

Closing

Intervention by Ms Frances Fitzgerald TD
Tánaiste and Minister for Justice and Equality

UPR 2nd cycle, 11 May 2016

Thank you Mr. President / Mr. Vice President.

I am very happy to be here with you as part of this dialogue and apologies that I was unavoidably delayed in Dublin this morning on urgent Government business.

This is an important process for us. As Ambassador O'Brien said earlier, Ireland regards the UPR as a valuable and critically important mechanism. This process by which the international community holds each UN Member State to account in relation to its individual human rights record is a real and practical expression of the fact that human rights are not solely of domestic concern, but rather a legitimate and important concern of the international community. We are proud of our own domestic record of protecting and promoting human rights and of our contribution to advancing human rights at an international level, but we equally accept that we have challenges and problems as a society that we need to face. We are committed to ongoing improvement in the protection and promotion of human rights and are convinced that all of us can learn and benefit from dialogue with other States and indeed – at treaty level – with the Expert Committees of the UN system.

I understand that there was a wide range of issues raised and we also had the benefit of receiving a number of advance questions. Before turning to respond to the major issues being raised with us and to the advance questions, I want to outline briefly some of the key human rights developments in Ireland since our 2011 appearance.

Arguably, the single most important development in human rights in Ireland since we were last here is the adoption by the people by referendum of an

amendment to our Constitution to provide for same sex marriage. This hugely symbolic step, providing for the recognition of, and respect for, the equality of our LGBTI fellow citizens is a hugely important legal change and represents a milestone of world significance on the journey to equal rights for LGBTI people. Ireland is the first sovereign country to make the journey to marriage equality by popular vote. Furthermore, we made that journey through a fundamentally democratic process, and a decision made by referendum of the people.

I have been personally committed for decades to pursuing progress on human rights across a wide range of areas. I pressed forward with the Children Referendum in 2012 which has given children in Ireland important rights in terms of safeguarding their welfare and enabling them to have a say in key decisions affecting their lives, such as in the areas of guardianship, custody and access. The Irish State is now able to protect children more effectively in situations where children are failed by their married parents.

Our ethos has been to encourage individual autonomy and to recognise the important contribution of all sectors to a vibrant society. Ireland has been a country of significant inward migration over the past decade. Many migrants have chosen to become Irish citizens. One innovation of the past five years has been the introduction of citizenship ceremonies which provides an important symbolic opportunity for the Irish State to welcome new citizens and to celebrate their membership of our nation. people from ... countries have participated in citizenship ceremonies since they were first introduced in 2011.

Significant progress has also been made in advancing the rights of people with capacity difficulties. The Assisted Decision-Making (Capacity) Act 2015 is a comprehensive reform of the law governing people with capacity difficulties. It enables people with intellectual difficulties, with dementia and with mental health issues to exercise their autonomy as much as possible on decisions concerning their lives. The Act is a crucial part of Ireland's preparations for ratification of the UN Convention on the Rights of Persons

with Disabilities. The Government is well advanced in the preparations for ratification of the Convention.

There are challenges, of course, needing to be addressed.

Germany, Czech Republic, Norway, Sweden, and the Netherlands posed advance about termination of pregnancy. In Ireland termination of pregnancy is regulated by constitutional and statute law.

The legislative provisions on termination of pregnancy in Ireland date back to 1861 and for the last thirty years plus years have been fraught with much controversy. I will outline the key steps in the evolution of the law in this area to provide you with the context for our present day situation.

Abortion was a felony under the 1861 Offences against the Person Act and a sentence of penal servitude for life could be imposed for the offence.

In 1983 the **first** of Ireland's referendums on the subject was held, and during the 1980s several landmark court cases were taken. The referendum introduced a new section in Article 40.3 of the Constitution which was to guarantee the right to life of the 'unborn'.

A number of cases then came before the courts concerning the interpretation of the Eighth Amendment and the provision of information on or referral to abortion services available in other countries.

The **second** referendum on abortion in Ireland was held on 25th of November 1992. The electorate were asked to vote on three proposed amendments to the Constitution. The Twelfth Amendment, which was designed to exclude the risk of suicide as a ground for lawful abortion, was defeated.

However, the right to travel and the right to information were accepted and Article 40.3.3° of the Constitution was further amended to reflect the position.

Following the referendum, the issue of information on abortion was dealt with in legislation. The *Regulation of Information (Services outside State for Termination of Pregnancies) Act, 1995* defines the conditions under which information relating to abortion services lawfully available in another state might be made available in Ireland. It makes it clear that in general, the provision of abortion information is unlawful in Ireland except in very restricted circumstances.

There then took place a number of public reflection processes to consider if constitutional change might be necessary to Article 40.3.33. Further to this public reflection process a **third** referendum on abortion was held in March **2002** to remove the threat of suicide as a ground for a lawful abortion and thereby restrict the grounds recognised in the X case. The **third referendum regarding abortion was defeated.**

The Protection of Life During Pregnancy Act 2013 was enacted on 30th July 2013 and commenced on 1st January 2014. It regulates access to lawful termination of pregnancy in accordance with the X case and the judgment of the European Court of Human Rights in the *A, B and C v Ireland* case. Its purpose is to confer procedural rights on a woman who believes she has a life-threatening condition, so that she can have certainty as to whether she requires this treatment or not.

The Act upholds the right to life of the unborn where practicable, and the right to life of a pregnant woman whose life is threatened by her pregnancy, as required by Article 40.3.3. The Act also creates procedures which apply to the lawful termination of pregnancy. The objectives of these procedures are, firstly, to ensure that, where lawful termination of pregnancy is under consideration, the right to life of the unborn is respected **where practicable**, and secondly to ensure that a woman can ascertain by means of a clear process whether she is entitled to medical treatment to which the Act applies.

The issue of abortion continues to be a very live issue in Ireland and we recognize the need for our discourse to be respectful of differing views. Recent

public debate has concentrated on extending the law on abortion to cover cases of fatal foetal abnormalities or cases where a woman is pregnant as a result of rape to a broader legal regime that allows abortion where the health of a woman is of concern.

None of the above measures is possible under the current regulation of constitutional and statute law. The Government have made a commitment in the most recent Programme for Government to establish a Citizen's Assembly to make recommendations to the Dáil on further constitutional changes and they will consider the Eight Amendment as part of this work.

I note that the UK has asked how human rights issues will be managed in our parliamentary committee system. That's an issue to be considered by the Oireachtas itself now that a new Government is in place and I am sure members will appreciate that I can't pre-empt how the national parliament will approach this question.

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A number of questions were asked in relation to the education system in Ireland, particularly in relation to provision for religious minorities and secular families.

Article 44 of our Constitution specifically protects religious freedom, in line with international human rights norms. This includes the right of religious groups to establish and maintain their own social, cultural and educational institutions. The Equal Status Act 2000, which outlaws discrimination in relation to the admission of a student, makes provision for exemptions to apply in the case of single sex schools and in the case of schools where the objective is to provide education in an environment that promotes certain religious values. The Act provides that schools in which the objective is to provide education in an environment that promotes certain religious values, may admit a student of a particular religion in preference to others.

It is the responsibility of the managerial authorities of all schools to implement an enrolment policy in accordance with the Education Act 1998. The enrolment policy must be non-discriminatory and must be applied fairly in respect of all applicants. Parents can choose which school to apply to, and where the school has places available, the pupil should be admitted. However, in schools where there are more applicants than places available, a selection process may be necessary and this may result in some pupils not obtaining a place in the school of their first choice.

A large majority of schools at primary level and a substantial number of schools at post primary level are under the patronage of religious institutions and groups. The focus of Government's work in this area (on which Slovenia and the Czech Republic have asked questions) has been to increase choice, by increasing the variety of schools available and by strengthening the legislative framework for control of admissions policies adopted by individual schools.

The outgoing Government accepted the recommendation from the Constitutional Convention to remove the offence of blasphemy from the Constitution and the timing of a referendum in that regard is now a matter for the incoming Government.

Mexico and Slovenia raised advance questions on health issues.

The National Sexual Health Strategy was launched by the Minister for Health on 29 October 2015. Ireland now has, for the first time, a National Strategy that sets out the direction that the Department of Health and the stakeholders, including those that use the services, wish to travel over the next 5 years. This will ensure that all our efforts across the entire range of sexual health from awareness, education, training, access, treatment and surveillance are coordinated and evidence informed, based on best practice and put the people who avail of these services first. The Strategy has a number of priority actions aimed at improving the sexual health and well-being of children and young people.

The question of incorporating economic, social and cultural rights into our Constitution has been considered by the Constitutional Convention, which terms recommended that in principle, the Constitution should be amended to strengthen the protection of ESC Rights.

The previous Government responded to the Eighth Report of the Convention in the lower House of our parliament on 14 January 2015. In its response, the Government pointed out that the Convention's recommendations raise substantial questions including, for example, the suitability or otherwise of the Constitution as a vehicle for providing for detailed rights in these areas. Other issues are the possible cost; the fact that there is already power by legislation to confer rights and determine expenditure via primary and secondary legislation. Unlike the Constitution, such legislation can be varied as needed

and as availability of resources allows. Additional issues mentioned include the absence of provisions for revenue to provide for any ensuing expenditure; concerns about transferring to the judiciary, which is unelected, power to make decisions affecting the allocation of resources more appropriate for a Parliament and Government, which are elected. The current position of the State as regards debt levels and the need to meet stringent EU rules into the future are also factors that need to be taken into account in our consideration.

In light of these considerations the previous Government had decided that the Report should be referred to a Parliamentary Committee for consideration of the various issues that arise from it. Now that the new Government has been formed, our Programme for Government contains a commitment that the recommendation be referred to the Oireachtas Committee on Housing for consideration.

I started my public life with the Council for the Status of Women, so am particularly thankful to Slovenia and Norway for putting gender equality on today's agenda. I have a dedicated Gender Equality Division in my Department with responsibility for coordinating policy across the whole of Government and promoting practical action to achieve greater gender equality in our society. This Division also works closely with our Foreign Ministry to promote gender equality and women's empowerment at international level and as part of Ireland's programme for overseas development. Indeed the most recent OECD statistics indicate that 55% of Ireland's bilateral Official Development Assistance (ODA) had gender equality and women's empowerment as a principal or significant objective.

Ireland is introducing 2 weeks paid paternity leave this year, as a family support and childcare measure, but also as a gender equality measure, so as to give a clear signal to employers that they should expect men to take on family responsibilities on the birth of a new child and not just young women. My objective is to pursue further developments to support childcare in the crucial first year of a newborn's life and to promote a fairer sharing of family responsibilities between men and women.

In relation to Article 41.2 of the Constitution (which refers to women in the home), the outgoing Government accepted the Constitutional Convention's recommendations. We noted, however, that the recommendations required further scrutiny to take cognisance of the reference to carers, and to examine the proposal in relation to incorporating gender equality within the Constitution and the scope of the changes which would be necessary to render the language gender inclusive throughout the Constitution.

A Task Force, composed of senior officials from the Equality and Civil Law Divisions of the Department of Justice and Equality, considered and reported on the Convention's recommendations and that report will now inform the consideration of the incoming Government of this issue.

The gender pay gap remains a concern for me. The most recent provisional figures provided by the Central Statistics Office (CSO) and released by the European Commission show that the gender pay gap, in unadjusted form, stood at 14.4% in Ireland in 2012. These figures compare with an EU average for 2012 of 16.5 % and a gap of 13.9% in Ireland in 2010. The gap in employment participation rates is also an issue here. The employment rate for men in 2014 was 73%, up from 68% in 2012. The female employment rate has shown a more modest but still significant increase, from 59.4% in 2012 to 61.2% in 2013. The gender gap in employment rates had almost halved from 16% in 2008 to 9% in 2012, but has widened slightly since then as male employment began to recover relatively rapidly.

The pay gap is of concern because it impacts on women's lifelong earnings, economic independence, private pension provisions and risk of poverty in older years. There are many complex causes of the gap, including women's increased likelihood to work part-time; to work in particular sectors; to play a disproportionately large role in the provision of caring within the family; to be under-represented in leadership and management roles and to experience discriminatory and gender-biased workplace practices and pay systems.

The introduction of a national minimum wage has led to an improvement in the situation in relation to the gender pay gap in Ireland. The introduction of a minimum wage benefits those in the lowest income groups and research shows that these groups are likely to have a significant female presence.

Work is ongoing to foster the advancement of women into decision-making roles. Positive action measures aimed at improving the employment opportunities and economic position of women include the Equality for Women Measure co-funded by the European Social Fund and Gender Equality Division, which provided training to over 12,145 women between 2007 and 2013, and focussed training for middle and senior management level women in the civil service.

We will commence later this year a consultation process with a view to putting a new National Women's Strategy in place and this will include wide-ranging consultation with civil society interests. We have advanced gender equality quite a lot in my time in public life, but much more needs to be done and the challenge for our new Strategy is to identify in a practical way what needs to be done and then to mobilise support and resources across the system of Government and across society as a whole to get it done.

I might conclude on that point Mr. President / Mr. Vice-President. I have only been able to touch briefly on issues that were raised with us today. We will of course return to the recommendations in our formal reply and I can confirm that we will again prepare a voluntary interim report by late 2018 / early 2019.

Our understanding with regard to human rights is ever evolving. New issues are constantly emerging. Our responses internationally are a work in progress. We share an enormous responsibility to tackle obstacles to the enjoyment of rights and to create the conditions in which all can realise their potential. None of us has all the answers. However, I believe through international collaboration, we can achieve much more than we could individually. This has been an important process for Ireland. We have learned much from it.

So, our gratitude to all for your participation and assistance today. We thank you for your comments and recommendations, all of which we will consider carefully and with an open mind. I hand you back to the President/ Vice-President.

