



October 1, 2014

Committee on Economic, Social and Cultural Rights
8-14 Avenue de la Paix
CH 1211 Geneva 10
Switzerland

Re: Submission for the Committee on Economic, Social and Cultural Rights' adoption of the list of issues for the review of the third periodic report of Ireland (December 1-5, 2014)

Distinguished Committee Members,

The Center for Reproductive Rights (CRR) is pleased to submit the enclosed report “Abandoned and Stigmatized: the Impact of Ireland’s Abortion Law on Women” for your consideration in the context of the preparation of the list of issues for the periodic review of Ireland under the International Covenant on Economic, Social and Cultural Rights (ICESCR). CRR, with headquarters in New York and regional offices in Colombia, Kenya, Nepal and Switzerland, is an independent non-governmental organization that uses the law to advance reproductive freedom as a fundamental human right that all governments are legally obligated to protect, respect, and fulfill.

The enclosed report details the impact of the broad criminalization of abortion in Ireland on women and how the law infringes on women’s fundamental human rights as protected by the ICESCR. It depicts women’s experiences of being denied abortion services in Ireland and being forced to endure grave threats to their mental and physical health and being compelled to travel abroad to access safe and legal abortion services. It also describes the discriminatory impact of the law on disadvantaged groups of women, in particular migrants, refugees and asylum seekers, women with disabilities, poor women, and adolescents who are often unable to find the necessary resources to travel abroad to have an abortion and are therefore compelled to carry an unwanted pregnancy to term.

The Irish government in the state report, which was submitted in May 2012, refers to consideration being given to implementation of the European Court of Human Rights’ ruling in the case *A, B and C v. Ireland*, in which the Court found Ireland in breach of Article 8 of the European Convention on Human Rights (the right to respect for private life) for its failure to put in place an effective and accessible procedure for women to establish whether they would be entitled to an abortion under the law.¹ Since then, the Protection of Life During Pregnancy Act (2013) has been adopted with a view to complying with this decision of the Court. Our report analyzes how the new law entrenches the broad criminalization of abortion and remains wholly inadequate to protect women’s right to access abortion services, at a minimum, when their life or health is at risk, when the pregnancy results from rape or incest and when the fetus carries a fatal or serious impairment. Finally, the report describes how the restrictions on information about abortion in Ireland continue to violate women’s right to access information related to their sexual and reproductive health.

We also wish to bring to the Committee’s attention the recent concluding observations by the United Nations Human Rights Committee (HRC), adopted in July 2014, in which the Committee expressed concern about “the criminalization of abortion under section 22 of the Protection of Life During Pregnancy Act, including in cases of rape, incest, fatal foetal abnormality and serious risks to the health of

the mother, which may lead to up to 14 years of imprisonment, except in cases that constitutes a “real and substantive risk” to the life of a pregnant women; (ii) the lack of legal and procedural clarity concerning what constitutes “real and substantive risk” to the life, as opposed to the health, of the pregnant women; (iii) the requirement of an excessive degree of scrutiny by medical professionals for pregnant and suicidal women leading to further mental distress; (iv) the discriminatory impact of the Protection of Life During Pregnancy Act on women who are unable to travel abroad to seek abortions; (v) the strict restrictions on the channels via which information on crisis pregnancy options may be provided to women and the imposition of criminal sanctions on healthcare providers who refer women to abortion services outside the State party under the Regulation of Information (Services outside the state for the Termination of Pregnancies) Act of 1995; and (vi) the severe mental suffering caused by the denial of abortion services to women seeking abortions due to rape, incest, fatal foetal abnormality or serious risks to health (arts. 2, 3, 6, 7, 17, 19 and 26).”²

In its concluding observations, the HRC called on the Irish government to “revise its legislation on abortion, including its Constitution, to provide for additional exceptions in cases of rape, incest, serious risks to the health of the mother, or fatal foetal abnormality.”³ It also called for the swift adoption of the Guidance Document for Health Professionals to clarify what constitutes a “real and substantive risk” to the life of a pregnant woman.⁴ The Guidance Document was issued in September 2014. However, it does not specify what constitutes a real and substantive risk to a pregnant woman’s life. This is left to health care professionals to assess. Moreover, the Guidance Document describes the very burdensome procedures a woman seeking an abortion in these circumstances must follow to have certified that she indeed is entitled to an abortion. At the same time, the Guidance Document notes that while there is no time limit posed by the Protection of Life During Pregnancy Act for carrying out a termination of pregnancy, “there is no specific stage of pregnancy below which the certifying doctor will not have to consider the possibility of preserving the life and dignity of the unborn where practicable without compromising the life of the mother.”⁵ The Guidance Document goes on to explain that health care professionals will have to exercise their clinical judgment as to “the most appropriate procedure to be carried out, in cognisance of the constitutional protection afforded to the unborn, i.e. a medical or surgical termination or an early delivery by induction or Caesarean section.”⁶ The Guidance Document thus changes the ordinary meaning of the term “termination of pregnancy” and suggests that women that have gone through the cumbersome procedure to access legal abortion services - having been certified by up to three doctors as being in a life threatening situation because of their pregnancy - may still not be able to access abortion services but could instead be offered early delivery. Such a proposition fails to respect women’s right to the highest attainable standard of physical and mental health under Article 12 of the ICESCR.

We hope that this information and the enclosed report will be useful during the Committee’s preparation of the list of issues for the upcoming review of Ireland. In this regard, we respectfully encourage the Committee to consider posing the following questions to the Government of Ireland:

- What steps will the state take towards decriminalization of abortion, as required by international human rights law, and to counteract the chilling effect that criminalization has on women and health providers?
- 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 as required by human right law and specifically recommended by the Human Rights Committee?

- How does the state explain that the Guidance Document for Health Professionals related to the Protection of Life During Pregnancy Act (2013) notes that a termination of pregnancy can be carried out through early delivery by induced labour or Caesarean section and how does this ensure protection of a woman's right to the highest attainable standard of physical and mental health?
- How will the state ensure that women who cannot freely leave and enter the country, such as women in custody or asylum-seeking women, as well as women living in poverty and women with disabilities will be able to access abortion services without their health and dignity being jeopardized?
- What will the state do to ensure that women in need of abortion services will have access to comprehensive, non-judgmental and timely information about where to access the procedure and what it entails?

We remain at your disposal should you need any additional information.

Sincerely,



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¹ Third periodic report of Ireland to the Committee on Economic, Social and Cultural Rights, para. 78, U.N. Doc. E/C.12/IRL/3 (2013).

² Human Rights Committee, *Concluding observations: Ireland*, para. 9, U.N. Doc. CCPR/C/IRL/CO/4 (2014).

³ *Id.*, para. 9, (a).

⁴ *Id.*, para. 9, (b).

⁵ AN ROINN SLÁINTE [DEPARTMENT OF HEALTH], IMPLEMENTATION OF THE PROTECTION OF LIFE DURING PREGNANCY ACT 2013: GUIDANCE DOCUMENT FOR HEALTH PROFESSIONALS, 31, sec. 6.4 (2014).

⁶ *Id.*