



**INCLUSION IRELAND**  
National Association for People with an Intellectual Disability

# **Key Priorities and challenges facing Ireland in complying with its obligations under the ICCPR**

**Inclusion Ireland Submission  
to the  
Seanad Public Consultation Committee**

**21 March 2014**

## Introduction

Established in 1961, Inclusion Ireland is the national organisation working for the rights of people with an intellectual disability. Inclusion Ireland membership is drawn from people with intellectual disability; parents and family members; providers of services to people with intellectual disability, academics, policymakers and others. The vision of Inclusion Ireland is of a society in which people with an intellectual disability can live and participate in the community.

There are over 57,700 people with an intellectual disability in Ireland. Eight out of ten people with an intellectual disability have another disability. Inclusion Ireland is concerned that many people with an intellectual disability have their human rights and fundamental freedoms restricted or removed.

Inclusion Ireland is particularly concerned with the denial of legal capacity to persons with an intellectual disability; safeguards for people with an intellectual disability in institutional care and the legal framework governing sexual offences.

This brief submission sets out the main priorities and challenges facing Ireland in meeting some of its ICCPR obligations.

## Key Priorities

### **1. Ensure Ireland has a robust national human rights and equality infrastructure**

When considering Ireland's obligations under the ICCPR, the Seanad Public Consultation Committee should be aware that since 2008 substantial cuts have been made to the budgets of the Irish Human Rights Commission (IHRC) – Ireland's National Human Rights Institution (NHRI). Likewise, the budget of the Equality Authority was also reduced significantly. The effect of these cuts has been to seriously reduce the capacity of these bodies to carry out their functions effectively, in particular in undertaking enquiries and in providing legal assistance and support to victims of discrimination. For example, despite having statutory powers to conduct enquiries, the IHRC was never adequately resourced to use its full powers of enquiry. In addition, the IHRC has had to rely on the services of pro bono legal assistance to fulfil its role as *amicus curiae*.

The Commissioner for Human Rights at the Council of Europe has called on the Irish Government to protect the independence and effectiveness of Ireland's human rights and equality bodies and to avoid limiting their capacity by subjecting them to budget cuts and staff reductions.<sup>1</sup>

---

<sup>1</sup> Report by Thomas Hammarberg, Commissioner for Human Rights, Council of Europe, following his visit to Ireland from 01 to 02 June 2011

Inclusion Ireland welcomes the proposal to merge the two bodies. In April 2013 the appointment of members designate of the new Irish Human Rights and Equality Commission (IHREC) was announced. Legislation establishing the IHREC was announced today (21 March 2014). These are positive developments.

Of particular importance to Inclusion Ireland is the adequate resourcing of the IHREC to enable it to support individuals to vindicate their human rights. The Committee should be mindful of the government's commitment that the new body will comply unequivocally with the Paris Principles.<sup>2</sup>

In considering Ireland's obligations arising under Article 2 of the ICCPR, and the need for a robust, independent human rights and equality infrastructure, the Seanad Public Consultation Committee should have regard to the need for adequate financial and human resources of the body to function effectively.

The UN Convention on the Rights of Persons with Disabilities (UNCPRD) is the first international human rights treaty of the twenty-first century. The UNCPRD provides the framework for the protection and promotion of the human rights of people with a disability.

The Convention brings together all of the human rights and fundamental freedoms of all of the other international human rights treaties, including the ICCPR. Ireland was one of the first countries to sign the Convention on 30 March, 2007. Seven years on, Ireland has yet to ratify the Convention.

The Seanad Public Consultation Committee should considering recommending that a timetable for ratification of the UNCPRD is published. The Committee should also recommend that the independent review of the legislative and administrative impediments to ratification, which has been completed on behalf of the Department of Justice, is made available to civil society organisations.

## **2. Recognise people with an intellectual disability as persons before the law**

In Ireland, the right to be recognised as a person before the law is denied to thousands of people on the basis of their capacity. Each year around 200 people with an intellectual disability are made wards of court. As a result, the individual's personhood is denied. Their human right and fundamental freedom, *inter alia*, to vote, make a will, make medical decisions, travel abroad or marry are denied.

The Lunacy Regulation (Ireland) Act (1871), allows this to happen. Ireland's legal and administrative framework dealing with legal capacity is out of step with many other modern democracies.

Inclusion Ireland welcomes the publication of the Assisted Decision-Making (Capacity) Bill 2013. This legislation will provide an improved legal framework for supporting

---

<sup>2</sup> See <http://www.justice.ie/en/JELR/Pages/PR12000226>

people to exercise their legal capacity. However, many of the rights denied to people with an intellectual disability will not be addressed by this legislation.

The issue of legal capacity of persons with an intellectual disability is evident in the laws in Ireland governing sexual offences, which do not adequately protect people with an intellectual disability.

The Criminal Law Rape (Amendment) Act, 1990 does not have regard to any mental impairment a complainant may have.

In 2010, a jury was directed to return a verdict of not guilty in the case of the alleged oral rape of a 23 year old woman with an intellectual disability due to inadequacies in the laws governing sexual offenses. Likewise, the Criminal Law (Sexual Offences) Act, 1993 does not provide for an offence in the alleged circumstances of this case. This Act provides only for offences in which a person “has, or attempts to have, sexual intercourse”, or “commits or attempts to commit an act of buggery with a mentally impaired person.”

The Criminal Law (Sexual Offences) Act, 1993 criminalises certain sexual acts between ‘mentally impaired’ persons, unless they are married. The Law Reform Commission is concerned the law may be incompatible with international human rights law.<sup>3</sup>

In another case involving an alleged victim of a sexual assault with an intellectual disability, the witness was prohibited from giving evidence about her alleged assault by a judge who deemed her not having the “capacity” to testify in court.

The Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act, 2012, permits a subjective and non-official assessment to be made regarding a person’s legal capacity.

The Criminal Evidence Act, 1992 allows for the use of intermediaries in cases where the victim is a child (under 14 years) or has a ‘mental disability’. However, this provision has never been used.

A recent review of the legal provisions and supports to victims of crime with a disability identified a number to shortcomings in the Irish criminal justice system.<sup>4</sup>

The Seanad Public Consultation Committee should recommend that Ireland’s laws dealing with sexual offences are be reviewed to ensure their compliance with international human rights standards.

The Seanad Public Consultation Committee should also be advised that the National Disability Authority has, on behalf of the Department of Justice and Equality, already undertaken a review of the legislative and administrative barriers to ratification of the

---

<sup>3</sup> Law Reform Commission: Vulnerable Adults and the Law, (LRC 83 -2006)

<sup>4</sup> See Kilcommins, Edwards and O’Sullivan (2013) An International Review of Legal Provisions and Supports for People with Disabilities as Victims of Crime, ICCL

UN Convention on the Rights of Persons with Disabilities. This review should be made available to civil society organisations.

### **3. Protect people with an intellectual disability in residential care**

The Seanad Public Consultation Committee will be aware of the many inquiries and investigations undertaken and reports published on the treatment of adults and children with an intellectual disability in residential services in Ireland.

Irish hospitals and community healthcare facilities recorded over 80,000 adverse events in 2011. Almost 10,000 of these adverse events involved incidents of violence, harassment, aggression or abuse against service users, including persons with intellectual disabilities.<sup>5</sup>

Inclusion Ireland remains concerned about the human rights of people with an intellectual disability in congregated settings. Over 3,500 people with an intellectual disability live in congregated settings. The majority of whom have a profound intellectual disability, and have been institutionalised for at least 15 years.<sup>6</sup> A plan to close all congregated settings within seven years was published in 2011. However, implementation of the plan is progressing at a painfully slow pace. The HSE plan 2014 sets a target of only 150 people to move this year.

Closing congregated settings and supporting people to make the transition to the community should be a priority for this government. The Seanad Public Consultation Committee should call on the Government to publish a realistic timetable for the closure of all congregated settings.

### **4. Personal Advocacy Service**

A key provision of the Citizens Information Act, 2007 is the introduction of a Personal Advocacy Service for people with a disability. Under the Act, advocates employed by the Personal Advocacy Service would have a range of statutory powers. These include powers to enter residential settings accommodating people with a disability and make enquiries in respect of persons in care. However, the section of the Citizens Information Act providing for the Personal Advocacy Service has not been commenced.

Inclusion Ireland reminds the Public Consultation Committee that the Citizens Information Act and the Personal Advocacy Service are key elements of the National Disability Strategy, which was announced by the Irish Government in 2006. People in care have a right to be protected. The Personal Advocacy Service would help safeguard that right.

---

<sup>5</sup> Adverse Event Data for 2011, published by the HSE and the State Claims Agency in 2012

<sup>6</sup> Time to Move on from Congregated Settings (HSE, 2011)

## 5. Safeguard the rights of people with a disability in psychiatric care

The Annual Reports of the Inspectorate of Mental Hospitals continue to draw attention to the fact that psychiatric hospitals are not appropriate accommodation settings for people with an intellectual disability.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has also questioned the appropriateness of accommodating patients with intellectual disabilities as primary diagnosis in a forensic psychiatric hospital.<sup>7</sup> The CPT also raised concerns that the Central Mental Hospital (CMH) continues to accommodate a growing number of persons with an intellectual or learning disability as their sole diagnosis. In 2011, the Irish High Court found that a man who was found not to be of unsound mind, not suffering from a mental disorder and not having a mental illness could be detained in the Central Mental Hospital.<sup>8</sup> The UN Committee against Torture (UNCAT) raised concerns about the right to liberty of persons admitted to an approved mental health centres. And recommended the Mental Health Act 2001 be reviewed to ensure its compliance with international human rights law.<sup>9</sup>

The significant majority (86%) of approved centres for mental health services were deemed not to be compliant with the code of practice for people working with persons with an intellectual disability.<sup>10</sup>

A 2012 inspection by the Inspectorate of Mental Hospitals of a mental health centre in Wexford found residents with intellectual disability engaged in rocking, self stimulating behaviour, sleeping or just sitting. In one ward, the inspectors found no curtains around beds and no locks on toilet doors.<sup>11</sup>

Persons admitted to wardship who are involuntarily detained in a psychiatric hospital or approved centre are not covered by the Mental Health Act, 2001 and have no right to a Mental Health Tribunal.

---

<sup>7</sup> Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Ireland from 25th January to 5th February, 2010, Strasburg, 10 February 2011

<sup>8</sup> In the matter of J.O'B and in the matter of the inherent jurisdiction of the High Court, Between the HSE (Plaintiff) and J.O'B represented by his Guardian ad Litem, (H.O'B) Citation 2011 IEHC 1973 see also Submission of the NDA on the Review of the Mental Health Act, 2001 (NDA, 2011)

<sup>9</sup> The UN Committee against Torture's concluding observations on Ireland, 2011

<sup>10</sup> Annual Report of the Inspector of Mental Health Services, 2011

<sup>11</sup> Report of the Inspector of Mental Health Services of St Senan's Hospital, July 2012

## 6. Criminalise hate crime against people with a disability

It is acknowledged that hate crime against people with a disability is a daily reality throughout the European Union (EU). In 2012 the European Court of Human Rights addressed a disability hate crime case for the first time.

The European Union Fundamental Rights Agency (FRA) has called on EU Member States to to introduce clear-cut definitions in national legislation of what constitutes hate crime.<sup>12</sup>

The Irish Crime Classification System, which classifies criminal offences, does not cover offences with a suspected hate motivation.<sup>13</sup>

In Ireland, the Prohibition of Incitement to Hatred Act, 1989 does not include disability as one of the grounds. The Seanad Public Consultation Committee should consider recommending that disability is introduced as a ground under the Incitement to Hatred Act. This would send a clear message that violence and other crimes against people with disability will not be tolerated in Irish society.

-----

### Further information:

Inclusion Ireland is grateful for the opportunity to make this submission. We would be pleased to provide the Committee with any other information it may require.

### Contact:

Siobhán Kane, Information and Communications Manager [siobhan@inclusionireland.ie](mailto:siobhan@inclusionireland.ie)

or

Jim Winters, Advocacy & Rights Officer, [jim@inclusionireland.ie](mailto:jim@inclusionireland.ie)

Our telephone number is 01 8559891

---

<sup>12</sup> Making Hate Crime Visible in the European Union, Fundamental Rights Agency, 2013

<sup>13</sup> *Ibid.*