



SUBMISSION OF THE CENTER FOR REPRODUCTIVE RIGHTS AND THE INTERNATIONAL COMMISSION OF JURISTS TO THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN ADVANCE OF THE EXAMINATION OF IRELAND'S THIRD PERIODIC REPORT UNDER ARTICLES 16 AND 17 OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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Center for Reproductive Rights, 7, Chemin Louis-Dunant, 1202 Geneva, Switzerland,
Website: www.reproductiverights.org; Email: geneva@reprorights.org

The International Commission of Jurists, P.O. Box, 91, Rue des Bains, 33, 1211 Geneva 8,
Switzerland, Tel: +41(0) 22 979 3800, Fax: +41(0) 22 979 3801,
Website: <http://www.icj.org>; E-mail: info@icj.org

Submission of the Center for Reproductive Rights and the International Commission of Jurists to the United Nations Committee on Economic, Social and Cultural Rights in view of its examination of Ireland's Third Periodic Report

1. Introduction

1. The Center for Reproductive Rights (the Center) and the International Commission of Jurists (ICJ) present this submission to the Committee on Economic, Social and Cultural Rights (the Committee) for its consideration in the context of its examination of Ireland's compliance with its obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR), including in light of the State Party's third periodic report under articles 16 and 17,¹ as well as of the additional information provided by the State in response to the Committee's List of Issues.²
2. This submission highlights concerns regarding Ireland's compliance with ICESCR Articles 2, 3 and 12 as a result of its highly restrictive legislative framework on abortion. Indeed, the Center and the ICJ consider that Ireland's laws on abortion undermine women's enjoyment of a number of rights under the ICESCR, and in particular the right to the highest attainable standard of health.
3. Section 2 below briefly describes the current regulation of abortion in Ireland. Section 3 summarizes the way in which previous treaty monitoring bodies' conclusions and recommendations have addressed women's access to safe and legal abortion, including specifically in Ireland. Section 4 suggests a number of recommendations.

2. Ireland's regulatory framework on abortion

4. Ireland's laws on abortion represent one of the most restrictive and punitive regulatory frameworks on abortion anywhere in the world. Irish law provides that any woman who obtains an abortion or anyone who administers an abortion commits a criminal offence. The only exception is where an abortion is deemed necessary to prevent a "real and substantial" risk to a pregnant woman's life, as distinct from her health.³
5. Article 40.3.3 of the Irish Constitution stipulates that, "[t]he 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."⁴ This provision has been interpreted by the Irish Supreme Court as allowing abortion in Ireland only where it is deemed necessary to avert a "real and

¹ Committee on Economic, Social and Cultural Rights (CESCR Committee), *Ireland's Third Periodic Report under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, U.N. Doc. E/C.12/IRL/3 (2013), available at

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fIRL%2f3&Lang=en.

² CESCR Committee, *List of issues in relation to the third periodic report of Ireland, Addendum - Replies of Ireland to the list of issues*, U.N. Doc. E/C.12/IRL/Q/3/Add.1 (2015), available at

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fIRL%2fQ%2f3%2fAdd.1&Lang=en.

³ Protection of Life During Pregnancy Act 2013, sec. 7, 8 & 9 (Act No. 35/2013) (Ir.), available at <http://www.irishstatutebook.ie/pdf/2013/en.act.2013.0035.pdf>.

⁴ IR. CONST., 1937, art. 40.3.3, available at

http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2012/Bunrecht_na_h%C3%89ireann-Aug2012.pdf.

substantial” risk to a pregnant woman’s life, and as prohibiting abortion even when it would be necessary to avert a risk of harm to a woman’s physical or mental health.⁵ Moreover the impact of the constitutional provision also extends beyond the abortion context and has had broader implications on the medical care of pregnant women, at times with terrible consequences.⁶

6. In July 2013, the Irish Parliament enacted legislation with the stated purpose of providing women and medical professionals with clarity as to the circumstances in which an abortion may be legally performed in Ireland in order to prevent a “real and substantial” risk to the woman’s life, and the procedures to be adhered to in certifying a woman’s entitlement under the Act. However, the adoption of the Protection of Life During Pregnancy Act in 2013 has in no way changed the extent to which abortion is legal in Ireland. The Act purports only to establish a procedure to enable women and their doctors to determine on a case-by-case basis when an abortion would be necessary to avert a “real and substantial” risk to a pregnant woman’s life.⁷
7. Significant concerns have been raised regarding the Act and the way in which its terms have been interpreted.⁸ Those concerns, at least in part, arise from problematic and narrowly framed guidelines for health care professionals on the implementation of the Act issued in September 2014.⁹ Among other things the guidelines provide that medical professionals are obliged, “to ensure that, where lawful termination of pregnancy is under consideration, the right to life of the unborn is respected where practicable.”¹⁰

⁵ Attorney General v. X and Others, [1992] IESC 1; [1992] 1 IR 1 (Ir.).

⁶ See for example, PP v. Health Service Executive [2014] IEHC 622 (26 December 2014); Fiach Kelly, Martin Wall, Stephen Collins, *Pregnant woman being kept on life support in hospital*, IRISH TIMES, Dec. 18, 2014, available at <http://www.irishtimes.com/news/health/pregnant-woman-being-kept-on-life-support-in-hospital-1.2041628> (last visited May 7, 2015); Mary Carolan, *Continuing to treat woman on life support ‘grotesque’*, IRISH TIMES, Dec. 23, 2014, available at <http://www.irishtimes.com/news/crime-and-law/courts/high-court/continuing-to-treat-woman-on-life-support-grotesque-1.2047808> (last visited May 7, 2015).

⁷ In situations where it is a physical health condition that endangers the pregnant woman’s life, two doctors (an obstetrician and a doctor with a relevant specialization) must certify that there is “a real and substantial risk of loss of the woman’s life” before an abortion can be performed. The Act demands a heightened level of scrutiny in situations when a woman is at risk of suicide requiring three doctors, two of whom must be psychiatrists, to certify the risk to the woman’s life. The law sets out a two part test requiring the doctors to examine the woman and jointly certify “in good faith” (1) that there is risk to her life, and (2) that the risk can only be averted by ending the pregnancy. [the language used is by the “medical procedure a medical procedure in respect of a pregnant woman in accordance with this section in the course of which, or as a result of which, an unborn human life is ended.”

⁸ CENTER FOR REPRODUCTIVE RIGHTS, ABANDONED AND STIGMATIZED: THE IMPACT OF THE IRISH ABORTION LAW ON WOMEN (2014); Comments of the Irish Family Planning Association (IFPA) in respect of the Fourth Periodic Review of Ireland under the International Covenant on Civil and Political Rights (ICCPR), p. 10-12(2014), available at https://www.ifpa.ie/sites/default/files/documents/submissions/irish_family_planning_association_re_4th_periodic_review_of_ireland.pdf; Jessica Valenti, *A pregnant, suicidal rape victim fought Ireland's new abortion law. The law won*, THE GUARDIAN, Aug. 18, 2014, available at <http://www.theguardian.com/commentisfree/2014/aug/18/pregnant-suicidal-victim-ireland-abortion-law> (last visited May 7, 2015); Mark Murphy, *Abortion law strangled at birth by unworkable guidelines*, THE INDEPENDENT, Aug. 9, 2014, available at <http://www.independent.ie/opinion/analysis/abortion-law-strangled-at-birth-by-unworkable-guidelines-30494121.html> (last visited May 7, 2015); Deirdre Duffy, *Opinion: Aside from the abortion question, Ms Y highlights serious flaws in Irish maternity care*, THE JOURNAL, Sep. 23, 2014, available at <http://www.thejournal.ie/readme/ms-y-suicidal-abortion-maternity-care-1685650-Sep2014/> (last visited May 7, 2015).

⁹ DEPARTMENT OF HEALTH, IMPLEMENTATION OF THE PROTECTION OF LIFE DURING PREGNANCY ACT 2013: GUIDANCE DOCUMENT FOR HEALTH PROFESSIONALS (2014), available at <http://health.gov.ie/wp-content/uploads/2014/09/Guidance-Document-Final-September-2014.pdf>.

¹⁰ *Id.* p. 5 & 31.

The guidelines ask doctors to use their clinical judgment to assess whether, in light of the constitutional protection of “the unborn”, the “termination of pregnancy” should be carried out through an abortion or, in situations where a fetus is potentially viable, through early delivery.¹¹ In at least one case this has led to a certified suicidal pregnant woman being denied access to an abortion and instead being pressured to undergo a caesarean section at 25 weeks of pregnancy.¹²

8. Meanwhile, Ireland continues to criminalize abortion in all instances beyond those covered by the Act and imposes a maximum 14-year prison sentence on women who obtain an abortion and on medical professionals who perform an abortion.¹³ As stated above, the only exception is when abortion is deemed necessary to avert a “real and substantial” risk to the pregnant woman’s life.¹⁴ As a result, abortion remains a criminal offence even when it is necessary to prevent a risk of harm to a woman’s physical or mental health, or when a pregnancy results from sexual assault.
9. While it is a serious criminal offense to obtain an abortion in Ireland, except where a “real and substantial” risk to a woman’s life is deemed to exist, Ireland’s laws explicitly provide that women may travel out of the state to access legal abortion services in another country.¹⁵ Every year thousands of Irish women obtain abortions outside of Ireland.¹⁶ Being forced to travel abroad to access abortion services not only jeopardizes women’s physical and mental health by imposing an undue and potentially harmful burden on them, it also subjects women to multiple or intersectional forms of discrimination, as many women, including asylum seekers, undocumented migrants, adolescent girls, women in detention facilities and women with limited financial resources, are often unable to make this journey and thus effectively prevented from receiving reproductive health services they need.
10. In addition, Ireland continues to place significant legal restrictions on the provision of information about abortion outside of Ireland. Irish law places strict limitations on the content and form of information that medical professionals may give pregnant women about legal abortion services abroad.¹⁷ It also prohibits health professionals from making “an appointment or any other arrangement for or on behalf of a woman” with abortion providers outside of Ireland.¹⁸

¹¹ *Id.* p. 31.

¹² Maeve Taylor, *Women’s right to health and Ireland’s abortion laws*, Int J Gynecol Obstet (2015).

¹³ Protection of Life During Pregnancy Act 2013 (Act No. 35/2013) (Ir.), *available at* <http://www.irishstatutebook.ie/pdf/2013/en.act.2013.0035.pdf>.

¹⁴ *Id.* sec. 7 & 9.

¹⁵ IR. CONST., 1937, art. 40.3.3., *available at*

http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2012/Bunrecht_na_h%C3%89ireann-Aug2012.pdf.

¹⁶ See IFPA, *Abortion: Statistics*, <http://www.ifpa.ie/Hot-Topics/Abortion/Statistics>.

¹⁷ Regulation of Information (Services outside the State for Termination of Pregnancies) Act, 1995, (Act No. 5/1995) (Ir.), *available at* <http://www.irishstatutebook.ie/1995/en/act/pub/0005/index.html>. The Abortion Information Act requires 1) that the woman specifically request written information about abortion services abroad before a health care provider can provide it; 2) that any such information be “truthful and objective;” and 3) that the information is “not accompanied by any advocacy or promotion” of abortion.” The Abortion Information Act does not explain the meaning of the terms “advocacy” or “promotion” resulting in lack of clarity as to what information medical professionals can provide.

¹⁸ *Id.* sec. 8(1).

3. Human rights standards related to access to safe and legal abortion services

11. Ireland's obligations under ICESCR Articles 2, 3 and 12 require it to ensure that women in Ireland can enjoy the right to the highest attainable standard of mental and physical health, including sexual and reproductive health, on a basis of equality and free from discrimination.¹⁹ Ireland's criminalization of abortion and its failure to legalize and guarantee women's access to abortion services in Ireland contravene these obligations.
12. Treaty monitoring bodies, including this Committee, and UN Special Procedures, have repeatedly called on states to decriminalize abortion and eliminate punitive measures, especially for women and girls who undergo abortions.²⁰ Additionally, this Committee has consistently expressed concern regarding laws that do not ensure women can access abortion when their physical or mental health is at risk or in situations when a pregnancy results from sexual assault.²¹ Other treaty bodies have affirmed that states must, at a minimum, legalize and ensure access to abortion in instances when necessary to avert a risk to a woman's physical or mental health, when a pregnancy results from sexual assault, and in cases of severe fetal impairment.²²
13. This Committee has also affirmed that the right to health encompasses access to health related information²³ and the World Health Organization has specified that information about safe and legal abortion is crucial for protecting women's health and human rights and has called on states to decriminalize the provision of information related to legal abortion.²⁴
14. Treaty bodies have consistently expressed serious concerns about Ireland's abortion laws in concluding observations. For example, in its 2008 Concluding Observations, the

¹⁹ CESCR Committee, *General Comment No. 14: The right to the highest attainable standard of health (Art. 12)*, (22nd Sess., 2000), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, para. 12(b)(i) & 22, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008) [hereinafter CESCR Committee, *Gen. Comment No. 14*]. See also Committee on the Elimination of Discrimination against Women (CEDAW Committee), *General Recommendation No. 24: Article 12 of the Convention (women and health)*, (20th Sess., 1999), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008) [hereinafter CEDAW Committee, *Gen. Recommendation No. 24*]; and *L.C. v. Peru*, CEDAW Committee, Commc'n No. 22/2009, para. 8.15, U.N. Doc. CEDAW/C/50/D/22/2009 (2011).

²⁰ CEDAW Committee, *Gen. Recommendation No. 24, supra note 19*, 358, para. 14; Human Rights Committee, *Concluding Observations: Costa Rica*, para. 11, U.N. Doc. CCPR/C/79/Add.107 (1999); Committee on the Rights of the Child (CRC Committee), *Concluding Observations: Nicaragua*, para. 59(b), U.N. Doc. CRC/C/NIC/CO/4 (2010); Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Interim rep. of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, transmitted by Note of the Secretary-General*, paras. 21 & 65(h), U.N. Doc. A/66/254 (Aug. 3, 2011) (by Anand Grover).

²¹ CESCR Committee, *Concluding Observations: Costa Rica*, para. 46, U.N. Doc. E/C.12/CRI/CO/4, (2008); *El Salvador*, para. 22, E/C.12/SLV/CO/2 (2007); *Nicaragua*, para. 26, U.N. Doc. E/C.12/NIC/CO/4 (2008); *Sri Lanka*, para. 34, U.N. Doc. E/C.12/LKA/CO/2-4 (2010); *Dominican Republic*, para. 29, U.N. Doc. E/C.12/DOM/C/3 (2010); *Malta*, para. 41, U.N. Doc. E/C.12/1/ADD.101 (2014); *Chile*, para. 53, U.N. Doc. E/C.12/1/ADD.105 (2004).

²² See, e.g., *L.C. v. Peru*, CEDAW Committee, Commc'n No. 22/2009, para. 12(b), U.N. Doc. CEDAW/C/50/D/22/2009 (2011); CRC Committee, *Concluding Observations: Chad*, para. 30, U.N. Doc. CRC/C/15/Add.107 (1999); *Chile*, para. 56, U.N. Doc. CRC/C/CHL/CO/3 (2007); *Costa Rica*, para. 64(c), U.N. Doc. CRC/C/CRI/CO/4 (2011); Human Rights Committee, *Concluding Observations: Guatemala*, para. 20, U.N. Doc. CCPR/C/GTM/CO/3 (2012).

²³ CESCR Committee, *Gen. Comment No. 14, supra note 19*, paras. 12(b)(iv) and 34.

²⁴ WORLD HEALTH ORGANIZATION, *SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS* 95 (2nd ed. 2012).

Human Rights Committee reiterated “its concern regarding the highly restrictive circumstances under which women can lawfully have an abortion in the State party” and explicitly urged Ireland to “bring its abortion laws into line with the Covenant.”²⁵ In 2011, the Committee against Torture concluded that “the risk of criminal prosecution and imprisonment facing both the women concerned and their physicians ... may raise issues that constitute a breach of the Convention.”²⁶

15. Most recently, in July 2014, the Human Rights Committee stated that, among other things, “it is concerned at ... the criminalization of abortion ... including in cases of rape, incest, fatal foetal abnormality and serious risks to the health of the mother, which may lead to up to 14 years of imprisonment, except in cases that constitute a ‘real and substantive risk’ to the life of a pregnant woman; [and] the discriminatory impact ... on women who are unable to travel abroad to seek abortions; [and] the severe mental suffering caused by the denial of abortion services to women seeking abortions due to rape, incest, fatal foetal abnormality or serious risks to health (arts. 2, 3, 6, 7, 17, 19 and 26).”²⁷ In light of its concerns, the Committee recommended that Ireland should, “[r]evise its legislation on abortion, including its Constitution, to provide for additional exceptions in cases of rape, incest, serious risks to the health of the mother, or fatal foetal abnormality.”²⁸

4. Recommendations

16. In light of the concerns outlined above the CRR and the ICJ recommend that, at a minimum, Ireland take the following steps to bring its laws closer to compliance with the ICESCR:

- Decriminalize abortion and amend its laws to guarantee, at a minimum, women’s entitlement to an abortion in Ireland in case of risks to physical and mental health, where the pregnancy results from sexual assault, or when it is affected by a fatal fetal impairment.
- Repeal the Protection of Life During Pregnancy Act.
- Adopt measures to ensure that women’s access to legal abortion is not hampered by procedural barriers.
- Take meaningful and effective steps to revise the Irish Constitution to abrogate Article 40.3.3.
- Remove all restrictions on the provision of information concerning safe and legal abortion.

²⁵ Human Rights Committee, *Concluding Observations: Ireland*, para. 13, U.N. Doc. CCPR/C/IRL/CO/3 (2008).

²⁶ Committee against Torture, *Concluding Observations: Ireland*, para. 26, U.N. Doc. CAT/C/IRL/CO/1 (2011).

²⁷ Human Rights Committee, *Concluding Observations: Ireland*, para. 9, UN Doc CCPR/C/IRL/CO/4 (2014).

See also Human Rights Committee, *Concluding Observations: Ireland*, UN Doc CCPR/C/IRL/CO/330 (2008); Human Rights Committee, *Concluding Observations: Ireland*, UN Doc. A/55/40 (2000).

²⁸ *Id.*