



Office of the United Nations High Commissioner for Human Rights

Mr. Anand Grover

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Ms. Kamala Chandrakirana

Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice

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Special Rapporteur on violence against women, its causes and consequences

Palais des Nations

CH-1211 Geneva 10

Switzerland

OHCHR REGISTRY

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Recipients : SPD

30 April 2013

Re: Impact of Ireland's restrictive abortion laws on the reproductive health of women and girls

Reference is made to the letter from the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health A. Grover, the Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice K. Chandrakirana, and the Special Rapporteur on violence against women, its causes and consequences R. Manjoo, to Ambassador Gerard Corr, Permanent Representative of Ireland to the United Nations Office in Geneva. The authors of the letter raise four questions. Please find our replies below.

1. Are the facts alleged in the above summary of the case accurate?

The allegations brought forward in the letter are in the main incorrect.

It is alleged that abortion services in Ireland are inaccessible in all circumstances, including in situations where a woman's life is in danger. This is inaccurate.

Article 40.3.3 of the Irish Constitution¹, as interpreted by the Supreme Court in *Attorney General v X*, provides that it is lawful to terminate a pregnancy in Ireland if it is established as a matter of probability that there is a real and substantial risk to the life, as distinct from the health, of the mother, which can only be avoided by a termination of the pregnancy.

While no official statistics are maintained in relation to the number of abortions taking place in Ireland, it is estimated that approximately 20 to 30 terminations of pregnancy take place nationally each year².

Whilst it is accurate to state, as per the allegations, that abortion in Ireland is not permitted in cases of rape or incest, or where there is foetal malformation, it is permitted if there is also a risk to the life of the mother.

¹ Article 40.3.3 states '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.'

² Houses of the Oireachtas, Joint Committee on Health & Children, *Report on the public hearing on the implementation of the Government decision following the publication of the Expert Group Report on A, B and C v Ireland*, January 2013: pg. 482-483.

Further, under the law as it currently stands, it is true that procuring or assisting in unlawful abortion is a criminal offence, punishable by up to life imprisonment. The law is currently being revised (see answer to question 2 below), and it should be noted that there have been no prosecutions for unlawful terminations of pregnancy in recent times and at least since 1975, when the Office of the Director of Public Prosecutions was established.

Two sets of allegations relate to the implementation of the judgment of the European Court of Human Rights in the *A, B and C v Ireland* case; these will be dealt with under question 2.

Finally, it is alleged that women must travel outside of Ireland to access safe and legal abortion services; and that those who cannot afford to travel often perform unsafe abortions in Ireland.

Women will need to travel outside of Ireland if they wish to have a termination of pregnancy which falls outside the criteria for a lawful termination in the State. The freedom to travel to another state for a termination of pregnancy and to obtain information in relation to this service is guaranteed in Article 40.3.3 of the Irish Constitution, as amended by referendum in 1992.³

The *Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995* sets out the conditions under which information relating to services lawfully available in another State might be made available within the Irish State. The Act permits a doctor or advice agency to provide abortion information to pregnant women in the context of full counselling as to all available options, and without any advocacy of abortion.

We are not aware of evidence to suggest that women are dying from unsafe abortions in Ireland; of the twenty-five maternal deaths ascertained by the Confidential Maternal Death Enquiry Ireland for the triennium 2009–2011⁴, none was associated with unsafe abortion.

2. *Please provide details of any measures taken to comply with the decision of the European Court of Human Rights (A, B and C v Ireland) and the ruling of the Irish Supreme Court (Attorney General v X).*

On foot of the judgment of the European Court of Human Rights in the *A, B and C v Ireland* case, the Government established an Expert Group to make recommendations on how the matter should be properly addressed. The Expert Group was made up of experts in the fields of obstetrics, psychiatry, general practice, law, professional regulation and public policy, and it was chaired by a judge of the High Court, the Honourable Mr Justice Sean Ryan.

The Government approved the publication of the Report of the Expert Group on *A, B and C v Ireland* judgment of the European Court of Human Rights in November 2012.

Last December, the Government approved the implementation of the judgment of the European Court of Human Rights in the *A, B and C v Ireland* case by way of legislation with regulations, within the parameters of Article 40.3.3 of the Constitution as interpreted by the Supreme Court in the *X* case. They also agreed to make appropriate amendments to the criminal law in this area.

³ Article 40.3.3 further states 'This subsection shall not limit freedom to travel between the State and another State. This subsection shall not limit freedom to obtain or make available, in the State, subject to such conditions as may be laid down by law, information relating to services lawfully available in another state.'

⁴ http://www.mdeireland.com/pub/MDE_report_w_2012.pdf

The aim of the legislation is to regulate access to lawful termination of pregnancy in accordance with the *X* case and provide for the drafting of regulations to deal with operational and procedural matters relevant to the issue.

Intensive work is now underway in the Department of Health on drafting the legislation. The procedural options are complex, given the technical, medical, legal, ethical and health service organisational implications. It is intended that the Bill itself will be introduced in the Parliament in the summer session (April – July) with the goal of having it enacted by the end of July, having due regard to the prerogatives of the Parliament. The regulations are due to be published at the same time as the primary legislation and it is intended that they will be made shortly thereafter.

In addition, Ireland has submitted four reports on the progress made in the implementation of the judgment in *A, B and C v Ireland* to the Committee of Ministers of the Council of Europe (in June 2011, January and November 2012, and February 2013). An oral hearing on the fourth Action Plan took place in Strasbourg on 5th – 7th March 2013, and a further action plan is due to be submitted on 8th May 2013.

- 3. Please provide details of any measures taken to ensure that all women have access to adequate medical services with a view to decreasing the number of unsafe abortions, and preventing serious and lasting harm to the physical and mental health of women.*

Ireland has made a significant investment in sexual health protection and crisis pregnancy prevention measures in the last decade. The Health Service Executive Crisis Pregnancy Programme (formally the Crisis Pregnancy Agency) was established more than ten years ago to address the issue of crisis pregnancy in Ireland. Its specific mandate is the provision of education, advice and contraceptive services in order to reduce the number of crisis pregnancies. It also aims to achieve a reduction in the number of women with crisis pregnancies that opt for abortion, by offering services and supports which make other options more attractive. It supports the provision of counselling services, medical services and such other health services for the purpose of providing support during and after crisis pregnancy.

The Health Service Executive (HSE), through the Crisis Pregnancy Programme, funds the provision of post-abortion medical check-up and counselling services. It continues to roll out a campaign to increase awareness among women that post-abortion services are available free of charge in Ireland. The Abortion Aftercare campaign, which consists of targeted online and print advertisements, encourages women who have had an abortion to attend for post-abortion medical check-up and promotes the availability of free post-abortion counselling.

Family planning services are available throughout Ireland, and the Health Service Executive is obliged, under law, to ensure that an impartial, accessible and comprehensive family planning service is provided in its area.⁵ This is done directly in HSE run local health centres, as well as through general practitioners (GPs) and family planning organisations. Services, including information, advice and prescriptions for contraceptive drugs and devices, are provided mainly by GPs, in maternity and other hospitals, and by a number of voluntary organisations. All maternity hospitals and most large public hospitals, as well as some private hospitals, provide surgical contraception services. Contraceptive medicinal products are widely dispensed across the country in pharmacies, while condoms can be purchased in a variety of settings, including pharmacies, stores, and entertainment venues.

⁵ Health(Family Planning) Act 1979

In terms of affordability, a wide range of contraceptive medicinal products and devices are available to patients availing of the General Medical Services (GMS) Scheme and Drug Payment Scheme. Under the GMS scheme patients pay a €1.50 charge per item dispensed, subject to a maximum monthly expenditure per individual or family of €19.50. Under the Drug Payment Scheme, patients pay no more than €144 per month on prescribed medical products and devices for themselves and their families. All residents of Ireland are eligible to hold either a medical card under the GMS scheme, or a Drug Payment Scheme card.

There are nineteen hospitals providing maternity services in Ireland, funded by the Health Service Executive (HSE). The HSE's National Clinical Care Programme in Obstetrics and Gynaecology was established two years ago, with the overall aim of improving choices in women's healthcare. A key area of work for the Programme is the development and implementation of national clinical guidelines, with the aim of ensuring consistency in clinical practice nationally. To date, the Programme has published twenty guidelines, four are in process and a further 20 have been commissioned including clinical guidelines on ultrasound. These guidelines, when developed, will address the way in which such services should be provided.

Under the Programme, an early warning scoring system for maternity services has been developed and is intended to be piloted in maternity units this year. The Programme is also involved in a multi-disciplinary review of models of maternity care, and, in association with the HSE National Advocacy Unit, plans to roll out a national maternity survey and to produce a patient charter for maternity services.

The Maternity and Infant Care Scheme provides an agreed programme of care to pregnant women who are ordinarily resident in Ireland. The service is provided by a GP of the woman's choice and a hospital obstetrician. Under the Scheme, a pregnant woman is entitled to free in-patient, out-patient and accident and emergency/casualty services in public hospitals in respect of the pregnancy and the birth, and is not liable for any of the hospital charges. The GP provides an initial examination, and a further six examinations during the pregnancy, which are alternated with visits to the maternity unit/hospital. An additional five visits to the GP are available to women with a significant illness, e.g. diabetes or hypertension. The vast majority of GPs in Ireland have agreements with the HSE to provide services under the Maternity and Infant Care Scheme.

There is evidence to suggest that the measures put in place by the Irish Government are working. The Irish Contraceptive and Crisis Pregnancy Study⁶, a nationally representative survey of the general population most recently published in 2010, showed improvements in sex education and contraceptive use among young people. The study also found decreases in the number and rate of births to teenagers. The vast majority of men and women who responded to the survey reported no difficulty in accessing contraception.

Maternal mortality is a rare occurrence in Ireland. According to the most recent World Health Statistics Annual Report (2012)⁷, Ireland has the 13th lowest rate of maternal mortality out of 178 countries reporting data. In order to address possible underestimates of maternal deaths, including indirect obstetric deaths resulting from previous existing disease or diseases which developed during the pregnancy, Ireland established a Confidential Maternal Death Enquiry (MDE) system in 2009.

⁶ McBride, O, Morgan, K & McGee, H (2010) *Irish Contraception and Crisis Pregnancy Study 2010 (ICCP-2010); A Survey of the General Population*. Dublin: HSE Crisis Pregnancy Programme.

http://crisispregnancy.ie/wp-content/uploads/2012/06/ICCP-2010_REPORT.pdf

⁷ http://www.who.int/gho/publications/world_health_statistics/2012/en/

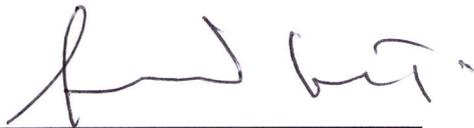
In doing so, it linked itself with the United Kingdom's Confidential MDE which has been acknowledged as a gold standard for maternal death enquiry in recent decades. The recently published report of Ireland's Confidential MDE⁸ for the period 2009 to 2011 shows Ireland with a rate about 30% lower than the UK⁹.

4. *Please provide details of any measures taken to ensure taken to ensure the enjoyment of the right to health, including sexual and reproductive health, of all girls and women.*

In addition to the programmes and initiatives referenced above, the Government published a *National Women's Strategy 2007-2016*. One of the key themes of the document, in line with the right to health, including sexual and reproductive health, of all girls and women was 'Ensuring the wellbeing of women'. This included a commitment to improving the reproductive and sexual wellbeing of women throughout their life course. As part of this goal, the Strategy committed to ensuring that all women have access to information on fertility, contraception and sexual health matters and to providing information on sexual and reproductive wellbeing through schools programmes. Implementation of the Strategy is overseen by the National Women's Strategy Monitoring Committee, made up of representatives from key Government Departments, relevant State Agencies and the Social Partners, including the National Women's Council of Ireland. The Monitoring Committee is chaired by the Minister of State with responsibility for Equality. The National Women's Strategy is the subject of ongoing monitoring, and a progress report is produced each year outlining positive developments and areas in which further work is needed.

A National Sexual Health Strategy is currently being developed by the Department of Health, with support from the Institute of Public Health. The Strategy will formulate a strategic direction for the delivery of sexual health services, focusing on improving sexual health and wellbeing. It will address the surveillance, testing, treatment and prevention of HIV and STIs, crisis pregnancy, and sexual health education and promotion. The National Sexual Health Strategy is due to be submitted to Government this year.

Yours sincerely,



Gerard Corr
Permanent Representative

⁸ http://www.mdeireland.com/pub/MDE_report_w_2012.pdf

⁹ The report cannot be compared with civil registration-based rates of other EU countries which do not have MDE systems. Note that caution must be exercised in interpreting this data since numbers of deaths remain small and the rates will be subject to significant fluctuation.