

# The Children's Rights Alliance, Republic of Ireland

## IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN IRELAND

### Submission to the UN Committee on Economic, Social and Cultural Rights

December 2001

#### Introduction

The Children's Rights Alliance is an umbrella body composed of a wide range of non-governmental organizations and individuals concerned with the rights and welfare of children.

The aim of the Alliance is to promote the implementation of the principles and provisions of the UN Convention on the Rights of the Child in Irish laws, policies, practices and services affecting children.

This submission addresses issues under Articles 2, 3, 9, 10, 11, 12 and 13 of the International Covenant on Economic, Social and Cultural Rights.

<b>Article 2 - States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind.</b>
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#### Unequal Access to Health and Related Services

The administration of health and related social services through eight regional health boards which have the authority to adopt different priorities, and the absence of a national policy on gathering information on children's needs and how they can be met, result in different levels of services being provided to children in different areas of the country.

Concerns about delays in gaining access to public health services, in particular hospital in-patient and out-patient care, has resulted in a significant proportion of the population joining private health care schemes. As a result there is differential access to health services, with speed of access related to economic circumstances.

There is a low uptake of maternal and infant health services among the Travelling Community, in particular immunisation and attendance at developmental screening examinations. Report of high levels of sickness and hospitalisation for respiratory and gastric disorders among Traveller children are consistent with poor accommodation and lack of sanitation. Services designed specifically to meet the needs of the Travelling Community have been provided in some parts of the country in recent years. However, a *comprehensive national* programme to address the health needs of the Travelling Community needs to be implemented. This should include preventative measures, health education initiatives, primary health care projects and other innovative measures to ensure that the conditions are created to enable Traveller children to enjoy the same health status as others.

## **Unequal Access to Education**

Equal access to education by Traveller children has not yet been attained and this is illustrated by the fact that only 20% of those in the 12-15 age group attend school. Factors which may influence this situation include the lack of relevance of the school curriculum to the needs of Traveller children, the still widespread lack of acceptance by the settled community of Travelling People, the lack of recognition by Traveller parents of the importance of education for their children.

The Alliance recommends that the unequal uptake of educational opportunities by Traveller children be addressed. The problem should be approached by improving educational opportunities and ensuring that schools and colleges adopt an intercultural approach which is sensitive to the needs of children from Traveller and settled communities alike. In addition, parental involvement in their children's education at all levels should be promoted.

Children with disabilities also experience inequalities in access to education. The Commission on the Status of People with Disabilities (1997) identified the following barriers to full participation: an absence of legislation establishing the right to an appropriate education; lack of information for parents and children in relation to decision making; lack of resources; lack of educational needs assessments; and lack of appropriate curricula to respond to individual needs. The Alliance welcomes the Commission's proposal for an equality strategy for education based on a set of principles which would form the basis of an education charter of rights.

The Alliance notes that there is a shortage of places for children with disabilities in mainstream second-level schools and this has led to high drop-out rates for children who have completed primary level in mainstream schools. The Alliance recommends that a greater number of places be made available to accommodate children with disabilities in second level schools in line with a policy of integration.

## **Support Services for Children with Disabilities**

Significant variations exist in relation to the availability of therapy and other support services for children with disabilities. Differences exist between urban and rural areas and between areas which have active voluntary agencies providing such services and those where such agencies are absent.

## **Ensuring Policy of Non-Discrimination**

The Alliance recommends that a specific enforceable means of ensuring the consistent implementation of all policies, practices and administrative and other procedures and structures should be established to ensure that economic, social and cultural rights are guaranteed to every child without discrimination. A mechanism for promoting and protecting children's rights such as an Office of Ombudsman for Children could undertake this task and also provide an opportunity for cases to be investigated independently where children's rights are infringed. Following its examination of the *First National Report of Ireland* on the implementation of the Convention on the Rights of the Child (January 1998), the UN Committee on the Rights of the Child recommended that the Irish government consider the establishment of an Office of Ombudsman or Commissioner for Children.

**Article 3 - The States Parties to the present Covenant undertake to ensure the equal rights of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.**

The Irish Supreme Court has found that neither a non-marital family nor its individual members are entitled to any of the protection of Article 41, the Constitutional provision which protects the family. Under Article 40 (3) of the Constitution, an unmarried father has no personal rights with regard to his children, for

example he has no automatic right to guardianship, access or custody. The Alliance recommends that this discrimination which impacts on the rights of both fathers and children be addressed.

Article 41(2) of the Constitution of Ireland assigns to women a domestic role as wives and mothers. The Alliance supports the recommendation of the Constitution Review Group that Article 41(2) be revised to represent a gender neutral form which would reflect the concept of shared parental responsibility.

**Article 9 - The States Parties to the present Covenant recognise the right of everyone to social security, including social insurance.**

A significant percentage of all children in Ireland live in families which rely for their income on social security payments. Although there has been a steady improvement in Irish social security payments in the past decade, further commitment of resources will be required if these are to be brought up to a level adequate to address poverty.

Families dependent on social security payments receive additional allowances in respect of children. These payments along with Child Benefit (a universal payment) are intended to meet the cost of maintaining children. It has been shown, however, that the combined value of these payments falls far short of the estimated cost of rearing a child at even a basic standard of living.

Young people who leave school at sixteen and who fail to find employment are not entitled to unemployment assistance. They are thus financially dependent on their parents who may themselves have limited financial resources and who do not receive Child Benefit in respect of them. The Alliance suggests that there should be a review of income maintenance policy in relation to young people who are unemployed, which would take into account the need to encourage such young people to avail of training opportunities. A review should give due attention to the views of young people themselves and of youth representative bodies.

**Article 10 - The States Parties to the present covenant recognise that:**

- 1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society.**
- 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions.**

## **Family Support**

Health boards provide some family support services, both directly and in association with voluntary agencies. However, in many areas service provision is patchy and fragmented, particularly in terms of practical, educational or support services at preventative level. There are no agreed national criteria concerning the circumstances in which families might be deemed to be entitled to family support services. There are many children within both settled and Travelling communities who are unsupervised, neglected and in need of support services. Support for parents of adolescents is especially weak.

The level and type of service provision offered to families experiencing difficulties differ within and between health board areas and can depend on factors such as the particular priorities set by individual health boards or the existence of local interested voluntary groups. In some instances, assistance and support are not available to those families who have difficulty providing a safe and nurturing environment for their children, and as a consequence the children are taken into care.

The Alliance recommends that resources be made available for the provision and evaluation of support services with emphasis being placed on maximising the potential of families to provide safe and nurturing environments for their children and minimising the need to remove children to alternative care.

The Alliance believes that policy needs to be developed by the Department of Health and Children (which has responsibility in this area) to include clear criteria regarding the circumstances in which families should receive support services. This policy should be developed in consultation with voluntary as well as statutory agencies. The Alliance also recommends that research be carried out into these services, particularly into the level of need for and take-up of such services, and the models of service delivery which are most effective and cost efficient.

### **Lack of Statistical Information on Children in Need of Care and Protection**

Statistics relating to children in need of care and protection, and to specific issues such as child abuse, are widely regarded as inadequate. The failure to analyse the data also raises questions about their usefulness.

The Alliance recommends that a system which compiles and publishes up-to-date, detailed and reliable statistical information on children in need of care and protection, and on child abuse, should be established and maintained. Published data should be accompanied by effective analysis so as to enable it to influence the development of policy and future planning in this area.

### **Children Separated from their Parents**

The Alliance is concerned that children who live with one parent (usually the mother) have little contact with the other parent, contrary to that parent's wishes. The Alliance is concerned that the non-custodial parent may have difficulty in accessing the court remedies available, particularly in rural areas where delays in getting to court mitigate against them getting access to their children. The Alliance encourages the Government to look seriously at this question in the context of the rights and the best interests of the child; on a practical level, it recommends that access centres be made available for both supervised and unsupervised access throughout the country in order to ensure that contact between parents and children is facilitated and encouraged where custody lies with one parent.

Although the Child Care Act, 1991 requires health boards to facilitate reasonable access to a child in its care, due to a lack of resources access may be irregular and inconsistent which can frustrate attempts to maintain personal relations between the child and both parents. Very few access centres are child-centred and good quality visits are often not facilitated. In some areas, lack of appropriate facilities and personnel makes regular access visits impossible.

In relation to children with disabilities living in residential care, these placements are often long distances away from the family home and children in these situations may have limited contact with their families and little or no contact with their own communities and neighbourhood friends. This can lead to potentially serious and sometimes irreparable damage to their relationships with their families and communities.

The Alliance recommends that resources be made available to guarantee the child's right to maintain and develop contacts with both parents and to further the implementation of every child's right to regular access and contact with his or her family and friends.

## **Children Deprived of a Family Environment**

The inadequacy of family support services and other factors results in the demand for alternative care placements exceeds the supply. At times, this has led to the inappropriate use of foster care placements, hospital bed, bed and breakfast accommodation (which means that children must leave each morning and do not have trained staff available to cater for their needs) and the frequent moving of children from place to place.

At the end of 1996, at least 14 children placed in statutory care were in residential facilities in Northern Ireland, the UK and the US at an approximate cost of IR£800,000. The Alliance has serious concerns about the impact on a child of placing him or her outside the jurisdiction where the child is no longer in the care of the Irish authorities. In particular, it notes the difficulties which such children may encounter in maintaining contact with their families and repatriating following their return to Ireland. It is concerned that this situation reflects the inadequacy of planning and resourcing of services and facilities for children in need of care and protection in Ireland.

The Alliance recommends that resources be made available to ensure that adequate provision be made for children in need of alternative care, both on a temporary and on a permanent basis, having due regard to the child's rights.

In practice, there is wide variation in the attention paid to the requirement to have due regard to ensuring continuity in the child's upbringing. Children may be placed outside their own communities and may have to change schools on going into care, and in the case of Traveller children, may be placed in families from the settled community. Often the focus is placed on the need to provide a safe place for the child without having due regard to the child's other needs. The Alliance believes that the current policy and practice with regard to alternative care should be reviewed.

Although health boards are empowered to provide after-care services for children until they reach 21 years there is no obligation for them to do so. Comprehensive research has indicated that 36% of residential care units provided no after-care service at all.

In the light of these findings, the Alliance recommends that the health board's power to provide after-care should be turned into a duty, especially for young people who have spent more than one continuous period in care.

The Alliance considers that there is a clear need for research into the experiences of and difficulties faced by children in alternative care. There is also a need to establish a permanent mechanism whereby the views of children in care can be heard. The findings of both processes should be used to inform the development of policy and practice in line with respect for the rights of the child.

## **Homeless Children**

There is inadequate provision for homeless children, particularly in the larger urban areas. Children are sometimes accommodated most unsuitably in adult hostels or bed and breakfast establishments. While some health boards operate 24-hour emergency services, the majority do not. As a result, Garda stations are used as places of safety and are often the only contact point for young people seeking access to out-of-hours services.

The Alliance believes that there is a need for a well-researched, well-resourced and co-ordinated response, at local level, to the problem of homelessness among children and young people. This should involve an immediate response to their situation, in terms of emergency residential accommodation and appropriate

day care. There is also a need to address the long-term needs of homeless children on a comprehensive level, dealing not only with accommodation needs, but also other needs, such as education, training and health care. Such an approach should show due regard for the child's best interests as well as respect for the child's views. A mechanism through which the experience and voice of young people out-of-home can feed into and influence policy and practice should be established.

### **Protection of Children At Risk**

There is an urgent need to update the 1987 Child Abuse Guidelines. Individual health boards have begun to produce their own updated version of the Guidelines and this and other factors may lead to anomalies and discrepancies in response to abuse situations in different parts of the country.

Most of the special units for investigation and management of cases of child sexual abuse focus only on initial issues of trying to ascertain whether allegations can be validated. There are clear gaps in the provision of treatment and support for all those involved in situations of abuse.

There is a general neglect of the broader issues involved in child sexual abuse as indicated by the small number of treatment programmes for offenders. The Alliance believes that the provision of an adequate range of therapeutic facilities for offenders is an important means of preventing abuse and protecting children.

There is a need to review and tighten mechanisms for communication and collaboration between Gardaí (police) and health boards in child abuse cases. Gardaí need specific facilities, organisational arrangements and skills training in interviewing victims of child abuse. While there is evidence of progressive and positive practice in relation to the treatment of victims of abuse, there is a need to ensure that the response to child victims is uniformly sympathetic and supportive.

Research has found that 18% of Irish women have been threatened by physical violence. More than 50% of women who have experienced physical abuse say that their children have witnessed this abuse. Despite this evidence, there is no comprehensive strategy to protect children from domestic violence. The provision of refuges and support services for women and children who are victims of domestic violence is inadequate. The Alliance does not believe that the placement of child victims of domestic violence in bed & breakfast or hostel accommodation is conducive to their physical and mental well being. The psychological recovery and social reintegration of children damaged by witnessing domestic violence is severely hindered by an acute shortage of appropriate services.

### **Refugee Children**

In light of the sharp increase in the number of refugees coming into Ireland, the Alliance urges the government to adopt a co-ordinated approach to the care of all refugee children, to ensure their rights are guaranteed.

As the majority of refugee children arrive in Ireland without any English, they may feel isolated in schools where they cannot communicate with adults and other children. The Alliance recommends that intensive bi-lingual English language training be offered to all refugee children on their arrival.

**Article 11 - The right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.**

The results of a major survey on the incidence of poverty carried out in 1994 highlight a disproportionate incidence of poverty in households with children.

In addition to the overall incidence of poverty, there are particular problems arising from the concentration of deprivation in specific areas and communities. For children growing up in such areas, the quality of their lives and their prospects for the future are affected not just by their own family circumstances but by the deprived environment of their communities.

The Alliance considers that the high risk of poverty in households with children, and the significance of unemployment as a cause, are issues which should be priority among national concerns.

**Article 12 - The right of everyone to the enjoyment of the highest attainable standard of physical and mental health.**

### **Children with Disabilities**

The Alliance is of the view that support services, therapies, assessment and development services must be provided for many children with disabilities to enable them to reach their full potential and thus facilitate them living full lives. In Ireland, such supports are usually centre-based and located in urban areas, which result in access being difficult for those children living in rural areas.

The Alliance recommends that flexible systems of providing necessary supports and services should be developed to ensure that they will be accessible to all children, regardless of where they live.

There are long waiting lists for assessments and there is an absence of services designed to cater for needs specifically identified. Additional funding should be made available to address current shortfalls in therapy, counselling, respite and residential care.

Transport is a major problem for children with disabilities generally. In particular, the standard of transport to and from special schools is often inadequate. Most public transport is inaccessible to wheelchair users and the visually impaired. In order to ensure that easy, dignified and safe transport is a right enjoyed by all children, resources must be made available to make public and school transport systems accessible to children with disabilities.

In spite of the fact that there has been a considerable expansion of respite care services significantly more services need to be established to meet needs. The Alliance recommends that respite models which have been shown to be appropriate for young children, for example, in-home support schemes and host family schemes should be developed.

The Alliance recommends that an individual service plan should be developed for each child with a disability in consultation with the child and his or her family. The service plan should be reviewed at regular intervals.

### **Health Services**

All children are entitled to avail of public hospital services on a minimum or no-cost basis. However, there are substantial waiting lists in the public hospital system for both out-patient appointments and non-urgent in-patient admissions, especially for specific procedures. There is considerable disparity between the speed of access to services for children dependent on the public hospital system - the majority - and those whose parents can afford private health care insurance.

Families on low income are entitled to a medical card, which gives access to General Practitioner services, and to medicines, free of charge. However, the cut off for entitlement to a medical card is not graduated, with the result that families on modest incomes, just above the cut-off point, are liable to the full cost of GP services and medicines. These could represent a considerable allocation from a modest family income, and could deter families from seeking medical attention.

A fundamental problem concerning the health care system is that there are no specific written comprehensive standards and guidelines relating to the provision of health services for children and adolescents. As a result there is no way to measure the consistency, efficacy and suitability of the services available.

The Alliance recommends that guidelines be drawn up which guarantee the rights of the child in relation to health and related services and which set down standards of treatment to which they are entitled.

### **Article 13 - The right of everyone to education**

In relation to providing assistance to low income families with educational costs, programmes such as the clothing and footwear scheme, the school book scheme and school meals are inadequate, with one survey finding that the payment levels represented between a quarter and a half of the real costs for these items for low income families.

The Alliance recommends that the contribution which currently must be provided by the local community for running costs of schools and capital buildings should be abolished so that all capital funding and all running costs are provided to schools by the Department of Education.

Not all children have access to the support services which they require, such as psychological services, speech therapy, physiotherapy, specialised teaching and specialised equipment. One study showed that 36% of children in primary schools do not have access to the services of a remedial teacher. The vast majority of these are in small schools, most of which are situated in rural areas.

Only 20 psychologists are employed in second level education which means that there is only one psychologist for every 18,000 students. 80% of primary school children have no access to an educational psychologist and this often means that children with difficulties are not identified early enough and as their problems develop they become demotivated and demoralised. Some of these children are lost to the system by the time they reach post-primary school age.

Up to 12% of those leaving school do so without a formal qualification or with what is regarded as a poor qualification. In disadvantaged areas as many as 25% of children leave primary school with literacy and numeracy difficulties.

In relation to early school leavers and those who leave without qualifications, it is argued that the school curriculum is academically biased and unsuited to the abilities and interests of these children. The Alliance recommends that serious efforts be made to incorporate the needs of non-academically-minded children into the school curriculum to ensure greater relevance to the diverse interests of pupils.

## Part II - Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of the available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

## Article 10 - The States Parties to the present covenant recognise that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young people should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set limits below which the paid employment of child labour should be prohibited and punishable by law.

## Article 11

The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent.

## Article 12

1. The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.