



INCLUSION IRELAND

National Association for People with an Intellectual Disability

Submission to the Department of Justice and Equality

On a new National Women's Strategy 2017-2020

January 2017

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

1. 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.

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's work is underpinned by the values of dignity, inclusion, social justice, democracy and autonomy.

2. Introduction

The development of a new National Women's Strategy for the period 2017-2020 provides an opportunity to ensure that the strategy is inclusive of all women.

Inclusion Ireland is concerned that women with disabilities have often been invisible in discourse on gender equality. There has been little attention paid to the intersection of gender and disability or to addressing the specific concerns of women and girls with disabilities.

Where the needs of women and girls with disabilities have been highlighted, it is usually in the context of health issues. This reinforces the medical model, seeing women with disabilities as primarily having health needs rather than an emphasis on their right to participate in the civil, political, economic, social and cultural life of their communities.

Women with disabilities experience the same inequalities as non-disabled women. However, their situations can be exacerbated by social and cultural attitudes to disability as well as environmental barriers. Through our advocacy work, Inclusion Ireland has encountered women who have faced barriers to accessing mainstream services, such as women's health and domestic violence services.

It is important to note that women and girls with disabilities are not a homogenous group. They have many different identities, among them, migrant, LGBTI, asylum seeker, Traveller.

It is the view of Inclusion Ireland that all women and girls with disabilities should be reflected in the forthcoming National Women's Strategy and not just in disability specific policies.

3. Towards an inclusive National Women's Strategy

The consultation document provided by the Department sets out the aim of the Strategy over the period 2017 to 2020:

"To change attitudes and practices preventing women's and girl's full participation in education, employment and public life, at all levels, and to improve services for women and girls, with priority given to the needs of those experiencing, or at risk of experiencing, the poorest outcomes".

Outcomes for women and girls with disabilities in Ireland indicate that they are among the groups that experience multiple inequalities and poorer outcomes than other groups in our society.

Through its work, Inclusion Ireland encounters obstacles that women and girls with intellectual disabilities face, including:

- Poverty and social exclusion
- Barriers to employment
- Difficulties in accessing health services
- Failure of the State to ratify the UN Convention on the rights of persons with disabilities (UNCPRD)
- Inadequate protection from sexual offences legislation
- Undue interference with rights to sexual relationships
- Lack of support when parenting
- Barriers to accessing justice

The Department proposes five high level objectives to advance gender equality over the next four years:

- Advance socio-economic equality for women and girls
- Improve women's and girl's physical and mental health
- Promote women's and girl's equal and active citizenship
- Advance women in leadership

- Embed gender equality in decision-making

Inclusion Ireland supports the inclusion of these high level objectives in the forthcoming Strategy. Many of the key issues facing women and girls with disabilities in Ireland could be addressed under the scope of these objectives.

3.1 Gaps in availability of data

One overarching issue that needs to be addressed is the lack of gender and disability disaggregated data to inform policy making. Given the lack of recognition of women with disabilities at national policy level, it is not surprising to find that there is a significant information gap on women with disabilities.

While some statistics are available relating to health issues, there appears to be no data on disabled women's representation or participation in decision-making; on disabled women's experiences of poverty or on the number of women and girls with disabilities that experience crime.

This knowledge gap greatly impacts on progress on policies and measures that could be developed to address the barriers women with disabilities face. There is an urgent need to collect and publish data which is disaggregated by sex, disability, ethnicity and age. This should be done in line with human rights and equality principles and in consultation with civil society organisations¹.

Recommendations:

- Gather and publish comprehensive gender-specific, disaggregated data on women with disabilities that is regularly updated. The Central Statistics Office, government departments, the HSE, the Courts, An Garda Síochána, Tusla and other relevant organisations might all play a role in this.
- Undertake research on the intersectionality between disability and gender, socio-economic status and other identities that disabled women and girls have

¹ National Women's Council of Ireland (2017). *Shadow report in advance of the examination of Ireland's combined sixth and seventh periodic reports under the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*. Dublin: NWCi.

4. Advance socio-economic equality for women and girls

4.1 Poverty and social exclusion

Comprehensive data on poverty among disabled women and girls in Ireland is not publicly available. While poverty statistics are disaggregated by disability, they are not disaggregated by both disability and gender. However, we do know that people with disabilities are more at risk of poverty and deprivation than non-disabled people.

The number of females living in consistent poverty increased from 7.2% to 8.3% over the period 2005 to 2014 and is higher than that experienced by men. However, the rate of consistent poverty among people with a disability was 13.2% in 2014. Deprivation rates of 51.3% were experienced by people with disabilities in 2014².

With reduced disposal income and less money to spend on social activities, people with disabilities, and women to a slightly greater degree, experience isolation and exclusion from community life. Accessibility issues arise to a greater degree when socialising in public venues, availing of general services, or moving about in the local area for all ages of women with disabilities³. There are increased accessibility difficulties in the latter two situations for the oldest cohort of women with disabilities⁴.

According to a recent EU report, almost 50% of women with disabilities in Ireland are at risk of poverty or social exclusion⁵. At EU level, women report experiencing more barriers to mobility, to transport, to accessing buildings, to education and training and to paying for essential goods⁶.

4.2 Cost of disability

While evidence from the Survey on Income and Living Conditions (SILC) indicates that people with a disability have the lowest levels of real disposable income, the SILC figures do not take account of the varying

² Central Statistics Office (2014). *Survey on Income and Living Conditions 2014*

³ Watson, D. & Nolan, B. (2011). *The Social Portrait of People with Disabilities in Ireland 2011. A report by the Department of Social Protection and the ESRI*. Dublin: DSP.

⁴ Ibid

⁵ European Institute for Gender Equality (2016). *Poverty, gender and intersecting inequalities in the EU Review of the implementation of Area A: Women and Poverty of the Beijing Platform for Action*. Brussels: EIGE

⁶ Ibid

expenditure needs of each household. There is substantial evidence that the additional, essential and recurring costs of having a disability can place a household at significant risk of poverty and deprivation. A report by Cullinan et al found that the estimated cost of disability is equal to 35 to 55% of average weekly income⁷. Therefore, people with a disability, in reality, experience greater levels of poverty as the cost of their disability has not been accounted for.

In a similar study published by NUIG in 2014, it concluded older people with a disability face more significant rates of poverty due to their age and their disability. As women make up the larger cohort of disabled people over 55⁸, it is disabled older women who are disproportionately affected by the cost of a disability.

4.3 Employment and caring

Labour participation rates for people with disabilities are extremely low with only three out of 10 adults with a disability of a working age having a job⁹. Women with disabilities are less likely to be employed than disabled men of the same age group. For example, of people with disabilities aged 35-44, 35% of men are in employment compared to 24% of women¹⁰.

Rates of employment among those with an intellectual disability are even lower. Data from the Health Research Board (HRB) indicates that only 1% of adults registered with the National Intellectual Disability Database (NIDD) are in open employment¹¹.

Family responsibilities are a key reason why women with disabilities have lower rates of employment¹². Other reasons include, availability and suitability of jobs and inadequate training or education.

Where a household contains a family member with a disability who requires care or support, responsibility for caring most often falls to

⁷ Cullinan, J., Gannon, B. and Lyons, S. (2010). *Estimating The Extra Cost of Living for People with Disabilities*. Health Economics.

⁸ Census 2011 indicates 164,306 women with disabilities aged 55 and over versus 133,920 men of the same age range. NIDD 2015 indicates that there are more women than men in the age category of 55 and over.

⁹ CSO. Census 2011

¹⁰ Health Research Board (2015). *Annual Report of the National Intellectual Disability Database Committee 2014*. Dublin: HRB.

¹¹ Health Research Board (2015). *Annual Report of the National Intellectual Disability Database Committee 2014*. Dublin: HRB.

¹² Watson, D. & Nolan, B. (2011). *The Social Portrait of People with Disabilities in Ireland 2011. A report by the Department of Social Protection and the ESRI*. Dublin: DSP.

women¹³. Evidence from the CSO indicates that there were 117,000 women versus 22,600 men in care giving roles in 2011¹⁴. Statistics from the Department of Social Protection show that women made up 77% of those receiving Carer's Allowance in 2015 (14,412 men and 48,590 women)¹⁵.

The relationship between gender and caring also applies to adult sibling relationships. In a recent Irish study examining adult sibling involvement and intentions of future involvement in the lives of their sibling with a disability, 80% of the participants were female¹⁶. Responsibility for providing care has a disproportionate effect on women and impacts negatively on women's ability to work outside the home.

4.3.1 Reasonable accommodation in employment

Reasonable accommodation is essential for people with disabilities to be encouraged to enter the workforce and to ensure consistency in the labour market. The Committee on the Elimination of Discrimination Against Women has stated that women with disabilities should be provided with reasonable accommodation in accessing employment¹⁷. Similarly, the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and the Employment Equality Acts 1998–2015 require employers to reasonably accommodate employees with disabilities.

'Reasonable accommodation' is interpreted as accommodation that will create the conditions to ensure the enjoyment of equal rights in the given situation. Failure to do so could result in discrimination.

Reasonable accommodation means necessary and appropriate modification and adjustments, not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to ensure people with disabilities can exercise their rights and freedoms on an equal basis as others (UNCRPD).

The Irish Human Rights & Equality Commission¹⁸ suggest the following as examples of reasonable accommodations:

¹³ Leane, M., Kingston, A., & Edwards, C. (2016). *Adult Siblings of Individuals with Intellectual Disability/Autistic Spectrum Disorder: Relationships, Roles & Support Needs*. Dublin: NDA.

¹⁴ Central Statistics Office (2011). *Women and Men in Ireland 2011*. Dublin: CSO.

¹⁵ Department of Social Protection (2016). *Annual SWS Statistical Information Report 2015*.

¹⁶ Leane, M., Kingston, A., & Edwards, C. (2016). *Adult Siblings of Individuals with Intellectual Disability/Autistic Spectrum Disorder: Relationships, Roles & Support Needs*. Dublin: NDA.

¹⁷ CEDAW/C/HUN/CO/7-8

¹⁸ Irish Human Rights & Equality Commission. Disability and reasonable accommodation: what are my obligations. Available at: <https://www.ihrec.ie/guides-and-tools/human-rights-and-equality->

- adapting the premises or the equipment, for example, installing wheelchair ramps, providing special computers for the visually impaired, installing loop systems
- Offering flexible working times
- Providing training or other supports that might help
- Adjusting an employee's attendance hours or allowing them to work from home
- Assigning an employee certain tasks, and substituting others for equivalent duties, in consultation with the employee.

4.4 Recommendations to advance socio-economic equality for women and girls

- Introduce disability adjusted poverty and inequality estimates and equivalence scales to ensure policy making is informed by accurate evidence
- Establish a Cost of Disability Commission to identify the extra costs of having a disability and to make recommendations around necessary reforms.
- Introduce a universal cost of disability payment based on individual needs, to offset some of the extra costs that people with disabilities face to attain the same standard of living as non-disabled people
- Provide supports for people with disabilities and carers to access further education, training and employment
- Further develop schemes for employers to encourage reasonable accommodation in the workplace

[for-employers/what-does-the-law-say/disability-and-reasonable-accommodation/](#) [Accessed 27.01.17]

5. Improve women's and girl's physical and mental health

5.1 Health screening for women with intellectual disabilities

Women with disabilities have lower uptake of health promotion and health screening services than non-disabled women. Rates of screening for both cervical and breast cancer are lower among women with disabilities than the general population and especially low for women with severe and profound intellectual disability¹⁹.

A 2009 research project²⁰ explored the extent of screening for breast cancer for post-menopausal women with learning disabilities living in residential care. The findings revealed that 85.6% of the sample received invitations to attend mammography breast screening, with an attendance rate of 93.5%. However, 16% were unable to complete the procedure owing to difficulties such as fear, discomfort, distress and an inability to co-operate. Of the women surveyed 26.7% received a manual breast examination. However, 24% of the entire sample did not receive any breast screening.

Even though a substantial proportion of the women received breast screening, almost a quarter received no screening, owing to difficulties experienced during the procedure, not receiving an invitation to attend for screening or a failure to carry out manual breast examinations.

Through our advocacy work, Inclusion Ireland meets women with intellectual disabilities on a regular basis. They often report experiencing barriers to accessing health services, such as cancer screening services. They may receive health screening information or automatic letters for screening initiatives such as CervicalCheck and BreastCheck in the post like many other Irish women, but that information is not in an accessible format to them.

Women are also in a minority in residential services so they report finding it difficult or challenging to speak up and ask about health screening that is specific to women. Some women Inclusion Ireland has worked with have expressed fear and embarrassment about asking for help to

¹⁹ McCarron, M. et al. (2014). *Advancing years, Different challenges: Wave 2 IDS-TILDA: findings on the ageing of people with an intellectual disability: an intellectual disability supplement to the Irish Longitudinal Study on Ageing*. Dublin: Trinity College Dublin.

²⁰ Llor, A. & Redmond, R. (2009). Breast screening for post-menopausal women. *Learning Disability Practice*. 12, 9, 28-33.

understand CervicalCheck or BreastCheck and so ignore opportunities to screen.

According to CervicalCheck's 2014/15 national report, over 1,650 treatments were carried out across Ireland as a result of screening. Women with intellectual disabilities need access to appropriate information and support for screening opportunities. They also need accessible information about treatment options and procedures so that they can understand everything that needs to happen to keep them physically, psychologically and emotionally well.

The Public Sector duty requires public bodies in Ireland have responsibility to promote equality, prevent discrimination and protect the human rights of their employees, customers, service users and everyone affected by their policies and plans. The Irish Human Rights & Equality Commission is developing guidance materials for public bodies on implementing the duty and this should include requiring that public health services provide easy-to-read materials on health screening.

5.2 Health and wellbeing facilities in public places

Many women and girls with disabilities around the country make use of accessible bathrooms and facilities. Women have reported to Inclusion Ireland that these facilities do not cater for the feminine hygiene needs of women and girls.

In many cases, these facilities are gender neutral, in that they are not housed in the male or female toilets. As a consequence, they often lack basic storage solutions for feminine hygiene products such as sanitary bins. They rarely have mirrors or vending options for female hygiene products, whereas these can often be found in the female toilets for general use.

This lack of access to basic products and facilities can cause undue stress and/or embarrassment to women and girls who may not be able to access these services through the ladies' toilets.

5.4 Sexual health

Women with disabilities experience inequality in accessing sexual health services and in their right to enjoy relationships on an equal basis with others. Due to a legacy of institutionalisation and segregation, women

and girls have been deprived of information and education on sexuality and family planning.

They have been denied bodily autonomy through forced sterilisation or been put on long term contraception without their consent. They face negative public attitudes around forming relationships, marrying and having children.

Their sexuality has been denied through outdated legislation which restricts their right to have intimate relationships as well as making educators and advocates afraid to provide support or education for fear of encouragement of law-breaking.

The 1993, Criminal Law (Sexual Offences) Act makes it an 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 relationships, 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

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.

5.5 Reproductive health

Both the UNCRPD and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) reaffirm the right of women with disabilities to decide on the number and spacing of their children, to have access to reproductive and family planning information and education as well as the means to exercise these rights. The UNCRPD also recognises the right of women with disabilities to retain their fertility on an equal basis with others.

More generally, both Conventions reaffirm the dignity and equality of the person, the freedom to make choices and the right not to be discriminated against because of their gender, disability or both.

In June 2016, the UN Human Rights Committee²¹ found that a woman had been subject to 'discrimination and cruel, inhuman or degrading treatment' as a result of Ireland's laws on abortion. The Committee recommended that Ireland reform abortion laws in line with the International Covenant on Civil and Political Rights to allow 'effective, timely and accessible procedures for pregnancy termination in Ireland'²².

The Irish Human Rights and Equality Commission (IHREC) has expressed concern that the current legal position on abortion impacts negatively on a women's right to autonomy and disproportionately impacts on women from lower socioeconomic backgrounds and other marginalised groups. The IHREC has endorsed the recommendations of the UN Human Rights Committee and the UN Committee on Economic, Social and Cultural Rights that Ireland should revise its law to bring it into line with international human rights law²³.

The current legislative framework on abortion in Ireland places a requirement on women to travel to access abortion services. The need to travel may be problematic for women with disabilities for a number of reasons. Given that people with disabilities are at higher risk of poverty than the general population, travelling outside Ireland to obtain healthcare services places a disproportionate economic burden on women with disabilities.

The Centre for Disability Law and Policy argue that the need to travel places an unreasonable burden on the body, health, life, welfare and dignity of people with disabilities. The CDLP also highlights the importance of having the support of medical practitioners that are familiar with a woman's medical history and preferences. While this is important for all women, it may be particularly so for women with disabilities²⁴.

A human rights compliant approach should be taken to the delivery of abortion services in Ireland. Such an approach would provide equal access to abortion for all woman, in recognition of their right to live autonomous, self-directed lives and to exercise choice and control over their lives and futures. This means:

²¹ Un Human Rights Committee (2016). Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2324/2013

²² Ibid, p18.

²³ Irish Human Rights and Equality Commission (2016). *Submission to the Citizens' Assembly in its consideration of Article 40.3.3° of the Irish Constitution*. Dublin: IHREC.

²⁴ Centre for Disability Law and Policy (2016). *Submission to the Citizens' Assembly on Repeal of the Eight Amendment to the Constitution*. Galway: CDLP.

- Women with disabilities should be provided with education, information and advocacy support in the areas of sexual and reproductive health
- They should have access to the full range of sexual and reproductive rights, including the right to have children as well as to choose not to
- They should have an opportunity to engage in the public conversation and debate and to participate in the decision making process around their reproductive rights
- Information should be available in plain English and easy to read formats so people can be fully informed and engage in the debate
- Women and families should have access to adequate economic and social supports to enable them to raise children with or without disabilities.

5.6 Safe from violence

There has been no comprehensive report on the prevalence of sexual violence in Ireland since the SAVI report in 2002²⁵. As such, it represents another crucial gap in the evidence base.

Internationally, a systematic review of evidence by the World Health Organisation shows that children and adults with disabilities are more likely to experience violence than their non-disabled peers and those with intellectual disabilities are most at risk²⁶. Research by UNICEF estimates that children with disabilities are 3 to 4 times more likely than other children to experience violence and neglect²⁷.

Furthermore, women in care have been left in a vulnerable and exposed position with abuse cases prominent in the news in recent years. 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

²⁵ McGee H., Garavan R., deBarra M., Byrne J., Conroy R. (2002). The SAVI Report. Sexual Abuse and Violence in Ireland. A national study of Irish experiences, beliefs and attitudes concerning sexual violence. Dublin: Liffey Press.

²⁶ Hughes K., Bellis M., Jones L, Wood S, Bates G, Eckley L, McCoy E, Mikton C, Shakespeare T, Officer A. (2012). Prevalence and risk of violence against adults with disabilities: a systematic review and meta-analysis of observational studies. The Lancet.

²⁷ Shannon, G (2016). 9th report of the special rapporteur on child protection. Dublin: Department of Children and Youth Affairs.

despite an allegation of sexual assault having been made by a former resident. Grace remained in the home for a further 14 years, subjected to horrific abuse.

In his latest report, the Special Rapporteur on Child Protection, Geoffrey Shannon, recommends that:

“It should be considered whether Ireland’s child protection programme is sufficiently inclusive from the perspective of protecting children with disabilities. It should be ensured that a sufficiently collaborative process is in place whereby all stakeholders work together to identify risk situations²⁸”.

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.

“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,”

²⁸ Shannon, G (2016). 9th report of the special rapporteur on child protection. Dublin: Department of Children and Youth Affairs.

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.

The NWCi has called for training on domestic and sexual violence to be made available to Gardaí, medical and paramedical staff, HSE and Tusla staff. Such training should include the specific needs of women and girls with disabilities

5.7 Women and aging

The age profile of people with disabilities is changing. In keeping with general population trends, people with disabilities are living longer. While this is good news, it has an impact on policy and service provision.

In general, women outlive men. While there are more men than women with disabilities in Ireland overall, this trend is reversed among those aged 55, with more women than men in this age range.

The Intellectual Disability Supplement to the Irish Longitudinal Study on Ageing (IDS - TILDA) reported some significant findings concerning women, with loneliness, social exclusion and difficulty in accessing the community recurring themes among women. According to IDS-TILDA, as they aged, women were more likely than men to:

- Report feelings of social exclusion
- Report feelings of loneliness
- Experience cardio-metabolic disease
- Experience eye conditions
- Experience 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).

Research has shown that women with disabilities have greater difficulty in carrying out normal tasks in the home when compared to men²⁹. This is a result of women undertaking more duties in the home and in terms of health, women encountering greater mobility and dexterity challenges as they age. Women require practical and economic supports in the home to be enabled to live independently and with dignity. However, it was reported in the same study that 8 to 14% of women compared with 6 to 13% of men are unable to get the help they need³⁰.

5.8 Recommendations to improve women's and girl's physical and mental health:

- Provide simple, clear, plain English information for all women on health screening and follow up treatment in fulfillment of the public sector duty
- Ensure that feminine hygiene products and bins are available in accessible toilets around the country
- Provide information and education on sexuality, consent and reproductive health for women and girls with disabilities
- Reform the legislative framework on abortion in Ireland so that it is in line with international best practice and human rights norms
- Provide training on domestic and sexual violence and the specific needs of women and girls with disabilities to Gardaí, medical and paramedical staff, HSE and Tusla staff
- Reform the Criminal Law (Sexual Offences) Act 1993 so that it removes barriers to consensual relationships and provides protection to victims of sexual violence in line with the functional approach taken in the Assisted Decision Making (Capacity) Act 2015.

²⁹ Watson, D. & Nolan, B. (2011). *The Social Portrait of People with Disabilities in Ireland 2011. A report by the Department of Social Protection and the ESRI*. Dublin: DSP.

³⁰ Ibid

6. Promote women's and girl's equal and active citizenship

6.1 The 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)”.

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.

6.2 Access to Justice for Women and Girls with Disabilities

In order to promote equal and active citizenship the state needs to ensure effective access to justice for persons with disabilities on an equal basis

with others. Both CEDAW and the UNCRPD recognise the importance of access to justice for women and girls and people with intellectual disabilities³¹.

There is a marked lack of data in Ireland on the rates of reporting and the amount of successful prosecutions with regard to crimes against people with intellectual disabilities however some agencies have kept records³².

There are two main issues which arise in the context of barriers to access to justice for women and girls with intellectual disabilities in Ireland:

1. Under-reporting of crimes against women and girls with intellectual disabilities
2. Challenges to the capacity of women and girls to testify

6.2.1 Under-reporting of crimes against women and girls with intellectual disabilities

Crime against people with intellectual disabilities is significantly under-reported and often fails to proceed to prosecution.³³ In Ireland people with intellectual disabilities face procedural barriers in reporting crimes committed against them. Under-reporting of sexual violence and all forms of abuse is an important issue, and considered to be a particular problem for people with disabilities³⁴.

One of the main barriers is a lack of information about procedures, from reporting a crime to giving evidence and seeking compensation post-trial, where relevant. Available information tends not to be written in an accessible format³⁵. The procedures in place can be intimidating and confusing and there has been a lack of accommodation in making these procedures accessible. A survey carried out as part of a UCC report on access to justice for people with disabilities found that "Individual support, whether from a key worker, family member, or advocate, was

³¹ Articles 12 & 13, UNCRPD and Article 15, CEDAW

³² Edwards, C., Harold, G. & Kilcommins, S. (2012), *Access to Justice for People with Disabilities as Victims of Crime in Ireland*. Cork: School of Applied Social Studies and Centre for Criminal Justice and Human Rights, UCC.

³³ *Ibid*

³⁴ Bartlett, H., & Mears, E. (2012). *Sexual Violence Against People with Disabilities, Data Collection and Barriers to Disclosure*. Rape Crisis Network Ireland.

³⁵ Edwards, C., Harold, G. & Kilcommins, S. (2012), *Access to Justice for People with Disabilities as Victims of Crime in Ireland*. Cork: School of Applied Social Studies and Centre for Criminal Justice and Human Rights, UCC.

seen as vital to enable people with disabilities to report crimes and follow the case through”³⁶.

Other barriers include the increased likelihood that women with intellectual disabilities will tell a third party³⁷ and the perception that “abuse in residential settings or when the perpetrator is close to the victim is looked upon as a private or family matter”³⁸.

In its 2013 report the Law Reform Commission suggested that training was a key element in the reporting of crime for Gardaí and those working in the administration of justice, practitioners, support persons and individuals themselves³⁹.

6.2.2 Challenges to the capacity of women and girls to testify

In the common law system, oral evidence at hearing is key to a successful prosecution and there are demands placed on witnesses to communicate clearly and effectively. In Ireland, the capacity of victims with an intellectual disability to testify has been challenged. Assumptions made by members of An Garda Síochána, the judiciary, solicitors and barristers about the abilities and capacities of people with disabilities have been shown to be problematic whether in terms of reporting a crime, or in people with disabilities being seen as competent and credible witnesses at court hearings⁴⁰.

Current legislation such as the Lunacy Regulation (Ireland) Act 1871 also erects barriers in terms of considering people with disabilities as competent witnesses. However, the appointment of assistant decision makers, co-decision makers and decision making representatives under the Assisted Decision Making (Capacity) Act 2015 will go some way to addressing this issue once it is commenced in full.

6.3 Women with intellectual disability in pregnancy and parenting

Inclusion Ireland has experienced, through its advocacy work, a significant proportion of parents with intellectual disabilities who have had

³⁶ *Ibid*, p 13

³⁷ *Ibid*

³⁸ Lewin, B. (2007). Who cares about disabled victims of crime? Barriers and facilitators for redress”. *Journal of Policy and Practice in Intellectual Disabilities*. 4(3), 170-176.

³⁹ Law Reform Commission (2013). *Sexual offences and capacity to consent*. Dublin: Law Reform Commission.

⁴⁰ *Ibid*, p 10 - 14

their children removed and placed in care. According to the Child Care Law Reporting Project, authored by Carol Coulter, the most common reason for seeking a care order in 2015 was parental disability (15.4% of cases)⁴¹.

Parental disability emerges as a major factor in 1 in 6 cases before the courts. Coulter notes that the prevalence of parents with disabilities before the courts highlights the lack of services available to this group. She notes that in many cases where the parent has a 'cognitive disability', there is no evidence of provision of appropriately tailored parenting supports.

According to a review of international evidence⁴² parents with an intellectual disability are more likely than other parents to have their children taken into care, and up to 48% of children of parents with intellectual disability were likely to be in care. Yet the report also states: "A consistent finding from the literature is that maternal IQ is not systematically correlated with parenting competence". A substantial body of evidence demonstrates that parents with an intellectual disability can adequately care for their children given appropriate support.

Coulter notes that the removal of children from intellectually disabled parents has been the subject of an adverse ruling from the European Court of Human Rights⁴³, which found that no adequate supports were given to the parents and their children.

6.4 Political participation of women with disabilities

The implementation of gender quotas in the 2016 General Election did result in a welcome increase of female TDs elected to the Dáil. Female representation at local government level also increased but is still very low at 20%.

The lack of diversity in Irish politics is notable in terms of representation from minority groups and people with disabilities are no exception. While women continue to face barriers in terms of political participation, women with disabilities face multiple barriers.

⁴¹ Coulter, C., Final Report, Child Care Law Reporting Project, 2015

⁴² O'Connor, J. (2008). *Literature Review on Provision of Appropriate and Accessible Support to People with an Intellectual Disability who are experiencing Crisis Pregnancy*. NDA and Crisis Pregnancy Agency.

⁴³ *Kutzner v. Germany*, no. 46544/99 [2000], ECHR.

The value of including more diverse groups of women should be recognised and supported by political parties for the range of views and perspectives that they would bring to the political arena.

The involvement of women with disabilities in leadership roles and in decision making is discussed further in the next section.

6.5 Recommendations to promote women and girls equal and active citizenship

- Take all necessary steps to ratify the UN Convention on the Rights of Persons with Disabilities.
- Appoint independent advocacy support within the court process to ensure equal access and participation and to support the person to communicate their instructions to the court
- Increase disability awareness training for key agencies in the criminal justice system
- Provide information and education to people with disabilities about how the criminal justice system works and their rights as victims of crime
- Commence the personal advocacy service as per the Citizens Information Act 2007
- Fully commence the Assisted Decision Making (Capacity) Act 2015 along with the support structures this entails
- Provide appropriate supports to parents with disabilities to empower and support them in their parenting role
- Require political parties to engage with women with disabilities as part of their State funding on women's participation in political activity
- Extend gender quota legislation to local elections
- Legislate for Victims Rights Directives

7. Advance women in leadership

Some progress has been achieved in the numbers of women in leadership positions. Gender quotas have resulted in more female TDs and there are more women in leadership positions in the judiciary. The new system for appointments to state boards is welcome, as is the requirement that the Public Appointment Service (PAS) will be asked to take account of diversity and balance.

However, across all levels of decision making, women continue to be hugely under-represented. Women with disabilities remain absent from all levels of decision-making from the community up to regional and national levels. Indeed, one of the areas of policy making in which women with disabilities are most invisible is in policies aiming to advance women's equality in decision-making.

Multiple barriers exist for women with disabilities which inhibit their participation, and for women with intellectual disabilities the barriers are much greater. The CRPD highlights these and draws particular attention to situations of multiple and intersecting discrimination which includes the ability to participate politically⁴⁴.

A report published by the National Women's Council of Ireland (NWC) in 2008 highlighted the absence of women with disabilities in decision-making processes, policy making and political structures of government at all levels. The report recommended that policy makers and others need to be more aware of the experiences of women with disabilities based on a social model understanding of disability⁴⁵.

For many women, involvement in decision making structures begins at a local (and national) level and within women's groups, with involvement in training, community development activity, representation and leadership⁴⁶. This indicates the need for local and national organisations to take proactive steps to promote, encourage and support the participation of women with disabilities in their activities and decision making structures.

The most recent National Women's Strategy also acknowledges the need for pro-active steps to be taken to ensure women with disabilities are

⁴⁴ CRPD General Comment 3

⁴⁵ NWC (2008), *Disability and Women in Ireland: Building Solidarity and Inclusion*. Dublin: NWC.

⁴⁶ NWC (2008), *Disability and Women in Ireland: Building Solidarity and Inclusion*. Dublin: NWC.

included in the decision-making processes that affect their lives. Such steps might include: disability equality training, disability inclusion policies, provision of structures and spaces for disabled women to meet⁴⁷.

Ordinary Lives in Ordinary Places - A plan for effective participation of people with disabilities in decision making

Working Group 3 of the Transforming Lives programme (set up to implement the recommendations of the Value for Money and Policy Review of Disability Services in Ireland), have created a draft report called 'Ordinary Lives in Ordinary Places - a plan for effective participation of people with disabilities in decision making'.

Although there was no specific focus on women, it was noted that people with disabilities are under-represented when it comes to participation and consultation in all areas of our health service and the community at large.

Barriers such as attitudes; communication, accessibility, lack of experience and knowledge, how meetings work and lack of change were identified by the working group. To address these, the working group came up with a plan which includes, changing attitudes, improving communication, improving accessibility, making meetings work better and achieving change.

7.1 Recommendations to advance women in leadership

- Ensure that any policies focused on advancing women's equality in decision-making include women with disabilities
- Ensure the inclusion of women with disabilities when the PAS is taking diversity into account on appointments to State boards
- Develop capacity building and leadership programmes to support women with disabilities to participate in decision-making structures at local level
- Provide supports to women's organisations and networks to ensure the inclusion of women with disabilities in their organisations

⁴⁷NWCI (2008), Disability and Women in Ireland: Building Solidarity and Inclusion. Dublin: NWCI. P.13

- Representative disability organisations (and others bodies) funded by Government should be obliged and supported to ensure the participation of women with disabilities on their decision-making structures
- Implement the recommendations contained in the Transforming Lives Plan – Ordinary Lives in Ordinary Place – upon publication

8. Embed gender equality in decision-making

Cuts to supports and services over the past number of years have had a disproportionate effect on marginalised groups, including women with disabilities. Poverty and deprivation rates have increased for women and for people with disabilities and their children⁴⁸.

The Equality Budgeting Campaign has highlighted the lack of human rights and equality analysis informing fiscal policymaking and the effect that this has on marginalised groups⁴⁹. The closed nature of the budgetary process earned a zero out of 10 score for Ireland in a recent report⁵⁰ with the OECD criticising Ireland for the quality of information given to parliament and civil society.

The Programme for Partnership Government commits to equality and gender proofing of budgets and to the establishment of an Independent Budget Office. These are key reforms to ensure that future budgets are proofed for advancing equality, reducing poverty and strengthening economic and social rights.

8.1 Recommendations to embed gender equality in decision making

- Implement equality and gender proofing of fiscal policy-making to ensure that women, people with disabilities and other marginalised groups are protected against poverty and social exclusion

⁴⁸ Watson, D., Maître, B., Whelan, C.T. and Russell, H. (2016). *Social Risk and Social Class Patterns in Poverty and Quality of Life in Ireland: An Analysis of the CSO Survey on Income and Living Conditions, 2004 to 2013, Social Inclusion Report No. 6*. Dublin: Department of Social Protection and the Economic and Social Research Institute.

⁴⁹ National Women's Council of Ireland (2017). *Shadow report in advance of the examination of Ireland's combined sixth and seventh periodic reports under the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*. Dublin: NWCI.

⁵⁰ Fischer, C. & Bayliss, L. (2017). *Shadow report in advance of Ireland's combined sixth and seventh periodic reports under the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*. Equality Budgeting Campaign.

- Ensure that the Public Sector Duty, provided for under the Human Rights and Equality Commission Act 2014, is used to promote gender and equality mainstreaming across all sectors

9. Conclusion

Ireland needs to do more to secure equality and human rights for women and girls with disabilities.

Women with disabilities have reported to Inclusion Ireland that when they experience discrimination, they are not sure whether it is because they are disabled or a woman. Article 6 of the UNCRPD recognises that women and girls with disabilities are subject to multiple discriminations and requires States Parties to take appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

Any legislative and policy initiatives to advance the equality of women should address the specific discrimination experienced by women with disabilities. The forthcoming National Women's Strategy needs to be inclusive of the needs of all women and girls in Ireland and acknowledge the different realities they face.

Other, more general, policies such as the proposed new 'Integrated Framework for Social Inclusion' (as outlined in the consultation document, p.7) must include measures and targets to address the citizenship of women with disabilities and their participation in civil society.

Finally, forthcoming disability specific policies such as the National Disability Inclusion Strategy must recognise specific barriers and supports necessary for women and girls with disabilities to enjoy their economic, social, cultural, civil and political rights.