



IRELAND

A State of Isolation

Access to Abortion for Women in Ireland

HUMAN
RIGHTS
WATCH



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I. Summary

Every day, women all over the world face the decision of whether to terminate crisis pregnancies they did not plan, did not want, or cannot continue. These decisions are not easy to make: they involve a personal assessment of the most intimate kind as the consequences of reproductive choices touch upon almost every aspect of a woman's private life. If a woman is lucky, she will have the support of her family and friends as she makes this decision and then goes on to implement it. If she is not, she will face the decision alone, isolated from her sources of support.

As a matter of international law, she should, however, be able to count on the state to provide access to accurate information and services. But women in Ireland most certainly cannot count on the state providing them with information and services about abortion. Abortion is legally restricted in almost all circumstances, except where the pregnant woman's life is in danger. Even in those rare circumstances where an abortion can be legally performed, it appears that it almost never happens. Despite interviewing a number of prominent obstetricians and physicians, Human Rights Watch was unable to document a single case where an abortion had been legally performed in Ireland. As a result, all women living on Irish soil are forced to travel to access a medical procedure.

The response of the Irish government to the need for abortion has been erratic and divisive, contributing directly to violations of women's human rights, including those to health, information, privacy, freedom from cruel, inhuman and degrading treatment, life, equal protection under the law, and nondiscrimination. Women with crisis pregnancies are forced to navigate the emotional, financial, and health implications of their decisions unsupported—and in many cases sabotaged—by the state. The women interviewed by Human Rights Watch for this report described how isolated they felt, in large part as a result of the government's inadequate and violatory policies.

As in most countries where abortion is illegal, estimates and statistics on the prevalence of and need for abortion among women in Ireland are hard to come by and vary widely. Unlike other countries where the availability of abortion is limited by restrictive laws and policies, Ireland does not have high levels of abortion-related mortality and morbidity, and there is no reliable data on the numbers of illegal, potentially dangerous abortions. While Irish service providers interviewed by Human Rights Watch all expressed concern that women—in particular women with limited resources—were resorting to unsafe backstreet abortions, such practices remain deeply hidden. The main reason for this is not that women have fewer

abortions or that the Irish government provides adequate care, but rather the proximity of Ireland to the United Kingdom (UK) and continental Europe, where abortion is legal and available (though expensive) for women from Ireland—a situation that has allowed the Irish government to abdicate its responsibility to protect the human rights of women who require access to abortion by exporting the problem abroad. Since 1980, hundreds of thousands of women have traveled to the UK from Ireland to terminate their pregnancies. Many women have traveled to other European countries for the same reason.

The Irish government actively seeks to restrict access to abortion and consequently violates women’s human rights. The potential imposition of life-time prison sentences for procuring an abortion in Ireland in and of itself threatens the right to liberty and security as women may risk prison for seeking to exercise their right to health. Further, the Irish government limits access to information about safe and legal abortion services through restrictive legislation. It has sought to prevent individual women from traveling abroad for abortion through injunctions and it refuses to regulate access to legal abortion within Ireland. The government does nothing to mitigate the consequences of a very divisive public abortion debate on women’s ability to exercise their full range of human rights. Critically, the government has not taken steps to regulate the provision of blatantly misleading and false information by so-called “rogue” agencies, to the detriment of women’s emotional and physical health. The Irish government declined to be interviewed for this report and indicated that it had no plans to review the current situation.

The women interviewed by Human Rights Watch described a climate of fear and shame, at least in part attributable to the criminalization of abortion. They explained their concerns about disclosing that they had had an abortion and the burden of secrecy that they are forced to carry. They also described their confusion about whether they could legally leave Ireland to access an abortion in the UK or other parts of Europe, and their concerns about whether to access post-abortion care, legally available in Ireland.

They also described financial constraints. Every woman interviewed for this report told Human Rights Watch how difficult it was to raise the money needed to pay for travel and the costs of the abortion. Even those who were employed indicated that the costs related to traveling created a significant barrier and delayed their access.

The current economic climate will inevitably create new financial barriers that will further limit access, especially for women who are poor or unemployed. At the time of researching this report, Ireland’s economy was one of the strongest in Europe and Ireland was often referred to as the “Celtic Tiger.” Little more than a year later, the picture has changed

dramatically. The International Monetary Fund (IMF) noted in June 2009 that “Ireland has been hit particularly hard by the global economic and financial crisis.” In September 2009, the Irish government reported unemployment figures at over 12 percent. These circumstances will conspire to reduce the numbers of women who can afford to travel to access safe and legal abortions and may force them to resort to less safe options or continue with unwanted pregnancies.

There are no reliable statistics about the numbers of women who continue with a crisis pregnancy or who have illegal abortions because they cannot travel to the UK or Europe. Service providers interviewed by Human Rights Watch suggest that significant numbers of women are not able to travel, and therefore are forced to carry on their pregnancies. Linda Wilson Long, head of counseling at a major Irish reproductive healthcare provider, describes them as the “desperate thirty percent.”

The public debate about abortion in Ireland has been marked by bitterly contested public referenda, tragic court cases involving rape survivors, girls in state care and women with fatal fetal abnormality pregnancies, and a militant anti-choice movement that continues to characterize abortion as “baby killing.” The voices of many women, whose stories fail to make the headlines, are absent from the debate. It is the hope of Human Rights Watch that this report will give a voice to some of these women.

Ireland is a party to several international human rights treaties, and has been repeatedly criticized by international treaty bodies for implementing abortion restrictions that are in violation of the human rights obligations the government has voluntarily undertaken. In 2000, the United Nations Human Rights Committee called on the Irish government to ensure that women were not forced to continue with unwanted pregnancies and expressed concern about the limited circumstances in which legal abortions were permissible in Ireland. In July 2005, the Committee on the Elimination of Discrimination against Women indicated its “concern about the consequences of the very restrictive abortion laws” and in 2008 the Human Rights Committee expressed its regret that Ireland had failed to make any progress on this issue.

The Irish government should take all necessary steps, both immediate and incremental, to ensure that women have informed and un-coerced access to safe and legal abortion services within Ireland as an element of women’s exercise of their reproductive and other human rights. In the interim, the government should immediately ensure that those abortion services that are currently legal under Irish law be provided to all who need them without

discrimination, and that full and accurate information on how to obtain safe abortions both within Ireland and outside its borders be available to all women, without discrimination.

II. Recommendations

To the Irish Government

- Take immediate steps toward decriminalizing all abortion for women living in Ireland.
- In the interim period, take urgent steps to:
 - Ensure that a national regulatory framework is effectively implemented to clarify the circumstances in which abortion is currently legally available in Ireland.
 - Develop a national framework to guarantee access to legal abortion according to international standards.
 - Repeal the Regulation of Information (Services Outside the State for the Termination of Pregnancies) Act, 1995 and enact legislation to:
 - Ensure that abortion-related information is widely available to all women;
 - Permit healthcare providers and other services providers to make appointments and other arrangements on behalf of women with legal abortion providers outside Ireland;
 - Ensure that the provisions requiring that information provided to women is “truthful and objective” and “fully informs women of all courses of action” apply to all service providers; and
 - Require all entities that provide pregnancy-related information or services to clearly advertise whether or not they provide abortion-related information.

To the Department of Justice, Equality and Law Reform

- Develop a uniform policy, including a streamlined process, for obtaining emergency travel documents for asylum seekers.
- Ensure that female asylum seekers are informed that, should they need to leave the country in order to obtain an abortion, this information will be kept confidential, and will in no way affect their asylum claim.

To the Department of Health

- Develop a national protocol on pre-natal diagnostic screening with full respect for women's human rights to freedom of expression and health.
- Develop binding guidelines to guarantee equitable access to abortion as currently permitted under Irish law, and to set out the duties of healthcare professionals and institutions in facilitating such access.
- Ensure that such guidelines specify:
 - That the determination of a woman's right to legal abortion, as currently permitted under Irish law, depends on the clinical judgment of her medical provider; and
 - That the woman seeking the abortion has the right to seek a second medical opinion if denied access from the first provider.
- Develop guidelines on the right of individual healthcare workers who decline to provide abortions on the grounds of conscientious objection, including clear standards on:
 - The right of all women to receive full and accurate information about their health options as well as emergency health care;
 - The obligation of doctors to make a timely referral to a known practitioner who will perform an abortion;
 - The obligation of all publicly funded health institutions to ensure that they have on their staff healthcare workers who will perform abortions; and
 - The limitation of conscientious objection to individual medical staff, excluding institutions and administrative staff.

To the Medical Council

- Disseminate clinical guidelines that explain:
 - When doctors may lawfully perform abortions; and
 - The complete standards of clinical care required for women having abortions in accordance with international medical norms and scientific development, including criteria and standards for access to both surgical and medical abortion.
- Amend section 2.6 of the Guide to Ethical Conduct and Behaviour, 2004 to ensure that the duties of doctors who decline to perform abortions on the grounds of conscientious objection are adequately spelled out. Specifically:
 - The duty to provide emergency medical care;
 - The duty to make a timely good faith referral to a known practitioner who will perform an abortion.

- Amend section 16.1 of the Guide to Ethical Conduct and Behaviour, 2004 to include an explicit obligation to maintain the right to confidentiality of all information relating to reproductive health care, including information about both providers and patients, and specifying disciplinary action for breach of confidentiality.
- Amend section 24.6 of the Guide to Ethical Conduct and Behaviour, 2004 to include a clear description of the circumstances when an abortion may be legally performed.

To the Crisis Pregnancy Agency

- Conduct a detailed evaluation of effective access to information about abortion and post-abortion care in Ireland, with particular focus on marginalized communities, with a view to developing targeted awareness-raising campaigns on these issues to close any information gaps.
- Develop and disseminate guidelines regulating the provision of information relating to abortion, including requirements that all information be accurate and based on medical and scientific principles.
- Publicly challenge incorrect medical information on abortion, such as, for example, claims of links between abortion and breast cancer.
- Ensure that the positive options campaign differentiates clearly between two-option agencies and three-option agencies, with particular guidance to women on where to obtain information on abortion services abroad.
- Assess the need for abortion services for women living in Ireland:
 - Conduct a detailed survey of legal and illegal abortions carried out in Ireland;
 - Conduct a detailed survey of the level of involuntary pregnancies in Ireland; and
 - Conduct research on the reproductive health needs of those who cannot travel for abortion services such as immigrant and asylum-seeking women, minors, and those under state custody.
- Withdraw funding from agencies that provide misleading or inaccurate information to women.
- Ensure that agencies funded to provide post-abortion care services provide full and accurate health information to patients, and that services are compassionate, humane, and respectful toward patient decisions, including the decision to terminate a pregnancy.
- Provide legal aid and support for women to make complaints where inaccurate information is being provided, and publicly announce that this support is offered.

- Conduct research on the reproductive health needs of immigrant and asylum-seeking women and advocate for the removal of travel barriers for women who travel for abortions.
- Develop and maintain a public up-to-date list of “rogue” agencies on the internet, clearly identifying those agencies that provide misleading, incomplete, or inaccurate information.
- Make formal complaints about “rogue” agencies through Advertising Standards regulations.

III. Methodology

This report is based on field research conducted in Dublin and Cork, Ireland, in August 2008, and in London and Birmingham, United Kingdom, in July, August and September 2008, by two Human Rights Watch researchers. One interview was conducted in Washington D.C., United States, in August 2008. In total, Human Rights Watch conducted 46 interviews with 55 people for this report. All interviews were conducted in English, and no incentives or compensation were offered or provided to persons interviewed.

Human Rights Watch conducted individual interviews with 13 women about their experiences accessing abortions outside of Ireland. The names of all the women have been disguised to protect their privacy.

Human Rights Watch also conducted interviews, individually or in small groups, with 38 key individuals about reproductive health services available to women in Ireland and barriers to accessing abortion services available in the UK and continental Europe. The interviews were conducted at the offices of a reproductive health service provider in Dublin or at places convenient to the interviewees. A small number of these interviews were conducted telephonically.

Those interviewed included: 16 reproductive healthcare providers, including staff members of Irish family planning services, English abortion services, a specialist counselor dealing with fetal abnormalities based in the UK, the director of a large maternity hospital, medical practitioners in private practice, a specialist mid-wife, and members of professional medical societies; and 22 civil society activists, including leaders in the movement for repeal of abortion restrictions, the women's rights movement, lawyers and community activists.

Despite numerous requests, Human Rights Watch was unable to obtain interviews with the Ministers of Health and Children, and Justice, Equality and Law Reform. Human Rights Watch also directed several requests for interviews to senior civil servants from these departments, but was unable to secure interviews with them.

Human Rights Watch interviewed three staff members of the Crisis Pregnancy Agency and the Women's Health Council respectively. These are both statutory advisory bodies that assist the Department of Health and Children to respond to the health needs of women. Although they have policy mandates, they have no specific legislative mandate and the Minister of Health and Children is under no legal obligation to follow their advice.

IV. Abortion in Ireland: Background and the Need for Services

In their daily work family doctors see the reality of the failure of the state to legalise abortion. They see the palpable horror of the woman who awaits a pregnancy test that she fears is positive. She must face this situation in the knowledge that she cannot have an abortion in Ireland.

— Dr Mary Favier, “Repressing Abortion in Ireland”¹

Abortion is criminalized in Ireland in almost all circumstances. Access is only permitted where it is necessary to save the life of the pregnant woman, including as a result of a risk of suicide. Ireland is one of only three countries in the European Union (EU) that places such severe restrictions on access to abortion.²

The ban on abortion has not stopped women from having abortions. It has, however, turned what should be a profoundly personal decision into a situation where women routinely experience unnecessary risk, stigma, shame and anguish. As a result of the severe legal restrictions, every year thousands of women are forced travel to the UK³, and more recently to the Netherlands⁴ and other EU countries,⁵ to obtain safe and legal abortions.

The need to travel to have a medical procedure raises many concerns for women: many struggle to raise money for travel, the abortion and other related costs; for others, feelings of anxiety and isolation are reinforced by punitive legislation and a public discourse about abortion that excludes their voices and experiences. Women fear judgmental and negative

¹ Mary Favier, “Repressing Abortion in Ireland,” <http://struggle.ws/wsm/rbr/rbr7/abortion.html> (accessed on July 9, 2009). Dr. Mary Favier is a practicing gynecologist in Ireland, a member of Doctors for Choice, and an interviewee for this report.

² In Malta, San Marino, and Andorra there are total bans on abortion, with no explicit exception for where it is necessary to save the pregnant woman’s life, although it is generally accepted that an abortion performed in such circumstances would be justified under the law on the grounds of necessity. (See Article 241, Criminal Code). In addition, Poland operates with a severely restrictive abortion access legal regime, allowing for abortion only where the pregnancy endangers the pregnant woman’s life or health; there is a high risk of serious fetal abnormality; the pregnancy is the result of a criminal act such as rape or incest. (See Section 4 (a) of the 1993 Family Planning (Protection of the Human Fetus and Conditions Permitting Pregnancy Termination) Act).

³ In 2008, the UK Department of Health released annual statistics showing that 4600 women providing Irish addresses had abortions in the United Kingdom. This represented 67 percent of all documented abortions performed on non-resident women during this period.

⁴ “Number of women giving Irish addresses at UK abortion clinics decreases for sixth year in a row according to Department of Health UK,” Crisis Pregnancy Agency press release, June 19, 2008, <http://www.crisispregnancy.ie/pressrelease.php?id=79> (accessed September 12, 2008). This press release reported that 445 women travelled to the Netherlands for an abortion in 2007.

⁵ Human Rights Watch interviewed women who had had abortions in Italy and France.

attitudes from healthcare workers when they return to Ireland and may be reluctant to seek post-abortion medical care or counseling.

Authoritative interpretations of international law recognize that obtaining a safe and legal abortion is of fundamental importance to women's ability to exercise and enjoy their human rights, including the rights to life, health, nondiscrimination, equal protection under the law, access to information and the right to be free from cruel, inhuman and degrading treatment.⁶ Further, the potential imposition of prison sentences for procuring an abortion in Ireland in and of itself threatens the right to liberty and security as women may risk prison for seeking to exercise their right to health.

The Irish ban on abortion unequivocally denies women protection for this range of their human rights. At the most fundamental level, women are prevented from fully enjoying their right to health by being denied access to information about a medical procedure and being forced to travel to obtain a medical procedure they clearly need. At its most extreme, this denial of basic rights may lead to death and serious injury. The mental anguish and distress caused by substantial and burdensome barriers to care may, in some circumstances, amount to cruel, inhuman, and degrading treatment.

Legal Framework

Ireland has held 5 seperate [sic] referenda on the seperate [sic] occasions on this issue. I am not aware of any proposal to put this before the people again.

— Sean Aylward, Secretary General, Department of Justice, Equality and Law Reform, Ireland⁷

Abortion has been illegal in Ireland since at least 1861. Irish law penalizes women who have or attempt to have abortions,⁸ and anyone who assists them⁹ and imposes strict constraints on the provision of abortion-related information.¹⁰ The penalty for women who pursue

⁶ For a review of international human rights law and abortion, see Human Rights Watch, "International Human Rights Law and Abortion in Latin America," *A Human Rights Watch Briefing Paper*, July 2005 ; Human Rights Watch, "Decisions Denied: Women's Access to Contraceptives and Abortion in Argentina", June 2005; Human Rights Watch, "Mexico: The Second Assault. Obstructing Access to Legal Abortion After Rape in Mexico", March 2006; Human Rights Watch, "Over their Dead Bodies: Denial of Access to Emergency Obstetric Care and Therapeutic Abortion in Nicaragua" October 2007, Human Rights Watch, "My Rights, and My Right to Know. Lack of Access to Therapeutic Abortion in Peru", July 2008.

⁷ Written communication to Human Rights Watch, September 29, 2008.

⁸ Offences Against the Persons Act, 1861, art. 58.

⁹ Offences Against the Persons Act, art. 59.

¹⁰ Regulation of Information (Services Outside the State for the Termination of Pregnancies) Act 1995

abortions within Ireland, and those who assist them, is “penal servitude for life.”¹¹ Healthcare workers and anyone else who provides drugs or other instruments to assist with an unlawful abortion are subject to imprisonment for three years.¹² The Irish Constitution was amended, following a referendum in 1983, to include a provision that recognized and pledged the state to protect the right to life of “the unborn.”¹³ The amendment has fostered persistent uncertainty about women’s legal rights to abortion services and information.¹⁴

The Irish Constitution has been amended twice on issues related to abortion during the past two decades. In 1992, an amendment to guarantee freedom to travel for abortion services and the right to information about such services lawfully available in another state was passed. The Regulation of Information (Services Outside the State for the Termination of Pregnancies) Act was passed in 1995, ostensibly to give effect to the 1992 constitutional amendment that gave women a legally protected right to seek, receive and impart abortion-related information, and to bring Irish law into line with the *Open Door v. Ireland* ruling of the European Court on Human Rights,¹⁵ but in effect it placed very strict conditions on the manner in which such information may be provided and the type of information that can be made available.

According to official government guidance on the Act, the stated objective appears to be not the protection of women’s right to information, but rather “to limit circumstances in which

¹¹ Offences Against the Persons Act, art. 58.

¹² Offences Against the Persons Act, art.59.

¹³ This was known as the Eighth Amendment and resulted in Article 40.3.3 of the Constitution: “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 respect, and, as far as practicable, by its laws to defend and vindicate that right.”

¹⁴ One of several legal issues left open by the 1983 amendment was whether women could legally travel to obtain a legal abortion outside of Ireland. The legal position was partly clarified in 1992 when the Attorney General sought an injunction to prevent a fourteen-year-old pregnant rape survivor, know as Ms X, from leaving Ireland for the duration of her pregnancy. See *Attorney General v X* [1992] 1. The court case that followed led to a ruling by the Supreme Court that there was a right to abortion in Ireland where the pregnant woman’s life was in danger, including through suicide, and that therefore it would not be unlawful for Ms X to travel to obtain an abortion. It also paved the way for the second abortion referendum later that year, to include in the constitution new amendments that would guarantee freedom of travel for women and the right to information. The referendum in November 1992 included three proposed amendments on abortion—amendments 12, 13 and 14. Amendment 12 proposed to reverse the ruling of the Supreme Court in *Attorney General v. X* and render it “unlawful to terminate the life of an unborn unless such termination is necessary to save the life, as distinct from the health, of the mother where there is an illness or disorder of the mother giving rise to a real and substantial risk to her life, not being a risk of self-destruction.” This was rejected by the voting public. Amendments 13 and 14 were passed which resulted in two additions to Article 40.3.3 which respectively held that the provision protecting the ‘unborn child’ “shall not limit freedom to travel between the State and another state” and “shall not limit freedom to obtain or make available, in the State, (...) information relating to services lawfully available in another state.”

¹⁵ Case of *Open Door and Dublin Well Woman v. Ireland*, Application no. 14234/88; 14235/88, Judgment of October 29, 1992, Series A No. 246-A.

women seek to have abortions.”¹⁶ Indeed most of the sections of the Act address prohibitions on dissemination of information. For example, it is unlawful, and an offence subject to summary conviction, to give information in any way which would be deemed to “encourage or advocate an abortion in individual circumstances”¹⁷ In practice, such restrictions prevent healthcare providers from giving accurate and complete guidance to their patients, especially since the threat of summary conviction in combination with a subjective term such as “encourage” is likely to have a chilling effect on some providers.

Despite the 1992 amendment which also guaranteed the right to travel, the Irish government has continued to try to prevent women from leaving the country. This has impeded women’s capacity to travel, in particular for minors under state custody, who have been subject to state imposed injunctions to block travel rights, and who therefore have been forced to go to court to enforce their right to travel. As recently as 2007, for example, a 17-year-old minor in the custody of the Health Services Executive¹⁸ had to go to court to get permission to travel to the UK for an abortion.¹⁹ In part due to the media coverage of these cases, and the lack of clear information in the public sphere on the legal right to travel, it remains unclear to many women whether they may in fact legally leave Ireland to have an abortion.

Ireland is a party to a number of human rights treaties guaranteeing rights to women which are undermined or violated by the current law and practice in Ireland.²⁰ On December 9, 2009, the European Court of Human Rights held its final hearing before the Grand Chamber in the case of *A, B, and C v. Ireland*.²¹ The case was brought by three women resident in Ireland, who traveled to the UK for abortions. The applicants argued that the restriction on

¹⁶ Department of Health, A Guide to the Regulation of Information (Services outside the State for Termination of Pregnancies) Bill, February, 1995

¹⁷ Regulation of Information (Services outside the State for Termination of Pregnancies) Act, 1995, Section 5.

¹⁸ The Health Services Executive is the state agency responsible for providing health and social services in Ireland.

¹⁹ The case of *D. v HSE*. See Owen Bowcott “Irish court battle over teenager’s abortion right,” *The Guardian*, at <http://www.guardian.co.uk/society/2007/may/02/health.comment> (accessed on December 7, 2008).

²⁰ See for example, International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. res. 2200A (XXI), 993 U.N.T.S. 3, entered into force January 3, 1976, ratified by Ireland on December 8, 1989; International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Ireland on December 8, 1989; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), G.A. res. 34/180, entered into force September 3, 1981, acceded to by Ireland on December 23, 1985; European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), entered into force September 3, 1953, as amended by Protocol 11 which entered into force on November 1, 1998, ratified by Ireland on February 25, 1953.

²¹ *A., B. and C. v Ireland*, Application no. 25579/05, lodged on July 15, 2005. On July 21, 2009 the initial chamber of the European Court to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber, as permitted in accordance with Article 30 of the ECHR, when “a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court.” The statement of facts for the case can be found at <http://www.echr.coe.int/echr/en/hudoc>.

abortion violates their rights under Articles 8 and 14 of the European Convention on Human Rights (ECHR).²² One of the applicants, who was in cancer remission, unintentionally became pregnant and was unable to find a doctor in Ireland willing to make a determination about whether the pregnancy would endanger her life, a ground to obtain a legal abortion in Ireland. She argued that the lack of clear guidelines about when abortion may be legally performed, and the lack of availability of lifesaving health services such as therapeutic abortion services, violated her right to physical integrity under the ECHR. The Court also heard arguments on discrimination on the grounds of sex and poverty, as this relates to access to abortion services for women in Ireland.

The Irish government has repeatedly made it clear that it does not plan to amend the laws on abortion in Ireland at this time. In its response to the recommendation in the report of the Commissioner for Human Rights, Council of Europe in 2008, that the government clarify when abortions may be lawfully performed, the Irish government stated that it had “no plans to bring forward further constitutional or legislative proposals in relation to abortion.”²³ This position was again confirmed in a letter to Human Rights Watch.

The Irish government has also obtained explicit guarantees from the European Union (EU) that European Treaties of the EU would not overturn Irish abortion laws.²⁴

Occurrence and Due Diligence

As in most countries where abortion is illegal or severely restricted, accurate information about the prevalence of and need for abortion among women in Ireland is hard to obtain, and statistics and estimates vary widely. The Irish government does not appear to systematically collect data on either the number of legal and illegal abortions carried out within Ireland, or the number of women who access medical attention abroad, thereby failing the most basic due diligence standards with regard to monitoring the consequences

²² Article 8 protects the right to privacy, including physical integrity, and Article 14 prohibits the discrimination in enjoyment of the rights under the Convention on certain grounds including gender. The applicants also raised violations under Articles 2 (right to life), 3 (prohibition on torture or to inhuman or degrading treatment or punishment) and 13 (right to an effective remedy) but focused their primary arguments on Articles 8 and 14.

²³ Report by the Commissioner for Human Rights Mr Thomas Hammarberg On His Visit to Ireland, 26 – 30 November 2007, adopted Strasbourg, April 30, 2008, CommDH (2008), p.52.

²⁴ See for example, Protocol 17 to the Maastricht Treaty states that nothing in the Treaty on European Union, or in the Treaties establishing the European Communities, or in the Treaties or Acts modifying or supplementing those Treaties, shall affect the application in Ireland of Article 40.3.3 of the Constitution of Ireland. Similar guarantees have also been granted under the Lisbon Treaty. On June 18 and 19, 2009, the European Council conclusions adopted a decision providing: “Nothing in the Treaty of Lisbon attributing legal status to the Charter of Fundamental Rights of the European Union, or in the provisions of that Treaty in the area of Freedom, Security and Justice affects in any way the scope and applicability of the protection of the right to life in Article 40.3.1, 40.3.2 and 40.3.3, the protection of the family in Article 41 and the protection of the rights in respect of education in Articles 42 and 44.2.4 and 44.2.5 provided by the Constitution of Ireland.”

of its restrictive policies. The Crisis Pregnancy Agency (CPA) has conducted a cross-section national survey to establish current attitudes, knowledge and experience of contraception, crisis pregnancy and related services in Ireland.²⁵ The survey indicates that 25 percent of the female study participants who had been pregnant experienced a crisis pregnancy, while 23 percent of the male participants had experienced a crisis pregnancy.²⁶ These figures clearly suggest that a substantial number of people will want to access information about abortion and related services.

The most accurate current estimates on the need for abortions in Ireland are based on information provided by the UK Department of Health, and apply to abortions provided in England, Wales, and Scotland. British clinics collect information regarding the number of women accessing abortion who give a non-UK address as their home contact information and then publish this information annually. These numbers are however likely to be an under-estimate of the need for abortion, as some women may give false addresses and many others now travel to countries other than the UK for care.

There are no statistics available about the numbers of women who cannot travel because they cannot afford to, do not have the necessary travel permissions, or who lack information about services available outside Ireland. These women are mostly invisible, ignored by their government and failed by a health system that does not respond to their health needs.

The unwillingness of the government to monitor and evaluate the prevalence of abortion, inside and out of Ireland, is yet another expression of the extent to which it continues to ignore the issue, at the expense of the human rights of women. The lack of reliable statistics severely hampers the ability of the Irish government to provide women in Ireland with the medical services to which they are entitled, including necessary post-abortion care. Moreover, it perpetuates the prevailing inaccurate and destructive myth that women in Ireland do not want or need abortions.

²⁵ Crisis Pregnancy Agency Report No. 7, "Irish Contraception and Crisis Pregnancy (ICCP) Study. A Survey of the General Population", September 2004, p. 13.

²⁶ *Ibid.*, p.19.

V. Obstacles to Abortion Access for Women Living in Ireland

There is a huge amount of hypocrisy in the Irish situation. One of the main reasons that abortion remains illegal is because they can export their problem, because women can travel.

— Ann Furedi, Chief Executive of the British Pregnancy Advisory Service,
August 20, 2008

Women living in Ireland face substantive obstacles to accessing safe abortion services. The vast majority must by law travel from their homes to a foreign country to access these services. Even the women who, by law, are entitled to have an abortion in Ireland because their pregnancy threatens their life often cannot get one due to lack of information and willing providers, and a general climate of fear and uncertainty.

These general obstacles to access are further compounded for women who do not live close to sources of information and available services, adolescents, disabled women and those without financial resources, all of whom face additional challenges in planning for an expensive medical procedure abroad at a time when they are already in a state of some emotional distress. Those who cannot travel because of their immigration status, lack of money, because they are in state custody, or for any reason whatsoever are forced to choose between continuing a crisis pregnancy and accessing illegal, often risky services.

The availability of safe abortion services in other EU countries, particularly in the UK, has played a significant role in allowing the Irish government to abdicate its responsibility to protect the human rights of women who require access to abortion. As one of a very small number of doctors in Ireland who are willing to be open about supporting women's right to decide to terminate a pregnancy told Human Rights Watch, "... if it [abortion] wasn't so readily available, this problem would have to be solved, but having access to the UK has made it not necessary ... to not ignore it."²⁷

Failure to Provide Access to Legal Abortions

In the most egregious violation of women's human rights, including to life, health, privacy, and equal protection under the law, the Irish government has failed to ensure access to abortion in even those limited circumstances where it is permitted by law.

²⁷ Human Rights Watch interview with Dr Mary Favier, Doctors for Choice, Cork, August 28, 2008.

A physician who has worked with pregnant women for a significant length of time told Human Rights Watch that she has never heard of any legal abortions being performed in Ireland. She recounted the case of a woman whose life was endangered by her pregnancy and who had to leave the country to access care, despite the fact that Irish law entitles her to an abortion at home.²⁸ Human Rights Watch was unable to document a single case of a legal abortion being performed in Ireland and it is clear from our interviews with doctors and medical professionals that many women who are legally entitled to access abortion services in Ireland cannot do so.²⁹ This situation is not in compliance with international law.

The 1994 International Conference on Population and Development (ICPD) Programme of Action was the first international consensus document to recognize that where abortion is legal, services must be provided and must meet certain standards.³⁰ The Programme of Action states that “[i]n circumstances where abortion is not against the law, such abortion should be safe,”³¹ a sentiment that has been repeated by several treaty-monitoring bodies as well as by the UN Special Rapporteur on the Right to Health.³² Abortion services should be provided in conformity with international human rights standards, including with regard to the adequacy and accessibility of the services.³³

The Irish government has failed utterly to ensure that health services are available to those women who are legally entitled to an abortion. In 2005 the UN Human Rights Committee, which oversees the implementation of the International Covenant on Civil and Political Rights (ICCPR) to which Ireland is a party, examined the situation of a young girl in Peru, who was not able to access a legal abortion in a legislative context which is similar to that of Ireland. The Committee held that there had been numerous violations of the girl’s rights as a result of the failure to provide access to legal abortions. In the specific case examined by the

²⁸ Ibid.

²⁹ Media accounts detail that Professor John Bonnar, Emeritus Professor of Obstetrics & Gynaecology at Trinity College, Dublin, during the course of his career had terminated small number of pregnancies in the context of saving a pregnant woman’s life, but it is not clear that any of these were classified as abortions. Dearbhail McDonald, “Doctors fear abortion charge if they direct patients abroad,” *Irish Independent* (Dublin), December 12, 2009.

³⁰ The outcome document from the International Conference on Population and Development (ICDP), held in Cairo in 1994.

³¹ ICPD Programme of Action, para. 8.25.

³² See e.g. Report by the Special Rapporteur on the Right to the Highest Attainable Standard of Health, UN E/CN.4/2004/49, 16 February 2004, para. 30.

³³ The UN Committee on Economic, Social and Cultural Rights, which is the authoritative body established to monitor states compliance with their obligations under the ICESCR, issued General Comment No. 14 on the right to the highest attainable standard of health, guaranteed in Article 12 of the ICESCR (E/C.12/2000/4, August 11, 2000.). The Committee set out that a state must ensure health care facilities and services are available in sufficient quantity; accessible to everyone without discrimination, including economically accessible; culturally acceptable, as well as scientifically and medically appropriate and of good quality (para. 12).

Committee, a pregnant adolescent had been forced to continue with an anencephalic pregnancy.³⁴ The Committee found 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, to such measures of protection as are required by her status as a minor, and to her right to an effective remedy.”³⁵

The United Nations Committee against Torture (CAT), which oversees the Convention Against Torture to which Ireland is also a party, has also described the inability to access abortion in a situation of a life threatening pregnancy as a violation of human rights.³⁶

In April 2008, the Commissioner for Human Rights for the Council of Europe, following a visit to Ireland, highlighted the failure of the Irish government to ensure access to legal abortion and called on the government to ensure that adequate services were in place to carry out legal abortions in Ireland.³⁷ The UN Human Rights Committee has also expressed its concerns about obstacles to abortion where it is legal, and the fact that women may be forced to go abroad for an abortion. The Committee has explicitly noted that no woman should be forced to go through with a pregnancy which would mean her suffering inhuman or degrading treatment.³⁸

In Ireland, the very divisive public debate on abortion in the context of a small country with a limited number of practicing obstetrics and gynecology specialists, all of whom know of

³⁴ Anencephaly is fetal malformation in which the brain and spinal cord fail to develop in utero. When the outcome is not a stillbirth, death usually occurs within hours or days after birth. Jerrold B. Leikin, MD and Martin S. Lipsky, MD (eds.), *American Medical Association Complete Medical Encyclopedia* (New York: Random House Reference, 2003), p. 160.

³⁵ *KL v Peru* (2005), Comm. No. 1153/2003, UN Doc. CCPR/C/85/D/1153/2003.

³⁶ UN Committee against Torture, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Concluding Observations of the Committee against Torture: Nicaragua*, CAT/C/NIC/CO/1, June 10, 2009, para. 16

³⁷ Report by the Commissioner for Human Rights Mr Thomas Hammarberg On His Visit to Ireland, 26 – 30 November 2007, adopted Strasbourg, April 30, 2008, CommDH (2008), p.36.

³⁸ See for example, Human Rights Committee, “Concluding observations of the Human Rights Committee on Ireland,” July 24, 2000, Document A/55/40[Vol.I](Supp.): “The Committee is concerned that the circumstances in which women may lawfully obtain an abortion are restricted to when the life of the mother is in danger and do not include, for example, situations where the pregnancy is the result of rape. The State party should ensure that women are not compelled to continue with pregnancies where that is incompatible with obligations arising under the Covenant (art. 7) and General Comment No. 28.” (paras. 444 – 445) and Human Rights Committee, “Concluding observations of the Human Rights Committee on Ireland,” CCPR/C/IRL/CO/3, July 30 2008: “The Committee reiterates its concern regarding the highly restrictive circumstances under which women can lawfully have an abortion in the State party. While noting the establishment of the Crisis Pregnancy Agency, the Committee regrets that the progress in this regard is slow. (arts. 2, 3, 6, 26). The State party should bring its abortion laws into line with the Covenant. It should take measures to help women avoid unwanted pregnancies so that they do not have to resort to illegal or unsafe abortions that could put their lives at risk (article 6) or to abortions abroad (articles 26 and 6)”, para. 13. See also *Concluding Observations of the Human Rights Committee on Monaco*, CCPR/C/MCO/CO/2, December 12, 2008 para.10.

each other, has also limited the availability of legal abortion services.³⁹ A prominent medical practitioner interviewed by Human Rights Watch, who asked to remain anonymous due to the subject matter of this report, stated that, “[there] is still a fear of being labeled as an abortionist, a fear of the extremist groups.”⁴⁰ Interviews with other healthcare providers suggested that many not only fear being targeted by anti-choice groups, but also the social stigma that may accompany being identified as an abortion provider.

Research from other countries where abortion is only legal in limited circumstances suggests that women will continue to face obstacles in accessing services to which they are legally entitled until the government regulates access and actively addresses the stigmatization of service provision among medical practitioners, including by enforcing strict confidentiality measures for both patients and providers.⁴¹

Inadequate, Inaccurate, and Misleading Information

Violations of the right to impart, seek and receive information have been common features of Ireland’s legal framework on abortion, and Ireland has both been criticized by the UN Human Rights Committee and found to be in violation of the European Convention on Human Rights by the European Court of Human Rights for its legal measures interfering with access to information.⁴²

Several international human rights treaties to which Ireland is a party include the obligation to respect and ensure the right to information also as it relates to the right to health.⁴³ The U.N. Committee on Economic and Social Rights, in its general comment on the right to health,

³⁹ The prevailing assumption among policy makers and some medical providers in Ireland seem to be that abortion, if available, would have to be provided by gynecologist or obstetric specialists. This is not an accurate reflection of international standards. In 2003, the World Health Organization’s safe abortion guidance recommended that abortion services be provided at the lowest appropriate level of the healthcare system. It states that vacuum aspiration can be provided at primary-care level up to 12 completed weeks of pregnancy and medical abortion up to 9 completed weeks of pregnancy, and that mid-level health workers can be trained to provide safe, early abortion without compromising safety. It includes as mid-level providers: midwives, nurse practitioners, clinical officers, physician assistants and others. Training includes bimanual pelvic examination to determine pregnancy and positioning of the uterus, uterine sounding, transcervical procedures, provision of abortion and skills for recognition and management of complications. World Health Organization, *Safe abortion: technical and policy guidance for health systems*. (Geneva: WHO; 2003).

⁴⁰ Human Rights Watch interview with [name withheld], Dublin, August 27, 2008.

⁴¹ See e.g. Human Rights Watch, “The Second Assault: Obstructing Access to Legal Abortion After Rape in Mexico,” in particular section V. See also Human Rights Watch, “My Rights, and My Right to Know: Access to Therapeutic Abortion in Peru,” in particular section V.

⁴² See UN Human Rights Committee (HRC), “UN Human Rights Committee: Comments: Ireland,” August 3, 1993, CCPR/C/79/Add.21, para. 15, and Case of Open Door and Dublin Well Woman v. Ireland, Application no. 14234/88; 14235/88, Judgment of October 29, 1992, Series A No. 246-A, p. 28.

⁴³ See Article 19 of the ICCPR and Article 10 of the ECHR.

explicitly recognizes the “special importance of this issue in relation to health.”⁴⁴ The Committee also recognizes the obligation of states to disseminate health-related information, including with regard to sexual and reproductive health.⁴⁵

The 2003 World Health Organization guidelines on safe abortion set out in detail the information and confidentiality requirements for crisis pregnancy counseling that would allow women to make decisions in an informed and autonomous manner, in accordance with their human rights.⁴⁶

The Irish government routinely violates women’s human right to access health-related information on a number of grounds. Firstly, it fails to ensure access to information about abortion services in Ireland in those circumstances permitted by law, and it does not adequately inform women and providers about their rights to confidentiality and health information. It further fails to ensure that women are able to access accurate information about abortion and services legally available outside of Ireland. Finally, it fails to counter the often blatantly false and potentially damaging and dangerous information about abortion provided by unregulated agencies that oppose women’s access to safe and legal abortion. These failures not only violate women’s right to access health-related information and services, but ultimately their rights to health, physical integrity and equality and nondiscrimination.

Lack of Information about Legal Abortion in Ireland

Human Rights Watch research suggests several reasons why access to currently legal abortion is so severely curtailed in Ireland, but the one of the clearest ones is undoubtedly the Irish government’s failure to clarify when a legal abortion may be performed and to provide information to women and healthcare workers about this right and the consequent availability of the service.

Human Rights Watch found that many medical practitioners do not know what services they may lawfully provide to women and what the standard of medical care should be when an abortion is performed in Ireland. Service providers also do not know when they can advise their clients to request an abortion. Dr Michael Geary, head of the largest maternity hospital

⁴⁴ Committee on Economic, Social and Cultural Rights, “General Comment 14: The right to the highest attainable standard of health”, E/C 12/2000/4, August 11, 2000.

⁴⁵ Ibid., para. 36.

⁴⁶ World Health Organization, *Safe abortion: technical and policy guidance for health systems*, 2003, in particular Chapter 3.

in Ireland suggested that “it is not absolutely clear-cut [when an abortion can be performed to save the life of the woman].”⁴⁷

The Medical Council, a statutory body established in 1979 to regulate the medical profession and protect the interest of the public in Ireland, is supposed to provide guidance on ethics and is responsible for disciplining those doctors who breach the required standards of conduct and behavior.

The Council’s guide on ethics does include a reference to abortion, acknowledging that it is legal in Ireland when there is a substantial risk to the life of the woman.⁴⁸ It however completely fails to provide further guidance to healthcare workers and refers to a submission made by the Institute of Obstetricians and Gynecologists to the All-Party Oireachtas Committee in 2000. The relevant portion of the submission is reprinted in the guide. The submission fails to refer to the risk of suicide as a ground to legally terminate a pregnancy.⁴⁹ It states that an abortion may only be performed “at a stage in pregnancy where there is little or no prospect for the survival of the baby, due to extreme immaturity”, and where the “failure to intervene may result in the death of both mother and baby.”⁵⁰ It fails to provide detailed guidance to doctors who are required to make these assessments, and it appears to value the life of the fetus over that of the woman. As noted by a member of the Human Rights Committee in the case concerning the adolescent girl in Peru who was forced to carry through an anencephalic pregnancy,⁵¹ “[i]t is not only taking a person’s life that violates article 6 [the right to life] of the Covenant but also placing a person’s life in grave danger, as in this case.”⁵² In this way, for purposes of adequate policy-making, the right to health and the right to life should be seen by the state as part of a continuum rather than as two separate concerns, in particular when addressing health conditions that pose a grave danger to a person’s life.

The failure of the Irish government to ensure that women have access to information about when legal abortions may be obtained in Ireland clearly violates their right to health. The UN Committee on Economic, Cultural and Social Rights has articulated the positive obligation

⁴⁷ Human Rights Watch interview with Dr Michael Geary, Master, Rotunda Hospital, Dublin, August 28, 2008.

⁴⁸ Medical Council, *A Guide to Ethical Conduct and Behaviour*, Sixth Edition 2004, section 24.6.

⁴⁹ The risk of suicide was specifically identified as included within the definition of “risk to the life of the mother.” See *Attorney-General v X* [1992] IESC 1.

⁵⁰ *Ibid.*, p.44.

⁵¹ *KL v Peru* (2005), Comm. No. 1153/2003, UN Doc. CCPR/C/85/D/1153/2003.

⁵² *Ibid.*, p. 12.

on the part of the state to disseminate information about sexual and reproductive health, including through information and education campaigns.⁵³

Obstacles in Access to Information about Abortion Services outside Ireland

The failure of the Irish government to ensure that women have access to abortion-related information means that many women struggle to access timely, accurate, and complete information about legal abortion services abroad. As a result, they experience delays in accessing care, which heightens the possibility of health complications from the intervention.⁵⁴ The delays also contribute to the emotional distress that many women experience.

Aoife C was living in a rural part of Ireland when she got pregnant. She described herself as “very distant from sources of information.”⁵⁵ She was unable to get any information about abortion and had to wait until she started university in Dublin before she was finally able to find out about services and travel to the UK, alone and extremely distressed. As a result of the delay, she was almost 28 weeks pregnant when she finally had an abortion.⁵⁶ Under UK law, a pregnancy of over 24 weeks may only be terminated if two doctors agree that a woman’s health or life is gravely threatened by the continued pregnancy or if the fetus will be severely handicapped.⁵⁷ For terminations below 24 weeks, the test is less strict, and a pregnancy can be terminated if the continued pregnancy is likely to prejudice the physical or mental health of the woman and her existing children.

Sarah B, a university educated woman, told Human Rights Watch about her experience, stating that, “information wasn’t easily available ... it was really hard to make the right connections.”⁵⁸

⁵³ Committee on Economic, Social and Cultural Rights, “General Comment 14: The right to the highest attainable standard of health”, E/C 12/2000/4, August 11, 2000, para. 36.

⁵⁴ Abortion is generally a safe medical procedure if carried out under proper conditions. It is safest when provided within the first eight weeks of the pregnancy. As the pregnancy progresses, “[t]he relative risk of dying as the consequence of abortion approximately doubles for each 2 weeks after 8 weeks’ gestation.” F. Gary Cunningham, Kenneth L. Leveno, Williams Obstetrics (2005), chapter 9.

⁵⁵ Human Rights Watch telephonic interview with Aoife C, September 11, 2008.

⁵⁶ Human Rights Watch telephonic interview with Aoife C, September 11, 2008.

⁵⁷ The Abortion Act 1967, section 1. The Abortion Act also permits post-24 week abortions if the fetus “would suffer from such mental or physical abnormalities as to be seriously handicapped.”

⁵⁸ Human Rights Watch interview with Sarah B, Dublin, August 25, 2008.

The Irish government has failed to take steps to inform women of their right to travel. To the contrary, it has historically sought to limit women’s access to information about abortion abroad, and at one time, banned all information related to foreign abortion services. The European Court of Human Rights at the time found Ireland to be in violation of its human rights obligations regarding access to information. The European Court of Human Rights noted that limiting access to information created a health risk to those women who, due to inadequate counseling, sought abortions at a later stage in their pregnancy, or who were not seeking post-abortion care. The Court also acknowledged the potentially discriminatory effect of the law, in that it “may have had more adverse effects on women who were not sufficiently resourceful or had not the necessary level of education to have access to alternative sources of information.”⁵⁹

The 1995 legislation, ostensibly enacted to give effect to the constitutional amendments guaranteeing the right to travel and information and to bring the law more in line with the Open Door ruling, in fact places far-reaching curbs on the manner in which information can be given and almost inevitably delays access to services. For example, information may only be given during a face to face meeting. Service providers are required to prioritize the precepts of the law over caring for their patients. A researcher and activist described how legal constraints on the provision of information, as provided for in the Information Act, negatively impact the provision of care:

[Counselors] use a very careful script to adhere to the legal constraints, but then women don’t always get the service they need.⁶⁰

Although the internet now means that many women can access information about abortion services abroad without having to meet with a service provider, and in some ways the Act has become obsolete, it continues to discriminate against marginalized, resource-poor, or rural women who do not have ready access to the resources provided by the internet. Since information may not be provided telephonically, access for those women and for anyone else without access to transport, is further limited. Information may also not be displayed “in or at a place to which the public have access.”⁶¹ This includes billboards and other forms of

⁵⁹ Open Door and Dublin Well Woman v. Ireland, October 29, 1992, para. 77, Series A no 246-A, This issue was also brought to the European Court of Justice as an alleged breach of the EU rules on freedom of provision of services, Society for the Protection of Unborn Children Ireland Limited (*SPUC*) v *Grogan* C- 159/90, [1991] ECR I-4685. The ECJ did not find a violation on those grounds, finding that the distribution by third parties of information on services was not a ‘service’ covered by EU law.

⁶⁰ Human Rights Watch telephonic interview with Catherine Conroy, September 11, 2008.

⁶¹ *Ibid.*, Section 4.

public advertisements. For some women, these forms of information may be the only way in which they are able to find out about available services.

Barriers to information are higher in non-Irish and in resource-poor communities. A service provider who assists African immigrant women indicated that her clients encountered particular problems in securing information about abortion services. She confirmed that immigrant women experienced a great deal of “confusion about how you can access information.”⁶² A community activist raised similar concerns about working class and poor women, stating that a lack of information was “the biggest barrier. ... [they] wouldn’t be aware of how to get information ... I give them information in a way that they can give it to others.”⁶³

The law requires that information about abortion be provided without any advocacy or promotion of abortion.⁶⁴ The Act also explicitly makes it an offence for service providers to make direct referrals for abortion, even where women make an autonomous decision to terminate a pregnancy after receiving information on all options.⁶⁵ A service provider described how these limitations prejudice women: “We cannot make direct referrals, so again distressed women are not helped. We have to send them away with a list of clinics to call. It’s very confusing [for the women] to give them information, but with no follow through.”⁶⁶

A community organizer who has spoken to many women in need of services added: “It adds to the pressure when they ... realize that they still have to call the clinic, book the flight, it just adds to the climate of fear.”⁶⁷

Unregulated Agencies

The difficulty in accessing full and accurate information about abortion, and the strict regulation imposed on bodies that provide what limited information on legal abortion

⁶² Human Rights Watch interview with Siobhan O’ Brien Green, Migrant Women’s Health Services Project, Akidwa, Dublin, August 27, 2008.

⁶³ Human Rights Watch interview with Kathleen O’Neill, Dublin, August 29 2008.

⁶⁴ Regulation of Information (Services outside the State for Termination of Pregnancies) Act, 1995, Section 5.

⁶⁵ 1995 Act, Section 8 (1); It shall not be lawful for a person to whom *Section 5* applies or the employer or principal of the person to make an appointment or any other arrangement for or on behalf of a woman with a person who provides services outside the State for the termination of pregnancies. Sections 9 and 10 set out the legal enforcement of the offence.

⁶⁶ Human Rights Watch telephonic interview with Rosie Toner, Director of Counselling, Irish Family Planning Association, August 25, 2008.

⁶⁷ Human Rights Watch interview with Sian Muldowney, Alliance for Choice, Dublin, August 25, 2008.

services they can, is further exacerbated by the existence of unregulated agencies that actively provide misleading or inaccurate information about abortion and related services in their efforts to delay or prevent abortions. These agencies misrepresent their services as neutral sources of information about crisis pregnancies and all available options, luring in women seeking information about a full set of options.⁶⁸

The 1995 act regulating the provision of abortion-related information does not apply to service providers who do not give abortion-related information. As a result, women who seek accurate information about all their options are at risk of receiving inaccurate, untruthful and misleading information, or in many cases, are denied information about abortion services altogether.

Claire A, a 29-year-old woman, described her experience to Human Rights Watch:

I checked in the Golden Pages [an Irish directory of products and services], and there was the first advert, called British Alternatives. I was very devastated that I was in this situation and I was afraid of getting a doctor who was unsympathetic. I called them and told them I wanted an abortion and I needed to know how far along I was. They made an appointment for Saturday ... the woman started to ask about adoption—I wanted to leave but didn't feel that I could. She then put a video on for me and she left the room, it was ultrasound pictures and pictures of mothers. Then she came back and she put a model of a small fetus in my hand ... told me to name my baby, asked me how I would feel if I killed the baby ... Nothing tipped me off about whether they were pro-life. I was in a state and just looking for something friendly. British Alternatives sounded very friendly.⁶⁹

While researching what information such agencies were disseminating to clients, Sinead Ahern from Choice Ireland, a Dublin-based organization advocating for women's right to access safe and legal abortions within Ireland, approached an agency undercover:

⁶⁸ Irish Family Planning Association, *Rogue Crisis Pregnancy Agencies in Ireland – Anti Choice and Anti Women*, (Dublin: IFPA, 2007); “Rogue pregnancy agencies accused of giving bad advice,” *Belfast Telegraph*, July 26 2008; Siobhan Maguire and Dearbhail McDonald, “Women ‘duped’ by bogus agencies,” *Times Online*, July 9, 2008, <http://www.timesonline.co.uk/tol/news/world/ireland/article685118.ece>, (accessed November 12 2008); Lara Bradley, “Counsellor offered shock anti-abortion propaganda,” *The Independent*, July 16, 2006, <http://www.independent.ie/unsorted/features/counsellor-offered-shock-antiabortion-propaganda-132608.html> (accessed November 12, 2008).

⁶⁹ Human Rights Watch interview with Claire A, Dublin, August 29, 2008.

I told them that my last period was five weeks ago, precisely ... so the first thing they did was to ask what I would do, and I said that I'd probably terminate.... So she pulled out this sheet that was ostensibly a consent form from Australia. It said that I understand that I most certainly will need a hysterectomy ... that I might end up with the need for a colostomy bag.... That I won't hold the doctor liable for the infection that I'd certainly get.... Next thing was a list of side-effects.... Breast cancer, cervical cancer ... [it said] most women end up with infections, infertile.⁷⁰

She described the tactics used by these “rogue” agencies to pressure women not to terminate their pregnancies:

She said ... that I'd become promiscuous, or frigid, one of the two [after an abortion].... That most relationships break up.... That is it likely to cause congenital depression, that is not only would I get depressed, but also my family.... That I would be at increased risk of abusing any other children I might have or get.... That it caused tearfulness and sighing.... Then she showed me a video of ultrasounds, and of a doctor explaining what I now know is a very late term abortion procedure ... she showed me the instruments. Then she showed me a plastic fetus the size of a pen ... and told me that's what my baby looked like ... the plastic fetus was sucking its thumb and had eyelashes.⁷¹

Claire C was under the impression that the agency she sought advice from would give her information and counseling about all her options. Instead, she was given misleading information, similar to that given to Sinead Ahern. After she left the agency, people from it “harassed me for a few weeks—they called every couple of days.... I stopped answering [calls with] withheld numbers. They would ask, ‘Is your baby still alive? Have you killed it yet?’”⁷² Jane H, who was also duped by a misleading advertisement, expressed her concern about the current lack of regulation of agencies providing crisis pregnancy counseling,

⁷⁰ Human Rights Watch interview with Sinead Ahern, Choice Ireland, Dublin, August 25, 2008.

⁷¹ Human Rights Watch interview with Sinead Ahern, Choice Ireland, Dublin, August 25, 2008. None of the medical claims allegedly made by this agency are supported by medical science. At 5 weeks, the product of the pregnancy is approximately the size of a large grain of rice and certainly would not have eye-lashes or developed digits. See Women's Healthcare Topics, “5 weeks pregnant – Pregnancy week by week,” at http://www.womenshealthcaretopics.com/pregnancy_week_5.htm, (accessed on January 12, 2010).

⁷² Human Rights Watch interview with Claire C, Dublin, August 29, 2008.

indicating that it was extremely difficult to ascertain which agency would provide impartial information.⁷³

Jane H and her boyfriend were also misled by an advertisement. She described the information provided by the agency as “all those lies”:

We went to the appointment and they separated us. I think they weren't used to girls coming with their boyfriends, so they separated us. One person spoke to each of us.... From what I remember, they said I'd probably never have kids [if I had an abortion], that we'd probably split up.... We didn't see each other that whole time.... It was two hours.... They said your family is going to reject you.⁷⁴

Interpretations of international law unequivocally support the conclusion that decisions about abortion should be made by pregnant women, and them alone. The state must ensure that women are able to exercise their full range of human rights, and the Irish government's failure to regulate the provision of information to protect women from misleading and inaccurate information, unreasonably interferes with the right to health and their right to information. The UN Committee on Economic, Cultural and Social Rights has explicitly recognized the obligation of the state to ensure that third parties do not limit access to information.⁷⁵

Fetal Abnormality Pregnancies

In (EU country where abortion was performed) ... you don't feel that the system is against you. I had a sense that they were looking after me and my health.

— Aisling J, Dublin, August 26, 2008

Women who find out that they are carrying a fetus with severe genetic abnormalities face additional challenges, including the stress of unexpected emotional, physical, financial, and other consequences of dealing with a special needs pregnancy. In Ireland, they do so

⁷³ Human Rights Watch interview with Jane H, Dublin, August 28, 2008.

⁷⁴ Human Rights Watch interview with Jane H, Dublin, August 28, 2008.

⁷⁵ Committee on Economic, Social and Cultural Rights, “General Comment 14: The right to the highest attainable standard of health”, E/C 12/2000/4, August 11, 2000, para. 35.

without any support from the state. Not only does Irish law prevent women with severe fetal abnormality pregnancies from accessing legal abortion services at home should they so choose, it also does not facilitate screening for fetal abnormalities for pregnant women in the first place.

The lack of consistent access to screening is of particular concern as fetal abnormality pregnancies can have a detrimental effect on the physical health of the pregnant woman, especially as the pregnancy progresses, in addition to the emotional stress that comes with dealing with a difficult pregnancy without support. Early detection and swift intervention is essential, and delays have an effect on women's ability to exercise their right to health, both physical and mental.⁷⁶

These medical facts, while uncontested in Ireland, have not translated into policies and practices that ensure that all pregnant women have routine access to antenatal care that includes screening for fetal abnormalities, or that they may choose to terminate a pregnancy that can severely endanger their health. The general stigmatization of abortion exacerbates a situation that is already painful. A clinical midwife specialist at the largest maternity hospital in Dublin who has dealt with fetal abnormality pregnancies for more than a decade, recalled the distress of the family members of a 17-year-old daughter carrying an anencephalic pregnancy:⁷⁷ "The father said, 'a month ago, if you'd asked if I was for abortion, I would have said no. But now I am in a society that expects my daughter to have this pregnancy!'"⁷⁸

There is no national protocol that regulates antenatal screening, although the Royal College of Gynaecologists recommended in 1997 that ultrasound screening for abnormalities be offered to all pregnant women. A 2006 survey of maternity units in Ireland found wide variations in practice, and recommended that a standard national protocol be developed. It also indicated that a national debate on ultrasound screening for fetal abnormality was urgently needed.⁷⁹

⁷⁶ Different fetal abnormality pregnancies carry different health risks for the pregnant woman. Typical physical health consequences may include polyhydramnios, postural hypotension, premature membrane rupture, breech birth or other forms of dystocia, and amniotic embolisms. Equally important are the potential consequences on the emotional health of the pregnant woman, including anxiety, severe depression, and post-traumatic stress disorder (PTSD). See Luis Távara Orozco, *Why fatal congenital malformations and rape justify a legal abortion (Por qué las malformaciones congénitas letales y la violación justifican un aborto legal)* (Lima: Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX), 2008), p. 11.

⁷⁷ See description of anencephaly at note 35 above.

⁷⁸ Human Rights Watch interview with Jane Dalrymple, Clinical Midwife Specialist, The Rotunda Hospital, Dublin, August 27, 2008.

⁷⁹ Lator, J, Devane, D, McParland, P, Ultrasound Screening for fetal abnormality in Ireland: A national survey, *Irish Journal of Medical Science* (2007) pp. 176 – 179.

If a woman wishes to terminate a pregnancy with fetal abnormalities, early detection is preferable, both for the safety of the procedure itself, and to minimize the physical and emotional health consequences for the pregnant woman. Moreover, an early termination allows those women who wish to do so, to attempt having a healthy pregnancy sooner, with potentially mitigating effects on their emotional health. A UK service provider informed Human Rights Watch that the “majority of [Irish] women [we see with pregnancies with fetal abnormalities] are post twenty weeks when they come. In the UK, the terminations are earlier.”⁸⁰

Aisling J encountered several obstacles in accessing diagnostic tests throughout the early part of her pregnancy, and therefore discovered relatively late that the fetus she was carrying had spina bifida⁸¹ and hydrocephalus⁸² and could not survive. She explained the problems she had met with:

I had the first scan after a long waiting time, so had the scan at about 16 weeks.... They said everything was fine. I saw the consultant at this visit.... He was a male doctor, extremely quick and dismissive. I was aware of the diagnostic tests I could request.... The doctor was extremely discouraging when I asked for information. He was very defensive ... why these tests? Did I know they could lead to an abortion? Did I know they could be wrong and so I could abort a healthy child?”⁸³

Aisling paid for the tests herself and also requested a second scan, to be conducted at twenty weeks, “I called the Ultra Sound Department and was categorically told no.... I was not referred to anyone else either.”⁸⁴ She eventually made arrangements to have the scan done while on vacation in a European country, where she received the devastating news that the fetus would not survive. She elected to terminate the pregnancy. She told Human Rights Watch: “I was very angry. I felt let down, maltreated.”⁸⁵

⁸⁰ Human Rights Watch interview with Jane Fisher, *Antenatal Results and Choices*, London, September 4, 2008.

⁸¹ Spina bifida is a series of birth defects in which there is incomplete closure in the spinal column. Jerrold B. Leikin, MD and Martin S. Lipsky, MD (eds.), *American Medical Association Complete Medical Encyclopedia*, p. 1148.,

⁸² Hydrocephalus is the excessive accumulation of cerebrospinal fluid in the brain. *Ibid.*, p. 687.

⁸³ Human Rights Watch interview with Aisling J, Dublin, August 26, 2008.

⁸⁴ Human Rights Watch interview with Aisling J, Dublin, August 26, 2008.

⁸⁵ Human Rights Watch interview with Aisling J, Dublin, August 26, 2008.

A medical practitioner interviewed by Human Rights Watch, who did not want to be identified, inadvertently illustrated the cruelty of a system that, because abortion is illegal, fails to provide sensitive support and care:

With fetal abnormalities, even if the [pregnancy] is not compatible with life, I would not positively offer an abortion. [I would ask] are you OK with continuing the pregnancy?⁸⁶

There is little, if any, support and assistance provided to women who are grappling with complex and traumatic decisions. For pregnant women and their partners, the discovery that the fetus may not survive, may only live a short time after birth, or may be severely disabled, is devastating. A UK service provider who counsels women and couples, including from Ireland, describes it as “a horrendous situation.”⁸⁷ She stated that women in the UK are able to access “sympathetic care ... with healthcare workers [who] are supportive of their choices.”⁸⁸ For Irish women, “there is not a lot we can do to break the isolation that they experience.”⁸⁹ Irish service providers confirmed that once a diagnosis has been made, there is no clear pathway of care, also post-procedure.⁹⁰ Aisling J described her experience afterwards:

When I came back, I rang the hospital and asked for follow up care.... I told them that I had a therapeutic abortion and asked about genetic testing. They just said to me, come back when you're pregnant again.⁹¹

Financial Barriers

Poor women—frankly, they're stuffed [i.e. they have no options] unless they know agencies who will help them [raise money to travel and for the abortion]
— Ann Furedi, Chief Executive Office, British Pregnancy Advisory Service,
London, August 20, 2008

⁸⁶ Human Rights Watch interview with [name withheld], August 27, 2008.

⁸⁷ Human Rights Watch interview with Jane Fisher, Antenatal Results and Choices, London, September 4, 2008

⁸⁸ Human Rights Watch interview with Jane Fisher.

⁸⁹ Human Rights Watch interview with Jane Fisher.

⁹⁰ Human Rights Watch telephonic interview with Rosie Toner, Director of Counselling, Irish Family Planning Association, August 25, 2008 .

⁹¹ Human Rights Watch interview with Aisling J, August 26, 2008.

All the women interviewed for this report identified the costs associated with traveling as their most immediate and urgent concern once they had decided to have an abortion. Sarah B was 24 years old when she traveled to the UK for an abortion. She was a student and working part-time as a waitress. She described her experience to Human Rights Watch, “First and foremost was the money thing—I was so broke, I was up to my eyeballs in debt ... on a waitress’s salary. I was just, how am I going to do this?”⁹²

Claire A was also a student when she had an abortion. She stated “there was panic over the money – there was a lot of panic. [It was] very stressful.”⁹³ Aoife C was 16 years old and living in a rural part of Ireland. She “had no money, so I had to go to my ex-boyfriend, [which was] very hard. His first line was ‘Are you sure it’s mine?’ It was very humiliating. He had to involve his brother, who was appalled and even now ... he is still appalled at me when he sees me.”⁹⁴

The Calthorpe Clinic in Birmingham, UK provided Human Rights Watch with a breakdown of the costs of an early medical abortion (a non-surgical procedure using medication to induce a miscarriage),⁹⁵ which include the costs of a consultation, €100, and the procedure, €510. Abortions performed after 15 weeks cost €870.⁹⁶ British Pregnancy Advisory Services (bpas) charges £459 (€535) for an early medical abortion and £800 (€932) for an abortion performed in late gestation.⁹⁷

These costs do not include other direct costs, such as travel and accommodation, or indirect costs, including childcare, loss of income and the costs of a traveling companion. Irish service providers estimated the total costs to be between €800 and €1000.⁹⁸ By comparison, the median salary in Ireland fluctuates around €30,000 per year, depending on the type of

⁹² Human Rights Watch interview with Sarah B, Dublin, August 25, 2008.

⁹³ Human Rights Watch interview with Claire A, Dublin, August 29, 2008.

⁹⁴ Human Rights Watch telephonic interview with Aoife C, September 11, 2008.

⁹⁵ Performed up to 9 weeks of gestation at the Calthorpe Clinic.

⁹⁶ Human Rights Watch interview with Carolyn Phillips, Clinic Manager, Calthorpe Clinic, Birmingham, July 29, 2008.

⁹⁷ Human Rights Watch interview with Ann Furedi, Chief Executive of Bpas, London, August 20, 2008.

⁹⁸ Human Rights Watch telephonic interview with Rosie Toner, Director of Counseling, Irish Family Planning Association, August 25, 2008.

job, or approximately €580 per week.⁹⁹ For someone living under the poverty line, the cost of an abortion could easily represent more than a monthly salary.¹⁰⁰

Service providers interviewed by Human Rights Watch confirmed how difficult it is for many women to raise the money to travel and the lengths that some must go to to ensure their access to safe and legal abortions. A community activist described the situation of the women she works with: “Most have to borrow money from money-lenders.... Young women, it’s not easy for them to get hold of €1000 – they go to the black market, to loan sharks.”¹⁰¹ Women who borrow money from informal sources may also find themselves at risk of violence if they cannot repay loans: “Women in poverty have been loaning money from loan sharks.... There are circumstances where they have been violently beaten because they cannot afford to repay.”¹⁰²

For women who are in the asylum seeking process in Ireland, money is even more difficult to borrow, earn or find.¹⁰³ The majority of such women are housed in special reception centers operated by the Reception and Integration Agency, Department of Justice, Equality and Law Reform. They receive an allowance of just €19.10 per week, and an additional €6.90 per child per week.¹⁰⁴ They do not have the right to work under Irish law to earn further income. The costs of traveling to obtain an abortion are plainly out of reach for them, unless they are willing to take drastic action.

Asylum seekers are in a particularly vulnerable position. Often isolated, without family and other social support, they fear the consequences of seeking permission to leave the country to have an abortion. They also face additional costs as they have no travel documents, and must therefore apply and pay for emergency temporary travel documents, which are issued by the Department of Justice, Equality and Law Reform. They will also have to apply and pay for visas to enter the UK, or Schengen visas to enter into a European Union (EU) country.

⁹⁹ See Payscale, “Median Salary Per Job, Country: Ireland,” at <http://www.payscale.com/research/IE/Country=Ireland/Salary>, (accessed on July 13, 2009).

¹⁰⁰ The Conference of Religious of Ireland (CORI Justice), “Income and Poverty,” at http://www.cori.ie/Justice/Specific_Policy_Issues/27-incomepoverty, (accessed on July 13 2009).

¹⁰¹ Human Rights Watch interview with Mary Cumming, Northwall Women’s Centre, Dublin, August 26, 2008.

¹⁰² Human Rights Watch interview with Sian Muldowney, Alliance for Choice, Dublin, August 25, 2008.

¹⁰³ In August 2008, statistics provided by the Reception and Integration Agency showed that there were 6959 residents in various reception centers in Ireland. This included 899 single women. 3781 families were also included, but no information was provided on the number of women in this figure.

¹⁰⁴ Information obtained from Refugee Information Services at <http://www.ris.ie/whataremyrights/asylumseeker.asp> (accessed on July 1, 2009).

Currently the cost of a UK visa is £65 (€72).¹⁰⁵ Application fees for a Schengen visa to the Netherlands cost £60 (€67).¹⁰⁶

A service provider, who spoke to Human Rights Watch on condition of anonymity, described the situation of a young female asylum seeker she had worked with:

She could not legally leave the country. Her difficulties were that she didn't know where to go ... money and her legal status. We made the call to Holland ... she needed to get a re-entry visa to return and to apply for a Schengen visa.... She needed a temporary travel document from the Department of Justice—we had a contact there—not sure how someone without a contact would do this.... It took a whole month to organize this. She was just over 12 weeks pregnant when she went to Holland. There were fees attached to the issuing of all the documents and there was no funding available for this.¹⁰⁷

Mary E, a young woman from an African country, had already applied for asylum when she became pregnant and decided to terminate her pregnancy. For her, “money was a big concern.”¹⁰⁸ She was aware of the costs and difficulties associated with applying for permission to travel, having “known other women in the same process for whom the help came too late.”¹⁰⁹ Struggling to raise the costs of travel and the abortion, “it took six weeks to get the money together,” Mary couldn't afford a further delay or any additional costs. She decided to “borrow” the passport of a friend, fully aware that if she was caught she would face immediate deportation.

Another service provider confirmed that their clients had experienced particular difficulties on getting entry visas to the UK due to a lack of information about how to apply for the visa and what documents are required. She explained that they had pressed the Crisis Pregnancy Agency (CPA) to push for changes to this with the Department of Justice and to agree on a procedure with the UK. However, she concluded that the Department of Justice was unwilling

¹⁰⁵ Information obtained from UK Border Agency at <http://www.ukvisas.gov.uk/en/howtoapply/visafees/> (accessed on November 28, 2008). Exchange rate of January 12, 2010.

¹⁰⁶ Information obtained from the Netherlands Embassy, UK at <http://www.netherlands-embassy.org.uk/passports/index.php?i=62> (accessed on November 25, 2008)

¹⁰⁷ Human Rights Watch interview with [name withheld], Dublin, August 25, 2008.

¹⁰⁸ Human Rights Watch telephonic interview with Mary E, September 25, 2008.

¹⁰⁹ Human Rights Watch telephonic interview with Mary E.

to come up with a policy to cover all women and persisted in treating each application as a new and separate case.¹¹⁰ To date, the CPA has not formally addressed this issue with the Department of Justice.

The position of Traveller women is equally difficult. The Travellers are an ethnic minority, indigenous to Ireland, and have been described as “one of the most marginalized and disadvantaged groups in Irish society.”¹¹¹ The UN Human Rights Committee expressed its concerns about the “generally lower living standards of members of this community, their low levels of participation in national, political and social life and their high levels of maternal and infant mortality.”¹¹² The committee urged the Irish government to improve access to services for Travellers, including to healthcare services. One service provider Human Rights Watch spoke to had assisted eight women with unwanted pregnancies over a period of four years: “None chose a termination – only because of the money.”¹¹³ She went on to describe why none of the women were able to raise the money to travel:

All of them had children already, on average two children. [They are] living with a partner on social welfare or on a government funded training course. The cost of traveling is just not an option.¹¹⁴

The Covenant on Economic, Social, and Cultural Rights prohibits discrimination in the enjoyment of the rights protected by the covenant, including specifically on the ground of property. The Committee on Economic Social and Cultural Rights has clarified that “[p]roperty status, as a prohibited ground of discrimination, is a broad concept and includes ... personal property (e.g., intellectual property, goods and chattels, and income), or the lack of it.”¹¹⁵ The restrictive access to abortion information and services within Ireland clearly operates as a particular barrier for women without a certain level of personal property, which, in some circumstances, would constitute prohibited discrimination.

¹¹⁰ Human Rights Watch telephonic interview with Alison Begars, Chief Executive Office, Well Woman, August 22, 2008.

¹¹¹ National Consultative Committee on Racism and Interculturalism, “Travellers in Ireland: An Examination of Discrimination and Racism,” at <http://www.nccri.ie/nccri-background.html> (accessed on December 7, 2008).

¹¹² UN Human Rights Committee, “Concluding Observations of the Human Rights Committee: Ireland,” A/55/40, July 24, 2000.

¹¹³ Human Rights Watch telephonic interview with [name withheld], August 29, 2008.

¹¹⁴ Human Rights Watch telephonic interview with [name withheld], August 29, 2008.

¹¹⁵ Committee on Economic Social and Cultural Rights, “Non-Discrimination in Economic Social and Cultural Rights,” E.C.12/GC/20, June 2009, para. 25.

Emotional Distress

The travel part is so difficult. I don't think that people know this. There are a lot of people worse off than me, but it is still so traumatic even if you can afford it.

— Sarah B, Dublin, August 25, 2008

Women interviewed for this report described a profound and pervasive sense of shame and guilt caused by the stigma attached to abortion in Ireland. Being forced to leave their homes to have an abortion reinforced these feelings. Sarah B described what she called “the shame factor ... having to lie to everyone ... the lies and the shame make you feel like you’re doing something really wrong, like a drug dealer.”¹¹⁶

The distress the women we interviewed felt was profound and in many cases linked to the reluctance on the part of the Irish government to address the issue of abortion. Having to travel abroad for a procedure at a time when many women are already in distress because of an unwanted or unhealthy pregnancy was a major source of anxiety. Sarah B explained that “the travel part is so difficult. I don’t think that people know this.... It is still so traumatic even if you can afford it.”¹¹⁷ For Aoife C, who was just 16 years old, it was her first trip out of Ireland. She stated that she “was just really alone and at the mercy of a system that had no knowledge of you. I felt completely abandoned. I felt that I might not survive it”¹¹⁸.

Siobhan G described an equally harrowing experience. Siobhan was pregnant with twins when she discovered that both had fatal birth defects:

I was forced to leave home and do everything in secrecy... I was made to feel that I was doing something wrong.¹¹⁹

Megan H also described the trauma of terminating her pregnancy in the UK. Antenatal tests indicated that the fetus had Edwards syndrome, which leads to severe physical and mental disabilities:¹²⁰ “I was all over the place.... Then [after an initial visit to an Irish clinic] I was on

¹¹⁶ Human Rights Watch interview with Sarah B, Dublin, August 25, 2008.

¹¹⁷ Human Rights Watch interview with Sarah B.

¹¹⁸ Human Rights Watch telephonic interview with Aoife, September 11, 2008.

¹¹⁹ Human Rights Watch telephonic interview, Siobhan G, September 8, 2008.

¹²⁰ Edwards syndrome (also known as Trisomy 18 syndrome) is a genetic disorder caused by the presence of an extra 18th chromosome. It is estimated that about half of pregnancies involving a fetus with Edwards syndrome end in a stillbirth. About

my own, I had to contact the place, make my own travel arrangements, hotel arrangements.”¹²¹

Invisible Women: Those who Cannot Overcome Obstacles to Travel

Seventy percent of them have access to the net, they have money – so they will manage to get there ... there is a desperate thirty percent and it’s a huge mess. No money, no travel documents, they may do something to stop the pregnancy.

— Linda Wilson Long, Head of Counselling Services, Well Women Centre, Dublin, August 26, 2008

Women who cannot travel are faced with a bleak and lonely choice—continue with an unwanted pregnancy or have an illegal and potentially unsafe abortion. This group of women is difficult to access, with few willing to expose themselves to the risk of criminal prosecution or admit that they contemplated terminating a pregnancy, once their child has been born.

Interviews conducted by Human Rights Watch suggest that many women have no choice but to continue with unwanted pregnancies. One experienced practitioner explained that many women see through crisis pregnancies “because they can’t afford the abortion.”¹²² The director of a community center in central Dublin described the distress of one such woman:

I can recall one woman here, and she already had six children, and she just put her face in her hands and said, ‘oh no, I’m having twins’ and she just cried and cried.... The devastation in her face, I’ll never forget that.... But there was nothing that she could do.¹²³

It is almost impossible to find accurate information about the prevalence and extent of illegal abortions in Ireland. The legal restrictions on abortion, stigma, fear of prosecution and attitudes of healthcare workers all prevent those women who have had illegal abortions in Ireland from seeking post-abortion care and disclosing information to healthcare providers and others. As Dr Juliet Bressan described to Human Rights Watch, “Hospitals here tend to

20 percent of those born alive with the syndrome will die within a month, and 90 percent will die before the age of 12 months. Jerrold B. Leikin, MD and Martin S. Lipsky, MD (eds.), *American Medical Association Complete Medical Encyclopedia*, p. 1239.

¹²¹ Human Rights Watch interview with Megan H, Dublin, August 28, 2008.

¹²² Human Rights Watch interview with Juliet Bressan, Doctors for Choice, Dublin, August 25, 2008.

¹²³ Human Rights Watch interview with Mary Cummings, Northwall Women’s Centre, Dublin, August 26, 2008.

be quite judgmental ... generally very anti-choice ... generally women only go [for post-abortion care] when they are bleeding ... maternity hospitals are actively anti-abortion.”¹²⁴

Irish service providers interviewed by Human Rights Watch all expressed concern that women were resorting to unsafe backstreet abortions: “we feel anecdotally that ethnic communities are having to find their own solutions ... we have had one young woman who told us that she had had the TOP [termination of pregnancy] in Dublin, but wouldn’t tell us who had done it. We had deep concerns about how the woman had been treated.”¹²⁵ In 2004 the media reported that the Garda, the Irish police, were investigating reports concerning two illegal abortions in Dublin.¹²⁶

A community worker working with Traveller women described the difficulties they face in a community where abortions are considered “very unacceptable.”¹²⁷ The community development worker agreed to ask the women she had assisted whether they would be willing to speak directly to Human Rights Watch. None were. The community worker told Human Rights Watch about the experience of one young woman who continued with her pregnancy:

The child is now seven or eight months old. The woman is very, very unhappy. She nearly had a termination. Her relationship has ended, she has three small children. She planned to go to college, now she cannot go for another three or four years as traditionally they [Traveller women] are solely responsible for child care ... huge pressure on mental health, many children and financial pressure.¹²⁸

A service provider for women in treatment for drug addiction described similar problems:

Women who are in treatment for drug addiction can’t just leave.... It’s mandatory daily treatment.... Just the organizing [of the trip] is a problem.... The existing children [that have to be cared for] and that’s all tied up with the

¹²⁴ Human Rights Watch interview with Juliet Bressan, Doctors for Choice, August 25, 2008.

¹²⁵ Human Rights Watch telephonic interview with [name withheld], August 22, 2008.

¹²⁶ Indymedia Ireland, “Backstreet abortions illustrate need for free, safe and legal abortion services in Ireland,” at <https://www.indymedia.ie/article/65902> (accessed on November 12, 2008); Irishealth, “Backstreet abortion probed,” at <http://www.eu-health.com/index.html?level=4&id=6088> (accessed on November 11, 2008).

¹²⁷ Human Rights Watch telephonic interview with [name withheld], August 29, 2008.

¹²⁸ Human Rights Watch telephonic interview with [name withheld], August 29, 2008.

fact that the termination is not really something that you want to talk about.... There are women who just go through with the pregnancy.... And the baby ends up in [public] care from birth.¹²⁹

Access to Abortifacients over the Internet

Advances in both medicine and technology have provided potentially safer options to women who are unable to travel in that they might purchase abortifacient drugs over the internet, though this would still constitute a crime under current Irish law, punishable by prison. Access also still depends on the resources available to the individual woman—both financially and in terms of her access to information. Even these newer options come with considerable delays and no medical review and safeguards.

A medical practitioner who, for research purposes, bought abortifacient drugs over the internet to test when and how they arrived, told Human Rights Watch:

The package is very complicated.... It says on the back of the package [the outside] that it is misoprostol, announcing ‘here is your abortion package’ almost.... It is delivered by couriers.... So it is not appropriate for women who are not internet literate, who don’t have a credit card, and who don’t sit in an office where they don’t mind having an abortion package delivered.... Plus it’s late ... it took three weeks to get to me after I ordered it.¹³⁰

Service providers also expressed confusion about whether acquiring an abortifacient over the internet contravened the provisions of the Offences Against the Person Act, leading women who obtained medication in this way to be more reluctant to seek post-abortion care and counseling.

Crisis Pregnancy Agency

One of the Irish government’s key responses to abortion was the establishment of the Crisis Pregnancy Agency (CPA) in 2001, a year that saw a particularly high number of women from Ireland traveling to the UK for abortions.¹³¹ The CPA was described by its first chairperson as the first attempt by the government to comprehensively address “the long standing

¹²⁹ Human Rights Watch interview with Joan Byrne, Saol Project, Dublin, August 27, 2008.

¹³⁰ Human Rights Watch interview with [name withheld], Dublin, August 25, 2008.

¹³¹ According to the UK Department of Health, 5 585 women who gave Irish residential addresses had abortions in the UK in 2005.

reality”¹³² of crisis pregnancy in Ireland, and in the 2003 report to the UN CEDAW committee, the government pointed to establishment of the CPA as part of the steps taken to realize the right to health without discrimination.¹³³ In 2007, the government again highlighted the establishment of the CPA, this time in its third periodic report to the Human Rights Committee, indicating that the CPA had been established to fulfill article 6 of the International Covenant on Civil and Political Rights on the right to life.¹³⁴

However, the mandate and structure of the CPA are mired with weaknesses that prevent it from adequately addressing the many abortion-related issues set out in this report, including that the CPA is a planning and coordination body with no regulatory authority, and the government is not obliged to follow its recommendations.

Another serious problem is that the agency, by its mandate, is geared towards limiting the autonomous reproductive decision-making that women have a human right to exercise, rather than supporting it. The CPA identifies parenting as the “optimal outcome for any woman,”¹³⁵ and one of its key objectives is to reduce the number of women who choose abortion, rather than adoption or parenting as the outcome of a crisis pregnancy. Apart from infringing on women’s human rights, this mandate hampers the agency’s ability to respond fully to the needs of women with unwanted pregnancies, including advocating for access to a full range of reproductive health services.

As a result of its limited mandate, the CPA has focused much of its attention and resources on funding counseling services and post-abortion care. In 2008, it spent €3.7 million on support and services for women with crisis pregnancies. €2.5 million of this amount was allocated to crisis pregnancy counseling and post-abortion care. The CPA claims that it has increased the provision of crisis pregnancy counseling by 55 percent since 2002.¹³⁶ Since the government does not gather information about abortion services in Ireland, nor about the number of women traveling for services, it is not possible to assess to what extent the agency is responding to the full need for post-abortion care.

¹³² Irishhealth.com, *Crisis pregnancy agency begins work*, at <http://www.irishhealth.com/article.html?id=3298> (accessed on December 7, 2008).

¹³³ UN CEDAW committee, “Consideration of the reports submitted by State parties under article 18 of Convention of the Elimination of All Forms of Discrimination Against Women, Combined fourth and fifth reports of State parties: Ireland,” CEDAW/C/IRL/4-5, 2003.

¹³⁴ UN Human Rights Committee, “Consideration of reports submitted by State parties under Article 40 of the Covenant, Third periodic reports of State parties: Ireland,” CCPR/C/IRL/3.

¹³⁵ Human Rights Watch telephonic interview with Caroline Spillane, Director, Crisis Pregnancy Agency, October 15, 2008.

¹³⁶ See <http://www.crisispregnancy.ie> (accessed on July 2, 2009).

The CPA has also delayed in responding to concerns raised by civil society about “rogue” agencies. The current legislation, while regulating the provision of abortion-related information, does not regulate the provision of any other information. The gap in the law has allowed the “rogue” agencies to provide misleading and inaccurate information to women and there have been calls on it to make recommendations to the government to prevent women from being duped by these agencies. The CPA only announced in July 2009 that it would undertake a public information campaign warning women about the “rogue” agencies. It acknowledged that it had received 67 complaints in a nine month period from women who had been victims of these agencies.¹³⁷

¹³⁷ Kitty Holland, “Warning on biased crisis pregnancy ‘counselling’,” *Irish Times*, at <http://www.irishtimes.com/newspaper/ireland/2009/0721/1224250997240.html> (accessed on July 26, 2009).

VI. Talking about Abortion in Ireland

It's very polarized, there's no dialogue.... If you open up the topic, you could open a can of worms.

— Dola Twoney, Director, Sexual Violence Centre, Cork, August 28, 2008

Another truism of abortion in Ireland ... is the contradiction and hypocrisy of public condemnation, but private acceptance.

— Dr Mary Favier, Doctors for Choice, May 19, 2008¹³⁸

The Irish government has done little to mitigate the effects of a condemnatory public discourse on abortion on the sexual and reproductive health of its population. In fact, it has contributed to it by failing to provide and regulate the provision of accurate information by refusing to collect reliable information about the need for abortion in Ireland and by, on the one hand paying for some women to travel to the UK for abortions,¹³⁹ while, on the other, going to court to prevent others from leaving the country to do so.¹⁴⁰ This hypocrisy frequently pervades the public discourse and compounds the isolation that women experience, as well as confusion regarding available legal options. Dr Mary Favier summed up the often duplicitous public dialogue:

Abortion is denounced as ‘not for us’ in Ireland, yet Irish women (and men with them as parties to the decision) are deciding to have abortions and traveling every day. Indeed, prominent politicians have publicly acknowledged that they would support a family member if she made a decision to have an abortion. They would respect her right to make that decision for herself—that it is her right to choose.¹⁴¹

None of the women interviewed for this report were willing to be identified, even though all had told friends and family about the abortion and had received support and understanding

¹³⁸ Mary Favier, “GPs and the silence around abortion”, *Forum* magazine (Ireland), May 2008, p 19.

¹³⁹ Human Rights Watch interview with Dr Mary Favier, Doctors for Choice, Cork, August 28, 2008.

¹⁴⁰ In 2007, the Irish government went to court to stop a 17-year-old in care from leaving the country to terminate her pregnancy. Tests showed that the fetus was anencephalic and unlikely to survive. Owen Bowcott, “Irish Police cannot stop girl leaving for abortion,” *The Guardian* (London at <http://www.guardian.co.uk/world/2007/may/04/ireland> (accessed on December 7, 2008)).

¹⁴¹ Mary Favier, “GPs and the silence around abortion”, . p 19.

from them. The women interviewed by Human Rights Watch described their feelings of isolation and shame, not related to the abortion, but to their fears of public disapproval. Sarah B talked of the “shame factor”, and being “terrified of people judging me”.¹⁴² She also spoke of her anger at being made to feel like a criminal by her country.

A prominent medical practitioner interviewed by Human Rights Watch expressed his opinion that “from listening to fellow GPs [general practitioners], the majority seem to have changed ... a lot would be much less judgmental, [they] would be sympathetic.”¹⁴³ Despite this, he declined to be named for the report.

Women were particularly concerned about how they would be treated by the medical profession. Aisling J stated that “it’s so bad that I didn’t even want to say to doctors that I had had a therapeutic abortion.”¹⁴⁴ These fears may have an impact on post-abortion care. Both British and Irish service providers interviewed by Human Rights Watch indicated that the uptake of post-abortion care, which is free in Ireland, is low. An Irish service provider estimated that “one in seven [of our clients] come back for a medical check-up. The numbers are even lower for post-abortion counseling.”¹⁴⁵

¹⁴² Human Rights Watch interview with Sarah B, Dublin, August 25, 2008.

¹⁴³ Human Rights Watch interview with [name withheld], Dublin, August 27, 2008.

¹⁴⁴ Human Rights Watch interview with Aisling J, Dublin, August 26, 2008.

¹⁴⁵ Human Rights Watch telephonic interview with Alison Begars, Chief Executive Officer, Well Woman, August 22, 2008.

IX. International Law

Authoritative interpretations of international law recognize that obtaining a safe and legal abortion is crucial to women's effective enjoyment and exercise of their human rights. Since the mid-1990s, the UN treaty bodies that monitor the implementation of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and the Convention of the Rights of the Child have produced a significant body of jurisprudence regarding abortion in over 122 concluding observations concerning at least ninety-three countries.¹⁴⁶

In their commentaries these bodies have frequently expressed concern about the relationship between restrictive abortion laws, clandestine abortions, and threats to women's lives, health and well-being. They have repeatedly recommended the review or amendment of punitive and restrictive abortion laws and have urged states parties on multiple occasions to legalize abortion, in particular when a pregnancy is life or health threatening or the result of rape or incest.¹⁴⁷

International human rights law and relevant jurisprudence support the conclusion that decisions about abortion belong to a pregnant woman alone, without interference by the state or third parties. Any restrictions on abortion that unreasonably interfere with a woman's exercise of her full range of human rights should be rejected. UN bodies and conferences have recognized that firmly established human rights are jeopardized and prejudiced by restrictive and punitive abortion laws and practices.

Human Rights Watch has previously published detailed legal analysis of the relationship between international human rights law and abortion, equally relevant for Ireland.¹⁴⁸ The

¹⁴⁶ By Human Rights Watch's count.

¹⁴⁷ See, Concluding Observations of the Committee on Economic, Social and Cultural Rights e.g. : Chile 26/11/2004, U.N. Doc. E/C.12/1/Add.105, paras. 26, 53; Malta, 14/12/2004, U.N. Doc. E/C.12/1/Add.101, paras. 23, 41; Nepal U.N. Doc. E/C.12/1/Add.66, paras. 33, 55; Concluding observations of the Human Rights Committee in e.g.: Poland, CCPR/CO/82/POL, December 2, 2004, para. 8; Monaco, CCPR/C/MCO/CO/2, December 12, 2008 para.10; Nicaragua, CCPR/C/NIC/CO/3, December 12, 2008, para. 13; Concluding comments of the Committee on the Elimination of Discrimination against Women in e.g.: Nicaragua, CEDAW/C/NIC/CO/6, February 2, 2007, paras. 17 – 18; Colombia, CEDAW/C/COL/CO/6, February 2, 2007, paras. 22-23; Peru, CEDAW/C/PER/CO/6, February 2, 2007, para. 25; Conclusions and recommendations of the Committee against Torture: Peru, CAT/C/PER/CO/4, July 25, 2006, para 23; Nicaragua, CAT/C/NIC/CO/1, June 10, 2009, para. 16.

¹⁴⁸ For a full analysis, see Human Rights Watch, *Decisions Denied: Access to Contraceptives and Abortion in Argentina*, and Human Rights Watch, *International Human Rights Law and Abortion in Latin America*.

human rights that are jeopardized by Ireland’s restrictions on abortion include the rights to life, health, liberty, non-discrimination, physical integrity, freedom of expression, and the right to be free from cruel, inhuman, and degrading treatment. In the following, we lay out additional analysis, not previously published, on the right to information and the right to be free from cruel, inhuman, and degrading treatment.

The Right to be Free from Cruel, Inhuman and Degrading Treatment

Particularly noteworthy to the violations exposed in this report are the circumstances in which Irish law on abortion violates the right to be free from cruel, inhuman or degrading treatment. This right is protected by international customary law as well as by several international and regional human rights treaties.¹⁴⁹ Various treaty monitoring bodies now regularly make clear that the prohibition has a wider application than the traditional context of government-imposed or tolerated torture or ill treatment in detention settings.¹⁵⁰

The UN Human Rights Committee has stated that article 7 prohibiting cruel, inhuman or degrading treatment, does not apply only to physical treatment, but also to conduct that causes “mental suffering to the victim.”¹⁵¹ The Committee has specifically requested states, when reporting on compliance with article 7, to include information on the availability of safe abortion following rape.¹⁵² In its Concluding Observations in 2000, the UN Human Rights Committee urged Ireland to ensure that “women are not compelled to continue with pregnancies where that is incompatible with obligations arising under the Covenant (art. 7).”¹⁵³

In May 2009, the United Nations Committee against Torture (CAT) described the criminalization of abortion under any circumstances as a violation of human rights. At its 42nd session in Geneva, the CAT expressed its profound concern about a situation in which there was a general prohibition of abortion “even in cases of rape, incest or apparently life-threatening pregnancies that in many cases are the direct result of crimes of gender

¹⁴⁹ For example, ICCPR Article 7 states: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

¹⁵⁰ E.g. Committee against Torture, “Conclusion and Recommendations of the Committee against Torture: Chile,” U.N. Doc. CAT/C/CR/32/5 (2004), para. 6(j); Human Rights Committee, “Concluding observations on Peru,” U.N. Doc. CCPR/C/79/Add.72 (1996), para. 15; and Human Rights Committee, “Concluding observations on Peru,” U.N. Doc. CCPR/CO/70/PER (2000), para. 20; and HRC, concluding observations on Morocco, U.N. Doc. CCPR/CO/82/CAR (2004), para. 29.

¹⁵¹ UN Human Rights Committee, “General Comment 20, Article 7 (Forty-fourth session, 1992),” U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994).

¹⁵² UN Human Rights Committee, “General Comment No. 28: Equality of rights between men and women (article 3),” CCPR/C/21/Rev.1/Add.10, March 29, 2000.

¹⁵³ UN Human Rights Committee, “Concluding Comments: Ireland,” A/55/40, July 24, 2000.

violence.” They noted that “for the woman in question, this situation entails constant exposure to the violation committed against her and causes serious traumatic stress and a risk of long-lasting psychological problems such as anxiety and depression.”¹⁵⁴

Obstacles in access to abortion-related information may also violate the right to be free from cruel, inhuman, or degrading treatment. For example, this right is arguably violated where the government, as in the case of Ireland, actively contributes to or fails to mitigate the stigmatization and misinformation that is directly related to a heightened emotional distress and anxiety among women who seek abortion services abroad.

Access to Information

The clarity of the status and scope of state obligations with regard to the intersection of the rights to information and health also has particular relevance to Irish law. Entities authorized to interpret international law have made clear that governments have essential responsibilities in providing this information and in countering misinformation in the public sphere. In 2000, the Committee on Economic, Social and Cultural Rights recognized that the right to health includes the right of access to information and health-related education.¹⁵⁵

The Committee explicitly recognizes the “special importance of this issue in relation to health” and states that “[T]he realization of women’s right to health requires the removal of all barriers interfering with access to health services, education and information ...”¹⁵⁶

The particular needs of women in relation to access to health-related information has also been highlighted by the Committee on the Elimination of Discrimination against Women (the CEDAW Committee) and the UN Special Rapporteur on Health who stated that one of the factors that make women more vulnerable to ill health is a lack of access to information.¹⁵⁷ The CEDAW Committee, in its General Recommendation No. 24, recognizes that women face barriers in accessing information about sexual health and indicates that states have an

¹⁵⁴ UN Committee against Torture, “Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Concluding Observations of the Committee against Torture: Nicaragua,” CAT/C/NIC/CO/1, June 10, 2009, para. 16.

¹⁵⁵ Committee on Economic, Social and Cultural Rights, “General Comment 14: The right to the highest attainable standard of health”, E/C 12/2000/4, August 11, 2000, para 12(b); see also note 8.

¹⁵⁶ Committee on Economic, Social and Cultural Rights, “General Comment 14: The right to the highest attainable standard of health”, E/C 12/2000/4, August 11, 2000, para 21.

¹⁵⁷ UN Commission on Human Rights, “The right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Report of Special Rapporteur, Paul Hunt, submitted in accordance with Commission resolution 2002/31”, E/CN.4/2003/58, February 13, 2003.

obligation to “ensure, without prejudice and discrimination, the right to sexual health information, education and services for all women and girls.”¹⁵⁸

The right to information, as it relates to the right to health, includes both the negative obligation for a state to refrain from interference with the provision of information by private parties and a positive responsibility to provide complete and accurate information necessary for the protection and promotion of reproductive health and rights, including information about abortion.¹⁵⁹ The Committee on Economic, Social and Cultural Rights has confirmed this view, recognizing the potential for state interference with health information. It noted that “States should refrain from ... censoring, withholding or intentionally misrepresenting health related information.”¹⁶⁰ In addition, states should also ensure that third parties do not limit access to health-related information and services.¹⁶¹

Human rights law recognizes the right to nondiscrimination in access to information and health services, as in all other services.¹⁶² Women stand to suffer disproportionately when information concerning safe and legal abortion is withheld, as evidenced in this report.

Ireland has been repeatedly criticized by international treaty bodies for its failure to provide women with access to safe and legal abortions. In 2000, the United Nations Human Rights Committee called on the Irish government to ensure that women were not forced to continue with unwanted pregnancies and expressed concern about the limited circumstances in which legal abortions were permissible in Ireland.¹⁶³ In July 2005, the Committee on the Elimination of Discrimination against Women, which is responsible for monitoring compliance with the provisions of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), reiterated its “concern about the consequences of the very restrictive abortion laws [in Ireland].”¹⁶⁴ The committee urged the Irish government to initiate a “national dialogue” on women’s right to reproductive health, including on the abortion laws. In the strongest statement thus far, in 2008 the Human Rights Committee

¹⁵⁸ Committee on the Elimination of Discrimination against Women, “General Recommendation No. 24: Women and Health”, 1999, U.N. Doc. A/54/38/Rev.3, para.18.

¹⁵⁹ Article 19, *The Right to Know: Human Rights and Access to Reproductive Health Information* (Philadelphia: University of Pennsylvania Press, 1995), pp. 39 and 61-72.

¹⁶⁰ Committee on Economic, Social and Cultural Rights, “General Comment 14: The right to the highest attainable standard of health”, E/C 12/2000/4, August 11, 2000, para. 34.

¹⁶¹ *Ibid.*, para. 35

¹⁶² See ICESCR, article 2(2) as well as CESCR, “General Comment 14,” paras. 12(b), and 18-19.

¹⁶³ UN Human Rights Committee, “Concluding Comments: Ireland,” A/55/40, July 24, 2000.

¹⁶⁴ UN Committee on the Elimination of Discrimination against Women, “Concluding Comments: Ireland,” CEDAW/C/IRL/CO/4-5, 2005.

expressed its regret that Ireland had failed to make any progress on this issue and urged it to “take measures to help women avoid unwanted pregnancies so that they do not have to resort to illegal or unsafe abortions that could put their lives at risk (article 6) or have abortions abroad (article 26 and 6).”¹⁶⁵

The right of women to choose whether to end a pregnancy was also affirmed by the Parliamentary Assembly of the Council of Europe (PACE). PACE adopted a resolution in April 2008 stating that the “ultimate decision on whether or not to have an abortion should be a matter for the woman concerned, who should have the means of exercising the right in an effective way.”¹⁶⁶ The resolution calls on all member states of the Council of Europe to decriminalize abortion and guarantee the right to safe and legal abortions. Specifically the Council of Europe High Commissioner on Human Rights, in his report in Ireland, issued also in April 2008, expressed his concern “that despite the already existing case law allowing for abortion under limited circumstances, no legislation is in place to ensure this happening in practice.” He noted the serious consequences this had “especially in such cases in which vulnerable women such as minors and migrants are concerned.” He warned that defective abortion legislation could amount to a violation of the European Convention on Human Rights, as had been found previously by the Court on Human Rights. He called upon the government “to ensure that legislation is enacted to resolve this problem and that adequate medical services are provided in Ireland to carry out legal abortions in line with the jurisprudence of the Supreme Court.”¹⁶⁷

Finally, in July 2002, the European Parliament passed a resolution in July 2002 that recommends that member states make abortion legal, safe, and accessible to all in order to safeguard women’s reproductive health and rights.¹⁶⁸ In January 2009, another resolution, this time on fundamental rights in the EU, called on all member states “raise awareness of the right to reproductive and sexual health.” The resolution calls on all member states to ensure that all women can fully enjoy these rights.¹⁶⁹

¹⁶⁵ UN Human Rights Committee, Concluding Observations of the Human Rights Committee: Ireland, CCP/C/IRL/CO/3.

¹⁶⁶ Parliamentary Assembly of the Council of Europe, *Resolution 1607*, April 16, 2008 (15th sitting).

¹⁶⁷ Report by the Commissioner for Human Rights, Mr. Thomas Hammarberg, On His Visit To Ireland, 26 - 30 November 2007, adopted Strasbourg, April 30, 2008, CommDH(2008).

¹⁶⁸ European Parliament, *Resolution on sexual and reproductive health and rights*, July 3, 2002, (2001/2128 (INI)).

¹⁶⁹ European Parliament, *Resolution on the situation of fundamental rights in the EO 2004–2008*, January 14, 2009, (2007/2145 (INI)).

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A State of Isolation

Access to Abortion for Women in Ireland

Every day, women face the decision of whether to terminate pregnancies they did not plan, did not want, or cannot continue. These decisions are not easy to make: they involve a personal assessment of the most intimate kind.

As women contemplate these decisions, international law mandates that they should be able to rely upon the state to provide access to accurate information and services. In Ireland, this mandate remains unfulfilled. Women with crisis pregnancies are forced to navigate the emotional, financial, and health implications of their decisions unsupported—and in many cases sabotaged—by the state. The women interviewed by Human Rights Watch described how isolated they felt when facing a crisis pregnancy, in large part as a result of the government’s inadequate policies.

In fact, the Irish government actively seeks to restrict access to abortion both within Ireland and abroad, contributing directly to violations of women’s human rights. Current Irish law severely restricts access to abortion, and the government has refused to provide adequate guidelines to guarantee access even in those limited circumstances contemplated by the law. As a result, women living in Ireland are forced to travel to access a simple medical procedure.

But the Irish government has not stopped there. It has sought to prevent individuals from traveling abroad for abortion through injunctions and does nothing to mitigate the consequences of a very divisive public abortion debate on women’s health decisions and lives. Critically, the government has not taken steps to regulate the provision of blatantly misleading and false information by so-called “rogue” agencies, to the detriment of women’s health.

Ultimately to be in compliance with its international human rights obligations Ireland must ensure access to abortion within Ireland. Until then, it should protect women and girls from receiving misleading and inadequate health information and provide them with much needed support both before and after they make decisions as to whether they will access lawful abortions abroad.

Protesters during an abortion rights demonstration in the centre of Dublin.

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