

Day of General Discussion on "the right to sexual and reproductive health"

Submission of the Irish Family Planning Association to the
Committee on Economic, Social and Cultural Rights

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About the Irish Family Planning Association (IFPA)

The IFPA is Ireland's leading sexual and reproductive health charity and has worked to promote and protect human rights in relation to sexual and reproductive health since 1969. The IFPA is recognised as a respected source of expertise because of its proven track record in the provision of sexual and reproductive healthcare services, non-directive pregnancy counselling, education, training for healthcare professionals, advocacy and policy development. The IFPA is regularly called upon by statutory agencies, parliamentary committees, medical associations and service providers to give its expert opinion on a wide range of issues related to sexual and reproductive health and rights.

In 2009, IFPA medical clinics provided sexual and reproductive health services to over 25,000 clients. In the same year, IFPA pregnancy counselling service provided information and support to approximately 5,000 women and girls experiencing pregnancies that were unplanned, unwanted or that had developed into a crisis because of changed circumstances.

Abortion is criminalised in almost all circumstances in Ireland¹ and women face penalties of life imprisonment for procuring an illegal abortion in Ireland. From 1980-2009², at least 142,060 women and girls living in Ireland have travelled to England to terminate an unwanted or crisis pregnancy. The IFPA makes this submission to the Committee on Economic, Social and Cultural Rights (hereafter "the Committee") based on its experience in providing information, counselling and medical health care to women and girls living in Ireland who are forced to travel abroad to access safe abortion services. IFPA counsellors, doctors, staff and volunteers have extensive knowledge of the physical and emotional hardship experienced by women and girls who are unable to avail of safe abortion services within their own jurisdiction. It is the IFPA's position that the criminalisation of abortion is disproportionate and ineffective and consequently jeopardises women's and girls' enjoyment of the right to the highest attainable standard of physical and mental health as guaranteed under article 12(1) of the ICESCR.

The IFPA urges the Committee to explicitly incorporate the rights of women to access safe and legal abortion services into the new General Comment on the right to sexual and reproductive health so that States Parties understand their duty to fulfil women and girls human rights.

Definitions and elements of the right to sexual and reproductive health (SRH)

The IFPA proposes that any new General Comment on SRH should be broadly based on article 12 of the Covenant and thus General Comment 14³. The elements of, and obligations arising from article 12 and General Comment 14 as applied to SRH provide a means of ensuring that

¹ The only circumstance under which abortion is legal in Ireland is where the pregnancy constitutes a "real and substantial risk to the life of the pregnant woman" as distinct from her health. No legislation has been enacted to give effect to this regulation.

² UK Department of Health Abortion Statistics. Available from http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsStatistics/DH_099285

³ ICESCR, General Comment 14 on "the right to the highest attainable standard of health" U.N. Doc E/C/12/2000/4 (11 August 2000).



States Parties understand their duty to provide an effective, integrated, accessible and responsive health system including adequate sexual and reproductive healthcare services.

General Comment 14 further recognises the duty of States Parties to eliminate the discrimination of women as an essential element of the right to health and that “the realisation of women’s right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health.”⁴

As recognised by the World Health Organisation (WHO)⁵, access to safe and legal abortion services and information is an essential element of SRH care and must be expressly recognised as such. Abortion where necessary to protect a woman’s physical and mental health is by definition a health service and under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the refusal of a state part to “provide legally for the performance of certain reproductive health services for women” is discrimination.⁶

The IFPA urges the Committee to explicitly recognise the rights of women and girls to access safe abortion services as an essential element of the right to sexual and reproductive health and as critical to the formulation of a definition of sexual and reproductive health.

Cross-cutting issues and groups in focus

The disproportionate affect of the criminalisation of abortion in Ireland on vulnerable populations illustrates the importance of recognising women’s and girls’ rights to access safe abortion services to protect their health.

Vulnerable groups such as women and girls seeking asylum in Ireland, undocumented migrants, young women, women with limited financial means and girls in the care of the State, experience increased risks to their health because the criminalisation of abortion.

Even women and girls who, by law, are entitled to have an abortion in Ireland because their pregnancy poses a real and substantial risk to their life cannot access the required services in Ireland due the absence of information for women and clinical guidelines for medical staff to determine when an abortion may lawfully be provided. Moreover, as documented by Human Rights Watch in 2009 and the current case before the European Court of Human Rights *ABC v Ireland*, the criminalisation of abortion in Ireland promotes a “chilling effect” on service providers, medical professionals, legislators and the public which creates a climate of fear and uncertainty⁷.

1) Groups in Focus

⁴ *Ibid.* para. 21.

⁵ See WHO, “Packages of Interventions for Family Planning, Safe Abortion care, Maternal, Newborn and Child Health” (2010) available at: http://whqlibdoc.who.int/hq/2010/WHO_FCH_10.06_eng.pdf (date accessed: 13 October 2010).

⁶ Committee on the Elimination of Discrimination Against Women, *General Recommendation 24: Women and Health*, para.11, UN Doc A/54/38.

⁷ See Human Rights Watch, “A State of Isolation: Access to Abortion for Women in Ireland” (January 2010), p. 16 and *A, B and C v Ireland*, ECHR, application no. 25579/05.

a) Women seeking asylum in Ireland

Travel restrictions and prohibitive costs endangers the health of women seeking asylum in Ireland who require pregnancy termination. Women seeking asylum in Ireland are generally not permitted to leave the State while their application is being processed. While a woman who decides to terminate her pregnancy may be permitted to travel for this purpose the process of applying for relevant travel documents is complex, expensive and may take several weeks. This results in delayed presentation to abortion services which is associated with increased health risks.

Women seeking asylum in Ireland are not permitted to work and receive €19.10 per week for expenses outside of food and accommodation. Costs associated with travelling abroad for an abortion ranges from €1000 - €3000. These costs present an insurmountable barrier for many women seeking asylum and results in women being forced to parent against their will or seek out illegal methods of termination, seriously endangering their physical and mental health.

b) Undocumented migrant women

Undocumented migrant women are unable to travel abroad to access safe abortion services and face impossible choices with regards to pregnancy termination. Women may seek out illegal methods of termination, continue with a pregnancy against their will or risk prosecution for irregular migration. All of which constitute grave risks to mental and physical health.

c) Women with limited financial means

As noted above costs associated with travelling abroad for safe abortion services ranges from €1000-€3000. Women without the financial means to travel must borrow money, often from unregulated money-lenders as the stigma attached abortion prevents many women from disclosing their pregnancy to friends or family. Women also risk loss of income by taking time off work and arranging for child care of existing children.

Some women who do not have the financial means to travel abroad are resorting to ordering such abortifacient pills over the internet. The use of such medications without medical supervision and proper aftercare poses a serious threat to the health and well-being of these women.

d) Girls in the care of the State

Due to the lack of clarity regarding the laws on abortion in Ireland, the State child protection services have attempted to prevent girls from travelling abroad to access safe abortions services. For example in 2007, a 17 year old woman, known as Miss D⁸, in the care of the Health Service Executive (HSE) who discovered that her foetus had

⁸ *Miss D v HSE, District Judge and Attorney General (unrep. 2007).*

anencephaly and would not survive. Miss D decided to travel to England to terminate the pregnancy, however, the HSE attempted to prevent her from travelling. Miss D was forced to bring a case to the High Court to compel the HSE to permit her to travel to access the necessary abortion services. While the High Court found in Miss D's favour, based on her right to travel, Miss D and her family were subjected to grave mental pain and distress. In the almost identical case of *KL v Peru*⁹ which came before the Human Rights Committee in 2005, the Committee held that, as a result of the State's failure to provide access to legal abortion in cases where a pregnancy is anencephalic, that the "treatment forced upon this young girl constituted a violation of her rights to be free from inhuman and degrading treatment, to private life and to such measures of protection as are required by her status."¹⁰

The IFPA recommends that a new General Comment should recognise the disproportionate impact of the criminalisation of abortion on the health and rights of vulnerable groups and to elaborate on the linkages between human rights principles that are necessary to fulfil women and girls rights to health.

Legal aspects and State obligations

It is submitted that any consideration of the legal aspects and State obligations arising from the right to SRH should be broadly based on the obligations arising from article 12 ICESCR, as discussed by the Committee in its General Comment 14. Furthermore, the General Comment should expressly recognise the interdependence and indivisibility of human rights principles.

As the Committee has highlighted, "[t]he right to health...imposes three types or levels of obligations on States Parties: the obligation to respect, protect and fulfil."¹¹ Thus, the discussion of State obligations in any new General Comment on the right to SRH should be based on the duty to respect, protect and fulfil the right to SRH, which includes the right to access safe and legal abortion services.

As the Committee highlights in General Comment 14, the obligation to respect the right to health requires States "to refrain from interfering directly or indirectly with the enjoyment of the right to health"¹² and to abstain "from imposing discriminatory practices relating to women's health status and needs."¹³ The uncertainty and restriction surrounding access to abortion services in Ireland marks a failure by the State to respect women's right to health and constitutes an interference with the right to the health. The IFPA therefore makes the submission that based on article 12 ICESCR and General Comment 14, the obligation to respect the right to sexual and reproductive health must encompass the duty of States parties to refrain from denying and restricting women's access to safe and legal abortion.

⁹ *KL v Peru*, ICCPR, communication no. 1153/2003.

¹⁰ *Ibid.*

¹¹ *Supra* note 3 para. 33.

¹² *Ibid.* para. 33.

¹³ *Ibid.* para. 34.

Moreover, as argued by the applicants in the *A,B,C v Ireland* case, the application of highly restrictive abortion laws with disregard to the harm caused to women, as is the current practice in Ireland, constitutes discrimination on the basis of sex.¹⁴ Several international human rights treaties recognise that equal access to medical treatment is essential to gender equality. For example, article 12 CEDAW requires States parties to “take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.” The effect of highly restrictive abortion laws as applied in Ireland, is to discriminate on the basis of sex as men are able to access the full range of medically necessary reproductive health care such as contraception, sterilization and treatment for STDs. Women can access all reproductive health care such as contraception, sterilization, treatment for STDs and medical care for childbearing, delivery and post-natal care – but women cannot access abortion. The IFPA submits that the construction of legal barriers to medical treatment required only by women to preserve their life and health constitutes discrimination on the basis of sex.

Abortion where necessary to protect a woman’s physical and mental health is by definition a health service. The United Nations Human Rights Treaty Monitoring Bodies interpret the human rights to life, health and non-discrimination, and the freedom from cruel, inhuman and degrading treatment or punishment, as requires States Parties to lawfully permit abortion where necessary to protect women’s mental and physical health and autonomy.

The Committee has expressly advised State Parties to permit or consider permitting abortion for therapeutic reasons in order to comply with the International Covenant on economic, Social and Cultural Rights (ICESCR)¹⁵. In *K.L. v Peru*, the Human Rights Committee (HRC) found that state failure to enable the applicant to benefit from a therapeutic abortion caused the depression and emotional distress she experienced, and thus constituted a violation of Article 7 (freedom from torture or cruel, inhuman or degrading treatment or punishment)¹⁶. Upon review of Ireland’s progress under the International Covenant on Civil and Political Rights in 2008, the HRC expressed concern over the highly restrictive circumstances under which women could lawfully have an abortion and recommended that Ireland should bring its abortion laws into line with the Covenant¹⁷.

It is submitted that the duty to fulfil the right to sexual and reproductive health must encompass access to abortion services. The obligation to fulfil (facilitate), as noted by the Committee, requires States to take positive measures that enable and assist individuals and communities to enjoy the right health. The failure of some States Parties such as Ireland, to give sufficient recognition to right to access safe and legal abortion in the national political and legal system, particularly by way of clear legislative provisions constitutes a violation of the duty to fulfil the right to sexual and reproductive health.

¹⁴ *Supra* note 7.

¹⁵ See *Concluding Observations of the CESCR: Chile*, para. 53, E/C.12/1/Add. 105 (2004)

¹⁶ *Supra* note 9.

¹⁷ See *Concluding Observations of the HRC: Ireland*, para. 13 CCPR/C/IRL/CO/3 (2008)

Moreover, the obligation to fulfil (provide) as arises under article 12 ICESCR and as elaborated upon in General Comment 14, requires States to “take positive measures that enable and assist individuals... to enjoy the right to health.”¹⁸ This obligation as the Committee makes clear, requires States Parties to undertake actions that create, maintain and restore the health of the population through “(i) fostering recognition of factors favouring positive health results e.g. provision of information...(ii) ensuring that ...health care staff are trained to recognise and respond to specific needs of vulnerable or marginalised groups, (iii) ensuring that the State meets its obligations in the dissemination of appropriate information relating to...the availability of services, (iv) supporting informed choices about their health.”¹⁹

In applying these duties to the right to SRH, the IFPA submits that restrictive and unclear abortion laws, such as those in force in Ireland, allow the State to avoid fulfilment of these obligations. Furthermore, due to the lack of clarity and the stigmatization surrounding abortion, health care staff are often unable to respond to the needs of women seeking abortion services.

The IFPA therefore makes the submission that based on article 12 ICESCR and General Comment 14 the obligation to respect the right to sexual and reproductive health must encompass the duty of States parties to refrain from denying and restricting women’s access to safe and legal abortion.

Thus, it is vital that the Committee explicitly refers to enactment of legislation, access to information and services relating to abortion in any discussion of States parties’ obligation to fulfil the right to sexual and reproductive health.

Conclusion

In conclusion the IPFA wishes to emphasise, as the Parliamentary Assembly of the Council of Europe has done, “the right of all human beings, women included, to respect for their physical integrity and to freedom to control their own bodies. In this context, the ultimate decision on whether or not to have an abortion should be a matter for the woman concerned, and she should have the means of exercising this right in an effective way.”²⁰ As demonstrated above, many consequences flow from the inability of women to access safe and legal abortion services. Such consequences often have serious impacts on the mental and physical well-being of women. In addition, restrictive abortion laws may result in the violation of other human rights such as the right to be free from inhuman and degrading treatment as held by the Human Rights Committee in *KL v Peru*.²¹

Accordingly, any new General Comment on the right to sexual and reproductive health should explicitly refer to the obligation of States Parties to respect, protect and fulfil the right to access

¹⁸ *Supra* note 3 para. 37.

¹⁹ *Ibid.* para. 37.

²⁰ Parliamentary Assembly of the Council of Europe “Access safe and legal abortion in Europe” Resolution 1607 (2008) 1, para. 6.

²¹ *Supra* note 9.

safe, reliable and legal abortion information and services. As noted above, the right to health demands an effective, integrated, accessible and responsive health system. In the context of the right to sexual and reproductive health such a system must include access to legal, safe and reliable information and services pertaining to abortion.

Recommendations

In summary, based on the discussion above, the IFPA makes the following recommendations with regard to the development of a new General Comment on the right to sexual and reproductive health.

Any new General Comment on the right to sexual and reproductive health should;

1. Be based broadly on article 12 ICESCR and hence General Comment 14;
2. Emphasise the positive obligation on States Parties to provide an effective, integrated, accessible and responsive health system which includes adequate sexual and reproductive health services, which explicitly refers to safe abortion services;
3. Recognise that the inaccessibility of safe abortion services jeopardises women's mental and physical health and has a disproportionate impact on vulnerable groups;
4. Emphasise, the right to non-discriminatory access to sexual and reproductive healthcare services and hence the right of all women to access reliable, legal and safe information and services pertaining to abortion.
5. Stress, the right of all persons to bodily integrity, physical, mental and social well-being in the specific context of sexual and reproductive health and consequently, the duty of States Parties to facilitate access to safe and legal abortion services.
6. Refer explicitly to the link between access to safe and legal abortion information and services and the enjoyment of the right to highest attainable standard of physical and mental health.