

Submission to the UN Committee on the Rights of the
Child
on Ireland's Second Periodic Report on the Rights of the
Child.

JUNE 2006

Introduction

General Comment No. 4 (2003) 'Adolescent health and development in the context of the Convention on the Rights of the Child' bolsters Article 5 of the UNCRC in relation to the exercise and enjoyment of the rights contained in the Convention which should be exercised progressively by children and young people 'according to their evolving capacities'. Underpinning this submission is the proposition that the legal and social framework as it exists in Ireland completely fails to recognise or respect this 'evolving capacity' as it relates to sexual and reproductive health and rights.

This results in consistent breaches of young people's civil rights and freedoms through a lack of access to appropriate information on family planning and sexual health and a lack of access to dedicated adolescent sexual health services. Children and young people are not specifically protected in the Irish Constitution resulting in social and educational services that fail to prioritise and safeguard their rights, particularly where there is a conflict between the rights of the child and the views of their parents or guardians.

Access to Family Planning and Sexual Health Services and Information

Family planning and sexual health services are developed in the absence of a national sexual health strategy. There is a lack of dedicated sexual health services accessible by young people in Ireland. A recent report noted the 'urgent need for sexual health services that target young people and cater for their specific needs'.¹ Where such services exist in other jurisdictions they provide an effective model of service provision.² Fears around confidentiality, negative professional attitudes, limitations on opening hours and access to a female doctor have been identified as posing particular difficulties for young people in respect of accessing quality, appropriate sexual health services.³

Cost is a particularly prohibitive factor for young people in accessing sexual health services. Condoms are taxed in the highest VAT bracket at the rate of 21%. A medical card system exists in Ireland in order to provide health services to those unable to meet medical costs from their own income. The coverage of the Irish population in receipt of a medical card entitling them to free medical services is approximately 26%. In 1994, this proportion was just over 36%.⁴ This fall has been attributed to the failure of the income guidelines to keep pace with social welfare payments. The net result of this is that many young people do not even have adequate access to mainstream health services through which they could access sexual health services.

This is in breach of Article 24(f) of the Convention which places an onus on State parties to develop family planning education and services. At paragraph 41 of General Comment No. 4, the committee specifically directs State Parties to develop such services paying attention to availability, accessibility, acceptability and quality.

In its concluding comments following Ireland's hearing under the Convention on the Elimination of Discrimination Against Women in July 2005, the CEDAW committee urged the State Party to further strengthen family planning services, ensuring their availability to all women and men, young adults and teenagers.

¹ Mayock, Paula and Byrne Tina (2004). 'A Study of the Sexual Health Issues, Attitudes and Behaviours: The Views of Early School Leavers'. Dublin: Crisis Pregnancy Agency p14.

² Models which could be considered include the Brook Advisory Centres which operate in Northern Ireland and the United Kingdom. They provide free and confidential sexual health advice and services specifically for young people under 25. Over 100,000 young people under the age of 20 used Brook Advisory Centres in 2004/2005.

³ Irish Family Planning Association. 1997. 'A Young People's Health Service for Dublin'. Research, Recommendations and Proposals Prepared for the Eastern Health Board.

⁴ This is once the figures are adjusted to take account of those over 70 who are universally entitled to receive a medical card.

Over 1,000 teenagers were diagnosed with STI's in 2004.⁵ However, there is no coordinated method of gathering statistics in this area. A 2004 study pointed to the fact that 'any attempt to assess trends in sexual practices is hampered by the absence of routinely gathered statistics'⁶. The Irish Study of Sexual Health and Relationships (ISSHR), The first Irish Sexual Knowledge, Attitude and Behaviour Survey sets a minimum age for respondents at 18 effectively excluding young people's voices and experiences from the first and most comprehensive national survey in the area on which we can rely to plan services and interventions. The collection of comprehensive data on young people, sexual health and attitudes is essential and its absence in Ireland is symptomatic of the lack of a coordinated and rights based approach to sexual health service provision in Ireland.

Relationship and Sexuality Education

In a 2004 report, relationship and sexuality education in Irish schools is described as 'patchy'.⁷ In light of Article 24 of the Convention and the way in which parental rights and responsibilities are understood in the Convention ie in the context of providing a safe and supportive environment in which the adolescent can develop and within the context of their 'evolving capacities', relationship and sexuality education should be uniform in quality and access and place the needs of the adolescent child at the centre of its delivery. The Convention conceptualises health in its broadest terms. The WHO definition of sexual health is one that requires 'a positive and respectful approach to sexuality and sexual relationships'. This should form the basis of relationship and sexuality education in an Irish context. Uneven access to relationship and sexuality education does not discharge the State Party's onus under the Convention.

Incorporation of the Convention into Irish Law

The IFPA supports the incorporation of the UNCRC into domestic law in order to give direct effect to the provisions of the Convention enforceable domestically. Arguments advanced by the government to the effect that a two-tier system of rights would develop do not recognise the need to strengthen the rights of children and adolescents beyond those currently protected in the Constitution.

The Irish Constitution is silent on the issue of children's rights resulting in the exercise of the rights of the family as contained in the Constitution by the parents. There is no guarantee that children's rights are afforded due weight even in cases where their Convention or other rights

⁵ Extrapolated from figures in the HSE Health Surveillance Centre Annual Summary Report 2005.

⁶ Mayock, and Byrne p19.

⁷ *ibid* p18.

are being infringed. This constitutional framework has had a direct impact on the development of legislation and corresponding social services that do not adequately protect the rights of children.⁸ It has also shaped policy in respect of access to sexual health information and adolescent sexual health services. The IFPA supports the recommendation of the Irish Human Rights Commission that 'there is a pressing need for express constitutional recognition of children's rights to break this constitutional silence'.⁹

Abortion and Equality of Access to Health Services

The Irish ban on abortion is one of the most restrictive in the world. A constitutional provision equates the life of the pregnant woman with that of the "unborn". The Irish Supreme Court has rightly criticised the constitutional provision for its lack of guidelines for life-saving abortions and its failure to consider the woman's circumstances. The law makes no provision for a woman who is pregnant as a result of rape or incest, experiencing severe foetal malformation, or at risk of permanent bodily harm such as blindness, diabetes, infections, kidney or heart disease, all of which may all result from continuation of pregnancy for some women. The law completely disregards the woman's age, her mental capacity, and her other life circumstances. Every day IFPA counsellors witness how a woman's youth, lack of education or money, uncertain immigration status or other socio-economic factors, can dramatically diminish her ability to access abortion abroad.

Ireland's ban on abortion places disproportionate burdens on young women seeking to access abortion services abroad. They face increased difficulties raising funds and often remain isolated because they fear telling anyone about their situation. Many young women travel without first seeking counselling or informing anyone that they are leaving the country. Young women in particular often do not feel comfortable consulting their family doctor or general practitioner ("GP") for fear they will be judged for being pregnant or considering abortion or that their confidentiality will be breached. Young migrant or asylum seeking women, those in the care or control of the State and women with disabilities face particular difficulties in travelling to access abortion services. The legal framework, silent as it is on the autonomy and rights of young women to make decisions regarding their sexual and reproductive lives, places young women in a precarious situation when it comes to protecting their best interests and their physical and mental health.

The Law on the Age of Consent

⁸ Prof William Duncan, Report of the Constitution Review Group at p.94

⁹ Irish Human Rights Commission. Submission to the UN Committee on the Rights of the Child on Ireland's second periodic report under the UN Convention on the Rights of the Child p.11

Legislation enacted on June 02, 2006 has created a uniform age of sexual consent for boys and girls of 17. There is a concern that the new legislative regime creates an inequality in respect of the criminalisation of sexual activity as between boys and girls. The Ombudsman for Children has expressed her concern in relation to the possibility of children being subjected to damaging adversarial procedures under the legislation.¹⁰ She also points to the prohibition of discrimination contained in Article 2 of the UNCRC and her concerns that the legislation is discriminatory against boys in creating special provision for young women exempting them from prosecution. The IFPA favours separating legislative provisions governing adolescent sexual activity from that criminalising sexual abuse of minors.

Right to be consulted

The committee has recognised, in giving guidance on the exercise of the rights contained in the Convention, that there is an obligation to take into account adolescents' views, in accordance with their age and maturity, and to provide a safe environment in which the adolescent can develop. Article 12 also protects adolescents' rights to have their views canvassed and respected as fundamental to the realisation of their rights under the convention. More effective systems should be developed in order to meaningfully engage and consult young people when it comes to their needs in relation to sexual health education and services.

Ends.

¹⁰ Advice of the Ombudsman for Children in relation to the Criminal Law (Sexual Offences) Bill 2006. June 1st 2006.