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Communication by the Irish Family Planning Association (IFPA) to the Committee of Ministers in relation to the Execution of the European Court of Human Rights Judgment in the case of *A, B and C v Ireland* (Application No. 25579/05)

Dear Honourable Committee members,

The Irish Family Planning Association (IFPA) submits this letter for your attention in accordance with Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements (adopted by the Committee of Ministers on May 10th 2006 at the 964th meeting of the Ministers' Deputies).

This IFPA communication is intended to supplement the information available to the Committee of Ministers at its forthcoming 1208th Human Rights meeting (23-25 September 2014). As an organisation that delivers a professional and ethically driven counselling service in eleven centres nationwide and provides information and support annually to some 4,000 women and girls experiencing pregnancies that were unplanned, unwanted, or developed into a crisis because of changed circumstances, the IFPA has a particular interest and set of concerns in relation to the European Court of Human Rights judgment in the case of *A, B and C v Ireland* and has expressed these concerns in previous communications.

The Protection of Life During Pregnancy Act 2013 came into effect on January 1st 2014. The IFPA's initial analysis of the legislation is set out in a previous communication (DH-DD(2013)1364E 18 December 2013). The clinical guidelines to support operation of the Act have not yet been published, although a draft has been circulated to selected health service providers and a leaked version is available on the website of the *Guardian* newspaper.

The guidance document, once published, will be the primary source for health service providers on the purpose, meaning and implementation of the 2013 Act. The IFPA will make an analysis of the final



guidance document when it is published. However, we wish to highlight two particular concern with the draft document:

Rather than stating that the purpose of the guidelines is to ensure that women can have timely access to a health service to which they have a legal right, the draft guidance document states that the purpose of the Act is to *restate the general prohibition on abortion*—language that is nowhere used in the Act itself. The guidance document is the document that medical professionals will turn to interpret the Act in their clinical practice. The inclusion of this statement can only serve to reinforce the chilling effect identified by the Court in *A, B and C v Ireland* and in other cases.

In addition, the guidance document states that *due regard should be given to the gestational stage of the pregnancy and the appropriate procedure decided to preserve unborn life as far as practicable*. This statement appears to introduce into clinical guidelines and, ultimately, clinical practice a gestational age limit that is not part of the Act or of the *X Case*.

The IFPA is of the view that the 2013 Act has been drafted in more narrow and restrictive terms than required by the Court's judgement, that it contains numerous procedural barriers and obstacle to access to services, and that the guidelines tend to overstate the restrictiveness of the Act such that the document adds another layer of chilling effect and stigma to access to lawful abortion. Neither the Act nor the guidelines resolve the central issue of how a woman and her doctors are to distinguish between risk to health and risk to life.

These matters are of particular importance in the circumstances where a young women, Ms Y, who was raped in her country of origin, became pregnant and requested an abortion on grounds of risk to life because of suicide, underwent a caesarean section at between 24 and 26 weeks gestation. It is unclear whether Ms Y was able to vindicate her rights under the 2013 Act and whether other violations of her rights under the Convention are at issue.

In light of these issues, it is the view of the IFPA that serious questions arise as to the adequacy of the 2013 Act as a measure to give effect to rights and fulfil the requirements of the Court in its judgment in *A, B and C v Ireland*. In this context, we believe that, notwithstanding the government's request to close the case, enhanced supervision by the Committee of Ministers should continue.

I hope that the Committee will find this communication useful in the deliberations on the execution of this judgment.

Respectfully yours,

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