

**A Presentation to Parnell Summer School,
“Children and Equality”**

By Norah Gibbons, Director of Advocacy and Central Services

August 15th 2011

Thank you very much for inviting me to present to you on this topic.

My primary focus in my work is on children and families in Ireland. Through our work in Barnardos, Ireland’s largest children’s charity we support children whose well-being is under threat, by working with them, their families and communities and by campaigning for the rights of children. Barnardos’ vision is an Ireland where childhood is valued and all children and young people are cherished equally.

I want to open with some facts about children and families in Ireland.

Ireland’s population has grown rapidly with the CSO findings showing that in Census 2011, the population is 4,581,269 an increase of 8% on Census 2006. Approximately, one quarter of the Irish population are under-18 and Ireland has a higher percentage of children under-18 than any other EU member state. Ireland’s birth-rate is also the highest across the EU and the baby boom is continuing with 363,500 babies born between 2006 – 2011.

The following key trends in 2010 are from the CSO¹:

- Average age of mothers is 31.5years in 2010
- 2,019 teenagers had babies in 2010.
- 24,860 births outside marriage in 2010 amounting to 33.7% of all births in comparison to 31.2% in 2001.
- 20,635 marriages were registered in 2010 down from 21,541 in 2009
- 3,093 divorces were granted in 2010 down from to 3,431 in 2009

In 2009, the last year for which figures have been published 91,954 children were living in consistent poverty in Ireland an increase of 26,684 on 2008 figures².

In April 2011, there were 6,122 children in care. We have more than 12,000 that are known to the care system – that is, where an expression of concern has been made to the HSE about their wellbeing.

Children Equal before the Law

With regard to equality and children - one area where children are unequally treated in favour of adults is under our Constitution in respect of their rights as individuals and also in the legal protections offered to their families. The Constitution recognises the paramountcy of parental rights while children’s rights are almost invisible, in particular Articles 41 and 42

¹ CSO (2011) Vital Statistics Yearly Summary 2010

² CSO (2010) EU Standards on Living Conditions 2009

of the Constitution render the rights of married parents in relation to their children “inalienable”.

However, there is even inequality between children as those born outside married families are not afforded the same protections. This was very clearly shown in the Baby Ann³ adoption case whereby the marriage of the birth parents ensured the return of the child to them when much earlier the expressed wishes of the birth mother could be set aside. The actual welfare of the child involved had to take second place. That is not to say the final determination by the Supreme Court was not the best one for the child but rather why it came about.

On the other hand, the rights of children from married families that have irrecoverably broken down to have a second chance of full family membership are made almost impossible because of the protection offered by the Constitution to the married family. The UN Convention on the Rights of the Child to which Ireland is a signatory is more progressive in relation to the rights of children and does not set parents rights against children’s rights.

The recent Civil Partnership Act of 2010, while very welcome, gives no rights to children being raised by same-sex cohabiting couples and fails to provide an equal legal relationship for children to both their parents.

The issue of joint guardianship of their children by both parents when they are not married is a highly contentious one and as yet there are no firm legislative proposals to amend the current position where unmarried mothers are automatically guardians of their children while unmarried fathers are not. Both the Labour Party’s Guardianship of Children Bill, 2010 and the Law Reform Commission (LRC) report ‘Legal Aspects of Family Relationship’, including a draft Children and Parental Responsibility Bill 2010 are calling for reform in this area. While some elements in these Bills are welcome such as extending guardianship to de facto parents i.e. step parents, same sex parents and other members of the extended family, there are some concerns including insufficient safeguards of the child’s best interest and welfare and the provision of automatic guardianship to all unmarried fathers purely on the basis of biological kinship, regardless of the actual relationship with and commitment to the child, even in cases where this is contrary to the safety or best interest of the child, such as in cases of rape or incest. It is suggested that neither of those Bills includes provisions to adequately protect children and parents experiencing domestic violence, nor do they adequately addresses the issues arising from Artificial Human Reproduction and the legalities that surround it.

Equality before the Criminal System

As for children engaged in the criminal system, inequalities are prevalent. For instance, we treat young offenders differently when we consider how they are accommodated once convicted of a crime and sentenced to be detained. Young males aged 16 and 17 are detained in St Patrick’s Institution at Mountjoy prison. Girls of the same age thankfully are not housed in a women’s prison. Shannon in his recent book on Child Care law⁴ notes that The Criminal Justice Act 2006 repealed Section 153 of the Children Act 2001 to allow for the retention of St Patricks. This, of course, runs contrary to the ethos of the UNCRC and the Child Care Act 2001 which was to outlaw the use of prisons for young people.

Again gender differences can be seen in the applications for Special Care Orders. A special care order operates in circumstances where, by virtue of the behaviour of a child, there is a

³ N and Others v Health Service Executive (2006) IESC 60

⁴ Shannon, G. Round Hall, (2010) Child Law Second Edition

real and substantial risk to his or her life, health, safety development or welfare that requires special care or protection. Mark Brierley in his report Tracking and Tracing of Children Subject to a Special Care Application (2010) noted that females are more likely to be made the subject of applications and that their applications were more likely to lead to an admission than those for males. Females with the same real and substantial risks to self as males were much more likely to be admitted to special care.

Applications for special care are considered by an admissions group before it goes to the High Court as it removes a child's right to liberty. The number of applications for females where the concern is around what would have been termed in the past "moral danger" is notable whilst there are no such applications for boys. One is reminded of past times, sadly not too distant past times, when girls were admitted to Industrial Schools for similar reasons and sent to Magdalene Laundries, as were women generally, without any representation to a Court. One of the more insidious aspects of the Magdalene Laundries regime was the denial of their name; girls and women were routinely given false names that they had to answer to. We know that for many the experience of such incarceration has had long term effects that are impossible to ameliorate. To the best of my knowledge, and I am glad that it was so, no such gender specific institutions existed for boys.

Economic Inequality

Social and economic inequality remains rife in Ireland, meaning that a child's life chances continue to be disproportionately affected by their family's social and economic status. Where they are born and their family's position on Ireland's social ladder limits their potential before they even begin in life and greatly hampers their ability to find their own way out of poverty.

While our obligation to the Troika bailout plan is resulting in further financial and social hardship for all families, it is families and children whose lives are blighted with poverty and disadvantage that are adversely affected. These are the families for whom the Celtic Tiger passed by and now very little remains behind. The communities that these children are growing up in feel abandoned by official Ireland. The majority of them are in or around our largest cities and are characterised by higher than usual unemployment, very high levels of intergenerational poverty, high levels of both petty and serious crime, high levels of harm from drugs and alcohol and a lack of public services to meet even basic needs in some instances. Many of those communities are housed in estates that are old, rapidly deteriorating and where no substantial finance was made available even for essential repairs over the years.

Children living in poverty live in families for whom life is a constant struggle to make ends meet. These children experience hardship; living in inadequately heated homes, wearing poor quality or insufficient clothes and not getting enough nutritious food to eat. Many of those on low incomes cannot afford to bring their child to the doctor, dentist or optician and they must rely on accessing public services which are characterised by lengthy waiting lists.

Already it has been mooted that Budget 2012 is going to be a harsh one. Despite the Programme for Government commitments to maintain social welfare rates it is likely that cuts in a number of supports currently available to social welfare recipients will occur. In fact, it has already begun with the announcement of cuts to the fuel allowance, at the same time that Bord Gais and ESB declared price hikes. These cutbacks will result in increased poverty and increased ill-health due to living inadequately insulated homes. In essence, it is of concern that this Government is jeopardising children's future health for a short term cost saving measure.

Actually, any cuts to the rates of social welfare simply recreates time and time again the traps that engulf generations of Irish people in cycles of poverty and deprivation without any real commitment to developing the structures for change. One has to question the logic of taking so much money out of families that they are pushed further into debt and poverty. Our key message for Budget 2012 is that children have paid enough for the recession that they didn't cause and must be spared any more hardship.

Educational Inequality

The correlation between income and social inequality and educational disadvantage is well documented. Literacy levels have remained largely unchanged since 1980 with one in three pupils from disadvantaged areas continuing to have severe literacy difficulties⁵. Reading scores show that the gap between reading scores for those whose mother left school with no qualifications and those whose mother achieved post-graduate level actually increases between first and fifth class indicating that disadvantage in literacy increases as children progress through school. Social inequality is a similarly prominent factor in early school leaving. While over 90 per cent of young people with parent(s) in professional occupations complete the Leaving Cert, just two-thirds of their counterparts from unskilled manual backgrounds do so. The ESRI's *No Way Back* (2010) study found the majority of early school leavers were low achievers with developing negative attitudes to school and their reason to leave was more out of desire to leave the educational system than to move onto welfare or employment.

The development of a National Literacy and Numeracy Strategy is welcomed. However, as the Minister for Education made very clear its roll out is contingent on present resources or cutbacks to other areas. Already the cutbacks within the educational system are significantly affecting children's ability to reach their educational potential. The range of supports already withdrawn or reduced includes Special Needs Assistants, Visiting Teachers for Travellers, Language Support Teachers and DEIS rural coordinators. Their loss will affect those children who already experience inequality in the wider society, namely Traveller children, children from migrant backgrounds and children with a disability.

Barnardos recently conducted its annual School Costs survey and again it highlights the huge financial strain on parents for sending their child to school. Parents are forced to pay around €350 for uniform, footwear, books, voluntary contribution and stationery for a 5 year old starting school. This rises up to over €800 for a 1st year entering the secondary school. Again it is families who can least afford it are feeling the greatest pain. Frequently we hear of parents getting into debt and resorting to money lenders so their child can participate in our 'free' educational system. Although some Government supports are available to low income families they are not reflective of the true costs of sending a child to school. The Back to school clothing and footwear allowance of €200 per primary school pupil and €305 for secondary school have not risen in recent years and falls far short of what is required.

With each Government conducting its own spending review, it is likely that further cuts will be announced for the Department of Education and these policy choices will be felt for generations to come. Again I believe this is short sighted as education is the route out of poverty and only a well educated workforce will help rebuild our economy and create employment. It will prevent some children from enabling them to become the adults they aspire to.

⁵ Department of Education and Science (2006), *National Assessment of English Reading in 2004*, Education Research Centre, Dublin

Now I wish to turn briefly to the explicit inequality facing three particular groups of children.

1. **Traveller children** – only the preliminary findings of the 2011 census were published so no up to date figures on the number of Traveller children are known. The All Ireland Traveller Health Study estimates a population of 40,000 people, with those under 18 comprising up to half of that number. The Traveller community experience widespread structural prejudice and inequality in all aspects of their lives. This result in Travellers frequently experiencing high levels of unemployment, poverty, ill health and poor housing conditions. The opportunities open to Travellers are few so they are one of the most disadvantaged groups in Irish society.

The educational system is not adaptable to some aspects of their culture and this often leads to early school leaving. Traveller children are over-represented in the approximately 1,000 children who fail to transfer between primary and secondary school every year. The recent education cutbacks adversely affect Traveller children and coupled with the loss of Traveller pre-schools means that Traveller children are already at a disadvantage when entering school.

2. **Children with a disability** – again the latest census figures are unavailable but the 2006 census shows that 42,021 children have a disability in Ireland, with 66% being boys. As we know there is a wide range of disabilities and the severity ranges too, accordingly an array of public services / supports must be available to these children. However, this is not always the case with many children waiting to be assessed and in such crucial areas such as psychological and psychiatric services children can be waiting as long as 14 months. This means that medical conditions are not detected early and can have a detrimental impact on a child's development. A particularly disturbing aspect is the lack of access to speech and language assessment and treatment. According to the HSE, by December 2010 there were 23,000 children awaiting assessment and treatment, with 4,000 of these having had to wait over a year or two. The development of speech and language is one of the most significant developmental steps for children and the provision of this basic treatment for children who require it should be the hall mark of any decent society.

The provision of mental health services in Ireland has been consistently underdeveloped and services for children and young people suffering from a mental illness are particularly poor. Although it is the intention to provide quality age appropriate services in the community, the development of these Children and Adolescent Mental Health Teams have been blighted with inadequate funding and recruitment issues. There has been an increase in the number of in-patient beds for children and young people but the practice of placing these patients in adult psychiatric units has not been totally phased out. Between January and November 2010, 120 children and adolescents were admitted to adult psychiatric units. Shockingly, this included 13 children under the age of 16. Placement in adult wards can exacerbate a child's illness, cause increased trauma and significantly impede their recovery.

3. **Separated Children** – who are children under 18 years of age who are outside their country of origin and separated from either parents or their previous legal / customary primary caregiver. 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.

Historically, there has been a lack of child centred approach in dealing with separated children by housing them in specific hostels, with too much emphasis placed on the immigration status of the child rather than the interests of the child. While there have been laudable improvements in the care of separated children in the few years as they have

moved into foster families, more action – especially of a legislative nature – is required for this vulnerable group of children with diverse needs.

Legislative reform is required in the providing a statutory entitlement to aftercare services for separated children as well as all those leaving the care system. There should be some mechanism where a child who has been living in the State for several years or from a certain age is granted humanitarian leave to remain before or just after turning 18. The removal of separated children to direct provision centres once they turn 18 is a significant issue of concern. This practice is not based on an assessment of the needs of that young person and is often contrary to their best interests.

For those living with foster families, appropriate supports and information must be available to the child and the carer to ease their transition into Irish family life. This includes specific issues facing separated children such as trafficking, language and cultural barriers, and managing the uncertainty that is the result of going through the asylum and managing expectations.

4. Children in Direct Provision - The accommodation of asylum-seeking parents and children in direct provision should be discontinued especially in circumstances where families are forced to share crowded accommodation space and as a result there are serious child protection concerns and lack of privacy within and outside the family. According to statistics from the Reception and Integration Agency (RIA) there were approximately 2,078 children under the age of 18 currently living in Direct Provision up to May 2011.

While in direct provision, parents are not allowed to work and therefore have no source of income other than a weekly payment of €19.10 and €9.60 per child. Restoration of universal child benefit to asylum seekers should be a priority as asylum seeking children and their families are being forced deeper into poverty.

Conclusion

As can be seen, children can experience inequality and disadvantage across a range of spheres. It is not a level playing field, children's experiences of childhood can differ depending on their gender, disability and place of birth. I believe that equality for children will only be achieved, by ensuring all children live free of poverty and have an equal opportunity to reach their potential and supports and services be available when required.

At a Governmental and societal level, a more equitable approach to eradicating social inequalities would be to make a conscious shift in investing in prevention and early intervention supports and services while also retaining reactive services. This would help prevent problems becoming entrenched and being passed onto future generations, thereby allowing children the best possible start in life.