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Disability Rights and Policing: Why Ireland's Ratification of the UN Convention on the Rights of Persons with Disabilities is Important for An Garda Síochána

Donna McNamara

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Dear Editor,

In January 2018, Finian McGrath, the Minister of State for Disability Issues, finally announced plans for Ireland's ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD).¹ The Convention, which was introduced in 2006 and has since been ratified by 175 countries,² seeks to 'promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.'³ While the commitment to ratify is a long overdue and much needed step on the road to equality for persons with disabilities in Ireland, it is still unclear what reservations or declarations will be made.⁴

The first human rights treaty of the twenty-first century, the CRPD has the potential to create real and substantive changes for persons with disabilities in their everyday lives. The rights contained within the Convention include non-discrimination, equal recognition before the law (Article 12), access to justice (Article 13), a right to liberty (Article 14), a freedom from torture and other cruel and degrading treatment (Article 15), amongst many others. In order to ensure that the objectives of the CRPD are realised and have real impact however, it is necessary that

¹ Kitty Holland, 'Government to ratify UN laws on rights of people with disabilities' *The Irish Times* (Dublin, 30 January 2018) <<https://www.irishtimes.com/news/social-affairs/government-to-ratify-un-laws-on-rights-of-people-with-disabilities-1.3374001>> accessed 12 February 2018.

² United Nations Office of the High Commissioner, 'Status of Ratification' (OHCHR) <<http://indicators.ohchr.org/>> accessed 26 February 2018.

³ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 art 1.

⁴ At the time of writing, it is expected that the Government will enter a reservation in relation to Article 27, which prohibits discrimination on the basis of disability to work and employment. See Harry McGee, 'Ireland to Ratify UN Disability Convention at the End Of March' *The Irish Times* (Dublin, 29 January 2018) <https://www.irishtimes.com/news/politics/ireland-to-ratify-un-disability-convention-at-the-end-of-march-1.3372902?mode=amp&twitter_impression=true> accessed 1 February 2018.

we look beyond the law as it exists on paper and reach out to all relevant stakeholders.⁵ This would include people with disabilities and their representative organisations, civil society organisations, social care professionals, medical professionals and criminal justice professionals, including members of An Garda Síochána (the Irish police).

The CRPD and Policing

The interrelationship between policing and human rights has long been recognised in international human rights law.⁶ However, the only reference to the police within the CRPD appears in Article 13(2) which provides for a right of access to justice:

In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

To date, there has been a lack of discussion about the relevance of the CRPD to criminal justice professionals, despite a wealth of research which proves that persons with disabilities are statistically more likely to come into contact with the criminal justice system and the police.⁷ As gatekeepers to the criminal justice system, the Gardaí play a fundamentally important role in identifying and responding to suspects' needs in the most appropriate way. However, to fulfil this role effectively, it is necessary that members of An Garda Síochána receive training about the rights of persons with disabilities.⁸

In their concluding observations on States Parties compliance to the CRPD, the Committee on the Rights of Persons with Disabilities have repeatedly called upon States Parties to provide

⁵ Mental Disability Advocacy Centre, *Building the Architecture for Change: Guidelines on Article 33 of the UN Convention on the Rights of Persons with Disabilities* (1st edn, 2011)

<http://mdac.info/sites/mdac.info/files/Article_33_EN.pdf> accessed 26 February 2018.

⁶ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 9 states '[n]o one shall be subjected to arbitrary arrest, detention or exile.'

⁷ Nancy Loucks, 'No One Knows: Offenders With Learning Difficulties And Learning Disabilities - Review Of Prevalence And Associated Needs' (Prison Reform Trust 2007)

<<http://www.ohrn.nhs.uk/resource/policy/NoOneKnowPrevalence.pdf>> accessed 5 March 2018.

⁸ Expert Group on Mental Health Policy, 'A Vision For Change – The Report Of The Expert Group On Mental Health Policy: Sixth Annual Report On Implementation 2011' (Department of Health June 2012) 65

<<http://www.lenus.ie/hse/handle/10147/263262>> accessed 5 March 2018.

police training and awareness-raising regarding disability.⁹ Among their recommendations to Australia for example, one of the first countries to ratify the Convention, the Committee recommended that standard and compulsory training modules should be provided for all criminal justice personnel.¹⁰ This position was once again reaffirmed by the Office of the United Nations High Commissioner for Human Rights in their report on Article 13, wherein it is recognised that training programmes play an important role in combatting attitudinal barriers among criminal justice professionals.¹¹ Negative attitudes are said to ‘stem from lack of awareness of the rights of, and appropriate practices for, persons with disabilities in the justice system on the part of police officers, public defenders and professionals working as public defenders or providing legal aid, legal service providers and others.’¹²

As a State Party to the CRPD, Ireland will be obliged to provide appropriate training to members of An Garda Síochána to ensure compliance with this provision. Article 13 should therefore be considered as a very practical and useful tool for ensuring that the rights contained in the CRPD are applied on the ground, as members of An Garda Síochána play an integral role within communities aside from fighting crime.¹³ They are often the first responders in emergency situations and are also afforded powers under the Mental Health Act 2001,¹⁴ therefore there are many occasions in which the Gardaí may come into contact with persons with disabilities and so, training should be provided accordingly. With respect to responding to suspects with disabilities, training should be provided which focuses on educating staff about the importance of early identification of disability, alternative interrogation methods and how

⁹ Committee on the Rights of Persons with Disabilities, ‘Concluding Observations On The Initial Report Of Armenia’ (CRPD/C/ARM/CO/1, 8 May 2017)

<<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhspZQ2sppBOANJSxHHwrsEJbjcpUWkg%2bMkKIITZvw7JK%2buYWfbtdMIEVnF0fSZiwodb8OBMGU4q3E3dIH%2fYkMw%2fe0juigiYWKOfVF6vzhs77>> accessed 5 March 2018; Committee on the Rights of Persons with Disabilities, ‘Concluding observations on the initial report of Canada’ (CRPD/C/CAN/CO/1, 8 May 2017) <<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhshFUyvCoX405cFaiGbrlB87R7e4hNB%2fgZKnTAU8BqK7FKCyFSQGUzS4dKwSRSD%2fCPUoSzW7oP9OI5lweGr%2b%2b7wpRzQbCN1rv%2b%2bwMd4F0fZ>> accessed 5 March 2018.

¹⁰ Committee on the Rights of Persons with Disabilities, ‘Concluding Observations On The Initial Report Of Australia, Adopted By The Committee At Its Tenth Session’ (CRPD/C/AUS/CO/1, 2-13 September 2013) [28-29]

<<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsnzSGolKOaUX8SsM2PfxU7tjZ6g%2fxLBVYsYEv6iDyTXyNk%2bsAB%2fHgrVpAKHcEYTB%2b1t%2fh3HX1F%2f%2bo%2bk3O4KxhfhPoTQZ3LeS75n8PHidYHE3>> accessed 5 March 2018.

¹¹ Office of the United Nations High Commissioner for Human Rights, ‘Right To Access To Justice Under Article 13 Of The Convention On The Rights Of Persons With Disabilities’ (A/HRC/37/25, 27 December 2017) 15-16.

¹² *ibid.*

¹³ Peter A J Waddington, *Policing Citizens: Authority and Rights* (Psychology Press 1999).

¹⁴ Mental Health Act 2001, s 12.

best to facilitate the needs of suspects with disabilities.¹⁵ Persons with disabilities should also be involved in the design and the delivery of this training, in keeping with the slogan of the CRPD – ‘Nothing about us, without us.’¹⁶

We are at a turning point in regards to the two distinct (but interrelated) fields of disability rights and criminal justice in Ireland. The Government’s intention to ratify the Convention comes at a time when a spotlight has been cast upon the practices of An Garda Síochána. On 1 January 2016, the Policing Authority came into existence,¹⁷ followed by the Commission on the Future of Policing in Ireland in May 2017 in response to concerns regarding the ‘accountability of An Garda Síochána, its leadership and management capacity and its culture and ethos.’¹⁸ Building a human rights culture within policing is an integral part of maintaining the broad objectives of a democratic and progressive society, but it is also an integral part of combatting negative stereotypes and attitudes towards persons with disabilities who come into contact with the justice system (either as suspects, offenders, victims, witnesses, etc.) Going forward, it is argued that disability rights should be included within future discussions about the future of policing, and criminal justice professionals should be engaged from the outset of Ireland’s ratification of the CRPD.

Is mise le meas,

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¹⁵ For example, the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 provide that when a Garda is aware that a suspect is ‘mentally handicapped’, the suspect should not be questioned without the presence of a responsible adult.

¹⁶ Eli Wolff and Mary Hums, “‘Nothing About Us Without Us’ — Mantra for a Movement’ *HuffPost* (9 May 2017) <https://www.huffingtonpost.com/entry/nothing-about-us-without-us-mantra-for-a-movement_us_59aea450e4b0c50640cd61cf> accessed 12 February 2018.

¹⁷ The Garda Síochána (Policing Authority and Miscellaneous Provisions) Act 2015.

¹⁸ Commission on the Future of Policing in Ireland, ‘Terms of Reference’ <http://policereform.ie/en/polref/pages/terms_of_reference> accessed 12 February 2018.