

State Party Examination of Ireland's Second Periodic Report

Session 43 of the Committee on the Rights of the Child

Ireland ratified the Convention on the Rights of the Child (CRC) in 1992. On 20 September 2006, the Committee on the Rights of the Child (the Committee) examined Ireland's Second Periodic Report on the CRC.

Opening Comments

The Chairperson, Mrs Khattab welcomed the delegation and realised that children's rights were taken seriously in Ireland as displayed by the large number of NGOs and audience members present for the hearing. The delegation, led by the Minister for Children, Brian Lenihan, opened by stating that Ireland had experienced tremendous economic growth in recent years, thus able to overcome its historical instability. It hoped to transfer this success into social progress. The clearest developments regarding the rights of the child were the creation of National Children's Strategies and the appointment of the first Ombudsman for Children. These structures were a strong start to recognising the voice of children and to more widely engage them in society. The delegation was proud to note that its first longitudinal study on the rights of the child was complete; it poured 2.9-7.9 billion Euros into education for teacher training and smaller classes; it provided early intervention and support for families to reduce dependency on the state; it implemented important structural reforms in the justice department; the elimination of child poverty was a priority to improve the quality of life; and the necessary legislative amendments were passed to ensure these goals were upheld. Over 100,000 children were lifted out of deprivation since 1997, although it did not deny that much still needed to be done. The government had decided to refer the issue of the rights of the child in the constitution to the All-Party Oireachtas Committee and Ministry of Children, which had not yet approved the wording of the legislation. It was confident, however, that children were a priority and that there was a clear commitment and clarity of purpose in pursuing their rights. For its part, the Committee was pleased to see the important establishment of a Ministry for Children, the National Children's Office (NCO), the Human Rights Commission and the Children's Ombudsman. It was also happy with the vibrant and active NGO community.

General Measures of Implementation

The Committee asked if the CRC, Committee recommendations, and state reports were the subject of circulation and discussion. The delegation did not reply. The Committee wondered what was preventing the ratification of the Hague Convention on Inter-country Adoption. The delegation responded that it would not adopt it until it passed new domestic legislation. The Committee also wondered why the Optional Protocols (OPs) were not yet ratified and if there were any plans to do so. It wanted to ensure that the CRC was given priority in all legislation, as it was concerned by the silence of children in the constitution and domestic law. The delegation assured that this issue would be addressed by the Minister to ensure that children would be guaranteed their inherent rights.

The Committee asked if the Minister of Children and the Ombudsman produced thematic reports, worked together or kept their independence. It also enquired about the role of the minister and his veto power. The delegation responded that the Ombudsman was independent. The veto, which had yet to be used, was meant for highly exceptional circumstances. The Committee found that a number of difficulties were encountered due to the low budgets for health and education. The delegation replied that the Ministry of Finance had the ultimate say

in the budget allotment, noting also that the GDP was overstated due to repatriated profits. The Committee regretted that although the best interest of the child was a primary consideration of the CRC, it was not mentioned by the delegation or in the state report.

Collection of Statistical Data

The Committee noted the absence of disaggregated data on a number of points such as children living in urban and rural areas, the disabled community, the average length of detention before trial, minorities or ethnic groups and the traveller community. The delegation agreed that there was no good statistical base on the average length of detention before trial, but noted that since most people were released on bail, very few were detained. It assured, however, that the establishment of the justice system would take care of the problem. It also recognised that the collection of statistics had to be addressed to better establish needs-based policies. It planned to develop the capacity for collecting data within ministries and other institutions and through the establishment of a youth justice service.

Definition of the Child

The Committee noted that a child was defined as any person below the age of 18, but was concerned that different age limitations could be applied for various situations. For example, although the age of criminal responsibility was 14, as defined by the Criminal Justice Bill, children as young as 10 could also be charged. The Committee saw no reason to change the proposals made in the Children Act of 2001. The delegation elaborated that 12 would be defined as the age of criminal responsibility as of 16 October 2006. For extreme offences such as sexual aggression or murder, the age threshold would be lowered to 10. However, a judge would be able to dismiss a case depending on criminal intent. The Committee was disappointed that its original proposals had not been heeded. It was also concerned that children as young as 17 could be recruited for military schools or forces, although the delegation assured that very few children were part of the military.

Poverty

The Committee noted that 2007 was the target for the decrease or elimination of consistent child poverty. It was concerned that child poverty was higher than in other developed country, at 2.3%. It wondered if it would be possible to reach the strategy goal in 2007, as social assistance was not increasing. It suggested a policy based on income support supplemented by a greater allocation of resources to vulnerable populations. The delegation responded that it was ensnared by inadequate statistics, hoping that accurate figures provided in the next year would prove its claim that it had a poverty rate lower than most developed countries. It continued by stating that there was a high level of unemployment among lone parents and large families; thus, 1.3 million Euros were allotted to aid them. It also hoped to avoid employment disincentives and to implement a programme of education and training.

Freedom of Religion

The Committee was concerned that freedom of religion for minorities was not easy to achieve, as 93% of primary schools were Catholic. It wanted to know if children had the right to decide which church to belong to once they reached a certain age and if they had the right to sit out of mandatory religious education in school. The delegation replied that the rapid increase in immigration was creating the need for new solutions to freedom of thought, conscience and religion. It constitutionally recognised the right of the parents to transfer religious views and to withdraw the child from religious schools and courses. It also noted that new schools had

become multi-denominational, although Catholic schools were still the ones of choice. However, the curriculum, uniform in all schools, was secular.

Child Participation

The Committee wanted the delegation to address children's lack of privacy and hindered participation rights, but it did not receive any response. It continued by speaking to the establishment of a children's parliament, but was concerned that 74% of children did not believe that they were heard in public life—only in schools and the family. This showed a clear deficit in child participation. Specifically, vulnerable groups (those with disabilities, etc.) were largely forgotten. It wanted to know how the delegation would ensure that children's voices were heard, but did not receive a reply.

Non-discrimination

The Committee was pleased to see the implementation of the National Action Plan Against Racism and the Equal Status Act in 2000, which prohibited discrimination on the basis of race and traveller status. However, the Committee mentioned that there was an increase in racist crimes. The delegation assured that the law enforcement authorities accordingly dealt with cases of racist crime. Despite these developments, the Committee wondered if there were any institutional mechanisms which dealt with racism in schools and the workplace. The delegation did not answer the questions. It did note that although historically, emigration was predominant, since the 1990s, immigration was more prevalent. It believed to be a model and pioneer of good practices in immigration services and protection of travellers.

In spite of this statement, the Committee was worried that discriminatory policies existed for asylum seekers and children separated from their families. For example, there were reported inequalities in children's benefits requirements for asylum-seeking families. Also, for children 14-18, it was an offence not to carry an identity card. The Committee was also concerned that there were problems with children born to foreigners in Ireland and then left behind. The delegation replied that asylum seekers were dealt with through direct state decisions and not in legislation. In addition, 200 million Euros were spent on travellers and Raman. Provided a child resided in the country for 5 years, it would be given the nationality. Finally, the Committee was concerned that unmarried fathers were not given equal rights, and stressed that paternity leave should become recognised in employment law. The delegation did not address paternity leave, but noted that under the Children Act of 1997 an unmarried father could be appointed as a joint-guardian if the mother agreed to it. However, custody tended to be awarded to the mother. All matters of this kind were entrusted to the courts, despite the fact that it gave rise to dissatisfaction.

Asylum-Seeking Children

The Committee was concerned that in European countries, the asylum-seeking interview posed problems since the interviewer was not trained to ask questions in a child-friendly manner and children were not provided with enough information. The delegation agreed that the interview process was a difficult issue, and that it was hard to establish the needs of the child. However, it noted that adult asylum seekers were provided with legal assistance and children with qualified, professional social workers.

The Committee stressed that asylum-seeking children should have the same rights to health, education, etc. The delegation confirmed that they had full entitlement to education services: in fact, 800 new teachers had been hired as supports in areas such as language instruction. There was a similar situation in the health department as well. It stressed that there were no restriction

on European Union immigration and that these children had the same access to the same services, despite their low cash flow. Indeed, in large community centres, they were provided with full board accommodations, health services, education, English language training, dieticians and small pocket-money allowances. There was also an 'imperative needs fund' in place to assure the provision of pampers, clothing, food, football kits, etc. The delegation noted that every effort was made to ensure that asylum-seeking children received adequate care. However, the Committee believed that the delegation did not properly answer questions on the situation of the child during the asylum seeking process: reports indicated that despite the fact that children were given pocket money, provided with mental health services and education, they still led unsuitably miserable lives.

Finally, the Committee wondered about the prevalence of the disappearance of children. The delegation assured that it tried to secure family reunification, although it was difficult for those who did not have family in Ireland. Short of locking children up, however, it was difficult to prevent them from moving around. It also instated inspection standards for asylum-seeking children in relation to alternative care, which was relevant in the context of missing persons.

Alternative Care

The Committee was interested to learn that certain children were supported by their extended families, and wanted to know about any financial allowances given to these family members, insurances for the safe return of children to their parents, and how the views of the child were incorporated into alternative care assignments. It noted a shift from residential care to foster care. It stressed that the first port of call should be to place the child in the extended family if it was not possible for the child to return to the parents. It suggested that an agency be determined to examine which option was in the best interest of the child. It also noted that due to inconsistencies in the structure, a more even approach to childcare services and planning needed to be established and periodically reviewed. It also stressed the importance of creating a complaints mechanism and inspectorate separate from the Ombudsman's Office. The delegation did not address these issues. The Committee also asked about the low level of domestic adoptions (most occurred overseas), but did not receive a response. The delegation only noted that divorce and custody battles were very expensive and drawn out, but that the Guardian Ad Litem represented the child and his/her best interests. Finally, the Committee stressed that there should be structures created to allow children to complain about the care they received in residential centres.

Children with Disabilities

The Committee expressed concern that disabled children did not receive the education they deserved. The delegation responded that the Education for People with Special Needs Act established a council in 2005 with operational responsibility to ensure that education and health supports were provided to those with disabilities. It was preparing an implementation report to ensure that all children developed an individual education plan where they would be schooled in an inclusive environment, whenever possible. For those who could not, there were special classes and schools developed through increased rates of funding. It also instituted a programme to ensure that all buildings provided for children with special needs. Senior officials from health and education departments and special needs officers interacted at the local level to address the needs of children with disabilities.

Health

The Committee was concerned that the rates of breast-feeding were the lowest in Europe. The delegation responded that in 2005, a 5-year strategic plan was implemented. It admitted that it

needed a breast-feeding coordinator. It also mentioned the first week of October was national breast-feeding week in an attempt to raise awareness.

The Committee was concerned that Female Genital Mutilation (FGM) was not criminalised or even mentioned in legislation. It had received reports that FGM was prevalent, especially in immigrant population. It emphasised that FGM should be strictly prohibited. The delegation responded that in certain cases, FGM could be considered assault. However, it was not a criminalised act.

The Committee noted that although the infant mortality rate was low, that of traveller children was twice as large as the rest of the population. It also wanted to know if children in the travelling community had the same considerations for health care. The delegation replied that since 1997, funding were allocated specifically for traveller health services. It was working together with traveller representatives to find the best way to cover health needs. It was also contemplating an ethnicity pilot project to collect ethnic-specific information.

The Committee wondered if there were enough human resources to deal with mental health issues. It wanted to know what was being done to reduce stigma against the ill. Additionally, it was concerned that 16-year-old children were admitted to adult mental wards. It asked about the measures to organise treatment of ADHD and provide psychiatric services in inpatient units. The delegation was concerned about resources. The programme, A Vision for Change 2004 exposed challenges such as the shortage of inpatient beds. Proposals were taken into account by the government, additional funding was allotted, and child mental health teams were increased. Additionally, the number of approved child consultants and psychiatrists increased. However, it admitted that there was a shortage of human resources, especially in psychology, speech and language. It was establishing a team to review the immediate requirements of children with mental health problems. The delegation agreed that it was not desirable or appropriate for children to be placed in adult wards. It was commissioning the building of new units and centres. All those under 18 were put under special 24 hour nursing supervision. The Committee was concerned by the high level of suicides amongst teenagers. It wondered if perhaps new strategies had to be carried out to ameliorate the problem. The delegation replied that there was a national strategy against suicide, health promotion and education measures and anti-stigma campaigns in the media. It was trying to develop links between doctors and schools as an essential part of treatment regimes.

The Committee expressed concern for the high number of teenage pregnancies listed in the state report. Many children were under 18, becoming pregnant multiple times. It wanted to know what adolescent health services were being offered, and if they covered girls who were in and out of school. The delegation responded that a crisis pregnancy agency was researching why sexual activity of young people began so early. It had launched a number of information campaigns to inform young people. The trend was on the decline. It was still trying to discern better ways of approaching young people about health issues using a multi-sectoral approach and ensuring the integration of youth issues in wider health promotion.

The Committee wanted to know what actions were being taken to prevent and treat drug and alcohol abuse problems. It noted that the trend was for children to begin drinking early, giving rise to health problems. It also mentioned that advertising was not forbidden. It suggested putting up barriers such as an alcohol tax to prevent children from purchasing alcohol, as had been done in some Latin American countries. The delegation admitted that it was a serious problem, despite campaigns, high taxing, etc. The children were reflecting the habits of the older generation. It noted that it was one of the first countries to ban cigarette smoking in pubs. It also mentioned that it had increased taxes, but that drinking was shifting from the public to

the private spheres. It was concerned that children who finished schooling at 16 and were unemployed used their benefits to purchase alcohol. It was open to suggestions on how to improve the situation.

The Committee was concerned that the waiting time in the health system did not meet demands. The delegation responded that the wait for health services varied widely across the country. There was a major initiative in place to reduce waiting times and improve services. Since April 2002, 5,000 children were targeted by a fund to pull them off waiting lists and receive treatment. It was trying to reduce the waiting time in Dublin from 6-12 months to 2-6 weeks. The Committee also wondered about the age of consent for medical procedures. The delegation replied that it was 16, and that parental consent was not needed. For mental health issues, parental consent was necessary up until age 18. Finally, the Committee mentioned the high index of obesity. The delegation did not comment on this issue.

Juvenile Justice

The Committee asked about the steps to remedy problems of violence in detention centres and police stations. It was concerned that in detention centres such as St. Patrick's Institution, girls and boys were mixed. The delegation did not respond, but noted that the age of provision for children would be extended from 16 to 18, and that they would be segregated in centres from those over 18. It hoped that new correctional facilities would be built by the end of the decade. The Committee wanted an explanation on diversion strategies and on the extent to which children were detained as a last resort. It wanted to ensure that the provisions on child justice services to be implemented October 2006 would focus on the best interest of the child. The delegation replied that the 2001 Children Act provided that diversion programmes were implemented on a statutory basis. It also ensured that there were alternatives to detention. Children were usually considered for these programmes if they had not committed a serious violation. It also mentioned that by 2007, it would institute other forms of punishment and probation services. Detention was considered a last resort.

The Committee was concerned that children suffered penal responsibility at the young age of 10. It enquired why some children went to the high court rather than the children's court. It asked what sorts of cases special tribunals handled and who decided if the child was taken to court or a diversion programme. The delegation did not answer the questions. It replied that the only juvenile liaison officers could operate the diversion schemes, and assured that a large number of juveniles were treated through these programmes. The children who went to district courts had committed egregious crimes, and strict criteria applied to them. The Committee was worried that minors who came before courts for egregious crimes were considered under the same laws as adults, which the delegation did not deny. The Committee wanted to ensure that children were given special considerations and provided with legal representation. The delegation replied that as of October 2006 it would create special legislation for children, applicable to all offenders under the age of 18.

Education

The Committee was concerned that the resources spent on education had decreased. The delegation disagreed, noting that spending had increased in real terms since 1995 by 57%. It also mentioned that education attainment levels were high. The Committee was worried that school student councils and child participation were not mandatory, but the delegation affirmed that enormous progress was made since the last meeting. It had created guidelines on the establishment of student councils in 2002. In 2003, a working group conducted a study to

further establish the status of councils in schools: the recommendations would be implemented as soon as they were complete.

The Committee had received complaints about the persistence of bullying. The delegation admitted its responsibility to handle the situation, noting that the Education Department provided support to the school in its structures and policies with codes for behaviour and discipline. It also enacted policies on Internet and mobile phone bullying. Thus, it was trying to raise awareness on the issue. The Committee was also concerned that there were not enough playgrounds available to children. The delegation replied that since the last Committee recommendations noted the same thing, it had implemented a National Play Policy in 2004 to make spaces more child friendly and to provide open recreational spaces. It admitted that there was a disparity between the localities in the number of play areas available. Its primary objective was to increase the number of recreational areas for children, particularly those who were discriminated against. There were 394 playgrounds (an increase of 123%), and 103 more new playgrounds were in the works.

The Committee enquired about the sort of sexual education children received in schools and what the rights of the child were to consult doctors. The delegation responded that all schools were required to teach sexual education and that it had implemented a Relationships and Sexual Education Programme (RSE). Guidelines and training were provided to teachers for all different age groups. Finally, the Committee asked if human rights were a mandatory part of the curriculum. The delegation responded that Civil, Social and Political Education (CSPE) on rights and democracy assured that human rights were covered in the primary and secondary levels. NGOs cooperated with this programme.

Corporal Punishment and Abuse

The Committee expressed concern that corporal punishment was considered a reasonable form of punishment in the family. It wondered if the perpetrator would be punished in the case of a child suffering violence and marks. The delegation assured that corporal punishment was expressly forbidden publicly, remaining only in the scope of the family. Perpetrators were charged with assault, imprisonment, fines, etc. From January 2007 these punishments would be the legal and practical norm for detention centres as well. The Committee was still worried that there was a lack of statistical data and that children who were victims of abuse were not afforded the proper measures to be heard and to complain. The delegation replied that video-link cross-examinations were to be implemented rather than direct confrontations. The Committee also asked about the type of emergency access available to abused children and if parental consent was necessary. The delegation replied that confidentiality applied in all criminal cases relating to children.

The Committee asked if there was mandatory reporting on child abuse, where children went to ask for support and counselling, and if there was an obligation to report violations of children's rights. The delegation responded that it had not introduced mandatory reporting, but that it had "children-first guidelines." It was looking at whether these mandatory reports were better approach, but it was worried about their implementation. Additionally, it mentioned that a long-standing debate was whether professionals should be made criminally responsible if they failed to report cases of abuse—it was being discussed by the government and would be legislated upon.

Sale and Trafficking of Children, Exploitation, and Sexual Exploitation

The Committee asked if criminal liability was incurred in cases of prostitution regardless of age. The delegation responded that those under the age of 12 were not implicated with criminal

liability. The Committee also enquired about problems with begging; the delegation replied that it was an offence under the Children Act. It also mentioned the Irish Society for the Prevention of Cruelty to Children (ISPCC), which worked with the government and garda to deter begging.

The Committee expressed concern for paedophilia and child sexual abuse, particularly on the part of priests. It asked what was being done to prevent and end this problem. The delegation stated that it was establishing structures involving social services, the garda and the church to deal with the issue. The church had its own safeguards in place, but the state felt the need to institute its own procedures since the church was the patron of primary schools.

The Committee regretted that there was no comprehensive information on the use and dissemination of child pornography. The delegation replied that the Child Trafficking and Pornography Act of 1998 imposed life imprisonment for trafficking. The government was also approving of a criminal law draft extending existing provisions from 17 to 18 years of age, thus allowing for the implementation of Optional Protocol on the sale of children, child prostitution, and child pornography (OPSC) and EU frameworks. The Committee asked about the rights a trafficked child had in terms of protection. It enquired if there was a database on children victims of trafficking and exploitation since it had not received any information on the issue. Similarly, it asked about data on child pornography, recommending that the government consult with NGOs to share information, assess the situation and find solutions. The delegation admitted that it had no information on these issues, but that the bill for the OPSC was before parliament. It assured that children who were trafficked were assisted and that the Department of Justice funded groups who worked on the issue of trafficked children. The Committee was unsatisfied and still wanted to be provided with more information on trafficking, stressing that the NGO reports should be better addressed by the delegation.

Concluding Remarks

The Committee was impressed by what had been achieved by Ireland in such a short time in terms of children's rights. It was hopeful regarding the reform of the constitution, especially with the inclusion of children's rights and best interests. However, it wanted to ensure that efforts were made regarding referenda and wanted more articles to be incorporated into the constitution. It also felt that the mandate of the Ombudsman needed to be broadened, and that the needs of asylum-seeking children needed to be better addressed. The Committee thanked the delegation for its fruitful dialogue, and hoped that it would continue to listen to children's voices in future.

Minister Lenihan thanked the Chair for facilitating the proceedings and appreciated the Committee's interest and visits from the Rapporteur. He acknowledged that there were problems in Ireland, and stressed that having the rights of the child addressed in constitutional form was very important.