qualitative data relating to children and their rights under the Convention**
- b) ensure that data is used effectively and appropriately in the formulation, monitoring and evaluation of legislation, policies, budgets, programmes and services affecting children**
- c) support appropriate sharing of data by relevant agencies, including in the context of individual cases and with particular regard to children who are vulnerable or at risk.**

²³ See [Statistical Database](#). This data repository is available from the [Statbank](#) database of the Central Statistics Office (CSO).

²⁴ UN Committee on the Rights of the Child (2016), [Concluding observations on the combined third and fourth periodic reports of Ireland](#), CRC/C/IRL/CO/3-4, para.18.

²⁵ Pavee Point Traveller and Roma Centre and Department of Justice and Equality (2018) [Roma in Ireland – A National Needs Assessment](#), p.26. Census 2021 will be the first census to include ‘Roma’ as an option under the topic ‘Ethnic Group’. See Central Statistics Office (2019), [Report on the public consultation on content of Census 2021 and the Census Pilot Survey 2018](#).

²⁶ The [Migrant Rights Council of Ireland](#) estimates that there are 2,000 to 3,000 undocumented children in Ireland.

²⁷ Data from Census 2016 indicated that there were 6,108 young carers under 17 in Ireland, but Carers Ireland estimates that the actual figure is over 55,000.

²⁸ OCO (2019), [No Place Like Home](#), pp.12-14 and p.28.

²⁹ UN Special Rapporteur on the sale and sexual exploitation of children (2019), [Visit to Ireland report](#), para.21.

³⁰ OCO (2020), [Molly Two Years On](#), p.11f.

6. Independent monitoring

Since the Committee's Concluding Observations in 2016, clarity has been achieved on the OCO's statutory complaints remit in relation to Direct Provision. That the OCO has been able to accept complaints made by or for children living in Direct Provision since April 2017 is a welcome development.

Gaps remain, however, in the State's independent, statutory complaints-handling framework, thereby limiting children's access to redress. For example, there is no independent statutory mechanism to deal with complaints relating to the administration of the international protection process or the administration of State-funded early years child care services.

The OCO is also concerned about the absence of independent statutory inspection of State-funded accommodation and associated services provided to vulnerable children and their families, including:

- homeless families with children
- asylum-seeking and refugee families with children living in Direct Provision and Emergency Reception and Orientation Centres (EROCs)
- children in residential care living in private and voluntary residential centres.

The OCO invites the Committee to ask the State when and how it intends to:

- a) address gaps in the State's independent, statutory complaints-handling framework**
- b) provide for independent, statutory inspection of State-funded accommodation and associated services for vulnerable children and their families.**

7. Dissemination and awareness raising

The OCO has 15 years' experience of developing and delivering a children's rights awareness and education programme for children and for third level students planning to work with children (e.g. student teachers, social workers and early years professionals).³¹

We welcome increased recognition of children's rights in early years settings through the [early years curriculum](#) and the [national quality framework](#) as well as the inclusion of rights in the new [draft primary school curriculum](#) and in [Politics and Society](#), an elective subject in the second level senior cycle. However, measures by relevant State bodies to inform and educate children about their rights remain limited.

The Committee previously recommended that the State should strengthen its efforts to provide adequate, systematic training and/or sensitisation of professionals working with and for children.³² The OCO's experience indicates that a majority of third level students receive limited education on working within a child rights framework. Furthermore, our engagement with public bodies indicates

³¹ See the OCO's [website](#) and [annual reports](#) for details.

³² UN Committee on the Rights of the Child (2016), [Concluding observations on the combined third and fourth periodic reports of Ireland](#), CRC/C/IRL/CO/3-4, para.22.

that understanding among civil and public servants of children's rights and implementing a child rights approach needs to be strengthened.

The OCO invites the Committee to ask the State to provide information on measures taken and envisaged to:

- a) strengthen and mainstream awareness of children's rights and the Convention among children, parents and care givers, and the general public
- b) improve capacity among legislators, policy makers, and relevant professional groups and service providers to give appropriate consideration to children's rights and to take a child rights approach to actions and decisions affecting children, including in the context of legislative, regulatory, policy and budgetary processes affecting children as well as the design and delivery of services for children.

GENERAL PRINCIPLES (arts. 2, 3, 6 and 12)

8. Non-discrimination

Since 2016, the State has developed several legislative and public policy measures relevant to children's right to non-discrimination, including:

- the [National Traveller and Roma Inclusion Strategy 2017-2021](#)
- the [Migrant Integration Strategy](#)
- the [LGBTI+ National Youth Strategy 2018-2020](#)
- enactment of the Education (Admission to Schools) Act 2018.

The OCO also welcomes work to develop [guidelines for schools on reduced timetables](#) further to indications that such timetables have been used inappropriately and in ways that disproportionately affect Traveller children, children with disabilities and children with emotional and behavioural difficulties.³³ It would be preferable, however, for these guidelines to be placed on a statutory footing.

Notwithstanding some positive developments, discrimination against children persists, including on the basis of race, ethnicity, religion and sexual orientation. Serious concerns remain about the discrimination faced by minority ethnic communities, including Travellers and Roma.³⁴ In this regard, participants in our 2019 consultation with children in the international protection system cited racism among peers, teachers and communities as well as religious discrimination in school practices

³³ OCO (2019), [‘Ombudsman for Children expresses concern at inappropriate use of reduced timetables in schools’](#); Joint Committee on Education and Skills (2019), [Interim Report on the Committee’s Examination on the Current Use of Reduced Timetables](#).

³⁴ IHREC (2019), [Ireland and the Convention on the Elimination of Racial Discrimination Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland’s Combined 5th to 9th Report October 2019](#), including pp.34ff; UN Committee on the Elimination of Racial Discrimination (2020), [Concluding observations on the combined fifth and ninth reports of Ireland, CERD/C/IRL/CO/5-9](#).

as ongoing challenges.³⁵ Continued anti-LGBTI+ bullying in schools is among our additional concerns.³⁶

Accordingly, we share the view expressed by the Committee in 2016 and by the UN Committee on the Elimination of Racial Discrimination in 2020 that the State needs to take additional measures to combat discrimination, including by developing a new national action plan against racism.³⁷

The OCO invites the Committee to ask the State to provide information about existing and proposed measures to combat all forms of discrimination against children, including:

- a) steps taken to implement the Committee’s recommendations to Ireland in this regard in 2016**
- b) specific actions to combat racism and sectarianism towards children seeking international protection and children of non-Irish heritage.**

9. Best interests of the child

Article 42A.4.1 of the [Constitution of Ireland](#) requires provision to be made by law for the best interests of the child to be treated as paramount in care and family law proceedings affecting children. Provision has also been made in a range of legislation for children’s best interests to be prioritised in decision-making processes affecting them.

The best interests principle has not been fully integrated into all relevant legislation, however, and important gaps remain – for example, as regards the [Housing Act 1988](#) and the [Disability Act 2005](#). The OCO is also concerned that a range of factors, including shortfalls in inter-agency coordination, inadequate resource allocation and geographical disparities in access to services, are mitigating against children’s best interests being upheld in practice. In this regard, complaints made to the OCO highlight the serious adverse effects that delays in receiving essential supports, therapies and treatment are having on children’s health and development.

Evidence from the OCO’s examination and investigation of complaints also illustrates how the best interests of children can be compromised by flawed administrative practices. For example, we have engaged on complaints based on child protection and welfare concerns involving vulnerable children where prioritisation of children’s best interests was compromised due to inconsistent approaches taken on how local complaints-handling procedures interact with Tusla’s statutory role.

The OCO invites the Committee to ask the State to outline:

- a) measures taken to ensure that children’s right to have their best interests treated as a primary consideration is being integrated, interpreted and applied appropriately in relevant legal proceedings and administrative processes affecting children**

³⁵ OCO (2020), [Direct Division: The Views and Experiences of Children Living in Direct Provision Accommodation](#).

³⁶ BeLonG To Youth Services (2019), [The 2019 School Climate Survey](#).

³⁷ UN Committee on the Rights of the Child (2016), [Concluding observations on the combined third and fourth periodic reports of Ireland](#), CRC/C/IRL/CO/3-4, para.28(b); UN Committee on the Elimination of Racial Discrimination (2020), [Concluding Observations on the combined fifth to ninth reports of Ireland](#), CERD/C/IRL/CO/5-9, para. 14.

- b) what additional measures it plans to take to ensure that the best interests principle is fully integrated into all relevant legislation, public policy and procedures and appropriately applied in all actions and decisions affecting children.**

10. Respect for the views of the child

Article 42A.4.2 of the Constitution requires provision to be made by law for children's views to be ascertained and given due weight, in accordance with their age and maturity, in care and family law proceedings affecting them.

The OCO is concerned that the State is not yet compliant with this constitutional obligation, which came into effect in 2015. Legislative reforms providing for children's right to be heard in family law proceedings are not sufficiently clear, giving rise to inconsistent practices and situations where children are not heard.³⁸ The OCO is also concerned that provision made in the Guardianship of Infants Act 1964 for paying the fees of a child views expert,³⁹ together with the maximum amount payable in this regard under corresponding regulations,⁴⁰ may mitigate against children having the opportunity to exercise their right to be heard in certain circumstances.

As regards care proceedings, we welcome measures taken to support the establishment of a national guardian *ad litem* (GAL) service and to legislate for the regulation, appointment, functions and powers of GALs. However, the OCO is concerned that the [Child Care \(Amendment\) Bill 2019](#), which lapsed with the dissolution of Ireland's parliament in January 2020, did not provide for a sufficiently robust or equitable approach to vindicating children's right to be heard in care proceedings affecting them.

Among our additional concerns are delays in advancing legislation to establish a dedicated family court and the persistence of infrastructural issues that mitigate against the courts being child-friendly environments.

The OCO invites the Committee to ask the State to provide detailed information about legislative and other measures taken and envisaged to:

- a) ensure that every child who has the capacity to form a view and wishes to express their views has an equitable opportunity to exercise their right be heard directly or through a suitably qualified representative in the context of care proceedings and family law proceedings affecting them**
- b) resource the courts to take an accessible, inclusive and coordinated approach to enabling children to exercise their right to be heard in such proceedings.**

³⁸ Joint Committee on Justice and Equality (2019), [Report on Reform of the Family Law System](#), in particular pp.34-42.

³⁹ Section 32 of the [Guardianship of Infants Act 1964](#), as amended by Section 63 of the [Children and Family Relationships Act 2015](#).

⁴⁰ [Guardianship of Infants Act 1964 \(Child Views Expert Regulations\) 2018](#).

CIVIL RIGHTS AND FREEDOMS (arts. 7, 8 and 13-17)

11. Access to information and protection from harmful material online

Since 2016 there have been several positive developments in legislation, policy, research and programmes directed towards strengthening opportunities that the online environment offers for children, including as regards their access to information, and addressing risks that this environment presents to children, including their exposure to harmful material. These developments include the establishment of a [National Advisory Council for Online Safety](#) (NACOS) as part of the Action Plan for Online Safety 2018-2019 and commissioning of primary research to generate up to date data on online use, risks and benefits, including regarding children.⁴¹ A government decision in 2019 to legislate for a regulatory framework to deal with harmful content online is also welcome. However, it is unclear whether the current [preliminary proposals](#), once fully developed and finalised, will provide for an effective regulatory mechanism that can strengthen the protection of children from harmful content.

The impact of the Covid-19 pandemic in Ireland has seen State and non-State actors mobilising information and communication technologies (ICTs) in innovative ways to respond to issues affecting children.⁴² However, it has also amplified shortfalls in measures to uphold children's rights in and through the online environment. Among other things, the OCO shares [concerns](#) as regards children being at increased risk of exposure to harmful material and behaviours online, including misinformation, cyberbullying, violence and hate speech, and grooming for sexual exploitation. The pandemic has also highlighted a digital divide, where digital poverty arising from limited access to suitable [devices](#) and/or [broadband](#) is mitigating against certain children being able to fully avail of ICTs, including to pursue their education, to access support, to maintain relationships with family and friends, and for recreation.

The OCO invites the Committee to ask the State to provide information about measures taken and additional measures proposed to:

- a) ensure that children have equitable access to the online environment, including for the purposes of accessing information**
- b) protect children from exposure to harmful material online and to facilitate children who have encountered harmful material to report concerns, receive supports and seek redress.**

⁴¹ Department of Communications, Climate Action and Environment (2020), [National Advisory Council for Online Safety Annual Report 2019](#), p.3f.

⁴² See [In This Together](#) for examples.

VIOLENCE AGAINST CHILDREN (arts. 19, 24(3), 28(2), 34, 37(a) and 39)

12. Child abuse and neglect

Among the positive developments relating to child protection since 2016 are commencement in full of the Children First Act 2015 (2015 Act), publication of national guidance on the implementation of this legislation, and the establishment of a Child Safeguarding Statement Compliance Unit within Tusla.

Further to the 2015 Act, the number of child protection and welfare referrals to Tusla increased from 47,399 in 2016⁴³ to 59,687 in 2019, with 15%-25% of the latter referrals being mandated under the legislation.⁴⁴ Given this increase, the OCO is concerned that the State needs to allocate sufficient resources to Tusla to allow for timely, appropriate and effective responses to referrals - for example, the number of referrals awaiting an allocated social worker increased between 2017 and 2018, following the introduction of mandatory reporting.⁴⁵ Such resourcing should be directed towards fully addressing the Committee's concerns in 2016 as regards the inadequacy of the emergency out-of-hours social work service, the inadequacy of therapeutic services for child victims of abuse, and the lack of services for child victims of domestic violence.⁴⁶ Furthermore, although the One House Barnahus Pilot Project⁴⁷ established in 2019 is a positive example of coordinated services, the OCO is concerned that the level of inter-agency coordination in relation to child protection and welfare services remains low.

The OCO invites the Committee to ask the State to provide information about:

- a) the impact that placing national child protection guidance on a statutory footing is having on the State's capacity to protect children effectively from abuse and neglect**
- b) the human, technical and financial resources allocated to Tusla and the adequacy of these resources to enable Tusla to:**
 - **provide a satisfactory emergency out-of-hours social work service nationwide**
 - **respond to child protection referrals and address the needs of children at risk in a timely manner**
 - **implement long-term programmes to address the root causes of abuse and neglect**
- c) existing and planned measures to support a systematic, coordinated approach between Tusla and other relevant agencies (in particular policing, education and health services) to prevent and combat child abuse and neglect**
- d) measures taken and envisaged to ensure that children affected by abuse have timely access to comprehensive, child-appropriate services, including counselling services, to support their recovery.**

⁴³ Tusla (2017), [Quarterly Performance and Activity Data, Quarter 4 2017](#).

⁴⁴ Tusla (2019), [Quarterly Integrated Performance and Activity Report, Quarter 4 2019](#) and Tusla (2020), [National Performance and Activity Dashboard, January 2020](#).

⁴⁵ Tusla (2019), [Annual Review on the Adequacy of Child Care and Family Support Services Available 2018](#).

⁴⁶ UN Committee on the Rights of the Child (2016), [Concluding observations on the combined third and fourth periodic reports of Ireland](#), CRC/C/IRL/CO/3-4, para.38.

⁴⁷ OCO, [Press Release](#), 17 September 2019; Conor Gallagher, ['Project seen as 'game changer' in helping child abuse victims'](#), in The Irish Times, 16 September 2019.

13. Domestic violence

The OCO welcomes the entry into force of the [Domestic Violence Act 2018](#) in January 2019. However, we remain concerned that this legislation recognises children as ‘dependents’ of victims rather than as rights-holders who can be victims of and/or witnesses to domestic violence.⁴⁸

Children who are victims of and/or witnesses to domestic violence are at serious risk of long-term physical and mental health problems.⁴⁹ In 2018, 2,572 children received support from a domestic violence service, including 1,667 children who stayed in a refuge.⁵⁰ Due to the absence of clear national statistics regarding the number of children impacted by domestic violence and underreporting of domestic violence,⁵¹ the OCO is concerned that the number of children who are at risk of or experiencing domestic violence is considerably higher.

There are no clear guidelines or procedures for supporting children who are affected by domestic violence. Supports available for children to overcome the impact of domestic violence are insufficient⁵² and children are not always able to access emergency accommodation when necessary due to refuges being full.⁵³ The OCO is also concerned that abuse against children can continue during court ordered access visits following the separation of their parents.⁵⁴

A recent increase in reports of domestic violence against children arising from the Covid-19 pandemic is concerning and underscores the need for adequate measures to identify and support children in these circumstances.⁵⁵

The OCO invites the Committee to ask the State to outline actions taken and proposed to:

- a) support reporting of domestic violence affecting children**
- b) ensure that children who are witnesses to and/or victims of domestic violence have timely access to appropriate assistance and services, including refuge accommodation, rehabilitation services and child-sensitive redress.**

14. Bullying among children in school

The OCO welcomes measures, including research and education programmes, directed towards addressing bullying among children, including in schools. Schools’ handling of bullying among children is a recurring theme in education-related complaints to the OCO.⁵⁶ In this regard, we

⁴⁸ OCO (2018), [Annual Report 2017](#), p.62.

⁴⁹ US Department of Health and Human Services (2019), [Effects of Domestic Violence on Children](#).

⁵⁰ Safe Ireland (2019), [Domestic Violence Abuse Services National Statistics 2018](#).

⁵¹ COSC, The National Office for the Prevention of Domestic, Sexual and Gender-based Violence (2019), [What the Research Tells Us](#). For data on incidents of domestic abuse recorded by Ireland’s police service, see An Garda Síochána (2019), [Garda Annual Report 2018](#), p.46.

⁵² Women’s Aid (2019), [Children Let Down by the System, Impact Report 2018](#), pp.12-15; Barnardos (2016), [What’s the Harm? A child-centred response to domestic abuse](#), p.11.

⁵³ Women’s Aid (2019), [Children Let Down by the System, Impact Report 2018](#), p.13; Barnardos (2016), [What’s the Harm? A child-centred response to domestic abuse](#), p.31.

⁵⁴ Women’s Aid (2019), [Children Let Down by the System, Impact Report 2018](#), pp.13-15.

⁵⁵ Conor Lally, ‘[Rapid and sustained increase in children reporting domestic violence since Covid-19](#)’, in The Irish Times, 22 May 2020; Paul Reynolds, ‘[25% rise in domestic violence calls during pandemic](#)’, RTE News, 9 June 2020.

⁵⁶ See OCO’s [annual reports](#).

continue to see variations in schools' capacity to address complaints and disclosures with due regard to the best interests of the children concerned.

The OCO is also concerned about the lack of a clear, proactive process on the part of relevant State agencies to engage with schools when children are removed from school due to unresolved bullying concerns. Additionally, the Department of Education and Skills (DES) does not appear to have undertaken the thematic evaluation of bullying in schools committed to in its 2013 Action Plan on Bullying⁵⁷ and has not reviewed its 2013 [Anti-Bullying Procedures for Primary and Post-Primary Schools](#). Furthermore, the DES does not collate schools' records of bullying incidents among children, resulting in a lack of data at national level to inform the development of measures to strengthen how bullying is addressed in and by schools.

Our experience highlights the need for an effective statutory framework for school grievance procedures and, as such, for the [Education \(Student and Parent Charter\) Bill](#) (which lapsed following the dissolution of parliament in January 2020) to be progressed as a priority.

The OCO invites the Committee to ask the State to provide information about:

- a) the prevalence and types of bullying occurring among children**
- b) mechanisms to review the efficacy of schools' complaint-handling procedures, including to address complaints about alleged bullying**
- c) mechanisms in place at national level to monitor schools' implementation of the Anti-Bullying Procedures for Primary and Post-Primary Schools and plans to review these procedures**
- d) measures taken to support schools when bullying also involves serious child protection and welfare factors, to ensure the follow-up processes have regard to the best interests of all children involved.**

FAMILY ENVIRONMENT AND ALTERNATIVE CARE (arts. 5, 9-11, 18(1) and (2), 20, 21, 25, 27(4))

15. Illicit transfer and non-return - Brexit

During the OCO's 2017 consultation with children from the North and South of Ireland about Brexit, participating children raised concerns about a lack of clarity in relation to provision for child protection and anti-trafficking measures post-Brexit.⁵⁸ The [UK's withdrawal from the European Arrest Warrant](#) and the non-implementation of the EU Brussels IIa (BIIa) and the [Maintenance Regulation](#) are examples of how Brexit will impact on the abduction and non-return of children. The lack of clarity on viable alternatives to protect children has been raised by the four [Children's Commissioners](#) in the UK and the House of Lords EU Committee.

⁵⁷ Department of Education and Skills (2013), [Action Plan on Bullying](#), p.110.

⁵⁸ OCO and NICCY (2018), [It's Our Brexit Too: Children's Rights, Children's Voices](#)

Many children in Ireland have separated parents where one parent resides in Ireland and the other in the UK, and foster care and child protection arrangements across the jurisdictions also exist. Illicit transfer of children is more easily facilitated due to our shared land border and free movement arrangements. Currently, it appears that only very general information on how these issues will be addressed by the Irish State is available.⁵⁹ In this context, the absence of sufficient clarity in relation to how the Irish State will address the issue of illicit transfer and non-return of children between the UK and Ireland is of concern.

The OCO invites the Committee to ask the State to provide details on proposed legislative and administrative measures to ensure that children are not at increased risk of illicit transfer and non-return to the UK in light of Brexit.

16. Children in alternative care

Tusla is the State agency with statutory responsibility to provide alternative care services for children. Under [Child Care Act 1991](#), Tusla must make suitable arrangements for children in its care, having regard to what it considers to be in the child's best interests. In January 2020, there were 5,971 children in care, over 5,400 of whom were in general or relative foster care.⁶⁰ 93% of these children had an allocated social worker and 94% had a written care plan.⁶¹

Tusla's establishment in 2014 further to the [Child and Family Agency Act 2013](#) was a welcome development. Also welcome is the review of the Child Care Act 1991 being conducted by the DCYA.

From our examination and investigation of complaints, we have a range of concerns about provision for children in care, including as regards:

- inconsistencies in the extent to which children's best interests and views are considered in decisions affecting them
- discrepancies in levels of care planning and in the allocation of social workers to children in foster care
- cases of children being placed at considerable distance from their homes
- cases of children experiencing multiple care placements, including short-term placements
- inadequacies in supports for children in care with special needs and in inter-agency coordination between the State agencies concerned
- access to mental health supports, particularly for children moved to placements in a different area.⁶²

Among our additional concerns are issues arising with regard to the use of voluntary care.⁶³

⁵⁹ For example, see information provided by the Department of Justice and Equality about [family law matters and Brexit](#).

⁶⁰ Tusla (2020), [National Performance and Activity Dashboard, January 2020](#).

⁶¹ Tusla (2020), [National Performance and Activity Dashboard, January 2020](#).

⁶² See OCO's [annual reports](#) and OCO (2018), [Submission to the Review of the Child Care Act 1991](#) for further details.

⁶³ Jack Power, 'Children left in State care 'twilight zone' indefinitely by Tusla', in The Irish Times, 11 May 2020; Tusla (2019), [Annual Review on the Adequacy of Child Care and Family Support Services Available 2018](#), in particular p.12, p.46 and p.53.

The OCO invites the Committee to ask the State to outline measures taken and progress made to ensure:

- a) effective implementation of individual needs assessments, care planning and review, and record keeping for children in alternative care
- b) availability and suitability of care placements for children, including measures taken to ensure that children with disabilities are placed in appropriate foster care placements rather than being institutionalised or hospitalised
- c) children in care with disabilities or mental health needs have their needs addressed in a coordinated, comprehensive and timely manner.

17. Placement of children in care outside the State

The OCO has previously recommended that the State should develop its special care services further in order to obviate the need for placing children in care outside the jurisdiction.⁶⁴ The Committee also made this recommendation in its Concluding Observations for Ireland in 2016.⁶⁵

In October 2019, there were 21 Irish children in out of State care placements.⁶⁶ The cost of these placements to the State has been estimated at €183,000 per month or €2.2 million per year.⁶⁷ Children placed abroad are deemed to have specific needs that cannot be met by existing services in Ireland. The services they require are highly specialised, such as specialist secure forensic mental health services and therapeutic residential services addressing specific needs identified in the child's care plan. There may also be children requiring placement with relatives who live abroad.

Decisions to place children abroad are taken in light of their assessed needs and best interests. Nonetheless, it is undesirable that these children are not provided for in this jurisdiction, not least because of the impact of being at such a remove from their families and communities. However, at present, there is little information available on the impact of placements abroad on the children concerned and their families or on the selection and monitoring of these placements and facilities.

The OCO invites the Committee to ask the State to:

- a) provide information about measures being taken to develop the State's secure care services in order to obviate the need for placing children in care outside the State
- b) outline how the State ensures that facilities, services and supports provided to children in out of State care placements meet children's needs and uphold their rights
- c) clarify which bodies are monitoring the situation of children placed in care outside the State, including from a legal and clinical perspective.

⁶⁴ OCO (2015), [Report to the UN Committee on the Rights of the Child on the examination of Ireland's consolidated Third and Fourth Report to the Committee](#), p.26.

⁶⁵ UN Committee on the Rights of the Child (2016), [Concluding observations on the combined third and fourth periodic reports of Ireland](#), CRC/C/IRL/CO/3-4, para.44.

⁶⁶ Data provided to the OCO by Tusla on 13 December 2019.

⁶⁷ See '[21 children in care placements abroad](#)', in the Irish Examiner, 23 January 2020.

18. Aftercare

Under the [Child Care \(Amendment\) Act 2015](#), Tusla is obliged to prepare an aftercare plan for eligible young people who have been in its care. At the end of 2018, there were 2,496 young people in receipt of aftercare services, 479 of whom were under 18 years.⁶⁸ 78% of those in receipt of aftercare services had an aftercare plan.⁶⁹ 92% of those with an aftercare plan assessed as needing an aftercare worker had one.⁷⁰

While the OCO welcomes that Tusla has a statutory obligation to prepare aftercare plans for eligible young people, we are concerned about the discretionary nature of Tusla's obligation to implement aftercare plans given the risks young people leaving care can face, including homelessness, unemployment, addiction and/or mental health difficulties. We are also concerned that the current legislation excludes certain children from aftercare.⁷¹ Evidence from our complaints-handling work gives rise to additional concerns, including as regards:

- failures to allocate aftercare workers
- inappropriateness of onward placements
- delays in, and inadequate levels of, aftercare planning
- considerable variation in aftercare service provision nationally
- deficits in interagency cooperation in the provision of aftercare supports for children with disabilities.⁷²

The OCO is also concerned about difficulties faced by separated children who transition from Tusla's care into the Direct Provision system when they reach 18 years of age.⁷³

The OCO invites the Committee to ask the State to provide information about measures taken to:

- a) adequately prepare young people for leaving care and ensure that appropriate aftercare supports and services are available to all young people who need them**
- b) enable children in care with disabilities to remain with their foster families once they reach 18 and support children with disabilities in residential care to transition to appropriate social care accommodation when they reach 18**
- c) mitigate challenges faced by separated children who transfer from Tusla's care to Direct Provision when they reach 18.**

⁶⁸ Tusla (2019), [Annual Review on the Adequacy of Child Care and Family Support Services Available 2018](#), p.72.

⁶⁹ Tusla (2019), [Annual Review on the Adequacy of Child Care and Family Support Services Available 2018](#), p.74.

⁷⁰ Tusla (2019), [Annual Review on the Adequacy of Child Care and Family Support Services Available 2018](#), p.74.

⁷¹ Tusla (2017), [National Aftercare Policy for Alternative Care](#), pp.7-8.

⁷² OCO (2018), [Submission to the Review of the Child Care Act 1991](#).

⁷³ Sarah Groarke and Samantha Arnold (2018), [Approaches to Unaccompanied Minors Following Status Determination in Ireland](#), pp.53-58.

19. Care of children presenting as homeless

Under [Section 5 of the Child Care Act 1991](#) (1991 Act) Tusla must take such steps as are reasonable and necessary to make suitable accommodation available for a child who appears to be homeless.

A previous examination by the OCO of services provided to children who present as homeless identified several issues relating to the range of accommodation services available nationally as well as the appropriateness and level of services provided to children using emergency accommodation.⁷⁴ Children with experience of homelessness who participated in a subsequent OCO consultation expressed several concerns, including as regards the inappropriate locations and/or environments of certain emergency placements.⁷⁵ The use of unsuitable emergency accommodation for children, including for extended periods of time, has continued to come to the OCO's attention through our complaints-handling work. Among our additional concerns is that children who have experienced homelessness and received services under Section 5 of the 1991 Act, but who have not been formally in care, are excluded from receiving aftercare supports and services.⁷⁶

We welcome the DCYA's ongoing work since 2017 to review the 1991 Act and are of the view that this review should identify appropriate measures, including legislative amendments, required to strengthen provision for this vulnerable cohort of children.

The OCO invites the Committee to ask the State to provide information about actions taken and proposed to:

- a) address root causes of homelessness among children who present as homeless on their own**
- b) ensure that children who present as homeless on their own are provided with accommodation and supports that are consistent with their best interests and appropriate to their needs**
- c) make sure that the amount of time homeless children spend in emergency accommodation is time limited and that children move to suitable, sustainable placements if they cannot return home or to their previous care placement.**

⁷⁴ OCO (2012), [Statement on the examination and proposed investigation of HSE Homelessness Service provision to children who are homeless and accommodated under Section 5 of the Child Care Act and those in the care of the HSE accessing homeless services](#).

⁷⁵ OCO (2012), [Homeless Truths: Children's experiences of homelessness in Ireland](#).

⁷⁶ OCO (2018) [Submission to the Review of the Child Care Act 1991](#); Focus Ireland (2018), [Submission to the DCYA Review of the Child Care Act 1991](#), p.4.

DISABILITY, BASIC HEALTH AND WELFARE (arts. 6, 18(3), 23, 24, 26, 27(1)-(3) and 33)

20. Implementing the rights of children with disabilities

The OCO welcomes Ireland's ratification of the [UN Convention on the Rights of Persons with Disabilities](#) (UNCRPD) in 2018, albeit we are concerned about the State's delay in ratifying the [Optional Protocol](#).⁷⁷ We also welcome several positive developments concerning children with disabilities in recent years, including:

- the [National Disability Inclusion Strategy 2017-2021](#), which contains several commitments relating to children
- the Education (Admission to Schools) Act 2018, which empowers the Minister for Education and Skills to compel a school to open a special class and enables the National Council for Special Education (NCSE) to designate a school place for a child with special educational needs (SEN)⁷⁸
- the expansion of the [Access and Inclusion Model](#) (AIM), which supports children with disabilities at pre-school.

The OCO is concerned, however, that key legislation is not aligned with a rights-based approach to disability and urgently requires review.⁷⁹ Arising from our complaints-handling work, we also have serious concerns about multiple barriers that children with disabilities face to enjoying their rights. Among the issues that continue to come to our attention are:

- significant delays for children in accessing an assessment of their needs and receiving corresponding services
- difficulties for children in accessing and maintaining school placements
- inadequate coordination between State agencies in providing supports to children
- inadequate funding for necessary aids and appliances
- problems concerning the provision of at home nursing supports
- delays in providing suitable housing and school transport.

The OCO invites the Committee to ask the State to provide detailed information about measures taken and envisaged to:

- a) implement a human rights-based approach to disability**
- b) strengthen coordination and improve resource allocation to address the rights and needs of children with disabilities, including as regards:**
 - **children's access to and receipt of timely assessment and corresponding services and treatment in accordance with their evolving needs**
 - **children's access to and participation in inclusive education, including early education**
 - **children's care by their family in their home environment, where possible and appropriate.**

⁷⁷ [Dáil Éireann Debate](#), 4 December 2018.

⁷⁸ See the DES' [website](#) for further details.

⁷⁹ [Education for Persons with Special Educational Needs Act 2004](#) and [Disability Act 2005](#).

21. Health and health services

[Sláintecare](#) is a ten-year programme to transform health and social care services in Ireland. While the OCO welcomes its vision for equal access to services based on need, we are concerned that the [Sláintecare Implementation Strategy](#) does not include new child-specific measures regarding access to primary care.⁸⁰ The OCO also welcomes recent commitments to extend the free GP care scheme to include 6 and 7 year olds and to introduce free dental care for children under 6.⁸¹ However, the pace of progress in extending free GP care to all children up to 17⁸² is concerning given the evidence that children whose parents face the full cost of GP care have significantly fewer GP visits.⁸³

With regard to hospital care, the OCO welcomes that almost 1,000 children we consulted about children's rights in hospital commented favourably on many aspects of their care.⁸⁴ However, we are concerned about the pace of progress in completing the new national children's hospital. We also have serious concerns about significant waiting lists for hospital treatment for children⁸⁵. For example, in September 2019, 1,191 children were waiting over 12 months for a hospital appointment.⁸⁶ In December 2019, 144 children were awaiting surgery for scoliosis, 45 of whom were waiting for over 4 months, an increase from 35 at the end of 2018.⁸⁷ Of additional concern are the costs incurred by families of children requiring treatment in hospital.⁸⁸

As regards rare diseases, the OCO notes the establishment of the [National Screening Advisory Committee](#) to advise on future screening programmes, but is concerned that the [Rare Disease Plan 2014-2018](#) has not been updated to incorporate the learning and experiences of children and their advocates who have sought to access and participate appropriately in the current orphan drug decision-making process.

The OCO invites the Committee to ask the State to outline measures taken and envisaged to:

- a) publish information about child-specific waiting lists for all healthcare services in Ireland**
- b) establish and monitor targets for maximum waiting times for out-patient appointments**
- c) strengthen timely access to health services for all children and reduce waiting lists**
- d) address barriers to accessing health services that particular groups of children can face, including children in poverty, children in one-parent families and children with disabilities.**

⁸⁰ Children's Rights Alliance (2020), [Report Card 2020](#), p.61.

⁸¹ Government [Press Release](#), 5 January 2020.

⁸² [A Programme for a Partnership Government](#) (2016), p.55.

⁸³ Anne Nolan and Richard Layte (2017), [Growing Up Ireland National Longitudinal Study of Children – Understanding Use of General Practitioner Services among Children in Ireland](#), p.8.

⁸⁴ OCO and the Children's Hospital Group Board (2018), [Joining the Dots: Connecting Voices for Child-friendly Healthcare in Hospital](#).

⁸⁵ OCO (2017), [Waiting for Scoliosis Treatment: A Children's Rights Issue](#).

⁸⁶ Health Service Executive, [Performance Profile July-September 2019 Quarterly Report](#).

⁸⁷ Figures provided to the OCO by the Minister for Health in January 2020, by way of additional follow up to OCO (2017), [Waiting for Scoliosis Treatment: A Children's Rights Issue](#).

⁸⁸ Children in Hospital Ireland (2020), [Childhood Illness. Financial Stress](#).

22. Mental health

The OCO welcomes an increased focus in recent years on promoting children's wellbeing. We also welcome the recent publication of an updated national mental health policy, [Sharing the Vision](#). However, the OCO has serious concerns about mental health provision for children, including in light of the views children have shared with us about their own experiences of mental health services.⁸⁹

Ireland has the fourth highest suicide rate for teenagers in the EU/OECD region.⁹⁰ The unacceptable practice of admitting children to adult psychiatric units continues: in 2018, 84 children were placed in adult psychiatric units and, up until September 2019, 37 children were placed in adult units last year.⁹¹ Waiting lists for [Child and Adolescent Mental Health Services](#) (CAMHS) remain high, with 2,300 children waiting for an appointment at end of December 2019.⁹² Through our complaints work, we see deficiencies in services' capacity to meet the needs of children with a dual diagnosis of intellectual disability and mental health difficulties.

The [Mental Health Act 2001](#) urgently needs reform, but draft legislation to amend it further to recommendations of an Expert Group in 2015 is still in development. Meanwhile, the [Mental Health \(Amendment\) Act 2018](#), which inserted a new section into the 2001 Act focused on children, was enacted in 2018, but has not entered into operation.⁹³ The pace of progress to implement improvements to cross-sectoral coordination, particularly the Youth Mental Health Pathfinder Project, is concerning.⁹⁴ Delays in establishing a national mental health information and advocacy service also persist.⁹⁵ As regards resource allocation, mental health for adults and children is allocated only 6% of the overall health budget, there is no ringfenced funding for children's mental health services and no routine publication of the amounts spent. Furthermore, challenges in recruiting sufficient staff to work in children's mental health services remain unresolved.⁹⁶

The negative impact of measures taken further to the Covid-19 pandemic on children's mental health is of significant concern and underscores the need for concerted action by the State to make Ireland's mental health system for children fit for purpose.

The OCO invites the Committee to ask the State to provide detailed information, including timelines, about the full range of measures it is taking, as well as additional measures planned, to ensure that Ireland's mental health system for children is consistent with children's rights and upholds children's right to the highest attainable standard of mental health.

⁸⁹ OCO (2018), [Take My Hand: Young People's Experiences of Mental Health Services](#), pp.13

⁹⁰ UNICEF (2017), [UNICEF's Report Card 14: child well-being in wealthier nations](#).

⁹¹ Eilish O'Regan, ['Adult psychiatric units are no place for children with severe mental health issues'](#), in the Irish Independent, 15 October 2019.

⁹² [Dáil Éireann Debate](#), 5 March 2020.

⁹³ OCO (2018), [Take My Hand: Young People's Experiences of Mental Health Services](#), pp.13-15; [Report of the Expert Group on the Review of the Mental Health Act 2001](#) (2015); [section 4](#) of the Mental Health (Amendment) Act 2018.

⁹⁴ [Dáil Éireann Debate](#), 18 December 2019.

⁹⁵ [Dáil Éireann Debate](#), 18 December 2019.

⁹⁶ [Dáil Éireann Debate](#) [Child and Adolescent Mental Health Services](#), 5 March 2020.

23. Child poverty

The OCO recognises the considerable work undertaken in relation to child poverty in recent years.⁹⁷ However, we remain concerned about the level of child poverty in Ireland and that certain groups of children continue to be disproportionately affected by poverty, including Traveller and Roma children,⁹⁸ children in one-parent families⁹⁹ and children in Direct Provision.¹⁰⁰

We welcome that the consistent poverty rate for children fell from 10.9%¹⁰¹ in 2016 to 7.7% in 2018.¹⁰² However, we are very concerned that over 100,000 children are living in consistent poverty.¹⁰³ BOBF contains a national child-specific target to lift over 70,000 children out of consistent poverty by 2020, a reduction of at least two-thirds on the 2011 level.¹⁰⁴ This target equates to 37,000 children remaining in consistent poverty,¹⁰⁵ which is an unacceptably high figure. Furthermore, this target is unlikely to be met,¹⁰⁶ in particular having regard to the serious adverse consequences of the Covid-19 pandemic, including on the State's finances and unemployment levels. The recently published Roadmap for Social Inclusion includes a commitment to set a new target for reducing consistent child poverty for the period to the end of 2025, consistent with any revised EU targets for the period.¹⁰⁷ In light of current circumstances, the implications of this commitment are uncertain.

The OCO invites the Committee to ask the State to:

- a) provide information about the effectiveness of measures being taken to reduce child poverty, having particular regard to groups of children who are disproportionately affected by poverty**
- b) outline its plans, including associated timelines, for working systematically towards eliminating child poverty, with particular reference to children who are most at risk of poverty.**

⁹⁷ See, for example, Better Outcomes, Brighter Futures, NGO Sub-Group on Child Poverty (2018), [Submission on Actions to Achieve the Child Poverty Reduction Target](#) (2018); [No Child 2020](#); [Speech by Minister Katherine Zappone at Open Policy Debate on Reducing Child Poverty](#), 13 December 2019.

⁹⁸ Dorothy Watson, Oona Kenny and Frances McGinnity (2017), [A Social Portrait of Travellers in Ireland](#), p.1 and p.3; Pavee Point (2016), [Poverty and Traveller Children Briefing Paper](#); Pavee Point Traveller and Roma Centre and Department of Justice and Equality (2018) [Roma in Ireland – A National Needs Assessment](#), pp59-62.

⁹⁹ Central Statistics Office, [CSO Table SIA16 – Income and Poverty Rates by Household Composition, Year and Statistic](#).

¹⁰⁰ Department of Children and Youth Affairs (2014), [Better Outcomes, Brighter Futures - The National Policy Framework for Children and Young People 2014-2020](#), p.90; Geoffrey Shannon (2018), [Eleventh Report of the Special Rapporteur on Child Protection](#), p.17 and p.59.

¹⁰¹ Central Statistics Office, [CSO Table SIA13, Income and Poverty by Age group, Year and Statistic](#).

¹⁰² Central Statistics Office, [CSO Table SIA13, Income and Poverty by Age group, Year and Statistic](#).

¹⁰³ Children's Rights Alliance (2020), [Report Card 2020](#), p.48.

¹⁰⁴ Department of Children and Youth Affairs (2014), [Better Outcomes, Brighter Futures - The National Policy Framework for Children and Young People 2014-2020](#), p.93.

¹⁰⁵ Department of Employment Affairs and Social Protection (2019), [Social Inclusion Monitor 2017](#), p.50.

¹⁰⁶ Central Statistics Office, [CSO Table SIA13, Income and Poverty by Age group, Year and Statistic](#).

¹⁰⁷ Government of Ireland (2020), [Roadmap for Social Inclusion 2020 – 2025, Ambition, Goals, Commitments](#), p.53.

24. Housing and homelessness

Ireland's housing and homelessness crisis has worsened significantly in recent years. Despite a range of measures being taken, homelessness among children increased by almost 350% between July 2014 and March 2020.¹⁰⁸ As of May 2020, 2,787 children were being accommodated in State-funded emergency accommodation.¹⁰⁹

The OCO is very concerned about the injurious impact of homelessness on children¹¹⁰ and the overall inadequacy of measures to tackle the family homelessness crisis.

Despite Ireland's obligations under international standards, including the Convention, longstanding political ambivalence about providing legal underpinning for the right to adequate housing has mitigated against full consideration being given to enumerating the right to housing in Ireland's Constitution. Children remain invisible in housing legislation, with local authorities having no legal obligation to provide accommodation to homeless families, let alone accommodation appropriate to children's needs.¹¹¹ [Rebuilding Ireland](#), the most recent national action plan for housing and homelessness, is widely regarded as unfit for purpose. A specific child and family homelessness strategy is required. With a majority of homeless families still being accommodated in unsuitable emergency accommodation without adequate supports, the need to implement a suite of effective, rights-based measures to address the homelessness crisis affecting children and families remains critical.

The OCO invites the Committee to ask the State to outline when and how it intends to:

- a) progress enumerating the right to housing in the Constitution**
- b) ensure that legislation, policy and programmes concerning housing and homelessness are grounded in a recognition of housing as a human right, which the State is obliged to respect, protect and fulfil**
- c) strengthen existing legislation to ensure that homeless families with children are provided with emergency accommodation and supports appropriate to their needs**
- d) ensure that the amount of time homeless families spend in emergency accommodation before moving on to long-term sustainable housing is time-limited**
- e) make sure that emergency accommodation provided to homeless families complies with national standards and is subject to independent inspection**
- f) comprehensively address root causes of homelessness among families with children.**

¹⁰⁸ See [Focus Ireland](#) for additional data.

¹⁰⁹ Department of Housing, Planning and Local Government, [Homelessness Report May 2020](#).

¹¹⁰ OCO (2019), [No Place Like Home](#); Mercy Law Resource Centre (2019), [Report on the Lived Experiences of Homeless Families](#); Children's Rights Alliance (2018), [Home Works: Study on the Educational Needs of Children Experiencing Homelessness](#).

¹¹¹ OCO (2019), [No Place Like Home](#), pp.18-21; [Home for Good](#) (2020); Oireachtas Library & Research Service (2019), [Briefing Paper: Property Rights and Housing Legislation](#).

EDUCATION, LEISURE AND CULTURAL ACTIVITIES (arts. 28-31)

25. Education

The OCO welcomes the Education (Admission to Schools) Act 2018, which removes significant barriers that certain children have faced in accessing a school place, including on the grounds of religion. The OCO is concerned, however, that schools can continue to allocate 25% of places to children of former students.¹¹² Furthermore, choice of schools remains limited, particularly at primary level where a significant majority of schools remain under the patronage of the Catholic Church.¹¹³

While we appreciate that a range of measures have been taken to address educational disadvantage, we are concerned about levels of disadvantage that certain groups of children continue to face, including homeless children, children with disabilities, Traveller children, children seeking asylum, children in care, and children in one-parent families.¹¹⁴ Among specific concerns that have come to our attention, including through our complaints work, are:

- delays in placing children living in EROC centres in recognised schools so they can benefit from the standards provided for under the [Education Act 1998](#)
- indications of disproportionate use of reduced timetables for Traveller children, children with disabilities and children with emotional and behavioural difficulties
- the lack of a legislative or administrative framework to inspect, examine and report on schools which have higher rates of suspension or permanent exclusion and a lack of clarity about how suspension and exclusion rates are monitored and reviewed
- limited access to suitable devices and/or broadband, which is mitigating against certain children being able to fully avail of ICTs to pursue their education.

The OCO invites the Committee to ask the State to provide information about the range and effectiveness of measures being taken to:

- a) ensure all children can access, participate and benefit from education, including measures to support and monitor actions by schools in this regard and to address any issues arising in a timely, appropriate and effective manner**
- b) address root causes of educational disadvantage and support access, attendance participation, completion and attainment in education by specific groups of children who face barriers in this regard**
- c) ensure that children have equitable access to the online environment, including for the purposes of accessing and participating in education.**

¹¹² [Section 9 of the Education \(Admission to Schools\) Act 2018.](#)

¹¹³ Department of Education and Skills (2019), [Statistical Bulletin Enrolments September 2019 - Preliminary Results](#), p.2 and p.6.

¹¹⁴ Joint Committee on Education and Skills (2019), [Report on Education inequality & disadvantage and Barriers to Education](#); Children's Rights Alliance (2020), [Report Card 2020](#), pp.12-19; IHREC (2019), [Ireland and the Convention on the Elimination of Racial Discrimination Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report October 2019](#), pp.60ff.

SPECIAL PROTECTION MEASURES (arts. 22, 30, 32, 33, 35, 36, 37(b)-(d) and 38-40)

26. Accommodation and supports for refugee and asylum-seeking children

In March 2020, 6,035 people, including 1,789 children, were living in Direct Provision accommodation. They include people with refugee status or permission to remain in the State who are unable to find alternative accommodation.¹¹⁵ An additional 1,633 people seeking international protection, including 304 children, were residing in emergency accommodation, including hotels and B&Bs, in March.¹¹⁶

As noted previously, the OCO's complaints remit regarding Direct Provision was clarified in 2017. Common issues raised with us through corresponding complaints concern the quality of accommodation; overcrowding; inappropriate or inadequate food; and a lack of facilities for children, including insufficient recreational and study space. Equally, during our 2019 consultation with children in Direct Provision, children raised concerns about overcrowded living space and insufficient privacy; lack of facilities such as recreation areas and Wi-Fi; and isolation from their peers and local community.¹¹⁷

Furthermore, while [National Standards](#) will come into effect in January 2021,¹¹⁸ no independent statutory inspection mechanism has been put in place yet and there is a lack of clarity about what alternatives will be available for residents in centres that do not meet the standards.

The OCO invites the Committee to ask the State to outline:

- a) measures taken to implement recommendations made by the Committee in 2016 in relation to asylum and refugee accommodation centres and to ensure that children's rights under the Convention are upheld in these settings
- b) measures being taken to address shortfalls in the availability of suitable accommodation
- c) progress made in providing for the independent inspection of all asylum and refugee accommodation centres
- d) plans to develop and implement alternatives to Direct Provision centres and Emergency Reception and Orientation Centres (EROCs) in order to mitigate the negative effects of institutionalisation on children and families
- e) plans to ensure that families granted asylum are provided with support to assist their integration into the community.

¹¹⁵ Sorcha Pollak and Mark Hilliard, '[Direct provision: The controversial system turns 20](#)', in The Irish Times, 19 November 2019.

¹¹⁶ Figures provided to the OCO by the International Protection Accommodation Service (IPAS) in March 2020.

¹¹⁷ OCO (20200, [Direct Division: The Views and Experiences of Children Living in Direct Provision Accommodation](#).

¹¹⁸ Department of Justice and Equality, [Press Release](#), 15 August 2019.

27. Separated children

In January 2020, there were 66 separated children in Tusla's care.¹¹⁹ According to Tusla, many of these children have *"high levels of vulnerability"* and *"have experienced gross trauma"*, where the issues they face include *"separation and bereavement from family and friends, social isolation, language barriers, emotional and mental health problems, discrimination and racism."*¹²⁰

It is incumbent on the State to take into account the specific situation of vulnerable persons, including unaccompanied minors, by conducting a special reception needs assessment within 30 days of presentation.¹²¹ It is unclear if or how such assessments are being conducted at present.

Similarly, while Tusla is empowered under statute to apply for international protection for a child in respect of whom it is providing care and protection,¹²² the OCO is concerned that Tusla has not published any national policy or framework on its practice in relation to this statutory responsibility.

A child may not apply for Irish citizenship by naturalisation in their own right. An adult parent, guardian or person acting *in loco parentis* must apply on their behalf.¹²³ It is Irish Naturalisation and Immigration Service (INIS) policy to refuse to process applications for naturalisation by separated children on the basis that INIS does not consider Tusla to be a person acting *in loco parentis* for this purpose.

The OCO invites the Committee to ask the State to provide information about measures taken to ensure that separated children:

- a) have a vulnerability assessment within 30 days of their arrival/presentation in the State and that a mechanism for identifying their vulnerabilities remains in place throughout the international protection process**
- b) are supported in making timely applications for international protection and in registering with INIS once they turn 16 years of age, including through the provision of best interests guidelines for allocated social workers and access to early, free legal advice for children**
- c) are not denied meaningful access to the naturalisation process as a consequence of being unaccompanied and in State care.**

¹¹⁹ Tusla (2020), [National Performance and Activity Dashboard, January 2020](#).

¹²⁰ [Information](#) on Tusla's website, accessed on 3 June 2020.

¹²¹ In 2018, Ireland opted into the re-cast EU Directive laying down standards for the reception of applicants for international protection (2013/33/EU) [RCD]. The European Communities (Reception Conditions) Regulations 2018 (S.I. 230 of 2018), which transposes the RCD into Irish law, includes an obligation to assess whether a person has special reception needs and, if so, the nature of his or her special needs (Article 22 of the RCD; Regulation 8 of the 2018 Regulations).

¹²² [Section 15\(4\)](#) of the International Protection Act 2015.

¹²³ [Section 15\(3\)](#) of the Irish Nationality and Citizenship Act 1956, as amended. See also Samantha Arnold (2020), [Pathways to Irish Citizenship. Separated, Stateless, Asylum Seeking and Undocumented Children](#), p.17f.

28. Traveller and Roma children

The OCO welcomes recognition of the Traveller community as an ethnic group in 2017,¹²⁴ but notes that this did not confer any legal rights on Travellers.¹²⁵ While we also welcome the [Roma Needs Assessment](#) and the [National Traveller and Roma Inclusion Strategy 2017-2021](#), we are concerned about delays with implementing associated actions.¹²⁶

Notwithstanding commitments and corresponding developments to address serious inequalities that Traveller and Roma children face, including with regard to health and education,¹²⁷ these children continue to face significant barriers to enjoying their rights.

Among our concerns are the higher levels of Traveller infant mortality compared to the general population¹²⁸ and that Traveller children are disproportionately represented in terms of educational disadvantage,¹²⁹ homelessness,¹³⁰ and placement in alternative care¹³¹ and in detention.¹³² We also have serious concerns about the unacceptable living conditions endured by members of the Traveller community;¹³³ according to the Irish Traveller Movement, over 2,000 families and upwards of 3,000 children are currently living in inadequate, unsafe and impermanent conditions that, among other things, place them at increased risk from Covid-19.¹³⁴

Roma children experience high levels of deprivation.¹³⁵ Having regard to the Committee's recommendation in 2016,¹³⁶ among the OCO's concerns is that the evidence required to satisfy the Habitual Residence Condition is a barrier to Roma accessing State supports, including child benefit.¹³⁷

¹²⁴ [Dáil Éireann Debate](#), 1 March 2017.

¹²⁵ [Statement of Recognition of Traveller Ethnicity 'has no legal effect'](#), RTE News, 8 December 2017.

¹²⁶ IHREC (2019), [Ireland and the Convention on the Elimination of Racial Discrimination Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report October 2019](#), including pp.34ff; UN Committee on the Elimination of Racial Discrimination (2020), [Concluding observations on the combined fifth and ninth reports of Ireland](#), CERD/C/IRL/CO/5-9, paras. 31 and 32.

¹²⁷ Department of Children and Youth Affairs (2014), [Better Outcomes, Brighter Futures - The National Policy Framework for Children and Young People, 2014-2020](#), p.52, p.57, p.71, p.75, and p.93.

¹²⁸ Department of Children and Youth Affairs (2020), [Statistical Spotlight #4, Young Travellers in Ireland](#), p.10.

¹²⁹ Department of Children and Youth Affairs (2020), [Statistical Spotlight #4, Young Travellers in Ireland](#); Joint Committee on Education and Skills (2019), [Interim Report on the Committee's Examination on the Current Use of Reduced Timetables](#).

¹³⁰ Seanad Public Consultation Committee (2020), [Report on Travellers Towards a More Equitable Ireland Post-Recognition](#), p.16.

¹³¹ Robbie Gilligan (2019), [Children and Youth Services Review, the family foster care system in Ireland – advances and challenges](#), p.227.

¹³² Oberstown Children Detention Campus (2019), [Key characteristics of young people in detention: A snapshot \(Q1 2019\)](#).

¹³³ Department of Housing, Planning and Local Government (2019), [Traveller Accommodation Expert Review](#); Pavee Point Traveller and Roma Centre and Department of Justice and Equality (2018) [Roma in Ireland – A National Needs Assessment](#), pp.85-93.

¹³⁴ Information provided to the OCO by the [Irish Traveller Movement](#) on 24 May 2020.

¹³⁵ Pavee Point Traveller and Roma Centre and Department of Justice and Equality (2018) [Roma in Ireland – A National Needs Assessment](#), p.12 and p.62.

¹³⁶ UN Committee on the Rights of the Child (2016), [Concluding observations on the combined third and fourth periodic reports of Ireland](#), CRC/C/IRL/CO/3-4, para. 70(f).

¹³⁷ Pavee Point Traveller and Roma Centre and Department of Justice and Equality (2018) [Roma in Ireland – A National Needs Assessment](#), pp.76-83; IHREC (2019), [Ireland and the Convention on the Elimination of Racial Discrimination Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report October 2019](#), p.79.

The OCO invites the Committee to ask the State to provide information about:

- a) progress with implementing actions affecting children set out in the National Traveller and Roma Inclusion Strategy 2017-2021 and measures put in place to support, monitor and review progress
- b) findings emerging from the 2019 review of the Traveller Education Strategy and specific measures being implemented to address barriers that Traveller and Roma children face with regard to education
- c) measures being taken to:
 - implement the recommendations of the 2019 Expert Review Group on Traveller Accommodation
 - combat the root causes of underspending by local authorities on Traveller-specific accommodation
 - address poor, overcrowded housing conditions and discrimination in accessing accommodation experienced by the Traveller and Roma communities
- d) measures being taken to address the health inequalities experienced by Traveller and Roma children
- e) whether the State intends to address the barrier that the Habitual Residence Condition poses to Roma being able to access social supports
- f) actions being taken to address the over-representation of Traveller children in the care system and the child justice system
- g) measures being taken to promote the cultural rights of Traveller and Roma children.

29. Administration of child justice

The Department of Justice and Equality's (DJE) recent publication of a draft new Youth Justice Strategy and public consultation about this draft Strategy are welcome developments.¹³⁸ The draft Strategy includes many positive elements and the OCO has engaged with the public consultation to highlight several ways in which it can be strengthened further.¹³⁹ Also welcome are indications that the DJE is planning to review the [Children Act 2001](#) (2001 Act) as a whole.¹⁴⁰

Child justice is a complex, multifaceted area. One dimension we are concerned about regards the adequacy of post-release supports for children. Over the last three years, the OCO has implemented an outreach programme to engage directly with children detained in [Oberstown Children Detention Campus](#). This engagement has highlighted the extent of the needs these children have and the importance of them receiving timely, appropriate supports when they leave detention. Among our concerns is that deficits in supports and accommodation post-release place children at risk of homelessness and mitigate against their successful reintegration. We welcome a proposal in the draft Youth Justice Strategy to make provision in the 2001 Act for a right to aftercare support for children leaving detention. Any such provision needs to be robust, with corresponding measures taken to ensure that its implementation is effective for children.

¹³⁸ Department of Justice and Equality (2020), [Draft Youth Justice Strategy 2020-2026](#) and associated [public consultation](#).

¹³⁹ OCO (2020), [Submission on the draft Youth Justice Strategy 2020-2026](#).

¹⁴⁰ Information provided to the OCO by the DCYA on 11 June 2020.

The OCO invites the Committee to ask the State to:

- a) clarify when and how it is planning to review the Children Act 2001 as a whole**
- b) outline measures being taken to**
 - **address the needs of specific groups of children who are over-represented in the child justice system, including children in alternative care and Traveller children¹⁴¹**
 - **provide timely, appropriate and coordinated supports to children when they leave detention**
 - **measure and reduce the rate of recidivism among children.**

OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

30. Delay in ratifying the Optional Protocol

Ireland signed the Optional Protocol on the sale of children, child prostitution and child pornography (Protocol) in September 2000. Notwithstanding the Committee's recommendation in 2016 that Ireland should proceed with ratifying this Protocol, the State has not yet done so.¹⁴² In January 2019, the then Minister for Children and Youth Affairs stated that Ireland met all the legal requirements of the Protocol and should move to ratification.¹⁴³ In November 2019, the then Minister for Justice and Equality stated that preparations to ratify the Protocol were at an advanced stage and that he would seek a Government decision on ratification as soon as possible following receipt of confirmation of compliance from the Office of the Attorney General.¹⁴⁴ In May 2020, the DCYA indicated that it expected Ireland to ratify this Protocol by the end of 2020.¹⁴⁵ While indications that Ireland will ratify the Protocol this year are welcome, the State's protracted delay in moving towards ratification is of considerable concern, particularly in light of the gravity of the children's rights issues that the Protocol focuses on.

The OCO invites the Committee to:

- a) urge the State to ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography without further delay**
- b) request formal confirmation from the State through its report in response to the Committee's LOIPR for Ireland that it has ratified this Protocol.**

¹⁴¹ Oberstown Children Detention Campus (2019), [Key characteristics of young people in detention: A snapshot \(Q1 2019\)](#), with further data available on the [Oberstown website](#).

¹⁴² UN Committee on the Rights of the Child (2016), [Concluding observations on the combined third and fourth periodic reports of Ireland](#), CRC/C/IRL/CO/3-4, para.77.

¹⁴³ Government [Press Release](#), 2 January 2019.

¹⁴⁴ [Dáil Éireann Debate](#), 19 November 2019.

¹⁴⁵ Information provided by the DCYA on 26 May 2020.



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