

## UPR Info Pre-session Briefing for Permanent Representatives to the UN

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I am grateful for the opportunity to speak on behalf of the Irish Family Planning Association (IFPA).

The IFPA is Ireland's leading reproductive healthcare provider. In 2015, we provided information and support to 3,700 women and girls who experienced pregnancies that were unplanned, unwanted or had developed into a crisis.

### Current Law

**1. Ireland's abortion laws are out of step with the European consensus:** abortion is lawful only when there is a risk to the life of a pregnant woman. In all other circumstances, including when a woman's physical or mental health is at risk, in cases of rape, incest or severe or fatal foetal anomaly abortion is criminalised.

Unless a woman's **life** is at risk, the embryo or foetus takes precedence over the right to **health** of a pregnant woman, and doctors are prevented from making clinical decisions in the interests of a woman's health. Doctors must allow a woman's health to deteriorate until a risk to health becomes a risk to life before certifying her eligibility for an abortion.

In 2013, the state implemented the recommendation of a government expert group and enacted the Protection of Life During Pregnancy Act, to give effect to the exceptionally limited right to lawful abortion.

However, this legislation is far from adequate to bring Ireland into compliance with international human rights law. It includes criminal provisions under which the maximum penalty for a woman or anyone who assists her, including a doctor, is 14 years imprisonment.

The Act's cumbersome procedures, criminal provisions and discriminatory impacts have been criticised, including by the Irish Human Rights and Equality Commission, and three UN Human Rights treaty monitoring bodies.

### Harms

**2. Ireland's abortion restrictions significantly harm women.** The State justifies its restrictive laws by permitting travel to and information about abortion in other states. But women must carry the entire financial, practical and emotional burden this journey.

Between 1980 and 2014, at least 163,514 women travelled from Ireland to the UK for legal abortion services. Each experienced the stigma of accessing services abroad that are criminalised in Ireland.

And not all women can access abortion outside of Ireland. This can be because of the costs, because they cannot obtain the necessary travel documents, because of caring or employment obligations, or for reasons of poor health or disability.

Increasingly, women are risking prosecution by self-inducing abortion in Ireland using medication obtained online. If complications arise in these cases, women may be deterred from seeking necessary medical help out of fear of prosecution.

These harms discriminate against women in their exercise of their right to reproductive health care.

### Treaty Monitoring Bodies

**3. Every UN treaty body that has examined Ireland's abortion laws (CRC, CESCR, HRC, CAT, and CEDAW) has concluded that Ireland's abortion laws are simply irreconcilable with women's human rights.**

They have criticised:

- the criminalisation of abortion;
- the need for women who seek abortion to travel to other jurisdictions to avail of these services and the consequent psychological, financial and health burdens;
- the discriminatory impacts of the law on vulnerable groups of women—undocumented women, migrant women, women living in poverty, and adolescent girls;
- the restrictions on the provision of information on legal abortion services in other states.

### Required Legal Reforms

**4. Legal reforms, including decriminalisation of abortion, are required if Ireland is to comply with human rights law.**

The barrier to reform of Ireland's abortion laws is Article 40.3.3 of the Constitution, which reads: "The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to .... defend and vindicate that right."

This clause affords constitutional protection to the biological existence of an embryo or foetus on a basis of equality with the right to life of a pregnant woman.

Repeal of Article 40.3.3 is necessary to permit the introduction of measures to broaden legal access to abortion in line with human rights standards.

Since 2014—the CRC, the CESCR and the Human Rights Committee—have each called on the state to make the necessary changes to the Constitution to permit broader access to abortion.

This would require a referendum.

### Public Opinion and Political Commitments

**5. It is abundantly clear that there is public support for a referendum and for broader access to abortion.** Opinion polls consistently show this. A March 2016 poll showed that 87% of people

want abortion access extended; 72% want decriminalisation of abortion; and 73% want a referendum on repealing Article 40.3.3 of the Constitution

And 76 of 158 members of Parliament also support a referendum. A further 39 are committed to or have publicly voiced their support for a Citizens' Assembly, which would be tasked with looking at constitutional reform in this area.

## Conclusion

**In conclusion**, at the first cycle of the UPR, Ireland rejected all six recommendations on abortion. Ireland's abortion laws are an unacceptable infringement of women's right to health and of Ireland's obligations under international human rights law.

We therefore respectfully urge member states to use the UPR to call on Ireland to implement the recommendations of human rights bodies and to make the necessary constitutional and legal changes to bring Ireland's abortion laws into line with international human rights norms and standards in law and in practice.

### ***This statement by the Irish Family Planning Association is also endorsed by:***

National Women's Council of Ireland

Irish Council for Civil Liberties

Coalition for the Repeal of the Eighth Amendment (a coalition of over 40 groups and organisations campaigning to repeal Article 40.3.3 (or the eighth amendment) from the Irish Constitution)

Abortion Rights Campaign

Action for Choice

Amnesty International

## **References**

See IFPA Stakeholder Submission and Summary of Issues for references and citations in relation to the information presented in this statement.

## **UPR first cycle, 2011: recommendations about Ireland's abortion laws, and note on the status of implementation**

### Human rights standards

**NORWAY:** Bring its abortion laws in line with ICCPR.

*Note: this recommendation was rejected and has not subsequently been implemented; the UN Human Rights Committee (HRC) which monitors implementation of the ICCPR (the International Convention on Civil and Political Rights) has recommended that Ireland must make legislative and constitutional changes in order to meet the requirements of the Convention.*

### Widen grounds for abortion

**DENMARK:** Take measures to revise the law on abortion with a view to permitting termination of pregnancy in cases where pregnancy is a result of rape or incest, or in situations where the pregnancy puts the physical or mental health or wellbeing of the pregnant woman or the pregnant girl in danger.

**SLOVENIA:** Allow abortion at least when pregnancy poses a risk to the health of the pregnant woman.

*Note: these recommendation were rejected and have not subsequently been implemented. There has been no change since 2011 in the situation of women who seek to end a pregnancy because of rape or incest, or because it poses a risk to health or well-being. Women in these situations have to travel to another state to access a procedure that would be offered in almost all other European countries.*

### Decriminalise abortion and safeguard reproductive rights

**SPAIN:** Adopt legislative measures that guarantee greater integration of women as well as safeguards for their personal rights and reproductive health care and reform the Offences against the Person Act of 1861 to decriminalize abortion under certain circumstances.

*Note: this recommendation was rejected and has not subsequently been implemented. The Protection of Life During Pregnancy Act includes criminal provisions under which a woman who had an abortion in Ireland and anyone who assisted her would be liable to prosecution and a maximum sentence if indicted of 14 years imprisonment.*

### Legislate to give effect to the right to lawful abortion if a pregnant woman's life is at risk

**UNITED KINGDOM :** Introduce legislation to implement the European Court of Human Rights judgment in the *A, B and C v Ireland* case.

**NETHERLANDS:** Ensure that the establishment of an expert group on abortion matters will lead to a coherent legal framework including the provision of adequate services.

*Note: The European Court of Human Rights required Ireland to give effect in practice to the limited constitutional right to lawful abortion if a woman's life, as distinct from her health, is at risk. An expert group established in June 2011 recommended legislation as the means to fulfil the Court's requirements. The Protection of Life During Pregnancy Act was enacted in 2013 to implement this judgment. However, the Act retains harsh criminal sanctions and has been criticised on a number of grounds, including by the UN HRC and the Irish Human Rights and Equality Commission).*