

Joint UPR Submission on Ireland 12th Session of the Universal Periodic Review – October 2011

1. This report is submitted by the **Irish Family Planning Association (IFPA)**¹ and the **Sexual Rights Initiative (SRI)**². It focuses on the human rights violations of women and girls living in Ireland who are denied access to safe and legal abortion services within the State.

Background and Context

2. Abortion is inaccessible in Ireland for all women and girls in all circumstances including when the pregnancy poses a risk to life or health of the pregnant woman, in cases of rape or incest, and when it is established that the foetus will not survive outside the womb. Women and girls who need to terminate their pregnancy are forced to seek out illegal and unsafe abortions, to raise large sums of money to travel abroad to private abortion clinics or to continue the pregnancy against their will.

3. Successive governments openly acknowledge that women and girls regularly avoid the ban on abortion by travelling to England to access safe and legal abortion services. Moreover, Irish authorities rely on women and girls accessing safe abortion in other jurisdictions so as to avoid public health crises related to unsafe abortion common in other States where abortion is similarly restricted. In 2009, 4,422 women and girls provided Irish addresses at English abortion clinics.³ This figure is based solely on the number of women and girls who choose to disclose their address and is therefore regarded as a significant underestimation.

4. The criminalisation of abortion disproportionately impacts vulnerable and disadvantaged women and girls who cannot raise the necessary funds to travel abroad or who cannot leave the jurisdiction because of immigration restrictions as well as young women in the care of the State. Women and girls in these circumstances are increasingly risking their health and criminal prosecution by seeking out illegal and often unsafe methods of abortion. In 2009, 1,216 illegal abortion-inducing drugs were seized by Irish customs⁴ reflecting the increased number of calls to IFPA helplines from women ordering abortifacient medication over the internet.

Legal and Institutional Framework

5. Procuring or assisting in an unlawful abortion is a criminal offence punishable by up to life imprisonment. This criminal law provision originates from the 1861 *Offences Against the Person Act* which is an English statute enacted in a number of countries and colonies in the mid-nineteenth century.

¹ **Irish Family Planning Association:** Ireland's leading sexual health charity, which has worked to promote and protect human rights in relation to sexual and reproductive health since 1969.

² **The Sexual Rights Initiative:** a coalition including: Action Canada for Population and Development (ACPD); Creating Resources for Empowerment and Action (India), Mulabi - Latin American Space for Sexualities and Rights, Federation for Women and Family Planning (Poland), and others.

³ UK Department of Health (2010). *Abortion Statistics: England and Wales 2009*. Available from http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsStatistics/DH_116039

⁴ The Irish Times October 26, 2010 *Customs seized 1,216 packs of illegal abortion drugs*. Available from: <http://www.irishtimes.com/newspaper/frontpage/2010/1026/1224282004957.html>

6. Ireland's Constitution was amended in 1983 to acknowledge "the right to life of the unborn", measured as equal to that of the pregnant woman, and provides that the State will take the necessary steps to vindicate this right. In 1992, the Irish Supreme Court determined that an abortion in Ireland is lawful when it is established that there is a real and substantial risk to the life (as distinct from the health) of the pregnant women, this includes the risk of suicide.⁵ However, no legislation has been enacted to give effect to this ruling or regulate the Constitutional provision and therefore access to abortion in all circumstances, even when lawful, remains unavailable.

7. In December 2010, the Grand Chamber of the European Court of Human Rights ruled in *A, B and C v Ireland* that the Irish State violated Applicant C's right to privacy by failing to provide for an accessible and effective procedure by which the Applicant could have established whether she qualified for a lawful abortion. The Irish Government is therefore obliged to implement a legislative and/or statutory framework that ensures women have access to life-saving abortions; however, no proposals for implementation have been put forward to date.

Human Rights Obligations

8. The disproportionate and ineffective nature of Ireland's abortion ban runs contrary to a number of UN human rights treaties to which Ireland is a signatory. Specifically, Ireland is in breach of its obligations under the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, and the *Convention on the Elimination of All Forms of Discrimination against Women*.

9. Several international human rights bodies including the UN Human Rights Committee, UN Committee on the Elimination of Discrimination against Women, Council of Europe Commissioner for Human Rights and the European Court of Human Rights, have expressed concern over Ireland's severely restrictive abortion laws and failure to clarify the circumstances under which lawful abortions may take place. Irish authorities have consistently ignored the concerns raised by these bodies, disregarded the harm suffered by women forced to travel abroad to access safe abortion services and the harm to poor or vulnerable women who cannot travel. Instead, they have expressly stated in 2009 that the Government "has no plans to bring forward further constitutional or legislative proposals in relation to abortion."⁶

The Right to Health

10. Ireland is the only member state of the Council of Europe that legally permits abortion to protect the life but not the health of the pregnant woman. This position is incompatible with human rights principles of indivisibility and interdependence which affirms there is no hierarchy of rights. Rights that protect life, health, non-discrimination and freedom from cruel, inhuman and degrading treatment are equal in status and importance. Moreover, practical distinctions between life and health cannot be meaningfully drawn in the clinical context. To require a woman to wait until her health has deteriorated to such an extent that her life is at risk in order to

⁵ *Attorney General v. X*, [1992] 1 I.R. 1

⁶ *ABC v Ireland*, [2010] ECHR 2032 Application no 25579/05

receive treatment is contrary to medical ethics and constitutes an unjustified interference with and violation of the right to health.

11. The State's failure to clarify when an abortion may be lawfully performed and the harsh penalties assigned to procuring or performing an unlawful abortion has created a "chilling effect" whereby women and medical professionals are deterred from providing or accessing abortion-related services and information, even when they are permitted to do so by law. The State denies the existence of a "chilling effect" and has repeatedly asserted that abortion is accessible in Ireland when a woman's life is at risk. However, in 2009, Irish authorities were unable to provide evidence to the Grand Chamber of the European Court of Human Rights of a single abortion having been provided in Ireland, even when a pregnant woman's life is at risk.

12. By restricting abortion, the State interferes with women's right to access necessary health services and directly jeopardises their physical and mental health by forcing women to continue with an unwanted, unviable or health-risky pregnancy or by resorting to unsafe methods of abortion. Women who have the resources to travel abroad also face unjustified risks to their health because of the delay involved in raising significant funds and making travel arrangements. Consequently, Irish women have a higher rate of later abortions, which creates greater health risks, and they receive less pre- and post-abortion medical care necessary to preserve their health and well-being.

The Right to Privacy

13. The principle of privacy encompasses the right to personal autonomy and integrity. It concerns one's sexual life, personal and psychological integrity as well as decisions both to have a child or not. In Ireland, the almost absolute ban on abortion combined with the absence of regulations regarding access of legal abortions constitutes a violation of Ireland's positive obligation to respect for private life, and also a violation of Ireland's negative obligation not to disproportionately interfere with women's private life.

The Right to Life

14. The lack of guidelines regulating access to lawful abortion constitutes a violation to the right to life of those women whose life are at risk and need an urgent abortion. In addition, Irish abortion laws impose delays to health care in order to reach a state where the patient's health has deteriorated enough so as to intervene.

15. Women who cannot travel abroad for immigration or financial reasons are seeking out illegal and unsafe abortions in Ireland. Because unsafe abortion is a life risking practice, a legal framework such as the Irish framework that exposes women to procedures that endanger their lives, violates the right to life.

The Right to be Free from Inhuman and Degrading Treatment

16. The extreme application of Irish abortion law does not take into consideration the individual circumstances of women and girls who become pregnant. Women and girls who become pregnant as a result of rape or incest are prohibited from accessing abortion services in Ireland. Women with wanted pregnancies who discover that the foetus will not survive outside the womb are also prohibited from accessing therapeutic abortions in Ireland. Women in these circumstances are faced with the option of carrying a pregnancy that will not result in a live birth or travelling abroad to a private abortion clinic without the benefit of support from family or friends. Forcing women and girls to continue a pregnancy in any circumstance, and these circumstances in particular, is an affront to their dignity and constitutes inhuman and degrading treatment.

The Right to Non-Discrimination

17. Under *CEDAW*, the refusal of a state party to provide legally for the performance of certain reproductive health services for women is discrimination. Abortion where necessary to protect a woman's mental or physical health is by definition a health service. The effect of the Irish abortion laws is to discriminate on the basis of sex because men are able to access the full range of medically necessary reproductive health services and women are not. The State has not only failed to provide equal health care but is singling out and criminalizing medical care that only women need.

18. The Irish abortion restrictions deprive women of the ability to make the decisions about their family life and instead force them to put their health at risk in pursuit of the State's goal to "protect the life of the unborn". Men are not required to sacrifice their bodily integrity and authority to make decisions about family life, even to preserve the life of an actual alive child.

19. The restrictions on abortion disproportionately impacts women living in poverty. Although abortion is severely restricted within Ireland, the State repeatedly acknowledges that abortion is readily access by thousands of women each year who pay to travel abroad. For women living in poverty, raising the necessary funds for flights, hotel, transportation to and from the airport and the private procedure is impossible. Women who do not have the means to travel are forced to continue the pregnancy against their will or seek out illegal and unsafe methods of abortion, creating a risk to her health and wellbeing.

20. The ban on abortion has a disproportionate impact on women seeking asylum and women with irregular immigration status because they are prohibited from leaving the State and cannot evade the law by travelling abroad to access safe abortion services. Migrant women are therefore at greater risk of unsafe and illegal abortion, endangering their health and life and also exposing them to criminal prosecution.

21. Irish abortion provisions also foster systemic discrimination against women. The criminalisation of a medical procedure needed by women and active prosecution of women and girls who require access to safe abortion services, contributes to the stigmatization of abortion in Ireland. The Irish State has put the full resources of the Attorney General's Office behind seven court actions against women and girls seeking judicial remedies to access to safe abortion services and information even when it has been established that it is lawful to do so. The State has also twice attempted to further restrict the limited circumstances by which an abortion can be

considered lawful. These further restrictive proposals were rejected by the Irish people in two separate referenda.

22. The Irish ban on abortion impedes the understanding of abortion as a regular medical procedure while at the same time, fostering stereotypical notions of womanhood as motherhood and cultural understandings that motherhood is the natural and only pathway that pregnant women may want to follow. This is particularly relevant in a Irish society where the State recognizes in its Constitution that “by her life within the home, woman gives to the State a support without which the common good cannot be achieved [and] ... shall, therefore, endeavor to ensure that mothers shall not be obliged by economic necessity to engage in labor to the neglect of their duties in the home.”⁷ The continued perception of women as dependents in Irish public policy promotes persistent traditional stereotyping of women and men.

Recommendations to Ireland:

23. Immediately amend the 1861 *Offences Against the Persons Act* so as to remove the criminal sanctions for women and girls who have unlawful abortions and those that may assist them.

24. Immediately enact legislation to clarify the circumstances under which an abortion may be lawful in accordance with the 2010 European Court of Human Rights ruling in order to fulfil women’s constitutional right to access life-saving abortions and health-care providers’ duty to provide life-saving abortions.

25. Immediately enact and implement legislation that defines the Constitutional provision related to the “unborn” so as to allow lawful abortions when a woman’s mental and physical health is at risk, and in cases of fatal foetal abnormality or where the pregnancy is a result of rape or incest.

26. The Department of Health and Children should immediately develop and disseminate guidelines for medical practitioners in order to clarify there circumstances under which abortion may be lawful in accordance with best medical practice and ethics.

27. Recognise through official health policy that travelling abroad to access safe and legal abortion services creates physical, emotional and financial hardship for women and disproportionately impacts on vulnerable and marginalised women.

28. Ensure the availability, affordability, acceptability and accessibility of contraceptive services, supplies, information and education on a national basis and without discrimination based on age, geography, disability or immigration status.

⁷ Bunreacht na hÉireann 1937 Article 41.2