



INCLUSION IRELAND

National Association for People with an Intellectual Disability

**Submission to National Women's Council of Ireland towards the
Shadow Report of The Convention on the Elimination of all Forms of
Discrimination Against Women (CEDAW)**

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This document is written in font 12 Verdana in line with Inclusion Ireland plain English guidelines.

About Inclusion Ireland

Established in 1961, Inclusion Ireland is a national, rights-based advocacy organisation that works to promote the rights of people with an intellectual disability. Our membership is drawn from persons with intellectual disability; parents and family members; providers of services to persons with a disability, academics, policy-makers and others.

Inclusion Ireland uses a human rights-based approach to its work. This recognises persons with an intellectual disability as rights holders with entitlements, and corresponding duty bearers and their obligations. Inclusion Ireland seeks to strengthen the capacities of persons with an intellectual disability to make their claims and of duty bearers to meet their obligations.

The vision of Inclusion Ireland is that of people with an intellectual disability living and participating in the community with equal rights as citizens, to live the life of their choice to their fullest potential. Inclusion Ireland works in partnership with other organisations.

Introduction

Inclusion Ireland is the national association for people with intellectual disabilities. There are an estimated 58,000 persons with intellectual disability in Ireland¹ and women represent a minority with 23,496 (40%)

Through its advocacy work, Inclusion Ireland encounters obstacles that women with intellectual disabilities face and these include:

- Failure of the State to ratify the UN Convention on the rights of persons with disabilities (UNCRPD)
- Inadequate protection from sexual offences legislation
- Undue interference with rights to sexual relationships
- Inadequate assisted decision-making
- Difficulties in accessing health services
- Loneliness and social exclusion when ageing
- Caring
- Parenting

¹ Census 2011

United Nations Convention on the Rights of Persons with Disabilities

The UNCRPD Preamble recognises that “women and girls with disabilities are often at greater risk, both within and outside the home of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation” Ireland signed the UNCRPD On March 30th 2007 describing it as a “blueprint for significant improvement in the lives of these people (persons with disabilities)”.

To date, almost a decade after signing the UNCRPD, Ireland has yet to ratify the convention meaning that there is no domestic or international monitoring of Ireland’s performance in relation to the rights of persons with disabilities.

While there are Articles that are general in nature, they may have particular relevance for women relating to Freedom from exploitation, violence and abuse (Art 16) Family (Art 23), Health (Art 25), Work and Employment (Art 27), there are several areas of specific application to women and girls including Article 6 which recognises that women and girls with disabilities are subject to multiple discrimination and requires States to take measures towards ensuring equal enjoyment of rights as well as taking all appropriate measures to ensure the full development, advancement and empowerment of women.

Additionally, the UNCRPD ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted and also to ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes.

Sexual Offences Legislation

Inclusion Ireland has been concerned about both the adequacy of the Criminal Law (Sexual Offences) Act 1993 from a protective aspect as well as the effect it has in impeding consensual sexual relationships.

The 1993, Criminal Law (Sexual Offences) Act makes it offence to have or attempt to have sexual intercourse or buggery with a ‘mentally impaired person’. While it does **not** impose a blanket ban on people with intellectual

disabilities having sexual it is sufficiently broad to create doubt about all sexual relationships including de facto consensual relationships.

This law does not apply to persons who are married

“Mental impairment” is defined as a person with a mental ‘handicap’ or ‘illness’ which is of such a nature or degree as to render a person incapable of living an independent life or of guarding against serious exploitation. There is no definition in the legislation of either ‘independent life’ or ‘serious exploitation’. The consent of a person is not an issue if they are considered to fit the definition of ‘mentally impaired’. Simply put they cannot, by law, consent.

The law does **not** make sexual contact that is not attempted or completed penetration an offence. Sexual contact that falls short of intercourse is considered in the same way as people without disabilities, on the basis of consent. It is a defence to show that the accused didn’t know or had no reason to suspect that the person was mentally impaired.

Case law in this area has demonstrated the inadequacy of the law from a protective perspective. In DPP V XY a man was acquitted of the oral rape of a woman with an intellectual disability. In that case the man had been charged with an offence under section 4 of the Criminal Law (Rape) (Amendment) Act 1990. This law does not have any regard to any mental impairment of a complainant. In his judgment Mr. Justice Barry White stated ***“It seems to me that the Oireachtas when they introduced the 1993 act did not fully appreciate the range of offences needed to give protection to the vulnerable,”***

A second case, again widely reported on in the media involved a young woman from County Kerry. Again as the sexual act fell short of penetration there was no charge under the 1993 Act and as the alleged victim was deemed to be an unreliable witness, the charges were dismissed.

Concomitantly, self-advocates with intellectual disabilities report the restriction of their rights as adults to have intimate relationships including sexual intercourse. Through our work, Inclusion Ireland has experienced the ‘chilling effect’ of the legislation with educators and advocates afraid to provide support to individuals with disabilities or provide education for fear of encouragement of law-breaking.

Women with intellectual disability in pregnancy and parenting

In 2009, a study² on barriers for women with intellectual were found in relating to society's negative attitudes to women with intellectual disabilities becoming pregnant, and caring for their children and conservative and protective perspectives from frontline caring staff and parents regarding the sexuality of women with intellectual disability, which put the women at risk of coercive sterilisation or forced contraception.

Accessible information for women with disabilities is difficult to come by and was cited in the Trinity report (supra) and a 2012 review by the National Disability Authority³ noted that many women remain poorly informed about contraception making it hard to make realistic and informed decisions about family planning.

Inclusion Ireland has experienced, through its advocacy work, a significant proportion of parents with intellectual disabilities who have had their children removed and placed in care. A 2016 report⁴ showed that "A disproportionate number of those facing child protection proceedings suffer from cognitive disabilities or mental health problems"

Furthermore, women in care have been left in a vulnerable and exposed position with abuse cases prominent in the news in 2016. In January 2016 the HSE confirmed that people remained in a foster care home that was the centre of abuse allegations and that one young woman with intellectual disabilities, known as Grace, was placed in a foster home despite an allegation of sexual assault having been made by a former resident. Grace remained in the home for a further 14 years.

Women with Disabilities and Ageing

The Irish Longitudinal Study on Ageing (TILDA) produced an intellectual disability supplement (IDS-TILDA). This reported some significant findings

² 2009 "women with disabilities and barriers and facilitators to accessing services during pregnancy, childbirth and early motherhood" Begley et al

³ Literature Review on Provision of Appropriate and Accessible Support to People with an Intellectual Disability who are Experiencing Crisis Pregnancy

⁴ Childcare Law Reporting Project report on cases where children taken into state care

concerning women with loneliness, social exclusion and difficulty in accessing the community recurring themes with greater prominence among women.

According to IDS-TILDA, as they aged, women were more likely than men to

- self-report feelings of social exclusion
- self-report feelings of loneliness
- experience cardio-metabolic disease
- experience of eye conditions
- experience of pain
- be overweight or obese

Women with intellectual disabilities were less likely to avail of mammography as they aged as compared with the general population and when compared with women from the general population, women with intellectual disability were more likely to have osteoporosis and were more likely to be obese (the reverse of the trend in the general population).

Caring

Approximately 84% of people with an intellectual disability live in a private household⁵. Around 80% of care across the EU is provided by family and friends. The number of informal carers far exceeds that of the paid care workforce⁶. Responsibility for caring for family member with a disability most often falls to women. This has a disproportionate effect on women and impacts negatively on women's ability to work outside the home.

Lone parents and caring – Findings from a study by Inclusion Ireland on needs of people with complex support needs and their families. Four participants were lone parents and all of these were women - *“you kept my son alive...you recommended I stop working which I did and then you abandoned us. It's a battle for any supports...get in the services and I can go back to work”*⁷.

Relationship between gender and caring also applies to adult sibling relationships. Women are more likely to provide care to an adult sibling with

⁵ CSO (2012). Census 2011, Profile 8, Interactive table CD824

⁶ Enabling carers to care. Proposal for an EU-level strategy in support of informal care provision

⁷ Conroy, P. & Meagher, M. (2016). Drowned in a sea of mainstreaming. Not yet published.

a disability⁸. Research recently carried out in Ireland and due to be published later this year, supports this view. In a study examining adult siblings involvement and intentions of future involvement in the lives of their sibling with a disability, 80% of the participants were female⁹.

Conclusion

Women with intellectual disabilities reporting incidences of discrimination may also report confusion as to whether the discrimination is as a result of gender or disability and it is recognised in the UNCRPD that multiple discriminations may be experienced by women with disabilities. Accessing information may be a large barrier to accessing health, education, employment opportunities as well as information about sexual health and contraception. Low expectations of women with disabilities can also lead to discrimination in relation to employment and education as well as difficulty in accessing parenting support or having children removed and taken into care.

Ireland needs to do more and the ratification of the UNCRPD will go some way towards a monitoring of Ireland's performance in relation to all persons with disabilities and women in particular but analysis of the treatment of women with disabilities under CEDAW is crucial for eliminating discrimination, particularly for individuals who may be experiencing multiple discriminations.

⁸ Heller, T. & Arnold, C. (2010). Siblings of adults with developmental disabilities: psychosocial outcomes, relationships, and future planning. *Journal of policy and practice in intellectual disabilities*. 7 (1): 16-25.

⁹ Leane, M., Kingston, A., & Edwards, C. (2016). Adult siblings of individuals with ID/ASD: Relationships, roles and support needs. Forthcoming