



RehabGroup

Investing in People, Changing Perspectives

**Stakeholder Report to the
Universal Periodic Review
in relation to Ireland's Human Rights record
March 2011**

Stakeholder Report to the Universal Periodic Review in relation to Ireland's Human Rights record

Executive Summary - The following recommendations to the Universal Periodic Review in respect of Ireland's Human Rights record:

1. The Review Committee should recognise the positive strides that the Irish state has taken in the area of disability legislation and in its consultation with the disability sector in relation to disability policy and issues.
2. Ireland should ratify and implement the Convention on the Rights of Persons with Disabilities in consultation with the disability sector as soon as possible.
3. Ireland should introduce and implement mental capacity legislation which ensures a broad ranging functional approach to decision-making without delay.
4. Ireland should protect disability-related social payments from further cuts.
5. A cost of disability payment in recognition of the addition costs incurred by people living with a disability should be introduced.
6. Ireland should consider and implement comprehensive actions to ensure that people with disabilities can enter and retain employment to develop lasting careers.
7. A network of community-based rehabilitation services should be developed throughout Ireland to ensure people acquiring disability receive appropriate early intervention services.
8. Ireland should fully implement the Independent Assessment of Need for people with disabilities to ensure that services are appropriate and prioritised in a time of economic austerity
9. The Irish Government's Congregated Settings Report should be published and implemented to enable 4,000 people with disabilities to live in the community.
10. Ireland should introduce the Housing Strategy for People with Disabilities and ensure that people with disabilities can choose housing options which enable them to live as independently as possible in the community.
11. Ireland should introduce mandatory standards for all residential and home care disability services.
12. Ireland should introduce a statutory personal advocacy service to ensure that people with disabilities, who are at risk, can access essential independent advocacy services.
13. Ireland needs to work collaboratively to divert resources from inappropriate mental health services in order to develop a comprehensive, 21st Century mental health service rooted in the principles of recovery.
14. The legal position of people with intellectual disabilities in respect of participation in the electoral process requires clarification.
15. A comprehensive set of actions to support the invaluable work of unpaid family carers is required to include financial support, respite and training.

I. Background

Rehab Group is a leading non-governmental organisation which works in local communities to support people to live their lives to their fullest potential. Located in Ireland, England, Scotland, Poland and the Netherlands, Rehab supports more than 50,000 people every year. In Ireland, more than 12,500 people use our services including young people and adults with physical, sensory and intellectual disabilities, people with mental health difficulties, people who are unemployed, people with autism and people with an acquired brain injury. A range of essential services are also provided to older people, carers and others who are marginalised.

In Ireland, Rehab's services aim to support people with disabilities to improve the quality of their lives and to access mainstream community supports. Throughout the country, our resource centres support individuals to develop their independent living skills to ensure that they can play an active role in their community. Every year, our training centres equip more than 5,000 students with disabilities and mental health difficulties with nationally-recognised qualifications to prepare them for further education or employment. Every year, our home care services support more than 700 older people and people with disabilities to enable them to live in their own homes. In addition, Rehab also provides supported accommodation to more than 200 people with disabilities. In the last year, Rehab has also provided training to more than 1,500 unemployed people, supporting them to re-enter employment or further education.

Throughout its 60-year history, Rehab has been to the forefront of promoting advances in policy to improve the lives of people with disabilities. Rehab has consultative status as a non-Governmental

organisation at the Economic and Social Council of the United Nations. The organisation is committed to ensuring that its expertise in supporting people with disabilities into employment and community participation is shared internationally. Over the last three years, Rehab has supported employment projects in Nepal, Panama, Mauritius, Taiwan and India, resulting in the sustainable employment of hundreds of people in these countries.

This Stakeholder Report has been developed following consultation with staff and service users within Rehab Group. In general, the recommendations contained in this document refer to the protection of human rights for people with disabilities and people with mental health difficulties.

- **Constitutional and legislative framework including progress on implementation of the international human rights obligations**

Disability in Ireland - According to the Census carried out by the Central Statistics Office in 2006, there are 393,785 people with disabilities living in Ireland, representing 9.3% of the population.

National Legislation - In recent years, Ireland has taken great strides in the areas of disability and mental health. In 2004, the National Disability Strategy was introduced in consultation with the sector and over the course of the next seven years, it has underpinned all government policy in relation to disability. The Strategy included a Disability Act (2005), which provides for greater provision for people with disabilities in a number of areas, including assessment of need, employment in the public service, access to buildings and services; the Citizens Information Act (2007), which provides for the establishment of a statutory Personal Advocacy Service; six Government Department Sectoral Plans; the Education for Persons with Special Educational Needs Act 2004, which provides for the needs of children with disabilities; and a programme of multi-annual funding up to 2009.

The Strategy's monitoring mechanisms are unique across Europe and represent a best practice stakeholder approach to ensuring that disability policies are implemented effectively and that disability is considered across government policy making. Through the National Disability Strategy Stakeholders Monitoring Group which is Chaired by the Department of the Taoiseach (Prime Minister) and co-Chaired by the chairperson of the Disability Stakeholders Group, a comprehensive monitoring structure which engages with key government departments has been established.

Recommendation: The Review Committee should recognise the positive strides that the Irish state has taken in the area of disability legislation and in its consultation with the disability sector in relation to disability policy and issues.

This Strategy is complemented by the existence of strong equality legislation which outlaws discrimination in employment and in the provision of goods and services under nine grounds: gender; marital status; family status; age; disability; race; sexual orientation; religious belief; and membership of the Traveller Community; this includes the Equal Status Acts 1998-2008 and the Employment Equality Acts 2000-2008

In the area of mental health, the Mental Health Act 2001 provides for the involuntary admission of people suffering from mental disorders to approved centres. This law is due to be reviewed to ensure that it is fully compatible with a 21st Century mental health system. In addition to this Act, *A Vision for Change, the Report of the Expert Group on Mental Health* details a comprehensive model of mental health service provision for Ireland. It provides that mental health services should be person-centred, recovery oriented, holistic, community-based, multi-disciplinary and population-based, i.e. they should focus on mental health and well-being of the whole population from childhood to old age.

Ratification of human rights instruments – Ireland has ratified the six core UN human rights treaties while it has also ratified a number of UN human rights instruments and Council of Europe human rights instruments. The Irish Department of Foreign Affairs places considerable importance on the role of the NGO community in the human rights area both in Ireland and internationally. The Joint DFA/NGO Standing Committee on Human Rights was established in 1997 and provides a formal framework for a regular exchange of views between the Department and representatives of the NGO community.

Ireland has signed the Convention on the Rights of Persons with Disabilities but not yet ratified it. During the final stages of the development of the Convention, Ireland held the Presidency of the European Union and played a key role in the negotiation of the Convention. However, while Ireland was one of the

first countries to sign the Convention in 2007, no indication has been given as to a possible date for full ratification. The primary reason offered has been the need for reform of mental capacity legislation.

Economic circumstances - At the end of the third quarter of 2010, unemployment in Ireland stood at 288,500. More than 140,000 people are now categorised as long-term unemployed and this figure rises on a monthly basis. In addition, the number of people leaving Ireland has risen by 81 per cent in four years. In 2010, expenditure on social welfare rose to more than €20 billion. In November 2010, the Irish Government agreed a programme of financial support for Ireland with the European Commission and the International Monetary Fund. This agreement will play a central role in decisions on government spending, and thus on all policy development over the next five years. It is likely that the controls on fiscal policies will lead to reductions in the funding available for public service provision and much care will be needed to minimise the impact on Ireland's most vulnerable citizens.

II. Promotion and Protection of Human Rights on the Ground - key recommendations

Ratification of the Convention on the Rights of Persons with Disabilities - In advance of the ratification of the UN Convention on the Rights of Persons with Disabilities, Ireland has identified a number of areas where work is required. Every effort should be made to fast track the requirements for ratification and to ratify the Convention in consultation with people with disabilities and the disability sector.

Recommendation - Ireland should ratify and implement the Convention on the Rights of Persons with Disabilities in consultation with the disability sector as soon as possible.

Mental Capacity Legislation - Ireland's legislation in the area of mental capacity dates back to the 1871 Lunacy Act. In Ireland, any person who is aged over 18 years is entitled in law, regardless of their disability, to make decisions about their lives, unless they are proven to have no capacity. There is no system in place to support people who may have difficulty understanding to gain access to support in decision-making. There is an 'all or nothing' system, where the Ward of Court system effectively removes all rights from individuals to make decisions for themselves, without family or other supports considered.

While it is appropriate that capacity is presumed, a targeted, functional approach which identifies areas where people can, can't, and need support to, understand decisions in all areas of life is now overdue. On a recent visit to Ireland, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) urged the Irish authorities to adopt updated mental capacity legislation without further delay. The newly formed Irish Government has made a commitment to introducing such legislation and this should take place without delay. (CRPD, Article 12)

Recommendation: Ireland should introduce and implement mental capacity legislation which ensures a broad- ranging functional approach to decision-making without delay.

Income sufficiency - During its period of economic success, great strides were made in increasing the payments made to people with disabilities by the Irish state. Unfortunately, austere budget provisions in recent years have seen successive reductions in these payments. Disability-related payments are considered working-age payments and have therefore been cut in line with other working-age payments, while payments relating to older people have been insulated from cuts. Unfortunately, this does not recognise that many people with disabilities are unlikely to be in a position to benefit from additional earned income, particularly in a more difficult economic environment. The disability sector has long campaigned for a cost of disability payment to cover the additional costs of disability and this is now urgently required. (ICESCR - Article 7 and CRPD - Article 28)

- **Recommendation** - Ireland should protect disability-related welfare payments from further cuts
- **Recommendation** - Introduce a cost of disability payment in recognition of the addition costs incurred by people living with a disability.

Access to employment - Research published by the National Disability Authority as far back as 2004 stated that people with disabilities of working age are two and a half times less likely to be in work. No research has as yet been published in relation to the impact of the recession on the employment rates of people with disabilities. At the end of 2010 more than 175,000 people were in receipt of a short or long-

term illness or disability-related payment. The National Disability Strategy includes provision for a Comprehensive Employment Strategy for People with Disabilities, but this has not yet been completed. Many people with disabilities can work with appropriate supports but flexible supports for both the employee and the employer remain under developed in Ireland. Ireland cannot sustain a situation where people with disabilities, capable of entering employment are not supported to do so. A range of actions, taken in collaboration with people with disabilities, employers and disability organisations is now required. (ICESCR–Article 7 and CRPD–Article 27)

Recommendation – Ireland should consider and implement comprehensive actions to ensure that people with disabilities can enter and retain employment to develop lasting careers.

Rehabilitation and early intervention – Ireland’s rehabilitation services are wholly inadequate and need to be enhanced to ensure that they are more easily accessible and provide early intervention services to people who acquire disabilities. Currently, specialist post-acute rehabilitation services are only available to people in one location in Dublin and while this facility provides exceptional services, a network of community-based, local rehabilitation services, throughout the country, would improve outcomes for individuals and reduce the need for care and social welfare in the long-term. In particular, rehabilitation services should focus on all areas of people’s lives from initial acute healthcare to rehabilitation for employment. (ICESCR - Article 12, CRPD - Article 25)

Recommendation – A network of community-based rehabilitation services should be developed throughout Ireland to ensure people acquiring disability receive appropriate early intervention services.

Access to services–Reductions in Irish public expenditure have impacted on essential services for people with disabilities. Funding for disability services has been cut annually since 2008, reducing funding by up to 10% and more in some areas. Further cuts will necessitate considerable reductions in services such as day services, home care, respite and supported accommodation. These services are not luxuries but are essential to supporting people to live their lives. Part II of the Disability Act 2005 provides for the development of an Independent Assessment of Need (IAN) and the provision of a Statement of Service for each person with a disability to ensure that they are receiving the services that they require. This statutory provision has only commenced for people aged up to 5, and has recently been reviewed, revealing some difficulties. An effective assessment of need process is the most effective way of ensuring that people with disabilities are receiving the services that they require and that those most in need are prioritised. (CRPD - Article 19)

Recommendation - Ireland should fully implement the Independent Assessment of Need for people with disabilities to ensure that services are appropriate and prioritised in a time of economic austerity

Appropriate accommodation for people with disabilities - The Irish Health Service Executive has been engaged in a piece of work to identify the required actions to move people with disabilities living in congregated settings (defined as locations where 10 or more people are living together) to community-based accommodation. 4,000 people have been identified as living in more than 70 large institutions. While it will take courage and additional resources in the short-term, Ireland has a responsibility to provide for this group of people and to ensure that they receive the support they need to reach their full potential. (ICESCR - Article 11 and CRPD, Article 28)

Recommendation – The Irish Government’s Congregated Settings Report should be published and implemented to enable 4,000 people with disabilities to live in the community.

Housing options for people with disabilities – Housing is a huge issue for people with disabilities and people with mental health difficulties living in Ireland. Many people who have had their disability since birth continue to live with family, often with ageing parents, while those who acquire a disability often find it difficult to identify suitable supported accommodation to meet their needs. There are best practice examples of supported accommodation such as that provided by Rehab’s Newgrove Housing Association through the Department of the Environment’s Capital Assistance Scheme. However, housing options differ across the country and thousands of people with disabilities continue to seek housing and accommodation supports to enable them to live independently in the community. A Housing Strategy for people with disabilities, promised under the National Disability Strategy has not yet been published. (ICESCR - Article 11 and CRPD, Article 28)

Recommendation – Ireland should introduce the Housing Strategy for People with Disabilities and ensure that people with disabilities can choose housing options which enable them to live as independently as possible in the community.

Standards for disability and older people services – While the Irish Health Information and Quality Authority introduced standards and mandatory inspection in 2009 to regulate residential settings for older people, regulations for similar inspection of standards for residential settings for people with disabilities have not been introduced. In addition, home care services for people with disabilities and older people remain completely unregulated. Standards, driven by best international practice and underpinned by mandatory inspection are essential to protecting some of the most vulnerable members of our society while also promoting high quality, person-centred services to enable people to live as independently as possible. (CRPD – Article 16)

Recommendation – Ireland should introduce mandatory standards for all residential and home care disability services.

Advocacy Services – under the National Disability Strategy, legislative provision has been made for a statutory Personal Advocacy Service to support people with disabilities who require a social service, without which s/he would be at risk of harm to his or her health, welfare or safety. The legislation aimed to support people with disabilities in particularly vulnerable situations; however, the legislation has not yet been commenced. The Citizens Information Board has taken steps to establish a National Advocacy Service for People with Disabilities to provide independent, representative advocacy service for people with disabilities which is welcome. However, these advocates have no statutory protection and unlike the planned Personal Advocacy Service cannot enter disability services on behalf of an individual.

Recommendation – Ireland should introduce a statutory personal advocacy service with entry powers to ensure that people with disabilities at risk can access essential independent advocacy services.

Mental health - Ireland’s mental health services are hugely underfunded and bear the signs of many years of under resourcing. The Irish Government must now take steps to completely overhaul the mental health services by moving to a more community-based model of service provision based on the principles of recovery. There is a need to recognise that while people with mental health difficulties will experience periods of ill-health they can recover and live fulfilling lives.

Plans to dispose of inappropriate psychiatric services and to replace them with community-based services should be fast tracked. In addition, child and adolescent mental health services urgently need to be considered to ensure that young people who develop mental health difficulties are supported to overcome them. Significant work is also required in the area of suicide and self harm.

Recommendation – Ireland needs to work collaboratively to divert resources from inappropriate mental health services in order to develop a comprehensive, 21st Century mental health service rooted in the principles of recovery.

Participation in public affairs - While progress has been made in recent years to facilitate people with disabilities to access the democratic process, there are still improvements to be made to ensure that people with disabilities can easily participate in public affairs. While anyone aged over 18 who is ordinarily resident in Ireland can register to vote, the presiding officer in a polling station can refuse a person with an intellectual disability access to vote if they believe that the person does not have capacity to vote. There are no guidelines for this and the decision is at the discretion of the presiding officer. This issue must be clarified in the upcoming mental capacity legislation. (ICCPR, Article 25)

Recommendation – The legal position of people with intellectual disabilities in respect of participation in the electoral process requires clarification.

Carers - More than 160,000 people in Ireland provide informal unpaid care to family members across Ireland. The National Census carried out by the Central Statistics Office in 2006 found that more than 40,000 people were providing more than 43 hours care per week of whom 26,869 were women and 14,014 were men. This was the first time a question in relation to informal care was included in the Census, which was a welcome development. However, a national carers strategy, planned for publication in 2009, was not published and family carers continue to experience considerable challenges every day. (CRPD – Article 23)

Recommendation – A comprehensive set of actions to support the invaluable work of unpaid family carers is required to include financial support, respite and training.

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Appendix I

Bibliography

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