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Committee on Economic, Social and Cultural Rights,
Human Rights Treaties Division,
Office of the United Nations High Commissioner for Human Rights,
Palais Wilson - 52,
Rue des Pâquis,
CH-1201 Geneva,
Switzerland.

Information on State Party: Ireland

26th September, 2014

Dear Members of the Committee on Economic, Social and Cultural Rights,

Family & Life has prepared this submission to assist the members of the Committee in compiling a List of Issues in relation to Ireland's compliance with the International Covenant on Economic, Social and Cultural Rights at the pre-sessional working group in Geneva.

Family & Life is a well-established human rights organisation based in Dublin, with a large network of supporters throughout Ireland. It promotes respect for the value and dignity of human life from conception to natural death. Family & Life was granted ECOSOC special consultative status in 2013.

Family & Life welcomes the opportunity to engage with the Committee on Economic, Social and Cultural Rights as it prepares for its examination of Ireland to assess its performance in protecting and vindicating human rights.

Article 8

Freedom of Association

The Convention provides for the right of freedom of union association. The obvious corollary to this right is the right to *disassociate* from a union in order to join another union or to freely decide to join no union at all.

Yet Irish university students are automatically made members of the students' union (SU) of their respective universities and have no way of disassociating from the SU. This means that they are forced to pay fees towards their university's SU.

This abuse of students' rights to freedom of association is particularly unjust when SUs campaign publicly on controversial matters outside of the field of education, thus alienating students who disagree with the political aims of the SU they are forced to be members of. In these instances the students' rights to freedom of conscience as well as their right to freedom of association are violated.

It is important to point out that the above mentioned rights violation occurs against a constitutional backdrop recognising the right to freedom of conscience and the right to disassociate from a union.

In order to protect the Article 8 rights of Irish university students it is imperative that:

- Universities and university SUs need to inform all students that it is possible to disassociate from the SU
- The SUs must provide a clear pathway for a student to disassociate from the SU and must clearly inform the student when his or her disassociation is complete
- Students who have disassociated from an SU must no longer be held liable for SU fees while the SUs must no longer keep account of the student's personal data

Issue: Irish university students are denied the freedom to decide whether or not to be associated with (and pay membership fees to) a Students' Union.

Article 12(2)(a)

Reduction of Still-Birth and Infant Mortality

The Convention provides for the right of everyone to the highest available standard of physical and mental health and requires State Parties to provide for the reduction of the still-birth rate and of infant mortality and for the healthy development of the child.

But Ireland's efforts to "achieve the full realization of this right" are hampered by the immunity in tort law enjoyed by medical professionals and institutions as regards the negligent causing of the death of the child *in utero*. Section 58 of the Civil Liability Act 1961 bars parents from suing on foot of the death of their unborn child even in cases of gross medical negligence. This immunity frustrates efforts to reduce the still-birth rate and grants legal immunity to poor health care standards.

In order to fully vindicate Article 12(2)(a) section 58 of the Civil Liability Act 1961 should be amended to protect the development of the child *in utero* from medical negligence.

Issue: Ireland's statute law impedes efforts to guarantee the right to health by reducing the incidence of still-birth.

Article 10

Childcare

The Irish state provides funding under the Early Childhood Care and Education Scheme which provides a free year of pre-school education and childcare for children whose families choose to place them in playschools or daycare centres. These centres are paid a capitation fee by the state.

No comparable funding is provided for pre-school children whose families choose to care for them and educate them at home.

Article 10 of the Convention recognises that “[t]he 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.*” (emphasis added).

Issue: Ireland discriminates against children and families if the parents choose to provide pre-school care and education to the children at home rather than in state-approved facilities.

Maternity Leave

Mothers are entitled to 26 weeks' maternity leave together with 16 weeks additional unpaid maternity leave. Employers are not obliged to pay women on maternity leave. Some mothers qualify for Maternity Benefit, a Department of Social Protection payment of €230 per week for those who have sufficient Pay-Related Social Insurance (PRSI) contributions.

By European standards, Ireland's level of maternity support is low. Ireland does, however, provide extremely high quality healthcare under the Maternity and Infant Care Scheme which is available to every pregnant woman who is ordinarily resident in the state. Mothers are entitled to free in-patient and out-patient public hospital services in respect of the pregnancy and the birth and are not liable for any of the standard in-patient hospital charges.

Issue: Maternity benefit is not payable to all mothers, only those who have been in a position to make PRSI payments.

Children Conceived by AHR

The practice of Assisted Human Reproduction is totally unregulated in Ireland and the rights of children conceived using such techniques are frequently

disregarded. This violates the commitment to provide protection for all children without discrimination on grounds of parentage or other conditions.

The publication of the Family Relationships and Children Bill is expected before the end of the year. The following observations are based on the Heads of the Bill which have already been published.

The Heads of Bill outline a scheme which assumes that a genetic link between a parent and a child only counts if the adult wishes it to. The fact that a child has a genetic link to both a father and a mother, and that this may be of great significance to the child in later life, is ignored.

The Heads of the Bill would facilitate the deliberate creation of a child with only one (legal) parent. Notwithstanding the heroic efforts made by many single parents to ensure the best possible upbringing for their children, the evidence is overwhelming to the effect that children fare better if they have two parents in a stable relationship. To facilitate, and thus promote, single parenthood as a matter of public policy is detrimental to the best interests of the children who will be created as a result.

The revised version of the Heads of the Bill indicate that the government has chosen not to prohibit commercial surrogacy. This is despite abundant evidence of the harmful consequences of this practice and the fact that it frequently involves the exploitation of poor or otherwise vulnerable women.

Both surrogacy and other forms of AHR disrespect the dignity of children by reducing them to commodities, to products subject to contract law, and to the desires and demands of the commissioning adults. Both surrogacy and AHR operate on the faulty basis that if one can afford the relevant payment there is such a thing as a “right to have a child”, just as there is a “right” to have a car or holiday or any other “thing”.

At the heart of the state’s approach to this issue is an attitude that favours adult preferences over the best interests of the child. This is evident from the fact that it ignores a child’s right to a mother and father.

Although the government’s latest proposals would not allow anonymity for gamete donors, they only give very inadequate recognition to the right of the conceived child to discover the identity of his or her biological parents.

Issue: The proposed law disregards a child’s right to a mother and father.

Article 13

Education

States Parties to the Covenant undertake to have respect for the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions.

Reflecting the religious make-up of the Irish population, a large majority of Irish schools, particularly in the primary sector, are denominational, and the vast majority of these are Catholic. In recent years efforts have been made to expand the range of school patrons to ensure that parents who wish have the option to send their children to a non-denominational school. Some of the government's policies in this respect however, pay insufficient regard to the rights of parents who *do* want a "religious and moral education [for] their children in conformity with their own convictions" where those convictions would lead them to choose a denominational school.

Specifically, Catholic parents who wish their children to receive a distinctively and authentically Catholic education have the right to do so, and that the state has a duty to vindicate and support that right.

In seeking to promote inclusivity in the education system, the state has appeared to support proposals that would deny denominational schools the right to maintain their ethos, as they see fit. Denominational schools are already inclusive and welcoming of pupils from many diverse backgrounds (religious, social, and ethnic). This inclusivity is achieved without diluting or undermining the characteristics that make denominational schools distinctive.

The Covenant recognises that denominational schools have a right to maintain a distinct and definite religious ethos.

The ethos of denominational schools that are not divested by their current patrons must be guaranteed and protected.

Christian schools, for example, should not be required to display non-Christian symbols, to celebrate non-Christian festivals, or to adapt hymns and prayers to accommodate non-Christian beliefs.

The government also proposes to repeal section 37 of the Employment Equality Act 1998 which safeguards the right of denominational schools to protect their distinctive ethos. No evidence has been presented to suggest that section 37 is being abused or that schools rely upon it to engage in unjust discrimination.

Rule 68 of the Rules for National Schools protects the denominational character of a school and underpins the legal right and responsibility of patrons to uphold and foster a characteristic spirit or ethos in accordance with the school's patronage. It also rightly recognises the distinctive nature of religious education, which in denominational schools is privileged in the day-to-day life of the school.

The Minister for Education is considering amending Rule 68. This should be done in such a way as to avoid infringing on the rights of denominational schools and parents who wish to choose such schools for their children.

If a Catholic school cannot fulfil what is described in the existing Rule 68 as the primary duty of an educator then it would cease to be a Catholic school, and arguably, a school at all in any meaningful sense.

A denominational school is entitled to proceed from a religious starting point, which from the state's point of view must be viewed as being equally as valid as that of the secularist. Otherwise, the state has already improperly adopted and is in fact proceeding on the basis of a secularist truth-claim.

Issue: In addressing the legitimate needs and desires of parents who want a non-denominational education for their children, the state needs to do more to safeguard the rights of parents who do want a denominational education and the rights of denominational schools to maintain their distinctive ethos.

Conclusion

Family & Life hopes that the information provided will be helpful to the Committee as it prepares a List of Issues for Ireland's review and we look forward to engaging further with members. Should you have any questions in the meantime, please do not hesitate to contact us.

Yours sincerely,

Patrick Carr