

Committee Against Torture

61st session

Review of Ireland's 2nd Periodic Report under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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INTRODUCTION

The Center for Reproductive Rights is pleased to present this submission to the Committee Against Torture (the Committee) for its consideration in the context of its examination of Ireland's second periodic report on compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention). This submission addresses Ireland's laws on abortion and is focused on the manner in which these laws subject women to cruel, inhuman or degrading treatment or punishment, in contravention of the Convention.

Ireland's abortion laws are among the most restrictive in the world and entirely out of step with the standard approach of European jurisdictions to the regulation of abortion.¹ Under Irish law abortion is only permitted when deemed necessary to prevent a "real and substantial" risk to a pregnant woman's life, as distinct from her health.² Outside of these circumstances, women who undergo unlawful abortion in Ireland, and anyone who assists them, commit serious criminal offences.³ Irish law does not prohibit women from traveling out of Ireland to access abortion services in another country and every year thousands of women leave Ireland to have abortions.⁴

Recently in two groundbreaking decisions, the Human Rights Committee (HRC) held that by virtue of its legal prohibition and criminalization of abortion Ireland had subjected two women to cruel, inhuman or degrading treatment in contravention of Article 7 of the International Covenant and Civil and Political

¹ Almost every country in Europe allows women to access abortion either on request or on broad socio-economic grounds, at least in early pregnancy, and later in pregnancy on exceptional grounds such as risk to a woman's health or situations where a pregnancy involves a severe or fatal fetal impairment or is the result of sexual assault. This is the case in every European jurisdiction except for: Andorra, Liechtenstein, Malta, Monaco, Northern Ireland, Poland and San Marino. For an overview of abortion laws, see Center for Reproductive Rights, *The World's Abortion Laws 2017*, at <http://worldabortionlaws.com/>.

² IR. CONST. art. 40.3.3^o; Protection of Life During Pregnancy Act 2013, §§ 7–9 (Act No. 35/2013) (Ir.); *Attorney General v. X & Others* (1992) IESC 1; (1992) 1 IR 1 (Ir.).

³ Protection of Life During Pregnancy Act 2013, §§ 7–9 (Act No. 35/2013) (Ir.).

⁴ See IR. CONST. art. 40.3.3; Irish Family Planning Ass'n, *Abortion in Ireland: Statistics*, <https://www.ifpa.ie/Hot-Topics/Abortion/Statistics> (last visited June 30, 2017).

Rights (ICCPR).⁵ In these decisions *Mellet v. Ireland* (9 June 2016) and *Whelan v. Ireland* (12 June 2017), the HRC also found violations of the women’s rights to privacy and to equality before the law under the ICCPR.

In addition to these decisions, and for many years, serious concerns regarding Ireland’s laws and practices on abortion, including regarding the implications of those laws for women’s enjoyment of the right to freedom from torture and other ill-treatment, have repeatedly been raised by treaty monitoring bodies in Concluding Observations together with repeated calls for reform and liberalization of the law.⁶ However, despite clear evidence of the harmful impact that the abortion law is having on women’s human rights, health and wellbeing, legal change has not taken place.⁷

The purpose of this brief submission is to provide the Committee with an overview of the recent HRC decisions in *Mellet v. Ireland* and *Whelan v. Ireland*, in which the Center for Reproductive Rights represented the applicants, and to set out a number of critical recommendations that must guide law-reform if Ireland is to put in place a legal framework on abortion that complies with its human rights obligations, including under the Convention.

I. MELLET V. IRELAND AND WHELAN V. IRELAND

In 2013-2014, the Center for Reproductive Rights filed two individual communications to the HRC, on behalf of Amanda Mellet and Siobhán Whelan, under the Optional Protocol to the ICCPR alleging that by virtue of its legal prohibition on abortion, Ireland had violated both women’s rights under the ICCPR. On 9 June 2016 the HRC published its Views in the cases of *Mellet v. Ireland* and on 12 June 2017 it issued its decision in the case of *Whelan v. Ireland*. The HRC held that as a result of its legal prohibition on abortion Ireland had violated each woman’s right to freedom from cruel, inhuman or degrading treatment under Article 7 of the ICCPR.

In both decisions the HRC held that under Article 2(3) of the ICCPR the Irish state is obliged to provide remedies and make full reparation to Ms. Mellet and Ms. Whelan. It explicitly specified the range of remedial measures required of the Government in each case.⁸

⁵ *Mellet v. Ireland*, Human Rights Committee, Communication No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013 (2016); *Whelan v. Ireland*, Human Rights Committee, Communication No. 2425/2014, CCPR/C/119/D/2425/2014 (2017).

⁶ See, e.g., Committee Against Torture, *Concluding Observations: Ireland*, para. 26, U.N. Doc. CAT/C/IRL/CO/1 (2011); Human Rights Committee, *Concluding Observations: Ireland*, para. 9, UN Doc CCPR/C/IRL/CO/4 (2014); 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); Committee on the Elimination of All Forms of Discrimination Against Women [CEDAW Comm.], *Concluding Observations: Ireland*, paras. 180, 186, U.N. Doc. A/54/38/REV.1(SUPP) (1999); *Concluding Observations: Ireland*, paras. 396-397, U.N. Doc. A/60/38(SUPP) (2005); *Concluding Observations: Ireland*, paras. 10-11, CEDAW/C/IRL/CO/6-7 (2017); Committee on the Right of the Child [CRC], *Concluding Observations: Ireland*, para. 58(a), U.N. Doc. CRC/C/IRL/CO/3-4 (2016); Committee on Economic, Social & Cultural Rights [CESCR], *Concluding Observations: Ireland*, para. 30, UN Doc. E/C.12/IRL/CO/3 (2015).

⁷ In 2013 the Protection of Life During Pregnancy Act was adopted. However, this legislation in no way changed or broadened the grounds on which abortion is legal in Ireland. Instead, the Act merely outlines very strict and onerous procedures by which doctors can establish whether or not a woman’s life is subject to a “real and substantial” risk, and thus whether or not she qualifies for a legal abortion in Ireland by virtue of a risk to her life. Protection of Life During Pregnancy Act 2013 (Act No. 35/2013) (Ir.).

⁸ *Mellet v. Ireland*, Human Rights Committee, Communication No. 2324/2013, para. 9, U.N. Doc. CCPR/C/116/D/2324/2013 (2016); *Whelan v. Ireland*, Human Rights Committee, Communication No. 2425/2014, para. 9, CCPR/C/119/D/2425/2014 (2017).

Section (a) below distills the findings of the HRC in relation to the violation of the prohibition of cruel, inhuman or degrading treatment. Section (b) outlines the remedies which the HRC specified Ireland was obliged to ensure in each case.

The relevant sections of the text of the HRC decision in each case are included in Annex 1 below.

(i) **The Human Rights Committee's Findings of Cruel, Inhuman or Degrading Treatment**

In 2010 and 2011 Siobhán Whelan and Amanda Mellet were respectively informed by their doctors in Ireland that their pregnancies involved fatal impairments and that in each case the foetus would most likely die in utero or not survive long after birth. The prospect of continuing the pregnancy became unbearable for them. However, they were both informed that because of Irish law on abortion in order to end the pregnancy they would have to travel to another country where the procedure is legal. In Ireland their only option would be to continue the pregnancies to term. Both women eventually traveled to the United Kingdom to end their pregnancies.

The HRC held that Ireland had subjected both Ms. Mellet and Ms. Whelan to cruel, inhuman or degrading treatment and violated their rights under Article 7 of the ICCPR because, as a result of Ireland's prohibition and criminalization of abortion, Ms. Mellet had been subjected to "intense physical and mental suffering,"⁹ and Ms. Whelan had suffered a "high level of mental anguish."¹⁰

In reaching these findings the HRC considered that:

- **A breach in the normal continuum of health care occurred.** As a result of the legal prohibition on abortion Ms. Mellet and Ms. Whelan were not able to undergo an abortion within the Irish health care system and under the supervision of doctors and nurses they each knew and trusted. Instead, the continuum of health care was severed and both Ms. Mellet and Ms. Whelan had to leave the country in order to obtain abortion services. The HRC held that this exacerbated Ms. Mellet's and Ms. Whelan's anguish and determined that many of the negative experiences they each endured could have been avoided, or at least mitigated, if they had not been prohibited from terminating the pregnancy "in the familiar environment of [their] own country and under the care of health professionals whom [they] knew and trusted."¹¹ It specifically noted that Ms. Whelan's suffering was exacerbated by "not being able to continue receiving medical care and health insurance coverage for her treatment from the Irish health care system; feeling abandoned by the Irish health care system and having to gather information on her medical options alone."¹²
- **The requirement to travel for services imposed psychological, physical and financial burdens on each woman.** The HRC held that because Irish laws forced each woman to choose between continuing her pregnancy or travelling away from Ireland to another country to access

⁹ *Mellet v. Ireland*, Human Rights Committee, Communication No. 2324/2013, paras. 7.4, 7.6, U.N. Doc. CCPR/C/116/D/2324/2013 (2016).

¹⁰ *Whelan v. Ireland*, Human Rights Committee, Communication No. 2425/2014, para. 7.7, CCPR/C/119/D/2425/2014 (2017).

¹¹ *Mellet v. Ireland*, Human Rights Committee, Communication No. 2324/2013, para. 7.4, U.N. Doc. CCPR/C/116/D/2324/2013 (2016); *Whelan v. Ireland*, Human Rights Committee, Communication No. 2425/2014, para. 7.5, CCPR/C/119/D/2425/2014 (2017).

¹² *Whelan v. Ireland*, Human Rights Committee, Communication No. 2425/2014, para. 7.5, CCPR/C/119/D/2425/2014 (2017).

abortion services a range of financial, social and health-related burdens and hardships were placed on them. It found that Ms. Mellet's suffering was increased because she was separated from family and support networks, because she was not fully recovered when traveling home and because she had to bear the financial costs of traveling.¹³ The HRC also held that Ms. Whelan's suffering was aggravated by having to travel to access abortion services at personal expense and separated from the support of her family.¹⁴

- **The criminalization of abortion generated painful shame and stigma.** The HRC found that criminalizing abortion can generate painful stigma for women and in its rulings it held that “the shame and stigma associated with the criminalization of abortion” had exacerbated Ms. Mellet's and Ms. Whelan's suffering.¹⁵
- **The criminal law had a chilling effect on medical practitioners and gave rise to information deficits.** The HRC also held that both Ms. Mellet's and Ms. Whelan's suffering was further aggravated by the obstacles they each faced in receiving needed information about appropriate medical options in their circumstances from known and trusted medical providers.¹⁶

(ii) The Remedial Measures Required and the State's Response

In its Views on each case the HRC outlined that pursuant to its obligations under the ICCPR Ireland is obliged to provide Ms. Mellet and Ms. Whelan with an effective remedy for the violations they endured. The HRC detailed that this obligation requires Ireland to make full reparation to Ms. Mellet and Ms. Whelan and it specified three specific obligations regarding individual and general measures in this regard:¹⁷

- (i) **Compensation:** to provide adequate compensation to Ms. Mellet and Ms. Whelan.
- (ii) **Rehabilitation:** to make available any psychological treatment they may need.
- (iii) **Guarantees of Non-Repetition:** to undertake law reform and take other steps to prevent similar violations from occurring in the future.

In regard to the third requirement the HRC stated in both decisions that Ireland is obliged to:

“amend its law on the voluntary termination of pregnancy, including if necessary its Constitution, to ensure compliance with the Covenant, ensuring effective, timely and accessible procedures for pregnancy termination in Ireland, and take measures to ensure that health-care providers are in

¹³ *Mellet v. Ireland*, Human Rights Committee, Communication No. 2324/2013, para. 7.4, U.N. Doc. CCPR/C/116/D/2324/2013 (2016);

¹⁴ *Whelan v. Ireland*, Human Rights Committee, Communication No. 2425/2014, para. 7.5, CCPR/C/119/D/2425/2014 (2017).

¹⁵ *Mellet v. Ireland*, Human Rights Committee, Communication No. 2324/2013, para. 7.4, U.N. Doc. CCPR/C/116/D/2324/2013 (2016); *Whelan v. Ireland*, Human Rights Committee, Communication No. 2425/2014, para. 7.5, CCPR/C/119/D/2425/2014 (2017).

¹⁶ *Mellet v. Ireland*, Human Rights Committee, Communication No. 2324/2013, para. 7.5, U.N. Doc. CCPR/C/116/D/2324/2013 (2016); *Whelan v. Ireland*, Human Rights Committee, Communication No. 2425/2014, para. 7.6, CCPR/C/119/D/2425/2014 (2017).

¹⁷ *Mellet v. Ireland*, Human Rights Committee, Communication No. 2324/2013, paras. 9-10, U.N. Doc. CCPR/C/116/D/2324/2013 (2016); *Whelan v. Ireland*, Human Rights Committee, Communication No. 2425/2014, paras. 9-10, CCPR/C/119/D/2425/2014 (2017).

a position to supply full information on safe abortion services without fearing they will be subjected to criminal sanctions.”¹⁸

In each decision the HRC outlined an initial deadline of 6 months for the Irish Government to report back to it on measures taken to provide these reparations. In December 2016, following the *Mellet v. Ireland* decision in June 2016, Ms. Mellet was provided with an *ex gratia* payment of 30,000 Euro in compensation and the State also informed her it would provide access to psychological support and counselling through the national health service. An offer of compensation and rehabilitation assistance has yet to be made to Ms. Whelan.

None of the law reform measures outlined by the HRC in the two decisions have been taken to date.¹⁹ In its response to the HRC regarding implementation of the *Mellet* decision on 30 November 2016 the Government outlined that in order for abortion to be made legal in Ireland in broader circumstances, Article 40.3.3 of the Irish Constitution (the Eighth Amendment), which was introduced into the Constitution in 1983, and which protects the ‘right to life of the unborn,’ must be changed.²⁰ The only way in which the Constitution of Ireland can lawfully be changed is through a referendum of the electorate.²¹ The Government outlined to the HRC that it had established a Citizens’ Assembly which would be tasked with recommending whether or not a constitutional referendum should be held, and if so the circumstances in which abortion be made legal and accessible in Ireland.

In April 2017 the Citizens’ Assembly concluded its deliberations on this issue and voted in favor of removing Article 40.3.3 from the Constitution, and to replace it with a provision in the Constitution which would make it clear that termination of pregnancy is a matter for the Oireachtas (Parliament).²² The Assembly also voted to recommend legalizing abortion on a woman’s request and on broad socio-economic grounds.

A special joint committee of the Oireachtas has recently been established to consider the Citizens’ Assembly results and make recommendations on the terms of a future referendum.²³ However the timeframe, process towards and terms of any future referendum, including whether or not the recommendations of the Citizen’s Assembly will be followed, remains unclear.

It is clear from the HRC decisions in *Mellet* and *Whelan* that until legal change is adopted that ensures that women, no matter what their circumstances, do not face violations of their right to cruel, inhuman or

¹⁸ *Mellet v. Ireland*, Human Rights Committee, Communication No. 2324/2013, para. 9, U.N. Doc. CCPR/C/116/D/2324/2013 (2016); *Whelan v. Ireland*, Human Rights Committee, Communication No. 2425/2014, para. 9, CCPR/C/119/D/2425/2014 (2017).

¹⁹ Center for Reproductive Rights, *Submission to the Human Rights Committee, Follow-Up to Views in Mellet v. Ireland* (Communication No. 2324/2013), Applicant Assessment of State Party Measures, 22 Dec. 2016; *Response of Ireland in the case of Mellet v Ireland*.

²⁰ *Response of Ireland to the View of the Human Rights Committee in the case of Mellet v Ireland, Submitted by the Government of Ireland to the Human Rights Committee* [hereinafter *Response of Ireland in the case of Mellet v Ireland*], 30 November 2016.

²¹ IR. CONST. art. 46.2.

²² First Report and Recommendations of the Citizens’ Assembly, The Eighth Amendment of the Constitution, available at <https://www.citizensassembly.ie/en/The-Eighth-Amendment-of-the-Constitution/Final-Report-on-the-Eighth-Amendment-of-the-Constitution/Final-Report-incl-Appendix-A-D.pdf>.

²³ See http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/eighthamendmentoftheconstitution/. See also Irish Times: <https://www.irishtimes.com/news/politics/oireachtas/abortion-referendum-to-be-held-next-year-varadkar-says-1.3119981>

degrading treatment or punishment as a result of Ireland's abortion laws, Ireland will remain in violation of its remedial obligations under international law.²⁴

II. RECOMMENDATIONS TO ENSURE COMPLIANCE WITH THE CONVENTION

Every year thousands of women and girls living in Ireland travel to another country in Europe to have an abortion.²⁵ The circumstances behind Ms. Mellet's and Ms. Whelan's decisions to end their pregnancies involved a diagnosis of a fatal fetal impairment. However most of the women and girls who leave Ireland to access abortion services in another country do so not because of exceptional circumstances, such as where a pregnancy is the result of sexual assault or involves a serious risk to a woman's health or a severe or fatal fetal impairment. Instead they decide to have an abortion because their pregnancy is unwanted or because they decide having a child is not in their best interests at the time.

Despite prohibiting and criminalizing abortion in Ireland, Irish law explicitly allows women to travel to have an abortion.²⁶ Additionally, evidence increasingly indicates that ever-growing numbers of women and girls, who may not be able to or cannot afford to travel, are illegally taking the abortion pill in Ireland, in a clandestine manner and outside of a care-pathway overseen by trained medical professionals.²⁷

Meanwhile, women who for a range of reasons cannot travel or do not have access to the abortion pill may continue unwanted pregnancies to term. Women living in poverty, women with disabilities, undocumented migrant women, asylum seekers, women at risk of domestic and intimate partner violence and adolescents may face particular barriers in travelling for abortion services.

Ensuring that Ireland's laws on abortion are changed in a manner that takes account of, and guarantees, all of these women's right to freedom from torture or cruel, inhuman or degrading treatment is critical in order for Ireland to move into compliance with, and implement, its international human rights obligations, including under the Convention.

The Committee has repeatedly expressed concern about laws that criminalize and severely restrict access to abortion and has called for their reform.²⁸ The Special Rapporteur on Torture, the Special Rapporteur on Health, and the Working Group on Discrimination Against Women have jointly expressed concern that "restrictive legislation which denies access to safe abortion is one of most damaging ways of instrumentalising women's bodies and a grave violation of women's human rights" and have recommended

²⁴ Center for Reproductive Rights, *Follow-Up to Mellet v. Ireland*.

²⁵ Irish Family Planning Ass'n, *Abortion in Ireland: Statistics*, <https://www.ifpa.ie/Hot-Topics/Abortion/Statistics>.

²⁶ IR. CONST. art. 40.3.3^o.

²⁷ ARA Aiken, R. Gomperts & J. Trussell, *Experiences and Characteristics of Women Seeking and Completing At-home Medical Termination of Pregnancy Through Online Telemedicine in Ireland and Northern Ireland: A Population-based Analysis*, 123 BRITISH J. OBSTETRICS & GYNECOLOGY (Oct. 2016).

²⁸ CAT, *Concluding Observations: Chile*, para. 7(m), U.N. Doc. CAT/C/CR/32/5 (2004); *El Salvador*, para. 23, U.N. Doc. CAT/C/NIC/CO/1 (2009); *Peru*, para. 23, U.N. Doc. CAT/C/PER/CO/4 (2006), *Poland*, CAT/C/POL/CO/5-6 (2013), para. 23; *Peru*, CAT/C/PER/CO/5-6 (2013), para. 15; *Nicaragua*, CAT/C.NIC/CO/1 (2009).

that states follow “the good practice found in many countries which provide women’s access to safe abortion services, on request during the first trimester of pregnancy.”²⁹

This recommendation has been echoed by other treaty monitoring bodies,³⁰ and also aligns with international public health and clinical guidelines.³¹

In order to ensure its laws on abortion comply with its human rights obligations, including under the Convention, Ireland should:

- Remove Article 40.3.3 of the Constitution.
- Decriminalize abortion in all circumstances.
- Repeal the Protection of Life During Pregnancy Act 2013 and replace it with a legislative and policy framework that upholds the reproductive rights of women and girls and guarantees that abortion services are available and accessible in a manner that ensures their autonomy and decision-making is respected, in line with best international health practice.
- Repeal the Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995 in order that women and girls can access information about abortion services in other states in a manner consistent with international human rights law and women’s right to dignity in access to health services.

²⁹ Statement by Alda Facio et al., *Unsafe Abortion Is Still Killing Tens of Thousands Women Around the World*, for International Safe Abortion Day (Sept. 28, 2016), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20600&LangID=E>.

³⁰ For example, the Committee on the Elimination of All Forms of Discrimination Against Women has repeatedly expressed serious concern about restrictive laws which do not allow for women’s access to abortion on request or broad socio-economic grounds, at least in early pregnancy, and has called for reform of restrictive abortion laws so as to “ensure women’s autonomy to choose.”³⁰ In its General Comment on the Right to Sexual and Reproductive Health the Committee on Economic, Social and Cultural Rights outlines that the criminalization of abortion and restrictive abortion laws “undermine autonomy and the equal right to non-discrimination in the full enjoyment of sexual and reproductive health.”³⁰ It specifies that “preventing unplanned pregnancies and unsafe abortions requires States to adopt legal and policy measures to . . . liberalize restrictive abortion laws, guarantee women and girls access to safe abortion services and quality post-abortion care . . . and respect women’s right to make autonomous decisions about their sexual and reproductive health.”³⁰ It also specifies that, “States should aim to ensure universal access without discrimination for all individuals, including those from disadvantaged and marginalized groups, to a full range of quality sexual and reproductive health care, including . . . safe abortion care.”³⁰ Additionally, the Committee on the Rights of the Child has repeatedly called on States to “decriminalize abortion in all circumstances and review its legislation with a view to ensuring access by children to safe abortion and post-abortion care services; and ensure that the views of the pregnant girl are always heard and respected in abortion decisions.” See CEDAW Committee, *Concluding Observations: New Zealand*, para. 34(a), U.N. Doc. CEDAW/C/NZL/CO/7 (2012); CESCR, *General Comment No. 22*, para. 34, 28, 45; CRC, *Concluding Observations: Ireland*, para. 58(a), U.N. Doc. CRC/C/IRL/CO/3-4 (2016).

³¹ For example the WHO recommends that, “laws and policies on abortion should protect women’s health and their human rights,” and that “regulatory, policy and programmatic barriers that hinder access to and timely provision of safe abortion care should be removed.” It outlines that public health data and evidence demonstrate that where abortion is legal on broad socio-economic grounds or on a woman’s request, and where safe services are accessible in practice, both unsafe abortion and abortion-related mortality and morbidity are reduced. See WORLD HEALTH ORGANIZATION (WHO), *SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS 9* (2012), http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf.

Annex 1

<p style="text-align: center;">Excerpts from the Views of the Human Rights Committee in <i>Mellet v. Ireland</i>, Communication 2324/2013</p>
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7.3 The author claims to have been subjected to cruel, inhuman and degrading treatment as a result of the legal prohibition of abortion, as she was, inter alia, denied the health care and bereavement support she needed in Ireland; compelled to choose between continuing to carry a dying fetus and terminating her pregnancy abroad; and subjected to intense stigma. The State party rejects the author's claim by arguing, inter alia, that the prohibition seeks to achieve a balance of competing rights between the fetus and the woman; that her life was not in danger; and that there were no arbitrary decision-making processes or acts of "infliction" by any person or State agent that caused or contributed to cruel, inhuman or degrading treatment. The State party also states that the legislative framework guarantees citizens' entitlement to information in relation to abortion services provided abroad.

7.4 The Committee considers that the fact that a particular conduct or action is legal under domestic law does not mean that it cannot infringe article 7 of the Covenant. By virtue of the existing legislative framework, the State party subjected the author to conditions of intense physical and mental suffering. The author, as a pregnant woman in a highly vulnerable position after learning that her much-wanted pregnancy was not viable, and as documented, inter alia, in the psychological reports submitted to the Committee, had her physical and mental anguish exacerbated by not being able to continue receiving medical care and health insurance coverage for her treatment from the Irish health-care system; the need to choose between continuing her non-viable pregnancy or travelling to another country while carrying a dying fetus, at her personal expense and separated from the support of her family, and returning while not fully recovered; the shame and stigma associated with the criminalization of abortion of a fatally ill fetus; the fact of having to leave the baby's remains behind and later having them unexpectedly delivered to her by courier; and the State party's refusal to provide her with the necessary and appropriate post-abortion and bereavement care. Many of the negative experiences described that she went through could have been avoided if the author had not been prohibited from terminating her pregnancy in the familiar environment of her own country and under the care of the health professionals whom she knew and trusted, and if she had been afforded the health benefits she needed that were available in Ireland, were enjoyed by others, and could have been enjoyed by her, had she continued her non-viable pregnancy to deliver a stillborn child in Ireland.

7.5 The Committee considers that the author's suffering was further aggravated by the obstacles she faced in receiving the information she needed about her appropriate medical options from known and trusted medical providers. The Committee notes that the Abortion Information Act legally restricts the circumstances in which any individual may provide information about lawfully available abortion services in Ireland or overseas and criminalizes advocating or promoting the termination of pregnancy. The Committee further notes the author's unrefuted statement that the health professionals did not deliver such information in her case and that she did not receive key medically indicated information about the applicable restrictions on

overseas abortions and the most appropriate types of terminations, given her period of gestation, thereby disrupting the provision of medical care and advice that the author needed and exacerbating her distress.

7.6 The Committee additionally notes, as stated in paragraph 3 of its general comment No. 20, that the text of article 7 allows of no limitation and no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reason. Accordingly, the Committee considers that, taken together, the above-mentioned facts amounted to cruel, inhuman or degrading treatment in violation of article 7 of the Covenant.

**Excerpts from the Views of the Human Rights Committee in Whelan v. Ireland,
Communication 2425/2014**

7.3 The author claims that the legal prohibition of abortion caused her to suffer cruel, inhuman and degrading treatment, in that she was denied the health care and bereavement support she needed in Ireland; felt pressurized to carry to term a dying fetus; had to terminate her pregnancy abroad without emotional support from her family; and was subjected to intense stigma and loss of dignity. The State party contests the author's claims by arguing, inter alia, that the prohibition on abortion seeks to balance the competing rights between the fetus and the woman; and that there were no arbitrary decision-making processes or acts of "infliction" by any person or State agent that caused or contributed to cruel, inhuman or degrading treatment. The State party also maintains that its laws guarantee access to information about abortion services provided abroad and constitute part of the balance it struck between the competing rights.

7.4 The Committee recalls that the legality of a particular conduct or action under domestic law does not mean that it cannot infringe article 7 of the Covenant. The Committee notes that in the present case, the author's claims appertain to her treatment in State health facilities, which was the direct result of the legislation in place in Ireland. The existence of such legislation engages the responsibility of the State party for the treatment of the author, and cannot be invoked to justify a failure to meet the requirements of article 7.

7.5 The Committee Considers it well-established that the author was in a highly vulnerable position after learning that her much-wanted pregnancy was not viable. As documented in the Psychological reports submitted to the Committee, her physical and mental situation was exacerbated by the following circumstances arising from the prevailing legislative framework in Ireland and by the author's treatment by some of her healthcare providers in Ireland: being unable to continue receiving medical care and health insurance coverage for her treatment from the Irish health care system; feeling abandoned by the Irish health care system and having to gather information on her medical options alone; being forced to choose between continuing her non-viable pregnancy or traveling to another country while carrying a dying fetus, at personal expense and separated from the support of her family; suffering the shame and stigma associated with the criminalization of abortion of a fatally-ill fetus; having to leave the baby's remains in a foreign country; and failing to receive necessary and appropriate bereavement counseling in Ireland. Much of the suffering the author endured could have been mitigated if she had been

allowed to terminate her pregnancy in the familiar environment of her own country and under the care of health professionals whom she knew and trusted; and if she had received necessary health benefits that were available in Ireland, which she would have enjoyed had she continued her non-viable pregnancy to deliver a stillborn child in Ireland.

7.6 The Committee considers that the author's suffering was further aggravated by the obstacles she faced in receiving information she needed about appropriate medical options from her known and trusted medical providers. The Committee notes that the Abortion Information Act legally restricts the circumstances in which any individual may provide information about lawfully available abortion services in Ireland or overseas, and criminalizes advocating or promoting the termination of pregnancy. The Committee further notes the author's unrefuted statements that the health professionals in Ireland did not provide her with clear and detailed information on how to terminate her pregnancy in another jurisdiction or from which other health care providers she could obtain such information, thereby disrupting the provision of medical care and advice that she needed and exacerbating her distress.

7.7. The Committee considers that, taken together, the facts described in paragraphs 7.5.-7.6 establish a high level of mental anguish that was caused to the author by a combination of acts and omissions attributable to the State party, which violates the prohibition against cruel, inhuman or degrading treatment found in article 7 of the Covenant. The Committee also notes in this regard, as stated in General Comment No. 20, that the text of article 7 may not be limited, and no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reason. Accordingly, it cannot accept as a justification or extenuating circumstances the State party's explanations concerning the balance between moral and political considerations that underlies the legal framework existing in Ireland.