SEXUALITY, INFORMATION
REPRODUCTIVE HEALTH & RIGHTS

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Re: Supplementary information on Ireland in relation to sexual and reproductive health and rights for the consideration of the Committee on the Elimination of Discrimination Against Women at its 66th session (13 February–3 March 2017)

Dear Honourable Committee Members,

The Irish Family Planning Association (IFPA) submits these remarks based on its experience in providing reproductive healthcare services to women and girls. The submission draws on the experiences of IFPA clients, with a focus on the barriers they encounter when trying to access abortion. It also addresses outstanding legal and policy issues regarding contraception, sexuality education, and the particular sexual and reproductive health needs of migrant women and girls. We also respectfully suggest a number of recommendations.

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 healthcare at its two medical clinics in Dublin and eleven pregnancy counselling centres across Ireland. Our services include 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 2015, we provided more than 12,000 sexual and reproductive health consultations and over 3,600 free pregnancy and post-abortion counselling services. We also delivered sexual health and contraceptive training to over 400 healthcare professionals, parents, support workers and young people. On the basis of this track record, the IFPA is recognised as a respected source of expertise in the provision of sexual and reproductive healthcare services, advocacy and policy development.

I hope that the information provided in this submission will be useful to the Committee in its review of Ireland's compliance with the Convention. Please do not hesitate to contact me should you have any questions.

Yours sincerely,

Niall Behan

Niall Behan
Chief Executive Officer

Submission by the Irish Family Planning Association (IFPA) in relation to the review by the Committee on the Elimination of Discrimination Against Women of Ireland's compliance with the Convention on the Elimination of All Forms of Discrimination Against Women

The Irish Family Planning Association (IFPA) makes this submission in order to supplement the information provided in the State report submitted by the Government of Ireland (CEDAW/C/IRL/6-7). The submission focuses on sexual and reproductive health and rights issues in Ireland and associated violations of **Article 12** of the Convention.

The submission draws on the experiences of IFPA clients, with a focus on the barriers they encounter when trying to access abortion. It also addresses outstanding legal and policy issues regarding contraception, sexuality education, the Sustainable Development Goals (SDGs) and the particular sexual and reproductive health needs of migrant women and girls. We also respectfully suggest a number of recommendations.

1. Denial of abortion services

1.1 Background

Abortion in Ireland is criminalised in almost all circumstances. Women who experience an unplanned or unwanted pregnancy, or pregnancy that has become a crisis in a woman's life must travel to another state to access lawful abortion services, or risk prosecution and self-induce abortion in Ireland. The law on abortion derives from a provision inserted into the Irish Constitution in 1983 – Article 40.3.3 – that accords an equal right to life to prenatal life as to a pregnant woman. The Irish Supreme Court has held that Article 40.3.3 means that abortion is lawful only in cases of risk to a woman's life, as distinct from her health.

1.2 Criminalisation: A deeply gendered form of discrimination

Ignoring the recommendations of international human rights bodies and of the World Health Organisation[1], the Irish Government enacted legislation (the *Protection of Life During Pregnancy Act 2013*) that retains harsh criminal sanctions for women and their doctors; the maximum sentence is 14 years' imprisonment if an abortion is carried out for any reason other than to save a pregnant woman's life.

The prohibition and criminalisation of abortion in Ireland perpetuates gender inequality because it restricts the provision of reproductive health services that only women require

(CEDAW General Recommendation 24). This discrimination is felt most acutely by women who experience multiple, intersecting forms of disadvantage, such as asylum-seeking women, poor women and minors.

Criminal laws on abortion stigmatise women who need to terminate a pregnancy and the healthcare providers who treat them. For the women who attend post-abortion counselling with the IFPA, a common theme in their experiences is the stigma they feel for having undergone a termination.

The criminalisation of abortion in all circumstances except where a woman's life is at risk reduces women to reproductive instruments. This subjects them to a gender-based stereotype that women should continue their pregnancies regardless of circumstances, because their primary role in society is to be mothers and caregivers (CEDAW Article 5).

1.3 Demand for and cost of abortion services

At least 166,951 women and girls travelled from Ireland to access abortion services in another country between January 1980 and December 2015.[2]

In 2015, the year for which the most recent figures are available, 3,451 women and girls in Ireland, or just over nine a day, travelled to the UK to access abortion services.[3] These numbers are an underestimation as not all women will provide their Irish addresses at UK abortion clinics for reasons of confidentiality or otherwise.

While the majority of women who leave Ireland to access abortion services travel to England and Wales, some women access abortion services in other European countries, such as the Netherlands. Increasingly, women who are unable to travel to another country for abortion services access the abortion pill online (see section 1.6 on clandestine abortions).

The State report (Reply of Ireland, paras 213-214) does not provide information relating to costs or detail the physical, psychological and financial burdens involved in travelling abroad for healthcare services that are criminalised in Ireland. An abortion procedure can cost €600 to €2000 in the UK, depending on the clinic and the stage of gestation. Additionally, women must cover the cost of flights and accommodation and also incur indirect costs, such as childcare and loss of earnings.

1.4 Impact of abortion law on marginalised groups

The requirement to travel abroad to access safe and legal abortion services has a disproportionate impact on vulnerable or disadvantaged women and girls. This includes women in poverty or living on low income, asylum-seeking and undocumented women who cannot travel freely to other states, women with disabilities and minors.

Costs can be an insurmountable barrier for some women, particularly when poverty intersects with other forms of disadvantage, such as a woman's legal status. Women asylum seekers – who do not have the right to work and must survive on a weekly allowance from the State of €19.10 – incur additional costs to those outlined above, such as a re-entry visa to Ireland (€60) and an entry visa for the country to which they are travelling (€60-100, depending on country). If the woman is undocumented, she will also need a temporary travel document (€80). No financial assistance is available from the State.

The IFPA knows from our services that women feel humiliated and degraded by the repeated disclosure of a situation that is private and personal to multiple agencies and state and embassy officials in order to obtain the necessary documentation. Their dignity is violated at every turn.

IFPA pregnancy counsellors have supported women who are pregnant, have made a decision that they cannot continue the pregnancy, but who are unable in spite of their best efforts to access abortion services outside the State. We know of women who have attempted to gain entry to another state without a visa and who have been refused entry, women who resort to illegal and potentially unsafe methods to end the pregnancy, and women who are forced to parent against their will.

1.5 Impact of abortion law on women's health

The constitutional, legislative and regulatory system in Ireland necessitates a medically unsound distinction between risk to the life of a pregnant woman and risk to her health. Furthermore, it requires doctors to refer to criminal legislation rather than clinical best practice in determining risk to life. The pregnant woman's views are not taken into account as to the nature of the risk.

The legal distinction between life and health may put women's lives at risk and prevent medical practitioners from acting in women's best interests. Doctors must wait until a woman's condition has deteriorated from risk to health to risk to life before a lawful termination of pregnancy can be carried out.

Women whose pregnancies cause serious risk to health must leave the state to terminate their pregnancy. Unlike any other medical treatment situation, therefore, the continuum of care is broken: the onus shifts to the patient to make contact with a doctor outside Ireland and to provide her medical history. This doctor is unlikely to have the opportunity to discuss her case with the treating doctor involved in her antenatal care prior to the abortion.

CASE STUDY: Lack of dignity in access to health

Jana is a married mother of one living in Galway. Her first pregnancy was very difficult and took a serious toll on her health. When she learns she is pregnant for a second time, she worries about how she'll care for her two year-old daughter if she has the same problems as her first pregnancy.

Her GP advises her that she may experience similar medical problems in a second pregnancy. Jana asks her GP about a termination. He tells her that because of the law, he cannot make a referral for her to an abortion clinic in the UK.

Jana considers her options and decides that, because of her health issues, ending the pregnancy is the right decision for her and her family. She has an early medical abortion at a clinic in the UK and returns home the same day. The abortion medication begins to take effect at the airport, and there is a lot of bleeding. She has to change her clothes. The bleeding continues for the duration of the flight and the bus journey home from Shannon airport. She finds the experience extremely distressing and embarrassing.

1.6 Clandestine abortion

The State report does not provide information on clandestine abortion (Reply of Ireland, para 22). The IFPA knows from its services that women who cannot travel for abortion services are increasingly importing medication and risking prosecution by self-inducing abortion. While there are sources of reliable medication (the abortion pill), women risk obtaining ineffective or harmful medication. When women import and self-administer medication, they do so with either no medical advice or supervision, or only online support.

No official figures exist for use of the abortion pill in Ireland. A 2016 paper in the British Journal of Obstetrics and Gynaecology estimates that 1,600 women in Ireland and Northern Ireland had abortion pills sent to them by one web-based service over three years.[4]

The IFPA has treated women who have incurred risks to their health when complications arose after using the abortion pill, because they were deterred or delayed by fear of prosecution from going to their doctor or presenting at a hospital.

CASE STUDY: Self-induced abortion using medication sourced online

Miriam is shocked and scared when she discovers she is pregnant. She is in a new relationship and doesn't feel that she and her boyfriend are emotionally or financially ready to become parents. The only person she tells is her sister. She is afraid that other family members and friends will judge her for wanting an abortion. She lives in a small town and is worried about people finding out she had an abortion.

She decides to obtain the abortion pill from a website. She is very nervous about doing something illegal and fears that using medication obtained this way might be dangerous. But this is the only option she can afford.

Miriam is on her own when she takes the pills. The experience is frightening. She doesn't know what to expect and isn't prepared for the pain involved. She bleeds heavily. She doesn't know where to turn.

Afterwards, she is worried that the pills might not have worked. But she is afraid to go for a post-abortion medical check-up in case the doctor reports her to the Gardaí.

1.7 Protection of Life During Pregnancy Act 2013

The current legal framework on abortion is wholly inadequate and fails to guarantee practical access to the limited right to abortion.

The Guidance Document[5] (Reply of Ireland, para 208) is entirely procedural in nature and does not provide clinical guidance to healthcare professionals; it is restrictively drafted and provides no assistance to medical professionals as to how they are to determine that a risk to health involves a risk to life. It contains no additional provisions for ensuring that particularly vulnerable groups, such as asylum seekers, can access lawful abortion.

The tests to be applied under the Act are onerous and unworkable in clinical practice in many circumstances. The Act is discriminatory because it includes more onerous decision-making processes if the risk to life is from suicide than when a physical health risk is present (Reply of Ireland, para 210). The Act also discriminates against women with low educational attainment, women with intellectual disabilities and minors who may face serious challenges in navigating the complex and burdensome certification and review processes.

As a result, some women who are potentially eligible for lawful abortion in Ireland travel for safe abortion services elsewhere. In 2015, three IFPA clients who believed that their pregnancy put their lives at risk, chose to travel abroad, rather than subject themselves to the certification process under the Act.

1.8 Abortion Information Act: Encoding gender stereotypes

The *Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995*, more commonly known as the 'Abortion Information Act', requires that information on abortion must be given directly to the woman, and only if she is given information, counselling and advice about all the options available to her (abortion, parenting, adoption). The Act prohibits service providers, such as doctors and counsellors, from making an appointment for an abortion in another state on behalf of their client. Infringement of the legislation is subject to criminal sanctions.

The way in which information about abortion is regulated encodes gender stereotypes by framing women as irrational, untrustworthy and incapable of making rational decisions about their pregnancies (CEDAW Article 5). The regulation of women's right to information on abortion is an unwarranted interference with their right to make autonomous decisions about their own healthcare. It also impacts on doctors' ability to act in their patients' best interests. The Act, therefore, confers no health benefits on pregnant women, but interferes with their right to health.

The stated purpose of the Abortion Information Act is to prescribe the conditions under which women can be given information about abortion services lawfully available in other states. The IFPA knows from its services that the Act imposes procedural obstacles to women's access to information. This is not consistent with international human rights law and women's right to dignity in access to health services.

Additionally, the Act fails to protect pregnant women from the operation of rogue agencies,[6] which masquerade as legitimate crisis pregnancy centres, but misinform, intimidate and manipulate women with the aim of preventing them from having abortions.[7]

1.9 Citizens' Assembly: A potential positive development towards abortion law reform

The government has convened a Citizens' Assembly, comprised of 99 citizens, and chaired by a Justice of the Supreme Court, to make recommendations to Parliament about constitutional change to Article 40.3.3. While the IFPA welcomes the establishment of the Citizens' Assembly as an important discussion forum, the process is, of itself, insufficient to meet the State's obligations under international human rights law, which requires both constitutional and legislative reform.

The Citizens' Assembly will report to Parliament in June 2017. To date, however, the State has provided little information about the steps which will then be taken. A Special Parliamentary Committee[8] will be charged with considering the report of the Citizens' Assembly; however, no clear timeline has been published for its deliberations. Nor has any indication been given a time period within which actions will be taken as a result of these processes.

The Citizens' Assembly has spent a session discussing fatal foetal anomaly as part of its process. However, no definite commitment has been made to introduce any new measures into law. Such discussion is inadequate to implement a 2016 decision by the UN Human Rights Committee[9]. The Committee held that the denial of an abortion to a woman whose pregnancy had a fatal foetal impairment violated her human rights and caused her "intense physical and mental suffering". The State is required to fully implement the Committee's ruling and ensure other women do not experience similar harms and violations of their human rights.

2. Accessibility, availability and affordability of modern contraceptive methods

A number of studies and reports have identified barriers preventing young people from accessing contraception.[10] These include regional disparities in the quality and availability of services, stigma and lack of confidentiality. In addition, the 2010 *Irish Contraception and Crisis Pregnancy Study* identified the cost of contraception as a significant access barrier for young people.[11]

The law regulating access to contraceptives for adolescents is very unclear because the age of medical consent is 16 but the age of sexual consent is 17. The situation is further complicated by the fact that the law does not explicitly prohibit healthcare providers from delivering services to girls under the age of 16. As a result of this legal ambiguity, doctors are often unsure of the law and may decide not to provide contraceptive services to young women under the age of sexual consent for fear of prosecution.

In 2011, the Law Reform Commission (LRC) recommended that young people under the age of 16 should be able to give their consent to medical treatment based on an assessment of their maturity, in "exceptional circumstances". Albeit this recommendation falls short of the World Health Organization recommendation[12] that information and services should be provided without mandatory parental and guardian authorisation or notification, its implementation would go some way to improving the current situation and its non-implementation is of concern.

3. Education on sexual and reproductive health

The provision of sexuality education in Ireland is patchy and inconsistent. Although the Department of Education has developed policy and curriculum guidelines, as well as other resources, significant freedom is given to individual schools in developing a policy on sexuality education. According to the Department of Education, this policy should reflect a school's core values and ethos as outlined in its mission statement. In practice, this means that not all schools provide comprehensive information on the full range of contraceptive methods. As a result, there is uneven implementation of sexuality education across the country and the information provided to young people varies greatly. Monitoring and evaluation systems are also inadequate to ensure effective implementation of the curriculum. The policy allows schools discretion to invite external groups to give workshops or deliver talks that focus exclusively on heterosexual relationships, promote abstinence until marriage and/or advocate against abortion. As a result, young people go through the school system without acquiring adequate information and knowledge to negotiate safe sexual relationships and to protect themselves from sexually transmitted infections and unplanned pregnancy.

4. Migrant women's and girls' sexual and reproductive health

The IFPA is deeply concerned about the harms caused by inadequate sexual and reproductive health services to the physical and mental health and wellbeing of women and girls who are living in direct provision, the system Ireland uses to provide for the welfare of asylum seekers as they await decisions on their asylum application.

4.1 Contraception

The IFPA knows from its services that some women and couples who wish to limit their family size, often in the interests of the wellbeing of their children, have been unable to do so. It is critical that women and girls living in direct provision have the information and means to protect themselves from sexually transmitted diseases (STIs) and to control their fertility and plan the number and spacing of their children.

Migrant women and girls experience particular problems accessing contraception.[13] This is due to cost, lack of information, problems with changing GPs or a refusal to prescribe contraception. Migrant women report that the Irish health care system does not fully meet their needs, either because they do not know about the services available or how to access them.

4.2 Female genital mutilation (FGM)

It is estimated that at least 5,277 women and girls in Ireland have experienced FGM.[14] While FGM is prohibited by the *Criminal Justice (Female Genital Mutilation) Act 2012*, legislation alone is insufficient to ensure the abandonment of the practice. Immediate action is needed across government departments to put in place proper protection and prevention measures, as part of a comprehensive plan to safeguard women and girls (CEDAW General Recommendation 14).

To address these issues, it is important that sexual and reproductive health is included as a distinct theme within the National Health Intercultural Strategy that is currently being developed by the Health Service Executive (HSE).

5. Sustainable Development Goals (SDGs)

Ireland has undertaken a range of commitments within the framework of the Sustainable Development Goals (SDGs). Goal 5 is “achieving gender equality and empowering all women and girls”. But the goals on poverty, health, including universal access to reproductive health, education, including comprehensive sexuality education, decent work and inequalities are also of critical significance to women and girls. The SDGs are of national application and are also relevant to Ireland’s overseas development commitments. The government has expressed very strong commitment to the SDGs, however, no National Action Plan for their implementation has been produced.

RECOMMENDATIONS

The IFPA respectfully requests that the Committee make the following recommendations to Ireland:

- Repeal Article 40.3.3 of the Constitution;
- Decriminalise abortion in all circumstances;
- Repeal the *Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995* in order that women and girls can access information about abortion services in other states in a manner consistent with international human rights law and women’s right to dignity in access to health services;
- Repeal the *Protection of Life During Pregnancy Act 2013* and replace it with a legislative and policy framework that upholds the reproductive rights of women and girls and guarantees that abortion services are available and accessible in a manner that ensures their autonomy and decision-making is respected, in line with best international health practice;
- Remove all existing legal, policy and cost barriers to adolescents’ and young women’s use of modern forms of contraception and ensure their access to contraceptive information and services without mandatory parental and guardian authorisation or notification;
- Ensure that conscience based refusals of abortion care do not jeopardise women and girls’ access to abortion services;
- Allocate additional resources to the provision of comprehensive sexuality education to ensure that all young people receive high-quality, evidence-based sexuality education, and ensure that a school’s ethos or value system does not compromise the quality and accuracy of the information students receive about sexual and reproductive health and rights;
- Eliminate specific access barriers impacting marginalised groups including girls and young women, asylum-seekers and those living in 'direct provision', undocumented migrants, women or girls with limited financial means, women or girls with disabilities and members of the Traveller community;

- Allocate resources for the establishment of an inter-departmental committee on FGM tasked with the role of drawing up a National Action Plan to combat FGM as a whole of government approach;
- Ensure that sexual and reproductive health is included as a distinct theme within the new National Health Intercultural Strategy;
- Assign responsibility for a National Action Plan (NAP) for the implementation of the SDGs to the Department of An Taoiseach. Ensure the involvement of women and girls in the development, monitoring and implementation of the NAP. Dedicate appropriate resources to Ireland's commitments to the achievement of the SDGs.

References

[1] World Health Organisation: Safe abortion: technical and policy guidance for health systems. 2nd edition 2012 1,18 (2nd ed., 2012), Available at: http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf. The WHO states that any "…legal restrictions on sexual and reproductive health services are likely to have serious implications for health". They assert that "restricting legal access to abortion, for example, does not decrease the need for abortion, but it is likely to increase the number of women seeking illegal and unsafe abortions, leading to increased morbidity and mortality."
World Health Organisation, 2015, 'Sexual health, human rights and the law'. p.16, Available at: http://apps.who.int/iris/bitstream/10665/175556/1/9789241564984_eng.pdf?ua=1. The WHO states that "Legal restrictions also lead many women to seek services in other states or countries, which is costly, delays access and creates social inequities."
See Committee on the Rights of the Child, 71st Session, Concluding observations on the combined third and fourth periodic reports of Ireland UN Doc CRC/C/IRL/CO/3-4, 29 January 2016; United Nations Committee on Economic, Social and Cultural Rights, 55th session, 1 – 19 June 2015, Concluding Observations: Ireland, UN Doc E/C.12/IRL/CO/3, 19th June 2015; Human Rights Committee, 111th Session. Concluding observations on the fourth periodic report of Ireland, UN Doc CCPR/C/IRL/CO/4, 19 August 2014; United Nations Committee against Torture, 46th session, 9 May - 3 June 2011 Concluding Observations: Ireland, UN Doc CAT/C/IRL/CO/1, 17 June 2011; Report of the Special Rapporteur the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. UN Doc A/66/254. 3 August 2011; UN Committee on the Elimination of Discrimination against Women, 33rd session, Concluding Comments: Ireland, UN Doc CEDAW/C/IRL/CO/4-5, 13 July 2005; UN Committee on the Elimination of Discrimination against Women, 21st session, Report of the Committee on the Elimination of Discrimination against Women, UN Doc A/54/38/Rev.1, 7-25 June 1999.

[2] For more information, please see: https://www.ifpa.ie/Hot-Topics/Abortion/Statistics

[3] UK Department of Health (2016) *Abortion statistics: England and Wales, 2015*. Available at: https://www.gov.uk/government/statistical-data-sets/abortion-statistics-england-and-wales-2015

[4] Aiken ARA, Gomperts R, Trussell J. (2016) 'Experiences and characteristics of women seeking and completing at-home medical termination of pregnancy through online telemedicine in Ireland and Northern Ireland: a population-based analysis', *British Journal of Obstetrics and Gynaecology*

[5] Department of Health (2014) *Implementation of the Protection of Life During Pregnancy Act 2013: Guidance Document for Health Professionals.* Available at http://health.gov.ie/wp-content/uploads/2014/09/Guidance-Document-Final-September-2014.pdf

[6] Ellen Coyne & Catherine Sanz, 'Women told abortion can cause cancer and create sex abusers', *The Times (Ireland edition)*, 5 September 2016

[7] In November 2016, the Minister for Health announced that his department would conduct a review of the Abortion Information Act, however no further information has been provided as to the nature or timeline of this review.

[8] Government of Ireland, *Government Statement – 8th Amendment of the Constitution*, 25 October 2016. Available at: http://health.gov.ie/wp-content/uploads/2014/09/Guidance-Document-Final-September-2014.pdf

[9] Human Rights Committee, 116th Session. Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2324/2013. UN Doc CCPR/C/116/D/2324/2013.

[10] IPPF European Network (2015) *Barometer of Women's Access to Modern Contraceptive Choice in 16 EU Countries: Key Findings and Policy Recommendations*. Available at: http://www.ippfen.org/sites/default/files/Barometer_final%20version%20for%20web%20(2)_0.pdf

[11] Crisis Pregnancy Programme (2012) *Irish Contraception and Crisis Pregnancy Study 2010 (ICCP-2010) A Survey of the General Population*. Available at: http://www.crisispregnancy.ie/publications/irish-contraception-andcrisis-pregnancy-study-2010-iccp-2010-a-survey-of-the-general-population/; Mc Geetal (2008) *The Irish study of sexual health and relationships. Sub report 2: Sexual health challenges and related service provision*. Available at: http://crisispregnancy.ie/wp-content/uploads/2012/05/ISSHR-sub-report-2.pdf; Abbey Hyde & Etaoine Hewlitt (2004) *Understanding Teenage Sexuality in Ireland*, Crisis Pregnancy Agency Report N°9. Available at: http://crisispregnancy.ie/wp-content/uploads/2012/05/9.-understanding-teenage-sexuality-in-Ireland.pdf

[12] World Health Organization (2014) *Ensuring human rights in the provision of contraceptive information and services: guidance and recommendations*

[13] Crisis Pregnancy Programme Report No. 25 (2012) *Attitudes to Fertility, Sexual Health and Motherhood amongst a Sample of Non-Irish National Minority Ethnic Women Living in Ireland*, 106. Available at http://crisispregnancy.ie/wp-content/uploads/2012/06/migrant-women-report.pdf

[14] Luk Van Baelen, Livia Ortensi & Els Leye (2016) 'Estimates of first generation women and girls with female genital mutilation in the European Union, Norway and Switzerland', *The European Journal of Contraception & Reproductive Health Care*