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This factsheet is based on research conducted between 2013 and 2015 within a European project on access to justice for children with mental disabilities, which took place in ten EU Member States. Full information can be found on the project website:

www.mdac.org/accessing-justice-children.

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Population:	4,588,252 ¹
People under the age of 18:	1,148,687 ²
Children with disabilities:	35,900 ³
Of which, children with	26,900
Intellectual and learning disabilities:	9,900
Emotional, psychological and mental health issues: ⁴	17,800 ⁵
Difficulties in remembering and concentrating:	
Children in institutions:	No available data
Date of CRC ratification:	28 September 1992
Date of CRPD ratification:	Not ratified yet

Insufficient legislative protections

The UN Convention on the Rights of Persons with Disabilities (CRPD) has not been ratified, although Ireland signed the CRPD on 30 March 2007. In the words of former Minister Alan Shatter (Justice and Equality, and Defence), “Ireland does not become party to treaties until it is first in a position to comply with the obligations imposed by the treaty in question, including amending domestic law as necessary.”⁶ The current Minister for Justice and Equality has expressed the government’s intention to ratify the Treaty as quickly as possible,⁷ but the

timescale is unclear, as are the steps the government considers necessary prior to ratification. The introduction of new legal capacity legislation is, however, considered to be critical prior to ratification.⁸ It is likely that once Ireland ratifies the treaty, the Irish Human Rights and Equality Commission and/or the National Disability Authority (NDA) will be the national focal point for implementation of the Convention in Ireland, in accordance with Article 33 CRPD.

- 1 Central Statistics Office, This is Ireland. Highlights form Census 2011, Part 1, (Dublin: Stationary Office, May 2012), available at <http://www.cso.ie/en/media/csoie/census/documents/census2011pdr/Census.2011.Highlights.Part.1.web.72dpi.pdf> (last accessed 27 April 2015), p. 57, Table 1.
- 2 Central Statistics Office, Census 2011 - This is Ireland. Profile 2: Older and Younger, (Dublin: Stationary Office, May 2012), available at: http://www.cso.ie/en/media/csoie/census/documents/census2011profile2/Profile2_Older_and_Younger_Entire_Document.pdf (last accessed 27 April 2015), p. 36, Table 2.
- 3 Central Statistics Office, National Disability Survey 2006: Volume 1. (Dublin: Central Statistics Office, 2010), p. 94, Table 5.B.
- 4 The term “mental disability” which is used by the project is not commonly used in Ireland. In Ireland the terms used are “children with autism”, “children with mental health issues” and “children with intellectual or learning disabilities”.
- 5 Central Statistics Office, National Disability Survey 2006: Volume 1. (Dublin: Central Statistics Office, 2010), p. 94, Table 5.B. One child may be counted in both groups if he/she has both an intellectual or learning disability and an emotional, psychological or mental health issue.
- 6 Dáil Deb 18 July 2013 vol 812 No. 2 Qs 508 and 556 col 1690.
- 7 Dáil Deb 7 October 2014, Q 260, available at: <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2014100700062?opendocument> (last accessed 13 April 2015).
- 8 Houses of the Oireachtas Committee on Justice Defence and Equality, *Report on hearings in relation to the scheme of the Mental Capacity Bill, May 2012*; 31/JDAE/005 (Dublin: 2012).

Legal framework inadequately addresses the needs of children with disabilities

In 2006, the UN Committee on the Rights of the Child in its Concluding Observations on Ireland's State report expressed concern that "the legal framework inadequately addresses the specific needs of children with disabilities and their access to necessary health services and educational facilities and that many of the provisions of the Children Act have not been fully enacted". The Committee recommended adoption of an

inclusive and rights-based legal framework, and that Ireland undertake – with the involvement of children – awareness-raising campaigns focusing "on prevention and inclusion, available support and services for children with disabilities, and on combating negative societal attitudes towards children with disabilities".⁹



Inadequate complaints mechanisms

There is no specific law that provides an explicit and regulated legal right for children (with or without mental disabilities) to provide evidence in hearings before the Disability Appeals Act Officer, Special Education Appeals Board or to the Children's Ombudsman, but children and their parents are not legally barred from doing so. The 2006 Concluding Observations of the UN Committee on the Rights of the Child express concerns about the limited scope of the Children's Ombudsman and the Irish Human Rights Commission (now the Irish Human Rights and Equality Commission) to investigate complaints made by children, or on their behalf, in prisons or Garda stations.¹⁰ There are no legislative references ensuring that children with mental disabilities are provided with support, procedural or age-appropriate accommodations in such complaints procedures.

In Ursula Kilkelly's report for the Ombudsman for Children, she highlighted concerns about a lack of independent advocacy for children making complaints to the HSE regarding sexual abuse, healthcare services or unaccompanied children in the asylum system.¹¹

9 United Nations Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention. Concluding observations: Ireland*, 11-29 September 2006, CRC/C/IRL/CO/2, paras. 41 – 42.

10 United Nations Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention. Concluding observations: Ireland*, 11-29 September 2006, CRC/C/IRL/CO/2.

11 Ursula Kilkelly, *Barriers to the Realisation of Children's Rights in Ireland*, commissioned by the Ombudsman for Children (August 2007), available at http://www.oco.ie/wp-content/uploads/2014/03/Barrierstorealisationofchildren_x0027_srights.pdf (last accessed 27 April 2015).

Lack of effective investigations

The research indicates the following types of problems with investigation where complaints have been brought:

- A parent said that she had brought a case to the Equality Tribunal about her child being excluded on the basis of disability from a State-funded drama group but had received no response regarding her complaint since she initiated the process a year previously.¹²
- Parents contacting the Children’s Ombudsman’s Office had not heard back from their case. One parent was told that their case could not be taken up,¹³ while another said their complaint got stuck between two different departments with both refusing to act or commit anything in writing, thus preventing the issue from coming to a final determination.¹⁴



Retaliation

Parents reported retaliatory actions against them once they question or appeal a decision. For example, researchers received multiple reports of retaliation against parents who complained that their child was refused services or denied inclusive education.¹⁵



¹² Interview with Parent 2 conducted by Jenni Kline on 27 February 2014.

¹³ Interview with Parent 1 conducted by Jenni Kline on 26 February 2014; Interview with Parent 4 conducted by Jenni Kline on 25 March 2014; Interview with Parent 5 conducted by Jenni Kline on 25 March 2014.

¹⁴ Interview with Parent 5 conducted by Jenni Kline on 25 March 2014.

¹⁵ Interview with Parent 1 conducted by Jenni Kline on 26 February 2014.

Children's lack of faith in the justice system

A consultation on 'child friendly justice' conducted by the Ombudsman's Office for the Council of Europe found that just over half the children consulted felt that the justice system was not the best way to solve the problems they faced. This was because of mistrust of the system – in particular its capacity to "understand problems faced by young people and/or to address such problems appropriately and/or effectively". Many

of those consulted suggested alternative approaches should be attempted first.¹⁶ Research for the Children's Mental Health Coalition described the criminal justice system as "traumatised and traumatising" for children.¹⁷



Child participation, procedural and age-appropriate accommodations

There are few set procedures, regulations or laws that facilitate the participation of children in relevant cases, and those which do exist are under-utilised. Although the Children Act of 1997 allows for use of an intermediary for questioning,¹⁸ none of the barristers or solicitors interviewed could recall the use of an intermediary. There are no guidelines or regulations around who should be an intermediary or how they should be used.¹⁹ The Children Act also allows for giving evidence through video link with the leave of the court,²⁰ and using hearsay evidence provided by the child.²¹ Video links are just beginning to be used – one judge confirmed using video link to communicate with a child who was the subject of a residential treatment order.²²

Section 9(4) of the Child and Family Agency Act states that the Agency must ensure that the views of the child are ascertained and given due weight, with the limiting clause: "where the child is capable of forming and expressing his or her own views".

There are no specific laws guaranteeing the rights of children to provide evidence in care or guardianship proceedings.

A report for the Ombudsman of Children highlighted that there is no statutory provision for ensuring there are appropriately qualified *guardians ad litem*.²³ The CRC Committee has expressed concern at the lack of sufficient provision for *guardians*

16 Ombudsman for Children, *Findings of the Consultation with Children and Young People living in Ireland conducted by the Ombudsman for Children's Office, Ireland in February/March 2010 as part of the Council of Europe's Consultation with Children on Child-Friendly Justice*, (Dublin: 2010).

17 Children's Mental Health Coalition and Children's Research Network for Ireland and Northern Ireland, *Someone to Care. The Mental Health Needs of Children and Young People with Experience of the Care and Youth Justice Systems* (CMHC, 2013) available at: http://www.drugs.ie/resourcesfiles/ResearchDocs/Ireland/2013/SOMEONE_TO_CARE_2013.pdf (last accessed 15 April 2015).

18 Children Act 1997, section 22.

19 Una Ni Raifeartaigh, *Child Sexual Abuse Cases: The Need for Cultural Change within the Criminal Justice System*, unpublished article based on papers given by the author at a joint DPP-St. Louise's Unit, Crumlin Hospital conference on Child Witness in November 2008, and an Irish Criminal Bar Association seminar in July 2008, respectively (2008).

20 Children Act 1997, section 21.

21 Children Act 1997, section 23.

22 Interview with District Court Judge conducted by Jenni Kline on 10 March 2014.

23 Kilkelly, *Barriers to the Realisation of Children's Rights in Ireland*, p. 114.

ad litem across all types of proceedings.²⁴ Although the NGO Barnardo's offers a *guardian ad litem* service, lack of funding is a limiting factor.²⁵ The CRC Committee recommends that children are provided with the opportunity to be heard in any judicial and administrative proceedings affecting them and that due weight is given to their views in accordance with their age and maturity.²⁶ Kilkelly raises concerns that there are no legal mechanisms – barring the appointment of a *guardian ad litem* – to enable the court to gather information about the child's views.²⁷

In a study on access to justice for people with disabilities who are the victims of crime, the authors noted that in common law systems such as Ireland, which are based on an adversarial principle, "orality is key: this in itself can disadvantage people with disabilities who are not able to communicate in a clear and persuasive manner."²⁸ The study described the attitudes of officials in the justice system – Gardaí, barristers, and the judiciary – towards people with disabilities, including that assumptions about their abilities and capacities in relation to reporting a crime or being seen as a competent and credible witness, were problematic. It noted that people with disabilities also met a range of practical barriers in relation to accessibility, including inaccessible courthouses or Gardaí stations and the failure to provide information in accessible formats or supports for communication.

Results of the consultation on 'child friendly justice' conducted by the Ombudsman's Office for the Council of Europe found that: children and young people felt it was important that those making decisions about their lives should hear their views; they would like to have a person of their choice to support them in saying what they think; and fewer than one-third thought that "anonymity would be a support or that nothing would help".²⁹ Most participants wanted parents, family members or friends – not judges, lawyers or officials – to explain legal decisions affecting them. Over two-thirds of participants said that they would "like the opportunity to question or challenge a legal decision affecting them if they were not happy with it."³⁰

Empirical research results show that in cases concerning where or with whom a child should live, in those cases where children themselves are heard, their evidence is not given equal weight: statements of abuse or poor parental behaviour are likely to be deemed true while statements of wanting to stay with their parents are given less weight.³¹ This is despite several safeguards guaranteeing the right of the child to be heard, including:

- the Children First Guidelines, according to which "children have the right to be heard, listened to and taken seriously";³²
- the 31st amendment to the Constitution that ensures the involvement of children in decisions that concern them; and
- the new Child and Family Agency Act, according to which the agency shall "ensure that consideration is given to the views of children".^{33,34}

In addition there are standards set by the Health Information and Quality Authority (HIQA). The HIQA standards for children in residential centres require that "young people are cared for in a manner that respects and takes account of their wishes, preferences and individuality."³⁵ All of the HIQA standards relating to children have a "child friendly version" and a version for "young people" available on their website.

A representative from a child advocacy organisation that was interviewed explained that there are significant cultural challenges to having the voice of the child heard in Ireland and that, even with upcoming family law proposals, there is a strong belief that children are not able to articulate or express their voice.³⁶ The representative also stated that children with mental disabilities in care often have their care dictated to them and are not included or involved in the process.³⁷

24 United Nations Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention. Concluding observations: Ireland*, 11-29 September 2006, CRC/C/IRL/CO/2.

25 Kilkelly, *Barriers to the Realisation of Children's Rights in Ireland*, p. 143.

26 United Nations Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention. Concluding observations: Ireland*, 11-29 September 2006, CRC/C/IRL/CO/2.

27 This might be contrasted with the approach taken in Scotland: E. K. M.Tisdall, R. Bray, K. Marshall & A. Cleland, "Children's Participation in Family Law Proceedings: A Step Too Far or a Step Too Small?" *Journal of Social Welfare and Family Law*, 26 (2004), 17-33.

28 C. Edwards, G. Harold and S. Kilcommins, *Access to Justice for People with Disabilities as Victims of Crime in Ireland* (University College Cork for the National Disability Authority, Ireland, 2012), p. 3.

29 Ombudsman for Children, *Findings of the Consultation with Children and Young People living in Ireland conducted by the Ombudsman for Children's Office, Ireland in February/March 2010 as part of the Council of Europe's Consultation with Children on Child-Friendly Justice*, (Dublin: 23 March 2010), p. 5.

30 Ombudsman for Children, *Findings of the Consultation with Children and Young People living in Ireland conducted by the Ombudsman for Children's Office, Ireland in February/March 2010 as part of the Council of Europe's Consultation with Children on Child-Friendly Justice*.

31 Interview with a Barrister conducted by Jenni Kline on 14 March 2014.

32 Department for Children and Youth Affairs, *Children First National Guidance for the Protection and Welfare of Children*, (Dublin: Government Publications, 2011), p. 4, section 1.1.1 (iv).

33 Child and Family Agency Act 2013, section 9(3).

34 See also Merike Darmody et. al., *Education of Children in Care in Ireland: An Exploratory Study*, commissioned by the Ombudsman for Children (May 2013), p. 45.

35 HIQA Standards for Children Residential Centres, available at: http://www.hiqa.ie/system/files/Standards_children_crc_DOHC.pdf (last accessed 25 October 2013), section 6.1

36 Interview with representative from a Child Advocacy organisation by Jenni Kline on 1 April 2014.

37 Ibid.

Institutionalisation

The Mental Health Act of 2001 allows for a person to be detained involuntarily in an approved centre on the grounds that “he or she is suffering from a mental disorder”³⁸ through an application of admission to a registered medical practitioner.³⁹ Such detention is subject to review by a Mental Health Tribunal within 21 days and can result in revocation of the order if it is found that the conditions for involuntary detention are not met.⁴⁰ Children may also be detained under the Mental Health Act 2001, even without the consent of the parents, where the HSE makes an application to a district court to authorise the detention.⁴¹

The Mental Health Commission has criticised as ‘unsatisfactory’ the continuing practice of admitting children to approved centres for the detention of adults.⁴²



Lack of data

There is a lack of data on children with disabilities in Ireland in general, and in some cases no data on any children is available – e.g. the Central Statistics Office does not collect data on victims of crime under the age of 18. Information on the number of *guardians ad litem*⁴³ appointed to children in general, or for children with mental disabilities in particular, is unavailable.

Where data is available, it is often not disaggregated on the basis of age or impairment-type, which would enable a better understanding on the actual situation of children with mental disabilities. This data is essential to enable more effective monitoring of the rights of children with mental disabilities and would form the basis for the development of targeted policies and programmes.

38 Mental Health Act 2001, section 8.

39 Mental Health Act 2001, section 9.

40 See http://www.mhcirl.ie/for_H_Prof/Mental_Health_Tribunals/ (last accessed 14 April 2015).

41 Mental Health Act 2001, section 25.

42 Mental Health Commission, *Annual Report 2012 Including Report of the Inspector of Mental Health Services* (Dublin: 2012).

43 Ann McWilliams and Claire Hamilton, “There isn’t Anything like a GAL: The Guardian ad litem Service in Ireland” *Irish Journal of Applied Social Studies* 10(1) (2010), 31 - 32.

Lack of awareness

Available evidence suggests that awareness of some key rights may be low for children with mental disabilities and their families. For example, the Ombudsman for Children attributed the low number of complaints connected with the Disability Act 2005 to a lack of awareness of the rights it contained, and a lack of understanding of how to enforce those rights through the complaints mechanism. A study commissioned by the ICCL on access to justice for people with disabilities who

are victims of crime also found a lack of awareness about how to report crime, and that this constituted a barrier to accessing justice.⁴⁴ A report for the Ombudsman for Children by Ursula Kilkelly highlighted lack of awareness as a key obstacle to the realisation of children's rights in Ireland.⁴⁵



Some positive changes

The age of criminal responsibility has now been raised from 7 to 12 years of age by the Criminal Justice Act 2006 which came into force in October 2006.⁴⁶ In addition, the Garda Diversion Programme was introduced under the Children Act 2001. The aim of the Programme is to divert young offenders away from the criminal justice system and from committing further offences. A child who has been admitted to the Programme is protected against prosecution for the behaviour which resulted in their admission to the Programme. However, under section 126 of the Criminal Justice Act 2006, evidence of such behaviour and/or involvement in the Programme may be used in sentencing proceedings in relation to an offence committed after entry into the Programme.

Another promising practice is the training and use of Garda's specialist interviewers to interview children and adults with intellectual disabilities who are victims of crimes. The interviewers undergo specialised training on communicating with children and adults with intellectual disabilities and disability rights theory, and they are placed with a community organisation that works with people with intellectual disabilities.

44 Edwards, Harold & Kilcommins, *Access to Justice for People with Disabilities as Victims of Crime in Ireland*.

45 Kilkelly, *Barriers to the Realisation of Children's Rights in Ireland*.

46 There is an exception for children over the age of 10 who can be charged with murder, manslaughter, rape or aggravated sexual assault.

