

# COMMITTEE ON THE RIGHTS OF THE CHILD

43<sup>rd</sup> session, Geneva 11 – 29 September 2006

## Ireland (2<sup>nd</sup> periodic report)

### *Information submitted to the Committee*

On 11 August 2005, Ireland submitted its second periodic report,<sup>1</sup> due in 1999, along with written responses<sup>2</sup> to the list of issues<sup>3</sup> presented by the Committee on the Rights of the Child (the Committee). The report provides a comprehensive analysis of the main policies and laws approved by the Irish government to implement the Convention on the Rights of the Child (the Convention) and the recommendations put forward by the Committee during its previous review of Ireland. Parallel reports<sup>4</sup> were submitted to the Committee by several NGOs<sup>5</sup>. The parallel reports focused on a wide variety of issues, including the accessibility of a help line to all children, the status of children in the Constitution, legal reform, poverty, asylum seekers and migrants, juvenile justice, education, children belonging to the traveller community,<sup>6</sup> young people's civil rights and freedoms, and corporal punishment.

Ireland has ratified the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, however, it has not yet ratified the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*. Ireland has made a declaration on Article 3 (2) of the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, which fixes the minimum age for recruitment at 18 years. The declaration explained that, despite the minimum age for recruitment in Ireland being 17 years, children at the age of 16 years could be recruited as apprentices. The State party assured that in those cases the children are not involved in military actions and that safeguards were adopted to ensure that children younger than 17 are not forced or coerced into recruitment.

### **Themes and issues**

During the meeting, several Committee members applauded the impressive improvements made by Ireland since the last report, and the accuracy of the current report in providing data and detailed explanations about the policies adopted. However, it lamented the lack of disaggregated data on the situation of children. The country Rapporteur, Ms Lucy Smith, congratulated the delegation for its high-level representation.<sup>7</sup> The Committee expressed its satisfaction with the report and the comprehensive analysis of the main issues that it provided.

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<sup>1</sup> CRC/C/IRL/2, 9 December 2005.

<sup>2</sup> CRC/C/IRL/Q/2/Add.1, 21 August 2006.

<sup>3</sup> CRC/C/IRL/Q/2, 23 June 2006.

<sup>4</sup> NGO reports are available on the NGO for the CRC website, <http://www.crin.org/docs/resources/treaties/crc.25/annex-vi-crin.asp>.

<sup>5</sup> Child Helpline International, Children's Rights Alliance, Children's Rights Alliance-Children's Report, Irish Family Planning Association, and Global Initiative to End All Corporal Punishment of Children.

<sup>6</sup> Irish Travellers are a nomadic or itinerant people of Irish origin living in Ireland, Great Britain and USA. Irish Travellers are distinguished from the settled communities of the countries in which they live by their own language and custom.

<sup>7</sup> The delegation was chaired by the Minister for Children, and included the Permanent Representative of Ireland to the United Nations Office In Geneva, and representatives from the office of the Ministry for Children, the Department of the Education and Science, the Department of Social and Family Affairs, the Department of the Environment and Local

### *Measures of implementation*

The **implementation** of the Convention into domestic law was a major issue for the Committee and concerns were expressed on the slowness of this process. The questions focused on the current political obstacles to incorporation of the Convention. The Committee was surprised by the conservative approach of the State party on children's rights. Notably, the fact that, in recent decisions, the Supreme Court had stated that the rights of the family as a unit superseded those of individual members, including children, violating the principle of the best interest of the child stated by Article 3 of the Convention. The Committee also asked why Ireland had not ratified the Optional Protocol on the sale of children. The delegation responded explaining that the main obstacle was the Irish dual System.<sup>8</sup> However, the delegation informed the Committee that a review of the constitution was underway and that it included the issue of children's rights. In its final recommendations,<sup>9</sup> the Committee encouraged the State party to incorporate the Convention into the domestic law, taking also into consideration the outcome document 'A World Fit for Children'.<sup>10</sup>

The Committee welcomed the creation of the **Ministry for Children** and the **Ombudsman** for children. However, the Committee expressed several concerns about their concrete powers and independence. The Committee asked if specific resources were allocated to them. The delegation explained that the Ministry has its own budget and that it comments on legislation that could affect children. The Committee asked about the limits on the mandate of the Ombudsman and, in particular, the veto power that the Ministry has on certain issues that the Ombudsman can investigate. The delegation responded that the veto power has never been used and hopefully never will be used. Furthermore it explained that if the veto were used it required a written and public explanation. In its final observations, the committee recommended that the State party review the provisions regarding the Ombudsman's investigative powers and eliminate possible gaps that could result in a violation of children's rights. Moreover, in order to ensure the Ombudsman's independence, it recommended that the State party provide the Ombudsman's office with adequate financial resources directly from the National Parliament and the Department of Finance.

### *Juvenile Justice*

The Committee focused its attention on the age of criminal responsibility and the Garda Diversion Programme enabling child offenders to be dealt with outside the formal court system. The Committee appreciated the fact, that according to the proposed Criminal Justice Bill, the age of responsibility was presumed to be 14 years. However, the Committee was concerned that, under current law, it appeared that children of 10 years could be charged with criminal responsibility. The delegation explained that from October 2006, the age of criminal responsibility would be 12 years. The delegation also explained that children at the age of 10 could be charged only if they commit egregious crimes. The Committee was disappointed that the original proposal was changed and reminded the delegation that in making this change State party did not take into consideration the previous Committee's concluding observations.<sup>11</sup> The Committee also expressed concerns regarding the high number of children that were still dealt with by ordinary courts instead of the children's

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Government, the Office of the Attorney General, the Department of Justice Equality and Law Reform, the Department of Health and Children, and the Department of Foreign Affairs.

<sup>8</sup> The Irish System required that the Parliament adopt a specific law to domestic incorporation of international conventions and treaties. So that it does not foresee an automatic mechanism of incorporation.

<sup>9</sup> CRC/C/IRL/CO/2, 29 September 2006.

<sup>10</sup> The document was adopted by the United Nation General Assembly at its special session on children held in May 2002.

<sup>11</sup> CRC/C/15/Add.85, 4 February 1998.

court and the unclear criteria used. It also asked to have clarifications about the Diversion Programme, notably about the procedures, and the alternative detention centres. The delegation explained that a juvenile liaison office could operate this programme and that only children who have committed a great offence would be dealt with district court. It also stressed the fact that the detention was considered a last resort. The Committee asked for clarification regarding the Diversion Programme's procedure but did not receive a completely satisfactory answer. The delegation replied referring to the new legislation for children that would be created in October 2006. This legislation would be in line with the Convention and applicable to all offenders under the age of 18. The Committee requested information regarding measures taken by the State party to solve the problem of violence in detention centres. It also expressed concern that in some centres girls and boys were mixed. The delegation affirmed that hopefully a new correctional centre would be built and the age limit to be prisoner in a child centre would be raised to 18 years. The Committee recommended that the State party make every effort to use detention only as a last resort and, in cases where it is unavoidable to ensure a separate detention centre for children under the 18. It also recommended extending the Ombudsman's jurisdiction to all places of detention.

### *Discrimination*

The Committee welcomed the implementation of national policies against racism<sup>12</sup>. However, it expressed concerns regarding the increased rates of racist crimes. The Country Rapporteur also expressed concerns regarding freedom of religion given that 93% of primary schools are Catholic. The committee asked if children were forced to attend religious classes or if they have the right to get out of it. Moreover it wanted to know if children have the right to choose which religion to belong to. The delegation replied that the Constitution recognized the rights of parents to determine religious training for their children. Moreover, the delegation explained that the new schools were multi-denominational. The delegation also explained that schools are not private but operated by the church in partnership with the Government, which provides a national curriculum that all schools have to follow. The Committee recommend that the State party take into consideration the recommendations made by the Committee on the Elimination of Racial Discrimination.<sup>13</sup>

### *Education*

The Committee expressed concern about the decreasing amount of funds directed to education. The delegation replied stating that since the 1995 the spending has increased in real terms. The Committee expressed concerns on several issues related to the educational environment such as the persistence of bullying and the lack of playground space. The delegation answered describing several programmes and projects set up. It stated that the Educational Department supports schools in definition of codes of behaviour and discipline to deal with issues of bullying. With regard to playground space the delegation referred to its National Play Policy to create more child friendly spaces. The Committee also raised concerns regarding **sexual education policies**. The delegation responded that it applied a Relationships and Sexual Education Programme which included guidelines and training courses for teachers. In its final observations, the Committee recommended that the State party to fully implement the National Action Plan Against Racism with specific attention to measures to address racism, prejudice and xenophobia in primary and secondary schools.

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<sup>12</sup> The Committee referred to the national Action Plan Against Racism and the Equal Status Act adopted in 2000 which prohibited discrimination on the basis of race and traveller status.

<sup>13</sup> In 2005 the Committee on the Elimination of Racial Discrimination (CERD) also raised the issue of discrimination in Catholic schools. In the observation no 18 the CERD encourages the establishment of non-denominational schools and to amend the existing framework to eliminate discrimination. Reference to this can be found in CERD/C/IRL/CO/2, 10 March 2005.

Other concerns were expressed regarding the access to **education for children with disabilities**, both physical and mental. The delegation replied that the Education of Children with Special Needs Act adopted in 2004 established special programmes for schools to provide an education in an inclusive environment. Where it was not possible to introduce special programmes, over one hundred specialised schools were created. The Committee recommended that the State party adopt an inclusive and rights-based legal framework to address the specific needs of children with disabilities and to review the existing policies and practices taking into account the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities.<sup>14</sup> It also encouraged the State party to amend the existing legislative framework to eliminate discrimination in school admissions.

### *Poverty*

The Committee inquired about the high rate of child poverty, the highest amongst developed countries at 2.3%. Also, it asked why favourable economical growth had not been transformed into a practical improvement of the living standards of the poorer families. The Committee suggested that the State party adopt policies based on income support and to increase the funds allocated to vulnerable populations. It also wanted more information regarding the policies set up for single parents, particularly with regards to single fathers' rights. The delegation replied that, according to its old method of calculating the poverty, the goal of a 2% reduction had already been reached. The new system adopted by the European Union did not make clear whether the rate has slightly increased or not. However, the delegation assured the Committee that it would provide more detailed and accurate data to it. It also added that the government had set up several economic support programmes for poor families. Regarding single fathers' rights the delegation explained that there was discussion on these issues and progress was being made. The final observations contain a specific recommendation to implement the National Anti-Poverty Strategy and to strengthen the support to families. The Committee also suggested that the State party introduce a supplement to existing child benefits and increase funds for services such as child care, health care and housing.

### *Health and Disabilities*

Health care was of great concern for the Committee. Its questions focused on **mental health** issues and the measures that the government took to ensure proper assistance. Notably, the Committee expressed concerns regarding the fact that children were admitted in adult centres. The delegation conceded that there was a shortage of psychiatric facilities for children. However, it explained that additional funds were allocated to increase mental health teams, child consultants and psychiatric assistance as well as the building of new units and centres. The Committee highlighted the high **infant mortality** rate of traveller children, which is twice that of the other communities. It asked which measures the State party would take to address this issue. The delegation replied that specific funds were allocated for the traveller community. Other concerns were expressed regarding the waiting time in the health system, which could not adequate to the medical needs of the community. The delegation highlighted that waiting times varied widely across the country. However, they emphasised that the Government set up several initiative to reduce waiting times. The Committee asked clarification regarding measures carried out to reduce the high rate of **teen pregnancy** and expressed concerns about drug and alcohol abuse and the fact that alcohol advertisement was not forbidden. The delegation explained that information campaigns have been launched on pregnancy and alcohol abuses. It also added that research was launched on the early age of sexual activity among young people. Regarding **alcohol abuse**, the delegation stated that heavy alcohol tax was imposed. However, it highlighted that the main problem was the use of

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<sup>14</sup> General Assembly resolution 48/96.

alcohol in the private sphere. In this regard the Committee recommend that the State party pay attention to the Committee's General Comment No. 4 on adolescent health.<sup>15</sup> Finally, The committee asked about the age of the consent for medical procedures. The delegation replied that from the age of 16 children did not need parental consent. However, for mental health issues the age was of consent was 18 years. In its final observation the Committee urged the State party to review existing policies in relation to children with disabilities and to launch a campaign focused on inclusion for children with disabilities. The Committee also stressed that the State party should pay special attention to needs of asylum seeking children and children from the traveller community.

### *Alternative Care*

The Committee wanted to know more about alternative care procedures, particularly regarding the role of the extended family and the existence of any financial support for them. It requested information on policies and procedures for the return of children in alternative care to their parents. In this regard the Committee suggested the creation of an agency charged to periodically review the needs of children in foster care and in residential care. The Committee highlighted the importance of a complaint mechanism for children, which would be independent from the Ombudsman's Office. The delegation did not address these issues fully. It simply stated that the Government recognized that the best place for children was their own family. It also referred to the Children Care Act explaining that this legislation defined standards, best practices and specific guidelines for alternative care and reunification policies. The Committee recommended considering measures to extend the Social Services Inspectorate's mandate to all children without parental care and strengthen its effort to ensure and provide follow-up care to young people leaving alternative care.

### *Asylum Seekers and Foreigners*

The Committee asked several questions about the rights of asylum seekers and foreigners, as well as the children of *traveller communities*. The Committee expressed concerns regarding the asylum application procedure and referred to the inadequate information provided to children and the child unfriendly approach of the interviewers. The delegation stressed that the asylum-seeking interview was a difficult process, and that qualified social workers and legal assistance were provided to help children in preparing their refugee application. The delegation also confirmed that all health and educational services were fully available to asylum-seekers and traveller children up to the age of 18 on the same basis as the Irish children. The Committee stated that the delegation did not properly respond to its queries. It also highlighted reports indicating that the standard of life of asylum-seeker and traveller children was still not adequate. In its final observation the Committee recommended that the State party review the definition of family in the Refugee Act 1996 and establish a legal framework for family reunification.

### *Exploitation and Trafficking*

The Committee examined the issue of child prostitution and the age of liability for children. The delegation responded that children under the age of 12 would not be charged. Other concerns were expressed regarding the trafficking and exploitation of children. In this regard, questions were asked regarding strategies to combat child pornography, paedophilia, and sexual abuse, particularly, in cases in which the priests are the abusers. The delegation answered that cooperation between the social services and the church was established to deal with this issues. It also explained that the law<sup>16</sup> imposed life imprisonment for trafficking. The committee asked whatever protection was set up for trafficked children. Faced with a lack of data, the Committee asked whether any data regarding child victims of trafficking and exploitation was available. The delegation stated that it

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<sup>15</sup> CRC/GC/4/2003.

<sup>16</sup> This provision is part of the Child Trafficking and Pornography Act adopted by Ireland in 1998

did not have information on the number of victims or the types of violations. However, it explained that the Department of Justice contacted groups to assist children who are victims of trafficking. The Committee was not satisfied by the answer and suggested that the state party should cooperate more with NGOs. It requested the State party to provide further information in its next report.<sup>17</sup>

### *Corporal Punishment and Abuse*

The Committee asked if **corporal punishment** was still used in the context of law enforcement and expressed concerns regarding the fact that corporal punishment was still accepted as reasonable form of education within the families. In this regards, the Committee inquired whether there existed any mechanisms to charge family member abusers. The delegation replied that corporal punishment was expressly forbidden in the public sphere, but not in the family sphere. In this case, the judge's interpretation of what constitutes reasonable punishment was critical and the judges view controlled whether it would be possible to prosecute parents for charges of assault. The Committee also asked whether there existed obligations to report on abuses in centres of support and counselling for abused children. The delegation responded that no mandatory reporting existed. However they had a 'children-first guidelines'. In its final observations, the Committee reiterated its previous recommendations<sup>18</sup> and urged the State party to take into account the Committee's General Comment n.8 on the right of the child to protection from corporal punishment<sup>19</sup>. On this regard, the Committee recommended that the State party make all efforts to ensure that reported cases of abuse are adequately investigated and prosecuted and that victims have access to counselling and assistance. It also urged the State party to explicitly prohibit all forms of corporal punishment in the family. The Committee recommend also that the State party use the outcome of the Regional Consultation for Europe and Central Asia as tool for taking action. Moreover, it suggested the State party take all appropriate measures to implement the recommendations contained in the Report of the independent expert for the United Nations study on violence against children.<sup>20</sup>

### *Other Issues*

The Committee expressed concerns regarding the prevalence of **Female Genital Mutilation** (FGM), particularly between the immigrant populations and the fact that the law did not prohibit it. The delegation conceded that FGM was not legally prohibited. However, it highlighted that in certain cases it would be considered assault. In its final observations the Committee recommended that the State party make efforts to prohibit FGM, including the possibility of exercising extra-territorial jurisdiction. It also recommended the implementation of programme to sensitise the population about its extremely harmful effects. The Committee also asked why Ireland has not yet ratified the *Convention on Protection of Children and Co-Operation in Respect of Inter-Country Adoption*. The delegation affirmed that the government was working on that issue and that in the meantime bilateral agreements were signed in accordance with the Convention's principles. Other concerns were expressed regarding the high level of **suicides** amongst children. In this regard the delegation highlighted the adoption of a national strategy against suicide and educational measures. Finally the Committee referred to the **disappearance** of children of asylums seekers and recommend that the delegation read the Committee's General Comment on the treatment of unaccompanied children outside their country.<sup>21</sup> The delegation explained that they were trying to

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<sup>17</sup> On this regard the Committee explicitly referred to the same request made by Committee on the Elimination of Discrimination Against Woman on its last final recommendation. References on this could be find on CEDAW/C/IRL/4-5, 22 July 2005.

<sup>19</sup> CRC/C/15/Add.85, paragraph 39.

<sup>19</sup> CRC/GC/2006/8.

<sup>20</sup> A/61/299.

<sup>21</sup> References to this could be find on CRC/GC/2005/6.

secure family reunification but highlighted the difficulties involved. In its final observations the Committee recommended that the State party review the definition of family in the Refugee Act 1996 and establish a legal framework for family reunification. Regarding the issue of the adoption, the Committee recommend that the State party expedite its efforts to ensure that all relevant legislation is in conformity with international standards.

### ***Conclusion and Next Steps***

The country Rapporteur was impressed by what Ireland had achieved in such a short time. She welcomed the creation of the Ministry for Children and hoped that it would use all its influence so as to incorporate the rights of the child into domestic law. It also welcomed the adoption of the Children Act of 2001, the Education for Persons with Special Needs Act 2004, and the National Children's Strategy. While it welcomed the measures taken to implement previous concluding observations, the Committee regretted that some of those observations were not fully addressed and urged the state Party to make all the efforts required to implement these observations. The Committee urged the State party to ensure that the policies adopted would respect the principle of the best interests of the child and respect for the views of the child. The Committee reserved special attention for traveller children and asked the State party to make more efforts to recognise the *traveller* community as an ethnic group, an issue that was already highlighted by CERD.<sup>22</sup> It also recommended that the State party implement the task force report on the *traveller* Community and to provide further detailed information in its next report. The committee invited the State party to submit its third and forth reports by 27 April 2009.

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<sup>22</sup> References to this could be find on CERD/C/IRL/CO/2 para.20.