United Nations Human Rights – Office of the High Commission

Submission: ***"Autonomy, dignity & human rights in situations of dependency in older age" by the Independent Expert on the enjoyment of all human rights by older persons.***

Introduction

The Irish Association of Social Workers is the national professional body for social workers in the Republic of Ireland. It was founded in 1971 and has a membership of more than 1,900 social workers. The Irish Association of Social Workers (IASW) welcomes this opportunity to address how human rights frameworks, public policies, and social practices in Ireland address situations of dependency in older age. Dependency is recognised as a cross-cutting human rights issue that profoundly impacts an individual's autonomy, dignity, participation, and equality before the law. This submission highlights the current landscape of older person care in Ireland, identifying systemic barriers and proposing a rights-based path going forward.

Legal and Institutional Framework

In principle, Ireland has made significant strides by establishing a legislative framework intended to protect the rights of older persons. The Assisted Decision-Making (Capacity) Act (ADMA) 2015, along with advanced care planning, advanced health care directives and the establishment of the Decision Support Service (DSS), provides a foundation for assisted/supported decision-making. Furthermore, the Health Information and Quality Authority (HIQA) serves as an independent body dedicated to ensuring that the rights and autonomy of service users are central to healthcare provision, supported by constitutional protections under Article 40.3.1.

However, a critical legislative gap remains: while nursing home care is underpinned by specific legislation (The Nursing Home Support Scheme, 2009), there is currently no legislative entitlement to home care or community support. While models like Sláinte Care and integrated care programs for older people aim for a holistic approach, the lack of statutory rights to home care creates significant inequities in service provision and hinders older persons ability to age in place.

The challenges to protecting older persons living in Ireland is compounded by the lack of a robust

primary legislative framework. Repeated concerns have also been expressed about the inadequacy of legal protections for adults at risk, including older people. The Health Service Executive has highlighted that safeguarding and protection social workers are operating in a “legal lacuna” in the absence of primary adult safeguarding legislation. Simply put, safeguarding social workers do not have the legal right of entry to private nursing homes where 80 per cent of residents reside while the Health Information and Quality Authority (HIQA) cannot investigate individual cases. In addition, while Ireland has legislated for the crime of coercive control in intimate relationships under the Domestic Violence Act, 2018, this does not extend to coercive control in non-intimate relationships which is a major omission in relation to our ability to protect older people experiencing coercive control by a family member such as an adult child. Additional legal provisions are therefore required and safeguarding procedures should be placed on a statutory basis to ensure that practices and processes are delivered in a standardised way.

Barriers to Autonomy and Dignity

Older persons in Ireland frequently encounter ageist attitudes, paternalism, and infantilisation within the healthcare and social care systems. These attitudes often lead to a presumption of a lack of capacity, where unwise decisions are misinterpreted as a lack of cognitive ability despite the protections of the ADMCA.

A major concern is the geographical inequality or postcode lottery regarding access to professional support; not all older people have access to Social Work services or support from other health and social care professions, particularly those in private nursing homes, leading to significant geographical variations in help and advocacy. In residential settings, autonomy is often undermined by institutional practices such as assigned bed times, waking times, and meal times, or requirements for a "sign out" person for a resident to leave the premises regardless of their level of capacity, will and preference and physical ability.

The Challenge of Institutionalisation and Community Inclusion

The privatisation and for-profit nature of the majority of nursing home care in Ireland presents both a moral and a human rights challenge. Many of these facilities are located on the outskirts of towns,

which can exacerbate social isolation and sever connections to local communities. The physical environment is essential for the wellbeing of nursing home residents. Nursing homes, however, often employ a wide range of physical and environmental barriers to movement for people living with dementia, including locked doors, lap sashes and belts, bed rails, and segregated wards. In addition, medication is frequently overused in nursing home settings, sometimes as a means of restraining people living with dementia without consent. Nursing Home residents, regardless of their disability, level of cognitive impairment or dementia have a right to good quality and safe services. They should also be supported to make complaints and speak out if their rights are impinged. The quality of the care provided is not dependent solely on the number of staff, but also on the right professional skills mix, qualifications, training, and relevant experience

Ireland has been identified as the loneliest country in Europe, yet there is a lack of adequate funding for day services and holistic, needs-based home care. Furthermore, there is an over-reliance on the voluntary and NGO sector to provide essential services like meals on wheels, which remain sporadic and dependent on local volunteers. Older people with disabilities are disproportionately placed in nursing homes regardless of their age, often due to a lack of flexible community supports that would allow them to age in place or in a more suitable, less institutionalised, residential home.

Relational Autonomy and Decision-Making Support

The IASW emphasises that autonomy should not be viewed solely through an individualistic lens, as this fails to account for interdependency and relationships of care. True agency is often hindered by external conditions such as social status, economic power, and a lack of resources to support genuine choice.

While the ADMCA is now in place, cultural change is slow. Navigating the Decision Support Service can be difficult, particularly for those with limited digital literacy, and moving between different tiers of decision-making support often requires returning to court. Additionally, the lack of domestic supports and flexible home help—such as assistance with shopping, pharmacy visits, or social engagement—leaves many older people ageing alone without the necessary tools to exercise their autonomy.

Informal Caregiving and Safeguards

Ireland relies heavily on informal, unpaid carers, yet there is a lack of legal recognition for this interdependency. There is currently no legal requirement for a standardised assessment of needs for older people or their family carers (such as that contained in the InterRAI Single-Assessment tool) or a legislative underpinning for carer assessments.

Existing safeguards against forced institutionalisation and deprivation of liberty remain insufficient. While new national policies and specific units within banks for vulnerable adults are being introduced, they can sometimes create new barriers to financial access rather than providing support.

Recommendations for a Human-Rights-Based Approach

To strengthen the protection of older persons in situations of dependency, the IASW recommends the following:

- Legislative Reform: Enact primary legislation for home care and community supports to ensure equitable access regardless of where in Ireland older people live. Introduce primary adult safeguarding legislation as a matter of urgency to ensure the safety and protection of our older citizens.
- Standardised Assessment: Implement a globally recognised, standardised assessment of need (such as InterRAI) for both older persons and their carers.
- Systemic Equity: Conduct a full assessment of all service provision to reduce overlapping or service provision gaps and ensure that resources are distributed based on population needs and relevant national data (census information, deprivation indices).
- Enhanced Accessibility and Support: Simplify the legal mechanisms for decision-making supports to ensure they are accessible to those without digital literacy or the means to navigate complex court processes.
- Cultural Shift: Foster a move away from paternalistic risk-averse care toward a model that respects the right to make unwise decisions and prioritises older person's will and preference.
- Community Investment: Increase funding for social and community engagement and integration to address the crisis of loneliness and reduce the reliance on institutional care.