

**CLM Submission to the National Women's Council of Ireland's Shadow Report
for submission to the UN Convention on the Elimination of all Forms of
Discrimination Against Women**



**Community
Law & Mediation**

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About Community Law & Mediation

CLM is an independent, community-based organisation that works to empower individuals experiencing disadvantage by providing free legal, mediation and information services. At a national level, we seek to have a wider impact through our campaigns for law reform and by acting as a resource for other advocacy organisations.

For more information, contact us at:

Community Law & Mediation

Northside Civic Centre, Bunratty Road, Coolock, Dublin 17

T: 01 847 7804 | E: info@communitylawandmediation.ie

W: www.communitylawandmediation.ie

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Executive Summary

Ireland's commitment to the implementation of The UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) is due to be examined in early 2017. As part of this process, the State submits a written response to a list of issues identified by the CEDAW Committee, which is an independent expert body within the United Nations. The National Women's Council of Ireland is drafting a Shadow Report for submission to the CEDAW Committee and this is CLM's submission to that Shadow Report. It has been ten years since Ireland was last reviewed by this Committee. CLM, in its work to improve access to justice over the last 41 years, works to tackle barriers to justice and to highlight and challenge the disproportionate effect of unfair laws and policies on certain groups in society, including women.

This submission deals primarily with issues around access to justice for women, particularly women who cannot afford to pay for private legal representation. It advocates for an expansion of the Civil Legal Aid Scheme, which currently does not cover claims taken to the Workplace Relations Commission, the forum in which employment equality and equal status cases are heard. It looks at the indirect gender discrimination that persists in the Irish social welfare system, focusing on the changes to the One Parent Family Payment and on the lack of recognition of domestic unpaid care-giving as work. The submission also looks at women in employment and the lack of affordable childcare, as well as the gender pay gap and the particular vulnerability of women at retirement age. Finally, it discusses the Workplace Relations Commission and the position of equality within the new forum, as well as the unmet legal need of claimants accessing it. CLM makes recommendations for the CEDAW Committee to consider in finalising its Concluding Observations.

Introduction

Ireland's commitment to the implementation of The UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) is due to be examined in early 2017. As part of this process the State submits a written response to a list of issues identified by the CEDAW Committee, which is an independent expert body within the United Nations. The National Women's Council of Ireland is drafting a Shadow Report for submission to the CEDAW Committee and this is CLM's submission to that Shadow Report. It has been ten years since Ireland was last reviewed by this Committee. CLM, in its work to improve access to justice over the last 41 years, works to tackle barriers to justice and to highlight and challenge the disproportionate effect of unfair laws and policies on certain groups in society, including women.

Women and access to justice

In its General Recommendation on women's access to justice,¹ the Committee on the Elimination of Discrimination against Women recognise the right of access to justice for women as being essential to the realisation of all the rights protected under CEDAW. The Committee examines the obligations of State parties to ensure that women have access to justice, stating: "*These obligations encompass the protection of women's rights against all forms of discrimination with a view to empowering them as individuals and as rights holders. Effective access to justice optimises the emancipatory and transformative potential of law.*"²

The Committee goes on to identify six interrelated and essential components — justiciability, availability, accessibility, good-quality, accountability of justice systems, and the provision of remedies for victims — necessary to ensure access to justice. It stated: "*While differences in prevailing legal, social, cultural, political and economic conditions will necessitate a differentiated application of these features in each State party, the basic elements of the approach are of universal relevance and of*

¹ CEDAW/C/GC/33 (23 July 2015)

² CEDAW/C/GC/33 (23 July 2015), I(2)

*immediate application.*³ The Committee recommends that States “[r]emove economic barriers to justice by providing legal aid and by ensuring that fees for issuing and filing documents as well as court costs are reduced for women with low income and waived for women living in poverty.”⁴

In promoting access to justice, Community Law & Mediation (CLM) adopts a combination approach to services. We provide free mediation, legal information and legal advice and aim to engage in strategic litigation, using targeted legal representation to achieve a result to benefit a community beyond the immediate client. We also provide community education and information so as to help people to understand law and the legal system, as well as its meaning in their lives. We aim to broaden our work by engaging in Law Reform and assisting other community organisations in their advocacy work. Our work focuses on areas of law where we have identified a need and which are not catered for by the Irish State sponsored Civil Legal Aid Scheme e.g. housing, social welfare, employment, equality and debt. The general aim is to break down the legal, social, cultural and psychological barriers which inhibit people from availing of legal services and thus accessing justice. We have first-hand experience of advising, advocating for and representing women whose access to justice is inhibited by a combination of barriers.

These barriers were first identified in Ireland by the Pringle Report published in 1977. This report acknowledged that the greatest single obstacle facing those living in disadvantage in need of legal services was not lack of finance but the following:

1. For a variety of social and psychological reasons, poor people were hesitant about approaching lawyers and were intimidated by the legal world.
2. Solicitor’s offices were often geographically inaccessible and only open during normal office hours, rather than in evenings or at the weekend.
3. Most people are unaware of their rights and lawyers in turn are ignorant of ‘poor law’.

³ CEDAW/C/GC/33 (23 July 2015)

⁴ CEDAW/C/GC/33 (23 July 2015)

4. Many of the problems of the poor could only be solved through effective community organisations and development rather than on an individual case by case basis.

Further barriers include:

1. Lack of justiciability of economic, social and cultural rights;
2. Poverty and marginalization;
3. Lack of meaningful, widespread and effective support for public interest litigation;
4. Human Rights and equality seen as added and optional extras in times of economic success;
5. Lack of buy-in in private business and in state bodies to human rights and equality.

Accessibility is a big issue here. For women and men to have any real recourse to exercising their rights, the fora in or means by which they can do so should be accessible to all, not just to those with access to resources such as legal advice/representation, or access and connectivity to information/support through the internet.

The aforementioned Pringle Report recommended that a Civil Legal Aid Scheme, should, inter alia, set out to make the public aware of their rights and identify necessary law reforms. The scheme adopted by the Irish State involved a rejection of the proposal of the Pringle Report that the provision of legal aid should be a comprehensive one. The scheme only provided for one aspect of securing access to justice, the expense involved. It was put on a statutory footing by the Civil Legal Aid Act 1995, which designates certain areas outside the scope of the scheme including: defamation, disputes over land, licensing, conveyancing, election petitions, test cases and class actions and so on. The scheme operates a number of exclusions in relation to housing rights, representation before tribunals including the Social Welfare Appeals Office and the Workplace Relations Commission. These areas of law can have a major impact on already vulnerable people and exclusion from the legal aid scheme may deny women on lower incomes access to the legal system.

While the Civil Legal Aid Scheme is subsidised, there is a strict means test and if a person qualifies, a sliding scale of fees are charged depending on income, with a minimum floor. The minimum fee for Legal Aid has increased from €50 to €130, an increase of 160% which may be cost prohibitive for some. Waiting lists and long waiting times are the result of cuts in funding at a time when demand for the service is high. It is certainly arguable that this Scheme doesn't comply with the *Airey*⁵ case and that at least some women involved in complex litigation will be unable to obtain Legal Aid from the State because of the restrictive nature of the statutory scheme and that, consequently, Ireland may still be in falling short of fulfilling its international obligations.

Women in the Irish social welfare system

Irish social policy has been highly gendered throughout its development. By way of illustration, Article 41 of the Irish Constitution, enacted in 1937, provides that '*a woman, by her life within the home*', supports the State for the '*common good*' and that '*mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.*' At this very fundamental legal level, the traditional stereotyping of women and men persists. Greater gender equality in social security began to be introduced in the 1980s, as a result of pressure both from Directive 79/7/EEC ("the Directive") and the feminist movement. By way of example, equal contribution rates and equal social welfare payments for men and women were introduced, as well as equal treatment for men experiencing circumstances traditionally associated with women, such as lone parenthood and widowhood. While the Directive abolished much of the direct discrimination that abounded within the social security system, there remains a legacy of indirect discrimination on the basis of gender.

⁵ *Airey v. Ireland* [1979] 2 E.H.R.R. 305 - Mrs. Airey took her case against the Irish government to the Commission of the European Court of Human Rights and claimed that Article 6(1) of the European Convention of Human Rights and Fundamental Freedoms guaranteed a right of access to the courts. She complained that this right had been infringed due to the prohibitive costs of obtaining a judicial separation, and the lack of any State subsidy. The Court agreed with her and found that it would be unreasonable to expect a person untrained in the law and procedures to effectively represent themselves.

One example of this indirect discrimination is the change to the eligibility criteria for the One Parent Family Payment (OPFP), designed to support single parents on low incomes. The majority of these single parents are women.⁶ In 2015, the criteria changed, removing payments for lone parents whose youngest child is seven years or over. CLM advocates for the reversal of these changes, which force many women and families into poverty, particularly in view of the lack of affordable childcare, which is discussed below.

On the provision of remedies, the Committee recommends that State parties “[t]ake full account of the unremunerated domestic and caring activities of women in assessments of damages for the purposes of determining appropriate compensation for the harm, in all civil, criminal, administrative or other proceedings”.⁷ By and large, Irish society does not acknowledge the unremunerated domestic and caring activities of women as work. The contribution to the economy of unpaid care-givers and the economic and societal pressure their work alleviates is consistently under-valued. The lack of recognition of care work and parenting as work affects women’s choices and opportunities for employment and thus their potential to move out of poverty. Issues arise such as poverty in old age, being economically dependent and less able to escape domestic violence and having incomplete access to Pay Related Social Insurance (PRSI) when working in caring and atypical work situations. It is predominantly women who act as carers – the last Census revealed that females provided around two-thirds (66.1%) of all care hours in Ireland. Issues around inadequate pension entitlements and coverage arise. One example of the failure of the social security system to recognise care work and parenting is the manner in which a person is deemed to be a new entrant if they have not contributed to the social insurance system for the previous two years. CLM is of the view that the failure to recognise periodic gaps in employment for reasons of parenting or care-giving constitutes indirect discrimination against women, particularly as they grow older.

⁶ Government of Ireland (2012) Census 2011 Profile 5: Households and Families, p.22.

⁷ CEDAW/C/GC/33 (23 July 2015)

Women in employment

Clearly, employment should provide a route out of poverty. However, an exit from poverty through employment is contingent on several factors – the level of pay, labour market conditions, childcare costs, and the extent to which the best interests of children are served through labour market flexibility and adequate welfare support from the State. The particular needs and skills of a family will dictate whether or not employment offers a real and sustainable route out of poverty.

The core objective of job activation social welfare reforms is to provide a route out of poverty and in so doing move away from “passive” income support and long term welfare dependency. The case for reform is being made in large part due to the disproportionately high level of poverty amongst one-parent households (the vast majority of which are headed by women) and the impact of long term welfare dependency. Unfortunately, the effectiveness of the current reform measures in achieving the stated objective is doubtful, given the reduction in ‘in work’ income support (income disregards) and the structural inequities that have now emerged from the erosion of supports for those parenting alone. More specifically, the regressive effects of the measures can be seen in those one-parent families in employment whose income has dropped significantly and those who cannot continue working because their hours of work conflict with the rules applicable to Jobseekers Allowance.

While there has been some investment in childcare services, this investment is very limited and cannot be described as being affordable and accessible. The Vincentian Partnership for Social Justice’s *Minimum Income Standard and the Cost of Childcare: A Working Paper (March 2015)* sets out in clear terms the actual cost of childcare in this state. This cost undoubtedly disproportionately affects the ability of one parent families to move into paid employment. In addition, while public discourse and policy development will often focus on the cost of childcare for younger children in formal settings, little attention is paid to the needs of older children who require supervision and support. School attendance is not the same as childcare – children only attend school a limited number of hours a day, for only part of the year. Therefore, at the core of any reform measures must be the recognition

that the State must play a major role in supporting and subsidising paid employment, particularly in the case of those on low pay with child dependants. While the recent introduction of paternity leave and benefit is welcomed, Ireland stands out as a country in which parental leave is unpaid, meaning that many parents cannot afford to avail of leave. These serious limitations on childcare options mean that women have limited choices when it comes to employment and social and political participation.

Between 2006 and 2015 the number of females in Ireland increased by over 10% to 2.3458 million, or 50.6% of the total population of 4.635 million. The largest proportional increases were in the age groups 45-64 years and 65 years and above. In November 2015, at a CLM roundtable on age discrimination and employment, the impact of a person's gender on their experience of retirement in Ireland was considered.⁸ CLM found that there remains a particular disadvantage to women in the context of retirement. The marriage bar, under which women working in the public and Civil Service had to resign their job as soon as they married, was abolished in Ireland in 1973. However, inequalities persist. As mentioned, there is a concentration of women in part time and lower paid employment. Generally, such women are less likely to earn as much as men. A significant number of women are at risk of poverty, particularly lone parents and older women. The latest figures from the EU Commission show that the gender pay gap in Ireland is 13.9% - in other words women in Ireland are paid almost 14% less than men. This, coupled with the high cost of motherhood and childcare, persistently constrains women in terms of employment and, as a result, places them in a particularly vulnerable position when it comes to retirement. The gender pay gap exists across the sectors. For the bottom 10% of earners, the gender pay gap in Ireland is 4% but this rises to 24.6% for the top 10% of income earners, suggesting the continued presence of a glass ceiling and indirect discrimination. These figures are troubling in light of the most recent concluding comments of the CEDAW Committee in 2005,⁹ which recommended that the Irish government monitor the situation of poverty and social exclusion of women

⁸ *Age Discrimination in Employment: Report following a Roundtable Discussion* (CLM, June 2016) <http://www.communitylawandmediation.ie/fileupload/Policy%20Work/Age%20Discrimination%20in%20Employment%20Report%20following%20a%20Roundtable%20Discussion%20June%202016.pdf>

⁹ CEDAW/C/IRL/CO/4-5

in the most vulnerable groups and implement effective measures and training programmes that will allow them fully to enjoy the benefits of the State's prosperity. The Committee were concerned at the concentration of women in low paid and part-time work and recommended measures for the "reconciliation of family and professional responsibilities to be adopted and implemented, including the provision of affordable childcare".¹⁰ These issues remain to be addressed in a meaningful way.

CLM again urges acknowledgement of the value of care in the economy, together with more meaningful support for women entering the employed work force. Increasing the economic independence of women at all stages of their lives is predicated on narrowing the gender pay gap and increasing flexibility in terms and conditions to accommodate parents and carers. CLM advocates for a pension and social welfare system that increases the possibility of economic independence and a decent standard of living for older women in a way that recognises periodic gaps in employment for reasons of parenting or care-giving. Many women in both the public and private sectors have had periods of interrupted service in their working lives due to caring duties and as a result have access only to small occupational pensions.

Equality in the WRC

CLM broadly welcomes the new Workplace Relations Commission and the positive reforms its establishment has sought to achieve. There is a perception that the prominence of equality in the new Workplace Relations Commission is diminished. The absence of the word "equality" from the new name of the organisation is a concern in itself. The Equality Tribunal has been subsumed into the more streamlined Workplace Relations Commission. While it is hoped that coalescing the various fora dealing with employment and equality claims will lead to greater clarity and reduced waiting times – both much-needed and very welcome – even a claim of gender discrimination under the Equal Status Acts must now be made to the Workplace Relations Commission. This is in circumstances where the Equal Status

¹⁰ CEDAW/C/IRL/CO/4-5

Acts cover discrimination in the provision of goods and services and generally have no connection with the claimant's workplace.

Our practical experience is that the lack of legal aid in employment and equality cases is a major barrier to enforcing employment rights, including the rights of women. Sometimes equality and employment law cases involve complex legal issues and there is a risk that individuals, including older persons, may not be able to present their cases in the manner that fairness demands without legal representation. While the new system certainly introduced some essential reforms, there is a concern that those without the educational attainment, legal experience or simply the technological know-how to navigate an increasingly virtual process may be left behind. The front-loading of appeals to the Labour Court in what is an extremely technical area of law is one example of how the lack of legal aid in employment equality and equal status cases calls into question the effectiveness of the Civil Legal Aid scheme.

Recommendations

CLM recommends that the CEDAW Committee consider the following in making its Concluding Observations:

1. The Civil Legal Aid Scheme should be expanded and supported to provide free legal representation to women taking claims under employment equality and equal status legislation. The lack of Legal Aid cases is a major barrier to women wishing to enforce their rights.
2. Indirect gender discrimination in the social welfare system should be addressed in a meaningful way and the changes to the One Parent Family Payment should be reversed and affordable childcare should be made a priority.
3. The possibility of economic independence and a decent standard of living for women must recognise periodic gaps in employment for reasons of parenting or care-giving. The contribution to the economy of unpaid care-givers and the economic and societal pressure their work alleviates is consistently under-

valued. This failure constitutes indirect discrimination and continues to affect women as they grow older.

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