

Mandates of the Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences

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Excellency,

We have the honour to address you in our capacities as Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 23/7, 24/6, 25/13, and 23/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the persistence of provisions relating to abortion, which directly discriminate against women and girls in Northern Ireland as they restrict their rights to health and physical integrity under international human rights law.

According to the information received:

Abortion is only legal in Northern Ireland if a woman's life is at risk, or if there is a risk of permanent and serious damage to her mental or physical health.¹ Under sections 58 and 59 of the 1861 Offences Against the Person Act and subject to sections 25 and 26 of the 1945 Criminal Justice (Northern Ireland) Act, which extended the provisions of the [Infant Life \(Preservation\) Act 1929](#) to Northern Ireland, a woman, or those who help a woman to terminate a pregnancy, can face life imprisonment.

Northern Ireland is not covered by the 1967 Abortion Act, which applies in the rest of the United Kingdom. Section 1 of this Act permits terminations up to 24

¹ See *R v Bourne* [1939] 1KB 687 and the Matter of an Application by the Society for the Protection of Unborn Children for Judicial Review [2009] NIQB 92, para. 3, LJ Girvan.

weeks of pregnancy on grounds that include risk to the physical or mental health of the woman or existing children in the family, and abnormalities that could lead to a child being "seriously handicapped." Under section 37(1)(d) of the Human Embryology and Human Fertilisation Act 1990, abortion is permitted up until birth "where there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped." However, according to section 48 of this same Act, section 37 does not apply in Northern Ireland. Currently, a woman cannot legally terminate her pregnancy in Northern Ireland if she is carrying a child with lethal foetus abnormalities or has become pregnant as a result of rape or incest. This issue was raised by stakeholders during the visit of the Special Rapporteur on violence, its causes and consequences to the United Kingdom of Great Britain and Northern Ireland from 31 March to 15 April 2014.

Although the Department of Health, Social Services and Public Safety has issued several draft guidance documents for health professionals on termination of pregnancy in Northern Ireland, as of August 2014, the final version of this guidance document, had allegedly still not been published. Previous to this, the Northern Ireland Council of the Royal College of General Practitioners had reportedly stated that, in order to exercise their clinical judgment in individual cases, doctors needed to be confident about the standards, provided by the guidance document, to which they are working.

In December 2013, Northern Ireland's Justice Minister, David Ford, announced his intention to prepare a consultation document which would examine whether there is scope to change abortion laws in Northern Ireland. He stated firmly that this consultation would not be about "a wholesale introduction of the 1967 Abortion Act" but should pertain to a very narrow range of cases permitting a legal abortion, such as lethal foetal abnormalities or pregnancy as a result of a sexual crime.

It is estimated that approximately 1000 women travel annually from Northern Ireland to have an abortion in other parts of the United Kingdom, usually in fee-charging independent clinics. These women must normally pay for their transport to the mainland, accommodation as well as the cost of the procedure, the total amount of which is estimated at upwards from several hundred to several thousand pounds. In May 2014, the High Court in London ruled that women from Northern Ireland are not legally entitled to free abortions on the National Health Service in England.

On 2 February 2015, the Northern Ireland Human Rights Commission was granted leave to pursue a judicial review of the current law on abortion in Northern Ireland. The Commission is reportedly recommending a change in the legislation to allow abortions in cases of rape, incest or serious foetal abnormalities. The next stage of this legal challenge will be a three-day hearing in June 2015.

We wish to express serious concern regarding the current legal provisions pertaining to abortion in Northern Ireland, which undermine women and girls' rights to health, including their reproductive health, and to physical and psychological integrity. We are concerned that forcing women to travel to other parts of the United Kingdom in order to have an abortion, for which they must pay themselves, both traumatizes and further victimizes women. Criminalizing abortion does not prevent women having abortions; rather it increases the physical, financial and emotional burden of obtaining the care they need. Women with limited financial means may have no option but to pursue illegal methods in order to end a pregnancy, if they cannot afford to pay privately for the service in other parts of the United Kingdom. Women should be able to access this care in Northern Ireland. Furthermore, clear guidance for healthcare professionals on the circumstances for the lawful termination of pregnancy in Northern Ireland is essential and should be issued at the earliest opportunity.

In connection to the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned allegations.
2. Kindly provide information regarding the public consultations already held examining the scope for amending current abortion laws in Northern Ireland and what recommendations, if any, have resulted from these consultations.

We would appreciate receiving a response within 60 days.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Emna Aouij
Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice

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

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Rashida Manjoo
Special Rapporteur on violence against women, its causes and consequences

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health as set forth in article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by the United Kingdom on 20 May 1976. This comprises an obligation on the part of all States Parties to ensure that access to health services is available to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination.

The Committee on Economic, Social and Cultural Rights in its General Comment No. 14 on *The Right to the Highest Obtainable Standard of Health* (2000) has made clear that the right to health contains both freedoms and entitlements and holds that “the freedoms include the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation” (para. 8).

The right to health of women is also reflected in the Convention on the Elimination of All Forms of Discrimination against Women, which the United Kingdom ratified on 20 May 1976. According to article 12 of the Convention, States should take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. Article 16 (1) of the Convention further holds that States should take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular should ensure, on a basis of equality of men and women, the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.

In its General Recommendation 24, on *Women and Health* (1999), the Committee on the Elimination of All Forms of Discrimination against Women has held that “it is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women” and “the obligation to respect rights requires States parties to refrain from obstructing action taken by women in pursuit of their health goals” (para. 14). It further notes in paragraph 31 (c) that States should “prioritize the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance. When possible, legislation criminalizing abortion could be amended to remove punitive provisions imposed on women who undergo abortion.”

We recall that the Committee on the Elimination of All Forms of Discrimination against Women has consistently expressed its concerns to your Excellency’s Government that the 1967 Abortion Act does not extend to Northern Ireland and where, with limited exceptions, abortion continues to be illegal, with detrimental consequences for women’s

health. In paragraph 289 of its 2008 Concluding Observations (CEDAW/C/GBR/CO/6)², the Committee recommended that the United Kingdom should initiate a process of public consultation in Northern Ireland on abortion law to remove the punitive provisions imposed on women who undergo abortions in Northern Ireland.

The Committee recalled this recommendation in paragraph 51 of its 2013 Concluding Observations to the United Kingdom (CEDAW/C/GBR/CO/7) and further stated that ‘in line with general recommendation No. 24 on women and health, and the Beijing Declaration and Platform for Action, the State party should expedite the amendment of the anti-abortion law in Northern Ireland with a view to decriminalise abortion. The State party should also ensure that legal abortion not only covers cases of threats to the life of a pregnant woman, but also other circumstances such as threats to her health and in cases of rape, incest and serious malformation of the foetus.’

In this context, the Special Rapporteur on violence against women, its causes and consequences highlighted in her report (E/CN.4/1999/68/Add.4) that acts deliberately restraining women from using contraception or from having an abortion constitute violence against women by subjecting women to excessive pregnancies and childbearing against their will, resulting in increased and preventable risks of maternal mortality and morbidity (para. 57). She further added that in countries where abortion is illegal or where safe abortions are unavailable; women suffer serious health consequences, even death. Women with unwanted pregnancies are forced to resort to life-threatening procedures when an abortion performed under appropriate conditions would otherwise be safe (para.59) Government failure to take positive measures to ensure access to appropriate health-care services that enable women to safely deliver their infants as well as to safely abort unwanted pregnancies may constitute a violation of a woman’s right to life, in addition to the violation of her reproductive rights. Furthermore, government failure to provide conditions that enable women to control their fertility and childbearing, as well as to bring voluntary pregnancies to term, constitutes a violation of a woman’s right to security of the person (para.66).

We would also like to recall the report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/66/254), which reiterates that the criminalization of sexual and reproductive health services for women generates and perpetuates stigma; restricts their ability to make full use of available sexual and reproductive health-care goods, services and information; denies their full participation in society; hinders their access to healthcare services; and disempowers women. Furthermore, criminalization of abortion results in negative physical and mental health outcomes for women and may increase the likelihood of women seeking clandestine abortions.

Similarly, in his report (A/HRC/22/53), the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment “call[ed] upon all States to ensure that women have access to emergency medical care, including post-abortion care,

² Extract from A/63/38, page 142

without fear of criminal penalties or reprisals. States whose domestic law authorizes abortions under various circumstances should ensure that services are effectively available without adverse consequences to the woman or the health professional” (para. 90). He furthermore states that international and regional human rights bodies have begun to recognize that abuse and mistreatment of women seeking reproductive health services can cause tremendous and lasting physical and emotional suffering, inflicted on the basis of gender (para. 46).

On numerous occasions United Nations bodies have expressed concern about the denial of or conditional access to post-abortion care often for the impermissible purposes of punishment or to elicit confession. The Human Rights Committee explicitly stated that breaches of article 7 of the International Covenant on Civil and Political Rights include forced abortion, as well as denial of access to safe abortions to women who have become pregnant as a result of rape and raised concerns about obstacles to abortion where it is legal (para. 50).

Finally, article 8 of the European Convention on Human Rights states that “Everyone has the right to respect for his private and family life, his home and his correspondence” and that “there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

In the case of *A, B and C v. Ireland [GC] [245]* the European Court of Human Rights held that Article 8 cannot be interpreted as conferring a right to abortion; however it has found that the prohibition of abortion when sought for reasons of health or well-being falls within the scope of the right to respect for one’s private life and accordingly of Article 8.

In addition, States also have a positive obligation to create a procedural framework enabling a pregnant woman to effectively exercise her right of access to lawful abortion (*Tysiac v. Poland Application no. 5410/03*) and (*R.R. v. Poland (Application no. 27617/04)*). According to the European Court, the legal framework governing lawful abortion should be “shaped in a coherent manner which allows the different legitimate interests involved to be taken into account adequately and in accordance with the obligations deriving from the Convention” (*A, B and C v Ireland (Application no. 25579/05)*).