ABANDONED AND STIGMATIZED

THE IMPACT OF THE IRISH ABORTION LAW ON WOMEN

CENTER FOR REPRODUCTIVE RIGHTS

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INTRODUCTION

The experiences of women who are denied health care and information due to Ireland's extremely restrictive abortion law, and who are consequently forced to travel abroad to access abortion services, are harrowing. The Center for Reproductive Rights ("Center"), an international non-governmental legal advocacy organization dedicated to promoting and defending women's reproductive rights worldwide, is working closely with women in Ireland affected by the country's extremely restrictive abortion law. The Center is representing two Irish women in cases pending before the Human Rights Committee ("HRC") that challenge the denial of abortion services in Ireland to women that have received a diagnosis of fatal fetal anomaly.

The extremely restrictive abortion law has had little impact on women's need to access abortion services. Indeed, at least around 4,000 Irish women travel each year to terminate their pregnancy in the United Kingdom ("UK"), and many others seek abortion services in other European countries.[1] Forcing women to travel to access the health care they need when they decide to end a pregnancy that results from rape or incest, when it endangers their health, when the fetus is non-viable or when they are simply not ready to be parents, violates women's fundamental human rights.

The abortion law represents the Irish government's abdication of its human rights obligations towards women in need of this health service and denies women their rights to physical and mental integrity, privacy, and dignity. It undermines women's rights to equality and non-discrimination, jeopardizes their health and lives and subjects them to cruel, inhuman and degrading treatment. The law has a disproportionate discriminatory impact on poor women, asylum seekers, adolescent girls, women with disabilities, and other women in vulnerable situations that may not have the resources or ability to travel to access abortion services.

Due to the intense stigma associated with abortion in Ireland, women's experiences of being denied health care in Ireland and having to travel abroad for an abortion have often not been publicly discussed and have not received the attention they deserve. This report seeks to bring greater visibility to the impact of the near total abortion ban on women in Ireland and how it violates their fundamental human rights.

ABORTION IN IRELAND: THE LAW AND PRACTICE

Ireland only permits abortion when there is a "real and substantial risk" to the pregnant woman's life.[2] In all other circumstances abortion is criminalized and carries a 14-year prison sentence.[3]

The extremely restrictive abortion law in Ireland clearly disregards international human rights standards and stands in stark contrast to the majority of European states, which permit abortion on request without restriction as to reason and/or allow abortion on a broad set of grounds, including when the woman's mental or physical health is at risk, when the pregnancy results from rape or incest, when the fetus carries an impairment, and on socio-economic grounds.[4]

Access to abortion in Ireland is regulated by the Constitution, jurisprudence from the Supreme Court, and the Protection of Life During Pregnancy Act, which was enacted in 2013. Together they create a highly restrictive regulatory framework.

After a referendum in 1983, Article 40.3.3 was added to the Irish Constitution. The provision provides 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."[5]

In 1992, the Supreme Court of Ireland interpreted the meaning of Article 40.3.3 in a case in which the state sought to prevent a 14-year-old girl who had been raped from obtaining an abortion abroad.[6] In its decision, *Attorney General v. X and Others*, the Supreme Court clarified that there is an exception to the abortion ban, which was then set out in the 1861 Offenses Against the Person Act, when there is a "real and substantial risk" to the woman's life, including a risk of suicide.[7] The Supreme Court made it clear that this exception does not include a risk to the pregnant woman's health.[8]

Despite the Supreme Court decision, the Irish Parliament failed to set out in law this exception until 2013 (further discussed below in section 3). The lack of codification and implementation of the exception was criticized by the European Court of Human Rights ("ECtHR") in 2010 in *A, B and C v. Ireland*.[9] The ECtHR noted that Ireland had not provided a framework to establish when a pregnant woman's life was at risk and had thereby caused a "lack of certainty for a woman seeking a lawful abortion in Ireland."[10] It demanded that the Irish government put in place an effective and accessible procedure for women whose life is at risk to know whether they would be entitled to an abortion.[11]

The highly restrictive abortion law and the lack of clarity about the circumstances in which women have a right to access abortion services has had serious detrimental effects on women's health and lives, and fails to respect and protect their fundamental human rights. It also forces thousands of women to travel abroad to access abortion services,[12] which causes many women mental and physical suffering, as further discussed in section 6 below. In the worst cases it may result in maternal deaths due to the chilling effect the law has on health care professionals preventing them from providing the necessary health care to women until it is too late.

A shocking example of this was the death of Savita Halappanavar in October 2012. She died at a Galway hospital of septic shock after being denied an abortion even in the face of an inevitable miscarriage most likely caused by an infection.[13] The medical staff refused to perform an abortion, claiming that "[u]nder Irish law, if there's no evidence of risk to the life of the mother, our hands are tied so long as there's a fetal heart beat."[14] The investigation into her death revealed that "concerns about the law . . . impacted on the exercise of clinical professional judgment" and that the lack of clear clinical guidelines materially contributed to her death.[15]

More than 20 years after the Supreme Court decision, and only after the ECtHR judgment and the tragic death of Savita Halappanavar, did the Irish Parliament finally adopt the Protection of Life During Pregnancy Act in 2013 to clarify the procedure for women seeking a lawful abortion because their life is at risk. However, the Act falls short of meeting international human rights standards, as further discussed below.

INADEQUACY OF THE "PROTECTION OF LIFE DURING PREGNANCY ACT"

The Protection of Life During Pregnancy Act (the "Act"), which entered into force on January 1, 2014, repealed Sections 58 and 59 of the Offenses against the Person Act 1861 that had criminalized any attempt to procure or perform an abortion.[16] However, the Act in no way decriminalized abortion.[17] Instead it re-criminalized it by imposing a criminal penalty of up to 14 years imprisonment for the intentional destruction of "unborn human life."[18] The continued criminalization of abortion and fear of prosecution has had a clear chilling effect on doctors.[19] The threat of this harsh penalty reinforces the stigma associated with abortion in Ireland and is likely to continue to deter doctors from providing the care that women need in life-threatening circumstances.

The government has argued that it is its duty under Article 40.3.3 of the Constitution to criminalize pregnant women that have an abortion in non-life threatening circumstances.[20] The government's statement blatantly ignores Ireland's human rights obligations and the consistent calls by UN treaty monitoring bodies on states to eliminate punitive measures for women and girls who undergo abortions and for health care providers who deliver abortion services.[21]

While the Act sets out in written law that a woman can have an abortion if there is a "real and substantial risk" to her life, it does not provide any clarity about how this standard is to be applied. The Protection of Life During Pregnancy Act was not accompanied by clinical guidance to doctors on how to implement its provisions. The Irish College of General Practitioners and the College of Psychiatrists have expressed concern at the enactment of the Act without guidance for health professionals.[22]

Without this guidance the law is highly unlikely to resolve the legal uncertainty faced by women in dire health situations that may lead to life-threatening circumstances and by their health care providers. According to Dr. Rhona Mahony, Master of the National Maternity Hospital, "[i]t is not clear whether or not the risk to life must be immediate or delayed . . . The critical question arises as to how a substantial risk of mortality is defined. Can it be a 10% risk of death or an 80% risk of death or a requirement for intensive care support?"[23] These questions remain unanswered.

The Irish government has promised that a "Guidance Document to assist health professionals in the implementation of the Act is being prepared and is due to be finalised early in 2014."[24] However, at the time of writing, the guidance document had not been finalized. As a consequence, the government has still not fully complied with the 2010 ECtHR judgment to establish an accessible and effective procedure for women to access legal abortion services. This failure continues to jeopardize women's health and lives, and violate their human rights.

The Act also introduces a burdensome procedure for women to establish their right to an abortion. In situations where it is the physical health of the woman that endangers her life, two doctors (an obstetrician and a doctor with a relevant specialization) must certify that her life is at real and substantial risk before an abortion can be carried out.[25] The Act demands a heightened level of scrutiny in situations when a woman is at risk of suicide requiring three doctors, two of whom must be psychiatrists, to certify the risk to the woman's life.[26] These procedural barriers subject women to discrimination and unnecessarily delay potentially life-saving care.

The Act also provides that health care providers may exercise conscientious objection to perform or assist with an abortion, which is likely to result in additional barriers to access.[27] Under the Act, the health care provider has a duty to ensure the transfer of the pregnant woman's care so that she can access abortion services. However, it does not place a duty on health care institutions to ensure that abortion services are available to women.

Finally, it should be underlined that the Act did not give women a right to access abortion services in circumstances other than when their life is at "real and substantial risk." International human rights bodies have firmly established that states must, at a minimum, allow for legal abortion in instances when the pregnancy poses a risk to the woman's life or health, when the pregnancy results from rape or incest, and in cases of severe fetal impairment.[28] Ireland continues to be in breach of these minimum standards (see text box).

Furthermore, since the 1983 referendum public opinion has significantly changed, and around 80% of the population now supports legalizing abortion in case of fatal fetal abnormalities and where the pregnancy results from rape or incest, and 70% would support it when the woman's health is at risk.[29] However, this has had little impact on lawmakers.

INTERNATIONAL HUMAN RIGHTS STANDARDS RELATED TO RESTRICTIVE ABORTION LAWS

The HRC has repeatedly criticized the criminalization of abortion, implying that such laws are incompatible with the International Covenant on Civil and Political Rights ("ICCPR" or "Covenant").[30] Treaty monitoring bodies have explicitly called on states to ensure access to abortion, at a minimum, where a pregnancy poses a risk to a woman's life or health,[31] when the pregnancy results from rape or incest,[32] and in instances of severe fetal impairment.[33] The Committee Against Torture ("CAT Committee") has on several occasions criticized abortion bans that do not have exceptions for rape and incest[34] and noted that without a rape exception, a woman is constantly exposed to "the violation committed against [her] and [experiences] serious traumatic stress…"[35]

In its 2000 Concluding Observations to Ireland, the HRC indicated its concern about women being forced to continue with pregnancies where this is "incompatible with obligations arising under the Covenant (art. 7) and General Comment No. 28."[36] In 2008, the HRC specifically urged Ireland to "bring its abortion laws into line with the Covenant."[37] In its 2011 Concluding Observations on Ireland, the CAT Committee further indicated that the uncertainty caused by Ireland's failure to clarify the circumstances under which abortion is legal could amount to cruel, inhuman or degrading treatment.[38]

International human rights bodies have also recognized that criminalization of abortion stigmatizes women. The ECtHR in the case of *A, B and C v. Ireland* recognized how stigmatized abortion is in Ireland: "The Court considers it reasonable to find that each applicant felt the weight of a considerable stigma prior to, during and after their abortions."[39]

Treaty monitoring bodies and the ECtHR have affirmed that where abortion is legal it must be accessible in practice and that states have positive obligations to adopt measures to ensure this,[40] including by enacting clear guidelines outlining the conditions under which abortion is legal.[41] The treaty monitoring bodies have also called on states to adequately regulate the exercise of conscientious objection to ensure that it does not limit women's access to abortion; implement a timely, systematic mechanism for referrals to an alternative provider; and ensure that conscientious objection is a personal, not institutional, practice.[42] The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health ("Special Rapporteur on the Right to Health") has further affirmed that states are obligated to ensure that there are available providers who do not invoke conscientious objection to abortion.[43]

LACK OF PROTECTION FOR WOMEN'S HEALTH IN THE CONTEXT OF ABORTION

The Protection of Life During Pregnancy Act upholds the legal distinction between "life" and "health" made in the Supreme Court decision in the *X* case. In practice, this distinction is fictitious, since according to Dr. Mahony, "[d]octors may rarely be certain that a pregnant woman will inevitably die as a result of her pregnancy."[44] Dr. Mahony has affirmed that "it is clinically difficult, if not impossible at times, to distinguish with certainty the difference between risk to health and risk to life."[45]

The current abortion law exposes women with pre-existing health conditions that may deteriorate as a result of pregnancy and who experience ill health as a result of their pregnancy to serious threats to their health and well-being in violation of their basic human rights.

The story of one woman the Center has spoken to illustrates how dangerous the abortion law is for women whose health is endangered during their pregnancy. The woman, who we will call Sarah, experienced extremely heavy bleeding during her pregnancy in 2012. On three separate occasions she hemorrhaged so severely that she had to rush to the hospital, which checked for a fetal heartbeat. Despite the increasingly clear indication that the pregnancy was doomed, the hospital denied her an abortion in line with the Irish abortion law. Sarah explains that she was told each time that there was nothing the hospital or she could do except wait for nature to take its course. She endured an agonizing six weeks of worry, uncertainty and serious endangerment of her health before suffering a miscarriage. Sarah says that she felt powerless, physically and emotionally weak and extremely anxious about the amount of blood she had lost.[46]

"I constantly feared that I would hemorrhage again, I was unable to sleep at night and thought I might die."[47]

Sarah's terrible ordeal is a direct result of the Irish abortion law that has no regard for the protection of women's physical and mental health. The law forces women to endure terrible risks to their health or travel abroad to receive medical care, which disregards not only medical ethics but fundamental human rights. Ireland is the only country in the Council of Europe that only allows abortion when a woman's life is at risk but not when her health is in danger, and Malta is the only European Union country that has a more restrictive abortion law that criminalizes abortion in all circumstances. By denying women whose health is deteriorating an abortion until their life is at "real and substantial risk", Ireland is blatantly violating their rights to be free from cruel, inhuman and degrading treatment and their rights to health and privacy and non-discrimination.

INTERNATIONAL HUMAN RIGHTS STANDARDS RELATED TO ABORTION AND WOMEN'S HEALTH

Treaty monitoring bodies have repeatedly called on states to legalize abortion, at a minimum, when the pregnant woman's health is at risk.[48] The HRC has also highlighted that states must pay attention to the consequences of restrictive abortions laws for women's health.[49]

The case of *L.C. v. Peru* decided by the Committee on the Elimination of Discrimination against Women ("CEDAW Committee") concerned a 13-year-old girl who became pregnant as a result of rape and who attempted to commit suicide by jumping off the roof of a building. She survived but severely injured her back. She was denied necessary medical treatment because she was pregnant, and was also denied an abortion although it would have been legal in her circumstances. L.C. ultimately miscarried but became paralyzed due to the lack of adequate medical treatment. The CEDAW Committee concluded that L.C.'s right to health was violated because there was no effective procedure by which she could establish her right to the medical services that her physical and mental condition required.[50] The Committee noted that Peru should establish a legal framework for abortion that includes a mechanism for rapid decision-making to limit the risks to the health of the pregnant woman, that her opinion should be taken into account, that the decision be well-founded and that there should be a right to appeal.[51] Importantly, it also urged states to interpret abortion laws permitting abortion where pregnancy poses a risk to women's health to include conditions that pose a risk to their mental health.[52]

DENIAL OF ABORTION IN CASES OF FATAL FETAL ANOMALY

The current abortion law prohibits abortion even when the fetus has a fatal anomaly. The Irish government has argued before the ECtHR in the case *D. v. Ireland* that the constitution may allow for an abortion in case of fatal fetal abnormality but this has never been confirmed by Irish courts.[53] Contrary to this argument, during the debate on the Protection of Life During Pregnancy Act, the Attorney General advised the government that Article 40.3.3 of the Constitution does not permit terminations in case of a fatal fetal anomaly. The legislature also opposed the inclusion of fatal fetal anomalies as a legal ground for abortion in the Protection of Life During Pregnancy Act. The relevant amendment was defeated by 124 votes to 19.[54]

It is widely debated in Irish academic and political circles whether it would be constitutional to allow for abortion on grounds of fatal fetal anomaly.[55] Until Irish courts resolve this question, Irish doctors will continue to deny women an abortion in these circumstances.

The denial of abortion services in case of fatal fetal anomaly causes numerous women great suffering and places their physical and mental health at risk. This has become evident from the harrowing stories of several Irish women who have received a fatal fetal anomaly diagnosis and were denied abortion services in Ireland.[56] Common to their experience is a deep sense of being abandoned by the Irish health care system and the state. Many women have been told by their health care providers that there is nothing that can be done for them and that they must simply wait for nature to take its course.

This denial of health care stands in stark contrast to what is considered good medical practice in other European countries. For example, the UK Royal College of Obstetricians and Gynaecologists' Guidelines on Termination of Pregnancy For Fetal Abnormality for England, Scotland and Wales state that whether the woman with a fatal fetal abnormality chooses to continue her pregnancy to term or decides to have an abortion "a coordinated care pathway needs to be established"[57] that ensures that women receive "appropriate information and support."[58]

A group of women and their partners that have suffered as a result of the denial of health care in Ireland have started an advocacy and support group called Terminations for Medical Reasons ("TFMR"). TFMR explains their shared experience:

"We have all been traumatised, shocked and appalled that at our greatest time of need, our country turned its back on us and made us feel like criminals. We found ourselves in unfamiliar places away from family, friends and our homes. This is so cruel and barbaric."[59]

This situation and their experience of being deserted by the health care system demonstrates Ireland's disregard for its human rights obligations to respect women's rights to be free from cruel, inhuman and degrading treatment, and to privacy, health and equality and non-discrimination (see text box).

Amanda Mellet, on whose behalf the Center submitted a complaint to the HRC in late 2013, learned when she was 21 weeks pregnant that her fetus had Edward's Syndrome, a fatal condition. She describes how she felt the Irish health care system abandoned her when she decided she did not want to carry the pregnancy to term:

"I was so shocked to learn that even with a fatal diagnosis you could not end a pregnancy in Ireland. I also felt abandoned. I felt that the Irish health care system turned its back on me. My country was denying me medical care, information, guidance, and referral during the most traumatic times of my life, at a time when I most needed support."[60]

Amanda's experience shows how the Irish state deserts women that wish to terminate a non-viable pregnancy by denying them health care and information, and even refusing to assist them in accessing legal services abroad. Although it is not illegal under Irish law to travel abroad for an abortion, the women that do so describe feeling like criminals exactly because they have to leave the country to access the services.

In 2009, Ruth Bowie was 11 weeks pregnant when she found out that her fetus had anencephaly, a neural tube defect, which results in lack of development of a substantial part of the brain and the inability of the fetus to survive outside of the womb. She explains how she felt about having to travel to the UK to terminate the pregnancy:

"Although we felt no shame about the decision we had made, this journey made us feel like criminals. It made an already traumatic situation infinitely worse."[61]

The intense stigma associated with abortion in Ireland can cause women great mental suffering, as described by Ruth.

Ruth's and Amanda's experiences also reveal how the extremely restrictive abortion law and the accompanying stigma and chilling effect results in a breakdown in the continuum of health care that women in these situations need. Several of the women interviewed for this report told us that they were never offered counselling in Ireland following the termination of a non-viable pregnancy abroad. Ruth explains her experience:

"We feel we missed out on important aftercare. Although we received excellent care and advice from the maternity hospital at the time of diagnosis, there was no support available for us before the termination and, crucially, after it. There are support groups for people who have had miscarriages and stillbirths, but there is nothing for people in our situation. We fall into a category that our healthcare system chooses to ignore and, worse, to stigmatise."[62]

Being forced to travel abroad for a termination in cases of fatal fetal anomaly and the stigma associated with abortion also means that women are deprived of the

opportunity to mourn the loss of their pregnancy in a normal way. Amanda Mellet explains her experience:

"We had to leave the country like criminals, speak in euphemisms to hospital staff in Ireland, pay thousands to end a pregnancy, all the while my heart breaking at having to say goodbye to my darling baby girl. I really felt that having to make all these arrangements prevented me from even beginning to deal with my loss and my grief."[63]

Furthermore, women in these circumstances that travel for an abortion abroad have to leave the fetus' remains behind and may receive the ashes by commercial courier. Siobhán Whelan, who the Center is representing in another complaint to the HRC, explains how after having the termination of her non-viable pregnancy in the UK she was devastated to have to leave the remains of the baby behind in the hospital. In her own words:

"It was a terrible feeling leaving the hospital knowing we would have to get on a plane and leave our baby behind in a foreign country the next day."[64]

Undermining women's ability to mourn the loss of their pregnancy adds to the distress and suffering they already experience by being forced to travel abroad for an abortion. The failure of the Irish state to care for the women that chose to terminate a pregnancy with a fatal fetal anomaly clearly violates women's human rights.

INTERNATIONAL HUMAN RIGHTS STANDARDS RELATED TO ABORTION AND FETAL IMPAIRMENTS

Treaty monitoring bodies have repeatedly urged states to revise restrictive abortion laws to allow women access to abortion at least in cases of serious fetal impairments.[65]

In *K.L. v. Peru*, the HRC held that a state party's failure to ensure that a young woman could terminate her non-viable pregnancy caused her severe mental suffering constituting cruel, inhuman and degrading treatment. The case involved a pregnant minor, K.L. who learned that her fetus had a fatal condition, which also threatened her life.[66] She was denied an abortion and as a result carried the pregnancy to term, and her daughter died shortly after birth.[67] The HRC stated that during the period when K.L. was obliged to continue with the pregnancy, she suffered "pain and distress."[68] The Committee also found that the state had violated her right to privacy. It specifically emphasized the infringement of K.L.'s decision-making, stating, "[i]n the circumstances of the case, the refusal to act in accordance with the author's decision to terminate her pregnancy was not justified and amounted to a violation of article 17 of the Covenant."[69] Finally, the HRC found that the state had failed to take special measures to protect K.L.'s physical and mental health as required by her young age in breach of Article 14.[70]

FORCED TO TRAVEL ABROAD FOR AN ABORTION

Due to the extremely restrictive abortion law, Irish women that want to have an abortion must travel abroad often with terrible consequences for their health and well-being. Official UK statistics show that around 4,000 women with Irish residencies obtained abortion services in the UK in 2012.[71] The actual numbers, however, are likely much higher as some women may not report their actual address and others travel to other European countries to have an abortion.[72]

The Irish Minister of Justice recently recognized that the Irish abortion law has provided for a situation in which there is now a "British solution to an Irish problem."[73] However, the fact that traveling for an abortion is explicitly permitted by Irish law and that women with the necessary means and resources can travel to access abortion services is not an acceptable solution. The UK's largest abortion provider, British Pregnancy Advisory Service, recently ran an ad in Irish newspapers with the slogan: "We'll care for your women until your government does."[74] The phrase captures Ireland's abdication of its human rights responsibility to provide women access to safe abortion services.

When women are forced to travel abroad to access abortion services they face considerable financial and physical hardship and experience a great sense of isolation and lack of support from the health care system.[75] The cost for an abortion starts at around 400 Euros but can be as much as almost 2,000 Euros, and the travel and need to spend time in a foreign country will add several hundred euros to the cost.

The heavy stigma attached to abortion in Ireland means that women often travel in secret and are burdened with having to make travel arrangements and identifying a suitable clinic or hospital at a time when they may already be experiencing considerable hardship.

Amanda Mellet explains how she was affected by the stigma associated with abortion as she travelled to the UK to terminate her pregnancy and how the journey impinged on her dignity:

"The whole journey felt like a nightmare, I wore baggy clothing to conceal my pregnancy. I worried that the taxi driver knew why we were there, I wondered what the hotel receptionist thought, if she saw a lot of Irish couples coming over in a shell shocked state like ours."[76]

Irish doctors have confirmed that the financial pressures and the isolation from health services and family that women experience when they are forced to travel abroad for safe abortion services negatively affects their health.[77] The experience of travelling can also itself jeopardize women's health and well-being.

Amanda Mellet found herself in an endless queue at the airport the day after giving birth to her stillborn baby and explains the inhumanity of the situation and the assault on her health:

"I was crying, weak, bleeding and light headed, willing myself not to faint for fear they wouldn't let me on the flight. All I could think of was getting home to my own bed."[78]

Being forced to travel for a termination also means that women find themselves in an unfamiliar environment without the support of their family that they would have enjoyed at home. They are forced to be out in public settings in a foreign country at a time when they need to recover physically and emotionally. Siobhán Whelan explains how she was feeling walking around in an unfamiliar city the day after the termination of her pregnancy:

"All the while you are trying to keep yourself together emotionally in public. I would have wished for nothing more than to curl up in my own bed at home with my family nearby for support."[79]

Amanda's and Siobhán's experiences demonstrate the extreme hardship associated with travelling for abortion services. Forcing women to travel to obtain medical treatment and exposing them to the stigma associated with obtaining an abortion causes women both physical and mental suffering.

The extremely restrictive abortion law in Ireland, and the need for women to arrange travel and find the necessary funds, also means that women seeking an abortion abroad are likely to access those services later in pregnancy. According to the primary abortion provider in the UK, almost one third of abortions for women from Ireland are carried out at ten weeks and later, compared with just over one fifth of abortions for women from England.[80] Delayed access to abortion services increases the risk of complications and can thus expose women to additional risks to their health.[81] Moreover, women may have lost confidence and trust in the Irish health care system after being forced to travel to access abortion services and be reluctant to return to their own health care providers to seek follow-up care.

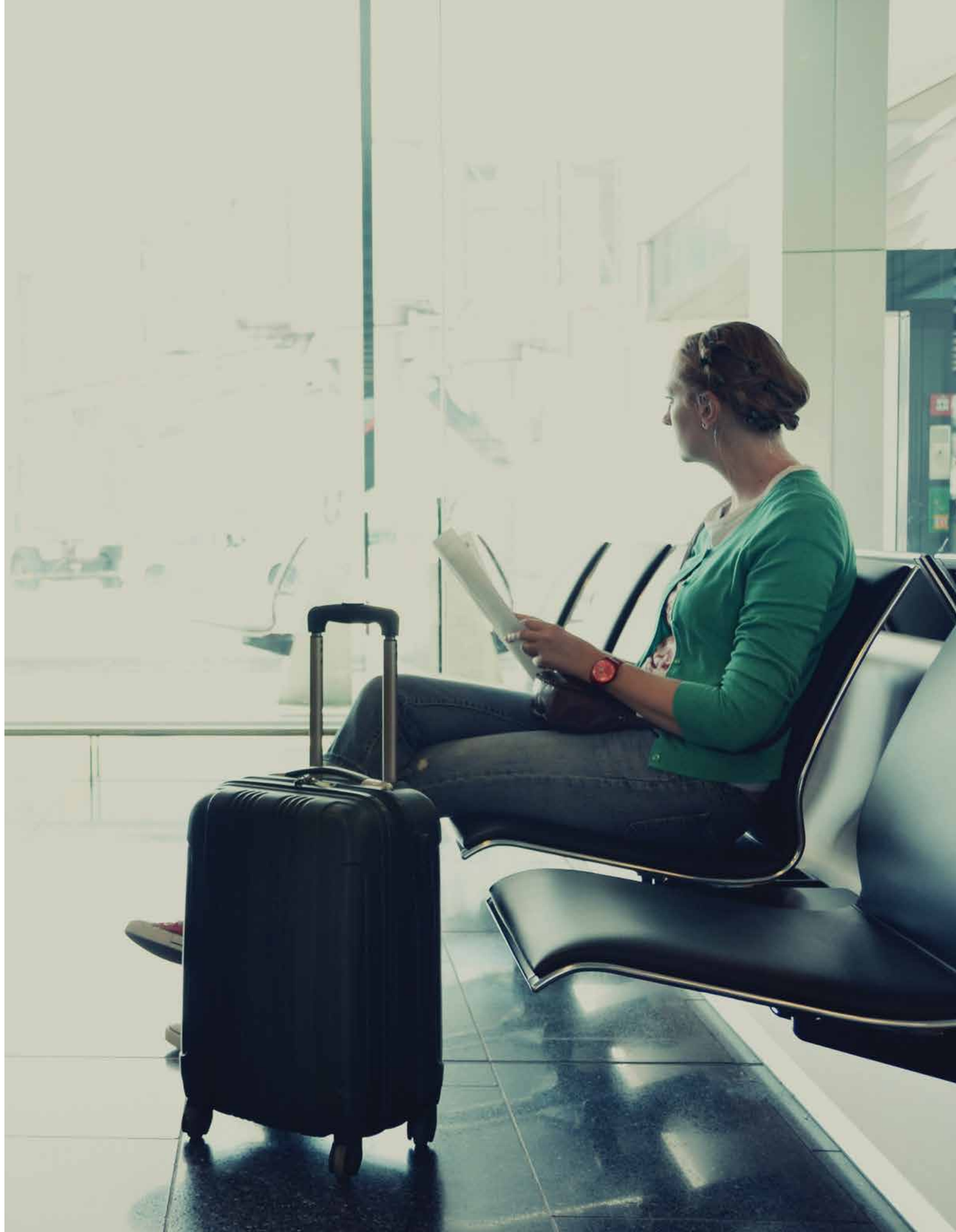
By denying women access to abortion services in Ireland and forcing them to travel abroad to access these services the state violates its human rights obligations. It is failing to respect women's rights to life, to privacy, to be free from cruel, inhuman and degrading treatment, and to equality and non-discrimination (see text box).

INTERNATIONAL HUMAN RIGHTS STANDARDS RELATED TO ABORTION AND FORCED TRAVEL

The HRC has explicitly recognized that forcing women to travel abroad to obtain an abortion can place women's lives at risk and discriminates against them.[82] It has in the past urged Ireland to ensure that women "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)."[83] Other treaty monitoring bodies have also acknowledged that the failure to ensure access to abortion services inflicts mental anguish that can amount to cruel, inhuman and degrading treatment.[84]

The ECtHR in the case of *A, B and C v. Ireland* recognized the negative impact on women's well-being of being forced to travel abroad for an abortion: "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."[85]

The World Health Organization has recognized that post-abortion care is crucial for preventing unsafe abortions and that "[t]he consensus … exists that post-abortion care should always be provided."[86] In this context, the CAT Committee has explicitly expressed concern about the "denial of medical care to women who have decided to have an abortion, which could seriously jeopardize their physical and mental health."[87] The Special Rapporteur on the Right to Health has also made explicit that "[s]tates are obliged to ensure that women are not denied access to necessary post-abortion medical services, irrespective of the legality of the abortion undertaken."[88]



DISCRIMINATION AGAINST WOMEN UNABLE TO TRAVEL FOR AN ABORTION

Certain groups of women, such as low-income women, young women, asylum seekers, migrants, women in state custody, and women with disabilities may not have the ability to travel abroad for a variety of reasons. For instance, women asylum seekers wishing to travel abroad to terminate their pregnancy must "apply and pay for an emergency visa from the Department of Justice, as well as a visa to enter the UK or The Netherlands, often having to wait for up to six to eight weeks for the paperwork or may not be able to travel at all."[89] The cost of traveling, lost income, and inability to afford childcare also create significant barriers for low-income women.

Those women who are unable to travel are therefore disproportionally affected by Ireland's restrictive abortion laws[90] and may resort to "ordering often untrustworthy medication online to self-induce abortion that may put their health at risk."[91]Anecdotal evidence and reports about the seizure of illegal abortion-inducing drugs by Irish customs suggest that some Irish women who are unable to travel take abortion pills at home, without oversight or medical support.[92]

Irish women who are not able to travel abroad to obtain an abortion are effectively denied access to abortion in situations where international human rights bodies have concluded that abortion should be legal and accessible. By denying women access to abortion, the Irish government not only violates all Irish women's human rights by forcing them to travel to obtain an abortion, but in addition discriminates against vulnerable women who cannot travel to access abortion services.

INTERNATIONAL HUMAN RIGHTS STANDARDS ON ABORTION AND NON-DISCRIMINATION

The CEDAW Committee, in General Recommendation 24, has recognized that "[i]t is discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women."[93] In its General Comment No. 28, the HRC recognized that denying women's access to reproductive health services can constitute a violation of their rights to equality and non-discrimination.[94]

The Special Rapporteur on the Right to Health has affirmed that criminal laws and other restrictive policies affecting sexual and reproductive health based on stereotypes disproportionally burden women.[95] In *L.C. v. Peru* the CEDAW Committee found a violation of Article 5 of CEDAW, which requires state parties to eliminate gender stereotypes, because "the decision to postpone the [author's] surgery due to the pregnancy was influenced by the stereotype that protection of the foetus should prevail over the health of the mother."[96]

Several treaty monitoring bodies have particularly framed the inability of vulnerable groups of women to access abortion services as human rights violations. The HRC has expressed concern over "discriminatory aspects of the [abortion] laws and policies" and the effects on poor and rural women in this context.[97] The CEDAW Committee has expressed concern that older women, asylum seekers, women with disabilities, and minorities are disadvantaged in accessing reproductive health services and has urged states repeatedly "[t]o provide equal access to reproductive treatment for all women …, without discrimination"[98] and to "[i]mprove the quality and accessibility of sexual and reproductive health services and guarantee their access to disadvantaged groups of women."[99] The CEDAW Committee has also highlighted that forcing pregnant women to travel abroad for abortions "creates hardship for vulnerable groups, such as female asylum seekers who cannot leave the territory of the State."[100] The CAT Committee has expressed concern that the Irish law results in "serious consequences in individual cases, especially affecting minors, migrant women, and women living in poverty."[101]

INADEQUATE INFORMATION ABOUT ABORTION SERVICES

Ireland's Regulation of Information (Services Outside the State for Termination of Pregnancies) Act 1995 (the "Abortion Information Act" or the "Act") regulates the right to information relating to abortion services lawfully available in another state.[102] The Abortion Information Act heavily restricts the content and form of information that medical providers may give pregnant women about abortion.[103] For example, the Act requires an individual to specifically request written information about termination services abroad before a health care provider can distribute it.[104] The Abortion Information Act requires any such information to be "truthful and objective" and "not accompanied by any advocacy or promotion of, the termination of pregnancy."[105] The Act lacks clarity about the meaning of the terms "advocacy" or "promotion" resulting in a failure to provide sufficient guidance to providers. The Act also prohibits providers from "mak[ing] an appointment or any other arrangement for or on behalf of a woman" with abortion providers outside of Ireland, but provides no guidance about what constitutes "other arrangement[s]."[106] Further, if a judge reasonably believes that the Act has been violated, he or she can authorize a search of the health care providers' premises by the police.[107] Any provider who is convicted of violating the Act is liable to a fine of up to £1,500.[108]

These severe restrictions and the stigma surrounding abortion in Ireland effectively censor what doctors believe they can tell their patients. The law clearly fails to respect women's right to information about abortion.

Siobhán Whelan was denied any information about abortion services abroad and directly experienced the chilling effect of the abortion ban on her health care providers:

"We were not offered any further information, leaflets or phone numbers to talk to anybody about our diagnosis, about our options or about travelling for a termination. I wasn't offered counseling services. We felt we could not bring up the topic of options for possibly terminating the pregnancy with the consultants as having being told in our local hospital 'obviously not in this country' we felt it was illegal to even discuss this or ask too many questions for fear of having the door slammed in our faces or of not receiving any help whatsoever."[109]

Denial of information contributes to women's sense of being stigmatized because they seek an abortion and leaves them without the necessary advice and support from their health care providers with resulting risks to their health and well-being. The unwillingness of health care providers to discuss abortion can also leave women uncertain about whether it is even legal to travel abroad for an abortion. Amanda Mellet explains how the lack of information from her health care providers contributed to the stigma she felt:

"The lack of information from the hospital staff left us wondering if in leaving the country for a termination we were actually seen to be committing a crime."[110]

The disproportionate restrictions on the provision of accurate and comprehensive information about abortion services in Ireland and abroad exacerbates women's suffering at being denied health care in their own country and clearly violates their right to receive sexual and reproductive health related information and to equality and non-discrimination.

INTERNATIONAL HUMAN RIGHTS STANDARDS RELATED TO INFORMATION ON ABORTION

The HRC has recognized that states have the duty to provide access to information, and has repeatedly called on states to adopt measures to do so.[111] In the context of information about abortion, the HRC has expressly shown concern that "insufficient … public information on how to gain access to a legal abortion continues to cause loss of life among women who have resorted to unsafe abortions (arts. 3, 6 and 26)"[112] and recommended that the state party increases information on abortion for all women.[113] The Special Rapporteur on the Right to Health has also reaffirmed that "[r]egardless of the legal status of abortion, women are entitled to receive access to … information related to sexual and reproductive health"[114] and that states have an obligation to "[e]nsure that accurate, evidence-based information concerning abortion and its legal availability is publicly available and that health-care providers are fully aware of the law related to abortion and its exemptions …"[115]

The denial of information on abortion violates women's right to freedom of expression, which includes a right to information concerning reproductive health issues, i.e. information to enable women to make informed choices about their sexual and reproductive health.[116] The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has affirmed that "[a]ccess to information about reproductive health is imperative to a woman's ability to exercise reproductive autonomy, and the rights to health and to physical integrity."[117] The ECtHR has also noted that the right to access reproductive health information "…is often decisive for the possibility of exercising personal autonomy"[118] and has held in *P. and S. v. Poland* that "effective access to reliable information on the conditions for the availability of lawful abortion, and the relevant procedures to be followed, is directly relevant for the exercise of personal autonomy."[119] Denying abortion services and relevant information to women perpetuates the stereotypical notion that women are not competent to make informed, rational decisions about their bodies.[120]

CONCLUSION AND RECOMMENDATIONS

Ireland's continued criminalization of abortion in all cases except when a woman's life is in "real and substantial" danger blatantly disregards its international human rights obligations to protect women's fundamental rights, and is out of touch with both the policies of a majority of European countries and, increasingly, with the views of its population.

International human rights bodies have clearly affirmed that women must have access to safe and legal abortion at a minimum when their life or health is at risk, when the pregnancy results from rape or incest and in cases of severe fetal impairments, and that abortion should never be criminalized.

Forcing women to carry unwanted pregnancies or travel abroad to access abortion services exposes them to severe suffering and hardship, and violates their basic human rights to respect for their dignity, autonomy, equality, life and health.

Ireland must without delay take steps to reform its abortion law and ensure that women have access to safe and legal abortion without discrimination in line with its human rights obligations. In this regard, the Center for Reproductive Rights urges the Irish government to:

- ➔ **Decriminalize abortion for both women and health care providers**
- ➔ **Allow women safe and legal access to abortion in Ireland, at a minimum, when their life or health is at risk, when the pregnancy results from rape or incest, and in case of fatal or serious fetal impairments in line with international human rights standards**
- ➔ **Repeal the Regulation of Information (Services Outside the State for the Termination of Pregnancies) Act, 1995 and adopt positive measures to ensure that women have access to comprehensive information about legal abortion both within and outside Ireland without restrictions in line with international human rights standards**
- ➔ **Adopt effective and accessible procedures for women to exercise their rights to access legal abortion services in Ireland that are non-discriminatory and sensitive to the particular circumstances and needs of different groups of women**
- ➔ **Put in place an effective and time-sensitive process through which individual women can challenge refusals to provide them a legal abortion**

ENDNOTES

1 According to the most recent annual statistics from the UK Department of Health, 3,982 women and girls providing Irish addresses sought abortion services from clinics in England and Wales in 2012 alone, accounting for 68% of non-residents seeking abortion services in the UK that year. *See* Department of Health, Abortion Statistics, England and Wales 16 & 52 (2013), *available at* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211790/2012_Abortion_Statistics.pdf [hereinafter Department of Health, Abortion Statistics, England and Wales].

2 Attorney General v. X and Others, [1992] IESC 1; [1992] 1 IR 1 (Ir.).

3 Protection of Life During Pregnancy Act, (Act No. 35/2013) (Ir.), *available at* http://www.irishstatutebook.ie/pdf/2013/en.act.2013.0035.pdf.

4 *Facts and Figures about Abortion in the European Region, Sexual and Reproductive Health*, World Health Organization (WHO), http://www.euro.who.int/en/what-we-do/health-topics/Life-stages/sexual-and-reproductive-health/activities/abortion/facts-and-figures-about-abortion-in-the-european-region (last visited May 13, 2014).

5 IR. CONST., 1937, art. 40.3.3.

6 Attorney General v. X and Others, [1992] 1 I.R. 1, 4 (S.C.) (Ir.).

7 *Id.*

8 *Id.*

9 A, B, and C v. Ireland, No. 25579/05 Eur. Ct. H. R., para. 253 (2010).

10 *Id.* para. 253.

11 *Id.* para. 267.

12 *See* Department of Health, Abortion Statistics, England and Wales, *supra* note 1, at 16 & 52.

13 Health Service Executive (HSE), Investigation of Incident 50278 from Time of Patient's Self Referral to Hospital on 21st of October 2012 to the Patient's Death on the 28th of October 2012, (2013), *available at* http://www.hse.ie/eng/services/news/nimtreport50278.pdf.

14 *Id.* at 33.

15 *Id.* at 69 & 73.

16 Protection of Life During Pregnancy Act, (Act No. 35/2013) (Ir.), *available at* http://www.irishstatutebook.ie/pdf/2013/en.act.2013.0035.pdf.

17 *Id.* sec. 5.

18 *Id.* sec. 22.

19 Doctors for Choice, *Submission to the Convention on the Irish Constitution, Request for the Convention on the Irish Constitution to recommend a repeal of the 8th Amendment of the Constitution of Ireland by referendum and a removal of the associated legal and constitutional elements which support this amendment*, 11 (Nov. 12, 2013) [hereinafter Doctors for Choice, *Submission to the Convention on the Irish Constitution*].

20 Human Rights Committee, *List of issues in relation to the forth periodic report of Ireland, Replies of Ireland to the list of issues*, para. 76, U.N. Doc. CCPR/C/IRL/Q/4/Add.1 (2014).

21 *See, e.g.*, Committee on the Elimination of Discrimination against Women (CEDAW Committee), *General Recommendation No. 24: Article 12 of the Convention (women and health)*, (20th Sess., 1999), *in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, at 358, para. 14, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008) [hereinafter CEDAW Committee, *Gen. Recommendation No. 24*]; Human Rights Committee, *Concluding Observations: Costa Rica*, para. 11, U.N. Doc. CCPR/C/79/Add.107 (1999); Committee on the Rights of the Child (CRC Committee), *Concluding Observations: Nicaragua*, para. 59(b), U.N. Doc. CRC/C/NIC/CO/4 (2010); 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 & 65(h), U.N. Doc. A/66/254 (Aug. 3, 2011) (by Anand Grover) [hereinafter *Interim rep. of the Special Rapporteur on health (2011)*].

22 Irish College of General Practitioners, *ICGP concerns at the early enactment of the Protection of Life in Pregnancy Act*, Jan. 6, 2014, http://www.icgp.ie/go/about/policies_statements/2014/0773A810-0A14-787E-1F9E449F08FDD88B.html (last visited May 13, 2014); *College tells psychiatrists not to do abortion assessments*, Irish Times, Jan. 3, 2014, http://www.irishtimes.com/news/social-affairs/college-tells-psychiatrists-not-to-do-abortion-assessments-1.1642834 (last visited May 13, 2014).

23 Rhona Mahony, Presentation to the Joint Committee on Health and Children, Public Hearings following the Publication of the Expert Group Report into Matters Relating to A, B, C v. Ireland (Jan. 8, 2013), *available at* http://www.oireachtas.ie/parliament/media/committees/healthandchildren/Presentation-by-Dr-Rhona-Mahony.pdf [hereinafter Rhona Mahony].

24 Human Rights Committee, *List of issues in relation to the forth periodic report of Ireland, Replies of Ireland to the list of issues*, para. 70, U.N. Doc. CCPR/C/IRL/Q/4/Add.1 (2014).

25 Protection of Life During Pregnancy Act, sec. 7(1), (Act No. 35/2013) (Ir.), *available at* http://www.irishstatutebook.ie/pdf/2013/en.act.2013.0035.pdf.

26 *Id.* sec. 9(1).

27 *Id.* sec. 17(1).

28 *See, e.g.*, L.C. v. Peru, CEDAW Committee, Commc'n No. 22/2009, para. 12(b), U.N. Doc. CEDAW/C/50/D/22/2009 (2011); CRC Committee, *Concluding Observations: Chad*, para. 30, U.N. Doc. CRC/C/15/Add.107 (1999); *Chile*, para. 56, U.N. Doc. CRC/C/CHL/CO/3 (2007); *Costa Rica*, para. 64(c), U.N. Doc. CRC /C/CRI/CO/4 (2011); Human Rights Committee, *Concluding Observations: Guatemala*, para. 20, U.N. Doc. CCPR/C/GTM/CO/3 (2012); Committee on Economic, Social and Cultural Rights (ESCR Committee) Committee, *Concluding Observations: Dominican Republic*, para. 29, U.N. Doc. E/C.12/DOM/CO/3 (2010); *Chile*, para. 53, U.N. Doc. E/C.12/1/Add.105 (2004).

[29] *Poll finds 85 per cent support abortion 'in certain circumstances'*, The Journal, Feb. 11, 2013, http://www.thejournal.ie/abortion-poll-support-790621-Feb2013/ (last visited May 13, 2014).

[30] Human Rights Committee, *Concluding Observations: Argentina,* para. 13, U.N. Doc. CCPR/C/ARG/CO/4 (2010); *El Salvador,* para. 10, U.N. Doc. CCPR/C/SLV/CO/6 (2010); *Mexico,* para. 10, U.N. Doc. CCPR/C/MEX/CO/5 (2010); *Monaco,* para. 10, U.N. Doc. CCPR/C/MCO/CO/2 (2008); *Nicaragua,* para.13, U.N. Doc. CCPR/C/NIC/CO/3 (2008).

[31] *See for example,* CEDAW Committee, *Concluding Observations: Indonesia,* para. 42, U.N. Doc. CEDAW/C/IDN/CO/6-7 (2012) (urging the state to "decriminalize abortion in cases… where the health of the pregnant woman or girl is in danger"); Human Rights Committee, *Concluding Observations: Philippines*, para. 13, U.N. Doc. CCPR/C/PHL/CO/4 (2012) ("The State party should review its legislation with a view to making provision for exceptions to the prohibition of abortion, such as protection of life or health of the mother"); ESCR Committee, *Concluding Observations: Nicaragua*, para. 26, U.N. Doc. E/C.12/NIC/CO/4 (2008) ("review its legislation on abortion and to study the possibility of providing for exceptions to the general prohibition on abortion in cases of therapeutic abortion or pregnancies resulting from rape or incest"). *See also* Human Rights Committee, *Concluding Observations: Bolivia,* para. 9, U.N. Doc. CCPR/C/BOL/CO/3 (2013); CEDAW Committee, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, paras. 50-51, U.N. Doc CEDAW/C/GBR/CO/7 (2013).

[32] *See for example,* CEDAW Committee, *Concluding Observations: Pakistan*, para. 32(d), U.N. Doc. CEDAW/C/PAK/CO/4 (2013) (urging the state to "review its abortion legislation with a view to expanding the grounds under which abortion is permitted, for example, cases of rape and incest"); Human Rights Committee, *Concluding Observations: Dominican Republic*, para. 15, U.N. Doc. CCPR/C/DOM/CO/5 (2012) ("The Committee recommends that the State party should review its legislation on abortion and make provision for exceptions to the general prohibition of abortion for therapeutic reasons and in cases of pregnancy resulting from rape or incest"); Committee Against Torture (CAT Committee), *Concluding Observations: Peru*, para. 15(a), U.N. Doc. CAT/C/PER/CO/5-6 (2013) ("The State party should review its legislation with a view to: Amending the general prohibition for cases of therapeutic abortion and pregnancy resulting from rape and incest and provide free health coverage in cases of rape"); CRC Committee, *Concluding Observations: Costa Rica,* para. 64(d), U.N. Doc. CRC/C/CRI/CO/4 (urging the State to "expand legal abortion in cases of rape and intra-family sexual violence"). *See also* Human Rights Committee, *Concluding Observations: Bolivia*, para. 9, U.N. Doc. CCPR/C/BOL/CO/3 (2013); CEDAW Committee, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, para. 50, U.N. Doc CEDAW/C/GBR/CO/7 (2013).

[33] CEDAW Committee, *Concluding Observations: Sri Lanka*, para. 283, U.N. Doc. A/57/38 (2002) ("The Committee encourages the State party to reintroduce legislation to permit termination of pregnancy in cases of rape, incest and congenital abnormality of the foetus"); CAT Committee, *Concluding Observations: Paraguay,* para. 22, U.N. Doc. CAT/C/PRY/CO/4-6 (2011) (expressing concern that abortion is prohibited even when the fetus is not viable and urging the state to review its legislation on abortion). *See also* Human Rights Committee, *Concluding Observations: Bolivia*, para. 9, U.N. Doc. CCPR/C/BOL/CO/3 (2013); CEDAW Committee, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, paras. 50-51, U.N. Doc CEDAW/C/GBR/CO/7 (2013).

[34] 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).

[35] CAT Committee, *Concluding Observations: Nicaragua*, para. 16, U.N. Doc. CAT/C/NIC/CO/1 (2009).

[36] Human Rights Committee, *Concluding Observations: Ireland*, para. 24, U.N. Doc. A/55/40 (2000).

[37] Human Rights Committee, *Concluding Observations: Ireland,* para. 13, U.N. Doc. CCPR/C/IRL/CO/3 (2008).

[38] CAT Committee, *Concluding Observations: Ireland,* para. 26, U.N. Doc. CAT/C/IRL/CO/1 (2011).

[39] A, B, and C v. Ireland, No. 25579/05 Eur. Ct. H. R., para. 126 (2010).

[40] *See, e.g.*, ESCR, *General Comment No. 14: The right to the highest attainable standard of health (Art. 12)*, (22nd Sess., 2000), *in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, para. 12, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008) [hereinafter ESCR Committee, *Gen. Comment* No. 14]; K.L. v. Peru, Human Rights Committee Commc'n No, 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005); L.M.R. v. Argentina, Human Rights Committee, Commc'n No. 1608/2007, U.N. Doc. CCPR/C/101/D/1608/2007 (2011); L.C. v. Peru, CEDAW Committee, Commc'n No. 22/2009, para. 8.17, U.N. Doc. CEDAW/C/50/D/22/2009 (2011); R.R. v. Poland, No. 27617/04 Eur. Ct. H. R. (2011); Tysiąc v. Poland, No. 5410/03 Eur. Ct. H.R. (2007), P. and S. v. Poland, No. 57375/08 Eur. Ct. H.R. (2008).

[41] *See, e.g.*, ESCR Committee, *Concluding Observations: Peru*, para. 21, U.N. Doc. E/C.12/PER/CO/2-4 (2012); CEDAW Committee, *Concluding Observations: Costa Rica*, paras. 32, 33(c), U.N. Doc. CEDAW/C/CRI/CO/5-6 (2011); *Kuwait* para. 42, 43, U.N. Doc. CEDAW/C/KWT/CO/3-4 (2011).

[42] *See* ESCR Committee, *Concluding Observations: Poland,* para. 28, U.N. Doc. E/C.12/POL/CO/5 (2009) (expressing concern that "that women resort to clandestine, and often unsafe, abortion because of the refusal of physicians and clinics to perform legal operations on the basis of conscientious objection (art. 12, 10)" and calling on the state to "take all effective measures to ensure that women enjoy their right to sexual and reproductive health, including by…implementing a mechanism of timely and systematic referral in the event of conscientious objection."); CEDAW Committee, *Concluding Observations: Poland,* para. 25, U.N. Doc. CEDAW/C/POL/CO/6 (2007) ("ensure that women seeking legal abortion have access to it, and that their access is not limited by the use of the conscientious objection clause."); *Slovakia,* para. 29, U.N. Doc. CEDAW/C/SVK/CO/4 (2008) ("adequately regulate the use of conscientious objection by health professionals so as to ensure that women's access to health and reproductive health is not limited…measures should be introduced to ensure that women are referred to alternative health providers"); *Hungary,* para. 31, U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013) (urging the state to "adequately regulate the use of conscientious objection by health professionals so as to ensure that women's access to health and reproductive health is not limited;" introduce measures to ensure women are referred to an alternative provider; and urging the state to ensure that conscientious objection remains a personal, rather than institutionalized, decision).

[43] Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Rep. of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover – Addendum – Mission to Poland,* paras. 50 & 85(f), U.N. Doc. A/HRC/14/20/Add.3 (May 20, 2010).

[44] Rhona Mahony, *supra* note 23.

[45] *Id.* at 4.

[46] Statement by Sarah on file (Apr. 30, 2014) (statement on file with Center for Reproductive Rights).

[47] *Id.*

[48] *See for example,* CEDAW Committee, *Concluding Observations: Indonesia,* para. 42, U.N. Doc. CEDAW/C/IDN/CO/6-7 (2012) (urging the state to "decriminalize abortion in cases… where the health of the pregnant woman or girl is in danger"); Human Rights Committee, *Concluding Observations: Philippines*, para. 13, U.N. Doc. CCPR/C/PHL/CO/4 (2012) ("The State party should review its legislation with a view to making provision for exceptions to the prohibition of abortion, such as protection of life or health of the mother"); ESCR Committee, *Concluding Observations: Nicaragua*, para. 26, U.N. Doc. E/C.12/NIC/CO/4 (2008) ("review its legislation on abortion and to study the possibility of providing for exceptions to the general prohibition on abortion in cases of therapeutic abortion or pregnancies resulting from rape or incest").

[49] Human Rights Committee, *Concluding Observations, Mali*, para. 14, U.N. Doc. CCPR/CO/77/MLI (2003).

[50] L.C. v. Peru, CEDAW Commc'n No. 22/2009, para. 8.11, U.N. Doc. CEDAW/C/WG/20/DR/22/2009 (2011).

[51] *Id.* para. 8.17.

[52] *Id.* para. 9(b)(i).

[53] D. v. Ireland, No. 26499/02, Eur. Ct. H.R., (2006).

[54] Kilian Doyle, *Debate on abortion Bill*, Irish Times, Jul. 11, 2013, http://liveblog.irishtimes.com/be31987970/LIVE-Debate-on-abortion-Bill/ (last visited May. 8, 2014).

[55] *See for example,* Jennifer Schweppe & Eimear Spain, *When is a Foetus not an Unborn? Fatal Foetal Abnormalities and Article 40.3.3,* 3(3) Irish Journal of Legal Studies 92, (2013) *available at* http://ijls.ie/wp-content/uploads/2013/07/IJLS_Vol_3_Issue_3_Article_6_Schweppe_Spain.pdf; Clare Daly (TD), *No need to change the constitution to allow for terminations where there is a fatal foetal abnormality,* Nov. 21, 2013, http://claredaly.ie/no-need-to-change-the-constitution-to-allow-for-terminations-where-there-is-a-fatal-foetal-abnormality/ (last visited May 13, 2014).

[56] *See for example,* Terminations for Medical Reasons (TFMR), http://www.terminationformedicalreasons.com (last visited May 13, 2014).

[57] Royal College of Obstetricians and Gynaecologists, Termination of Pregnancy For Fetal Abnormality in England, Scotland and Wales 12 (2012), *available at* http://www.rcog.org.uk/files/rcog-corpTerminationPregnancyReport18May2010.pdf.

[58] *Id.* recommendation 2.

[59] TFMR, *About us,* http://www.terminationformedicalreasons.com/about-us/ (last visited May 13, 2014).

[60] Statement by Amanda Mellet (Apr. 28, 2014) (statement on file with Center for Reproductive Rights).

[61] Statement by Ruth Bowie (Apr. 28, 2014) (statement on file with Center for Reproductive Rights).

[62] TFMR, *Ruth's Story*, http://www.terminationformedicalreasons.com/our-personal-stories/ruths-story/ (last visited May 13, 2014).

[63] Statement by Amanda Mellet (Apr. 28, 2014) (statement on file with Center for Reproductive Rights).

[64] Statement by Siobhán Whelan (May 12, 2014) (statement on file with Center for Reproductive Rights).

[65] *See, e.g.* CEDAW Committee, *Concluding Observations: Sri Lanka,* para. 283, U.N. Doc. A/57/38 (2002) ("The Committee encourages the State party to reintroduce legislation to permit termination of pregnancy in cases of rape, incest and congenital abnormality of the foetus"); *Malta,* para. 35, U.N. Doc. CEDAW/C/MLT/CO/4 (2010); ESCR Committee, *Concluding Observations: Mauritius,* para. 25, U.N. Doc. E/C.12/MUS/CO/4 (2010); CAT Committee, *Concluding Observations: Nicaragua,* para. 16, U.N. Doc. CAT/C/NIC/CO/1 (2009); ESCR Committee, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, para. 25, U.N. Doc. E/C.12/GBR/CO/5 (2009); CEDAW Committee, *Concluding Observations:* Honduras, para. 25, U.N. Doc. CEDAW/C/HON/CO/6 (2007); CAT Committee, *Concluding Observations: Paraguay,* para. 22, U.N. Doc. CAT/C/PRY/CO/4-6 (2011) (expressing concern that abortion is prohibited even when the fetus is not viable and urging the state to review its legislation on abortion); ESCR Committee, *Concluding Observations: El Salvador*, para. 44, U.N. Doc. E/C.12/SLV/CO/2 (2007); *Monaco*, para. 23, U.N. Doc. E/C.12/MCO/CO/1 (2006); *Chile*, para. 53, U.N. Doc. E/C.12/1/Add.105 (2004); Stedman's Medical Dictionary (28th ed. 2006) (Stedman's Medical Dictionary defines "therapeutic abortion" as "abortion induced for the sake of the mother's physical or mental health *or to prevent the birth of a congenitally compromised child* or of a child conceived as a result of nonconsensual sexual intercourse" emphasis added).

[66] K.L. v. Peru, Human Rights Committee, Commc'n No. 1153/2003, paras. 2.1 & 2.7, U.N. Doc. CCPR/C/85/D/1153/2003 (2005).

[67] *Id.* para. 2.6.

[68] *Id.* para. 6.3.

[69] *Id.* para. 6.4.

70 *Id.* para. 6.5.

71 Irish Family Planning Association (IFPA), Annual UK Abortion Statistics Highlight Need to Repeal Article 40.3.3, Jul. 11, 2013, http://www.ifpa.ie/node/526 (last visited May. 13, 2013).

72 *See* Department of Health, Abortion Statistics, England and Wales, *supra* note 1, at 16 & 52.

73 Ruadhan Mac Cormaic, *Shatter describes abortion restrictions as 'a great cruelty,'* Irish Times, July 24, 2013, http://www.irishtimes.com/news/ireland/irish-news/shatter-describes-abortion-restrictions-as-a-greatcruelty-1.1473673 (last visited May. 8, 2014) [hereinafter Irish Times, *Shatter describes abortion restrictions as 'a great cruelty'*].

74 *Stop exporting your abortion problem, Britain tells Ireland*, The Journal, Nov. 2, 2013, http://www.thejournal.ie/bpas-abortion-ireland-1155918-Nov2013/ (last visited May 13, 2014) [hereinafter The Journal, *Stop exporting your abortion problem*].

75 IFPA, *Psychological, Physical and Financial Costs of Abortion*, http://www.ifpa.ie/node/506 (last visited May 13, 2014).

76 Statement by Amanda Mellet (Apr. 28, 2014) (statement on file with Center for Reproductive Rights).

77 Doctors for Choice, *Submission to the Convention on the Irish Constitution, supra* note 19, at 11.

78 Statement by Amanda Mellet (Apr. 28, 2014) (statement on file with Center for Reproductive Rights).

79 Statement by Siobhán Whelan (May 12, 2014) (statement on file with Center for Reproductive Rights).

80 The Journal, *Stop exporting your abortion problem, supra* note 74.

81 Irish Times, *Shatter describes abortion restrictions as 'a great cruelty,' supra* note 73.

82 Human Rights Committee, *Concluding Observations: Ireland,* para. 13, U.N. Doc. CCPR/C/IRL/CO/3 (2008).

83 *Id.*

84 CAT Committee, *Concluding Observations: Nicaragua,* para. 16, U.N. Doc. CAT/C/NIC/CO/1 (2009); L.C. v. Peru, CEDAW Committee, Commc'n No. 22/2009, paras. 8.15 & 8.18, U.N. Doc. CEDAW/C/50/D/22/2009 (2011).

85 A, B and C v. Ireland, No. 25579/05 Eur. Ct. H. R., para. 126 (2010).

86 World Health Organization (WHO), Safe Abortion: Technical and Policy Guidance for Health Systems 18 (2nd ed. 2012).

87 CAT Committee, *Concluding Observations: Paraguay,* para. 22, U.N. Doc. CAT/C/PRY/CO/4-6 (2011).

88 *Interim rep. of the Special Rapporteur on health (2011), supra* note 21, para. 27.

89 National Women's Council of Ireland, NWCI Policy Position Paper on Abortion 18 (2013), *available at* http://www.nwci.ie/download/pdf/nwci_policy_position_paper_on_abortion_final.pdf [hereinafter NWCI Policy Position Paper on Abortion].

90 According to the Parliamentary Assembly for the Council of Europe, restrictions on safe, affordable and accessible abortions "have discriminatory effects, since women who are well informed and possess adequate financial means can often obtain legal and safe abortions more easily." EUR. CONSULT. ASS., Resolution 1607: Access to safe and legal abortion in Europe, para. 2 (2008).

91 NWCI Policy Position Paper on Abortion, *supra* note 89, at 18.

92 Eilish O'Regan, *Women warned of dangers from illegal abortion pills sold online*, Independent Newspapers, Sept. 10, 2012, http://www.independent.ie/lifestyle/health/women-warned-of-dangers-fromillegal-abortion-pills-sold-online-26896287.html (last visited May 7, 2014).

93 CEDAW Committee, *Gen. Recommendation No. 24, supra* note 21, para. 11.

94 Human Rights Committee, *General Comment No. 28: Article 3 (The equality of rights between men and women)*, (68th Sess., 2000), *in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, paras. 10, 11 & 20, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008).

95 *Interim rep. of the Special Rapporteur on health (2011), supra* note 21, paras. 16-17.

96 L.C. v. Peru, CEDAW Committee, Commc'n No. 22/2009, para. 8.15, U.N. Doc. CEDAW/C/50/D/22/2009 (2011).

97 Human Rights Committee, *Concluding Observations: Argentina*, para. 14, U.N. Doc. CCPR/CO/70/ARG (2000).

98 CEDAW Committee, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, para. 53, U.N. Doc. CEDAW/C/GBR/CO/7 (2013); *see also Greece*, para. 31, U.N. Doc. CEDAW/C/GRC/CO /7 (2013); *see also* Alyne da Silva Pimentel Teixeira v Brazil, CEDAW Committee, Commc'n No. 17/2008, U.N. Doc. CEDAW/C/49/D/17/2008 (2011) (holding 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) (emphasis added).

99 CEDAW Committee, *Concluding Observations: Greece*, para. 31, U.N. Doc. CEDAW/C/GRC/CO /7 (2013), *see also* Alyne da Silva Pimentel Teixeira v Brazil, CEDAW Committee, Commc'n No. 17/2008, U.N. Doc. CEDAW/C/49/D/17/2008 (2011).

100 CEDAW Committee, *Concluding Observations: Ireland*, para. 185, U.N. Doc. CEDAW/C/SR.440 and 441 (1999).

101 CAT Committee, *Concluding Observations: Ireland*, para. 26, U.N. Doc. CAT/C/IRL/CO/1 (2011).

102 Regulation of Information (Services outside the State for Termination of Pregnancies) Act, 1995, sec. 2 (Act No. 5/1995) (Ir.), *available at* http://www.irishstatutebook.ie/1995/en/act/pub/0005/index.html; *see also* A, B and C v. Ireland, No. 25579/05 Eur. Ct. H. R., para. 56 (2010).

103 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.

104 *Id.* sec. 4(b).

105 *Id.* sec. 3(1)(a)(II), 5(b)(i), 5(b)(iii) (notably, the Abortion Information Act does not provide any guidance about what "advocacy" or "promotion" means).

106 *Id.* sec. 8(1).

107 *Id.* sec. 9(1)(b).

108 *Id.* sec. 10.

109 Statement by Siobhán Whelan (May 12, 2014) (statement on file with Center for Reproductive Rights).

110 Statement by Amanda Mellet (Apr. 28, 2014) (statement on file with Center for Reproductive Rights).

111 Human Rights Committee, *Concluding Observations: Benin,* paras. 7 & 10, U.N. Doc. A/60/40 Vol. 1 (2004) ("The State party should make people more aware of the opportunities they have to bring matters before the Constitutional Court … The Committee invites the State party to increase its efforts to inform women [about the prohibition on polygamous unions] and make them aware of these issues, including in the remotest parts of the country."); *Tajikistan,* para. 9, U.N. Doc. A/60/40 Vol. I (2005) ("The State party should take urgent measures to inform families of the burial sites of those who were executed before the moratorium."); *Colombia*, para. 19, U.N. Doc. CCPR/C/COL/CO/6 (2010).

112 Human Rights Committee, *Concluding Observations: Colombia*, para. 19, U.N. Doc. CCPR/C/COL/CO/6 (2010).

113 *Id.*

114 *Interim rep. of the Special Rapporteur on health* (2011), *supra* note 21, para. 30.

115 *Id.* para. 65.

116 ESCR Committee, *Gen. Comment No. 14*, *supra* note 40, para. 11.

117 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Rep. of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, para. 47, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013) (by Juan E. Méndez).

118 R.R. v. Poland, No. 27617/04 Eur. Ct. H. R., para. 197 (2011).

119 P. and S. v. Poland, No. 57375/08 Eur. Ct. H.R. para. 111 (2008).

120 *For more information, see* Rebecca Cook, *Human Rights and Reproductive Self Determination*, 44 Am. U. L. Rev. 975, (1995); Simone Cusack and Rebecca Cook, S*tereotyping Women in the Health Sector: Lessons from CEDAW*, 16 Wash & Lee J.C.R: & Soc. Just. 47, (2009).

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