

Submission to the Citizens' Assembly on Gender Equality

March 2020



**Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas**

Irish Human Rights and Equality Commission

Submission to the Citizens' Assembly on Gender Equality

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1. Introduction

The Irish Human Rights and Equality Commission ('the Commission') is both the national human rights institution (NHRI) and the national equality body for Ireland, established under the *Irish Human Rights and Equality Commission Act 2014*.

The Commission welcomes the opportunity to make a submission to the Citizens' Assembly. As requested our submission addresses the four areas of concern to the Assembly:

- Gender Norms and Stereotypes;
- Women in Political and Public Life;
- Gender and Decent Work; and
- Gender and Care Work.

While these are all significant areas it is important at outset to acknowledge that many other areas (e.g. healthcare, reproductive rights, violence against women and girls, sexual exploitation and trafficking for the purposes of prostitution) are crucially important to achieving the rights of women and girls and to bringing about gender equality throughout society. Gender equality in all its dimensions is central to the Commission's equality and human rights mandates. The Commission has previously engaged with former Assemblies and drew attention to other gender equality issues in those submissions¹ and through its work more broadly.

With that in mind, it is important to briefly reflect on some significant events that have led to advancements and regressions for gender equality in recent years. The repeal of the Eighth Amendment in 2018² and the entry into force on 1 January 2019 of *the Health (Regulation of Termination of Pregnancy) Act 2018*³ marked significant steps forward in removing the barriers to reproductive healthcare in Ireland. The ratification of the Istanbul Convention⁴ and the enactment of the *Domestic Violence Act 2018* advanced the State's legislative and policy approach to tackling violence against women.

¹ The Commission previously submitted to the Citizens' Assembly's consultation on Article 40.3.3 of the Constitution of Ireland and its consultation on the Challenges and Opportunities of an Ageing Population.

² A referendum was held in May 2018 amending Article 40 of the Constitution to provide that 'provision may be made by law for the regulation of termination of pregnancy'. See Thirty-sixth amendment to the Constitution Act 2018 at <http://www.irishstatutebook.ie/eli/2018/ca/36/enacted/en/print/>.

³ Commission views on the draft of this legislation were published in September 2018, with a particular focus on conscientious objection and equality and universality of access to services. See IHREC (September 2018), [*Observations by the Irish Human Rights and Equality Commission on the General Scheme of a Bill Entitled Health \(Regulation of Termination of Pregnancy\) Bill 2018*](#).

⁴ The Council of Europe Convention on preventing and combating violence against women and domestic violence. The Commission has set out priority areas for State action under the aegis of the Convention, including on data collection, combatting violence against specific groups of women, gender-sensitive asylum policy, access to services, access to justice and the promotion of gender equality. See IHREC (July 2019), [*Statement on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence*](#).

Equality for lesbian and bisexual women was advanced with the introduction of marriage equality through popular vote⁵. The introduction of gender recognition laws⁶ progressed equality for transgender women.⁷ Reform in this area has been important in recognising that women are not a homogenous group and the impact of intersectional discrimination on the advancement of gender equality. This has also been underscored in Ireland's ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2018,⁸ as well as during the recent examination by the UN Committee on the Elimination of Racial Discrimination.⁹

However, the Commission has more recently sounded a warning regarding the emergence of a 'pervasive pushback on core and well-established concepts of women's rights', and has called upon the State to adopt a 'strong leadership role on the international stage in promoting the protection of women's rights'.¹⁰ This sentiment is shared by the Council of Europe's Commissioner for Human Rights, Dunja Mijatović, who has cautioned that: 'we are witnessing stagnation and backward steps in gender equality'.¹¹ The Commission has also previously expressed concern about the impact of austerity measures introduced following the economic collapse on women's rights,¹² noting this resulted in 'a step backwards in terms of gender equality'.¹³ In this regard, the Commission welcomes the publication in March 2020 of the European Commission's *Gender Equality Strategy 2020-2025*, which

⁵ Article 41.4 of the Constitution of Ireland provides: 'Marriage may be contracted in accordance with law by two persons without distinction as to their sex'.

⁶ The *Gender Recognition Act 2015* came into force on 4 September 2015.

⁷ The Commission notes that the Assembly has indicated that although the Oireachtas resolution refers to women and men, girls and boys, for the purposes of the consultation, 'gender' should be understood 'to refer to any and all options in terms of gender identity'. See discussion of discriminatory grounds in Section 4 below. See also IHREC (2016), [Observations on the General Scheme of the Equality/Disability \(Miscellaneous Provisions\) Bill](#); IHREC (2015) [Ireland and the United Nations Convention on the Rights of the Child](#).

⁸ Article 6 CRPD states that States Parties recognise 'that women and girls with disabilities are subject to multiple discrimination, and that in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms'. Legislation is currently in development to designate the Commission as independent monitoring mechanism under Article 33 of the Convention. The Commission notes the importance of avoiding stereotyping girls and women with disabilities as requiring care. It notes that CRPD Article 19 Independent living and participating in the community reframes the public discourse around disability and highlights the importance of personal assistance.

⁹ The Committee recommended that the State equip police and other officials 'to deal with the intersectional nature of domestic violence and sexual and gender based violence experienced by migrant women'. Committee on the Elimination of Racial Discrimination (12 December 2019), [Concluding observations on the combined fifth to ninth reports of Ireland](#), CERD/C/IRL/CO/5-9, para. 40.

¹⁰ IHREC (2019) *Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report*, p. 146.

¹¹ Dunja Mijatović (2019) 'Women's rights at the crossroads: strengthening international co-operation to close the gap between legal frameworks and their implementation', CommDH/Speech(2019)5, available: <https://rm.coe.int/women-s-rights-at-the-crossroads-strengthening-international-co-operat/16809493ba>

¹² CESCR (2015) *Concluding Observations on the third periodic report of Ireland*; Carmona (2011) *Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona: Mission to Ireland*; F. McGinnity, H. Russell, D. Watson et al (2014) *Winners and Losers? The Equality Impact of the Great Recession in Ireland*, Equality Authority and ESRI

¹³ CESCR (2016) *Public Debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights*, para. 2.

names as its key objectives: ‘ending gender-based violence; challenging gender stereotypes; closing gender gaps in the labour market; achieving equal participation across different sectors of the economy; addressing the gender pay and pension gaps; closing the gender care gap and achieving gender balance in decision-making and in politics.’¹⁴

In the sections that follow, this submission will address the Assembly’s four areas of thematic focus. Under the heading of ‘Gender norms and stereotypes’, the submission will outline the Commission’s position on the need for Constitutional reform, before outlining its views and recommendations on gender stereotyping in education, representation of women in the media, and the problem of online misogyny, harassment and abuse.

The section on ‘Women in political and public life’ will outline some of the improvements that are needed to increase the participation and representation of women in politics, the legal profession, the public service, in the boardroom and in sport, while the section on ‘Gender and decent work’ will focus on the need to strengthen equality legislation, tackle gender pay disparities, and promote family-friendly measures in the workplace.

Finally, the section on ‘Gender and care work’ will identify a range of measures, from constitutional reform, to an overhaul of the state’s policy framework for care, to ensure that it is adequately supported, publically valued, and equally shared.

¹⁴ European Commission (March 2020), [Gender Equality Strategy 2020-2025](#).

2. Gender norms and stereotypes

The UN Committee on the Elimination of Discrimination against Women has stated:

Inherent to the principle of equality between men and women, or gender equality, is the concept that all human beings, regardless of sex, are free to develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices.¹⁵

Article 5 of the UN Convention on the Elimination of All Forms of Discrimination against Women requires States Parties to take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Following its examination of Ireland in 2017, the UN Committee on the Elimination of Discrimination against Women recommended that the State implement constitutional, legislative and policy change to combat gender stereotyping.

¹⁵ CEDAW (2010) *General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/C/GC/28, para. 22.

Proposals for Constitutional reform

Article 41.2

The Commission notes repeated calls at both the national and international level¹⁶ as well as the recommendations of the Convention on the Constitution,¹⁷ to amend or remove Article 41.2 of the Constitution of Ireland. In response, a Task Force on Implementation of the Recommendations of the Second Report of the Convention on the Constitution ('the Task Force') was established to consider all previous proposals in order to devise the most appropriate wording.¹⁸ In 2018, the *General Scheme of the 38th Amendment of the Constitution (Role of Women) Bill* was published, which provided for the deletion of Article 41.2. Following pre-legislative scrutiny of the General Scheme, the Joint Oireachtas Committee on Justice and Equality concluded:

There was universal consensus amongst both witnesses and Members of the Committee that Article 41.2 of the Constitution as currently drafted is sexist and paternalistic, and has no place in the Ireland of the 21st century.¹⁹

In its policy statement on Article 41.2, the Commission expressed the view that Article 41.2 is not compatible with Ireland's international human rights obligations.²⁰ Moreover, the Commission expressed concern that the provision continues to perpetuate stereotypical

¹⁶ Recommendations have been made by the following bodies:

- Commission on the Status of Women (1993) *Report of the Second Commission on the Status of Women*, Dublin: Government Publications, p. 27;
- Constitution Review Group (1996) *Report of the Constitution Review Group* Dublin: Government Publications, pp. 333–334;
- The All-Party Oireachtas Committee on the Constitution (2006) *Tenth Progress Report: The Family*, Dublin: Government Publications, p. 127;
- UN Human Rights Committee (2008), *Concluding Observations on Ireland's Third Periodic Report*, CCPR/C/IRL/CO/3, 2008, para. 10;
- UN Human Rights Committee (2014), *Concluding Observations on Ireland's Fourth Periodic Report*, CCPR/C/IRL/CO/4, para. 7;
- Committee on the Elimination of Discrimination against Women (2005) *Concluding Comments: Ireland*, CEDAW/C/IRL/CO/4-5, 2005, paras. 24–25
- Committee on the Elimination of Discrimination against Women (2005) *Concluding Comments: Ireland*, CEDAW/C/IRL/CO/4-5, 2005, para 10(a)

¹⁷ Convention on the Constitution (2013) *Second report of the Convention on the Constitution*, available: <https://www.constitution.ie/AttachmentDownload.ashx?mid=268d9308-c9b7-e211-a5a0-005056a32ee4>

¹⁸ Minister for Justice and Equality delivered the Government's response to the Convention's Second Report in the Dáil on 10 October 2013. The Task Force was comprised of officials from the Department of Justice and Equality and was assisted in its work by the Departments of Health, Social Protection, and Public Expenditure and Reform and the Office of the Attorney General. The report of the Task Force was published on the website of the Department of Justice and Equality in October 2016 ('hereafter Task Force Report'), see: http://www.justice.ie/en/JELR/TaskForceReport_Impl-2nd-Rpt-Conv-Constit.pdf/Files/TaskForceReport_Impl-2nd-Rpt-Conv-Constit.pdf

¹⁹ https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2018/2018-12-06_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-38th-amendment-of-the-constitution-role-of-women-bill_en.pdf, p 35.

²⁰ IHREC (2018) *Policy Statement on Article 41.2 of the Constitution of Ireland*, p 6.

attitudes towards the role of women in Irish society, which may have a negative impact on women's participation in the labour market.²¹

The Commission reiterates its position that Article 41.2 should be amended to make it gender neutral.

The Constitutional definition of family

Given that Article 41.2 exists within the rubric of the constitutional protection of the family, the Commission broadly supports an approach that replaces references to 'woman' and 'mothers' with a reference to 'family life'.

However, the Commission is of the view that in the context of updating the Constitution to promote a more gender-neutral concept of 'family life', regard must be had to the wide range of family relationships that have been recognised in the context of international human rights law, as well as in Irish law, policy and society in recent times.

Article 41 of the Constitution of Ireland protects the rights of the family and contains a number of provisions imposing duties on the State. Article 41.1 recognises the family as the 'natural primary and fundamental unit group of Society'. Noting that Article 41.3.1 obliges the State to 'guard with special care the institution of Marriage, on which the Family is founded' the Supreme Court has interpreted the references to the family in Article 41 as the family founded on marriage.²² Nevertheless, in more recent cases, a wider interpretation of the types of familial relationships protected by Article 41 has been contemplated by the Superior Courts.²³ In addition, following a referendum to amend Article 41 of the Constitution in 2015, the constitutional definition of the family has been expanded to include married same-sex couples.²⁴ Legislation and public policy also recognise a much broader range of family relationships, for example through the introduction of automatic guardianship rights to unmarried fathers in certain circumstances²⁵ and the provision for cohabiting couples and one parent families in the social welfare code.

²¹ IHREC (2018) *Policy Statement on Article 41.2 of the Constitution of Ireland*, p 6.

²² *State (Nicolaou) v An Bord Uchtála* [1996] IR 567. This narrow judicial interpretation has been the subject of much litigation and debate.

²³ *RX, QMA & CX v Minister for Justice, Equality and Law Reform* [2010] IEHC 446. In that case Mr Justice Hogan stated: 'The fact that marriage was (and, of course, is) regarded as the bedrock of the family contemplated by the Constitution does not mean that other close relatives could not, at least under certain circumstances, come within the scope of Article 41'.

²⁴ Article 41.4 provides that 'marriage may be contracted in accordance with law by two persons without distinction as to their sex'. Previously the High Court defined marriage as between a man and a woman in *Zappone & Gilligan v. Revenue Commissioners & Ors* [2006] IEHC 404. See also: IHREC (2015) *Policy Statement on Access to Civil Marriage*, available:

https://www.ihrec.ie/download/pdf/ihrec_policy_statement_access_civil_marriage_11_feb_2015.pdf

²⁵ Section 6 of the Guardianship of Infants Act 1964, as amended by the Children and Family Relationships Act 2015. For an overview of the amendments see: O'Toole and Mahon (2016) 'Guardianship and the family' *Bar Review*, 21(4). See further: Bergin-Cross (2015) 'The Evolution of the Definition of Marriage and the Family under the Irish Constitution', *Irish Journal of Family Law*, 15(2).

As well as being recognised in Irish law, family rights are also recognised by a number of international human rights treaties,²⁶ in particular Article 8 of the European Convention on Human Rights (ECHR).²⁷ In its jurisprudence, the European Court of Human Rights has broadly conceived ‘family life’ beyond the nuclear family to recognise familial relationships where there is evidence of the existence of close personal ties, i.e. *de facto* family ties.²⁸

The Commission is of the view that further reform of Article 41 is required to ensure its compatibility with developments in domestic law and policy, social norms, and the broader conception of family life recognised in international human rights law.

The Commission is of the view Article 41.2 should be amended to reference ‘family life’, and that ‘family life’ should be understood as including a wide range of family relationships and include situations where family members do not live in the same home.

The Commission recommends that Article 41, including Article 41.3.1, is amended to recognise the broader conception of family life recognised in international human rights law.

Gender neutral language and the principle of gender equality

In addition, the All-Party Oireachtas Committee on the Constitution has described the text of the Constitution as ‘a product of the patriarchal times in which it was written, as being insensitive on the issue of gender, and as invariably presuming that officeholders will be male’.²⁹ In 2005, the IHRC recommended that immediate priority should be afforded to replacing the sexist terminology of the Constitution with gender-inclusive language within a specific timeframe.³⁰

The Commission recommends that the Constitution of Ireland be amended to include gender neutral language and an explicit provision on gender equality.

Gender stereotyping of women and girls in education

The Commission has highlighted the impact of gender stereotyping on children attending secondary school.³¹ In particular, the Commission noted that research has demonstrated

²⁶ Article 16(3) Universal Declaration of Human Rights recognises that ‘the family is the natural and fundamental group unit of society and is entitled to protection by society and the State’. This is echoed in Article 23(1) of the International Covenant on Civil and Political Rights (ICCPR). Article 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which states that ‘the widest possible protection and assistance should be accorded to the family’.

²⁷ The ECHR has been indirectly incorporated into Irish law by the European Convention on Human Rights Act 2003.

²⁸ For an overview of the Court’s jurisprudence on Article 8 see:

http://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf

²⁹ All-Party Committee on the Constitution (2006) *Tenth Progress Report: The Family*, Dublin, Stationery Office, available at: <http://archive.constitution.ie/reports/10th-Report-Family.pdf>

³⁰ https://www.ihrec.ie/app/uploads/download/pdf/submission_cedaw.pdf

³¹ IHREC (2017) CEDAW Report

that ‘school policy regarding subject provision, subject packaging and timetabling can serve to either reinforce or challenge existing gendered patterns of subject take-up’.³²

In 2007, the Department of Education report *Sé Sí: Gender in Irish Education* found that ‘from early second level onwards, pupils conform closely to the traditional gender stereotypes in terms of the subjects they study. Boys far outnumber girls in the take-up of practical subjects, such as engineering, technical drawing, and construction studies...’³³ The author of the report later stated that the ‘prejudices about what girls could or could not do, or were or were not capable of, were deeply ingrained [...] the attitude has lingered, and reverberated through the education that teachers themselves received.’³⁴

Recent statistics show that girls still make up a much lower proportion of students undertaking Science, Technology, Engineering, and Mathematics (STEM) Leaving Certificate subjects.³⁵ The low take-up of STEM subjects amongst girls is partly explained by subject provision in schools.³⁶ Some have also attributed the low enrolment to low confidence among girls, and internalised messaging of ‘what girls are capable of’.³⁷

Subject take-up in turn can constrain career options for women, increasing the likelihood of their exclusion from certain academic and professional fields. The low levels of girls enrolled in STEM subjects in secondary school is reflected in third level education. For example, while enrolment across fields is roughly equal between men and women, enrolment in full time ICT-related courses was only 16% women in 2015/2016.³⁸ A recent study by the UCD Centre for Economic Research has identified a clear link between differential subject choice by girls in secondary school and the low level of women’s representation in STEM at third level.³⁹

³² Emer Smyth and Merike Darmody (2007) ‘“Man enough to do it”? Girls and non-traditional subjects in lower secondary education’, ESRI Working Paper No. 198, p. 23, available: <https://www.esri.ie/pubs/WP198.pdf>.

³³ Department of Education and Science, *Sé Sí: Gender in Irish Education* (2007), available at: <https://www.education.ie/en/Publications/Statistics/Se-Si-Gender-in-Irish-Education-Introduction-to-Chapter-9.pdf>.

³⁴ Peter McGuire, ‘Gender imbalances in the classroom – and all the way up’, Irish Times, 20 Jan 2015, available at:

³⁵ In 2019, less than 7% of students doing Engineering for the Leaving Certificate were female. Examinations, ‘2019 Leaving Certificate Statistics’, available at: <https://www.examinations.ie/statistics/>. Girls only made up 28% of students sitting the Physics Leaving Certificate examination, and 11% of Construction Studies students. Examinations, ‘2019 Leaving Certificate Statistics’, available at: <https://www.examinations.ie/statistics/>.

³⁶ All-Girl Secondary Schools are less likely to offer STEM subjects to their students. Only 14% of All-Girl Secondary Schools offer Technical Graphics as a Junior Certificate subject, compared to 82% of All-Boys Schools. Athena Analytica, ‘Only 14% of All-Girl Secondary Schools offer Technical Graphics as a Junior Certificate Subject’ (2018), available at: <https://www.athena.ie/single-post/2018/10/08/Only-14-of-Post-Primary-Girls-Only-Schools-offer-Technical-Graphics-as-a-Junior-Certificate-Subject>.

³⁷ A 2018 Survey of 218 teachers found that 85% said that girls’ belief in their own ability was a big influence on the rate of uptake of STEM subjects. I Wish, ‘2018 Survey of Female Students’ Attitudes to STEM’, at p. 3, available at: <http://www.iwish.ie/wp-content/uploads/2017/11/I-Wish-2018-Survey-Final.pdf>.

³⁸ Oireachtas Library & Research Service, ‘STEM in schools: the introduction of Coding and Computer science/ICT to the curriculum’, at p. 16, available at: https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2017/2017-08-25_l-rs-note-stem-in-schools-the-introduction-of-coding-and-computer-science-ict-to-the-curriculum_en.pdf.

³⁹ Judith Delaney and Paul Deveraux (2019), *It’s not just for boys! Understanding Gender Differences in STEM*, University College Dublin. The study indicates that there is a large gender gap in the fraction of applicants

In this regard, the Commission welcomes the gender-specific actions and indicators in the Department of Education and Skills *STEM Education Policy Statement 2017-2026*⁴⁰ and the work of the STEM Education Review Group.⁴¹

The Commission reiterates its recommendation that guidance be developed and provided to schools on tackling gender stereotyping within the subject choice process.

Representation of women in the media and advertising

The Commission notes the important role of media and advertising in perpetuating gender stereotypes, whether via broadcast, print, online, via social media, or on other forms such as outdoor advertising.

The negative or stereotypical portrayal of women in the media can have a harmful effect on women's engagement in political and public life, as well as on public discourse on gender equality. Women's representation in the media is regularly tied up with the perpetuation of gender stereotypes – particularly those associating women with care and the domestic sphere, or framing women as sexual objects. Negative portrayal of women in the media also contributes to health concerns, low self-esteem and body image issues in women and girls.⁴²

A study commissioned by the Equality Authority found that the manner in which goods are designed for and marketed at children can impact negatively on gender equality in the following areas: the sexualisation of girls; incitement of gender rivalry (extending in some cases to incitement to violence); practices of exclusion; casting of judgements; and limiting of possibilities.⁴³

In 2014, the Department of Justice and Equality specifically identified gender stereotyping as a barrier, amongst others, to women's participation in political and public life, formed by

listing a STEM course as their first preference in college applications, with just over 40% of males listing a STEM course compared with roughly 19% of females. The study also observes that there is not a significant gender gap in science take-up, and that efforts to close the gap “might be better off focusing on narrowing the gap just in TEM (Technology, Engineering and Math)”.

⁴⁰ Department of Education and Skills, *STEM Education Policy Statement 2017-2016* (2016), available at: <https://www.education.ie/en/The-Education-System/STEM-Education-Policy/stem-education-policy-statement-2017-2026-.pdf>.

⁴¹ See STEM Education Review Group, *STEM: Education in the Irish School System* (2016), available at: <https://www.education.ie/en/Publications/Education-Reports/STEM-Education-in-the-Irish-School-System.pdf>.

⁴² Gender Equal Media Scotland, *Representations of women: What's the problem?*. Gender Media Scotland is an initiative of Engender, University of Strathclyde, The Royal Society of Edinburgh bringing together academics, journalists, campaign groups and organisations working for women's equality in Scottish media. See also Nuffield Council of Bioethics (2017) 'Cosmetic Procedures: Ethical Issues' available at <https://www.nuffieldbioethics.org/wp-content/uploads/Cosmetic-procedures-full-report.pdf>

⁴³ Maryann Valiulis, Aoife O'Driscoll and Jennifer Redmond (2007) *An Introduction to Gender Equality Issues in the Marketing and Design of Goods for Children*, Dublin: Equality Authority, available at: http://www.ihrec.ie/download/pdf/an_introduction_to_gender_equality_issues_in_the_marketing_and_design_of_goods_for_children.pdf

societal norms and values that have historically associated positions of authority with men.⁴⁴ In addressing gender stereotyping and negative portrayals of women in media, the European Commission's Advisory Committee on Equal Opportunities for Women and Men suggests that media organisations should adopt positive action measures to integrate a gender dimension into their work and national and EU institutions could develop media monitoring projects.⁴⁵ The Council of Europe has also underlined the importance of 'promoting a positive and non-stereotyped image of women and men in the media' and 'strengthening self-regulatory mechanisms and codes of conduct to condemn and combat sexist imagery, language and practices'.⁴⁶

The Commission recommends that the State consider introducing statutory guidelines on gender equality for the advertising and marketing industry.

The Commission recommends that the State undertake a media monitoring project, including social media, in order to assess the portrayal of women, particularly marginalised groups of women, in Irish media, and that an action plan to combat sexist imagery, language and practices in Irish media is developed on foot of the project's findings.

Online misogyny

The internet and media play a critical role as both enablers and barriers to the full and meaningful participation of women in political and public life, offering a powerful opportunity for women to transmit information, share knowledge and support and broadcast to wider audiences. These spaces, however, can be far from inclusive and can also serve as a platform for perpetuating online misogyny, sexism and sexist hate speech. The Council of Europe Commissioner for Human Rights, Dunja Mijatović, has spoken at length on the damaging effects of sexist hate speech on women's rights, noting how it silences women's voices and weakens their determination to take part in political, social or cultural life.⁴⁷ To this end, the Council of Europe has released a set of guidelines on preventing and combating sexism in a number of fields, including the public sector, media, the workplace, justice, education and the private sphere.⁴⁸

Beyond the impact of stereotyping generally, online misogyny profoundly impedes women's safety, freedom of expression and participation in democratic processes and often manifests

⁴⁴ This is the definition used by the Department of Justice in the *National Women's Strategy 2007-2016*. See Department of Justice and Equality (2014) *Towards Gender Parity in Decision-making in Ireland*, an initiative of the *National Women's Strategy*.

⁴⁵ Advisory Committee on Equal Opportunities for Women and Men (2010) *Opinion on Breaking gender stereotypes in the media*, available [here](#)

⁴⁶ Council of Europe, *Combating Gender Stereotyping in the Media*.

⁴⁷ The Council of Europe's Press [Statement](#), 'Speak Up Against Sexist Hate Speech' (2019).

⁴⁸ The Council of Europe Committee of Ministers [Recommendation](#) CM/Rec(2019)

itself in threats to women's safety or that of their families, as well as attacks on their moral and human dignity.⁴⁹ While both women and men may be subject to harassment and harmful communications, such attacks often take a gender-based form, such as sexist commentary, sexual harassment and even threats of sexual violence, including threats of rape.⁵⁰ Intersectionality is essential when conceptualising online misogyny, as women can be targeted on overlapping grounds of discrimination, reinforcing marginalisation and further restricting women's access to public and political spaces.⁵¹

'Notice and take-down' procedures have emerged as the primary mechanism of self-regulation for social media platforms. These mechanisms have been codified at the European level, with the European Commission having agreed in 2016 a *Code of conduct on countering illegal hate speech online* with Facebook, Microsoft, Twitter and YouTube.⁵² Regarding notice and take-down procedures, the OSCE recommends:

States should require internet intermediaries to adopt and effectively implement clear and transparent policies and procedures governing the removal of illegal content disseminated by users through their services or networks. Those procedures should be subject to due process, including adequate oversight and effective appeal mechanisms, and ultimately be subject to independent judicial review and remedies.⁵³

The Law Reform Commission has recommended the establishment of a monitoring and oversight body to regulate the operation of notice and take-down processes.⁵⁴

⁴⁹ Ging & Siapera, 'Special issue on online misogyny' in *Feminist Media Studies* (2018): p. 523.

⁵⁰ The IPU's 2016 survey of women parliamentarians identified social media platforms as 'the number one place in which psychological violence – particularly in the form of sexist and misogynistic remarks, humiliating images, mobbing, intimidation and threats – is perpetrated against women parliamentarians'. Available [here](#)

⁵¹ A study of online discourse in Ireland in 2018, co-funded by the Commission and conducted by Dublin City University, noted with serious concern that online discourse in Ireland is increasingly punctuated with misogynist attacks directly targeting women and members of other vulnerable groups, including the LGBT community and ethnic minorities. IHREC (2019). *Hate track: tracking and monitoring racist speech online*, Stage IIIa: Dataset analysis: racially-loaded toxic contents in the Irish digital sphere (p.4). <https://www.ihrec.ie/app/uploads/2018/11/HateTrack-Tracking-and-Monitoring-Racist-Hate-Speech-Online.pdf>

⁵² European Commission (2016) *Code of conduct on countering illegal hate speech online*. Other companies to have since joined the code of conduct include Instagram, Google+, Snapchat, Dailymotion and Jeuxvideo.com. By agreeing to the code, the companies commit to having in place 'clear and effective processes to review notifications regarding illegal hate speech on their services so they can remove or disable access to such content' and also commit to reviewing the majority of valid notifications for removal of illegal hate speech within 24 hours. The code does not provide for the administration of penalties or sanctions if signatories fail to abide by these commitments.

⁵³ OSCE (2019) *The Tallinn Guidelines on National Minorities and the Media in the Digital Age & Explanatory Note*, para.37.

⁵⁴ See Law Reform Commission (2016) *Report on Harmful Communications and Digital Safety* LRC 116 – 2016 (available at <http://www.lawreform.ie/fileupload/Reports/Full%20Colour%20Cover%20Report%20on%20Harmful%20Communications%20and%20Digital%20Safety.pdf>).

The Commission notes that these initiatives to better regulate harmful content online are developing in the context of a forthcoming revision of the EU Audiovisual Media Services Directive.⁵⁵ The revised Directive also provides greater clarity regarding determinations of regulatory jurisdiction over media service providers operating in more than one Member State.⁵⁶ Ireland will have a significant role to play in regulating many relevant services on an EU-wide basis.⁵⁷

The Commission is of the view that the State should show leadership by developing a comprehensive regulatory framework to combat online hate speech, including misogynistic speech.

Under this framework, the operation of notice and take-down procedures should be subject to codes of practice, compliance with which should be promoted by way of effective and proportionate sanctions.

The Commission supports the establishment of an independent statutory body to monitor and enforce compliance with the new regulatory framework.

Cyber harassment and abuse

The Commission notes that the Law Reform Commission's 2016 *Report on Harmful Communications and Digital Safety* has recommended amending the harassment offence to include a specific reference to harassment by digital or online means in order to provide both needed clarification as to the scope of the offence of harassment, as well as reflect societal recognition of the importance of online harmful communications, which could in turn result in an increase in reporting of cyber harassment.⁵⁸

The Commission recommends that the proposals to reform the law on harassment set out in the Law Reform Commission's 2016 *Report on Harmful Communications and Digital Safety* be taken into account in the development of a legal response to the issue of cyber harassment and abuse.

⁵⁵ [DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services \(Audiovisual Media Services Directive\) in view of changing market realities](#). The deadline for the implementation of the provisions of the Directive is 19 September 2020 – see Department of Communications, Climate Action and the Environment (2019) [Public Consultation on the Regulation of Harmful Content on Online Platforms and the Implementation of the Revised Audiovisual Media Services Directive: Explanatory Note](#). The revised directive will extend the scope of EU broadcasting regulations to online video-sharing platforms, the scope of which will include social media platforms such as Facebook and YouTube. It will place new requirements on these platforms, including to take measures to protect the general public from audiovisual content that contains incitement to violence and hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter of the European Union.

⁵⁶ *DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL*, para.3.

⁵⁷ Department of Communications, Climate Action and the Environment (2019) [Public Consultation on the Regulation of Harmful Content on Online Platforms and the Implementation of the Revised Audiovisual Media Services Directive: Explanatory Note](#).

⁵⁸ Law Reform Commission (2016) *Report on Harmful Communications and Digital Safety*, Chapter 2.

3. Women in political and public life

While the number of women participating in political and public life has improved in Ireland in recent years, there remains a significant absence of gender balance across a range of spheres. Below, the Commission outlines some of the improvements that are needed to increase the participation and representation of women in politics, the legal profession, the public service, in the boardroom and in sport.

Women in politics

The Commission welcomes advancements made in participation of women in politics, notably the establishment of the Irish Women's Parliamentary Caucus in 2017 and the increased participation of women in the latest local, general and European electoral cycles. Most recently, the Irish Times reported the highest representation of women on the ballot in General Election 2020, with 160 of the 516 candidates being women (31 per cent).⁵⁹ Despite the increased representation on the ballot, however, women only accounted for 36 of those elected (22.5 per cent), an improvement of one seat when compared with the previous General Election in 2016.⁶⁰ Significant progress was also evidenced during the European Parliament elections in 2019, when 22 of the 59 candidates to contest in Ireland were women (37 per cent).⁶¹

Increased participation in politics may be attributed to the commencement of the *Electoral (Amendment) (Political Funding) Act 2012*, which provided that in order to secure State funding, political parties would be required to ensure that 30 per cent of their candidates in the general election be female.⁶² An analysis of the general and local elections highlighted substantial geographical differences in female candidacy and election, with women more likely to run and win seats in more urbanised areas of the country.⁶³ In the 2019 local elections, women accounted for only 29 per cent of all local candidates and 23.9 per cent of those subsequently elected.⁶⁴ While a certain improvement from the 2014 local elections,

⁵⁹ *Irish Times*, 'Record Share of Women Running for Dáil' (2020), Available [here](#).

⁶⁰ Almost one-third of the thirty-nine parliamentary constituencies failed to elect a female candidate in the General Election 2020. *Irish Times*, 'Election 2020: A 'missed opportunity' for gender equality – Women's Council' (2020), Available [here](#).

⁶¹ See *Female Representation in Politics in Ireland* (2020). Available at: <https://irelandsdg.geohive.ie/>

⁶² Fiona Buckley (2016) 'The implementation of gender quotas in Ireland: opportunities, challenges, controversies and success. Comments paper for 'The EU Mutual Learning Programme in Gender Equality. Women in political decision-making', Slovenia, 15–16 June 2016, available [here](#).

⁶³ Fiona Buckley and Caroline Hofman (2015) 'Women in local government: Moving in from the margins', *Administration*, vol. 63, no. 2, pp. 79–99 <https://www.degruyter.com/view/j/admin.2015.63.issue-2/admin-2015-0011/admin-2015-0011.xml?format=INT>. Adrian Kavanagh (2016) 'Female candidates in the 2016 General Election', *Irish Elections: Geography, Facts and Analyses* [web page]. Available [here](#).

⁶⁴ National Women's Council of Ireland press statement on the 2019 Local Elections. Available [here](#).

when women represented 21 per cent of the elected candidates, this is far below the EU average of 32 per cent for women's representation in local politics.⁶⁵

These figures are particularly concerning given that research demonstrates that local government experience is statistically more significant for women than men in the development of women's political careers.⁶⁶ It has been argued that 'without a targeted geographical strategy, quotas may not necessarily change all constituencies and many parts of rural Ireland could remain male-dominated for the foreseeable future'.⁶⁷ The Commission notes measures in 2019 to incentivise women's representation in local government through the provision of funding for an equality officer to parties meeting the threshold of 30 per cent women nominated candidates.⁶⁸ While such a measure is welcome, the Commission is of the view that this measure is inadequate to ensure greater women's participation in local politics.

The Commission recommends that the *Electoral (Amendment) Political Funding Act 2012* be amended to apply to local government elections.

The Commission recognises that legislation does not address all of the barriers to female political participation identified by a parliamentary committee examining women's participation in politics, namely childcare, cash, confidence, culture and candidate selection procedures.⁶⁹ The perpetuation of gender stereotypes in care work can act as an inhibitor,⁷⁰ while women living in rural areas face practical barriers, such as the time spent travelling to meetings, as well as more conservative attitudes and different cultural expectations about the role of women in politics.⁷¹ The Convention on the Constitution considered that education is required to change societal and cultural attitudes in relation to female participation in politics.⁷²

Additional groups of women have also been found to face compounding barriers to participation in political life, including Traveller and migrant women.⁷³ The Commission notes the concerns laid out in the concluding observations by the Committee on the Elimination of Racial Discrimination (CERD) regarding 'the low representation ethnic

⁶⁵ 'The local and municipal councils are also short of women, with the EU average equalling 32.1 % of women participating' in *Women in politics in the EU: State of Play* (2019). Available [here](#) (p.3)

⁶⁶ Fiona Buckley, Mack Mariani, Claire McGing, and Timothy White (2015) 'Is local office a springboard for women to Dáil Éireann?', *Journal of Women, Politics & Policy*, Vol. 36, No. 3, pp. 311–335.

⁶⁷ Claire McGing (2015) 'Women's representation in Ireland: Why do so few rural women enter Dáil Éireann?' Presentation to 5050 Group/Longford Women's Link seminar.

⁶⁸ Department of Housing, Planning and Local Government (11 March 2020), 'Ministers Murphy and Phelan announce new measures to promote greater gender equality on local councils'

⁶⁹ Houses of the Oireachtas (2009) *Joint Committee on Justice, Equality, Defence and Women's Rights: Second Report – Women's Participation in Politics*, <http://opac.oireachtas.ie/AWDData/Library3/Library2/DL100271.pdf>

⁷⁰ Yvonne Galligan (2010). 'Women in politics', in: J Coakley & M Gallagher (eds), *Politics in the Republic of Ireland* (5th ed.) pp. 263–291. London: Routledge

⁷¹ Fiona Buckley and Caroline Hofman (2015) 'Women in local government: Moving in from the margins', *Administration*, vol. 63, no. 2, pp. 79–99. Available [here](#).

⁷² Constitution of Ireland, Section 5.3, available [here](#).

⁷³ IHREC (2017), [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women](#).

minorities, including Travellers, Roma, people of African descent, Mixed Race Irish and migrant communities, in the political positions at all levels as well as in public services.⁷⁴

The Commission is also alarmed by recent incidents of racist speech amongst politicians, particularly during election campaigns and acknowledges that such rhetoric discourages political participation amongst vulnerable groups, particularly migrant and Traveller women and repeats the UN CERD Committee's recommendation that in order to address racist rhetoric in the context of elections, the State must 'effectively investigate and, as appropriate, prosecute and punish acts of hate speech, including those committed by politicians during election campaigns.'⁷⁵

The Commission recommends that the State monitor political party gender recruitment practices including female party membership rates, the level of female party office-holders, party spend on the promotion of women, and the implementation of gender quotas at election time.

The Commission recommends that the proposed Electoral Commission engages groups facing barriers to participating in the Irish electoral process, such as women, persons with disabilities, young people, migrants and people from ethnic minority backgrounds including Travellers and Roma.

The Commission recommends that codes of conduct for public officials and election candidates should clearly prohibit the use or endorsement of hate speech, including misogynistic speech. These codes should provide for appropriate sanctions for breach of their conditions.

The Commission recommends that capacity training and mentoring workshops be provided for rural women, migrant women and Traveller women to redress the underrepresentation of these groups of women in politics.

Women in the legal profession and judiciary

The year 2019 marked the centenary of the enactment of *the Sex Disqualification (Removal) Act 1919*, which permitted women to become solicitors and barristers, a change which led to women joining the civil service, accountancy and other professions.

The UN CEDAW Committee has recommended that States 'take measures, including awareness-raising and capacity-building programmes for all justice system personnel and law students, to eliminate gender stereotyping and incorporate a gender perspective into all aspects of the justice system'.⁷⁶

⁷⁴ Concluding observations on the combined fifth to ninth reports of Ireland, UN CERD 2019. Available at: https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT_CERD_COC_IRL_40806_E.pdf (p.5)

⁷⁵ Concluding observations on the combined fifth to ninth reports of Ireland, UN CERD 2019. Available at: https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT_CERD_COC_IRL_40806_E.pdf (p.5)

⁷⁶ CEDAW (2015) *General recommendation No. 33 on women's access to justice*, para. 29.

The Commission welcomes the increase in the number of women joining the legal professions in Ireland. As of the end of 2017, 52 per cent of practicing solicitors in Ireland are female. There are approximately 2155 members of the Law Library,⁷⁷ 38 per cent of whom are female.⁷⁸ This is up from 34 per cent in 2003.⁷⁹ The judiciary is 38 per cent women, up from just 13 per cent in 1996.⁸⁰

However, the different courts vary as to their gender representation. While 4 out of the 9 Supreme Court judges are women, women only make up 28 per cent of the High Court judiciary. Out of the 15 judges in the Court of Appeal, seven of these are women. In the Circuit Court 16 of the 38 judges are women. At District Court level, 23 of the 63 judges are women.⁸¹

Despite now representing over half of total solicitors in Ireland, only 33 per cent of partners in firms are women. Women are half as likely to make partner as their male colleagues.⁸²

The lack of women in senior levels is reflected in the barrister profession. Only 17 per cent of 352 senior counsel are women.⁸³ Becoming a senior counsel allows a barrister to charge up to 50 per cent more for their services, and it is also a recognised path to a senior judicial position.⁸⁴

A survey conducted by the Bar Council of Ireland in 2016 found that 67 per cent of female barristers encountered direct or indirect discrimination and a significant proportion reported either 'personal experience of, or an awareness of, casual sexism or sexual harassment'.⁸⁵

⁷⁷ Nearly all barristers practicing in Ireland are members of the Law Library.

⁷⁸ The Bar of Ireland, *Annual Report 2018-2019* (2020), at p. 13, available at: https://www.lawlibrary.ie/media/lawlibrary/media/Secure/TheBarofIreland_AnnualReport2018-2019.pdf

⁷⁹ Conor Gallagher, 'Why are so few women becoming senior counsel?' (2013) *Irish Times*, 9 Dec 2013.

⁸⁰ Michelle Hennessy, 'Supreme Court sits with highest proportion of female judges on bench ever' (2020) *The Journal*, 16 Jan 2020.

⁸¹ Courts Service, *The Judges*, available at: <http://www.courts.ie/Courts.ie/Library3.nsf/PageCurrent/91D731A12A4B8A0F80257FBC004E191F?opendocument#district>

⁸² Suzanne Carthy, 'Mind the Gap' (2018) *Law Society Gazette*, at p. 40, available at: <https://www.lawsociety.ie/globalassets/documents/gazette/gazette-pdfs/gazette-2018/june-2018-gazette.pdf#page=39>. In a 2018 study on gender equality in the Irish solicitors' profession, it was found that for women, gender and maternity are significant factors associated with career stalling and exit. Only one in eight of women who has taken any maternity leave is a partner. Solicitors who had agreed flexible working arrangements or reduced hour schedules with their employers were exclusively female and mothers of young children. Senior partners interviewed for the study admitted that they did not consider that agile working arrangements were compatible with being a partner.

⁸³ The Bar of Ireland, 'Annual Report 2018-2019' (2020), at p. 13, available at: https://www.lawlibrary.ie/media/lawlibrary/media/Secure/TheBarofIreland_AnnualReport2018-2019.pdf

⁸⁴ Conor Gallagher, 'Why are so few women becoming senior counsel?' (2013) *Irish Times*, 9 Dec 2013. Junior counsel usually consider becoming seniors, or 'taking silk', after 15 years of practice, usually in their 30s or early 40s. This coincides with a time when many women are concentrating on raising young families. Further, the process for taking silk also lacks transparency, which can work against women in a male-dominated field. See also Raymond Byrne and Paul McCutcheon, *The Irish Legal System* (Dublin, Butterworths, 4th ed, 2001), at p. 78.

⁸⁵ Aedamair Gallagher, 'Women's Issues?' (2016) *Bar Review* 21(2), p. 52, available: https://issuu.com/thinkmedia/docs/thebarreview_april2016_web-small/11?e=1242192/35062654

One respondent to the survey stated ‘despite it being 2016 – it is still very much a male-dominated environment’.⁸⁶

Similarly in 2019, a survey on the wellbeing of barristers 1 in 5 female barristers reported to have been discriminated against, 1 in 5 reported experiences of bullying and 11 per cent have experienced sexual harassment.⁸⁷ Discrimination and sexual harassment was found to be almost exclusively experienced by female, and generally younger barristers.

The Commission recommends that the Judicial Council take measures to increase representation of women in the judiciary.

In line with the UN CEDAW Committee’s General Recommendation No. 33, in particular the need to address gender stereotyping in the justice system, the Commission recommends that the Legal Services Regulatory Authority and the Minister for Justice and Equality consider:

- measures to ensure the health, safety and well-being of all male and female members of the bar;
- incorporation of equality training into barrister-at-law and solicitor training; and
- measures to encourage flexible hours, flexi-time job sharing, part-time work, shorter hours, remote working, term-time working in solicitor firms.

Women in the civil service, higher education and on state boards

The Commission welcomes the increased participation of women in public life, including on the judiciary and within the diplomatic service, but repeats its outstanding concern over gender distribution amongst senior grades in the civil service. As of February 2019, women constitute 34 per cent of those at the most senior grades of Assistant Secretary and above. At the next most senior grade, Principal Officer, women account for 43 per cent.⁸⁸

The Commission is also concerned about the ongoing lack of gender balance in senior academic posts Ireland’s higher educational institutions, where there are currently no

⁸⁶ Aedamair Gallagher, ‘Women’s Issues?’ (2016) *Bar Review* 21(2), p. 52, available: https://issuu.com/thinkmedia/docs/thebarreview_april2016_web-small/11?e=1242192/35062654. It was suggested by respondents to the survey that a set of guidelines should be published to tackle discrimination faced by female barristers and that effective complaint mechanisms and training be put in place.

⁸⁷ Bar of Ireland (2019) *Balance at the Bar, Members Survey*, available: <https://www.lawlibrary.ie/media/lawlibrary/media/Secure/Balance-at-the-Bar-Survey-Report.pdf>

⁸⁸ See the Department of Justice and Equality’s *Report of the Comprehensive National-level Review: Twenty-fifth anniversary of the Fourth World Conference on Women and adoption of the Beijing Declaration and Platform for Action* (June 2019). Available [here](#) (p.7). The Commission acknowledges that while this is a considerable improvement from 2014, when women represented 25 per cent and 24 per cent at Deputy/Assistant Secretary General and at Secretary General levels, respectively, further commitment is needed if the State is to reach its 50:50 gender target laid out in the Civil Service Renewal Programme. See ‘Press Release on Civil Service Renewal Programme’ (2017). Available [here](#).

female university Presidents/Provosts, and where only 24 per cent of Professorships are held by women.⁸⁹

As regards State Boards, which amount to approximately 230 in Ireland, the Government target of 40 per cent gender balance was met in July 2018 in respect of average board membership, and continues to be pursued in respect of all individual boards.⁹⁰ As women's participation on public boards grows, the Commission believes that its own statute-based requirement of equal gender balance is exemplary of best practice and should be replicated across all State boards.⁹¹

The Commission recommends that the State should place the requirement to have gender balance on State Boards on a statutory footing.

Women's leadership in business

There is a significant gender gap in the leadership of businesses in Ireland. Data released by the Central Statistics Office in 2019⁹² indicates that only one in nine CEOs of large enterprises is a woman. The same data indicates that women make up under 20 per cent of board membership. The female share of board membership in certain sectors is even lower, with men accounting for 83 per cent of all board membership in the Industry sector and 92 per cent in the construction sector.

The Commission is of the view that in light of these figures, remedial measures are required to increase the representation of women in senior positions and on boards in business in Ireland. Internationally, it has been established that a combination of legislative quotas and soft measures have been drivers of gender equality in board membership.⁹³ As the European Institute for Gender Equality has remarked:

the difference between action and inaction is striking. The six countries with binding quotas currently have 35 per cent women on boards (aggregate of all companies covered in those countries) and this proportion has gone up by 26 pp since October 2010.⁹⁴

The Commission recommends that a system of gender quotas for company board membership, with appropriate scaling to the size and revenue of the business, be developed and placed on a statutory footing.

⁸⁹ Higher Education Authority (2018), *Higher Educational Staff Profiles by Gender*.

⁹⁰ https://www.unece.org/fileadmin/DAM/Gender/Beijing_20/Ireland.pdf

⁹¹ IHREC Act 2014: (12) Membership of the Commission: (ii) Of the members of the Commission, not less than 6 of them shall be men and not less than 6 of them shall be women, and in a case where there are 14 or more members, not less than 7 of them shall be men and not less than 7 of them shall be women.

⁹² CSO (23 May 2019) *Statistical Release: Gender balance in business survey*.

⁹³ European Institute for Gender Equality (28 June 2019), '[Legislative quotas can be strong drivers for gender balance in boardrooms](#)'

⁹⁴ European Institute for Gender Equality (28 June 2019), '[Legislative quotas can be strong drivers for gender balance in boardrooms](#)'. The Six countries are France, Sweden, Italy, Finland, Belgium, Germany.

Women in sport

As with political and governmental decision-making, national sports governing bodies could also benefit from increased female participation. During a consultation for the Commission's submission under CEDAW, it was frequently highlighted that women in Ireland do not enjoy equal treatment in sport. State funding practices⁹⁵, a lack of female representation in sports governance, and poor representation by the media of women in sport were cited as the key barriers to gender equality.⁹⁶ The Commission welcomes the publication of the *National Sports Policy 2018-2027* in July 2018, which aims to increase participation, with a specific focus on women and girls, and which commits to financing 'increasing participation in sport throughout the population'.⁹⁷

The Commission acknowledges the private sector-backed campaign, 20x20, which aspires to raise media coverage, attendance and participation across all women's sports by 20 per cent by 2020, but recommends that an action plan be developed at Departmental level to reflect governmental commitment to ensuring a more equal representation of women's sport in the media. The Commission also welcomes improvement in 2019 in terms of coverage of women's sport, including RTÉ and TG4's shared coverage of the FIFA Women's World Cup, but notes that parity between men and women's sport on national media platforms is far from being achieved.⁹⁸ According to data from the Teneo Sport and Sponsorship Index (TSSI), only 25 per cent of respondents across the nation believed that women's sports received enough coverage in 2019.⁹⁹

The Commission recommends that Sport Ireland review its approach to sports investment in order to ensure that State funding for participation and advancement in sport promotes women's participation and advances gender equality.

The Commission recommends that sporting bodies in receipt of State funding be required to have gender balance on their boards.

The Commission recommends that an action plan be developed at national level to ensure a more equal representation of women's sport in the media.

⁹⁵See <https://www.sportireland.ie/women-in-sport/women-in-sport-funding>, <https://assets.gov.ie/15979/04e0f52cee5f47ee9c01003cf559e98d.pdf>

⁹⁶ IHREC (2017), *Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women*.

⁹⁷ Department of Transport, Tourism and Sport: *National Sports Policy 2018-2027*.

⁹⁸ Irish Times article <https://www.irishtimes.com/sport/soccer/women-in-sport-movement-gathers-pace-with-key-milestones-achieved-in-2019-1.4119537>

⁹⁹ The TSSI is a 1,000 person nationally-representative survey that examines public attitude towards sport in Ireland. See Irish Times article on *Women in Sport's Movement Gathers Pace with Key Milestones Achieved in 2019* at: <https://www.irishtimes.com/sport/soccer/women-in-sport-movement-gathers-pace-with-key-milestones-achieved-in-2019-1.4119537>

4. Gender and decent work

As mentioned in the introduction, in its *Strategy Statement 2019-2021*, the Commission has committed to advancing socio-economic rights and the social protection of all families and individuals, particularly with respect to decent work¹⁰⁰. The Commission understands ‘decent work’ in the context of the International Labour Organisation’s (ILO) which describes it as follows:

opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.¹⁰¹

The right to work is protected by a number of international treaties that Ireland has ratified, most notably, article 7 of the International Covenant on Economic Social and Cultural Rights. Article 11 of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) also provides gender-specific protection of the right to work. The right to work is also protected under Article 40.3.1° of the Constitution of Ireland.¹⁰² Direct and indirect discrimination on the grounds of gender are prohibited in an employment context by the *Employment Equality Acts 1998-2015*. The *Employment Equality Acts 1998-2015* provide for equal pay¹⁰³ as well as the prohibition of discrimination in access to employment, conditions of employment, training or experience, promotion or re-grading and classification of posts.¹⁰⁴

The Commission notes that despite these protections, there remains a significant gender inequality in employment in Ireland, in the shape not only of a pay and pension gap, but in terms of occupational and hierarchical segregation, and the intersectional experience of discrimination. The Commission is of the view that a variety of legislative and policy measures need to be undertaken to tackle these inequalities.

100 The Commission has the power to draft codes of practice in accordance with its founding legislation and submit each to the Minister of Justice and Equality (the Minister) for approval.¹⁰⁰ It has produced three draft codes of practice relevant to the area of gender equality: on Equal Pay for Like Work; Sexual Harassment and Harassment at Work; and the Promotion of Family-Friendly Measures in the Workplace (see Section on ‘Promotion of Family-Friendly Measures in the Workplace’.

¹⁰¹ International Labour Organisation (ILO) (2019) *Decent Work Agenda*. See further:

¹⁰² *Landers v. The Attorney General* (1975) 109 I.L.T.R. 1, *Murtagh Properties v. Cleary* [1972] I.R. 330, *Murphy v. Stewart* [1973] I.R. 97 and *Cafolla v. O'Malley* [1985] 1 I.R. 486

¹⁰³ Section 19 of the Employment Equality Acts 1998-2015.

¹⁰⁴ Section 8(1) of the Employment Equality Acts 1998-2015.

Gender inequality in employment

The gender pay gap is an indicator of gender inequality in the labour market. It is estimated that the gender pay gap in Ireland is approximately 14 per cent.¹⁰⁵ The gender pension gap is currently 38 per cent in Ireland.¹⁰⁶ Competing theories have been put forward to explain the persistence of the gender pay and pension gap across a number of disciplines including economics, psychology and sociology.¹⁰⁷ For example, in relation to the gender pension gap, it has been argued that a number of factors have contributed to this including the gender pay gap, women being overrepresented in precarious and part-time work and women being less likely to have occupational or private pensions than men or, if they have them, generally at lower rates.¹⁰⁸ The UN Committee on Economic, Social and Cultural Rights has stated that the persistence of the gender pay gap is evidence that 'the importance of the right to just and favourable conditions of work has yet to be fully realised'.¹⁰⁹

Women's experience of work can be adversely impacted by intersectional discrimination. Research has found that women with a disability are less likely than men with a disability to be active in the labour market and, when in employment, women in this group are more likely to be working on a part-time basis, which has been linked to caring responsibilities.¹¹⁰ Research has also shown that 81.2 per cent of Traveller women are unemployed and educational attainment, discrimination, childcare and family commitments, and welfare issues act as barriers to the labour market.¹¹¹ Migrant women are over-represented in the care and domestic work sector with many women working in vulnerable employment conditions.¹¹² In 2013 the Equality Tribunal held a transgender woman suffered

¹⁰⁵ This figure is based on data from 2014 and relates to the 'unadjusted gender pay gap' which is defined as the difference between the average gross hourly earnings of men and women expressed as a percentage of the average gross hourly earnings of men. For further details see: https://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics

¹⁰⁶ IHREC (2017) Citizens' Assembly on the Challenges and Opportunities of an Ageing Population.

¹⁰⁷ See for example the following Opinions of the European Commission's Advisory Committee on Equal Opportunities: 2017 Opinion on Gender Pay Gap, 2018 - Opinion on new challenges for gender equality in the changing world of work, 2016 - Ad-hoc opinion on the new initiative to address the challenges of work-life balance faced by working parents and caregivers, 2015 - Opinion on how to overcome occupational segregation. Available here: https://ec.europa.eu/info/publications/list-previous-opinions-advisory-committee-equal-opportunities-women-and-men-2014-2016_en

¹⁰⁸ Bassett, M. (2017) *Towards a Fair State Pension for Women Pensioners*. Dublin: Age Action, p. 6, available: https://www.ageaction.ie/sites/default/files/attachments/final_towards_a_fair_state_pension_for_women_pensioners.pdf

¹⁰⁹ UN Committee on Economic, Social and Cultural Rights (CESCR) (2016) *General Comment No. 23: the right to just and favourable conditions of work*, para 2.

¹¹⁰ Dorothy Watson and Brian Nolan (2011) *Social Portrait of People with Disabilities in Ireland*, p. 23 available at <https://www.welfare.ie/en/downloads/SocialPortraitPeopleWithDisabilities.pdf>

¹¹¹ National Traveller Women's Forum (2012), *Traveller Women and Employment*, available at: <http://www.ntwf.net/wp-content/uploads/2013/10/NTWF-Traveller-Women-and-Employment.pdf>.

¹¹² Migrant Rights Centre Ireland (2015) *Migrant Workers in the Home Care Sector: Preparing for the Elder Boom in Ireland*, available at <http://www.mrci.ie/resources/publications/migrant-workers-in-the-home-care-sector-preparing-for-the-elder-boom-in-ireland/>. The Commission remains concerned about the treatment of domestic migrant workers and regrets that domestic workers continue to be excluded from equality protections with respect to recruitment, which places them at risk of discrimination.¹¹²

discriminatory treatment on the grounds of gender and disability after she was constructively dismissed having endured intolerable working conditions following a disclosure of her gender identity.¹¹³

These examples demonstrate the need to devise flexible measures to tackle inequality in work, that take the circumstances of particular groups of women into account.

Equal pay and wage transparency

Equal pay for work of equal value has been a principle of international law for over a century and has been articulated in a number of international instruments.¹¹⁴ In its General Recommendation No. 13 on equal remuneration for work of equal value, the Committee on the Elimination of Discrimination Against Women suggested that States parties:

should consider the study, development and adoption of job evaluation systems based on gender-neutral criteria that would facilitate the comparison of the value of those jobs of a different nature, in which women presently predominate, with those jobs in which men presently predominate.¹¹⁵

Following its examination of Ireland in 2017, the Committee on the Elimination of Discrimination Against Women (CEDAW) recommended that the State ‘take concrete measures to reduce the gender pay gap by enforcing the principle of equal pay for work of equal value and intensifying the use of wage surveys’.¹¹⁶

The principle that men and women should receive equal pay for equal work has been a longstanding principle of the law of the European Union. This principle is enshrined in Article 157 of the *Treaty on the Functioning of the European Union (TFEU)*, Article 23 of the *Charter of Fundamental Rights of the European Union* and the *Equal Treatment Directive*¹¹⁷. The principle of equal pay for work of equal value is enshrined in section 19 of the *Employment Equality Acts 1998-2015*, which transposed the *Equal Treatment Directive* into Irish law.

In order for a claim to succeed under the *Employment Equality Acts 1998-2015*, an individual claimant must identify a specific named comparator, who is performing ‘like work’ for the same or an associated employer. The legislation therefore, requires a potential claimant to gather information on the pay of a male colleague. This can present barriers, particularly

¹¹³ *Louise Hannon v First Direct Logistics Ltd*, Decision No. DEC-E2011-066. See also: McNeil, Jay, Louis Bailey, Sonja Ellis and Maeve Regan (2013) *Speaking from the Margins: Trans Mental Health and Wellbeing in Ireland*, Transgender Equality Network Ireland, available: <http://www.teni.ie/attachments/5bdd0cd5-16b6-4ab6-9ee6-a693b37fdbcf.PDF>.

¹¹⁴ For example the ILO Convention No. 100 on Equal Remuneration.

¹¹⁵ CEDAW (1998) General recommendation No. 13: Equal remuneration for work of equal value.

¹¹⁶ CEDAW (2017) *Concluding Observations: Ireland*, para. 41.

¹¹⁷ *Directive 2006/54/EC* of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) replaced the *Equal Pay Directive 75/117/EEC*.

with the rise in use of pay secrecy clauses in contracts of employment.¹¹⁸ Despite the introduction of measures to mitigate the information deficit,¹¹⁹ it remains difficult to prove an individual equal pay claim.

In light of the lack of transparency on pay in Ireland, the Commission is of the view that legislative reform is necessary to enforce the principle of equal pay for work of equal value in Ireland.

In 2014, the European Commission issued recommendations on strengthening the principle of equal pay through transparency, which suggested that Member States introduce pay audits and pay reporting.¹²⁰ Two legislative measures were introduced during the 32nd Dáil on gender pay gap reporting with a new function proposed for the Commission but neither of these Bills completed their passage through the Houses of the Oireachtas before the Dáil was dissolved on 14 January 2020.¹²¹ As noted above, in accordance with section 31 of the *Irish Human Rights and Equality Commission Act 2014* the Commission has prepared a draft code of practice on Equal Pay for Like Work, which is currently under consideration by the Minister for Justice and Equality. The code sets out the law and best practice in relation to equal pay for like work as developed under both European Union and Irish law.¹²²

The Commission is of the view that wage transparency must be coupled with measures to tackle occupational or hierarchical segregation as well as workplace discrimination in order to advance gender equality in the context of decent work.

¹¹⁸ Bolger, Bruton and Kimber (2012) *Employment Equality Law* (Roundhall: Dublin), para 11.04.

¹¹⁹ The claimant has a right to information under section 76 of the Employment Equality Acts 1998-2015 but there is no obligation on the employer to provide this information. In *Handels- og Kontorfunktionærernes Forbund I Danmark v Dansk Arbejdsgiverforening, acting on behalf of Danfoss* (C-109/88) [1989] ECR 3199, the Court of Justice of the European Union held that if the pay system is completely lacking in transparency, the burden of proof shifts to the employer to show that the pay system is not discriminatory.

¹²⁰ The Equality and Human Rights Commission in Great Britain has published a statutory code of practice on equal pay, which includes guidance on reviewing or auditing pay. See <https://www.equalityhumanrights.com/sites/default/files/equalpaycode.pdf>

¹²¹ In May 2017, Senator Bacik introduced the Irish Human Rights and Equality Commission (Gender Pay Gap Information) Bill 2017 [PMB] to Seanad Éireann.¹²¹ This proposed to empower the Commission to administer a scheme for gender pay gap reporting, through amendments to the Irish Human Rights and Equality Commission Act 2014. The Bill was passed by Seanad Éireann on 3 October 2018.

(<https://www.oireachtas.ie/en/debates/debate/dail/2018-11-28/31/>). On 26 June 2018, the Minister for Justice and Equality, Mr Charlie Flanagan TD, and Minister Stanton announced the publication of the General Scheme of the Gender Pay Gap Information Bill ('General Scheme').

<http://justice.ie/en/JELR/Pages/PR18000210>. The Government proposed an approach whereby the Minister for Justice and Equality would be required to make regulations setting out a mechanism for gender pay gap reporting in Ireland, through amendments to the *Employment Equality Acts 1998-2015*. While these legislative proposals were to be welcomed in terms of promoting wage transparency, the Commission reiterates the need for legislative reform to ensure that individuals are supported in advancing equal pay claims in the courts.

¹²² The purpose of the code is to assist employers, employees, advisors, trade union representatives, human resources departments and other relevant stakeholders by providing a clear understanding of how to apply the law on equal pay for like work, and to inform them of how they can seek recourse before the Workplace Relations Commission, as necessary. The code also seeks to provide guidance on how to prevent or eliminate discriminatory pay practices and to ensure that there are no unjustifiable pay inequalities. The draft code was submitted to the Minister for approval on 19 December 2018.

Promotion of family-friendly measures in the workplace

Research published by the Equality Authority and the ESRI found that differences in levels of labour market experience accounted for the largest single proportion of the gender pay gap and lower levels of female experience derive from the fact that females tend to take more time out of the labour market for family-related reasons.¹²³ Another study published by the Equality Authority and the ESRI in 2009, *A Woman's Place*, found that family characteristics play a role in promotions which creates 'vertical segregation' between women and men in the workplace.¹²⁴

The UN Committee on Economic, Social and Cultural Rights has recommended that State Parties should ensure that 'in law and in practice, men and women have equal access to jobs at all levels and all occupations', and suggests the adoption of 'temporary special measures to accelerate women's equal enjoyment of their rights'.¹²⁵ The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) requires States to provide 'the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities'.¹²⁶ Following its examination of Ireland's compliance with CEDAW in 2017, the Committee on the Elimination of Discrimination Against Women recommended that the State:

Intensify efforts to promote the use of shared parental leave so as to encourage men to participate equally in childcare responsibilities, and ensure childcare services are affordable and readily available in all parts of the State.¹²⁷

Sections 24 and 26 of the *Employment Equality Acts 1998-2015* allow for positive measures to be taken to promote equality of opportunity. Public bodies may also identify positive measures within the context of fulfilling its public sector human rights and equality duty. Recent progress has also been made on work-life balance, with the enactment of the EU Directive on work-life balance for parents and carers.¹²⁸ This aims to: support work-life balance for parents and carers; encourage more equal sharing of parental leave between men and women; and address women's underrepresentation in the labour market. It includes measures for paternity leave, non-transferable parental leave, carers' leave, and the right to request flexible working arrangements. This will now need to be transposed into national legislation by the Member States by June 2020.

¹²³ McGuinness, Kelly, Callan, O'Connell (2009) *The Gender Wage Gap in Ireland: Evidence from the National Employment Survey 2003* (ESRI and Equality Authority: Dublin), p 31.

¹²⁴ Russell, McGinnity, Callan and Keane (2009) *A Woman's Place: Female Participation in the Irish Labour Market* (ESRI and Equality Authority: Dublin), p 60.

¹²⁵ CESCR, *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights*, para 21-23.

¹²⁶ Article 11(2)(b) of the UN Convention on the Elimination of All Forms of Discrimination Against Women.

¹²⁷ CEDAW (2017) *Concluding Observations: Ireland*, para. 41.

¹²⁸ [Directive \(EU\) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers](#) and repealing Council Directive 2010/18/EU

At the national level, the Commission has welcomed the introduction of paternity leave and the extension of parental leave but cautions that increased leave does not always tackle gender stereotyping in relation to parental responsibilities. In 2010, the Court of Justice of the European Union ruled that a Spanish law permitting female employees to take leave following a child's birth was not a lawful positive measure because men were not entitled to such leave and therefore the measure served to perpetuate gender stereotypes in relation to parental duties.¹²⁹ A review of paternity and parental leave policies across the European Union reveals that the uptake of father-specific leave tends to be higher in countries that reserve part of the parental leave for fathers, for example, Sweden, Germany and Iceland.¹³⁰ In addition, in Sweden, parents receive a cash bonus on top of the daily allowance if parental leave is equally divided between parents.¹³¹ This research illustrates that 'when women re-enter the labour market after having children, they often return to part-time jobs, which are often poorer quality jobs with lower pay, and fewer options for career progression' which has been described as 'the child penalty'.¹³² The research goes on to state that 'an increase in leave uptake by fathers has the potential to equalise the effect of the child penalty between parents, thereby mediating the long term effects of the child penalty on the gender pay gap'.¹³³ The question of care work will be dealt with further in the next section.

The Commission is currently consulting on a draft Code of Practice on the promotion of family-friendly measures in the workplace. The aim of the proposed code is to consolidate guidance on the different family-focused rights in one accessible document and explain key concepts in this area. These concepts include maternity leave, paternity leave, adoptive leave, parental leave and parent's leave, force majeure leave and carer's leave. It is intended that the proposed code will assist employers, employees, advisors, trade union representatives, human resources departments and other relevant stakeholders by providing a clear understanding of how to apply the law on family-friendly working rights.

In light of the expected transposition of the EU Directive on work-life balance in 2020, and of the Concluding Recommendations of the UN CEDAW Committee in 2017, the Commission recommends that the State redouble its efforts to modernize the legislative and policy framework for the promotion of family-friendly measures in the workplace, including the development of paternity leave, non-transferable parental leave, carers' leave, and the right to request flexible working arrangements.

¹²⁹ *Roca Álvarez v Sesa Start Espana ETT SA* (C-104/09) [2010] ECR I-08661.

¹³⁰ Janna van Belle (2016) *Review of paternity and parental leave policies across the European Union*, (RAND Europe: UK), available: https://www.rand.org/content/dam/rand/pubs/research_reports/RR1600/RR1666/RAND_RR1666.pdf, p. 16.

¹³¹ Janna van Belle (2016) *Review of paternity and parental leave policies across the European Union*, (RAND Europe: UK), p. 16.

¹³² Janna van Belle (2016) *Review of paternity and parental leave policies across the European Union*, (RAND Europe: UK), p. 12.

¹³³ Janna van Belle (2016) *Review of paternity and parental leave policies across the European Union*, (RAND Europe: UK), p. 12.

Strengthening employment equality legislation

Equality law is comprised of two key pieces of legislation, which transposed the European Union's Equal Treatment Directives into domestic law¹³⁴. The law that deals with discrimination in the workplace is the *Employment Equality Acts 1998-2015* (EEA), which aims to ensure that people have equal opportunities in relation to skills, training, jobs and promotion. The law that deals with discrimination in relation to goods and services is the *Equal Status Acts 2000-2018* (ESA).

Discriminatory grounds

Under the equality acts, discrimination occurs where a person is treated less favourably than another 'is, has been, or would be' treated, in a comparable situation, on any of the specified grounds. The nine grounds¹³⁵ on which employment discrimination is prohibited are: gender, civil status, family status, sexual orientation, religion, age, disability, race/colour/nationality or ethnic or national origins, and membership of the Traveller community.¹³⁶ The 'Gender' ground covers women and men.¹³⁷ Discrimination because of pregnancy or maternity leave is also defined as gender discrimination¹³⁸

While transgender people are not specifically referenced in the equality acts, the Acts must be - and indeed have been - interpreted in accordance with the EU Directives and under EU law a transgender person who experiences discrimination arising from their 'gender reassignment', or transition, is also protected under the gender ground.¹³⁹ The Commission is nevertheless of that view that the equality acts should explicitly prohibit discrimination against transgender, non-binary and intersex people. The Commission has also recommended that the grounds of discrimination be expanded to include to prohibit discrimination on the ground of socio-economic status.¹⁴⁰

¹³⁴ Council Directive 2000/43/EC implementing the principle of equal treatment of persons irrespective of racial or ethnic origin; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in access to and supply of goods and services; Directive 2006/54/EC implementing the principle of equal opportunities and equal treatment between men and women in matters of employment and occupation (Recast); and Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.

¹³⁵ Section 6(2) EEA

¹³⁶ In addition, discrimination in the provision of accommodation and related services and amenities is unlawful on the grounds that an individual is in receipt of specific payments under the *Social Welfare Acts*.

¹³⁷ Section 6(2A).

¹³⁸ Section 6(2A).

¹³⁹ See Recital 3, Gender Recast Directive 2006/54/EC which reads "The Court of Justice has held that the scope of the principle of equal treatment for men and women cannot be confined to the prohibition of discrimination based on the fact that a person is of one or other sex. In view of its purpose and the nature of the rights which it seeks to safeguard, it also applies to discrimination arising from the gender reassignment of a person".

¹⁴⁰ IHREC (2017) Observations on the Equality (Miscellaneous Provisions) Bill 2017, available:

<https://www.ihrec.ie/app/uploads/2018/01/Observations-on-Equality-Miscellaneous-Provisions-Bill-2017.pdf>

The Commission recommends amendment of the equality acts to explicitly prohibit discrimination against transgender, non-binary and intersex people.

The Commission recommends that the grounds of discrimination be expanded to include to prohibit discrimination on the ground of socio-economic status.

Intersectional discrimination

The European Institute for Gender Equality (EIGE) describes intersectionality as ‘acknowledging that experiences and positions in society are influenced by gender as well other social categories’.¹⁴¹ Furthermore, the European Commission has highlighted that intersectionality means that ‘several grounds of discrimination operate and interact with each other simultaneously in such a way that they are inseparable’.¹⁴²

In its 2020 Opinion on Intersectionality the European Commission’s Advisory Committee on Equal Opportunities for Women and Men states ‘intersecting forms of discrimination must be made visible and well understood for policies and legislation to be more targeted and effective’.¹⁴³ Article 2 CEDAW requires State parties to ‘legally recognise intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them’.¹⁴⁴ Under equality legislation described above an individual may bring proceedings on one or more of the nine grounds of discrimination, yet there is no provision for intersectional discrimination where each ground adds to the other ground.¹⁴⁵

The Commission reiterates its previous recommendation that equality legislation be amended to provide for intersectional discrimination.¹⁴⁶

Access to justice

As set out in the introduction, in its *Strategy Statement 2019-2021* the Commission has committed to supporting people who face the greatest barriers to justice as part of the human rights and equality protections for all.

¹⁴¹ European Institute for Gender Equality (EIGE), *Intersecting inequalities Gender Equality Index*, Publications Office of the European Union, Luxembourg, 2019. Available at:

<https://eige.europa.eu/publications/intersecting-inequalities-gender-equality-index>

¹⁴² European Commission, Directorate-General for Employment, Social Affairs and Equality Opportunities Unit *Tackling Multiple Discrimination Practice, policies and laws*, 2007, citing Moon, Gay, *Multiple discrimination – problems compounded or solutions found?*, *Justice Journal*, 2006, pp. 86-102.

¹⁴³ European Commission Advisory Committee on Equal Opportunities for Women and Men (2020) *Opinion on Intersectionality in Gender Equality Laws, Policies and Practices*.

¹⁴⁴ CEDAW (2010) *General Recommendation No. 28 on the core obligations of States parties under article 2*, para. 18.

¹⁴⁵ Frances Meenan (2015) *Country Report: Gender Equality – How are EU Rules Transposed in National Law. Ireland*. Brussels: European Commission Directorate-General for Justice and Consumers, p. 12. Available: http://ec.europa.eu/justice/gender-equality/files/ge_country_reports_d1/2015-ie-country_report_ge_final.pdf

¹⁴⁶ CEDAW Shadow Report 2017.

One of the key components of access to justice is having access to effective remedies. The Commission is mandated to keep the effectiveness of human rights and equality legislation under review,¹⁴⁷ and has identified some examples of the limitations of existing remedies. For example, Irish equality law places an upper limit on the amount of compensation that may be awarded to a victim of discrimination.¹⁴⁸ Similar limitations on compensation in other EU Member States have been found to be incompatible with EU law¹⁴⁹ and has led Ireland's compliance with EU law being questioned, particularly in relation to the question of 'whether the legislation includes real and effective compensation'.¹⁵⁰ In gender discrimination cases, the complainant may refer their case to Circuit Court,¹⁵¹ where compensation is not limited¹⁵² but the individual may face other barriers such as increased costs, particularly if the claim is lost.

The Commission reiterates its recommendation that section 82(4) of the *Employment Equality Acts 1998–2015* and section 27(2) of the *Equal Status Acts 2000–2015* be amended to ensure that the amount of compensation is not limited.

The UN Committee on the Elimination of Discrimination against Women has also recommended that States remove economic barriers to justice by providing a legal aid system which is 'accessible, sustainable and responsive to the needs of women ... provided in a timely, continuous and effective manner at all stages of judicial or quasi-judicial proceedings'.¹⁵³ Legal advice and representation is provided by the Legal Aid Board,

¹⁴⁷ Sections 10(2)(b) and 30(1)(a)–(b) of the *Irish Human Rights and Equality Commission Act 2014*.

¹⁴⁸ Section 82(4) of the *Employment Equality Acts 1998–2015* provides that the maximum amount that can be paid in compensation is the greater of 104 weeks' pay or €40,000 where the complainant was in receipt of remuneration at the time of the referral of the claim or at the date of dismissal, or in any other case €13,000. Section 27(2) of the *Equal Status Acts 2000–2015* provides that the maximum amount of redress is the amount that may be awarded by the District Court, currently €15,000.

¹⁴⁹ In *Marshall v Southampton & South-West Hampshire Area Health Authority (No.2)* [1993] European Court Reports I-4367 the Court of Justice of the European Union held that the setting of a national upper limit on the award of compensation was not permissible as this could not properly fulfil the requirement that a remedy must be effective. EU equality law requires the provision of effective, proportionate and dissuasive remedies: Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, Article 17; Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Article 15; Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services, Article 14; Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), Article 25 – Article 18 of the Recast Directive also prohibits the fixing of a prior upper limit of compensation except in relation to cases involving access to employment.

¹⁵⁰ European Commission (2016) *Country report: Ireland – Gender equality: How are EU rules transposed into national law*, p. 47. This report relates to the period 1 January 2014 – 1 July 2015 and was prepared by Frances Meenan for the European network of legal experts on gender equality and non-discrimination. Available at: http://ec.europa.eu/justice/gender-equality/files/ge_country_reports_d1/2015-ie-country_report_ge_final.pdf

¹⁵¹ Section 77(3)(b) of the *Employment Equality Acts 1998–2015*; Section 21(1A) of the *Equal Status Acts 2000–2015*.

¹⁵² Section 82(3) of the *Employment Equality Acts 1998–2015*; Section 27(5) of the *Equal Status Acts 2000–2015*.

¹⁵³ CEDAW (2015) *Committee's General Recommendation No. 33 on women's access to justice*, para. 33.

primarily in family law matters, subject to qualifying criteria.¹⁵⁴ In 2013, despite the detrimental impact of austerity measures on those with low incomes, the minimum financial contribution for legal representation under the civil legal aid scheme was raised from €50 to €130.¹⁵⁵ While a fee waiver system is provided for in cases of ‘undue hardship’, there is no automatic entitlement to this waiver.¹⁵⁶

The Commission reiterates its recommendation that the State review the Legal Aid Board’s system of waiver to ensure it operates in a transparent and effective manner and does not prevent individuals from accessing legal aid due to their economic circumstances.

Finally, it is not always recognised that the diversity of the legal profession and the judiciary may have an impact on access to justice and in this context the Commission also reiterates its observations above regarding the importance of increased female representation in the judiciary and legal profession at senior levels, and stresses the relevance of this to improving women’s access to and experience of the justice system.

¹⁵⁴ For example an individual may qualify for legal aid if their disposable income is less than €18,000 per annum and disposable capital (other than the home) is less than €100,000. See further:

http://www.legalaidboard.ie/lab/publishing.nsf/Content/Civil_Legal_Aid

¹⁵⁵ *Civil Legal Aid Regulations 2013*, 3(d) SI No 346 of 2013.

¹⁵⁶ Sections 24, 29(2) of the *Civil Legal Aid Act 1995*.

5. Gender and care work

There is a significant over-reliance on the provision of unpaid care work in Ireland, and the provision of such care is heavily gendered. The Commission has identified a range of measures, from constitutional reform, to an overhaul of the state's policy framework for care, to ensure that it is adequately supported, publically valued, and equally shared.

Constitutional recognition of care work

It has been stated that 'gender stereotyped patterns of care are rooted in the Irish Constitution', where references to 'mother' and 'women' are interchangeable, and as a result it is claimed that 'the gendered division of care labour is deeply embedded in the legislative and policy fabric of Irish society'.¹⁵⁷ As outlined above, the Commission is of the view that Article 41.2 of the Constitution of Ireland perpetuates gender stereotypes. However, it has been argued that Article 41.2 represents 'an important constitutional affirmation of the public and essential good that care work provides to the State in the pursuance of "the common good"'.¹⁵⁸

The Commission has stated that the support for care work currently envisaged by Article 41.2.2 arguably lays the foundation for recognising a right to social security in the Constitution.¹⁵⁹ While strengthening the protection of economic, social and cultural rights in the Constitution continues to be a matter of public debate, it should be noted that the Convention on the Constitution, favoured a reasonable level of State support for carers.¹⁶⁰ Taking account of the views of the Convention, the Commission suggests that this wider recognition could be reflected in a positive obligation within Article 41.2 in a number of ways such as incorporating a statement that: 'The State shall provide a reasonable level of support to parents and others providing family care'.

*The Eighth Report of the Convention on the Constitution*¹⁶¹ currently stands referred to the Joint Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach for consideration of the recommendation to amend the Constitution to strengthen the protection of economic, social and cultural rights and to consider any 'implications arising in terms of balance of rights, good governance (including the separation of powers) and resource prioritisation'.¹⁶² While a full exposition of the arguments for and against strengthening socio-economic rights protection in the Constitution is beyond the scope of

¹⁵⁷ TASC (2016) Cherishing All equally: http://www.tasc.ie/download/pdf/tasc_inequalityreport_2016_web.pdf

¹⁵⁸ Olivia Smith (2012) 'How Far From a "Right to Care"? Reconciling Care Work and Labour Market Work In Ireland' *Irish Jurist* 47(1), 143-167, p 148.

¹⁵⁹ IHREC (2018) Policy Statement on Article 41.2 of the Constitution of Ireland.

¹⁶⁰ Convention on the Constitution (May 2013), *Second Report of the Convention on the Constitution*.

¹⁶¹ Convention on the Constitution (2014) *Eighth Report of the Convention on the Constitution*.

¹⁶² Following on from a commitment in the Programme for a Partnership Government, Eoghan Murphy TD proposed a motion to refer the report, which was passed by Dáil Éireann on 28 September 2017.

this submission, the Commission reiterates its view that socio-economic rights should be fully recognised in the Constitution of Ireland.

The Commission reiterates its view that Article 41.2 should be amended to recognise and support care work.

Unpaid care work in Ireland

Recent research published by the Commission has clearly illustrated that gender inequality in care work in Ireland is close to the most pronounced in the European Union.¹⁶³ Drawing on data from the European Quality of Life Survey (EQLS), the research demonstrates the significant extra burden placed on women when it comes to unpaid care work in Ireland.¹⁶⁴ When compared across the EU 28, the data reveals that Ireland has the third highest rate of unpaid work for both women and men, and that the gap between genders, at 15 hours per week, is amongst the greatest amongst member States. Of further note in the study, is the fact that over half of those carrying out unpaid care work are juggling these responsibilities with employment, and that women are significantly overrepresented amongst employees who avail of reduced hours in order to facilitate care and unpaid work, contributing to gender inequality in the labour market.

Overall, this data presents a clear picture that, despite developments in recent years in support for childcare and other care work, provision of support for combining paid and unpaid work remains well behind that seen in Scandinavia and other European states. In particular, it is not commensurate with the ‘dramatic rise in women’s paid employment in Ireland’.¹⁶⁵ The research indicates that the gender gap is narrowest in Scandinavian countries where policies have sought to promote gender equality in both paid and unpaid work.

The Commission is of the view that caring and household work should be more valued and equally shared between men and women in Ireland, and has repeatedly called on the State to provide additional financial supports and to promote recognition of care workers within

¹⁶³ IHREC/ESRI (2019) [Caring and Unpaid Work in Ireland](#). This report was published as part of the Commission’s Research Programme on Human Rights and Equality with the Economic and Social Research Institute (ESRI). The Commission has also highlighted the issue of gender inequality in care work in its reporting to the UN CEDAW Committee and to the UN Committee on Economic, Social and Cultural Rights.

¹⁶⁴ Key findings include: 45 per cent of women and 29 per cent of men provide care for others on a daily basis (childcare and/or adult care); 55 per cent of those regularly providing care are in employment: 45 per cent in the case of women and 72 per cent in the case of men; Daily involvement in care of children is more common across the population than care of adults: 33 per cent compared to 8 per cent; The average time spent on care across the whole population is 16 hours per week; 10.6 hours for men and 21.3 hours for women; Among those providing regular childcare i.e. at least once a week, the mean weekly time is 35.2 hours per week: 42.6 hours for women and 25.2 hours for men; Among those providing regular adult care the mean time commitment is 19.4 hours per week; 19.8 hours per week among female carers and 18.8 hours among male carers; The provision of care to older or disabled adults every day is most common for those women aged 50 to 64 years, but for men such care peaks in the over 65 age group. See Executive Summary at p ix, and Summary and Conclusions at p 67.

¹⁶⁵ IHREC/ESRI (2019) *Caring and Unpaid Work in Ireland*, p xiii.

Irish society.¹⁶⁶ A shift in policy approach will be necessary to achieve this. *Caring and Unpaid Work in Ireland* indicated the scope of such a shift, concluding that:

there is a need for changes in social and employment policies that support carers, facilitate the combination of care and employment, and at the same time encourage greater male participation in care.¹⁶⁷

Recent scholarship on care work has identified a conceptual framework¹⁶⁸ which identifies a number of interconnected elements required to ensure sustainable and inclusive support for care work in society. This framework is predicated, firstly on recognition of the value of care work, and the rights of care workers; then on the development of ‘reliable, flexible, affordable and accessible and technology-enabled’ services for users and carers.¹⁶⁹

Thereafter, the framework foresees provision for ‘workplace and life-course flexibility for employers [and] employees’, followed finally by provision for financial support to ‘prevent financial hardship’. While Irish policy on care work touches on some of these elements – caring and parental leave provisions, welfare payments, and the recognition of (gendered) care work in the Constitution, for example – the policy approach remains relatively underdeveloped, as is borne out by the current data.

The Commission is concerned that current care work policy in Ireland continues to negatively and disproportionately affect women.

The Commission underlines the urgent need for effective and transformative policy in Ireland to address the gendered division of care work, and to uphold the value of care work and the rights of care workers.

The Commission is of the view that an approach to reform of state policy on care work should place a more holistic emphasis on these interrelated elements of recognition of rights, provision of services, work-care reconciliation and financial supports.

Supporting child care

There are significant ongoing deficiencies in the childcare infrastructure, notably witnessed in the high cost of childcare in Ireland. High cost quality childcare has detrimental consequences for women’s enjoyment of the right to work as well as impeding their

¹⁶⁶ Most recently, the Commission raised concerns at Council of Europe level regarding cuts to the Respite Care Grant and access to social supports for carers. IHREC (2018) [Comments on 15th National Report on Ireland’s Implementation of the ESC](#). During its CEDAW consultations in 2016, concerns were also expressed to the Commission, particularly in focus groups with older women and women with disabilities, about the insufficient recognition for the work of carers.

¹⁶⁷ IHREC/ESRI (2019) *Caring and Unpaid Work in Ireland*, p xiii.

¹⁶⁸ Cass, B. et al. (2014) [The Challenge of Caring, Now and in the Future: learning from across the world](#), University of Leeds. Framework developed by Janet Fast and Sue Yeandle. See also Sue Yeandle et al. (2017), [Work-care reconciliation policy: Legislation in policy context in eight countries](#), Bundesministerium für Familie, Senioren, Frauen und Jugend.

¹⁶⁹ Sue Yeandle et al. (2017), [Work-care reconciliation policy: Legislation in policy context in eight countries](#), Bundesministerium für Familie, Senioren, Frauen und Jugend, p.3.

opportunities for promotion. The *Caring and Unpaid Work in Ireland* report characterises Irish social policy as being a 'liberal modified male breadwinner regime', in that the provision of care services, including childcare, by the State is relatively low, leaving households to provide these services themselves or to source them from the market if they can pay.¹⁷⁰ Overall, families still face a high burden of cost and there is a high level of unmet need in Ireland for formal childcare supports, particularly among disadvantaged families.

As of 2019, Ireland continues to have the highest childcare costs in the European Union.¹⁷¹ The European Commission has identified 'limited access to affordable and quality childcare' as 'a barrier to increased female labour market participation'.¹⁷²

The Commission welcomes that the State has put in place some measures to address the deficiencies in the availability of affordable childcare. For example, the Commission welcomes the extension of the free pre-school year support from 38 weeks up to a further 50 weeks.¹⁷³ The Commission highlights, however, that the free pre-school year does not provide adequate childcare to significantly facilitate women's greater participation in the labour force due to the part-time nature of the scheme¹⁷⁴ resulting in only a partial reduction of costs for working parents who are required to pay additional costs. The Commission welcomes the introduction of Paternity Leave and Paternity Benefit in September 2016 as well as the passing of the *Parental Leave Act 2019* as measures to promote the sharing of parenting responsibilities between men and women. The Commission also notes the introduction of the *National Childcare Scheme (NCS)* in October 2019, which replaced the former *Single Affordable Childcare Scheme (SACS)*¹⁷⁵, and stresses

¹⁷⁰ IHREC/ESRI, *Caring and Unpaid Work in Ireland*

¹⁷¹ European Commission (2019), *Country Report Ireland 2019*, p36. According to the European Commission, 28.6 per cent of children aged 0 to 3 years old have access to childcare in Ireland; 12.5 per cent of parents in Ireland have 'great difficulty' in accessing childcare services for children under the mandatory school-going age; and participation rates in formal childcare for children in low income families are 12 per cent in Ireland, less than a quarter of that for children from high-income families (57 per cent). European Commission (2015) *Country Report Ireland Including an In-Depth Review on the Prevention and Correction of Macroeconomic Imbalances*, Brussels: European Commission, p. 2.

¹⁷² European Commission (2015) *Country Report Ireland Including an In-Depth Review on the Prevention and Correction of Macroeconomic Imbalances*, Brussels: European Commission, p. 2. The European Commission has identified that over 15 per cent of women are inactive in the labour market and 10 per cent of women are working part-time in Ireland because of caring responsibilities, of whom 40 per cent report a lack of suitable care services. See European Commission, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the development of childcare facilities for young children with a view to increase female labour participation, strike a work-life balance for working parents and bring about sustainable and inclusive growth in Europe (the "Barcelona objectives") (May 2018).

¹⁷³ Department of Finance, *Budget 2016: Part 11 Expenditure Allocations 2016*, 2015. Available: <http://budget.gov.ie/Budgets/2016/Documents/Part%20II%20Expenditure%20Allocations%202016%20-%202018.pdf>. [accessed 7 December 2015].

¹⁷⁴ The free pre-school year is available to all children between the ages of 3 years and 2 months and 4 years and 7 months in September of the relevant year, entitling them to 15 hours of childcare services weekly for 38 weeks of the year.

¹⁷⁵ Department of Children and Youth Affairs (2016) 'Single Affordable Childcare Scheme' [web page], available <http://www.dcy.gov.ie/viewdoc.asp?DocID=4004>

that the new scheme must secure the necessary budgetary resources to ensure the provision of quality childcare services to all children, particularly vulnerable children and children of lone parents, children of unemployed parents and children of parents in full-time education.¹⁷⁶

The Commission recommends that the State address the high costs of childcare in Ireland with a view to providing adequate financial supports, and State-delivered subsidies that ensure quality and accessible childcare, particularly for lone parents, parents with limited financial resources, unemployed parents and parents pursuing full-time education.

The Commission calls upon the State to review the free pre-school year scheme currently in effect, particularly the part-time nature of the scheme and its potential impact on reducing women's greater participation in the labour force.

¹⁷⁶ Concerned groups call for further investment in childcare scheme to support lone parent and low income families. Press Release, Children's Rights Alliance, Sept 2019. Available at: <https://www.childrensrights.ie/resources/press-release-concerned-groups-call>

6. Conclusion

In this submission, the Commission has addressed concerns arising in the four areas which are the focus of the work of this Citizens Assembly:

- Gender Norms and Stereotypes;
- Women in Political and Public Life;
- Gender and Decent Work; and
- Gender and Care Work.

These are significant and interrelated areas which profoundly shape all our lives. Specific recommendations have been set out to address the concerns identified in each area. Implementing these proposals would significantly advance gender equality in Ireland and the Commission hopes therefore that the Assembly will take full account of them in its deliberations.

In concluding the Commission emphasises again that gendered assumptions, norms and practices remain influential across all aspects of society and social life. It is clearly important to recognise and celebrate the very real progress towards greater equality that has been achieved in Ireland over a number of years. However, it is also essential that we recognise the very real challenges that remain - and the new challenges that have emerged.¹⁷⁷ Achieving gender equality in Ireland continues to need committed leadership and sustained effort across national and local government, the education sector, business, trade unions and all sectors of civil society.

¹⁷⁷ See Caroline Criado Perez (2019) 'Invisible Women: exposing data bias in a world designed for men' Chatto and Windus: London



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