



INCLUSION IRELAND

National Association for People with an Intellectual Disability

Submission to the Irish Human Rights & Equality Commission

On IHREC's Strategy Statement 2019-2021
September 2018

**This document is written in font 12 Verdana in line with Inclusion
Ireland plain English guidelines.**

Easy to read summary

The Irish Human Rights & Equality Commission are putting together their plan for the next three years.

The Commission should make sure that rights of persons with a disability are included in the plan.

This is very important because Ireland has now ratified the UN Convention on the Rights of Persons with a Disability (UNCRPD)

Inclusion Ireland thinks that the following equality and rights issues are important;

1. Institutions

Inclusion Ireland believes that people have a right to live in the community with support.

Ireland still uses institutions and there are a lot of people still living there.

2. Seclusion & restraint in Schools

Some schools use seclusion and restraint with children. Seclusion is where someone is left on their own. Restraint is where someone is holding another person down.

3. Poverty

Persons with a disability experience poverty which means they have less money available than other people.

Poverty can make accessing your rights harder.

4. Monitoring the UNCRPD

Persons with disabilities from all across Ireland should be involved in the monitoring of the UNCRPD.

Persons with intellectual disabilities need to be involved in the monitoring and be supported to take part.

5. The Optional Protocol

The optional protocol is an important part of the UNCRPD and Ireland has not signed up to it.

The Optional Protocol allows disabled people to take a complaint to the UN about their rights.



1. About Inclusion Ireland

Established in 1961, Inclusion Ireland is a national, rights based advocacy organisation that works to promote the rights of persons with an intellectual disability.

Inclusion Ireland uses a human rights-based approach to its work. This recognises persons with an intellectual disability as rights holders with entitlements, and corresponding duty bearers and their obligations.

Inclusion Ireland seeks to strengthen the capacities of persons with an intellectual disability to make their claims and of duty bearers to meet their obligations.

The vision of Inclusion Ireland is that of persons with an intellectual disability living and participating in the community with equal rights as citizens, to live the life of their choice to their fullest potential. Inclusion Ireland's work is underpinned by the values of dignity, inclusion, social justice, democracy and autonomy.

2. Introduction

Inclusion Ireland welcomes the opportunity to make a submission to the Irish Human Rights & Equality Commission on their strategy for the next 3 years. Unfortunately, the previous strategy contained sparse mention of disability issues, with the only reference to "ensure robust implementation of human rights and equality standards—in particular the (UN Convention on the Rights of Persons with Disabilities) UNCRPD". For the first 2 ½ years of the previous IHREC strategy statement, the UNCRPD had not been ratified and so the implementation of the Convention was not possible, however now that the ratification has taken place it is essential that work is done to improve equality for persons with disabilities

This submission contains the key human rights and equality concerns that Inclusion Ireland has identified as well as some key strategies that we would encourage the commission to take over the coming years.

3. Deinstitutionalisation

Ireland has held the policy position to move away from institutionalised living for persons with disabilities for decades. In June 2011, the HSE published a strategy designed to implement deinstitutionalisation in Ireland. 'Time to Move on from Congregated Settings – A Strategy for Community Inclusion' focused specifically on 4,000 people in 72 centres which it called 'congregated settings'. This was defined as ten or more people sharing a single living unit or where the living arrangements are campus-based.

Publication of the strategy was considered a milestone and established a national policy for a new approach to community living for persons with disabilities. Despite the limited ambition of this strategy in focusing on large 'congregated settings', it is now clear that the policy has failed. Today, the Health Service Executive (HSE) provides residential services to thousands of persons with disabilities many of which could be characterised as institutional in nature and additionally thousands more persons with disabilities, under the age of 65 live in nursing homes.

The UNCRPD is clear in its opposition to institutional living and on the right of persons with disabilities to a life in the community. Article 19 reaffirms the "equal right of all persons with disabilities to live in the community, with choices equal to others' and to "full inclusion and participation in the community". It is therefore imperative that the Irish State stops the continued use of and new admissions to these institutions which are a clear breach of domestic and international rights.

The Committee on the United Nations Convention on the Rights of Persons with Disabilities have clearly stated that while institutions may differ in size, they share common characteristics such as isolation and segregation, lack of control and choice, paternalism and disproportion in the number of persons with disabilities living in the same environment. This means that a person can experience institutional life, not just within congregated settings but in group homes or other living arrangements.

Deinstitutionalisation involves more than just the closure of large, residential settings. It is about removing institutional cultures and practices and ensuring that accessible, inclusive housing, services and supports are available to persons with disabilities in community settings. Inclusion Ireland has previously called on the Irish Human Rights & Equality Commission to carry out an inquiry to examine the continued use

of institutions and the pace and process of deinstitutionalisation. As part of this inquiry, IHREC should determine whether the manner in which deinstitutionalisation has been implemented is in breach of the domestic and international legal rights of persons with disabilities and also determine whether there is a legal basis for the use of community group homes in this deinstitutionalisation process to support persons with disabilities.

4. Seclusion & Restraint in Irish Schools

In September 2018, Inclusion Ireland published a paper called "Shining a light on seclusion and restraint in schools in Ireland", outlining the stories of children with disabilities and their families who had experienced restrictive practices in Irish schools.

That paper outlined how a variety of restrictive practices were being carried out by adults who worked in schools including teachers, special needs assistants and transport escorts and also discussed how there is no mandatory training for staff in the use of restrictive practices, no regulation of the practices in a school setting and no State oversight.

Inclusion Ireland believes that the rights of a child to education, bodily integrity, liberty and to be free from torture are breached by these practices and that in allowing these practices to continue in an unregulated manner, Ireland is in breach of the UNCRPD and in particular, Article 17 of the (respect for physical and mental integrity) and Article 14 of (deprivation of liberty).

Inclusion Ireland also believes that these practices are not in compliance with the United Nations Convention on the Rights of the Child and the United Nations Convention against Torture.

Additionally, as these practices are generally carried out only on children with a disability there is the possibility of indirect discrimination under equality legislation and also a requirement on the Department of Education to take steps in line with its Public Sector Duty Obligations.

While not the subject of the discussion paper it is very clear that many children in Ireland are having their education severely restricted. Children are experiencing short school days despite this being a suspension and children are being 'forced' out of school. When this happens a child may

be entitled to as little as 5 hours of home tuition support per week while a child in school experiences 5 hours 40 minutes per day. The child also misses out on all of the social aspects of school such as birthday party invites, play dates, etc.

The Department of Education and Skills are refusing to acknowledge the issue of short school days and a parent cannot appeal a short school day until it reaches a combined 20 days of missed school days. Barnardos note that children as young as 5 are on short school days.¹

5. Poverty & Disability

The UN Convention on the Rights of Persons with Disabilities (UNCRPD) recognises that persons with disabilities often live with poverty and Article 28 of the UNCRPD says persons with disabilities have a right to an adequate standard of living, including adequate food, clothing and housing. Article 28 also says that there is a right to continuous improvement of living conditions.

In Ireland, persons with disabilities are more than three times as likely to experience poverty and deprivation as the general population².

According to the ESRI persons with a disability experience much higher rates of deprivation which means they go without some of the basic necessities for living. The ESRI has also said that “policies that reduce poverty among the general population do not adequately address deprivation experienced by vulnerable groups” and targeted interventions are needed in households where there is a disabled person.

Persons with disabilities are less likely to attend further education or be in employment. If they do have a job, they are likely to have lower earnings.

Persons with disabilities also face additional costs such as specialist disability aids, home adaptations, higher energy costs or an increased need for taxis due to inadequate public transport and these costs are estimated as being between €207-€276 per week³.

¹ Barriers to education facing vulnerable groups, Barnardos, 2018

² In 2016, 26% of people with disabilities were at risk of poverty as compared with 8% of the general population..

³ Cullinan, J., Gannon, B. and Lyons, S. (2008) Estimating the Economic Cost of Disability in Ireland. ESRI

In August 2017, the UN Disability Committee reviewed the UK's compliance with the UNCRPD. They highlighted the need for action to eliminate the higher levels of poverty, particularly affecting children, women and members of black and ethnic minority communities with disabilities. The Committee was also concerned that austerity measures had a negative effect on persons with disabilities.

Addressing cost of disability is an equality issue - persons with disabilities have lower incomes than the population as a whole and have to spend more of their income to achieve the same standard of living as everyone else.

An increase in social welfare payments such as Disability Allowance is often mentioned as a way to address the cost of disability. However, social welfare increases would not completely or fairly address the cost of disability. An understanding of all of the causes of poverty and deprivation among persons with disabilities is needed as well as approaches that involve, increasing income, reducing costs or both.

Inclusion Ireland has called on the State to conduct research into not just a cost of disability payment but also the extra costs. Inclusion Ireland believes that this research should be conducted through an independent commission with the express aim of identifying that extra costs and identifying strategies for addressing them.

6. Monitoring and Disability Advisory Committee

At this important juncture in Ireland's preparations for implementation of the UNCRPD and as Ireland's national human rights and equality institution, the Irish Human Rights and Equality Commission has a role to play in monitoring the State's implementation of the UNCRPD.

With the recent ratification of the UNCRPD in March 2018, Ireland will be required to submit a state report to the United Nations Committee on the Rights of Persons with a Disability within two years of ratification and every four years thereafter. IHREC will also be Ireland's independent mechanism for the Convention. Section 18 of the Irish Human Rights and Equality Act (2014) outlines that the Commission may establish Advisory Committees to assist it in its functions.

Currently there is a recruitment process underway to recruit 9 members to sit on a Disability Advisory Committee by the end of 2018. It is of utmost importance that this Disability Advisory Committee includes persons with intellectual disability. This involves having persons with lived experience of intellectual disability sitting on this committee with the necessary supports in place to fully participate on the committee.

Further to this the Commission has an opportunity at this juncture to be pro-active and reach out to persons with intellectual disabilities throughout the country. This could be done through the establishment of regional community forums where the Commission could consult with persons with intellectual disabilities in order to hear what issues are directly affecting them, and ways in which the Disability Advisory Committee could ensure their voices are heard.

7. Optional Protocol

It is also of importance that IHREC – as Ireland independent monitoring mechanism - puts pressure on the government to immediately ratify the Optional Protocol of the UNCRPD. The Optional Protocol is the complimentary enforcement mechanism to the UNCRPD.

The benefit of the Optional Protocol is that individuals or groups of individuals can take complaints against their State for violations of their rights under the CRPD. The Optional Protocol has been ratified by most other European countries.

The decision by the Irish government to decline to give persons with disabilities around Ireland the ability to hold its government to account needs to be challenged. Ireland has a poor record when it comes to subsequently ratifying Optional Protocols after the Convention has been ratified and this need not be repeated in relation to the UNCRPD.

8. Conclusion & Recommendations

- a) IHREC should include a specific goal relating to the implementation of the UNCRPD, along the lines of Goal 5 of the previous strategy which focused on intercultural understanding and diversity.
- b) IHREC should include a goal relating to using the IHREC's inquiry function should be considered in order to address issues such as the failure of deinstitutionalisation, restrictive practices (seclusion and restraint) and children being denied their constitutional right to an education through short school days.
- c) IHREC should include a goal that commits themselves to providing information and offering services that are accessible to all, this includes using Plain English and Easy to Read formats and using video where possible.
- d) IHREC should build up community forums to support the work of monitoring the UNCRPD.
- e) IHREC should work proactively with Government to ensure that the UNCRPD Optional Protocol is ratified during the first reporting cycle.

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