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**THE INTERNATIONAL COMMISSION OF JURISTS' SUBMISSION TO THE UN
HUMAN RIGHTS COMMITTEE IN ADVANCE OF THE EXAMINATION OF
IRELAND'S FOURTH PERIODIC REPORT UNDER ARTICLE 40 OF THE
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

Submitted on 13 June 2014

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

THE INTERNATIONAL COMMISSION OF JURISTS' SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE IN ADVANCE OF THE EXAMINATION OF IRELAND'S FOURTH PERIODIC REPORT UNDER ARTICLE 40 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Introduction

1. During its 111th session -- 7th to 25th July 2014 -- the Human Rights Committee (the Committee) will examine Ireland's implementation of the provisions of the International Covenant on Civil and Political Rights (ICCPR), including in light of the State Party's fourth periodic report under Article 40 of the ICCPR. In this context, the International Commission of Jurists (ICJ) welcomes the opportunity to submit the following observations to the Committee.
2. In this brief submission the ICJ expresses concern that breaches of the State party's obligations under articles 2, 3, 6, 7 and 26 of the ICCPR continue to arise as a result of legal provisions that severely restrict access to safe and legal abortion in Ireland.

ARTICLES 2, 3, 6, 7 and 26: Access to safe and legal abortion in Ireland

3. Ireland's legal prohibition on abortion remains among the most restrictive in the world. Irish criminal law provides that any woman who obtains an abortion or anyone who administers an abortion commits a criminal offence. The only exception to this prohibition is where an abortion is necessary to prevent "a real and substantial risk to a woman's life". In addition, Irish law does not prohibit women from travelling abroad to obtain an abortion.¹
4. In July 2013, the Irish Parliament enacted legislation with the stated purpose of providing women and medical professionals with clarity as to the permissible circumstances and procedures for performing an abortion in Ireland in order to prevent "a real and substantial risk to the woman's life". The adoption of this legislation was identified by the Irish Government as a necessary step towards compliance with the ruling of the European Court of Human Rights in the case of *A, B and C v. Ireland*.² The ICJ notes that questions remain as to how far the 2013 legislation is effective in practice in addressing the human rights violations found by the European Court of Human Rights in *A, B, and C*, in particular since no clinical guidance has so far been issued to give effect to the legislation.
5. Although the enactment of this legislation, and its effective implementation, is important, the legislation does not give rise to substantive changes in Irish abortion law. It remains a criminal offence for a woman to obtain an abortion in Ireland or for a medical professional to provide one, in all situations where the abortion is not deemed necessary to prevent "a real and substantial risk to the woman's life". As a result, abortion remains a criminal offence even in cases where the pregnancy involves a fatal foetal abnormality, or is the result of rape or incest, or where it is necessary in order to prevent harm to a woman's health.
6. In light of this, the ICJ considers that this situation continues to be inconsistent with Ireland's obligations under articles 2, 3, 6, 7 and 26 of the Covenant as raised by the Committee in 2000 and 2008.³

¹ Article 40(3.3), Irish Constitution.

² *A, B, and C v. Ireland*, ECtHR Application No. 25579/05, 16 December 2010.

³ Concluding observations of the Human Rights Committee on Ireland, UN Doc CCPR/C/IRL/CO/3, 30 July 2008, para. 13; Concluding observations of the Human Rights Committee on Ireland, 24 July 2000, UN Doc. A/55/40 (Vol. I), paras. 444-445, p. 64. Additional relevant documentation, commentary and jurisprudence on this issue includes: *KL v.*

7. In 2008, in its Concluding Observations following its examination of Ireland's third periodic report under the ICCPR, the Committee "reiterate[d] its concern regarding the highly restrictive circumstances under which women can lawfully have an abortion in Ireland" and requested Ireland to "bring its abortion laws in line with the Covenant."⁴ The Committee noted particular concerns with respect to the State's obligations under articles 2, 3, 6 and 26. Previously in 2000, in its Concluding Observations following its examination of Ireland's second periodic report, the Committee had expressed concern "that the circumstances in which women may lawfully obtain an abortion are restricted to when the life of the mother is in danger and do not include, for example, situations where the pregnancy is the result of rape."⁵ The Committee requested the State to "ensure that women are not compelled to continue with pregnancies where that is incompatible with obligations arising under the Covenant"⁶ noting in particular its concerns regarding the State's obligations under article 7.
8. These conclusions echo the views of the Committee in a range of individual communications under the Covenant concerning other States in which it found violations of article 7 where women were denied access to abortions in situations involving fatal foetal abnormality or pregnancy resulting from rape.⁷ In addition they mirror similar statements by other treaty monitoring bodies concerning such restrictive laws in other States. For example the Committee Against Torture has repeatedly expressed particular concern regarding failures to ensure access to therapeutic abortions⁸ and the "criminalization of abortions in cases of rape and incest,"⁹ noting that where pregnancy is the result of rape or incest, and abortion is prohibited, this may cause severe traumatic stress and long lasting psychological problems.¹⁰ Meanwhile the Committee on the Elimination of Discrimination against Women (CEDAW) has underscored the necessity of ensuring access to therapeutic abortion so as to protect women's physical and mental health.¹¹ Similar pronouncements have been made by Special Procedures of the Human Rights Council.¹²

Peru, Human Rights Committee Communication 1153/2003, UN Doc CCPR/C/85/D/1153/2003 (2005); *V.D.A. v. Argentina*, Human Rights Committee Communication No. 1608/2007, CCPR/C/101/D/1608/2007 (2011); *LC v. Peru*, CEDAW Communication 22/2009, UN Doc CEDAW/C/50/D/22/2009 (2011). On a number of occasions the Committee Against Torture has also called on States to reform restrictive abortion laws so as to avoid violations of the Convention Against Torture, see for example: Concluding Observations of the Committee Against Torture on Nicaragua, U.N. Doc. CAT/C/NIC/CO/1 (2009), para. 16. See also: Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN Doc A/66/254 (2011), in particular, paras. 21-36; and the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc A/HRC/22/53 (2013), paras. 45-50, and para. 90.

⁴ Concluding observations of the Human Rights Committee on Ireland, UN Doc CCPR/C/IRL/CO/330 (2008), para. 13.

⁵ Concluding observations of the Human Rights Committee on Ireland, 24 July 2000, UN Doc. A/55/40 (Vol. I), para. 444, p. 64.

⁶ *Ibid*, para. 445, p. 64.

⁷ For example, see *KL v. Peru*, Human Rights Committee Communication 1153/2003, UN Doc CCPR/C/85/D/1153/2003 (2005); and *V.D.A. v. Argentina*, Human Rights Committee Communication No. 1608/2007, CCPR/C/101/D/1608/2007 (2011).

⁸ On a number of occasions the Committee against Torture has called on States to reform restrictive abortion laws so as to avoid violations of the Convention Against Torture. For example, see: Concluding Observations of the Committee against Torture on Peru, UN Doc CAT/C/PER/CO/4 (2006), para. 23; and Concluding Observations of the Committee against Torture on Nicaragua, UN Doc CAT/C/NIC/CO/1 (2009), para. 16.

⁹ *Ibid*.

¹⁰ Concluding Observations of the Committee against Torture on Nicaragua, UN Doc CAT/C/NIC/CO/1 (2009), para. 16.

¹¹ *LC v. Peru*, CEDAW Communication 22/2009, UN Doc CEDAW/C/50/D/22/2009 (2011).

¹² See for example: Report of the Special Rapporteur on the right of everyone on to the enjoyment of the highest attainable standard of physical and mental health, UN Doc A/66/254 (2011), paras. 21-36; and the Report of the Special Rapporteur on torture and other cruel,

9. In the List of Issues in relation to the fourth periodic report of Ireland the Committee asked the State to provide information on whether it "intends to introduce measures to broaden access to abortion to guarantee women's rights under the Covenant, including when the pregnancy poses a risk to the health of the pregnant woman, where the pregnancy is the result of a crime, such as rape or incest, cases of fatal foetal abnormalities, or when it is established that the foetus will not survive outside the womb." The State replied that there are, "currently no proposals to amend Article 40.3.3 of the Constitution."

Recommendations

The ICJ considers that, in order to bring the State Party's law into compliance with the Covenant and ensure that its restrictive abortion laws and practices do not continue to impair or jeopardize women's equal enjoyment of their Covenant Rights, Ireland must take a range of steps.

At a minimum such steps must include: (a) decriminalization of abortion; (b) legalization of abortion in situations where a pregnancy involves a fatal foetal abnormality, or is the result of rape or incest, or where it is necessary in order to prevent harm to a woman's health.