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Submission to the United Nations Committee Against Torture (UNCAT)

24 July-7 August 2017: Adoption of a List of Issues to Ireland

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Reporting Organisation

The Abortion Rights Campaign (ARC) advocates for access to free, safe and legal abortion on the Island of Ireland. We are a national grassroots movement for choice and change. We believe that Ireland's restrictive abortion laws are an injustice, as they deny women and girls¹ access to the full realisation of the right to health and create an inequitable system where women and girls with privilege may access abortion services abroad while marginalised women are forced to continue their pregnancies or to resort to illegal and possibly unsafe means of procuring abortions. We promote broad national support calling for the Irish Parliament to hold a referendum to repeal the 8th Amendment to the Irish Constitution, which remains the single largest barrier to liberalising abortion access. We believe that access to abortion in Ireland must align with human rights standards and norms to ensure the health and rights of women and girls in pregnancy are respected, protected and fulfilled.

Executive Summary

ARC wishes to call the attention of the Committee of the Convention Against Torture (CAT) to the situation as it exists in Ireland concerning restricted access to abortion. The laws as they stand are currently in conflict with Article 1 and 16 of the Convention, inflicting cruel and inhuman treatment on those living in the Irish state on the basis of gender.

In Ireland, legal, policy and regulatory barriers pose key challenges to the full realisation of sexual and reproductive health and rights. Human rights violations stemming from Ireland's criminalisation of abortion services were raised repeatedly during examinations by the Human Rights Committee in 2014, by the Committee on Economic Social and Cultural Rights in 2015, during the country's last Universal Periodic Review in 2016, and again by the Committee on the Elimination of Discrimination Against Women (CEDAW) in 2017. Recent developments have continued to highlight the harmful and coercive impact of these laws on the lives of women and girls, however the Irish government has repeatedly failed to take satisfactory action to address this injustice.

Abortion remains virtually inaccessible to women and girls in the Republic of Ireland, and is criminalized in all cases except when there is a real and significant threat to the life of the pregnant woman or girl. In 2014, Nigel Rodley, Chair of the UN Human Rights Committee stated that for Ireland to deny rape victims access to abortion services is to treat

¹ Although the words "women" and "girls" are used in this document, ARC campaigns for the rights of anyone who may become pregnant and need access to abortion services regardless of gender.

these women and girls as “vessels and nothing more.”² In 2015, the concluding observations of the UN Committee on Economic, Social and Cultural Rights (CESCR) recommended that Ireland “take all necessary steps, including a referendum on abortion, to revise legislation on abortion, including the Constitution and the Protection of Life During Pregnancy Act, in line with international human rights standards.”³ During the examination the CESCR Committee also expressed concern at the “limited access to information on sexual and reproductive health” in Ireland. Despite these observations and recommendations, the government has not taken decisive action to address these concerns.

Background

The Irish government has taken limited action on access to safe and legal abortion services in response to the 2010 decision of the European Court of Human Rights in the case of *A, B and C v Ireland*⁴ and in reaction to the tragic death of Savita Halappanavar who died in 2012 after being denied a termination for her miscarrying pregnancy.⁵ In 2013, the Irish government introduced legislation in the form of the Protection of Life During Pregnancy Act (hereafter: PLDPA), which creates only a narrow exception to the Constitutional ban on abortion. The PLDPA provides for access to abortion services only where a woman or girl’s life, as distinct from her health, is at risk. This is a clear derogation of the right to health, in violation of Article 12 of the CEDAW Convention. Even for women whose circumstances meet the Act’s restrictive criteria, the provisions of the PLDPA are onerous and unworkable. Women and girls whose reasons for seeking a termination of pregnancy fall outside the narrow confines provided for in the PLDPA continue to be forced to either travel abroad to access services, to seek out illegal and possibly unsafe means of procuring an abortion, or to continue the pregnancy against their will. Additionally, there is evidence that even women who meet the restrictive criteria for termination allowed under the Act are travelling abroad to access services. The Irish Family Planning Association (IFPA) note that in their 2015 caseload, three of their clients who believed their lives to have been at risk as a result of their pregnancy opted to travel to another jurisdiction rather than subject themselves to the complex and arduous procedures necessitated under the PLDPA⁶.

Not only has the government failed to take any positive steps towards implementing the recommendations emerging from its examinations by the Human Rights Committee (HRC), the CESCR, CEDAW, and recommendations from its last Universal Periodic Review, several developments run counter to these recommendations. For instance, as a result of the PLDPA, procuring an abortion in Ireland outside the narrow confines provided for by the legislation now carries a criminal penalty of up to 14 years.⁷ Furthermore, the Irish Parliament rejected amendments to the PLDPA which would extend access to women or girls who have become pregnant as a result of rape or incest or in situations where the pregnancy poses risks to the physical or mental health of the woman or girl.

² The Irish Times 15 July 2014 *Irish solutions on women’s rights not enough for UN* Available from: <<http://www.irishtimes.com/news/politics/irish-solutions-on-women-s-rights-not-enough-for-un-1.1867197>> [accessed 15 October 2015]

³ UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the Third Periodic Report of Ireland, E/C.12/IRL/CO/3 Available from: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fIRL%2fCO%2f3&Lang=en> [accessed 15 October 2015]

⁴ *A, B and C v. Ireland* App no 25579/05 (ECtHR, 16 December 2010) Available from: <[http://hudoc.echr.coe.int/eng?i=001-102332#{"itemid":\["001-102332"\]}](http://hudoc.echr.coe.int/eng?i=001-102332#{) > [accessed 15 October 2015]

⁵ The BBC 19 April 2013 *How Savita Halappanavar’s death called attention to Irish abortion law* Available from: <<http://www.bbc.com/news/world-europe-22204377>> [accessed 15 October 2015]

⁶ IFPA Submission to the Citizen’s Assembly <https://www.ifpa.ie/node/723>

⁷ Protection of Life During Pregnancy Act 2013. Act Number 35 of 2013. Available from <<http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/acts/2013/a3513.pdf>> [accessed 15 October 2015]

In 2016, the Irish government established a Citizen’s Assembly – made up of 99 randomly selected representatives – to deliberate on a number of issues including the 8th Amendment. Advocacy organisations, including ARC, were sceptical of the process given, amongst other factors, the lack of transparency surrounding submissions and speakers, the absence of a timeline or clear objectives upon completion and the delays to any possible rectification of the current legislation while the Assembly was underway.⁸ Ireland cited the Assembly in its response to the UN Human Rights Committee ruling in June 2016. However, its creation has offered no recourse to those whose rights continue to be violated while Ireland’s abortion legislation remains unchanged. Women are still being forced to travel to other jurisdictions to access healthcare and those without adequate means or resources continue to be disproportionately discriminated against.

Although the Citizen’s Assembly voted that abortion should be made available in a full range of circumstances, there is no guarantee that these recommendations will come to fruition. A report will be developed from the Assembly’s recommendations and this is expected to be delivered in June 2017. It will then go to a specially convened government committee, who will elect their own chair and decide on their own terms of reference. They must make a report three months after their first public meeting. That report will then go to the government, who will then decide how to act on the recommendations. During this process, women will continue to be denied their fundamental reproductive rights.

Problem Identification

Constitutional prohibition of abortion

Article 40.3.3 (the 8th Amendment) of the Irish Constitution, which equates a pregnant woman’s life with continued foetal development, remains the single greatest impediment to access to abortion services. It states that, “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”.⁹ Legislation has been introduced to give effect to a 1992 Supreme Court ruling which established the right of women and girls in Ireland to access abortion services where their lives are at risk, including the risk of suicide. However, both the Supreme Court decision and the subsequent legislation prohibit access to abortion where there is a risk to a woman’s health. This is a clear derogation of the right to health (CEDAW Article 12) that can only be addressed by removing the prohibitive 8th Amendment.

As with any constitutional amendment in the Republic of Ireland, a public referendum is required. Despite urgent recommendations from the ICESCR committee for the Irish government to hold a referendum, the government has repeatedly delayed and deferred taking action. Opinion polls have revealed a groundswell of support among the Irish people for repealing the 8th Amendment and support is increasing for broadening the grounds for access to abortion. According to a recent Red C poll commissioned by Amnesty International, two-thirds (67%) of people surveyed favoured decriminalizing abortion,¹⁰ 69% favoured expanding access on the ground of rape, and 68% favoured expanding access on the ground of a risk to health.¹¹

Ireland’s current Constitutional ban on abortion, considered in conjunction with subsequent legislation allowing women

⁸ <https://www.citizensassembly.ie/en/>

⁹ Irish Constitution. Art. 40.3.3. Available from < <http://www.irishstatutebook.ie/eli/1983/ca/8/enacted/en/print.html> > [accessed 15 October 2015]

¹⁰ The Irish Times 8 July 2015 *Abortion poll finds two-thirds favour decriminalisation* Available from: <<http://www.irishtimes.com/news/social-affairs/abortion-poll-finds-two-thirds-favour-decriminalisation-1.2277540>> [accessed 15 October 2015]

¹¹ The Irish Independent 21 September 2014 *Poll: Act now on abortion say voters* Available from: <<http://www.independent.ie/irish-news/politics/poll-act-now-on-abortion-say-voters-30602947.html>> [accessed 15 October 2015]

to travel abroad to obtain abortions, has the effect of discriminating against those who may be unable to travel. While abortion remains illegal in Ireland except in the narrowest circumstances, the extent to which women living in Ireland can access abortion currently depends on their financial means, whether they are able-bodied, their health status, geographic location, migration status, and age among other factors. Marginalised women, such as asylum seekers, prisoners, poor, young, rural and disabled women and women who have been sectioned under the Mental Health Act, bear the full burden of the State's abortion ban whereas privileged women can circumvent it, albeit often at a significant financial and emotional cost. Measures taken by the government in the form of the PLDPA have done nothing to address this gross inequity.

Flawed legislation

In 2013, the State introduced the PLDPA, ostensibly to (a) respond to the European Court of Human Rights (ECtHR) judgment in *A, B and C v Ireland* (2010) and (b) to finally give legislative effect to the 1992 Irish Supreme Court ruling in the X case that established a constitutional right to abortion if a woman or girl's life is at risk, including the risk of suicide. The reality, however, is that the PLDPA does not adequately fulfil Ireland's obligations under the European Convention on Human Rights (ECHR) nor does it legislate for the full constitutional right established by the Irish Supreme Court in the X case. In addition, the PLDPA is a clear derogation of the right to health, as it creates a false distinction between health and life and does not provide for access to services where a woman or girl's health is at risk.

Furthermore, the assessment procedures set out in the PLDPA are onerous, impractical and unworkable. Section 9, which deals specifically with cases where a pregnancy may constitute a risk to the woman's life by way of suicide, requires that three medical professionals – two psychiatrists and an obstetrician – certify that the woman's life is at risk in order for her to be able to access an abortion. If her request for an abortion is denied by any of these medical professionals, but the woman still believes she is entitled to an abortion under the PLDPA, she must appeal to a review panel whereby a further three medical professionals will adjudicate on her case. Additionally, given that the first point of care for many pregnant women is their general practitioner, a pregnant woman at risk of suicide could potentially have to make her case to seven medical professionals before she is granted her request for an abortion.

These extremely onerous barriers to abortion access in cases of suicide risk do not constitute an "effective and accessible" procedure for assessing whether a woman qualifies for a legal abortion as required by the ECtHR ruling in the *A, B and C* case, nor are they humane.¹² These burdensome requirements discriminate against women and girls with mental health issues, compounding their vulnerability and placing their lives and health at greater risk. The UN Special Rapporteur on the Right to Health has criticised legislation that requires access to legal abortion to be approved by more than one healthcare provider on the grounds that this necessarily restricts access.¹³

Not only are the PLDPA's provisions onerous, recent reports indicate that they are patently failing the most marginalized women and girls. Within a year of the commencement of the PLDPA, the *Irish Independent* newspaper reported the case of a young asylum-seeking woman (known only as "Miss Y") who was raped in her country of origin and discovered after arriving in Ireland that she had become pregnant as a result of the assault¹⁴. At eight weeks' gestation, she indicated that she did not want to continue the pregnancy and sought advice on obtaining an abortion abroad but, because of her migration status, she was unable to leave the State freely. Unable to access a termination, she became increasingly distressed and then suicidal. Despite her suicidal ideation and engagement with the State health system, Miss Y was not assessed under the PLDPA criteria until 24 weeks' gestation. Although certified as suicidal, she was allegedly refused an

¹² *A, B and C v. Ireland* App no 25579/05 (ECtHR, 16 December 2010) Available from: <[http://hudoc.echr.coe.int/eng?i=001-102332#{"itemid":\["001-102332"\]}](http://hudoc.echr.coe.int/eng?i=001-102332#{)> [accessed 15 October 2015]

¹³ Interim report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, A/66/254, para 24, Available from: <<http://www.un.org/en/ga/third/66/documentslist.shtml>> [accessed 15 October 2015]

¹⁴ The Irish Independent 16 August 2014 *Baby delivered as woman refused abortion under law* Available from: <<http://www.independent.ie/irish-news/health/baby-delivered-as-woman-refused-abortion-under-law-30512513.html>> [accessed 25 June 2017]

abortion at 24 weeks' gestation on the premise that the foetus was, by that stage, potentially viable. She then went on hunger and liquid strike in protest at being forced to continue her pregnancy, and a High Court injunction was sought to forcibly hydrate her. After being told her pregnancy would be terminated, she resumed eating and drinking¹⁵. However the termination was not as expected: Miss Y's pregnancy was eventually terminated by caesarean section at just under 26 weeks' gestation. It is not yet clear what information was provided to the young woman about her right to access a termination under the legislation.¹⁶ It is deeply concerning that the first known application of the PLDPA should result in a case that would appear to demonstrate that abortion, even under the strict circumstances permitted by the new PLDPA, is not accessible in practice. Her case also illustrates how the Irish government's failure to substantively address the issue of equitable access to abortion translates into coercion, inhuman and degrading treatment towards women and girls, particularly asylum seekers and others who are unable to travel.

In recent weeks, another case of a pregnant girl at risk of suicide has come to light. According to the 2016 Child Care Law Report, a teenager was sectioned under the Mental Health Act rather than granted an abortion, despite being deemed suicidal and at risk of self-harm as a direct result of her pregnancy by a psychiatrist¹⁷. Although she legally qualified for a termination under the PLDPA, the girl was denied an abortion and instead was admitted to a mental health unit without prior warning or consent of the girl or her parent.

Additionally, the Abortion Support Network, a charity which helps fund access to abortion for vulnerable women, recently reported on the cases of two women who were refused abortions while at risk of suicide in Ireland.¹⁸ Both women were immigrants who did not have freedom of travel to the UK. Both had already attempted suicide at least once and one had been diagnosed with a fatal foetal abnormality. However, the medical professionals assessing them were not convinced that the risk of suicide was substantial enough and refused to grant legal abortions on their first applications. One of the women attempted suicide three times before being granted an abortion under the PLDPA. These cases again demonstrate the failings of the PLDPA to provide access to safe and legal abortion even in cases that clearly meet the limited criteria. The unnecessary delay in providing abortions to the vulnerable women in these cases would have severely added to their acute mental and emotional distress. Cases such as these highlight both the unworkability of the PLDPA and its potential to cause severe physical, psychological and emotional trauma, particularly to marginalised women and girls.

Criminal penalties

The PLDPA maintains the criminalization of abortion in all cases except where there is a "real and substantial risk" to the woman's life. Abortion in all other cases, including where there is a serious risk to the woman's health, carries a potential fourteen-year prison sentence. This preservation of the criminal prohibition of abortion prevents women from seeking medical after-care and contravenes human rights norms.

This Committee has previously expressed specific concern for the criminal penalties in Ireland's abortion laws and has cautioned that it may give rise to a violation of the CAT.¹⁹ Criminalising abortion in any capacity creates a culture of fear

¹⁵ Amnesty Ireland 21 March 2016 *Ms. Y's Case* Available from: <<https://www.amnesty.ie/ms-ys-case/>> [accessed 25 June 2017]

¹⁶ The Irish Times 22 October 2014 *Terms of inquiry set into care of woman in abortion case* Available from: <<http://www.irishtimes.com/news/social-affairs/terms-of-inquiry-set-into-care-of-woman-in-abortion-case-1.1905586>>, and Irish Independent 19 October 2014 *Baby delivered as woman refused abortion under law* Available from: <<http://www.independent.ie/irish-news/health/baby-delivered-as-woman-refused-abortion-under-law-30512513.html>> [accessed 15 October 2015]

¹⁷ The Irish Time 12 June 2017 *Girl sectioned after psychiatrist ruled out abortion*. Available from: <<http://www.irishtimes.com/news/social-affairs/girl-sectioned-after-psychiatrist-ruled-out-abortion-1.3116111>> [accessed 18 June 2017]

¹⁸ The Times 20 June 2017 *'Abortions were denied to women at suicide risk'* Available from : <<https://www.thetimes.co.uk/edition/ireland/abortions-refused-after-several-suicide-bids-xxq0k8r7?t=ie>> [accessed 25 June 2017]

¹⁹ Committee Against Torture, Concluding Observations for the Irish State, CAT/C/IRL/CO/1, Available from: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2fIRL%2FCO%2f1&Lang=en>

and stigma for women when dealing with the authorities for fear of legal reprisals. This complicates the work of medical professionals delivering emergency medical care, including post-abortion care. The Special Rapporteur has called for States who have ratified UNCAT to provide for post-abortion care in their legislation and in practice.²⁰ In 2014, the UN HRC expressed grave concern over the criminalisation element in the PLDPA,²¹ suggesting that it was not compatible with Ireland's obligations under the International Covenant on Civil and Political Rights (ICCPR). In 2015, the CESCR echoed this concern and made specific recommendations for the Government to hold a referendum to revise its abortion legislation.²² Finally, the UN Special Rapporteur on the Right to Health has recommended the immediate removal of criminalisation of and legal restriction on sexual and reproductive healthcare services, including abortion, in all states.²³

For doctors operating in the State, there is a lapse in consistency for what is legal and what is practical. While the PLDPA determines that abortion is legal when there is a real and substantial risk to the life of a pregnant woman, the lack of clarity regarding the definition of the moment between life and death creates confusion about the PLDPA's translation into medical terminology²⁴. Needless to say, any ambiguity leaves doctors in fear over what action is legal, and therefore puts the life of the woman at risk. This was evident in the death of Savita Halappanavar who died because of a failure in assessing the risk to her life and the inevitability of her miscarriage²⁵. For the PLDPA to work in practice, and to avoid adverse consequences for the woman or health professionals, confusion and fear needs to be eliminated from the interactions between women and doctors.

Despite the clear injustice of criminal penalties on abortion being raised over the course of the Citizen's Assembly process – both by Citizens themselves and by organisations such as ARC and others in submissions and presentations made to the Assembly – decriminalisation was not put forward as an option when potential recommendations were set out. The decriminalisation of abortion should be considered by the State as a matter of urgency and should be incorporated into any potential wording of a future referendum.

[accessed 15 October 2015]

²⁰ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/22/53, Available from: <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf [accessed 10 June 2017]

²¹ UN Human Rights Committee, Concluding Observations for the Irish State, CCPR/C/IRL/CO/4, Available from: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2fCO%2f3&Lang=en> [accessed 15 October 2015]

²² UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the Third Periodic Report of Ireland, E/C.12/IRL/CO/3 Available from: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fIRL%2fCO%2f3&Lang=en> [accessed 15 October 2015]

²³ Interim report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, A/66/254, para 24, Available from: <<http://www.un.org/en/ga/third/66/documentslist.shtml>> [accessed 29 September 2014]

²⁴ Doctor's for Choice Submission to the Citizen's Assembly, Available from <<http://www.repealeight.ie/wp-content/uploads/2017/01/Doctors-for-Choice.pdf>> [Accessed 11 June 2017]

²⁵ Investigation of Incident 50278 from time of patient's self referral to hospital on the 21st of October 2012 to the patient's death on the 28th of October, 2012, Available from <<http://cdn.thejournal.ie/media/2013/06/savita-halappanavar-hse-report.pdf>> [Accessed 11 June 2017]

Inequitable access to abortion services

The Irish Constitution guarantees that the state will not interfere with women and girls seeking abortion services in other jurisdictions, however this cannot be seen as satisfying the State's human rights obligations. Forcing women to travel to access necessary healthcare services is hypocritical and disproportionately affects women at various intersections of disadvantage. The State's Constitution effectively permits abortion through Article 40.3.3, which recognises that the constitutional right to life afforded to "the unborn" does not limit the freedom to travel in and out of the State. However, the combination of these provisions places the full emotional, psychological and financial costs of such an arrangement (travel, accommodation and childcare costs, lost income arising from leave from work, isolation, and stigma, among other burdens) on the woman or girl herself.

In its General Recommendation 24 on Women and Health, the CEDAW Committee identified that respecting the right to health for women and girls requires the removal of laws that "criminalize medical procedures only needed by women."²⁶ However, in Ireland women and girls are patently discriminated against in having to travel and pay for access to a health service, a limitation not placed on men's access to the highest attainable standard of health. The reality is that many women living on the margins of Irish society simply do not have the resources and support structures to effectively exercise their right to travel to access reproductive healthcare abroad.

Forcing women to access abortion facilities abroad also disrupts the continuum of clinical care, as a woman's own doctor will not necessarily be able to communicate with the medical practitioners she engages with abroad. This creates a lack of medical continuity that may negatively impact on women's health and welfare. Coupled with fear of negative repercussions including social stigma and criminal prosecution, this creates a chilling factor which deters some women from seeking post-abortion medical care or check-ups, including when they are experiencing complications.

In 2016, at least 3,265 women and girls travelled from the Republic of Ireland to Britain to access abortion services.²⁷ As noted above, the 13th Amendment to the Irish Constitution provides for a negative right to travel for abortion services with no positive obligations for the state to facilitate equitable access to travel.²⁸ A discriminatory two-tier system has been created within Ireland's abortion regime; women with financial resources and support can travel abroad to access appropriate healthcare while all others cannot. Women on the margins of Irish society, however – very often the women whose agency has also been limited in other ways – have no effective means to vindicate their rights. They simply cannot access abortion services.

The Irish State allows women to travel abroad but it provides no financial or administrative support. Thus, in Ireland, it cannot be said that the State authorities have fulfilled the requirement to provide "economically accessible" healthcare in line with the principle of non-discrimination. On the contrary, Ireland's current abortion laws result in flagrant inequity. The UN HRC specifically referred to this inequality in its recent Concluding Observations on Ireland's compliance with the ICCPR, which identified "the discriminatory impact of the Protection of Life During Pregnancy Act on

²⁶ UN Committee on the Elimination of Discrimination Against Women (CEDAW) *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, 1999, A/54/38/Rev.1, chap. I, Available from: <https://www1.umn.edu/humanrts/gencomm/generl24.htm> [accessed 8 September 2015]

²⁷ *Abortion Statistics, England and Wales: 2014* June 2015, Available from: <https://www.gov.uk/government/statistics/report-on-abortion-statistics-in-england-and-wales-for-2014> [accessed 15 October 2015]

²⁸ Irish Constitution. Art. 40.3.3. Available from < <http://www.irishstatutebook.ie/eli/1983/ca/8/enacted/en/print.html> > [accessed 15 October 2015]

women who are unable to travel abroad to seek abortions”.²⁹

An inestimable number of women in Ireland now illegally procure abortions in their homes with abortifacient pills ordered online. In 2016, 536 such pills were seized by the Health Products Regulatory Authority³⁰. Although this represents a decrease on previous years³¹, these figures do not fully represent the number of pills imported into Ireland, as many pills are delivered successfully and still more are delivered to Northern Irish addresses. In short, abortion has always been a global phenomenon and is an incontrovertible reality for thousands of women and girls in Ireland today.

Existing human rights rulings

In June 2016, the United Nations HRC released their decision on a landmark case brought by Amanda Mellet. In 2011, Ms Mellet was informed that her pregnancy involved a fatal foetal impairment and that her foetus would die in utero or shortly after birth. Due to the restrictions placed on accessing abortion in Ireland, Mellet was forced to travel to Liverpool at her own expense to obtain an abortion. She flew home 12 hours later, unable to afford accommodation³². In November 2013, Mellet filed a complaint to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights. In June 2016, the Committee found that the State’s abortion laws violated Ms Mellet’s right to be free from cruel, inhuman or degrading treatment (Article 7) as well as her right to privacy (Article 17) and her right to equality before the law (Article 26)³³. The Committee ruled that Ireland’s prohibition on, and criminalisation of, abortion in cases of fatal foetal abnormality was of sufficient severity to amount to “cruel, inhuman or degrading treatment”³⁴. The Committee did not accept the State’s defence that their refusal to provide care was permissible under Irish law; they made clear that there could be no exceptions or justifications made by State parties under this article of the Covenant. The refusal to grant Ms Mellet a termination in her place of residence, thus forcing her to travel, severed the cycle of reproductive healthcare to which she was entitled and added significantly to her distress. The limits placed on healthcare professionals under the Irish law were also criticised by the Committee, who ruled that this further added to the suffering encountered by Ms Mellet and the difficulty she had in accessing the information she needed. The Committee held that in forcing Ms Mellet abroad, the State had placed substantial “financial, psychological and physical burdens” on Ms Mellet and that the shame and stigma reinforced by Ireland’s criminalisation of abortion further exacerbated her suffering. Individual committee members echoed this view in stating that Ireland’s abortion prohibition was both “punitive and stigmatising.”³⁵

In holding that Mellet’s right to privacy had been violated, the Committee ruled that there had been an unreasonable interference with the complainant’s decision to end her pregnancy under Ireland’s restrictive law and that “the balance that the State party has chosen to strike between protection of the fetus and the rights of the woman in this case cannot be justified.”³⁶ The Committee also held that Ireland’s prohibition and criminalisation of abortion is a source of discrimination between women. They contrasted the experiences of a woman who decides to carry a pregnancy where

²⁹ UN Human Rights Committee, Concluding Observations for the Irish State, CCPR/C/IRL/CO/4, Available from: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2fCO%2f3&Lang=en> [accessed 29 September 2014]

³⁰ <http://www.irishtimes.com/news/health/number-of-abortion-pills-seized-by-irish-customs-declines-1.3059156> [accessed 4 June 2017]

³¹ 850 pills were seized in 2015 and 1107 in 2014. Irish Times 24 April 2017 *Number of abortion pills seized by Irish Customs declines* <<http://www.irishtimes.com/news/health/number-of-abortion-pills-seized-by-irish-customs-declines-1.3059156>> [accessed 4 June 2017]

³² Mellet v. Ireland, Human Rights Committee, Communication No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013 (2016)

³³ Mellet v. Ireland, Human Rights Committee, Communication No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013 (2016)

³⁴ Mellet v. Ireland, Human Rights Committee, Communication No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013 (2016)

³⁵ Mellet v. Ireland, Human Rights Committee, Communication No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013, Appendix I, Individual opinion of Committee member Yadh Ben Achour (concurring), para. 4.

³⁶ Mellet v. Ireland, Human Rights Committee, Communication No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013, para. 7.10 (2016).

there is a fatal foetal abnormality to term – and is thus able to avail of the Irish healthcare system and the advice and knowledge of medical professionals – with those of Ms Mellet who had to rely on her own resources to obtain healthcare in another country and was therefore entirely removed from the Irish health system. In its failure to take Ms Mellet’s medical needs and socio-economic circumstances into account by forcing her to travel, the Committee held that the Irish State discriminated against her and denied her equal protection under the law. The Committee ruled that Ireland make full reparations to Ms Mellet for the harm caused to her and, in order to prevent a reoccurrence of similar cases, instructed Ireland to amend its law on voluntary termination of pregnancy; ensure effective, timely and accessible procedures for the termination of pregnancy in Ireland and take measures to ensure that healthcare providers are in a position to supply complete information on safe abortion procedures, free from the fear of criminal prosecution. Ireland was instructed to report back to the Committee within six months with a full account of measures taken to implement this decision.³⁷ Late last year, the State responded to the ruling by offering compensation to Ms Mellet. The State did not respond to the other points raised by the Committee other than saying that the matter has been referred to the Citizen’s Assembly for further discussion. Depending on the final outcome in the aftermath of the Assembly’s recommendations, the Committee may continue to hold Ireland in breach of the law.³⁸

Earlier this month, the UN Human Rights Committee ruled Ireland’s abortion law as cruel and inhuman for a second time. This was in response to a case brought by Siobhan Whelan who, in 2010, was forced to travel to the UK at her own expense in order to access an abortion after a diagnosis of fatal foetal abnormality. The committee held that she had been subjected to cruel, inhuman and degrading treatment; discriminated against by being denied healthcare based on her sex; and denied the right to privacy.³⁹ The Committee held that Ireland had subjected Ms Whelan to “a high level of mental anguish” and that the criminalisation of abortion had directly resulted in Ms Whelan experiencing shame and stigma. The Committee ruled that Ireland redress the harm caused to Ms Whelan by being forced to travel, including by reforming its laws around abortion to prevent others from being subject to similar injustices.⁴⁰ Ms Whelan’s case demonstrates that the State has failed to act on the Committee’s instructions from Ms Mellet’s case. Furthermore it highlights that women and girls continue to suffer inhuman and degrading treatment while awaiting completion of the Citizens’ Assembly process.

ARC respectfully suggests that the Committee ask the State:

- Provide information on how the State intends to meet its international human rights obligations in the interim of the Oireachtas Joint Committee making recommendations on the 8th Amendment.
- Provide information on how the State’s current exceptions-based legislation can address the burden placed on marginalised groups and meet their human rights needs, given the innate inefficiencies of exceptions-based abortion access.

³⁷ Center for Reproductive Rights (2016) Fact Sheet: Mellet V Ireland. Geneva: Center for Reproductive Rights.

³⁸ Irish Times 8 January 2017 *Citizens’ Assembly offers ‘wide views’ on abortion law changes* Available from:<
<http://www.irishtimes.com/news/social-affairs/citizens-assembly-offers-wide-views-on-abortion-law-changes-1.2929274>>
[accessed 25 June 2017]

³⁹Abortion Rights Campaign 13 June 2017 *Ireland’s abortion laws ruled ‘cruel and inhumane’ by UN Human Rights Committee* Available from:<

<https://www.abortionrightscampaign.ie/2017/06/13/press-release-irelands-abortion-laws-ruled-cruel-and-inhumane-by-un-human-rights-committee-for-the-second-time/>> [accessed 20 June 2017]

⁴⁰ Amnesty International 13 June 2017 *UN highlights the shame of Ireland’s harsh abortion laws* Available from
:<<https://www.amnesty.org/en/latest/news/2017/06/un-highlights-the-shame-of-irelands-harsh-abortion-laws/>> [accessed 20 June 2017]

- Take action to decriminalise abortion in line with international human rights standards and ensure that the full decriminalisation of abortion is incorporated into any potential wording of a future referendum.
- Account for how it intends to ensure access to reproductive services, including abortion, for asylum seeking women, undocumented women, those living under direct provision, adolescents, women living with disabilities and other vulnerable groups.