



Submission to the Committee on the Elimination of Discrimination Against Women (CEDAW) (13-15 February 2017): Supplementary Submission

Reporting Organisation

The Abortion Rights Campaign advocates for ‘free, safe and legal’ abortion access in 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 a system of inequality whereby women and girls with the means can access abortion services abroad, while marginalised women cannot. They are forced to continue their pregnancies or resort to illegal and possibly unsafe means of procuring abortions. We promote broad national support for a referendum to repeal the Eighth Amendment to the Irish Constitution, which introduced the right to life of the unborn into our laws. We believe that access to abortion must align with human rights standards and norms in order to ensure that the health and rights of women and girls in pregnancy are respected, protected and fulfilled.

We would draw the Committee’s attention to our previous submission, which was made on 16 October 2015. The current document will serve to inform the Committee about relevant issues that have arisen in the State Party since this date. Since the 2015 submission, there have been a number of developments in Ireland’s situation regarding abortion. These included widespread denigration of Irish restrictions on abortion by other State Parties under its 2016 Universal Periodic Review, landmark rulings by the United Nations Human Rights Committee in relation to the discriminatory and cruel nature of the law, findings by the Irish Family Planning Association (IFPA) on the unworkable nature of the Protection of Life During Pregnancy Act 2013, rulings by the Broadcasting Authority of Ireland effectively silencing certain voices from public discourse on abortion and the establishment of a Citizen’s Assembly to discuss the future of the Eighth Amendment. These developments have emphasised that Ireland’s punitive abortion restrictions continue to violate the rights of women and girls and that in order to comply with human rights standards and international norms, a significant widening of abortion access is required.

Universal Periodic Review

In May 2016, Ireland’s human rights record was examined by other countries as part of its second Universal Periodic Review.² 20 countries held Ireland to account in its failure to take meaningful steps to bring Irish abortion law in line with international human rights standards

¹ The Abortion Rights Campaign uses the terms ‘women and girls’. However, we acknowledge that individuals who do not identify as women may need and want abortions.

² All related documentation is available here:

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/IESession25.aspx>

and norms. Denmark were critical of the Protection of Life During Pregnancy Act 2013 and expressed concern at the false distinction it makes between health and life. They went on to recommend that Ireland repeal the Eighth Amendment and decriminalise abortion. Cuba were also critical of the 2013 Act, in particular its restrictive implementation. The United States, speaking to the decision to re-criminalise abortion, expressed concern at “negative developments in women’s reproductive health, including the imposition of criminal penalties on women who procure an abortion”. India called on Ireland to bring abortion laws in line with international human rights standards, a statement which was echoed by a host of other nations including Iceland, Uruguay and the Netherlands.

Amanda Mellet Case

In June 2016, the United Nations Human Rights Committee 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 a termination. She flew home only 12 hours later, still weak from the procedure, as she could not afford overnight accommodation³. 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 of last year, 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).

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. The fact that the State’s refusal to provide abortion care was in keeping with the law was of no consequence and the Committee 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 health care to which she was entitled and added significantly to her distress. The limits placed on health care professionals under the Irish law was 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.”⁴

³http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2F116%2FD%2F2324%2F2013&Lang=en

⁴ 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.

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."⁵ 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 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 health care 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.⁶

Late last year, the State responded to the ruling by offering compensation to Ms Mellet. The State has not responded 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. This process will take at least three more months of deliberation. If there is no resolution from the Assembly, the Committee may continue to hold Ireland in breach of the law.⁷

Accessing Abortion under the Protection for Life During Pregnancy Act (PLDPA) 2013

It has been repeatedly documented that in upholding restrictions on abortion in all but the most severe circumstances and imposing restrictive and complex guidelines on health care professionals, the PLDPA is a dangerous and unworkable law completely out of line with international best practice. In their submission to the Citizen's Assembly on the Eighth Amendment, 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 Act⁸. This provides concrete evidence that the Act fails to serve even the extremely restrictive purposes it sets out to. This

⁵ Mellet v. Ireland, Human Rights Committee, Communication No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013, para. 7.10 (2016).

⁶ Center for Reproductive Rights (2016) *Fact Sheet: Mellet V Ireland*. Geneva: Center for Reproductive Rights.

⁷ <http://www.irishtimes.com/news/social-affairs/citizens-assembly-offers-wide-views-on-abortion-law-changes-1.2929274>

⁸ IFPA Submission to the Citizen's Assembly <https://www.ifpa.ie/node/723>

legislation continues to be out of touch with the wishes of the Irish public, 87% of whom (according to a recent Amnesty International-Red C poll) favour an expansion in Ireland's abortion access and 72% of whom agree that abortion should be decriminalised.⁹

Citizen's Assembly

The Citizen's Assembly has been established to examine the issue of the Eighth Amendment to the Constitution. This group of 99 citizens have been asked to meet on five (revised from four) occasions before making recommendations to the government on what, if any, changes should take place.¹⁰ The Assembly was cited by Ireland in its response to the UN Human Rights Committee ruling in June 2016. However, its creation has failed to account for 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.

Much of the Citizen's Assembly process has lacked transparency; the terms of reference for those sending in submissions have been unclear and it is uncertain how or why topics have been chosen for discussion. Equally, there is concern – as was noted by the Abortion Rights Campaign at the outset of the process¹¹ – that the voices of women who have experienced the first-hand effects of Ireland's restrictive abortion laws are not being sufficiently heard throughout the Assembly process. This concern was amplified upon hearing that a member had been removed from the Assembly for being a member of a pro-choice group in 2012¹² (the same year that Savita Halappanavar tragically died as a result of the Eighth Amendment). Excluding citizens who have been involved in pro-choice activism undermines the representative nature of the Assembly.

So far, the Assembly has not appeared to take a woman-centred focus or to deal with the human rights violations emanating from Irish abortion law in a proportional fashion. Instead, meetings to date (and particularly the second meeting which took place 7-8 January 2017) have been focused on dealing with specific circumstances under which a woman may experience an unwanted pregnancy (such as instances of fatal foetal abnormality). It has been suggested by the Assembly Chair that future meetings will talk about the subject of termination following rape.¹³ In devoting a large amount of time to these particular types of cases, although they are undoubtedly important, the Assembly ignores the vast majority of women who choose to terminate a pregnancy simply because it is the best decision for them. Focusing on exceptional cases like rape also reinforces the aforementioned moralising of abortion and the notion that some terminations are deserving while others are not. A situation in which Ireland legislated for abortion in very strict circumstances (for instance

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<http://www.redcresearch.ie/wp-content/uploads/2016/03/157316-%E2%80%93-Amnesty-International-Feb-2016-040316-Press-Release.pdf>

¹⁰ <https://www.citizensassembly.ie/en/>

¹¹ <http://www.abortionrightscampaign.ie/2016/11/10/we-want-your-voices-to-be-heard-at-the-citizens-assembly/>

¹² <http://www.newstalk.com/Former-prochoice-activist-removed-from-Citizens-Assembly>

¹³ <https://www.citizensassembly.ie/en/Meetings/Chair-s-Closing-Remarks-8-Jan-2017.pdf>

where the woman's health was at risk, in cases of rape, incest or fatal foetal abnormality) would not significantly impact on the numbers having to access abortion overseas or outside of the law and it would continue to discriminate against women in Ireland.

Equally, in attempts to prioritise balance and impartiality, it appears that many of the panellists whose role is to inform members of the Assembly the facts about abortion are those who have remained neutral on the issue. This excludes from the discussion those medical and legal experts who have researched the subject of abortion in Ireland in depth and thus have a wide range of knowledge on the subject. Where panellists have been able to state their beliefs (such as the section on ethics at the January 7-Eighth meeting), the discussion has been positioned as two opposing sides, with the result being a debate akin to those often heard in Irish media outlets. Not only has this served to detract from important issues, it has also resulted in public remarks about women who have abortions that many may find upsetting and insulting.¹⁴

The Abortion Rights Campaign continues to believe that the Citizens Assembly amounts to a delaying tactic by a Government unwilling to call a referendum on an issue that is still seen as contentious and divisive. We know that this polarisation is exaggerated, both by the media and by the State, and that the majority of people in Ireland are in favour of broadening abortion access in the State.¹⁵ While we have been heartened by some of the comments made by participants in the Citizens Assembly, we are very concerned that the human rights and the health of women are being left in the hands of 99 unelected individuals. Should the Assembly recommend retaining the Eighth Amendment, Ireland would continue to be in breach of numerous international human rights treaties. Participants cannot be expected to review all documentation, which consists of 13,000 submissions from both members of the public and organisations. The only way to ensure the people of Ireland get a chance to participate in a discussion about a woman's right to choose is through a referendum.

Silencing by State Agencies

The Abortion Rights Campaign is gravely concerned by recent decisions and pronouncements by State agencies relating to the ability of individuals who have accessed abortion services or are pro-choice to represent themselves in the media. We believe that women in particular are being denied their right to freedom of expression about their bodies and their reproductive choices.

In May 2016, the Broadcasting Authority of Ireland (BAI) upheld complaints made against a popular radio show and its presenter, Ray D'Arcy. The BAI, which is a State agency established under the Broadcasting Act 2009¹⁶, investigated complaints made by two listeners following the broadcast of an interview with a couple who terminated their pregnancy after receiving a diagnosis of Fatal Fetal Abnormality. The BAI found that the

¹⁴<http://www.abortionrightscampaign.ie/2017/01/10/abortion-rights-campaign-analysis-of-saturday-7-january-session-of-the-citizens-assembly/>

¹⁵ See: <http://www.redcresearch.ie/amnesty-international-abortion-poll/>

¹⁶ Available at: <http://www.irishstatutebook.ie/eli/2009/act/18/enacted/en/html>

programme breached their Code of Fairness, Objectivity and Impartiality in News and Current Affairs.¹⁷

The couple interviewed had spoken publically about their experience accessing abortion services as part of the Amnesty International “She’s Not a Criminal” campaign. The complainants argued that the presenter promoted his personal view and failed to challenge the interviewees on a number of points. The BAI agreed with the complainant and found that the interview did not amount to a human interest story, as the interviewees were involved in the Amnesty International campaign, as noted above.¹⁸ Even though the presenter solicited and read out comments from anti-choice campaigners in response, this was not deemed sufficient to create objectivity and impartiality.

The implications of this ruling concern us on a number of levels. In relation to this particular case, should the broadcaster have allowed anti-choice commentators to personally challenge and condemn a couple who experienced a personal tragedy? The interview was not considered a human interest piece because the interviewees were involved in advocacy and campaigning work. Does this mean that women who wish to share their stories but have engaged in pro-choice activism cannot go unchallenged? We believe that this position oppresses women’s freedom of speech and freedom of expression.

More broadly, the BAI rules mean that extreme anti-choice organisations, whose views are representative of only 7% of the country¹⁹, are given as much media time as pro-choice and pro-repeal organisations representing the views of anywhere from 50% to 87% of the populace. This inaccurately depicts abortion as a divisive issue when we know the majority of people support a broadening of access.

Conclusion

The Abortion Rights Campaign continues to condemn the inaction of the Irish government in relation to its international human rights obligations. Building upon a submission presented to the Committee in October 2015, we emphasise the scant progress made toward the realisation of sexual and reproductive health rights in the Republic of Ireland since its previous examination under the Convention.

In our prior report, various legal, policy and regulatory constraints were identified as contributing factors to the continuation of rights violations for women and girls, including the constitutional prohibition of abortion, the criminal penalties as appended to abortion and unequal access to abortion services. The Abortion Rights Campaign wishes to reiterate the importance of said issues while noting the State’s marked lack of progress in rectifying its discrimination against its residents who need abortion services.

¹⁷ Available at: <http://www.bai.ie/en/codes-standards/#al-block-3>

¹⁸ Available at: http://www.bai.ie/media/sites/2/2016/05/201605_CCECF_Decisions_May16_vFinal.pdf see page 6

¹⁹ From RED C/Amnesty International Poll on Attitudes to Abortion, available at: <http://www.redcresearch.ie/amnesty-international-abortion-poll/>

The Abortion Rights Campaign draws attention to the widespread condemnation the State received during its Universal Periodic Review in its failure to bring Irish abortion law in line with international standards. The Irish State has failed to adequately address recommendations issued by the United Nations Human Rights Committee regarding the discriminatory, cruel, inhuman and degrading treatment and the impingement on privacy incurred upon Ms. Mellet (and by inference all those forced to seek services abroad) as a result of Ireland's Eighth Amendment.

The introduction of a 'Citizen's Assembly' as a means to resolve said recommendations constitutes a delay tactic designed to quell condemnation while rights abuses remain rampant. This process, the lack of transparency, the impartiality of experts, and the lack of a woman-centric focus raises questions regarding the legitimacy of the Citizen's Assembly as a democratic process.

The Abortion Rights Campaign requests that the Committee ask the State to:

- ***Provide information on how the State intends to meet its international human rights obligations should the Citizen's Assembly not recommend a referendum to repeal the Eighth Amendment.***
- ***Address what measures shall be taken to counter the oppression placed upon pro-choice advocates in the public eye with view to uphold freedom of speech and expression as under international obligations (article 19, ICCPR).***
- ***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.***

The Abortion Rights Campaign asks that the State Party:

- ***Repeal Article 40.3.3 of the Constitution and introduce legislation to allow for free, safe, and legal abortion on request;***
- ***Decriminalise abortion in all circumstances;***
- ***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***
- ***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;***
- ***Eliminate specific access barriers impacting marginalised groups including girls and young women, asylum-seekers and those living in 'direct provision', undocumented migrants, women or girls with disabilities, women or girls with limited financial means, and members of the Traveller community.***

- ***Ensure that conscience based refusals of abortion care do not jeopardise women and girls' access to abortion services, including by making clear that those who object to providing abortion services have a duty to make a timely referral to another health care provider who will offer the services, and to always provide care, regardless of their personal beliefs or objections, in emergency circumstances or where a referral or continuity of care is not possible.***
- ***Allocate additional resources to the provision of sexuality education to ensure that all young people receive high-quality, evidence-based sexuality education, and ensure that a school's ethos or value system does not compromise the quality and accuracy of the information students receive about sexual and reproductive health.***