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## **Submission to the Pre-Sessional Working Group of the Committee on the Elimination of Discrimination Against Women (CEDAW) (23-27 November 2015): Adoption of a List of Issues to Ireland**

**16 October 2015**

### **Reporting Organisation**

The Abortion Rights Campaign 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 girls access to the full realization of the right to health, and create an inequitable system where women and girls with privilege may access abortions services abroad, while marginalized 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 8<sup>th</sup> 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**

In Ireland, legal, policy and regulatory barriers pose key challenges to the full realization of sexual and reproductive health and rights. Human rights violations stemming from Ireland’s criminalization of abortion services were raised repeatedly during the country’s last Universal Periodic Review (UPR) in 2011, and during examinations by the Human Rights Committee in 2014 and by the Committee on Economic Social and Cultural Rights in 2015. In the intervening years, a series of developments have continued to highlight the harmful and coercive impact of these laws on the lives of women<sup>1</sup> and girls, however, the Irish government has repeatedly failed to take satisfactory action to address this injustice.

Access to abortion remains virtually inaccessible to women and girls in the Republic of Ireland, and is criminalized in the cases of rape, incest, fatal foetal abnormality and where the pregnancy poses a risk to the physical or mental health of a 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 these women and girls as “vessels and nothing more.”<sup>2</sup> In 2015, the

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<sup>1</sup> ARC works for rights for anyone who may become pregnant and need access to abortion services no matter their gender.

<sup>2</sup> 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]

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.”<sup>3</sup> During the examination the CESCR Committee also expressed concern at the “limited access to information on sexual and reproductive health” in Ireland. However, 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*,<sup>4</sup> and in reaction to the tragic death of Savita Halappanavar who died in 2012 after being denied a termination for her miscarrying pregnancy.<sup>5</sup> In 2013 the Irish government introduced legislation in the form of the Protection of Life During Pregnancy Act (hereafter: the Act), which creates only a narrow exception to the Constitutional ban on abortion. The Act 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 Act are onerous and unworkable. Women and girls whose reasons for seeing a termination of pregnancy fall outside the narrow confines provided for in the Act 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.

Not only has the government not taken any positive steps towards implementing the recommendations emerging from its examinations by the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, and recommendations from its last Universal Periodic Review, several developments run counter to these recommendations. For instance, as a result of the Act, procuring an abortion in Ireland outside the narrow confines provided for by the legislation, now carries a criminal penalty of up to 14 years,<sup>6</sup> and amendments to the Act 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, were rejected by the Irish Parliament.

## Problem identification

### *Constitutional prohibition of abortion*

Article 40.3.3 (the 8<sup>th</sup> 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”.<sup>7</sup> Legislation has been introduced to give effect to a 1992 Supreme Court ruling which established the right of women and girls in Ireland to

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<sup>3</sup> 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](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fIRL%2fCO%2f3&Lang=en) > [accessed 15 October 2015]

<sup>4</sup> *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":\["001-102332"\]} > \[accessed 15 October 2015\]](http://hudoc.echr.coe.int/eng?i=001-102332#{)

<sup>5</sup> 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]

<sup>6</sup> 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]

<sup>7</sup> Irish Constitution. Art. 40.3.3. Available from < <http://www.irishstatutebook.ie/eli/1983/ca/8/enacted/en/print.html> > [accessed 15 October 2015]

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 8<sup>th</sup> 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 8<sup>th</sup> 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,<sup>8</sup> 69% favoured expanding access on the ground of rape, and 68% favoured expanding access on the ground of a risk to health.<sup>9</sup>

Ireland's current Constitutional ban on abortion, considered in conjunction with an amendment stating that the government will not interfere with women and girls who obtain abortion services abroad, has the effect of discriminating against those who may be unable to travel. While abortion remains, except in the narrowest circumstances, illegal in Ireland, 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. Marginalized women, such as asylum seekers, poor women, young, rural and disabled women, 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 Protection of Life During Pregnancy Act have done nothing to address this gross inequity.

#### *Flawed legislation*

In 2013 the State introduced the Protection of Life During Pregnancy Act, 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 Act 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 Act 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 Act 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 still believes she is entitled to an abortion under the Act, 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 a termination.

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

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

<sup>9</sup> 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]

the A, B and C case, nor are they humane.<sup>10</sup> 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 criticized legislation that requires access to legal abortion to be approved by more than one health-care provider on the grounds that this necessarily restricts access.<sup>11</sup>

Not only are the Act'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 Act, 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 assault. 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. After many weeks of engagement with the State health system, she was eventually assessed under the Protection of Life During Pregnancy Act.

Although certified as suicidal, she was apparently refused an abortion at 24 weeks' gestation on the premise that the foetus was, by that stage, potentially viable. She then went on hunger strike in protest at being forced to continue her pregnancy, and a High Court injunction was sought to forcibly hydrate her. Her 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.<sup>12</sup> It is deeply concerning that the first known application of the Act should result in a case that would appear to demonstrate that abortion, even under the strict circumstances permitted by the new Act, 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, and inhuman and degrading treatment towards women and girls.

#### *Criminal penalties*

Section 59 of the 1861 Offences Against the Person Act, now obsolete, criminalized abortion with a sentence of life imprisonment.<sup>13</sup> The Protection of Life During Pregnancy Act restates the criminalization of abortion in all cases except where there is a "real and substantial risk" to the woman's life, which can only be averted by terminating the pregnancy. 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 restatement of the criminal prohibition of abortion is dangerous and unnecessary and contravenes human rights norms.

In 2014 the UN Human Rights Committee expressed grave concern over the criminalization element in the Act,<sup>14</sup> suggesting that it was not compatible with Ireland's obligations under the International Covenant on Civil and Political

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<sup>10</sup> *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]

<sup>11</sup> 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]

<sup>12</sup> 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]

<sup>13</sup> Offences Against the Person Act, 1861, Available from: <<http://www.irishstatutebook.ie/1861/en/act/pub/0100/print.html>> [accessed 15 October 2015]

<sup>14</sup> 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](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2fCO%2f3&Lang=en)> [accessed 15 October 2015]

Rights (ICCPR). This year, the Committee on Economic, Social and Cultural Rights, echoed this concern and made specific recommendations for the Government to hold a referendum to revise its abortion legislation.<sup>15</sup> The UN Committee Against Torture (UNCAT) has also 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 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>16</sup> Finally, the UN Special Rapporteur on the Right to Health has recommended the immediate removal of criminalization of and legal restriction on sexual and reproductive health-care services, including abortion, in all states.<sup>17</sup>

### *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 health-care services is hypocritical and disproportionately affects women at various sites and intersections of disadvantage. The State's Constitution effectively permits abortion through Article 40.3.3, which recognizes 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."<sup>18</sup> 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 for many women living on the margins of Irish society, they simply will not have the resources and support structures to effectively exercise their right to travel to access reproductive health care 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, which may negatively impact on women's health and welfare. Coupled with fear of repercussions including social stigma and criminal prosecution, this creates a chilling factor which deters some women from seek post-abortion medical care or check-ups, including where they are experiencing complications.

In 2014 at least 3,735 women and girls travelled from the Republic of Ireland to Britain to access abortion services.<sup>19</sup> As

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<sup>15</sup> 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](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fIRL%2fCO%2f3&Lang=en)> [accessed 15 October 2015]

<sup>16</sup> 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](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fIRL%2fCO%2f1&Lang=en)> [accessed 15 October 2015]

<sup>17</sup> 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]

<sup>18</sup> 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]

<sup>19</sup> *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]

noted above, the Thirteenth 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.<sup>20</sup> A discriminatory two-tier system has been created within Ireland’s abortion regime, where women with financial resources and support can travel abroad to access appropriate health care. 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” health care in line with the principle of non-discrimination. On the contrary, Ireland’s current abortion laws result in flagrant inequity. This inequality was specifically referred to by the UN Human Rights Committee 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 women who are unable to travel abroad to seek abortions”.<sup>21</sup>

An inestimable number of women in Ireland now illegally procure abortions in their homes with abortifacient pills ordered online. In 2012 the Irish Medicines Board (now the Health Products Regulatory Authority) seized 487 such pills.<sup>22</sup> Although this represents a decrease on previous years, these figures still probably represent only the tip of the iceberg of the true volume of such pills being imported by people in Ireland, as many packages are successfully delivered. In short, abortion has always been a global phenomenon and is an incontrovertible reality for thousands of women and girls in Ireland today.

### **ARC respectfully suggests that the Committee ask the State:**

- Please provide information on how the State reconciles its obligations regarding women’s reproductive health under the Convention with its restrictive abortion laws.
- Please provide information on plans to implement the recommendations of the UNHRC and UN CESCR in relation to the repeal of Article 40.3.3 of the Irish Constitution and the decriminalisation of abortion.
- Please provide information on measures to ensure that asylum seeking women and girl, undocumented women and girls, young women, women and girls with disabilities and other vulnerable groups have adequate access to reproductive health information and services, including in relation to abortion.

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<sup>20</sup> Irish Constitution. Art. 40.3.3. Available from < <http://www.irishstatutebook.ie/eli/1983/ca/8/enacted/en/print.html>> [accessed 15 October 2015]

<sup>21</sup> 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](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2fCO%2f3&Lang=en)> [accessed 29 September 2014]

<sup>22</sup> Fiona Gartland, ‘Fall in seizures of drugs that induce abortion’, Irish Times, 27 May 2013, Available from: < <http://www.irishtimes.com/news/environment/fall-in-seizures-of-drugs-that-induce-abortion-1.1407015>> [accessed 15 October 2015]