



## Universal Periodic Review Ireland

### Submission by Edmund Rice International on behalf of the Edmund Rice Network for the 12<sup>th</sup> Session of the UPR Working Group, 3rd-14th Oct 2011

#### I. Introduction

1. The Edmund Rice Network is a loosely affiliated grouping of Education Centres, Schools and non-profit organisations associated with the Christian Brothers and the Presentation Brothers around the world. The aim of the Network is to promote Social Justice through Education and Community Development by pooling the resources and experiences of its constituent parties. A research and advocacy group was formed in Dublin, in September 2010, to promote the welfare of our most marginalised and vulnerable people.

2. This submission focuses in the first instance on the education of our young people and the failure of the State to provide alternatives for those who cannot function in the mainstream system. Secondly it looks at the welfare of the young people who are currently in residential care settings for which the Department of Justice and the Department of Health are legally responsible.

3. Through the experience of the group<sup>i</sup> and research into the policies of the State<sup>ii</sup> it becomes clear that the Irish State is failing to live up to its commitments as framed within the UN Conventions under Human Rights in regard to the safety, welfare and education of young people<sup>iii</sup>.

#### Background and framework

4. In September 2010 the Edmund Rice Network established a group to research the Human Rights and Children's Rights record in Ireland. This group is comprised of Christian Brothers, Humanitarian Experts, Community and Youth Workers, Educators and Counsellors. The Life Centres<sup>iv</sup> are a core constituent of the group. In the Centres we see at first hand the difficulties that some young people experience in the school setting and the benefit of an approach that provides for all their needs instead of focusing solely on the academic.

5. Following the group's foundation, research was carried out in the area of education and residential care<sup>v</sup>. It was agreed that the primary concern of the group was the failure of the State to ensure the safety of children in its care. Consequently, the three key points that the Edmund Rice Network wishes to focus on are:

- The failure of the Health Service Executive (HSE), in the position of *Loco Parentis*, to ensure an adequate standard of living for young people in care;
- The rights of young people to adequate and statutory care after leaving the care system at the age of 18;
- The rights of young people to an education when the mainstream system fails them.

## **II. Promotion and protection of human rights on the ground**

### **1. Violation in the rights of the child to education**

6. Ireland has ratified a number of Treaty Body Conventions and Declarations in which the State commits itself to uphold the Rights of the Child to Education:

- Article 13 and 14, International Covenant on Economic, Social and Cultural Rights;
- Article 18 (4), International Convention of Civil and Political Right.
- Article 28 and 29, Convention on the Rights of the Child;
- Article 5 (e) (v), Convention on the Elimination of all Forms of Racial Discrimination;
- Article 10, Convention on the Elimination of all Forms of Racial Discrimination against of Women;
- Article 26, Universal Declaration of Human Rights;
- Articles 10, 15(1), and 17 (1) (a), 17 (2), European Social Charter (revised);
- Article 2, European Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol 1.

7. The Education (Welfare) Act 2000 raised the minimum school leaving age from 15 to 16, or the completion of three years of post primary education, whichever is the later. At present there are young people leaving the school system without any qualification or the minimum statutory requirement<sup>vi</sup>. A study conducted by the ESRI (2010) found that many Early School Leavers could not cope in a classroom environment, leading to increased behavioural issues. Disengaged from their peers and teachers, self-esteem and motivation is greatly affected often leading to early school leaving. Early School Leavers have been shown to be disadvantaged in terms of education, employment and socio-economic status<sup>vii</sup>.

8. Educational centres, such as The Life Centres, have a proven success rate in the holistic approach to education<sup>viii</sup>. This approach includes passing state examinations but also incorporates essential life skills. These centres are not currently recognised, supported or funded by the Government. In the period of 2000-2006, 24 out of 30 students in The Life Centre in Cork City sat and passed their Junior Certificate. An internal review taken in 2009 by the Cork Life Centre shows the value the young people, the parents and the staff place on the approach taken to education. The student-teacher ratio is kept to a minimum, building a relationship of trust. The teacher assumes a key role in both the educational and social progress of the young people.

9. The Education (Welfare) Act 2000 makes a provision for alternative educational settings but fails to specify how such settings should function and enforces no measures for their official regulation<sup>ix</sup>.

### **Recommendation:**

- We strongly recommend that Centres of Education, with a more holistic approach to the education of young people, are established and recognized by the State and given adequate support and funding.

## **2. Right of the child to an adequate standard of living**

10. Ireland has ratified the following Treaty Body instruments in which the State upholds the right of all children, especially those in the care of the State, to an adequate standard of living:

- Article 11, International Covenant on Economic, Social and Cultural Rights;
- Article 25 (1), Universal Declaration of Human Rights;
- Article 27, Convention on the Rights of the Child;
- Part I, (7), (11), (13), article 17, (1) (b-c), European Social Charter (revised).

11. The Child Care Act of 1991, Part 2, Section 4 places the HSE *in loco parentis* where the child's parents are unable to undertake their care. There are many areas where the State has failed young people at risk which has in some cases led to their death<sup>x</sup>. Acting *in loco parentis*, the HSE assumes a statutory responsibility to provide the best care possible for young people. The Child Care Act, 1991, Part 6, Section 38 outlines the requirements as to the maintenance, care and welfare of children while being maintained in residential care centres. According to this Act children in these centres should be provided with:

- Available and qualified staff;
- A building of adequate quality;
- Adequate washing facilities and personal space;
- Adequate standard of food provision.

12. The HSE has failed in this on several occasions; Christopher O'Driscoll who was left in Jury's Hotel and a 16 year old boy left in an internet café are just two examples<sup>xi</sup>. Social workers, unable to find suitable Emergency Care Centres are forced to house young people in unregulated accommodation<sup>xii</sup>. In these cases the young people are forced onto the street between the hours of 9am and 6pm with nowhere to go and only breakfast provided for them. This is a situation that is untenable for anyone, least of all children<sup>xiii</sup>.

### **Recommendation:**

- We recommend that the State conduct a full review of the current Care System and subsequently provide a new framework of Emergency Care Centres;
- We recommend that all aspects of provision within the care system be fully human rights proofed.

## **3. Violations in the Rights of the Child to social security**

13. Ireland has ratified the following Treaty Body instruments in which the State commits itself to upholding the right of the child to social security:

- Article 9, International Covenant on Economic, Social and Cultural Rights;

- Article 26, Convention on the rights of the Child;
- Article 5 (e) (iv), Convention on the Elimination of all Forms of Racial Discrimination;
- Article 22, Universal Declaration of Human Rights;
- Article 2 (1), Equality of Treatment (Social Security) Convention (ILO).

14. The Child Care Act of 1991 mentions aftercare but remains silent and vague in relation to the implementation of its provisions.

15. Article 45 (1)(a) Where a child leaves the care of a health board, the board may, in accordance with subsection (2), assist him for so long as the board is satisfied as to his need for assistance and, subject to paragraph (b), he has not attained the age of 21 years.

16. We strongly recommend that this is made a statutory provision. Young people<sup>xiv</sup> attending second level education are often in their final year of school when they reach the age of 18. It is the year in which they sit the Leaving Certificate, an exam that determines their future life choices. Being in a position of extreme financial insecurity as well as under the threat of homelessness while they sit the state examinations is hugely detrimental to their ability to study.

17. Even without the added pressure of the Leaving Certificate, young people in the care system are particularly vulnerable and adjusting to life on their own is extremely difficult. Often they do not have family support and have been dependent on the State during their adolescent years. Their young age and limited life skills puts them in an extremely susceptible position when they are no longer welcome in residential centres. While the Government has acknowledged that after care may be necessary, it has failed to make it statutory.

**Recommendation:**

- We strongly recommend that the State be legally bound by statutory provision to provide aftercare services for young people leaving the care system.

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<sup>i</sup> The group consists of teachers, counsellors, therapists, lawyers and those working on the ground level  
<sup>ii</sup>The Child Care Act 1991, Convention on the Rights of the Child 1992, Children’s Act 2001, Children’s First: National Guidelines for the Protection and Welfare of Children, National Children’s Strategy 2000, Education (Welfare) Acts

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<sup>iii</sup> UN Declaration of Human Rights Article 3, 7,12, 22, 25, 26,27, 28.

<sup>iv</sup> The Life Centres are comprised of four education centres in Ireland; two in Dublin, one in Cork and one in Belfast. The Centres support 12-18 year olds, whose needs have not been met within mainstream education, to achieve school certification and gain essential life skills. The Centres provide one-to-one teaching in a safe and nurturing environment with an atmosphere closer to a home than a school.

<sup>v</sup> Initial research focused on government policy and human rights, after which contact was made with various organisations working with young people; human rights lawyers, the HSE, the Irish Youth Justice Service (IYJS), and the Economic and Social Research Institute (ESRI). There was an emphasis on interviewing young people who had experience within the system to get their views on the care provided and the areas in which they felt let down.

<sup>vi</sup> School Leavers Report 2007, ESRI. See also *No Way Back?The Dynamics of Early School Leaving*, ESRI, 2010.

<sup>vii</sup> *No Way Back? Dynamics of Early School Leavin.. ESRI, 2010.*

<sup>viii</sup> Evaluation of Education Support Project: Report, Department of Education and Skills 2009. *Opening Closed Doors; A Review of the Sunday's Well Life Centre, 2009.*

<sup>ix</sup> Education (Welfare) Act, 2000.

<sup>x</sup> Child in Care Report, Child; Young Person A, HSE, April 2010 (Daniel Mc Anaspie), , Child in Care Death Report, Child; Young Person B, HSE, April 2010 (Tracey Fay)

<sup>xi</sup> Oireachtas report, 11/Mar/2010; Report of Joint Committee on the Constitutional Amendment on Children: Statement of Alan Shatter. <http://debates.oireachtas.ie/dail/2010/03/11/00007.asp#N45>

<sup>xii</sup> Child Care Act, 1991, Part 8, Section 61; definitions are given as to the regulations of centres which require registered proprietor. The HSE has a responsibility to regulate and to maintain a register of Residential Centres in it's functional area.

<sup>xiii</sup> On the 8<sup>th</sup> of May 2009 Christopher O'Driscoll was found dead in Cork City, two days after his death. Christopher had been in State Care since he was ten years old. Two weeks before his death he was thrown out of the hostel for homeless adolescent boys where he had been accommodated. His social worker, with no other action to fall back on, booked him into Jury's Hotel using her own personal credit card. He fled the hotel during the night. That was the last time he was seen alive. Christopher was 17 years of age. The State failed him in every way, he had a drug abuse problem, he was underweight, and he tried to throw himself under a car. These are issues that should have been dealt with by the State but most importantly, he was left alone in a Hotel without supervision and care.

<sup>xiv</sup> Separated Children(AOM) under the jurisdiction of the Youth Justice System should also be taken into consideration.

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## Appendix

### A. The Number of Children in the Care of the Health Service Executive (HSE), October 2010

Care Placement	Numbers
Residential Care	418
Foster Care	3,418
Relative Foster Care	1,683
Other care placements	163
<b>Total</b>	<b>5,682</b>

### B. The Tracey Fay Case

Tracey Fay died of a drug overdose in 2002, she lived a life in and out of care, suffering abuse from her mother and her mother's partner. In 2010 Catherine Ghent, her lawyer, was interviewed on the RTE *Drivetime* programme and read out the text below (*The Life of Tracy Faye*). She speaks as she were Tracy recounting her life from the grave. The words are poignant and heart breaking.

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#### Transcript of the RTE *Drivetime* statement, *The Life of Tracy Faye*, by human rights lawyer, Catherine Ghent

It's 1983 and I'm just born. The world's a strange place when you're not four yet. That's when it started you know. Five times it turned up and people went to the bother

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of contacting the Social Workers saying they were worried my injuries were non-accidental. That means someone deliberately hurt me you know.

I'm 7 years of age. I'm small. I'm vulnerable. I'm not able physically to protect myself from those who are supposed to love me and look after me. I was hit so hard in the face my two front teeth were knocked out. Seeing it coming towards me. Waiting for the impact. Feeling the pain and experiencing the shock and crying and having nowhere to go to. Being scared and wondering if it will happen again. This is my life at seven years of age. Nobody told the guards and do you know what they said? The matter appeared to be a family conflict over which we've no jurisdiction. Isn't that mad?

I'm now 8 years of age. I couldn't go to school for a while because I'd bruising and a black eye. I told my teacher when I was at school that I didn't like my Mam's new partner and I don't think he likes me. I'd bloodstains not usual for my age and I thought somebody would have asked me what was happening and was anything wrong? They asked my Mam of course who said I'd already been to the doctor. It's funny they must have told someone because they had a record of that bit. I believe the HSE wrote to my Mam and asked her to come and see them. She didn't go and nobody came to see me or ask if I was ok.

I'm 11 years of age now and I just can't take it anymore. I want to kill myself. I wonder does anybody else my age feel like this? I suppose I'm still pretty young and still not that big. They asked my Mam to come and see them again but she didn't come and they closed the file. Imagine that. Wouldn't you think someone would have said-I wonder what's going on in that house? I wonder if that little girl is ok? Is she safe? And wouldn't you think that somebody would have figured out if these things kept happening and I wanted to kill myself. They'd need to meet me, to talk to me and make my mum realise that she couldn't keep doing this. But they closed the file.

I'm fourteen now and I turned up with a fractured skull. It took some whack to do that. It's not easy to fracture a skull. I'm used to it now. Waiting for the impact, the crunch and the after-math. I went to England for a bit and the Social Workers there tried to contact my granny when I came back. They told the Social Workers here they were closing their file because I'd moved back. They asked them to hold a meeting. It's called a child protection case conference. Somebody clearly thought I needed protecting and guess what? They closed the file again. Is this a joke? Do they not think it's strange that from the age of seven I've turned up with serious injuries consistently.

Still 14. I turned up at the out-of-hours. The social worker left me at 6.40pm and I had to walk to the Garda Station on my own. It was very scary and Garda Stations aren't nice places to be. There's people there who are drunk and who shout a lot and there's people there I think aren't well and they can be noisy and some of them very frightening.

I'm 15 now and I've a pretty good social worker. She told them. She said I was an

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extremely vulnerable girl who at present is not receiving adequate care. She also said I was a victim of physical and emotional abuse and that I was at risk. Fair play to her but still it's a bit late. But it's good somebody finally told it like it is.

I'm 15 and a half now and the guards are on my case. They wrote to the HSE so it must be bad. They told them I'm going up to men of all ages and that I'm going home with them. The guards are investigating criminal offences but they weren't after me. They were after those men. I'm in a hostel and the guard said because I'm allowed to leave whenever I want I'm in grave danger. Sounds pretty serious to me.

I'm still 15. It's a long year. Just got barred from the out-of-hours. It's a terrible service anyway. Expecting you to wait at the Garda Stations to be picked up and left at whatever hostel's free. You have to get out at 9.30 in the morning you know and you can't come back until 10 o'clock at night unless you've a long term bed. It's no place for us kids. We should be in school. In a safe place and people should love us instead of leaving us.

I'm 17 now. The guards stopped me for soliciting while heavily pregnant. Do they know how hard it is? Do they know how many placements I've had? Thirty-eight in three years, thirty-one B&B's. Stayed in A&E a few times as I'd nowhere else to go, even slept in a tent.

I'm 18 now and it's all over. They find me in a coal bunker used by drug addicts. Not a pretty ending but then it wasn't a pretty life.

So what's the story now? My lifespan 1983 to 2002. I'd love to say it's all ok, they have it sorted and there's no more kids like me getting messed up by their parents and then by the system. But sure you know it's still going on. Do you actually care? There's still kids in the out-of-hours, sleeping rough, being sexually abused for profit. And there's still no social workers at weekends or after five. They're still sticking bits of paper in filing cabinets, hundreds of them. But they're not just bits of paper. It's information on kids like me. Information you should be listening to and acting on.

We know some parents hurt their children. We know they sexually abuse them. We know mothers do it too. Struck me as funny. Charge a mum with incest and she can only get 7 years. Why not charge her with rape and she could get life? They need to get that referendum sorted. I don't believe the brains in this country can't come up with the wording that means kids that should be at home stay at home and kids like me who need to be taken out are. And then you make sure you actually look after us and help us. Cause you're the state you know. You're the people who decide how important it is or isn't to protect and help kids like me. And you haven't been very good at it and you're still letting us down. Do something about it. Show you care and don't just say it's tragic. There's others like me and you can make a difference. Because when you don't listen we give up telling.