



**Submission to the Committee on the Elimination of Racial Discrimination for its
Consideration of the Combined Fifth to Ninth Periodic Reports of Ireland
(CERD/C/IRL/5-9)
(November 2019)**

About our Organisations

The Abortion Rights Campaign (ARC) is a grassroots all-volunteer group dedicated to achieving free, safe, legal and local abortion care across the island of Ireland for everyone who wants or needs it. ARC is one of the three core groups that formed the civil society organisation Together for Yes, which successfully campaigned for a Yes vote in the referendum to repeal the 8th Amendment to the Irish Constitution in May 2018. ARC is founded on principles of individual bodily autonomy and decision-making, equality and non-discrimination, with a strong commitment to health and human rights. ARC recognises that many people, including girls, women, transgender people and non-binary people, can become pregnant and need an abortion. ARC is committed to vindicating the rights of all people who need abortion care.

Abortion Support Network (ASN) is a charity that provides information, financial assistance and, where needed, accommodation in volunteer homes to those forced to travel for abortion care from Ireland, Northern Ireland, the Isle of Man, Malta and Gibraltar. The cost of this support ranges from £400 to £2000 or more depending on circumstances and stage of pregnancy. ASN was founded with the understanding that making abortion against the law doesn't stop abortion but only stops safe abortion, and is especially punitive to women and pregnant people who are living in poverty or otherwise marginalised. ASN opened in 2009 to Ireland, Northern Ireland and the Isle of Man, and in early 2019 expanded service to those resident in Malta and Gibraltar. ASN continues to assist people in Ireland and Northern Ireland who fall through the cracks of legal provision and still need to access care abroad.

Executive Summary

In order for Ireland to meet its obligations to guarantee **"the right to public health, medical care, social security and social services,"** the State must do more to affirm, protect and vindicate the right to abortion, especially for those whose access to health care is undermined by racial discrimination.¹ This report elaborates on abortion as a critical element of ethnic minority and migrant women's health, one of the areas highlighted in the *Alternative Civil Society Report* submitted by the Irish Network Against Racism, describing barriers in Irish abortion law and service provision that interfere with the human rights guaranteed by CERD.²

Since the last review in 2011, Ireland has changed its Constitution and legalised abortion in certain circumstances through the Health (Regulation of Termination of Pregnancy) Act 2018. The right to abortion is grounded in the rights to life, health, equality and non-discrimination.³ Recognising the importance of abortion to attaining human rights in Ireland, the UN Committee on the Rights of the Child recommended in 2016 that the Irish State decriminalise abortion in all circumstances.⁴ The State declined to follow this advice when it enacted legislation on abortion in 2018.⁵

Like all health care, abortion should be available, accessible, acceptable to patients, and of good quality.⁶ We commend the State for providing abortion care without charge to patients. However, Travellers⁷, migrants and other people of colour in Ireland still face many obstacles in accessing abortion care. For the purposes of this report, all migrants are considered to be racial minorities because ‘migrant’ is a racialised identity in Ireland. The State must urgently educate doctors about migrants’ rights to free abortion care and implement reimbursement mechanisms for doctors treating migrant patients. The State must also urgently increase the availability and accessibility of abortion services in primary care and in hospitals to meet the needs of racial and ethnic minorities and migrants, particularly those seeking international protection.

To rectify these deficiencies, we request that the Committee direct the State to:⁸

- Decriminalise abortion
- Eliminate the three-day waiting period for abortion on request
- Eliminate the arbitrary 12-week cut-off for abortion on request
- Eliminate barriers stemming from refusal of care (so-called “conscientious objection”)
- Improve access to abortions after 12 weeks
- Ensure access to free abortion for all people living in Ireland, including Travellers and migrants; include free transportation, child care and other enabling services needed to access abortion, coordinated by the State’s abortion referral service to safeguard privacy
- Publish clear procedures for international protection applicants’ access to abortion care; give this information to all asylum applicants, in a language they can understand, as well as to General Practitioners and maternity hospitals, and educate all relevant contractors and employees of Direct Provision centres and emergency accommodation
- Collect data that can be disaggregated by race/ethnicity and migration status
- Clarify, through legislation or other means, that citizenship aspirants retain their right to travel and their right to medical care

Context of Abortion Rights in Ireland

For many years, United Nations treaty monitoring bodies directed Ireland to stop violating the human rights of individuals needing abortion care.⁹ The weight of these recommendations combined with civil society activism finally led the State to schedule a referendum giving citizens the chance to vote on whether to change the Irish Constitution to permit the Oireachtas (Parliament) to legislate on abortion. On 25 May 2018, a resounding 66.4% of people cast their ballot for legal abortion. The government subsequently enacted legislation to legalise abortion in certain circumstances through the Health (Regulation of Termination of Pregnancy) Act 2018. This change is a major but incomplete step for human rights. Many barriers to safe abortion remain, and these are compounded for ethnic and

racial minorities such as Travellers and migrants, particularly migrants seeking international protection who are in State custody. **We are concerned that racial discrimination in access to abortion is built into the structure of the law.**

Abortion is free to residents of Ireland. We commend the State for making this essential health care free, and for making it part of public health service provision. However, the State has yet to provide clear information and reimbursement mechanisms to doctors asked to care for migrants without government-issued medical cards. Residents of Ireland continue to travel abroad for abortion because of obstacles to care.

An overriding problem is that **abortion remains criminalised**. Doctors face up to 14 years in prison if found to have provided an abortion outside the parameters of the law. Ireland ignored the recommendation of the UN Committee on the Rights of the Child, which called on the Irish State to “decriminalise abortion in all circumstances.”¹⁰

Although abortion is allowed on request during the first 12 weeks since the last menstrual period, the State imposes needless barriers to this newly legal medical care, including a mandatory three-day waiting period. Mandatory delays contravene World Health Organisation best practice, and the Council of Europe’s human rights commissioner immediately called for Ireland to remove this barrier.¹¹ Again contravening international practice, abortion after nine weeks is only available from maternity hospitals. Just 10 of 19 maternity hospitals provide abortion care, and access to ultrasound dating scans is limited, pushing people further into pregnancy as they try to arrange all the necessary appointments. Abortion care is not equally available across the State, undermining the rights of racial and ethnic minorities in underserved areas.¹² These harms are especially acute for people in Direct Provision, whose residence is determined by the State rather than their own free choice.¹³ At least one maternity hospital has asserted that it will not provide any abortion care, violating the law’s prohibition on institutions (as opposed to individuals) refusing to provide care.¹⁴

Abortion after 12 weeks is only available in three situations: emergencies, when pregnancy poses a “risk to the life, or of serious harm to the health” of the pregnant person, or when a “condition [is] likely to lead to death of foetus” before or within 28 days of birth. In the second situation, the law is vague; in the third, it is strict. Fear of criminal penalties hangs over doctors’ decision making. Pregnant people given diagnoses of catastrophic but not necessarily “fatal” foetal anomalies have no choice but to travel abroad for abortion care, just as they did before Irish voters changed the Constitution.

Barriers to Travellers’ and Migrants’ Access to Abortion Under Current Law

Given the law’s strict time limits, people need trusted, local medical providers. However, a recent study of Traveller and Roma women in Ireland found that **31.5%** did not have a General Practitioner, **44.6%** did not have a medical card, and as many as **86%** experienced discrimination in health services. This evidence bodes poorly for access to abortion on equal terms with white settled people as well as for Travellers’ right to dignity.¹⁵

Ireland’s Direct Provision system creates especially onerous barriers to abortion access for asylum seekers. Direct Provision centres tend to be located on the outskirts of cities or in rural areas, where abortion providers are scarce. People in Direct Provision must use their meagre weekly allowance to pay for transportation to medical appointments, or risk having to divulge personal information if they request funding for transportation to the doctor, violating their rights to medical care and privacy. Medical abortion, which involves taking medication that induces a miscarriage ‘at home’, is the norm in Ireland. This process is painful, can last more than a day, and can involve a good deal of bleeding, depending on the

individual. In almost all cases, a person in Direct Provision or emergency accommodation shares a room with other people, be they family members or complete strangers.

Anyone undergoing an abortion deserves privacy, dignity and comfort. More doctors should be trained and encouraged to offer vacuum aspiration abortion so that their patients can have a choice between taking medication and having an abortion procedure in the doctor's office. Having this choice is paramount to safeguard individual dignity, which is an essential right of all people.

Migrants face many obstacles if they need to leave Ireland to access abortion care after 12 weeks. We are especially troubled that the Government has produced no information explaining how asylum seekers can access abortion outside the State. In 2018, ASN assisted 46 migrants or refugees, twice as many as they did the previous year.¹⁶ Abortion Support Network has had to enlist politicians, immigration lawyers, doctors and NGOs to determine how to assist migrants who need to travel to obtain abortion care. In some cases, these efforts took so long that migrants were forced to remain pregnant — a severe violation of their human rights.

An ASN client, a refugee with no English skills or support network in Ireland, was too afraid to tell anyone she was pregnant until she was at 17 weeks. Because of the legal intricacies of her case, she was unable to travel before she had reached the gestational limit for abortion in Amsterdam. She was not able to obtain a UK visa in time to have an abortion. As a result of these roadblocks, she was forced to continue her pregnancy against her will.¹⁷ Cases like this one show how the arbitrary 12-week cut-off can become an insurmountable barrier for refugees seeking abortion care. No one's human rights should depend on charity and connections.

Even in cases of rape — a form of persecution experienced by many migrants — there is no exception to the 12-week limit. The State has mistreated migrant survivors of rape in the past. In the Ms Y case, a young African woman became suicidal at the prospect of having to remain pregnant after being raped by soldiers during a civil war; she was denied an abortion she qualified for under Irish law at the time and then also subjected to a Caesarean delivery — major surgery carrying significant health risks.¹⁸

We are concerned that a situation similar to that of Ms. Y could arise again. Nick Henderson, the chief executive of the Irish Refugee Council, explains that in his agency's experience, "particularly for a person who is the victim of sexual violence, it can be very difficult to disclose their experience and that they might be pregnant. This can cause a delay for people newly arriving in the jurisdiction and they may be well outside the 12 weeks before they seek help. With each delay it becomes more likely that a person seeking asylum will need to travel for an abortion."¹⁹

Yet the ability to travel is by no means guaranteed, as a recent case involving a refugee shows. She arrived in Ireland when she was more than 10 weeks into her pregnancy. Abortion Support Network worked with a number of individuals and agencies to try and get this client medical treatment before she reached the legal limit for abortion. She was unable to get a visa for the UK and, due to circumstances beyond her control, was unable to travel to the Netherlands for the appointment that had been arranged there. In the end, the client was forced to continue the pregnancy at great cost to her mental health, a clear violation of her human rights.

Furthermore, international students and all non-EU residents are now being advised to travel to the Netherlands because of difficulty getting timely visas for travel to the UK. Individuals can often obtain abortion care in the UK and return to Ireland in one day, but going to the

Netherlands requires more travel time, with additional financial and practical concerns.²⁰ An ASN client who was a non-EU national discovered her pregnancy at 13 weeks. Upon arriving in the UK, she was told of a serious medical condition that meant she needed to be seen in a hospital. Her bag was stolen on her way back to Ireland, so she needed a new passport and a new visa before she could return to the UK for hospital care.²¹ While the visa problems arise primarily in the UK, if the Irish State did not impose needless barriers, then non-EU residents would not need visas to obtain abortion care in the first place.

Our organisations also have serious concerns about a July 2019 High Court decision that interpreted the Irish Nationality and Citizenship Act to mean that people cannot leave Ireland at all for the year prior to applying for citizenship. If upheld, this unprecedented interpretation of the Act would prevent any migrant hoping to apply for citizenship within that time frame the ability to travel abroad for an abortion if needed, violating their human rights to health and equality. If upheld, this decision would heap discrimination upon discrimination, preventing those who have unequal access to health care in Ireland from obtaining the care they need anywhere else. The case has been appealed but no new decision has been rendered at time of our submission, and news reports state that if the case is not heard in October 2019, then the appeal may be delayed for two years, until 2021.²² Such a delay would be an intolerable violation of human rights.

Data Collection by the State & Support for Human Rights Bodies Monitoring Racial Discrimination

We recognise the need for data disaggregated by ethnicity and migration status in order to identify racial discrimination in health care and improve health care delivery. If we want to know, for example, whether racial and ethnic minorities, or people in the State's Direct Provision system, are accessing abortion care later than the overall population, or whether people in these groups have to travel farther to find an abortion provider, then we need to know the ethnic identity of abortion patients. Disaggregating data by ethnicity will also help us better understand if and how racial discrimination affects people's experiences accessing abortion.

We have great concerns, however, about the State's ability to collect such data without violating individuals' privacy rights and confidential medical information. In the early months of legal abortion, at least two hospitals were involved in data breaches that violated their patients' confidentiality.²³ There is a lack of trust in Irish society regarding the State's ability to safeguard sensitive information and the State's motivation for keeping information.²⁴ Therefore, it is crucial that the State take steps to assure stakeholders and patients that any data collected will be anonymised and kept securely.

Conclusion and Recommendations

Decriminalisation is the best way to address problems with abortion access, especially for those migrants whose right to abortion after 12 weeks is effectively nullified if they cannot obtain care in the State. Therefore:

The Abortion Rights Campaign and the Abortion Support Network request that the Committee ask the Irish State:

- ***How it intends to ensure access to free abortion for all people living in Ireland, including Travellers, migrants and international students***

- ***How the State will enforce the law against institutions refusing to provide abortion care and remove other barriers related to the refusal of care (so-called “conscientious objection”)***

The Abortion Rights Campaign and the Abortion Support Network asks that the State Party:

- ***Eliminate the three-day waiting period for abortion on request***
- ***Abolish the arbitrary 12-week cut-off for abortion on request***
- ***Completely decriminalise abortion for healthcare providers and third parties who help individuals to access abortion care***
- ***Create clear procedures for international protection applicants’ access to abortion care, which should be provided to all asylum applicants, in a language they can understand, as well as to General Practitioners, maternity hospitals, employees of Direct Provision centres and emergency accommodation, and other relevant contractors***
- ***Train doctors to offer vacuum aspiration abortion so that their patients can have a choice between taking medication and having an abortion procedure in the doctor’s office***
- ***Provide services to enable Travellers, people in Direct Provision and others who must travel outside their county to access an abortion, including free transportation and child care; coordinate this direct support through the State’s abortion referral service to protect individuals’ privacy***
- ***Clarify, through legislation or other means, that citizenship aspirants retain their right to travel and their right to health care***
- ***Collect data that can be disaggregated by race/ethnicity and migration status to increase understanding of how membership in a racial or ethnic minority group affects access to abortion, and safeguard all such data with robust privacy protections***

Finally, we endorse the recommendation in the *Alternative Report on Racial Discrimination in Ireland* to abolish Direct Provision and replace it with a system that respects asylum seekers’ human rights.

Appendix:
Other Cases of Migrants Facing Threats to Abortion Rights Under CERD

An ASN client living in Direct Provision tried to travel to the UK for an abortion, which required her to get special travel documents as well as entry and exit visas. While waiting for her visa, she had a miscarriage. Five months later, her application was denied by the UK Home Office. Even had the UK approved her visa, it would have come too late to be of use.²⁵

A case where the UK part of a migrant's visa was approved a day and a half before the Irish part expired, requiring ASN to pull in favours to get the client an immediate appointment in an English clinic as well as paying a premium for last-minute flights.²⁶

A case of a non EU-national living in Ireland who was not paid for her last period of work, leaving her short of funds to cover living expenses, let alone travel to England for an abortion. As she did not find out about the pregnancy until she was past 11 weeks, it was too late for her to access care in Ireland because of the medically unnecessary mandatory three-day waiting period. A problem at the clinic in England caused her appointment to be scheduled and then rescheduled, causing delay and stress.

A case of a non-EU resident living legally in Ireland with a wanted pregnancy that was diagnosed with a catastrophic foetal abnormality. It took more than E1000 (which does not even include the cost of the abortion) to arrange for her to be able to travel, and this would not have been possible without a veritable army of people, including but not limited to a friendly Member of Parliament, an immigration solicitor in the UK, a number of professionals in Ireland and donors.

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¹ "Convention on the Elimination of All Forms of Racial Discrimination," Article 5(e)(iv) (1969).

² Irish Network Against Racism, "Alternative Report on Racial Discrimination in Ireland," November 2019, <http://enarireland.org/wp-content/uploads/2019/11/INAR-ALTERNATIVE-REPORT-to-CERD-WEB.pdf>.

³ "International Covenant on Economic, Social, and Cultural Rights," § Article 12 (1976); "Convention on the Elimination of All Forms of Discrimination Against Women," § Article 12 (1979); "Convention on the Rights of Persons with Disabilities," § Articles 23 and 25 (2008); "CEDAW," General Recommendation No. 24, paragraphs 11, 14, 18, 23, 26, 29, and 31(b) (1999); "International Covenant on Civil and Political Rights," General Comment No. 36, paragraph 8 (2018).

⁴ UN Committee on the Rights of the Child, "Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland," paragraphs 57-58 (2016), <https://www.childrensrights.ie/resources/un-committee-rights-child-concluding>.

⁵ "Health (Regulation of Termination of Pregnancy) Act 2018" (2018).

⁶ World Health Organization, “Human Rights and Health,” December 29, 2017, <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health>.

⁷ Irish Travellers are an indigenous nomadic ethnic minority. The State recognised Irish Travellers as a distinct ethnic group in 2017.

⁸ See p. 6 of this report for more detailed recommendations.

⁹ UN Human Rights Committee, “Concluding Observations on the Fourth Periodic Report of Ireland,” paragraph C(a, b, c) (2014), <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsieXFSu dRZs%2FX1ZaMqUUOS9ylqPEMRvxx26PpQFtwrk%2BhtvbJ1frkLE%2BCPVCm6IW%2BYjfrz7jxiC9 GMVvGkvu2UluUfSqikQb9KMVoAoKkgSG>; UN Committee on Economic, Social, and Cultural Rights, “Concluding Observations on the Third Periodic Report of Ireland,” paragraph C(30) (2015), <https://www.ihrec.ie/documents/un-committee-on-economic-social-and-cultural-rights-concluding-observations-on-the-third-periodic-report-of-ireland-8-july-2015/>; UN Committee on the Rights of the Child, “Concluding observations on the combined third and fourth periodic reports of Ireland,” paragraphs 57-58 (2016), <https://www.childrensrights.ie/resources/un-committee-rights-child-concluding>; UN Committee on the Elimination of Discrimination Against Women, “Concluding Observations on the Combined Sixth and Seventh Periodic Reports of Ireland,” paragraphs 10(b), 11(c), and 43(a, c, d) (2017), <https://www.refworld.org/docid/596f48a94.html>; UN Committee against Torture, “Concluding Observations on the Second Periodic Report of Ireland,” paragraph 32(e) (2017), https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT_CAT_COC_IRL_28491_E.pdf; see also *Mellet v. Ireland* (UN Human Rights Committee 2016); *Whelan v. Ireland* (UN Human Rights Committee 2017).

¹⁰ UN Committee on the Rights of the Child, “Concluding observations on the combined third and fourth periodic reports of Ireland,” paragraphs 57-58 (2016), <https://www.childrensrights.ie/resources/un-committee-rights-child-concluding>.

¹¹ Ellen Coyne, “Three-Day Wait for Abortions Must Go, Rights Chief Demands,” *The Times*, December 15, 2018, <https://www.thetimes.co.uk/article/three-day-wait-for-abortions-must-go-rights-chief-demands-thdrb826x>.

¹² Martin Wall, “‘Conscientious Objections’ Delaying Roll-out of Abortion Services,” *The Irish Times*, October 29, 2019, <https://www.irishtimes.com/news/ireland/irish-news/conscientious-objections-delaying-roll-out-of-abortion-services-1.4065217>.

¹³ Direct Provision is the name of Ireland’s custodial approach to people seeking international protection.

¹⁴ Catherine Shanahan, “Kilkenny Hospital Unsited to Abortions, Say Medics,” *Irish Examiner*, June 22, 2019, <https://www.irishexaminer.com/breakingnews/ireland/kilkenny-hospital-unsited-to-abortions-say-medics-932314.html>.

¹⁵ Pavee Point Traveller & Roma Center and National Traveller Women’s Forum, “Irish Traveller & Roma Women Joint Shadow Report: A Response to Ireland’s Consolidated Sixth and Seventh Periodic Report to the UN Committee on the Elimination of Discrimination against Women,” January 20, 2017, <https://www.paveepoint.ie/wp-content/uploads/2017/01/Pavee-Point-NTWF-Joint-Shadow-Report-to-CEDAW-Committee-20012017.pdf>.

¹⁶ Abortion Support Network, “Annual Report 2018,” 2018, <https://www.asn.org.uk/wp/wp-content/uploads/2019/05/ASN-Annual-2018-Report-with-links.pdf>.

¹⁷ Henry McDonald, “Brexit Effect Forces Women to Go to Netherlands for Abortions,” *The Guardian*, July 6, 2019, <https://www.theguardian.com/world/2019/jun/07/brexit-effect-forces-women-to-go-to-netherlands-for-abortions>.

¹⁸ Amnesty International Ireland, “Ms. Y’s Case: Denied a Lawful Abortion in Ireland,” March 21, 2016, <https://www.amnesty.ie/ms-ys-case/>; Ellen Coyne, “‘Abortions Were Denied to Women at Suicide Risk,’” *The Times*, June 20, 2017, <https://www.thetimes.co.uk/article/abortions-refused-after-several-suicide-bids-xxlq0k8r7>.

¹⁹ *Ibid* 17

²⁰ *Ibid* 17

²¹ Mara Clarke, “Mara Clarke: The Law and Resulting Provision Are Leaving Too Many People Behind,” Abortion Rights Campaign, September 28, 2019, <https://www.abortionrightscampaign.ie/2019/09/28/mara-clarke-the-law-and-resulting-provision-are-leaving-too-many-people-behind/>.

²² Mary Carolan, "Controversial High Court Citizenship Ruling Being Appealed," *The Irish Times*, July 25, 2019, <https://www.irishtimes.com/news/crime-and-law/courts/high-court/controversial-high-court-citizenship-ruling-being-appealed-1.3967018>.

²³ "Harris Orders Inquiry over Claim Woman Had Details Leaked after Abortion," *The Irish Times*, January 2, 2019, <https://www.irishtimes.com/news/social-affairs/harris-orders-inquiry-over-claim-woman-had-details-leaked-after-abortion-1.3778998>.

²⁴ Jack Horgan-Jones, "Data Commissioner's Ruling Lifts the Veil from Public Services Card," *The Irish Times*, August 16, 2019, <https://www.irishtimes.com/news/ireland/irish-news/data-commissioner-s-ruling-lifts-the-veil-from-public-services-card-1.3987567>.

²⁵ Ibid 16

²⁶ Ibid 17