

UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

54th Session (Pre-Sessional Working Group)

2 to 5 December 2014

**THE INTERNATIONAL COMMISSION OF JURISTS' SUBMISSION FOR THE
PREPARATION BY THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL
RIGHTS OF A LIST OF ISSUES FOR THE EXAMINATION OF THE COMBINED
THIRD PERIODIC REPORT OF IRELAND**

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Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

**ICJ's submission for the Committee on Economic, Social and Cultural Rights
for the preparation of a List of Issues on Ireland**

Introduction

1. During its 54th session from 1 to 5 December 2014 the Pre-Sessional Working Group of the Committee on Economic, Social and Cultural Rights (the Committee) will prepare a list of issues concerning Ireland's third periodic report under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
2. In light of this, the International Commission of Jurists (ICJ) welcomes the opportunity to make the following submission, which summarizes concerns regarding the impact which severe legislative restrictions on access to safe and legal abortion in Ireland has on the enjoyment of rights guaranteed under the ICESCR, in particular Articles 2, 3 and 12.

ARTICLES 2, 3 and 12: Access to safe and legal abortion in Ireland

3. Ireland's legal prohibition on abortion remains among the most restrictive in the world. Irish criminal law provides that any woman who obtains an abortion or anyone who administers an abortion commits a criminal offence. The only exception to this prohibition is where an abortion is necessary to prevent a real and substantial risk to a woman's life.¹ Irish law, however, does not prohibit women from travelling abroad to obtain an abortion.²
4. In July 2013, new legislation was enacted by the Irish Parliament with the stated purpose of providing women and medical professionals with clarity as to the circumstances and procedures in which an abortion may be performed in Ireland in order to prevent a real and substantial risk to the woman's life. The adoption of this legislation was identified by the Irish Government as a necessary step towards compliance with the judgment of the Grand Chamber of the European Court of Human Rights in *A, B and C v. Ireland*.³
5. However, although the enactment of this legislation was important, it does not change the circumstances in which abortion is legal in Ireland. It remains a criminal offence for a woman to obtain an abortion in Ireland or for a medical professional to provide one, in all situations where the abortion is not deemed necessary to prevent a real and substantial risk to the woman's life. As a result, abortion remains a criminal offence even in cases where the pregnancy involves a fatal foetal abnormality, or is the result of rape or incest, or where it is necessary in order to prevent harm to a woman's physical or mental health.
6. The ICJ considers that Irish abortion law undermines Ireland's compliance with its obligations under the ICESCR, including, in particular, Articles 2, 3 and 12. This is because the inability of a woman to obtain a therapeutic abortion in Ireland where there is a risk to her health or to obtain a legal abortion where a pregnancy is the result of sexual assault, where a pregnancy is not viable, or where there is a fatal foetal abnormality violates the right to the enjoyment of the highest attainable standard of physical and mental health on a basis of

¹ Protection of Life During Pregnancy Act, 2013; Article 40.3.3 Irish Constitution.

² Article 40.3.3 Irish Constitution.

³ *A, B, and C v. Ireland*, ECtHR Application No. 25579/05, 16 December 2010.

equality and non-discrimination.⁴

7. The Committee has repeatedly expressed concern regarding compliance with Article 12 of the ICESCR in situations where access to therapeutic abortions is not legalized and in situations where abortion remains illegal when a pregnancy is the result of rape or incest or where there is a fatal foetal abnormality.⁵
8. Other treaty bodies have made similar findings. For example the Committee Against Torture has repeatedly expressed particular concern regarding failures to ensure access to therapeutic abortions⁶ and the "criminalization of abortions in cases of rape and incest,"⁷ noting that where pregnancy is the result of rape or incest, and abortion is prohibited, this may cause severe traumatic stress and long lasting psychological problems.⁸ CEDAW has also underscored that States are required to ensure access to therapeutic abortion so as to protect women's physical and mental health.⁹
9. Such analysis by treaty bodies has also been specific to Ireland. Indeed on a number of occasions treaty bodies have expressed serious concerns regarding the effect of Ireland's restrictive abortion laws on women's physical and mental health and have indicated that such legislative provisions are contrary to Ireland's international human rights obligations. For example, repeatedly in its Concluding Observations following its examination of Ireland's periodic reports under the International Covenant on Civil and Political Rights (ICCPR), the Human Rights Committee has expressed serious concerns regarding, "the highly restrictive circumstances under which women can lawfully have an abortion in Ireland"¹⁰ and has requested Ireland to bring its abortion laws in line with the Covenant.
10. Most recently in July 2014 the Human Rights Committee stated that, among other things, "it is concerned at: (i) the criminalization of abortion under section 22 of the Protection of Life During Pregnancy Act, including in cases of rape, incest, fatal foetal abnormality and serious risks to the health of the mother, which may lead to up to 14 years of imprisonment, except in cases that constitutes a "real and substantive risk" to the life of a pregnant women; (ii) the lack of legal and procedural clarity concerning what constitutes "real and substantive risk" to the life, as opposed to the health, of the pregnant women."

⁴ See for an analysis: Report of the Special Rapporteur on the right of everyone on to the enjoyment of the highest attainable standard of physical and mental health, UN Doc A/66/254 (2011); *LC v. Peru*, CEDAW Communication 22/2009, UN Doc CEDAW/C/50/D/22/2009 (2011).

⁵ Concluding observations of the Committee on Economic, Social and Cultural Rights on Nicaragua, UN Doc. E/C.12/NIC/CO/4, Paras 26-27; Concluding observations of the Committee on Economic, Social and Cultural Rights on Sri Lanka, UN Doc. E/C.12/LKA/CO/2-4 (2010), Para. 34; Concluding observations of the Committee on Economic, Social and Cultural Rights on El Salvador, UN Doc. E/C.12/SL V/CO/3-5, Para. 22

⁶ On a number of occasions the Committee against Torture has called on States to reform restrictive abortion laws so as to avoid violations of the Convention Against Torture. For example, see: Concluding Observations of the Committee against Torture on Peru, UN Doc CAT/C/PER/CO/4 (2006), Para. 23; Concluding Observations of the Committee against Torture on Nicaragua, UN Doc CAT/C/NIC/CO/1 (2009), Para. 16

⁷ *Ibid.*

⁸ Concluding Observations of the Committee against Torture on Nicaragua, UN Doc CAT/C/NIC/CO/1 (2009), Para. 16

⁹ *LC v. Peru*, CEDAW Communication 22/2009, UN Doc CEDAW/C/50/D/22/2009 (2011).

¹⁰ Concluding observations of the Human Rights Committee on Ireland, UN Doc CCPR/C/IRL/CO/4 (2014), Para. 9. See also Concluding observations of the Human Rights Committee on Ireland, UN Doc CCPR/C/IRL/CO/330 (2008); Concluding observations of the Human Rights Committee on Ireland, 24 July 2000, UN Doc. A/55/40.

It went on to specify that the State party should, "provide for additional exceptions in cases of rape, incest, serious risks to the health of the mother, or fatal foetal abnormality," and should "swiftly adopt the Guidance Document to clarify what constitutes a "real and substantive risk" to the life of the pregnant woman."¹¹

11. In light of the above, the ICJ recommends that the following questions be included in the List of Issues for the examination of Ireland:

What steps, will the State party take to ensure that its restrictive abortion laws and practices do not continue to impair or jeopardize women's equal enjoyment of their right to the highest attainable standard of physical and mental health under the Covenant? What timeframe is contemplated for each of these steps?

¹¹ Concluding observations of the Human Rights Committee on Ireland, UN Doc CCPR/C/IRL/CO/4 (2014), Para. 9. See also Concluding observations of the Human Rights Committee on Ireland, UN Doc CCPR/C/IRL/CO/330 (2008); Concluding observations of the Human Rights Committee on Ireland, 24 July 2000, UN Doc. A/55/40.