SEXUALITY, INFORMATION
REPRODUCTIVE HEALTH & RIGHTS

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Stakeholder report of the Irish Family Planning Association on reproductive rights
Second Universal Periodic Review of Ireland: 2016

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Credentials

The Irish Family Planning Association (IFPA)[1] submits these remarks based on its experience in providing reproductive health care services to women and girls. Since 1969, the IFPA has worked to promote and protect basic human rights in relation to reproductive and sexual health, relationships and sexuality. The IFPA provides the highest quality reproductive health care at its two medical clinics in Dublin and eleven counselling centres across Ireland. Our services include non-directive pregnancy counselling, family planning and contraceptive services, medical training for doctors and nurses, free post-abortion medical check-ups and educational services. In 2014, the IFPA medical clinics provided sexual and reproductive health services to over 16,000 clients and provided information and support to 3,700 women and girls experiencing pregnancies that were unplanned, unwanted or that had developed into a crisis because of changed circumstances.

At Ireland's first Universal Periodic Review in 2011, the State received six recommendations in relation to Ireland's abortion laws.[2] All were rejected.

This submission addresses (1) Ireland's abortion laws; (2) the harms to women of these laws; (3) developments since UPR 2011; (4) observations by human rights bodies; (5) public opinion.

1. Ireland's laws on abortion

Article 40.3.3 of the Irish Constitution states that: "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

[1] Irish Family Planning Association website available at www.ifpa.ie.

[2] 108.4. Bring its abortion laws in line with ICCPR (Norway); 108.5. Introduce legislation to implement the European Court of Human Rights judgement in the A, B and C versus Ireland case (United Kingdom); 108.6. 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 (Denmark); 108.7. Allow abortion at least when pregnancy poses a risk to the health of the pregnant woman (Slovenia); 108.8. 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 (Spain); 108.9. Ensure that the establishment of an expert group on abortion matters will lead to a coherent legal framework including the provision of adequate services (Netherlands).

to respect, and, as far as practicable, by its laws to defend and vindicate that right." [3] This article gives a foetus an equal right to life with a pregnant woman. It has been interpreted by the Irish Supreme Court to mean that abortion is prohibited in all circumstances, except where there is a risk to a woman's life, as distinct from her health.[4]

In all other cases abortion is criminalised, with a maximum sentence of 14 years imprisonment.[5] Andorra and Malta are the only European countries with equally or more restrictive laws on abortion.

While the rights to travel for and receive information about abortion are guaranteed in the Constitution, access to information is regulated by the "Abortion Information Act"[6].This Act requires that information about abortion services can only be given to a woman if she is also given information about parenting and adoption.

Ireland's abortion laws have been criticised by successive UN Treaty Monitoring Bodies—the UN Human Rights Committee, the UN Economic, Social and Cultural Rights Committee, the UN Committee Against Torture, and the Committee on the Elimination of Discrimination Against Women—as irreconcilable with women's human rights, including the right to the highest attainable standard of physical and mental health.[7] Most recently, the UN Human Rights Committee and the UN committee on Economic, Social and Cultural Rights, in 2014 and 2015 respectively, called on the State to reform its legislative and constitutional provisions on abortion in line with international human rights obligations.

2. Impact and harms of the law

The vast majority of women and girls in Ireland who need abortions rely on the provision of services in other jurisdictions, particularly the UK. According to UK Department of Health statistics, 3,735 women gave Irish addresses at abortion services in the UK in 2014; 1,497 women gave Irish addresses at Dutch abortion clinics between 2006 and 2013.[8] These numbers are an underestimation, as not all women resident in the Republic of Ireland provide their Irish addresses.

The requirement to travel for abortion services

The requirement to travel for abortion services imposes financial, physical and psychological burdens on pregnant women, who must undertake the full financial cost of travel and

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[3] Article 40.3.3, Bunreacht Na hEireann, 1937, Available at https://www.constitution.ie/Documents/Bhunreacht_na_hEireann_web.pdf

[4] Attorney General v X, [1992] IESC 1; [1992] 1 IR 1.

[5] Protection of life During Pregnancy Act, 2013, section 22 available at http://www.irishstatutebook.ie/2013/en/act/pub/0035/sec0022.html#sec22

[6] Regulation of Information (Services Outside the State For Termination of Pregnancies) Act, 1995

[7] UN Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Ireland, Adopted by the Committee at its fifty-fifth session (1–19 June 2015) page 9. Available at < http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/150/67/PDF/G1515067.pdf?OpenElement>; Human Rights Committee, 111th Session. Concluding observations on the fourth periodic report of Ireland, UN Doc CCPR/C/IRL/CO/4,19 August 2014; United Nations Committee against Torture, 46th session, 9 May - 3 June 2011 Concluding Observations: Ireland, UN Doc CAT/C/IRL/CO/1, 17 June 2011; UN Committee on the Elimination of Discrimination against Women, 33rd session, Concluding Comments: Ireland, UN Doc CEDAW/C/IRL/CO/4-5, 13 July 2005 .

[8] Abortion in Ireland: Statistics. Irish Family Planning Association https://www.ifpa.ie/Hot-Topics/Abortion/Statistics.

accommodation and of the abortion service itself. These burdens, and the significant stigma that attaches to abortion in Ireland, were highlighted by the European Court of Human Rights in *A, B and C v Ireland*.[9] The need to travel to access abortion services disproportionately affects vulnerable and disadvantaged women and girls. This includes those who cannot raise the necessary funds to travel abroad, who are in the care of the State, who experience difficulties and delays in travelling abroad or who cannot leave Ireland because of immigration restrictions. Undocumented and asylum seeking women and girls experience particular barriers to access to services outside the State.[10] A Government working group report on asylum in Ireland has recently called on the State to ensure that barriers to women asylum seekers' access to abortion services outside Ireland are addressed.[11]

Some women are unable to travel to access services. Women are increasingly importing medication to self-induce abortion. These medications may be ineffective or harmful, and are administered without proper medical advice or supervision.[12]

Risk to health

Women who receive a diagnosis of severe or fatal foetal anomaly, or who have an underlying health condition that may be exacerbated by pregnancy, must also travel to another State for services. The burden of accessing this service is placed on the woman rather than the health care system. Women who make this journey for medical reasons must leave the mainstream health care service. They must make their own way to a private medical facility in another country without the protection of the protocols that apply in other situations where people travel for health care. While some doctors make ad hoc arrangements, we know of women who have travelled without medical files detailing their medical history or proper referral by their doctor.

In many cases, women in these circumstances are receiving prenatal care and find themselves effectively ejected from the health care system, with the onus of organising a

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[9] Application No. 25579/05. [2010] ECHR 2032.

[10] IFPA Annual Report 2013, available at: https://www.ifpa.ie/sites/default/files/documents/annual-reports/ifpa_annual_report_2013.pdf.

[11] Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers: Final Report June 2015. The Working Group: "Strongly urges that a review by the relevant organisations of services for persons in the system experiencing a crisis pregnancy be undertaken immediately with a view to a protocol being agreed to guide State agencies and NGOs supporting such persons. Particular attention should be paid to addressing the needs of the individual in the context of the legislative framework. Issues relating to travel documents, financial assistance, confidentiality, and access to information and support services should be addressed." Available at http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf.

[12] According to the Irish Medicines Board, the number of abortion-inducing drugs seized by the Customs Authority is increasing each year. Last year, 60 importations (1,017 pills) were seized. This is up from the figure of 25 intercepted importations (of 438 pills) in 2013. http://www.thejournal.ie/ruth-coppinger-abortion-pills-2060811-Apr2015/ Many more importations are not intercepted, either because those selling them change the packaging regularly to avoid detection and because many women have them sent to addresses in Northern Ireland. (The Irish Times: July 27, 2013. *Abortion law: what comes next?* Available at http://www.irishtimes.com/news/health/abortion-law-what-comes-next-1.1476187.)

termination placed entirely on them. This was described as "a great cruelty" in 2012, by then Minister for Justice Alan Shatter.[13]

In Ireland, in cases of conflict with the foetal right to life, doctors are prevented by the law from making clinical decisions that are in the best interests of the pregnant woman's health. The distinction between risk to the life and risk to the health of the pregnant woman is medically unsound. This distinction requires doctors to delay performing medically necessary abortions until a woman's health has deteriorated to such an extent that her life is at risk.

The National Consent Policy makes clear that such conflict may also result in situations where pregnant women are coerced into unwanted medical interventions where refusal of treatment would put the life of a viable foetus at risk.[14]

Gender Inequality

Under the Abortion Information Act, provision of information about abortion services is strictly regulated, and infringement of the legislation is subject to criminal sanctions. Information about abortion services is treated in law, therefore, as so odious that its provision must be regulated by legislation. And women are treated by the law as incapable of making rational decisions about their pregnancies. The IFPA knows from our clients that the legislation maintains and reinforces abortion stigma and harmful gender stereotypes.

In 2012, the then Minister highlighted that: "there is no impediment to men seeking and obtaining any required medical intervention to protect not only their life but also their health and quality of life….[I]t can truly be said that the right of pregnant women to have their health protected is, under our constitutional framework, a qualified right as is their right to bodily integrity. …. This is a republic in which we proclaim the equality of all citizens, but it is a reality that some citizens are more equal than others."[15]

3. Developments since UPR 2011

The Protection of Life During Pregnancy Act 2013 (PLDPA) is the State's response to the European Court of Human Rights judgment in *A, B and C v Ireland*. Despite the recommendations of international human rights bodies and the World Health Organisation[16] that abortion should be decriminalised, the PLDPA maintains the legal position whereby

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[13] Speech delivered by Alan Shatter TD, Minister for Justice, Equality and Defence in Dail Eireann during Private Members Time on Tuesday, 27th November 2012. Available at http://www.justice.ie/en/JELR/Pages/SP12000333.

[14] Para 7.7.1, Refusal of treatment in pregnancy. Health Service Executive (2013). *National Consent Policy*. Available at http://www.hse.ie/eng/about/Who/qualityandpatientsafety/National_Consent_Policy/consenttrainerresource/trainerfiles/NationalConsentPolicyM2014.pdf.

[15] Op cit.

[16] World Health Organisation: Safe abortion: technical and policy guidance for health systems. 2nd edition 2012 1,18 (2nd ed., 2012), Available at: http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf. The WHO states that any "…legal restrictions on sexual and reproductive health services are likely to have serious implications for health". They assert that "restricting legal access to abortion, for example, does not decrease the need for abortion, but it is likely to increase the number of women seeking illegal and unsafe abortions, leading to increased morbidity and mortality." Legal restrictions also lead many women to seek services in other states or countries, which is costly, delays access and creates social inequities."; World Health Organisation, 2015, 'Sexual health, human rights and the law'. p.16, Available at: http://apps.who.int/iris/bitstream/10665/175556/1/9789241564984_eng.pdf?ua=1

abortion is criminalised in all circumstances, except where there is risk to life, and imposes a maximum penalty of 14 years imprisonment on conviction.[17]

Ireland's national human rights institution, the Irish Human Rights and Equality Commission, has criticised the legislation on a number of grounds, including the new procedural barriers to access to lawful services.[18] The procedures of the PLDPA are complicated.[19] They are also discriminatory; the Act includes more onerous decision-making processes if the risk to life is from suicide than when a physical health risk is present. A review procedure was a requirement of *A, B and C v Ireland*, but the Act's review provisions place significant burdens on women, particularly a pregnant woman who asserts suicide risk, and is, by definition, extremely vulnerable. If she is denied certification and seeks a review of the decision, she will be subjected to examinations by four psychiatrists and two obstetricians. The role of the psychiatrists in this process is not to provide treatment, but only to examine the woman to determine whether she is at risk of suicide. The PLDPA provides for conscientious objection of health care providers: there is cause for concern about widespread claims of conscientious objection will result in refusal of care, particularly where the risk to life arises because of risk of suicide.[20]

The Guidance Document[21] issued to medical practitioners on the implementation of the Act is entirely procedural and does not provide clinical guidance.[22] The State informed the CESCR Committee in 2015 that clinical guidance on how risk to life should be determined was "a matter for health professional bodies".[23] However, if a risk to life identified by a doctor were later deemed not significantly "real and substantial" to satisfy the test established by law, a doctor could be prosecuted under the Act. In such circumstances, where an error in clinical judgment is potentially punishable by 14 years imprisonment, the chilling effect on doctors of the criminalization of abortion remains.

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[17] Sections 22 and 23 of the Protection of life During Pregnancy Act, 2013 are available at http://www.irishstatutebook.ie/2013/en/act/pub/0035/sec0022.html#sec22 and http://www.irishstatutebook.ie/2013/en/act/pub/0035/sec0023.html#sec23.

[18] Irish Human Rights Commission. Observations on the Protection of Life During Pregnancy Bill 2013.

[19] S.9.3; S.9(4), Protection of Life During Pregnancy Act 2013. Act Number 35 of 2013. Available at: http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/acts/2013/a3513.pdf. The Act includes separate provisions for the certification of cases of non-emergency physical threat to life (section 7), medical emergencies (section 8), and cases of risk to life from suicide (section 9). Certification involves a two-part test: first, doctors must make a determination that there is a "real and substantial" risk to the woman's life; and second, they must jointly certify "in good faith" that the relevant "medical procedure" is the only reasonable means of eliminating that risk. Decision-making is in the hands of medical specialists and is different under each section. One doctor can make the decision in emergency cases. A pregnant woman who asserts her right to abortion because of physical risk to life under section 7 must be examined by two medical practitioners (an obstetrician and a specialist in a relevant area). However, the requirements for certification are more onerous in cases of suicide risk than when there is physical risk to life. Section 9 provides that three specialists—two psychiatrists and an obstetrician—must jointly certify a woman's legal entitlement to the "medical procedure". If certification is refused under section 7 or section 9, the pregnant woman, or someone acting on her behalf, can seek a second opinion or initiate a formal review procedure. She will then be examined by a review panel of the same number and specializations as under sections 7 and 9, depending on the nature of the risk to life.

[20] Professor Veronica O'Keane. *Anti-choice psychiatrists undermine abortion law*. The Irish Times. 14 February 2014. http://www.irishtimes.com/news/health/anti-choice-psychiatrists-undermine-abortion-law-1.1690750

[21] Department of Health. Implementation of the Protection of Life During Pregnancy Act 2013: Guidance Document for Health Professionals. http://health.gov.ie/wpcontent/ uploads/2014/09/Guidance-Document-Final-September-2014.pdf. Published September 2014.

[22] Taylor, op cit.

[23] Taylor, Maeve. *The UN, Ireland and abortion*. Letter published in *The Irish Times*, June 25th 2015.

Case studies

Since Ireland's last UPR, at least 15,000 women have travelled for abortion services. Three cases in particular have come to public prominence and demonstrated the harms of Ireland's constitutional and legislative regime on abortion.[24] In each case, well established human rights norms of a pregnant woman's dignity, and her rights to health, autonomy and bodily integrity were secondary to the preservation of foetal life.

1. Savita Halappanavar

In 2012 Ms Halappanavar died after being refused a termination, despite inevitable miscarriage, because a foetal heartbeat could be detected. The report into her death found an over-emphasis on the need not to intervene until the foetal heart stopped, together with under-emphasis on managing her risk of infection and sepsis.[25] This case highlighted the impossibility in clinical practice of distinguishing ethically or clinically between a risk to life and risk to health.[26] The report of the inquiry into the death of Ms Halappanavar is clear that, in another state, clinical practice would have led to an early termination of pregnancy. In its recognition that such guidance would require legal change, the report tacitly accepts that Irish law as it stands does not allow for best practice in the management of cases in which a woman's health, or indeed her life, is at risk.

2. Ms Y

Ms Y was pregnant as a result of rape.[27] Living within Ireland's direct provision system for asylum seekers, she was unable to gather the necessary travel documents and financial means to travel abroad to access safe and legal abortion.[28] At approximately 21 weeks of pregnancy, she attempted to enter the UK to seek an abortion, but was detained and returned to Ireland. Newspaper reports indicate that Ms Y was admitted to hospital and assessed under Section 9 of the PLDPA some weeks later, and that a panel of two psychiatrists and an obstetrician found that her life was at risk from suicide. However, rather than authorise an abortion, a plan was put in place to deliver a live neonate by caesarean. Ms Y went on hunger strike in protest. Lawyers acting on behalf of the governmental Health Service Executive obtained a High Court order to forcibly hydrate and sedate her. It is understood that Ms Y was not forcibly hydrated and ultimately ended her hunger strike. A caesarean delivery was carried out at approximately 25 weeks of pregnancy.

3. PP v HSE

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[24] Taylor M (2015). Women's right to health and Ireland's abortion laws, *Int J Gynecol Obstet*. Available at http://dx.doi.org/10.1016/j.ijgo.2015.04.020

[25] Health Service Executive. Final Report: Investigation of Incident 50278 from time of patient's self-referral to hospital on the 21st of October 2012 to the patient's death on the 28th of October, 2012. http://www.hse.ie/eng/services/news/nimtreport50278.pdf. Published June 2013.

[26] Irish Human Rights Commission. Observations on the Protection of Life During Pregnancy Bill 2013. http://www.ihrec.ie/download/pdf/ihrc_observations_protec- 429 tion_of_life_in_pregnancy_bill_2013.pdf. Published July 2013.

[27] Fletcher R. Contesting the cruel treatment of abortion-seeking women. Reprod Health Matters 2014;22(44):10–21. No official record of this case has been published, despite two investigations having been launched. Newspaper reports are conflicting and some are of doubtful accuracy.

[28] Behan N. Opinion: Ireland's law on abortion is a shambles entirely of the State's creation. http://www.thejournal.ie/readme/abortion-laws-ireland-ms-y-1689733- 509 Sep2014/. Published September 27, 2014. Accessed April 13, 2015.

A further case—PP v HSE[29]—came before the High Court in December 2014. PP, who was at 15 weeks of pregnancy, experienced brain stem death. A foetal heartbeat was present, and doctors implemented a medical process to facilitate "somatic care"—i.e. measures to support the maternal organs after death, in an attempt to maintain foetal viability. The medical team felt unable to follow the wishes of the family to discontinue care because of uncertainty as to the legal standing with regard to the unborn child. The somatic measures were described in court as grotesque.[30] While the High Court ultimately ruled that the state's interest in preserving foetal life does not require that it be prolonged at all costs, and that life support for the foetus could be removed, the case demonstrates the impact of fear of violating Article 40.3.3 on doctors.

4. Observations by human rights monitoring bodies

In 2011, Norway recommended (108.4) Ireland reform its abortion laws to comply with the ICCPR. When Ireland was reviewed by the Human Rights Committee in 2014, the Committee recommended that Ireland:

(a) Revise its legislation on abortion, including its Constitution, to provide for additional exceptions in cases of rape, incest, serious risks to the health of the mother, or fatal foetal abnormality; (b) Swiftly adopt a guidance document to clarify what constitutes a "real and substantive risk" to the life of the pregnant woman; (c) Consider making more information on crisis pregnancy options available through a variety of channels, and ensure that health-care providers who supply information on safe abortion services abroad are not subject to criminal sanctions.

In 2015, the Committee on Economic, Social and Cultural Rights[31] also recommended legislative and constitutional reform, calling on Ireland to:

"take all necessary steps, including the referendum on abortion, to revise its legislation on abortion, including the Constitution and the Protection of Life During Pregnancy Act 2013, in line with international human rights standards; adopt guidelines to clarify what constitutes a real and substantive risk to the life of a pregnant woman; publicize information on crisis pregnancy options through effective channels of communication; and ensure the accessibility and availability of information on sexual and reproductive health." [32]

The Committee stressed its particular concern at:

"[the] criminalization of abortion, including in cases of rape and incest and the risk of health of a pregnant woman; the lack of legal and procedural clarity on what constitutes a real and substantive risk to the life, as opposed to the health, of a pregnant woman; and the discriminatory impact on women to cannot afford to get abortion abroad or access the

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[29] PP v Health Service Executive [2014] IEHC 622 (26 December 2014).

[30] Carolan M. Continuing to treat woman on life support 'grotesque'. http://www.irishtimes.com/news/crime-and-law/courts/high-court/continuing-to-treat-woman-on-life-support-grotesque-1.2047808. Published December 23, 2014.

[31] UN Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Ireland, Adopted by the Committee at its fifty-fifth session (1–19 June 2015). Available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/150/67/PDF/G1515067.pdf?OpenElement.

[32] UN Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Ireland, Adopted by the Committee at its fifty-fifth session (1–19 June 2015) page 9. Available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/150/67/PDF/G1515067.pdf?OpenElement

necessary information. It is further concerned at the limited access to information on sexual and reproductive health (art. 12)."[33]

In 2011, the Committee Against Torture (CAT) urged Ireland to clarify the scope of legal abortion through statutory law and provide for adequate procedures to challenge differing medical opinions as well as adequate services for carrying out abortions in the State party, so that its law and practice is in conformity with the Convention.[34]

5. Public opinion

Public opinion is in favour of reform of Ireland's restrictive laws. Five referendums have been held on abortion in Ireland. Proposals to further restrict the law have been rejected. The Irish people have never been offered an opportunity to vote to broaden the grounds for abortion.[35]

Opinion polls show widespread public support, in the region of 67%, for reform of the abortion laws. Increasing political will to repeal Article 40.3.3 is also evident, with one recent survey suggesting that 63% of Government representatives are in favour. [36]

Since 2011, a number of new organisations and alliances have emerged to advocate for reform of Ireland's abortion laws: an oral statement to the UN Committee on Economic, Social and Cultural Rights in June 2015 was endorsed by 10 national organisations and coalitions. In the same month, Amnesty International published a new report highlighting that pregnant women in Ireland currently do not have full access to their rights to life, health, privacy, non-discrimination and freedom from torture and other ill-treatment.

Finally, a total of 161,987 women and girls have provided Irish addresses at English abortion clinics since 1980, and over 300 women each month continue to do so.

Recommendations

In light of the foregoing, the IFPA respectfully suggests that the member states of the Human Rights Council make the following recommendations to Ireland:

1. Repeal Article 40.3.3 of the Irish Constitution
2. Repeal the Protection of Life During Pregnancy Act, 2013
3. Decriminalise abortion by repealing sections 22 and 23 of the Protection of life During Pregnancy Act, 2013
4. Repeal the Information Act 1995
5. Introduce all legal and other measures necessary to provide a framework for abortion that is human rights compliant in law and in practice.

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[33] Para 30, Committee on Economic, Social and Cultural Rights, Concluding observations of the 3rd periodic report of Ireland, 8 July 2015, E/C.12/IRL/CO/3.

[34] United Nations Committee against Torture, 46th session, 9 May - 3 June 2011 Concluding Observations: Ireland, UN Doc CAT/C/IRL/CO/1, 17 June 2011

[35] Abortion in Ireland: Legal Timeline. Available at: https://www.ifpa.ie/Hot-Topics/Abortion/Abortion-in-Ireland-Timeline.

[36] Abortion in Ireland: Opinion Polls https://www.ifpa.ie/Hot-Topics/Abortion/Public-Opinion.