August 9, 2013

Human Rights Committee
Office of the United Nations High Commissioner for Human Rights
Palais des Nations
CH-1211 Geneva 10
Switzerland

Re: Supplementary Information on Ireland Submitted to the Pre-Sessional Working Group of the Human Rights Committee during its 109 Session.

Dear Committee Members:

The Center for Reproductive Rights (the Center) has prepared this letter to assist the Pre-Sessional Working Group of the Human Rights Committee (the Committee) in its review of Ireland's compliance with the International Covenant on Civil and Political Rights (the Covenant) and formulation of the list of issues during the 109 Session.[1] This letter is submitted in accordance with the new optional reporting procedure (LOIPR) under the Covenant that Ireland has agreed to submit under. With this letter, we hope that the Committee's list of selected issues will cover several areas of concern related to violations of women's rights stemming from Ireland's restrictive abortion law, as discussed below. Ireland has ratified the Covenant, but has failed to incorporate it into domestic law, preventing Irish women from using its protections to seek abortion services in Ireland.[2]

Irish law currently allows abortions only in cases where there is a "real and substantial" risk to the woman's life, as distinct from her health. Under this scheme, women seeking abortions for any other reason, including health, are either forced to travel abroad or, if unable to travel, forced to carry their pregnancy to term regardless of the trauma or risk involved. Scores of Irish women travel to the U.K. every year to terminate their pregnancies, with damaging consequences on their health and rights.[3]

Ireland's restrictive abortion scheme has been repeatedly criticized by UN treaty monitoring bodies, including this Committee.[4] As section I of this letter will discuss, abortion remains criminalized in Ireland and even with the recently adopted abortion law, women will be unable to access the only exception (when their lives are at risk). Sections II and III address the abortion ban's narrow exception and its concomitant harms to women's health and well-being, in violation of international human right standards. The letter concludes with a list of suggested questions to be posed to the state party for the Committee's consideration (Section IV).

I. Ireland's Abortion Ban (Articles 2, 3, 6, 7)

A. Abortion Law in Ireland: Background

Abortion was until recently completely banned in Ireland, as per the Offenses Against the Person Act of 1861.[5] Section 58 of the Act defined any attempt to procure or perform an abortion, including cases where a woman's life was at risk, as a felony with a punishment of up to life

imprisonment.[6] After a referendum in 1983, Article 40.3.3 was added to the Irish Constitution, codifying a presumption against abortion but acknowledging a woman's right to life: "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."[7]

In 1992, the Supreme Court of Ireland decided *Attorney General v. X and Others,* a case in which the state enjoined a 14-year-old girl from obtaining an abortion abroad for a pregnancy resulting from rape.[8] The Court clarified that there is an exception to the abortion ban when there is a "real and substantial" risk to the woman's life, including the risk of suicide.[9] The exception does not include a risk to the pregnant woman's health.[10] Despite the *X* judgment, the Irish Parliament failed to codify any exceptions. This lack of codification and implementation of the exception was substantially criticized by the European Court of Human Rights in 2010 in *A, B and C v. Ireland*.[11] The Court noted that the state had not provided a framework to establish whether a woman fell within the purview of the exception provided in the *X* decision and had caused a systemic "lack of certainty for a woman seeking a lawful abortion in Ireland."[12]

Doctors in Ireland have to balance their medical opinions with the substantial cost of misinterpreting the law, resulting in a systemic lack of terminations.[13] This lack of implementation of the life exception is exemplified in the death of Savita Halappanavar, a pregnant woman who died at a Galway hospital after being denied an abortion even in the face of an inevitable miscarriage.[14] Though she and her husband requested a termination, the medical staff refused, 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."[15] The investigation of 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.[16]

B. Gaps in the New Law and Failure to Properly Implement the Exception to the Abortion Ban (Articles 2, 3, 6, 7)

Ireland did not amend its laws to conform to the *X* decision for 21 years, until the passage of the Protection of Life during Pregnancy Act in July 2013.[17] As will be explained below, the new Act has several flaws, not only with regard to the extremely narrow scope of the exception to the abortion ban. Together, these aspects of the law will continue to prevent women from obtaining lawful abortions when their lives are at risk, with consequences for Ireland's ability to comply with its obligations under Article 2 of the Covenant.

First, while the passage of the Act codifies the "real and substantial risk" to the woman's life exception, <u>it does not provide any clarity about how this standard is to be applied</u>, perpetuating implementation problems. This failure to clarify the meaning and application of the "real and substantial risk" standard will continue to confuse medical providers.[18] According to Dr. Rhona Mahony, Master of 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?"[19] Without clarification, these questions remain unanswered and doctors

continue to balance their medical opinions and legal ambiguity; a regime that is likely to result in continued widespread lack of terminations.

Second, the Act upholds the legal distinction between "life" and "health" described in the *X* decision.[20] In practice, this distinction is fictitious, since "[d]octors may rarely be certain that a pregnant woman will inevitably die as a result of her pregnancy."[21] In this way, "it is clinically difficult, if not impossible at times, to distinguish with certainty the difference between risk to health and risk to life."[22] To force medical providers to withhold treatment until a serious health condition worsens to the extent that it can be described as life-threatening corresponds poorly with medical ethics. The Act thus risks placing medical providers yet again in situations in which they will have to choose between *either* acting according to their sound clinical judgment in their patient's best interest *or* staying true to the letter of the law. In sum, excluding health as a ground for legal abortion constrains the practice of medicine and endangers women's health.

Third, while the Act acknowledges suicide as a risk to a woman's life, it requires a heightened level of scrutiny for the exception to apply in situations when a woman is at risk of self-harm. Instead of two medical practitioners to certify that the risk to the woman's life is real and substantial, a claim of suicide requires three, two of whom must be psychiatrists.[23] These heightened procedural barriers when there is a risk of suicide subject women to discrimination on the basis of their mental health and delays potentially life-saving care.

Finally, the Act reaffirms the state's commitment to criminalization of abortion by establishing a maximum of 14 years' imprisonment for violation of the law.[24] Both women seeking abortion services and providers performing them can be subject to prosecution. The threat of this extreme penalty will reinforce the stigma associated with abortion in Ireland, prevent women from seeking care and physicians from providing the care that women need in life-threatening, traumatic circumstances. Thus, instead of *decriminalizing* abortion, the state with the new law has *recriminalized* the procedure – in stark contrast with recommendations from various human rights authorities.[25] The state's refusal to decriminalize abortion results in a chilling effect on doctors who fear criminal penalties for violating the law. In this regard, women will continue to find lawful abortions unavailable and inaccessible.

The widespread lack of implementation and criminalization of abortion violate the state's obligations under the Covenant. This Committee has indicated that the lack of implementation of lawful abortion implicates an individual's right to life.[26] The Committee has also expressed its concern about medical providers not performing lawful abortions, suggesting that legal abortions should be ensured by the state.[27] The Committee has repeatedly criticized the criminalization of abortion in many different states, implying that such schemes are incompatible with the Covenant.[28] In its 2000 Concluding Observations to Ireland, the Committee 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."[29] In 2008, the Committee specifically urged Ireland to "bring its abortion laws into line with the Covenant."[30] In its 2011 Concluding Observations for Ireland, the Committee Against Torture (CAT Committee) 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 (CIDT).[31]

Thus, Ireland's failure to clarify the "real and substantial risk" standard and decriminalize abortion results in harms that are incompatible with the Covenant and international norms.

Moreover, the abortion restrictions disparately impact women, preventing them from enjoying the protections of the Covenant equal to men in violation of Article 3.

For the foregoing reasons, abortions in instances where the woman's life is at risk will remain unavailable and inaccessible. This situation violates women's right to life, causes severe physical and mental pain that amounts to CIDT, and constitutes gender discrimination.

II. Ireland's New Restrictive Abortion Law and Its Effects (Articles 3, 7, 17, 19)

While there is now an explicit exception to the abortion ban for a risk to the woman's life, Ireland's abortion regime continues to lack other exceptions that have become internationally accepted as minimum grounds for legal abortion. These include, as will be explained below, protection of the woman's health, when the pregnancy is a result of rape or incest, and when fetuses are afflicted with severe fetal impairments.[32]

To preserve the pregnant woman's health. According to the WHO, 88% of developed countries allow for an exception to preserve physical health and 86% to preserve mental health.[33] Of European countries, 90% have exceptions to preserve a woman's mental or physical health.[34] Importantly, Ireland is the only country in Europe that makes a legal distinction between abortion to save a woman's life and to preserve her health.[35] Ireland's deviation from this international norm results in a violation of the right to health recognized by the Convention on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women.[36]

Ireland's failure to ensure access to abortion for a risk to a woman's health also causes women severe mental and physical suffering amounting to CIDT. According to General Comment 20, Article 7 refers to acts that cause physical pain and mental suffering.[37] In *K.L. v. Peru*¸ the HRC found that the state party violated Article 7 by forcing a young girl with an anencephalic fetus to continue with her pregnancy, causing her extreme mental pain and threatening her health.[38] This decision indicates that risks to a woman's physical and mental health resulting from a lack of access to abortion services can amount to CIDT.

Rape or incest. Permitting abortion in cases of rape or where pregnancy results from incest is standard in nearly 50% of countries worldwide, and in 87% of European countries.[39] General Comment 28 requires states to give access to safe and legal abortion services to those who have become pregnant as a result of rape.[40] In 2000, the Committee expressed its concern that Ireland does not recognize an exception for rape, and explicitly recommended that states permit legal terminations in cases of rape.[41] In *L.M.R. v. Argentina,* the Committee found a violation of Article 7 for the refusal to terminate a young girl's pregnancy from rape, noting that it resulted in severe mental suffering.[42] The CAT Committee has repeatedly criticized abortion bans that do not have exceptions for rape and incest[43] and noted that without a rape exception, a woman is constantly exposed to "the violation committed against [her] and [experiences] serious traumatic

stress…"[44] Thus, human rights standards require states to provide access to legal abortion in cases of rape and incest.

Severe fetal impairments. Because of the abortion ban, Irish couples who receive the devastating news that their wanted pregnancy is not viable cannot access a termination in their own home country. Thus, they must travel overseas for an abortion. Couples in this situation have testified to the added humiliation, pain, suffering, and stigma associated with traveling under such traumatic circumstances.[45] The WHO indicates that 84% of all developed countries and 88% of European countries allow abortion in cases of fetal impairment.[46] In *K.L. v. Peru,* the Committee established that withholding abortion services in cases of fatal fetal impairments, regardless of legality, constitutes CIDT.[47] The Committee recognized that a woman forced to carry an anencephalic pregnancy to term would experience unnecessary pain and suffering amounting to CIDT.[48] States are thus obligated to remove restrictions that prevent access to abortion in cases of severe fetal impairments such as fatal anomalies.

A. Inadequate Information (Articles 7, 17, 19)

Ireland's Regulation of Information (Services outside the State for Termination of Pregnancies) Act of 1995 ("Information Act") heavily restricts the content and form of information that medical providers may give pregnant women about abortion outside the law's single exception.[49] The Information Act requires any such information to be "truthful and objective" and "not accompanied by any advocacy or promotion of, the termination of pregnancy."[50] It 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]."[51] The Act further includes that if a judge reasonably believes that the Act has been violated, he or she can authorize a search of the provider's premises by the police.[52] Essentially, the *mere appearance* that a provider has violated this law can lead to harmful consequences.

Under WHO standards, every pregnant woman considering a termination should receive adequate information in order to make a choice about abortion and its risks.[53] However, when women seek termination for any reason outside the narrow scope of the law in Ireland, <u>their medical providers are prevented from both assisting them with procuring one abroad and communicating freely about the process</u>.[54] The criminal penalties for violating the law even further restrict the provision of medical information by providers.[55] This prevents women from freely seeking and receiving information related to abortion services and violates both the WHO standard and the right to freedom of expression under the Covenant.[56]

In addition, the lack of information can result in substantial harm to the woman's health and well-being. The Information Act requires an individual to request written information about termination services abroad before a provider can distribute it.[57] This places a heavy burden on the individual and can result in women not receiving any information about the option of seeking an abortion abroad. In these circumstances, women may be forced to carry their pregnancies to term and experience additional trauma or physical and mental pain. In *K.L. v. Peru,* the Committee found that forcing a young woman to continue a pregnancy that caused extreme mental pain and threatened her health was a violation of Article 7.[58] Applied here, the state has

an obligation to ensure that women are not forced to carry pregnancies that will result in severe pain or trauma.

In *L.M.R. v. Argentina,* the Committee recognized that the right to privacy includes the right to make decisions about one's life without interference from the state.[59] By withholding reproductive health information, the state undermines a woman's right to make personal, autonomous decisions about her reproductive health. In this way, the state arbitrarily interferes in the woman's decision making process in violation of Article 17.

B. Traveling Abroad for an Abortion (Articles 6, 7)

As discussed above, Irish abortion law forces women seeking an abortion in cases of rape, incest, severe fetal impairment, or when their health is at risk to travel abroad. Recent official UK data reflects that around 4,000 women with Irish addresses accessed abortion services in the UK in 2012.[60] The actual incidence is likely much higher. Media reports indicate that around 12 women a day were traveling from Ireland to the UK to obtain terminations in 2010.[61] Women traveling from Ireland constitute 68% of all terminations carried out in the UK on non-UK residents.[62] Thus, as recently recognized by the Irish Minister of Justice, the Irish abortion ban has created a situation in which there is now a "British solution to an Irish problem"[63]—in stark contrast with the principle that under the Covenant, each state party must be judged based on its own ability and willingness to protect and fulfill the rights of its own residents.

Further, being forced to travel abroad for abortion constitutes mental suffering in and of itself. The Committee has specifically recognized that the imposition of mental health risks violates the right to be free from CIDT.[64] In its 2008 Concluding Observations to Ireland, the Committee asked the state party 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)."[65] By grouping "abortions abroad" with illegal and unsafe abortions that put women's lives at risk, the Committee framed the process of having to terminate a pregnancy abroad under any circumstances as a fundamentally harmful experience that defies international human rights law. Women in Ireland are left to make their own arrangements for traveling abroad, including securing an appointment with an abortion provider, struggle with the stigma of seeking out a procedure that is illegal in their home country, and obtain abortions at later stages of pregnancy than they would if abortion services were available in their own communities. Once abroad, many Irish women terminate their pregnancies without the support of family or friends, who are unable to make the journey with them. The mental and emotional anguish caused by these factors directly stem from the withdrawal of care and lack of support and guidance from the Irish health care system.

The harms experienced by traveling abroad for abortion are compounded by the difficulty to access post-abortion medical care in Ireland. Anecdotal evidence suggests that many women must hastily return to Ireland after their procedure, without proper time to recuperate before traveling back. Moreover, once back in Ireland, they find a health care system that is unequipped to ensure the comprehensive medical care they need. While the Irish Medical Council Guidelines include a specific duty to provide follow-up services for women who have received terminations abroad,[66] this is not systematically implemented.

The Irish health care system also fails to offer appropriate counseling for women returning from abroad.[67] Women who have terminated their pregnancies due to fatal fetal abnormalities often need bereavement counseling instead of post-abortion counseling, but the Irish health care system does not ensure its availability.[68] Those lacking financial means to access private counseling are left without crucial professional support in the aftermath of a traumatic experience. The state thus fails to ensure the recovery that women need to cope with their loss and denies them the dignity afforded and protected by article 7.

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" could amount to CIDT.[69] The UN Special Rapporteur on the Right to Health has also made explicit that "States are obliged to ensure that women are not denied access to necessary post-abortion medical services, irrespective of the legality of the abortion undertaken."[70] In this regard, Ireland has failed its duty to protect and support women who have sought terminations abroad in violation of their obligations under Article 7.

III. Women Who are Unable to Travel (Article 7)

Women who experience traumatic pregnancies, from fatal fetal anomalies to pregnancies resulting from rape, are forced to travel abroad for crucial reproductive healthcare. For many, however, traveling overseas is not an option. In this way, Irish abortion law prevents a substantial amount of women from receiving abortion services in a discriminatory manner.[71]

<u>Irish abortion law uniquely harms vulnerable subgroups of women, such as poor women, young women, asylum seekers, victims of violence, women in state custody, rural women, women with disabilities, and uneducated women, among others, who do not have the ability to travel abroad for a variety of reasons</u>. For instance, women asylum seekers wishing to obtain a termination abroad 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."[72] Needless to say, such hardship and delay can have a devastating effect on the health and dignity of a woman experiencing an unwanted pregnancy. The cost of traveling, lost income, and inability to afford childcare create significant barriers for low-income women. Rural women may not be able to access urban centers where a few clinics offer support for women seeking terminations or returning from terminations abroad.[73] As trips abroad often require reliance on public transportation and being able to navigate a new city, this may be particularly challenging for women with disabilities.

Those unable to travel abroad are forced to continue with an unwanted or problematic pregnancy, or potentially resort to an illegal procedure within the state, such as "ordering often untrustworthy medication online to self-induce abortion that may put their health at risk."[74] Anecdotal evidence and information about the seizure of illegal abortion-inducing drugs by Irish customs suggest that Irish women, deterred by the cost of an abortion abroad or driven underground for other reasons, take abortion pills at home, without oversight or medical support.[75]

In its 2000 Concluding Observations for Argentina, the Committee explicitly expressed its concern over "discriminatory aspects of the [abortion] laws and policies in force" and specifically addressed effects on poor and rural women.[76] Irish abortion law has similar discriminatory effects and creates situations in which in particular poor, young or otherwise marginalized women's health, well-being, and dignity are jeopardized.

IV. Questions to the Irish Government

In light of the above, we hope that the Committee will consider selecting the above-mentioned issues for the state to report on, and also consider asking the following questions to the Irish Government:

1. What concrete measures will the state take to clarify what a "real and substantial risk" to the pregnant woman's life means in practice, in order to provide legal and clinical clarity for health providers and certainty for women experiencing potentially life-threatening pregnancies?

2. What will the state do to ensure that health providers will be able to provide abortion services when the pregnant woman's health is severely at risk, without having to fear criminal sanctions and/or compromise their clinical judgment?

3. What will the state do to move towards decriminalization of abortion, as required by international human rights law, for the protection of women's human rights and to counteract the chilling effect that criminalization has on women and health providers?

4. Please provide the Committee with information on the circumstances under which prosecutions under the new Act are likely to be brought and how the state will ensure that the criminal provisions will not constitute a barrier for women in need of legal abortion services and for health professionals willing and able to provide these services.

5. What concrete measures will the state take to ensure that abortion will be legal and available at least in cases when there is a threat to the woman's health, when the pregnancy is the result of rape or incest, and when there is a severe fetal anomaly, in line with international human rights standards?

6. In particular, how is the state planning to actively support women and couples with fatal fetal anomalies or whose pregnancies are the result of rape, in order to ensure that they do not have to experience the added pain, stigma, and relived trauma of forced traveling overseas for an abortion?

7. How will the state ensure that women who cannot freely leave and enter the country, such as women in custody or asylum-seeking women, will be able to access abortion services without their health and dignity being jeopardized?

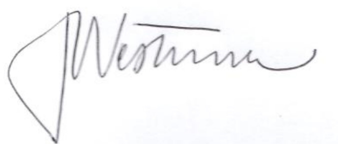
8. What concrete measures will the state take to guarantee that women living in poverty or women with disabilities will be able to access abortion services overseas?

9. What will the state do to ensure that women in need of abortion services will have access to comprehensive, non-judgmental, adequate and timely information about where to access the procedure and what it entails, in line with recommendations from the World Health Organization?

We hope that the information provided in this letter will be useful to the Committee in drafting the list of issues to be addressed to the Irish Government for its fourth periodic review.

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

Sincerely,



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[1] International Covenant on Civil and Political Rights, *adopted Dec. 16, 1966,* G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976) [hereinafter ICCPR].
[2] *Id,* (*succeeded by* Ireland December 8, 1989).
[3] *Annual UK Abortion Statistics Highlight Need to Repeal Article 40.3.3,* IRISH FAMILY PLANNING ASSOCIATION (IFPA), Jul. 11, 2013, *available at* http://www.ifpa.ie/node/526 (last visited Aug. 7, 2013) [hereinafter *Annual UK Abortion Statistics Highlight Need to Repeal Article 40.3.3*].
[4] Human Rights Committee, *Concluding observations: Ireland,* para. 13, U.N. Doc. CCPR/C/IRL/CO/3 (2008); *Ireland,* para. 13, U.N. Doc. A/55/40 (2000); CAT Committee, *Concluding Observations: Ireland,* para. 26, U.N. Doc. CAT/C/IRL/CO/1 (2011); CEDAW Committee, *Concluding Observations: Ireland,* paras. 38-39, U.N. Doc. CEDAW/C/IRL/CO/4-5 (2005); *see also* Human Rights Committee, *Report of the Working Group on the Universal Periodic Review: Ireland,* U.N. Doc. A/HRC/19/9 (2011).
[5] Offenses Against the Person Act 1861, Section 58 (Ir.).
[6] *Id.*
[7] IR. CONST., 1937, art. 40.3.3.
[8] Attorney General v. X and Others, [1992] 1 I.R. 1, 4 (S.C.) (Ir.).
[9] *Id.*
[10] *Id*.
[11] A, B, and C v. Ireland, No. 25579/05 Eur. Ct. H. R., para. 253 (2010).
[12] *Id*.

[13] Despite abortions being technically legal under very narrow circumstances since 1992, the state has failed to collect data on the number of abortions performed within its jurisdiction. In its Fourth Periodic Report to the Committee, the state party explicitly indicated that "[n]o statistics are maintained in relation to number of abortions taking place in Ireland each year." Government of Ireland, *Fourth Periodic Report of States Parties: Ireland,* para. 210, U.N. Doc. CCPR/C/IRL/4 (2012). In addition, in its submission to the European Court of Human Rights in 2011, the government was unable to reference one abortion carried out in the state. NATIONAL WOMEN'S COUNCIL OF IRELAND (NCWI), NWCI POLICY PAPER ON ABORTION 9 (2013) (referring to the Irish government submission to the European Court of Human Rights in *A, B and C v. Ireland* (2011), 53 EHHR 13 and noting that "[t]he only statistic referred to by the government concerned ectopic pregnancies.") [hereinafter NWCI POLICY PAPER ON ABORTION (2013)].

[14] 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, at 21 (2013).

[15] *Id.* at 33.

[16] *Id*. at 69, 73.

[17] Protection of Life during Pregnancy Act of 2013 (Act No. 35/2013) (Ir.).

[18] Protection of Life during Pregnancy Act of 2013, Articles 7 – 9, (Act No. 35/2013) (Ir.).

[19] 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) [hereinafter Rhona Mahony].

[20] *See* Attorney General v. X and Others, [1992] 1 I.R. 1, 11 (S.C.) (Ir.) ("the proper test to be applied is that if it is established as a matter of probability that there is a real and substantial risk to the life, *as distinct from the health*, of the mother, which can only be avoided by the termination of her pregnancy, such termination is permissible, having regard to the true interpretation of Article 40.3.3 of the Constitution." (emphasis added)).

[21] Rhona Mahony, *supra* note 19.

[22]*Id*.

[23] Protection of Life during Pregnancy Act of 2013, art. 9(1) (Act No. 35/2013) (Ir.).

[24] *Id*, art. 22.

[25] Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Interim rep. of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, transmitted by Note of the Secretary-General*, paras. 21-36, U.N. Doc. A/66/254 (Aug. 3, 2011) (by Anand Grover) [hereinafter SRRH, *Interim Rep. of the Special Rapporteur on the right to health*]; Human Rights Committee, *Concluding Observations: Venezuela,* para. 19, U.N. Doc. CCPR/CO/71/VEN (2001); Committee against Torture, *Concluding Observations: Paraguay,* para. 22, U.N. Doc. CAT/C/PRY/CO/4-6 (2011); *Nicaragua,* para. 16, U.N. Doc. CAT/C/NIC/CO/1 (2009); CEDAW Committee, *Concluding Observations: Rwanda,* paras. 35-36, U.N. Doc. CEDAW/C/RWA/CO/6 (2009).

[26] Human Rights Committee, *Concluding Observations: Cameroon,* para. 13, U.N. Doc. CCPR/C/CMR/CO/4 (2010); *Poland,* para. 12, U.N. Doc. CCPR/C/POL/CO/6 (2010); *Colombia,* para. 19, U.N. Doc. CCPR/C/COL/CO/6 (2010).

[27] Human Rights Committee, *Concluding Observations: Cameroon,* para. 13, U.N. Doc. CCPR/C/CMR/CO/4 (2010); *Poland,* para. 12, U.N. Doc. CCPR/C/POL/CO/6 (2010); *Colombia,* para. 19, U.N. Doc. CCPR/C/COL/CO/6 (2010).

[28] 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).

[29] Human Rights Committee, *Concluding Observations: Ireland,* para. 24, U.N. Doc. A/55/40, paras. 422–451 (2000).

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

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

[32] *The World's Abortion Laws 2011,* Center for Reproductive Rights (2011), http://worldabortionlaws.com/index.html.

[33] WORLD HEALTH ORGANIZATION (WHO), SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS tbl.1.2, 25 (2nd ed. 2012), *available at*

http://www.who.int/reproductivehealth/publications/unsafe_abortion/9789241548434/en/index.html [hereinafter WHO, SAFE ABORTION (2012)].

[34] *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 Aug. 7, 2013) [hereinafter Facts and Figures about Abortions].

[35] NWCI POLICY PAPER ON ABORTION (2013) *supra* note 13, at 13.

[36] International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, art. 12, G.A. Res. 2200A (XXI), U.N. GAOR Supp. No. 16, U.N. Doc. A/6316 (1966) (*entered into force* Jan. 3, 1976); Convention on the Elimination of All Forms of Discrimination against Women, *adopted* Dec. 18, 1979, art. 12, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46, U.N.T.S. 13 (*entered into force* Sept. 3, 1981).

[37] Human Rights Committee, *General Comment No.20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment),* (44th Sess. 1992), *in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, at 200, para. 5, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008).

[38] K.L. v. Peru, Human Rights Committee, Commc'n No. 1153/2003, para. 6.3, U.N. Doc. CCPR/C/85/D/1153/2003 (2005).

[39] WHO, SAFE ABORTION (2012), *supra* note 33, at 92 (citing UN Department for Economic and Social Affairs, World Abortion Policies, 2011); Facts and Figures about Abortions, *supra* note 34; WORLD HEALTH ORGANIZATION (WHO), ABORTION IN EUROPE (2005), *available at* http://www.euro.who.int/__data/assets/pdf_file/0004/69763/en59.pdf [hereinafter ABORTION IN EUROPE 2005)].

[40] Human Rights Committee, *General Comment 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, at 229, para. 11, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008).

[41] Human Rights Committee, *Concluding Observations: Ireland,* para. 23, U.N. Doc. A/55/40, paras. 422 – 451 (2000), *Argentina,* para. 14, U.N. Doc. CCPR/CO/70/ARG (2000).

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

[43] 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).

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

[45] *Call on fatal foetal abnormalities,* PRESS ASSOCIATION, June 26, 2013, *available at* http://uk.news.yahoo.com/call-fatal-foetal-abnormalities-142434648.html#ppdhoxL (last visited Aug. 8, 2013); Henry McDonald and Ben Quinn, *More Irish women seeking help for British abortions, says charity*, THE GUARDIAN, July 6, 2012, *available at* http://www.theguardian.com/world/2012/jul/06/ireland-women-abortion-law-britain (last visited Aug. 8, 2013); Jane Wheatley, Damned if they do, THE SUNDAY MORNING HERALD, November 2, 2012, *available at* http://www.smh.com.au/lifestyle/damned-if-they-do-20121029-28e7r.html (last visited Aug. 8, 2013).

[46] WHO, SAFE ABORTION (2012), *supra* note 33, at tbl.1.2, 25; Facts and Figures about Abortions, *supra* note 34; ABORTION IN EUROPE (2005), *supra* note 39.

[47] K.L. v. Peru, Human Rights Committee, Commc'n No. 1153/2003, para. 6.3, U.N. Doc. CCPR/C/85/D/1153/2003 (2005).

[48] *Id*, paras. 2.1, 6.3.

[49] 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.

[50] *Id*, Sec. 3(1)(a)(II), 5(b)(i), 5(b)(iii). Notably, the Information Act does not provide any guidance about what "advocacy" or "promotion" means.

[51] *Id,* Sec. 8(1).

[52] *Id,* Sec. 9(1)(b).

[53] WHO, SAFE ABORTION (2012), *supra* note 33 at 36. The WHO provides a list of the minimum amount of information an individual should receive about abortion procedures, including information about the process, risks, complications, and follow-up care.

[54] Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995, Sec. 8(1) (Act No. 5/1995) (Ir.), *available at* http://www.irishstatutebook.ie/1995/en/act/pub/0005/index.html.

[55] *Id,* Sec. 4(b).
[56] ICCPR, *supra* note 1.
[57] Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995, Sec. 4(b) (Act No. 5/1995) (Ir.), *available at* http://www.irishstatutebook.ie/1995/en/act/pub/0005/index.html.
[58] K.L. v. Peru, Human Rights Committee, Commc'n No. 1153/2003, paras. 2.1, 6.3, U.N. Doc. CCPR/C/85/D/1153/2003 (2005).
[59] L.M.R. v. Argentina, Human Rights Committee, Commc'n No. 1608/2007, paras. 9.3-9.4, U.N. Doc. CCPR/C/101/D/1608/2007 (2011).
[60] *Annual UK Abortion Statistics Highlight Need to Repeal Article, supra* note 3.
[61] Press Release, Irish Family Planning Association (IFPA), New UK Abortion Statistic – 12 Women a Day Must Travel to Britain to Access Abortion Services (May 25, 2010) (http://www.ifpa.ie/node/164).
[62] *Annual UK Abortion Statistics Highlight Need to Repeal Article 40.3.3, supra* note 3. Other women have reportedly traveled to the Netherlands and Spain, NWCI POLICY PAPER ON ABORTION, *supra* note 13, at16 (citing statistics compiled by the HSE Crisis Pregnancy Programme from 2005-2009).
[63] Ruadhan Mac Cormaic, *Shatter describes abortion restrictions as 'a great cruelty,'* IRISH TIMES, July 24, 2013*, available at,* http://www.irishtimes.com/news/ireland/irish-news/shatter-describes-abortion-restrictions-as-a-great-cruelty-1.1473673 (last visited Aug. 8, 2013).
[64] K.L. v. Peru, Human Rights Committee, Commc'n No. 1153/2003, para. 6.3, U.N. Doc. CCPR/C/85/D/1153/2003 (2005).
[65] Human Rights Committee, *Concluding Observations: Ireland*, para. 13, U.N. Doc. CCPR/C/IRL/CO/3 (2008) (emphasis added).
[66] IRISH MEDICAL COUNCIL, GUIDE TO PROFESSIONAL CONDUCT AND ETHICS FOR REGISTERED MEDICAL PRACTITIONERS, section 21 (7th ed. 2009), a*vailable at* http://www.medicalcouncil.ie/Registration/Guide-to-Professional-Conduct-and-Behaviour-for-Registered-Medical-Practitioners.pdf.
[67] Jim Clarke, *Help After an Abortion,* IRISH HEALTH, July 23, 2001, *available at* http://www.irishhealth.com/article.html?id=2649 (last visited Aug. 7, 2013) [hereinafter Jim Clarke].
[68] Notably, it ensures that couples whose pregnancies have resulted in stillbirth bereavement counseling and an invitation to a bereaved parents support group, but excludes those who have experienced terminations. ROTUNDA HOSPITAL, INFORMATION FOR PARENTS WHOSE BABY HAS DIED 7 (2011), *available at* http://www.rotunda.ie/Portals/0/Documents/Maternity%20S/BereavInf.pdf.
[69] CAT Committee, *Concluding Observations: Paraguay,* para. 22, U.N. Doc. CAT/C/PRY/CO/4-6 (2011).
[70] SRRH, *Interim Rep. of the Special Rapporteur on the right to health, supra* note 25, para 27.
[71] 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).
[72] NWCI POLICY PAPER ON ABORTION (2013), *supra* note 13, at 18.
[73] Jim Clarke, *supra* note 67.
[74] NWCI POLICY PAPER ON ABORTION (2013), *supra* note 13, at 18.
[75] Eilish O'Regan, *Women warned of dangers from illegal abortion pills sold online,* INDEPENDENT NEWSPAPERS, September 10, 2012, *available at* http://www.independent.ie/lifestyle/health/women-warned-of-dangers-from-illegal-abortion-pills-sold-online-26896287.html (last visited Aug. 7, 2013).
[76] Human Rights Committee, *Concluding Observations: Argentina,* para. 14, U.N. Doc. CCPR/CO/70/ARG (2000).