UNIVERSAL PERIODIC REVIEW (UPR) STAKEHOLDER SUBMISSIONS

CHOICE IRELAND & the IRISH FEMISNIST NETWORK

Submission to the United Nations
Universal Periodic Review

Twelfth Session of the Working Group on the UPR
Human Rights Council
6th October 2011

EXECUTIVE SUMMARY

Choice Ireland is a feminist organisation of volunteers, who come from various backgrounds, which aims to promote **reproductive freedom** and access to all forms of reproductive choices and **unbiased sex education** in Ireland. The Irish Feminist Network (IFN) is an organisation aimed at challenging **gender inequality** in Ireland.

The key points that Choice Ireland the IFN wish to focus on are:

- The lack of access to all forms of reproductive choices within Ireland
- The lack of unbiased sex education due to the high percentage of state-run schools with a Catholic ethos

I. BACKGROUND AND FRAMEWORK

Choice Ireland respectfully submits comments concerning Ireland for the consideration by the Human Rights Council (HRC) within its Universal Periodic Review of Ireland in its twelfth session, on the 6th October 2011.

Choice Ireland was founded in 2007 and has been working alongside other grassroots organisations to promote reproductive freedom within Ireland ever since. Choice Ireland takes part in many human rights activities and campaigns throughout Ireland, including the recent campaign run by the Irish Family Planning Association to highlight the lack of progress made on the Millennium Development Goal part 5b (Universal Access to Reproductive Health). Campaigns run by Choice Ireland include:

- Over-the-counter access to emergency contraception (recent success)

- Demanding legislation relating to women's health centres (where the agency may be providing false and judgemental information to women in a crisis pregnancy)
- To legislate for the C case, following the judgement made by the European Court of Human Rights

Established in May 2010, the Irish Feminist Network aims to make feminism relevant and accessible to the next generation of women, and engage all people in working for change. The IFN organises regular meetings throughout the year to share ideas and take action against injustices faced by women in Ireland. It also aims to hold discussion groups and workshops to further education about feminism and its practical application, as well as organising campaigns around specific feminist issues such as women's political and media representation. The IFN is an organisation committed to actively protesting against gender inequalities across Ireland.

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

A. Cooperation with human rights mechanisms

Ireland has a constitution that seeks to protect the life of the unborn. As a result, abortion is not available in Ireland. The Supreme Court, however, has interpreted the constitution to allow abortion when the right to life of the woman arises, and which they have interpreted to include a risk of suicide (the X case – appendix III). The Supreme Court urged the government to legislate for situations where the woman's life was threatened and regulate availability of abortion in those circumstances. The government has not done so and were recently castigated by the European Court of Human Rights for such failure (the C case - appendix II).

The foregoing ignores the right of a woman to choose to have an abortion in circumstances where her life is not in peril, for example, in cases involving rape, incest, and domestic violence, or indeed for broader reasons such as career, financial constraints, emotional stability and even medical reasons not amounting to a threat to her life. This, by definition, is discrimination affecting only women and can be a major constraint on the bodily integrity in which a woman should enjoy, in addition to the devastating consequences of being forced to carry an unwanted pregnancy to full term. The Irish constitution is heavily influenced by religious mores which have traditionally been male dominated and has tended to subjugate women.

B. Implementation of International Human Rights Obligations

Ireland has signed the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of Discrimination against Women. As such, Ireland should be promoting a society that reflects these commitments, which includes the removal of all barriers interfering with a woman's access to health services, education and information, including in the area of sexual and reproductive health.

Instead of legislating for the X case (1992), the government held two referenda, one in 1992, and another in 2002, which if passed, would have further restricted access to abortion in Ireland by effectively removing the decision made by the Supreme Court from the Irish Constitution. This shows the utter contempt that the Irish government has for implementing full and effective healthcare for women.

III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS (Approx. 100 words)

In the past four years, the only notable achievement made by Ireland with regard to reproductive healthcare was the provision of emergency contraception over the counter in pharmacies, without the requirement of a prescription from a general practitioner (whom were legally entitled to refuse to provide a prescription on personal grounds).

The challenges faced by the state include:

- A male dominated government (approximately 85 %)
- A public school system which is dominated by a Catholic ethos (approximately 95 % of public schools), providing young adults with the Catholic viewpoint on the abortion debate, with no alternative
- Lack of religious freedom; people in Ireland often have difficulties enrolling their children in school if they are not of a Catholic background, as a baptismal certificate is often a pre-requisite to enrol in many publicly funded schools, without which a child may go to the bottom of the waiting list

IV. KEY NATIONAL PRIORITIES

Ireland should undertake the following to improve its human rights:

- Legislate for the provisions set out in the constitution (where a woman's life is at risk)
- Implement changes to the Irish constitution for full access to reproductive choice based on best practice abroad
- Work to remove the Catholic ethos from publicly funded schools
- Remove restrictions on non-Catholic children enrolling in public schools

V. CAPACITY BUILDING AND TECHNICAL ASSISTANCE

Efforts should be made by the international community to put pressure on Ireland to make progress on its reproductive rights. Full change is unlikely to come from within Ireland in the near future due to the influence of the Catholic Church on the developing minds of our young adults.

RECOMMENDATIONS

First of all, it is recommended that Ireland legislates for the provision of abortion where the life of the woman is at risk, this is already enshrined in our constitution, but the government have failed to legislate for this.

It is also recommended that Ireland looks at best practice abroad, especially from its nearest neighbours in Europe, on how to implement sufficient reproductive healthcare that includes access to all reproductive choices. This would involve making changes to the Irish constitution to incorporate the bodily integrity of Irish women.

APPENDIX

- Extract of the Irish Constitution
- Press release from the European Court of Human Rights ruling on A, B and C v Ireland
- Ruling of the Attorney General v X

Appendix I
Extract from the Irish constitution:

Article 40

3° 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.

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.

Appendix II

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

no. 974
16.12.2010

Rights to abortion in Ireland

In today's Grand Chamber judgment in the case A, B. and C v. Ireland (application no. 25579/05), which is final[1], the European Court of Human Rights held:

By eleven votes to six, that there had been **no violation of Article 8 (right to private and family life)** of the European Convention on Human Rights in respect of the first and the second applicants, and

unanimously, that there had been a **violation of Article 8** in respect of the third applicant.

The case concerned the complaint by three women that the restrictions on abortion in Ireland stigmatised and humiliated them, risked damaging their health, and, in the third applicant's case, even her life.

Principal facts

The applicants are three women over 18 years of age who live in Ireland: two are Irish nationals and one is a Lithuanian national.

All three applicants travelled to the UK in 2005 to have an abortion after becoming pregnant unintentionally.

The first applicant, unmarried, unemployed and living in poverty, had four children all of whom had been placed in foster care. A former alcoholic struggling with depression, she decided to have an abortion to avoid jeopardising her chances of reuniting her family. She paid for the abortion in a private clinic in the UK by borrowing money from a money lender.

The second applicant was not prepared to become a single parent. While initially she feared an ectopic pregnancy, she was aware that it was not prior to travelling to the UK for an abortion.

The third applicant, in remission from cancer and unaware that she was pregnant, underwent a series of check-ups contraindicated during pregnancy. Once she discovered she was pregnant, she believed that there was a risk that her pregnancy would cause a relapse of the cancer and was thus concerned for her health and life. She was also concerned about a risk to the foetus if she continued to term and claimed she could not obtain clear advice. She therefore decided to have an abortion in England.

In Irish law, abortion is prohibited under criminal law, and in particular, in section 58 of the Offences Against the Person Act of 1861 ("the 1861 Act"), still in force. It stipulates that every pregnant woman, or a third party, who undertakes any unlawful action with

1 Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

the intent to provoke a woman's miscarriage, shall be guilty of a crime which carries a penalty of life imprisonment. A referendum held in 1983 resulted in the Eighth Amendment to the Constitution: Article 40.3.3 of the Irish Constitution acknowledged the right to life of the unborn and, with due regard to the equal right to life of the mother, guaranteed to respect the latter in national laws.

As a result of cases taken before the Irish courts concerning the interpretation of the Eighth Amendment, the Supreme Court held, in a judgment in the X case in 1992, that abortion was lawful in Ireland, if there was a real and substantial risk to the life, as distinct from the health, of the mother as a result of her pregnancy. In similar judgments, delivered in subsequent cases, the courts regretted that Parliament had not enacted legislation regulating that constitutionally guaranteed right. In 1992, a referendum resulted in the Thirteenth Amendment to the Constitution, which lifted the ban on travelling abroad for abortion and allowed information about lawfully available abortions abroad to be disseminated in Ireland.

The first two applicants believed that they were not entitled to abortion in Ireland as Irish law did not allow abortion for health and/or well-being reasons, but solely when there was an established risk to the mother's life, including from suicide. The third applicant submitted that, although she believed her pregnancy put her life at risk, there was no law or procedure through which she could have that, and – as a result - her right to an abortion in Ireland, established.

On their return to Ireland the applicants claim they experienced medical complications.

Complaints, procedure and composition of the Court

All three women complained that the impossibility for them to have an abortion in Ireland made the procedure unnecessarily expensive, complicated and traumatic. In particular, they claimed that the restriction on abortion stigmatised and humiliated them and risked damaging their health and, in the third applicant's case, even her life.

The third applicant relied on Article 2 (right to life) and all three applicants relied on Article 3 (prohibition of inhuman and or degrading treatment). The first and the second applicant complained under Article 8 (right to respect for family and private life) about the restrictions on lawful abortion in Ireland which meant that they could not obtain an abortion for health or well-being reasons and the third applicant complained under that Article about the absence in Ireland of laws implementing the Constitutional provision acknowledging the right to life of the future mother. The applicants claimed that the fact that women – provided they had sufficient resources – could travel outside Ireland to have an abortion defeated the aim of the restriction, and the fact that abortion was available in Ireland only in very limited circumstances was disproportionate and excessive. Furthermore, the restriction placed an excessive burden on the applicants as women, in breach of Article 14 (prohibition of discrimination), and particularly on the first applicant, whose financial means were extremely limited.

The application was lodged with the European Court of Human Rights on 15 July 2005. The Chamber to which the case was assigned relinquished jurisdiction in favour of the Grand Chamber on 7 July 2009. A Grand Chamber hearing took place in public in the Human Rights Building in Strasbourg on 9 December 2009.

Numerous third parties have submitted written observations: the Lithuanian Government (one of the applicants being Lithuanian); the European Centre for Law and Justice in association with Kathy Sinnott (Member of the European Parliament); the Family Research Council (Washington D.C.) and the Society for the Protection of Unborn Children (London); the Pro-Life Campaign; Doctors for Choice (Ireland) and the British

Pregnancy Advisory Service; and, the Center for Reproductive Rights and the International Reproductive and Sexual Health Law Programme.

Judgment was given by the Grand Chamber of 17, composed as follows:

Jean-Paul **Costa** (France), *President*,
Christos **Rozakis** (Greece),
Nicolas **Bratza** (the United Kingdom),
Françoise **Tulkens** (Belgium),
Josep **Casadevall** (Andorra),
Giovanni **Bonello** (Malta),
Corneliu **Bîrsan** (Romania),
Elisabet **Fura** (Sweden),
Alvina **Gyulumyan** (Armenia),
Khanlar **Hajiyev** (Azerbaijan),
Egbert **Myjer** (the Netherlands),
Päivi **Hirvelä** (Finland),
Giorgio **Malinverni** (Switzerland),
George **Nicolaou** (Cyprus),
Luis **López Guerra** (Spain),
Mihai **Poalelungi** (Moldova), *Judges*,
Mary **Finlay Geoghegan** (Ireland), *ad hoc Judge*,

and also Johan **Callewaert**, *Deputy Grand Chamber Registrar.*

Decision of the Court

Scope of the case

The Court emphasised that its role was to examine the legal position on abortion in Ireland in so far as it directly affected the present applicants.

It then observed that it had not been disputed that all three applicants had travelled to England for abortion: the first two for reasons of health and well-being, and the third applicant given her fear that her pregnancy posed a risk to her life. While travel abroad had undoubtedly represented a psychological burden for all three, and for the first applicant a financial drain, the Court found that the necessary medical advice and treatment had been available to them in Ireland both before and after their abortions. The Court found that, apart from the psychological impact on the applicants of going abroad to do something which was a criminal offence in their own country, the criminal sanctions in Ireland applicable to abortion had had no direct relevance to the complaints of the first and second applicant. The Court examined the risk of those sanctions in the third applicant's case together with the merits of her complaint.

Exhaustion of domestic remedies

The Court found ineffective the domestic legal remedies which the Government considered the applicants should have exhausted, which remedies included a constitutional action and an application under the European Convention on Human Rights Act 2003. Consequently, there was no need for the first and the second applicant to use them before turning to the Court. As regards the third applicant, the Court examined that question together with its analysis on the merits.

Article 2

The Court recalled that there had been no legal obstacle to any of the applicants travelling abroad for an abortion. Given that the third applicant, who had suffered

post-abortion complications, had not claimed that those had represented a threat to her life, the Court rejected her complaints as inadmissible.

Article 3

The Court rejected all three applicants' complaints under Article 3, as it found that the psychological and physical burden undoubtedly suffered by each of them as a result of their travelling abroad for an abortion, had not been sufficiently grave to represent inhuman or degrading treatment prohibited under Article 3.

Article 8

Third parties provided lengthy submissions both in favour and against widening access to abortion services in Ireland.

The Court held that, while Article 8 could not be interpreted as conferring a right to abortion, its prohibition in Ireland came within the scope of the applicants' right to respect for their physical and psychological integrity, hence within their private lives, and thus under Article 8. The Court examined the complaints of the first and second applicant separately from those of the third applicant.

First and second applicant

The Court found that the prohibition on the termination of the first and second applicants' pregnancies had represented an interference with their right to respect for their private lives. That interference had been in accordance with the law and had pursued the legitimate aim of protecting public morals as understood in Ireland.

Examining whether the prohibition had been necessary in a democratic society, and in particular, whether a pressing social need had existed to justify it, the Court observed that a consensus existed among the majority of the members States of the Council of Europe allowing broader access to abortion than under Irish law: abortion was available on request in some 30 European countries; it was available for health-related reasons in approximately 40 States; and it was available for well-being reasons in about 35 of those. Only three States[2] had more restrictive access to abortion than Ireland, in which States abortion was prohibited regardless of the risk to a woman's life. In addition, Ireland was the only Council of Europe member State which allowed abortion only when the pregnancy posed a risk to the life of the expectant mother.

However, the Court found that the undisputed consensus among the Council of Europe member States was not sufficient to narrow decisively the broad margin of appreciation the State enjoyed in that context. The Court had accepted in a prior case - *Vo v. France* - that the question of when life began came within the States' margin of appreciation. As there was no European consensus on the scientific and legal definition of the beginning of life and as the right of the foetus and mother were inextricably linked, a State's margin of appreciation concerning the question of when life began implied a similar margin of appreciation as regards the balancing of the conflicting interests of the foetus and the mother.

The Court then applied that margin of appreciation. Having regard to the first and second applicants' right to travel abroad to obtain an abortion and to appropriate pre- and post-abortion medical care in Ireland, as well as to the fact that the impugned prohibition in Ireland on abortion for health or well-being reasons was based on the profound moral values of the Irish people in respect of the right to life of the unborn, the Court concluded that, the existing prohibition on abortion in Ireland struck a fair balance

[2] Andorra, Malta and San Marino

between the right of the first and second applicants to respect of their private lives and the rights invoked on behalf of the unborn.

There had, therefore, been no violation of Article 8 as regards the first and the second applicants.

Third applicant

The Court noted that the third applicant had a rare form of cancer and she feared it might relapse as a result of her being pregnant. The Court considered that the establishment of any such risk to her life clearly concerned fundamental values and essential aspects of her right to respect for her private life.

It went on to find that the only non-judicial means for determining such a risk on which the Government relied, the ordinary medical consultation between a woman and her doctor, was ineffective. The uncertainty surrounding such a process was such that it was evident that the criminal provisions of the 1861 Act constituted a significant chilling factor for women and doctors as they both ran a risk of a serious criminal conviction and imprisonment if an initial doctor's opinion that abortion was an option as it posed a risk to the woman's health was later found to be against the Irish Constitution.

Neither did the Court consider recourse by the third applicant to the courts (in particular, the constitutional courts) to be effective, as the constitutional courts were not appropriate for the primary determination of whether a woman qualified for a lawful abortion. It was likewise inappropriate to ask women to pursue such complex constitutional proceedings when their right to have an abortion if pregnancy posed a threat to their life was not disputed. In any event, it was unclear how the courts were to enforce any mandatory order requiring doctors to carry out an abortion, given the lack of clear information from the Government to the Court as regards lawful abortions currently carried out in Ireland.

The Court concluded that neither the medical consultation nor litigation options, relied on by the Irish Government, constituted effective and accessible procedures which allowed the third applicant to establish her right to a lawful abortion in Ireland. Moreover, there was no explanation why the existing constitutional right had not been implemented to date.

Consequently, the Court concluded that Ireland had breached the third applicant's right to respect for her private life given the failure to implement the existing Constitutional right to a lawful abortion in Ireland. Accordingly, there had been a violation of Article 8.

The Court rejected the applicants' remaining complaints.

Article 41 (just satisfaction)

Under Article 41 (just satisfaction) of the Convention, the Court held that Ireland was to pay the third applicant 15,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinions

Judge Lopez Guerra, joined by Judge Casadevall, and Judge Finlay Geoghegan expressed concurring opinions. Judges Rozakis, Tulkens, Fura, Hirvela, Malinverni and Poalelungi expressed a joint partly dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

Appendix III

The Supreme Court rules in Attorney General v X that a 14 year old girl, known as X, pregnant as a result of rape, faces a real and substantial risk to her life due to threat of suicide and this threat could only be averted by the termination of her pregnancy. Therefore, X is entitled to an abortion in Ireland under the provision of article 40.3.3

of the Constitution that requires the State to have "due regard to the equal right life of the mother"

Supreme Court of Ireland decision on the X case
http://www.bailii.org/ie/cases/IESC/1992/1.html

The 14 year old girl subsequently had a miscarriage before an abortion could be carried out.