

## Reflections on Ireland's UPR process – from a children's rights perspective

October 2015

### Introduction

There have been some welcome developments in relation to the advancement of children's rights since Ireland's last UPR review in 2010, including most significantly the 31<sup>st</sup> Constitutional amendment which introduced children's rights into Bunreacht na hÉireann. However, the impact of austerity measures and lack of Governmental action in certain key areas have coincided with an alarming increase in child poverty rates, which means there remains serious children's rights concerns as we approach 2016.

### General Children's Rights Protections

#### Positive:

106.9, 106.10, 106.11, 107.9, 107.10: Children's rights Constitutional Amendment overcame its final hurdle on 24 April 2015 when the Supreme Court ruled an appeal to the referendum inadmissible.<sup>1</sup> The 31<sup>st</sup> Constitutional amendment as subsequently been adopted, which is a significant development in relation to children's rights protections in Ireland.<sup>2</sup> However this is just a first step. Implementation has to trickle down through domestic legislation, policy and culture to have a real impact on children's lives.

In September 2014 Ireland ratified the third Optional Protocol to the UN Convention on the Rights of the Child, providing children in Ireland with the opportunity to take complaints to the UN, once all domestic remedies have been exhausted. This is an important development in relation to the recognition of children's rights in Ireland.<sup>3</sup>

#### Needs action:

106.14 We would urge for all professionals working with children to be included in the human rights training programme, with particular emphasis on children's rights; in particular for staff of Tusla – Child and Family Agency, health service professionals, teachers, school board members, early childhood workers, social workers, legal professionals, the judiciary and members of An Garda Síochána (Police Service). It will

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<sup>1</sup> Mary Carolan, Supreme Court rejects appeal on Children's Referendum, *The Irish Times*, 24 April 2015, <http://www.irishtimes.com/news/crime-and-law/supreme-court-rejects-appeal-on-children-s-referendum-1.2187741>

<sup>2</sup> 31<sup>st</sup> amendment to the Constitution of Ireland, adopted 28 April 2015 [http://www.taoiseach.gov.ie/eng/Historical\\_Information/The\\_Constitution/](http://www.taoiseach.gov.ie/eng/Historical_Information/The_Constitution/)

<sup>3</sup> Eurochild, Ireland announces OP3 CRC ratification, 17 September 2015 <http://www.eurochild.org/news/news-details/article/ireland-announces-op3-crc-ratification/>

be impossible to deliver the human rights commitments promised in the Children's Rights Constitutional amendment without this training.

106.16 There was a welcome specific allocation of €15m funding<sup>4</sup> to allow young children with disabilities to access Early Childhood Care Education provisions as despite this being a universal provision, uptake among children with disabilities has been low due to logistical barriers.<sup>5</sup>

However, full implementation of EPSEN Act 2004 has been paused unconditionally which means the full impact of its provisions are not being enjoyed by children and young people with a disability.<sup>6</sup> The country's improving economic fortunes means the barrier to implementation should be removed and its full enactment should be expedited.

106.17 There has been no improvement in the treatment of separated children who age out / turn 18. Prior to this they are placed with foster families / residential centres and upon turning 18, and thereby deemed to be an adult, they are transferred to direct provision centres to await the processing of their applications.<sup>7</sup> The vast majority of these young people have attended 2<sup>nd</sup> level education in Ireland and undertaken exams but are ineligible to pursue a 3<sup>rd</sup> level course or even work while they are resident in the direct provision centres. Living in such an institutional system seriously undermines all the gains achieved while the young person was in care. It is crucial their status is determined prior to turning 18.

106.29 While the introduction of free GP access for all under 6s was a positive step forward for children – a vulnerable group – to enjoy their right to health, there are a number of concerning issues in this area. Coverage of access to GP's offering to treat the under sixes is still patchy. Also waiting lists are a key issue for primary and mental healthcare<sup>8</sup> and essential health supports including speech and language and dentistry. This contributes to a situation of health inequality as children with parents who can afford to pay for services access more timely support, while those without the means will be adversely affected and experience worse outcomes.

106.30, 160.32, 160.33 State support for Traveller children to access education was slashed by 86% during the austerity budgets and has not been reinstated.<sup>9</sup> This has

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<sup>4</sup> Department of Children and Youth Affairs, Budget 2016, 13 October 2015

<http://www.dcy.gov.ie/viewdoc.asp?DocID=3624>

<sup>5</sup> Elaine Keogh, Children with disabilities missing out on pre-school, *Irish Independent*, 8 June 2015, <http://www.independent.ie/irish-news/education/children-with-disabilities-missing-out-on-preschool-31284824.html>

<sup>6</sup> Niall Murray, No plans to implement 11 year old disability law, *Irish Examiner*, 10 July 2015, <http://www.irishexaminer.com/ireland/no-plans-to-implement-11-year-old-disability-law-341712.html>

<sup>7</sup> Muireann Ni Raghallaigh (2013) Foster Care and Supported Lodgings for Separated Asylum Seeking Young People in Ireland, Barnardos & HSE

<sup>8</sup> Mental Health Reform analysis of HSE Child and Adolescent Mental Health Service annual report 2012/3 (most recent available) <https://www.mentalhealthreform.ie/mhr-snapshot-analysis-of-2012-13-camhs-annual-report/>

<sup>9</sup> It is important that these cuts are considered in comparison to the overall reduction in government spending of -4.3% during the period 2008-2013, in Harvey, B., *Travelling with Austerity: Impacts of cuts on Travellers, Traveller Projects and Services*, Dublin, Pavee Point Publications, 2013. Harvey notes "one can think of no other section of the community which has

not been redressed in subsequent 'recover' Budgets (2015 and 2016) and the full impact of this remains to be seen.

**106.56 Education** Access to education is not universal, and there are very real barriers for vulnerable children. The cost of education is a barrier to access, as is highlighted in Barnardos' annual School Costs Survey.<sup>10</sup> Cuts to supports for vulnerable families (including Back to School Clothing and Footwear Allowance,<sup>11</sup> One Parent Family Payment<sup>12</sup>) have not been sufficiently off-set by the meagre increase in Child Benefit<sup>13</sup> in two recent Budgets or investment in school book rental schemes – which do not receive adequate investment<sup>14</sup> and so still have patchy delivery.

**106.56 106.57 Health** While free GP care for under 6s a welcome step,<sup>15</sup> its delivery was very nearly scuppered because it was not tied to full implementation plan. Pledges to deliver free GP care to under 12s faces similar challenges.<sup>16</sup> Too many vulnerable children are left to languish on waiting lists for essential health services until it is too late.<sup>17</sup> This perpetuates cycles of disadvantage and inequality.

**107.4** Barnardos would endorse the incorporation of the right to health and housing into Ireland's Constitution and domestic legislation. Ireland has a two-tier health system<sup>18</sup> and current efforts to address access for the most vulnerable remain piecemeal and not tied to an overall strategy to improve universal access based on need, not ability to pay.

**Housing** Ireland is in the midst of a serious housing crisis, which is worsening. The number of homeless children in Dublin has doubled in the past year.<sup>19</sup> A rights based approach to housing has had success with residents in a Dublin estate (Dolphin's

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suffered such a high level of withdrawal of funding and human resources, compounded by the failure of the state to spend even the limited resources that it has made available”.

<sup>10</sup> Barnardos School Costs Survey 2015, 4 August 2015,

<http://www.barnardos.ie/assets/files/Advocacy/2015SchoolCosts/BarnardosSchoolCostsSurveyBriefing2015.pdf>

<sup>11</sup> Ibid, p. 9

<sup>12</sup> Aideen Sheehan, More than 30,000 families will lose Lone Parent Payment in July, *Irish Independent*, 2 February 2015 <http://www.independent.ie/irish-news/news/more-than-30000-families-will-lose-loneparent-payment-in-july-31004488.html>

<sup>13</sup> Department of Social Protection, Budget 2016 <https://www.welfare.ie/en/Pages/Budget-2016.aspx> and Budget 2015 <https://www.welfare.ie/en/Pages/Budget-2015.aspx>

<sup>14</sup> Budget 2016: Main points, *Irish Examiner*, 13 October 2015, <http://www.irishexaminer.com/budget2016/budget2016-latest/budget-2016-main-points-700488.html>

<sup>15</sup> Free GP care for under 6s was pledged in Budget 2015 and delivered in July 2015 [http://www.citizensinformation.ie/en/health/entitlement\\_to\\_health\\_services/gp\\_visit\\_cards.html](http://www.citizensinformation.ie/en/health/entitlement_to_health_services/gp_visit_cards.html)

<sup>16</sup> Irish Medical Organisation, Budget 2016 - IMO warns that extending Free GP Visits to children under 12 is “simply not possible”, 13 October 2015 <https://www.imo.ie/news-media/news-press-releases/2015/budget-2016-imo-warns-tha/index.xml>

<sup>17</sup> Michelle Hennessey, 25,000 children are waiting for to get their first outpatient appointment, *TheJournal.ie*, 10 April 2015, <http://www.thejournal.ie/children-outpatient-2040001-Apr2015/>

<sup>18</sup> Sara Burke, Politics condemns us to a two-tier health system, *Irish Independent*, 13 March 2015, <http://www.independent.ie/opinion/comment/politics-condemns-us-to-a-two-tier-health-system-31062823.html>

<sup>19</sup> Kitty Holland, Number of homeless children in Dublin doubles in a year, *Irish Times*, 17 October 2015, <http://www.irishtimes.com/news/social-affairs/number-of-homeless-children-in-dublin-doubles-in-a-year-1.2396086>

Barn)<sup>20, 21</sup> and as a government strategy has also been successful in Scotland.<sup>22</sup> We would urge the Irish Government to consider framing its housing policy within a human rights perspective to address the current crisis.

107.11 While it is welcome that children in detention can now raise a complaint with the Ombudsman for Children,<sup>23</sup> children seeking asylum are still excluded from accessing this important redress mechanism (despite recommendations they should have access)<sup>24</sup> and Barnardos would welcome the extension of the Ombudsman for Children Act 2002 to be extended to allow for this.

107.18 There is no human rights impact assessment of the annual State Budgets. In Budget 2016 Minister for Public Expenditure and Reform went on record to insist inequality was reducing in Ireland,<sup>25</sup> despite widespread evidence to the contrary.<sup>26</sup> The latest figures reveal 138,000 children are living in consistent poverty in Ireland<sup>27</sup> and there is concern that the delivery of certain socio-economic rights have been rolled back on as a consequence.

We would urge government departments to provide an analysis of the potential impact on their budgetary proposals on children's rights, with a particular focus on child poverty.<sup>28</sup>

107.41 We welcome the inclusion in the upcoming Children First Act of a clause removing the common law defence of 'reasonable chastisement' in relation to corporal punishment on children.<sup>29</sup>

107.42 As a consequence, positive action must be undertaken by the Government to promote alternative more effective methods of non-violent discipline.

107.44 A strong advocate in favour of Ireland's marriage equality referendum in 2015, Barnardos was also encouraged by the passing of the Children and Family

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<sup>20</sup> Dolphin House and Park Community website, <http://dolphinhouse.ie/humanrights/>

<sup>21</sup> RTÉ, European committee told of dire social housing conditions in Ireland, 24 March 2015, <http://www.rte.ie/news/2015/0324/689252-social-housing/>

<sup>22</sup> Dr Beth Watts, Rights, Needs and Stigma: A Comparison of Homelessness Policy in Scotland and Ireland, *European Journal of Homelessness* Volume 7, No. 1, August 2013 [http://www.feantsaresearch.org/IMG/pdf/bw\\_paper.pdf](http://www.feantsaresearch.org/IMG/pdf/bw_paper.pdf)

<sup>23</sup> IPRT, Ombudsman for Children's complaints remit extended, June 2012, <http://www.iprt.ie/contents/2355;>

<sup>24</sup> Ombudsman for Children's Office, 7 May 2015, <http://www.oco.ie/2015/05/ombudsman-for-childrens-office-welcomes-psop-committee-call-to-extend-remit-in-relation-to-direct-provision/>

<sup>25</sup> "It has become popular to say that under this Government, inequality has risen. This is simply not true." 13 October 2015, <http://www.irishtimes.com/business/economy/brendan-howlin-full-budget-2016-speech-1.2390174>

<sup>26</sup> *Cherishing All Equally*, TASC, February 2015, <http://www.tasc.ie/news/2015/02/16/tasc-report-says-ireland-will-move-closer-to-us-ie/>; European Anti-Poverty Network, <http://www.eapn.ie/eapn/training/income-inequality;>

<sup>27</sup> EU SILC figures from Central Statistics Office, <http://www.cso.ie/en/releasesandpublications/er/silc/surveyonincomeandlivingconditions2013/>

<sup>28</sup> Yvonne O'Sullivan, Why Budget 2015 must be that last of its kind, *Humanrights.ie*, 17 October 2014, <http://humanrights.ie/economic-rights/why-budget-2015-must-be-that-last-of-its-kind/>

<sup>29</sup> Children's Rights Alliance, ISPC and Children's Rights Alliance welcome an historic legal amendment to protect children from corporal punishment, 21 October 2015, <http://childrensrights.ie/resources/ispc-and-children%E2%80%99s-rights-alliance-1>

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Relationships Act in 2015 which introduces broader protections for non-biological children within families.<sup>30</sup> We urge its swift commencement.

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<sup>30</sup> Children and Family Relationships Act 2015,  
<http://www.justice.ie/en/JELR/Children%20and%20Family%20Relationships%20Act%202015.pdf/Files/Children%20and%20Family%20Relationships%20Act%202015.pdf>