

UNITED NATIONS COMMITTEE AGAINST TORTURE

51st Session of the UN Committee against Torture

28 October to 22 November 2013

**INTERNATIONAL COMMISSION OF JURISTS (ICJ) SUBMISSION
FOR THE PREPARATION BY THE UN COMMITTEE AGAINST TORTURE
OF A LIST OF ISSUES PRIOR TO REPORTING IN RELATION TO THE SECOND PERIODIC
REPORT OF IRELAND UNDER THE INTERNATIONAL CONVENTION AGAINST TORTURE
AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

Submitted 28 August 2013

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.

ICJ submission to the Committee against Torture for the preparation of a List of Issues in relation to the Second Periodic Report of Ireland

1. During its 51st session on 28 October to 22 November 2013, the Committee against Torture (the Committee) will prepare and adopt a List of Issues Prior to Reporting in relation to Ireland's second periodic report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Committee's preparation of the List of Issues. This brief submission focuses on the way in which breaches of the State party's obligations under articles 2 and 16 of the CAT may arise as a result of severe legislative restrictions on access to safe abortion in Ireland.

**ARTICLES 2 and 16
Access to safe and legal abortion in Ireland**

2. Ireland's legal prohibition on abortion is 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 allows women to travel abroad to obtain an abortion.

3. Until recently no appropriate procedure was in place enabling women to enforce this right to an abortion when facing a real and substantial risk to their life. Indeed as the Committee noted in its Concluding Observations to Ireland's initial periodic report under the CAT, "despite the already existing case law allowing for abortion, no legislation is in place and that leads to serious consequences in individual cases".¹ On that occasion the Committee urged Ireland to "clarify the scope of legal abortion through statutory law" and expressed concern on "the absence of a legal framework through which differences of opinion could be resolved" and the "risk of criminal prosecution and imprisonment facing both the women concerned and their physicians".² The Committee's concerns echoed those of the Grand Chamber of the European Court of Human Rights in *A, B and C v. Ireland*³ and other international authorities. In July 2013, legislation was enacted by the Irish Parliament outlining the relevant process and procedures that women and their doctors should follow in situations where they believe an abortion to be necessary to prevent a real and substantial risk to the woman's life.

4. However, although the enactment of this legislation is important, it 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 where the pregnancy involves a fatal foetal abnormality, or is the result of rape or incest or other criminal activity, or is necessary in order to prevent harm to a woman's health.

5. This situation undermines Ireland's compliance with its obligations to ensure women's enjoyment of the right to freedom from cruel, inhuman or degrading treatment.

¹ Committee against Torture, Concluding Observations on Ireland, UN Doc CAT/C/IRL/CO/1 (2011).

² Ibid.

³ *A, B, and C v Ireland*, European Court of Human Rights (Grand Chamber), App No 25579/05 (16 December 2010).

6. This has been underlined by the Human Rights Committee in its Concluding Observations on periodic reports by Ireland under the International Covenant on Civil and Political Rights (ICCPR). For example, that Committee has observed 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”, and has requested the State to “ensure that women are not compelled to continue with pregnancies where that is incompatible with obligations arising under the Covenant (article 7)”.⁴ These conclusions echo the views of the Human Rights Committee in a range of individual communications under the ICCPR concerning other States in which it found violations of Article 7 (the prohibition of torture and other cruel, inhuman or degrading treatment) where women were denied access to abortions in situations involving fatal foetal abnormality or pregnancy resulting from rape.⁵

7. Similar Concluding Observations have been issued by the Committee against Torture regarding such restrictive laws in other States. For example the Committee has repeatedly expressed particular concern regarding failures to ensure access to therapeutic abortions⁶ and the “criminalization of abortions in cases of rape and incest”,⁷ 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.⁸

8. Meanwhile CEDAW recently held that a State party to the Convention on the Elimination of all forms of Discrimination Against Women should ensure access to therapeutic abortion so as to protect women’s physical and mental health.⁹

9. In this context ICJ recommends that the following question be included in the List of Issues for the examination of Ireland:

- ***What steps, and in what timeframe, will the State party take to change its restrictive abortion laws so they do not continue to impair or jeopardize women’s equal enjoyment of their rights under the Convention Against Torture?***

⁴ Human Rights Committee, Concluding Observations on Ireland (Report of the Human Rights Committee: Volume I), UN Doc A/55/40 (2000), paragraph 445.

⁵ For example, see Human Rights Committee, *KL v Peru*, Communication No 1153/2003, UN Doc CCPR/C/85/D/1153/2003 (2005), and *V.D.A. v. Argentina*, Communication No 1608/2007, CCPR/C/101/D/1608/2007 (2011). See also 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); Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc A/HRC/22/53 (2013).

⁶ 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 on Peru, UN Doc CAT/C/PER/CO/4 (2006), paragraph 23; Concluding Observations on Nicaragua, UN Doc CAT/C/NIC/CO/1 (2009), paragraph 16.

⁷ *Ibid.*

⁸ Committee against Torture, Concluding Observations on Nicaragua, UN Doc CAT/C/NIC/CO/1 (2009), paragraph 16.

⁹ Committee on the Elimination of Discrimination against Women, *LC v Peru*, Communication 22/2009, UN Doc CEDAW/C/50/D/22/2009 (2011).