

ICCL Submission to the Oireachtas Joint Committee on Gender Equality regarding the Citizens' Assembly Recommendations on Gender Equality

March 2022

Executive Summary

1. In June 2021, the Citizens' Assembly published its recommendations on advancing gender equality. This submission addresses the recommendations most relevant to ICCL's work and offers views on how such recommendations can best be implemented. We address the following areas: constitutional changes; leadership in politics; public life and the workplace; domestic, sexual and gender-based violence; gender equality principles in law and policy; and pay and workplace conditions. We include a set of general principles we believe should inform the work of Oireachtas bodies involved in advancing gender equality.

Introduction

2. The Irish Council for Civil Liberties (ICCL) welcomes the opportunity to make a submission to the Oireachtas Joint Committee on Gender Equality on the Citizens' Assembly (CA) Recommendations on Gender Equality¹. This brief submission focuses on the recommendations that are most relevant to ICCL's work. We echo the CA in considering gender equality a matter of human rights, justice, and fairness, and we agree that its advancement can benefit the whole of Irish society. Behavioral change should be the ultimate aim to ensure everyone in Ireland is respected and valued².

Citizens' Assembly Recommendations

A. Constitutional Change

3. In relation to Article 40.1, ICCL endorses the CA recommendation to amend the Constitution to refer expressly to the rights to gender equality and non-discrimination. Should such an amendment pass, government must implement relevant legislative and policy measures to ensure that the enshrinement of such rights leads to concrete change across Ireland with a real impact on how people are treated.
4. ICCL joins the voices of those who have been calling for a review of Article 41 on the rights of the family to ensure that the constitutional definition goes beyond the traditional marital family. This is vital to ensure that the Constitution protects all forms of families and reflects the lived experience and reality of Irish society. The reformulation should be in line with article 8 of the European Convention of Human Rights (right to respect for privacy and family life)³ and the relevant case-law of the European Court of Human Rights⁴.
5. As currently formulated, article 41.2 contains an archaic reference to a woman's place in the home which should be removed. ICCL supports the amendment of this article to include gender-neutral language and recognition of the contribution provided by carers in the home and wider community.

¹ Report of the Citizens' Assembly on Gender Equality, June 2021, available at: <https://www.citizensassembly.ie/en/previous-assemblies/2020-2021-citizens-assembly-on-gender-equality/about-the-citizens-assembly/report-of-the-citizens-assembly-on-gender-equality.pdf>.

² Report of the Citizens' Assembly on Gender Equality, June 2021, pp 8-9.

³ Council of Europe. The European Convention on Human Rights. Strasbourg: Directorate of Information, 1952. Available at: https://www.echr.coe.int/documents/convention_eng.pdf.

⁴ See Council of Europe/European Court of Human Rights, Guide on article 8 of the Convention – Right to respect from private and family life (updated 31 August 2021) available at: https://www.echr.coe.int/documents/guide_art_8_eng.pdf

B. Leadership in Politics, Public Life & the Workplace

6. ICCL is concerned about abuse on social media directed at women, particularly public figures. We believe the most effective way to address social media abuse is to focus on the algorithmic “recommender systems” that determine how widely abusive material spreads. Abuse grows on social media because recommender systems promote it. Algorithms that operate behind the scenes on platforms such as Facebook, YouTube, and TikTok determine what content appears in each user’s feed. While some recommender systems should be allowed to operate, ICCL recommends that recommender systems which rely on profiles about people (“profiling” as defined in GDPR Article 4(4)) should be off by default. This would instantly cut the distribution of unlawful material and hate discussion on platforms.
7. Removing content identified as illegal is a suitable response for print and broadcast media, because the act of publication is decisive. In contrast, publication on social media platforms has little impact unless the published item is then selected by a recommender algorithm for wide distribution to other users. A focus on removal of content inevitably leads to the incorrect removal of some material. Therefore, shifting the focus from removal of illegal content to preventing algorithmic amplification of harmful content avoids disproportionate restrictions on freedom of expression and is more efficient than seeking to remove all problematic content.
8. We note that the European Court of Human Rights has made clear that freedom of expression includes the right to shock, offend or disturb. Defining offensiveness is highly subjective. Moreover, democracy requires space for new ideas that may shock, offend and disturb⁵. Thus overly restrictive regulation that restricts the free exchange of information and ideas must be avoided.
9. Any actions undertaken to combat online harms should be consistent with related legislative developments. This includes the Criminal Justice (Hate Crime) Bill 2021⁶, the EU Digital Services Act (DSA)⁷ and the Online Safety and Media Regulation Bill (OSMR)⁸. ICCL has highlighted elsewhere that the OSMR’s definition of “harmful” content is too vague. The definition creates a new hazard to freedom of expression and communication, and a potential chilling effect on how people express themselves.⁹ This concern about the OSMR definition of what is harmful also applies to the CA Recommendation 24 about what is hateful and abusive. ICCL also highlights a serious flaw in the draft EU DSA. It devotes a large section of the law to notice and take down, but mentions “recommender systems” only briefly and fails to address them.
10. Women are under-represented in political and public life. Government should take targeted measures to increase women’s representation in government.
11. While Ireland provides for a lengthy duration of maternity leave, it has one of the lowest payment rates for maternity leave in the OECD. A key gap is the lack of maternity leave

⁵ European Court of Human Rights, *Handyside v UK*, Application no. 5493/72) available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-57499%22%7D>

⁶ Available at: [https://www.justice.ie/en/JELR/Pages/Criminal_Justice_\(Hate_Crime\)_Bill_2021](https://www.justice.ie/en/JELR/Pages/Criminal_Justice_(Hate_Crime)_Bill_2021).

⁷ Available at: https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package_

⁸ Available at: <https://www.gov.ie/en/publication/88404-publication-of-the-online-safety-and-media-regulation-bill/>.

⁹ [ICCL submission on the Online Safety and Media Regulation Bill, 8 March 2021, available at: https://www.iccl.ie/wp-content/uploads/2021/03/ICCL-submission-on-Online-Safety-Media-Regulation-Bill.pdf](https://www.iccl.ie/wp-content/uploads/2021/03/ICCL-submission-on-Online-Safety-Media-Regulation-Bill.pdf).

for elected officials, which is a clear barrier to women's right to equal participation in political life.

C. Domestic, Sexual and Gender-Based Violence

12. In relation to recommendation 37 and 38, ICCL supports the call for the coordination of actions to prevent and counter domestic, sexual and gender-based violence (SGBV) across different sectors. We particularly encourage the development and implementation of a comprehensive national strategy. This should include a set of policy actions and awareness raising initiatives, prevention and education campaigns aimed at tackling gender-based violence and ensuring wide societal and behavioral change.
13. While anyone can be a victim of online harassment or harmful communications, most victims of certain types of online harassment are women and most perpetrators are men¹⁰. This is therefore a gendered problem, and should be addressed as such, considering that intersectional factors also influence the likelihood of experiencing online harassment.¹¹
14. Government should conduct an awareness-raising campaign on the offense of coercive control and other provisions of the Domestic Violence Act 2018 and provide increased funding to non-governmental organisations that provide services to victims of domestic violence and GBV.
15. Government should ensure perpetrators of human trafficking are vigorously investigated and prosecuted. There is a clear need to improve victim identification and referral, and issue a revised referral mechanism in coordination with NGOs offering formal identification, a recovery and reflection period, and services to all victims of trafficking. Recognising the gendered nature of trafficking victims, gender-specific accommodation and supports, where required, should be prioritised. Government should ensure that victims of human trafficking rights to identification, R&R period and assistance are enshrined in primary legislation, applicable to all victims, regardless of their immigration status and nationality.
16. The Criminal Justice (Hate Crime) Bill 2021 will be published this summer. This Bill offers the opportunity to ensure crimes motivated by prejudice on the grounds of gender can be addressed through the criminal justice system. Gender is one of the protected characteristics identified in the general scheme published in April 2021¹². This draft includes provisions on incitement to hatred¹³ as well as introducing new specific aggravated offences for crimes motivated by prejudice and a general aggravated sentencing provision.¹⁴
17. As highlighted by the Organisation for Security and Co-Operation in Europe (OSCE), "gender-based hate crimes are a consequence of gender inequalities and disproportionately affect women, as well as anyone perceived as not complying with

10 See ICCL Submission on Online Harassment, 6 October 2019, available at: <https://www.iccl.ie/wp-content/uploads/2019/10/ICCL-Online-Harassment-Submission.pdf>.

11 McGlynn and Rackley (2017: 39) for example observe that men who do not conform to conventional masculine norms or stereotypes are at greater risk. McGlynn C and Rackley A (2017) Image-Based Sexual Abuse. *Oxford Journal of Legal Studies* 37(3): 534–561. ICCL's submission also shows how one's sexual orientation, gender, identity, race, religion, ethnicity, mental health and ability are also risk factors.

12 Available here: [https://www.justice.ie/en/JELR/General_Scheme_Criminal_Justice_\(Hate_Crime\)_Bill_2021.pdf/Files/General_Scheme_Criminal_Justice_\(Hate_Crime\)_Bill_2021.pdf](https://www.justice.ie/en/JELR/General_Scheme_Criminal_Justice_(Hate_Crime)_Bill_2021.pdf/Files/General_Scheme_Criminal_Justice_(Hate_Crime)_Bill_2021.pdf).

13 The Prohibition of Incitement to Hatred Act 1989 is available here: <https://www.irishstatutebook.ie/eli/1989/act/19/enacted/en/print#sec6>.

14 In our submission on the General Scheme of this Bill to the Joint Committee on Justice, we recommend that hate crime and hate speech be treated separately. Though the issues are related, they are distinct and must be treated as such in law. The submission is available here:

prevailing gender norms.”¹⁵ The specific nature of such crimes should be taken into account when drafting the legislation, for example, in relation to the inclusion of particular offences.

18. ICCL has also called for a comprehensive approach to addressing hate crime, including gender-based crimes, that goes beyond legislation. Government needs to implement better education, effective monitoring and reporting mechanisms, an enabling environment for counter-speech, training of public actors including police, and national awareness campaigns in order to combat all forms of hate crime¹⁶. All measures should be developed in collaboration with civil society organisations, affected communities and other stakeholders¹⁷.
19. In response to recommendation 39, ICCL considers that the most significant barriers to access to justice for survivors of domestic violence and other forms of SGBV are the difficulty in securing legal aid, high legal costs and court delays. ICCL calls for a comprehensive review of the criminal justice system to identify other barriers to access to justice for survivors and agree that specialised confidential health care and other support services for survivors should be provided.
20. Victims should have the right to legal representation in general, not only when they are being questioned on their sexual history. Recommendation 39(b) appears to suggest the repeal of Section 3(2) of the Criminal Law (Rape) Act 1981 and Section 13 of Criminal Law (Rape) (Amendment) Act, 1990 which provide for cross-examination of the complainant on their previous sexual history. ICCL considers that this issue would need significant examination in light of Article 38.1 of the Constitution¹⁸ and in terms of fair trial rights. ICCL recommends reviewing these provisions and providing clearer judicial guidelines in terms of this form of evidence to ensure that the dignity of a victim is protected at all times.
21. ICCL also strongly agrees that training is required urgently for criminal judges and prosecution solicitors and barristers on the appropriateness of evidence of previous sexual conduct, sexual history, character, and attire of SGBV complainants. ICCL is strongly in favour of a review of the law in relation to the area of a SGBV complainant’s counselling/medical records. Currently, if a SGBV complainant refuses to disclose same this can result in the withdrawal of the prosecution or the direction of an acquittal by the trial judge.
22. ICCL supports the recommendation to increase rehabilitation programmes for the perpetrators of Domestic Violence and SGBV crimes. Finally, ICCL is strongly in favour of recommendation (e) to establish an independent Commissioner on access to justice for survivors. ICCL has long called for a Victims’ Ombudsperson to centralise victims’ rights and provide a complaints mechanism and we reiterate that call.¹⁹

D. Gender Equality Principles in Law and Policy

15 OSCE, Gender-Based Hate Crime, March 2021, available at: <https://www.osce.org/files/f/documents/f/1/480847.pdf>

16 For an in-depth analysis of the General Scheme of the Criminal Justice (Hate Crime) Bill see the submissions sent to the Oireachtas at the pre-legislative scrutiny stage by ICCL (available here: <https://www.iccl.ie/wp-content/uploads/2022/01/ICCL-Submission-Hate-Crime-Bill.pdf>) and the Coalition Against Hate Crime Ireland (available here: <https://www.iccl.ie/wp-content/uploads/2021/11/Coalition-Against-Hate-Crime-submission-on-Hate-Crime-Bill.pdf>).

17 ICCL and Coalition against Hate Crime Ireland letter to the Joint Committee on Justice “Calling for a wider involvement of civil society in the development of hate crime legislation in Ireland”, 15 December 2021, available here: <https://www.iccl.ie/wp-content/uploads/2022/01/211215-Coalition-Against-Hate-Crime-letter-Criminal-JusticeHate-Crime-Bill-2021.pdf>

18 ICCL notes that the O’Malley Report did not recommend any legislative change in this area, see para. 6.8, p. 66, “REVIEW OF PROTECTIONS FOR VULNERABLE WITNESSES IN THE INVESTIGATION AND PROSECUTION OF SEXUAL OFFENCES”, available here:

https://www.justice.ie/en/JELR/Review_of_Protections_for_Vulnerable_Witnesses_in%20the_Investigation_and_Prosecution_of_Sexual_Offences.pdf/Files/Review_of_Protections_for_Vulnerable_Witnesses_in%20the_Investigation_and_Prosecution_of_Sexual_Offences.pdf.

19 See also <https://www.iccl.ie/justice/victims-rights/> for ICCL’s work on victims’ rights.

23. In relation to CA recommendations 42 to 45, we stress the need for gender equality issues to be tackled in a systematic and cross-cutting way through legal and policy measures. Key measures include the regular gathering and publication of disaggregated data on key gender equality issues as well as the undertaking of gender impact assessments, for all relevant proposed legislation. A gender impact assessment – as well as impact assessments for other minoritised and marginalised groups – should also be conducted when reviewing existing legislation, including in regards to the the ongoing review of Equality legislation²⁰.

E. Pay and Workplace Conditions

24. In relation to chapter 9, we strongly call for effective measures to close the gender pay gap and improve working conditions for women, noting that Covid-19 had a disproportionate effect on the rise of unemployment rates for women.²¹ ICCL notes the passing of the Gender Pay Gap Information Act in June of 2021.²² We call for this Act to be commenced as soon as possible. We also call for wider societal attention to actual or potential gender pay gaps across workplaces beyond the remit of the legislation.

25. ICCL notes that the cost of childcare is still a major barrier to women participating in public life, including returning to the workplace.²³ We call on government to prioritise increasing childcare support as part of its efforts to ensure gender equality in the Workplace.

F. General principles

26. The following principles should underpin the work of the Committee on Gender Equality in implementing the CA recommendations and the future work of the government:

- a. The Committee's work, as well as all actions implemented by the Government, should be guided and aligned to international, regional and national human rights standards.
- b. Civil society organisations and all those affected by gender inequalities should be actively consulted at all stages to ensure that proposed measures respond to existing needs and the different lived experiences.
- c. In tackling gender inequalities, an intersectional perspective should be adopted, exploring coexisting identities and connected types of oppression related to gender.²⁴ Overlooking this aspect could undermine the potential of the new measures.²⁵

²⁰ See <https://www.gov.ie/en/consultation/066b6-review-of-the-equality-acts/> (last accessed 4 March 2022)

²¹ See Covid-19 NGO Group, *Marginalised Groups and Promoting Equality, Inclusion and Human Rights in the Covid Crisis – A Joint Submission*, 2020, p. 12.

Available at: <https://www.communityworkireland.ie/covid-19-ngo-group-marginalised-groups-and-promoting-equality-inclusion-and-human-rights-in-the-covid-crisis-a-joint-submission/>. See also PwC Ireland, *PwC Women in Work Index reveals COVID reversing workforce gains*, 5 March 2021. See:

<https://www.pwc.ie/media-centre/press-releases/2021/women-in-work-index-reveals-covid-reverses.html>.

²² See <https://www.irishstatutebook.ie/eli/2021/act/20/enacted/en/print.html>

²³ See for example the National Women's Council work on childcare, available at

https://www.nwci.ie/discover/what_we_do/valuing_care_and_care_work/providing_high_quality_childcare_for_all_children

²⁴ See e.g. ENAR, "EU gender equality strategy: a missed opportunity to be truly intersectional" available at <https://www.enar-eu.org/EU-gender-equality-strategy-a-missed-opportunity-to-be-truly-intersectional> (last consulted 4 March 2022).

²⁵ For example, such approach has been announced in the Anti-Racism Committee Interim Report to the Minister

for Children, Equality, Disability, Integration and Youth, 30 November 2021, p. 5, available at:

<https://www.gov.ie/pdf/?file=https://assets.gov.ie/132151/ed3f39e2-4aa1-4991-aa06-52beae8310db.pdf#page=null>.

- d. In implementing the CA Recommendations and in designing actions, the Government should address the disproportionate impact that Covid-19 had on women and caregivers, as well as other at-risk groups²⁶.
- e. While aware that abortion falls outside of the scope of the CA recommendations, we encourage the Committee on Gender Equality to work in close contact with the relevant Oireachtas Bodies who will be discussing the scope of the statutory review of the Health (Regulation of Termination of Pregnancy) Act 2018 to ensure that the issues at stake are not addressed in isolation.
- f. While we welcome the Government's commitment²⁷ to providing follow-up information on the National Strategy for Women and Girls 2017-2020²⁸, we note that since January 2022 Ireland has been lacking a national strategy to achieve full gender equality. A new strategy should be published promptly and be informed by the CA Recommendations, the work of the Committee on Gender Equality, international, regional and national human rights standards and relevant guidance from expert human rights bodies. A consultative mechanism to monitor its implementation should be established.

²⁶ For an in-depth analysis of the impact of the pandemic on human rights in Ireland see ICCL, Human Rights in a Pandemic, May 2021, available at: <https://www.iccl.ie/wp-content/uploads/2021/06/Human-Rights-in-a-Pandemic.pdf>

²⁷ . In view of the impact of COVID-19 on planned work, the implementation of the Strategy was extended from 2020 to the end of 2021. See Parliamentary Question to Minister O'Gorman

²⁸ Available at: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/95975/bd524a60-e19f-44e8-80ce-9cdc58853403.pdf#page=null>.