

National Women's Council of Ireland

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**Shadow Report in advance of  
the examination of Ireland's  
combined sixth and seventh  
periodic reports under the UN  
Convention on the Elimination  
of All Forms of Discrimination  
against Women (CEDAW)**

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20 January 2017

## About National Women's Council of Ireland

Founded in 1973, the National Women's Council of Ireland (NWCI) is the leading national women's membership organisation. We represent and derive our mandate from our membership, which includes over 180 groups and organisations from a diversity of backgrounds, sectors and locations across Ireland. We also have a growing number of individual members who support the campaign for women's equality in Ireland. Our mission is to lead and to be a catalyst for change in the achievement of equality for women. Our vision is of an Ireland and of a world where women can achieve their full potential and there is full equality between women and men.

NWCI is the chair of the National Observatory on Violence against Women, convenor of the Women's Human Rights Alliance and a member of a broad range of networks, including the Coalition to Repeal the Eighth Amendment, the Community Platform and Community and Voluntary Pillar. At a European level, NWCI is represented on the Executive Committee of the European Women's Lobby.

NWCI's expertise in informing the development of government policy and legislation has been widely recognised. We currently sit by invitation on the National Steering Committee on Violence Against Women, the Women, Peace and Security Monitoring Group and the Department of Foreign Affairs NGO Standing Committee on Human Rights. Our role in contributing to Government's task of addressing all areas of concern for women in Ireland has been explicitly recognised in the National Women's Strategy 2007–2016, prepared by the Department of Justice, Equality and Law Reform. The Strategy acknowledged, in particular, the value our organisation can provide 'by identifying the needs of [our] member organisations and their members'.

## Acknowledgements

NWCI would like to thank all our members for engaging in the consultation process, and in particular those organisations, both members and non-members, which made written contributions

|                                       |   |
|---------------------------------------|---|
| 50/50                                 | Irish Cancer Society                      |
| Abortion Rights Campaign              | Irish Penal Reform Trust                  |
| Action Aid Ireland                    | Irish Federation of University Women      |
| Adoption Rights Alliance Ireland      | Justice for Magdalenes Research           |
| Age Action                            | Migrants Rights Centre                    |
| Atheist Ireland                       | National Deaf Women of Ireland            |
| Coalition to Repeal the 8th Amendment | National Travellers Women's Forum         |
| Community Law and Mediation           | Pavee Point Traveller and Roma Centre     |
| Community Work Ireland                | Ruhama                                    |
| Cork Traveller Women's Network        | Safe Ireland                              |
| Dublin Rape Crisis Centre             | Sonas Domestic Violence Charity           |
| Early Childhood Ireland               | Survivors of Symphysiotomy                |
| Free Legal Advice Centre              | Vincentian Partnership for Social Justice |
| Irish Council for Civil Liberties     | Waking the Feminists                      |
| Irish Family Planning Association     | Women in Media and Entertainment          |
| Immigrant Council of Ireland          | Women's Aid                               |
| Inclusion Ireland                     | Women's Human Rights Alliance             |

All of the views expressed in this report do not necessarily reflect the policies and positions of each contributing organisation. However, all recommendations are consistent with NWCI policy, as agreed by our members.

NWCI acknowledges the contribution of the staff team in the compilation of this submission and particularly acknowledges the work of Denise Roche, in the production of this submission.

## Introduction

NWCI welcomed the publication, in September 2016, of the Government's combined sixth and seventh periodic reports under CEDAW. However, the substantial delay of nearly ten years in submitting these reports, which were originally due in January 2007, remains unexplained by the State.<sup>1</sup> Although the Report should stand as a reflection of the last ten years, it appears more of an aspirational document, referencing future plans and actions, rather than providing any detailed analysis of past successes or failures. NWCI recognises and acknowledges that significant positive advancements have occurred for women's equality, e.g. quotas for national elections and marriage equality, but there remain persistent structural inequalities for women in Ireland. An issue of considerable concern is the lack of comprehensive disaggregated data pertaining to a range of areas where women's rights are engaged. The Report also lacks a comprehensive analysis of the impact of the economic crisis on the implementation of those rights.

### Women and the impact of austerity

Recession and austerity have had a disproportionate economic impact on women in Ireland. The gender pay gap has widened from 12.6% to 14.4% while the gender pension gap has widened from 35% to 37%. A majority of low paid part time workers are women. Already vulnerable groups including, Traveller and Roma women, have suffered some of the worst impacts. 59% (almost three in five) of lone parent households, mostly women, experienced enforced deprivation (inability to afford two from a list of 11 basic necessities) in Ireland.<sup>2</sup> Moreover, many services addressing violence against women endured significant funding cuts and Ireland's childcare infrastructure continues to lag behind all of Europe. Recent years have seen some recovery in the Irish economy with increased growth and a reduction in unemployment rates. Yet worrying deprivation levels, a doubling of consistent poverty rates from 4% to 8% and abnormally high income inequality remain serious concerns. Gender proofing and impact assessments have the potential to ensure a fair and just economy. However, this process is in its infancy as it was only recently included in the new Programme for Government.

### Persistent lack of disaggregated data

There is a critical need for gender disaggregated data and for data in critical areas relating to women's equality. The Central Statistics Office is no longer producing an annual Women and Men in Ireland report which collected data on critical socio-economic areas. This should be reinstated on an annual basis as matter of priority. The absence of data on violence against women requires prioritisation and investment so that data is robust, current and can be analysed to provide the information required to increase the effectiveness of services to women. The last comprehensive study on the level of sexual violence in Ireland dates from 2002.<sup>3</sup> Data also needs to be disaggregated to provide information on progress for different groups of women e.g. Traveller and Roma women, women with disabilities.<sup>4</sup>

### The Consultation Process

In order to compile this Shadow Report for the CEDAW Committee NWCI has engaged in a full consultation process with all of our member organisations and with other NGOs. Membership responded to a detailed questionnaire about the application of the Convention in Ireland. We held a national consultation members meeting and invited international experts and a former CEDAW committee member to provide their expertise into the shaping of our report. The evidence, views and recommendations in this submission are based on significant work by NWCI and our members to continually hold the Irish Government to account. The recommendations reflect a high level of participation from the wide and diverse membership of NWCI in campaigning, research, policy development, service delivery and project implementation targeting diverse groups of women

Ireland's efforts in creating awareness of CEDAW and ensuring women are able to invoke these rights were largely seen as poor by our consultees. The State held one public consultation regarding their report to this Committee. Organisations have communicated their disillusionment with Ireland's commitment to this Convention and other conventions, as there is a culture of ratification without domestic implementation. There were repeated references to the particular exclusion of already marginalised women in both their awareness of rights available and in realising their rights through an impoverished legal aid system.

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1. This is so, despite a series of recommendations made to Ireland during that period by several Treaty Bodies, including Human Rights Committee (2008, 2014), Committee on Economic, Social and Cultural Rights (2015), the Committee for the Elimination of Racial Discrimination (2011), Committee against Torture (2011) and the Committee on the Rights of the Child (2015). Additionally, during Ireland's first and second UPR examinations, women's equality and non-discrimination on the basis of gender, were the subject of a number of recommendations by UN Human Rights Council members.

2. The results of Survey on Income and Living Conditions (SILC) 2014, released on the 26th of November, 2015.

3. THE SAVI REPORT Sexual Abuse and Violence in Ireland Hannah McGee, Rebecca Garavan, Mairéad de Barra, Joanne Byrne and Ronán Conroy Royal College of Surgeons in Ireland. Commissioned by Dublin Rape Crisis Centre: <http://www.drcc.ie/about/savi.pdf> Accessed 5/9/2016

4. The lack of disaggregated data pertaining to a range of areas where human rights are engaged was raised during Your Rights. Right Now UPR civil society consultations in advance of Ireland's second review under the UPR. Your Rights. Right Now, Civil Society Stakeholder Report for Ireland's 2nd Universal Periodic Review. In its review of Ireland's Third Periodic Report in 2015, the UN Committee on Economic, Social and Cultural Rights drew particular attention to the lack of disaggregated data and up-to-date data. Concluding observation on third periodic report of Ireland, E/C.12/IRL/CO/3, para. 6. Lack of comprehensive data collection was also raised by the UN Human Rights Committee, with specific reference to violence against women and the Roma community, during its review of Ireland's Fourth Periodic Report under the International Covenant on Civil and Political Rights in 2014. Concluding observations on fourth periodic report of Ireland, CCPR/C/IRL/CO/4, paras. 8, 23. Lack of disaggregated data regarding Traveller and Roma children, including their socioeconomic situation, was also raised by the UN Committee on the Rights of the Child in its review of Ireland's Combined Third and Fourth Periodic Reports in 2016. Concluding observations on the combined third and fourth periodic reports of Ireland, CRC/C/IRL/CO/3-4, para 7.

## 1. Constitutional, legislative and institutional framework

As Ireland operates a dualist legal system, the ratification of international treaties does not give them automatic effect at domestic level. The majority of international human rights treaties that Ireland has ratified have not been incorporated into law, including CEDAW.<sup>5</sup> The Constitution was drafted exclusively by men and contains a number of provisions which directly or indirectly raise gender concerns.<sup>6</sup>

- The CEDAW Committee previously recommended (2005 Concluding Comments at para. 382) that the State consider replacing the male-oriented language with **gender-sensitive language**. A vast majority (89%) of the members of the Convention on the Constitution<sup>7</sup> agreed. However, a report by the task force assigned to review the matter recommended further consultation, despite previous consultations conducted in 1993, 1996, 1997 and 2006.<sup>8</sup>

- The Constitution guarantees **equality before the law** in Article 40.1 The interpretation of this provision has been focused exclusively on a procedural model of equality to the neglect of a substantive model. Inserting an explicit provision on gender equality into the Constitution was recommended by the majority (62%) of the Convention members. A constitutional amendment on the issue would allow for the introduction of legislative schemes which would increase equality of outcomes for women. Such a measure would also ensure that measures that sought to improve the position of women relative to men did not fall foul of a constitutional challenge based on the existing formal equality guarantee.<sup>9</sup>

- Article 41.2 of the Constitution recognises the **role of women in the home** and undertakes not to force them to take up paid work to the neglect of those duties. These provisions are anachronistic and outdated. Notwithstanding this, the recognition of the importance of unpaid informal care work in Ireland is of great value. The Constitutional Convention recommended recognising this type of work in a gender neutral way. The Government commitment to holding a referendum on the Article which remains to be progressed.<sup>10</sup>

- Ireland ratified the International Covenant on **Economic, Social and Cultural Rights** in 1989 but the majority of economic, social and cultural rights are not legally enforceable in Irish law. A large majority (85%) of the members of the Constitutional Convention recommended that these rights should be given greater protection in the Constitution and that they should be enforceable before the courts. Over two years after the recommendation was made, the Minister of State at the Department of the Taoiseach, said that the matter will be referred to an Oireachtas committee for consideration.<sup>11</sup>

- **The Citizens' Assembly**<sup>12</sup> is mandated to make recommendations on a number of issues, including the constitutional provision governing abortion access, Article 40.3.3, otherwise known as the Eighth Amendment. However, no clarity exists with regard to what will happen with the outcome of the Assembly and the timeframe within which recommendations will be considered and acted upon. Abortion was one of the biggest political issues for women in 2016, with over 13,000 submissions to the Citizens' Assembly.

- Section 42 of the Irish Human Rights and Equality Commission Act 2014 provides for the introduction of a **public sector equality and human rights duty**, requiring public authorities to take a proactive approach to tackling institutional gender discrimination, and promote the mainstreaming of gender perspectives in all other functions. Such an approach has the potential to ensure that attention to the goal of gender equality is a central consideration in all activities undertaken by public bodies and to complement actions required under European Union law.

- While there is a formal requirement that all Memoranda for Government should consider **the impact of the proposed legislation on women**, there is not yet a mechanism for ensuring this is done systematically. Equality proofing during the drafting of legislation should not be seen as stand-alone but rather as part of an on-going process of analysis which begins at the policy development stage. Given resource constraints it may be impracticable to analyse all policies in depth. Screening tools enable civil servants to identify those legislative proposals which require more detailed attention and analysis. There is, however, a need for equality experts within departments and legal specialists with expertise in gender and diversity analysis to support equality proofing in the policy development process and in the drafting of legislation.

- During the 30th Dáil and the 23rd Seanad (2007 – 2012), three committees of the Oireachtas (Irish Parliament) held a specific named remit regarding women's rights: Select Committee on Justice, Defence and Women's Rights and Joint Committee on Justice, Defence and Women's Rights, the latter which operated a Sub-Committee on Women's Participation in Politics. Since the 31st Dáil and 24th Seanad (2011 – 2016), the Committee structure has altered to include the Select Committee on Justice, Defence and Equality and the Joint Committee on Justice, Defence and Equality. Thus, women's rights have been subsumed into the broader 'equality' stream of work without a named specific mandate around women's equality attaching to any **Parliamentary committee structure**.

5. See the Irish Council for Civil Liberties submission to this Committee.

6. For a comprehensive discussion of this matter see Alan D.P. Brady, *The Constitution, Gender and Reform: Improving the Position of Women in the Irish Constitution*, November 2012. NWCi publication.

7. The Convention on the Constitution was termed a "venture in participative democracy" as it was tasked with considering certain aspects of the Constitution to ensure that it is fully equipped for the 21st Century and to make recommendations to the Oireachtas on future amendments to be put to the people in referendums. It comprised of an independent Chairman and a forum of 100 people, representative of Irish society and parliamentarians.

8. Report of the Task Force on Implementation of the Recommendations of the Second Report of the Convention on the Constitution; [http://www.justice.ie/n/JELR/TaskForceReport\\_Impl-2nd-Rpt-Conv-Constit.pdf/Files/TaskForceReport\\_Impl-2nd-Rpt-Conv-Constit.pdf](http://www.justice.ie/n/JELR/TaskForceReport_Impl-2nd-Rpt-Conv-Constit.pdf/Files/TaskForceReport_Impl-2nd-Rpt-Conv-Constit.pdf)

9. Ultimately, despite having two years to assess this recommendation, and with the benefit of two previous assessments, the task force recommended that the Department of Justice and Equality should under take further examination of this question.

10. Second Report of the Convention on the Constitution (i) Amending the clause on the role of women in the home and encouraging greater participati of women in public life; and (ii) Increasing the participation of women in politics. May, 2013 <https://www.constitution.ie/AttachmentDownload.ash?mid=268d9308-c9b7-e211-a5a0-005056a32ee4>

11. Eighth Report of the Convention on the Constitution Economic, Social and Cultural (ESC) Rights (March, 2014).

12. Established in 2016, is a body comprising of a chairperson and 99 citizens.

### Recommendations

- Publish a Central Statistics Office report on 'Women and Men in Ireland' on an annual basis.
- Ensure all proposed legislation be gender proofed in a systematic and consistent manner. Assign equality experts within departments and legal specialists with expertise in gender and diversity analysis to support equality proofing in the policy development process and in the drafting of legislation.
- Commit to implementing the recommendations of the Convention on the Constitution that concern inserting an explicit provision on gender equality into the Constitution, amending the Constitution to include gender-inclusive language, as well as those relating to economic, social and cultural rights.
- Set a concrete timeframe within which Article 41.2 regarding the role of women in the home will be progressed towards a referendum.
- Set out a concrete timeframe for a referendum to remove the Eight Amendment from the Constitution.
- Ensure that the Public Sector Duty is utilised to promote the mainstreaming of gender equality in all areas and sectors. There should be a designated specific budget line for its implementation.
- Attach a named specific mandate around women's equality to a Parliamentary committee.

## 2. National machinery for the advancement of women

Irish law prohibits gender discrimination and promotes gender equality in a range of areas. However, the State's equality infrastructure has radically altered since the onset of the recession in 2008. Public and statutory bodies established or supported to promote equality, monitor and evaluate progress, improve awareness and innovative practice have been restructured, closed down, or were subjected to drastic budget cuts. The independence of important statutory agencies has been undermined where government departments have absorbed the work of key bodies such as the Combat Poverty Agency, the Women's Health Council, and the Crisis Pregnancy Agency.<sup>13</sup> Funding for the Equality for Women Measure, designed to provide for equal opportunities measures, positive actions and structures to promote gender equality, was reduced from €31.75 million to just under €12 million for the period 2008 to 2013. Accordingly it was only feasible to undertake modest positive actions contrary to what had been envisaged originally.<sup>14</sup>

- When the **National Women's Strategy 2007-2016** was launched, NWCI highlighted the absence of measurable targets, indicators and expected outcomes. What is more, the Strategy did not contain actions or targets to address the inequalities experienced by Traveller and Roma women or other vulnerable groups. Over the period of its lifetime, and in particular at the mid-point review, many civil society groups called for the development of clear and transparent ways to measure the progress of the Strategy, but such measurement never took place. As such, it is extremely difficult to accurately gauge the impact of the Strategy. In December 2016, the Department of Justice and Equality opened a public consultation process towards the development of a new **National Women's Strategy and Action Plan** to cover the period 2017-2020. This new plan will be a critical opportunity for the Government to show ambition and vision to addressing women's equality in Ireland and is welcomed by NWCI. Critical to its effectiveness will be a robust monitoring and implementation process with strong political leadership to hold all state bodies and agencies to account.

- The 2016 Programme for a Partnership Government contains a welcome commitment to **equality and gender proofing budget proposals**. Gender proofing can produce gender disaggregated data to assess how women are affected by budgetary measures, particularly taxation and social welfare measures. In addition, it is critical that there is a commitment to utilise the information gained to achieve tangible, positive outcomes for women by reducing social and economic gender inequalities.

- The amalgamation of the Equality Authority and the Human Rights Commission into the **Irish Human Rights and Equality Commission (IHREC)** has the potential to produce a strong body that is capable of strengthening the protection of women and girls, in particular those from disadvantaged groups, from all forms of discrimination. Concerns have been raised that the organisation's 'equality' function is not bestowed the same degree of focus as its 'human rights' work. There is a critical need for IHREC to work with equality focused NGOs so as to strengthen its work to address discrimination against women and women facing multiple discrimination. In addition, the significant work undertaken by IHREC with regard to Ireland's human rights record at international level requires a similar national strategy to ensure that national government and state agencies are held accountable to equality commitments.

13. For a comprehensive analysis see, Ireland in Crisis 2008-2012, Women, Austerity and Inequality, Ursula Barry and Pauline Conroy, September 2013. See also IRELAND 2008-2012 Untold Story of the Crisis – Gender, Equality and Inequalities Ursula Barry and Pauline Conroy (2012)

14. Towards gender parity in decision-making in Ireland an initiative of the national women's strategy 2007 - 2016 (2013), para. 13.

- The Equality Tribunal was an impartial, independent body set up to investigate and decide or mediate cases brought under Ireland's equality legislation. In 2015 it was merged with four other bodies<sup>15</sup> to form the **Workplace Relations Commission**. Civil society organisations have already raised considerable issues in relation to the visibility of equality in the work of the Commission, the accessibility of the Commission for those experiencing inequality, and the procedures of the Commission in cases of discrimination.<sup>16</sup> In particular, the functions of the Commission as set out in the governing legislation are silent on issues of equality, diversity and discrimination; publications make little mention of equality cases and equality legislation. The monthly reporting of the Equality Tribunal on equality cases decided or mediated has not been continued, and there is no breakdown provided in Commission publications of cases by ground or field of discrimination and outcome. An ad-hoc approach to case management, inconsistencies with adjudication rulings and haphazard communication of decisions are all issues that were raised by the barristers, solicitors, employer organisations and trade union representatives who participated in a 2015 survey conducted by the Employment Law Association of Ireland.<sup>17</sup>

- Ireland has undertaken a range of commitments within the framework of the **Sustainable Development Goals (SDGs)**. Goal 5 is "achieving gender equality and empowering all women and girls". But the goals on poverty, health, including universal access to reproductive health, education, including comprehensive sexuality education, decent work and inequalities are also of critical significance to women and girls. The SDGs are of national application and are also relevant to Ireland's overseas development commitments. The Government has expressed a very strong commitment to the SDGs, however, no National Action Plan for their implementation has been produced.

- The struggle for women's equality has not concentrated to any significant degree on the particular needs of disabled women or on the specific strategies required to address their concerns. The Government has approved the Disability (Miscellaneous Provisions) Bill 2016, which will enable ratification by Ireland of the **UN Convention on the Rights of People with Disabilities**. NWCi looks forward to its imminent ratification. However, the Government's plan to enter certain reservations upon ratification is concerning.

- A Report on the Formal Recognition of Irish Sign Language was published in October 2016<sup>18</sup> by the Joint Committee on Justice and Equality. It recognised that **members of the deaf community** face "extreme marginalisation" due to the lack of official sign language recognition and provision. In particular, their interactions with the organs of the State, including the education system, the health service<sup>19</sup> the courts system and the national parliament itself are all affected. Deaf women are continually fighting to obtain services. At parent/teacher meetings for example, deaf women on a yearly basis have to negotiate with the school authorities for interpreter provision to

be made available whilst schools continue to use the response that they don't have the budget to provide same. It is usually the deaf mother, as they are the primary care giver, who has to fight for such a service. If Irish Sign Language is not officially recognised here as a language, these scenarios are unlikely to change. Only by official recognition of ISL can we expect for these barriers to be broken down and for services to be compelled to make interpreter provision available.

- After repeated recommendations by UN treaty monitoring bodies, European institutions, and Irish equality and human rights bodies, the Taoiseach has indicated that **Traveller ethnicity** will be recognised by the end of January 2017. This will be most welcome, allowing for the inclusion of Traveller women in anti-racism and intercultural initiatives and legislation. For the first time, the State has indicated a commitment to include gendered actions in the new **National Traveller Roma Inclusion Strategy**. However, there are major concerns with the draft Strategy, including lack of clarity whether an implementation plan will be developed with associated targets, indicators, budgetary lines or timeframes.<sup>20</sup>

- The **National Consultative Committee on Racism and Interculturalism** was abolished in 2008. It was intended that its functions would be transferred to the Office for the Promotion of Migrant Integration. However, this has not happened. There is no transparent penetration of the functions of the NCCRI in any other structure including the Office for Migrant Integration, nor has the National Action Plan Against Racism (2005-2008) been renewed.

#### Recommendations

- Ensure that the National Women's Strategy and Action Plan 2017-2020 contains measurable targets, indicators and expected outcomes, with clear lines of responsibility linked to relevant Government departments and agencies. A strong focus on vulnerable groups, including Traveller women, will be necessary. In particular, it requires a robust monitoring mechanism with a decision making authority with the ability to hold departments and implementing bodies to account.

- The role of the Workplace Relations Commission as the forum for cases taken under employment equality and equal status legislation should be emphasised and promoted and women should be supported in taking such claims.

- The Workplace Relations Commission should publish detailed accounts of the cases adjudicated with disaggregated data.

- Implement the equality and gender proofing budgetary process in a meaningful way, with a strong role for civil society.

- IHREC to increase their work with equality focused NGOs so as to strengthen its work to address discrimination against women and women facing multiple discrimination.

15. The National Employment Rights Authority, the Labour Relations Commission, the Rights Commissioner Services, and the complaints and referrals functions of the Employment Appeals Tribunal.

16. In September 2016, Equality Rights Alliance (ERA), in conjunction with SIPTU, the Independent Law Centre's Network and the Employment Law Association of Ireland, hosted a roundtable discussion called Building an Agenda for Change in the WRC. The aim of the roundtable was to discuss the operation of the WRC from an equality perspective and to generate a shared vision for the direction participants would like the Workplace Relations Commission (WRC) to take in enforcing employment equality and equal status legislation. The civil society roundtable agreed that a time-limited problem-solving working group should be convened by the Commission to bring the relevant stakeholders together to secure such an outcome. The convening of such a working group will be a key test of the willingness to change <http://www.communitylawandmediation.ie/submissions/submission-on-building-an-agenda-for-change-in-the-wrc.1252.html>

17. The research was conducted by ELAI committee member Dr Brian Barry, a law lecturer at Dublin Institute of Technology. See <http://www.elai.ie/news-events/22-elai-survey-of-practitioners-on-dispute-resolution-under-the-workplace-relations-act-2015-one-year-on.html> 13. <http://www.oireachtas.ie/parliament/media/committees/justice/Final-Report-on-Recognition-of-Irish-Sign-Language.pdf> (last accessed on 19/12/2016)

18. <http://www.oireachtas.ie/parliament/media/committees/justice/Final-Report-on-Recognition-of-Irish-Sign-Language.pdf> (last accessed on 19/12/2016)

19. Deaf women who are medical card holders can access their G.P. and hospital services via an interpreter, however, those who do not hold a medical card are not provided with interpreters.

20. See Irish Traveller & Roma Women Joint Shadow Report A Response To Ireland's Consolidated Sixth And Seventh Periodic Report To The Un Committee On The Elimination Of Discrimination Against Women (January 2017).



- The significant work undertaken by IHREC with regard to Ireland's human rights record at international level requires a similar national strategy to ensure that national Government and State agencies are held accountable to equality commitments.
- Provide information on measures planned to ensure the full implementation of the Sustainable Development Goals, at national level and in its overseas development policy.
- Publish a National Action Plan (NAP) for the implementation of the SDGs. Ensure the involvement of women and girls in the development, monitoring and implementation of the NAP. Dedicate appropriate resources to Ireland's commitments to the achievement of the SDGs.
- Ratify the UN Convention on the Rights of People with Disabilities.
- Official recognition of Irish Sign Language.
- Recognise Travellers as a minority ethnic group in Ireland without any further delay.
- Ensure the gendered goals in the National Traveller Roma Inclusion Strategy have measurable objectives and a concrete implementation plan with targets, indicators, timeframes and budget lines.
- Introduce a new National Action Plan against Racism with a strong gender focus and establish a national oversight committee with representatives from statutory and NGO sectors to implement it.

### 3. Access to justice

Unhindered access to justice for women is a critical pathway for the achievement of gender equality. A number of historical abuses of women in the care of the State have emerged, namely the Magdalene Laundries, Mother and Baby Homes, and symphysiotomy. While numerous UN bodies have called for the State to implement full independent inquiries into the experience of women, the State has failed to adopt a consistent approach, in line with international human rights law, to all inquiries into the historical abuse of women and children.

#### Historical abuses of women in the care of the State The Magdalene Laundries

The Magdalene Laundries were unregulated residential institutions, operated by religious orders and utilised and financed by the State between 1922 and 1996.<sup>21</sup> Thousands of girls and women were imprisoned, forced to carry out unpaid labour and subjected to psychological and physical mistreatment within the Laundries. Despite repeated international calls, a full independent inquiry into the experience of women in the Magdalene Laundries has not been undertaken.<sup>22</sup> Instead the State established a scheme of "ex gratia" redress, the Magdalene Restorative Justice Scheme, where qualifying survivors had to waive any right of action against the State or any other body or agency arising out of her admission to or work in a laundry, contrary to her constitutional rights.

The Government (State Report para. 41) repeats the claim – previously made to CAT and CESCR – that there is "[n]o factual evidence to support allegations of systematic torture or ill treatment of a criminal nature". This has the potential to interfere with the criminal justice system's response to the women's evidence. Further a Report commissioned by the State clearly acknowledges that the girls and women were not free to leave the institutions (false imprisonment and arbitrary detention);<sup>23</sup> they were not paid wages;<sup>24</sup> and that they were forced to constantly work (victims of forced or compulsory labour in contravention of Ireland's obligations under the International Labour Organisation's (ILO) Forced Labour Convention)<sup>25</sup> and as a result, were denied their basic rights to education, fair wages and social security. The report also referenced a number of incidents that appear to meet the common law requirements of assault.

#### Mother and Baby Homes

In 2014, following media reports of the alleged discovery of mass graves at the sites of former Mother and Baby Homes the Government established an independent Commission of Inquiry into the matter, to report within 36 months. The Commission has full investigatory powers regarding the care, welfare, burial arrangements, vaccine trials, adoptions, entry arrangements and exit pathways for the women and children who were residents of a sample of institutions between 1922-1998. The Commission has not decided to hold any public hearings, and its underpinning legislation (the Commissions of Investigation Act 2004) makes it a criminal offence for any person to publish evidence given to the Commission in private. The Commission submitted a second Interim Report to the Minister for Children and Youth Affairs on 16 September 2016. It is expected that all reports will be completed by February 2018.

21. See Justice for Magdalenes Research submission to this Committee.

22. This is despite the fact that both the UN Committee against Torture in 2011 and the UN Human Rights Committee in 2014, raised concerns and made recommendations to the State to conduct independent investigations into the Magdalene Laundries and prosecute and punish the perpetrators. Human Rights Committee, Concluding Observations on the fourth periodic report of Ireland, CCPR/C/IRL/CO/4, para 10, Committee against Torture, Concluding Observations: Ireland, CAT/C/IRL/CO/1, para 21.

23. e.g. Inter-departmental Committee Report, Chapter 19, paras 51, 52, 55, 57, 58, 69-71

24. Inter-departmental Committee Report, Chapter 20, para 33

25. e.g. Inter-departmental Committee Report, Chapter 19, para 39

Considering the State's failure to establish an independent inquiry into allegations of abuse in the Magdalene Laundries, and the linkages between Magdalene Laundries and institutions such as Mother and Baby Homes and County Homes, the ongoing work of the Commission of Investigation should include the Magdalene Laundries within its investigative remit. In fact, the remit of the Commission should be extended to include in its inquiry all 176+ institutions, agencies and individuals involved with the treatment of unmarried mothers and their children in 20th century Ireland. It remains unclear why the Commission's remit is limited to 14 named Mother and Baby Homes and a representative sample of County Homes during the period of 1922-1998.

### Symphysiotomy

The controversial operation of symphysiotomy, involving sundering the pelvis to enforce vaginal birth in obstructed labour and leading to lifelong disability, was practised in mainly Catholic hospitals from the 1940s-1980s<sup>26</sup>. In 2014, the UN Human Rights Committee found that the practice of symphysiotomy constituted torture, cruel, inhuman or degrading treatment, and involuntary medical experimentation. Despite a recommendation by this Committee to initiate a prompt, independent and thorough investigation into symphysiotomy, no specific measures have been taken to investigate the alleged carrying out of 1,500 of these operations without patient consent, nor have any concrete measures been adopted to identify, prosecute and punish the perpetrators.

Survivors have been denied an effective remedy, as recommended by the Committee, for the damage sustained. There has been no full, independent inquiry into the practice. The sole remedy offered by the State was an ex gratia Payment Scheme, which does not constitute an effective remedy, as there was no admission of wrongdoing. The Scheme failed to respect applicants' legal rights: data protection rights were reportedly breached and the Scheme provided no appeal mechanism. Oral evidence was generally not taken. As a condition of payment, women were required to waive all rights and indemnify scheduled parties, including religious congregations, against legal action. The report on the Payment Scheme has been criticised for justifying the surgery, undermining applicants' credibility, suggesting that they were generally not injured, long term, by the operation and implying that patient consent was not required. In a recent symphysiotomy case, the State, having deployed its vast resources to defeat the 78 year old plaintiff, then obtained a costs order against her, in a decision that undermines the access to justice principle.

### Recommendations

- Abolish redress scheme waivers that prevent survivors from exercising their constitutional rights.
- Adopt and implement a consistent approach, in line with international human rights law, to all inquiries into the historical abuse of women and children.

### Institutional economic barriers

The civil legal aid scheme is not available to people who want to take employment, employment equality or equal status claims to the Workplace Relations Commission. While the stated intention is to remove lawyers from the process, in practice, employers tend to be legally represented before the Commission. In circumstances where women, often financially disadvantaged, cannot access the civil legal aid scheme, this is a real cause for concern. Sometimes equality and employment law cases involve complex legal issues and there is a risk that individuals, including older persons, may not be able to present their cases in the manner that fairness demands without legal representation.

While legal aid is technically available to victims of domestic violence, the requirement to pay financial contributions hampers the accessibility of justice. In 2013, the situation was exacerbated as the minimum contribution for legal aid services provided by the Legal Aid Board increased from €50 to €130,<sup>27</sup> a rise of 160%.<sup>28</sup> This is not a once off payment as victims of domestic violence may need to make recurring applications for legal aid and a financial contribution is required for each.<sup>29</sup> Moreover, some women are not eligible for legal aid because of assets held in joint names over which they have no control. High demand for services has led to long waiting lists and waiting times, with some women waiting months for a solicitor.<sup>30</sup>

### Recommendations

- The Civil Legal Aid Scheme should be expanded and supported to provide free legal representation to women taking claims under employment equality and equal status legislation. The lack of Legal Aid cases is a major barrier to women wishing to enforce their rights.
- End the requirement for victims of domestic violence to make financial contributions for civil legal aid services where safety, protection or barring orders are being sought.

### Women in Prison

Over recent years, there has been a significant increase in the number of women being sent to prison.<sup>31</sup> In 2015, there were 3,411 female committals<sup>32</sup> compared to 155 female committals in 1999.<sup>33</sup> Although Travellers account for 0.6% of the overall population in Ireland, they account for 22% of the female prison population.<sup>34</sup> The majority of women serve short sentences and commit non-violent offences.<sup>35</sup> In 2015, 80% (2,667) of female committals were for failure to pay court-ordered fines.<sup>36</sup> Despite the commencement of the Fines (Payment and Recovery) Act 2014, the highest percentage of female committals continues to be for fines default.<sup>37</sup> The lower risk presented by women has resulted in provision of "generic offender based services to women offenders, designed for men in the first instance."<sup>38</sup> The provision of gender-specific non-custodial alternatives on a national basis is particularly important for women, who often have primary caregiving responsibilities and may be at risk of losing their home if imprisoned. Despite the introduction of the Criminal Justice (Community Service) Amendment Act 2011, the number of Community Service Orders for women decreased every year between 2012 and 2015.<sup>39</sup>

26. See Survivors of Symphysiotomy submission to this Committee

27. Civil Legal Aid Regulations 2013 (SI No. 346/2013).

28. While a system of waiver does exist which permits the Legal Aid Board to waive an applicant's legal fees where failure to do so would cause "undue hardship", and such waivers have been applied to cases involving victims of domestic violence, difficulties exist as to the operation of the waiver system. Some of the difficulties include a lack of public awareness, waiting times, no automatic entitlement.

29. SAFE Ireland (2014) Safety in a Time of Crisis: Priorities for Protecting Women and Children impacted by Domestic Violence, Athlone: SAFE Ireland, p.13.

30. Safe Ireland (2015) The Lawlessness of the Home. Athlone: SAFE Ireland. P. 63 However, an increase of over E1.6m was announced in the budget for 2016, which it is hoped will assist in reducing waiting times

31. See Irish penal Reform Trust submission in advance of the examination of Ireland's combined sixth and seventh periodic reports under the UN CEDAW.

32. Irish Prison Service (2016) Irish Prison Service Annual Report 2015, p. 29

33. Inspector of Prisons (2013) Interim Report on Dóchas Centre, p.9

34. Irish Prison Service cited in Travellers in Prison Initiative, [http://ssgt.ie/travellers\\_in\\_prison.html](http://ssgt.ie/travellers_in_prison.html).

35. Irish Prison Service, Snapshot Offence Profile 2007-2014

36. Irish Prison Service (2016) Irish Prison Service Annual Report 2015, p. 31

37. Irish Examiner, Jailings for Fines down by 1000, 3 December 2016

38. The Probation Service & Irish Prison Service Joint Strategy 2014-2016: An Effective Response to Women who Offend, p.7.

39. Probation Service Annual Report, 2014 and Probation Service Annual Report, 2015



The two women's prisons are consistently the most overcrowded in the State<sup>40</sup>, with higher rates of female remand committals (18.9%) than males (14%).<sup>41</sup> Currently, 30% of women in the Dóchas Centre are in shared cells<sup>42</sup> using the toilet in the presence of others. Overcrowding and staffing issues are having a detrimental impact on regimes, including access to education.<sup>43</sup> 85% of women in the Dóchas Centre have addiction issues, with limited interventions for women on remand.<sup>44</sup> The prison currently has no onsite psychologist, and a waiting list for addiction services.<sup>45</sup> There are no open prison facilities for women in Ireland. The particular vulnerability of women on release from prison has been highlighted by the Inspector of Prisons and others, stating that no woman should leave prison homeless, and calling for provision of supported accommodation.<sup>46</sup> Female offenders in Ireland are 4.6 times more likely than males to experience difficulties with accommodation.<sup>47</sup> There is particular need for tailored post-release supports for Traveller women who are over-represented in the prison population.

#### Recommendation

- Implement the Probation Service and Irish Prison Service (2014) Joint Strategy for Women who Offend, including the development of: (1) gender-specific non-custodial options for women, as an alternative to custodial sentences, which take into account the complexity of female offenders' needs, including those of Traveller women; and (2) post-release supports including an open prison and supported step-down residential facilities, which should be geographically spread.

## 4. Violence against women

Since 2005, Ireland has signed the Istanbul Convention on violence against women after a long campaign by NWCI and our members. A timescale for the ratification of the Convention has still to be announced. Ireland has also completed its first National Strategy on Domestic, Sexual and Gender Based Violence, and is currently in the early stages of implementing a second strategy. This new strategy, which is until 2021, adopts a whole of Government approach under the areas of prevention, prosecution, protection and monitoring and is expected to act as a roadmap to the ratification of the Istanbul Convention. In addition, the Tánaiste and Minister for Justice and Equality has recently launched the "What would you do?" campaign on domestic violence, and secured funding of €950,000 for 2016 and 2017. NWCI considers the National Awareness campaign to be an important part of the overall strategy to combatting violence against women. The Strategy has been officially declared as 'a living document' with ongoing scope for actions to be added over time. Issues particularly remarked upon by the Committee in 2005, namely the low prosecution and conviction rates of perpetrators, high withdrawal rates of complaints, as well as the violence suffered by marginalized and vulnerable women, remain very significant for women in Ireland.

#### Data

Significant change on violence against women cannot be achieved without a sustained commitment to data collection and analysis by all agencies working in the area of domestic and sexual violence. For example, the last comprehensive study on the level of sexual violence in Ireland dates from 2002.<sup>48</sup> The Government has committed in principle to establishing a bottom line 'gold standard' of data collection and analysis with plans to include the disaggregation of data by ethnicity, sex, age, disability and relationship between the victim and perpetrator. While this is a welcome and necessary step, it is imperative that the development, implementation and monitoring of the 'gold standard' is undertaken in consultation with civil society organisations; is in line with human rights principles and standards; and is allocated sufficient resources.

Data from An Garda Síochána has proven to be unreliable, with the most recent Garda Inspectorate Report revealing that domestic violence incidents were often not classified correctly.<sup>49</sup> Improvements have been made since 2015, as all incidences recorded on PULSE must now be flagged if they are domestic violence related. However, there continues to be a significant concern with the PULSE system as it was established as a data recording system and does not easily facilitate data analysis on the full spectrum of violence against women. The data produced by the Courts Services are also unreliable as they are paper based systems and individual to each court geographical area, so there is no agreed national system for recording data from the district and circuit courts.

40. Inspector of Prisons (2013) Interim Report on the Dóchas Centre, p.14 and Dóchas Visiting Committee Report 2015, p. 7

41. Strategic Review on Penal Policy, p.65

42. Irish Prison Service (2016) Census of Cell Occupancy

43. Dóchas Centre Visiting Committee Report 2015.

44. The Probation Service & Irish Prison Service (2016) Review of Drug and Alcohol Treatment Services for Adult Offenders in Prison and in the Community, pp.69-70, 74

45. Ibid.

46. Inspector of Prisons (2013) Interim Report on the Dóchas Centre, p.10 and Dóchas Visiting Committee Annual Report, (2015), p.7

47. Kelly, J. & J. Brogue (2014) Gender Differences in Criminogenic Needs among Irish Offenders, Irish Probation Journal, p.97

48. THE SAVI REPORT Sexual Abuse and Violence in Ireland Hannah McGee, Rebecca Garavan, Mairéad de Barra, Joanne Byrne and Ronán Conroy Royal College of Surgeons in Ireland. Commissioned by Dublin

Rape Crisis Centre: <http://www.drcc.ie/about/savi.pdf> Accessed 5/9/2016

49. Garda Inspectorate, 2014, Crime Investigation Report

### Recommendation

- Ensure the 'gold standard' of data collection and analysis is developed within An Garda Síochána, Courts system, TUSLA and HSE and other relevant agencies, is implemented in consultation with civil society organisations and is in line with human rights-based standards of data collection.

### Femicide

Since the beginning of 1996, 211 women have died violently in Ireland. In the resolved cases, 86 women (55%) were killed by their partner or ex-partner.<sup>50</sup> In other jurisdictions, domestic homicide reviews are systematic multi-agency reviews which are understood to be a route to improving both risk assessment and management, and to identifying gaps in policy and practice. This needs to take place in Ireland. A review of domestic homicides from 2007 has recently been committed to by the Department of Justice and Equality and An Garda Síochána to identify trends and patterns which is a positive and necessary development. A system of risk assessment is also urgently required in order to protect the lives and safety of women and children. This will require close co-operation from a range of agencies – An Garda Síochána, TUSLA,<sup>51</sup> NGOs and local authorities regarding accommodation. It will also require appropriate and effective responses to meeting the identified safety risks to women.

### Domestic Violence

In Ireland, domestic violence is not classed as a crime but rather describes a context in which crimes occur.<sup>52</sup> When a perpetrator is charged and prosecuted this is done under a range of other criminal statutes (e.g. damage to property, threats, assault, rape, homicide), making it impossible to get an accurate picture of how domestic violence perpetrators are dealt with by the criminal justice system. Furthermore, while the legislation provides for the criminalisation of forms of domestic violence such as assault and sexual violence, provision is not made for coercive control nor are repeated patterns of violence legislated for (unless they satisfy the definition of criminal harassment). Establishing new criminal legislation to include all forms of intimate partner violence and coercive control including physical, sexual, psychological and economic abuse would recognise domestic violence as a serious crime with significant consequences for victims and allow for harsher penalties and address high rates of recidivism by requiring more severe punishments for multiple domestic convictions.

The current domestic violence legislation governs civil protection orders. However, its effectiveness is undermined as it does not include a clear and comprehensive definition of what constitutes 'domestic violence'. One of the major findings of a 2015 study was that the law is being applied inconsistently in civil courts in different parts of the country.<sup>53</sup> As a consequence, responses vary, legal professionals find it difficult to predict outcomes for women and this in turn deters women from reporting and pursuing legal cases. This is undoubtedly contributing to the low levels of

reporting and high levels of withdrawals of complaints. A clear statutory definition of 'domestic violence' should be adopted to assist the operations of civil courts.

Dating or formerly dating, intimate partners (of either sex) should have the protection of the domestic violence legislation, not least because abusive behaviour is by no means confined to current or former intimate partners who are, or were, living together. It also includes cases where there is no issue relating to legal or beneficial interests in property.<sup>54</sup> Furthermore, emergency interim barring and protection orders are currently unavailable outside of ordinary court hours. Moreover, the courts, when dealing with domestic violence orders, custody or access, are usually not supplied with expert assessment of the safety of children in the relationship and it is common that the abuser has unsupervised access. Even when supervised access is ordered, there are no suitable access centres with staff trained on the dynamics of domestic violence. The forthcoming Reformed and Consolidated Domestic Violence Bill, published in 2015, should be refined, progressed, enacted and brought into force as soon as possible.

Women's shelters are frequently oversubscribed. In 2014, domestic violence services were unable to meet 4,831 requests for safe accommodation because their refuge was full.<sup>55</sup> Ireland's shelters only provide 31% of the places needed according to the Recommendation of the Council of Europe.<sup>56</sup> In recent years, the housing and homeless crisis has impacted greatly on women and children escaping domestic violence. As well as the challenges experienced by all people in need of housing assistance, women escaping domestic violence face unique and additional challenges in relation to eligibility for social housing.<sup>57</sup> The result is that many women are forced to stay with or return to the abuser, or having accessed refuges, end up staying there for months, due to the lack of exit options. This in turn contributes to the unavailability of places in refuges.

### Sexual violence

The prosecution of serious cases of sexual violence remains very low in Ireland.<sup>58</sup> In the SAVI report of 2002, only 8% of women who suffered an adult sexual assault reported their experience to the Gardaí.<sup>59</sup> In 2009 Ireland was among 11 countries that took part in the EU Daphne II project, Different systems - similar outcomes,<sup>60</sup> which looked at attrition in rape cases. The report found the reporting of rape had increased in Ireland by over 500% between 1977 and 2007 but that the conviction rate had fallen. Between 1998 and 2000 the conviction rate was 16%, but at the time of the report had dropped to 8%.<sup>61</sup> The small percentage of those known to have suffered sexual violence who proceed to prosecution is a matter of serious concern. It is problematic that there are no sentencing guidelines available to the judiciary in relation to rape and sexual assault cases. Legal professionals do not receive specific training targeted at ensuring the protection of the victims of sexual violence.

50. Women's Aid Female Homicide Media Watch 1996 to June 2016.

51. On the 1st of January 2014 the Child and Family Agency became an independent legal entity, comprising HSE Children & Family Services, Family Support Agency and the National Educational Welfare Board as well as incorporating some psychological services and a range of services responding to domestic, sexual and gender based violence.

52. See Women's Aid Submission to the CEDAW Committee in relation to the Republic of Ireland (January 2017).

53. SAFE Ireland. (2015) The Lawlessness of the Home. Athlone: SAFE Ireland. Available at: <http://www.safeireland.ie/wp-content/uploads/SAFE-IRELAND-The-Lawlessness-of-the-Home.pdf>

54. In 2015, there were just over 17,000 visits to [www.2in2u.ie](http://www.2in2u.ie), a dating abuse website of Women's Aid.

55. Safe Ireland National Domestic Violence Service Statistics Report 2014.

56. Women Against Violence Europe (WAVE) Country Report 2014 Vienna. The calculation above was worked out by WAVE using the standard of 1 family place (enough room for a woman and average number of children) per 10,000 population, which is the standard used by the Council of Europe and the Istanbul Convention. Moreover, the IC Explanatory Report also states "However, the number of shelter places should depend on the actual need." [Council of Europe, CETS 210, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence page 25, paragraph 135.] The huge number of women and children that could not get access to emergency refuge in the last few years confirms that Ireland does NOT meet this standard.

57. As some Local Authorities: (1) do not consider "homeless", women who have left home because of domestic violence and are staying with friends/relatives, so they are not eligible for priority housing. (2) There is no consistent policy on rehousing women who have had their name previously on a tenancy or mortgage. (3) Policies require the woman to have lived in the area for a specified time or to have local connections, ignoring the fact that they may wish to move to an area that is away from their abuser.

58. See the Dublin Rape Crisis Centre submission to this Committee.

59. THE SAVI REPORT Sexual Abuse and Violence in Ireland. McGee et al. Royal College of Surgeons in Ireland. Commissioned by Dublin Rape Crisis Centre:

60. <http://kunsapsbanken.nck.uu.se/nckkb/nck/publik/fil/visa/197/different>

61. <http://www.irishtimes.com/news/just-8-of-reported-rapes-result-in-convictions-1.756237>

Irish law has no statutory definition of consent in sexual cases and an accused's entirely subjective view of 'honest consent' constitutes a full defence to a charge of rape.<sup>62</sup> While the Tánaiste has recently given a firm commitment to create a statutory definition of consent, it is not clear at this stage if the subjective 'honest belief' defence will be reformed to a defence test based more on reason. The measures contained within the Criminal Law (Sexual Offences) Bill 2015 have the capacity to significantly protect women and particularly girls, against sexual offences and to heighten their protection in the court system. The draft legislation would advance the rights of those with intellectual disabilities both to have their rights to family life recognised and also their rights to be better protected from sexual harm. While recognising the Government's commitment to ensuring this legislation is put in place, NWCI remains concerned about the length of time that this legislation is taking to process through the Oireachtas to enactment, following which it will have to be implemented by regulation.<sup>63</sup> It was first debated in October 2015.

### Stalking

Digital abuse sometimes referred to as "revenge pornography" and cyber stalking are set to become illegal offences, after Cabinet approved the drafting of a Non-Fatal Offences (Amendment) Bill to address loopholes in current legislation. This is to be welcomed. However, there should be a distinct offence of stalking. Currently, harassment is dealt with under Section 10 of the Non-Fatal Offences Against the Person Act 1997, however, the definition of harassment in this Act is complex and hard to prove. It is the experience of those working in this sector that this Act is rarely used to protect women who are stalked by their partners. It is important that stalking legislation should recognise that behaviours that may appear innocent or trivial when viewed in isolation may amount to harassment when viewed in context and that stalkers can target not just the victim but also someone close to the victim as a means of creating fear and apprehension in the victim. In the context of domestic violence, this often means targeting children, new partners, family and friends, or colleagues of the victim.<sup>64</sup>

A defined order, like a non-harassment order or a restraining order, copies of which could be served on the accused/defendant, the victim and the Gardaí, would be much clearer than an order made under s10(3). This would also be open to the court to make an order in circumstances where harassment has occurred but a criminal charge has not been brought.

### EU Victims Directive

In order to comply with and give effect to the EU Victims Directive, the State published the Criminal Justice (Victims of Crime) Bill 2016 on December 29th 2016, which, when enacted, will put victims' rights on a statutory footing in Irish law for the first time. It should be progressed with expediency and should be reviewed within a designated time period to ensure the full implementation of the Directive.

### Recommendations

- Remaining steps necessary to ratify the Istanbul Convention should be taken with the minimum of delay.
- Domestic Homicide Reviews which are systematic multi-agency reviews should be carried out annually.

- Domestic violence should be made a distinct criminal offence. Any offence should include physical, emotional or psychological abuse and coercive control.

- Further amending the Domestic Violence Act to extend eligibility for Safety Orders to all parties who are or have been in an intimate relationship, regardless of cohabitation and providing for Emergency Barring Orders. Any person should be able to seek a restraining order against an individual who has put them in fear.

- Emergency Interim Barring and Protection Orders should be available outside of ordinary Court hours, through liaison by an Garda Síochána and judiciary and consideration should be given to providing additional powers for An Garda Síochána to institute interim barring orders for a limited period of time to allow the victim time to consider taking further action, similar to practise in other EU countries.

- The Courts, when dealing with domestic violence orders, custody or access, should be supplied with expert assessment of the safety of children in the relationship. When supervised access is ordered, there should be suitable access centres with staff trained on the dynamics of domestic violence.

- Provide adequate funding to specialist domestic violence services so they can meet demand and increase refuge provision to meet international standards. Ensure that current national homeless policy and future policies engage with the reality that domestic and sexual violence is a leading cause of women, children and young people becoming homeless.

- Progress the Criminal Law (Sexual Offences) Bill 2015 with immediate effect.

- A statutory definition of consent be incorporated and the legislation should also reform the currently entirely subjective defence to rape of 'honest belief'.

- There should be a distinct offence of stalking, and a definition should also include online stalking which provides for restraining orders for victims. Stalking should be explicitly recognised as a ground for applying for a safety order.

- The State party should prioritise the enactment and implementation of legislation to give effect to the EU Victims Directive.

### Training

There is an absence of appropriate training on domestic and sexual violence within all statutory agencies and the judiciary. Training for Gardaí is solely included within training at recruitment stage. Training for judges and other legal personnel is ad hoc and not systematic. Medical and paramedical staff do not consistently receive training on the impact of physical and sexual violence on women, particularly by partners and former partners. Similarly training is ad hoc for HSE and TUSLA personnel. Staff in all agencies that assist women experiencing domestic violence need to be trained to develop an understanding of the impact of abuse on women and children, the risk of the abuse continuing or escalating and the responses of perpetrators to approaches to agencies by women for support. Training is also required on legislation and internal policies which are relevant to domestic and sexual violence on an ongoing basis. Dedicated funding must be ring-fenced within the budgets of each statutory

62. The decision of the Supreme Court was delivered by Mr. Justice Peter Charleton on behalf of a 7 judge Supreme Court on Friday November 11th 2016 in the case of The People (at the suit of the DPP) and C O'R.

63. Criminal Law (Sexual Offences) Bill 2015 as amended in the Select Committee on Justice & Equality

64. Women's Aid Response to the Law Reform Commission Issue Paper on Cyber-Crime Affecting Personal Safety, Privacy and Reputation including Cyber-Bullying, January 2015).

agency to provide high quality training at regular intervals. The composition of the training is also important and should include the diverse experiences of women from minority ethnic groups and developed in consultation with NGOs.

### An Garda Síochána

The establishment of the National Protective Services Bureau whose remit includes domestic, sexual violence, trafficking and child pornography is a welcome development. There is now greater oversight of the force through the Bureau. However, it is significantly under resourced to carry out its wide remit effectively. Other welcome changes include the Garda Victims Service Offices, new information leaflets for victims and the introduction of new domestic violence kits for officers called to incidences to collect evidence. While these initiatives are important, the introduction of further necessary reforms is unacceptably slow and the approach of Gardaí on the ground remains inconsistent. It is clear that there are insufficient Garda personnel at district level to meet the demand of domestic violence incidences appropriately. The quality of the initial response a woman receives from An Garda Síochána is critical to her future contact and engagement. Greater monitoring and supervision is required of domestic violence incidences to ensure consistent and appropriate responses. In addition, the absence of regular training results in a lack of expertise and understanding to effectively respond to domestic and sexual violence in a consistent manner. Divisional Garda Protective Units, due to be in place in 2016, are still not operating with only three such units now proposed on a pilot basis instead of the original nine. A new Garda domestic violence policy has also been under development for the last four years, it is unclear when it will be published and how it will be implemented effectively.

### Recommendations

- Fund and provide mandatory and high quality training, in conjunction with specialist services, to the Gardaí, Court and legal personnel, including judges and child experts, social workers, relevant staff in A&E departments, maternity hospitals, mental health and child protection services, Local Authorities staff and community organisations, which are often the first and vital point of contact. This training should include material on the fluid, complex and inter-related nature of the specific needs of women victims of violence. Training should also address 'unconscious bias' to help avoid stereotypical thinking in relation to some groups of women with specific needs.
- Adequately resource the Garda National Protective Service Bureau and the Divisional Units to increase the capacity and effectiveness of the Gardaí and increase resources so that each district has adequate personnel to respond to domestic and sexual violence.

### Habitual Residence Condition (HRC)

Habitual Residence is a condition which applicants must satisfy in order to qualify for certain social welfare assistance payments, including child benefit. All applicants applying for social protection are required to meet the HRC, including Irish and EU citizens. However, this has placed migrants, Travellers (who move across jurisdictions, generally from the UK to Ireland) and Roma in Ireland (and indeed returning Irish immigrants) in very vulnerable positions, whereby they cannot access any support

services. In relation to victims of human trafficking, due to the HRC, non-third country nationals and those with a pre-existing immigration permit cannot access appropriate housing and social supports; they can be housed in asylum reception centres which are inappropriate to a recovery process.

It has a particular negative impact upon women experiencing violence and their children. For women trying to leave a situation of violence, if they do not have access to financial resources from the State, it can impact on their ability to successfully leave a violent relationship long term. It also impacts on their ability to access a refuge because a woman generally has to be in receipt of social welfare to access a refuge beyond an emergency period. Ireland must ensure that women experiencing violence are not subject to the HRC when trying to access safety in a domestic violence situation. In 2014, the Joint Oireachtas Committee on Justice, Defence and Equality recommended the introduction of a formal exemption to the Condition to account for domestic violence.<sup>65</sup>

There also needs to be formal recognition of domestic violence in immigration law by making provisions which enable migrants who experience domestic violence to apply for independent residence permits. While NWCI acknowledges that the Irish Naturalisation and Immigration Service has developed useful guidelines in relation to survivors of domestic violence, these need to be placed on a statutory basis. Pending determination of applications to remain in Ireland, victims of domestic violence must be able to access safe emergency housing and essential welfare benefits to meet basic needs.<sup>66</sup>

### Recommendation

- Review the implementation of the right to reside (Directive 2004/38) and HRC (as per the Joint Oireachtas Committee's recommendation) and introduce an exemption to end their discriminatory impact on Roma and Traveller women who experience domestic, sexual and gender-based violence.

### Female Genital Mutilation

It is estimated that at least 5,277 women and girls in Ireland have experienced FGM. A 2015 study on FGM risk within the European Union calculated that between 1 and 11% of the 14,577 girls aged 0-18 in Ireland whose parents originate from FGM-practicing countries may be at risk of having the procedure done to them. While progress has been made on the prohibition of FGM in Ireland through the introduction of the Criminal Justice (Female Genital Mutilation) Act 2012, legislation alone is insufficient to ensure the abandonment of the practice. Immediate action is needed across Government departments to put in place proper protection and prevention measures, as part of a comprehensive plan to safeguard women and girls. As regards FGM treatment, the funding by the Health Service Executive of a specialist treatment service for women and girls who have undergone FGM is a welcome development.

### Recommendation

- Allocate resources for the establishment of an inter-departmental committee on FGM tasked with the role of drawing up a National Action Plan to combat FGM as a whole of government approach.

65. Joint Committee on Justice, Defence and Equality Report on hearings in relation to Domestic and Sexual Violence October 2014.

66. See Domestic Violence Coalition Submission to the Joint Oireachtas Committee May 2013. Available at [www.womensaid.ie](http://www.womensaid.ie)

## 5. Trafficking and exploitation of women

### Trafficking

Ireland's first National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland expired in 2012. There have been extremely low conviction rates for sex trafficking since enactment of 2008 legislation with no convictions since 2013. The Second National Action Plan which was published in late 2016 commits to addressing the identified and well established problems but is not yet a guarantee for a satisfactory resolution. What must occur is a review and revamp of the present procedure for identification of victims of trafficking. The current policy limits the right to formal identification solely to undocumented third country nationals, excluding the vast majority of victims who are either EU nationals or asylum seekers. Apart from amending this policy by removing any considerations linked to nationality and immigration status, there needs to be the involvement of independent parties in the assessment process for identification. Presently, only high-ranking officers of An Garda Síochána can identify.

There also needs to be a comprehensive policy with regard to assistance and protection of victims. Such a policy is presently absent with the exception of Administrative Immigration Arrangements for undocumented third country nationals. In that respect the Victims Directive should be fully applied to all suspected cases of victims of trafficking whether or not they are formally recognised. There should be a review of the compensation mechanisms and their relevance for victims of trafficking.<sup>68</sup> There is a lack of viable avenues to compensation for the majority of victims of trafficking and especially those affected by the most prevalent form of the crime, namely sexual exploitation. The existing avenues put victims of trafficking for sexual exploitation at a disadvantage because, in the vast majority of cases, they do not have verifiable expenses or employment losses to present in order to avail of the Criminal Justice Compensation Tribunal or any other body. There needs to be serious consideration paid to the possibility of appointing an independent national rapporteur that reports directly to the Oireachtas on matters concerning human trafficking. Presently the Department of Justice and Equality's Anti Human Trafficking Unit evaluates the efforts and investments in the area, which is a clear conflict of interest. Instead there should be an Independent national rapporteur who reports directly to the Oireachtas.

### Prostitution

Women and children are exploited in Ireland's sex industry that has an estimated annual value of 180 million and is present and thriving across Ireland.<sup>67</sup> On average 1000 women are available for sale on any given day and the vast majority of them are migrant women and girls who are particularly vulnerable.<sup>69</sup> Trafficking for the purposes of sexual exploitation is a well-documented issue in Ireland and significant efforts have been made to tackle these problems. NWCI views prostitution as a form of violence against women and holds the firm belief that prostitution is not an equal consensual contract which both people have equal power. Most women enter prostitution because they do not have a choice. Prostitution is a violation of women's human rights, including human dignity. The system of prostitution perpetuates patriarchal views on women's sexuality and legitimates male domination in society. As long as it is tolerated, it is an obstacle to equality between women and men.

NWCI believes the introduction of legislation to criminalise the purchase of sex whilst at the same time decriminalising those who sell sexual acts and offering support services to people in prostitution is the only viable way to work towards an end to this exploitative industry. The Criminal Justice (Sexual Offences) Bill 2015 as a mechanism for reducing the harm and exploitation of prostitution and sex trafficking is an essential piece of legislation that should be enacted without delay. This legislation is supported by the 70+ members of the Turn Off the Red Light Campaign, of which NWCI is a member. A law that does not criminalise those 'selling' in prostitution but targets those who buy sex should not impact the availability or access to sexual health services or education initiatives because these are already in place for those involved in prostitution. This approach will ensure that any education initiatives will have to target a broader male population and not a narrow cohort of 'identified sex buyers'. Therefore a criminal offence in relation to this activity should not preclude safe sex education.

### Recommendations

- Appoint an independent national rapporteur that reports directly to the Oireachtas on matters concerning human trafficking.
- Investigate new possibilities for compensation for victims of trafficking, such as for example, the creation of a specialised fund or the possibility for direct compensation from the Criminal Assets Bureau fund.
- The immediate enactment of the Criminal Justice (Sexual Offences) Bill 2015, and its effective implementation.
- Resources must be ring fenced to provide a range of support services for survivors of prostitution. These include: access to social protection, education, training and employment, and appropriate accommodation, regardless of nationality or immigration status. Existing health and support services must be maintained and further resourced nationally.

67. See Ruhama submission to this Committee.

68. Article 6(6) of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime provides that each State "shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered"

69. Kelleher Associates, O'Connor M., and Pillinger, J. (2009), Globalisation, Sex Trafficking and Prostitution: The Experiences of Migrant Women in Ireland, Dublin: Immigrant Council of Ireland. [www.dublinpa.ie/dignity/traffickingreport.pdf](http://www.dublinpa.ie/dignity/traffickingreport.pdf)



## 6. Participation in political and public life

The increased visibility of women in decision making positions, particularly within our justice system (State Report paras 134 and 135), is to be welcomed, however, the overwhelming number of those in positions of decision-making, whether elected or appointed, continue to be men. A significant majority (97%) of the members of the Convention on the Constitution recommended that the government needed to do more to enhance women's participation in politics and public life.<sup>70</sup> The CEDAW principles on temporary special measures and General Recommendation 25 have not been fully utilised.

### Political life

Ireland has historically had a low level of women's participation in elected politics. Since last examined by the CEDAW Committee, in 2005, a significant positive development was the introduction of a quota of 30% for national elections, which has improved women's participation, and women now hold 35 of the 158 seats in the lower house of our national parliament.<sup>71</sup> Despite a pre-election promise of a 50/50 Cabinet, just four women were among the 15 senior ministers and just six women out of 23 were appointed to committee chairs.

The Electoral (Amendment) Political Funding Act 2012 provides that State funding received by a political party will be reduced by 5% unless at least 30% of its candidates at the preceding general election were women and at least 30% were men. This will increase to a minimum 40% in 2023. All parties met their quota during the 2016 general election. However, the measures under the Act do not extend to local government elections. Instead a voluntary quota of 30% was in operation during the 2014 local elections and three political parties failed to reach it: Fianna Fail 17.1%; Fine Gael 22.6% and Labour 28.9%.

The State Report omits any examination of the reasons for the political parties' failure to meet these voluntary quotas at local level. NWCI would like to see the quota system extended to local elections in order to see a greater increase in the number of female politicians at local level. However, candidate selection quotas on their own will not solve all the problems. Quotas must be used in conjunction with other 'soft' measures to see real change such as civic education programmes, mentoring and training programmes, childcare and eldercare and financial supports.

### Public and Private Boards

An analysis of 180 boards shows gender targets are being largely ignored by some ministers, with 97 boards having less than 40% female or male membership.<sup>72</sup> The incremental measures undertaken by successive Governments since 1993<sup>73</sup> have seen the representation of women on State Boards creep towards the minimum target of 40%, while the percentage of women occupying the position of chair stands at approximately 23%. There is no penalty for boards that do not have the appropriate gender balance. While most boards are lacking in female members, a small number need more male representation. None of the 12 boards under the Department of Agriculture meets the target of 40% women. The State confirmed that when successful candidates come through their "alert system" (State Report

para 143), approximately 46% of the appointments are women. Furthermore, the 2014 Act which established the Irish Human Rights and Equality Commission is an example of best practice in this regard as it sets out that, of the members of the Commission, not less than a half shall be women.<sup>74</sup> The public sector should lead the way for the private sector, where women occupy only 10% of board positions.

### The Civil Service

In 2008, the Centre for Gender and Women's Studies, Trinity College Dublin published a report entitled 'Women and Ambition in the Irish Civil Service'.<sup>75</sup> The researchers concluded that the issue of child bearing, child rearing and work-life balance is of great importance in the context of the potential for women to advance in their careers. The study found that there were differences in the family structures of the senior managers,<sup>76</sup> suggesting that women, unlike their male counterparts, at the top, were making sacrifices in their personal life in order to reach senior management grades. While measures are being taken by the Government to improve the position of women in the civil service, (State Report paras 138 to 141), attention should be paid to the steps being undertaken by the Higher Education Authority. Following a Review of Gender Equality in Irish Higher Education Institutions published in 2016, it determined that radical steps must be undertaken in order to change a culture that is biased against the advancement of women, including the introduction of gender quotas.

### Local community decision-making

Throughout the recent period of austerity the community development sector has undergone a prolonged process of dismantling brought about by significant cuts to funding, the prioritisation of labour market activation initiatives focused on individuals over collective social and economic development, and the replacement of grant-aided schemes with target-driven, centrally prescribed tendering processes. Disadvantaged women are no longer specifically targeted or prioritised in the State's only social inclusion programme (a cross-cutting 'horizontal theme' naming gender equality has been inserted but is not rigorously assessed). A new, separate fund was established in 2016 for local community-based women's groups, but is available at present solely to one network of 17 small organisations, leaving other local women's projects without sufficient funding to carry out integral development work in their communities.

### Rural women

In a rural context, it has long been a concern that policies have focused predominantly on economic development in isolation from social development and have failed to recognise, resource or support the diversity that, while now growing, has always been a part of rural society. Socially excluded members of rural populations are rarely targeted or prioritised in rural development policy and programmes. The White Paper on Rural Development Committee<sup>77</sup> found that '[t]he problems of poverty and social exclusion in rural areas have a distinct impact on women. Economic dependency, isolation, unequal opportunity and participation are compounded by the problems of distance from services and amenities. The absence of an adequate

70. Second Report of the Convention on the Constitution (i) Amending the clause on the role of women in the home and encouraging greater participation of women in public life; and (ii) Increasing the participation of women in politics. May, 2013 <https://www.constitution.ie/AttachmentDownload.ashx?mid=268d9308-c9b7-e211-a5a0-005056a32ee4>

71. The figure places Ireland in 76th place in the world tables of women's representation in the lower or single house of national parliaments. ([www.ipu.org](http://www.ipu.org)). Ireland is placed 25th out of 28 in the EU. 72. 'More than half of Government's State boards fail to meet gender quota', Independent, 12 January 2017, See: <http://www.independent.ie/irish-news/politics/more-than-half-of-governments-state-boards-fail-to-meet-gender-quota-35336950.html>

73. Women's representation on all non-commercial State Boards increased was at 15% in 1992. See <http://www.justice.ie/en/JELR/Pages/PR14000203>

74. Section 12 (b), Irish Human Rights and Equality Commission Act 2014.

75. <https://www.tcd.ie/cgws/assets/pdf/Women%20and%20Ambition%20Report%202008.pdf>

76. 86% of the senior male managers were married and the corresponding percentage of them also had children while only 56% of the female senior managers were married and 53% had children

77. See <https://www.agriculture.gov.ie/publications/1996-1999/whitepaperonruraldevelopment/> See chapter 9, Social Inclusion.

transport service and affordable childcare services in many areas make it difficult for women to avail of training and education or to enter into or retain employment.'

### Women in the Media

The lack of gender balance is a concern recognised across the wider broadcasting arena. Research in Ireland has shown that on average less than one quarter or 23% of the voices on air are women and women represent just one fifth of on air voices in news and current affairs broadcasting. Such imbalance can negatively impact attitudes toward male and female participation in our society, and contribute to the reinforcement of negative gender stereotypes. The Broadcasting Authority of Ireland has the capacity to raise awareness of gender equality across all stations public and private. It also has the capacity to compel stations, to meet minimum targets, if these targets are linked to the licencing process.<sup>78</sup>

### Women in the Arts

There is a chronic problem in the theatre, and wider arts, industry in Ireland when it comes to the advancement of women. Latest figures show that more women than men are matriculating through Third Level Education with degrees in theatre practice, yet women are very poorly represented professionally as directors, playwrights, producers, and even as performers in the organisations in receipt the highest levels of State funding. Currently the Arts Council, funded through State budgets, does not take into account the gender of the applicant and therefore has no mechanism in place to monitor gender differences in terms of number of awards made and amounts awarded. This in turn means there is currently no way to assess and evaluate gender imbalances, or to strategize around reducing imbalances and inequalities where they occur. While the Arts Council has underlined the importance of diversity in their funding models in their two most recent reports, there seems to be no attempt to outline what this diversity might consist of, or how exactly it is being promoted. The Arts Council distributes public money to arts organisations. They should make equal distribution of funding in gender terms a stated priority.

### Recommendations

- Create a family-friendly Oireachtas (Parliament) by introducing maternity leave for women who are elected representatives and paid paternity leave for male politicians.
- Direct the Houses of the Oireachtas Commission to conduct a gender audit of the Houses of the Oireachtas and establish a clear plan, including benchmarks and indicators, for making the institution's policies and practices more gender sensitive.
- Legislate for gender quotas to be introduced for local elections.
- Create 40% quota for female representation on State Boards.
- Introduce a quota for the boards of publicly listed private companies.

- The particular concerns of women in rural areas should be incorporated into all developments in relation to rural development, including the LEADER programme,<sup>79</sup> and similar programmes should be gender proofed.

- The policies and guidelines regulating these local government structures should contain a particular focus on women to enhance their participation in decision-making and policy formation processes.

- Ensure that the community development sector, in particular local women's community groups, and groups representing minority ethnic women, be funded under specific grant agreements. A good example of this is the Support Scheme for Women under the Department of Justice and Equality under which the National Collective of Community-based Women's Networks is funded, and which could be expanded to support women's community-based groups across the country.

- Require the Broadcasting Authority of Ireland's licensed stations to include a section in their annual reports on gender equality and report on performance. Require all stations, public and private, to report on gender equality performance. Set minimum gender quotas for guests/experts of 30:70 over a three year period. Highlight programmes and stations that achieve the target of 40:60 and challenge stations and programmes that do not show improvements over time.

- The Arts Council should make equal distribution of funding in gender terms a stated priority.

78. For more information please see Dr. Kathy Walsh, Dr. Jane Suiter & Orla O'Connor, Hearing Women's Voices? Exploring women's underrepresentation in current affairs radio programming at peak listening times in Ireland, November 2015).

79. The LEADER Programme 2014 – 2020 Rural Development Policy is a core element of the European Union's Common Agricultural Policy, delivered through national Rural Development Programmes RDPs. LEADER is a key funding pillar supporting the implementation of RDPs through the delivery of local development actions in rural communities.n.

## 7. Education

Women's participation in education has increased and there are higher success rates of young women at secondary level. At third level, while there have been efforts to change educational options for women and men, as well as efforts to increase leadership roles in academia, this has yet to manifest itself in all areas. Women indicated that everyday problems include overt and unconscious sexism from male-dominated lecturer panels and male students, lack of female role model lecturers and an academic system that often demands inflexible timelines and group type working that conflicts with care responsibilities. Furthermore, pathways from education to industry and ongoing training whilst working can present significant problems for women in terms of care responsibilities, loss of social welfare supports such as Medical Card, confidence and networking. NWCI is concerned by the low level of young people from lower socio-economic groups that actually progress to Higher Education. The National Plan for Equity of Access to Higher Education 2015 – 2019 stated that only 16% of young people from Dublin 10 progress to Higher Education. Many DEIS schools have experienced a serious decline in retention of students from the Traveller community.<sup>80</sup>

### Equality Education

The Department of Education and Skills has adopted a National Strategy on Education for Sustainable Development that seeks to ensure learners are equipped with the relevant knowledge, the key dispositions and skills and the values that will motivate and empower them throughout their lives to become informed active citizens who take action for a more sustainable future. The Strategy emphasises that 'ESD' is proactive and transformational. It lists a range of policy areas spanning the environmental, social and political issues, including gender equity. The Department should work to ensure that the education system both guarantees gender equity from early childhood to further and higher education, and is a driver for gender equality. Ensuring that children and young people are equipped with the knowledge and skills to prevent and counteract inherent gender bias is key. This needs to be recognised in the development of curricula for primary and post-primary education, in particular the Framework for the Junior Cycle. New curriculum developments should be proofed to ensure that potential gender bias is recognised and dealt with. This can contribute to addressing other national priorities, such as increasing the engagement of girls with STEM subjects.

### Education about domestic, sexual and gender-based violence

Educating young people about domestic, sexual and gender-based violence is part of the proposed Actions for Second National Strategy on Domestic Sexual and Gender-based Violence 2016-2021. According to a Monitoring Report published in June 2016, the current stay safe programme meets the obligations of this action. However, it is the view of NGOs working in this area that both children and young people in primary and secondary education are not appropriately and sufficiently educated on gender based violence. The revised programme should also

cover what is meant by a safe relationship. Educating teenagers on sexual consent is vital and it should be complemented by education on respectful, healthy relationships with awareness of the unacceptability of verbal, emotional and all other forms of domestic abuse. There have been a number of studies of late that clearly indicate that young people are having trouble understanding the concept of 'consent'.<sup>81</sup>

### Relationships and Sexuality Education (RSE)

The provision of sexuality education in Ireland is hugely varied and its comprehensiveness depends on the ethos and value system of individual schools. A strong policy and legislative infrastructure exists (the Department of Education has developed policy and curriculum guidelines, as well as other resources), however, significant freedom is given to individual schools in developing an RSE policy, and the monitoring and evaluation systems are inadequate to ensure effective implementation. RSE is sometimes taught as a stand-alone subject or in conjunction with other subjects, such as Biology and Religious Education. The latter approach is particularly problematic as it may result in young people only receiving information about the biological aspects of sex or being taught sexuality education within a religious framework. As a result, there is a lack of transparency surrounding sexuality education and uneven implementation of the RSE programme across the country. In addition, the policy allows schools discretion to invite external groups that focus exclusively on heterosexual relationships, promote abstinence until marriage and/or advocate against abortion to deliver programmes or provide materials for use in schools. As a result, young people go through the school system without acquiring adequate information and knowledge to negotiate safe sexual relationships and to protect themselves from sexually transmitted infections and unplanned pregnancy.<sup>82</sup>

### Women in leadership in education

Institutions have, to varying degrees, sought to address gender inequality. However, although there is gender-balance at entry-level academic grades, 81% of academic professor positions are filled by men, and although 62% of all non-academic staff are women, men represent 72% of the highest paid non-academic staff. A national review of gender equality in higher education institutions concluded that a series of systematic barriers have cumulatively impacted on the degree of gender equality in Higher Education Institutes. Talent alone is not always enough to ensure success, and the 'fix the women' approach – aimed at getting women to change to fit the existing culture has not resulted in substantial change. The expert group concluded that "deliberately ambitious and radical" recommendations are required to affect "gender balance in top leadership positions". They adopted nearly a dozen key recommendations but in particular, mandatory quotas for academic promotion, based on the flexible cascade model where the proportion of women and men to be promoted/recruited is based on the proportion of each gender at the grade immediately below.<sup>83</sup>

80. There continues to be a significant gap between the participation and attainment of Traveller children when compared with children from wider settled society. The attainment and retention levels of Traveller students in second level education remains a serious concern. There are lower numbers of Traveller women engaging in higher and further education. In 2006 only 19 Traveller women had obtained a third level qualification at degree or higher level and only 3.1 per cent of Travellers continued their education (<http://www.cso.ie/en/census/census2006reports/census2006volume5-ethnicculturalbackgroundincludinngtheirishtravellercommunity/>). The 2011 Census revealed that only 3.1 per cent of Travellers continued their education past the age of 18 compared with 41.2 per cent for the general population and that the number of Irish Travellers who completed third level in 2011 was 115 or 1 per cent. This compares with 30.7 per cent of the general population excluding Irish Travellers.

81. In 2013, the Union of Students of Ireland carried out a study of students' experiences of harassment, stalking, violence & sexual assault, entitled 'Say Something'. The research found that 16% of students reported having experienced some form of unwanted sexual experience. But more disturbing were the explanations given as to why the respondents hadn't reported to the Gardaí; (i) that they did not believe the incident was serious enough to report (57%) or (ii) that they did not think that what happened was a crime (44%). See poll of 25 November <https://ec.europa.eu/ireland/news/21-de-mhuintir-na-h%C3%A9ireann-den-tuairim-go-bhfuil-caidreamh-colla%C3%AD-gan-toil%C3%BA-ceart-go-leor-i-en>

82. Ireland was reviewed by the UN Committee on the Rights of the Child in early 2016, wherein the Committee expressed concern at the "severe lack of access" to sexual and reproductive health education for adolescents. The Committee recommended that Ireland "adopt a comprehensive sexual and reproductive health policy for adolescents and ensure that sexual and reproductive health education is part of the mandatory school curriculum and targeted at adolescent girls and boys, with special attention to the prevention of early pregnancy and sexually transmitted infections". This recommendation was later reinforced by two Member States during Ireland's second Universal Periodic Review (UPR) in May 2016.

83. Report of the expert group HEA Review of Gender Equality in Irish Higher Education Institutions, JUNE 2016. Available at <http://www.heai.ie/en/policy/policy-development/gender-equality>

### Recommendations

- Increase resources to make education available to young people from lower socio-economic groups, particularly in DEIS schools, to both remain longer in education and progress to Higher Education.
- Expand the current school curricula to include education about gender equality, including education about the need for shared care responsibilities.
- Expand the current school curricula to include age appropriate awareness and prevention programmes throughout the education system, including a focus on gender based violence.
- Ensure that all young people receive high-quality, evidence-based sexuality education, in line with the goal on sexual health promotion, education and prevention in the National Sexual Health Strategy 2015-2020.
- Laws and policies should be put in place to ensure that children and adolescents can access social, personal and health information in a neutral studying environment and free from religious influence.
- The Higher Education Authority should implement in full the recommendations of its Expert Group on gender equality in higher education institutions.

## 8. Employment and economic independence

The majority of women are in paid work outside the home. Women also undertake the vast majority of care work in Ireland, with the last Census revealing that women provided around two-thirds (66.1%) of all care hours in Ireland. However, in Irish society the dominant approach is to value paid employment and to treat unpaid informal care work as some form of private choice, and although care work is essential to the common good and performs vital social and economic functions, it is neither prioritised nor sufficiently supported. The possibility of economic independence and a decent standard of living for women must recognise periodic gaps in employment for reasons of parenting or care-giving.

### Recognising the role of care work in society

The State has been remarkably hesitant to create any new space for protecting the important work of informal unpaid caring. One example of the failure of the social security system to recognise care work and parenting is the manner in which a person is deemed to be a new entrant if they have not contributed to the social insurance system for the previous two years. This is compounded by the fact that there is no statutory entitlement to flexible work practices in Ireland, with such schemes at the discretion of the employer. Those that may wish to combine care work with part-time waged work also find that they are not eligible for social welfare payments (i.e. Jobseekers Allowance), are not registered as unemployed and are, therefore, discriminated against in terms of welfare income and opportunities to participate in training programmes. It is essential that men's equal responsibility for care work be emphasized. Paternity Leave for fathers, introduced in 2016, is an important step forward in the recognition and sharing of care. The next step is a timeline for paid Parental Leave. Time spent caring should be recognised and credited, both for people currently in the workforce and those who are now of retirement age who have spent a large portion of their lives caring. The National Pensions Framework made a commitment to replace the Homemakers' disregard with credits for new pensioners, but there is yet to be official confirmation of when this will happen. A provision in the Constitution recognising the value of care work in a gender neutral manner would be a useful symbolic statement. However any serious attempt to improve the lot of carers in Ireland must include enforceable constitutional socio-economic rights (see section 1 of this Report).

### Gender pay gap

The gender pay gap in Ireland stands at 14.4%.<sup>84</sup> It has increased from 2008 levels (12.6%) showing that immediate action is necessary to address this pay disparity. For women with one child the pay gap jumps to 31% compared to women with no children (OECD). A 2016 study comparing thousands of professionals in Ireland across a number of sectors revealed that the average earnings gap (basic salary plus bonuses) in the professional sector stands at 20%<sup>85</sup> The average salary gap stands at 16% while the bonus gap goes up as high as 50%. Of particular significance, the gap widens with the number of years of experience that women have and their greater educational attainment had no impact on the earnings pay gap. The Government has committed to putting the reduction of the gender pay gap formally on the political agenda. Increasing transparency around gender pay differences will enable the impact of those workplace policies and practices promoting gender equality to be monitored and remedial action

84. Women and men in Ireland 2013 - CSO - central statistics office (2014) Available at: <http://www.cso.ie/en/releasesandpublications/ep/p-wamii/womenandmeninireland2013>

85. <https://www.morganmckinley.ie/article/irish-gender-pay-gap-stands-20-according-morgan-mckinley-study>

to be prioritised. An employer may be unaware that they even have a gender pay gap until they analyse their pay information.

### Gender pension gap

The pension gap between men and women in Ireland rose from 35% in 2010 to 37% in 2012.<sup>86</sup> Government reports consistently show the low numbers of women with pension coverage and the high numbers of older women at risk of poverty. Women struggle to build up sufficient contributions across both the private and public pension systems as a result of the pay gap, precarious and low-paid work, carrying out unpaid caring, and being excluded from the labour market for long periods over the course of their lives as a result of the prohibitive cost of childcare. Women who have worked on family farms and in family businesses also do not have social insurance coverage, which means that they are totally reliant on their husbands in older age.<sup>87</sup> Only 16% of those receiving a full state contributory pension are women. While this payment was protected during the recession, the non-contributory pension, on which the majority of women rely, has been steadily eroded. In 2012, changes made to the eligibility criteria for the state contributory pension effectively made it more difficult for those without a full-time, long-term working history to qualify for the maximum weekly payment.

### Low pay, part time and precarious work

Ireland has one of the highest percentages of low paid jobs in the developed world (OECD 2013). According to the Central Statistics Office, in 2014 50% of women workers earned €20,000 or less. The majority of workers dependent on minimum wage are women. Low paid employment is linked to poor working conditions with the use of low and non-fixed-hour contracts in the retail, hospitality and care sectors increasing. These sectors are significant employers of women. The increased casualization of working conditions is a clear consequence of austerity policies which favoured employers concerns rather than employees' rights. The rate of part-time employment is also highly gendered; among women it has traditionally accounted for over a third of the female workforce, and stood at 35% in 2014, compared to 13.8% of men's in the same year. The Low Pay Commission should be strengthened to reflect in-work poverty, the gender pay gap and minimum essential standards of living.

### Childcare

Childcare costs in Ireland are the second highest in the OECD for couples and the highest in the OECD for lone parents. The position is further exacerbated as Ireland has the fourth shortest period of paid family leave in Europe.<sup>88</sup> Mindful that UNICEF recommends 12 months' paid leave as a minimum, NWCI welcomes the government commitment to "significantly increase parental leave in the first year of a child's life" and to "prioritise paid parental leave in the first year". The introduction of paid paternity leave is also a positive step in this regard. A significant development is the introduction of the new 'Single Affordable Childcare Scheme' from September 2017, including both targeted and universal elements. Further investment in the scheme will be critical to build a publically subsidised model of childcare supports and this will need to be prioritised in subsequent budgets. Early childhood care and education must

be recognised as essential social infrastructure, vital to achieving equality for women and for sustainable economic and social development. Critical areas that require further measures are the low pay and working conditions of workers in the childcare sector and supports and availability of out of school hours childcare. In the absence of significant State investment into the sector, there are only limited options available to support the financial sustainability of services, which are predicated on maintaining the status quo of a workforce that is highly qualified, low paid and employed on a part-time basis.<sup>89</sup>

In addition, while public discourse and policy development will often focus on the cost of childcare for younger children in formal settings, little attention is paid to the needs of older children who require supervision and support. School attendance is not the same as childcare – children only attend school a limited number of hours a day, for only part of the year. Therefore, at the core of any reform measures must be the recognition that the State must play a major role in supporting and subsidising paid employment, particularly in the case of those on low pay with child dependants.

### Lone parents

The latest figures show that 59% (almost three in five) of lone parent households, mostly women, experienced enforced deprivation (inability to afford two from a list of 11 basic necessities) in Ireland.<sup>90</sup> The One Parent Family Payment is a means-tested social welfare payment to support parents on low incomes who are parenting alone. Previously, a lone parent could receive this payment if they met the qualifying criteria until their youngest child reached 18 years of age. However, new measures introduced gradually reduced the age threshold for the youngest child for new recipients until it became 7 years in 2015. Lone parents with children between the ages of 7 years and 13 years may now be entitled to a payment that aims to support them into the workforce (jobseekers transitional payment, although they are exempted from the requirement to seek work). A lone parent whose youngest child is aged 14 years or more must seek and accept full-time work under the same conditions and rules that apply to single people without children, without regard for the potential need for childcare. While lone parents on low pay in receipt of the One Parent Family Payment can qualify for extra financial support (Family Income Supplement), lone parents in receipt of the jobseekers transitional payment cannot.

### Women with a migrant background

Starting in 2009, the Department of Jobs and Enterprise has gradually introduced restrictions to the employment permits system making it more difficult to secure a permit for work in the private home. Since the last reform of the system in 2014, work in the private home has become ineligible in all circumstances which has contributed to the devaluation of the work, often unrecognised, and has resulted in the emergence of exploitative practices. Of special concern is the growing use of the 'au-pair' system as a cover up for the exploitation of childminders in private homes. Au pairs provide childcare to approximately 20,000 families in Ireland, often for as little as €100 per week for sixty hours of work, or more.<sup>91</sup> In spite of recent favourable

86. (European Institute for Gender Equality).

87. Placing a spotlight, through these testimonials, on the impact of a patriarchal pension system, is critical in order to ensure that the inequalities which women experience are acknowledged and addressed in the current reform of Pension policy in Ireland. [http://www.nwci.ie/download/pdf/pension\\_sample4.pdf](http://www.nwci.ie/download/pdf/pension_sample4.pdf) Forgotten Women Personal stories of women experiencing discrimination of the State pension system (2007)

88. The gap between the end of paid leave (a maximum of six months given that two weeks of maternity leave must be taken prior to the child's birth) and the beginning of subsidised preschool programme is approximately 138 weeks, depending on when during the programme year a child turns three years old. With the introduction of paid parental leave and together with the provision of 26 weeks paid maternity leave, Ireland now offers a total of only 28 weeks paid leave (7 months), compared to the average of 76 weeks (19 months) paid leave for parents across Europe.

89. Early Childhood Ireland's recent report Doing the Sums: The Real Cost of Providing Childcare (September, 2016).

90. The results of Survey on Income and Living Conditions (SILC) 2014, released on the 26th of November, 2015.

91. Migrant Rights Centre of Ireland - 'Childcare in the Domestic Work Sector: Who's Minding the Children?'



rulings from the Workplace Relations Commission and official communications from relevant government departments, the enforcement of employment rights of those providing childcare in private homes remains difficult and the 'au-pair' system continues to flourish. The ILO Domestic Workers Convention 2011 (No.189) was ratified by Ireland in 2015. However, greater protections are required for female migrant workers in the reform of immigration legislation. A voluntary code of practice under the Industrial Relations Act 1990 does not offer adequate safeguards.

Many Roma women in Ireland are unable to access any social protection due to the implementation of the right to reside, European Directive 2004/38, and the Habitual Residence Condition (HRC), a policy by the Department of Social Protection. Under the European Directive migrants and returning Irish citizens have a right of residence without restriction for three months. Establishing a right to reside is a prerequisite to meeting the HRC, which a person must meet in order to access welfare supports, including Child Benefit, Job Seekers Allowance, Rent Allowance, public housing, and employment and training supports. The right to reside and HRC can also impact access to medical cards when women cannot prove their means. 57% of Roma women are not successful in applying for social welfare supports, and 85.1% of Roma women feel discriminated against in accessing social protection. This leaves them completely outside of the social protection system. It is important to note that of those who are not successful in their social protection applications, the average number of years they have lived in Ireland is eight years.

#### Recommendations

- Establish mandatory annual gender pay gap reporting, requiring large private sector employers to publish the differences between the average pay and bonuses of their female and male employees. This should also extend to the public sector. Following publication, employers must identify and publicize how they propose to close the identified gap.
- Move towards a universal pension system which gives women and men equal access to a comprehensive pension guarantee, which provides a decent standard of living for all. Deliver on the long promised transition from 'Homemakers Disregard' to a 'Homemakers Credit' that actively recognises the contribution of care and also serves as a 'Re-Entry Credit', opening up voluntary access to employment and training opportunity.
- Legislate against insecure, non-fixed hour jobs as 'reasonable offer of work'. Recognise atypical work patterns by calculating unemployment in hours rather than in days per week. Drive cross-departmental cooperation to promote 'Living Wage' through policy and practice.

- Strengthen the Low Pay Commission in relation to the gender pay gap, in-work poverty and minimum essential standards of living.
- Appropriate investment in developing a strong early-years and out-of-school hours infrastructure and professional workforce that provides high quality, affordable and accessible childcare.
- Provide supports to lone parents to access education, training and employment provisions.
- Set firm targets to reduce deprivation for Lone Parents. Restore Income Disregard and extend to Jobseekers Transitional Payment pending a complete review of current policy.
- Attach gender and social criteria, clauses and conditionality to Employer Incentive Schemes. Demand attachment of strong employment standards and gender and social criteria to all public spending including procurement, grants and investment.
- Remove the current ban on issuing employment permits for work in the private home and consider introducing sector-based employment permits for this area of work where labour mobility acts as a measure to prevent exploitation. Address the current level of exploitation in the au-pair industry through awareness-raising, enforcement and tackling unscrupulous au-pair agencies who promote illegal work arrangements.
- Introduce targeted and adequately resourced employment, training and enterprise measures for Traveller and Roma women to increase access to the labour market.

## 9. Health

Many women communicated the devastating impact of cutbacks and austerity on our health services and the need for renewed investment to ensure women's health needs are being met. In this context, NWCI regrets the dissolution in 2009 of two statutory bodies with a gender-specific health focus, namely the Women's Health Council<sup>92</sup> and the Crisis Pregnancy Agency. Women in the consultations felt that their needs were not prioritised, their symptoms were often over-medicalised, and they were not always treated holistically. Over-prescription of medications particularly impacted poor and marginalised women, to whom alternative treatments such as counselling were not made available. Attitudinal barriers and health professionals' lack of understanding of women's health issues sometimes resulted in embedded assumptions determining diagnoses, including a variety of symptoms being attributed to the menopause, for example, even where this was not the case. Absence of community services, lack of information about available services, and biomedical determinism all caused significant problems for women. Furthermore, while a men's health action plan was launched in November 2016 with specific commitments for the Department of Health and the HSE, working in partnership with men's groups across the country, no corresponding focus on women's health was announced.<sup>93</sup>

### Gender mainstreaming

Irish healthcare systems, policies, strategies and services are gender blind. For example the current mental health strategy A Vision for Change is gender blind, failing to recognise gender differentials in presentation and treatment for illness. The development of the HSE Gender Mainstreaming Framework in collaboration with NWCI confirms that gender sensitive health policies and services deliver better outcomes for both men and women.<sup>94</sup> However, progress on the implementation of this important Framework has been very slow and it has not been translated into HSE policy and practice. A standardised approach to healthcare ignores disparities in health outcomes between genders and amongst communities who experience discrimination and disadvantage. Despite the evidence of Roma women experiencing significant health issues and Traveller women experience the worst health status in Ireland, Traveller and Roma health is not a priority among health planners.<sup>95</sup>

### Universal health care

In discussing the concepts of availability, accessibility, acceptability, and quality in healthcare during the consultations Ireland's two-tier health system was widely regarded as unfair, and as the cause of poor health outcomes. Longer waiting times for public patients and the poorer quality of the service particularly affect women because women are more likely to be poor, to parent alone and to be at a disadvantage. Waiting times for public patients remain excessive. Additionally, the lengthy waiting times in community based services are significant, and these are not subject to the same controls as public hospital

care. User fees were seen as a major deterrent to the take up of community health services. NWCI believes that universal access to primary care services is the best means to provide an accessible quality health care system, capable of meeting the needs of all citizens in their diversity.

### Women and smoking

While there have been significant improvements in reducing the smoking rate in Ireland, certain sections of the population are being left behind, and one of these is disadvantaged women. Smoking rates for women living in disadvantaged areas is nearly twice as high as those living in the more affluent areas – 42.2% of women in disadvantaged areas report smoking one cigarette per week in comparison to 9.1% in the most affluent areas and 26.1% in the second most affluent areas. Each year, at least 5,200 people die from diseases caused by tobacco use. In order for the target set in 'Tobacco Free Ireland' to be reached - less than 5% of the population smoking by 2025 – more needs to be done to tackle the high smoking rate amongst disadvantaged women. The Government and HSE need to ensure that prevention and cessation programmes are specifically targeted to this community.

### Sexual health

Despite the State's assertion that there is good availability of, and access to, contraception methods to people of all ages in Ireland, (State Report para. 218) a number of studies and reports<sup>96</sup> have identified barriers preventing young people from accessing contraception. These include regional disparities in the quality and availability of services, stigma and lack of confidentiality. In addition, the 2010 Irish Contraception and Crisis Pregnancy Study<sup>97</sup> identified the cost of contraception as a significant access barrier for young people. The National Consent Policy<sup>98</sup> states that there is no specific provision in law regarding the age at which contraceptive advice and sexual health services can be provided to a young person. The Policy also notes that while a young person over 16 can give their own consent to medical treatment, sexual activity under the age of 17 may constitute a criminal offence. The legal status of prescribing contraception to young people under the age of 16 is therefore very unclear. This poses a major dilemma for doctors who are ethically required to provide a confidential service which is in the best interest of their client. In 2012 the Sexual Health and Crisis Pregnancy Programme highlighted that some migrant women still have problems accessing contraception. This is due to cost, lack of information, problems with changing GPs or a refusal to prescribe contraception.<sup>99</sup>

### Recommendations

- Establish and resource a gender mainstreaming unit within the Department of Health to oversee and implement the HSE Gender Mainstreaming Framework across the full complement of health services.

92. The Women's Health Council was a statutory body established in 1997 to advise the Minister for Health on all aspects of women's health. Its mission was to inform and influence the development of health policy to ensure the maximum health and social gain for women in Ireland. Its work was guided by the need to develop flexible and accessible services which respond equitably to the diverse needs and situations of women and quality in the provision and delivery of health services to all women throughout their lives. The Women's Health Council was subsumed into the Department of Health in October 2009 as part of the health sector agencies rationalisation initiative.

93. The Women's Human Rights Alliance (WHRA) is a coalition of organisations and individuals concerned with promoting and protecting women's human rights and monitoring Ireland's compliance with its international obligations under various international treaties and covenants. WHRA is being convened by NWCI. In 2009 – 2010 the WHRA conducted a country-wide consultation on the right to health which were held as part of the WHRA shadow report of the Government's implementation of the ICESCR. Thirteen workshops were held with women in rural areas, women in disadvantaged communities, women living in poverty, Traveller women, Roma women, refugee and asylum seeking women, women with disabilities, LGBT women, and older women. Submission in relation to the review by the Committee on Economic, Social and Cultural Rights of Ireland's compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR) 55th Session of the Committee, 1-19 June 2015

94. In November 2012 NWCI / HSE Equal but Different: A Framework for Integrating Gender Equality in Health Service Executive Policy, Planning and Service Delivery. (2012) was launched. Since the launch of the framework in 2012 training tools, guides and resources have been developed to support the implementation of this Framework. For example, Women & Smoking.

95. School of Public Health, UCD: All Ireland Traveller Health Study Our Geels (September 2010)

96. The Irish study of sexual health and relationships. Sub report 2: Sexual health challenges and related service provision, Mc Gee et al, 2008: <http://crisispregnancy.ie/wp-content/uploads/2012/05/ISSHR-sub-report-2.pdf>; Irish Contraception and Crisis Pregnancy Study 2010 (ICCP-2010) A Survey of the General Population, Crisis Pregnancy Programme (CPP), 2012: <http://www.crisispregnancy.ie/publications/irish-contraception-and-crisis-pregnancy-study-2010-iccp-2010-a-survey-of-the-general-population/>; Understanding how sexually active women think about fertility, sex, and motherhood, Crisis Pregnancy Agency Report N°6, Murphy-Lawless et al., 2004: <http://crisispregnancy.ie/wp-content/uploads/2012/05/6-Understanding-how-sexually-active-women-think-about-fertility-sex-and-motherhood.pdf>; A follow-up project on perceptions of women about fertility, sex, and motherhood: probing the data further, Crisis Pregnancy Agency Report N°17, Jo Murphy-Lawless, 2012: <http://crisispregnancy.ie/wp-content/uploads/2012/05/17-A-follow-up-project-on-perceptions-of-women-about-fertility-sex-and-motherhood-probing-the-data-further.pdf>; Understanding Teenage Sexuality in Ireland, Crisis Pregnancy Agency Report N°9, Abbey Hyde and Etoaine Hewlitt, 2004: <http://crisispregnancy.ie/wp-content/uploads/2012/05/9-understanding-teenage-sexuality-in-Ireland.pdf>

97. Irish Contraception and Crisis Pregnancy Study 2010 (ICCP-2010) A Survey of the General Population, Crisis Pregnancy Programme Report N°24: [http://www.ucd.ie/t4cms/ICCP-2010\\_REPORT.pdf](http://www.ucd.ie/t4cms/ICCP-2010_REPORT.pdf)

98. National Consent Policy QPSD-D-026-1.V.1. Section 10, page 60. A supplementary document, Consent: A guide for young people (QPSD-GL-055-1.V.1) gives a general overview of the policy, but makes no specific reference to access to contraceptive treatment.

99. See the Irish Family Planning Association submission to this Committee.

- Create a universal single tier healthcare system from taxes and social insurance schemes as the best means to provide an accessible quality primary health care system, capable of meeting the needs of all women in Ireland.
- Develop a women's health action plan with specific commitments for the Department of Health and the HSE, working in partnership with women's groups across the country.
- Make Nicotine Replacement Therapy (NRT) available free of charge to all those enrolled in smoking cessation programmes. Alongside any fiscal policies, targeted community intervention programmes need to be carried out as well.
- Develop and fund a new National Traveller Health action plan to address the findings of the All Ireland Traveller Health Study and develop and fund a primary healthcare project with the Roma community to increase access to information on healthcare and uptake of services.
- Remove all existing legal, policy and cost barriers to adolescents' and young women's use of modern forms of contraception and ensure their access to contraceptive information and services without mandatory parental and guardian authorisation or notification.

## Reproductive Healthcare

### Maternity

The first National Maternity Strategy 2016-2026 for Ireland was launched in January 2016. This strategy is timely in light of the recent cases in our maternity services that were a cause of great concern to the public. The Strategy aims to incorporate a more women centred approach and this is to be welcomed. The proposed establishment of a new community midwifery service will facilitate better continuity of care and more choice in birth with better information and communication throughout the different stages of pregnancy and birth. The commitment to additional staffing resources to realise this model is to be welcomed, as understaffing of maternity units has been a source of concern for some time. However, in 2009, a study found negative attitudes to women with intellectual disabilities becoming pregnant, and caring for their children. Conservative and protective perspectives from frontline caring staff and parents regarding the sexuality of women with intellectual disability put the women at risk of coercive sterilisation or forced contraception.<sup>100</sup> Moreover, there are significant concerns with regards to the maternal health of Roma women. In a quarter of Roma households women have not accessed a doctor or hospital during pregnancy. In 36% of Roma households women have difficulty accessing maternity services, and in 24.6% of households women don't seek medical attention before birth but access a hospital for the first time to give birth.<sup>101</sup>

### Access to abortion

Ireland has one of the most restrictive regimes in the world in relation to accessing safe and legal abortion services for women and girls, criminalising it in almost all circumstances, including in the cases of rape, incest, fatal foetal abnormality and where the pregnancy poses a risk to the woman's physical or mental

health.<sup>102</sup> While criminalised since 1861, it was the passage of the Eighth Amendment in 1983, (Article 40.3.3) which inserted 'the right to life of the unborn' into the Constitution, thereby equating the life of a foetus with that of a pregnant woman. The Irish Supreme Court has held that article 40.3.3 means that abortion is lawful in case of risk to a woman's life, as distinct from her health. Consequentially, doctors must make the medically unsound distinction between a risk to life and a risk to health. This essentially requires them to allow a pregnant woman's health to deteriorate to the point until her life is at risk before performing a lawful abortion; a clear derogation of the right to health (CEDAW Article 12). The Amendment clearly prevents healthcare providers (HCPs) from providing proper care to pregnant women, as has been acknowledged by the Masters of our maternity hospitals, and its continued presence will only serve to undermine the first National Maternity Strategy 2016-2026.

Abortion is legal in Ireland when a woman's life is at risk, including the risk of suicide. While the Protection of Life During Pregnancy Act 2013 gives legal effect to this limited constitutional right, in practice it does not ensure the actual and effective exercise of this right. It introduced onerous and unworkable tests into clinical practice.<sup>103</sup> The accompanying guidelines for the medical profession, meant to be read in conjunction with the Act, make no reference to international best practice standards,<sup>104</sup> are restrictively drafted and essentially provide no assistance to medical professionals as to how they are to determine when a risk to health involves a risk to life. They are only procedural in nature and provide no clinical guidance to HCPs. Even where the pregnant woman has passed the complicated certification and review process set out in the Act, she still may be denied access to an abortion, because of the requirement to have "due regard to the equal right to life of the unborn". In 2014, it was widely reported in the media that an asylum seeker, pregnant through rape, was confirmed as suicidal by a panel of two psychiatrists and an obstetrician established under Section 9 of the 2013 Act, and, but was subjected to an unwanted Caesarean section, rather than a termination.

The Thirteenth Amendment to the Constitution states that nothing can limit the freedom to travel to another State to procure an abortion. However, the need to travel for abortion services imposes financial,<sup>105</sup> physical and psychological burdens on women; moreover, not all women can travel out of Ireland. Numerous elements affect a woman's ability to travel: her economic status; her immigration or asylum status; her physical and mental health; her age; or whether she is a minor, in prison or otherwise in the care of the State. The law facilitates unequal access to abortion, making it dependent on the socio-economic circumstances of the pregnant woman. The fact that not all women can travel to access abortion, is a profound source of discrimination.

In 2015, 3,451 women and girls in Ireland, or just over nine a day, travelled to the UK to access abortion services.<sup>106</sup> However, Ireland's abortion statistics are widely accepted to be an underestimation. The number of women who choose not to give their addresses to UK abortion clinics or travel to countries such

100. "Women with disabilities and barriers and facilitators to accessing services during pregnancy, childbirth and early motherhood" Begley et al 2009

101. <http://www.pavepoint.ie/roma-needs-assessment/>

102. See the Abortion Rights Campaign submission to this Committee. See IFPA submission to this Committee.

103. These tests are as follows: The risk must be to life as distinct from health, the risk must be one that can only be averted by termination of pregnancy, and the HCPs must have due regard to the "right to life of the unborn".

104. Implementation of the Protection of Life During Pregnancy Act 2013: Guidance Document for Health Professionals.

105. In excess of €1,000 and could be as high as €3,000. The cost of the abortion pill is approx. €90.

106. UK Department of Health, Abortion Statistics, England and Wales: 2015. Retrieved from: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/529344/Abortion\\_Statistics\\_2015\\_v3.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/529344/Abortion_Statistics_2015_v3.pdf)

as the Netherlands or Spain is unknown.<sup>107</sup> Increasing numbers of women risk prosecution by accessing medication online to self-induce abortion. Again there are no official statistics.<sup>108</sup> Though considered relatively safe if purchased from a reputable source, this is a risky measure taken by women who have no other option in their particular circumstances. This can involve significant risk to the woman's health if complications arise, but in fear of prosecution, a woman delays or avoids seeking medical assistance. Under the 2013 legislation, accessing and/or assisting with an abortion are criminalised in all circumstances other than risk to life, with a maximum sentence of 14 years imprisonment. All of which directly contravenes General Recommendation 24, where the CEDAW Committee identified that respecting rights 'requires States parties to refrain from obstructing action taken by women in pursuit of their health goals', such actions included the criminalizing 'medical procedures only needed by women and that punish women who undergo those procedures'. The State's claim (State Report para. 214), that the monitoring system developed by the HSE's Crisis Pregnancy Programme has shown a 40% reduction in the number of women travelling from Ireland to the UK for abortion services, cannot be considered a true reflection of the situation. The Eight Amendment delays women in making their decision and forces them to travel abroad to receive healthcare. This travel requirement breaks the continuity of medical care and, as a result, routine issues can become health complications.<sup>109</sup>

The Fourteenth Amendment to the Constitution prevents the Eight Amendment from being used to limit the supply of information to women seeking an abortion lawfully available in another state. The right to information, however, is subject to conditions set out in the Regulation of Information (Services Outside the State for the Termination of Pregnancies) Act 1995, which broadly serves to prevent the apparent 'promotion' of abortion as an outcome. The Act stipulates that women who seek information on abortion can only obtain it if they are also given information and counselling on "all the options available to the woman in her particular circumstances". The Information Act perpetuates a harmful gender stereotype of pregnant women as incapable of decision-making, thereby denying their reproductive autonomy. The Act does nothing to regulate the operation in Ireland of "rogue agencies" that misinform women about abortion and distribute literature containing unfounded information about the negative repercussions of terminating a pregnancy.<sup>110</sup>

The provision of safe and legal abortion in Ireland would simply provide a service, of which many women are already availing. Between January 1980 and December 2015, at least 166,951 women and girls travelled from the Republic of Ireland to access abortion services in another country. Numerous UN Bodies have continued to criticise Ireland for its restrictive abortion laws.<sup>111</sup> The

UN Human Rights Committee case of Amanda Mellet<sup>112</sup> is the first time that an international human rights body has found a state in violation of its human right obligations for criminalizing and prohibiting abortion. In September 2016, Ireland rejected 16 of the 17 outstanding recommendations relating to abortion made during the Universal Periodic Review in May. The only accepted recommendation, called on the State to conduct consultations involving all stakeholders, including civil society organisations. The State has since established the Citizens' Assembly to review the constitutional provision governing abortion and to report back to Parliament with recommendations. However, no clarity exists with regard to the composition of the Special Parliamentary Committee which will hold responsibility, nor the timeframe within which recommendations will be considered and acted upon, if indeed they will be acted upon at all.

#### Recommendations

- Hold a referendum to repeal the Eighth Amendment. Establish legislation to regulate abortion and allow women equal access to the highest attainable standard of reproductive health.
- Provide a human rights compliant framework for abortion in law in line with international health best-practice and international human right norms.
- Provide information on how the State reconciles its obligations regarding women's reproductive health under the Convention with its restrictive abortion laws.
- Provide information on measures to ensure that asylum seeking women and girls, undocumented women and girls, young women and girls with disabilities and other vulnerable groups have adequate access to reproductive health information and services, including in relation to abortion.

107. According to statistics compiled by the HSE Crisis Pregnancy Programme, 1,470 women travelled from Ireland to the Netherlands from 2005-2009 to access safe abortion services. See further: <http://www.crisispregnancy.ie/news/number-of-women-giving-irish-addresses-at-uk-abortion-clinics-decreases-for-tenth-year-in-a-row-according-to-department-of-health-uk/>

108. In October 2016, the British Journal of Obstetrics and Gynaecology published a study showing that more than 5,600 women in Ireland tried to buy abortion pills online over a five-year period between 1 January 2010 and 31 December 2015 using a leading web supplier based in the Netherlands. Pills were shipped by the Women on Web site to 1,642 women in Ireland between 2010 and 2012.

109. Due to the chilling effect of criminalisation, women may not present for medical advice if experiencing pain, nausea or bleeding; Some women are limited to surgical abortion as medical abortion requires a longer stay in England (medical abortion is safer, although surgical abortion is also very safe); The restrictions of the Abortion Information Act means that doctors in abortion clinics abroad are not properly briefed on a client's medical history if the women is travelling from Ireland; Poorer women from Ireland travel later (the later the abortion the more chance there is of a medical complication).

110. A 2016 investigation by the Ireland edition of The Times newspaper found that an agency in Dublin misinformed women about abortion and distributed literature containing unfounded information about the negative repercussions of terminating a pregnancy. This prompted public outcry and a commitment by Government to reform the area.

111. This includes CEDAW in 2005 [CEDAW/C/IRL/4-5/CO], UNCAT in 2011 [CAT/C/IRL/CO/1], UNHRC in 2014 [CCPR/C/IRL/CO/4], UNCESCR in 2015 [E/C.12/IRL/CO/3] & UNCRC in 2016 [CRC/C/IRL/CO/3-4].

112. Human Rights Committee, 116th Session. Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2324/2013. UN Doc CCPR/C/116/D/2324/2013. The Committee found Ireland's prohibition and criminalisation of abortion services violated Ms Mellet's human rights and caused her "intense physical and mental suffering" when it prevented her from terminating a pregnancy involving a fatal foetal anomaly. The UN Committee found Ireland's abortion laws subjected Ms Mellet to cruel, inhuman and degrading treatment, and discrimination, in violation of Articles 7 and 26 of the International Covenant on Civil and Political Rights. It also found a violation of Article 17 on the right to privacy.







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