

EUROPEAN LIFE NETWORK

Submission to the United Nations Universal Periodic Review
12th session of the working group on the UPR Human Rights Council October 6th 2011

The primary focus of this submission is Ireland's human rights obligations with regard to the right to life, and in particular the right to life of the child before birth. Its secondary focus is Ireland's obligations regarding the family as the fundamental group unit of society and its associated rights.

The Treaties and Conventions signed by Ireland encompass individual and family rights and involve both national and international obligations.

Obligations

- As a member of the United Nations (UN), Ireland has freely committed itself to the recognition that the inherent dignity and worth and, the equal and inalienable rights of all members of the human family, is the foundation of freedom, justice and peace in the world.
- Accordingly, Ireland is obligated to act in a manner consistent with the Charter of the United Nations (the Charter) and the UN Bill of Rights.
- Everyone, having duties to other individuals and to the community to which they belong, is under a responsibility to strive for the promotion and observance of recognized rights.

General human rights

- Recognition of the fundamental human rights and of the dignity and worth of the human persons.
- The right to life, the inherent dignity, worth and equal and inalienable rights of all members of the human family must be protected in law.
- All human beings are entitled to all the rights and freedoms contained in the Universal Declaration of Human Rights (UDHR) without distinction of any kind.
- Everyone has the right to recognition everywhere as a person before the law.
- Everyone has the right to equality before the law and is entitled without any discrimination to equal protection under the law.
- The family, the natural and fundamental group unit of society, is the natural environment for the growth and wellbeing of all its members particularly children and is entitled to protection by society and the State.

Rights of women and children

- Motherhood and childhood are entitled to special care and assistance, and that all children, before or after birth or whether born in or out of wedlock, shall enjoy the social protection of their family, society and the State without unjust discrimination of any kind.
- The upbringing of children requires a sharing of responsibilities between men and women and society as a whole.
- No pregnant woman shall be executed lest an innocent child die with the guilty.
- The state is obliged to ensure to the maximum extent possible the survival and development of the child before as well as after birth.

Rights of the child (born and unborn)

- Every child, before as well as after birth, has the inherent right to life.
- Every child, before as well as after birth, has the right to be free from all forms of discrimination.
- Every child, before as well as after birth, has the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment.

Vienna Convention on the Law of Treaties

The Vienna Convention on the Law of Treaties ("VCLT") is clear that the authority of a treaty stems from obtaining the consent of the states, or the States Parties over which it will be binding.

Article 31 of the VCLT sets out interpretive norms for all treaties stating:

"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose."

In other words, attention must be paid to the actual text of the treaty and, as an aid to interpretation, to its surrounding context.

None of the Treaties or Conventions referred to above recognise a so-called right to abortion, no such right exists, nor can such a right ever exist. Even States, which permit the execution of convicted criminals, are currently being encouraged to change their laws in this regard.

Equally the family based on the marriage of one man and one woman is under pressure from many sources as is the right of parents to educate their children. Both issues urgently need greater support from the Irish State.

The right to life of all human beings from the moment of conception to natural death, is protected in the Bill of Rights, that is, the UN Charter, the UDHR and the subsequently enacted Covenants and legally binding Conventions.

The Convention on the Rights of the Child (CRC) recognizes human rights during the entire pre-natal period of life. Following on from the 1959 Declaration on the Rights of the Child, the preamble of the CRC expressly states:

"the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."

- The CRC having used the term child in its preamble in respect of a human life before as well as after birth, defines children in Article 1 as all "human beings" under 18 years of age (unless the State sets a lower age of majority).
- The right to health, in Article 24 is for the protection of the child who is the rights holder under the convention and expressly recognises the rights of children during the entire pre-natal period.
- When Article 1 is read in the light of Article 24, "human being" covers children during the entire pre-natal period, that is to say, from conception onwards. Article 24 reads:
 1. States Parties recognize the *right of the child* to the enjoyment of the highest attainable standard of health ...
 2. States Parties shall pursue full implementation of *this right, in particular*, shall take appropriate measures: ...
 - (d) To *ensure* appropriate *pre-natal* and post-natal health care for mothers." (Article 24; emphasis added.)

The child is the right-holder of the right to pre-natal care, not the mother, according to the text of Article 24 *States Parties recognize the right of the child... to pre-natal... care.*

- The fact that the text says "pre-natal ...health care *for mothers*" (emphasis added) does not transfer the right to the mother. By definition, pre-natal care is medical care delivered to the mother. The care to the child is delivered through actions directed at the mother's body. In other words, the child has the right to have health care given to his or her mother, for the purpose of ensuring the child's wellbeing.

It is duty of the HRC to uphold this Convention in accordance with the terms of the Vienna Convention on the Law of Treaties, that is, "...in good faith in accordance with the *ordinary meaning* to be given to the terms of the treaty in their context and in light of its object and purpose."

To continue to fulfil its obligations under the CRC and other human rights instruments, Ireland must resist pressure to introduce abortion whether internally from groups or individuals advocating abortion, or from external sources such as international abortion providers like International Planned Parenthood Federation (IPPF), pro-abortion member states of the UN, pro-abortion Non Government Organisations and international law firms such as the Center for Reproductive Rights (CRR)

The vast majority of the Irish people have repeatedly rejected the legalisation of abortion in national referenda, a result also verified by recent large-scale opinion polls.

Numerous arguments have been put forward for the removal Ireland constitutional protection of children before birth. These arguments attempt to justify abortion by i) claiming that the wishes of a woman supersedes the right to life of her child, ii) by rejecting of the humanity of the unborn child, iii) claiming that maternal mortality is reduced by the availability of abortion or iv) simply by citing so-called hard cases. All of these arguments have been shown to be false.

As already demonstrated international human rights instruments recognise the right to life of children before birth. The inalienable rights of any section of the human family are not subject to the will or interests of others.

The humanity of the unborn was never in doubt but recent medical and scientific progress has made this incontrovertible by proving that from the moment of fertilization a new and unique DNA exists distinct from that of either the mother or the father.

Arguments based upon 'hard cases' usually cite a pregnancy resulting from rape, or life threatening conditions arising during pregnancy. Taking the issue of rape first. Every rape is a gross act of violence against a woman. It is essential that all rapists face justice. Where a child is conceived in rape justice also requires that he or she is not punished for the crime of a parent. All members of the human family have an equal right to life without distinction of any kind including the circumstances of his or her conception. Special support and care is necessary to help all victims of sexual assault, this is particularly true of women who conceive through rape. The deliberate killing of a child before birth, can never constitute support or care for the child's mother.

On the issue of life saving treatment, medical interventions considered necessary to avoid the death of a pregnant woman have always been available in Ireland. Such treatment is never refused and every opportunity is given to both a mother and her child to survive. Medical expertise recognises that it is never necessary to terminate the life of a child in the womb in order to save a mother's life. While some children may not survive such interventions, their deaths are an undesired consequence of the treatment of the mother's condition rather than the intended result of the doctor's actions. It is important that medical interventions intended to save the life of a pregnant woman are not confused with abortion procedures which aimed at ending the life of an unborn child.

On the issue of maternal mortality Ireland's record is second to none. Both the World Health Organisation and United Nations Fund for Population Activities in their most recent reports show that Ireland without abortion has the lowest level of maternal mortality in the world. The United Kingdom, however, where legalised abortion has been easily accessible and for over 40 years, has a maternal mortality rate between 3-5 times higher than Ireland. The US is considerably higher again. In addition Member States, which previously

had legalised abortion such as Chile and Poland have seen dramatic reductions in their maternal mortality rates following the enactment pro-life legislation.

The Case of A, B & C v Ireland

Contrary to the claims of abortion advocates, the ruling of the European Court of Human Rights (ECtHR) in the Case of A, B & C v Ireland does not require Ireland to liberalise its abortion laws. The ECtHR ruled that access to abortion is not a human right; and that Ireland's constitutional protection for children prior to birth does not violate the rights of women.

In rejecting all the claims of two of the applicants, A and B, the ECtHR recognised the legitimate aim of Ireland's prohibition of abortion for so-called health and social reasons "based as it is on the profound moral views of the Irish people as to the nature of life" and "struck a fair balance" between a woman's right to respect for her private life and "the rights invoked on behalf of the unborn." (A, B & C v Ireland *No.* 25579/05 2010 para 241) The ECtHR made no recommendation that abortion on so-called health or social grounds should be made available.

In upholding the complaint of the third applicant, C, the ECtHR wrongly asserted that a right to abortion exists in Irish law. It mistakenly equated the principle established by Irish Supreme Court in the case of *Attorney General v. X and Others* ([1992] 1 IR 1) that a termination of pregnancy is permissible when it is the only way to avoid the death of the mother, with a positive legal right to abortion. Abortion in Ireland remains presumptively illegal. Any intervention, which may result in the death of an unborn child, is unlawful unless a clinician forms the requisite clinical judgment that such a procedure is the only means by which the death of a pregnant woman can be avoided. Even in these circumstances the intentional killing of the unborn child is unlawful.

Advances in obstetrics, foetology and prenatal healthcare make the conditions in which such interventions can be deemed necessary, and therefore lawful, increasingly rare. Nevertheless, the ECtHR considered that the circumstances in which women's lives could only be saved by abortion were beyond the ability of current Irish clinical practice to deal with. It dismissed existing medical consultation procedures as inadequate since "no criteria or procedures have been subsequently laid down in Irish law...by which that risk is to be measured or determined, leading to uncertainty as to its precise application." (para 253) However, as already demonstrated Ireland's standard of maternal healthcare does not bear this out.

Abortion is not a means of protecting women's health.

The reduction of maternal mortality rates in developed countries has been achieved by increased standards of maternal healthcare and by improving the general health status of women. This is true whether women have an abortion or carry to term. Better ante and post-natal care, the availability of midwives and birth attendants, medical interventions such as assisted delivery and caesarean section, decent sanitation, clean water and the ability to provide antibiotics and blood transfusions where necessary, have all contributed to dramatically reducing maternal mortality. Such improvements in basic healthcare, combined with policies such as health insurance, free maternity services, offering protection to pregnant women from domestic violence, involving men in maternal health, increasing efforts to prevent child marriage and ensuring young women postpone their first pregnancy, will significantly help the achievement of the MDG goal to reduce the global maternal mortality rate.

In the US, the availability of penicillin from 1943 dramatically helped to reduce the number of maternal deaths due to abortion from around 700 per 100,000 live births per year by nearly two thirds in 1953; and, in subsequent years, prior to the introduction of legal abortion, maternal deaths had declined to just 10-20 per year.

The World Health Organisation has declared that the dramatic decline in maternal mortality rates in the developed world coincided "...with the development of obstetric techniques and improvement in the general

health status of women.” WHO do not cite abortion as a cause, because no link has been shown to exist.

In England and Wales, maternal mortality declined dramatically during the 40's and 50's with the introduction of antibiotics, transfusions, and better pregnancy management techniques. More recently, countries like Malaysia and Sri Lanka have achieved rapid improvements in maternal health by making professional midwives and supervisory nurse-midwives widely available. In both examples, abortion was not legally available. It is clear that the key to maternal health is modern medicine and better health care, not legal abortion.

In India, where abortion laws have recently been widened to include abortion for social and economic reasons, the procedure is still practised under dangerous conditions and maternal mortality rates remain high. In 1993, Poland severely restricted its abortion laws and its maternal death rate declined correspondingly.

It is well established that legalising abortion increases the number of abortions. For example, in South Africa the number of abortions increased from 1,600 in 1996, the year before abortion was made legal, to 85,621 in 2005. Therefore, in countries where access to quality health care is poor, if abortion were to become legal, the increased numbers of women accessing abortion would potentially increase overall maternal mortality and morbidity as legal abortions would be carried out in the existing substandard healthcare conditions. Furthermore, already stretched healthcare regimes would potentially come under even more pressure, resulting in poorer care for women's health in general.

In the US, more than 300 women have died from legal abortions since the procedure was legalised nationwide in 1973. Even under the best medical conditions an experienced abortionist may cause injuries that lead to haemorrhage, infection and death. In the developing world where conditions are often unsanitary, emergency facilities and supplies are inadequate or entirely absent, doctors and health staff lack training in handling such situations and even the most basic medical resources such as antibiotics, and sterile gloves are scarce or unavailable, mortality rates would be expected to be substantially higher regardless of whether abortion is legalised or not. Women who are generally at risk because they lack access to a doctor, hospital or antibiotics in countries where abortion is illegal will face these same circumstances whether or not the procedure were legalised.

Conclusion

Ireland's laws and Constitution meet many of its obligations to children before birth by protecting them from abortion these laws however must be copper fastened to ensure that this protection remains intact also bearing in mind that an indeterminate number of children at the pre-natal stage of development are objectified, exploited and killed through the practice of in vitro fertilisation and related experimentation. For Ireland to fully discharge its obligations these practices must be ended. One way of reinforcing the level of protection for unborn life would be by holding a new referendum.

Similarly, the policies of successive Irish governments have failed to give due recognition to the family as the basic unit of society. Social engineering aimed at undermining the family as the basic unit of society must end. Greater State recognition of the value to society of stable family life is needed and of the rights of parents is urgently required as well as more substantial assistance to mothers working in the home.