SEXUALITY, INFORMATION
REPRODUCTIVE HEALTH & RIGHTS

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Office of the United Nations High Commissioner for Human Rights
Secretariat of the Committee Against Torture
Palais Wilson
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August 9, 2013

Dear Honourable Committee Members,

Re: Supplementary information on Ireland in respect of restrictive laws on abortion for the consideration of the Committee Against Torture at its 51st session (28 October to 22 November 2013)

The Irish Family Planning Association (IFPA) has prepared this letter to assist the Committee Against Torture (the Committee) in its review of the State Party's compliance with the United Nations (U.N.) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) and the adoption of the list of issues prior to report.

The IFPA submits these remarks based on its reproductive rights advocacy experience within Ireland and its experience in providing reproductive health care services to women. Since 1969, the IFPA has worked to promote and protect basic human rights in relation to reproductive and sexual health, relationships and sexuality. The IFPA provides the highest quality reproductive health care at its clinics and counselling centres, including non-directive pregnancy counselling, family planning and contraceptive services, medical training for doctors and nurses, free post-abortion medical check-ups, and educational services. In 2012, IFPA medical clinics provided sexual and reproductive health services to over 19,000 clients, and provided information and support to 4,000 women and girls experiencing pregnancies that were unplanned, unwanted or that had developed into a crisis because of changed circumstances. In accordance with the law, the IFPA has never in its history provided any abortion services. The IFPA is recognised as a respected source of expertise because of its proven track record in the provision of sexual and reproductive healthcare services, non-directive pregnancy counselling,

education, training for healthcare professionals, advocacy and policy development. The IFPA is regularly called upon by statutory agencies, parliamentary committees, medical associations and service providers to give its expert opinion on a wide range of issues related to sexual and reproductive health and rights.

The IFPA believes that abortion is an intimate aspect of private life, intricately linked with human rights values and principles that protect a woman's sexual rights, the right to control her own body, and the liberty and security of her person. These values are unacceptably infringed upon when access to safe, legal abortion services and information is impeded by the State.

This letter focuses on issues related to the status of women's reproductive rights in Ireland, with a particular focus on the ways in which Ireland's restrictive legal regime in relation to abortion violates women's rights under the Convention.

In its 2011 concluding comments to Ireland in relation to the State's compliance with the Convention, the Committee highlighted the issue of Ireland's abortion law:

> "The Committee notes the concern expressed by the European Court of Human Rights about the absence of an effective and accessible domestic procedure in the State party for establishing whether some pregnancies pose a real and substantial medical risk to the life of the mother (case of A, B and C v. Ireland), which leads to uncertainty for women and their medical doctors, who are also at risk of criminal investigation or punishment if their advice or treatment is deemed illegal. The Committee expresses concern at the lack of clarity cited by the Court and the absence of a legal framework through which differences of opinion could be resolved. Noting the risk of criminal prosecution and imprisonment facing both the women concerned and their physicians, the Committee expresses concern that this may raise issues that constitute a breach of the Convention. The Committee appreciates the intention of the State party, as expressed during the dialogue with the Committee, to establish an expert group to address the Court's ruling. The Committee is nonetheless concerned further that, despite the already existing case law allowing for abortion, no legislation is in place and that this leads to serious consequences in individual cases, especially affecting minors, migrant women, and women living in poverty (arts. 2 and 16).
>
> The Committee urges the State party to clarify the scope of legal abortion through statutory law and provide for adequate procedures to challenge differing medical opinions as well as adequate services for carrying out abortions in the State party, so that its law and practice is in conformity with the Convention."[1]

In its Concluding Observations to Ireland at its ninety-third session, July 2008, the Human Rights Committee highlighted its concern about the restrictive nature of the law in Ireland in relation to abortion and urged the State to take measures to help women avoid unwanted pregnancies so that they do not have to resort to illegal or unsafe abortions that could put their lives at risk (article 6) or to abortions abroad (articles 26 and 6).[2] The inclusion of "abortions abroad" with illegal and unsafe abortions that put women's lives at risk locates the situation of women who have to terminate a pregnancy in another state under any circumstances as a fundamentally harmful experience that is incompatible with international human rights law.

Ireland's prohibitive regulation of abortion and the discriminatory nature of its application have also been criticised by the CEDAW Committee.[3] Moreover, at Ireland's Universal Periodic Review in 2011 Norway, Denmark, UK, Slovenia, Spain, and the Netherlands made recommendations in relation to the restrictive abortion regime in Irish law and called for firm timelines for the implementation of the judgment of the European Court of Human Rights in A, B and C v Ireland. Finland, Germany and France asked advance questions about the law on abortion in Ireland.[4]

Some progress has been made in relation to reproductive rights, notably the wider availability of emergency contraception and the enactment in 2013 of legislation[5] (discussed below) governing the limited grounds on which abortion is available. The introduction of legislation governing the exercise of the limited constitutional right to abortion is a significant step. However, the IFPA is of the view that questions arise as to the compatibility of the new legislation with human rights standards. The denial of abortion services within the State in almost all circumstances leads to violations of women's human rights, including the rights to life, non-discrimination and equality, freedom from cruel, inhuman and degrading treatment, and privacy.

Numerous human rights organisations in Ireland and internationally have expressed concern about the failure of the law on abortion in Ireland to fulfil women's human rights. This view has support within the Government; the Minister for Justice, Minister Alan Shatter stated that "the right of pregnant women to have their health protected is, under our constitutional framework, a qualified right as is their right to bodily integrity."[6] In July 2013 the Minister stated:

> "I personally believe it is a great cruelty that our law creates a barrier to a woman in circumstances where she has a fatal foetal abnormality being able to have a pregnancy terminated, and that according to Irish law any woman in those circumstances is required to carry a child to full term knowing it has no real prospect of any nature of survival following birth".[7]

The Minister further stated that it was also an "unacceptable cruelty" that abortion was not available to rape victims unless there was a risk to their life.[8] The Minister has acknowledged that "as a State we have responsibilities we should live up to in this area."[9]

Notwithstanding such acknowledgement, both the Minister[10] and the Taoiseach (prime minister) have stated that there are no plans to introduce measures to broaden access to abortion.[11]

The IFPA is of the view that denial of therapeutic abortion to women whose pregnancies involve foetal abnormalities of such severity that there is no realistic prospect of life outside the womb, women who are pregnant as a result of a crime, women in whose case pregnancy presents a risk to health and women who experience serious obstacles to exercising their right to travel, or cannot travel for abortion violates their right to freedom from cruel, inhuman and degrading treatment.

The IFPA urges the Committee to call on the Irish Government to address the violations of women's civil and political rights directly resulting from denial of critical reproductive rights services and to take measures to bring the law in Ireland into line with the Covenant. Through this submission the IFPA respectfully requests that the impact of Ireland's abortion law be included in the list of issues adopted by the Committee for its review of Ireland's compliance with the Convention against Torture.

Background and Context

Abortion is lawful in Ireland where pregnancy involves a risk to a woman's life that can only be averted by a termination of pregnancy. Abortion is not lawful in any other circumstances, including when the pregnancy poses a risk the health of the pregnant woman, where pregnancy is the result of a crime, and when it is established that the foetus will not survive outside the womb.

Successive governments openly acknowledge that women and girls avoid the ban on abortion by travelling to other states, in particular the UK, to access safe and legal abortion services. Indeed, Irish authorities rely on women and girls accessing safe abortion in other jurisdictions to avoid public health crises related to unsafe abortion common in other States where abortion is similarly restricted. In 2012, 3,982 women and girls provided Irish addresses at UK abortion clinics. This figure is based solely on the number of women and girls who choose to disclose their addresses and is therefore regarded as a significant underestimation.

Women and girls who need to terminate a pregnancy must raise large sums of money to travel abroad to private abortion clinics for safe and legal abortion services, or seek out illegal and unsafe abortions, or continue the pregnancy against their will.

The restrictive legal regime in relation to abortion disproportionately affects the vulnerable and disadvantaged, including women and girls who cannot raise the necessary funds to travel abroad, who are in the care of the State, who experience difficulties and delays in travelling abroad or who cannot leave the jurisdiction because of immigration restrictions.

The IFPA knows from our clients that that the process of securing visas and travel documents, which includes gathering supporting documents and the necessary fees, can take many weeks. Women and girls in these circumstances are increasingly risking their health and criminal prosecution by seeking out illegal and often unsafe methods of abortion. According to the Irish Medicines Board, 487 tablets were seized by Customs in 2012 and 635 in 2011. It is likely that many more are not intercepted, either because those selling them change the packaging regularly to avoid detection or because women have them sent to addresses in Northern Ireland.[12]

The extreme application of Irish abortion law does not take into consideration the individual circumstances of women and girls who become pregnant. Women and girls who become pregnant as a result of rape or incest are prohibited from accessing abortion services in Ireland. Women with wanted pregnancies who discover that the foetus will not survive outside the womb are also prohibited from accessing therapeutic abortions in Ireland. Women in these circumstances are faced with the option of carrying the pregnancy to term knowing there is no real prospect of survival following birth or travelling abroad to a private abortion clinic without the benefit of support from the State. Forcing women and girls to continue a pregnancy in any circumstance, and these circumstances in particular, is an affront to their dignity and constitutes inhuman and degrading treatment.

1. Legal and institutional framework

The law on abortion in Ireland derives from the Constitution, case law and legislation.

Article 40.3.3 of the Constitution of Ireland 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."
>
> "This subsection shall not limit freedom to travel between the State and another state."
>
> "This subsection shall not limit freedom to obtain or make available, in the State, subject to such conditions as may be laid down by law, information relating to services lawfully available in another State."

In 1992, the Irish Supreme Court determined that an abortion in Ireland is lawful when it is established that there is a real and substantial risk to the life (as distinct from the health) of the pregnant woman, this includes the risk of suicide.[13]

In December 2010, the Grand Chamber of the European Court of Human Rights ruled in *A, B and C v Ireland*[14] that the Irish State violated Applicant C's right to privacy by failing to provide for an accessible and effective procedure by which the Applicant could have established whether she qualified for a lawful abortion. In July 2013, the Protection of Life During Pregnancy Act (hereafter the 2013 Act) was signed into law.

The legislation includes provisions governing the procedure (including the review procedure) to be followed in determining whether or not a woman's life is at risk, the circumstances in which a medical practitioner may exercise a conscientious objection to carrying out an abortion and the procedure to be followed in the event of such an objection occurring. The Act includes wide ministerial powers to suspend abortion services and rigorous reporting requirements, including identification of doctors who carry out terminations under the legislation. The Act includes an offence of "destruction of unborn human life". The maximum penalty for this offence, which applies equally to pregnant women and abortion providers, is 14 years.

2. The Protection of Life During Pregnancy Act 2013

The Committee was particularly concerned in 2011 that scope of legal abortion would be clarified through statutory law and that adequate services for carrying out abortions in the State party would be put in place to bring its law and practice into conformity with the Convention.[15]

The 2013 Act goes some way to providing clarity for women and for doctors in determining the circumstances in which abortion may lawfully be carried out within the State to save a woman's life. However, as a provider of medical services, however, the IFPA is of the view that the legislation does not place sufficient emphasis on the State's duty of care and requirement of due diligence to ensure practical and effective exercise of a constitutional right, for the following reasons:

- The IFPA knows from our services that pregnant women who are concerned about a possible risk to life tend to present at a primary care setting before the risk becomes imminent. The 2013 Act omits a clear referral and treatment pathway for a woman or girl seeking access to the procedure through which a medical certification is made or refused. The legislation further omits safeguards to ensure that a woman will not experience undue delays in referral for examination by a medical practitioner at

an appropriate location in circumstances where she is unclear whether a risk to her life exists and/or where she is not under the care of a doctor.

- Where a woman is refused certification that she is entitled to an abortion under the Act, she is entitled to apply for the decision to be reviewed. Where a woman seeks treatment under section 9 of the legislation on the grounds that the risk to her life arises from a risk of suicide, the requirements of the Act for certification are more onerous than in the case of physical risk to life. The pregnant woman must be examined by three, rather than two specialists (two psychiatrists and an obstetrician). If a woman is refused certification and subsequently appeals, she will be subjected to examination by a further two psychiatrists and an obstetrician. Such a requirement will inevitably increase the mental anguish and suffering of a vulnerable person. In addition, no supports are explicitly included in the Act to ensure access to the review process for women with intellectual disabilities or women who do not have literacy skills or whose first language in not English.

- The legislation provides for the exercise of conscientious objection by a medical practitioner. The Act places an obligation on such a practitioner to ensure the transfer of the pregnant woman's care. However, the Act does not place an explicit obligation on hospitals to ensure that women can receive life-saving treatment under the Act. (A member of the Board of one of the hospitals listed as appropriate institutions in the Schedule to the Act has stated that the hospital, which is publicly funded, may refuse to provide abortions because of its religious ethos.[16]) Conscientious objection provisions have been abused in many jurisdictions to refuse care to women. In this context, the insufficiently robust provisions of the Act, and the omission of sanctions in the case of refusal of care, may act as a barrier to access to lawful care in cases where a woman's life is at risk.

The Irish Human Rights and Equality Commission (IHREC), Ireland's National Human Rights Institution, has raised a number of concerns in relation to the Act's compliance with human rights standards.[17] The IHREC highlights the question of access to an effective remedy with regard, in particular, to women and girls in whose cases access to medical practitioners may be in doubt and/or the making of an application in writing may pose difficulties, e.g. women or girls from lower socio-economic backgrounds or geographic areas with limited access to or lack of choice regarding health care, women or girls of ethnic minority backgrounds, including asylum seekers and refugees, or women or girls who are functionally illiterate or have intellectual disabilities. The IFPA shares these concerns.

3. Criminalisation of Abortion

In 2011, the Committee highlighted the risk of criminal prosecution and imprisonment facing both the women concerned and their physicians, and expressed concern that this may raise issues that constitute a breach of the Convention.[18] The U.N. Special Rapporteur on the Right to Health has highlighted that the criminalisation of reproductive health services is incompatible with human rights standards in that it places barriers in the way of access to services and information and shifts the burden of realising rights from the State and onto individual women.[19] The CEDAW Committee has stated in its general recommendation on women and health, that barriers interfering with access to health services include laws that criminalise medical procedures only needed by women and that punish women who undergo these procedures.[20]

Despite the numerous recommendations from human rights monitoring bodies to decriminalise abortion, the State has re-criminalised abortion.[21] The 2013 Act maintains the legal position whereby abortion is

lawful only to save a pregnant woman's life, and is criminalised in all other circumstances, including where there is a risk to a woman's health and well-being.

The European Court of Human Rights considered that the existence of criminal penalties for having or assisting in an unlawful abortion constitutes a significant "chilling factor" for both women and their doctors. The IFPA is concerned that the 2013 Act does not adequately address the chilling effect highlighted by the European Court of Human Rights, and may, in fact, substantially reinforce it.

The new offence of intentional destruction of unborn life in section 22 of the Act carries a maximum penalty of 14 years imprisonment, which is applicable to a pregnant woman or another person who carries out an abortion in any circumstances except where a woman's life is at risk. Prosecutions under this section require the consent of the Director of Public Prosecutions.

The effect of section 22 is that it remains a crime to provide an abortion in the interests of a woman's health, where the pregnancy is the result of a crime and in cases of fatal foetal abnormality. The offence of intentional destruction of unborn life appears to be sufficiently widely drafted to criminalise women and girls who obtain medication from an internet or other provider and self-induce abortion.

The criminalisation of a medical procedure needed by women and the potential prosecution of women and girls who require access to safe abortion services contribute to the stigmatization of abortion in Ireland. The Irish State has actively engaged in litigation to prevent access to abortion and has put the full resources of the Attorney General's Office behind seven court actions against women and girls seeking judicial remedies to access to safe abortion services and information even when it has been established that it is lawful to do so. The State has also twice attempted to further restrict the limited circumstances by which an abortion can be considered lawful. These further restrictive proposals were rejected by the Irish people in two separate referenda.

The current criminal law does not deter the more than 4,000 women who travel to the UK for abortions each year. Nor does the criminal law deter many other women from resorting to the importation of medication which may then be used incorrectly and without medical supervision, that may not be genuine or that may not be safe. The law does, however, deter some women in such circumstances from seeking medical advice in cases of any post-abortion complications that arise. Delay in seeking medical advice may result in risk to a woman's health. [22]

4. Denial of abortion within Ireland

The current constitutional and legislative provisions disproportionately favour the State's interest in protecting foetal life over the rights of pregnant women. Women whose pregnancy presents a risk to health, women who have been raped or have received a diagnosis of fatal foetal abnormality and women who choose abortion for reasons related to their own or their families' well-being are also denied abortion services in the State.

The Committee has stated that women are particularly at risk in contexts of "deprivation of liberty, medical treatment, particularly involving reproductive decisions, and violence by private actors in communities and homes."[23] The Committee has criticized abortion bans that do not have exceptions for rape and incest;[24] the Committee has noted that without a rape exception, a woman is constantly exposed to "the violation committed against [her] and [experiences] serious traumatic stress…"[25]

Article 7 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom from cruel, inhuman and degrading treatment, a right that carries with it nonderogable state obligations to prevent, punish, and redress violations of this right. The Human Rights Committee (HRC) has emphasised that the prohibition contained in this article extends to acts that cause mental as well as physical pain and suffering.[26] Moreover, in the case of *L.M.R. v. Argentina,* the HRC found a violation of Article 7 for the refusal to terminate a young girl's pregnancy from rape, noting that it resulted in severe mental suffering.[27]

Two recent cases of the ECtHR (RR v Poland[28] and P and S v Poland[29]) indicate that states are obliged to ensure that women seeking lawful abortions should not be exposed to inhuman and degrading treatment.

Risk to a pregnant woman's health

Doctors are required under Irish law to make a distinction between risk to a pregnant woman's life, in which case abortion is lawful, and risk to her health or her quality of life, which is criminalised. As a medical services provider, the IFPA is of the view that a distinction between life and health cannot be meaningfully drawn in the clinical context and prevents medical practitioners from acting in the best interests of their patients and providing treatment in a timely manner.

The serious risk posed to pregnant women's health—for example by heart and vascular diseases, pulmonary diseases, kidney diseases, oncological, neurological, gynaecological, obstetric and genetic conditions—may become a risk to life in particular circumstances. Pregnancy may exacerbate the risk to women of pre-existing conditions—for example, epilepsy, diabetes, cardiac disease, auto-immune conditions and severe mental illness. Ireland is the only member state of the Council of Europe that permits abortion to protect the life but not the health of a pregnant woman.

To refuse a pregnant woman an abortion until her health has deteriorated to such an extent that her life is at risk is contrary to medical ethics and constitutes an unjustified interference with and violation of women's rights, including the right to life.

In these circumstances the burden of accessing abortion services to preserve her health is placed on the woman rather than the health care system. Women who choose to end a pregnancy for medical reasons must leave the mainstream health care service. They must make their own way to a private medical facility in another country without the protection of the protocols that apply in other situations where people travel for health care. While some doctors make *ad hoc* arrangements, the IFPA is aware of women who have travelled without medical files detailing their medical history or proper referral by their doctor.

Fatal foetal abnormalities

The HRC has found that Article 7 may be relevant where women who have become pregnant as a result of rape[30] or have received a diagnosis of foetal impairment.[31] The IFPA knows from our services that, as foetal abnormalities are not usually detected until the later stages of a pregnancy, they involve particularly severe emotional and physical hardship. The hardship is exacerbated by the abrupt cessation of care by the health service of women who chose to end a pregnancy and find that they cannot by law do so within the State. Some clients of the IFPA who have received a diagnosis of serious foetal abnormality during a pregnancy have reported subsequent refusal by the health service to provide them with genetic testing. Abortion in such cases involves longer and more complex medical treatment

than cases of earlier abortion. Treatment which can last 4-5 days involves higher costs; these costs are not reimbursed by the State.

It is not clear whether abortion in cases of fatal foetal abnormality may be permitted under the Constitution; the question has never been tested by the courts. However, the Irish State argued before the ECtHR in 2006 in *D v Ireland*[32] that there was "at least a tenable argument" that the right to life is not actually engaged in the case of a foetus that has no prospect of life outside the womb and that such a foetus may not be considered "unborn" for the purposes of Article 40.3.3. The ECtHR accepted that there was a possibility that the Irish Supreme Court could rule that termination of pregnancy could take place lawfully in the State in these circumstances.

A number of senior government ministers have indicated support for measures to broaden access to abortion in certain circumstances. The Minister for Justice has characterised the failure to permit abortion in cases of fatal foetal abnormality or rape as a "great cruelty" and an "unacceptable cruelty."[33]

Restrictions on the right to information

According to the World Health Organisation (WHO), every pregnant woman considering a termination should receive adequate information in order to make a choice about abortion and its risks.[34] In Ireland the right to receive information about abortion is enshrined in the Constitution. However, the Regulation of Information (Services outside the State for Termination of Pregnancies) Act of 1995 ("Information Act") restricts the content and form of information that may be given to pregnant women about abortion.[35] Any such information must be given in the context of a face-to-face counselling session or in person by a medical provider and must not be "accompanied by any advocacy or promotion of, the termination of pregnancy."[36] Agencies, doctors and counsellors are also prohibited from making arrangements on behalf of their clients for an abortion abroad.[37]

The criminal penalties for violating the law further restrict the provision of medical information by providers.[38] This prevents women from freely seeking and receiving information related to abortion services and violates both the WHO standard and the right to freedom of expression under the Covenant.

In *L.M.R. v. Argentina,* the HRC recognized that the right to privacy includes the right to make decisions about one's life without interference from the state.[39] The restrictive provisions of the Information Act undermine women's right to make personal, autonomous decisions about her reproductive health.

In her 2013 report on the situation of human rights defenders in Ireland, the U.N. Special Rapporteur Margaret Sekaggya highlighted that the provisions of the Information Act can pose significant barriers for counsellors and potentially restrict women's access to information on sexual and reproductive rights.

> "Moreover, the provision can restrict the ability of defenders to make contact with some women who may not be able to attend a face-to-face counselling session, including women who live in isolated or rural areas, young women, women in State care and/or migrant women. The inability of counsellors to make appointments on behalf of their clients further restricts the support they can offer to women seeking this type of service abroad."[40]

Barriers to the exercise of the right to travel

As stated above, women in Ireland rely on the provision of abortion services in other states, in particular the UK, and on the ability to exercise the constitutionally guaranteed right to travel to access such services. Abortion is highly stigmatised even in countries where it is legal. The IFPA knows from our clients that in Ireland the criminalisation of abortion in virtually all circumstances, the restrictions on the provision of information in relation to abortion and the need to travel to avail of services increases this stigma significantly.

The European Court of Human Rights recognised in the case of *A, B and C v Ireland* that all women who travel for abortion experience stigma and endure physical, financial and psychological hardship.

> "The Court considers it reasonable to find that each applicant felt the weight of a considerable stigma prior to, during and after their abortions….Moreover, obtaining an abortion abroad, rather than in the security of their own country and medical system, undoubtedly constituted a significant source of added anxiety. The Court considers it evident that travelling abroad for an abortion constituted a significant psychological burden on each applicant."[41]

Although the Court applied a wide margin of appreciation and did not find a violation of the rights under the European Convention on Human Rights of applicants A and B, who travelled for abortion in circumstances where abortion is criminalised in Ireland, the Court found that the need to travel involved an interference with their right to privacy.[42]

In its 2011 Concluding Observations on Ireland's Initial Report, the Committee Against Torture highlighted that Irish law results in "serious consequences in individual cases, especially affecting minors, migrant women, and women living in poverty".[43] In 1999, the CEDAW Committee stated that the need for pregnant women to travel abroad for abortion "creates hardship for vulnerable groups, such as female asylum seekers who cannot leave the territory of the State".[44] The CEDAW Committee has also held, in *Alyne da Silva v Brazil*[45], that governments have a human rights obligation to guarantee that all women in their countries—regardless of income or racial background—have access to timely, non-discriminatory, and appropriate maternal health services.

The restrictions on abortion disproportionately affect women living in poverty. The IFPA knows from our services that for women living in poverty the need to raise the funds necessary for flights, hotel, local transport and the fee for the procedure in a private clinic can present enormous and sometimes insurmountable obstacles.

The costs of travelling for abortion are significant. The minimum direct cost of travelling to the UK for a first trimester abortion is €1000. This includes clinic fees of €500-€600, flights and accommodation. This does not include indirect costs such as child care and loss of income. Clinics fees rise significantly when procedures are carried out at later gestational periods.

The costs of travelling are higher for women who are subject to travel restrictions and visa requirements, including women asylum seekers and other migrant women. Fees for visas to the country where the abortion provider is located, re-entry visa to Ireland, and temporary travel documents, where required, can add between €120 and €240 to the cost of accessing abortion.[46] Women who require visas and travel documents must gather extensive supporting documentation and attend the relevant embassies

and the Department of Justice in person.[47] These requirements can take a considerable amount of time to fulfil and, for women living outside the capital, can involve significant additional expense and time.

For many women, the need to raise funds to cover fees for a health service denied within the state and to travel to avail of such a service elsewhere means that they experience significant delay in accessing services. The IFPA is aware of situations where the time involved in organising the journey to have an abortion has resulted in a delay of 8 to 12 weeks in exercising the right to travel. Delayed access to abortion services is strongly associated with subsequent adverse health outcomes, particularly where a woman has underlying health problems, and can mean the difference between a minor early procedure and a more invasive procedure.

The women most likely to be delayed in exercising the right to travel and consequently those who incur the greatest expense are women asylum seekers. The weekly allowance paid to asylum seekers is €19.10.[48]

Furthermore, for women living in reception centres—the State's institutional living arrangement for asylum seekers—the process of organising to travel for abortion may involve multiple disclosures of their private situation and personal decision in order to obtain information and financial support and to acquire documents allowing them to travel.

Women may not be aware of the fact that they can obtain temporary travel documents to allow them to leave and re-enter Ireland. Language barriers and other cultural factors may prevent women from accessing supports and information.

The IFPA knows from our services that some women in these circumstances find these obstacles insurmountable and are forced to parent or resort to illegal and unsafe methods of abortion, creating a risk to their health and wellbeing. In the *Alyne* case the CEDAW Committee found a violation of human rights in circumstances where multiple and intersecting aspects of disadvantage and discrimination were at issue. The CEDAW Committee held that discrimination based on sex and gender is inextricably linked to other factors, including pregnancy, general health status, ethnic minority status and socio-economic status.[49] This focus on vulnerable populations within a state is of particular relevance to the situation of women asylum seekers in Ireland who experience the barriers outlined above to their access to the right to travel to avail of services that only women require.

In light of the above, the IFPA takes this opportunity to urge the Committee to select the above-mentioned issues for review with the State and to consider asking the State the following:

In relation to the Protection of Life During Pregnancy Act 2013:

provide information about the referral pathways for women whose pregnancy may present a risk to life and who present at primary care level;

provide information on the measures in place to ensure that vulnerable groups are not disadvantaged in accessing life-saving treatment;

provide information on measures to ensure that women receive appropriate care in all the institutions listed in the Schedule to the Act of 2013 and that no woman's life or health is endangered by refusal of care by any doctor or institution.

In relation to the criminalisation of abortion:

clarify whether medical practitioners will risk prosecution if an abortion is carried out to avert a serious risk to a woman's health or in cases of foetal abnormality where there is no prospect of life outside the womb;

provide information on the circumstances in which the Director of Public Prosecutions will authorise prosecutions, and against whom, under section 22 of the 2013 Act;

provide information on what the State will do to fulfil its obligations under international human rights law and decriminalise abortion, including an indicative timeline.

In relation to the denial of abortion in all circumstances other than to save a woman's life:

provide information on the supports, including any financial supports, that are available to women who travel outside the State to access abortion in cases of foetal abnormalities incompatible with life outside the womb;

clarify what the State will do to provide abortion services so that—at least in cases of foetal abnormalities incompatible with life outside the womb, where a woman's health is at risk and in cases where pregnancy is the result of a crime—women are not forced to experience the pain, trauma, and stigma involved in travelling abroad for an abortion;

provide information on how the State ensures that women and girls, in particular minors, asylum seekers and other migrant women, women living in poverty and women who choose termination because of medically indicated reasons are enabled to access abortion services overseas without risk to their health and without violation of their rights under the Convention.

I hope that the information provided in this letter will be useful to the Committee in drafting the list of issues to be raised with the Government during its review of Ireland's compliance with the Convention.

Please do not hesitate to contact me should you have any questions.

Yours sincerely,

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Niall Behan
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References

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[2] Concluding Observations of the Human Rights Committee (HRC), 93rd session, 30 July 2008, U.N. Doc CCPR/C/IRL/CO/3 at para 13.

[3] Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDAW), 33rd session, 22 July 2005 U.N. Doc CEDAW/C/IRL/CO/4-5 at paras 38-39; CEDAW Concluding Observations, 21st session, 25 June 1999, U.N. Doc CEDAW/C/SR.440 and 441.

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[8] Supra, note 7

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[10] Ibid.

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[19] Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Interim rep. of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, transmitted by Note of the Secretary-General*,paras. 21-36, U.N. Doc. A/66/254 (Aug. 3, 2011) (by Anand Grover) [hereinafter SRRH, *Interim Rep. of the Special Rapporteur on the right to health*].

[20] General Recommendation No. 24, Article 12 of the Convention (Women and Health) 1999, U.N. Doc A/54/38/Rev 1 (para 14).

[21] SRRH, *Interim Rep. of the Special Rapporteur on the right to health*; Human Rights Committee, *Concluding Observations: Venezuela,* para. 19, U.N. Doc. CCPR/CO/71/VEN (2001); Committee Against Torture, *Concluding Observations: Paraguay,* para. 22, U.N. Doc. CAT/C/PRY/CO/4-6 (2011); *Nicaragua,* para. 16, U.N. Doc. CAT/C/NIC/CO/1 (2009); CEDAW Committee, *Concluding Observations: Rwanda,* paras. 35-36, U.N. Doc. CEDAW/C/RWA/CO/6 (2009).

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[24] CAT Committee, *Concluding Observations: Nicaragua,* para. 16, U.N. Doc. CAT/C/NIC/CO/1 (2009); *Peru,* para. 23, U.N. Doc. CAT/C/PER/CO/4 (2006).

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[27] L.M.R. v. Argentina, Human Rights Committee, Communication No. 1608/2007, para. 9.2, U.N. Doc. CCPR/C/101/D/1608/2007 (2011).

[28] RR v Poland, (Application No. 27617/04), Judgment of 26 May 2011.

[29] P and S v Poland, (Application No. 57375/08), Judgment of 30 October 2012.

[30] In its General Comment 28, the Committee states that information on the availability of safe abortion to women who have become pregnant as a result of rape is required for assessment of compliance with Article 7. HRC Gen Comment No 28: Equality of rights between men and women (article 3), U.N. Doc CCPR/C/21/Rev.1/Add.10 (2000).

[31] In the 2005 K.L. v Peru case, the Committee held that the physical and psychological harm arising from forcing a pregnant girl to carry a pregnancy to term despite a diagnosis of anencephaly (a foetal complication incompatible with life) amounted to a violation of Article 7.

[32] *D v Ireland*, (Application No. 26499/02) Decision 27 June 2006.

[33] Supra, note 7.

[34] World Health Organization (WHO). Supra, note 22. At page 36.

[35] Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995, Sec. 2(a) (Act No. 5/1995) (Ir.), *available at* http://www.irishstatutebook.ie/1995/en/act/pub/0005/index.html.

[36] Id, s. 3(1)(a)(ii), 5(b)(i), 5(b)(iii).

[37] Id, s.8 (1).

[38] Id, s. 4(b).

[39] L.M.R. v. Argentina, Human Rights Committee, Communication No. 1608/2007, paras. 9.3-9.4, U.N. Doc. CCPR/C/101/D/1608/2007 (2011).

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