



Submission to ICCL on the State's Fourth Periodic ICCPR Report

July 2013

Introduction

Established in 1961, Inclusion Ireland is the national voluntary organisation for people with an intellectual disability. Inclusion Ireland is a membership organisation. Our membership includes people with intellectual disability; parents and family members of people with intellectual disability and providers of services to people with intellectual disability. The vision of Inclusion Ireland is of a society in which people with an intellectual disability can live and participate in the community with equal rights as citizens.

Article 2 – Obligation to implement the provisions of the Covenant

Equality and Human Rights Infrastructure

- In 2008 the government announced substantial cuts to the budgets of the Irish Human Rights Commission (HRC) and the Equality Authority (EA). The budget of the EA was cut by 43%, the IHRC by 32%
 - <http://www.ihrc.ie/publications/list/annual-report-2008/>
- These cuts have seriously impacted the capacity of these bodies to carry out their functions effectively. Adequate resources are needed if the new body is to function effectively.
- In 2011, the Commissioner for Human Rights of the Council of Europe called on the Irish Government to protect the independence and effectiveness of these bodies and to avoid limiting their capacity by subjecting them to budget cuts and staff reductions.
 - <https://wcd.coe.int/ViewDoc.jsp?id=1831077>

Merger of Irish Human Rights Commission and Equality Authority

- Of particular importance to Inclusion Ireland are the powers and functions of the existing bodies to provide support to persons with a disability who believe that their rights have been violated should be strengthened in the proposed Irish Human Rights and Equality Commission (IHREC).
- It is essential that the Irish Government's commitment that the IHREC will comply 'unequivocally' with the Paris Principles is honoured.

- <http://www.justice.ie/en/JELR/Pages/PR120001557>
- In addition, it is a requirement that the designated independent mechanism under Article 32(2) of the Convention of the Rights of Person with Disabilities (CRPD) complies with the Paris Principles.
- It is imperative that necessary safeguards are put in place to enable the IHREC to function without interference from government. The new body should be accountable to the Oireachtas (Parliament).
- The legislation to establish the IHREC must include a Positive Duty on public sector bodies to consider equality and human rights in carrying out their functions.
 - [http://www.eracampaign.org/uploads/Equality & Rights Alliance Submission to merger working group.pdf](http://www.eracampaign.org/uploads/Equality_&_Rights_Alliance_Submission_to_merger_working_group.pdf)

Discrimination

- Inclusion Ireland is concerned with negative attitudes towards persons with an intellectual disability.
- A 2011 National Survey of Public Attitudes to Disability in Ireland found a hardening of negative attitudes towards persons with a disability, since 2006.
 - [Public Attitudes to Disability in Ireland 2011](#)
 - [Public Attitudes to Disability in Ireland 2006](#)

Hate Crimes

- The EU Fundamental Rights Agency (FRA) has confirmed that hate crime is a daily reality throughout the European Union (EU)
 - <http://fra.europa.eu/en/press-release/2012/hate-crime-reality-eu-two-new-fra-reports-show>
- The FRA has called on governments to introduce clear-cut definitions in national legislation of what constitutes hate crime.
 - <http://fra.europa.eu/en/publication/2012/making-hate-crime-visible-european-union-acknowledging-victims-rights>
- **Irish legislation governing hate crime, the Prohibition of Incitement to Hatred Act, 1989, does not include disability as a ground.**
- In addition, there is a dearth of statistical information available on rates of crime against people with disabilities in Ireland.
 - [Access to Justice for People with Disabilities as Victims of Crime in Ireland 2012](#)
- The Irish Crime Classification System, which classifies criminal offences, does not cover offences with a suspected hate motivation.
 - <http://fra.europa.eu/en/publication/2012/making-hate-crime-visible-european-union-acknowledging-victims-rights>

Sexual Violence

- In the 2011 National Survey of Public Attitudes to Disability in Ireland, 49% people surveyed agreed with the statement that persons with an intellectual disability did not have the same right to sexual relationships as everyone else.
 - [National Survey of Public Attitudes to Disability in Ireland 2011](#)
- Data published by the Central Statistics Office in 2012 reports that sexual offence involving 'mentally impaired persons' is now at the rate of one crime per fortnight.
 - http://www.cso.ie/en/media/csoie/releasespublications/documents/crimejustice/2012/recordedcrime_q22012.pdf
- 90 survivors of sexual violence, who attended Rape Crisis Centres between 2008 and 2010, had an intellectual or learning disability.
 - <http://www.rcni.ie/disability-1.aspx>
- **Irish laws governing sexual offenses do not adequately protect people with disabilities who are victims of sexual assault.**
- In 2007, a woman with an intellectual disability was prohibited from giving evidence about her alleged sexual assault by a judge who deemed she did not have the "capacity" to testify in court. The case was dismissed.
 - <http://www.irishexaminer.com/ireland/icrime/family-want-archaic-law-overhauled-115886.html>
- 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. The Criminal Law Rape (Amendment) Act, 1990 does not have regard to any mental impairment a complainant may have. Likewise, the Sexual Offences Act, 1993 does not provide for an offence in the alleged circumstances of this case. Had the act of sexual intercourse been completed, the alleged victim would not have been required to give evidence under the 1993 Act.
 - <http://www.irishexaminer.com/text/ireland/kfmhgbqlcwmh/>
 - <http://www.inclusionireland.ie/content/media/61/court-case-shows-law-does-not-protect-people-intellectual-disability-against-all>
- The Director of Public Prosecutions (DPP) has been asked to explain to survivors of rape the reasons why it chooses not to prosecute in certain cases. This followed the decision of the DPP not to prosecute three men who are accused of the gang rape of a 16-year-old girl with a learning disability in a graveyard over two years ago.
 - <http://www.independent.ie/irish-news/dpp-urged-to-explain-decisions-on-rape-claims-29294966.html>
- The Criminal Law (Sexual Offences) Act, 1993 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.
- Section 5 of the Act makes it an offence to have or attempt to have sexual intercourse or buggery with a mentally impaired person other than a person to whom he is married.

- The Law Reform Commission is concerned that the the Criminal Law (Sexual Offences) Act, 1993 may be incompatible with international human rights law.
 - <http://www.lawreform.ie/fileupload/Reports/Report%20Vulnerable%20Adults.pdf>
- 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, which came into force in 2008, includes provision for 'special measures' to support individuals rendered 'vulnerable' by court proceedings. However, the current arrangements for special measures as applied to support people with intellectual disabilities may not be age appropriate as they include the provision of 'Child Specialist Interviewers' for adults with intellectual disabilities. This may not be in accordance with Article 13 of the CRPD, which requires the provision of procedural and age-appropriate accommodations.

Convention on the Rights of Persons with Disabilities (CRPD)

- The Government gave a commitment to ratify the CRPD as soon as possible after Ireland signed the Convention on 30 March, 2007. Despite this commitment, the CRPD has yet to be ratified by the Ireland.
- The CRPD places an obligation on States Parties to facilitate the participation and involvement of people with disabilities in all aspects of national implementation and monitoring of the Convention. This includes establishment or designation on focal points, coordination mechanisms and the designated independent mechanism for monitoring implementation.
- However, civil society organisations, including people with a disability, have not been involved in any preparation for ratification of the CRPD.
- The a high-level interdepartmental group established by government to advise on ratification of the CPRD, has no representation from civil society. No minutes or reports from the group have been made public.
- The government's disability advisory body, the National Disability Authority, has identified the remaining requirements for ratification. This advice has not been published or made available to civil society organisations.

National Disability Strategy

- A National Disability Strategy was announced by the government in 2004. The three key legislative components of the National Disability Strategy are The Disability Act, 2005; Education for Persons with Special Educational Needs Act, 2004; and Citizens Information Act 2007.
- However, none of the legislative components of the National Disability Strategy have been fully commenced.

Disability Act, 2005

- The Disability Act, 2005 sets out the legal requirements of public bodies, subject to certain considerations. The provisions of the Act include a right to an independent assessment of individual needs, a related service statement and an independent redress and complaints mechanism. The Act also places a legal obligation on public bodies to make their buildings, information and services accessible to people with disability.
- The Disability Act, 2005 has only been partially commenced.
- A key provision of the Disability Act, providing for an independent assessment of health and education needs of adults and children with a disability, is only available to children born after 01 June 2002.
- A commitment to extend the right to an independent assessment of need to adults by the end of 2011 has not been honoured.
- It is a requirement under the Act that assessments of need are completed within six months of receipt of an application. According to official figures, 3,361 applications were received for assessments of needs in 2011. However, only 712 of these applications were completed within the timeframe specified in the Act.
 - <http://www.hse.ie/eng/services/Publications/corporate/performance/dec12sr.pdf>
- The independent Ombudsman & Information Commissioner has criticised the administration of the assessment of need provisions under the Disability Act, 2005
 - <http://www.oic.gov.ie/en/news/speeches-articles/2012-speeches-articles/health-services-and-the-law-%e2%80%93-some-reflections.html>
- The Disability Appeals Officer is an independent officer appointed by the Minister for Health whose purpose is to provide an appeals service to people who wish to appeal against a finding or recommendation under the Disability Act. However, the post of Disability Appeals Officer remains unfilled since 2011, despite several assurances that the post would be filled.
 - <http://debates.oireachtas.ie/dail/2012/01/25/00166.asp>
- The Irish Human Rights Commission and the UN Committee on Economic, Social and Cultural Rights have expressed concern at the omission from the Disability Act (2005) of the right of persons with disabilities to seek judicial remedies where any of the provisions of the Act are not carried out.
 - <http://www.iccl.ie/attachments/download/79/ICCL,%20FLAC,%20and%20IPRT%20Shadow%20Report.pdf>
- The Irish Human Rights Commission has called on the government to fully implement the Disability Act, 2005.
 - <http://www.ihrc.ie/enquiriesandlegal/conducteng.html>

Education for Persons with Special Educational Needs Act, 2004

- The Education for Persons with Special Educational Needs Act, 2004 provides for a statutory right to assessment, preparation and review of individual education plans and an independent complaints and appeals mechanisms. The Act was to be implemented over a number of years, with full implementation of its provisions to take place by October 2010.

- However, the key parts of the Education for Persons with Special Educational Needs Act, 2004, including those sections which give effect to the above rights, have not been commenced.
- Under the Act, a Special Education Appeals Board (SEAB) was established to hear complaints and determine appeals. The SEAB was established in 2007 and developed a system for complaints and appeals. The term of office of the inaugural SEAB came to an end in April 2010. Since then, no new board has been appointed.
 - <http://www.inclusionireland.ie/content/media/94/independent-appeals-process-essential-children-special-education-needs-inclusion>
- In the meantime, successive Governments have implemented cuts to education supports to children with special education needs. These cuts are compounded by increasing class sizes, which also put children with a disability at a disadvantage.
 - <http://www.inclusionireland.ie/content/media/55/budget-2009-rights-children-special-needs-further-diminished-budget-2009-inclusion>
 - <http://www.inclusionireland.ie/content/media/26/special-teacher-cuts-will-have-dire-long-term-effects-inclusion-ireland>
 - <http://www.inclusionireland.ie/content/media/95/un-convention-recognises-right-people-disability-education-govt-continues-wield-axem>
 - <http://www.inclusionireland.ie/content/media/74/children-disabilities-hit-again-education-cuts>
- It is of concern to Inclusion Ireland that a recent national survey on public attitudes to disability found that 40% of respondents were opposed to educating children with an intellectual disability in mainstream settings.
 - [Public Attitudes to Disability in Ireland 2011](#)

Citizens Information Act, 2007

- A key provision of the Citizens Information Act, 2007 is the introduction of a Personal Advocacy Service to people with a disability. Advocates employed by the Personal Advocacy Service would have a range of statutory powers. These include statutory powers to enter residential settings accommodating people with a disability and make enquiries in respect of persons accommodated therein.
 - <http://www.oireachtas.ie/documents/bills28/acts/2007/a207.pdf>
- The section of the Act providing for the establishment of the Personal Advocacy Service has not been commenced.
- The failure to establish a Personal Advocacy Service, which is provided for under the Citizens Information Act (2007), means that advocates seeking to support vulnerable adults in residential services do not have the statutory power to make inquiries in relation to the vulnerable person as he or she considers appropriate.
- The failure to introduce the Personal Advocacy Service means that up to 8,500 adults and children with a disability in residential care have no right to an independent advocate and advocates working the community and services have no obligation to cooperate with advocacy services.

Legal Capacity

- One of the main impediments to ratifying the Convention and its Optional Protocol is the current law regarding capacity - The Lunacy Regulation (Ireland) Act (1871). Under this law, a person can be made a Ward of Court. As a result, they are denied the right to vote, to make a will, make medical decisions, travel abroad or marry.
- Each year, around 100 persons with an intellectual disability are admitted to wardship.
 - <http://www.courts.ie/courts.ie/library3.nsf/pagecurrent/5D12A39F06827AD080256DA60033FE87?opendocument&l=en>
- 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.
- Irish Human Rights Commission (IHRC) HAS called on the Irish Government to introduce legal capacity legislation and ratify the CRPD.
 - <http://www.ihrc.ie/enquiriesandlegal/conducteng.html>

Treatment of persons in care of state/private residential institutions

- Irish society has been shocked by the harrowing revelations about the treatment of vulnerable adults and children in residential services. A number of inquiries and investigations have been undertaken and reports published. These reports highlight the extent of physical, sexual and emotional abuse experienced by adults and children with disabilities.
 - [Report of the Commission of Investigation into Leas Cross Nursing Home 2009](#)
 - [McCoy Report 2007](#)
 - [Report of the Commission to Inquire into Child Abuse 2009](#)
 - [Hynes Review 2009](#)
- The lack of regulation and inspection of residential and day services for adults and children with an intellectual disability remains a major concern for Inclusion Ireland. Over 8,000 adult and children with a disability live in residential care settings. The majority of these settings are congregated and segregated from mainstream society.
- 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.
 - <http://www.hse.ie/eng/services/News/newsarchive/2012archive/Oct2012/patientsafety.html>
- Inclusion Ireland is concerned with the practice of placing people with an intellectual disability inappropriately accommodated in nursing homes for older persons. In 2011, 157 people with an intellectual disability were accommodated in nursing homes.
 - <http://www.hrb.ie/publications/hrb-publication/publications//583/>
- In 2010 the family of a man with an intellectual disability who died in state care were denied access to the report into his death, unless they signed a confidentiality agreement.
 - <http://www.inclusionireland.ie/content/media/93/inclusion-ireland-calls-report-leas-cross-death-be-published-full>

- A 2011 report found over 4,000 persons with an intellectual disability accommodated in congregated settings.
 - <http://www.hse.ie/eng/services/Publications/services/Disability/timetomoveon.pdf>
- Independent advocates have no powers to enter these premises or make enquires on behalf of persons accommodated therein.
- The Council of Europe Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 January to 5 February 2010 recommends the Irish authorities take the necessary steps to ensure that all residents in institutions for persons with learning disabilities benefit from an adequate range of safeguards.
 - <http://www.cpt.coe.int/documents/irl/2011-04-inf-eng.htm>

Mental Health

- *A Vision for Change* (2006) is the national strategy for mental health services in Ireland.
 - http://www.dohc.ie/publications/vision_for_change.html
- Despite *A Vision for Change* recommending that people adults with intellectual disability should be cared for separately to people with a mental illness, people with an intellectual disability continue to be inappropriately placed in psychiatric hospitals.
 - <http://www.inclusionireland.ie/content/media/32/people-intellectual-disability-still-psychiatric-hospitals-25-years-after>
 - <http://www.hrb.ie/publications/hrb-publication/publications//583/>
- The Annual Reports of the Independent Monitoring Group (IMG), which has reported each year since the publication of *A Vision for Change*, have been highly critical of the lack of progress in implementation of key recommendations from *A Vision for Change*.
 - http://www.dohc.ie/publications/vision_for_change_review1.html
- The IMG has reiterated the need for specialist mental services need to be developed as a matter of urgency.
 - http://www.dohc.ie/publications/vision_for_change_6th_report.html
- 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 intellectual disabilities.
 - http://www.mhcirl.ie/Publications/Annual_Reports/
- Many persons with an intellectual disability will experience mental health difficulties at some point in their lifetime. This is the case for around 50% of people with a profound intellectual disability and up to 25% of persons with a mild to moderate intellectual disability.
- There is only one approved centre in Ireland for the treatment of persons with intellectual disabilities experiencing mental health difficulties.
- There is no dedicated unit providing for the acute treatment of persons with intellectual disabilities experiencing acute mental health difficulties.

- According to the 2011 annual report of the Inspectorate of Mental Hospitals, 86% of approved centres for mental health services were deemed not to be fully compliant with the code of practice for people working with persons with an intellectual disability.
 - http://www.mhcirl.ie/Publications/Annual_Reports/AR_2011_Index
- In 2011, the UN Committee against Torture questioned the compatibility of Ireland's Mental Health Act, 2001 with international human rights standards.
 - <http://www.cpt.coe.int/documents/irl/2011-04-inf-eng.htm>
- The Committee also expressed concern that the definition of a voluntary patient under the Act, 2001 is not sufficient to protect the right to liberty of a person who might be admitted to an approved mental health centre.
 - <http://www2.ohchr.org/english/bodies/cat/cats46.htm>

The right to take part in public affairs

The right to vote

- Inclusion Ireland has received calls from people who were refused access to vote on the basis of their disability.
- Currently, Irish law does not specifically deal with the measures required to enable persons with an intellectual disability to vote.
- Persons with an intellectual disability admitted to wardship are denied the right to vote. Around 100 persons with intellectual disability are admitted to wardship each year.
 - [Annual Reports of the Courts Service in Ireland](#)

Jury Service

- Persons with an intellectual disability are denied the right to serve on a jury.
- Persons admitted to wardship under the Lunacy Regulation (Ireland) Act 1871, are automatically denied the right to serve on a jury.
- The Juries Act, 1976 fails to distinguish between ill health and decision-making capacity.
 - <http://www.lawreform.ie/fileupload/Reports/r107.pdf>

Detention / Prison Conditions

- A 2007 study of detention schools in Ireland found 82% of young people had at least one form of psychiatric disorder.
 - http://www.ucd.ie/news/may07/051807_research_det.html
- There were 988 persons with a disability in Irish prisons in 2011.
- The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) found that many of the voluntary residents in St Joseph's Disability

Services were de facto detained: they lived in a closed unit and were not allowed to leave the institution without prior permission.

- <http://www.cpt.coe.int/documents/irl/2011-04-inf-eng.htm>

- The CPT was also concerned that the Central Mental Hospital continued to accommodate a growing number of persons with learning disability as their sole diagnosis.

- <http://www.cpt.coe.int/documents/irl/2011-04-inf-eng.htm>

- The CPT also questioned the appropriateness of accommodating patients with intellectual disabilities as primary diagnosis in a forensic psychiatric hospital

- 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. (See: 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 NDA Submission on the Mental Health Act, 2001 \(2011\)](#)