



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



Ref: CommHR/SG/sf 116-2012

Ms Kathleen LYNCH, TD

Minister of State with special responsibility
for Disability, Equality, Mental Health and Older People

Strasbourg, 9 November 2012

Dear Minister,

It was a pleasure meeting with you and Minister Shatter in Dublin on 18 October 2012. I would like to continue our discussions by sharing with you some observations relating to the mental health reform currently under way in Ireland.

I am aware that there is widespread acknowledgement in Ireland that outdated domestic legislation must be reformed in order to be able to ratify the UN Convention on the Rights of Persons with Disabilities (UNCRPD), which Ireland signed already in 2007. During our meeting, I learned that once the Mental Capacity Bill is adopted, a major obstacle to ratification of the UNCRPD will be removed. I commend your intention to make rapid progress on this matter now that the Joint Committee on Justice, Defence and Equality of the Oireachtas has issued its Report on hearings in relation to the Scheme of the Mental Capacity Bill (May 2012).

I warmly welcome that the Joint Committee addressed the issue of appropriate language, pointing out that the UNCRPD does not mention the term “mental capacity”, but uses the term “legal capacity” as the capacity to hold and exercise rights. Furthermore, the Committee observed that “a human rights approach to legal capacity is currently not prevalent despite pockets of good practice”. It strongly advocated in favour of supported decision-making, thus moving away from the former and much criticised “best interest” model. I believe that the report provides valuable guidance for the future legislation, which should be shaped by supported decision-making and a rights-based approach. In this regard, I would like to draw your attention to the Issue Paper “*Who gets to decide? Right to legal capacity for persons with intellectual and psychosocial disabilities*” published by my Office in February 2012, which includes detailed recommendations on the question. This paper, which you will find enclosed, was also submitted to the Oireachtas as part of the hearings organised by the Joint Committee on Justice, Defence and Equality on this issue.

The progress made in reviewing the Mental Health Act 2001 after public consultation is also encouraging. I note that the June 2012 Interim Report of the Steering Group responsible for this review advocates a rights-based approach as well as community-based mental health services. Furthermore, you informed me that this work will be completed by an expert group you established, with a report to be issued in March 2013. While I am aware of the complexity of the matter, I strongly encourage you to continue the reform process with vigour, not least by further implementing the “*A vision for change*” strategy, which aims at providing accessible, community-based, specialist services for people with mental illness and promotes the use of an integrated multidisciplinary approach to addressing the different factors that contribute to mental health problems.

During the visit, I learned about concerns that budget cuts made in the context of the current economic crisis could lead to the social exclusion of persons with disabilities, including by reversing the model of living in the community. In this regard, I urge you to closely review proposals related to budget cuts in the field of health care and social services for any negative impact on the rights of persons with disabilities. The Issue Paper "*The right of people with disabilities to live independently and be included in the community*", published by my Office in March 2012 and enclosed to this letter, provides guidance in this regard which I hope you will find useful.

I would very much appreciate being informed about the progress of your work in these areas and look forward to a continuing constructive dialogue with you.

Yours sincerely,

Nils Muižnieks