

Barriers to the Realisation of Children's Rights in Ireland

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Commissioned by the Ombudsman for Children

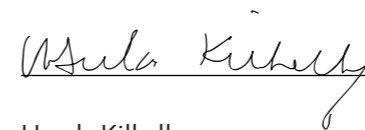
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introduction

This research was commissioned in 2006 by the Ombudsman for Children as a baseline research study concerning children's rights in Ireland. Its objective is to identify the principal obstacles children and young people face with regard to the realisation of their rights under the Convention on the Rights of the Child.

The United Nations Convention on the Rights of the Child

The UN Convention on the Rights of the Child (CRC) is a comprehensive internationally-binding treaty which sets out the rights of children and young people in a variety of settings and contexts. As well as being the most highly ratified instrument in international law, it is unique in encompassing civil and political rights, economic, social and cultural rights and humanitarian provisions in a single human rights instrument.¹ Moreover, its comprehensive nature means that the CRC contains standards applicable in all areas of the child's life including: family life (Arts 3, 5, 18, 20, 21); school (Arts 28 and 29); and health and material welfare (Arts 6, 24, 27). It contains provisions on vulnerable children and those in particularly difficult circumstances such as: children whose parents have separated (Arts 3, 9); children who have been subjected to abuse and exploitation (Arts 19, 30-34, 37); children with disabilities (Art 23); refugee children (Arts 7, 8, 10 and 22); and children in conflict with the law (Arts 37, 40). It contains rights of relevance to very young children (such as Arts 7 and 18) as well as those more important to older children (Arts 13, 14 and 17). It refers to the right of families to financial and other support from the State (Arts 5, 18) and specifies the duties on the State to respect and vindicate the rights of children individually as well as members of a group (for example Arts 24 and 29). Overall, the CRC is unrivalled insofar as it recognises the rights of children and young people and it details how they are to be promoted and protected in all areas and at all stages of the child's life. As a result, it is widely regarded as the 'touchstone for children's rights throughout the world'.²

Guiding Principles

Fundamental to the Convention is that it recognises the rights of children as autonomous rights holders, and recognises the State as the principal duty bearer. Its provisions represent and reflect the meaning of a rights-based approach to children's issues and services.³

The Convention has four general principles, so denoted by the Committee on the Rights of the Child, the body given responsibility for monitoring the Convention's implementation.⁴ These principles are contained in: Article 2, which provides for the right of every child to enjoy CRC rights without discrimination of any kind; Article 3, which requires that the best interests of the child are a primary consideration in all actions taken

¹ Mc Goldrick, 'The United Nations Convention on the Rights of the Child', *International Journal of Law and the Family*, (1991) 132-169, p 133.

² Fortin, *Children's Rights and the Developing Law* (2nd ed., LexisNexis, 2003), p 49.

³ Committee on the Rights of the Child, 'General Comment No 5', *General Measures of Implementation of the Convention on the Rights of the Child*, CRC/GC/2003/5 (2003).

⁴ Guidelines of the Committee on the Rights of the Child can be found in UN Doc CRC/C/5, retrieved 28 July 2006, www.ohchr.org

concerning children; Article 6, which recognises the right of the child to life, survival and development; and Article 12, which provides that the State shall assure to every child capable of forming a view the right to express those views freely in all matters concerning him/her and to have those views given due weight in accordance with the child's age and maturity. More than any other, Article 12 is a defining principle of children's rights; it has both substantive and procedural effect and is both fundamentally important in its own right and as a provision that enables children's exercise of their rights in other areas.⁵ It applies to children of all ages and, more than any other provision, encapsulates the true meaning of children's rights as a recognition of the respect and equal treatment to which all children and their views are entitled. According to the Committee on the Rights of the Child, Article 12 represents a 'new social contract', one by which children are 'fully recognised as rights-holders who are not only entitled to receive protection but also have the right to participate in all matters affecting them, a right which can be considered as the symbol for their recognition as rights holders'.⁶

Monitoring the CRC

Most commentators agree that, despite its content, issues of enforcement and implementation are key to maximising the CRC's potential to improve the lives of children and young people at national level.⁷ According to the Committee on the Rights of the Child, ensuring that all the provisions of the CRC are respected in law and policy, and in the delivery of services, demands a continuous process of child impact assessment and evaluation. In addition to self-monitoring by Government, however, the Committee also considers independent monitoring of progress towards implementation to be essential.⁸ Academic research has a particular role to play in this regard, as do national human rights institutions like the Ombudsman for Children, whose specific mandate includes keeping under review the adequacy and effectiveness of law and practice relating to the protection of children's rights.⁹ Under the *Ombudsman for Children Act, 2002*, Section 7(1), the Ombudsman for Children's Office (OCO) has a number of duties that mandate independent research into the extent to which children enjoy their rights in law and practice and how the CRC can be better enforced. For example, the OCO has duties:

to collect and disseminate information on matters relating to the rights and welfare of children; to highlight issues relating to children's rights and welfare of children that are of concern; and to monitor and review generally the operation of legislation concerning matters that relate to the rights and welfare of children.

Ireland ratified the CRC on 28 September 1992 and its progress in the implementation of the CRC has been reviewed on two occasions, in 1998 and 2006, by the Committee on the Rights of the Child. On both occasions, the Committee identified a wide range of concerns regarding implementation and enforcement of the CRC and, in its recent conclusions, highlighted how far Ireland has come in implementing the CRC, and how far it must still travel in this respect.¹⁰ This research aims to build on these evaluations by auditing law, policy and practice in Ireland against the Convention. It identifies the principal barriers that prevent children and young people in Ireland from realising fully their rights and makes recommendations both to the Ombudsman for Children and, generally, as to how this situation might be improved.

⁵ On Article 12, and participation rights generally, see Hart, *Children's participation: from tokenism to citizenship* (Florence: International Child Development Centre/UNICEF, 1992); Sinclair, 'Participation in Practice: Making it Meaningful, Effective and Sustainable', *Children and Society*, 18 (2004), 106-118 and Lundy, 'Voice' is not enough: the implications of article 12 of the United Nations Convention on the Rights of the Child for Education', forthcoming *British Educational Research Journal* (2007).

⁶ Committee on the Rights of the Child, *Day of General Discussion on the Right of the Child to be Heard*, (29 September 2006) www.ohchr.org, p 2, retrieved on 23 August 2007.

⁷ Fottrell, 'One Step Forward or Two Steps Sideways? Assessing the First Decade of the Convention on the Rights of the Child' in D Fottrell (ed), *Revisiting Children's Rights: 10 Years of the UN Convention on the Rights of the Child* (Kluwer Law International, 2000), 1; and Balton, 'The Convention on the Rights of the Child: Prospects for International Enforcement', *HRQ* 12/120 (1990), 125-129.

⁸ Committee on the Rights of the Child, *General Comment No 5 (2003) General Measures of Implementation of the Convention on the Rights of the Child*, paras 88-90.

⁹ Committee on the Rights of the Child, *General Comment No 2 (2002) The role of independent national human rights institutions in the promotion and protection of the rights of the child*, *CRC/GC/2002/2*, para 19.

¹⁰ Committee on the Rights of the Child, *Concluding Observations: Ireland*, *CRC/C/15/Add.85* (4 February 1998) and Committee on the Rights of the Child, *Concluding Observations: Ireland*, *CRC/C/IRL/CO/2*, (29 September 2006) www.ohchr.org, retrieved on 16 February 2007.

methodology

Identifying the Problems and the Barriers

The principal methodology used in this research was literature review. The study was a desk-based one designed to collect and collate available, published research and data on children's rights in Ireland. No primary data collection was undertaken.

The first stage in the process was to identify the children's rights standards against which the treatment of children in Irish law policy and practice could be measured. The most important instrument for this purpose, for reasons explained above, is the Convention on the Rights of the Child. This document, together with other related children's instruments, was used to identify the rights to which children are entitled and the measures required to make those rights real and effective. Particular guidance was sought from the documentation of the Committee on the Rights of the Child, including the Committee's Concluding Observations on Ireland, the Committee's ten General Comments and reports of its Days of General Discussion (See Appendix A). Taken together, these documents were used to identify the benchmarks against which implementation of children's rights could be measured. In particular, they served to identify the areas in which children's rights are currently being ignored and where barriers to the realisation of those rights exist.¹¹

To guide the literature review, eight themes were developed based on the reporting guidelines of the Committee on the Rights of the Child.¹² They included six substantive headings as follows:

- Family environment and alternative care;
- Health, wealth and material deprivation;
- Education;
- Play, leisure and recreation;
- Youth justice.

In addition, the following two cross-cutting themes were used:

- Children and young people's right to be heard, and
- Vulnerable children, including children in need of special protection.

¹¹ See also Kilkelly and Lundy, 'Children's rights in action: using the UN Convention on the Rights of the Child as an auditing tool' *Child and Family Law Quarterly*, 18/3 (2006), 331.

¹² Reporting Guidelines of the Committee on the Rights of the Child can be found in UN Doc CRC/C/5, www.ohchr.org

The process of literature review thus served to identify the children's rights issues of concern according to these eight themes.¹³ Accordingly, the second stage of the research resulted in the identification of the areas where children's rights are being ignored or underplayed grouped together under the eight headings.

The third stage of the process was to reflect on the numerous and diverse range of issues raised in the literature review. While it was difficult to do justice to the sheer volume of concerns that exist, particularly bearing in mind that no one child's rights are more important than another's, some weighting of issues was a necessary evil in the process. In this regard, the international children's rights standards were particularly useful in allowing the principal barriers underlying these problems to be identified. Particular reliance was placed on Article 4 of the CRC, which sets out the State's duty to take all appropriate measures to implement the Convention, and the Committee on the Rights of the Child's General Comment on implementation. Applying this guidance allowed the obstacles to greater implementation of children's rights to emerge in two distinct ways: the first was in the emergence, through the research, of a number of categories of particularly vulnerable children who face especially difficult, complex and inter-linking barriers to the enjoyment of their rights in a range of areas. Two other areas – poverty and child protection – emerged as those where intractable problems of a very different nature appeared to exist. On the basis of both the seriousness of these issues from the children's perspectives and extent of the barrier faced in each case, it was decided to identify these groups separately at the start of the research. This is not to ignore that other children also face difficulties having their rights protected, but separating out these areas is justifiable considering the barriers these children face to the realisation of their rights. The second part of this process involved the identification of key barriers to the implementation of the rights of all children. Again with reference to the children's rights standards, six principal barriers (with numerous sub-categories) were identified, and these are presented in Part B of the research, and their impact on and relationship to children's rights is explained by way of detailed illustrations and examples.

Lack of Data

Applying the benchmarks also revealed the absence of reliable, up-to-date data and research in a number of areas. As the Committee on the Rights of the Child has noted, the absence of such data undermines attempts to monitor implementation of the CRC and children's rights generally.¹⁴ In these areas, identified throughout the Report, lack of information was identified as a barrier in itself. In addition, once the literature review had been completed, it became clear that further research was required to illuminate the barriers more clearly. Even though the scope of the research did not allow for empirical

¹³ A full bibliography is contained in Appendix B.

¹⁴ Committee on the Rights of the Child, General Comment No 5, *General Measures of Implementation for the Convention on the Rights of the Child*, para 48.

research to be undertaken or for consultation with those working with and for children, it was decided to undertake informal consultation with a number of key practitioners and researchers in areas in which the gaps in data or understanding had emerged. This had two further objectives: first, it sought to identify particularly recent publications of relevance to the research not otherwise available; and second, it acted as a double-check on the problems identified. In the latter regard, for example, it served to ensure that the research included those issues not necessarily documented anywhere, and it also enabled issues of attitude and culture, which can be difficult to articulate and document, to be taken into account.

Aims

Throughout the collation of the literature and its review, the research sought to identify the areas in which children's rights are being ignored or underplayed. The overriding objective, however, was to illuminate the barriers that prevent this inadequate treatment of children from being put right and to make recommendations as to how this might be remedied. Attention was also paid to areas where the Ombudsman for Children's Office might play a role.

It was not the objective of this research to undertake a comprehensive review of children's rights in Ireland, and to highlight both the positive as well as the negative developments. Rather, its aim was to take a necessarily focused and selective look at the principal problems so as to highlight their scope and nature, and to identify their causes. This is not to ignore the very positive work being undertaken in many areas locally and nationally by both the State and the non-state sector and by all those who work with and for children. However, the purpose of the research was to highlight the underlying barriers and obstacles that are currently hampering greater realisation of children's rights in Ireland insofar as they prevent existing, sometimes well-known problems from being addressed effectively, and positive work from being mainstreamed.

Part One of a Three-Part Project

It should also be noted that this research is the first part of a three-part project (hereafter called 'the Project'). The three parts of the Project are: Phase 1 – the identification of the principal obstacles to the realisation of children's rights; Phase 2 – a qualitative research study involving children and young people; and Phase 3 – the holding of a nationwide vote called the 'Big Ballot' in which children and young people will vote on the issues of greatest importance to them.

This research study was conducted concurrently with Part Two of the Project and provided a resource tool for the design and operation of the qualitative research study. The qualitative research study also contributed to the compilation of this research by providing feedback from the children and young people involved in the Part Two study about issues

of importance to them and the obstacles they faced in realising their rights. The results of Parts One and Two of the Project will help to guide preparations for the 'Big Ballot' to be held through schools and other settings nationwide in November 2007.

The three-part Project will guide the development of the OCO's strategic plan for the period 2007 – 2010. By adopting this integrated approach to the Project, the OCO aims to ensure that its strategic plan will be grounded in the views of children and young people and supported by academic research, drawing upon relevant existing materials. This approach also aims to ensure that this research will have a clearly identifiable role to play in the development of the OCO's strategic plan and in the development of the future policy and research work of the OCO.

Structure of the Report

With these aims in mind, the report sets out to present the principal barriers to the realisation of children's rights in Ireland. This is done in the following two sections: Part A deals with children who face multiple barriers or obstacles to the exercise of their rights, where barriers cut across issues and multiply the difficulties children face. It includes children living in poverty, recognising poverty as a multifaceted and underlying obstacle to the realisation of many children's rights, and children at risk of abuse and neglect, in recognition of the fact that child protection is an area where multiple problems can lead to very serious breaches of children's rights.

Part B then sets out the six barriers to the realisation of children's rights; it includes many barriers that are overarching and structural in nature and, rather than being isolated, are all interlinking and connected. In each case, the importance of the barrier is illustrated by examples, and occasional case studies are used to illustrate the particularly serious or complex issues. Recommendations are made throughout the report, and brought together in the Conclusion, regarding the action necessary to address the barriers identified. These are aimed at both Government and other bodies, like the Ombudsman for Children's Office, which play an important role in this area.

part A

multiple barriers and multiple breaches

Human rights are based on the fundamental principle that all people are equal, and equally deserve to have their rights and freedoms respected. This principle operates against prioritising the rights of one group over another, and within groups, from ranking infringements of the rights of one group as a matter of greater concern or importance than those of another. Such an approach could also be said to be morally repugnant.

At the same time, it is clear from the research that, in Ireland, certain groups of children are particularly vulnerable insofar as they suffer multiple breaches of their rights, and face multiple barriers in the enjoyment of these rights. In addition, they are particularly marginalised and voiceless in seeking to have those rights vindicated. On this basis, and with reference to the international standards in these areas, it was decided to highlight the particular vulnerability of the following groups in Part A of this Report: children in the care system, children in the criminal justice system, homeless children, immigrant and asylum-seeking children and Traveller children. Children living in poverty are a wide-ranging group of children from a variety of backgrounds who, as a result of poverty, endure multiple problems realising their rights. Child protection is an area where complex and serious problems place the rights of a smaller number of children at serious risk. For this reason, children at risk of abuse and neglect are thus the final category of vulnerable children identified in this section of the Report.

The identification of these groups is not to deny that other groups of children also face very significant obstacles in the realisation of their rights: children with disabilities, sick children, children with mental health problems and children suffering from alcohol or drug abuse. These children are equally deserving and their causes equally weighty. The difficulties they face realising their rights are not to be underestimated and, for this reason, they are also given particular mention throughout the Report.

With regard to the seven groups of particularly vulnerable children identified above, research identifies that they face multiple problems realising their rights and endure cross-cutting barriers in many areas of their lives including, with respect to their rights, in the areas of: family, education and health and material deprivation. Such children have not, to date, benefited from coherent policy or targeted intervention, supports or services. They also suffer marginalisation and, in some cases, discrimination. Many such children face the additional obstacle of being isolated from their families and friends, without advocacy or support or anyone to lobby on their behalf.

There is an urgent need to overhaul how existing services and supports are delivered to these children and, to this end, it is recommended that a high-level group be convened with a view to ensuring that the necessary co-ordinated, intensive, strategic action is taken to mainstream targeted, child-focused and rights-based services in these areas. Awareness also needs to be heightened among the public, service providers and

Government about the problems these children face in the realisation of their rights and consideration given to establishing dedicated advocacy services to provide these children with support and to lobby on their behalf. The Ombudsman for Children's Office is well placed to take a rights-based approach to these issues.

1. Children in the Care System

Children taken into the care of the State have already experienced multiple breaches of their rights, including lack of family support, possible abuse and/or lack of appropriate care, and poor health and educational achievement.¹⁵ There were 5,060 such children in Ireland in 2004¹⁶ and, when separated children (unaccompanied asylum seekers) are excluded, there are approximately 200 separated children in the care of the HSE; there has been an 8 per cent increase in the number of children in the care of the State between 2001 and 2004.¹⁷

The problems faced by children in both residential and foster care have a number of underlying causes. For the children themselves, it is noticeable that socio-economic factors, like poverty, mental health and addiction, are forcing them, perhaps unnecessarily, into the care of the State where they are remaining for long periods. This factor works against them returning successfully to their families, and problems with adoption law mean that they have little chance of securing an alternative family on a permanent basis. Foster carers, and their families, on which the State relies for the provision of alternative care for these children, need far greater support. Research shows that children in residential care experience problems regarding education, having their cases reviewed and being adequately protected from harm. They also feel isolated, lack a say in their lives and want more time to be kids. These problems are all explained in more detail in the sections that follow.

Neglect: Statistics show that 'neglect' is the primary reason why children are taken into care, and poverty is the underlying cause; about half enter care due to neglect, family difficulties such as housing or finance, or their parents' inability to cope.¹⁸ Families in such circumstances have found themselves unable to access support because of educational disadvantage, addiction problems or social exclusion. The failure to address poverty and disadvantage, and to take a family-centred approach to addiction and mental illness, is thus leading to children being denied the right to live in the care of their families. Underfunding and lack of planning in the area of family support are serious underlying reasons for this failure.

Long-Stay Foster Care: In 2004, almost 56 per cent of children had been in care for five years or more.¹⁹ Further evidence of the fact that long-stay foster care is a problematic

¹⁵ See Committee on the Rights of the Child, *General Day of Discussion, Children without Parental Care*, CRC/C/153 (17 March 2006) www.ohchr.org, retrieved on 1 February 2007. See also the concerns of the Ombudsman for Children, *Report to the Committee on the Rights of the Child on the occasion of the examination of Ireland's Second Report* (April 2006), pp 24-25.

¹⁶ HSE, *Health Statistics 2005* (HSE, 2006), p 132.

¹⁷ Irish Social Services Inspectorate, *Annual Report (2005)*, p 7.

¹⁸ Department of Health and Children, *Analysis of Childcare Interim Dataset (2004)* pp 5-6.

¹⁹ Department of Health and Children, *Analysis of Childcare Interim Dataset, (2004)*, pp 5-6.

feature of the Irish system can be found in a recent study of the experiences of 13 and 14-year-olds in foster care. This found that 44.8 per cent had spent longer than 10 years (most of their short lives) in care; one quarter had been placed in care when aged less than one, while just under half were first placed in care when aged three or younger.²⁰ Research shows that the longer young people have been in care, the less likely they are to have regular and recent contact with their birth families.²¹ This is particularly the case when the child is placed in care at a young age. Those in relative care fared better, having more contact with family members, and those who did not have special needs were more likely to have regular friends, to not be bullied at school and to make good educational progress. Outcomes were better for children placed together with a birth sibling in the same foster family, which generally had a protective effect.²²

Lack of Support for Foster Carers: A variety of services and supports are needed for foster carers, their families, fostered children and their families. Research highlights that foster carers sometimes receive a child into their care with insufficient information about the child's background or needs, and 'critical information about previous placement breakdowns, sexual abuse and challenging behaviour or special needs' may be excluded.²³ Foster carers find it difficult to get services for children in their care who need immediate psychiatric support and counselling²⁴ or social work help outside of regular hours.²⁵ Greater training, ongoing support and professional development are required to support foster carers in their role. Given the increasing number of children from the asylum system placed in foster care, it has also been recommended that carers receive training in cultural diversity.²⁶ The birth children of foster carers have also highlighted their need for preparation and ongoing help, in the form of peer-support, in coping with the arrival of a foster child.²⁷

One of the anomalies of the care system is that foster parents receive approximately €300 per week, meaning that, by contrast with a child's natural parents, they may have greater income available to spend on the child. This can create a disadvantage for natural parents visiting their children, and work against the principle of family reunification.²⁸ Accordingly, consideration should be given to providing greater financial support to families seeking the removal of their children from care.

²⁰ Daly and Gilligan, *Lives in Foster Care The educational and social support experiences of young people aged 13-14 years* (Dublin: Children's Research Centre, 2005), p 22.

²¹ *Ibid.*, p 79.

²² *Ibid.*, p 95 and p 108.

²³ O'Riordan, and Veale, (forthcoming) *A competency based approach in assessment in fostering*. Cork: University College Cork/Health Services Executive, Southern, p 36.

²⁴ *Ibid.*, p 38.

²⁵ *Ibid.*, pp 43-44.

²⁶ ISSI, *Inspection of Five Rivers Island and the HSE. Final Report* (Dublin: ISSI, 2006) p 13.

²⁷ O'Riordan, and Veale, pp 49-50. See also O'Riordan and Veale, 'Children looking after children: the experience of growing up as part of a family that fosters', *British Psychological Services: Service and Practice Update*, (2006).

²⁸ Correspondence from the National Association for Parent Support (15 January 2007).

It is welcome that the *Child Care (Amendment) Act, 2007* makes provision for foster parents to exercise parental rights in relation to children in their care, for example, with regard to medical treatment. It is unfortunate, however, that this only applies to situations where children have been living with the foster carers for over five years. Those who foster children for shorter periods will thus be unaffected by the new regime and will still face difficulties where the child requires urgent medical treatment.

Adoption: The inability to place children of married parents for adoption, even when it is in their best interests and it is their own wish, means that they live in limbo, unable to be reunited with their natural families and unable to be adopted by their foster families. It is proposed to amend the Constitution to allow provision to be made by law for the adoption of children who have been in care for a period of time and whose parents have failed in their duty towards them. While the attempt to address this issue is welcome, it is not clear whether, without establishing the rights of the child as superior to those of the parents (or at least to replace the test of parental failure with one based on the child's best interests), this change will be effective.²⁹

Serious Shortcomings in Residential Care: Research shows that when in residential care, many children suffer further problems – losing contact with siblings, parents and friends, facing obstacles in the educational system, and in some cases, being placed at risk. They need significantly higher levels of social work, emotional and psychiatric support than is currently available to them. The Annual Reports of the Irish Social Services Inspectorate (ISSI) show that there are serious shortcomings in the treatment of children in some residential placements operated by the HSE, with concerns about: child protection; ensuring dedicated and ongoing social work support; the treatment of complaints; and the use and monitoring of physical restraint and segregation. The lack of proper planning and dedicated social work support are serious problems,³⁰ and the failure to ensure rigorous vetting and checking of all staff places these children at intolerable risk of harm.³¹

Right to Review: *The Child Care (Placement of Children in Residential Care) Regulations 1995* provide that children in care have a right to a review of their placement within two months, and then every six months for the first two years of their placement. After two years, the review must take place annually.³² However, this minimum statutory requirement was not being met in the cases of the vast majority of children detained in one residential facility inspected by ISSI in 2006.³³

²⁹ See further Kilkelly and O'Mahony, 'The Proposed Children's Rights Amendment: Running to Stand Still?' *Irish Journal of Family Law*, 2 (2007), 19.

³⁰ ISSI, *Annual Report* (2004) and *Annual Report* (2005).

³¹ ISSI has also found, on more than one occasion, that residential centres employ staff who are unqualified, that care plans devised for children are 'very poor' and that some children have extremely limited access to social work and psychiatric support. See ISSI, *Annual Report* (2004). See below on the importance of an effective monitoring function.

³² SI No 259 of 1995. See also *The Child Care (Placement of Children in Foster Care) Regulations* SI No 260 of 1995.

³³ See ISSI, *Inspection of Five Rivers Island and the HSE; Review of Admission Criteria and Processes for Special Care* (Dublin: SRSB, 2005) and Hanlon and Riley, *The Impact of Placement in Special Care Unit Settings on the Wellbeing of Young People and their Families: A Summary Report* (Dublin, SRSB, 2004).

Education: Research into the educational experiences of children in care highlights that such children, particularly those in education at second level, receive inadequate support and supervision with their education. Problems caused by staff rostering – where staff who had seen children to school in the morning were not there to greet them on their return in the evening – left young people feeling isolated, lonely and without the consistency of family support.³⁴ Others felt under pressure to perform, particularly to act as a positive role model for the other children, and frequently turned to each other (rather than adults) for support.³⁵

Children in residential care face barriers as a result of previous gaps in their education which caused them to fall behind. Research has documented that these children experience significant anxiety in this regard and, despite their appreciation of the need to do well in exams, feel that teachers do not understand the care system, lack sensitivity and make them feel different from their peers.³⁶ Many young people have expressed the importance of feeling included, something which they associated with having friends, while at the same time, described difficulties making new friends in school, being unsure how long their current placement would last. For some, 'choosing to not have friends was easier than having to repeatedly leave friends behind'.³⁷

Stigma and Stereotyping: Clearly, care staff need to be sensitive to children's needs for practical, daily support in relation to their education and for the need to raise awareness among schools/teachers about the special needs of children in care. This is necessary to reduce any stereotyping of children in care and to ensure the inclusion of children in care into the education system and to prevent them suffering stigma.

Stress and Bullying: Emond's research noted that children in care are bullied on the basis of their in-care status, and children complain that telling an adult did not make it stop.³⁸ Many also experienced stress particularly when their Leaving Certificate examination coincided with the uncertainty of leaving care.³⁹ Overall, the children expressed concern that there was a lack of understanding in the community about residential care, and that staff in the children's home reinforced their sense of difference from the local community. They were also distressed by feeling that they had to have more than one identity to fit into their family, school and the children's home.⁴⁰

³⁴ Emond, *Learning from their Lessons: A study of young people in residential care and their experiences of education* (Dublin: Children's Research Centre, 2002), p 32.

³⁵ *Ibid.*, p 35.

³⁶ *Ibid.*, pp 23-25.

³⁷ *Ibid.*, pp 27-28.

³⁸ *Ibid.*

³⁹ In this regard, it appears that the conclusion of second level education is seen as the cut-off from care, and not the child's 18th birthday. Daly and Gilligan, *Lives in Foster Care: The educational and social support experiences of young people aged 13-14 years*, p 49.

⁴⁰ *Ibid.*, p 36.

Lack of a Say: Many children in residential care found the rules to be very rigid and complained about their lack of input into the rules, particularly regarding day-to-day decision making.⁴¹ There is a clear need to involve children more in decisions about their daily lives.

Time to be Kids: Significantly, children in care want more time to be kids, to express themselves emotionally without fear of reprisal and to not be under analysis all the time. They have the same desires as other young people, including wanting to have friends stay over for the night.

Recommendations

It is clear from the research that children in foster care and residential care face multiple challenges in the vindication of their rights across the spectrum of their lives. To address this situation, a greater intensity of effort is required to prevent children being placed in care in the first instance, minimising that placement when it is necessary and ensuring that residential care is a measure of last resort. Placing siblings together, minimising changes in placements, and supporting contact between children in care and their families is essential if alternative care is to be short-term in nature and family reunification successful. Greater communication between the HSE and foster carers, and others involved in the upbringing and welfare of the child, is also important to ensure the success of the placement. To maximise the potential of the child's time in care, every child should have an individual education plan developed in conjunction with his/her school, and a care plan fully implemented by intensive social work support. Much stronger regulation and monitoring of both foster care and residential care facilities is required.

⁴¹ *Ibid.*

2. Children in the Criminal Justice System

Relatively little is known about Irish children who come into conflict with the law, and greater research is required to identify the barriers children face exercising their rights as a result of their involvement in criminal behaviour and the criminal justice system. However, in line with international research and a nationwide study published in 2007, it is known that such children come from poor socio-economic backgrounds, many of them have lived out-of-home or been in care,⁴² they have weak attachment to family, enjoy little family support, and invariably have problems with drugs and/or alcohol.⁴³ They are typically early school leavers, and mental health and behaviour problems are also particularly prevalent among this group.⁴⁴ Where these risk factors converge, the risk they face of being involved in criminal behaviour is multiplied. Many of these factors represent the causes of their anti-social behaviour in some form. Yet, in Ireland, such young people enter a system which currently gives them few opportunities to have their problems addressed.

The following additional concerns arise:

- Children in conflict with the law enter a system which has not been adequately adapted for their age or circumstances. Few lawyers or judges have received training on child development or psychology, children's rights or youth justice;
- Beyond the Smithfield Court in Dublin, most Children Courts are not adapted for the purpose. The rooms are too large to facilitate direct communication and to secure the participation and understanding of the young person and his/her family in the process;⁴⁵
- The *Children Act, 2001* provides a list of community sanctions, including day centre orders, mentoring orders and residential supervision and training orders. It is welcome that these provisions finally came into force in March 2007 but it is too soon to determine their impact.⁴⁶ Ongoing monitoring is required to ensure that these new measures result in reduced numbers of young people being sentenced to detention;
- The Garda Diversion Programme is under-resourced and the development of a specially-trained Garda youth division is required;⁴⁷

- Children as young as 12-years-old who are involved in anti-social behaviour face the risk of being fast-tracked to court where a Behaviour Order can be made, breach of which is a criminal offence carrying a penalty of either €800 or three months in detention;⁴⁸
- Those under 16 sent to detention in the Children Detention Schools have their educational and health needs met, but receive insufficient work on their offending behaviour. These Schools are old buildings in a poor state of repair;⁴⁹
- While young people over 16 years who are detained in St Patrick's Institution are now separated from adults, the regime remains poor. Bullying and drugs are serious problems and young people have little opportunity for education, training and exercise. Only a skeleton psychiatric service is available, and there are no individualised education or care plans to ensure young people's offending behaviour and related problems are addressed;⁵⁰
- Children in the criminal justice system have few opportunities to access independent complaints mechanisms. Children in the court process, and those detained in places other than in Children Detention Schools, fall outside the complaints remit of the Ombudsman for Children;⁵¹
- Little is known about the rights of young people tried in the higher courts, and greater research into this group is urgently required.

Recommendations

The area of youth justice has lacked coherent policy, co-ordinating structures and serious investment for many years.⁵² The Irish Youth Justice Service, established in 2005, will address many of these difficulties in time, but sustained as well as substantial investment are required for this to be a success, together with large-scale reform of the way all aspects of the system are managed. Further research is also required, particularly involving young people and research on pathways through the system. Greater efforts must also be made to ensure that the voices of young people in conflict with the law are heard in decisions made concerning them at a local level, as well as in law and policy reform. Ongoing monitoring of the many new initiatives, especially in the areas of sentencing and detention, is also essential to the successful protection of children's rights in this area. The recommendations of the Committee on the Rights of the Child regarding the need to extend the remit of the Ombudsman for Children to all children in the criminal justice system is reiterated here.⁵³

⁴² See Hanlon and Riley, *The Impact of Placement in Special Care Unit Settings on the Wellbeing of Young People and their Families: A Summary Report* (Dublin: SRSB, 2004).

⁴³ See P O'Mahony, 'Punishing Poverty and Personal Adversity' *Irish Criminal Law Journal*, 7 (1997) 152-70; See National Crime Council, *Tackling the Underlying Causes of Crime: A Partnership Approach* (Dublin: Stationery Office, 2005).

⁴⁴ Meehan and Carroll, *The Children Court: A Nationwide Study* (Dublin: ACJRD, 2007) and Hayes and O'Reilly, *Emotional Intelligence Mental Health and Juvenile Delinquency* (Cork: Juvenile Mental Health Matters, 2007).

⁴⁵ Kilkelly, *The Children Court: A Children's Rights Audit* (Cork: 2005).

⁴⁶ *Children 2001 (Commencement) Order 2007*, SI 64 of 2007.

⁴⁷ See Kilkelly, *Youth Justice in Ireland: Tough Lives Rough Justice* (Dublin: IAP, 2006), pp 66-99.

⁴⁸ See Ombudsman for Children, *Advice of the Ombudsman for Children on the proposed changes to the Children Act 2001* (April 2006).

⁴⁹ See Kilkelly, *Youth Justice in Ireland: Tough Lives Rough Justice*, pp 200-222.

⁵⁰ *Ibid.*, pp 226-232. See also Inspector of Prisons, *St Patrick's Institution 2004-2005* (Dublin: Department of Justice, Equality and Law Reform, 2006).

⁵¹ See Ombudsman for Children, *Report of the Ombudsman for Children to the UN Committee on the Rights of the Child on the occasion of the examination of Ireland's second report to the Committee* (April 2006).

⁵² *Ibid.*, pp 38-42.

⁵³ Committee on the Rights of the Child, *Concluding Observations: Ireland, CRC/C/IRL/CO/2* (29 September 2006), p 4.

3. Traveller Children

Traveller children endure multiple breaches of their rights, particularly in the areas of: poverty; access to education; and retention; and health and play. To date, numerous policies and other interventions have failed to fully address the underlying causes of these problems.

Pre-School: Special provision has been targeted at pre-school education for Traveller children for many years. However, research in 2003 found a lack of strategic planning in Traveller pre-schools and highlighted the need for comprehensive guidelines and further training for staff in this area.⁵⁴ Other problems identified were absenteeism, the irregularity of funding and the decision to place accommodation close to Traveller sites, thereby limiting the potential for integrating the pre-school into the mainstream educational system. There has been some progress in this area⁵⁵ but other issues, including the legacy of negative attitudes towards education among the Traveller community, warrant action.⁵⁶

Education and Early School Leaving: There have been significant policy developments and increased supports in the area of Traveller education in the last decade, and the number of Traveller children in primary education has increased to almost full participation. However, the number in second level education remains problematic with a very low retention rate beyond the junior cycle. Many Travellers are alienated from the education system and leave school early; concern has been expressed about the 'lack of validation of Traveller culture within the post-primary education system, which can often leave young Travellers feeling isolated resulting in them leaving mainstream education'.⁵⁷ The attractiveness of Youthreach, including the availability of training allowances, also acts as an unintended contributing factor to early school leaving, and there is a serious risk that this is creating an alternative education route for those for whom the mainstream educational system is inaccessible, i.e. rather than adapting the mainstream to accommodate them, they are being pushed towards the alternative 'out of school' system.⁵⁸ The High Level Group on Traveller Issues has recommended that the placement of Travellers in Youthreach, or other alternative, integrated, mainstream courses should be permitted only in exceptional circumstances and in accordance with stringently applied criteria.⁵⁹

⁵⁴ Inspectorate of the Department of Education and Science, *Pre-School for Travellers National Evaluation Report*, (Dublin: Department of Education and Science, 2003).

⁵⁵ *In-career development programme for staff and management of Traveller Pre Schools, Project Report for CEDCE* (Dublin: CEDCE, 2006).

⁵⁶ Centre for Early Childhood Development and Education, *Submission to the Educational Disadvantage Committee on the Traveller Education Strategy* (January 2004).

⁵⁷ This is the view of the Irish Traveller Movement, www.itm.ie, retrieved 29 January 2007.

⁵⁸ *Ibid.*

⁵⁹ *High Level Group on Traveller Issues* (Dublin: Department of Justice, Equality and Law Reform, 2006), p 52.

Education, Absenteeism and Achievement: Absenteeism remains a major problem at both primary and secondary level and the majority of Traveller students have very low attainment levels in literacy and numeracy.⁶⁰ A significant issue here is the negative attitude of some Traveller parents, who have low expectations of schools and of their own children's ability to benefit from the education system. This impacts on their willingness to ensure that their children receive a full education in the mainstream system. A further issue is the concern that Traveller children do not benefit from the full curriculum on a par with their settled peers, placing them at a disadvantage on transfer to second level.⁶¹

High levels of learning difficulties and special educational needs have been identified among Traveller children. Literacy rates remain very low and most leave school without qualifications. It appears that the education system is still failing many Travellers and that structural inequality, including weaknesses in institutional and policy responses, are key factors in this failure. It has been recommended that the emphasis should now shift to the implementation of a co-ordinated strategy spearheaded by the Department of Education and Science (DOES) and supported by Traveller parents, schools and support services. The education system must focus not only on equality of access for Traveller children but on their increased attainment and full participation in the life of the school.⁶²

Care: Traveller children are over-represented in State care, and difficulties arising here include the fact that Traveller identity is not recognised in policy or planning for child welfare and protection services; the health and wellbeing of many Traveller children are at severe risk due to the inadequacy of their accommodation, and over-representation will continue until they receive the necessary welfare and protection. The policies and procedures on which the service is based are informed by mono-cultural thinking and practice, and this has a specific impact on Travellers.⁶³

Health: Traveller children continue to suffer serious breaches of their rights to life, health and development and to an adequate standard of living. Infant mortality amongst Traveller children is two-and-a-half times that for the settled population.⁶⁴ Traveller children also have significantly lower birth weights than other children⁶⁵ and a large majority live in conditions that are far below the minimum required for healthy child development.⁶⁶

⁶⁰ See the *Chief Inspectors Report 2001-2004* (Department of Education and Science, 2005) www.itm.ie, retrieved 29 January 2007.

⁶¹ The Chief Inspectors Report 2001-2004 observed 'that [Traveller] pupils were frequently assigned low-level tasks that did not challenge and extend them sufficiently. Many pupils did not engage in whole-class activities especially in such areas as History, Geography or Science'. *Ibid.*

⁶² Inspectorate of the Department of Education and Science, *Survey of Traveller Education Provision*, (Dublin: Department of Education and Science, 2005).

⁶³ Traveller Health Unit Eastern Region, *Caring for Diversity Report on a research project to identify the need and potential for culturally appropriate, child welfare and protection services for Travellers*, (2002).

⁶⁴ Combat Poverty Agency, *Poverty Briefing 15, Poverty and Health*, (Dublin: Combat Poverty Agency, 2004) and End Child Poverty Coalition, *Child Poverty in Ireland: An Overview 2005*, (Dublin: End Child Poverty Coalition, 2005), p 9.

⁶⁵ Department of Health, *Traveller Health – A National Strategy 2002-2005* (Dublin: Department of Health and Children, 2002) and End Child Poverty Coalition, *Child Poverty in Ireland: An Overview 2005* (Dublin: End Child Poverty Coalition, 2005), p 9.

⁶⁶ *Ibid.*

In 2006, the Committee on the Rights of the Child recommended that Government pay special attention to the needs of Traveller children in this area, *inter alia*, by implementing the existing National Strategy for Traveller Health.⁶⁷

Play: Despite numerous recommendations for safe play space for Traveller children, few halting sites include play facilities for children.⁶⁸ This means that many Traveller children continue to play in dangerous and dirty conditions, in breach of their right to play, a right of vital importance to children's development and wellbeing.

Recommendations

Traveller children continue to face serious challenges to the protection of their rights in the areas of health care, education and play in particular. A redoubling of efforts is required to address the underlying causes of the serious barriers causing these problems. The Ombudsman for Children is well placed to both highlight efforts to address the rights of Traveller children and to monitor progress in this area from a rights perspective. It is particularly important that measures are taken to involve the Traveller community as full partners in the process, and to ensure that the voices of Traveller children are also taken into account.

⁶⁷ Committee on the Rights of the Child, *Concluding Observations: Ireland*, 2006, para 45(d). See also UN Committee on the Elimination of Racial Discrimination, *Concluding Observations: Ireland*, CERD/C/IRL/CO/2, 2005, para 21.

⁶⁸ See *The Report of the Task Force on the Travelling Community* (1995), and 'The Guidelines on Residential Caravan Parks for Travellers', published by the Department of the Environment and Local Government in National Children's Office, *Ready Steady Play! A National Play Policy* (Dublin: National Children's Office, 2004), p 30.

4. Immigrant and Asylum-Seeking Children

Immigrant children, including those who have migrated with their families, those seeking asylum and family reunification, and separated children, face particular difficulties vindicating their rights, including their rights to: education, housing, play and health care.⁶⁹ They are at grave risk of breaches of their rights to protection from harm, including: from trafficking; from racism and discrimination; and from poverty. They face particular challenges with respect to their position in the asylum process, and frequently lack an independent advocate to represent their concerns both in the asylum process and in the education, housing and health care areas. These barriers are detailed further below and are divided into data and co-ordination; poverty; education; trafficking; provision of services; and separated children.

Data and Co-ordination

Planning is impeded by the lack of data in this area. Data on immigrant movements into Ireland is only emerging, and there is no stock of data detailing ethnicity, immigration and asylum seeking.⁷⁰

Research has highlighted a lack of co-ordinated services, particularly at local level, the absence of communication between service providers, and a lack of resources. All these factors must be addressed to ensure that services are strategically planned, appropriate and co-ordinated to meet immigrants' needs. The appointment by An Taoiseach Bertie Ahern of a new Minister for State with responsibility for integration policy may play a positive role here, particularly given its cross-cutting role in the Departments of Justice, Equality and Law Reform, Education and Science and Community, Rural and Gaeltacht Affairs. Particularly valuable work could be done by centralising data collection and responsibility for service delivery, as well as the development of a coherent integration and immigration policy that is rights based and child focused.

Poverty

Children seeking asylum are more likely to experience poverty and social exclusion than many other groups in Irish society due to: higher levels of dependence on social welfare, direct provision, lower levels of welfare payments and higher levels of housing deprivation.⁷¹ Language difficulties, racism and institutional barriers, in addition to having fewer rights and entitlements⁷² also mean that asylum seekers experience greater degrees

⁶⁹ See the concerns of the Ombudsman for Children, *Report to the Committee on the Rights of the Child*, pp 35-37.

⁷⁰ The 2006 Census asked about ethnic and cultural background for the first time, but did not enquire as to immigration status.

⁷¹ Corrigan, *OECD Thematic Review of Early Childhood Education and Care Policy in Ireland*, p 14.

⁷² For example, asylum-seeking children do not have the same access to health services as Irish children and their benefits and rights are curtailed by the status of their parents. Correspondence from Dun Laoghaire Refugee Project and Integrating Ireland (15 January 2007).

of social exclusion than many other vulnerable groups.⁷³ Lone asylum-seeking and refugee mothers face particular problems of poverty and social isolation compounded by the lack of childcare, an inability to work and language barriers.⁷⁴

Denial of Child Benefit: The introduction in May 2004 of a two-year Habitual Residency Test for Child Benefit ended the policy of a universal Child Benefit payment to all children resident in Ireland. No review was undertaken to assess the potential impact of this decision on children and families affected. According to FLAC, a wide range of families are adversely affected by the withdrawal of universal Child Benefit and there is deep concern that children are being driven into poverty through the application of immigration policy and being discriminated against on the basis of their parents' nationality and residency status.⁷⁵

Direct Provision: The Government's policy of direct provision has had a serious detrimental impact on the rights of children.⁷⁶ Living conditions in hostels can be poor and there are frequently no recreation facilities for children who are 'cooped up in bedrooms with play areas locked'.⁷⁷ Parents feel particularly powerless that they cannot provide for their children's basic needs, and enforced unemployment is leading to growing poverty and social isolation in families.⁷⁸ Concern has been expressed about the diet available to pregnant and nursing women in asylum accommodation centres, and parents have complained about being unable to prepare food for themselves and their families, particularly over a long period of time.⁷⁹ According to research, 'there needs to be more resources and funding for local services to provide worthwhile activities to residents of the accommodation centres'.⁸⁰ In addition, Government agencies need to take responsibility for the welfare of children in this situation.

Child Trafficking

One of the most serious issues facing children in the asylum process is that there are insufficient monitoring and protection mechanisms in place to deter or identify child trafficking. There is no mechanism to identify separated children entering the country

who are not referred to the HSE and thus would not be known to any statutory body. In addition, there is little or no follow-up of separated children reunited with family members once in the country.⁸¹ This situation places these children at serious risk of multiple breaches of their rights.

Education

Despite its importance to them and society, all immigrant groups experience difficulties accessing education and benefiting fully from the education received. Lack of information means that newcomer families may be unaware of the need to pre-enrol or register their children in advance of the start of the school year, and children in direct provision face significant difficulties accessing education because they 'do not have money for school books and clothes'.⁸²

The living arrangements of some young immigrants do not facilitate their studies. Those living in hostels have reported being unable to have non-residents, including home-school-community liaison co-ordinators, visit them at home, and the lack of privacy is also not conducive to study.⁸³

Students who are asylum seekers have often experienced gaps in their schooling due to war in their country of origin or long transit periods; this makes it difficult for them to return to education.⁸⁴ In addition, these students have reported having to locate and approach schools themselves, and have found little information readily available on the Irish school system, subject availability and what materials they need. They also reported being unfamiliar with the culture of Irish schools and expectations of their behaviour but found that the experience was eased by a teacher who was culturally aware.⁸⁵

Schools are a major source of support and information for many immigrant students particularly those whose families do not speak English or who are separated from family members. It is important for teachers to be aware of how isolated such students can feel and the impact this may have on their studies.⁸⁶

⁷³ Fanning, Veale and O'Connor, *Beyond the Pale: asylum seeking children and social exclusion in Ireland* (Dublin: Irish Refugee Council, 2001) in Keogh and Whyte, *Getting on: the experiences and aspirations of immigrant students in second level schools linked to Trinity Access Programmes*, (Dublin: Children's Research Centre, 2003), p 6.

⁷⁴ Smyth and Whyte, *Making a new life in Ireland: lone refugee and asylum seeking mothers and their children* (Dublin: Children's Research Centre, 2005).

⁷⁵ *FLAC News*, 16/4 (October – December 2006), p 8.

⁷⁶ Fanning and Veale, 'Child poverty as public policy: direct provision and asylum seeker children in the Republic of Ireland', *Child Care in Practice*, 10/3 (2004), 241-251.

⁷⁷ Brehony and Clancy, *Building a Diverse Mayo: A Report on Immigration, integration and service provision* (Castlebar: Mayo Intercultural Action, 2006), p 79.

⁷⁸ *Ibid.*, p 73. In addition, those granted Leave to Remain find it difficult to make the transition to independent living and face many barriers to employment, accommodation and education. *Ibid.*, p 72.

⁷⁹ *Ibid.*

⁸⁰ Brehony and Clancy, *Building a Diverse Mayo: A Report on Immigration, integration and service provision*, p 78.

⁸¹ Veale, Paludaries and Gibbons, *Separated Children Seeking Asylum in Ireland* (Dublin: The Irish Refugee Council, 2003), pp 7-8 and Mooten, *Making separated children visible: The need for a child-centred approach* (Dublin: Irish Refugee Council, 2006), pp 40-41.

⁸² INTO, *Newcomer Children in the Primary Education System* (Dublin, INTO, 2006), p 11.

⁸³ Halpenny, Keogh and Gilligan, *A place for children? Children in families living in emergency accommodation* (Dublin: The Homeless Agency and the Children's Research Centre, 2002).

⁸⁴ Keogh and Whyte, *Getting On: The experiences and aspirations of immigrant students in second level schools linked to the Trinity Access Programmes* (Dublin: Children's Research Centre, 2003), p 19.

⁸⁵ *Ibid.*, pp 21-22.

⁸⁶ Keogh and Whyte, *Getting On: The experiences and aspirations of immigrant students in second level schools linked to the Trinity Access Programmes*, p 22.

Other barriers to immigrants' participation in schools are as follows:

- **Language and communication barriers:** (grouping together of immigrant students easier for them, but is worrying for principals worried about cliques);
- **Social and cultural factors:** trying to remain faithful to their heritage while integrating in Ireland, some common social activities are unacceptable (e.g. going to the pub or girls being in the unsupervised company of boys);
- **Social class differences:** many came from affluent, well-educated families in their countries of origin but found themselves housed in areas of disadvantage;
- **Age difference:** (due to the gap in education, older immigrant students end up in lower classes than Irish students of their age).⁸⁷

Schools also expressed concern about the number of immigrant students arriving in Ireland (and to their school) with poor English, living in emergency accommodation and without background information on previous education, legal status, health and who is responsible for them.⁸⁸ Schools do not have the necessary resources to meet the needs of and to support immigrant students effectively; all teachers need basic EFL training, a forum in which to discuss issues of culture and language diversity and assistance establishing structured integration and orientation strategies for students and support in developing anti-racism and intercultural policies. Pupils need support in subjects other than English, accommodation in exams (e.g. dictionaries), and assistance to overcome specific difficulties which inhibit access to third level education.

Children who do not have English or Irish as their home language are offered additional support from Language Support Teachers. However, an inadequate system has been in place whereby only one teacher was employed for every 14 children with a maximum of three language teachers even where the population demands more.⁸⁹

Racism: Schools have noted that racism is a problem, but teachers struggle to identify the difference between racism and 'slagging'.⁹⁰ The students have expressed the view that they would not be able to tell a teacher about racist experiences for fear of it causing them more trouble. Some students do not remain in one school for long either choosing to move due to teasing, racist comments or being unhappy, or having to change because they had been re-housed.⁹¹

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*, pp 45-46.

⁸⁹ Following criticism that the previous system was too rigid, the Minister announced a relaxation of these limits in February 2007, but it is unclear what the new limits are. Marie O'Halloran, 'Hanafin ends rule limiting language support teachers', *Irish Times*, 14 February 2007.

⁹⁰ INTO, *Newcomer Children in the Primary Education System*, (Dublin: INTO, 2006), pp 29-31.

⁹¹ *Ibid.*

Provision of Services

Mental Health and Support: Many young immigrants have endured the challenge of leaving friends and family behind and trying to adapt to a new culture and society; many have probably also witnessed traumatic events, including war, before leaving their country of origin and some have lost family members and been thrust into positions of responsibility – often as the main English-speaker in the family – before they were ready. Despite these difficulties, there is no specialist psychological or psychiatric service for asylum seekers attached to asylum accommodation centres at a local level. Nor is there more general, practical support to help traumatised young people rebuild their lives.⁹²

Language Support Services: The lack of an official service providing interpreting and translation services has resulted in children being used as interpreters in a range of settings including on work-related issues⁹³, in GP surgeries and in schools.⁹⁴ They sometimes miss school for this purpose⁹⁵ meaning that the absence of a State service in this area interferes with their right to education.

Separated Children

Due to the seriousness of the problems that they encounter exercising their rights in a range of areas, the particular barriers faced by separated children demand special attention here. In particular, they are doubly discriminated against due to their status as children and their status as asylum seekers, and within the system they are invisible in many respects.⁹⁶ Overall, there has been a failure to take a child-focused, age-appropriate approach to the asylum process where children are concerned.⁹⁷ Research has also identified significant gaps in terms of meeting good practice guidelines for separated children. Key problems exist in relation to guardianship, accommodation and interim care, access to and support in participating in education, and problems around family tracing, reunification, settlement and integration.⁹⁸

Data and data collection: Data on separated children vary significantly from one authority to another⁹⁹, making it very difficult to establish a true position on the number of separated children in Ireland.¹⁰⁰ A coherent system of data collection is urgently required.

⁹² Brehony and Clancy, *Building a Diverse Mayo: A Report on Immigration, integration and service provision*, p 86. See also INTO, *Newcomer Children in the Primary Education System*, (Dublin: INTO, 2006), p 7.

⁹³ McInri, 'Ireland Research Findings' in Watt and McGaughey (eds) *Improving Government Service Delivery to Minority Ethnic Groups. Northern Ireland, Republic of Ireland, Scotland* (Dublin, NCCRI et al, 2006), p 125.

⁹⁴ *Ibid.*, 117. GPs do not yet have access to a nationwide funded system of interpreters, although a pilot system is planned.

⁹⁵ Keogh and Whyte, *Getting On: The experiences and aspirations of immigrant students in second level schools linked to the Trinity Access Programmes*, pp 17-18.

⁹⁶ Mooten, *Making separated children visible*, p 72.

⁹⁷ See Conroy, *Separated children seeking asylum research study 2004. Health and social educational needs. Final Report for HSE*, (August 2005), p 31.

⁹⁸ Veale, Palaudaries and Gibbons, *Separated Children Seeking Asylum in Ireland* and Mooten, *Making separated children visible*.

⁹⁹ Keogh and Whyte, *Getting On: The experiences and aspirations of immigrant students in second level schools linked to the Trinity Access Programmes*, p 22.

¹⁰⁰ See further Mooten, *Making separated children visible*, p 22.

The Asylum Process: The asylum process – in law and in practice – has not been adapted to take into account children’s specific characteristics despite international guidance although the Office of the Refugee Applications Commissioner (ORAC) has developed guidelines for the treatment of claims from separated children and exhibited an appreciation that they should not be treated in the same way as adults.¹⁰¹ Where it has concerns about the welfare of a child, or the relationship between a child and an adult, these concerns are notified to the local HSE area or the Garda National Immigration Bureau.¹⁰² It is recommended that children at risk should be referred directly to the HSE under the *Child Care Act, 1991* and protocols should be developed to identify when a separated child stops being a child at risk.

Burden of Proof: The burden of proof and assessment of credibility can act against the protection of children. Providing proof that an applicant is entitled to refugee status can be especially difficult in the case of children where requirements of ‘reasonable explanation’ and ‘well-founded fear of persecution’ can pose problems if a child-focused approach is not adopted.¹⁰³ In addition, a whole range of issues may impinge on the child’s ability to give a credible account of how he got here – maturity, youth, experience of trauma and violence, development issues – and while ORAC and the Refugee Appeals Tribunal enjoy mandatory discretion on how to assess credibility, no exception is made for separated children.¹⁰⁴

Research highlights the need for specialised training for interpreters, and for the provision of age-appropriate interview facilities (not just child-friendly). According to the Refugee Council, not only are many officials untrained in how to conduct interviews with children, but the interview framework for an asylum claim is frequently adult-centred with questions being asked that are more relevant to adult experiences.¹⁰⁵ Although officials have received initial training on the asylum process for separated children, there is a need for ongoing and continued expert training.¹⁰⁶

The Role of the HSE: Serious questions remain about the ability of children to participate and be involved in decision making concerning their welfare, particularly when they are in the care of the HSE.¹⁰⁷ There is a serious question about the lack of guardianship, independent representation and advocacy for these children who, in this area, may also fall outside the complaints function of the Ombudsman for Children (see Section 3.4 below). Concerns have been expressed about social workers advising children on the asylum process, including the decision to make an application in the first instance.¹⁰⁸

¹⁰¹ Mooten, *Making separated children visible*, p 39-41.

¹⁰² Conroy, *Separated children seeking asylum*, p 32.

¹⁰³ *Ibid.*, p 29. See also Smyth, ‘Refugee Status Determination of Separated Children – International Developments and the Irish Response. Part I – the Refugee Definition’, *Irish Journal of Family Law*, 1 (2005), 15-21,, p 17.

¹⁰⁴ See Section 11b of the Refugee Act in Smyth, *ibid.*, p 19.

¹⁰⁵ Mooten, *Making separated children visible*, p 35.

¹⁰⁶ *Ibid.*, p 29.

¹⁰⁷ *Ibid.*, p 35.

¹⁰⁸ See the Immigration, Residency and Protection Bill 2006, and Mooten, *Making separated children visible*, p 40.

Social Work Services for Separated Children: There is grossly inadequate social work support for separated children. Separated children identified as ‘at risk’ outside of working hours (9.00am - 5.00pm) are detained in Garda stations, and these children currently receive very little protection. Procedures are not in place to ensure that they are fully incorporated into the care system and that they receive 24-hour support, dedicated services and proper procedures to ensure their protection in care and on leaving care.¹⁰⁹

Accommodation: The number of separated children has far outstretched the capacity of the HSE to accommodate them within existing children’s residential services, especially within the Dublin area. As a result, many children live in the unsupervised and unsupported environment of hostels¹¹⁰ which are outside the remit of the Social Services Inspectorate and which do not have to comply with national childcare standards. In 2005, ISSI recommended the inspection and registration of hostels providing accommodation for separated children seeking asylum.¹¹¹

Supervision: Serious concerns exist about the welfare of unaccompanied minors and the level of supervision and care they receive. Although each separated child is allocated a social worker, under-funding of the services means they are often in the care of unqualified or untrained private hostel staff.¹¹² Project workers/advocates should be allocated to children and/or the hostels in which they live on a 24-hour basis. Staffing levels of children’s services must be increased in line with the increased demand that separated children place on the system, and the development of foster care within immigrant communities should be explored.¹¹³

Repatriation: The family tracing and tracking resources necessary to effect the child’s return are relatively scarce in Ireland. There is no international welfare liaison officer appointed despite the urgent need, in the Eastern Regional Health Authority (RHA) in particular.¹¹⁴ There are concerns about the checks carried out on children in care who are reunited with their families, with the process being described as ‘rushed and inadequately validated’. Few, if any, regional health authorities provide proper follow-up care or monitoring of such children.¹¹⁵ Monitoring and protection mechanisms must be put in place to deter and to identify child trafficking. Mechanisms must also be put in place to identify separated children entering the country who are not referred to the HSE.¹¹⁶

¹⁰⁹ Mooten, *Making separated children visible*, p 40.

¹¹⁰ Mooten, *Making separated children visible*, pp 43-44. This was raised as an issue of concern in Committee on the Rights of the Child, *Concluding Observations: Ireland (2006)*, para 32. This has also been raised as a concern by the Social Services Inspectorate.

¹¹¹ ISSI, *Annual Report 2005*, p 9.

¹¹² Mooten, *Making separated children visible*, pp 40-41.

¹¹³ This was recommended as a priority for Health Boards in 2003. See Veale, Palaudaries and Gibbons, p 7.

¹¹⁴ *Ibid.*, p 43.

¹¹⁵ Comments of Dr Pauline Conroy in Carl O’Brien, ‘System has failed young people seeking asylum’, *Irish Times*, 27 March 2006. In March 2006, it was reported that more than 2,000 children have been reunited with adults in Ireland since 1999.

¹¹⁶ Veale, Palaudaries and Gibbons, pp 7-8.

Aged Out Minors: Aged out minors face additional problems. Many of them face return to their country of origin, or if they are still being processed, they are moved to adult accommodation and moved to the Reception and Integration Agency from the HSE. Once they have completed second level education they cannot access work, third level education or vocational training and are forced into becoming dependent on the State.¹¹⁷ Some interim form of accommodation, perhaps based on a group model, should be developed for this purpose.

Health: There is a need for further research into the health and social educational needs of separated children seeking asylum.¹¹⁸ Those found to be pregnant are particularly vulnerable, and their experiences highlight the need for provision of information and guidance on the range of free and quality services available to them in the health area, including the OPTIONS text service.¹¹⁹ Existing services and supports also need to be more effectively co-ordinated.¹²⁰ The inadequacy of mental health services for asylum-seeking children must be urgently addressed.¹²¹

Trafficking: Research into separated children highlights the prevalence of trafficking although precise data are not available.¹²² There is as yet no comprehensive legislation to address trafficking of children and victims appear to be without legal status insofar as they are in the care of the HSE under the *Child Care Act, 1991* but are not asylum seekers, refugees or displaced persons. Their status needs to be clarified in legislation, and their rights to health screening and all necessary psychiatric and psychological services must also be explicitly recognised.

There is serious concern that the asylum process does not meet the needs of separated children who have been trafficked. The identification of children who have been trafficked requires more sophisticated analytical tools than are presently available and should strictly adhere to international guidelines. Their need for care and protection should inform their treatment.¹²³

Despite concerns that a large number of children have 'disappeared' from HSE care,¹²⁴ the absence of recordkeeping in accommodation for separated children means that such children cannot be properly traced. For instance, if they arrive at the weekend, when a social worker is not available, their true identity may not be verified from the outset.¹²⁵

¹¹⁷ *Ibid.*, p 61.

¹¹⁸ Conroy, *Separated children seeking asylum*.

¹¹⁹ *Ibid.*, p 5.

¹²⁰ *Ibid.*, p 44.

¹²¹ Mooten, *Making separated children visible*, pp 47-49.

¹²² It is recommended that the Annual Report of the Office of the Refugee Applications Commissioner (ORAC) contain an anonymous report of cases, by sex, nationality and age, of presenting separated children where trafficking is part of the claim or emerges in the process of the claim or appeal. See Conroy, *Separated children seeking asylum research study 2004*, p 46. See also Mooten, *Making separated children visible*, p 22.

¹²³ Mooten, *Making separated children visible*, p 67.

¹²⁴ *Ibid.*, p 22. See also, Carl O'Brien, 'Concern for missing children prompts new service' *Irish Times*, 20 June 2005.

¹²⁵ Conroy, *Separated children seeking asylum*, p 39.

Although it is an offence punishable by up to life imprisonment to traffic a person under 17 through or out of Ireland for the purpose of sexual exploitation (under the *Child Trafficking and Pornography Act, 1998*), from a prosecutorial perspective, these cases are complex and time-consuming. Suspected perpetrators have fled the country or cannot be found, or children have had to be repatriated to other continents before a file could be taken to the next stage.¹²⁶ There is a serious dearth of research on this issue and a serious lack of care for victims.¹²⁷ They need 24-hour care in safe accommodation on arrival.

Complaints function of the OCO: The OCO may examine and investigate complaints concerning the treatment of children, with the exception of complaints relating to decisions made in the asylum, immigration or citizenship context. Concerns have been expressed about the nature of this exclusion and while it has been interpreted to mean that the OCO may consider complaints about the wider treatment of these children – for example, with regard to housing, education or health issues – this is not explicit in the legislation and may lead to confusion about the OCO's mandate. As a minimum, the legislation should be amended to make this distinction explicit.¹²⁸

Recommendations

Overall, it is clear that newcomer children, whether alone or with their families, seeking asylum or here as migrants, face problems in relation to accessing health, education and other supports. They are also denied the additional protection they need to protect them from harm, including trafficking, and to ensure that their complex needs are met through dedicated and targeted children's services. In addition, they need independent advocacy and representation in the asylum process, which must be adapted to take their particular needs into account. These highly vulnerable children face multiple breaches of their rights of the most serious kind, and addressing their rights in an urgent, integrated and coherent manner should be a matter of priority.

¹²⁶ Conroy, *Separated children seeking asylum*, p 29.

¹²⁷ Conroy, *Separated children seeking asylum*, p 67.

¹²⁸ Committee on the Rights of the Child, *Concluding Observations: Ireland, 2006*, paras 14-15.

5. Homeless Children

Homelessness, whether among children or among families, represents an acute form of poverty; children who are without a home experience a sense of crisis, insecurity and displacement and endure multiple barriers realising their rights. Homelessness is caused by a combination of economic poverty and housing problems with a personal life crisis which might include ill-health, addiction or domestic violence.¹²⁹ Poverty can exacerbate these problems and mean that the necessary supports and services are inaccessible to these very vulnerable children.

Failure of state supports: Research on the pathways to homelessness in Dublin City cited a history of State care, household instability and family conflict, including a profound lack of emotional support coupled with neglect and/or abuse or violence and negative peer associations and problem behaviour. The research found that family conflict was the unifying theme.¹³⁰ It also reported that by the time young people found themselves out of home for the first time, their experience of several of society's key institutions – family, school and/or State care – had been overwhelmingly negative and, at a relatively young age, the vast majority were living outside, or marginal to, the traditional supports that play a key role in preparing young people for the transition to adulthood.

Health: Research has highlighted, in vivid terms, the serious impact of homelessness on children:

'The crisis of eviction or homelessness may have a traumatising effect on children to an even greater extent than on adults. The child's world may be turned upside down and positive ties to schools, friends, teachers, extended family, pets, neighbourhood may be broken. Vulnerable children, particularly, may need special help. Otherwise, they may never fully recover from the negative impact of homelessness on their educational progress and social development.'¹³¹

Homelessness has serious implications for the health and development of the children, with poor accommodation standards (children may be in cramped housing, when one family member gets sick, they all get sick) and lack of continuity in their access to health care services (missing immunisations and development checks, for example) and schools contributing to poor health in many children and delays in their development. Lack

¹²⁹ Barnardos, *Every Child Matters: Children living without* (Dublin: Barnardos, 2003), p 8.

¹³⁰ Mayock and Vekic, *Understanding Youth Homelessness in Dublin City Key Findings from the first phase of a longitudinal cohort study* (Dublin: OMC, 2006), pp 14-17.

¹³¹ Halpenny, Keogh and Gilligan, *A place for children?* p 72. See also Halpenny et al, *Children of Homeless Mothers. The daily life experiences and well-being of children in homeless families* (Dublin: Children's Research Centre, 2001).

of confidence and high levels of anxiety are prevalent characteristics in these children and these problems can manifest themselves in behaviour problems at school and elsewhere.¹³² Unstable routines and few opportunities for one-to-one interaction have implications for their communication skills and their ability to communicate with others.¹³³

The lack of medium and long-stay housing for homeless children leaves these children extremely vulnerable and at risk of abuse and exploitation, poverty and poor health. In Dublin, for example, most children must access hostel accommodation in the city centre following contact with the HSE Out of Hours Service (OHS). They were required to travel to the city centre for this purpose, placing them at additional risk¹³⁴, and those who used OHS repeatedly were particularly vulnerable to exposure to alcohol and drug use, criminal activity and intimidation and violence.¹³⁵

There is also a shortage of long-stay accommodation for families who are living out of home, many of whom live in Bed and Breakfast accommodation assigned by OHS. As a result, they often live in single rooms having to share cooking, washing and bathroom facilities and being required to vacate the premises during the day.¹³⁶ Homeless families need self-catering, self-contained accommodation; they should have full access to their accommodation during the day and all accommodation should comply with the standards set out in the Homeless Agency's good practice guide for homeless services, *Putting People First*.¹³⁷

Play and Leisure: Children living in emergency accommodation do not have adequate play space or facilities and older children are often embarrassed or not permitted to have friends visit. Research has found a 'very noticeable lack of appropriate space for children to play within or outside emergency accommodation', with 'limited possibilities for children's interaction with others of their age'.¹³⁸ There is also a requirement to address the needs of teenagers in these settings, linking them in with youth services in the area surrounding their accommodation.¹³⁹

¹³² Halpenny et al, *Children of Homeless Mothers*.

¹³³ *Ibid.*, pp 50-51.

¹³⁴ Mayock and Vekic, *Understanding Youth Homelessness in Dublin City Key Findings from the first phase of a longitudinal cohort study* (Dublin: OMC, 2006), p 24.

¹³⁵ *Ibid.*, p 22.

¹³⁶ Barnardos, *Every Child Matters, Children living without*, p 27.

¹³⁷ www.homelessagency.ie, retrieved 24 August 2007. See also Halpenny, Keogh and Gilligan, p 73.

¹³⁸ Halpenny, Keogh and Gilligan, p 74.

¹³⁹ *Ibid.*

Halpenny's research on the children of homeless mothers found that children living in emergency accommodation had the following concerns:

- The rules and regulations in the emergency accommodation – having someone other than their parents tell them what to do;
- Frequent moves in accommodation and difficulty adapting;
- Vacating accommodation during the day if placed in a B & B;
- Not being able to lead a 'normal life', and a sense that nobody understood the problems they faced every day. Negative perceptions of being homeless and living in emergency accommodation;
- Problems with lack of space – nowhere to play – and the lack of privacy, especially for older children;
- Little contact with extended family, unfamiliar neighbourhoods and limits on visitors, with little opportunity to make and keep friends and a lack of opportunities for interaction with the community;
- Older children were worried about their parents.¹⁴⁰

Education: Research has highlighted the stabilising effect that education can have when children are living out of home. It is important that this stability be maintained, that children be allowed to remain in their school, where possible, that they be supported in their education by being given time and space to do their homework and supported in travel to and from school and through special liaison programmes.

Summary

Children who experiences homelessness, either alone or with their families, face multiple barriers having their rights to adequate housing (Art 27(3)), health (Art 24), education (Art 28) and play and leisure (Art 31) vindicated. Their interaction with state services is frequently a negative experience and they will continue to face a bleak future unless dedicated supports are put in place at different stages of the homeless cycle, from early identification of those at risk of becoming homeless (intensive support needs to be put in place), early resolution of homelessness crisis, and intensive support to homeless families with additional needs. There is also a need for specific training to sensitise mainstream professionals to the needs of homeless families, as well as ongoing training and support for specialist workers serving this population.¹⁴¹

¹⁴⁰ Halpenny et al, *Children of Homeless Mothers*, pp 29-40.

¹⁴¹ *Ibid.*, p 75.

6. Children Living in Poverty

Despite Ireland's relative wealth and legal obligations under the CRC to provide a standard of living adequate for the child's development, and support to ensure parents fulfil their children's material needs, child poverty remains a serious, multi-dimensional problem in Ireland. Centred on inadequate income, poverty is not only a human rights issue in its own right (Art 27, CRC), it has additional knock-on, exclusionary effects in terms of access to resources and the participation in everyday activities, such as education and play (Arts 28 and 31). In addition, children can be doubly disadvantaged as poverty is exacerbated by other social inequalities such as: family status, asylum status, race, ethnicity, disability and geographical location (Art 2). Moreover, poverty and levels of deprivation are greatest among one-parent families, families where parents are unemployed or engaged in low-paid employment, ill or disabled and in families with three or more children. Other groups, including homeless children, Traveller children and children in asylum-seeking families, experience particularly deep levels of poverty. Child poverty is an intergenerational phenomenon; children who have been poor a long time are likely to be worse off than children who are newly poor, because the capacities of families to 'get by' are eroded over time. Child poverty has a fundamental influence on the life-chances of the next generation; the longer a child is poor, the greater the subsequent deprivation in later life. Poor children are more likely to have a low birth weight, to leave school early, to spend time in the State care and youth justice systems and to experience unemployment.¹⁴² Child poverty is clearly an issue which concerns fundamental issues about the child's right to life, survival and development (Art 6, CRC).

The rate of child poverty is disproportionately high in Ireland, given its economic wealth.¹⁴³ Currently one-in-nine children are considered to live in poverty and, in a UNICEF study in 2007, Ireland ranked third-last from a list of 21 OECD countries in terms of the material wellbeing of its children.¹⁴⁴ According to the Combat Poverty Agency, the duration of child poverty in Ireland is unevenly distributed, with a minority of children, almost one-in-five, spending five or more years in poverty (approx 182,000 children).¹⁴⁵ The duration of child poverty is affected by the parents' employment and educational status, the number of working adults in the household and dependence on social welfare. The likelihood of adult poverty is influenced by childhood economic circumstances and by children's educational opportunities.¹⁴⁶

¹⁴² Barnardos, *Every Child Matters: Children living without*, p 9.

¹⁴³ See the concerns of the Ombudsman for Children, *Report to the Committee on the Rights of the Child*, pp 28-30.

¹⁴⁴ UNICEF, *Child poverty in perspective: An overview of child well-being in rich countries. A comprehensive assessment of the lives and well-being of children and adolescents in the economically advanced nation* (Florence: UNICEF, 2007).

¹⁴⁵ Combat Poverty Agency, *Tackling Child Poverty: A Dynamic Perspective* (Dublin CPA, 2006), p 2.

¹⁴⁶ *Ibid.*

According to the End Child Poverty Coalition,

‘Living in poverty is stressful and upsetting. Children can come under enormous pressure if they cannot afford to conform to the expectations of their peer group. This pressure may even manifest itself in bullying and stigmatisation. Being stigmatised can have a negative impact not only on the child’s ability to make and sustain a circle of friends but on their education and emotional well-being.’¹⁴⁷

Administrative barriers and lack of political will stand in the way of progressive, but possibly expensive policies that will make a real difference to child poverty.

One-Parent Families: While the barriers of poverty faced by other children are highlighted throughout the report, the situation faced by children from one-parent families is highlighted here. Poverty is not only felt disproportionately by this group but they also face significant barriers getting out of poverty.

For one-parent families, the lack of directly-subsidised childcare facilities means that many are left with little realistic choice but to stay at home to raise their children and rely on social welfare as their main income source; this places them in a veritable poverty trap.¹⁴⁸ Innovative supports are needed to facilitate a pathway to employment for those who could take up work¹⁴⁹, and there is a need to ease the transition from welfare to work for unemployed parents with young children and those parenting alone through education and employment measures, affordable and accessible childcare and income supports.¹⁵⁰

In terms of supports, there has been a failure to consider delivery mechanisms that employ the taxation system, as well as the social welfare/benefits system, despite the evidence from the UK that these can be effective with higher take up rates and improved withdrawal rates.¹⁵¹ Tapered benefits/means testing is needed rather than the full withdrawal of benefits to soften the financial burden of such services for low-to middle-income households, especially low-income working families and low-income parents.¹⁵²

Primary Health Care: Children from poorer socio-economic groups have poorer levels of nutrition, and poverty has a clear impact on the health of children, their ability to have a balanced diet and to get adequate exercise (Art 24, CRC). A number of key recommendations have been made in this area, which would have a knock-on effect of addressing the impacts of child poverty on children’s lives. In particular, Combat Poverty

¹⁴⁷ Barnardos, *Every Child Matters, Children living without*, p 9.

¹⁴⁸ CPA, *Policy Statement on Child Poverty* (2005), p 3.

¹⁴⁹ Combat Poverty Agency, *Against All Odds, Living with Poverty and Poor-Health* (2004).

¹⁵⁰ Combat Poverty Agency, *Tackling Child Poverty: A Dynamic Perspective*, p 2.

¹⁵¹ CPA, *Policy Statement on Child Poverty* (2005), p 5.

¹⁵² Tapering reduces withdrawal rates and improves marginal rates of taxation. *Ibid.*

has recommended increased funding for primary health care as one area likely to make the greatest impact among less well off families with children, who are struggling to make ends meet and are unlikely to be able to afford the financial pressures arising from ill health. Initiatives targeted at the community level, like GPs in disadvantaged areas, need additional funding. Other recommendations include greater coverage of the medical card for vulnerable families, and undertaking preventive and other health-improving initiatives.¹⁵³

Poverty and Education: Research now clearly shows that a significant number of children are going to school hungry, and are often too hungry to do their schoolwork. According to one study on early school leaving, almost 20 per cent of children attending primary schools in one of the most disadvantaged areas of Ireland are either often, or very often, ‘too hungry’ to do their schoolwork.¹⁵⁴ Concerns regarding hunger are enduring into secondary school. Further research has confirmed that the nutrition needs of a substantial minority of pupils are not being met despite the clear need for more consistent access to breakfast clubs.¹⁵⁵ The meal scheme needs to be properly resourced to ensure that all children have one nutritious meal every day, with breakfast clubs available every day of the week.¹⁵⁶ Students’ nutrition needs must be addressed in a systematic way across all primary schools in disadvantaged areas.¹⁵⁷

Although the Constitution allows for and encourages free choice in relation to education, the level to which this can be acted upon is limited in reality, being influenced by economic capacity, geographical location, range of options and time available to parents and children. Accordingly, those who can afford to transport their children to and from school, to pay school fees and other costs, will experience a greater level of choice than those whose economic and social position restricts this.¹⁵⁸

A two-tier education system is now clearly established at second level, leading to an absence of equal educational opportunity. Young people from the fee-paying and grind school sector are three times more likely to go to a university than an institute of technology. This disadvantages those from poorer socio-economic groups who cannot afford fee-paying schools highlighting the ‘huge class division in Irish education’ and confirming that those who pay for their education at second level, or part of it, are

¹⁵³ Combat Poverty Agency, *Policy Statement on Child Poverty* (2005), pp 6-7.

¹⁵⁴ Kitty Holland, ‘Poor schoolwork linked to hunger in Dublin study’, *Irish Times*, 9 December 2006.

¹⁵⁵ See Downes, Maunsell and Ivers, *A holistic approach to early school leaving and school retention in Blanchardstown: Current Issues and Future Steps for Services and Schools. A Study commissioned by Blanchardstown Area Partnership* (Dublin: Educational Disadvantage Centre, St Patrick’s College, 2006).

¹⁵⁶ Combat Poverty Agency, *Against All Odds: Living with Poverty and Poor-Health* (2004).

¹⁵⁷ See also Downes, Maunsell and Ivers.

¹⁵⁸ Lynch, ‘The status of children and young persons: educational and related issues’ in Healy and Reynolds (eds) *Social Policy in Ireland: Principles, practise and problems* (Dublin: Oak Tree Press, 1998) in Emond, *Learning from their lessons. A study of young people in residential care and their experiences of education* (Dublin: The Children’s Research Centre, 2002), pp 6-7.

significantly more likely to go on to university.¹⁵⁹ Such figures create the clear perception that the chances of securing a university place are higher with attendance at a fee-paying school. This may increase the pressure on some parents to send their children there, despite the enormous cost involved.

Poorer children also face difficulties meeting the costs of education and 'a child's ability to benefit from all the educational opportunities on offer is obviously affected by household income'.¹⁶⁰ For some parents, the combined cost of school uniforms, books, sports gear and school trips can be excessive, particularly at the onset of the school year. These costs can result in families getting into debt or having to sacrifice essential items like healthy food. The Committee on the Rights of the Child expressed concern about this issue in 2006.¹⁶¹

The Department of Social and Family Affairs provides a Back to School Clothing and Footwear Allowance (BSCFA) to families who meet the criteria but these are 'tight' and the support given is inadequate to meet the ongoing costs of the child's education.¹⁶² The BSCFA does not pay for school tours; yet a parent's inability to pay excludes children and marginalises them further. Nor is there adequate support available for out-of-school activities or study support programmes.¹⁶³ Similarly, the School Book Rental Scheme does not operate on a nationwide basis despite its potential to have a positive effect.¹⁶⁴

Investment and Social Expenditure: Ireland places a far greater emphasis on income support (both universal and targeted measures) for families with children than most European countries, but invests less in subsidised equality services and levels of subvention for childcare and health care for children.¹⁶⁵ Net housing costs for families with children can be burdensome, and those on low incomes in the private rental sector are particularly vulnerable. Ireland's housing scheme does not take account of household composition and size, and there is a relatively small proportion of social housing compared to European neighbours.¹⁶⁶ Meeting supply targets for social and affordable housing is necessary to allow potential homeowners on modest incomes to acquire a property that is fit and appropriate for their means.¹⁶⁷

¹⁵⁹ In 2006, 25.7 per cent of first-year university students came from fee-paying or grind schools (with fees of €5,500) Sean Flynn, 'List identifies a two-tier system', *Irish Times*, 14 November 2006.

¹⁶⁰ Barnardos, *Make the Grade*, (Dublin: Barnardos, 2006), p 16.

¹⁶¹ Committee on the Rights of the Child, *Concluding Observations: Ireland*, (2006), para 58.

¹⁶² The current value of the BSCFA is €120 for children between two and 11 years and €190 for children between 12 and 17 years. In 2006, the average cost for uniform, sportswear, shoes and textbooks for a primary school pupil is €225.60 and €408.75 for a secondary school pupil. This excludes ongoing costs incurred during the year, such as school tours or replacement shoes or books. Barnardos, *Making the Grade*, p 17. The need for greater allowances is also supported by the St Vincent de Paul. Email correspondence from John Mark McCafferty, Head of Social Justice and Policy, St Vincent de Paul, 18 January 2007.

¹⁶³ Only 1-2 per cent of all six to 12-year-olds used this form of provision in 1999/2000. See Barnardos, *Making the Grade*, p 17.

¹⁶⁴ St Vincent de Paul *Learning to Make Do – a study on educational disadvantage*, Dublin, 2003 in Barnardos *Make the Grade*, p 16.

¹⁶⁵ Child Poverty Agency, *Ending Child Poverty* (Dublin: CPA, 2005), 86.

¹⁶⁶ *Ibid.*, p 87.

¹⁶⁷ CPA, *Policy Statement on Child Poverty* (2005), p 7.

Irish social expenditure should be brought into line with other EU member states.

Initiatives that have success in reducing poverty in those states should be monitored and employed here, if successful.¹⁶⁸ According to one recent review of measures to tackle child poverty in Europe, 'the provision of high quality, affordable and universal childcare offered at flexible times is essential for the reduction of child poverty as well as for the prevention of negative child outcomes and not least an effective means against the transmission of poverty'. The expansion of public childcare or public subsidies to private childcare facilities should, thus, be high on the political agenda.¹⁶⁹

Particular consideration also needs to be given to:

- coupling the early childhood supplement with improved access to pre-school education;¹⁷⁰
- hearing children's voices on the development of government policy in this area and maximising the added value of inclusive policy dialogue where children's experiences and voices are heard;¹⁷¹
- introducing more integrated policy approaches to combat all inequalities;¹⁷²
- considering the interplay between the broader forces that influence living standards and wellbeing of children, including family supports, employment and public services;¹⁷³
- broadening the eligibility criteria for medical cards and GP visit cards in order to break the link between poor health and poverty.¹⁷⁴

In general, there is a need to place the interests of children at the centre of policy making on poverty so that children have first call on tax/welfare resources and on public expenditure.¹⁷⁵

Addressing Persistent Poverty: The need to address child poverty has been acknowledged in numerous policy documents (e.g. the *National Action Plan against Poverty and Social Exclusion 2003-2005*) and the commitment to reduce it has been reiterated in the partnership agreements and the National Anti-Poverty Strategy. However, the political

¹⁶⁸ *Ibid.*, p 8.

¹⁶⁹ Hoelscher, *Preventing and reducing child poverty*, European Commission DG Employment and Social Affairs, Brussels, 2004 in Combat Poverty Agency, *Tackling Child Poverty: A Dynamic Perspective*, p 11.

¹⁷⁰ Combat Poverty Agency, *Tackling Child Poverty: A Dynamic Perspective*, p 11.

¹⁷¹ CPA, *Policy Statement on Child Poverty*, 2005, p 8.

¹⁷² *Ibid.*, p 5.

¹⁷³ Combat Poverty Agency, *Tackling Child Poverty: A Dynamic Perspective*, p 2.

¹⁷⁴ Children's Rights Alliance, *From Rhetoric to Rights, Second Shadow Report to the United Nations Committee on the Rights of the Child* (Dublin: CRA, 2006), para 271, 42. Requests to extend the medical card to all children under 18 years and to those in full-time education up to 23 years have been ignored. See Budget 2006, 'Youth Forgotten' *Post Budget Analysis* (National Youth Council of Ireland), p 6.

¹⁷⁵ Budget 2006, *Youth Forgotten' Post Budget Analysis* (National Youth Council of Ireland), p 6.

and policy systems have failed to deliver on various strategies and programmes (like the National Anti-Poverty Strategy, the National Children's Strategy, the Health Strategy, the Youth Homelessness Strategy) and programmes like RAPID and CLAR focusing on tackling disadvantage.¹⁷⁶ According to Combat Poverty, the main focus in these high-level policy documents is to reduce the numbers in child poverty. The challenge now must be to broaden the existing approach to addressing the factors which result in some children experiencing persistent childhood poverty and in childhood poverty being replicated as adult poverty in later life.¹⁷⁷ More attention must also be given to reducing the 'duration' of child poverty as well as to improving the situation of children in acute poverty at a particular point in time.¹⁷⁸ Further, there is a need to adopt targets on income poverty and income inequality to form the basis for a genuine equality of opportunity for children.¹⁷⁹

Summary

The Committee on the Rights of the Child expressed serious concern in 2006 about the level of child poverty in Ireland. It recommended that the Government effectively implement its National Anti-Poverty Strategy and strengthen its support to families living in economic hardship, in order to ensure that poverty is reduced and children are protected against the negative impact of economic hardship on their development. It also recommended that a supplement to the existing 'universal' child benefit payments be introduced as an additional and targeted allowance to assist the families which experience highest levels of poverty, and implement fully existing policies and strategies and increase budgetary allocations for, and subsidisation of, services, including childcare, health care and housing, for families with children who are particularly vulnerable.¹⁸⁰ All of these different solutions must be employed in order to address the multi-dimensional problem of child poverty.

In addition, and implicit in the Committee's observations, it is vital that child poverty is seen and represented as a fundamental children's rights issue, given that it places children's rights to development, to health care, to education and to general wellbeing at serious risk.

¹⁷⁶ Barnardos, *Every Child Matters*, p 11.

¹⁷⁷ Combat Poverty Agency, *Tackling Child Poverty: A Dynamic Perspective*, p 8.

¹⁷⁸ *Ibid*, p 2.

¹⁷⁹ CPA, *Policy Statement on Child Poverty*, 2005, p 8.

¹⁸⁰ Committee on the Rights of the Child, *Concluding Observations: Ireland*, (2006), para 57.

7. Children at Risk of Abuse and Neglect

Article 19 of the CRC requires that all measures are taken to protect children from harm and abuse. Article 19(2) requires states to put in place effective procedures to ensure necessary supports for the child who has suffered abuse, and to ensure prevention and detection and effective responses to abuse when it happens.¹⁸¹ Such responses must be co-ordinated, preventive and integrated, bearing in mind that states have the primary responsibility to uphold children's rights to protection and access to services, and to support families' capacity to provide children with care in a safe environment.¹⁸²

Measures taken by the State to ensure the protection of children raise many serious and complex issues in the Irish context. At one level, there are clear failures to protect children from abuse and neglect in the first instance, including the absence of an effective vetting system, failure to make soft information available as appropriate and ensuring the enforcement of *Children First* Child Protection Guidelines. At another level, the response to child abuse or neglect is clearly inadequate, and the child protection system labours under poor management, administrative failure and inadequate resources.¹⁸³ A more general issue relates to successive Governments' failure to learn from past mistakes, despite numerous enquiries and reports identifying problems and making recommendations regarding how they might be avoided in the future. Taken together, these three barriers place the rights of children who have been abused at very serious risk.

7.1 Preventing Abuse and Neglect

In addition to the problems with the child protection system detailed below, the State's failure to put in place proper systems to protect all children from the risk of harm is also problematic.

Children First, the Guidelines for the Protection and Welfare of Children were drafted as a policy instrument to ensure that children were protected from abuse and harm.¹⁸⁴ The lack of implementation and enforcement of the Guidelines in certain settings is a matter of very serious concern. In particular, they do not apply in private childcare settings and secondly, there have been documented occasions where they were not followed in residential care settings (see below). The failure to ensure the implementation of *Children First* in all settings places children at serious risk of harm.

¹⁸¹ See also Committee on the Rights of the Child, General Comment No 8, *The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment*, CRC/C/GC/8, (2006).

¹⁸² United Nations, *The World Report on Violence against Children* (New York: UN, 2006), p 18-22.

¹⁸³ See *The Report of the Ombudsman for Children to the Oireachtas Joint Committee on Health and Children on Complaints Received about Child Protection in Ireland* (30 January 2006), and also Ombudsman for Children, *Report to the Committee on the Rights of the Child*, pp 21-22.

¹⁸⁴ Department of Health and Children, *Children First: National Guidelines for the Protection and Welfare of Children* (Dublin: Stationery Office, 1999).

No Sex Offenders Register: There is no sex offenders 'register' under Irish law, rather a 'notification list' that is maintained by An Garda Síochána's Domestic Violence and Sexual Assault Unit, consisting of a (manual) list of sex offenders who are obliged to provide Gardaí with details of their whereabouts.¹⁸⁵ While there are sanctions for failure to comply with notification requirements, it is not clear what resources are devoted to pursuing those who attempt to evade the conditions of their registration.

Inadequacies of the Notification List: Moreover, the list only includes those who have been convicted of offences against children and it does not allow An Garda Síochána to check whether the person in question is a risk to children. Currently, the fact that the system is manual and paper-based rather than computerised means that there is inadequate management and dissemination of information notified to Gardaí under the *Sex Offenders Act, 2001*. In particular, it appears that the Garda Central Vetting Unit does not have access to this information.¹⁸⁶

Across Jurisdictions: Although a joint protocol was signed in 2006 between PSNI and An Garda Síochána to co-share information regarding the movement of sex offenders across the jurisdictions, no similar protocols operate on a pan-European basis, meaning that sex offenders from other jurisdictions can freely enter and remain in the jurisdiction without notification to the Gardaí or without being subjected to supervision.¹⁸⁷

Lack of an effective vetting system: There is no statutory, properly-resourced system for vetting those who seek to work with children.¹⁸⁸ Serious concern was expressed by the Committee on the Rights of the Child on this issue in 2006¹⁸⁹ and it recommended that the Government ensure that evaluation of all employees and volunteers working with children is undertaken prior to recruitment and that adequate support and training is provided for the duration of their employment.¹⁹⁰

While the (previous) Minister for Children gave an undertaking to roll out a plan for the education and voluntary sectors, vetting procedures still fall well below the systems in operation in neighbouring countries. This disparity leaves the Republic of Ireland 'an attractive place for those who may wish to avoid the more rigorous systems imposed in their own jurisdictions'.¹⁹¹ These weaknesses need to be addressed by:

- extending full Garda vetting to all organisations and individuals that have contact with children;
- placing vetting on a legislative basis (ensuring that it is not left to discretion);
- enacting legislation allowing the recording of 'soft' information where information short of criminal convictions can be recorded.¹⁹²

Early Childhood Services: The particular vulnerability of young children, and their need for additional protection, was highlighted by the Committee on the Rights of the Child in 2005.¹⁹³ In Ireland, however, all staff working in the early childhood care and education sector are not currently vetted by An Garda Síochána. The *Child Care (Pre School Services) Regulations 2006* provide for Garda vetting for all staff, student workers and volunteers in crèches, nurseries and other pre-school services. However, the Regulations do not cover childcare personnel working outside pre-school care (those caring for 80 per cent approximately of children in day care) and under-staffing at the Garda Central Vetting Unit means that they are currently unable to take on the cases of childcare workers because of obligations to other sectors.¹⁹⁴ As a result, the Regulations, which were due to come into force in January 2007 will not now be enacted until 3 September 2007.

No Treatment or Assessment of Offenders: Facilities for those convicted of sexual offences are very limited, with only a handful of places available for those seeking help in prison. There are currently no mandatory and regulated risk assessments or treatment plans for sex offenders and there is no assessment of sexual offenders prior to their release from prison to identify the level of supervision and regulation needed.

7.2 Responding to Abuse and Neglect

There are well-documented problems with the child protection system and its potential to respond to an allegation of child abuse or neglect. Many of these have been raised by complainants to the Ombudsman for Children's Office and were subsequently contained in a report to the Oireachtas Joint Committee on Health and Children in January 2006. These concerns relate particularly to the difficulties experienced in disclosing concerns about child abuse to the relevant authorities, and the subsequent treatment of the child and his/her parents or carers following the disclosure.¹⁹⁵ In addition, institutional problems appear to militate against the use of agreed best practice on a universal basis across all

¹⁸⁵ See Joint Committee on Child Protection, *Report on Child Protection* (November 2006), pp 84-85.

¹⁸⁶ Joint Committee on Child Protection, *Report on Child Protection* (November 2006), p 85.

¹⁸⁷ Joint Committee on Child Protection, *Report on Child Protection* (November 2006), p 85.

¹⁸⁸ A vetting system was originally announced in September 2004 but is still not operational.

¹⁸⁹ See also the concerns of the Ombudsman for Children in *Report to the Committee on the Rights of the Child*, pp 17-18.

¹⁹⁰ Committee on the Rights of the Child, *Concluding Observations: Ireland* (2006), para 37(d).

¹⁹¹ ISPC, *How can we be sure they're safe? An Independent Ten Point Plan for a better, safer childhood*, (undated).

¹⁹² While the nature of the proposals to amend the Constitution suggested that a constitutional amendment was required, this view is not unanimous. In particular, the Oireachtas Committee on Child Protection did not consider the constitutional right to a good name to be a bar to the use of 'soft' information. Joint Committee on Child Protection, *Report on Child Protection* (November 2006), p 87.

¹⁹³ See further Committee on the Rights of the Child, *Implementing Child Rights in Early Childhood General Comment No 7, CRC/C/GC/6* (2005).

¹⁹⁴ Conor Ryan, 'Means of vetting pre-school sector staff to be decided on', *Irish Examiner*, 5 January 2007.

¹⁹⁵ See the *Report of the Ombudsman for Children to the Oireachtas Joint Committee on Health and Children on Complaints Received about Child Protection in Ireland* (30 January 2006).

HSE areas, and the HSE social work service appears to be inadequate to meet its statutory obligations to children at risk under the *Child Care Act, 1991*. A complete review, audit and overhaul is required. The following issues arise:

Prioritising of Serious Cases: no universally agreed criteria for identifying risk: Despite a significant increase in the provision of family support over the past decade, services to vulnerable families are still rationed in line with agencies' perceptions of the seriousness of the concerns presented. While there have been various attempts to classify different levels of intervention along a continuum, from vulnerable groups and communities to situations of social breakdown, thresholds appear to be based in practice on norms that are 'indigenous to community care areas, which in turn reflect team culture, local knowledge, styles of management, capacity and prevailing specialist interests or skills'.¹⁹⁶

Use of Social Work Time: Social workers spend a disproportionate amount of time investigating reports which they consider to be allegations of abuse, half of which ultimately prove to be confirmed non-abuse or inconclusive.¹⁹⁷ This statistic demonstrates some fairly significant problems, including the perceptions of referrers as to what constitutes 'child abuse' and the screening methods used by intake workers which appear to erroneously label a high number of initial reports as suspected child abuse. While this is a complex issue and reasons for the problem are diverse, Buckley asserts that 'the current child protection system is, to a significant degree, failing to engage with the needs of vulnerable children'.¹⁹⁸ She recommends the establishment of a central intake system where a team of supervised social workers based on a call centre with access to all child protection data held by statutory agencies nationwide – this should lead to a more focused use of capacity.¹⁹⁹

Approaches to Categorisation undermine getting services quickly to children in need: Research shows an emphasis within the HSE on categorisation which focuses not on children's needs but on parental behaviour in relation to one or more incidents. This leads away from a child-centred approach to one that concentrates on parental culpability (e.g. was the harm or incident intentional or not) and the agency's method of responding to it. While intent is important as to whether a serious incident is likely to re-occur if the child remains in the perpetrator's custody, it is only one element and should only form one part of an investigation or assessment.²⁰⁰

¹⁹⁶ Buckley, 'Reviewing *Children First*: Some Considerations', *Irish Journal of Family Law* 3 (2005), 2-8, p 2.

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*, p 3.

¹⁹⁹ Buckley, *Child Protection and Welfare: National/Centralised Intake Systems. Briefing Paper commissioned by the Health Service Executive* (March 2006).

²⁰⁰ Buckley, 'Reviewing *Children First*: Some Considerations', p 3.

There also seems to be some difficulty in the use of language – with child protection professionals using the term 'abuse' while parents and others talking about injuries, threats and risks to their children. In some regions of the HSE, cases are classified as either 'child protection' or 'family support' – this assumes a static cause and effect trajectory and ignores the fluid nature of child protection and welfare concerns. Denying how dynamic family situations are and using labels like 'child protection' or 'family support' can be 'invidious, ineffective and potentially dangerous if it means they are going to get a differential response'.²⁰¹

Co-operation between agencies and professionals: While co-operation has improved with the adoption of the *Children First* Guidelines and subsequent training and dissemination of information as to roles has contributed to inter-agency relationships, problems still exist. Research and experience show that urging practitioners and agencies to work collaboratively is not sufficient and relying on good personal relationships between and within agencies is not an enduring method of maintaining co-operation.

Problems include the following:

- Lack of very basic information about each other's roles, particularly in relation to professionals who work with children but whose main responsibility is not child protection;
- High staff turnover which means that professional relationships are short-term;
- Confusion about the meaning of confidentiality, and general norms around sharing of information;
- Overlapping of different professionals' contact with families with little sharing of information;
- Failure of social workers to provide feedback to referring professionals, particularly teachers;
- Perceived high thresholds operated by intake social workers, which leave referrers feeling frustrated;
- Stigma attached to social work service;
- Gatekeeping of family support services by social workers which impedes other professionals such as public health nurses accessing them;

²⁰¹ *Ibid.*, p 4. Concern has also been raised about the Child Protection Notification System (CPNS) and the extent to which it focuses on whether notification is required rather than on what services the child and family need. Also of concern is the exclusion of children who have suffered harm (abuse by a person now left the home or the community) but are no longer deemed to be at risk gives the impression that the longer term impact of abuse on a child and family is a low priority. While the original intention was that the system would provide a Health Board record, ie a system for managing information, it now appears to resemble a register in all but name. The use of the term 'notification' also causes confusion given that the Gardaí use it to describe the process of formally passing reports to community care teams.

- Lack of accountability on the part of different services to one overarching authority. The Area Child Protection Committees are not perceived to have made a significant positive impact on inter-agency and inter-professional co-operation.

Lack of Resources: There is no central collation of waiting lists for social work assessment and, because child sexual abuse assessment services in each HSE area are under-funded, demand for appointments normally exceeds supply. Families commonly have to wait several weeks for assessment. This is particularly serious given that children cannot/should not receive counselling or treatment until they have been assessed as it may interfere with the assessment process. Afterwards, the lack of resources means that children may be left with enduring unmet need following the initial, investigative response to the disclosure of child sexual abuse.²⁰²

Administrative Problems: In terms of the community care teams, a lot of energy is taken up with assessment, arranging appointments and liaising with specialist services. Long-term work seems to lack form and focus, and practitioners have expressed lack of confidence in their skills to deal with this type of problem. There is a clear need for specific programmes of work to be carried out in the community.

Neglect: Insufficient attention is focused on children who suffer neglect, and there is a lack of multidisciplinary, appropriate interventions to address the complex problems faced by their families.²⁰³ An integrated service is currently lacking and the mainstream child protection system (which focuses on incident-related concerns) still has many difficulties responding effectively to the issue of neglect. Revision of the *Children First Guidelines*, currently underway, must pay special attention to child neglect.

Lack of Early Intervention: Many 'neglect' difficulties are associated with behaviour problems linked to poor parenting resulting in detention, juvenile crime and homelessness, and early intervention/parenting support is necessary to avoid this in the future. There is a need to investigate the development of sub-neglect teams, which would be involved in neglect cases at an early stage, while also remaining involved in the family long-term. In such cases, there is a need for all involved (professionals, family and HSE) to accept the inevitability of long-term involvement. Family support services, rather than social workers, are key here.

Lack of an Out of Hours Service: The HSE social work service does not operate outside of office hours, meaning that children at risk (including homeless children and newly-

²⁰² Colligan and Buckley, 'Community-based Professional Responses to Child Sexual Abuse' *Irish Journal of Family Law* (2004), 2-7, p 2.

²⁰³ *Ibid.*, p 6.

arrived, separated asylum seekers) or who disclose abuse during these times must go to the Garda Station. The Committee on the Rights of the Child has recommended the urgent establishment of a 24-hour service.²⁰⁴

Lack of respect for the voice of the child: The Ombudsman for Children has expressed concern about the failure to respect the voice of the child and allow for the child's participation, where appropriate, in procedures following the making of a disclosure of child abuse.²⁰⁵

7.3 Implementing Recommendations

The Government has commissioned several inquiries and reports in the area of child protection but, to date, relatively little progress has been made implementing their recommendations. One of the difficulties is that once the report is complete, no single body or individual appears to have dedicated responsibility for ensuring follow through. Some examples follow:

Kilkenny Incest Investigation and the Kelly Inquiry:²⁰⁶ Two high-profile reports were undertaken in the 1990s into systemic failure by the Health Boards to intervene to protect the lives and rights of children who endured serious abuse and, ultimately, death at the hands of their carers. Numerous recommendations were made regarding how to avoid such tragedies reoccurring; few of these were implemented.

In particular, the Chair of the Kilkenny Investigation, Catherine McGuinness, SC (now a retired Supreme Court Judge), observed that:

'... the very high emphasis on the rights of the family in the Constitution may consciously or unconsciously be interpreted as giving a higher value to the right of parents than to the rights of children.'

Accordingly, the Investigation recommended that:

'... consideration be given by the Government to the amendment of Articles 41 and 42 of the Constitution so as to include a statement of the constitutional rights of children.'

²⁰⁴ Committee on the Rights of the Child, *Concluding Observations: Ireland*, (2006), para 29(b).

²⁰⁵ See the Report of the Ombudsman for Children to the Oireachtas Joint Committee on Health and Children on Complaints Received about Child Protection in Ireland (30 January 2006), p 11.

²⁰⁶ McGuinness, *Kilkenny Incest Investigation* (Dublin: Stationery Office, 1993) and Kelly – *A Child is Dead: Report of a Committee of Inquiry, Interim Report of the Joint Committee on the Family* (Dublin: Stationery Office, 1996).

While current proposals to amend the Constitution are not without merit, they will not address this shortfall.²⁰⁷

Ferns Report:²⁰⁸ The Ferns Report into sexual abuse by priests in the Diocese of Ferns made several key recommendations. They include the following:

- The creation of an offence of wanton or reckless endangerment;
- That the Department of Health and Children launch and repeat periodically a nationwide publicity campaign on child sexual abuse focusing on: the innocence of victims; the harm abuse causes; that abuse is perpetrated by those in all walks of life, including respected men and women; that it is a serious criminal offence; and that children who complain will be listened to;²⁰⁹
- That every organisation whose employees or volunteers work unsupervised with children develop a code of conduct to ensure that children are kept safe from abuse;
- That investigating Gardaí be trained in how to interview children appropriately and to create a child-friendly environment to ease the trauma. Specialist child protection units should be developed within the Gardaí;
- That consideration be given to conferring an express power on the HSE to apply to a court for an order prohibiting a named person from engaging in an activity which would give him ready access to children at all or otherwise on such terms that the court might direct;²¹⁰
- That the HSE carry out an enquiry into its powers to intervene in relation to sexual abuse of a child by a non-family member without the connivance of the child's parents.

With the exception of the offence of reckless endangerment, created by Section 176 of the *Criminal Justice Act, 2006*, and the publicity campaign to raise parents' awareness about the importance of listening to children, it is not clear what measures have been adopted to further the above recommendations.

The Child Protection Committee:²¹¹ In 2006, in response to the CC case which struck down as unconstitutional the offence of statutory rape (with reference to a girl under 15) because it did not allow the defendant to raise the defence of reasonable mistake,²¹² the Government appointed two rapporteurs – one child law expert, one criminal law expert –

²⁰⁷ Ombudsman for Children, *Report to the Oireachtas on the Twenty Eighth Amendment to the Constitution Bill 2007* (6 March 2007). See also Kilkelly and O'Mahony, 'The Proposed Children's Rights Amendment: Running to Stand Still?' *Irish Journal of Family Law*, 2, 2007, 19.

²⁰⁸ Francis D. Murphy, Helen Buckley and Larain Joyce, *The Ferns Report*, presented by the Ferns Inquiry to the Minister for Health and Children (Dublin: Government Publications, October 2005).

²⁰⁹ The 'Parents who listen' 'Protect' awareness raising campaign (media together with a published booklet) was launched by the HSE in April 2007 with the support of the ISPCC, Barnardos and the National Youth Council of Ireland.

²¹⁰ This power is currently inferred from existing powers under the *Child Care Act 1991*.

²¹¹ Joint Committee on Child Protection, *Report on Child Protection* (November 2006).

²¹² *CC v Ireland, the Attorney General and the DPP, IESC 33* (2006).

to report annually to the Oireachtas on child protection laws in Ireland and elsewhere.²¹³ These are not statutory appointments and their role is unclear. In addition, Peter Power, TD, was appointed chair of an Oireachtas Committee given responsibility for looking at child protection issues, including the age of consent. This report was published in December 2006 and made 62 recommendations concerning substantive criminal law, the age of consent, criminal justice procedures and the implications of the decision of the Supreme Court in the CC case.

Its recommendations included the following:

- As a legislative priority, new offences of child sexual abuse and grooming a child for sexual abuse be created along with offences related to the trafficking, sale or organisation of children for the purpose of sexual abuse;
- The defence of mistake as to age should not be available to a person accused of an offence involving sexual activity with a child under the age of 16 years;
- Consideration be given to providing separately in the law for sexual offences against children under the age of 18 years committed by persons in authority with a sentence of life imprisonment;
- Publication of detailed statistics relating to sentencing for sexual offences against children and a continuous review of those statistics to determine the need for sentencing guidelines;
- Further study of the arrangements for listing and hearing trials of sexual offences against children to determine whether any additional measures, including provision for formal pre-trial plea hearings, would facilitate the entry of pleas of guilty at an earlier stage.

On the age of consent it recommended the following:

- Different ages of maturity and consent be reviewed and kept under review to ensure consistency and coherence and with reference to a child's maturity;
- The age of consent be set at 16 years (18 for those in authority) and that clear and definitive guidance on the age be distributed through public awareness campaigns and educational programmes.

On criminal justice procedures, it recommended the following:

- The establishment of regional specialist child protection units within an Garda Síochána, which should take responsibility for the investigation of complaints of child sexual abuse;

²¹³ Carl O'Brien, 'State to appoint legal experts to enhance child protection', *Irish Times*, 20 June 2006.

- Provision of comfortable and non-threatening facilities for interviewing witnesses/victims;
- Consideration of social worker participation in interviews of child complainants;
- Structured programme of training and education on child psychology, child development and the reaction of children to incidents of child sexual abuse delivered to Gardaí, DPP, solicitors and judges;
- Putting into practical effect the use of video link evidence, taking into account the needs and sensitivities of child witnesses;
- Putting in place facilities for video recording of statements;
- All under 18s receive the protection afforded to child witnesses;
- Training for lawyers on cross examining children and ongoing training for judges and lawyers involved in cases of sexual abuse; and
- The development and proper funding of child witness support services.

The Committee also recommended the amendment of the Constitution to permit the Oireachtas to enact laws providing for absolute criminal liability in respect of sexual activity with children, and recommended a public awareness campaign designed to raise awareness of all aspects of child sexual abuse including the age of consent, health issues and available resources implemented through the media, schools and youth organisations. It also recommended that the content and delivery of existing sex education programmes in schools be reviewed to ensure that the needs of children are met.

The recommendation on the (lowering of the) age of consent was not reached unanimously and Fine Gael members of the Committee objected to it.²¹⁴ Although the Taoiseach initially indicated his support to lowering the age to 16,²¹⁵ the opposition of the Catholic hierarchy among others²¹⁶ seemed to bring about a change of heart. It is now proposed to hold a referendum to change the Constitution *inter alia* to reinstate a form of the 1935 offence but there will be no change to the age of consent.²¹⁷ No action appears to have been taken to implement any of the other recommendations, despite the support of young people consulted specifically for this purpose.²¹⁸

Summary

Several committees and reports have now reiterated the same recommendations regarding legislative, administrative, training and awareness raising measures necessary to respond and address the problem of child abuse. With few exceptions, however, these

recommendations have remained largely unimplemented to date. In addition, it is apparent that the systems designed to protect children from abuse, and to respond effectively to abuse when it happens, are grossly deficient and continue to provide inadequate protection for the child's right to protection from harm (Art 9, CRC). A range of measures is required to address these very serious issues, and their variety and cross-cutting nature means that a high-level inter-departmental group would be best placed to identify the recommendations outstanding and devise a plan to secure their implementation. Alternatively, this could be a finite and important function for the two Rapporteurs on Child Protection appointed in 2006.

Conclusions

Part A has highlighted a number of areas in which particularly vulnerable children face multiple breaches to their rights as well as multiple barriers to the realisation of those rights. Children in the care and justice systems, Traveller children, children in the asylum system, including separated children, and homeless children face serious problems exercising their rights under the CRC, including their right to development, to an adequate standard of living, to education, to play and leisure and to protection from harm. The multiple breaches of these children's rights cut across all areas of their lives and compound each other to frustrate their chances of a happy and safe childhood. Multifaceted, high-level and strategic responses to these individual situations are required both to target the complex needs of these children, and to ensure their rights are more adequately protected in the future.

Part A also highlights the deep-rooted and multi-dimensional problems of poverty and child protection, where a whole range of children's rights, including the rights to health and material welfare and protection from harm, face grave risk. The barriers to the exercise of children's rights in these areas are complex, and both comprehensive and urgent action is required to break them down. Poverty is a problem especially cross-cutting in nature, which underlines many of the problems faced by Traveller children, those seeking asylum and those in the care and justice systems. Only a multifaceted, inter-departmental response will successfully address its underlying causes.

All of the problems identified in Part A are complex and require strategic, inter-departmental responses. However, they are not unrelated to the more general barriers identified in Part B below, and so addressing these barriers will also be necessary to protect the rights of particularly vulnerable groups. In particular, joined-up policies, a child-focused approach, awareness of children's rights and children's rights training and the development of strategies to implement a rights-based approach to children's issues are as relevant to the rights of the vulnerable, as they are to the rights of all children.

²¹⁴ Joint Committee on Child Protection, *Report on Child Protection* (November 2006), p 38.

²¹⁵ Marie O'Halloran, 'Aherne indicates support to lower age of consent' *Irish Times*, 14 December 2006.

²¹⁶ Patsy McGarry, 'Organisations and churches divided on age of consent', *Irish Times*, 9 December 2006.

²¹⁷ See Speech by Brian Lenihan, TD, Minister for Children, *Publication of the Bill to Amend the Constitution in relation to the rights of Children* (19 February 2007), p 9.

²¹⁸ *Report on the outcome of consultation with teenagers on the issues to be considered by the Minister for Children when examining the age of consent for sexual activity* (Dublin: Office of the Minister for Children, 2006).

general barriers

This part of the research presents six general barriers that children face in the realisation of their rights in Ireland. Under each barrier, the analysis is divided into a number of key categories, focusing on the underlying obstacle to the realisation of children's rights and using examples to illustrate the effect of these barriers on children's lives. Recommendations to address these barriers are set out at the end of each section.

All six barriers were identified with reference to the children's rights standards set out in the Convention on the Rights of the Child, and the guidance of the Committee on the Rights of the Child on the measures required to make those rights effective.²¹⁹ While the research identifies the principal problems that children face in the exercise of their rights, the analysis that follows aims to go deeper in order to explore the underlying barriers that prevent these problems being addressed.

The six barriers are as follows:

1. The invisibility of children in decision-making structures;
2. The absence of children's rights from law and policy;
3. The inadequacy of mechanisms for complaints, monitoring and advocacy;
4. The inadequacy of supports and services;
5. The absence of investment; and
6. The need for greater information and training.

²¹⁹ Particular emphasis is placed here on the Committee on the Rights of the Child, *General Comment No 5, General Measures of implementation of the Convention on the Rights of the Child*, and the *Concluding Observations* on the Irish reports on implementation from 1998 and 2006.

1. Invisibility of Children

1.1 Invisibility as a barrier to children's rights

The Convention on the Rights of the Child provides that all children have legal rights in a wide variety of areas. These rights are intended to be real rather than theoretical and so the Convention's full implementation depends on attitudes and approaches that are based on children's status as independent holders of rights and active participants with a say in their own lives. For it to have meaningful effect, there must be a culture shift away from traditional paternalism (where the adult knows best) towards a rights-based approach. This must be matched with action that makes children a high political priority and shows a sensitivity to the impact of governance on children and their human rights.²²⁰

In this regard, it is vital that children and children's rights issues are visible in the process of law and policy reform, that adequate structures are in place to ensure children's rights are taken into account in decision making at all levels, and that Government activity involves an approach that is child focused and rights based. This can only be secured by putting mechanisms in place to co-ordinate, supervise and monitor implementation of the Convention, and procedures that proof, check and audit compliance of decision making with children's rights standards. In line with Article 12 of the CRC, children have a right to express their views on matters that concern them and have those views taken into account. Accordingly, full compliance with the Convention is about empowering children and about respecting them and the contribution they can make to relevant decision making. However, this will not always happen by default, and so procedures and mechanisms must be established to ensure that the voices of children are heard on all matters that affect them.

Against these standards, it is one of the remarkable features of law and policy concerning children in Ireland that children are largely invisible, and their rights ignored and underplayed. The overarching invisibility of children from governance structures, law and policy and public debate is related to and derived from the absence of express rights for children in the Constitution and their explicit protection in law and policy. These issues are addressed in Barrier 2 below. This section discusses the following issues in the context of the invisibility of children:

- The systematic failure to listen to the voices of children, to give due weight to their views and to appreciate the value of their contributions;
- The lack of a child focus, a rights basis and child proofing mechanisms, and
- The failure to take a child-focused and rights-based approach to children's issues and the lack of appropriate structures to ensure this happens.

²²⁰ Committee on the Rights of the Child, *General Comment No 5, General Measures of implementation of the Convention on the Rights of the Child*, para 10.

1.2 Failure to Listen to Children's Views

Implementation of Article 12, which requires that children's voices are heard and taken into account in all matters that affect them, requires that permanent and inclusive mechanisms be put in place to hear the voices of all children, including marginalised groups, in law and policy reform. The views of particular groups should also be heard on particular issues. This means that decision-making processes must be open to children, and mechanisms established that ensure that children have active and inclusive participation at all levels in the home, school, community and wider society.²²¹

1.2.1 Moving Consultation into the Mainstream

The Committee on the Rights of the Child has urged states to move from an events-based approach of the right to participation to systematic inclusion in policy matters in order to ensure that children can express their views and effectively participate in all matters affecting them.²²²

Research highlights the important contribution young people have to make to debates on a wide range of issues²²³ and the Office of the Minister for Children has made advances in terms of the number of initiatives that involve children and young people in their work.²²⁴ For example, children and young people have been involved in policy making through the consultation for the National Children's Strategy, the National Play Policy and the National Recreation Policy (this is ongoing).²²⁵ Children were also involved in the development of a children's code of advertising and in the appointment of the Ombudsman for Children.²²⁶

However, there has been little initiative taken to involve children and young people in policy making in other areas that concern them; for example, children and young people have yet to be invited to contribute to policy making in areas of public health, tobacco, alcohol or the planning process. Similarly, there has been almost no consultation with young people on matters of law reform; the consultation on the age of consent was a rare exception.²²⁷

Reflecting this, one survey in 2006 recorded that 74 per cent of children and young people felt that they were not heard when decisions were made in their community that affected them.²²⁸

²²¹ *Ibid.*, para 12.

²²² Committee on the Rights of the Child, *Day of General Discussion on the Right of the Child to be Heard*, para 25.

²²³ *How we see it. Children and young people's views on the implementation of the CRC in Ireland.* (Office of the Minister for Children, September 2006).

²²⁴ In general, see the comments and criticisms of the Ombudsman for Children in *Report to the Committee on the Rights of the Child*, pp 14-17.

²²⁵ *Consultation Document for a Recreation Policy for Young People in Ireland*, Office of the Minister for Children.

²²⁶ O'Donnell, 'The work of the National Children's Office on Children and Young People's Participation' *Barnardos Childlinks*, 1 (2005) p 14.

²²⁷ *Report on the outcome of consultation with teenagers on the issues to be considered by the Minister for Children when examining the age of consent for sexual activity* (Dublin: Office of the Minister for Children, 2006).

²²⁸ ISPCC, *My right to know. A study of children and young people's awareness of their rights, fourteen years on from Ireland's ratification of the UN Convention on the Rights of the Child* (Dublin: ISPCC, 2006).

Consultations that have taken place have been on an *ad hoc* basis and there has, to date, been insufficient progress integrating consultation (and the development of appropriate structures designed to integrate consultation) into mainstream policy and law making. The majority of organisations working with, or on behalf of, children and young people do not consult with them in a formal way during the preparation of their submissions, policy papers or proposals, including in areas of public policy which affect them.²²⁹

A number of barriers can be highlighted in this context:

- A culture of participation is lacking in many organisations, particularly State agencies, and this militates against children's views being valued and fully respected. Adults' lack of commitment to consulting with children, and scepticism about their competency as contributors, is entrenched at senior policy-making levels and militates against their meaningful involvement in decision making;²³⁰
- Despite the National Children's Strategy, which identifies listening to children as one of its three goals, there is no national plan or policy on consultation with children and young people, no co-ordination of consultation at statutory level, and an absence of leadership (including an agreed understanding), guidance and mechanisms regarding when to consult with children and young people and how to take their views into account.

1.2.2 Lack of Structures

The level of participation of young people in decision making at both central and local levels of government is negligible. There is a need to build structures at local and central government levels to facilitate the voices of young people into this work, and a Youth Participation Support Unit should be established, perhaps within the Office of the Minister for Children, to advise and support the inclusion of young people into the decision making of local and central Government.²³¹

1.2.3 Lack of Guidance, Advice and Technical Support

The process of translating rhetoric into reality in this area faces a number of different obstacles. For example:

- There is an absence of adequately-funded supports to promote the concept of participation and to build capacity at local, regional and national levels;

²²⁹ McAuley with Brattman, *Hearing Young Voices consulting children and young people, including those experiencing poverty or other forms of social exclusion, in relation to public policy development in Ireland. Key issues for consideration*, (Dublin: Open your Eyes to Child Poverty Initiative, 2002), p 113.

²³⁰ O'Leary, *Taking the Initiative: promoting young people's participation in public decision making in Ireland* (Dublin: NYCI, Carnegie Young People Initiative, 2001) in McAuley, *Hearing Young Voices consulting children and young people*, p 113.

²³¹ McAuley, *Hearing Young Voices consulting children and young people*, p 86.

- Unavailability of training courses and resource materials acts as a barrier to including young people in policy and other work. While some guidance and materials have been developed,²³² challenges remain in translating this into practice;
- Even those who find the guidance accessible struggle without practical support, for example in relation to legal and ethical issues;²³³
- Building expertise and confidence is a resource-intensive (funding, personnel, time) and lengthy process which requires investment and ongoing practical support;²³⁴
- The lack of support for children and young people also creates a barrier to the effectiveness of consultation.

Capacity building, training and influencing and changing attitudes are all vital to ensuring the full implementation of Article 12 in public sector decision making.

1.2.4 Lack of Public Education and Awareness

The lack of public education and awareness about the rights of children as active citizens means that many adults simply do not appreciate either the legal duty to, or the value, merit or importance of, consulting with young people. Compounded by time and resource constraints, many choose not to do so. There is a need to persuade adults about the rights of young people to be involved and the benefits to everyone of such involvement. Those willing to undertake consultation processes must also be supported to persuade others and to break down the cultural barriers blocking effective and meaningful consultation.

1.2.5 Giving Views Due Weight – Avoiding Tokenism

Article 12 of the CRC requires that children be facilitated to express their views in all matters concerning them, but also requires that those views be given 'due weight in accordance with the child's age and maturity'. Feedback to children on the impact of their views on the decision-making process is not only an implicit part of implementing Article 12, it is important because children and young people quickly become disillusioned with consultation processes that appear to be tokenistic.

While some progress has been made in terms of facilitating children and young people to express their views, there is far less evidence that those views are being taken seriously. For example, children and young people were consulted during the drafting of the National Children's Strategy but the weight given to those views is unclear.²³⁵ In other

²³² *Young Voices: Guidelines on how to involve children and young people in your work* (The National Children's Office, The Children's Rights Alliance and the National Youth Council of Ireland, June 2005).

²³³ McAuley, *Hearing Young Voices: consulting children and young people*, p 76.

²³⁴ *Ibid.*

²³⁵ McAuley notes that 'While the reports on the consultation afforded considerable space to the representation of participating children's and young people's observations views and ideas, the extent to which these influenced the decision making process relating to the content of the Strategy is ultimately a matter of speculation', at p 112.

areas, children do not appear to have received feedback on the impact of the consultation process. For example, it is unclear what weight was attached to the views expressed by children and young people consulted on the age of consent, given that none of their recommendations has been acted upon to date.

While some measures have been taken to survey children and consult with them on various issues, the failure to act on these views gives rise to tokenism.²³⁶ Young people are themselves quick to identify that such token efforts by adults, especially decision-makers, aim at giving the impression of consultation with young people, without real substance.²³⁷ Accordingly, there is a pressing need to move beyond tokenism and present young people with real evidence that their voices matter and can influence change.

Dáil na nÓg is an important annual event which has continued to improve in line with the duty to give due weight to children's views.²³⁸ However, barriers to it realising its full potential in this regard are that:

- it takes place too infrequently to have an impact, and
- it may be viewed as tokenistic by young people because there are few mechanisms for what is discussed there to be made count by being brought to Government/ the Oireachtas.

Various recommendations have been made to enhance the potential of Dáil na nÓg, to develop the capacity of statutory and voluntary organisations to promote youth participation nationally and regionally, and to develop the relationship between Dáil na nÓg and the parliamentary and administrative processes at national and local level.²³⁹ These offer important ways to move beyond the facilitation of expression of views towards giving due weight to those views in this process. Consideration should also be given to introducing a network of children's panels at local and central level which could feed directly into policy making on a more regular basis.

1.2.6 Failure to Involve Children in Policy Implementation

Few initiatives involve children and young people in the implementation of policy, or its review. Areas where such involvement would be beneficial both for young people and for the policy area itself include:

²³⁶ In one publication, children's views were described as 'articulate, rational and insightful' but, despite this flattery, young people will quickly lose interest in making contributions if little weight is attached to their views. *How we see it. Children and young people's views on the implementation of the CRC in Ireland*, p 18.

²³⁷ Carl O'Brien, 'We don't want to be just smiling faces', *Irish Times*, 22 April 2006.

²³⁸ See Murphy, *Review of Comhairle na nÓg and Dáil na nÓg* (Dublin: National Children's Office, 2005).

²³⁹ *Ibid.*, p 81. Such recommendations include disseminating models of best practice, delivering accredited training for volunteers and Comhairle/Dáil members, providing a mentoring system for the young people involved and disseminating the conclusions of Dáil na nÓg so as to ensure that the views of young people are presented formally to Government.

- Health promotion: here engaging in a meaningful way with young people would ensure their buy-in on the risks to their health posed by alcohol, tobacco, drugs, obesity and lack of exercise,²⁴⁰ and
- Recreational and play facilities, particularly at local levels and in areas of disadvantage.²⁴¹

1.2.7 Failure to Consult Vulnerable and Marginalised Children

Given the failure to mainstream the participation of children and young people into policy and law reform, it is not surprising that marginalised children face additional barriers having their voices heard. Despite the clear advice of the Committee on the Rights of the Child that it is vital to listen to marginalised groups, few inclusive structures have been developed for listening to 'hard to reach' groups. In general, the views of children from rural communities, children with disabilities, children in care and in the youth justice system, Traveller children and immigrant children are not being heard in relation to policies and other decision-making areas that concern them both as children, and as people with particular needs and vulnerabilities. Nor are early school leavers listened to either before they leave or afterwards, and there is a general failure to engage with all children – not just those academically suited to school – to ensure that the curriculum remains relevant to all young people.²⁴²

1.2.8 Link between participation of young people and a working democracy

According to the National Youth Council of Ireland in 1999, 'the non-participation of young people is the greatest threat and challenge facing Ireland's democratic system as it enters the new century'. The turnout among young people at election time is lower than among the general population and it has steadily declined in recent years to a point where the number of young people who vote is becoming a minority.²⁴³

There is clear concern that the voter apathy previously identified among voters between 18 and 25²⁴⁴ years is now also affecting those who have not yet reached voting age. In a survey undertaken in second level schools in 2000, a quarter of those surveyed said that they would not vote even if they were allowed to vote,²⁴⁵ illustrating a failure to make the link between listening to the views of young people and their subsequent involvement and interest in the political process. Young people are becoming marginalised from the political process at a young age. Involving them in decision-making processes at national and local levels is thus not just important in respect of children's rights but to ensure the survival of democratic politics.

²⁴⁰ National Youth Council of Ireland, 'One in Three' A report on smoking and young people in Ireland with policy proposals for action (March 2000).

²⁴¹ Children's Rights Alliance, *From Rhetoric to Rights*, para 464, p 66.

²⁴² NYCI, *Submission to NAPS on Educational Disadvantage* (April 2001).

²⁴³ For example, 38 per cent of young people voted in the Good Friday and Amsterdam Treaty Referenda. *Voting at the Crossroads: The 21st Century, Politics, Democracy and Young People* (Dublin: NYCI, 1999) p 6.

²⁴⁴ *Ibid.*

²⁴⁵ *Share it with the rest of the class. A nationwide study of second level students and Principals examining their views on student participation in school decision making and student councils.* (Dublin: NYCI, 2000).

1.2.9 Participation in Education

The Education Act, 1998 makes provision for schools councils at second level but their establishment is not mandatory. It is welcome that many schools now have schools councils, although research has shown that, even where they exist, they do not always function effectively and do not enjoy the support or confidence of students and staff.²⁴⁶

Key challenges to the successful operation of a truly representative student council have been identified as lack of time, lack of feedback and action from management on council's suggestions, and lack of support from students and staff. While a wide range of recommendations have been made to enhance the role of schools councils and to maximise their potential to make schools more democratic,²⁴⁷ there is a need for policy to inform best practice in schools councils, resources to be made available centrally to invest in their success, and ultimately, legislation to make them mandatory at both primary and second level.

More generally, there is little provision for incorporating the views of children and young people into schools and policies on education. For example, children do not appear to have been consulted as part of the work of the Task Force on Student Behaviour, and their views are notably absent from this debate. In this regard, it is notable that there are growing perceptions among young people of being treated unfairly in secondary schools.²⁴⁸ Measures need to be taken to prevent the development of authoritarian teaching and school climate - supported by the conclusion that pupils are also increasingly reluctant to ask their teachers about academic matters - and measures must be taken to address the need to include pupils in school matters and to improve relations between more marginalised pupils and their teachers.²⁴⁹

1.2.10 Participation in Health Care

Research has highlighted that there are significant barriers to the involvement of children in decisions made about their health care contrary to Art 12 CRC. They include:

- The failure to use age-appropriate explanations and props, and to explain procedures carefully to children in advance;
- Inadequate or inappropriate time, space and physical environment;
- The lack of specialist training and ongoing professional development for all health professionals who come into contact with children and young people on child development, children's rights and communicating with children;

²⁴⁶ Keogh and Whyte, *Second Level Student Councils in Ireland: A Study of Enablers, Barriers and Supports* (Dublin: National Children's Office, 2005).

²⁴⁷ For example, there is a need to identify time and resources for elections to the council and its operation, to establish effective means of communication between the council and students, staff, management and others in the school, to raise the profile of the council within the school and to provide training to those involved. *Ibid.*, pp 120-128.

²⁴⁸ See, for example, Downes, *Psychological Support services for Ballyfermot. Present and Future, commissioned by URBAN Ballyfermot, Educational Disadvantage Centre* (Dublin: 2004).

²⁴⁹ *Ibid.*

- Parents' lack of awareness about their child's need to be involved in their own health care and health care decisions.²⁵⁰

1.2.11 Providing Leadership

The Ombudsman for Children's Office has a clear statutory role in both acting in compliance with, and raising awareness of, the child's right to be heard, and in the fulfilment of its statutory functions under the *Ombudsman for Children Act, 2002*. There is clear potential for the Office to act as a champion for the right of the child to be heard in all matters that affect him/her. Part of this role could be to communicate the benefits and importance of listening to children.

At the same time, there is a need for practical resources to be made available to all those working with children to incorporate children's views into their work. The Office of the Minister for Children is well placed to continue to establish itself as a central resource which provides practical resources, including training, and ongoing support for consultation and participation initiatives in both the public and the private sector.

These bodies in their distinct roles can provide the leadership and the practical support necessary to integrate the views of children into all areas of decision making.²⁵¹ Care must also be taken to prioritise the mainstreaming of the practice of listening to and consulting with children, rather than to have one or two agencies working in this area.

1.2.12 Recommendations

While acknowledging progress made to date, it is vital now to move beyond one-off consultation processes towards the integration of children's views and voices into the mainstream. One important way to achieve this goal is to incorporate into the Constitution the terms of Article 12 in the form of a duty on all public bodies to consult with children and young people and to give due weight to their views in all matters concerning them. Alternatively, consideration should be given to requiring such consultation through legislation²⁵² or incentivising it by, for example, making it a requirement of funding or budget allocation.

²⁵⁰ See Kilkelly and Donnelly, *The Child's Right to be Heard in the Healthcare Setting: Perspectives of Children, Parents and Health Professionals* (Dublin: Office of the Minister for Children, 2006) and Coyne et al, *Giving Children a Voice: Investigation of Children's Experiences of participation in consultation and decision making within the Irish healthcare setting* (Dublin: Office of the Minister for Children, 2006).

²⁵¹ Sinclair, 'Embedding children's participation' *Barnardos Childlinks*, 1 (2005).

²⁵² See, for example, Section 75 of the *Northern Ireland Act, 1998* which requires statutory bodies to consult with groups, including children and young people, adversely affected by their policies. According to the Equality Commission 'the legislation recognises the central role of children and young people in participating in the policy making process; it gives value to their views.' See Equality Commission for Northern Ireland, *Response to the UNCRC Day of General Discussion on the Child's Right to be Heard*, (16 June 2006) www.equalityni.org, retrieved 20 November 2006, p 3.

1.3 Lack of a Child Focus, a Rights Basis and Child Proofing

The Convention on the Rights of the Child is not just about the treatment and needs of children, it is also concerned with the real and effective respect for their rights. According to the Committee on the Rights of the Child, the development of a children's rights perspective throughout Government, parliament and the judiciary is necessary for effective implementation of the whole Convention and, in particular, its general principles.²⁵³ Children's rights will only be protected where those making decisions are fully aware of their implications for children, take children's rights fully into account and take a children's rights focus to their work. This is particularly challenging in areas of law and policy where children are indirectly affected or where the focus is on a broader group, like immigrants, that happens to include children and young people. Implementation of the CRC also requires a rights approach to children's issues, meaning that issues are articulated using rights-based language and the framework of the CRC, and using processes that are compliant with children's rights principles.

In Ireland, express rights are absent from statute in many areas, and, in others, legislation does not explicitly recognise or seek to promote and protect their rights (see further below). When this child-centred approach and rights basis is missing from both legislation and policy making, it is inevitable that its implementation will suffer the same inadequacy. This highlights the need for greater child proofing of law and policy to keep the compatibility of law and policy with the CRC under review.

1.3.1 Lack of Child Focus

Immigration and planning/transport are two areas of state activity which do not directly concern children but have a serious impact on their lives. In both, a children's rights focus is absent from law and policy.

Immigration and Asylum Law: The areas of asylum, refugee and immigration law lack a child focus, with the result that children are frequently invisible in processes and procedures that impact heavily on them.²⁵⁴ The rights of children to have their rights and interests taken into account (including their right to be heard) in decisions made in the asylum/Leave to Remain processes should be placed on a clear, statutory basis.²⁵⁵

²⁵³ Committee on the Rights of the Child, *General Comment No 5, General Measures of Implementation on the Convention on the Rights of the Child*, para 12.

²⁵⁴ Culleton, 'Irelands' (sic) Immigrant Children' *Child Care in Practice*, 10/3 (2003), 265-270.

²⁵⁵ In *Bode and Others v Minister for Justice, Equality and Law Reform*, High Court, unreported, 14 November 2006, the High Court held that the Minister for Justice unlawfully breached the rights of Irish citizen children by not considering their rights and entitlements when refusing their parents' applications for permission to remain in the state under the IBC (Irish Born Child) 05 scheme. Even if this judgment withstands appeal to the Supreme Court, as judge-made law it can be changed through legislation or subsequent case-law. It is particularly noteworthy, for example, that the child at the centre of this case, whose rights had not been given independent consideration, had special needs. Thus, subsequent case law may seek to limit the requirement to one to take into account special needs of children.

NGOs have developed a model of impact analysis for decisions on family reunification but this has not been adopted by Government.²⁵⁶ In 2006, the Committee on the Rights of the Child expressed concern about the absence of the best interests test from the decisions on family reunification, and recommended that steps be taken to ensure that the principle of the best interests of the child is always a primary consideration when making decisions involving children under any legal or administrative procedures.²⁵⁷ This recommendation has yet to be implemented.

Space, Planning and Transport: There is a lack of a child-focused approach to planning and development, and a failure to recognise the importance for children and young people of having safe spaces to play and hang out.²⁵⁸ Planning rules frequently do not require the provision in residential areas, and between them and commercial centres and other amenities, of safe walkways and cycling routes. Similarly, as rural areas around towns become more populated, roads have become busier with traffic, making it less safe for children to cycle, walk and play in these areas.²⁵⁹ Children's rights are invisible in the development of law and policy in this area, and in 2006, the Committee on the Rights of the Child expressed concern that little political or financial importance is given to the creation of recreational facilities, and that increasing housing demands may further hamper the developments of playgrounds and public space.²⁶⁰ This is notwithstanding the adoption, in 2004, of the National Play Strategy.

1.3.2 Lack of a Rights Basis

Law and policy which concerns children frequently lacks a rights basis. An approach which gives explicit recognition to children's rights is necessary to ensure its compliance with the CRC.

Alternative Care: The *Child Care Act, 1991* lacks a clear children's rights focus and framework. It does not recognise the right of the child to alternative care when he/she cannot remain in the family environment, nor does it make provision for the rights of the child in alternative care. While Section 3 identifies the welfare of the child as the first and paramount consideration, the HSE is also required to have regard to the rights and duties of parents.

Family Support: Family support interventions and initiatives lack a rights basis. In 2006, the Committee on the Rights of the Child expressed concern that family support

²⁵⁶ CADIC, *All Our Children: Child Impact Assessment for Irish Children of Migrant Parents*, (Dublin: Children's Rights Alliance, 2006).

²⁵⁷ Committee on the Rights of the Child, *Concluding Observations: Ireland*, 2006, para 30 and 31(c).

²⁵⁸ Children's Rights Alliance, *From Rhetoric to Rights*, para 472.

²⁵⁹ In addition, more children are being taken to school by car. For example, cycling to school in the greater Dublin area has fallen by 80 per cent since 1991, walking is down by 50 per cent while car travel is up by more than 60 per cent. The number of Dublin primary school pupils being driven to school increased from 32 per cent in 1997 to 50 per cent in 2002 and from 15 per cent to 30 per cent for secondary school children. See further the website of the Dublin Transportation Office www.dto.ie, retrieved 24 August 2007.

²⁶⁰ Committee on the Rights of the Child, *Concluding Observations: Ireland* (2006), para 62.

structures, payments like the quarterly payment to children under 6 years, lack a broad-based and child-centred approach.²⁶¹

Child Protection: In general, the area of child protection is viewed as one concerning 'welfare' of children rather than their 'rights'. Paternalistic attitudes prevail over the need to empower children so as to create awareness about the prevalence of child abuse, to equip them to protect themselves and to create a space in which children can tell of their experiences.

Family Law: Law and policy relating to family law, particularly divorce, is not child centred and does not take account of the rights and needs of children of all ages, including their right to contact with both parents following relationship breakdown.²⁶²

Education: The *Education Act, 1998* does not establish a rights basis to the educational system. For example, it does not recognise children's rights to education in respect of access and content (Arts 28 and 29, CRC).²⁶³ This is compounded by the lack of children's rights focus in constitutional provision and its interpretation by the courts.²⁶⁴

Special Needs: While the *Education for Persons with Special Educational Needs Act, 2004* is child focused, it is not rights based insofar as it does not recognise the right of children with disabilities to therapy or supports in schools.²⁶⁵ One consequence of this is that the equipment belongs to the school, rather than the child, and children moving from primary to secondary school must thus reapply for their supports. Further training is also needed for teachers working with children with disabilities, both in mainstream and specialised schools.²⁶⁶ The Committee on the Rights of the Child expressed concern in 2006 that this legal framework inadequately addresses the specific needs of children with disabilities and their access to necessary health services and educational facilities. It recommended that the Government adopt an inclusive and rights-based legal framework that addresses the specific needs of children with disabilities and implement all relevant provisions of the existing legislation related to such children.²⁶⁷

Sex Education: Children and young people have no right to receive sex education, despite the importance of this education to their health and lives (recognised by articles 3, 17 and

24, CRC).²⁶⁸ Instead, it is a matter of teacher discretion, and it is not delivered consistently in all schools to all pupils. Teachers have identified the lack of time, policy, teacher training and support from school management as obstacles to their ability and willingness to prioritise sex education and to deal with issues like lesbian and gay issues as part of the SPHE curriculum.²⁶⁹ A holistic programme of relationships and sexuality education needs to be fully implemented in all primary and secondary schools nationally and the capacity of these programmes to increase sexual knowledge and competence should be evaluated and augmented where necessary.²⁷⁰

Human Rights Education: Despite the requirement in Article 28, CRC that the child's education must be directed at the development of human rights, children do not receive human rights education as a matter of right. Whether the curriculum delivered at primary and second level school includes human rights education is a matter of discretion for individual teachers. Human rights education should be a compulsory component of the relevant programmes.

Health Care: Recognition of the rights of the child to health and health care is absent from the multitude of policy documentation in this area.

1.3.3 Lack of Child Proofing

One of the ways in which the absence of a child focus or a rights basis to law, policy and practice can be identified is through a process of children's rights proofing. To this end, structures and systems need to be put in place to ensure that children and children's rights are at the centre of the development and implementation of law, policy and practice in all areas affecting children. The Committee on the Rights of the Child has noted that ensuring that the best interests of the child are a primary consideration in all actions concerning children, and that all the provisions of the Convention are respected in legislation and policy development and delivery at all levels of government, demands a continuous process of child impact assessment. This is described as a process 'predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights and child impact evaluation, i.e. evaluating the actual impact of implementation. This process needs to be built into government at all levels and, as early as possible, in the development of policy. Accordingly, consideration should be given to requiring the adoption of a child impact statement, or a child proofing exercise in all areas.

²⁶¹ *Ibid.*, para 28.

²⁶² Hogan, Halpenny and Greene, *Children's Experiences of Parental Separation* (Dublin: Children's Research Centre, 2002), p 116.

²⁶³ See Committee on the Rights of the Child, *General Comment No 1, The Aims of Education Article 29(1)* CRC, CRC/GC/2001/1.

²⁶⁴ While the child-focus is evident, it is not the dominant approach. See O'Mahony, *Educational Rights in Irish Law* (Dublin: Thomson Round Hall, 2006), pp 97-104.

²⁶⁵ According to O'Mahony, the 'tenor of the Act as a whole would suggest that the needs of the child are the dominant consideration'. *Ibid.*, p 195.

²⁶⁶ Children's Rights Alliance, *From Rhetoric to Rights*, para 432, p 62.

²⁶⁷ Committee on the Rights of the Child, *Concluding Observations: Ireland (2006)*, paras 41 and 42(a).

²⁶⁸ See also Committee on the Rights of the Child, *General Comment No 4, Adolescent health and development in the context of the Convention on the Rights of the Child*, CRC/GC/2003/4, paras 28. This was also recognised by the European Court of Human Rights in *Kjeldsen, Busk Madsen and Pedersen v Denmark* (1979-80) 1 EHRR 711.

²⁶⁹ It is clear also that the single-gender of the school and the (religious) ethos militate against these issues being dealt with in an open way in some schools. Norman, *A Survey of Teachers on Homophobic Bullying in Irish Second-Level Schools* (Dublin: DCU, 2005).

²⁷⁰ Layte et al, *The Irish Study of Sexual Health and Relationships* (Dublin: Crisis Pregnancy Agency and the Department of Health and Children, 2006).

Currently, however, law and policies, even those affecting children directly, are not ‘child proofed’ to ensure that their implementation does not negatively impact on children. No system of child impact analysis operates in relation to legislation, policy or budgetary decision making. The Oireachtas does not have any integrated mechanisms in place whereby legislation can be child proofed or audited against the CRC for its compliance with international obligations.²⁷¹ While the Ombudsman for Children can undertake such proofing as part of its oversight function, the Office of the Minister for Children is also well placed to supervise law and policy going through the Oireachtas and government departments to ensure it has both a child focus and a rights basis.

One of the key goals of the National Children’s Strategy is that ‘children’s lives will be better understood’.²⁷² To implement that goal, the Strategy provided that ‘departments are required, where relevant, to identify the impact of their policies on children’ incorporating child impact statements into their departmental strategies. Although research in this area has been published by the Office of the Minister for Children, it is unclear how this objective is to be implemented and mainstreamed throughout all government departments and agencies.²⁷³

Poverty and Budgets: Little use is being made of child impact statements in this area, despite their value in identifying early on the potential impacts of policies on children and their families, and ensuring that children’s issues are kept to the fore in government budgets and decision making.²⁷⁴ The Government does not present a children’s budget, frustrating transparency in relation to spending on children’s services and supports and the areas where spending may negatively impact on children. Nor does it produce a family budget, explaining what will be spent on families and why.²⁷⁵ According to the Committee, no state can tell whether it is fulfilling children’s economic, social and cultural rights “to the maximum extent of ... available resources”, as required by Article 4 of the CRC, unless it can identify the proportion of national and other budgets allocated to the social sector and, within that, to children both directly and indirectly.²⁷⁶

²⁷¹ The *Ombudsman for Children Act, 2001* and the *Human Rights Act 2002* give this power to the Ombudsman and the Commission respectively. The advice of neither office is mandatory, however.

²⁷² National Children’s Office, *National Children’s Strategy: Our Children their Lives* (Dublin: Stationery Office, 2000), p 41.

²⁷³ Corrigan, *The Development and Implementation of Child Impact Statements in Ireland* (Dublin: Office of the Minister for Children, 2006).

²⁷⁴ Barnardos, *Seven Steps to Ending Child Poverty* (Dublin: Barnardos, 2005).

²⁷⁵ Barnardos, *Every Child Matters, Parents under Pressure* (Barnardos, Dublin, 2002) p 12.

²⁷⁶ Committee on the Rights of the Child, *General Comment No 5, General Measures of Implementation*, paras 51-52.

Recommendations

According to the Committee on the Rights of the Child, comprehensive and ongoing review of all domestic legislation and related administrative guidance is required to ensure full compliance with the CRC.²⁷⁷ In Ireland, greater efforts need to be made to ensure implementation of children’s rights by establishing permanent mechanisms that children’s rights proof law, policy and budgets in all areas affecting children. Consideration should be given to introducing a statutory requirement that a statement explaining its compliance with the CRC accompany all new legislation and budgets. A continuous policy to ensure the ongoing review of law and policy should also be put in place.

1.4 Inadequate Administrative and Political Structures

One of the way in which a child rights focus will be secured in law, policy and practice is through prioritising and mainstreaming such an approach throughout Government. According to the Committee on the Rights of the Child, effective implementation of the Convention requires visible cross-sectoral co-ordination to recognise and realise children’s rights across Government, between different levels of Government and between Government and civil society - including in particular children and young people themselves. These are important to ensure that the Convention is implemented in a co-ordinated manner, and also because they indicate a willingness to give higher political priority to children and an increasing sensitivity to the impact of governance on children and their human rights.²⁷⁸

Ireland has made some progress in this area but serious concerns remain about the extent to which children’s rights are at the heart of the decision making and planning processes, and whether the administrative and political structures designed to make this a reality are having the necessary positive impact on children’s rights.

Office of the Minister for Children: Despite achievements in other areas, the Government has been slow to put effective administrative structures in place to co-ordinate and monitor implementation of children’s rights, law and policy initiatives in the area of children’s services. In December 2005, the Office of the Minister for Children (OMC) was established.²⁷⁹ While a very welcome measure, OMC is not a fully-fledged independent ministry – many of its divisions are bi-located with principal departments for example – and so the significance and practical impact of this change has yet to be measured. There is always a risk that a ministerial office dedicated to children’s issues will compartmentalise

²⁷⁷ Committee on the Rights of the Child, *General Comment No 5, General Measures of Implementation*, para 18.

²⁷⁸ *Ibid.*, paras 10 and 28.

²⁷⁹ Press Release, (13 December 2005) www.omc.gov.ie, retrieved 27 July 2006.

them further, i.e. as the concern of OMC rather than of every government department²⁸⁰ and so every effort must be taken to ensure that OMC works to mainstream children's rights issues throughout all government departments.

The National Children's Office and the Irish Youth Justice Service: The National Children's Office was set up in 1999 as a cross-cutting, non-statutory body with particular responsibility for overseeing the implementation of the National Children's Strategy and co-ordinating Government policy in this area. In December 2005, it was incorporated into the Office of the Minister for Children but it remains without a statutory basis. It remains to be seen whether this change will address the lack of clarity in its role identified by the National Children's Advisory Council (see below) and give the NCO 'teeth' to effectively pursue its mandate under the Strategy and more generally. Similarly, following a review of the area of youth justice, the Irish Youth Justice Service was established as a body within the Department of Justice, Equality and Law Reform. This is a very welcome development although, without statutory powers, it is unclear how it will achieve its significant mandate, which includes monitoring and co-ordinating the delivery of services by various State agencies and bodies, NGOs that have been delegated State functions and three Government Departments. The Committee on the Rights of the Child has recommended that the Service be established on a statutory basis and that it gives high priority to the drafting and implementation of a child-oriented, rights-based Youth Justice Policy that is based on the Convention.²⁸¹

Cabinet Committee: At Government level, a Cabinet Committee on Children was set up, also under the National Children's Strategy, with the aim of reviewing progress on implementing the Strategy and agreeing priorities for action. Chaired by An Taoiseach, the Committee includes the Government Ministers with a significant role in implementing the Strategy, and meets on a quarterly basis. Again, the significant shortcomings in implementing the Strategy to date, noted in its mid-term review, suggest that the Cabinet Committee has been unsuccessful in ensuring children's voices are heard and a priority is given to children's issues at the highest political level.

Local Structures: A further shortcoming in this area is the absence of agencies acting at a local level to co-ordinate the implementation of children's rights, and to act as a link with law and policy at a national level. Consideration should be given to developing a network of children's offices as a focal point for the integrated and co-ordinated delivery of services and supports at local levels.

²⁸⁰ See the concerns of the Committee in this regard in Committee on the Rights of the Child, *General Comment No 5, General Measures of Implementation*, para 39.

²⁸¹ Committee on the Rights of the Child, *Concluding Observations: Ireland, 2006*, para 69(a).

Recommendations

The establishment of the Office of the Minister for Children provides a good opportunity to review all administrative and political structures in line with the requirements of the Convention and to ensure a child focus and a children's rights focus is being adopted in all relevant areas. Such structures should be kept under regular, meaningful review and monitored as to their efficacy in ensuring children's rights are fully protected and promoted.

1.5 Recommendations

This section considered the barrier presented by the invisibility of children in decision-making processes and law and policy, and the absence of child proofing, and monitoring and other structures designed to address this issue. The following recommendations address this barrier:

- Children's voices must be integrated into the mainstream political and administrative decision-making structures at local and central levels;
- Consideration should be given to requiring such consultation through legislation or incentivising it by, for example, making it a requirement of funding or budget allocation;
- The Office of the Minister for Children should consider establishing a dedicated programme to offer support, information and training to all those working with children, who must incorporate their views into their work;
- Permanent mechanisms need to be established that children's rights proof law and policy in all areas affecting children. Consideration should be given to introducing a statutory requirement that a statement explaining its compliance with the CRC accompany all new legislation;
- A continuous policy to ensure the ongoing review of law and policy should be put in place;
- A children's budget should be produced annually, and the impact of budgetary decisions on children's lives measured and explained;
- Structures like the Office of the Minister for Children and the Irish Youth Justice Service should be kept under review with regard to their efficacy in ensuring children's rights are fully protected and promoted.

In accordance with its statutory mandate in this area, it is recommended that the Ombudsman for Children act as a 'champion' for the child's right to be heard and consider establishing the Office as a centre of excellence in this area.

2. Law and Policy

Article 4 of the CRC requires states to take all appropriate measures necessary to implement the Convention. Where the State has a written Constitution, this should include either incorporating the CRC into the Constitution or giving express constitutional recognition to children's rights. In addition, children's rights should be expressly recognised in law and policy. Where children's rights are not explicitly set out in law and policy, those responsible for implementing these measures lack explicit guidance to take children's rights into account. This results in children being denied their rights, or these rights being ignored or underplayed, either taken alone or with reference to the rights of others.

2.1 Absence of Express Children's Rights in the Constitution

Lack of Express Rights for Children: Many of the problems highlighted in this research can be traced back to the constitutional position, in particular the fact that express rights for children are virtually absent from the 1937 Constitution and, where they do appear, they are limited to those rights which the child enjoys as part of the family unit. It is clear that this failure to give explicit protection to the independent rights of children has a knock-on effect on the profile of children's rights in law, policy and practice.²⁸²

Listening to Children: The child's right to be heard is not recognised in the Constitution. The Committee on the Rights of the Child has recommended that Ireland strengthen its efforts to ensure, including through Constitutional provisions, that children have the right to express their views in all matters affecting them and to have those views given due weight, in particular in families, schools and other educational institutions, the health sector and in communities.²⁸³

The Family: It is clear from this research that the constitutional position of the family, and the superior position enjoyed by the family based on marriage, act to the detriment of children and their rights. The Constitution has a direct impact on the way in which family law/constitutional cases are decided; it has also resulted in an under-resourcing of family support services and has underpinned a general reluctance to intervene in the family and, in such cases, a focus on the extent of parental failure rather than the needs of the child. This can be seen, for example, in the lack of priority for early intervention and support services, and in the absence of a strategy or approach to deal with child neglect.

²⁸² See Kilkelly and O'Mahony, 'The Proposed Children's Rights Amendment: Running to Stand Still?', *Irish Journal of Family Law*, 2 (2007), 19.

²⁸³ *Ibid.*, para 25 (a)

Education: Under the Constitution, 'the balance between the education rights of children and parents may be more properly described as an imbalance in favour of parents'.²⁸⁴ Case-law in the area of educational rights, particularly focusing on children with special educational needs, makes clear that, under the Constitution, parents both exercise their children's rights on their behalf and also enjoy independent rights of their own in this area.²⁸⁵ In contrast, children have few, if any, constitutional rights in the area of education, and reform is required to give express recognition to the rights of children in and to education.

The extent to which the State is responsible for educational provision and the treatment of children in schools is also questionable in light of the constitutional provision which recognises the duty of the State to 'provide for' (and not to provide) education.

Recommendation: A constitutional amendment is required to insert into the Constitution explicit protection for children's rights, including the general principles (non-discrimination, the best interests principle and the child's right to be heard) and other pivotal provisions, including the child's right to protection from harm, the right to education and the right to enjoy contact with both parents. Such an amendment would also have to address the current constitutional imbalance in favour of parents' rights.²⁸⁶

2.2 Gaps in Legal Provision

Ireland has not incorporated the CRC into domestic law, despite recommendations to this effect.²⁸⁷ This means that the CRC is not binding law in Ireland and, despite its binding international status, its potential to directly inform law and policy is limited. Nor are the courts required to act in conformity with the CRC when interpreting law and policy. Apart from the CRC's lack of status in Irish law, its principles and provisions are also absent from legislation in various areas. While there are many areas in which more laws will not solve the problem, in the examples that follow, it is clear that lacunae or inadequacies in the law create a problem for the protection of children's rights.

Best Interests of the Child: In 2006, the Committee on the Rights of the Child recommended that Ireland integrate fully into all legislation relevant to children the general principle that the best interests of the child are a primary consideration. It also recommended that this principle be applied in all political, judicial and administrative

²⁸⁴ O'Mahony, 'Children, Parents and Education Rights: A Constitutional Imbalance' *Irish Journal of Family Law*, 3 (2004), 3-7.

²⁸⁵ *Comerford v Minister for Education*, *ILRM*, 2 (1997), 134; *O'Shiel v Minister for Education*, *ILRM*, 2 (1999), 241. See also Whyte, 'Education and the Constitution: Convergence of Paradigm and Praxis', *Irish Jurist*, XXVII-XIX 69, 1002-2994.

²⁸⁶ See the Advice of the Ombudsman for Children on the proposed referendum on children's rights, (December 2006) www.oco.ie

²⁸⁷ Committee on the Rights of the Child, *Concluding Observations: Ireland* (2006), para 9. See also Ombudsman for Children, *Report to the Committee on the Rights of the Child*, p 6.

decisions, as well as projects, programmes and services that have an impact on children.²⁸⁸ The provision currently enjoys limited expression in statutes directly concerning child welfare, such as the *Child Care Act, 1991*, the *Children Act, 2001* and the *Guardianship of Infants Act, 1964*, and none in other areas including education (see the *Education Act, 1998*). Nor is there any acknowledgement in legislation that under Article 3 of the CRC, the best interests principle places a duty on all public bodies, including the judiciary, local authorities and service providers, to act in the best interests of children.

Separated Children: The *Immigration, Residency and Protection Bill, 2006* provides that an application for asylum shall not be made where the HSE decides it is not in the best interests of the child and that the person is entitled to protection. It is not clear whether the HSE is best placed to decide who is/is not entitled to protection and the role of the HSE should be clarified in legislation, and consideration given to establishing a *guardian ad litem* system in this area to ensure such children are independently advised and represented.²⁸⁹

Family Reunification: There are currently no laws governing the family reunification process. This is carried out by administrative schemes only.²⁹⁰ With some limited exceptions (relating to EU groups) family reunification applications are considered and granted at the absolute discretion of the Minister for Justice, Equality and Law Reform, in the absence of published criteria. This lack of transparency is a matter of serious concern, and legislation is required urgently to ensure that such decisions are guided by the best interests of the child and otherwise act in conformity with the CRC and Ireland's other international obligations.

Right to be Heard: This principle enjoys very limited expression in statute and is only recognised in the context of public law/child care proceedings (see above) and in criminal law proceedings under the *Children Act, 2001*. In particular, provision to listen to children where this is 'appropriate' or 'practicable' do not provide adequate protection of the child's right to be heard.

Education: Schools are not required under the *Education Act, 1998* to consult with pupils on matters that concern them, including their code of behaviour. This means young people have no 'buy-in' to the disciplinary codes which apply to them, and which are supposed to influence their behaviour. This is a key area of activity for the OCO, given that education falls squarely within its policy remit and its complaints function.

²⁸⁸ Committee on the Rights of the Child, *Concluding Observations: Ireland (2006)*, para 23.

²⁸⁹ *Irish Refugee Council submission on the scheme of the Immigration, Residence and Protection Bill*, (November 2006), p 13. See also Integrating Ireland, *Observations in response to the Department of Justice, Equality and Law Reform on the Immigration, Residence and Protection Bill 2006* (November 2006).

²⁹⁰ Cosgrave, *Family Matters: Experiences of Family Reunification in Ireland. A Critical Analysis of Government Policy and Procedure* (Dublin: Immigrant Council of Ireland, 2006).

School Councils: Despite a precise recommendation by the Committee on the Rights of the Child to promote the implementation of Article 12 in the educational setting,²⁹¹ there is no legislative provision for school councils at primary level and no requirement that they be established at second level. While much work has been undertaken to support the establishment of schools councils and to improve the quality of effective councils,²⁹² the absence of a statutory duty to introduce councils in all schools at both levels is a barrier to the full implementation of Article 12 in this area.²⁹³

Non-Discrimination between Children: No legislation currently exists to guarantee the right of children to equal protection and enjoyment of their rights. Children are currently excluded from relying on the age ground under the *Equal Status Acts, 2000-2004* and children under 16 years cannot rely on the age ground under the *Employment Equality Acts, 1998-2004*. The Constitutional position is unclear at best.

Non-Discrimination in Schools: There is emerging anecdotal evidence that schools use a child's religion (i.e. baptism) as an admission criterion particularly given increasing pressure on school numbers. In 2005, the UN Committee on the Elimination of Racial Discrimination (CERD) expressed concern that existing laws and practice favoured Catholic pupils in the admission to Catholic schools in case of shortage of places, particularly in the light of the limited alternatives available. It encouraged Ireland to promote the establishment of non-denominational or multi-denominational schools and to amend the existing legislative framework so that no discrimination may take place as far as the admission of pupils (of all religions) to schools is concerned.²⁹⁴ The Committee on the Rights of the Child reiterated this recommendation in 2006.²⁹⁵

Privacy in Court: The *Children Act, 2001* provided children in the Children Court with a guarantee that their privacy would be protected in accordance with Article 40 of the CRC. This provision did not extend to the higher courts. This position was amended by the *Criminal Justice Act, 2006* to extend the *in camera* rule to the higher courts but also to insert an exception to all cases where the public interest so requires. The Committee on the Rights of the Child recommended that the protection of privacy extend to all legal proceedings involving children.²⁹⁶

²⁹¹ Committee on the Rights of the Child, *Concluding Observations: Ireland (2006)*. See further above.

²⁹² See *Student councils: A voice for students* (Dublin: DES, 2002).

²⁹³ The establishment of structures to enable pupils to be consulted about policies that affect them was recommended by the INTO, which noted that pupils can provide critical feedback. INTO, *Challenges for Learning* (Dublin: INTO, 2005), 38.

²⁹⁴ Committee on the Elimination of Racial Discrimination, *Concluding Observations Ireland*, CERD/C/IRL/CO/2 (2005), para 18.

²⁹⁵ Committee on the Rights of the Child, *Concluding Observations: Ireland (2006)*, para 61.

²⁹⁶ *Ibid.*, para 26-27.

Soft Information: There is a need to address the difficulties concerning the burden of proof in this area so that information about people believed to be a risk to children can be held by An Garda Síochána for vetting purposes. This is related directly to the need to vet all those coming into contact with children; while there are serious issues of child protection involved here, a proportionate balance must also be found with the individual's right to protect their good name with safeguards being key. The Joint Oireachtas Committee on Child Protection recommended, in November 2006, that a statutory framework be established, making provision for the use of soft information as part of employee vetting procedures.²⁹⁷

Unmarried Fathers: It is well established that the unmarried father occupies a disadvantageous position in Irish law vis-a-vis the unmarried mother, and that his rights are inadequately recognised. At present, unmarried mothers have automatic sole guardianship rights over a child (and constitutional rights under Article 40.3) while unmarried fathers have no automatic rights and no constitutional right to guardianship. They may only apply for guardianship under the *Guardianship of Infants Act, 1964*. This legal position needs to be addressed to ensure that the child's right to identity and to contact with both parents have explicit statutory recognition.

Unmarried Families: No registered partnerships or presumptive rights schemes exist for cohabiting couples, meaning that the rights of children in these relationships remain unprotected. Nor do such families enjoy the protection afforded to married couples in relation to protecting the family home or to pension entitlements.²⁹⁸ Adult members are not entitled to maintenance on the break-up of a relationship (unlike a marriage) and while married parents are automatically joint guardians of their children, unmarried couples must sign a statutory agreement for joint guardianship, with the obvious requirement of consensus.²⁹⁹ Similarly, there is no duty on parents to conclude a joint guardianship agreement or to have both parents' names registered on the child's birth certificate. Legal provision must be made for children's rights to identity and to contact with both parents to be protected.

²⁹⁷ Joint Oireachtas Committee on Child Protection, *Report on Child Protection* (November 2006), 87-88.

²⁹⁸ For example, such families do not have the benefit of the *Family Home Protection Act 1976*, which protects the sale of the family home without the consent of the other spouse. They do not enjoy the facility of property adjustment orders or orders in respect of the family home that serve to protect spouses on family breakdown, and remedies available under the *Family Law Act 1995* and the *Family Law (Divorce) Act 1996* do not extend to them. There is also a lack of proper protection for the inheritance rights of lone parents arising out of cohabiting arrangements that break down and non-marital partners often face significant difficulties accessing pension funds on the death of a partner, especially because public sector pensions do not recognise non-marital partners. See One Family, *Submission to Department of Justice, Equality and Law Reform's Working Group on Domestic Partnerships* (19 May 2006).

²⁹⁹ A related concern is the lack of a central register of guardianship agreements. See Children's Rights Alliance, *From Rhetoric to Rights*, para 192, pp 31-32.

Child's Right to Contact: Despite the overwhelming evidence that children in joint custody (legal and physical), and who enjoy contact with both parents, do better,³⁰⁰ there is no statutory recognition of the right of the child to have regular and direct contact with both parents unless it is contrary to the child's best interests (Art 9, CRC). While the courts have operated the assumption that contact/access is in the child's best interests, this principle does not have statutory recognition and so is not a formal or mandatory factor in the decision-making process.

Parental Responsibility: This area of law and policy is in need of reform in line with children's rights obligations. In particular, the language needs to be revised from custody and access, to parental responsibility and contact. It is also important that law and policy promote an ethos of lifelong parental responsibility for children regardless of their marital status, and promote co-operation between parents in decision making about the reorganisation of family life after separation.

Right to Identity: There is no statutory recognition of the right of the child to know his/her parents (Art 8, CRC). This raises concern for children born outside marriage,³⁰¹ children conceived by assisted reproduction using donor gametes,³⁰² and children who are adopted,³⁰³ none of whom enjoy a statutory right to know the identity of their natural parents.

Physical Punishment: Exceptions from the ban on physical punishment still exist in relation to children in foster care³⁰⁴, children in certain kinds of day care³⁰⁵ and within the family.³⁰⁶ Physical restraint against children in detention or secure care is still permitted. The Committee on the Rights of the Child expressed its deep concern in 2006 that corporal punishment within the family is still not prohibited by law.³⁰⁷

³⁰⁰ Bauseman, 'Child Adjustment in Joint-Custody versus sole-custody arrangements: a meta-analytic review', *Journal of Family Psychology*, 16/1 (2002), 91-102 and Hogan, Halpenny and Greene, *Children's Experiences of Parental Separation* (Dublin: Children's Research Centre, 2002).

This research found that one of the most important issues for children during the separation of their parents was maintaining contact with both parents. Those who did not see their non-residential parents as much as they would have liked were more likely to be distressed about the separation.

³⁰¹ Alison Healy, '20,000 born each year without right to know their fathers', *Irish Times*, 17 May 2006. About one quarter of children born outside marriage do not have their father's name on the birth certificate while other children may have their father's names on their birth certificate but not have any contact with them.

³⁰² A right to access identity information for those over 18 years was recommended by the *Commission on Assisted Human Reproduction* in 2005. Donnelly et al, *Report of the Commission on Assisted Human Reproduction* (Dublin: Department of Health and Children, 2005).

³⁰³ Only limited recognition of this right was recommended by the Adoption Consultation in 2005. Department of Health and Children, *Adoption Legislation: 2003 Consultation and Proposals for Change* (January 2005). See also McIntyre, 'Adoption Law: the Case for Reform', *IJFL*, 1 (2001), 6. See also Richardson, 'Current Issues in Adoption Policy and Practice' *IJFL*, 2, 2003 p 14.

³⁰⁴ The National Standards for Foster Care, which prohibit physical punishment, do not have statutory force.

³⁰⁵ Section 58 of the *Child Care Act 1991*, which prohibits physical punishment in day care, provides a general exemption from the Pre-School Services Regulations for certain categories of child carers, including those who care for less than three children in their own home.

³⁰⁶ See Arthur, 'Ending corporal punishment of Irish Children: Complying with Ireland's International Law Obligations', *Irish Journal of Family Law*, 2/5, 8-11. Under common law, physical punishment which constitutes reasonable and proportionate chastisement is legal.

³⁰⁷ Committee on the Rights of the Child, *Concluding Observations: Ireland* (2006), para 39. See also Ombudsman for Children, *Report to the Committee on the Rights of the Child*, pp 19-20. See also Committee on the Rights of the Child, *General Comment No 8, The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment*. CRC/C/GC/8 (2006), para 34.

Children First: The non-statutory child protection guidelines need urgent revision. The fact that they do not have a statutory basis means *inter alia* that reporting of child sexual abuse is not mandatory and there is no effective mechanism for ensuring their implementation. As explained in Part A above, this means that the mechanisms in place to protect children from harm are inadequate and place their rights under Article 19, CRC at risk.

Amicus Curaie: The *Ombudsman for Children Act, 2002* does not give OCO the power to intervene as an *amicus curiae* in relevant legal proceedings, despite the fact that the determination of the issue may benefit significantly from the independent and impartial input of the office in such cases. As a result, there is inadequate legislative provision for third-party intervention in relevant legal proceedings. The Irish Human Rights Commission enjoys this power but does not necessarily have the expertise or focus to undertake this role in children's cases. Joint protocols are required here to ensure that the IHRC powers are used in children's cases with OCO co-operation and input.

Special Care Orders: Special Care Orders are made by a court to place a child in a special care unit where 'the behaviour of the child is such that it poses a real and substantial risk to his or her health, safety development or welfare and the child requires special care'. While criteria for making such an application were agreed between the HSE and the Children Acts Advisory Board in November 2006, these are not statutory in nature and so are not binding on the parties.³⁰⁸ Statutory expression should be given to the principle that detention is a measure of last resort (Art 37, CRC) and the provision should be made for the protection of the rights of the child in Special Care Units. Statutory provision should also be made for children to be heard at the hearing for a Special Care Order and for the child to be present at their review.

Children Leaving Care: Young people with care experience are significantly more disadvantaged in terms of education, income and employment. One study found that 68 per cent of young people had experienced homelessness two years after leaving HSE care.³⁰⁹ While the *Child Care Act, 1991* makes provision for a leaving care plan to be prepared for children in care, beginning at age 16, there is no statutory requirement on the HSE to prepare children for leaving care. Similarly, the Act enables but does not require the provision of aftercare support from age 18 to 21 or when they have completed their full-time education.³¹⁰ The lack of a statutory duty to provide after-care services for children leaving care has meant that aftercare services are 'patchy, inadequate and not prioritised

³⁰⁸ Details are available, www.caab.ie, retrieved 24 August 2007.

³⁰⁹ Kelleher, Kelleher and Corbett, *Left Out on their Own: Young People leaving care in Ireland* (Dublin: Oak Tree Press, 2000) in Children's Rights Alliance, *From Rhetoric to Rights*, para 216, 34.

³¹⁰ See also Buckley, *Child Protection and Welfare Innovations and Interventions* (Dublin: IPA, 2002). See also Mayock and Vekic, *Understanding Youth Homelessness in Dublin City*, 5.

for resources'.³¹¹ This has been exacerbated by the fact that there is no written policy or procedures to assist young people leaving care, leaving all initiatives to the discretion of the HSE areas.³¹² The Committee on the Rights of the Child has recommended that the Government strengthen its efforts to ensure and provide for follow-up and after-care to young persons leaving care centres.³¹³

Adoption Law: Adoption legislation is out of date and no longer adequate to meet the needs of children. Problems include the need to regulate inter-country adoption, the rights of unmarried fathers, step-family adoption³¹⁴ and access to information and issues concerning search and reunion.³¹⁵ Lack of up-to-date adoption legislation places the rights of children involved in the adoption process at risk.

- **Reform:** Despite the obsolete nature of Irish adoption legislation, reform is extremely slow and new legislation is long overdue. Following a consultation process in 2003, draft heads of bill were published in 2005 but the legislation has not yet been passed.³¹⁶ This was the subject of concern of the Committee on the Rights of the Child in 2006.³¹⁷
- **Open Adoption:** There is no legal provision for 'open adoption' but many mothers may prefer to opt for some form of open adoption arrangement. Without the legal provision for such agreements, however, the legal status of the mother and child's relationship is uncertain, and this situation needs to be resolved through law reform and other measures, including counselling for natural parents.
- **Children Born inside Marriage:** Recent case law has highlighted the virtual impossibility of having a child born to married parents adopted.³¹⁸ This situation needs to be urgently reformed so that children born inside marriage have the same rights to a family and to protection from harm as those born outside marriage. Constitutional change is clearly required to protect the equal right of all children to alternative care including adoption determined to be in their best interests. This is anticipated.
- **International Adoption:** Ireland has not ratified the Hague Convention on Inter-country Adoption, designed to ensure minimum standards are adhered to by all Hague countries, as its laws do not provide the requisite level of protection. This means that children adopted internationally into Ireland experience less protection than those

³¹¹ Department of Health and Children, *Working for Children and Families, Exploring Good Practice*, (Dublin: Department of Health and Children, 2003), 8.

³¹² Stein, Pinkerton and Kelleher, 'Young people leaving care in England, Northern Ireland, and Ireland' *European Journal of Social Work*, 3/3 (2000), 235-246, 244.

³¹³ Committee on the Rights of the Child, *Concluding Observations: Ireland* (2006), para 33(b).

³¹⁴ This has been growing in Ireland in proportion to other types of domestic adoption – for example, they were 5.3 per cent of all adoptions in 1980 and 67 per cent in 2000. See Loftus, 'What children know about their birth circumstances in stepfamily adoption in the Republic of Ireland', *Child Care in Practice*, 9/4 (2003), p 322-335, p 322.

³¹⁵ See Richardson, 'Current issues in adoption policy and practice' *IJFL*, 2 (2003), 14.

³¹⁶ Department of Health and Children *Adoption Legislation: 2003 Consultation and Proposals for Change* (Dublin: Stationery Office, 2005).

³¹⁷ Committee on the Rights of the Child, *Concluding Observations: Ireland*, (2006), paras 34-35.

³¹⁸ N and N v HSE, G and G and An Bord Uchtala, *IESC*, (2006), 60.

adopted within Ireland. This is worrying because Ireland has a high number of children adopted from other countries which has only been possible through the completion of bilateral agreements with individual countries, some of whom are not part of the Hague framework. Ireland needs to take the necessary steps to ratify the Hague Convention urgently and to consider terminating arrangements with countries outside this Convention.

Children with Disabilities: The statutory entitlements of children with disabilities are clearly set out in the *Education Act, 1998*.³¹⁹ However, qualifications in the Act threaten to 'set a child's statutory right to appropriate education at naught' by referring to 'as far as practicable' and 'having regard to the resources available' in several provisions.³²⁰ The resources defence applies under the Act to both the school and the Minister, and it is also used in respect of the *Education for Persons with Special Needs Act, 2004*. This is contrary to the CRC (Arts 2 and 28).

Special Needs: The enactment of the *Education for Persons with Special Needs Act (EPSN) 2004* provides a detailed framework for making adequate provision for children with special educational needs. Two major issues arise, however. The first is the age limits on entitlements; what is at issue here is provision for continuing support for a child with special needs on reaching 18. In particular, the Act appears (although this is not explicit) to allow for education plans and their resourcing only up to age 18 and to leave to aspiration subsequent provision for when the child reaches that age. This will result in children, such as those with autism, running the risk of losing the benefit of earlier education as a result of its discontinuation once they reach 18. In this way, the Act fails to reverse the age limit imposed by the Supreme Court in the *Sinnott* judgment.³²¹

The second issue is that it is unclear whether the Act provides a remedy for the circumstances in which adequate resources are not made available to meet a child's needs as determined under the Act's provisions. The Act also fails to make provision for the circumstances in which the needs of the child can be best met in another jurisdiction which offers more appropriate care. This has already led to legal challenges.³²²

The *Disability Act, 2005* does not make specific provision for children and thus the only legislative instrument of importance in this area focuses on the rights of disabled children to and in education. This means that there is no comprehensive statutory framework

³¹⁹ For example Section 9 requires that the school ensure that the educational needs of all students, including those with disabilities, are identified and provided for, while Section 15 requires the school to publish its admission policy, including its policy on admission to and participation by students with disabilities or who have other special educational needs.

³²⁰ See Sections 6(b) and 7(4)(a)(i) in Duane, 'Children with disabilities and the law', *Irish Journal of Family Law*, 2 (2004), 8-13, p 11.

³²¹ See O'Mahony, 'Education for Persons with Special Educational Needs Act 2004 – A New(ish) Beginning', *Irish Law Times* (2004), 309.

³²² See the case of O'Carolan v Minister for Education, *IEHC* (2005), 296 in O'Mahony, Cases and Comment: 'The right to Education and 'Constitutionally appropriate provision' *Dublin University Law Journal*, 13/1 (2006), 422.

to ensure that children with disabilities have the right to access and enjoy a full range of health, social and educational services, in line with Arts 3 and 23, CRC and the Convention on the Rights of Persons With Disabilities (Arts 3 and 7).³²³

Health Care: There are no statutory guidelines for the treatment and care of children in hospital despite the commitment to introduce them in the National Health Strategy. The Committee on the Rights of the Child expressed concern in 2006 about the lack of a comprehensive legal framework in this area and the absence of statutory guidelines safeguarding the quality of and access to health care services as stipulated in Article 24 of the Convention, in particular for children in vulnerable situations. It recommended the adoption of all-inclusive legislation that addresses the health needs of children.³²⁴

Criminal Responsibility: Following the amendment of the *Children Act, 2001* in the *Criminal Justice Act, 2006*, the age of criminal responsibility was raised to 12 with an exception for serious crime in respect of which children can be charged at 10 years. The Committee on the Rights of the Child has expressed serious concern about the low age and the disparity in the ages applied for different crimes and has recommended the reinstatement of the original 2001 Act provisions.³²⁵

Anti-Social Behaviour Orders: The Committee on the Rights of the Child has expressed concern about the introduction of the controversial Behaviour Orders into Irish law in the *Criminal Justice Act, 2006* and recommended that their use be closely monitored and only used as a last resort after preventive measures (including a diversion scheme and family conferences) have been exhausted in accordance with Article 40, CRC.³²⁶

Recommendations: Explicit protection for the rights of children are absent from a wide range of legislative instruments, and law reform is required to prevent children's rights from being underplayed or ignored in the areas identified above. Certain areas, like adoption, will require a full children's rights audit to ensure that the resulting legislation is CRC compliant.

2.3 Commencing, Implementing and Resourcing Legislation

Legislation which has been passed by the Oireachtas sometimes takes time to implement and fully resource. This is to be expected where legislation is complex or has to be phased in for practical reasons. However, in the examples that follow, there has either been inordinate delay in commencing legislation, or it has not happened at all. This is the underlying problem in areas of child protection, economic exploitation, and separate

³²³ Children's Rights Alliance, *From Rhetoric to Rights*, para 258-262, p 41.

³²⁴ Committee on the Rights of the Child, *Concluding Observations: Ireland* (2006), para 44. and 45(a).

³²⁵ *Ibid*, para 66-67.

³²⁶ *Ibid*, para 69(b).

representation where consequently, the rights of the children concerned are placed at risk. This is particularly serious given that the Oireachtas has approved the legislation concerned, making the risk avoidable. In other instances, legislation has been enacted but inadequately resourced. This is contrary to Article 4 of the CRC, which requires states to implement socio-economic rights, like the right to health care, education and housing, to the maximum extent of available resources. This requires that states with sufficient resources must put them to maximum effect. The impact is the same, i.e. placing children's rights at avoidable risk particularly in light of Ireland's relatively high level of economic wealth. Some illustrations follow:

Separate Representation: Children have no right to separate representation in private family law proceedings, or in other proceedings which affect them, because of the failure to commence the relevant parts of the *Children Act, 1997*. Without this, courts have no power to direct the appointment of a guardian in such cases or to sanction the retention of a legal representative for the guardian. Even when the provision is enacted, the section requires 'special circumstances' to justify the appointment of a guardian but it is not clear what special circumstances must exist.³²⁷

Youth Work Act, 2001: There has been a lack of adequate funding to implement both the *Youth Work Act, 2001* and the National Youth Work Development Plan.³²⁸

Educational Disadvantage: The National Education Welfare Board (NEWB) is currently inadequately resourced to enable it to fulfil the full array of its statutory functions.³²⁹ Although the NEWB has responsibility for the continuing education of young people aged 16 and 17 who leave school to take up employment, no progress has been made in relation to this part of its remit, arguably due to the lack of resources.³³⁰ At present, there are only 83 Education Welfare Officers nationwide³³¹ and, although 15 posts were announced in 2007,³³² the workload of existing officers is very heavy.³³³ The impact of this is worst felt by those in low-income communities.³³⁴

³²⁷ The Children Acts Advisory Board has the function to publish guidance on the qualifications, criteria for appointment, training and role of any guardian *ad litem* appointed for children in proceedings under the Act of 1991, under Section 227 of the *Children Act 2001* as amended by the *Child Care (Amendment) Act 2007*.

³²⁸ Children's Rights Alliance, *From Rhetoric to Rights*, para 450, p 64.

³²⁹ Barnardos, *Make the Grade*, pp 5-6.

³³⁰ Almost 15 per cent of young people leave school before completing the Leaving Certificate, and 3 per cent leave with no formal qualification at all. Department of Education and Science, *Retention rates of Pupils in Second Level Schools 1996 Cohort* (Dublin: 2005) in Barnardos, *Make the Grade*, 10. One child in ten leaves primary school with serious literacy problems, increasing to one in three in disadvantaged communities. Barnardos, *Make the Grade*, p 7.

³³¹ Barnardos, *Make the Grade*, p 10.

³³² 'National Educational Welfare Board welcomes announcement of extra staff', (19 January 2007) www.newb.ie, retrieved 10 February 2007.

³³³ See Barnardos, *Make the Grade*, p 10.

³³⁴ High levels of early school leaving are concentrated in low-income communities and particularly prevalent among boys. The employment prospects for those who leave school early are worse than ever as employers seek a more educated workforce. A 2004 ESRI study found that 21 per cent of early school leavers were still unemployed one year after leaving school, in comparison to 11 per cent in 1999. ESRI, *Annual School Leavers Survey* (Dublin, 2006) in Barnardos, *ibid*.

School Attendance: NEWB statistics from 2005 note that:

- Every primary student misses, on average, 10 days in the 183-day school year, but this rises to 17 days in the most disadvantaged urban areas;
- One in five students from disadvantaged areas misses more than 20 days in primary and secondary school in a given year.³³⁵

The under-resourcing of the NEWB explains why, despite paying considerable policy attention to reducing absenteeism, it remains at a significant level nationwide in both the primary and second level sectors. Much greater sustained investment is required to enable the NEWB to tackle these problems on a long-term basis and to ensure that every child's right to education is adequately protected (Arts 2 and 28, CRC).

Tobacco: Although it is illegal to sell cigarettes to anyone under 18, a survey, conducted by the Office of Tobacco Control (OTC) in 2006, found that 16 per cent of 12 to 17-year-olds are now smoking and of those who do smoke, 92 per cent were not asked for identification the last time they bought cigarettes.³³⁶ Clearly, the law is not being enforced in this area. Education of retailers and an increased number of inspectors are required to protect the child's right to health and protection from harm (Arts 19, 24 and 33, CRC).

Road Safety: Together with raising awareness among parents, greater measures should be taken to protect children from road traffic accidents by: enforcing requirements regarding the fitting of baby seats; wearing of seat belts; and the wearing of safety helmets, etc while cycling.³³⁷ This is a matter for An Garda Síochána.

Homelessness: Improving the security of tenure for tenants in the private sector could improve the attractiveness of renting and help to stabilise house prices. The *Residential Tenancy Act, 2004* is welcome, but its implementation and enforcement require dedicated resources.³³⁸

Economic Exploitation: The *Protection of Young Persons (Employment) Act, 1996* sets out the framework to protect young people from harmful employment, in line with Art 32, CRC. It should serve as the guarantor of their right to be protected from unfair and exploitative practices which hinder their development and education. According to the

³³⁵ NEWB, *Pre-Budget Submission* (Dublin, 2006) in Barnardos, *ibid*.

³³⁶ Office of Tobacco Control, *Children, Youth and Tobacco: Behaviour, Perceptions and Public Attitudes* (Dublin: OTC, 2006). See also Eithne Donnellan, 'Retailers failing to check ages of young smokers' *Irish Times*, 29 November 2006.

³³⁷ See the Committee on the Rights of the Child, *General Comment No 4, Adolescent health and development in the context of the Convention on the Rights of the Child*, para 21.

³³⁸ CPA, *Policy Statement on Child Poverty 2005*, p 7.

National Youth Council of Ireland, the legislation 'seems to be widely ignored'. Under Sustaining Progress, a commitment was made to evaluating compliance with the Act but this has not been implemented. There are an inadequate number of labour inspectors to enforce the legislation.³³⁹

The Children Act, 2001: While the *Children Act, 2001* is now fully in force, parts relating to the detention of children will not be implemented for many years. Moreover, years of under-funding will need to be addressed to ensure that all facets of the youth justice system – including education, probation and health services – play a full role in effectively tackling offending behaviour.

Recommendation: The failure to implement and fully resource legislation threatens to place children's rights at risk. For this reason, a full audit should be undertaken, either by the Ombudsman for Children or the Office of the Minister for Children, of those areas in which laws have been passed but whose implementation or full resourcing is outstanding. A programme should then be put in place to ensure complete resourcing and implementation of all legislation passed by the Oireachtas.

2.4 Gaps/Flaws in Policy

While progress has been made in adopting policies on a range of subjects relevant to children's rights, problems still exist in areas where policies are absent, incoherent or inadequate from a children's rights perspective. The result is that decision-makers have little to inform them on issues concerning children, and lack guidance to ensure that their approach is CRC-compliant.

Family Policy: There is no unified family policy and, as a result, no coherent framework within which family supports and services can be implemented. While efforts have been made to address supports for lone parents, there is an urgent need to develop and implement a coherent policy framework for one-parent families, a group where the incidence of deprivation is particularly high.³⁴⁰ This means that the socio-economic rights of children in this group continue to be ignored (Art 27, CRC).

School-Age Parents: There is no national strategy to deal with school-age parents to ensure that they get the support (financial and childcare) that they need to enable them to continue with and complete their education (Arts 2 and 28, CRC). There are no formal guidelines or protocols to help schools deal with these issues.

³³⁹ Budget 2006, 'Youth Forgotten' *Post-Budget Analysis*, National Youth Council of Ireland, p 7.

³⁴⁰ One Family, *Government Discussion Document on Proposals for Supporting Lone Parents' Submission to Department of Social and Family Affairs* (6 June 2006). See also One Family, *Policy Position Paper: Ensuring Quality of Life for All One-Parent Families* (August 2006).

Young Carers: There is no national policy dedicated to young carers and, although a number of policy developments related to health, disability, children and their families, are relevant,³⁴¹ the notion of the young carer is largely absent in policy and research literature, resulting in the neglect of their rights and needs.

Early Childhood Education and Care (ECEC): Dozens of reports have highlighted the fact that ECEC is under-developed in Ireland, which has no history of comprehensive or universal provision.³⁴² While the *National Childcare Investment Programme 2006–2010*, under the remit of the Office of the Minister for Children, offers funding in this area, it does not represent a coherent policy response towards early childhood education and care, which is driven by the child's rights to development, care, education, health and wellbeing and play.³⁴³

Child Abuse: There is no national strategy or policy to prevent and respond to child abuse and to deal with the broad area of child protection. Both the *Ferns Report* and the *Report of the Oireachtas Child Protection Committee* repeated many of the same recommendations (set out above) but there has been no policy adopted to set out the proposed way forward. The Committee on the Rights of the Child expressed serious concern about the lack of a comprehensive national strategy or measures for the prevention of child abuse and recommended that a comprehensive child abuse prevention strategy be developed, including: developing adequate responses to abuse, neglect and domestic violence; facilitating local, national, and regional co-ordination; and conducting sensitisation, awareness-raising and educational activities.³⁴⁴

Children First: These guidelines are in urgent need of revision. Some problems are as follows:

- Their scope is narrow and they do not apply in private settings, such as childcare facilities;
- They are inadequate to deal with neglect;
- They are weak on enforcement – training on child protection procedures has been found to be lacking in community playgroups and education settings.³⁴⁵

³⁴¹ It has also been recommended that the Department of Health and Children accept responsibility for policy in relation to young carers, and that delivering appropriate supports on the ground be an explicit function of the HSE with other relevant key policy players like the NCO, the Mental Health Commission and others playing a key role in identifying and formulating responses to need at system and case level. See Halpeny and Gilligan, *Caring before their Time? Research and Policy Perspectives on Young Carers* (Dublin: National Children's Resource Centre, Barnardos and Children's Research Centre, TCD, 2004), p 50.

³⁴² Department of Justice, Equality and Law Reform, *National childcare strategy: Report of the Partnership 2000 expert working group on childcare* (Dublin: Stationery Office, 1999); Corrigan, *OECD Thematic Review of Early Childhood Education and Care Policy in Ireland*.

³⁴³ See Committee on the Rights of the Child, *General Comment No 7 implementing child rights in early childhood CRC/C/GC/7/Rev.1* (2006).

³⁴⁴ Committee on the Rights of the Child, *Concluding Observations: Ireland* (2006), paras 36 and 37(c).

³⁴⁵ Buckley, 'Duty to Care: Reducing risk in childcare settings' *Irish Journal of Family Law*, 9 (2006), 1-8, p 4.

Residential care, and other services within the framework of alternative care, operates in a policy vacuum. In its 2004 and 2005 Annual Reports, ISSI made a series of recommendations necessary to support equitable standards of services across all regions. These highlight some of the inconsistencies across areas in the current system with regard to differing standards in children's residential centres, differing financial and personnel resources, differing ratios of children in care and differing ratios of children in foster care and residential care. Accordingly, the ISSI recommended in 2005 that the HSE rationalise some resources and develop national policies and protocols in the following areas:

- National protocol on managing child protection and complaints when a child is placed out of his/her local health office area;
- National protocol on monitoring where a child is placed out of the area covered by the local monitoring officer;
- Standardisation of reporting relationships for HSE monitoring officers nationally and clear guidance on their role;
- Better HSE monitoring officers to produce a more even spread of monitoring and inspection activity across children's residential centres;
- National policy on aftercare.³⁴⁶

Children with Disabilities: There is a failure at policy level to acknowledge that early intervention for children with disabilities must address their health and their education needs (Art 23, CRC). As a result, the rights and needs of children with disabilities to appropriate health care and screening are not uniformly met, and supports for families are, in many ways, poorly developed. Families with highly dependent children may have to 'fight' to get a break from caring for a few hours every week. Children may have to wait for months for appropriate equipment, such as special seating. Coherent, rights-based policies on these issues are urgently required to ensure that the rights of disabled children are fully protected.

Racism: The issue of racism in schools and among school children warrants attention at a policy level.³⁴⁷ Schools do not have specific policies or practices for recording and dealing with complaints about racist incidents, and there is little support for teachers on how to deal with racist behaviour. There is no unit within the Department of Education and Science responsible for racial equality or multiculturalism in schools.

Bullying: All schools do not yet have anti-bullying policies (there are no sanctions for those who do not) and there are difficulties ensuring access to psychological and

³⁴⁶ Irish Social Services Inspectorate, *Annual Report* (Dublin: ISSI, 2005)

³⁴⁷ Devine, Kenny and McNeela, 'Experiencing Racism in the Primary school – Children's Experiences and Views', in Deegna, Devine and Lodge (eds) *Primary Voices – Equality, Diversity and Childhood in Primary Schools* (Dublin: IPA, 2004).

counselling services for both victims and perpetrators.³⁴⁸ The Committee on the Rights of the Child recommended in 2006 that necessary measures are taken to combat the phenomenon of bullying and that its consequences are dealt with in a responsive and child-sensitive manner.³⁴⁹ This is important to ensure that all children are protected from harm in school (Art 19).

Tobacco: There is a lack of strategy to combat smoking among young people, particularly among poor socio-economic groups, despite evidence that initiation into smoking is largely a childhood and teenage phenomenon.³⁵⁰ It is in this context that a failure to ban tobacco advertising must be viewed, given the research that anti-smoking advertising campaigns have a maximum 50 per cent impact getting the message about the dangers of smoking across.³⁵¹ Despite this evidence, there has been a failure to deal with tobacco in an integrated way as a children's health issue.³⁵²

Health Promotion: Strategies are needed to foster more responsible public behaviour concerning alcohol and illicit drugs, given their role in unprotected sexual encounters.³⁵³ These strategies must involve young people in their development and implementation.

Recommendation: Effective protection of children's rights requires coherent, rights-based policies to guide decision-makers on children's issues. Such policies must be continually reviewed to ensure their evidence-base is up to date and regularly revised in line with best practice, international standards and the views of practitioners, children and young people. The Office of the Minister for Children should be given responsibility for this policy review function in an oversight role.

2.5 Failure/Delay in Policy Implementation

Policy has been developed in a wide variety of areas, most importantly on children, play and mental health. However, progress implementing these strategies has been slow, and even non-existent, in some cases. In other areas, the policies in question are isolated, not integrated and fail to join-up with policies in related areas. Together, such political and administrative failure results in the rights of children being ignored and underplayed in areas of particular importance, like child protection, education and health. It also reflects the inadequate weight given to the State's legal duty to take all appropriate measures to implement the CRC under Article 4. Given that substantial resources are required to develop policy in the first place, it is particularly regrettable then that it remains

³⁴⁸ INTO, *Discipline in the Primary School* (Dublin: INTO, 2002), p 112.

³⁴⁹ Committee on the Rights of the Child, *Concluding Observations: Ireland, 2006*, para 59(c).

³⁵⁰ Office of Tobacco Control, *Children, Youth and Tobacco, Behaviour Perceptions and Public Attitudes* (Dublin: OTC, 2006), p 36.

³⁵¹ Office of Tobacco Control, *Children, Youth and Tobacco, Behaviour Perceptions and Public Attitudes*, (Dublin: OTC, 2006), p 35.

³⁵² Committee on the Rights of the Child, *General Comment No 4, Adolescent health and development in the context of the Convention on the Rights of the Child*.

³⁵³ Layte et al, *The Irish Study of Sexual Health and Relationships*.

unimplemented, especially where the problems it identified continue to impact adversely on children's lives. It reflects similar lack of priority that the structures necessary to ensure co-ordinated implementation of policies affecting children are outstanding.

National Children's Strategy: The Committee on the Rights of the Child has recommended the adoption of a single national strategy to co-ordinate implementation of the Convention and stressed that such a policy should be unifying, rights based and comprehensive.³⁵⁴ The National Children's Strategy was adopted in 2000 as a blueprint for the development of law, policy and practice regarding children and young people, their lives and their families.³⁵⁵ Although it is not rights based, it sets out three important goals – that children's voices would be heard, that their lives would be better understood and that they would receive quality services and supports – that are consistent with further implementation of the CRC. Numerous steps and measures were identified in connection with the fulfilment of these objectives. While there has undoubtedly been progress made pursuing the Strategy's three goals, it has not succeeded in unifying or addressing the fragmentation of policy and service provision or the *ad hoc* nature of many supports and services. There has also been a failure to take the necessary measures to translate into reality the commitment to hear children's voices.³⁵⁶

According to the Committee on the Rights of the Child, a children's strategy must include: arrangements for monitoring and continuous review; for regular updating; and for periodic reports to parliament and to the public.³⁵⁷ A mid-term review of the Irish Strategy concluded that, despite the commitment to the Strategy among those working in the children's sector, progress in achieving the objectives which require effective cross-cutting work has been limited by the lack of integration of the Strategy into each Department's plans and by an apparent lack of clarity or negotiated agreement about the role of the National Children's Office (NCO, now part of the Office of the Minister for Children). According to the review, the NCO's lack of independence from the Department of Health and Children and the absence of an independent budget line have meant that its influence is limited to negotiating co-operation between departments. It also noted that several fundamental commitments made in the Strategy – to tackle child poverty, protect children from abuse, provide adequate child health services and provide supports for children with special needs – have yet to be met in a strategic manner. The Review concluded that greater political leadership was required: to ensure renewed commitment to the Strategy; to further its full implementation; and to ensure that the Strategy was fully integrated into the strategies of individual departments. It also recommended the establishment

³⁵⁴ Committee on the Rights of the Child, *General Comment No 5, General Measures of Implementation*, para 28.

³⁵⁵ National Children's Office, *Our Children Their Lives: A National Children's Strategy*, (Dublin: Stationery Office, 2000).

³⁵⁶ See the view of Youth Work Ireland in Michael McLoughlin, 'Voting age must be lowered to give youth a real voice', *Irish Times*, 28 June 2006.

³⁵⁷ Committee on the Rights of the Child, *General Comment No 5, General Measures of Implementation*, para 33.

of short-term task forces to take forward the recommendations of its review. These recommendations are reiterated here.

Other areas where there has been a delay or a failure to implement policy are as follows:

- **Children First:** Apart from problems with its content, *Children First* Child Protection Guidelines are not always adhered to, and there are difficulties ensuring their implementation in practice. Particular concerns have been expressed by ISSI about the failure to follow the Guidelines in residential care.³⁵⁸ Insufficient effort has been focused on implementing the Guidelines and making sure they are followed in all settings. Staff training, awareness and monitoring, necessary to ensure their implementation, has been inadequate.
- **Traveller Children:** Numerous reports and policy documents have been adopted on the difficulties faced by the Traveller community, with little reported improvement in their situation. A 2001 progress report on the 1995 Task Force on the Travelling Community found that there had been 'no real improvement' in the everyday life of Travellers since the publication of the report six years before. The report estimated that 25 per cent of all Travellers lived in 'very poor conditions'.³⁵⁹
- **Travellers and Health:** The National Traveller Health Strategy identified and addressed some of the problems that Travellers encounter in relation to health and established an infrastructure for dealing with them which was inclusive of Traveller organisations.³⁶⁰ Despite this, Traveller health status continues to be poor.
- **Education and Racism:** The Committee on the Rights of the Child recommended in 2006 that the Government ensure that the National Action Plan against Racism is fully implemented and that specific attention is given to measures to address racism, prejudice, stereotyping and xenophobia among children, in particular in primary and secondary education.³⁶¹ Despite this, the Department of Education and Science has yet to appoint an internal co-ordinator under the *National Action Plan against Racism*.
- **Interculturalism:** Guidelines on intercultural education for both primary and post-primary schools were drafted in 2005³⁶² but they are not part of a broad policy or legislative framework to ensure full implementation. There is no framework for supervising their implementation and there are no sanctions for those schools who do not take them into account in policy making, school management or teaching; no person or division within the Department of Education and Science has been given this responsibility.

³⁵⁸ ISSI, *Inspection of Five Rivers Island by the HSE*, p 18. For example, in one case, the child was spoken to over the phone where he withdrew his allegation, rather than being interviewed personally about the issue.

³⁵⁹ Department of Justice, Equality and Law Reform, *Progress report on the Task Force on the Travelling Community* (Dublin: Stationery Office) in Barnardos, *Every Child Matters*, p 9.

³⁶⁰ *Traveller Health: A National Strategy 2002-2005*.

³⁶¹ Committee on the Rights of the Child, *Concluding Observations: Ireland*, 2006, paras 16-17, paras 20-21.

³⁶² Department of Education and Science, *Intercultural education in the primary school* (Dublin: Department of Education and Science, 2005) and Department of Education and Science, *Intercultural education in the post-primary school: Enabling students to respect and celebrate diversity, to promote equality and to challenge unfair discrimination* (Dublin: Department of Education and Science, 2005).

- Schools themselves have complained that they need time and support to enable them to put the Guidelines into action³⁶³ and teachers have received little or no pre-service education in relation to the implementation of an intercultural curriculum.³⁶⁴
- **Right to Health:** The Government has adopted a large number of important policy documents in areas affecting children's health, such as obesity³⁶⁵, alcohol³⁶⁶, drugs³⁶⁷ and tobacco use.³⁶⁸ It has also adopted the National Health Strategy which makes specific reference to the review of paediatric care, and the National Health Promotion Strategy makes specific references to the need to target the health needs of children.³⁶⁹ Implementation of these policy documents has been slow and, in some cases, non-existent. The failure to integrate or connect these policy instruments and to adopt policy specifically focusing on children's health, health promotion and health care has compounded the lack of progress in this area. In the absence of this lack of integrated policy, there is concern that resources for children's health care are not provided in a 'strategic, targeted and co-ordinated manner involving long-term planning and investment'.³⁷⁰ The Committee on the Rights of the Child expressed concern about this issue in 2006, and recommended that Government take measures to ensure that the resources allocated to existing health care services for children are used in a strategic and co-ordinated manner benefiting all, i.e. the public, the community and the voluntary sectors.³⁷¹
- Both the *National Children's Strategy and the National Health Strategy* make commitments to researching and understanding children's health and health needs. The *Health Strategy* refers to the need to disaggregate data by age, group, location, distance from services and type of illness, and to develop guidelines for children in hospital.³⁷² These have not materialised to date.
- **Play Policy:** The adoption of the *National Play Policy 2004-2008*,³⁷³ the increase in the number and quality of playgrounds and the establishment of the National Play Resource Centre are welcome developments. However, there are concerns about the extent to which the Policy is being implemented, particularly at local level, given that to date only

³⁶³ INTO, *Newcomer Children in the Primary Education System* (Dublin: INTO, 2006), p 1.

³⁶⁴ *Ibid.*, p 12.

³⁶⁵ *Obesity: The Policy Challenges: The Report of the National Taskforce on Obesity* (Dublin: The Stationery Office, 2005). See also Foley-Nolan et al, *Our Children..Their Future...Why Weight??* (Dublin: HSE, Dublin, 2005).

³⁶⁶ Department of Health and Children, *Strategic Task Force on Alcohol Second Report* (September 2004).

³⁶⁷ *Building On Experience: National Drugs Strategy 2001-2008* (Dublin: Department of Tourism, Sports and Recreation, 2001). See also *Mid-Term Review of the National Drugs Strategy 2001-2008* (Department of Community, Rural and Gaeltacht Affairs, March 2005) and Connolly, *Drugs and Crime in Ireland: Overview* (Dublin: Health Research Board, 2006).

³⁶⁸ Department of Health and Children, *Towards a Tobacco Free Society: The report of the Tobacco Free Policy Review Group* (Dublin: Hawkins House, 2000).

³⁶⁹ *National Health Promotion Strategy 2000-2005* (Dublin: Department of Health and Children, 2000), pp 40-43.

³⁷⁰ Children's Rights Alliance, *From Rhetoric to Rights*, para 285, pp 43-44.

³⁷¹ Committee on the Rights of the Child, *Concluding Observations: Ireland* (2006), para 45(c).

³⁷² Department of Health and Children, *Quality and Fairness: A Health System for You, Health Strategy* (Dublin: Stationery Office, 2001).

³⁷³ *Ready Steady Play! A National Play Policy*.

50 per cent of Local Authorities have produced a local play policy as required.³⁷⁴ There is a clear need for joined-up thinking in this area and the integration of the National Play Policy with Local Authority planning strategies.³⁷⁵

- **Play and Health:** The importance of play therapy in the care of sick children was recognised in the National Play Policy, which also recognised the inadequate number of play specialists in Irish hospitals.³⁷⁶ Commitments to increase the number of play specialists have not been fulfilled and, where they are employed in Irish hospitals, facilities are poor and often rely solely on fundraising activities and charitable donations. The Play Policy also contains a commitment to actively pursue the recommendations of Children in Hospital in this area, to identify and promote the 'rehabilitative and therapeutic value of play in a range of health care and social services settings' and to ensure that 'public health care settings accessed by children will be designed to be child-friendly'.³⁷⁷ Little progress has been made in the implementation of these recommendations.
- **Mental Health:** The area of mental health has been neglected for decades, leading to serious gaps in services and supports for children placing their lives as well as their health at serious risk.³⁷⁸ In 2002, a Minister with special responsibility for mental health was appointed, and in 2006, the mental health strategy *A Vision for Change* was adopted.³⁷⁹ This policy requires the establishment of child and adolescent mental health teams at local level, a commitment to introduce in-patient beds in every region and early intervention teams for children with autism. Meaningful progress has not been made in this area, and the rights of children (Arts 6, 24, CRC) continue to be placed at serious risk. Urgent implementation of these recommendations is necessary.
- **Suicide Prevention:** The Committee on the Rights of the Child has expressed particular concern about the high rate of suicide among young people and urged states to take effective measures to address the underlying causes and problems.³⁸⁰ Since suicide was decriminalised in Ireland in 1993, there have been 'many efforts to develop a co-ordinated response to suicide', most notably in the setting up of the National Task Force on Suicide which published its final report in 1998. However, a recent review of the implementation of the National Task Force recommendations by the National Suicide Review Group identified 'significant gaps and limitations in their implementation'.³⁸¹ Effective implementation of the ten-year National Strategy for Action on Suicide Prevention is required – it depends on collaboration and co-operation between individual departments and agencies – and there is also a need for comprehensive

³⁷⁴ All data are taken from the National Children's Resource Centre www.playinireland.ie, retrieved 15 January 2006.

³⁷⁵ Sugrath www.playireland.ie, retrieved 16 January 2006. See also the National Children's Advisory Council, *Play and Recreation Policy* (2002), 3 www.ncac.ie, retrieved 17 January 2006.

³⁷⁶ *Ibid.*, p 26.

³⁷⁷ *Ibid.*, p 48.

³⁷⁸ See the concerns of the Ombudsman for Children, *Report to the Committee on the Rights of the Child*, pp 28-29.

³⁷⁹ Expert Group on Mental Health Policy, *A Vision for Change: Report of the Expert Group on Mental Health Policy* (Dublin: Stationery Office, 2006).

³⁸⁰ Committee on the Rights of the Child, *General Comment No.4 on Adolescent health and Development in the context of the CRC*, paras 22 and 29.

³⁸¹ *Reach Out. National Strategy for Action on Suicide Prevention 2005-2014* (Dublin: HSE, 2005) p 10.

and adolescent-friendly mental health services, improved guidance and counselling services for young people both in and out of school, and education and awareness raising in school.³⁸² In addition, there is a need to reach out to young people in ways that are familiar to them. Their involvement in the development and implementation of strategies and policies is vital but has been absent heretofore.

- **Mental Health and Alcohol:** To date, there has been a failure to act on the connection between underage substance misuse and suicide in Ireland.³⁸³ The Committee on the Rights of the Child has urged Ireland to implement the ten-year National Strategy for Action on Suicide Prevention and the recommendations from the second report of the Strategic Task Force on Alcohol.³⁸⁴ Despite this, *A Vision for Change* recommended that addiction (other than severe substance abuse) be removed from the remit of mental health services.³⁸⁵ This highlights the confusion that exists at a high policy level.
- **Drugs:** Despite increasing evidence about the prevalence of drug use among young people, the recommendations of policy in this area remain unimplemented.³⁸⁶ With respect to young people, the approach taken has been to rely on criminal law to tackle the issue of drug abuse, with insufficient attention given to protecting young people from the harm of drugs. For example, children continue to be prosecuted for drugs offences without getting help, counselling or treatment.³⁸⁷ This is contrary to Art 33, CRC which requires children to be protected from such harm.
- **Breastfeeding:** Despite its clear benefits for children, recognised in Art 24, CRC, breastfeeding rates continue to be low in Ireland by international standards, with both low initiation and short duration.³⁸⁸ The latter, in particular, is identifiable with a lack of support for breastfeeding mothers. Despite this, significant obstacles remain to the implementation of the National Committee on Breastfeeding's Strategic Action Plan.³⁸⁹ These include lack of information and support for mothers, poor public awareness of the benefits and importance of breastfeeding and practical and cultural obstacles to breastfeeding in public places.³⁹⁰
- **Health Care and Obesity:** The Committee on the Rights of the Child has highlighted the need for multi-sectoral approaches to the promotion and protection of health among young people.³⁹¹ Yet, serious policy failures, mainly due to poor co-ordination,

³⁸² Children's Rights Alliance, *From Rhetoric to Rights*, para 3276, para 48.

³⁸³ This link was made in the *Second Task Force Report on Alcohol* (2004).

³⁸⁴ Committee on the Rights of the Child, *Concluding Observations: Ireland* (2006), para 51.

³⁸⁵ *A Vision for Change: Report of the Expert Group on Mental Health Policy*, pp 146-149.

³⁸⁶ National Drug Strategy 2001-2008.

³⁸⁷ This is particularly the case with boys: 127 prosecuted in 1997 while 426 prosecuted in 2003. See Connolly, *Drugs and Crime in Ireland*, p 56.

³⁸⁸ *Ireland's Second Report to the UN Committee on the Rights of the Child*, para 555, p 118.

³⁸⁹ National Committee on Breastfeeding, *Breastfeeding in Ireland: A Five Year Strategic Action Plan*, (Dublin: Department of Health and Children, October 2005).

³⁹⁰ Email correspondence from Jackie Atkinson, La Leche League (31 January 2007).

³⁹¹ Committee on the Rights of the Child, *General Comment No 4, Adolescent health and development in the context of the Convention on the Rights of the Child*, CRC/GC/2003/4, paras 42-43.

have resulted in children's right to health care being inadequately protected and promoted (Arts 3, 6, 24, CRC). While the Government has acknowledged that obesity has become a significant health problem for Irish children (some 300,000 are currently estimated to be overweight or obese), there is still an absence of joined-up thinking in relation to the implementation of the recommendations of the National Task Force on Obesity.³⁹² For example, the Government has failed to address obesity as a matter of health promotion among young people and their families, or to address the barriers that prevent many young people from exercising or taking part in sport. It has also failed to ensure that all schools have the necessary equipment and resources to make physical education a central part of the curriculum.³⁹³ In relation to school involvement in tackling obesity, there has been a failure to put the necessary supports in place both in relation to nutrition/school means and physical education.³⁹⁴ Research by the Department of Public Health in the HSE, published in 2005, highlighted a number of barriers to children being active in schools.³⁹⁵

- **Commission on Assisted Human Reproduction:** Fertility health care is unregulated in Ireland meaning *inter alia* that there are no statutory rules to govern decisions made about the rights of children born through this process, particularly regarding their right to identity. The Commission on Assisted Human Reproduction made wide-ranging recommendations regarding the legislative framework required but these remain unimplemented.³⁹⁶

2.5.1 Alcohol – all policy, no implementation

One of the areas where the failure to implement policy has the most serious consequences is in relation to alcohol. It is useful to highlight this example in some detail:

Alcohol: A children's rights issue

Alcohol is a significant problem in society in Ireland as a whole, as well as among young people. Studies show that Irish young people drink more, binge drink more and are more often drunk than their European counterparts.³⁹⁷ Children in Ireland are also affected

³⁹² One of the principal recommendations of the Task Force was the need for a high-level political response to ensure a co-ordinated, proactive and integrated response to obesity in the school, home and community. *Obesity the Policy Challenges. Report of the National Task Force on Obesity*, 871.

³⁹³ Jamie Smyth, 'PE provision in Republic among worst in EU', *Irish Times*, 5 March 2007.

³⁹⁴ National Task Force on Obesity, *ASTI Submission*, (undated) www.asti.ie, retrieved 18 January 2007.

³⁹⁵ These included lack of adequate indoor facilities in school, an average exercise time of only 40 minutes per week and a focus on high athletic achievement and competitiveness in sport in schools. See Foley-Nolan et al, *Our Children... their future... why weight???*, p 34. This issue was also identified by young people themselves as a barrier to participation in leisure activities in De Roiste and Dinneen, *Young People's Views about Opportunities, Barriers and Supports to Recreation and Leisure* (Dublin: The National Children's Office, 2005), pp 13-14. Further barriers noted the failure to connect health eating with school policies on fast or convenient foods. Foley-Nolan, p 45.

³⁹⁶ Donnelly et al, *Report of the Commission on Assisted Human Reproduction*.

³⁹⁷ One survey in 1997 indicated that 23 per cent of Irish adolescents (fifth-year students were surveyed) reported 'binge drinking' (more than five drinks in a row). This was the highest figure for binge drinking among adolescents surveyed in 26 European countries. See Hibell et al, *The 1995 ESPAD Report, Alcohol and other drug use among students in 30 European countries* (Sweden: 1997), in Lalor et al, p 326. This was confirmed in a follow-up study in 1999. See Hibell et al, *The 1999 ESPAD Report. Alcohol and other drug use among students in 30 European countries* (Sweden, 2000) in Lalor et al, p 326.

by the widespread harmful use of alcohol by parents, other family members and other drinkers.³⁹⁸ Barnardos has summarised the effects of alcohol on children as follows:

- A high proportion of family income is spent on alcohol, leading to material deprivation and poverty, including lack of a proper diet, lack of school books, clothes and toys;
- One or both parents may be drunk in front of the child, their friends and neighbours;
- A parent is unable to get up in the morning to get a child ready for school;
- A child or young person is addicted to alcohol while still in their teens;
- Children can be victims of conflict, marital breakdown and parental separation;
- Children can be witnesses and victims to alcohol-related domestic violence;
- Children can become engaged in inappropriate, ill-informed and possibly involuntary sexual activity;
- Children can be victims or perpetrators of violent assault.³⁹⁹

Alcohol, its presence in society and the failure to tackle its abuse and associated problems is itself a barrier to the protection of children's rights in Ireland. The Committee on the Rights of the Child has expressed serious concern about the failure to address alcohol problems in Irish society and recommended in 2006 that the Government strengthen its efforts to address alcohol consumption by children, by, *inter alia*, developing and implementing a comprehensive strategy which should include awareness-raising activities, the prohibition of alcohol consumption by children and advertising that targets children.⁴⁰⁰

Considerable attention has been given to the issue of alcohol over the past decade, with the publication of a National Alcohol Policy in 1996, two reports by the Strategic Task Force on Alcohol in 2002 and 2004 and an All Party Oireachtas Committee on Children and Young People reporting also in 2004.⁴⁰¹ There is wide consensus in these reports and elsewhere about the measures that need to be taken to address the harm caused to young people by alcohol. These include:

- Reducing children's access to alcohol;
- Restricting its promotion;
- Raising awareness of the harmful effects of alcohol;
- Creating early intervention programmes;
- Developing young age-appropriate treatment services;

³⁹⁸ Children's Rights Alliance, *From Rhetoric to Rights*, para 330, pp 48-49.

³⁹⁹ Barnardos, *Every Child Matters: Families under the Influence* (Dublin: Barnardos, 2002), p5

⁴⁰⁰ Committee on the Rights of the Child, *Concluding Observations: Ireland (2006)*, para 49.

⁴⁰¹ See also the Work Group on National Alcohol Policy, 1996; the Commission on Liquor Licensing, which published four reports between 2001 and 2003; and the Joint Committee on Health and Children which published a report on alcohol misuse by young people in 2004.

- Providing alcohol-free social opportunities for young people;
- Conducting research into the effects of alcohol on children's lives;
- Enabling children's voices to be heard in developing programmes and policies in this area.

Other issues raised through expert analysis and policy development include:

- The need to build the capacity of the youth sector to tackle the problem of alcohol within their own work;⁴⁰²
- Failure to treat seriously the evidence of alcohol abuse by children and young people, to treat children as the victims of alcohol rather than the perpetrators of alcohol misuse, and put in place appropriate support and treatment services;
- The need to listen to and engage with young people in the development and implementation of solutions;
- The need to undertake a widespread study on the extent of alcohol use by children and young people, and its impact on their lives and health;
- The need to mobilise communities in an integrated way to respond to alcohol misuse among young people;
- The need for government departments and agencies, and social partners and other stakeholders, to commit time and resources to the implementation of the Task Force recommendations. Much work remains to be done to translate clear directions as to a future approach into specific actions which can deliver results over time;⁴⁰³
- The acceptance that the legislative responses which focus on making alcohol harder to purchase/obtain have failed to tackle the increasing use of alcohol among young people.

Adult Problem: Youth Problem: Research has failed to identify the causes of increased alcohol consumption among young people. What appears to be central is the issue that drinking by children is largely a reflection of drinking by adults. In this way, targeting initiatives at children without tackling the abuse of alcohol by the adult population will fail. For example, telling children in school that alcohol is harmful will not work when they then see adults enjoying themselves with alcohol. It needs to happen in a policy mix – a range of approaches that have a central message.⁴⁰⁴

⁴⁰² NYCI, *Submission on the proposed new licensing arrangements in the general scheme of the Intoxicating Liquor Bill 2005* (May 2005).

⁴⁰³ Sustaining Progress Special Initiative, *Working together to reduce the harms caused by alcohol misuse* (February 2006).

⁴⁰⁴ Dr Shane Butler, 'Alcohol Consumption and its negative impact on Irish children and young people: A research paper prepared by Dr Shane Butler, Addiction Studies Centre, Trinity College Dublin' in Barnardos, *Every Child Matters: Families under the Influence* (Dublin: Barnardos, 2002), pp 9-14.

Despite the above consensus, the Government has taken little initiative to implement any of these measures.⁴⁰⁵ There is a lack of political leadership on this issue – for example, there is currently no national alcohol policy advisor in place in the Department of Health and Children - and a lack of political will to implement the recommendations that are so widely agreed as necessary to protect children (and society) from the harmful effects of alcohol. This is epitomised by the decision in 2005 to replace the mandatory advertising code with a voluntary code drafted by the drinks and media industries together. This is despite the clear appeal that such advertisements have for children, particularly adolescents.⁴⁰⁶ Under the advertising code, advertisements for alcohol are not permitted on any TV programme aimed at children and are not permitted to be broadcast on any television or radio programme where more than 33 per cent of the audience is children. The Code also bans the placement of outdoor advertising for alcohol in the vicinity of schools. However, the weakness of the code, which has no monitoring mechanism, is that it does not safeguard the right of all children to be protected from potentially harmful influences on their health (Art 24, CRC). Crucially, the code fails to disassociate alcohol advertising from major sporting events.

Integrating Alcohol into the Drugs Strategy: There has been a persistent failure to consider and implement the recommendations of the many reports and inquiries into licensing and alcohol misuse. According to an Oireachtas Committee, ‘the arguments have been rehearsed *ad nauseam*, yet it would appear that to date no sustained, evidence-based policy response has been set in place in this sphere’. In 2006, the Committee referred to a ‘Groundhog Day sensation’ with respect to its consideration of the most effective way to manage alcohol,⁴⁰⁷ and also considered that, despite the existence of ‘scientific consensus’ as to the cause and prevention of health and social problems caused by alcohol, ‘successive governments have failed to set in place any joined-up or cross-cutting management structures aimed at reducing the prevalence of alcohol-related problems in this country’.⁴⁰⁸

Accordingly, the Committee recommended that a practical way forward was not to develop a further policy process to deal with alcohol, but rather to integrate alcohol into the current substance abuse strategy/drugs strategy. Supported by compelling reasons, the Committee noted that this recommendation could be acted upon quickly to:

- anchor this important policy issue within a well-established structure which guarantees ongoing policy work at the highest Government level (there is a Junior Minister with responsibility in this area, for example);

⁴⁰⁵ Children’s Rights Alliance, *From Rhetoric to Rights*, paras 331-333, p 49.

⁴⁰⁶ Dring and Hope, *The Impact of Alcohol advertising on Teenagers in Ireland* (Health Promotion Unit, Department of Health and Children, November 2001).

⁴⁰⁷ Joint Committee on Arts, Sport, Tourism, Community, Rural and Gaeltacht Affairs, Ninth Report. *The Inclusion of Alcohol in a National Substance Misuse Strategy* (July 2006), 13.

⁴⁰⁸ *Ibid.*, p 26.

- create a framework for bottom-up or community mobilisation activity in relation to alcohol, comparable to that which has taken place in relation to illicit drugs for many years;
- create greater clarity at the research/policy interface and, in particular, challenge the dominance and popularity of policy measures which lack research support as to their effectiveness;
- satisfy public demand for a coherent policy response to alcohol-related problems.⁴⁰⁹

Despite the seriousness of the problem and the relative ease with which this recommendation could be implemented to address it, there has been no action in this area in the interim, and the very serious problem of alcohol abuse remains largely unaddressed. The drinks industry and vintners interest groups are apparently having a powerful effect here, and this is compounded by the failure to view alcohol as a health issue and a children’s rights issue.

2.5.2 Recommendations

This section highlighted areas where policy exists but is inadequate or inadequate structures exist to ensure its effective implementation. Two recommendations fall to be made here; the first is that there is a need for a high-level response to the key problems identified here of health/health promotion, suicide and mental health, and alcohol abuse. Inter-Departmental structures must be urgently put in place to facilitate immediate implementation of the relevant policies. Secondly, the Ombudsman for Children should undertake to raise awareness among the public, the Oireachtas and policy-makers that issues like health, alcohol and racism are children’s rights issues that require urgent attention.

2.6 Recommendations

This section identified the general barrier to the protection of children’s rights as the inadequacy of law and policy. In particular, it detailed the inadequate expression of children’s rights in the Constitution and in legislation, and considered the extent to which the inadequacy of law and policy and, where it exists, its inadequate implementation, act as an obstacle to children’s rights. In numerous areas, these problems act as serious impediments to realising the rights of children; they are particularly serious because they are so unnecessary, i.e. if the law and policy was CRC-compliant and fully implemented and resourced as planned, breaches of children’s rights would be significantly reduced.

⁴⁰⁹ *Ibid.*, p 28.

The following measures are designed to address these barriers:

- Children's rights, particularly the CRC general principles (non-discrimination, the best interests principle and the child's right to be heard) must be incorporated into the Constitution with consideration also being given to inserting other key provisions, including the child's right to protection from harm, the right to education and the right to enjoy contact with both parents. Such an amendment would also have to address the current constitutional imbalance in favour of parents' rights;
- Legislation found to make inadequate provision for children's rights should be remedied without delay. Areas, like adoption, which are in need of widespread reform will require a full children's rights audit to ensure CRC compliance;
- A full audit should be undertaken of those areas in which laws have been passed but whose implementation or full resourcing remains outstanding, with a detrimental impact on children's rights. A programme should then be put in place to ensure complete resourcing and implementation of all legislation passed by the Oireachtas;
- Policies should be continually reviewed to ensure their evidence-base is up to date and that they remain in line with best practice, international standards and the views of both practitioners and children and young people. The Office of the Minister for Children should be given responsibility for this policy review function in an oversight role;
- Where policy is inadequate or structures designed to ensure implementation have been found to be inadequate, a high-level, inter-departmental response to the problem should be adopted. Areas where this is required include health/health promotion, suicide and mental health, and alcohol abuse.

It is further recommended that the Ombudsman for Children's Office:

- continue to raise awareness among the public, the Oireachtas and policy-makers about issues that affect children both directly and indirectly, in line with its functions under the *Ombudsman for Children Act, 2002*;
- bring the above findings relating to implementation and co-ordination of policy to the attention of the relevant Government Ministers in line with Section 7(1)(a) of the Act;
- encourage public bodies to develop policies, practices and procedures designed to promote the rights and welfare of children under Section 7(1)(b) of the Act.

3. Advocacy, Complaints and Monitoring

Central to full implementation of children's rights are the mechanisms and systems that must be put in place to prevent rights violations and to address them effectively when they occur. The special status and vulnerability of children means that they will often need assistance bringing their views and concerns to the attention of those with responsibility. In this regard, Article 12 of the CRC recognises that children must be facilitated to express their views, and must be given representation to support them in this process. In addition, Article 13 recognises the child's right to seek and receive information, Article 17 requires that children have access to appropriate information aimed at the promotion of his/her wellbeing and, most importantly, Article 42 requires that children and adults are informed about their rights. Where children are denied information about their rights, or do not have a voice or representation to express their concerns, this can result both in the procedural rights (to have a say) being infringed, but it can also lead to substantive rights violations.

Further to the duty under Article 4, to take all measures to implement the CRC, the Committee on the Rights of the Child has recommended that remedies be put in place to provide redress where violations occur, and administrative structures to ensure that rigorous monitoring of the Convention's implementation is built into the process of government at all levels and undertaken by independent bodies.⁴¹⁰

Where these measures are absent, it is clear that the CRC will not be fully implemented and, in this event, the rights of children will remain theoretical rather than real. Issues of the awareness about children's rights, the need for advocacy and complaints systems, and structures to monitor and regulate those who provide children's services are thus worthy of serious consideration in this context.

3.1 Children's Lack of Awareness of their Rights

According to the Committee on the Rights of the Child, awareness of children's rights is integral to their implementation, particularly given that, in many societies, children have not been regarded as rights-holders. Awareness, training and public information is thus necessary to implement Article 42, CRC and to ensure that everyone understands the implications of the Convention for children.⁴¹¹ In 2006, the Committee on the Rights of the Child encouraged Ireland to further strengthen its efforts to ensure that the provisions of the Convention are widely known and understood by both adults and children, including through periodic and nationwide public awareness-raising campaigns that also include child-friendly material.⁴¹²

⁴¹⁰ Committee on the Rights of the Child, *General Comment No 5, General Measures of Implementation*, paras 68, 70 and 88-90.

⁴¹¹ Committee on the Rights of the Child, *General Comment No 5, General Measures of Implementation*, paras 66-70.

⁴¹² See Committee on the Rights of the Child, *Concluding Observations: Ireland (2006)*, paras 18-19.

There has been no comprehensive, nationwide study to collate the views of children and adults about their rights under the CRC and generally. One survey among children between the ages of five and 17, undertaken by the ISPC in 2006, found that 88 per cent felt that young people in Ireland have rights and 53 per cent had heard of the UN Convention on the Rights of the Child (most through school).⁴¹³ While these figures suggest high levels of awareness among children of their rights, it is significant that only 4 per cent had heard of the National Children's Strategy, that 85 per cent felt that children did not have the same rights as adults and 67 per cent felt that young people did not have enough access to information about their rights.

Recommendations: There has been no national campaign to raise awareness about children's rights among children or adults. Efforts to increase the awareness among children about their rights must be preceded by a comprehensive survey of what children, of all ages and in a variety of circumstances, already know. Regular surveys are also required to monitor the effectiveness of any awareness or public education campaign. Awareness raising and education on children's rights must be developed in conjunction with children themselves. The ISPC survey, *My Right to Know*, showed that they have clear ideas about the media and methods that could be used for this purpose.

3.2 Lack of Complaints Mechanisms and Remedies

For rights to have meaning, effective remedies and complaints mechanisms must be available to redress violations. Given that children's special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights, particular attention must be paid to ensuring that there are effective, child-sensitive procedures available to children and their representatives, including the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance. Where rights are found to have been breached, there should be appropriate reparation.⁴¹⁴ The next section details with the absence of effective complaints mechanisms and the section which follows considers the lack of effective remedies.

Inadequacy of Complaints Mechanisms

Child Protection: In January 2006, the Ombudsman for Children placed on record before the Oireachtas Committee on Health and Children the substance of 61 complaints made to the Office concerning the handling of reports of abuse by statutory bodies.⁴¹⁵ This report documented the very serious obstacles faced by children and their families in their efforts to report child abuse. Problems included:

- Lack of information regarding how to complain and to whom, and a lack of knowledge of HSE child-protection practice and procedures;
- Lack of an immediate response/delays and lack of support for children following disclosure;
- Lack of awareness about roles and powers of the HSE, leading to false expectations of how the HSE could respond to reports of abuse;
- Lack of awareness regarding the consequences of reporting, acting to discourage disclosure;
- Delays in the provision of psychological and other therapeutic support and, when it was provided, it was sporadic and poorly co-ordinated.

Other factors that highlight the inadequacy of the current remedies for sexual abuse are as follows:

- Lack of availability of HSE social work services outside office hours;
- Requirement that abuse reported outside hours is made to An Garda Síochána, who are not trained for this purpose;
- The absence of a dedicated free-phone line staffed by trained social work staff available 24 hours per day with full psychiatric support.

The HSE has placed some information about child protection on its website, although far greater information should be made available, including information in a child accessible format. NGOs, health professionals and community-based support services should also be provided with more detailed information about how to bring child protection issue to the authorities. A centralised information system should be set up to deliver this information – how to complain, what to do – in an accessible and anonymous form to children and their carers.

Children in Residential Care: According to the Irish Social Services Inspectorate (ISSI) not all HSE areas have a specific complaints policy for children in foster care, and the complaints policy devised by some residential facilities requires revision. According to ISSI, the procedure should be 'simplified, separated from procedures for other complainants and customised to reflect procedures in Ireland'.⁴¹⁶

⁴¹³ ISPC, *My right to know*.

⁴¹⁴ See Committee on the Rights of the Child, *General Comment No 5, General Measures of Implementation*, para 24.

⁴¹⁵ *Report of the Ombudsman for Children to the Oireachtas Joint Committee on Health and Children on Complaints received about Child Protection in Ireland* (30 January 2006) p 6.

⁴¹⁶ ISSI, *Inspection of Five Rivers Island and the HSE, Final Report, October 2006* (Dublin: ISSI, 2006) p 13. See further Part A above.

In addition, ISSI recommended that:

- a child-friendly version of the complaints procedure be produced for young people,
- social workers explain the complaints procedure to young people on arrival and be assured rather than assume that the young people understand it;⁴¹⁷
- *Children First* procedures should always be followed by staff.⁴¹⁸
- **Education:** There are generally no independent remedies or complaints mechanisms available to children in schools and the autonomy of schools means that children and parents may be reluctant to make a complaint against the school or a teacher. Where Boards of Management are unco-operative or slow to respond to a complaint, this can frustrate the consideration of the issue by the Ombudsman for Children, which can only intervene where local complaints procedures have been exhausted. Awareness of the OCO and its powers should be raised among school staff and Boards of Management.

Children have no independent right to complain to the Board of Management in respect of a suspension or exclusion. Only a parent or a person over 18 years can do so. It is also worrying that amendments to the *Education Act, 1998* will make express reference to the rights of the other pupils with respect to the pupil being excluded.

Health Care: There is concern over the general lack of accountability of the Department of Health and Children for health care services for children⁴¹⁹ and the extent to which the HSE operates as, and is viewed as, an unaccountable, independent entity.

Family Reunification: There is no child-centred complaints mechanism available in respect of applications for family reunification. The process is very bureaucratic and lacks transparency, and appeals are not independently heard but considered internally by the same Government Department.

Garda Complaints: The establishment of the Garda Ombudsman Commission is welcome and puts in place an independent mechanism to hear complaints against members of An Garda Síochána. However, it is vital that this process is made accessible to young people, that information is made available to them in an age-appropriate manner and brought to their attention. A joint protocol should also be agreed between the Ombudsman Commission and the Ombudsman for Children in this area.

⁴¹⁷ *Ibid.*, p 17.

⁴¹⁸ Inspectors noted the failure to follow child protection procedures and to comply with *Children First* guidelines in respect of concerns expressed about the protection of a number of children. *Ibid.*, p 18.

⁴¹⁹ This is borne out by the percentage of complaints received by the OCO in this area, 32 per cent of all complaints between April 2005 and December 2006. See *Report of the Ombudsman for Children to the Joint Oireachtas Committee on Health and Complaints received about Child Protection in Ireland* (30 January 2006, p 6.

The Ombudsman for Children: The Ombudsman for Children has a function to examine and investigate complaints against public bodies in certain circumstances. However, exclusions to this mandate are set out in Section 11 of the *Ombudsman for Children Act, 2002*. In particular, the OCO cannot investigate complaints made by children detained outside Children Detention Schools (i.e., St Patrick's Institution and prisons); nor can it investigate complaints about any action taken by or on behalf of a public body, school or voluntary hospital if the action is (*inter alia*) one taken in the administration of the law relating to asylum, immigration, naturalisation or citizenship. The OCO has expressed concern to the Oireachtas⁴²⁰ and the Committee on the Rights of the Child⁴²¹ about the breadth of these exclusions and their impact on the particularly vulnerable children affected.

During the Oireachtas debates on the *Ombudsman for Children Bill*, the then Minister of State clarified that it excluded only decisions on status, stating: "children seeking refugee status or asylum can go to the Ombudsman for Children in relation to that process. It is only the decisions that are excluded".⁴²² Accordingly, this provision of the *Ombudsman for Children Act*, may be interpreted as providing for the examination of complaints from separated children seeking asylum, with one exception - it cannot review decisions on status. However, this is a matter of interpretation only. To avoid confusion, it would be strongly preferable for the legislation to be explicit on this point.

Moreover, the Act is explicit about the exclusion from the OCO mandate of the complaints made by children detained outside Children Detention Schools and, as a result, these children do not have recourse to an independent complaints function. Nor, it appears, can children in the asylum process complain to the OCO about their treatment within that system. The Committee on the Rights of the Child has expressed concern about these limitations on the OCO's mandate and recommended that they be removed.⁴²³

Lack of an Effective Remedy

There are other areas where the lack of an effective remedy acts as a barrier to the realisation of children's rights.

Death Review: Where a child who is in the care or custody of the State or is known to the HSE dies there is no automatic review of the circumstances of the death of the child. The inquest procedure is inadequate to deal with these issues insofar as it has limited capacity to find out what happened and why.⁴²⁴ There is a need for a Child Death Review body

⁴²⁰ *Annual Report of the Ombudsman for Children (2005)*.

⁴²¹ *Report of the Ombudsman for Children to the UN Committee on the Rights of the Child* (April 2006).

⁴²² Seanad Éireann, *Ombudsman for Children Bill 2002, Second Stage*, 169 (21 February 2002).

⁴²³ Committee on the Rights of the Child, *Concluding Observations: Ireland (2006)*, paras 14-15.

⁴²⁴ For example, in one recent case, it was reported that the Coroner recorded an open verdict in respect of a girl who took her own life after she was denied access to psychiatric treatment. Breda Heffernan, 'Overdosed teen died after hospital sent her home', *Irish Independent*, 30 November 2006. See also Western Health Board, *Kelly – A Child is Dead: Interim Report of the Joint Committee on the Family* (Dublin: Stationery Office, 1996).

to be established as an independent statutory body with full powers to investigate how a child died and who is responsible. Such a committee would investigate all suspicious deaths, including deaths in custody and at the hands of parents or carers, and make binding recommendations to prevent such tragedies reoccurring.⁴²⁵

Contact: There are no effective remedies available to children who are denied contact with one parent by the parent with custody (Art 9, CRC).

Disability and Special Needs: Children with disabilities have had to take constitutional action to seek to have their rights vindicated. While it is important that there is an avenue of complaint readily available to these children under the Constitution,⁴²⁶ cases have enjoyed limited success in that, in each case, due to the separation of powers doctrine, the court stopped short of ordering the Government to put in place the necessary facilities.⁴²⁷

Recommendations: It is clear that effective remedies are absent in many areas, with the result that children denied their rights have few avenues open to them to secure redress. Given that the Ombudsman for Children already has an explicit complaints function, consideration should be given to undertaking a review of areas where further remedies are needed to secure rights to children. Legislative change will be required in some areas, with the adaptation of procedures or greater awareness required in others. The Office should also keep its complaints function, including its scope, procedures and impact, under regular review.

3.3 Inadequate Representation/Advocates for Children

Article 12 requires states to facilitate children's expression of their views in all matters affecting them, with due weight being given to those views in line with their age and understanding. Article 12(2) makes specific provision for children to be heard and, if necessary, represented in judicial and administrative proceedings affecting them. In respect of Ireland, the Committee on the Rights of the Child has recommended the use of independent representatives (like a *guardian ad litem*), especially where children are separated from their parents.⁴²⁸

3.3.1 Lack of Advocacy Services

There are serious gaps in the provision and quality of independent representation and advocacy services for children are absent in a number of areas. The result is that the child's right to be heard is ignored both in terms of process and with regard to their rights in the related substantive areas of child protection and health, for example. Issues also arise in the context of legal proceedings in terms of the difficulties children face in court.

⁴²⁵ Children's Rights Alliance, *From Rhetoric to Rights*, para 249-251, p 38.

⁴²⁶ Duane, 'Children with disabilities and the law', *Irish Journal of Family Law*, 2 (2004), 8-13, p 8.

⁴²⁷ 'O'Donoghue v the Minister for Education', *IR*, 2 (1996), 20 and 'Sinnott v Minister for Education and Science', *IR*, 2 (2001), 545.

⁴²⁸ Committee on the Rights of the Child, *Concluding Observations: Ireland* (2006), para 25(b).

Child Protection: As highlighted above, children who report child sexual abuse may not have an independent advocate to complain on their behalf and represent their interests independently to the HSE. An independent advocate should be appointed as quickly as possible to liaise with any child who makes such a complaint. This is particularly important to secure the child's rights in light of their concern that they may not be believed.

Separated Children: Separated children are, by their nature, without advocates or guardians to advocate on their behalf and provide necessary support. Those that go missing lack an advocate to ensure that everything is done to trace them. In 2006, the Committee on the Rights of the Child expressed concern that the appropriate guidance, support and protection may not be available to separated children during the asylum process, in particular with respect to access to services and independent representation.⁴²⁹ It has also recommended that an independent guardian be appointed expeditiously for separated children.⁴³⁰

Family Reunification: There is a scarcity of legal practitioners with expertise in this area and a lack of affordable legal services. The Refugee Legal Service does not normally provide legal advice or assistance to refugees in family reunification applications. Standards of decision making are also a matter of concern.⁴³¹

Health Care: There is a lack of advocacy services to support families and children using the health care services, particularly hospital services. Nurses sometimes fill this role but the conflict of interests clearly means that this is problematic. There is a need for an independent advocacy service to support parents of sick children; this was recognised by the National Health Strategy but it has not been implemented.⁴³²

Recommendations: The absence of advocacy services can have a serious impact on children's rights and the above section highlights the important support that advocacy offers children, especially those who are separated from guardians, unwell or otherwise at risk. It is vital where children do not have other representation and, accordingly, serious consideration should be given to establishing an independent advocacy service to ensure that all children in need of independent representation can access it without delay.

3.3.2 Children in Court

Inadequate legal provision: Section 25 of the *Guardianship of Infants Act, 1964*, which requires the courts to take into account the child's wishes in matters of custody, guardianship or upbringing, gives discretion to the judge to decide the circumstances in

⁴²⁹ *Ibid.*, para 64.

⁴³⁰ The Committee on the Rights of the Child, *General Comment No 6: Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6, para 21.

⁴³¹ Cosgrave, *Family Matters: Experiences of Family Reunification in Ireland*.

⁴³² *Quality and Fairness. A Health System for You* (Dublin: Department of Health and Children, 2001).

which it is 'appropriate and practicable' to take the wishes of the child into account.⁴³³ Case-law also seems to indicate a wide degree of judicial discretion as to whether the views of a child of sufficient age and maturity are heard at all.⁴³⁴

While it has been recognised that the right to be heard is a constitutional right under Article 40.3 of the Constitution, this principle has not gathered further support in case-law.⁴³⁵ Nor has it led to a sea change in the extent to which courts hear the views of children in cases of guardianship, custody or access.⁴³⁶

Unclear Framework: Hearing of children's views in divorce or judicial separation proceedings is based on an unclear and incoherent framework. Overall, there appears to be a lack of a universally-accepted and suitable means to elicit evidence of the views of children when their cases come before the courts.

Constitutional and Statutory Change: There is a need to give both constitutional and statutory expression to the right of the child to be heard in decisions, including judicial decisions which concern them. While it is important that the judge retains discretion in this area, this should not be limited by what is 'practicable' or 'appropriate' insofar as this may allow a judge's personal view as to the age at which it is appropriate for a young child to express his/her views in court to influence his/her approach.

Invisibility of Children in Family Law Proceedings: Overall, despite some advances, children are still largely invisible in family law proceedings. One of the reasons for this has been that 'the parents' solicitors, although key gatekeepers to the family justice system, do not see it as part of their role to see or involve the children'.⁴³⁷ A further reason is that the preferential weighting of the system in favour of parents is sanctioned and even required by Article 41 of the Constitution. Only in disputed cases where welfare reports are sought might children have limited opportunities to have their views considered by those in the system who might be taking decisions about them. Even this is limited by the undeveloped state of the Irish court welfare and *guardian ad litem* services.⁴³⁸

⁴³³ See Clissmann and Hutchinson, 'The right of the child to be heard in guardianship, custody and access case Part I', *Irish Journal of Family Law*, 11 (2006), p 13.

⁴³⁴ *Ibid.*

⁴³⁵ 'FN and another v CO' IEHC (2004), 60.

⁴³⁶ Overall, there is little evidence of the extent of consultation with children happening in the courts of England and Wales, by contrast, where the views of children have frequently acted as a tipping point in the decision being made. Clissman and Hutchinson, 'The right of the child to be heard in guardianship, custody and access case Part I', p 15.

⁴³⁷ Murch and Keenan, *The voice of the child in private family law proceedings. Findings from a reconnaissance of Anglo-Irish child-related divorce legislation* (Bristol: Family Law, 2003), p 113.

⁴³⁸ *Ibid.*, p 117.

There is a clear reluctance to involve children in proceedings, either through fear or a paternalistic view that it is not in their interests.⁴³⁹ At the same time, there has been relatively little empirical, Irish, social-legal research investigating the perceptions of children themselves. This is vital to facilitate the move from a paternalistic approach towards one which recognises the right of the child (not the duty) to be involved.

Culture and Attitudes: Existing studies highlight three areas of concern regarding listening to children in legal proceedings:

- Historically in our culture, children are not used to being listened to – we do not have a culture that supports participation by children;
- Many adults seem to have difficulties listening to children – adults view children as 'other', they are seen as less important, they are dependent and less powerful. Adults interpret what children say and welfare professionals do so on the basis of their understanding of what is in the child's best interests;
- Children do not always have positive experiences when talking to professionals. Research in the family system has found that:
 - children were generally reluctant to talk to outsiders about family issues as this was seen as being disloyal;
 - professionals were seen as being interventionist rather than supportive;
 - the discussions that children had with professionals often sounded like interrogations;
 - adults were frequently experienced as judgemental and intrusive in their approach;
 - discussions were often not treated as confidential.⁴⁴⁰

Unsworn Evidence: The law makes provision for the child to give direct (unsworn) evidence to the court where (under Section 28 of the *Children Act, 1997*) the child can give an intelligible account of the evidence relevant to the proceedings. According to Clissmann and Hutchinson, 'the desirability of calling children to give such evidence is very much open to question, especially in circumstances where the infant in question would be compelled to express *a viva voce* preference for one parent over the other. This begs the question as to how these views are to otherwise be admitted'.⁴⁴¹ Judicial training and development of judicial policy are needed to work out a best practice approach for the giving of unsworn evidence by children.

⁴³⁹ *Ibid.*

⁴⁴⁰ Discussed in Keehan, 'Findings from a Reconnaissance of Anglo-Irish Child-Related Divorce Legislation', *Irish Journal of Family Law*, 3 (2003), 20-26, p 22.

⁴⁴¹ Clissmann and Hutchinson, 'The right of the child to be heard in guardianship, custody and access case Part II', *Irish Journal of Family Law*, 2/2 (2006), p 2.

Statutory Reports: There are two types of statutory reports that can be used to gather evidence on the child's views and wishes. A Section 47 (*Family Law Act, 1995*) social report and Section 20 (*Child Care Act, 1991*) welfare reports can be ordered by the court or the parties. However, such reports are slow and delay proceedings and, more importantly, are not designed to elicit the views of the children. Rather, their function is to assess the overall family situation. The criticism has also been made that court practice in ordering such a report gives no background information on the family history or circumstances or why the report is being ordered. This leads to the social worker going in 'cold'.⁴⁴²

Absence of Legal Mechanism: Outside the *guardian ad litem* approach, there is no legal mechanism to enable the court to gather evidence of the child's views and wishes.

Judicial Interview: The practice of judges interviewing children privately in their chambers has become common in the absence of other more satisfactory ways of obtaining the views of children in legal proceedings which concern them. However, it raises a number of ethical and professional issues: confidentiality (what can a judge disclose about the interview – should he/can he offer confidentiality to the child and, if not, is it ethical to continue?); consent, including parental consent; child protection concerns, particularly if the child has experienced or alleged abuse. In general, there is a need for judicial training on communicating with children and, on issues of child protection, consent and confidentiality. Judicial guidelines should also be developed in this area. Questions have also been raised about the legal basis of the private judicial interview with children.⁴⁴³

Recommendation: It is clear that both legal change and judicial and legal training are required to ensure that the voice of the child is heard in legal proceedings that affect him/her.

3.3.3 The Guardian Ad Litem

No statutory GAL System and no State funding for GALs: There is no GAL system in place to ensure that a sufficient number of vetted, appropriately-trained and qualified Guardians are available throughout the country to act in public law cases. The availability and cost of appointing a Guardian are key issues for any court wishing to make such an appointment. While there are a number of Guardians available either as freelance or attached to the Barnardos service, funding is a key concern.

Judicial Guidance: Although provision is made in the *Child Care Act, 1991* for the appointment of a GAL in public law cases, the appointment is at the discretion of the

judge. The issue here is often the availability (or lack) of resources to fund the guardian and judges may also need guidance as to the circumstances in which it may be necessary, important or desirable to appoint a GAL.

Law is vague about functions and duties of a GAL: The provisions of the *Children Act, 1997* and the *Child Care Act, 1991* are vague about the functions and duties of a GAL. The tension between what is in the child's interests and what the child wants is one that has arisen in other jurisdictions and needs to be addressed here also. The GAL generally represents to the court what is in the best interests of the child; this often includes but is not limited to the child's wishes.

Failure to Commence Legislation: The provisions of the *Children Act, 1997*, which allow for the appointment of a *guardian ad litem*, have not yet been commenced. This means that children in family law proceedings, e.g. divorce proceedings involving matters of custody and access which directly affect them, have no right to independent or separate representation, leaving them without a voice in such proceedings.⁴⁴⁴ The Committee on the Rights of the Child has expressed concern at the lack of sufficient provisions for *guardian ad litem* and the fact that these measures are not taken in a systematic and comprehensive manner.⁴⁴⁵

Failure to Ratify Convention: Ireland has not ratified the European Convention on the Exercise of Children's Rights, signed in 1996, which provides for the separate representation of children in family law proceedings. The necessary measures have not been enacted to enable this to take place.

Recommendations: The Children Acts Advisory Board now has the function to issue guidance on the qualifications, criteria for appointment, training and role of any *guardian ad litem* appointed for children in proceedings under the *Child Care Act, 1991*. Notwithstanding that this relates only to public law proceedings this may act as an important impetus to further action in this area. The Ombudsman for Children should give consideration to making this issue a strategic priority along with its role in the championing of related Article 12 issues.

3.3.4 Children and the Criminal Process

Children in Conflict with the Law: Research has highlighted concerns about representation for children in criminal cases and questioned the extent to which children are involved and understand the cases against them. This highlights the need for an independent advocate to liaise between the child and his/her lawyer and the court.⁴⁴⁶

⁴⁴² Murch and Keenan, *The Voice of the Child in Private Family Law Proceedings Findings from a Reconnaissance of Anglo-Irish Child-Related Divorce Legislation* (Bristol: Family Law Jordan Publishing, 2003), p 70.

⁴⁴³ *Ibid.*, (Part II) p 5. One suggestion is that it is a derivation of the wardship/*parents patriae* jurisdiction as per Costello P in 'In the Matter of MS and W Infants', *ILRM*, 1 (1996), 370.

⁴⁴⁴ The report of the Guardian ad Litem Group, *Giving Children a Voice* (May 2001) recommended implementation of the Act.

⁴⁴⁵ Committee on the Rights of the Child, *Concluding Observations: Ireland* (2006), para 24.

⁴⁴⁶ Kil Kelly, *The Children's Court: A Children's Rights Audit* (Cork: 2005).

Children as Vulnerable Witnesses: Many concerns exist around the involvement of children as victims and witnesses in the criminal justice system, and many parents see the court as a hostile place for children.⁴⁴⁷ A befriending and advocacy service is urgently required to support vulnerable witnesses in this process.

The OCO has also recommended that additional protection measures be considered, such as the admission of video-recorded evidence by a child as evidence in chief, the prohibition of cross-examination by an accused, the presence of intermediaries, pre-trial preparation and victim-court liaison. Training has also been recommended.⁴⁴⁸

Adapting the Criminal Process: Efforts must be made to adapt the criminal process for cases in which children, including young children, are involved as witnesses and/or victims. These include implementing and resourcing measures already legislated for (live TV link, use of video-recorded evidence) and others e.g. expert witness statements, video recording of statements made by children to Gardaí, allowing children to use various media to make their statement, supplying a play room for such children, appointing a court intermediary. The Joint Oireachtas Committee on Child Protection have made numerous recommendations with regard to reducing the intimidating atmosphere for children as vulnerable witnesses, which have not been fully explored here.⁴⁴⁹ These should be fully explored.

Recommendations: A whole range of measures need to be adopted to ensure that children involved in the legal process are protected and have their voices heard. These include constitutional and legislative change, as well as putting in place practical supports to protect children from being subjected to further trauma. Careful consideration should be given to implementing the recommendations of the Joint Oireachtas Committee on Child Protection.

3.4 Lack of Monitoring Mechanisms and Regulation

The Committee on the Rights of the Child has made it clear that permanent monitoring mechanisms and processes are required to ensure that all state and non-state service providers respect the Convention.⁴⁵⁰ Despite this, there are many areas in which monitoring mechanisms are either absent or they are inadequate to protect children's rights. The most serious of these is the area of child protection where the failure to put in place effective monitoring and regulatory structures is placing children at risk of serious harm.

⁴⁴⁷ See the comments of Dr Imelda Ryan, Director of St Louise's Child and Adolescent Sexual Treatment Unit cited in Joint Oireachtas Committee on Child Protection, *Report on Child Protection*, p 55.

⁴⁴⁸ Ombudsman for Children, *Submission to Joint Committee on Child Protection* (30 August 2006). See the recommendations of this Joint Committee at p 95 of its Report.

⁴⁴⁹ Joint Oireachtas Committee on Child Protection, *Report on Child Protection*, pp 96-98.

⁴⁵⁰ Committee on the Rights of the Child, *General Comment No 5, General Measures of Implementation*, para 44.

The Irish Social Services Inspectorate: The ISSI, established in 1999, has a role to inspect childcare services as part of the Health Information and Quality Authority. It was placed on a statutory basis under the *Health Act, 2007* in accordance with which the Office of the Chief Inspector of Social Services has statutory responsibility for inspecting children's residential services and foster care services. Although the Act provides the framework for the ISSI to inspect residential services such as those accommodating children seeking asylum, including children in direct provision, homeless children and children in the Children Detention Schools (i.e. these services must first be registered as designated centres under Part 8 of the 2007 Act) it will take some time before the inspections can begin to take place. In the meantime, the children accommodated in these settings have inadequate protection of their rights. Examples follow:

- The annual reports of the ISSI highlight extremely serious shortcomings in the treatment of children in some residential placements operated by the HSE in relation to child protection, the appointment of social workers, complaints and the use and monitoring of physical restraint and segregation. For example, in 2004, the Inspectorate highlighted concern about health and safety standards in many residential centres for children, including that they were 'employing staff with no qualifications' and that the care plans devised for children were 'very poor'. It also expressed concern that almost half of the staff were on temporary contracts and half of the managers were in an acting capacity. Several children had no social worker and, in just two centres were all staff properly vetted. Serious problems had been experienced trying to access psychiatric services for the children.⁴⁵¹ Many of these concerns were reiterated in 2005 when the ISSI carried out a cluster inspection of the residential centres. Its conclusions were that many of its previous recommendations remained unaddressed and that, within the former Health Board area, there were areas of 'significant difficulty' including: care and strategic planning; suitable placements for children under 12 years; suitable line management arrangements; managing change satisfactorily; stability of staffing; responding to complaints; effective monitoring; and the provision of a safe and satisfactory standard of accommodation.⁴⁵²
- Concerns also exist about the extent to which law and policy is being implemented in some Special Care Units and High Support Units. In 2005, the ISSI reported serious concerns about certain aspects of their operation and, in particular, it noted that the level of physical restraints and separations/isolation was still 'unacceptably high'.⁴⁵³ In relation to High Support Units, the ISSI noted 'delays in processing complaints and that the right of access to information was inadequately promoted and facilitated'.⁴⁵⁴

⁴⁵¹ ISSI, *Annual Report* (2004).

⁴⁵² ISSI, *Annual Report* (2005), p 49.

⁴⁵³ ISSI, *Annual Report* (2005), p 53. There were 180 physical restraints and 126 separations recorded. The use of physical restraint in High Support Units was also 'a matter of concern'. ISSI, *Annual Report* (2005), p 44. In this regard, it must be questioned what level of physical restraint is 'acceptable' in the context of the provision of secure care.

⁴⁵⁴ ISSI, *Annual Report* (2005), p 53.

Key recommendations were made on the following areas: staff vetting and a staff appraisal system; review of institutional practices; revision of the sanctions system; the introduction of a streamlined, organised and accountable recording system; changes in practice in respect of notification of significant events; obtaining a dedicated GP service for the unit; and carrying out a safety check on the potential of young people to self-harm. Some of the recommendations made in respect of the treatment of children in secure care were repeated from previous inspections of this service.

- While it is vital that the ISSI continues to inspect these facilities and follow-up its recommendations, the repetition of its recommendations calls into serious question its ability to enforce standards and ensure that the rights of these most vulnerable children are protected. The establishment of a well-resourced, independent statutory inspection mechanism, which can compel the implementation of its findings, is extremely important to ensure children's rights are protected.⁴⁵⁵ Such a system must also be capable and prepared not only to inspect buildings and policies, but to inspect social work practice and to demand the highest standards of protection and treatment for the young people in residential care with absolute protection of their physical integrity and welfare as a minimum standard. A highly-visible complaints mechanism for children, including recourse to legal action, is a very important factor here.

Early Childhood Care and Education: Early childhood care and education in Ireland is either poorly regulated or not regulated at all, depending on the area. While the problems with the current system impact on all children (in terms of price and quality of education and care), children from high-risk backgrounds are most likely to be damaged by poor-quality services.⁴⁵⁶

Without a universal state system of early childcare, the need is being met by members of the extended family and local childminders. There are an estimated 40,000 childminders in Ireland and approximately 80 per cent of full day care for children is believed to be provided by childminders, self-employed in their own homes.⁴⁵⁷ According to the Regulations for Pre-school Services for Children, revised in 2006, there is no limit to the number of children a childminder may care for and this sector is effectively unregulated and unsupervised. Neither the notification system nor the registration requirements, operational for other types of childcare under the *Child Care Act, 1991*, apply to private childminders. No standards apply,

⁴⁵⁵ This was also the recommendation of the Committee on the Rights of the Child in 2006. Committee on the Rights of the Child, *Concluding Observations: Ireland (2006)*, para 32-33.

⁴⁵⁶ Brennan, 'Childcare in disadvantaged areas' *Barnardos Childlinks*, Winter (2003), p 14. They are also most likely to benefit from high-quality services.

⁴⁵⁷ Corrigan, *OECD Thematic Review of Early Childhood Education and Care Policy in Ireland*, p 30. According to a TUI survey in 2002, 86.3 per cent of members with children under 14 years relied on some form of childminding arrangement.

no inspection or supervision takes place and there are no requirements as to health and safety, qualifications of staff and quality of food and general care.⁴⁵⁸

Even for more formal childcare settings, the present system represents a very weak form of regulation, particularly in view of the number of children attending the wide variety of early childhood settings, and the lack of choice parents currently enjoy. Current pre-school regulations are limited in their remit and are not 'uniformly applied across different Health Boards'.⁴⁵⁹ The Regulations have been criticised for focusing on the structural aspects of settings and not regulating quality in terms of process variables such as relationship and adult-child interaction.⁴⁶⁰ In this regard, new regulations – the *Child Care (Pre-School Services) Regulations 2006* – are welcome insofar as they make provision for greater regulation and for trained and vetted staff. Although they are in force, it is too early to determine their impact on the rights of children cared for in this setting.

The failure to put in place rigorous mechanisms for evaluating childcare facilities has meant a lack of external accountability in this area, and Buckley maintains that 'as long as demand for childcare places exceeds supply, the impact of regulatory measures will be weakened'.⁴⁶¹ Previous regulations did not focus on the quality of care given to children, with the 1996 version imposing only the 'basic means of promoting the development of children', containing 'no specific requirement that there be professionally trained and educated staff, skilled in the education and development of pre-school children'.⁴⁶² Considerable investment, particularly in training and regulation, is required to ensure that the 2006 Regulations will have a positive impact on the care received by children.

School Attendance and Early School Leaving: A database of attendance is maintained in the Department of Education and Science but it is reliant on the principal notifying the National Education Welfare Board (NEWB) that the child has left and has not registered with another school or has amounted up 20 days absence indicating the likelihood of him/her leaving.⁴⁶³ Response rates were reported to be taking place at levels of between 76 per cent for second level schools and 83.4 per cent for primary schools in 2004/2005.⁴⁶⁴ Rates of absenteeism appear to be very high – one in 10 pupils was absent for more than 10 days in primary school whereas that rose to one in five in second level – and it is not

⁴⁵⁸ In 2006, a tax break was introduced to encourage childminders to register in a voluntary capacity with their local authority but only 300 registered. See Carl O'Brien, 'Lenihan to give €15 million for childcare services', *Irish Times*, 3 January 2007.

⁴⁵⁹ O'Kane, 'The effect of regulation on the quality of early childhood services in Ireland', *Child Care in Practice*, 11/2 (April 2005), pp 231-251, at p 236, citing the Department of Justice Equality and Law Reform, *National childcare strategy report of the Partnership 2000 expert working group on childcare* (Dublin: Stationery Office, 1999).

⁴⁶⁰ O'Kane, *ibid.*, at pp 236-237.

⁴⁶¹ Buckley, 'Duty to Care: Reducing risk in childcare settings', *Irish Journal of Family Law*, 3 (2006), 1-8, at p 3.

⁴⁶² *Ibid.*

⁴⁶³ Barnardos, *Make the Grade*, p 11. These statistics are published annually in the National Education Welfare Board's annual report, www.newb.ie

⁴⁶⁴ National Education Welfare Board, *Annual Report 2005*, p 25.

clear what response the reporting of this data currently triggers, although work here is ongoing.⁴⁶⁵ In addition, there is currently no system of tracking the transfer of children from primary to second level, and the numbers who drop out at this stage are unknown.⁴⁶⁶ This failure to maintain accurate and up-to-date records of children's attendance at both primary and their transfer to second level school undermines attempts to prevent early school leaving.

The level of school suspensions and exclusions is not known. There is a need to review the issue of rolling suspensions, particularly in areas of high economic and social disadvantage, and also a need for a nationwide tracking system of suspensions to enable them to be monitored.⁴⁶⁷ There is no available information on how the educational needs of children excluded from school are met.

Lack of After-School Care: The issue of primary school children being left waiting outside schools without official supervision is a growing cause of concern. Parents struggling with work schedules and school bus timetables involving double runs have been cited as the main reasons for these unmonitored periods before and after school.⁴⁶⁸ Although there is a trend towards the provision of after-school services for children, there are no guidelines or regulations as to how after-school services should be provided, and the evidence is that provision for such services is minimal.⁴⁶⁹ After-school and out-of-school services remain under-developed and unregulated aspects of childcare for children of all ages.⁴⁷⁰ The Children's Rights Alliance has recommended that after-school provision be supported to provide balanced opportunities for free play, creative activities and sports, as well as homework and other academic work.⁴⁷¹

Education and Enrolment Policies: While the *Equal Status Acts, 2000-2004* prohibit schools from applying discriminatory criteria to enrolment, research has found that enrolment policies relating to 'feeder schools' catchments areas and having siblings who attend the school have a disproportionately negative impact on certain groups of children, including Traveller children and newcomer children.⁴⁷² Similarly, although schools report operating an open and transparent policy, operating a policy that prefers siblings or those with a family connection excludes large parts of the population. Schools continue to use these policies in the absence of effective monitoring and regulation.⁴⁷³

⁴⁶⁵ *Ibid.*, p 23.

⁴⁶⁶ It is estimated that up to 1,000 children annually do not transfer from primary to second level school; Children's Rights Alliance, *From Rhetoric to Rights*, paras 409-410, p 60.

⁴⁶⁷ NYC1, *Submission to NAPS on Educational Disadvantage* (April 2001), p 13.

⁴⁶⁸ See www.educationmatters.ie (22 January 2007) and Ombudsman for Children, *Submission to the Joint Oireachtas Committee on Education and Science on School Transport* (1 March 2007).

⁴⁶⁹ Fallon, 'Targeting Disadvantage among young children in the Republic of Ireland' *Child Care in Practice*, 11/3 (July 2005), 289-311, p 296.

⁴⁷⁰ Corrigan, *OECD Thematic Review of Early Childhood Education and Care Policy in Ireland*, p 28.

⁴⁷¹ Children's Rights Alliance, *From Rhetoric to Rights*, paras 452-453, p 65.

⁴⁷² McLnri, 'Ireland Research Findings' in Watt and McGaughey (eds) *Improving Government Service Delivery to Minority Ethnic Groups*, p 121.

⁴⁷³ Sean Flynn, 'List identifies a two-tier system' *Irish Times*, 14 November 2006.

Recommendations: There is a need to acknowledge that lack of monitoring and supervision can lead to complacency and/or the failure to ensure that children's rights are protected and promoted. In early childhood care and education, education, child protection and residential care, there is a need to revise (in some cases dramatically revise) current monitoring mechanisms and systems. The Ombudsman for Children may also consider raising awareness about the relationship between monitoring services and protecting children's rights.

3.5 Recommendations

There is a strong link between the protection and promotion of children's rights in practice and the existence of mechanisms designed to provide children with advocacy and representation. In some cases, for example, children denied this support will suffer multiple breaches of their rights. Similarly, the establishment of effective, independent complaints mechanisms and systems to monitor and regulate services have a direct bearing on the extent to which children, particularly vulnerable children who are very young, sick, in residential care or at risk, enjoy their rights. Accordingly, the following recommendations are made here:

- Priority should be given to ensuring that children enjoy the right to express their views and concerns, and providing them with the support to do so should they need it, especially for communicating their views to the Ombudsman for Children.
- Serious consideration should be given to establishing an independent advocacy service to ensure that all children in need of independent representation can access it without delay.
- Legal change and judicial and legal training are required to ensure that the voice of the child is heard in legal proceedings that affect him/her.
- The outstanding legal provisions relevant to the provision of *guardian ad litem* should be enacted without delay. The Children Acts Advisory Board is encouraged to expedite its process of issuing guidance on the qualifications, criteria for appointment, training and role of the *guardian ad litem* to this end.
- A whole range of measures are needed to ensure that children involved in the legal process as victim, accused or witness, are protected and have their voices heard. Particular consideration should be given to implementing the recommendations of the Joint Oireachtas Committee on Child Protection.
- In early childhood care and education, formal education, child protection and residential care settings, there is a need to revise (and in some cases dramatically revise) existing monitoring mechanisms and systems and their impact.

In exercise of its statutory function to protect and promote the rights of children, the Ombudsman for Children's Office should:

- raise awareness about the relationship between complaints procedures, monitoring services and protecting children's rights;
- continue to bring details of available complaints mechanisms to the attention of children and adults in line with Section 7(1)(d) of the *Ombudsman for Children Act, 2002*;
- continue to press for legislative change in respect of the exclusions to its complaints function under Section 11 of the *Ombudsman for Children Act, 2002*.

4. Provision of Services and Supports

Article 3 of the Convention on the Rights of the Child requires that the child's best interests be a primary consideration in all actions concerning the child. It also requires states to provide children with the protection and care necessary for their wellbeing and to take all appropriate legislative and administrative measures to this end. Services and facilities responsible for the care or protection of children must conform to the standards established by competent authorities.

Article 3 of the CRC is the mandate for child-focused services in all areas of the child's life. According to the Committee on the Rights of the Child, the Article 3 principle provides the basis on which programmes and policies are set, and must be taken into account in every service provided for children.⁴⁷⁴ Service provision must take account of the best interests principle and implementation of the CRC requires services and supports that are dedicated to children by being tailored to their needs and circumstances. In addition, they must be accessible to children, with reference to their age and geographical location, and information about the services should be widely distributed so that children are aware of the supports that are available. As with law and policy, services and supports must also be properly integrated and mechanisms established to ensure that they are co-ordinated and delivered effectively.

The provision of services and supports to children is fundamental to the successful implementation of the Convention and the effective protection of their rights. Moreover, services that are not tailored to children, that are inaccessible or fragmented, that are inadequately mainstreamed or co-ordinated will result in diminished protection for children's rights. Conversely, ensuring accessible and age-appropriate services that meet children's needs will add value to existing supports for children and bring about greater adherence to children's rights' standards.

4.1 Lack of Dedicated Children's Services

There are many areas of children's lives where there is a complete absence of dedicated children's supports or services. In addition, where such supports exist for families, there is frequently a failure to provide child-specific or age-appropriate supports. These may result in very serious breaches of children's rights, including the right to survival and development (Art 6), the right to health (Art 24) and the right to protection from harm (Art 19). Examples are as follows:

⁴⁷⁴ See, for example, the Committee on the Rights of the Child, *General Comment No 9: The rights of children with disabilities*, CRC/C/GC/9 (2006), para 29.

Mental Health: The Committee on the Rights of the Child has highlighted the need for dedicated, community-based services and supports for children in the area of mental health.⁴⁷⁵ Despite the evidence of serious mental health problems among both children and young people,⁴⁷⁶ there are very serious gaps in mental health provision and only a skeleton mental health service exists for adolescents at risk.⁴⁷⁷ This is placing children's rights at very serious risk. There is inequitable distribution of child and adolescent mental health services across the country and insufficient (20 beds) in-patient facilities.⁴⁷⁸ Children wait a long time, sometimes two to three years, for appropriate services, and waiting lists vary dramatically from one area to the next. In the interim, children are accommodated inappropriately in homeless hostels and elsewhere, and some receive no assistance whatsoever.⁴⁷⁹

Dedicated adolescent services – for 16 and 17-year-olds – are virtually non-existent, and young people continue to be treated through adult services.⁴⁸⁰ Young people who have psychiatric, emotional or behavioural difficulties are sometimes held in inappropriate settings, such as adult facilities, due to a lack of specialised services suitable for their needs. There are currently an inadequate number of specialist out-patient multidisciplinary teams, the majority of which are significantly below the recommended multidisciplinary staffing complement.⁴⁸¹

A survey by Behaviour and Attitudes among 1,200 adults has found that depression still attracts a high level of stigma and 64 per cent found that they would find depression difficult to talk about with a GP or another health professional, while 62 per cent said they would find it difficult to talk to friends about.⁴⁸² There is a clear gap in supports for young people suffering mental health problems, many of whom need community-based emotional support services in light of emerging evidence that many students are

not willing to open up to adults in a school setting.⁴⁸³ The Committee on the Rights of the Child has also highlighted the need to raise awareness about the impact of mental health issues so as to reduce stigma in this area. In 2006, it urged the Government to implement the recommendations of the Mental Health Strategy and to continue its efforts to ensure that children with mental health difficulties benefit from specific services designed for children.⁴⁸⁴ Urgent implementation of all recommendations in *A Vision for Change* is required, with substantial capital and ongoing investment in community-based multidisciplinary services, including sub-speciality for children as a priority.⁴⁸⁵

Children in Relationship Breakdown: Although children's rights are affected by the breakdown of their parents' relationship, there is a lack of dedicated services for children in this area. Mediation services are currently offered to parents, with little provision for children being integrated into the process.⁴⁸⁶ While the Family Support Agency assists parents in this area, its remit does not extend to providing specific supports or services to such children.⁴⁸⁷ There is a lack of services directed at young people (like 'Teen Between' run by the Marriage Relationship Counselling Service), and a great need for supports, including those that are peer-led, services and counselling for children whose parents are going through separation. A broad range of adaptable supports is needed, which are accessible and available quickly at the time of separation; information on them should be widely disseminated.⁴⁸⁸

Bereaved Children: While many children suffer bereavement, there is little information available on the services and supports available to these children who may suffer an exacerbation of existing problems due to the bereavement or the onset of new problems, including mental health issues.⁴⁸⁹

Children and Domestic Violence: Despite the very serious children's rights issues involved, there is an absence of dedicated services for children affected by domestic violence. Research highlights the need to have services and interventions that are tailored to suit the situations and the personalities of individual children.⁴⁹⁰ There is also a need for one service to oversee and make connections between different agencies that may or may

⁴⁷⁵ Committee on the Rights of the Child, *General Comment No 4 on Adolescent Health and Development in the context of the CRC, CRC/C/GC/4* (2003), para 29.

⁴⁷⁶ See also *A Vision for Change, Report of the Expert Group on Mental Health Policy* (Dublin: Stationery Office, 2006), p 92 which estimates that 2 per cent of children will require mental health services at some point. Suicide is a very serious problem in Ireland, particularly for young men, although concern about young girls (15 to 19 years) is increasing. Ireland has the fifth highest youth suicide rate in Europe. Information from RTE, *Primetime Investigates*, 4 December 2006.

⁴⁷⁷ See generally, Irish College of Psychiatrists, *A better future now: Position statement on psychiatric services for children and adolescents in Ireland* (Irish College of Psychiatrists, September 2005).

⁴⁷⁸ *A Vision for Change: Report of the Expert Group on Mental Health Policy*, 86.

⁴⁷⁹ Edel Kennedy, 'Parents waited eight years for aid to son', *Irish Independent*, 30 November 2006. According to consultant psychiatrist Dr Margo Wrigley a two-year wait for an appointment is 'not unusual'. Martin Wall, 'O'Malley wants cut in mental health delays' *Irish Times*, 14 December 2006. Eithne Donnellan, 'Child needing psychiatric help spent week on trolley', *Irish Times*, 11 October 2006. Breda Heffernan, 'Overdosed teen died after hospital sent her home', *Irish Independent*, 30 November 2006.

⁴⁸⁰ *A Vision for Change*, p 86. See also the provisions of the *Mental Health Act 2001* and the *Report of the Review Group on Child and Adolescent Psychiatric Services*.

⁴⁸¹ Irish College of Psychiatrists, *A better future now: Position statement on psychiatric services for children and adolescents in Ireland*.

⁴⁸² The Irish Association Suicidology, *Newsletter*, 3/3 (Autumn 2006), p 15.

⁴⁸³ Downes, *Psychological Support Services for Ballyfermot: Present and Future*, commissioned by URBAN Ballyfermot (Dublin: Educational Disadvantage Centre, 2004).

⁴⁸⁴ Committee on the Rights of the Child, *Concluding Observations: Ireland* (2006), para 47(c).

⁴⁸⁵ Irish College of Psychiatrists, *A better future now: Position statement on psychiatric services for children and adolescents in Ireland*.

⁴⁸⁶ Conneely found that it almost never happened. Conneely, 'Researching the Irish Family Mediation Service. Children in Mediation', *Irish Journal of Family Law*, 3/4 (2000), 1-9. See also Hogan, Halpenny and Greene, *Children's Experiences of Parental Separation* (Dublin: Children's Research Centre, 2002), 89.

⁴⁸⁷ Its functions are set out under Section 4 of the *Family Support Agency Act 2001*.

⁴⁸⁸ Hogan, Halpenny and Greene, *Children's Experiences of Parental Separation* (Dublin: Children's Research Centre, 2002), p 112.

⁴⁸⁹ The Family Support Agency distributes funding for services associated with counselling children who have been bereaved, but their extent is not clear. Barnardos also provides a service in this area.

⁴⁹⁰ Buckley, Whelan and Holt, *Listen to Me! Children's experience of domestic violence* (Dublin: Children's Research Centre, 2006). This research develops such a model.

not have a direct focus on domestic violence. The needs of the children are so varied that a range of interventions may be necessary at any one time.

Children's Health Care: The Committee on the Rights of the Child has stated the need to ensure health care that is sensitive to the needs of adolescents in particular.⁴⁹¹ Yet research highlights the inadequacy of child-focused services in Irish hospitals, including the lack of appropriate facilities for older or adolescent children, the perceived over-investigation and over-treatment of children, possible misconceptions regarding the appropriate age of consent for children and the lack of paediatric specialisation among staff working with children.⁴⁹² The physical fabric of almost all hospital buildings, including the children's hospitals, where children are cared for is poor. The space requirements and facilities are inadequate. For example, most children's wards do not cater well for adolescents; no hospital has urinals for boys or adequate bathroom facilities to meet young people's sanitary and shaving needs.⁴⁹³ There is a severe shortage of age-appropriate care settings within the community and in hospitals.⁴⁹⁴ Where there are children's wards in general hospitals, these cater for all age groups from babies to adolescents, and this failure to make age-appropriate provision available to all age groups reduces the quality of the health care experience, particularly for older children.⁴⁹⁵ There is no hospice for children in Ireland.

There is also a need for greater support for families of children in hospital in line with the CRC.⁴⁹⁶ Parents can be placed under great financial strain and get into debt, particularly where their child has a long-term condition. In one survey, costs were found to be higher for those parents with other children and for those who lived further away from the hospital and incur transport costs.⁴⁹⁷

Drug Prevention and Treatment Services: There are insufficient adolescent outpatient and in-patient treatment services to treat children suffering drug addiction. Current in-patient services – those provided by the Drug Treatment Centre Board – target only those in extreme need.⁴⁹⁸ Additional investment needs to be made for the development

of mental health/addiction services as a matter of urgency.⁴⁹⁹ Similarly, mainstream family support services are not equipped to deal with drug issues and specialist addiction services do not have a family support focus. Policy development and training are needed to maximise the potential benefits of the effective linking of these two services.⁵⁰⁰

Drug-Using Parents: According to research, drug-using parents receive little support from services or agencies to help them cope with the care of their children or deal with family problems arising from their drug dependence.⁵⁰¹ Drug treatment services were perceived by both parents and professionals as focusing primarily on drug users as individuals rather than as family members with responsibilities and relationships affected by their drug use. There is also an absence of dedicated services for children of drug users⁵⁰² resulting in the rights of these children being ignored.

Sexual Health: There is no national, adolescent health service including provision for gay, lesbian, bisexual and transsexual young people. Although there are some services available locally, there is no national service making information widely available to young people on the risks of sexually transmitted diseases; nor are there any reproductive and sexual health services dedicated to young people.⁵⁰³ The Committee on the Rights of the Child recommended in 2006 that the Government strengthen its efforts to enhance access to adolescent-specific reproductive and sexual health information and services, and that these are not limited to school curricula but can also be accessed within the adolescent daily living environment, in addition to information and awareness-raising campaigns.⁵⁰⁴ Similar recommendations were made by the Joint Oireachtas Committee on Child Protection.⁵⁰⁵

There is also a need to address certain supports, services and information to hard-to-reach groups. For example, with increasing rates of sexual activity at a younger age – and the range of problems this brings – access by young people to accessible, age-appropriate information, particularly those at risk and those who are hard to reach, is vital.⁵⁰⁶

⁴⁹¹ Committee on the Rights of the Child, *General Comment No 4, Adolescent health and development in the context of the Convention on the Rights of the Child*, para 41.

⁴⁹² Migone, McNicholas and Lennon, *Children's Rights in Hospital – Is Ireland following the European Charter?* available from Children in Hospital (Ireland). See also Kilkelly, and Donnelly, *The Child's Right to be Heard in the Healthcare Setting: Perspectives of Children, Parents and Health Professionals* (Dublin: Office of the Minister for Children, 2006) and Coyne, Imelda et al, *Giving Children a Voice: Investigation of Children's Experiences of participation in consultation and decision making within the Irish healthcare setting* (Dublin: Office of the Minister for Children, 2006).

⁴⁹³ Correspondence from Mary O'Connor, CEO Children in Hospital (Ireland), 23 February 2007.

⁴⁹⁴ Barnardos, *Seven Steps to Ending Child Poverty* (2005), p 14.

⁴⁹⁵ Children's Rights Alliance, *From Rhetoric to Rights*, para 296, p 45.

⁴⁹⁶ Committee on the Rights of the Child, *General Comment No 4, Adolescent health and development in the context of the Convention on the Rights of the Child*, para 15.

⁴⁹⁷ Fitzgerald, *Sick Children Money Worries* (Dublin: Children in Hospital (Ireland)), June 2004).

⁴⁹⁸ Children's Rights Alliance, *From Rhetoric to Rights*, para 342, pp 50-51.

⁴⁹⁹ HSE and Department of Health and Children, *Report of the working group on the treatment of under-18-year-olds presenting to treatment services with serious drug problems* (September 2005), 6.

⁵⁰⁰ Children's Rights Alliance, *From Rhetoric to Rights*, para 343, 51.

⁵⁰¹ Hogan and Higgins, *When parents use drugs: Key findings from a study of children in the care of drug-using parents* (Dublin: Children's Research Centre, undated), 25-27.

⁵⁰² *Ibid.*, p 30.

⁵⁰³ More than 1,000 teenagers were diagnosed with STDs in 2004 and the rate of infections has increased dramatically since 1995, with young women between 16 and 19 particularly at risk. Mayock and Byrne, *A Study of Sexual Health Issues, Attitudes and Behaviours: the views of early school leavers* (Dublin: Crisis Pregnancy Agency, 2005).

⁵⁰⁴ Committee on the Rights of the Child, *Concluding Observations: Ireland* (2006), paras 52-53. See also Committee on the Rights of the Child, *General Comment No 4 on Adolescent health and Development in the context of the CRC*, paras 28, 30.

⁵⁰⁵ Joint Oireachtas Committee on Child Protection, *Report on Child Protection*, p 99.

⁵⁰⁶ Layte et al, *The Irish Study of Sexual Health and Relationships*.

Detention: Children in detention, outside of the Child Detention School system, are not currently separated from adults, contrary to Article 37 of the CRC. They are detained alongside adults in adult prisons and some 16 and 17-year-olds are detained with adults in St Patrick's Institution. The Committee on the Rights of the Child expressed serious concern about this practice, particularly given the poor regime in St Patrick's and adult prisons, where there are inadequate facilities for education, training and work on offending behaviour. Separate dedicated detention facilities for children were recommended where detention was the only/last resort.⁵⁰⁷ While it is proposed to remove all children under 18 years from the adult system, no known time-scale has been identified for this process.⁵⁰⁸

School-Age Parents: In 2004, 654 children were born to mothers under the age of 18, and one of the biggest challenges facing these young parents is completing their education. They face a higher risk of early school leaving and, consequently, of being confined to low-paid employment or dependence on social welfare payments. While in 2001 an Oireachtas report identified a need for specific supports for students who become pregnant,⁵⁰⁹ there is no national, integrated strategy on this issue covering all forms of education, including vocational and further education. Moreover, there are no official protocols or guidelines for school authorities in relation to responding to the needs of pregnant or parenting teenagers. Nor are there sufficient State-aided projects to support school-age mothers who need childcare to remain in, or return to, school.⁵¹⁰

Early School Leavers: There is a need to develop special programmes and projects for early school leavers, which fulfil the need for life-long learning in a way that is certified and meets their needs. Although Youthreach has many merits, including that participants are paid a training allowance, it has been described as 'perverse that a person has to leave school to be able to draw down income support and well-resourced suitable programmes'.⁵¹¹ There is also concern that the training allowance provides an incentive to those already isolated within the school system and encourages them to leave.

Recommendation: The absence of dedicated supports and services for children in the event of relationship breakdown, bereavement and domestic violence and in the areas of health

⁵⁰⁷ Committee on the Rights of the Child, *Concluding Observations: Ireland (2006)*, paras 72-73. See also Ombudsman for Children, *Advice of the Ombudsman for Children on the proposed changes to the Children Act 2001* (April 2006).

⁵⁰⁸ Ombudsman for Children, *Advice of the Ombudsman for Children on the proposed changes to the Children Act 2001* (April 2006), pp 14-15.

⁵⁰⁹ Joint Committee on Social, Community and Family Affairs, *Teenage Parenting: Contemporary Issues* (Dublin: 2001).

⁵¹⁰ Children's Rights Alliance, *From Rhetoric to Rights*, paras 440-443, p 64.

⁵¹¹ NYCI, *Class Action: An NYCI policy on lifelong/lifewide learning educational disadvantage and access to higher and further education* (February 2002).

care, mental health, drug addiction and detention have very serious consequences for the protection of the rights of these children. Efforts need to be redoubled to ensure that these vulnerable children receive the necessary age-appropriate services as a matter of urgency. Awareness also needs to be raised about the availability of existing supports and services.

4.2 Geographical Disparity and the Rural/Urban Divide

Non-discrimination means that all children have an equal opportunity to enjoy their rights under the CRC regardless of any differences between them. However, there is evidence that particular problems are faced by those seeking to deliver services in rural areas, and in many other areas geographical disparity, sometimes unexplained, means that services are significantly worse in some areas than others. This leads to an uneven enjoyment of children's rights. Some examples follow:

- **Family Support Services:** Difficulties are encountered delivering family support in rural areas given that social workers/professionals may spend large periods of time travelling to and from families. There is a need to streamline these services.⁵¹²
- **Investment in Family Support:** Levels of investment in family support vary dramatically from one part of the country to another. For example, the West has the highest levels of investment in family support, while the Eastern region has the lowest level. Corresponding figures show that the West has the lowest rate of children in care (32 per 10,000) while the East has the highest (57 to 10,000).⁵¹³
- **Education:** Increased population size, with a focus on particularly urban areas, has led to a dramatic increase in class sizes in some areas and a shortage of school places in others. Class sizes for Ireland's junior infants vary greatly depending on location; they can be as low as eight or nine in rural counties but over 30 in urban areas like Dublin and some of its commuter towns.⁵¹⁴
- **Early School Leaving and Absenteeism:** While problems of early school leaving and absenteeism are experienced nationwide, they are more pronounced in certain, particularly urban areas.⁵¹⁵ At the same time, more than one in four of all 840 schools in the School Support Programme are in Counties Donegal, Mayo or Galway.⁵¹⁶
- **Support for LGBT Young People:** There is inadequate support for young LGBT people outside the Dublin area, particularly in rural areas where other sources of support,

⁵¹² Manktelow, 'Delivering family support services in rural Ireland' *Child Care in Practice* 9/2 (2003), 140-155.

⁵¹³ Department of Health and Children, *Analysis of Childcare Interim Dataset* (2004).

⁵¹⁴ John Downes, 'Almost 110,000 pupils in class sizes of 30-plus', *Irish Times*, 24 August 2007, citing Department of Education and Science figures released in a written Parliamentary Question to the Labour Party's Education spokesperson, Jan O'Sullivan.

⁵¹⁵ *Analysis of school attendance data at Primary and Post-Primary levels for 2003/2004*, in National Education Welfare Board, *Annual Report 2004*, 11-12, available at www.newb.ie, retrieved 10 February 2007.

⁵¹⁶ Niall Murray, 'Experts question plans for schools' funding' *Irish Examiner*, 20 October 2006.

including peer support, may not be available.⁵¹⁷ It is important to supplement internet-based resources with walk-in centres. *Belong To*, an organisation which supports LGBT young people, is only beginning the process of expanding nationwide.

- **Language Support:** Schools with fewer than 14 newcomer pupils receive part-time hours for their language support. Such schools, more likely to be those based in rural or smaller urban areas, find it difficult to attract qualified teachers on this basis.⁵¹⁸
- **Health Services:** There is concern that the provision and quality of health services varies greatly between regions. As many of the specialised services are provided in Dublin, those living elsewhere in the country experience additional strain and need additional support.⁵¹⁹ The Committee on the Rights of the Child recommended that the Government ensure that availability and quality of health care services are maintained throughout the country by providing targeted resources and establishing statutory guidelines for the quality of these services.⁵²⁰ Support also need to be provided to parents who must travel and stay away from home to ensure their children's health needs are met.
- **Play Provision:** While there has been a marked increase in the number of playgrounds (207 more since 2002, with a further 107 planned) there are wide variations from county to county.⁵²¹ For example, Dublin County currently enjoys a ratio of one playground for every 5,894 people; the vast majority of counties enjoy only one playground for between 10,000 and 15,000 people. Indeed, some counties have dramatically worse ratios. Limerick, for example, has only one playground for 121,471 people. There is little apparent explanation for Local Authorities' failure to make provision for playgrounds.
- **Juvenile Liaison Officers:** The number of Juvenile Liaison Officers (JLOs) in each Garda area also appears to vary arbitrarily from one area to the next. Data show that JLOs are not present in sufficient numbers, particularly in counties with large urban centres, while in other areas there are clearly insufficient JLOs to maximise the potential of the Scheme or indeed to ensure its non-discriminatory application at the most basic level. For example, the largest counties appear to have the smallest numbers of Gardaí operating the Programme – for example, County Clare has one Garda, County Mayo has two Gardaí, Counties Galway and Roscommon share four Gardaí, and County Kerry has two Gardaí.⁵²²

⁵¹⁷ Public campaigns which target all schools and areas are important. For example, the Equality Authority and *Belong To* launched a public campaign – supported by the teachers' unions, the National Parents' Council Post Primary, the Gardaí and others in October 2006 – part of which is the circulation to all schools of posters in support of gay and lesbian young people. Pobal also published their resource guide for young gay, lesbian, bisexual and transgendered learners – *Not Just a Phase* – in 2006. See www.pobal.ie/publications, retrieved on 18 January 2007.

⁵¹⁸ INTO, *Newcomer Children in the Primary Education System* (Dublin: INTO, 2006), p 5. The INTO has recommended that teaching English as an additional language be included in all primary teachers' pre-service education.

⁵¹⁹ Children's Rights Alliance, *From Rhetoric to Rights*, para 290, p 44.

⁵²⁰ Committee on the Rights of the Child, *Concluding Observations: Ireland, CRC/C/IRL/CO/2* (29 September 2006), para 44(b).

⁵²¹ All data are taken from the National Children's Resource Centre website at www.playinireland.ie, retrieved on 15 January 2006.

⁵²² 'Report of the Committee appointed to monitor the effectiveness of the Diversion Programme, 2003', p. 11 in Kilkelly, *Youth Justice in Ireland Tough Lives Rough Justice* (Dublin: IAP, 2006), 11.

Recommendation: The National Children's Strategy placed strong emphasis on the need to establish equitable service provision across the country. Clearly, greater efforts need to be made to streamline services across geographical areas and to ensure that any disparities are eliminated, or that additional supports are provided where this is not practicable. It is also important that strategies on regional development are integrated with national strategies relating to children's rights.

4.3. The Challenges of Modern Life

The characteristics of modern life and lifestyles raise significant challenges for children and young people that can place them under additional strain, with the knock-on effect on their rights. It is important to collect data and evidence about these challenges so that evidence-based policy, supports and services can be developed to respond to them. Similarly, it is important to factor them into planning and policy making concerning young people so that such responses are up to date and continue to be adequately child focused.

Faster, Busier Lifestyles: The challenges of faster, busier lifestyles can be adversely felt by children and their families. An increasing number of families now have two parents in employment, children in full-time childcare and endure long commuting distances. This means that parents' ability to spend quality time with their children is being compromised, highlighting the urgent need for a government-led policy on creating a family-friendly workplace.

Commuting and Childcare: The demand for early childhood care and education has increased dramatically in the last decade with the increased participation of women in the workforce and the increased number of children in the population, due to factors like immigration and changes in family formation. The accompanied increase in property prices has meant that more families have moved to Dublin's ever-widening commuter belt. This has had repercussions for childcare and education services in the commuter zone, which have seen an increase in young families, many of whom commute long distances to work.⁵²³ These families are under severe financial and emotional pressure. There is evidence that working parents experience particular strain trying to care for their children and fulfil work commitments⁵²⁴ and the lack of affordable, flexible and quality childcare is a serious concern for parents.⁵²⁵

⁵²³ Corrigan, *OECD Thematic Review of Early Childhood Education and Care Policy in Ireland*, p 9.

⁵²⁴ Sheila Burt, 'Care of children costing parents €1.1 bn' *Irish Times*, 12 September 2006. In this *Irish Times*/MRBI survey in 2006, 16 per cent of parents admitted taking their child to a childcare facility, knowing that they were unwell, as they had no alternative childcare option. It found that 45 per cent of working parents found it difficult to advance in their careers and care for children.

⁵²⁵ 'Fewer than half say childcare meets needs, survey finds' (7 November 2006) www.ireland.com, quoting the *Dublin City Childcare Committee Survey*.

Over-reliance on the Car: It is well documented that there is an over-reliance on the car as a means of school transport not only causing traffic problems at peak hours, but also having serious implications for children's health.⁵²⁶

Increased Anxiety and Stress: There are reports of increased anxiety and depression among children, and concerns that the impact of stress on children is not always understood.⁵²⁷ According to leading professionals and academics in Britain, 'modern life leads to more depression among children'. In an open letter to the Daily Telegraph newspaper in September 2006, the experts explained that, as children's brains are still developing, they cannot adjust to the effects of even more rapid technological and cultural change. They need real food, real play and time. 'In a fast-moving hyper-competitive culture, today's children are expected to cope with an ever-earlier start to formal schoolwork and an overly academic test-driven primary curriculum. They are pushed by market forces to act and dress like mini-adults and exposed via the electronic media to material which would have been considered unsuitable for children even in the very recent past.'⁵²⁸

Work and Education: An NYCI survey carried out in a number of second level schools in 2000 found that almost half of those surveyed (48 per cent) have a part-time job. Of those who work, 54 per cent work for eleven hours or more per week. According to NYCI, 'it is difficult to see how this level of commitment to a job cannot take its toll on performance in school.'⁵²⁹

Play: Súgradh has identified the increasing pressures on the child's opportunities for free play including parental expectations of academic progress from an early age; increased pressure for child supervision at all times; traffic dangers, parental fears of 'stranger danger', the loss of national play opportunities through development and isolation and the lack of transport in rural areas.⁵³⁰

Technology: There is increasing concern about the risks posed to children and young people by those that children encounter on the internet; websites like YouTube and Bebo have made interaction on the web more attractive for young people, with attendant dangers. Difficulties arise in relation to the capacity of parents and others supervising or monitoring the behaviour of young people on the internet, particularly given the level of

⁵²⁶ According to the Dublin Transportation Office, 100,000 (almost half) fewer primary school children walk to school since 1991 and 17,000 fewer cycle. Seven thousand more go by car. In relation to second level schools, 17,000 less children walk to school, 34,000 fewer cycle and 42,000 go by car. This is despite the fact that most journeys are less than one mile in length.

⁵²⁷ According to one survey carried out in South Tipperary, one in five teenagers experienced significant psychological disorders and, of these, almost one in six seriously considered suicide. Almost 9 per cent of these children actually attempted suicide in the past year and one in six attempted it at some stage of their life. Conor Ryan, 'One-in-five teenagers suffer mental disorders', *Irish Examiner*, 7 October 2006.

⁵²⁸ Professor Peter Abbs et al, 'Modern life leads to more depression among children', *Daily Telegraph*, 12 September 2006. For an Irish perspective see Marie Murray, 'Generation Stress', *Irish Times*, 21 September 2006.

⁵²⁹ *Share it with the rest of the class: A nationwide study of second level students and principals examining their views on student participation in school decision making and student councils.* (Dublin: NYCI, 2000).

⁵³⁰ See www.playireland.ie, retrieved on 16 January 2006.

PC, internet and mobile phone usage among children and young people.⁵³¹ Other issues that arise are the participation of young people in the creation of harmful and unsuitable material.

Recommendation: While some of these barriers require substantive action – such as putting in place a fully resourced state system of early childhood care and education – others require the support of child-focused and family-oriented measures and interventions in the workplace and in society. They also highlight the need for greater awareness among parents of the impact of modern influences on children and the risks they pose and the need to provide greater support to parents on how to meet those challenges.

4.4. Fragmented Responsibility and the Lack of an Integrated Approach to Services

Fragmented responsibility and the lack of an integrated approach are clear barriers to the implementation of children's rights and, for this reason, the Committee on the Rights of the Child has recommended greater co-ordination in the delivery of services between central and local levels, between different regions and between Government and civil society.⁵³² The purpose of co-ordination is to ensure respect for all of the Convention's principles and standards for all children within the jurisdiction; to ensure that the obligations inherent in ratification of or accession to the Convention are not only recognised by those large departments which have a substantial impact on children – education, health or welfare and so on – but right across Government, including for example departments concerned with finance, planning, employment and defence, and at all levels.

Despite the establishment of the Office of the Minister for Children, responsibility for children's services is divided or falls between several government departments. As the examples below show, this has serious implications for service delivery and for the protection of children's rights in a wide range of areas including family support, education, health, homelessness and disadvantage. This fragmentation of services occurs both between government departments, within government departments and between government departments and other state agencies.

Family Support Services

- Family support services are split between the Department of Health and Children/HSE (with responsibility for individual families at risk) and the Department of Social and Family Affairs (with responsibility for general, community-based family support services). Seven other Government Departments also have responsibility for certain

⁵³¹ See SAFT, *Children's study – Investigating Online Behaviour* (May 2003) and Webwise, *Survey of children's Use of the Internet: Investigating Online Risk Behaviour*, (2006) www.webwise.ie, retrieved on 24 August 2007.

⁵³² Committee on the Rights of the Child, *General Comment No 5, General Measures of Implementation*, paras 37-39.

programmes for families and children. Despite the existence of the Family Support Agency, no single agency has responsibility to co-ordinate, guide and supervise projects in this area. The Committee on the Rights of the Child has expressed concern that responsibility for support programmes and for the delivery of support services is allocated to different governmental authorities.⁵³³

- Historic devolution of responsibility for the development and provision of family support services to the Health Boards has resulted in regional differences in the type and scope of services provided. Outside the statutory sector, funding for community-based or voluntary organisations providing family supports is not reliable or constant, and such groups often need different types of supports to ensure their survival (e.g. focus on disadvantage is a useful hook for those seeking funding but this may skew services). These issues are compounded by a lack of a single unified policy on families or on how best to support families and parents, and by the way the variety of initiatives and policies emerge from government departments.⁵³⁴

Family Support and Addiction

- **Drugs and Family Support:** There is an absence of integrated family support services – currently addiction services are separate – to ensure that drug-using parents receive adequate family support and treatment for drug addiction.⁵³⁵ Failure to address drug using among parents means that children suffer through their exposure to drug taking and their own vulnerability to drug use and crime.
- **Alcohol and Family Support:** Similarly, parental drinking problems have not been addressed holistically, including by addressing the impact this may have on children. This lack of joined-up thinking means that child protection specialists see adult drinking as outside their remit, and those who deal with adult drinking do not deal with the family-wide problem.
- Childcare professionals need to develop capacity and competence in these related areas. There is a need for childcare specialists to receive training through primary education and ongoing professional development. Similarly, addiction specialists need to adopt a more explicit childcare and parenting focus since so many of their clients have alcohol problems which contribute to, and complicate, their childcare difficulties.⁵³⁶
- The relatively minor role that social work plays in the drug and alcohol sphere in Ireland needs to be re-examined.⁵³⁷ One survey conducted in 1999 found that only 6 per cent of social workers (8) were described as being specifically in the addictions field, with

⁵³³ Committee on the Rights of the Child, *Concluding Observations: Ireland (2006)*, para 28.

⁵³⁴ Barnardos, *Every Child Matters, Parents under Pressure*, p 12.

⁵³⁵ Hogan and Higgins, *When parents use drugs: Key findings from a study of children in the care of drug-using parents* (Dublin: Children's Research Centre, undated), p 29.

⁵³⁶ Barnardos, *Every Child Matters, Parents under Pressure*, p 14. See also Butler, 'Addiction Problems, Addiction Services, and Social Work in the Republic of Ireland, *International Aspects of Social Work Practice in the Addictions*, (2002), 31-48.

⁵³⁷ Butler, *ibid.*, p 38.

only 1.3 per cent of the total (17.5 posts) being in community work.⁵³⁸ While this may have improved in recent years, it is clear that it is from an extremely low base.

Early Childhood Education and Care

- Historically, Ireland has provided limited State support for early childhood education and care, relative to other developed countries, and its concerns in this area have been led by educational disadvantage and the gender equality agenda, rather than a child-focused or children's rights approach. Until the late 1990s, support for childcare came mainly from the Department of Health through Health Boards; the majority of this support was aimed at providing small grants to develop community-based services catering for children at risk and in need of protection. It has thus developed on an *ad hoc* basis and co-ordination of activities 'still presents major challenges at local, regional and national levels.'⁵³⁹ The need for greater co-ordination and a coherent approach to provision for early years services is well established. Funding for early childhood care is now provided by the Department of Justice, Equality and Law Reform.

Education

- **Education:** The structure of education in Ireland means that individual schools enjoy considerable autonomy and independence. However, this puts huge responsibility on individual schools at local level and means that planning is done in isolation (Boards of Management may or may not contribute in a meaningful way) and connections between schools are informal only and dependent on schools themselves. While the Department of Education and Science provides funding and grants, needs must be identified by schools alone (by internal rather than external audit) and spending this grant is the school's responsibility also (e.g. architecture, planning, building all has to be managed by schools).
- **Educational Disadvantage:** Government policies and services to combat educational disadvantage are fragmented, poorly co-ordinated and lack a coherent policy framework.⁵⁴⁰ The Educational Disadvantage Committee has highlighted the need for a radical reform of systems and structures, based on setting clear and unambiguous targets for improvement at national, local and individual school levels, on supporting the achievement of these targets and of monitoring outcomes consistently.⁵⁴¹ There is a need for high levels of co-ordination between statutory agencies involved in the area of educational disadvantage and schools to ensure that every child's right to education is realised (Arts 2, 28, CRC).

⁵³⁸ *Ibid.*, pp 39-40.

⁵³⁹ Duignan, 'Talking about Quality: Report of a Consultation Process on Quality in Early Childhood Care and Education in Ireland' *Child Care in Practice*, 11 / 2 (April 2005), pp 211-230, pp 212-213.

⁵⁴⁰ Educational Disadvantage Committee, *Moving Beyond Educational Disadvantage 2002-2005* (Dublin: Department of Education and Science, 2005).

⁵⁴¹ *Ibid.* p 22.

- Various government departments spend significant amounts of public money on areas of disadvantage, including the Department of Education and Science, Department of Enterprise, Trade and Employment, Department of Community, Rural and Gaeltacht Affairs, Department of Health and Children, Department of Social and Family Affairs, and Department of Justice, Equality and Law Reform. There is a need for greater collaboration between these departments in addressing issues relating to disadvantage and to draw up an agreed common agenda for how each department can optimise its investment in these areas and avoid duplication of expenditure'.⁵⁴² There is also a need for greater co-operation and collaboration between the various agencies dealing with educational disadvantage within the Department of Education and Science (such as the National Council for Curriculum and Assessment, the State Examinations Commission, the National Educational Psychological Service (NEPS), the National Council for Special Education, the National Education Welfare Board (NEWB), the National Qualifications Authority, and the Higher Education Authority) and a closer link between school-based initiatives and community education initiatives.
- **Student Behaviour:** The Report of the Task Force on Student Behaviour published in 2006 recommended *inter alia* the establishment of a National Behaviour Support Service (NBSS) to support schools at a regional level in relation to coping with challenging behaviour in schools.⁵⁴³ There is concern that establishing a further body in this area – to work with schools, the NEPS, NEWB and others – will lead to duplication of functions rather than greater implementation of a co-ordinated strategy. As yet, the functions of the NBSS are unclear, as is its relationship to the Department and the other bodies in this area.
- **Mental Health and Education:** Given the high levels of mental health need among young people, and the impact this has on the education of all children, there is a need to mainstream and integrate psychiatric support into schools.⁵⁴⁴ However, difficulties are caused by the fact that many of the services that these children need are the responsibility of the Department of Health and Children and not the Department of Education and Science and there is no integrated service between Government Departments and schools.

Other Vulnerable Groups

- **Homelessness:** There is a need to develop preventive (including in-reach) strategies so that young people leaving care or the youth justice system do not end up homeless or in prison. The extent to which the Homelessness Preventive Strategy will achieve the necessary level of co-ordination is difficult to assess.

⁵⁴² *Ibid.*

⁵⁴³ *School Matters: the Report of the Task Force on Student Behaviour in Second Level Schools* (Dublin: Department of Education and Science, 2006).

⁵⁴⁴ An INTO/Prime Time Survey of 200 schools found that 72 per cent of teachers said that their teaching had been compromised by a pupil with a mental health problem. INTO Press Release: *Statement by John Carr, General Secretary, Irish National Teachers' Organisation, on Mental Health Services for Children* (5 December 2006).

- **Travellers:** Travellers have been named and included in a wide range of policy developments, for example: National Social Partnership Agreements; the National Anti-Poverty Strategy; the National Action Plan Against Racism; National Employment Action Plan; the National Women's Strategy. These wider policy instruments have provided a weight to Travellers' issues that has proved very useful. But the lack of progress in many areas has also highlighted the issue: that a more informed and equality focused cross-departmental and cross-initiative approach is required if Travellers' exclusion is to be truly addressed. According to the High Level Group on Travellers Issues 'to achieve successful outcomes for Travellers there is a need for institutionalised inter-agency co-ordination at national and local level' and continuing political commitment at senior political and official level.⁵⁴⁵
- **Children with Disabilities:** Services for young children under school age with a disability are fragmented, mirroring and extending beyond the fragmentation that exists in the pre-school sector generally. The Department of Health and Children is currently responsible for a significant proportion of existing provision while the Department of Education and Science also plays a role.⁵⁴⁶ Difficulties are posed by the fact that much of the work is contracted out by the HSE to voluntary bodies, while in other areas the Health Boards provide services directly. The level and type of provision varies greatly from one geographical region to another, even within (former) Health Board areas.
- **Special Needs:** There is currently no comprehensive, integrated approach to the educational, family support and health needs of children with autism. Of particular importance are comprehensive and co-ordinated early intervention and assessment services.⁵⁴⁷ There are concerns that the implementation of the *Education of Persons with Special Needs Act, 2004* is taking place 'in the absence of protocols to guide the co-ordination of different services'. Some children fall between two stools in terms of being either 'pervasive developmental disorder' (autistic spectrum) and 'developmental delay' (which is more prevalent and can take longer to clarify). The issue raises concern about the co-ordination and/or gate-keeping of resources between the Department of Health and Children and the Department of Education and Science.
- A further difficulty arises that there is no means by which a child's special needs assessments accompanies them, automatically, to a new school, either between primary schools, or between primary and second level. This means that having the child's needs met will rely on individual parents or teachers communicating this information on a formal or informal basis. Breakdown in this communication will result in a gap in special provision for the child.
- **Domestic Violence:** There are few services providing a one-stop-shop service for those affected by domestic violence and there is a need for a single service (e.g. the Children Initiative proposed by the Mayo Women's Support Services) to take overall

⁵⁴⁵ *High Level Group on Travellers Issues, 2006.*

⁵⁴⁶ O'Connor, 'Supporting young children with a disability and their Families' *Barnardos ChildLinks*, (Autumn 2003), p 4

⁵⁴⁷ *A Vision for Change*, p 89.

responsibility for developing an appropriate assessment tool and using it to gauge individual children's needs, and then to broker a package of services on their behalf.⁵⁴⁸

- **Cultural Activities:** The Arts Council Strategy document, *Partnership for the Arts*, includes, as a goal, the creation of 'better opportunities for young people to experience the arts'.⁵⁴⁹ However, the document has been criticised for failing to articulate a 'specific, coherent strategy' as to how this will be done, for not recognising the importance of combating cultural disadvantage as part of addressing child poverty, or prioritising children in disadvantaged areas where there are few cultural resources.⁵⁵⁰
- **Disadvantaged Communities:** Communities with poor local facilities - such as shops, public transport, schools, health services, community facilities and specific services for families, children and young people, including parks and safe play spaces – and a high concentration of socially-excluded households are characterised by high levels of deprivation. Children living in these deprived neighbourhoods face a wide range of problems compared with children in other areas.⁵⁵¹ Action to tackle these problems requires a co-ordinated strategic response.
- Even while maintaining the focus on housing, it is possible to make useful proposals that relate to neighbourhood conditions. A key element in deprivation is residualisation, i.e. a high concentration of socially-excluded households. Mixing social and affordable housing with private housing schemes is a positive step in this regard but this appears to not be implemented in every area. Approaches which avoid concentrations of young single people, lone parents or families with children should also be explored (e.g. allocate houses by different criteria such as connection with the local area, people with family connections).⁵⁵²

Recommendation: The lack of co-ordination in the delivery of services and supports to children is a serious barrier to the realisation of their rights in a significant number of areas. It is undoubtedly a challenge to overcome given the boundaries that exist within and between government departments and other agencies. The role of the Office of the Minister for Children is vital to ensure that the necessary child focus is brought to bear in such a way that relevant bodies and groups work together more effectively. While it will not eradicate the need for inter-departmental and inter-agency working, it may provide a working model of best practice as to how children's services can be provided on the basis of need across areas of responsibility. This area should be kept under closer review and other jurisdictions studied carefully.

⁵⁴⁸ Buckley, Whelan and Holt, *Listen to Me! Children's experience of domestic violence*.

⁵⁴⁹ Goal 20, Arts Council, *Partnership for the Arts: Arts Council Goals 2006-2010* (Dublin: Arts Council, 2005), p 20.

⁵⁵⁰ Children's Rights Alliance, *From Rhetoric to Rights*, p 67, para 467.

⁵⁵¹ Brooke, *Housing Problems and Irish Children* (Dublin: Children's Research Centre, 2004), p 36.

⁵⁵² *Ibid.*

4.5. Low take-up of existing services

Issues arise here in two principal areas in relation to the low take-up of existing services and/or the need to make existing services more accessible and attractive:

Family Support Services

- There is evidence of low take-up of ante-natal classes, parenting courses and services offered to young parents by family centres. Studies have highlighted the need to make these courses and services more attractive to young people and more user-friendly, but also to engender a sense of ownership by the community by including service users in their planning and operation/management.⁵⁵³
- In addition, family support services have failed to include men/fathers and a more inclusive family approach needs to be addressed at both policy and operational levels.⁵⁵⁴ The predominant focus of services for families is on mothers; fathers tend to avoid professionals and there is great uncertainty among professionals about how to approach fathers and work with them.⁵⁵⁵ As a result, fathers have become virtually invisible within family support policies and strategies, as supporting families has become virtually synonymous with supporting mothers'.⁵⁵⁶ In addition, policies need to be drawn up to deal with parents who separate so that fathers are not excluded,⁵⁵⁷ and there is a need to develop services which support fathers as part of a broader strategy of promoting the wellbeing of children and families.
- Parents in employment but with low income may qualify for Family Income Support but there is a widespread lack of awareness of this provision and, as a result, a low take-up.⁵⁵⁸

Disadvantage

- There is a need to acknowledge that the stigma attached to services and supports targeted at 'disadvantaged' families may deter those who most need them from accessing them.
- Difficulties also exist in accessing telephone numbers for health centres or duty teams (due to outdated, inadequate or complicated entries in the phone directory) and the fact that some health centres have a shortage of telephone lines, making it difficult for callers to get through.

Recommendation: More needs to be done to make the public more aware of the above services for children and their families, and to make them more attractive to their targeted population.

⁵⁵³ Buckley, *Child Protection and Welfare Innovations and Interventions*, p 289.

⁵⁵⁴ McKeown, *Fathers and Families: research and reflection on key questions* (Dublin: Department of Health and Children, 2001), p 32.

⁵⁵⁵ *Ibid.*, p 31.

⁵⁵⁶ Barnardos, *Every Child Matters: Parents under Pressure*, p 12.

⁵⁵⁷ Jerome Reilly, 'HSE lacks policy to deal with parents who separate', *Irish Independent*, 12 February 2006 and Emma Browne, 'HSE failed to deal with guardianship rights of father', *Village Magazine*, 16 March 2006.

⁵⁵⁸ CPA, *Policy Statement on Child Poverty*, 2005, p 4.

4.6. Failure to Mainstream Services and Supports

A further barrier to children accessing services and supports that meet their needs, in line with the CRC, is the failure to mainstream services and supports. This has been a feature of Irish law and policy for many years and has led to many services being offered on an *ad hoc* basis. This has been compounded by the way in which traditional Health Board structures operated, meaning that many services were developed and delivered in a fragmented and patchy way, and positive initiatives and projects were not always mainstreamed. As a result, positive projects have had a limited and disparate impact, and too many projects and programmes are delivered on the margins without being properly mainstreamed. Some examples follow:

Ethnic Minorities and Health: While there are some very good initiatives being undertaken throughout the country around the unique needs of persons from minority ethnic communities, their delivery is fragmented.⁵⁵⁹ The role of hospitals is crucial and there is a need to mainstream approaches like the Migrant Friendly Hospital.⁵⁶⁰

Immigrants and Education: Despite the publication of guidelines, the intercultural approach has not yet been mainstreamed in a cross-cutting way across the educational sector. Some of the main challenges exist in relation to language, financial support, prejudice, lack of information and communication.⁵⁶¹

Family Support Services: The many positive projects in the area of family support, like Springboard, are disparate and, to a large extent, focused on designated disadvantaged areas.⁵⁶² While there is no precise picture as to where services are being provided - highlighting the need for a comprehensive audit - it is apparent that they are not integrated into any clear, coherent or overarching structure and there is a lack of a co-ordinated and child-focused approach.

Similarly, there is little mainstream funding for early family support services and programmes like Lifestart, other than those connected to disadvantage or poverty. While the public health/community nursing scheme should provide this role, its under-resourcing means that development checks do not always happen in time for early diagnosis and treatment to take place.

Given that many want to avoid the stigma of a service targeted at 'disadvantage', providing such support on a universal basis would mean that those who wanted or needed the service could access it with significant benefit to all. It would also recognise that the need

⁵⁵⁹ McInri, 'Ireland Research Findings' in Watt and McGaughey (eds) *Improving Government Service Delivery to Minority Ethnic Groups*, p 118.

⁵⁶⁰ Importantly, Temple Street has an extensive Diversity programme. *Ibid.*, p 119.

⁵⁶¹ *Ibid.*, p 121.

⁵⁶² See *Working for Children and Families: Exploring Good Practice* and Buckley, *Child Protection and Welfare Innovations and Interventions*.

for these supports and services is not confined to areas designated as disadvantaged – disadvantaged families can and do live anywhere – and that the average parent or family also needs family support in the form of education, guidance and occasionally State services, regardless of where they live.⁵⁶³

Educational Disadvantage: While there have been some developments in this area,⁵⁶⁴ more needs to be done to provide greater co-ordination and integration of service provision, resourcing and policy development, with less emphasis on the development of once-off initiatives or pilot projects.⁵⁶⁵ While the Delivering Equality of Opportunity in Schools (DEIS) programme is bringing together many schemes so that the most disadvantaged schools can receive a comprehensive package of measures, other programmes like the School Meal Scheme and the Back to School Clothing Allowance are under-resourced, *ad hoc* rather than mainstreamed, and are not implemented throughout the country.⁵⁶⁶

Important issues here are as follows:

- Supports and interventions are mostly targeted at schools designated as disadvantaged. Regardless of how disadvantaged status is determined, this ignores the fact that while there are some schools in particularly disadvantaged areas, disadvantaged pupils are in all schools in all parts of the country. The failure to mainstream such supports, including tapering supports for all schools,⁵⁶⁷ and to attach supports to families and communities, means that this need is unmet. Risk of losing disadvantaged status, and the supports that go with it, can act as a disincentive for schools addressing problems of absenteeism and early school leaving.
- There is a need to mainstream learning support education for all teachers, not just those learning support teachers.⁵⁶⁸
- The Educational Disadvantage Committee has highlighted the need to move beyond a programme-based approach to effect long-term sustainable cultural and institutional change in mainstream systems and not just in marginalised areas.
- Caution needs to be exercised with respect to integrating children with special learning needs into mainstream schools, doing so only when sufficient resources, including properly qualified staff, are in place.⁵⁶⁹ Adequate provision also needs to be

⁵⁶³ See Barnardos, *Every Child Matters: Parents Under Pressure*, p 8.

⁵⁶⁴ These include the establishment of the Education Welfare Board under the Education (Welfare) Act 2001 and the publication by the Department of Education and Science in 2005 of *Delivering Equality of Opportunity in Schools: An Action Plan for Educational Inclusion*.

⁵⁶⁵ Children's Rights Alliance, *From Rhetoric to Rights*, para 401, p 59.

⁵⁶⁶ *Ibid.*

⁵⁶⁷ The introduction of a tapered system of supports, or a greater number of bands, was recommended in 2006 by the Educational Research Committee. Niall Murray, 'Experts question plans for schools' funding', *Irish Examiner*, 20 October 2006.

⁵⁶⁸ National Education Welfare Board, *Annual Report 2004*, pp 11-12, available at www.newb.ie, retrieved on 10 February 2007.

⁵⁶⁹ Niall Murray, 'Experts question plans for schools' funding', *Irish Examiner*, 20 October 2006, quoting the concerns of the Educational Research Committee, St Patrick's College, Drumcondra. These concerns were also raised by the National Disability Authority in *Special education provision for children with disabilities in Irish primary schools – the views of stakeholders*; a report commissioned by the NDA in May 2006.

made in mainstream classrooms for pupils with physical or sensory disabilities, and special attention should be paid to minority groups, such as members of the Traveller community, refugees and asylum-seekers, in education programmes at all levels. The challenge is to create an inclusive education system, which is rights based, from pre-school to adult education, based on equality and diversity policies.⁵⁷⁰

Mental Health: In light of the serious problems in mental health services, positive initiatives need to be mainstreamed urgently. For example, an innovative drop-in service in Clonmel and Cashel has eased pressure on waiting lists for a psychologist, and has also allowed for more serious cases to be fast-tracked.⁵⁷¹ Such initiatives should be highlighted and replicated as appropriate.

Early School Leaving: Early school leavers often attend 'Youthreach' programmes. These programmes are not prescribed as centres for education under the *Education Welfare Act, 2000*, however, and learners in these programmes thus do not receive the supports set out in the Act according to their needs.⁵⁷² 'Pathways' aims to provide effective support for early school leavers. It has various programmes aimed at tracking, mentoring and offering access to gateway programmes. Despite its success, it has yet to be mainstreamed and there is still a need for greater co-ordination between in-school and out-of-school services.⁵⁷³

Recommendation: In general, systems need to be put in place to ensure that measures piloted are evaluated and provision is made for them to be mainstreamed without delay. The recommendations of the Educational Disadvantage Committee in this respect should be implemented urgently.

4.7. Privatisation and Role of NGOs as service providers

The Committee on the Rights of the Child has noted that the process of privatisation of services can have a serious impact on the recognition and realisation of children's rights. States have a legal obligation to respect and ensure the rights of children under the CRC which includes the obligation to ensure that non-state service providers operate in accordance with its provisions, thus creating indirect obligations on such actors. This must be carried out by imposing standards and putting effective monitoring and rigorous inspection structures in place.⁵⁷⁴

Ireland has a long tradition of NGOs and other non-governmental or statutory bodies being involved in the delivery of family supports and services. However, the picture that

emerges is one of reliance on community groups to provide supports and services to families. However, this sector is under-resourced and under-supported to deal with the wide range of challenges it faces.⁵⁷⁵ Combined with this, related problems have emerged through the increased privatisation of children's services. Examples follow:

Health Care: In the area of health care, there is poor co-ordination between the statutory sector and the community and voluntary sectors. The Programme of Action for Children was adopted to facilitate a co-ordinated and integrated approach to the delivery of a range of health and childcare projects. One project being undertaken as part of the Programme of Action is the framework for children's health services. The status of this is unclear, however.⁵⁷⁶

Poverty: Charities are a lifeline for many people living in poverty, but people feel uneasy relying on them.⁵⁷⁷

Family Reunification Procedures: This process is unnecessarily bureaucratic and while the Coalition Against the Deportation of Irish Children (CADIC) and a range of NGOs provide support, advocacy and information,⁵⁷⁸ they have limited resources; in any event, this is a function of the State.

Guardian ad Litem Service: Barnados provides the only *guardian ad litem* service in lieu of the State-funded independent agency recommended on numerous occasions. Barnados operates this service at a loss and has encountered difficulties being paid for its services by the HSE.

Privatisation of Residential Care: The Foster Care Standards require that the HSE put policies in place regarding the contracting-out of foster care placements, and must enter into a service agreement with any agency contracted for this purpose.⁵⁷⁹ In 2006, ISSI noted during an inspection of one residential facility that 'significant work needs to take place to formalise working arrangements' between one particular unit and the HSE. Other issues detailed in the report were: the formulation of HSE policy and procedures for the contracting-out of any non-statutory foster care service, or part of a service; the implementation of service level agreements; monitoring of compliance with standards; and the need for consistency across the HSE in relation to the assessment and approval of foster carers.⁵⁸⁰

⁵⁷⁰ Educational Disadvantage Committee, *Moving Beyond Educational Disadvantage*, p 24.

⁵⁷¹ Aine Kerr, 'Pioneering adoption service is nominated for award' *Irish Times*, 10 October 2006.

⁵⁷² Barnados, *Make the Grade*, p 12.

⁵⁷³ Battell, *Pathways Effective Support for Early School Leavers. The Integrated Proactive tracking and Mentoring Initiative. A composite report reviewing the work and practice of the Kildare, Kerry and Waterford Pathways sites in 2003 and their impact on Early School Leavers in those areas* (National Youth Federation, 2004).

⁵⁷⁴ Committee on the Rights of the Child, *General Comment No 5, General Measures of Implementation*, paras 42-44.

⁵⁷⁵ Children's Rights Alliance, *From Rhetoric to Rights*, para 168.

⁵⁷⁶ A report on this issue has been submitted to the HSE for consideration. See www.hse.ie/ProgrammesProjects/ProgrammeofActionforChildren, retrieved on 20 February 2007. An interim steering group was appointed to oversee the Programme of Action but no further information is available on its progress.

⁵⁷⁷ Combat Poverty Agency, *Against All Odds, Living with Poverty and Poor-Health*, (2004).

⁵⁷⁸ See for example, CADIC Coalition, *Information for Parents of Irish Citizen Children. Family Reunification* (June 2006).

⁵⁷⁹ See Standard 24, *National Standards for Foster Care* (Department of Health and Children, 2003).

⁵⁸⁰ ISSI, *Inspection of Five Rivers Island and the HSE*.

Public Private Partnerships: Schools that have been built under the Public Private Partnerships (PPPs) have experienced problems, particularly with practical and management issues stemming from a school's lack of full control over its resources.⁵⁸¹ A particular concern is the difficulty making school resources available to the community.

Recommendations: Responsibility for the realisation of children's rights rests primarily with the State, which can only delegate its functions but not its overall responsibility in this area. Greater measures need to be undertaken to ensure that non-governmental groups and organisations undertaking State functions, particularly in the areas of family support, health care and advocacy, are fully financed for this purpose. Checks and balances also need to be put into the system to ensure standards are maintained.

4.8. Recommendations

The absence of dedicated supports and services for children, the fragmented co-ordination of such services and the failure to mainstream positive initiatives means that children's services in many areas are poorly structured, *ad hoc* and difficult to access. This has a direct impact on the protection of children's rights in a variety of areas, including their right to appropriate health care (Article 24), the right to enjoy rights equally (Article 2, CRC), the right to education (Article 28) and the right to family support services (Article 18, CRC). Particular problems are also experienced with respect to measures designed to target disadvantage, and in areas where children have complex needs that require services to cut across different state agencies or government departments. The Government should undertake an extensive review of the support services provided under the different governmental departments to assess the quality and outreach of family support services and to identify and address possible shortcomings. A number of other measures are required to address these problems:

- Efforts need to be redoubled to ensure that particularly vulnerable children, like those with mental health problems, receive the necessary age-appropriate services as a matter of urgency;
- Awareness also needs to be raised about the availability of existing supports and services;
- Services need to be streamlined across geographical areas to ensure that any disparities are eliminated, or that additional supports are provided where this is not practicable. Co-ordination between strategies on regional development and children's rights strategies need to be integrated;
- Children's services need to be kept under review to ensure that their evidence base continues to be relevant to respond to the modern challenges children face;

- Systems need to be put in place to ensure that measures piloted are evaluated, and provision made for them to be mainstreamed without delay.

In line with its functions under Section 7(1) of the *Ombudsman for Children Act, 2002*, the Ombudsman for Children is encouraged to:

- keep the availability of dedicated children's services under regular review, and highlight where gaps in these services result in children's rights being ignored;
- observe the extent to which State functions are being carried out by the NGOs or the private sector, funded by the State.

⁵⁸¹ Department of Education and Science, *Whole School Evaluation Report: Ballincollig Community School, Ballincollig, County Cork* (Dublin: Department of Education and Science, 2006), pp 6-8.

5. Lack of Investment

Article 4 of the Convention on the Rights of the Child requires that states take measures to ensure implementation of children's social, economic and cultural rights to the maximum extent of available resources. In short, this is an expectation that wealthy states will spend more in this area and it also incorporates the principle that states will continue to progressively realise the socio-economic rights of children. However, despite Ireland's sustained wealth over the last decade, several areas of Government policy have been denied substantial resources and investment. This has led to a sustained failure to ensure the realisation of the rights of children to the extent that the lack of investment is a serious barrier to the realisation of children's rights.

Ireland places a far greater emphasis on income support (both universal and targeted measures) for families with children than most European countries but invests less in subsidised quality services for children. Ireland's level of subvention for childcare and health care for children is among the lowest in the EU, and Ireland is also a laggard when net education costs are considered, although this is increasing.⁵⁸² This lack of investment leads, directly and indirectly, to the denial of the rights of children and young people in a wide variety of areas including: the right to adequate health care (Article 24, CRC); the right to rest, play and leisure (Article 31, CRC); the right to family support (Article 18, CRC); and the right to education (Article 28, CRC). While some of these areas also suffer from other inadequacies, such as *ad hoc* planning and provision, failure to mainstream and the lack of coherent policy, the main barrier here is a sustained lack of investment.

5.1 Investment in Health Services

Lack of investment in health services has had a knock-on effect on the ability of children to exercise their right to health and health care (Article 24, CRC).

Health: Delays and waiting lists are a common feature of the health system. Emanating principally from under-investment and a lack of staffing and resources, these delays have the direct effect of denying the child's right to health care while also having a knock-on effect on other rights, such as the right to life, survival and development (Article 6, CRC) and the right to education (Article 28, CRC).

Community Health Services: According to the HSE, there is an urgent need to adequately resource and develop community child health services in Ireland, as existing services are often unable to respond to identified needs of children in a timely and appropriate manner.⁵⁸³ The shortage of public health doctors reduces early timely detection and intervention, which can have a lifelong negative impact on the child.⁵⁸⁴

⁵⁸² Combat Poverty Agency, *Policy Statement on Child Poverty*, 2005, p 2.

⁵⁸³ HSE and Department of Health and Children, *Best Health for Children: Revisited report from the national core child health programme review group to the HSE* (October 2005), p 8.

⁵⁸⁴ Barnardos, *Seven Steps to ending child poverty*, p 14.

Disability: The *Educational Provision for Children with Special Needs Act, 2004* requires assessment before the release of resources for children in need, but the long delays in having children assessed (psychologists have long waiting lists) means that time is lost addressing that need. Those with the resources can employ a private psychologist and access the necessary resources more quickly. This creates an inequitable system, compounding the disadvantage suffered by poorer socio-economic groups.

Waiting Lists: Therapeutic provision is poorly co-ordinated and generally under-resourced. There is a long-standing shortage of speech and language therapists, occupational therapists, physiotherapist and clinical and educational psychologists. Children remain on waiting lists for these services for up to three years or even longer, frustrating the exercise of the child's right to health care (Art 24, CRC).⁵⁸⁵

Waiting for Diagnoses: Full details of children awaiting treatment, including diagnosis, are not available. It is known that children whose parents are unable to pay for specialists' services in the private sector can experience lengthy delays in accessing public services, including hospital outpatient and in-patient care, orthodontic and optical services, and speech and language therapy. Apart from putting children's health at risk by exacerbating existing problems, this delay may also impede children's development.⁵⁸⁶ While waiting lists identify the length of time children are waiting for treatment, they do not explain the length of time children are waiting for assessment or diagnosis. Accordingly, they are not the subject of targets under the National Health Strategy.⁵⁸⁷

5.2 Play, Leisure and Culture

Funding from both statutory bodies and the community is essential to ensure that every child enjoys the right to play and that play is free, accessible and inclusive. Certain groups of children face particular obstacles here:

- **Children with disabilities:** Children with disabilities face additional barriers accessing play, leisure and sport facilities⁵⁸⁸ and the fact that they can be sheltered by parents/carers also places obstacles in the way of their right to play.⁵⁸⁹
- **Asylum Seekers:** Facilities and opportunities for play are inadequate in direct provision centres for asylum seekers. Research has identified a lack of appropriate space to play for children living in temporary accommodation, and due to the financial burden, parents were often unable to afford toys or participation in clubs or after-school activities.⁵⁹⁰

⁵⁸⁵ Children's Rights Alliance, *From Rhetoric to Rights*, para 301 p 45.

⁵⁸⁶ *Ibid.*, para 272, p 42. See also Barnardos, *Seven Steps to Ending Child Poverty*.

⁵⁸⁷ Fitzgerald, *Counting our Children An Analysis on official sources on children and childhood in Ireland* (Dublin: Children's Research Centre, 2004).

⁵⁸⁸ Children's Rights Alliance, *From Rhetoric to Rights*, para 465, p 66.

⁵⁸⁹ Leah McBride, 'Children's play needs a gameplan but not at the expense of fun', *Irish Times* 6 June 2006 reporting the comments of Dr Paula Kramer, Occupational Therapy Professor at the University of the Sciences in Philadelphia.

⁵⁹⁰ Fanning, Veale and O'Connor, *Beyond the Pale; asylum seeking children and social exclusion in Ireland* (Dublin: Irish Refugee Council, 2001), in *National Play Policy*, p 31.

- **Children out of Home:** Children out of home or living in emergency accommodation have inadequate access to facilities for play, rest and leisure. Severe restrictions on the ability of families to access play areas,⁵⁹¹ and the lack of access to appropriate play space within and outside such accommodation, cause children problems in their realisation of their rights.⁵⁹²
- **Travellers:** Many halting sites, including Government-provided sites, do not have safe areas for children to play. Many of these are situated near busy roads, power lines, industrial estates and railways.⁵⁹³

Leisure Activities: For older children and teenagers, the space and opportunity for socialising, rather than equipment, is the most important consideration. This group has almost no facilities provided for them and the only places in which to hang out in the evening are green areas and street corners. This often results in complaints from the public about noise and nuisance, alienating further young people who already have nowhere to go.⁵⁹⁴ The introduction of Behaviour Orders under the *Criminal Justice Act, 2006* further compounds their difficulties using these public spaces.⁵⁹⁵

Research has identified that the key barriers faced by young people, with regard to leisure, are time, transport and money, and a lack of leisure provision in the locality.⁵⁹⁶ Rural dwellers were strongest in this belief, reflecting a lack of facilities and provision for rural adolescent leisure, and dedicated provision was found to vary hugely across the State.⁵⁹⁷ The research also showed that ‘hanging around outside’ is an important leisure time activity for adolescents, with over 90 per cent of adolescents of all ages reporting that they enjoyed hanging around with their friends.⁵⁹⁸ Youth cafés which are co-run with young people clearly fill this gap. There is a clear need to develop and mainstream such initiatives.⁵⁹⁹

Young people with additional needs – members of the Traveller community, early school leavers, young people with sensory, physical and learning disabilities – all identified additional structural barriers with respect to their right to leisure, with transport, access, finance and lack of facilities all featuring prominently. This highlights the need to pay particular attention to these groups when developing and implementing policy in this area.⁶⁰⁰

⁵⁹¹ Halpenny, Keogh and Gilligan, *A place for children?*

⁵⁹² *National Play Policy*, p 31.

⁵⁹³ Children’s Rights Alliance, *From Rhetoric to Rights*, para 465, p 67.

⁵⁹⁴ Centre for Social and Educational Research, DIT and the Children’s Research Centre, TCD, *Public Policy on Children’s Play in Ireland*, p 17.

⁵⁹⁵ Kilkelly, *Youth Justice in Ireland Tough Lives Rough Justice*, pp 185-187.

⁵⁹⁶ De Roiste and Dinneen, *Youth People’s Views about Opportunities, Barriers and Supports to Recreation and Leisure*.

⁵⁹⁷ *Ibid.*, p 13.

⁵⁹⁸ *Ibid.*, p 17. The literature agrees on the normative importance of this activity to young people.

⁵⁹⁹ Foróige, *Annual Review 2005-2006*.

⁶⁰⁰ De Roiste and Dinneen, *Youth People’s Views about Opportunities, Barriers and Supports to Recreation and Leisure*, 16.

Participation in Cultural Activities: A 2004 survey of children and young people identified the lack of publicly-funded cultural activities as the main barrier to children and young people’s participation in the arts.⁶⁰¹ Funding is required to develop new cultural facilities and activities for children and young people and to promote their involvement in mainstream cultural activities. The availability of local-level projects is particularly important, highlighting the need for strategic funding, especially at this level.⁶⁰²

5.3 Education

Despite historic under-spending on education in Ireland, spending on both primary and second level education has increased at only half the rate of economic growth in the period 1995-2002.⁶⁰³ A number of issues arise in this context:

Investment is the only solution to the pervasive problem of class size.⁶⁰⁴ Class sizes at primary level remain at 24 on average, although over a quarter of primary school pupils are being taught in classes with over 30 pupils and, in some cases, over 40 pupils. Almost one quarter of second level pupils are in classes of thirty or more.⁶⁰⁵ Budget 2006 saw the provision of an additional 500 teachers to be phased in over the next two years in a bid to reduce the teacher pupil ratio. The scale of this investment shows that class size is a very serious problem.⁶⁰⁶

Large class size has the following knock-on effects:

- It has a significant impact on the quality of education for children, both at primary and second level;⁶⁰⁷
- It frustrates the teaching of the primary school curriculum, which celebrates the uniqueness of the child, and the child’s participation in an interactive and activity-based curriculum that is child-centred.⁶⁰⁸ Many of the pedagogical principles underlying the curriculum require small classes;⁶⁰⁹

⁶⁰¹ City Arts Centre, *Civil Arts Inquiry: Young People, Awareness and Participation in Arts and Cultural Activities 2003-2004* (Dublin: 2004).

⁶⁰² Children’s Rights Alliance, *From Rhetoric to Rights*, para 468, 67.

⁶⁰³ OECD, *Education at a Glance* (2005) cited in Children’s Rights Alliance, *From Rhetoric to Rights*, para 375, 57. In 2005, Ireland was ranked 21st out of 27 OECD countries for education spending.

⁶⁰⁴ ASTI Press Release, *Budget fails to resource special needs education at second level*, (6 December, 2006).

⁶⁰⁵ OECD, *Education at a Glance* (2005) cited in Children’s Rights Alliance, *From Rhetoric to Rights*, para 375, p 57.

⁶⁰⁶ Barnardos *Make the Grade*, p 8 citing Dail Eireann, *Parliamentary Question* (7 February 2006).

⁶⁰⁷ School-based factors influencing the teaching of English in school have been identified as the large class sizes, shortage of learning support teachers and inability to adapt teaching methodology to the needs of pupils. Barnardos, *Make the Grade*, p 8.

⁶⁰⁸ Schools’ failure to transmit values was identified as a serious problem in a survey on education in 2004, with almost 40 per cent of respondents saying that too little emphasis is placed on the goal of promoting moral development in primary schools. See Kellaghan, McGee, Millar and Perkins, *Views of the Irish Public on Education: 2004 Survey* (Dublin: Educational Research Centre, 2004) p 6.

⁶⁰⁹ If a teacher is to engage in methodologies which require time and attention to individual children, then the curriculum must be implemented in well-resourced small classes with plenty of space for activity. Correspondence from INTO, 22 January 2007.

- It makes classes more difficult to manage and makes hands-on exercises, like scientific experiments, difficult to supervise.⁶¹⁰

Under-investment also gives rise to the following problems in education:

- The ratio of non-teaching staff to teaching staff in schools, at both levels, is significantly lower than in other OECD countries, while class sizes in both sectors are significantly higher.⁶¹¹ Many schools operate without the necessary secretarial, administrative and management support, resulting in overworked principals, and an inability to prioritise issues of academic leadership within the school;⁶¹²
- Under-funding has impacted not only on infrastructure and materials to implement the curriculum but on the availability of equipment, such as sports equipment, musical instruments and computers,⁶¹³ needed to help children learn effectively and reach their full potential. Primary schools perform particularly poorly with six out of ten schools providing inadequate facilities and equipment for PE.⁶¹⁴ The lack and inadequacy of science laboratories and the lack of laboratory technicians are particularly acute problems affecting the teaching of science at all levels;⁶¹⁵
- The lack of resources has caused some schools to close⁶¹⁶ while, for many others, under-resourcing has resulted in their inability to pay for basic services to run the school, causing them to raise funds themselves for this purpose;⁶¹⁷
- For other schools, only the prudent management of resources allows them to survive without external fundraising, e.g. reducing the options available for Senior Cycle students – thereby reducing the choice available to students who want to study less popular subjects – is one way this is achieved;
- Much progress has been made in recent years in improving the infrastructure of many schools. However, a substantial number of school buildings remain dilapidated with poor sanitary conditions and dangerous electrical wiring.

⁶¹⁰ Problems in the teaching of science have been related to the large size of classes. For example, the ASTI Science Survey 2006 noted that Junior Certificate Science classes are too big (43 per cent of teachers were of this view) and 44 per cent expressed the view that laboratories are too old and cannot accommodate a wide range of practical work. See ASTI Science Survey 2006 available at www.asti.ie, retrieved on 18 January 2007.

⁶¹¹ OECD, *Education at a Glance* (2005) cited in Children's Rights Alliance, *From Rhetoric to Rights Second Shadow Report to the United Nations Committee on the Rights of the Child* (Dublin: CRA, 2006), p 57, par 375.

⁶¹² IPPN, *Survey on Principals' Workload* (2004), available at www.ippn.ie, retrieved on 10 February 2007.

⁶¹³ Despite the importance of ICT in education, particularly relating to maths, one survey noted that one in five computers in schools are unusable. Niall Murray, 'Disadvantaged children show no gains in maths', *Irish Examiner*, 5 October 2006.

⁶¹⁴ Jamie Smyth, 'PE provision in Republic among worst in EU', *Irish Times*, 5 March 2007.

⁶¹⁵ For example, according to one survey, 72 per cent of science laboratories require refurbishment. ASTI Science Survey 2006 available at www.asti.ie, retrieved on 18 January 2007.

⁶¹⁶ Brian McDonald, 'Uproar over closure of school', *Irish Independent*, 14 October 2006.

⁶¹⁷ John Walshe, 'Voluntary schools are being starved of funds', *Irish Independent*, 3 November 2006. See also Irish Primary Principals Network, Press Release, *Primary Schools to end Fundraising for survival* (25 January 2007), available at www.ippn.ie, retrieved on 10 February 2007.

Early Childhood Care and Education: While some funding has been provided towards the availability and affordability of early childhood in disadvantaged areas, the area has been almost entirely deprived of investment over the years. No resources have been invested in universal childcare to date.⁶¹⁸

Psychological Support for Schools: Research has clearly highlighted the need for comprehensive psychological support for children in schools.⁶¹⁹ The National Educational Psychological Service (NEPS) aims to provide a psychology service to school students experiencing educational difficulties and its remit extends to addressing emotional difficulties which impact on pupils' performance and behaviour in school, and supporting teachers in responding to school-based difficulties. Despite this mandate, the number of psychologists employed by NEPS is 'insufficient to meet current demand for assessment of need'⁶²⁰ and, because the service is 'dangerously under-resourced',⁶²¹ this has led to unacceptable delays.⁶²² More than half of primary schools and a quarter of second level schools do not have access to the NEPS.⁶²³ Furthermore, the service is only available to a fixed quota of students per school, with the school deciding which students are most in need of an assessment. The only other option is to refer the child to private psychological services, which means that access is dependent on parents' ability to pay for private treatment.⁶²⁴

According to the National Disability Authority, there are serious difficulties and delays in obtaining assessments, with widespread inconsistencies regarding: access to NEPS; the quality and usefulness of assessment reports (some excellent, some useless); and difficulties transferring resources for assessed needs when moving schools.⁶²⁵ Similarly, not every centre for children who are unsuited for mainstream school (Youth Encounter

⁶¹⁸ Barnardos *Make the Grade*, 13-14. The Economic and Social Research Forum recommended in 2005 that universal, quality free ECEC places be made available for three and a half hours a day, five days a week for all children the year prior to joining primary school.

⁶¹⁹ Downes, *Psychological Support services for Ballyfermot: Present and Future*.

⁶²⁰ Children's Rights Alliance, *From Rhetoric to Rights*, paras 444-446, 64. Recent appointments have brought the number of educational psychologists working with NEPS to 158 bring the service to only three-quarters of its intended staffing levels.

⁶²¹ By Olwyn Enright, TD, Fine Gael Spokesperson on Education and Science in Shaun Connolly, "Minister 'shamed' into hiring school psychologists", *Irish Examiner*, 5 January 2007.

⁶²² According to ASTI, NEPS is 'vastly understaffed' and 74 per cent of principals reported long delays in getting appointments with NEPS psychologists - 42 per cent of principals stated it took an average of three months or more to secure an appointment with NEPS and 35 per cent of principals reported a two-month delay. Furthermore, 58 per cent of principals cited that delays in accessing NEPS and students not being assessed quickly enough, was one of the single biggest barriers to the inclusion of students with special educational needs in schools. Other reasons cited were whole school staff training for teachers (66 per cent) and difficulties in getting teaching resources (57 per cent). ASTI, *Survey on Special Educational Needs Provision* (April 2006).

⁶²³ Shaun Connolly, "Minister 'shamed' into hiring school psychologists". See also INTO Submission to the National Educational Psychological Service Strategic Review in June 2004, 3 available at www.into.ie, retrieved on 18 January 2007.

⁶²⁴ In 2006, 1,000 child appraisals were paid for by the St Vincent de Paul charity. Shaun Connolly, "Minister 'shamed' into hiring school psychologists", *Irish Examiner*, 5 January 2007. See also INTO Press Release, *Statement by John Carr, General Secretary INTO on Psychological Services for Children*, (3 January 2007), www.into.ie, retrieved on 18 January 2007.

⁶²⁵ National Disability Authority, *Special education provision for children with disabilities in Irish primary schools – the views of stakeholders: A report commissioned by the NDA* (May 2006). Parents, teachers, principals, support staff, policy-makers and disability organisations all reported specific difficulties in accessing supports for children with certain disability types, including deaf children and those with dyslexia.

Projects or YEPs) has access to NEPS, notwithstanding that their students present with behavioural difficulties and problems like aggression, verbal abuse and violent conduct.⁶²⁶

5.4 Housing and Family Support

Family Support: It is highlighted throughout this research that the inadequate funding given to social services and family support services makes it difficult to undertake preventive work, limiting interventions to families at risk. This historic failure to prioritise the resourcing of family support resources – which can be traced back to the default Constitutional position of non-interference – has meant that the capacity and focus of social services is limited to crisis intervention and child protection to the detriment of preventive and support services.⁶²⁷ This under-resourcing has had the very serious consequence of diverting limited resources away from primary intervention (family support service) towards families and children at risk.⁶²⁸

Related to this, under-investment has caused serious problems with staff recruitment and retention. These difficulties need to be urgently addressed *inter alia* by providing in-service support, supervision and training.⁶²⁹

Youth Work: The Budget 2006 failed to provide any additional funding for the development of youth work in 2006, having a negative impact on some of the most disadvantaged young people who rely on youth services. As a result, not only is the future strategic development of youth work in jeopardy, but youth work providers will struggle to maintain the services they currently provide.⁶³⁰

Access to Adequate Housing: It is clear from research with children and young people that living in poor housing in disadvantaged areas has an immense impact on their wellbeing, resulting in depression, anxiety and boredom.⁶³¹ Ireland's housing benefit scheme does not appear to take account of household composition and size to the same degree as in many other European countries where there is a high degree of horizontal equity. This finding is quite at odds with the current direction in Ireland towards more family-friendly policies.⁶³² Restructuring of housing benefit towards a more family-friendly model should be considered and the *Residential Tenancies Act, 2004* should be enforced.⁶³³ The Committee on the Rights of the Child expressed concern about this issue in 2006 and recommended that the Government increase investment in social and affordable housing for low-income families.⁶³⁴

5.5 Recommendations

The key areas where the lack of significant and, in some respects, sustained investment is acting as a serious obstacle to the realisation of the rights of children are:

- health services,
- play and leisure services,
- education at all levels (in respect of early childhood care and education, class size and psychological support for all schools), and
- housing and family support.

These are basic needs in a child's life and an inability to access adequately-resourced services in these areas could lead to fundamental rights, like survival and development, being ignored or underplayed. Given Ireland's sustained wealth over the last decade, it is vital that historic under-investment continues to be addressed in the medium to long-term. Efforts should also be made to enhance transparency in cost-effectiveness of children's services and the recommendation to produce a children's budget is reiterated here.

The Ombudsman for Children should continue to highlight situations where the lack of investment acts a barrier to the realisation of children's rights, in line with its functions under Section 7(1), particularly paragraph (e) of the Ombudsman for Children Act, 2002.

⁶²⁶ See, for example, Department of Education and Science, *Evaluation in the Context of Expenditure Review of Youth Encounter Project Schools Report Saint Augustine's School* (26 October 2006), www.education.ie, retrieved on 24 August 2007.

⁶²⁷ Children's Rights Alliance, *From Rhetoric to Rights*, para 174, p 30.

⁶²⁸ Manktelow, 'Delivering family support services in rural Ireland'.

⁶²⁹ Children's Rights Alliance, *From Rhetoric to Rights*, para 176-177, p 30.

⁶³⁰ *Budget 2006, 'Youth Forgotten' Post Budget Analysis* (National Youth Council of Ireland, December 2005).

⁶³¹ End Child Poverty Coalition, *Child Poverty in Ireland: An Overview 2005*, 12.

⁶³² CPA, *Policy Statement on Child Poverty* (2005), p 3.

⁶³³ Healy, 'Ending Child Poverty in Ireland' *Barnardos Childlinks*, 3 (2005), 12.

⁶³⁴ Committee on the Rights of the Child, *Concluding Observations: Ireland* (2006) para 57(d). Note also that a large proportion of those on local authority housing lists are single parent families. One Family, *Pre Budget Submission* (11 September 2006), p 7.

6. Information and Training

The Committee on the Rights of the Child has made it clear that the collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realisation of rights, is an essential part of implementation. In addition to establishing effective systems for data collection, it is vital to ensure that the data collected is evaluated and used to assess progress in implementation, to identify problems and to inform all policy development for children. In this regard, children's policies must have a regularly-updated evidence base.

Evaluation requires the development of indicators related to all rights guaranteed by the Convention and the involvement of young people themselves in this process.⁶³⁵ In respect of Ireland, concern has been expressed about inadequate data in a number of areas and in 2006, the Committee welcomed the establishment of the first longitudinal study, but remained concerned about the lack of systematic and comprehensive data on children, disaggregated by age, sex, ethnicity and rural and urban areas, which would enable the analysis of the situation of particularly vulnerable children in Ireland, including: victims of abuse, neglect or ill-treatment; street children; children with disabilities; and children in institutional care. It recommended that the Government take further measures, including through strengthening the role of the Central Statistical Office and other Government Departments and agencies, to develop a systematic and comprehensive collection of disaggregated data in compliance with the Convention, which should be used for the creation, implementation and monitoring of policies and programmes for children.⁶³⁶

Article 42 of the Convention requires the State to raise awareness about children's rights among children and adults, and Article 3 requires services that meet the child's need for care and protection. Apart from these specific duties, the Committee on the Rights of the Child has highlighted the State's duty to develop training and capacity building for all those involved in the Convention's implementation, including all those who work in any capacity with and for children. The purpose of this training is to emphasise the child's status as a rights-holder, to increase knowledge and understanding of the Convention and to encourage active respect for its provisions.

Full implementation of these provisions and recommendations is vital to the successful realisation of children's rights in practice. On the other hand, lack of data frustrates the use of an evidence base on which to formulate children's policies, and poor awareness about children's rights among children as well as among adults and others working with children similarly undermines efforts to protect and promote children's rights. There is thus a

⁶³⁵ Committee on the Rights of the Child, *General Comment No 5, General Measures of Implementation*, paras 48-50.

⁶³⁶ Committee on the Rights of the Child, *Concluding Observations: Ireland (2006)*, paras 16-17.

direct link between generating a broad understanding, knowledge and awareness about children's rights and their successful implementation.

6.1 Lack of Research and other Data

According to the National Children's Strategy, there continues to be 'limited empirical data and research-based understanding' of children's lives. Moreover, 'the absence of a fuller knowledge and understanding is reflected in children's relative invisibility within public policy debate' and 'remains a barrier to providing a more coherent approach'. Better research and information on children is urgently required to improve the quality and effectiveness of the services and supports being provided to them and their families.⁶³⁷

There has been some progress in this area with the establishment of the National Children's Strategy Research Programme, the launch of the longitudinal study and the publication of the first State of the Nation's Children report in 2007. However, specific areas of children's lives, and the lives and experiences of specific groups of children, remain under-researched and undocumented, with the result that they are invisible, in the words of the National Children's Strategy, from public policy. Some examples follow:

Poverty and social exclusion: Children who experience poverty and social exclusion are not homogenous and the National Children's Strategy recognises that children with disabilities, Traveller children, refugee children and other immigrants have special needs which must be considered. However, there is relatively little known about the experience of such groups of children.⁶³⁸

Separation including Contact: Research needs to be undertaken into the experiences and perspectives of children in separation,⁶³⁹ and research on the level and quality of contact that fathers have with their children is scant. There is a considerable deficit in relation to families, particularly young parents and fathers. There is no single central database of information on the family in Ireland.⁶⁴⁰

Guardian ad Litem Appointments: There is little information available on the cases in which GALs have been appointed, on the obstacles which exist to GALs being appointed and the quality of representation provided. Research is also required to identify need in this area. More generally, there is a need to research more fully the barriers that exist to children's views being sought by, and due weight being given to them by, the courts.

⁶³⁷ *National Children's Strategy: Our Children their Lives*, p 38.

⁶³⁸ Corrigan, *OECD Thematic Review of Early Childhood Education and Care Policy in Ireland*, p 14.

⁶³⁹ Hogan, Halpenny and Greene, *Children's Experiences of Parental Separation* (Dublin: Children's Research Centre, 2002), pp 115-116.

⁶⁴⁰ The proposed longitudinal study will address this in time. Barnardos, *Every Child Matters. Parents under Pressure*, p 9.

Child Carers: Little is known about the circumstances of children caring for disabled or ill family members, and further research is needed to gain insight into their experiences, the nature of the caring they undertake and the meaning and impact of this on their lives and rights.⁶⁴¹ Research is also needed into the level of supports and services for young people in caring roles.

Children in Care: There appears to be a lack of data on what interventions have been tried and have failed before a child is moved into care. There is a need for greater transparency in this area so as to better understand what supports are needed to prevent children being removed from their families. Further research is also needed on the educational progress of young people in long term foster care, on their experiences of care, on contact with the birth family and changes over time and the protective aspects of foster placements regarding educational experience.⁶⁴²

Parental Involvement in Child Protection Plans: There is a need for more research into the involvement of families in the implementation of the child protection plan.

Cyber-Bullying: There are no data available on the incidence of cyber-bullying (over email, SMS, instant messaging or websites) and Irish research is required to tailor responses to the Irish context.

GLBT Young People: There is a need to engage in further research into the phenomenon of homophobic bullying in Irish schools and the general experiences and needs of gay, lesbian, bisexual and transsexual young people.⁶⁴³

Gender and Education: There is a need to consider various issues regarding gender and education. In particular, there is a need for a major study of the issues relating to achievement including the study of data relating to socio-economic background, ethnicity and gender,⁶⁴⁴ and further research into the impact of gender difference among pupils, regarding performance at school and following early school leaving.

⁶⁴¹ Halpenny and Gilligan, *Caring before their Time?* p 7.

⁶⁴² Daly and Gilligan, *Lives in Foster Care*, pp 135-137.

⁶⁴³ Norman, *A Survey of Teachers on Homophobic Bullying in Irish Second-Level Schools* (Dublin: DCU, 2005) p 2. See also Finola Meredith, 'Tough Lessons learned by gay teenagers', *Irish Times*, 30 September 2006.

⁶⁴⁴ See NYCI, *Submission to NAPS on Educational Disadvantage* (April 2001), p 13 and INTO, *Challenges for Learning* (Dublin: INTO, 2005), p 35. See also concerns about the decline in the number of male entrants to primary teaching. INTO, *Gender Imbalance in Primary Teaching – A Discussion Document: The Demise of the Male Primary Teacher?* (April 2004).

Children's Health and Health Needs: The National Children's Strategy makes a commitment to undertake empirical research into the health needs of children.⁶⁴⁵ Nevertheless, there is a lack of systematic data on children's health care needs and, in its absence, it is not clear where and what further resources are needed. There are particular gaps in relation to the health status and needs of children of ethnic minorities and children in the asylum system.

Drugs and Drug Use: No nationwide, current data is available on the level of drug use among young people or the number of young people who have significant drug problems.⁶⁴⁶ There is also a lack of research on the contribution of parental drug and alcohol problems to child welfare problems in Ireland.

Sexual Behaviour and Health: Few studies have explored sexual behaviour among the general population and fewer still have focused on young people's sexual health and relationships. One survey carried out in 2006 undertook a wide-ranging survey of views on sexual health, activity and education but it did not include those under 18 years.⁶⁴⁷ A national survey of sexual knowledge, attitudes and behaviours should be carried out among young people in Ireland. There is also a need for smaller scale, more detailed studies particularly among poorer socio-economic groups. Given the particular risks they face, their needs must be accurately assessed so that they can be met.

Homelessness: There is a need for more research into the impact of poor housing and homelessness on children of different ages; it is clear from existing research that the impact differs according to age but more detailed analysis is required.

Immigration/Asylum Law: There are significant data collection issues in this area. While certain gaps will be filled when the 2006 Census data is published, the absence of intercensal data is a continuing problem. Some gaps currently are as follows:

- The lack of data generally available on the social conditions, economic circumstances, access to services and experiences of racism and discrimination of immigrants, asylum seekers and those with Leave to Remain;
- There is no comprehensive national database giving details of migrant children enrolled in the Irish school system (the estimate of 6,000 seems improbably low), or related data such as patterns of absenteeism;⁶⁴⁸

⁶⁴⁵ *The National Children's Strategy Our Children Their Lives*, p 56.

⁶⁴⁶ Valuable small-scale studies have been completed. See Lalor, O'Dwyer and McCann, 'Review of a community-based youth counselling service in Ireland', *Children and Youth Services Review*, 26 (2006), 325-345. See also Mayock, *Choosers or Losers? Influences on Young People's Choices about Drugs in Inner-City Dublin* (Dublin: The Children's Research Centre, TCD, 2000).

⁶⁴⁷ Layte et al, *The Irish Study of Sexual Health and Relationships*.

⁶⁴⁸ McInri, 'Ireland Research Findings' in Watt and McGaughey (eds) *Improving Government Service Delivery to Minority Ethnic Groups*, p 115.

- There are currently no figures available for the numbers of individuals admitted to Ireland under family reunification applications or the number of people refused admission. No real explanation is given (other than brief standard box-ticking).⁶⁴⁹

Separated Children: There has been some research into the experiences and needs of separated children, but difficulties remain in relation to identifying up-to-date and accurate data on this group.⁶⁵⁰

Traveller Children: The lack of adequate data and good information impacts on the State's ability to systematically identify problems and solutions here. The Traveller question in the 2002 Census and the commitment of the CSO to gather data shed some light on the challenges faced in relation to Traveller economic development, education, health and accommodation. However, there is a need for a broader data strategy which encompasses data collection, collation, disaggregation, analysis and monitoring. This work needs to be progressed and pursued within a broader equality framework and Traveller organisations need to be involved in its development and implementation.⁶⁵¹

Sexual Exploitation and Trafficking: There is a clear dearth of statistics in this area. In 2006, the Committee on the Rights of the Child recommended that the Government collect information and undertake research on child prostitution, pornography and other forms of sexual exploitation and sexual abuse of children with a view to developing targeted measures, and include such detailed information in its next report. It also expressed concern about the lack of information on child trafficking.⁶⁵²

Children in the Criminal Justice System: Little empirical research has been undertaken on children in the criminal justice system, and virtually none that involves the perspectives of children themselves. Data collection systems are grossly deficient in this area and frustrate meaningful research.

Recommendations: The above snapshot identifies a number of key policy areas where basic data are missing, and the need for more detailed research outstanding. While the Office of the Minister for Children should undertake to address some of the above problems as a matter of urgency (e.g. separated children, trafficking and vulnerable groups), the Ombudsman for Children and children's agencies should consider funding small-scale empirical research projects, particularly where the existing evidence base is poor and would offer a multiplier effect by, for example, involving young people themselves.

⁶⁴⁹ Cosgrave, *Family Matters: Experiences of Family Reunification in Ireland*.

⁶⁵⁰ Mooten, Mooten, *Making separated children visible: The need for a child-centred approach* (Dublin: Irish Refugee Council, 2006).

⁶⁵¹ *High Level Group on Travellers Issues*. This recommendation was echoed by the Committee in 2006. See Committee on the Rights of the Child, *Concluding Observations: Ireland* (2006), para 79(b).

⁶⁵² *Ibid.*, paras 75-76. See also *The World Study on Violence against Children*, pp 18-22.

6.2 Lack of Information and Education for Parents and the Public

Parents are the group with primary responsibility for protecting and promoting the rights of their children, and for exercising children's rights on their behalf. Accordingly, their attitudes, skills and knowledge play a crucial role in realising the rights of their children or facilitating their children's own exercise of those rights. Despite Article 18 of the CRC, which recognises the state's duty to support parents in their child-rearing function, there are many areas where parents lack information, education and awareness about specific issues. Given the extent to which this may result in children's rights being underplayed or ignored, the Committee on the Rights of the Child has recommended that states take measures to raise the awareness of children's rights among parents, and provide education and information to parents in areas of concern.⁶⁵³ In the Irish context, these concerns include parenting, health care, marital breakdown and education. Some examples are as follows:

Parenting Skills

- **Parenting:** Education, information and awareness about best practice in child rearing is not widely available. There is no source of guidance available to help parents make decisions as to how to best balance work and home life, or how to respond to the challenges and dangers of modern life and childhood. Parents feel increasingly isolated and would welcome education, information and supports on a wide range of issues relating to family life and child rearing.⁶⁵⁴
- **Physical Punishment:** There are few sources of information on positive parenting and alternatives to physical punishment. The Committee on the Rights of the Child has recommended the banning of physical punishment, and that measures be taken to sensitise and educate parents and the general public about the unacceptability of corporal punishment, and to promote positive, non-violent forms of discipline as an alternative to corporal punishment.⁶⁵⁵

Health

- **Mental Health:** In light of increased stress and mental health problems among young people, parents and other adults need to be alert to the levels of anxiety and depression among children, particularly among young children. The importance of positive communication between adults and children needs to be highlighted and promoted through public information campaigns and education. There is concern that children are not accessing mental health services due to the stigma attached to mental health. The Committee on the Rights of the Child recommended in 2006 that the State undertake awareness-raising and sensitisation campaigns to prevent stigmatisation and ensure that focus is given to early intervention programmes.⁶⁵⁶

⁶⁵³ See Committee on the Rights of the Child, *General Comment No 7 (2004) Implementing child rights in early childhood*, paras 15-21.

⁶⁵⁴ Barnardos, *Every Child Matters: Parents Under Pressure*, p 8.

⁶⁵⁵ Committee on the Rights of the Child, *Concluding Observations: Ireland*, (2006) para 40(b) and (c).

⁶⁵⁶ *Ibid.*, para 47(b).

- **Obesity:** The Children's Advertising Code 2004 issued by the Broadcasting Commission of Ireland failed to ban the advertising of junk food despite the relationship between the consumption of junk food and obesity.⁶⁵⁷ Parents need education about the impact of television viewing on their children's health, and the important role of nutrition in a child's healthy development.
- **Alcohol:** Parents also need to be aware of the need to protect children from exposure to alcohol as long as possible. Parents should be aware of the importance of providing the counter-balance to the advertising of alcohol.
- **Sex Education:** In recognition of the important role of parents in providing sex education, they should be provided with more information on talking to their children about matters of sexual health and education. Their role in providing sex education needs to be supported more. The particular challenges of sexuality education for parents in lower socio-economic groups also need to be understood and addressed. Intervention to support them should be made in a way that is sensitive to their wishes and concerns.⁶⁵⁸
- **Child Safety:** Parents' awareness about the matters of child safety – safety in the home, fitting baby seats properly, wearing seat belts and ensuring helmets and other safety equipment is worn when cycling or walking in traffic – is vital to reducing the main injuries to children, i.e. those caused by burns and road traffic accidents.
- **Immigrant Parents and Health:** Some migrants do not have a medical card because they do not know of their entitlements. Others assume they have a right of access to services to which they are not entitled under the Irish system; this can lead to misunderstandings.⁶⁵⁹ Accordingly, there is a need to provide information relating to health and education services in key languages. Research has found that sex education is not being received equally by all, with poorer access by hard-to-reach groups, such as those with lower levels of education and in poorer socio-economic groups, who are likely to receive less sex education. There is a need to provide information to these groups in particular (and to all children) on sexual health and sex education, outside the school setting, given the impact of education and social class in shaping risky sexual behaviours.⁶⁶⁰

Child Protection

- Parents can be unaware that their child is being bullied or is bullying someone over the internet or by mobile phone. Parents need accessible information and technical support to be able to respond to the dangers of the internet.
- There is a general lack of awareness about how to report child sexual abuse – whether to the HSE (if so, then where and how?) or An Garda Síochána. Parents, teachers and

others remain unaware how to report child sexual abuse.⁶⁶¹ There is a need for a public information awareness-raising campaign about the means of reporting child sexual abuse.

Relationship Breakdown

- 'Exposure to frequent, intense and poorly resolved interparental conflict has been associated with a number of indices of child maladjustment, including depression, anxiety, conduct-disorder, increased aggression, low academic achievement and substance abuse.'⁶⁶² This difficulty is exacerbated in the circumstances where the source of the inter-parental conflict may indeed be the children themselves, i.e. matters of custody and access. Research highlights the importance of the child's perspective in this process, children's need and desire to be involved, and the need to raise awareness among parents as to how to guide themselves and their children through the process.⁶⁶³ Emphasis is placed on guidance for parents and on involving the child's perspective (if not the child himself/herself) in the mediation process.
- There is a need to develop and promote respect for children as active participants in family life, with due consideration for the complexity of the issue of children's participation in decision making about family arrangements.⁶⁶⁴
- There is a need for public awareness to try to reduce the isolation and stigma such children feel is attached to parental separation. Effort should also go into information design for children and young people and for families to make it age-appropriate and as widely accessible as possible.⁶⁶⁵

Education

- Parents cannot currently access independent reports on the quality of care and education provided by crèches, other day centres and private childminding services for children. Making this material available also doesn't affect the fact that parents will have few early childhood care and education options in their area and so genuine choice is very limited. The Office of the Minister for Children is developing a standardised inspection report to be used by pre-school inspectors to compile outcome inspection reports on pre-schools. These reports will be placed on the HSE website in 2007.⁶⁶⁶ Currently, however, there is no information objectively compiled and publicly available to help parents ensure that their children have access to the highest quality pre-school service available. Moreover, this system will only cover pre-school services registered with the HSE and will thus not cover childminders and other exempt services.

⁶⁵⁷ Children's Rights Alliance, *From Rhetoric to Rights*, para 349, p 51.

⁶⁵⁸ See generally, Layte et al, *The Irish Study of Sexual Health and Relationships*.

⁶⁵⁹ McInri, 'Ireland Research Findings' in Watt and McGaughey (eds) *Improving Government Service Delivery to Minority Ethnic Groups*, p 118.

⁶⁶⁰ Layte, Fullerton and McGee, *Scoping study for National Survey of Sexual Knowledge, Attitudes and Behaviours* (2003), p 156.

⁶⁶¹ CARI's *Submission to the Joint Oireachtas Committee on Child Protection* (25 August 2006).

⁶⁶² Harold and Murch, 'Children of separated and divorced parents: Theory, Research and Future Directions' *Irish Journal of Family Law*, 3 (2004), 16-28, p 19.

⁶⁶³ Hogan, Halpenny and Greene, *Children's Experiences of Parental Separation* (Dublin: Children's Research Centre, 2002).

⁶⁶⁴ *Ibid.*, pp 115-116.

⁶⁶⁵ *Ibid.*, pp 115-116.

⁶⁶⁶ Conor Ryan, 'Means of vetting pre-school sector staff to be decided on', *Irish Examiner*, 5 January 2007.

- Ireland has no system of league tables and this been a contentious issue between parents, many of whom want access to such information to inform their choice of school, and also believe such transparency would have a positive influence on school performance, and others, including teachers who believe that it will measure academic achievement only. While the Minister for Education and Science is opposed to league tables,⁶⁶⁷ Whole School Evaluation (WSE) reports on schools at both primary and second level have been available on the Department's website since 2006. However, these reports specifically exclude details of exam results and give schools the right to respond to any inspection report and to have that response published alongside the Inspector's report. Not every school's WSE is available online.
- School attendance is a pervasive problem nationwide and this highlights the need for parent education and general public awareness about the importance of full school attendance.
- Children should also be made aware, in school and through public information campaigns, about the dangers of the internet, how to respond to cyber-bullying and where to go for help. Given the high levels of internet usage among children in Ireland, it is essential that they are equipped with the necessary skills to use all forms of communications technology in a safe and beneficial manner.⁶⁶⁸ Parents need support in this context also.

Recommendations

The support and assistance of parents is vital in the exercise of children's rights in many areas, including education, health care and areas like relationship breakdown and child protection, where children are particularly vulnerable. Apart from parenting education courses, it is recommended that the Ombudsman for Children consider publication, together with others, of a series of information fact sheets or information leaflets/ booklets informing parents on issues like corporal punishment, health care, child safety, and school attendance, from a children's rights perspective. This would have the multiplier effect of giving parents information for their own knowledge, as well as changing attitudes and approaches towards their children. It would also have the knock-on effect of raising awareness among other family members, like grandparents and children themselves.

6.3 Specialism and Professional Training

According to the Committee on the Rights of the Child, the Government has a duty to raise awareness about the Convention and children's rights and should do so through necessary training for professionals working with and for children, in particular within schools and health and social services and legal professionals and law enforcement officials.⁶⁶⁹

Gaps appear in the following areas:

⁶⁶⁷ Sean Flynn, 'Minister still strongly opposed to league tables', *Irish Times*, 14 November 2006.

⁶⁶⁸ See SAFT, *Children's study – Investigating Online Behaviour* (May 2003) and Webwise, *Survey of children's Use of the Internet: Investigating Online Risk Behaviour* (2006) www.webwise.ie, retrieved 24 August 2007.

⁶⁶⁹ See Committee on the Rights of the Child, *Concluding Observations: Ireland* (2006), paras 18-19.

Health Professionals

Health professionals work in the front-line, where many complex and difficult issues come to the fore. As a result, health professionals need adequate training and ongoing professional development and support in the following areas:

- **Ethnic Minorities:** Medical staff need ongoing in-service training on medical ailments heretofore not encountered. Such training courses should be developed with asylum seekers themselves;⁶⁷⁰
- **Poverty:** Awareness training should be available to the health sector and other front-line staff working with people who are experiencing poverty, to improve mutual understanding and ensure the effective delivery of care and services.⁶⁷¹ Currently, people feel stressed and humiliated asking for help;⁶⁷²
- **Article 12 and Consent:** Research has identified the need for health professionals to receive training on children's rights, communication with children and the legal and practical issues of consent/assent.⁶⁷³ Although the age of consent to medical treatment is 16 years, some health professionals appear to apply 18 years in practice due to apprehension or fear of parents' reaction if children are treated without their involvement. It has been recommended that 16-year-olds be considered capable of consenting on their own behalf - to enable them to access treatment and counselling while involving the client's family as best practice;⁶⁷⁴
- **Charter for Children in Hospital:** There is inadequate awareness about the European Association for Children in Hospital (EACH) Charter for Children in Hospital, and training on the Charter is recommended alongside official communication of the Charter to hospitals;
- **Child Abuse:** All health care staff should receive training on child abuse, identifying possible symptoms and how to create a safe space for children and young people to tell;
- All HSE staff, particularly social workers, dealing with separated children must be adequately trained.⁶⁷⁵

Lawyers and Judges

Professionals working in the legal system are not always adequately trained to speak to children or to represent their views and/or wishes. Those involved in family law proceedings and the mediation process need special training on the importance of

⁶⁷⁰ McInri, 'Ireland Research Findings', in Watt and McGaughey (eds) *Improving Government Service Delivery to Minority Ethnic Groups*, p 119.

⁶⁷¹ Combat Poverty Agency, *Against All Odds: Living with Poverty and Poor-Health* (2004).

⁶⁷² *Ibid.*

⁶⁷³ Kilkelly and Donnelly, *The Child's Right to be Heard in the Healthcare Setting*.

⁶⁷⁴ HSE and Department of Health and Children, *Report of the working group on the treatment of under-18-year-olds presenting to treatment services with serious drug problems* (September 2005) p 58.

⁶⁷⁵ Integrating Ireland, *Observations in response to the Department of Justice, Equality and Law Reform on the Immigration, Residence and Protection Bill 2006* (November 2006).

involving children in the process and how to do so.⁶⁷⁶ There is also a need for judicial training on how the discretion granted by Section 25 of the *Guardianship of Infants Act 1964* to hear the views of children should be exercised. Issues like the circumstances in which a *guardian ad litem* should be appointed, when/whether it is advisable or useful to speak to a child in chambers, and what level of questioning should take place in front of the parties, all require discussion. Judges in the Children Court also require training on youth justice, criminology and child psychology to enable them to cope with the challenges of their work more effectively.⁶⁷⁷

An Garda Síochána (police)

Child Protection: There are no specialist teams within An Garda Síochána in the area of child protection/children at risk, meaning that the Gardaí are not fully equipped or resourced – through timing or specialist units – to respond to allegations of child sexual abuse. This is notwithstanding that they have *de facto* responsibility for receiving children’s complaints out of hours. There is a need to develop such teams to ensure momentum generated by training, etc is sustained.

Youth Justice: Gardaí should also receive a greater level of training on children’s rights, youth justice and child psychology.

Teachers

Extraordinary demands are currently placed on teachers, particularly those at second level, and ongoing training and support is necessary to enable them to meet these demands.⁶⁷⁸ Particular needs are as follows:

- Training in how to deal with diversity, racism and difference among school pupils;⁶⁷⁹
- Learning support for all teachers;⁶⁸⁰
- Training on educational disadvantage, and to reflect the diversity of the school population and improve relationships between teachers and parents;⁶⁸¹
- Training on how to address homophobic bullying;⁶⁸²
- Training and support in the teaching of human rights;⁶⁸³
- Ongoing professional education and development in order to be able to teach the diverse Social Personal and Health Education (SPHE) syllabus;

⁶⁷⁶ View of GAL expressed in Murch and Keenan, 72-73.

⁶⁷⁷ Kilkelly, *The Children’s Court: A Children’s Rights Audit*.

⁶⁷⁸ See INTO, *Change in Primary Education. Challenges for Teachers: An INTO Report* (Dublin: INTO, 2004). See also Professor Tom Collins, Head of Education at NUI Maynooth, ‘Teachers need more support and professional development’, *Irish Times*, 24 October 2006.

⁶⁷⁹ NYCI, *Submission to NAPS on Educational Disadvantage* (April 2001), 13.

⁶⁸⁰ A Department of Education and Science study published in 2006 found that almost half of learning support teachers had not completed a recognised one-year course in remedial education/learning support. See Department of Education and Science, *National Assessment of English Reading in 2004*, (Dublin: Education Research Centre, 2006).

⁶⁸¹ Barnardos, *Making the Grade*, p 20.

⁶⁸² Norman, *A Survey of Teachers on Homophobic Bullying in Irish Second-Level Schools*, p 10.

⁶⁸³ Children’s Rights Alliance, *From Rhetoric to Rights*, paras 424-426, p 62.

- Support to develop the concept of the health promoting school;⁶⁸⁴
- Training in order to sensitise teachers to Traveller issues and intercultural approaches.⁶⁸⁵

Recommendations

Professional training for those who work with and for children is vital to equip them with the information and skills to deal with children in an age-appropriate manner and to foster an attitude of respect for children and their rights. Additional training in psychology, child development and related communication with children is also recommended for lawyers, judges, health professionals, teachers and the Gardaí.

6.4 Synchronising Perspectives/Shared Understanding

Combining parental education and information with the need for professional training for those working with and for children is not always sufficient to ensure that children’s rights are realised. Often, the best initiatives will fail or their success will be limited because of a lack of shared understanding or consensus regarding the objectives to be achieved, why and how. Alternatively, professionals may feel frustrated in their work to further the child’s interests in the apparent absence of parental support or commitment. Such gaps between those delivering a service and those using them need to be narrowed through the reaching of agreed perspectives and consensus. In many cases, this can be achieved through the provision of information and public or targeted awareness raising campaigns. Some examples follow:

Child Protection

- Misunderstandings and conflicting perspectives occur in the mainstream child protection system. For example, a gap exists between parental perceptions and professional diagnoses of what constitutes risk to a child. This can lead to a lack of confidence and the perception that services do not meet need or do not do so for long enough.
- There is a perception that child protection/social work services have a very poor image in certain areas and this will continue if it is not addressed through a public information campaign presenting a more positive view of the service.

Educational Disadvantage

- In the area of educational disadvantage, there is a need for both professionals and parents to understand each other’s perspectives. For example, teachers need to understand that parents who have themselves suffered educational disadvantage may not be in the best position to appreciate the importance of education for their child. Mutual understanding of each party’s position will facilitate communication and fulfilment of the aim of furthering the child’s education.

⁶⁸⁴ National Task Force on Obesity, *ASTI Submission* (undated) www.asti.ie, retrieved 18 January 2007.

⁶⁸⁵ Committee on the Rights of the Child, *Concluding Observations: Ireland*, (2006), para 59(d).

- Staff working in the area of educational disadvantage need further training to ensure they are sensitive to the problems faced by parents and families. Similarly, parents are not always aware of the importance of full education for their children, and greater resources and support for the National Education Welfare Board (NEWB) is required to make this a reality (i.e. full implementation of its statutory functions).

Education

- Parental opposition is sometimes presumed to exist as an obstacle to dealing with certain sensitive issues in school, such as lesbian and gay issues, and sex education generally. Parents and teachers need to learn to communicate more effectively to break down these barriers in the interests of their children.
- There are significant cultural barriers preventing full involvement of newcomer parents in schools and greater communication and awareness is required to improve understanding between them and teachers.
- The accommodation of different perspectives is also vital to addressing the multiple problems faced by the Traveller community, given the vital role of parents in supporting Traveller education.⁶⁸⁶ In addition, efforts to improve Traveller parents' confidence in the education system must be undertaken if their children's rights are to be protected.⁶⁸⁷

Health Care

- Research shows that there is a significant lack of awareness among parents of the rights of their children and their role in working to have these vindicated. This is further complicated by stress and the dependence of the children and their parents on authority/expert figures they encounter in the health care system generally⁶⁸⁸ and a lack of awareness among health professionals of the rights-based approach to children's issues.⁶⁸⁹ Greater efforts must be made to establish understanding of each others' perspectives.

Recommendations

It is vital that there is consistency and common values and objectives shared by those who work with and for children. To this end, it is important for the effective realisation of children's rights that efforts be made to establish common approaches, perspectives and shared understandings in areas of educational disadvantage, child protection and health care.

6.5 Recommendations

The connection between the lack of data and the lack of awareness about children's rights issues among children, parents and those working with and for children is clear. Lack of data leads to the absence of an evidence base and frustrates a child-focus to matters of policy and practice. In this regard, serious problems currently exist with the lack of data on separated children, trafficking, children in the care and youth justice systems and other vulnerable children, and research is urgently required to establish this evidence base, especially in areas like immigration where a child-focused policy is absent.

The following recommendations are made in response:

- The Office of the Minister for Children should undertake to address some of the above problems with the lack of data as a matter of urgency (e.g. separated children, trafficking, and vulnerable groups);
- The support and assistance of parents is vital in the exercise of children's rights in many areas including education, health care and areas like relationship breakdown and child protection, where children are particularly vulnerable. Providing parents with information and support would have the multiplier effect of giving them information for their own knowledge, as well as changing attitudes and approaches towards their children. It would also have the knock-on effect of raising awareness among other family members, like grandparents and children themselves;
- Professional training for those who work with and for children is vital to equip them with the information and skills to deal with children in an age-appropriate manner and to foster an attitude of respect for children and their rights. Additional training in psychology, child development and related communication with children is also recommended for lawyers, judges, health professionals, teachers and the Gardaí;
- Finally, it is vital that there is consistency and common values and objectives shared by those who work with and for children. To this end, it is important for the effective realisation of children's rights that efforts be made to establish common approaches, perspectives and shared understandings in areas of educational disadvantage, child protection and health care.

The Ombudsman for Children should consider all means of promoting issues in this research from a children's rights perspective with reference to its statutory mandate.

Given its mandatory role to undertake, promote or publish research, consideration should be given to small-scale empirical research projects, particularly where the existing evidence base is poor and would offer a multiplier effect, for example, by involving young people themselves.

⁶⁸⁶ *Report and Recommendations for Traveller Education Strategy* (Dublin: Department of Justice, Equality and Law Reform, 2006) p 22.

⁶⁸⁷ Department of Education and Science, *Survey of Traveller Education Provision*, (Dublin: Department of Education and Science, May 2006).

⁶⁸⁸ See Kilkelly and Donnelly, *The Child's Right to be Heard in the Healthcare Setting*.

⁶⁸⁹ Correspondence from Mary O'Connor, CEO, Children in Hospital (Ireland), 23 February 2007.

conclusions and summary of recommendations

Parts A and B of this research highlight, in some detail, the many and multiple problems that children in Ireland face in the realisation of their rights. Part A highlights the multiple barriers and difficulties faced by children in a number of specific contexts:

- Children in the care system;
- Children in the criminal justice system;
- Traveller children;
- Immigrant and asylum-seeking children;
- Children living in poverty; and
- Children at risk of abuse and neglect.

The identification of these groups is not to deny that other groups of children also face very significant obstacles in the realisation of their rights: children with disabilities, sick children, children with mental health problems and children suffering from alcohol or drug abuse. These children are equally deserving and their causes equally weighty. The difficulties they face realising their rights are not to be underestimated and for this reason, they are also given particular mention throughout the report.

The problems that these children face cut across all areas of their lives and result in their rights to protection, education, health care and material welfare being ignored or placed at risk. They also face complex challenges enjoying their rights and this is compounded by the fact that they may be isolated from family and others that offer support and can advocate on their behalf. Many of these children have not, to date, benefited from coherent policy or targeted intervention, supports or services, and they suffer marginalisation and, in some cases, discrimination.

Coherent, multifaceted responses are needed to address the complex multiple barriers faced by these children. Notwithstanding existing policy and positive initiatives, these children deserve an overhaul of how existing services and supports are delivered and, to this end, it is recommended that consideration be given to convening short-term targeted, high-level groups with a view to ensuring that the necessary co-ordinated, intensive, strategic action is taken to mainstream targeted, child-focused and rights-based services in these areas. Awareness also needs to be heightened among the public, service providers and Government generally about the problems these children face in the realisation of their rights. The Ombudsman for Children is particularly well placed to advocate on behalf of these children, and to present their concerns from a children's rights perspective.

While the challenges faced by these children are particularly difficult, they are not necessarily unique and it is clear from this research that all children face some level of barrier to the exercise of their rights in Ireland, whether in the family, in education, in health care or in society generally. Thus, problems with children's rights are faced by all children – not just the particularly vulnerable or the disadvantaged but children from all backgrounds and in all circumstances. This is because the failure to put in place universal services and supports, to adopt a child focus and a children's rights approach to law and policy and to put in place effective complaints procedures and advocacy affects all children, although of course, its effects fall most harshly on those already disadvantaged. With this in mind, Part B of this research identifies the six key barriers to the full realisation of children's rights in Ireland with illustrated examples of the many and varied obstacles that block the child-focused implementation of law, policy and practice. To respond to the negative barriers, the research makes a wide-ranging number of recommendations and they are drawn together here.

1. Invisibility of Children

This section considered the barrier presented by the invisibility of children in decision making processes and law and policy, and the absence of child-proofing, and monitoring and other structures designed to address this issue. The following recommendations address this barrier:

- Children's voices must be integrated into the mainstream political and administrative decision-making structures at local and central levels;
- Consideration should be given to requiring such consultation through legislation or incentivising it by, for example making it a requirement of funding or budget allocation;
- The Office of the Minister for Children should consider establishing a dedicated programme to offer support, information and training to all those working with children who must incorporate their views into their work;
- Permanent mechanisms need to be established that children's rights-proof law and policy in all areas affecting children. Consideration should be given to introducing a statutory requirement that a statement explaining its compliance with the CRC accompany all new legislation;
- A continuous policy to ensure the ongoing review of law and policy should also be put in place;
- A children's budget should be produced annually, and the impact of budgetary decisions on children's lives measured and explained;
- Structures like the Office of the Minister for Children and the Irish Youth Justice Service should be kept under review with regard to their efficacy in ensuring children's rights are fully protected and promoted.

Section 6 of the *Ombudsman for Children Act, 2002* requires the Ombudsman for Children to perform her functions by giving due consideration to the wishes of the child. Accordingly, it is recommended that the Ombudsman for Children act as a 'champion' for the child's right to be heard, and consider establishing the Office as a centre of excellence in this area.

2. Law and Policy

This section identified the general barrier to the protection of children's rights as the inadequacy of law and policy. In particular, it detailed the inadequate expression of children's rights in the Constitution and in legislation, and considered the extent to which the inadequacy of law and policy and, where it exists, its inadequate implementation act as an obstacle to children's rights. In numerous areas, these problems act as serious impediments to realising the rights of children; they are particularly serious because they are so unnecessary, i.e. if the law and policy was CRC-compliant and fully implemented and resourced as planned, breaches of children's rights would be significantly reduced.

The following measures are designed to address these barriers:

- Children's rights, particularly the CRC general principles (non-discrimination, the best interests principle and the child's right to be heard), must be incorporated into the Constitution, with consideration also being given to inserting other key provisions, including the child's right to protection from harm, the right to education and the right to enjoy contact with both parents. Such an amendment would also have to address the current constitutional imbalance in favour of parents' rights;
- Legislation found to make inadequate provision for children's rights should be remedied without delay. Areas, like adoption, which are in need of widespread reform will require a full children's rights audit to ensure CRC-compliance;
- A full audit should be undertaken of those areas in which laws have been passed but whose implementation or full resourcing remains outstanding, with a detrimental impact on children's rights. A programme should then be put in place to ensure complete resourcing and implementation of all legislation passed by the Oireachtas;
- Policies should be continually reviewed to ensure their evidence-base is up to date and that they remain in line with best practice, international standards and the views of both practitioners and children and young people. The Office of the Minister for Children should be given responsibility for this policy review function in an oversight role;
- Where policy is inadequate or structures designed to ensure implementation have been found to be inadequate, a high-level, inter-departmental response to the problem should be adopted. Areas where this is required include health/health promotion, suicide and mental health and alcohol abuse.

It is further recommended that the Ombudsman for Children's Office:

- continue to raise awareness among the public, the Oireachtas and policy-makers about issues that affect children both directly and indirectly, in line with its functions under the *Ombudsman for Children Act, 2002*;
- bring the above findings relating to implementation and co-ordination of policy to the attention of the relevant Government Ministers in line with Section 7(1)(a) of the Act;
- encourage public bodies to develop policies, practices and procedures designed to promote the rights and welfare of children under Section 7(1)(b) of the Act.

3. Advocacy, Complaints and Monitoring

There is a strong link between the protection and promotion of children's rights in practice and the existence of mechanisms designed to provide children with advocacy and representation. In some cases, for example, children denied this support will suffer multiple breaches of their rights. Similarly, the establishment of effective, independent complaints mechanisms and systems to monitor and regulate services have a direct bearing on the extent to which children, particularly vulnerable children who are very young, sick, in residential care or at risk, enjoy their rights. Accordingly, the following recommendations are made here:

- Priority should be given to ensuring that children enjoy the right to express their views and concerns, and to providing them with the support to do so should they need it, especially for communicating their views to the Ombudsman for Children;
- Serious consideration should be given to establishing an independent advocacy service to ensure that all children in need of independent representation can access it without delay;
- Legal change and judicial and legal training are required to ensure that the voice of the child is heard in legal proceedings that affect him/her;
- The outstanding legal provisions relevant to the provision of *guardian ad litem* should be enacted without delay. The Children Acts Advisory Board is encouraged to expedite its process of issuing guidance on the qualifications, criteria for appointment, training and role of the *guardian ad litem* to this end;
- A whole range of measures are needed to ensure that children involved in the legal process as victim, accused and witness are protected and have their voices heard. Particular consideration should be given to implementing the recommendations of the Joint Oireachtas Committee on Child Protection;
- In early childhood care and education, formal education, child protection and residential care settings, there is a need to revise (and in some cases dramatically revise) existing monitoring mechanisms and systems and their impact.

In exercise of its statutory function to protect and promote the rights of children, the Ombudsman for Children's Office should:

- raise awareness about the relationship between complaints procedures, monitoring services and protecting children's rights;
- continue to bring details of available complaints mechanisms to the attention of children and adults in line with Section 7(1)(d) of the *Ombudsman for Children Act, 2002*;
- continue to press for legislative change in respect of the exclusions to its complaints function under Section 11 of the *Ombudsman for Children Act, 2002*.

4. Provision of Services and Supports

The absence of dedicated supports and services for children, the fragmented co-ordination of such services and the failure to mainstream positive initiatives means that children's services in many areas are poorly structured, *ad hoc* and difficult to access. This has a direct impact on the protection of children's rights in a variety of areas, including their right to appropriate health care (Article 24), the right to enjoy rights equally (Article 2), the right to education (Article 28) and the right to family support services (Article 18). Particular problems are also experienced with respect to measures designed to target disadvantage, and in areas where children have complex needs that require services to cut across different state agencies or government departments. The Government should undertake an extensive review of the support services provided under the different government departments to assess the quality and outreach of family support services and to identify and address possible shortcomings. A number of other measures are required to address these problems:

- Efforts need to be redoubled to ensure that particularly vulnerable children, like those with mental health problems, receive the necessary age-appropriate services as a matter of urgency;
- Awareness also needs to be raised about the availability of existing supports and services;
- Services need to be streamlined across geographical areas to ensure that any disparities are eliminated, or that additional supports are provided where this is not practicable. Co-ordination between strategies on regional development and children's rights strategies need to be integrated;
- Children's services need to be kept under review to ensure that their evidence base continues to be relevant to respond to the modern challenges children face;
- Systems need to be put in place to ensure that measures piloted are evaluated and provision made for them to be mainstreamed without delay.

In line with its functions under Section 7(1) of the *Ombudsman for Children Act, 2002*, the Ombudsman for Children is encouraged to:

- keep the availability of dedicated children's services under regular review and highlight where gaps in these services result in children's rights being ignored;
- observe the extent to which State functions are being carried out by the NGOs or the private sector, funded by the State.

5. Lack of Investment

The key areas where the lack of significant and, in some respects, sustained investment is acting as a serious obstacle to the realisation of the rights of children are:

- health services,
- play and leisure services,
- education at all levels (in respect of class size and psychological support for schools), and
- housing and family support.

These are basic needs in a child's life and an inability to access adequately resourced services in these areas could lead to fundamental rights, like survival and development, being ignored or underplayed. Given Ireland's sustained wealth over the last decade, it is vital that historic under-investment continues to be addressed in the medium to long-term. Efforts should also be made to enhance transparency in cost-effectiveness of children's services and the recommendation to produce a children's budget is reiterated here.

The Ombudsman for Children should continue to highlight situations where the lack of investment acts a barrier to the realisation of children's rights, in line with its functions under Section 7(1), particularly paragraph (e) of the *Ombudsman for Children Act, 2002*.

6. Information and Training

The connection between the lack of data, and the lack of awareness about children's rights issues among children, parents and those working with and for children, is clear. Lack of data leads to the absence of an evidence base and frustrates a child-focus to matters of policy and practice. In this regard, serious problems currently exist with the lack of data on separated children, trafficking, children in the care and young justice systems and other vulnerable children, and research is urgently required to establish this evidence base, especially in areas like immigration where a child-focused policy is absent. The following recommendations are made in response:

- The Office of the Minister for Children should undertake to address some of the above problems as a matter of urgency (e.g. separated children, trafficking and vulnerable groups) by prioritising the development of systems of data collection and research in these areas;
- The support and assistance of parents is vital in the exercise of children's rights in many areas, including education, health care and areas like relationship breakdown and child protection, where children are particularly vulnerable. Providing parents with information and support would have the multiplier effect of giving parents information for their own knowledge, as well as changing attitudes and approaches towards their children. It would also have the knock-on effect of raising awareness among other family members, like grandparents and children themselves;
- Professional training for those who work with and for children is vital to equip them with the information and skills to deal with children in an age-appropriate manner and to foster an attitude of respect for children and their rights. Additional training in psychology, child development and related communication with children is also recommended for lawyers, judges, health professionals, teachers and the Gardaí;
- Finally, it is vital that there is consistency and common values and objectives shared by those who work with and for children. To this end, it is important, for the effective realisation of children's rights, that efforts be made to establish common approaches, perspectives and shared understandings in areas of educational disadvantage, child protection and health care.

The Ombudsman for Children should consider all means of promoting issues in this research from a children's rights perspective with reference to its statutory mandate.

Given its mandatory role to undertake, promote or publish research, consideration should be given to small-scale empirical research projects, particularly where the existing evidence base is poor and would offer a multiplier effect, for example, by involving young people themselves.

Role of the Ombudsman for Children

The Ombudsman for Children has a statutory mandate to protect and promote the rights of children. Under Section 7 of the *Ombudsman for Children Act, 2002*, the Office has a clear legal function to raise the profile of children's rights and a wide range of functions to enable children to realise their rights, including make recommendations to Government for change on children's behalf. Supported by the weight of international consensus on children's rights, notably the UN Convention on the Rights of the Child, the Ombudsman for Children is well placed, through its statutory mandate, to remind the Government about its commitments to the implementation of children's rights in all areas. This research should inform the OCO, but also facilitate its work by highlighting where priorities might lie and identifying practical solutions to the problems identified.

In particular, the Ombudsman for Children's Office is encouraged to pursue the following issues as priority areas throughout all elements of its work under Sections 7 and 8 of the *Ombudsman for Children Act, 2002*:

- Work towards constitutional change to make express protection for children's rights a reality. In particular and further to her advice to the Oireachtas in 2007, the Office should work towards incorporation into the Constitution of the substance of Articles 2 (non-discrimination), 3 (best interests of the child) and 12 (right of the child to be heard) of the CRC into the Constitution;
- Press for these principles to be incorporated into all sectoral laws on children, working towards full incorporation of the CRC into domestic law;
- Campaign for law, policy and its implementation to have a child-focused, rights-based approach, including the need for children's rights-proofing of law, policy and budgets;
- Raise awareness about children's rights among children and young people and their representatives;
- Continue to undertake research into children's lives and their experiences;
- Highlight, from a rights-based perspective, the complex problems faced by particularly vulnerable groups, including those identified throughout the report, and children living in poverty and at risk of abuse and neglect.

Children's Rights Instruments used in the establishment of Benchmarks

United Nations

Convention on the Rights of the Child, 1989

- Optional Protocol 1 on the protection of children from sexual exploitation, prostitution and the sale of children
- Optional Protocol 2 on the protection of children in armed conflict

Committee on the Rights of the Child Documentation:

- Committee on the Rights of the Child, Reporting Guidelines of the Committee on the Rights of the Child can be found in UN Doc CRC/C/5 at www.ohchr.org
- Committee on the Rights of the Child, Concluding Observations: Ireland, CRC/C/15/Add.85, 4 February 1998
- Committee on the Rights of the Child, Concluding Observations: Ireland, CRC/C/IRL/CO/2, 29 September 2006
- General Comment No 1 on the Aims of Education (2001)
- General Comment No 2 on the role of national institutions in the protection and promotion of children's rights (2002)
- General Comment No 3 on HIV/Aids and Children (2003)
- General Comment No 4 on Adolescent health and Development in the context of the CRC (2003)
- General Comment No 5 on general measures of implementation for the CRC (2003)
- General Comment No 6 Treatment of unaccompanied and separated children outside their country of origin (2005)
- General Comment No 7 Implementing Rights in Early Childhood (2006)
- General Comment No 8 The right of the Child to protection from Corporal Punishment and other cruel or degrading forms of punishment (2006)
- General Comment No 9 The Rights of Children with Disabilities (2006)
- General Comment No 10 Children's Rights in Juvenile Justice (2007)
- Reports of General Discussion Days including the Committee's recommendations on the implementation of the Convention in areas including economic exploitation (1993); the role of the family (1994); juvenile justice (1995); the child and the media (1996); children with disabilities (1997); violence against children (2001) and the private institutions as service provider (2002); the rights of indigenous children (2003); implementing rights in early childhood (2004); children without parental care (2005) and the right of the child to be heard (2006).

UNICEF and Special Session Documentation

- *A World Fit for Children* (2002)
- UNICEF Follow-up to the United Nations Special Session On Children (2003)
- *Guide for NGO Involvement* in National-Level Follow-up to the Special Session on Children (2003)

Other International Treaties ratified by Ireland

- **International Covenant on Economic, Social and Cultural Rights** including Concluding Observations of the Committee on Economic, Social and Cultural Rights on the Ireland (1999 and 2002)
- **International Covenant on Civil and Political Rights**, including the Concluding Observations of the Human Rights Committee (1993 and 2000) and *General Comment No 17 on the Rights of the Child* (1989)
- **Convention on the Elimination of Racial Discrimination**, including the Committee on the Elimination of Racial Discrimination, *Concluding Observations: Ireland*, CERD/C/IRL/CO/2 (2005)
- **Convention on the Elimination of Discrimination against Women** including the Concluding Observations of CEDAW (1999)

General Assembly Recommendations

- UN Rules on the Administration of Juvenile Justice (Beijing Rules), 1985
- UN Rules on the Protection of Children deprived of their Liberty, 1990
- UN Rules for the prevention of delinquency (Riyadh Guidelines), 1990

Council of Europe Standards

- **European Convention on Human Rights, 1953** and relevant case law of the European Court of Human Rights;
- **European Convention on the Exercise of Children's Rights, 2002;**
- **Convention on Contact concerning Children, 2003**
- **Parliamentary Assembly Resolutions:**
 - *European Strategy for Children (1996) and follow up (2002)*
 - Declaratory statements on matters of youth affairs, family law, succession and the media.

Hague Conference on Private International Law

Hague Convention on Inter-Country Adoption

- *Reports and Conclusions of the Special Commission* (2000)

Hague Convention on Abduction

- *Reports and Conclusions of the Special Commission* (2002)

Hague Conference on the recovery of maintenance

- *Reports and Conclusions of the Special Commission* (2003)

appendix B

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appendix C

The Convention On The Rights Of The Child – Overview

Article 1

Defines a child as everyone below the age of 18 years

Article 2

Non-discrimination in the enjoyment of Convention rights

Article 3

Best interests of the child must be a primary consideration in all actions concerning the child

Article 4

Duty to take all appropriate measures to implement the Convention

Article 5

Principle of evolving capacity

Article 6

Right to life, survival and development

Article 7

Right to a name, nationality and as far as possible to know and be cared for by his/her parents

Article 8

Right to identity, including name, nationality and family relations

Article 9

Right not to be separated from his/her parents except where it is determined by a competent authority to be in the child's best interests. Right to maintain direct contact on a regular basis with non-custodial parent

Article 10

Right to have applications for family reunification dealt with in a positive, humane and expeditious manner

Article 11

Duty to take measures to combat the illicit transfer and non-return of children abroad

Article 12

Right of all children to express views and have them given due weight in accordance with the child's age and maturity in all matters concerning the child. Right to participate in legal proceedings, including via representation

Article 13

Freedom of expression including right to seek, receive and impart information using media of the child's choice

Article 14

Right to religious freedom

Article 15

Freedom of association

Article 16

Right to privacy and integrity

Article 17

Role of the media and right to information conducive to the child's development

Article 18

Right to support for parents in the exercise of child-rearing duties

Article 19

Duty to take measures to protect children from all forms of harm, abuse and neglect

Article 20

Right to alternative care when deprived of a family environment, including where this is deemed by a competent authority to be in the best interests of the child

Article 21

Rights in adoption including that the best interests of the child be paramount

Article 22

Duty to take measures to ensure that refugee children receive appropriate assistance in the enjoyment of their rights

Article 23

Rights of children with disabilities including special care and assistance and education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to social integration and individual development

Article 24

Right to health and health care including primary health care and family planning

Article 25

Right to periodic review of treatment where a child is placed in care or detention

Article 26

Right to social security

Article 27

Right to a standard of living adequate to ensure the child's development

Article 28

Right to education including access to education at all levels and that measures be taken to ensure discipline is compliant with the rights of the child

Article 29

Aims of education including that it be directed at fulfilment of potential and respect for human rights

Article 30

Right to children of minority groups to enjoy their own culture, language and practise their religion

Article 31

Right to play, rest and leisure

Article 32

Protection from economic exploitation

Article 33

Duty to take all measures to protect children from drugs including trafficking

Article 34

Duty to protect children from sexual exploitation including from prostitution and pornography

Article 35

Right to protection from trafficking and sale

Article 36

Right to protection from all forms of exploitation

Article 37

Right to liberty and to be detained only as a last resort. Right to freedom from inhuman and degrading treatment and rights in custody

Article 38

Protection of the child from involvement in armed conflict

Article 39

Duty to provide rehabilitation and treatment for children who have suffered abuse or trauma

Article 40

Right of accused children to enjoy rights of due process including representation, privacy and support of family

Article 42

Duty to make provisions of the Convention widely known to adults and children

