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Coalition to Repeal the Eighth Amendment
Respect and protect women's lives, health and choices

Abortion Rights Campaign; Action for Choice; AIMS; Akidwa; Anti-Racism Network; Atheist Ireland; Choice Ireland; Cork Women's Right to Choose; Doctors for Choice; Galway Pro-Choice; Irish Council for Civil Liberties Lawyers for Choice; Mandate Trade Union; National Women's Council of Ireland; Northern Ireland Alliance for Choice; People Before Profit Alliance; Re(al) Reproductive Health ROSA; Socialist Party; Socialist Workers Party; Trade Union Campaign to Repeal the 8th Amendment; Union of Students in Ireland; United Left; UNITE the Union.

Dear Committee members,

The Coalition to Repeal the Eighth Amendment has prepared this submission under Article 12 and with reference to Article 2.2 and Article 3 of the Covenant to assist the Committee for Economic, Social and Cultural Rights in its preparation of a list of issues in advance of the review of the Irish State's compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Coalition to Repeal the Eighth Amendment Credentials

The Coalition to Repeal the Eighth Amendment (hereafter the Coalition), a broad alliance involving 23 different organisations, was established in September 2013 following the passing of the Protection of Life During Pregnancy Act. The Coalition is a campaigning organisation that is working for a referendum to repeal article 40.3.3

(known as the eighth amendment) ¹ from the Irish constitution in order to respect and protect the lives, health and choices of women living in Ireland.

These comments address the Coalition's concern and disappointment at the failure of the Irish State in its recent response (dated 01 April 2015) to the Committee to adequately address the question of women's access to abortion and the criminalisation of abortion in Ireland. Our submission will focus on the Irish State's response to questioning on three Covenant articles; Article 2.2, Article 3 and Article 12.

We welcome the CESCR Committee's willingness to highlight that the realization of women's right to health requires the removal of barriers that interfere with access to health services, education and information, including in the area of sexual and reproductive health.

We submit that the failure of the Irish State to ensure that women living in Ireland have adequate and equal access to abortion is a violation of a woman's right to exercise her rights. It is also a fundamental violation of women's right to mental and physical health.

We contend that is not enough to ensure that women have a right to travel abroad to access abortion if there are no measures in place to ensure that women, regardless of race, nationality, economic means and ability to travel have equal access to that right.

Finally, we contend that Ireland's current prohibition on abortion fails to reflect public opinion in Ireland as opinion polls have consistently shown increasing support for abortion on broader grounds.

Article 2.2

This article compels the Irish State to "undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social

¹ Article 40.3.3, known as the Eighth Amendment, was voted by referendum into the Irish Constitution in 1983. It equates the life of a pregnant woman with that of an embryo or foetus. It states: "*The State*

origin, property, birth or other status.” The Irish State assertion that “Ireland has comprehensive and robust equality legislation in place, prohibiting discrimination on nine specified grounds” is entirely inadequate and fails to address the many areas where women continue to experience discrimination, particularly in relation to abortion access. The lack of legal abortion in Ireland is a profound source of discrimination against women and girls. It means that women who cannot travel, including women on low incomes, asylum-seeking or undocumented women, women with disabilities, and all those unable to travel for whatever reason, are clearly discriminated against and do not have access to same rights that women who can. The recent 2014 case of Ms Y is illustrative of this. Ms Y, an asylum seeker who became pregnant as a consequence of rape. Ms Y was not permitted to have an abortion, but instead was required to continue with the pregnancy until a caesarean section was performed on her at 25 weeks. Furthermore, women who are unable to travel and are forced to use the abortion pill are subject to criminalisation and liable to be punished with up to 14 years in prison. It is not enough to ensure that women have a right to travel abroad to access abortion without putting in place measures to ensure that women, regardless of race, nationality, economic means and ability to travel have equal access to that right.

Article 3

This requires the Irish state “to undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.” In terms of reproductive rights the Irish State’s response here only makes reference to the Crisis Pregnancy Programme and declares its success in halving the number of teen pregnancies between 1998 and 2012. There is no mention of abortion and the fact that in that same period 10,335² teenagers were forced to travel abroad to Britain to access a legal abortion. Therefore, the government’s success is, in part at least, due to the fact that women travel abroad to access abortion.

Article 12

² UK Department of Health Statistics of Women From the Republic of Ireland Accessing Abortion Services in England and Wales 1998-2012. See <https://www.ifpa.ie/Hot-Topics/Abortion/Statistics>

The Covenant recognises “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” The Coalition is deeply disappointed with the Irish State’s response to the direct questions regarding the criminalization of abortion in Ireland. We note in particular the government’s statement that “it does not intend to propose any amendments to the Act or Article 40.3.3 of the Constitution at present. This ignores the reality of abortion in Ireland and the significant material difficulties that women face in accessing abortion in Ireland even in the very limited circumstances where it is legal. The recent *PP v HSE* case illustrates how the Eighth amendment impacts negatively on maternal health care in general. The High Court handed down judgment in *PP v. HSE* today. P., who was 15 weeks pregnant, died on December 3rd, but her body was subjected to medical processes to ‘facilitate the continuation of maternal organ supportive measures in an attempt to attain foetal viability’ for several more weeks. The family was forced to obtain a order from the High Court in order for medical treatment to be discontinued.

Abortion is prohibited in Ireland in all cases except where doctors believe a woman’s life is at risk, including the risk of suicide. Abortion is banned in all other situations including cases of rape, incest, or fatal foetal abnormality. The current prohibition forces at least 12 women and girls a day to leave Ireland for a medical procedure they should be able to access here. The threshold encapsulated in the current legal structure means that doctors are forced to wait until a woman’s life is endangered before being able to provide appropriate health care. The Irish constitution makes a makes an unworkable and dangerous distinction between a pregnant woman’s life and her health, and may prevent doctors from acting in the best interests of their patients. It creates an unequal and discriminatory health system: a pregnant woman has only a qualified right to health care, and her right to make informed decisions about her health is restricted.

Instead of giving full expression to a woman’s constitutional right to have an abortion where her life is at risk, the Protection of Life during Pregnancy Act 2013, introduces new legal barriers that require complicated certification and review by up to six doctors. The result of this law is to restrict a woman’s constitutional right to a life-saving abortion rather than to give legal effect to it.

The presence of Article 40.3.3 in the Irish Constitution, which gives priority to the protection of the “right to life of the unborn”, requires that in a crisis pregnancy priority is always given to life of the foetus regardless of the impact that this may have on the physical or mental health of the pregnant woman.

Public Opinion

The Coalition contends that current government policy is out of step with public opinion. While the Irish government’s delegation argued before the Human Rights Committee in July 2014 that Irish law reflects an evolution of attitudes on abortion; that its development has involved substantial public discussion and that there is a general consensus in Ireland that is represented by the 2013 Act. Neither of these assertions is accurate. In fact two referendums (1992 and 2002) were held by which the state aimed to further restrict the right in the X case by excluding suicide. One of these proposals (2002) would have included specific reference to criminal provisions by referring in the proposed amendment to a proposed legislation which included a max term of 12 years (lower than the maximum term in the 2013 Act). Both failed. Referendums to ensure the rights to travel for and to receive information about abortion passed. The people have *never* been given the opportunity to vote on an amendment to make art 40.3.3 less restrictive.

The will of the people is best indicated by opinion polls - see below - consistently over 70% of Irish people support abortion in case of foetal anomaly, risk to a woman's health and where pregnancy results from rape/child abuse, and around 36% are in favour of a woman's right to choose in other circumstances. Those in younger age groups show higher levels of support.

- In **April 2015**, a *Sunday Independent*/ Millward Brown poll found that 70% of people surveyed supported abortion where there is a medical risk to a woman's life other than suicide. 63% of people supported abortion in cases of fatal foetal anomaly, while 60% were in favour of abortion in cases where a woman is suicidal.

- In **October 2014**, an *Irish Times/Ipsos MRBI* poll found that 68% of people surveyed were in favour of a referendum to be held on whether or not to allow for abortion in cases of rape and fatal foetal anomaly.
- In **September 2014**, a *Sunday Independent/ Millward Brown* poll found that of those who expressed an opinion, over 75% of people surveyed were in favour of holding a referendum to repeal the Eighth Amendment of the Constitution. 69% of respondents believed abortion should be allowed in cases of rape, while 68% were in favour of abortion where there is a threat to the long-term health of a woman.

Questions

We respectfully suggest that the CESCR ask the following questions of the state:

- What measures is the Irish State taking to bring Irish law into line with international medical best-practice and international human right norms?
- What measures does the state plan to put in place to ensure equal access to the right to travel abroad for an abortion?
- Is the Irish State content to allow women who have received a diagnosis of fatal foetal abnormality or women who are pregnant as a result of rape or incest no access to abortion in Ireland?
- Under what circumstances would the Irish government allow a referendum to repeal the eighth amendment?

Finally, we would respectfully suggest that the Committee urge the Government to repeal and amend its abortion laws, including the article 40.3.3 of the Constitution and allow women equal access to the highest attainable standard of reproductive health.

Yours sincerely,

Ailbhe Smyth

Convenor, Coalition to Repeal the Eighth Amendment.