



**INCLUSION IRELAND**

## **Submission to the Department of Foreign Affairs and Trade on the Draft Fourth Report by Ireland on the measures adopted to give effect to the provisions of the International Covenant on Civil and Political Rights (ICCPR)**

**Date of Submission: Friday, May 11, 2012**

### **Inclusion Ireland**

Established in 1961, Inclusion Ireland is the national organisation for people with an intellectual disability in Ireland.

Inclusion Ireland is a membership organisation. Its membership includes people with intellectual disability; parents and family members of people with intellectual disability; providers of services to people with intellectual disability and other individuals. 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. As well as campaigning for changes in laws and policies that impact on people with an intellectual disability, Inclusion Ireland also provides a representative advocacy service to adults with intellectual disability to support them in vindicating their human rights. Inclusion Ireland welcomes the opportunity to make observations on the Draft Report.

Our submission offers observations on the following areas of relevance:

- National Disability Strategy
- Treatment and protection of elderly in long-term care homes/patients in residential health institutions
- The right to vote
- UN Convention on the Rights of Persons with Disabilities
- The Criminal Law (Sexual Offences) Act (1993)

## **Summary of Inclusion Ireland's observations:**

- Lack of independent, statutory inspections of residential services for adults and children with disabilities
- Failure to move people with disabilities from congregated settings
- Lack of modern capacity legislation
- Concerns regarding the law governing sexual offenses, as it relates to persons with intellectual disability
- Failure to implement in full the legislative components of the National Disability Strategy
- Failure to ratify the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol.

### **National Disability Strategy**

The Irish Human Rights Commission and the United Nations Committee on Economic, Social and Cultural Rights have expressed concern at the omission from the Disability Act (2005) of the right of people with disabilities to seek judicial remedies where any of the provisions of the Act are not carried out.<sup>1</sup>

The right to an independent assessment of health and education needs of persons with a disability, which was established in law under the Disability Act (2005), is only partially commenced. Currently, only children with a disability aged less than 5 years are entitled to an assessment. Six months is the maximum period within which an assessment must be completed, barring exceptional circumstances. An unpublished report submitted to the HSE's board in September 2011 showed that about 80 per cent of children – about 2,500 annually – were not being assessed within legal time limits.<sup>2</sup>

A commitment to extend the right to an independent assessment of need to adults by the end of 2011 was contained in the Sectoral Plan for the Department of Health and Children and the Health Services in 2006. However, the Government has since decided not to implement this decision.

The independent, statutory redress mechanism for appeals under Section 2 of the Disability Act is the Office of the Disability Appeals Officer (ODAO). However, the post of Disability Officer has remained unfilled since 31/12/2011.

---

<sup>1</sup> Shadow Report to the Third Periodic Report of Ireland under the International Covenant on Civil and Political Rights, FLAC, ICCL, IPRT, (2008)

<sup>2</sup> 'Major delay in assessing disabled children', Irish Times, 07 May, 2012

The Education for Persons with Special Educational Needs Act 2004 has not been fully commenced. Successive Governments have denied education supports to children with special education needs:

- October 2008 - halting full rollout of Education for Persons with Special Educational Needs Act 2004. Thereby denying disabled children a right to have their education needs assessed and reviewed
- February 2009 – it was announced that 128 special classes were to be cut from mainstream schools.. 534 pupils were enrolled in these classes. Following appeals, 10 of these classes were reinstated, but 118 were still cut
- April 2010 - a review of special needs assistants (SNAs) was published that showed there were 353 fewer SNAs in the education system. However, this is 'whole-time equivalents' and does not accurately reflect the number of children involved, i.e. many SNAs work part-time and many children only have an SNA for a few hours per week, so one whole-time equivalent may support several children.

### **Treatment and protection of elderly in long-term care homes/patients in residential health institutions**

The lack of regulation and inspection of disability services for vulnerable adults and children with intellectual disability is a major concern of Inclusion Ireland. In recent years 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 were undertaken and reports published, which highlighted the extent of physical, sexual and emotional abuse.<sup>3</sup>

However, despite the findings of these investigations, children and adults with disabilities remain in unregulated, uninspected residential services. The lack of independent, statutory inspections continues to leave thousands of persons with disability at risk of abuse.

The HSE report on Congregated settings has shown that there are nearly 4,000 persons with an intellectual disability living in congregated settings. Of these, 60% have a severe or profound intellectual disability and have been institutionalized for at least 15 years.<sup>4</sup>

Adults with intellectual disability continue to be accommodated in psychiatric hospitals. Furthermore, there is no specific unit providing for the acute treatment of intellectually disabled people with serious mental health problems.<sup>5</sup>

---

<sup>3</sup> Report of the Commission to Inquire into Child Abuse, (2009); McCoy Report, (2007); Hynes Report, (2009); Leas Cross Review,(2007)

<sup>4</sup> Congregated Settings Report, HSE, (2011)

<sup>5</sup> Mental Health Commission 2001 Annual Report, Mental Health Commission, (2012)

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.<sup>6</sup>

## **The right to vote**

Irish law does not specifically deal with the measures required to enable people with intellectual disability to vote. As it stands, Presiding Officers are given wide powers in this area. For example, if a presiding officer considers that a person lacks the capacity to vote. The Presiding Officer has the discretion to refuse a person access to vote..

Guidelines prepared by Department of the Environment governing this area have not been published.

## **UN Convention on the Rights of Persons with Disabilities**

On 30 March, 2007 Ireland was among the first countries to sign the UN Convention on the Rights of Persons with Disabilities. At that time, the Government gave a commitment to ratify the Convention "as soon as possible".

Ireland has yet to ratify the Convention. 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).

Inclusion Ireland has for many years argued for new legislation to provide for decision making by adults with intellectual disability.

A person made a Ward of Court under this law is denied the right to vote, to make a will, to travel abroad or to marry. Furthermore, Wards of Courts 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.

The decisions which pose the greatest difficulties are, in the experience of Inclusion Ireland, ones involving money and property, medical treatment, sexual relations and where there is a difference of opinion between parties such as:

- A mother advised to make her daughter a Ward of Court in order to have a gynaecological procedure undertaken. The mother did not wish to do so;
- A separated parent insisting on visitation rights to see his adult son yet the son had expressed a clear wish not to have such contact;
- Parents with intellectual disability involved in child care proceedings as they are deemed incapable of looking after their children;

---

<sup>6</sup> Citizens Information Act (2007)

- A sexual relationship between two people with intellectual disability outside of marriage may constitute a criminal offence;
- People with intellectual disabilities required to be made a Ward of Court after they had received awards from the Residential Redress Board;

### **The Criminal Law (Sexual Offences) Act (1993)**

This legislation criminalises certain sexual acts between certain mentally impaired persons, unless they are married. The law makes it an offence to have sexual intercourse with a person deemed to be mentally impaired but does not protect against sexual offences that fall outside of sexual intercourse or buggery. In 2010, a jury was directed to return a verdict of not guilty because the law does not provide for oral rape as an offence.