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# Centre for Disability Law and Policy

**Human Rights Committee’s Half Day Discussion in Preparation for a General Comment on Article 6-Right to Life**

# Submission June 2015

**About Us**

**The Centre for Disability Law and Policy (CDLP)** The Centre for Disability Law and Policy at NUI Galway was formally established in 2008 and works in pursuit of equal opportunities and social justice for persons with disabilities in Ireland and around the world. The Centre’s Director, Professor Gerard Quinn, led the delegation of Rehabilitation International during the negotiations of the CRPD in New York. Since its establishment, the CDLP has organised and participated in a number of key events regarding disability law reform. The CDLP’s operating philosophy is ‘scholarship in action’ which entails research that addresses the problems that ordinary citizens face and providing practical policy solutions. In the course of our work we have made submissions to national and international bodies advocating for policies and laws that best facilitate the free and full exercise of rights for people with disabilities.

We are writing this submission in support of the interpretation that Article 6 is not incompatible with a woman’s ability to access abortion and we want to ensure that the HRC’s interpretation does not impinge upon or violate the rights of persons with disabilities as laid out in the UN Convention on the Rights of Persons with Disabilities. Our submission will consider specifically the issues around prenatal genetic testing and disability-selective abortions.

*Article 6 and its applicability to foetuses*

The Right to Life under Article 6 s.1 of the International Covenant on Civil and Political Rights (ICCPR) simply states, “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” [[1]](#footnote-1)This article has consistently been interpreted as applying to born human beings given that the drafters of the ICCPR explicitly rejected proposals to extend Article 6(1) to the moment of conception.[[2]](#footnote-2)In 2014, the Human Rights Committee raised concerns that Ireland’s restrictive abortion laws and laws on crisis pregnancy information violate Article 6 (among other articles) of the ICCPR.[[3]](#footnote-3) In their concluding observations to Guatemala in 2001 the Human Rights Committee stated,

“The State party has the duty to adopt the necessary measures to guarantee the right to life (art. 6) of pregnant women who decide to interrupt their pregnancy by providing the necessary information and resources to guarantee their rights and amending the legislation to provide for exceptions to the general prohibition of all abortions except where the mother’s life is in danger.”[[4]](#footnote-4)

*Prenatal Genetic Testing and Disability Selective Abortion*

Some countries or localities create exceptions on restrictive abortion laws for when there is a likelihood the child will be born with certain disabilities. An example of this is the UK’s Abortion Act 1967 which allows for abortion when “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.”[[5]](#footnote-5) Other countries like Greece, Estonia and Poland have similar exceptions under more restrictive abortion regimes.[[6]](#footnote-6)It is true that these types of legislation suggest that a disability is an undesirable condition and contributes to stigma and discrimination of people with disabilities.[[7]](#footnote-7) The language used in these laws is offensive and discriminatory to people with disabilities. Since the Human Rights Committee has to date stated that Article 6 does not extend to the unborn foetus – this presents challenges in finding that such approaches violate Article 6.

In light of the UN Convention on the Rights of Persons with Disabilities, we argue that the most human rights-compliant approach to this issue is not to restrict women’s access to abortion, or to require or prevent women from undergoing prenatal testing. Instead, we should ensure that countries provide equal access to abortion as a means of reproductive autonomy for all women – including women with disabilities. As an alternative to disability-selective abortion, we advocate that a woman should have access to abortion where she believes that to continue with a pregnancy would constitute a risk to her health. The ‘health’ ground should be broadly interpreted to ensure respect for reproductive autonomy, and should prioritise women’s own views as to what would constitute a risk to their own physical or mental health. The right to privacy, also protected by the ICCPR, should ensure that women do not have to provide more detailed reasons for their decision. In addition, to ensure that women can make free and informed decisions about their reproductive autonomy, countries which allow for prenatal testing should ensure that results are accompanied with information about available disability supports and human rights-based information on the lives of people with disabilities.[[8]](#footnote-8)

*Abortion restrictions and conditions can create unsafe environments for women*

Restrictions and conditions that must be met in order to access abortion often end up having a negative effect of women’s health. For example, Ireland has extremely limited access to abortion as well as abortion information which has created an unsafe system of maternal and women’s health care according to a recent report released by Amnesty International.[[9]](#footnote-9) In addition to limited access to abortion there are severe restrictions around information about reproductive choices in Ireland which have impacted on doctors giving information to women and families about their pregnancy. Women should have access to information about their pregnancy, and prenatal testing, can provide such information. However, we want to emphasise that prenatal testing should not be imposed on women against their will, and that the results of prenatal tests should not be delivered to women in a manner that seeks to influence their decision about whether to continue with a pregnancy. As stated above, information should be provided in a manner that is not stigmatising or discriminatory towards persons with disabilities. In a restrictive abortion

*The Convention on the Rights of Persons with Disabilities and Reproductive Choice*

We would caution against states employing foetal abnormality exemptions to existing abortion regimes, on the basis that such exemptions may violate the Convention on the Rights of People with Disabilities (CRPD). The CRPD contains some of the most explicit and direct language of any international convention on the right to reproductive freedom. Article 23 (Respect for the Home and Family) directs that States must ensure that, “the rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided.”[[10]](#footnote-10) Similarly, Article 25 (on the right to health) directs States to “provide persons with disabilities the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes.”[[11]](#footnote-11) Other Articles of the CRPD, such the right to have respect for privacy (CPRD Art. 22), reinforce this notion that women with disabilities are entitled to reproductive choice.[[12]](#footnote-12)

Another important point can be made in reference to Article 10 of the CRPD, which is the Article that specifically concerns the right to life. The article states:

“States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.”[[13]](#footnote-13)

The Committee on the Rights of Persons with Disabilities (CRPD Committee) has commented on disability-based distinctions in abortion laws. The CRPD Committee has not flagged them as a violation of Article 10[[14]](#footnote-14) but rather as violations of the general principles of the CRPD, and particularly, as concerns for the right to equality and non-discrimination protected in Article 5.[[15]](#footnote-15)

Furthermore, arguments against prenatal testing or arguments in favour of laws that provide for disability-selective abortions often ignore how women have often experienced restrictions in making reproductive choices. These restrictions include involuntary sterilization,[[16]](#footnote-16) the failure of the State to provide women access to contraception or sexual health education, and even forced abortions.[[17]](#footnote-17) Women with disabilities, as well as non-disabled women, have experienced these restrictions, which impact on reproductive autonomy and violate the right to equality before the law, as well as the rights to self-determination and privacy.

*Conclusion*

To date, Article 6 of the ICCPR has not been used to restrict access to reproductive choice. Equally, it is clear that to date Article 10 of the CRPD (on the right to life) has not been interpreted to extend to restrictions on pre-natal testing. Nevertheless, disability-based abortion exceptions have been criticised by the UN Committee on the Rights of Persons with Disabilities as incompatible with the general principles of the CRPD. Coupled with the extensive protections for productive health and choice contained in the CRPD we would urge the Committee members not to interpret Article 6 as precluding prenatal testing in general, as an option which women may choose in order to have information for reproductive decision-making. We would further advocate that the Committee should not support restrictions on access to abortion beyond a broad interpretation of a self-identified risk to the woman’s health – and particularly, should not legitimise disability-selective abortion.

1. s.1 Article 6, International Covenant for Civil and Political Rights (1976). [↑](#footnote-ref-1)
2. IPAS Health, Access, Rights, <http://www.ipas.org/en/The-Storehouse-for-Abortion-Law-and-Policy/Right-to-life/Human-rights-standards.aspx> (last visited June 11, 2015). [↑](#footnote-ref-2)
3. s.9, Human Rights Committee, *Concluding observations on the fourth periodic report of Ireland* ,CCPR/C/IRL/CO/4 (19 August 2014). [↑](#footnote-ref-3)
4. Human Rights Committee, *Concluding observations of the Human Rights Committee- Republic of Guatemala*, CCPR/CO/72/GTM (27 August 2001). [↑](#footnote-ref-4)
5. S. 37, *Abortion Act 1967* as amended by the *Human Fertilisation and Embryology Act* 1990. [↑](#footnote-ref-5)
6. International Planned Parenthood Federation European Network, Abortion Legislation in Europe, (January 2009).*Available at <https://www.ifpa.ie/sites/default/files/documents/resources/ippf\_abortion\_legislation\_in\_europe\_feb\_2009.pdf>*(last accessed 12 June 2015). [↑](#footnote-ref-6)
7. Erik Parens and Adrienne Asch, ‘The Disability Rights Critique of Prenatal Genetic Testing: Reflections and Recommendations*’ Hastings Center Report, Special Supplement, s1-s22*  (September-October 1999). [↑](#footnote-ref-7)
8. KrutiAcharya, ‘Prenatal Testing for Intellectual Disability: Misperceptions and Reality with Lessons from Down syndrome,’ *Developmental Disabilities Research Review* 17 (1), 27-31 (2011). [↑](#footnote-ref-8)
9. Amnesty International, *She is not a criminal-The Impact of Ireland’s Abortion’s Law,* p7-8 (2015). *Available at* <http://www.amnesty.ie/sheisnotacriminal> (last accessed 12 June 2015). [↑](#footnote-ref-9)
10. *Convention of the Rights of Persons with Disabilities* (2006).<http://www.un.org/disabilities/convention/questions.shtml> (last accessed 11 June 2015). [↑](#footnote-ref-10)
11. *Id.* [↑](#footnote-ref-11)
12. *Id.* [↑](#footnote-ref-12)
13. *Id.* [↑](#footnote-ref-13)
14. *Id.* [↑](#footnote-ref-14)
15. Committee on the Rights of Persons with Disabilities *Concluding observations of the Committee on the Rights of Persons with Disabilities Spain*, CRPD/C/ESP/CO/1, (19-23 September 2011): Committee on the Rights of Persons with Disabilities *Concluding observations of the Committee on the Rights of Persons with Disabilities Austria*, CRPD/C/AUT/CO/1 (13 September 2013). [↑](#footnote-ref-15)
16. Human Rights Watch, *Sterilization of Women and Girls with Disabilities: A Briefing Paper* (2011). [↑](#footnote-ref-16)
17. “Mentally disabled woman escapes forced abortion” *The Daily Telegraph*, Jan. 10 2013, http://www.telegraph.co.uk/health/healthnews/9793790/Mentally-disabled-woman-escapes-forced-abortion.html. [↑](#footnote-ref-17)