

### Introduction

Barnardos welcomes the opportunity to input into the Irish Council of Civil Liberties' NGO report to the UN Human Rights Council. Barnardos believes that scrutinising Ireland's performance through the Universal Periodic Review process will help the incoming Government to take stock of our failure to adequately protect human rights and be an impetus for reform.

Ireland has signed up to a number of UN and international human rights and equality instruments. In the past ten years, some progress was made to improving the human rights and equality infrastructure for instance the enactment of Equal Status Act 2000, Disability Act 2005 and establishment of the Equality Authority<sup>1</sup>. However, more recently there has been a significant pulling back on supporting human rights with funding cuts of 32% and 43% to Irish Human Rights Commission and Equality Authority respectively. These cutbacks coupled with a failing to advance human rights through legalisation are impacting negatively on children.

In this short submission, Barnardos will focus on areas where we believe the Government has failed through its domestic legislation and policies to protect or promote children's rights.

### Children's rights in the Constitution

Barnardos continues to campaign for the insertion of children's rights into the Irish Constitution. The conspicuous absence of distinct children's rights in the Constitution represents the ongoing failure of our society to adequately prioritise children and means that a distinction is made between children of married and non-married parents in the delivery and access of services. This distinction is in breach of Article 25 of the UN Declaration of Human Rights which states that: *Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.*

Having explicit rights within the Constitution would be beneficial for all children regardless of the marital status of their parents but particularly those vulnerable children who are in the care of the State and / or are involved in court proceedings. The UN Committee on the Rights of the Child criticised the Government in 2006 for failing to ensure that the Convention is fully incorporated as part of domestic law, beginning with constitutional reform<sup>2</sup>. Barnardos believes that any wording must at a minimum enshrine the principles of best interest of the child and the voice of the child in keeping with the UNCRC.

In fact, Barnardos believes that the insufficient adoption of these principles into domestic law and policies has resulted in ongoing difficulties for many children. Issues such as unequal access to services distinctly disadvantages many children in Ireland and are contrary to their rights. For example, although all children have a right to an education, provision of supports are being withdrawn which impacts adversely on children with special needs and Traveller children. The two tier health system in Ireland means many children who cannot afford private health care have to endure lengthy waiting lists for both assessments and treatments, thereby affecting their development. The absence of or inconsistent availability of social workers and aftercare services hinders children involved in the care system from reaching their potential and making a successful transition to independent adult living.

### Mental Health

Children suffering from a mental illness are a particularly vulnerable group and Ireland's record of upholding Article 24 of the UNCRC – namely a child's right to highest attainable standard of health and to facilities for the treatment of illness has been poor. For example, children and young people suffering from a mental

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<sup>1</sup> Equality and Rights Alliance (2011) A Strengthened Equality and Human Rights Infrastructure in Ireland

<sup>2</sup> Committee on the Rights of the Child, Summary Record of the 1182<sup>nd</sup> Meeting: Press Release 29<sup>th</sup> September 2006

illness can be detained 'involuntarily' without their views being sought or an independent advocate being appointed. Also the inadequate provision of age appropriate services led to 120 children and adolescents being admitted to adult psychiatric units between January and November 2010. Shockingly, this includes 13 children under the age of 16.

### Separated Children

In addition to not having child centred legislation, there is also still no clear entitlement to international protection for separated children in Ireland as set out in UNCRC Article 20: *A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. States Parties shall in accordance with their national laws ensure alternative care for such a child.*

As a result of these and other factors, Ireland was referred, by the European Commission, to the European Court of Justice in 2010 for its failure to fully implement the EU Asylum Procedures Directive. The directive states EU rules on the determination of minimum standards to be respected in the framework of procedures for granting and withdrawing refugee status and Ireland has amongst other reasons failed to put measures in place that ensure separated children have equal access to justice. Although this group is numerically small, it is considered at high risk. Of the 513 children who have gone missing from State care between 2000 and 2010, 440 are still unaccounted for and there is concern that some may be victims of trafficking or exploitation.

### Children in Detention Centres

Article 37 of the UNCRC states that: *The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.* Ireland is still waiting for the establishment of a new national children's detention facility in Oberstown, Lusk with capacity for 157 boys and 10 girls. The delay in the provision of this facility means that boys between 16 and 21 years continue to be detained in St. Patrick's Institution. On average 220 boys aged 16 and 17 are imprisoned in the institution on a yearly basis<sup>3</sup>. This is a wholly inappropriate setting for children and poses a serious risk to their well-being. Issues include a lack of rigour in consistently separating children from adult prisoners; young people on protection or on special medical observation are often held in the same areas of the prison as adults.

Children who are being detained have their rights further compromised as they are prevented from presenting their case to the Ombudsman for Children whose office is precluded from investigating cases involving children who are detained in prisons and Garda stations and from investigating any action on decisions relating to status in the refugee appeals process.

### Conclusion

Children are a vulnerable group in our society and many decisions affecting their lives are made by adults with little opportunity for children to have their voices and wishes heard. Barnardos believes that the Government is failing to protect the rights and integrity of children, particularly those who are vulnerable, failing to give them the opportunities they need to reach their full potential. The ongoing failure to translate the key principles of the UNCRC into domestic law and policies means that this is likely to continue and another generation of children will be disadvantaged by Ireland's failure to protect and promote their rights.

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<sup>3</sup> Irish Penal Reform Trust (2010) Briefing on Detention Children in St. Patrick's Institution.