



## Briefing Note on the occasion of the visit to Ireland of the Council of Europe

Commissioner for Human Rights, Mr Thomas Hammarberg

November 2007

This Briefing Note aims to outline the Alliance's key concerns and some recommendations. The Alliance's policies were comprehensively mapped out in 2006 in the report *From Rhetoric to Rights, Ireland's Second Shadow Report to the UN Committee on the Rights of the Child*. Copies of this report are available on request and can also be found at [www.childrensrights.ie](http://www.childrensrights.ie).

### 1. Youth Justice

#### 1.1 *The Detention of Children with Adults*

Section 10 of the Criminal Justice Act 2006 provides that all young offenders under eighteen are to be held in child detention schools. Despite this, children continue to be detained in adult prisons; 165 children were detained in adult prisons in 2006. The Committee for the Prevention of Torture has expressed serious concerns about St Patrick's Institution, including inter-prisoner intimidation and violence, lack of safety, easy access to drugs, and lack of purposeful activity such as educational classes or workshops.

The Government has committed to remove all under eighteen year old boys from St. Patrick's Institution by 2010 and to accommodate them in a separate newly built child detention school under the auspices of the Youth Justice Service. This is to be situated at a site in Lusk, which houses other child detention schools. However, the Alliance has been informed that the Government is planning to build a temporary facility to detain under 18 year olds in the new Irish Prison Service complex being developed at Thornton Hall. The Alliance is concerned that these plans may delay progress on the proposed new child detention school in Lusk and that the Thornton Hall facility will continue to be maintained as an option to accommodate some young offenders even after the child detention school is up and running.

- **The Alliance calls for the Government to cease its plans to build a temporary facility in the Thornton Hall complex and to focus instead on the timely completion of a child detention school for 16 and 17 year old boys within the Lusk complex.**

#### 1.2 *Age of Criminal Responsibility*

The Children Act, 2001 provided for the age of criminal responsibility to be raised from seven to twelve years. However, the relevant provision was never commenced and was subsequently amended by the Criminal Justice Act 2006. The 2006 Act raised the age to twelve years for most crimes but also allows children from the age of ten to be prosecuted for serious crimes, including rape, aggravated sexual assault, murder or manslaughter. The 2006 Act also abolished the rule of *doli incapax* and replaced it with a provision that requires the Director of Public Prosecution's consent to take action with respect of charges against children under fourteen years.

- **The Alliance calls for the age of criminal responsibility to be raised to twelve years in all circumstances.**

### 1.3 *Anti-Social Behaviour Orders*

Anti-Social Behaviour Orders (ASBOs) for children aged 12 to 18 years came into effect on 1 March 2007. ASBOs in Ireland have been integrated into the existing youth justice legislation which is diversionary in nature. Although modified from the UK model, they share many of the same worrying elements of ASBOs operating in the UK. The reporting restrictions on publishing and broadcasting the identity of a child under the Children Act 2001 can be lifted to facilitate the enforcement of an ASBO; thus eroding the child's right to privacy in criminal proceedings. No child has been issued with an ASBO to-date.

- **The Alliance calls for the legislation providing for ASBOs to be repealed; and for the full implementation of the progressive measures under the Children Act which are designed to respond to the individual needs of offending children.**

## **2. Social Support Services**

At present, the capacity and focus of the social services is mainly limited to crisis intervention and child protection with the result that preventive and support services are seriously underdeveloped. There is no central collation of waiting lists for social work assessment. However, anecdotal evidence points to significant delays in securing an assessment for a child deemed to be at risk or suspected of having been abused, and difficulties exist in contacting social work staff to report child abuse. Outside of Dublin, there is no social work service available, outside office hours, to families and children at risk.

- **The Alliance calls for the provision of multi-disciplinary professional teams to provide preventive and therapeutic services to move the emphasis away from crisis intervention, and for the provision of a national twenty-four hour social work service.**

## **3. Mental Health**

There has been chronic under-funding of services in the area of mental health generally and, in particular, in relation to child and adolescent psychiatric services. Sixteen and seventeen year-olds continue to be treated through adult services; 166 children were admitted to adult psychiatric centres from November 2006 to September 2007. This is despite the provisions of the Mental Health Act, 2001 and the recommendations of the Second Report of the Review Group on Child and Adolescent Psychiatric Services. There is also inequitable distribution of child mental health services across the country and insufficient in-patient facilities. The age of consent for mental health treatment is eighteen years, in contrast to sixteen years for medical treatment.

- **The Alliance calls for significant investment to establish a comprehensive range of appropriate preventive, early intervention and treatment services for children and adolescents with mental health difficulties, and for the reform of the age of consent for mental health treatment.**

#### 4. Multi-denominational Education

Ninety-nine percent of Irish primary schools are under the management of a religious body. Nearly all of these schools are publicly funded by the State but privately owned by the religious bodies. This system of education is unique to Ireland, is underpinned by constitutional provisions (Articles 42 and 44) and leads to a significant lack of educational choice. In September 2007, 106 children, the majority from minority ethnic families, were left with no school place for several weeks, due to poor planning and integration policies.

- **The Alliance calls on the Government to actively promote the establishment of multi-denominational and non-denominational schools; to reform the existing system of school patronage; and to ensure no child is denied their right to education due to a lack of places.**

#### 5. Traveller Children

There are an estimated 12,000 Traveller children in Ireland. The daily reality of life for many Traveller children is that they face huge barriers – discrimination, poverty, inadequate and inappropriate accommodation and serious difficulties in accessing appropriate education, health and social services – which significantly impact on their development and their right to equal treatment. It is estimated that over 2,000 Traveller children within 750 families live on the roadside without basic facilities such as running water, electricity, regular refuse collection, toilets, baths and showers, fire precautions or safe play areas.

Under the Housing (Miscellaneous Provisions) Act, 2002, Gardaí can evict Travellers living on an unauthorised site at any time and without notice, including those awaiting accommodation within local authority areas. Since 1998, more than 1,602 families have been served with eviction notices without being offered alternative accommodation.

- **The Alliance calls for strong political leadership to create sustainable change for Traveller children by ensuring implementation of long outstanding Government commitments in relation to their accommodation, health and education.**

#### 6. Separated Children (unaccompanied minors)

The majority of separated children in the care of the Health Service Executive (HSE) are accommodated in private, profit-making unregistered hostels run by mostly untrained and unvetted staff. The hostels are not covered by the National Standards for Children's Residential Centres. The quality of care and accommodation provided is significantly below that provided to other children living in residential care; with inadequate levels of adult supervision, security or support. In 2006, the HSE reported that 328 migrant children had gone missing from their care placements in the period from 2001 to 2005. Anecdotal evidences suggests that many of these children have been trafficked for sexual exploitation, domestic servitude or labour exploitation.

- **The Alliance calls for the system of accommodating children in large hostels to be abandoned as a matter of urgency, and the children moved to small residential group homes or fostering options. Furthermore, anti-trafficking and victim protection measures need to be introduced as a matter of priority.**

## 7. Corporal Punishment

Although Section 246 of the Children Act 2001 protects children against serious violence, the Act does not prohibit a parent from using physical force when disciplining their child. Provided the parent acts from a reasonable and proper belief that corporal punishment is an appropriate disciplinary measure, and the use of force against the child is not inordinate and is not more than is required to achieve the disciplinary goal, parents may legally assault a child due to the existence of the common law defence of “reasonable chastisement”. The common law therefore permits parents and other persons in loco parentis to administer moderate or reasonable physical chastisement to a child. This common law principle/defence remains unaltered until explicitly repealed.

In June 2005, the European Committee of Social Rights ruled that Ireland is in breach of its human rights obligations under the European Social Charter due to the fact that under Irish law the corporal punishment of children within the home is permitted by virtue of the existence of the common law defence of reasonable chastisement (*World Organisation Against Torture v Ireland*).

- **The Alliance calls for legislation to be introduced without delay to repeal the ‘reasonable chastisement’ defense. Legislation will need to be accompanied by a public awareness programme on the unacceptability of corporal punishment**

### Additional key facts about Children in Ireland

- Over 110,000 children (one in nine) live in consistent poverty; 240,000 (nearly one in four) are at risk of poverty (relative poverty).
- There are no statutory guidelines on the reporting child abuse.
- One child in five leaves school before completing their final State examination.
- Children have no entitlement to be heard in their own right in court or administrative hearings that directly affect them.
- 50,000 children are on the waiting list for social housing – and, by implication, are currently in overcrowded or inappropriate or emergency accommodation.
- A two-tier system operates within the health and therapeutic services, whereby the speed of access and the quality of care will depend on whether a child is a public or private patient.

The **Children’s Rights Alliance** is a coalition of over 80 non-governmental organisations (NGOs) working to secure the rights and needs of children in Ireland, by campaigning for the full implementation of the UN Convention on the Rights of the Child. It aims to improve the lives of all children under 18, through securing the necessary changes in Ireland’s laws, policies and services.