



**REFERENDUM  
ON THE 36<sup>TH</sup> AMENDMENT TO THE CONSTITUTION  
IRELAND, MAY 25, 2018**

**FINAL REPORT**



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## Executive Summary

With the cooperation of the Franchise Section of the Department of Housing, Planning and Local Government and the Referendum Returning Office, Sustainable Development Assistance International (SDAI) deployed a team of 15 international observers to observe voting on the Referendum on the 36<sup>th</sup> Amendment to the Irish Constitution, held on May 25, 2018. Early planning revealed that another group, the UK based NGO Democracy Volunteers (DV), also planned to conduct an observation. To avoid wasteful duplication, SDAI and DV cooperated on training and some other technical issues.

The 36<sup>th</sup> Amendment concerned the repeal of the 8<sup>th</sup> Constitutional Amendment (1983), which enshrined in the constitution equal rights to life for both the mother and her unborn child. The 8<sup>th</sup> Amendment prohibited abortion except in very narrowly defined circumstances.

During the pre-referendum period, Core Team members met with various interlocutors.<sup>1</sup> SDAI would like to thank all our interlocutors, and particularly the Local Returning Officers for the areas in which SDAI observed, for their assistance and cooperation in organizing this mission, and for taking the time to meet with mission members and to share their views.

Registered voters cast their ballots for either “yes” or “no”, to approve the proposal to amend the Constitution contained in the 36<sup>th</sup> Amendment of the Constitution Bill 2018.<sup>2</sup>

Working in teams of two, observers visited polling stations in 11 of the 40 *Dáil*<sup>3</sup> constituencies. The SDAI observers visited 121 polling stations in those 11 constituencies.<sup>4</sup>

The SDAI teams observed opening procedures in some polling stations, closing procedures in all polling stations they attended at close of voting, and counting procedures in their constituency’s central location on the next day. The primary focus of their observations concentrated on actual procedures at the polling stations visited.

Although not addressed specifically in the survey questions, SDAI observer assessed the counting procedures as Best Practices.

While overall, voting-day activities in areas that allowed observation were assessed positively by the mission’s teams, a significant concern was noted early in the mission regarding denial of access to polling stations.

Concerns were also noted regarding the legally decentralised relationship between the Referendum Returning Office and the Local Returning Officers.

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<sup>1</sup> Appendix A: List of Meetings

<sup>2</sup> See sample ballot in Appendix B

<sup>3</sup> *Dáil Éireann* – lower house of the Irish Parliament

<sup>4</sup> Kerry, Mayo, Tipperary, Laois, Kildare North, Kildare South, Dublin West, Dublin North West, Dublin Bay North, Roscommon-Galway, Rathdown

## Referendum Background

In 1983, The Referendum on the Eighth Amendment of the Constitution (Article 40.3.3) was passed after a bitterly contested campaign. 53.67% of the electorate voted, with 841,233 votes in favour and 416,136 against. Article 40.3.3 of the Constitution is inserted to read (English language version):

"The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right."

The proponents of the 8<sup>th</sup> Amendment were fearful that the right of abortion could have been recognised by the Irish Courts along the lines of martial privacy. This would have been on similar lines to the Roe v Wade US Supreme Court judgment. By introducing the 8<sup>th</sup> amendment it was hoped to prevent such judicial activism in Ireland.

The 8<sup>th</sup> amendment exposed various issues that came before the Courts and led to subsequent referendums. The 13<sup>th</sup> amendment provided that the right to life of the unborn would not limit freedom to travel between Ireland and another state. The 14<sup>th</sup> amendment provided that the right to life of the unborn would not limit freedom to obtain or make available information relating to services lawfully available in another state. Both the 13<sup>th</sup> and 14<sup>th</sup> amendment referendums were held on 25 November 1992.

In addition to the 13<sup>th</sup> and 14<sup>th</sup> amendments, several other attempts were made in the years between 1983 and 2013, through private member bills and other methods, to liberalise access to legal abortion. All were defeated. The public discussion during these periods was acrimonious, and no legislation was successful in making inroads into liberalisation. Many successful challenges were presented to the European Court of Human Rights (ECtHR), but these challenges did not result in changes to Ireland's abortion laws.

In 2013, legislation was passed that provided for lawful access to abortion where a pregnant woman's life is risk, although allowable risk factors are still restrictive.

Attempts continued to be made in the Oireachtas<sup>5</sup> to revise legislation regarding access to abortion. Two more private member bills failed to pass, in 2014 and 2015.

In 2016, the government established a Citizen's Assembly to consider several issues around the abortion question. After several meetings on the Eighth Amendment, it voted to amend the constitution to allow the Oireachtas to legislate for abortion. It also voted on the provisions it would support in this legislation. The Report of the Assembly was sent to the Joint Oireachtas Committee on the Eighth Amendment of the Constitution.

That Committee delivered its report in December 2017, and after the report was debated in both Houses of the Oireachtas in January 2018, the decision was made to conduct a Constitutional Referendum, on May 25, 2018, to establish the will of the people.

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<sup>5</sup> National Parliament of Ireland

## SDAI Team and Survey Background

The SDAI multi-national observer team comprised 15 members, drawn from six different countries.<sup>6</sup> Gender balance was nearly 50/50 and the two-person teams were primarily composed of both an experienced and a novice observer.

The SDAI teams observed both opening and closing procedures in several polling stations but did not collect data on those procedures. The concentration was on activities regarding voting in the polling station itself, during the hours that the polling station was open.

Each team of observers completed one observation survey form for each polling station visited. The survey provides a standardized method for each team to evaluate conditions in a polling station. The goal of completing this standardized survey was to collect information on polling station activities.

The observation checklist (survey) examined various aspects of polling station processes, including (among others)<sup>7</sup> signage, ballot box integrity, access for disabled, family voting, assisted voting, and an overall assessment of the polling station environment.

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<sup>6</sup> Canada, USA, France, Greece, UK, Ireland.

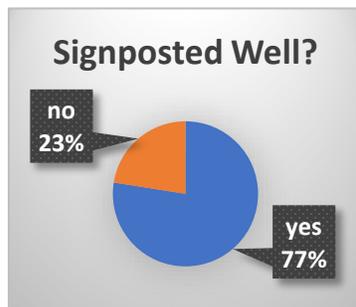
<sup>7</sup> Appendix C, List of Selected Survey Questions

## Observations and Recommendations

While the survey looked at several different aspects of activity in and around the polling stations, this report will address only a few, as follows:

### Is the Polling Station well signposted from the pavement?

Were voters easily able to identify where they must go to vote? In urban locations, this could be a problem for newcomers to the neighbourhood, or if the polling location has changed. In smaller villages and rural areas, there may be only one polling location, usually in a school, and residents can easily identify its location.



77.5% of the polling locations were reported as well-marked and easy to locate from the street. Of those polling locations that were reported as not well-marked, many of those premises were surrounded by walls and trees, and the sign

could not be seen at all from the street. In smaller communities, where there was only one polling station, this was not a problem, as most voters knew where the polling station was located. While many of the polling stations used a bright yellow sign indicating the location of the polling station, there was no standard sign, and instances of hand-made signs of various quality and visibility were observed.



photo: ABC News



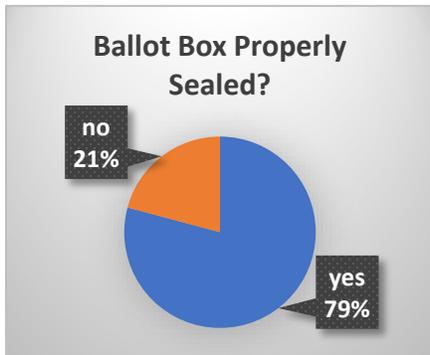
Photo: C. Mondamert-Chartron

**Recommendation 1:** While respecting the autonomy of the Local Returning Offices, standardization of signage would be a simple and positive step toward eliminating any confusion.

## Is the Ballot Box completely sealed with a padlock and/or numbered cable ties?

There were several configurations of ballot box sealing observed, using a somewhat complicated system of cable ties, string and padlocks.

79% of the Ballot Boxes were reported as properly sealed. While 21% were reported as not properly sealed, all were reported as completely sealed except for missing some component of the required configuration.

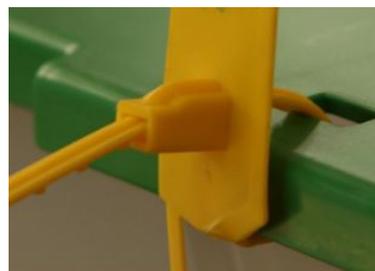


There were reports of un-numbered cable ties, a missing padlock, a padlock but no cable ties, or missing cable ties. As there was no requirement to record the numbers of the cable ties, a record of the numbers would seem to be irrelevant.



Ballot box during polling

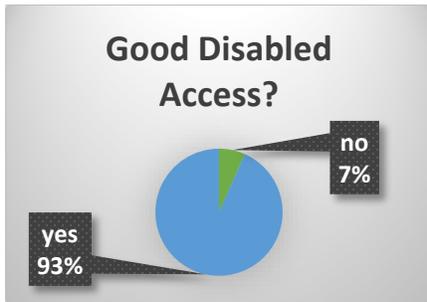
**Recommendation 2:** A simpler, standardized method of sealing the boxes could eliminate any confusion or debate about whether they were properly sealed. In many countries, the use of numbered cable ties, with numbers recorded in a poll book, are sufficient to ensure a tightly sealed ballot box.



Ballot box sealed with cable tie only

## Access for Disabled Voters?

Access to the polling station by disabled voters is an important issue in ensuring that the franchise is extended to all citizens who are registered to vote. Access often refers to the ease with which wheelchair-bound voters can get into the building or the room that houses the polling station. This will usually involve the presence of ramps and wide doorways. Most polling stations (93%) provided good access for disabled voters. However, one observer team noted instances of no adaptation for disabled voters.

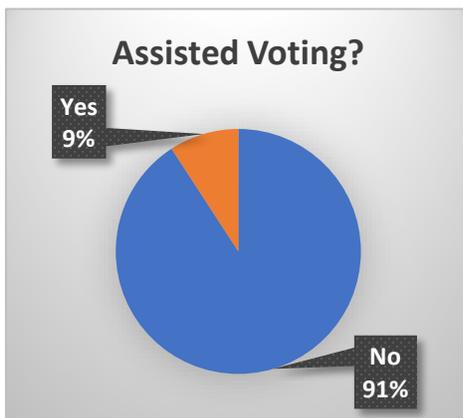


Other teams observed that there was little allowance for the height of the voting booth. While the round voting booths did have a feature that allowed a lower height, it was not often used, and voters were provided a table and chair for this purpose. However, this situation did not allow for strong secrecy of the vote, as these tables were sometimes in the middle of the room.

***Recommendation 3:*** Ensure that all polling stations allow full access, including ensuring that each polling station has at least one dedicated low-height voting booth.

## Assisted Voting

Assisted Voting is the practice of aiding voters who, for reasons of physical disability, literacy or language issues, among others, are unable to complete their ballot without help. 91% of polling stations reported that no voters received assistance in completing their ballot. Of the 9% that reported assistance being given, most assistance was given by family members, but was not formally recorded by the polling station staff. There were a few cases where the assistance consisted of simply directing the voter to the correct polling box.

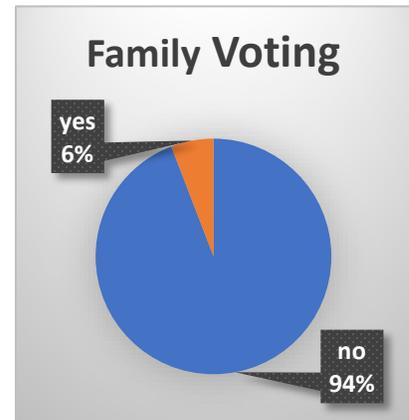


The Ballot Paper Template (BPT) for the visually impaired was reported to be present in 96% of the polling stations. Observers did not check whether it was present in the remaining 4% of polling stations. While we have no actual data as to how many times the template was used, several voters were overheard to say that "it is the first time I have been able to vote without assistance".

## Family Voting

Family voting is a practice where a family member or other person casts votes on behalf of another, or where one member of a family pressures other members to vote for a certain candidate. In many contexts, family voting refers to the practice of (male) heads of family influencing other family members, in particular women, during voting. This practice violates the concept of the secrecy of one's vote, a fundamental principle of free and fair elections.

There was family voting reported in only 6% of the polling stations visited.<sup>8</sup> Each of the 7 reported cases occurred only once in each of 7 polling stations. One unsuccessful attempt was made to prevent the practice, and in another case, the polling staff were unaware of it, as their backs were to the voting booth. All cases involved a husband/wife, or couple, who appeared to be consulting or confirming their vote. This low percentage of observed “family voting” would not seem to indicate a serious problem with the issue.



***Recommendation 4:*** One simple, positive step that could be taken would be to place the voting booths so that they are all in sight of the polling staff.

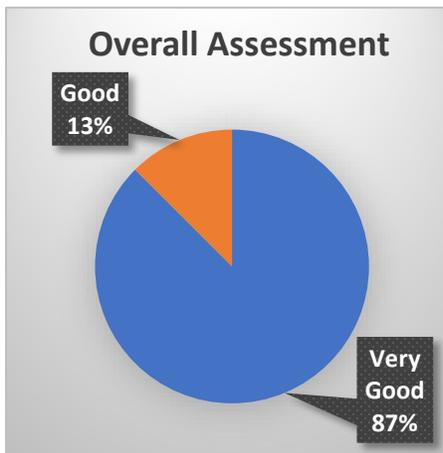
***Recommendation 5:*** Another simple, positive recommendation would be to place signs to remind voters that only one adult is allowed in the voting booth at a time. SDAI approves of the practice of including children in the process, in order to instill in future voters, the importance of the vote.

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<sup>8</sup> While the Preliminary Statement reported that Family Voting occurred in 21% of polling stations observed, an analysis of SDAI's observation data produced this much lower figure.

## Overall Assessment of the Polling Station

The overall assessment of a polling station is an overview of all activities observed during the course of a visit to a polling station. The atmosphere and activities in the polling station as a whole are taken into consideration. Some of the factors that affect this assessment are clear signage, premises well organized and uncrowded, laid out to protect the secrecy of the vote, and knowledgeable and helpful polling staff.



87% of the polling stations observed received an assessment of “very good”, and 13% were assessed as “good”. There were no assessments of “bad” or “very bad”.



Photo: C. Howell



Photo: C Howell.

## Further Observations/Recommendations from the Field

These further observations and recommendations were not covered in the survey but are taken from the findings of our observers in the field, during polling day and at the SDAI team debrief held on Sunday, May 27, 2018.

### Coming home to vote

No out-of-country voting is currently allowed. Postal voting is available to a limited subset of voters, such as home-bound, diplomats posted abroad and those accompanying them, a student studying full time away from the place they are registered, and Gardai who will be away from their home polling station on voting day.

We have no figures regarding the number of Irish citizens who returned home specifically to vote in this referendum, but it was widely reported as a significant number of voters. For those who did return, our observers felt that it represented a disruption in people's lives, and a large expense for a few minutes of the voter's time, even when taking into consideration that many probably used the opportunity to visit family and friends while in Ireland.

***Recommendation 6:*** *Legislative consideration should be given to alternate methods of voting, such as early voting, expanded postal voting, or polling stations set up in embassies.*

Related to this issue is that of the short length of time (only 18 months) that someone can be out of the country before losing their voting privilege. Many people who emigrate for work are required to be out of country for periods longer than 18 months. While in many cases, returning Irish people still receive voter cards and are not questioned at the polling station, legally, they have lost their right to vote. This loss of the right to vote is a heavy price to pay for temporarily leaving Ireland for opportunity in another country.

***Recommendation 7:*** *Consideration should be given to re-thinking the 18-month limit to be non-resident before losing voting privileges altogether.*

## Voting booths/screens

There were two types used of voting booths used: a round 4-sided table, and wooden cubicles set against, and facing, a wall. The 4-sided voting booths did not guarantee voter secrecy as two sides of these booths are normally exposed to view of other voters. In the case of the wooden cubicles, most are positioned right next to each other, sometimes several in a row, depending on the size of the room. The sides do not extend very far away from the wall and thus may allow a view of the adjacent voter's ballot. Although it could be argued that the voter's back obscures any view as to his/her choice, this method relies much on chance.

***Recommendation 8:*** *A simple curtain or screen could solve this. Alternatively, inexpensive, portable, 3-sided cardboard voting screens could be used.*



## Counting

*When the polls closed, polling station staff packed all electoral materials and transferred them to the central count centre. The SDAI observers followed the materials to the count centre and observed the procedures for securing the ballots overnight.*

On the following day, May 26, 2018, SDAI observers were present in six counting centres.<sup>9</sup> They observed the counting of the postal vote and the counting of the votes from each polling station in the constituency.



photo: C. Mondamert-Chartron

Although the counting process was not addressed in the survey questions, SDAI observers assessed the counting process as a **Best Practice**. They felt that the process of counting the ballots on the next day, when everyone has rested and is refreshed, helped to ensure an accurate and timely result. They also reported that, where observed, the process was completely transparent, and in compliance with international standards and commitments.



photo: J. Ibbitson



photo: S. Carnson

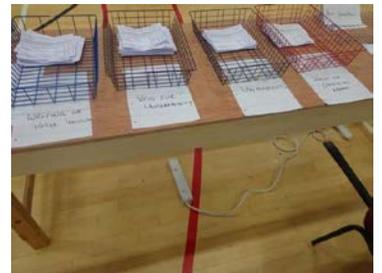


photo: C. Mondamert-Chartron

<sup>9</sup> Mayo, Tipperary, North/South Kildare, Rathdown, Roscommon-Galway, Kerry.

## Final Conclusions

Overall where observed, voting-day activities took place in a professional and transparent manner, generally meeting international standards and commitments, and were assessed positively by the mission's teams. While the turnout in this referendum was higher than usually experienced, the polls took place in an organized and calm manner, allowing voters to freely cast their votes.

Where observed, polling staff were courteous and helpful to the voters. Most voters appeared to understand the process and could vote without hindrance. Polling stations were generally set up to facilitate voting, although there were minor issues with signage, disabled access, and secrecy of the vote.

A serious concern arose when the mission team was informed that observers would have no access to 18 of the 40 *Dáil* constituencies - nearly half of the constituencies in the country.

The law provides for observation only of counting procedures, by campaign representatives, including, in this case, "approved bodies"<sup>10</sup>. In specific cases, upon request, Returning Officers (ROs) may also grant access to polling to approved or other agencies or bodies, such as international observers. They also have the right to deny access to polling.

Despite repeated recommendations by OSCE/ODIHR<sup>11</sup> to include full observation rights in legislation, there are no explicit provisions providing for the presence of citizen or international observers, a conflict with paragraph 8 of the OSCE 1990 Copenhagen Document, to which Ireland is a signatory.

Regardless of the reasons, this limitation resulted in a major disadvantage for observation efforts. SDAI agrees with the previous OSCE/ODIHR reports<sup>12</sup> that full rights to observers, be they domestic or international, be included in legislation, in accordance with Ireland's international commitments.

Previous OSCE/ODIHR reports as cited below also recommended the establishment of a centralized, national Election Commission. There has been continued interest in realizing this

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<sup>10</sup> "Yes" and "No" campaigns, other groups who lobbied for one side or the other. The legitimacy of these "bodies" is clearly defined in regulations regarding referendums.

<sup>11</sup> Organization for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights Needs and Election Assessment Reports, 2007, 2011, 2016, 2018

<sup>12</sup>ibid

recommendation, but to date, no initiative has been pursued in that direction. Based on the findings of the SDAI team, the establishment of such a commission would add value to future observation missions, by standardizing some aspects of voting procedures, such as training, signage, ballot box sealing, for example, that would not compromise the autonomy of the Local Returning Officers.

SDAI concurs with previous reports in recommending establishment of a centralized Elections Office.

For inquiries or further information regarding this report, please contact:

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## Appendices

## **Appendix A: List of Meetings**

### **Department of Housing, Planning and Local Government:**

John Paul Phelan, TD<sup>13</sup>, Minister of State for Local Government and Electoral Reform  
Barry Ryan, Principal Officer/Returning Officer  
Paris Beausang, Assistant Principal Officer  
Ian Stuart-Mills, Administrative Officer

### **Dublin City Returning Office:**

James C. Barry, Returning Officer

### **YES campaign:**

Dierdre Duffy

### **NO campaign:**

Attempts were made to meet both organisations campaigning for a No vote, namely The Iona Institute and Save the 8th Campaign. Both declined on basis of time pressures.

### **Embassy of Canada:**

Jackie Ellis, General Relations Officer

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<sup>13</sup> A TD is a member of Dáil Éireann, the lower house of the Oireachtas. It is the equivalent of terms such as "Member of Parliament" or "Member of Congress" used in other countries (*Wikipedia*).

## Appendix B: Sample Ballot & Turnout

### Sample Ballot

An bhfuil tú ag toiliú leis an togra chun an Bunreacht a leasú atá sa Bhille thíosluaite?

Do you approve of the proposal to amend the Constitution contained in the undermentioned Bill?

An Bille um an Séú Leasú is Tríocha ar an mBunreacht, 2018  
Thirty-sixth Amendment of the Constitution Bill 2018

Ná cuir marc **ach san aon chearnóg amháin**  
Place a mark in **one square only**

**Má thoilíonn** tú, cuir X sa chearnóg seo .....

If you **approve**, mark X in this square .....

**Mura dtoilíonn** tú, cuir X sa chearnóg seo .....

If you do **not approve**, mark X in this square.....

	Tá Yes
	Níl No

### Turnout

Choice	Votes	%
Yes	1,429,981	66.40
No	723,632	33.60
Valid votes	2,153,613	99.72
Invalid or blank votes	6,042	0.28
<b>Total votes</b>	2,159,655	100.00
Registered voters and turnout	3,367,556	64.13

## **Appendix C: Selected Survey Topics**

Is the Polling Station clearly signposted from the pavement?

Upon entering the Polling Station, is it clear to where the voter should report?

Is it clear how disabled voters would access the Polling Station?

Does the Polling Station have a Ballot Paper Template?

Upon arrival, did Polling Staff ask to see your ID or check your Letter of Accreditation?

Is the Ballot Box completely sealed with a padlock and/or numbered cable ties?

Is there any campaign material inside the Polling Station?

Evidence of “Family Voting”?

How many times was the voter’s ID checked by the Presiding Officer?

Were voters being assisted, how were they assisted, and was such assistance recorded?

Overall rating of Polling Station?