



## **Submission to the United Nations Special Rapporteur on Violence against Women on mistreatment and violence against women during reproductive healthcare in Ireland and Northern Ireland**

The *Abortion Rights Campaign (ARC)* is a grassroots all-volunteer group dedicated to achieving free, safe and legal abortion care across the island of Ireland, for everyone who wants or needs it. ARC was one of the three core groups that formed the civil society organisation *Together for Yes*, which successfully campaigned for a Yes vote in the referendum to repeal the 8th Amendment to the Irish constitution in May 2018.

*Disabled Women Ireland (DWI)* is a grassroots group that advocates for the rights and equality of women, girls, trans, and non-binary people with disabilities in Ireland. Reproductive justice and access to quality maternity and reproductive health services is a disability rights issue as well as a feminist one.

### **Executive summary**

In this submission to the Special Rapporteur on Violence against Women we address issues of mistreatment of women and pregnant people in reproductive healthcare in both the Republic of Ireland and Northern Ireland. Disabled Women Ireland and the Abortion Rights Campaign jointly call on the Special Rapporteur to recognise and condemn the violence imposed on pregnant people in Ireland and Northern Ireland from the criminalisation of abortion, denial of agency and bodily autonomy, sexism and ableism in medical settings and society, and failure to provide the necessary standard of care to women, trans and non-binary people during pregnancy.

We call upon the Special Rapporteur to make the following recommendations to the Irish State:

- Revise the National Consent Policy as a matter of urgency so that pregnant people are guaranteed their full rights to choose and refuse medical treatment.
- Decriminalise abortion and put an end to the dangerous chilling effect on health care providers which undermines pregnant people's quality of care.
- Urgently review other problematic areas of the new abortion law (such as the use of ambiguous terminology, the mandatory waiting period, the 12-week cut-off, and inadequate access to information for people with disabilities) with a view to rectifying these without delay, rather than in three years.

- Make provisions for people from Northern Ireland who need to access abortion care in the Republic.
- Take steps more broadly to ensure the full and equal access to safe reproductive healthcare to all in Ireland, particularly those from marginalised groups.

We call upon the Special Rapporteur to make the following recommendations to the United Kingdom:

- Immediately make the necessary changes to UK law to decriminalise abortion and provide full abortion services in Northern Ireland, so that the rights of Northern Irish people are protected equally to other people in the UK and Ireland in the absence of a devolved government in Northern Ireland.
- Take steps more broadly to ensure the full and equal access to safe reproductive healthcare to all in Northern Ireland, particularly those from marginalised groups.

### **Context**

Ireland has a long history of mistreatment and violence towards women, particularly during pregnancy. While the institutions that were used to systematically imprison and enslave people who got pregnant outside of marriage have been closed, their legacy lives on in many ways.

- Ireland recently repealed its constitutional ban on abortion. However, the law that has replaced the ban is inherently misogynistic and has such strict time limits that it will likely result in forced continuation of pregnancy for some. There remains uncertainty over whether pregnant people have the right to consent to or refuse to consent to medical care.
- Northern Ireland has an extreme and archaic abortion ban in force, the 1861 Offences Against the Person Act. Every year approximately 900 pregnant people are forced to travel out of Northern Ireland for abortion, including children, rape victims and those who have received a diagnosis of a severe or fatal foetal anomaly.
- Cultural factors, including sexism and ableism in hospitals, a lack of accurate sex education and abortion stigma remain major problems which affect women and people who can become pregnant on a daily basis, with the negative impacts most acute for those from marginalised communities.

In the rest of this submission, we describe specific instances of human rights abuses which illustrate these core problems.

### **Ireland's national policy on consent to medical care denies pregnant people their right to choose and refuse treatment**

The Health Service Executive (HSE) is Ireland's national public health service provider. In its National Consent Policy<sup>1</sup> the HSE states that "consent must be obtained before starting any treatment or investigation." However, when it comes to individuals who are pregnant, the policy contradicts itself:

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<sup>1</sup> Health Service Executive (2019) *National Consent Policy*. Available at: <https://www.hse.ie/eng/about/who/qid/other-quality-improvement-programmes/consent/>

“The consent of a pregnant woman is required for all health and social care interventions. However, because of the constitutional provisions on the right to life of the ‘unborn’, there is significant legal uncertainty regarding the extent of a pregnant woman's right to refuse treatment in circumstances in which the refusal would put the life of a viable foetus at serious risk. In such circumstances, legal advice should be sought as to whether an application to the High Court is necessary. Relevant factors to be considered in this context may include whether the risk to life of the unborn is established with a reasonable degree of medical certainty, and whether the imposition of treatment would place a disproportionate burden or risk of harm on the pregnant woman.”<sup>2</sup>

The constitutional provision referred to in this section is the now repealed Article 40.3.3, better known as the 8th Amendment. This section of the National Consent Policy should be changed given the removal of this provision from the Irish Constitution. However, in April 2019, almost a year after the referendum, the HSE revealed that a review of the National Consent Policy had not yet commenced. Currently this policy remains in force and therefore it is legally uncertain whether or not pregnant people have the right to refuse treatment during pregnancy or childbirth.

This policy has had a real and material impact on the treatment of women and pregnant people. Under the national policy to abrogate pregnant patients' consent, such patients have been subjected to a vast array of medical interventions against their will. Pregnant individuals have been subjected to forced cesarean surgical delivery,<sup>3</sup> forced episiotomy,<sup>4</sup> and forced membrane sweeps<sup>5</sup> or artificial rupture of membranes (ARM)<sup>6</sup> to hasten delivery,

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<sup>2</sup> Section 7.7.1, cited above.

<sup>3</sup> Reilly, J. (2013). “Hospital sought court order to force mother to have C-section” Irish Independent, 10 March. Available at:<https://www.independent.ie/irish-news/courts/hospital-sought-court-order-to-force-mother-to-have-c-section-29120379.html> See also: AIMS Ireland (2013) “No Country for Pregnant Women - Mother A v. Waterford Regional Hospital”, available at:<http://aimsireland.ie/no-country-for-pregnant-women-mother-a-v-waterford-regional-hospital/>; Carolan, M. (2016) “Judge refused to order woman to undergo Caesarean section” The Irish Times, 2 November, available at: <https://www.irishtimes.com/news/crime-and-law/judge-refused-to-order-woman-to-undergo-caesarean-section-1.2852130>; Williams, G. (2018) “Geraldine Williams’ statement on why we need #Repeal4BetterBirth”, available at:<http://midwivesforchoice.ie/wp-content/uploads/2016/02/Mother-B-statement-17-feb.pdf>

<sup>4</sup> AIMS Ireland “What Matters to YOU?” 2014 Report on Consent in the Irish Maternity System, available at: <http://aimsireland.ie/what-matters-to-you-survey-2015/womens-experiences-of-consent-in-the-irish-maternity-services/>

<sup>5</sup> Association for the Improvement of Maternity Services Ireland [AIMS Ireland] (2014) “What Matters to You? - 2014 Report on Consent in the Irish Maternity System”. Available at:<http://aimsireland.ie/what-matters-to-you-survey-2015/womens-experiences-of-consent-in-the-irish-maternity-services/>

<sup>6</sup> Madden, E. (2014) “Woman sued HSE following the birth of her second baby” Irish Medical Times, 5 September, available at: <https://www.imt.ie/opinion/woman-sued-hse-following-the-birth-of-her-second-baby-05-09-2014/>; AIMS Ireland (2014) “Not a ‘consent’ issue - Hamilton v HSE”, available at: <http://aimsireland.ie/not-a-consent-issue>

as well as the denial of pain medication,<sup>7</sup> the denial of life-sustaining cancer treatment,<sup>8</sup> and, of course, the denial of abortion. The Association of Maternity Services Ireland has conducted research showing the ongoing failure to respect pregnant people's fundamental rights in labour and birth. In its most recent survey conducted in 2014 in which 2,836 women who gave birth in Ireland between 2010-2014 participated, 50 percent reported being denied the opportunity to refuse a test, procedure or treatment during labour.<sup>9</sup>

By ignoring its responsibility to immediately bring its consent policy in line with the new status of pregnant people after the repeal of the 8th Amendment, the HSE and national government is actively violating the decision-making authority, bodily integrity, and equality of pregnant people within the State. It is also worth noting that pregnant people and disabled people are the only two groups of people who are systematically stripped of their right to make their own decisions in the Republic of Ireland.

### **Misuse of the law to violate pregnant women's rights**

The State has used the law and the judicial system as a weapon against women. Pregnant women have been threatened with legal proceedings if they do not consent to cesarean deliveries or other interventions. "Mother A"<sup>10</sup> and "Ms. B"<sup>11</sup> are two such women who were brought to the High Court over their birth decisions as medics tried to force them to undergo cesarean operations, citing remote risks associated with attempting vaginal childbirth as justification for usurping their patients' right to make decisions.

In 2014, the right of a woman to her own body even in death was brought into question. Ms P<sup>12</sup> was a young mother who suffered an accident and became clinically brain dead. She was placed on life support against her family's wishes. She was approximately 14 weeks pregnant at the time. Her parents and her partner both requested that life support be withdrawn so she could have a dignified death. Because of her pregnancy, the hospital refused to withdraw the life support. The refusal was due to the perceived conflict between the foetus's right to life and the woman's right to a dignified death in line with her family's wishes. The foetus was not viable. Over the following weeks Ms P's condition deteriorated. Her children came to see her and were distressed by her appearance. On December 15, 2014, Ms P's father applied to the High Court to have her life support turned off. The foetus was assigned a lawyer and represented in court. The family had to continue to wait for an answer over Christmas. Finally on December 26, the Court allowed the life support to be withdrawn, after accepting that the foetus was not likely to be born alive. The court maintained the foetus held a right to life and a legal precedent was set which could allow this

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<sup>7</sup> Ibid

<sup>8</sup> Lambe, F. (2010) "Abortion nightmare for cancer sufferer Michelle" Irish Independent, 28 December, available at:

<https://www.independent.ie/regionals/goreyguardian/news/abortion-nightmare-for-cancer-sufferer-michelle-27340507.html>; Roche, B. (2018) "Mother might still be alive if not for Eighth Amendment" The Irish Times, 13 May, available at:

<https://www.irishtimes.com/news/ireland/irish-news/mother-might-still-be-alive-but-for-eighth-amendment-gynaecologist-1.3493958>

<sup>9</sup> AIMSI "What Matters to YOU?" (see footnote 4)

<sup>10</sup> Mother A v. Waterford Regional Hospital

<sup>11</sup> HSE v. B

<sup>12</sup> PP v. HSE

horrific situation to occur again.

### **Marginalised groups experience compounded forms of discrimination in reproductive health settings**

Many groups are disproportionately negatively impacted by human rights violations during pregnancy and childbirth in Ireland. This section of our submission will concentrate on the experiences of people with disabilities and migrants and ethnic minority groups.

There are over 100,000 women with disabilities of childbearing age living in Ireland. Disabled women and pregnant people face numerous barriers to adequate maternity, sexual, and reproductive health services, barriers which endanger their lives and increase their risk of mistreatment within healthcare services.

Pregnant people with pre-existing medical conditions accounted for 68% of maternal deaths in the 2013-2015 period. One tragic example of this occurred in the death of a new mother in March 2019. The vast majority of Irish maternity hospitals do not allow partners or loved ones to remain with their partner overnight. These restricted visiting hours, and the resulting lack of overnight support, have had dangerous consequences. A woman and her newborn baby died in Cork University Maternity Hospital after she fell out of bed while breastfeeding.<sup>13</sup> The woman was thought to have had an epileptic seizure while breastfeeding her four day old son between the hours of 7am and 8am while alone and unattended.

People with disabilities in Ireland are twice as likely to experience basic deprivation and consistent poverty which affects their ability to access basic health services on an equal basis as their non-disabled peers. In addition to financial barriers, prejudicial attitudes, inaccessible information, physical and communication barriers and an inaccessible transportation infrastructure impedes disabled women's and pregnant people's sexual and reproductive rights and freedoms, including the right a safe pregnancy and childbirth.<sup>14</sup>

Migrants and people from ethnic minority backgrounds also suffer disproportionately under Irish structures. Earlier this year, a member of activist group Migrants and Ethnic Minorities for Reproductive Justice (MERJ) shared her experience of the appalling treatment she received in an Irish maternity hospital during late 2018, following the vote to repeal the 8th Amendment but before the enactment of new legislation.<sup>15</sup> She recounted the multiplicity of ways in which she was denied autonomy over her own care, including being refused treatment for cervical incompetence at an early stage of her pregnancy. This refusal by hospital staff to see her for regular antenatal appointments at this stage of pregnancy

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<sup>13</sup> The Irish Times 28 March 2019 *Mother who died in maternity hospital had epilepsy* Available at: <https://www.irishtimes.com/news/health/mother-who-died-in-maternity-hospital-had-epilepsy-1.3840828>

<sup>14</sup> Bruton, L. (2018) "Sexual health, if you are living with a disability, is not a level playing field," Irish Times, 6 March. Available at: <https://www.irishtimes.com/life-and-style/health-family/sexual-health-if-you-are-living-with-a-disability-is-not-a-level-playing-field-1.3406100>

<sup>15</sup> MERJ (2019) My activism and my experience in a maternity hospital in Ireland. Available at: <http://merjireland.org/index.php/2019/04/09/my-activism-my-experience-in-a-maternity-hospital-in-ireland/>

contributed to the woman's baby surviving mere hours after her premature birth at 22 weeks' gestation. In describing her experience in the run-up to, during and following the delivery, this woman said that she felt discriminated against and profoundly violated. She recalled how her questions and concerns were evaded and ignored, and recounted the substantive injuries she sustained when several doctors manually removed her placenta after the delivery. This woman's identity as a Brazilian national compounded the discrimination she received at the hands of the hospital. She reported being treated in a patronising and misogynistic manner by staff, who spoke about her in her presence rather than consulting her directly. Migrants and people from ethnic minority backgrounds, like people with disabilities, experience disproportionately high maternal death rates. In the 2013-15 period some 40% of maternal deaths were among migrants, despite the fact that this group only accounts for 17% of the general population.<sup>16</sup>

In her closing remarks, she says, "We know our bodies better than anyone else. We should learn to read their signs and be confident about it. We must question doctors!!! We should ask them to clarify our doubts or to seek other opinions. At the end of the day it is our lives in their hands – and we have only one!"<sup>17</sup>

It is evident from these women's recent experiences as well as the body of evidence compiled by the Association of Maternity Services Ireland that the substantial problems in the Irish maternity system have not disappeared with the repeal of the 8th amendment.

### **Denial of abortion and forced hospitalisation and surgical delivery**

The case of Ms Y illustrates troubling treatment of migrants and serious human rights violations that could recur. In 2014, a young asylum-seeking woman known only as "Ms Y" who was raped in her country of origin arrived in Ireland to discover that she had become pregnant as a result of the assault.<sup>18</sup> At eight weeks' gestation, she indicated that she did not want to continue the pregnancy and sought advice on obtaining an abortion outside of Ireland, but because of her migration status she was unable to leave the State freely. Reports indicate that she was not given the support she needed to complete the paperwork required to leave the State, which was complex and written in English, a language she did not speak. Unable to access an abortion, she became increasingly distressed and then suicidal; a medical report from that time noted that Ms Y had a "strong death wish." Further assessment and counselling was recommended; however, she was not referred for psychological or psychiatric support or treatment. Nor was she referred for antenatal maternity care. In July 2014, Ms Y managed to travel to the UK with the intention of obtaining an abortion. Upon arrival in the UK, she was arrested and detained for up to eight hours. The medical records from her assessment in custody in the UK state that she was "suicidal since being pregnant as a result of rape." Ms Y was returned to Ireland, as she was not legally permitted to enter the UK.

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<sup>16</sup> University College Cork (2015) *Maternal death enquiry report 2013-15*. Cork: University College Cork.

<sup>17</sup> MERJ (2019) My activism and my experience in a maternity hospital in Ireland, cited above.

<sup>18</sup> McDonald, D. and Sheehan, F. (2014) "Baby delivered as woman refused abortion under law," Irish Independent, 16 August. Available at: <http://www.independent.ie/irish-news/health/baby-delivered-as-woman-refused-abortion-under-law-30512513.html>

Some weeks later she was brought to an Irish maternity unit, where again she communicated her suicidal ideation and her desire to have an abortion. Ms Y was not advised of her right to a life-saving abortion under the law that was in force at that time, the Protection of Life During Pregnancy Act (PLDPA) 2013. Medical records noted how doctors "hoped to maintain the patient on the ward" until the foetus was viable.

At 24 weeks' gestation Ms Y was finally assessed under the criteria of the Protection of Life During Pregnancy Act. She was certified as suicidal but allegedly refused an abortion at 24 weeks' gestation on the premise that the foetus was, by that stage, potentially viable. She then went on hunger strike, refusing even water, in protest at being forced to continue her pregnancy, and a High Court injunction was sought to forcibly hydrate her. After being told her pregnancy would be terminated, she resumed eating and drinking.<sup>19</sup> However the termination was not as expected: Ms Y's pregnancy was eventually "terminated" by cesarean section delivery at just under 26 weeks' gestation. Ms Y was later granted refugee status.

The treatment of Ms Y by Irish State health service personnel was manipulative and abusive, and could only serve to exacerbate the trauma she was already experiencing. The medical records disclose that Ms Y was asked if she wanted to see a priest, which she declined. On another occasion, she was asked: "Do you think the baby deserves a life?" The notes also record how she was told by a doctor that the "abortion would not take the rape away."<sup>20</sup>

Ms Y's lawyer stated that:

"In my opinion, Ms Y was given no choice. I believe that she did not fully understand what was going on. How could she? I believe that she was unduly influenced into accepting the planned cesarean section, otherwise she would be kept in hospital in order to continue with the pregnancy, which was a life or death decision for my client. From what I have read, viability considerations and other legal implications were first and foremost in the minds of those involved." That such violence was perpetrated against a young woman who did not speak English and is a migrant seeking asylum compounds the injury she had already suffered.

Our organisations are concerned that a situation similar to that of Ms Y could occur again under Ireland's new abortion law. The criteria for accessing an abortion after 12 weeks are both vague and extremely limited. A person is only able to access abortion on health grounds if there is deemed to be a "risk of serious harm" to their health.<sup>21</sup> However, "serious harm" is not defined anywhere in the legislation and is not a standard medical term with a shared meaning. Past experience with the Protection of Life During Pregnancy Act (which

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<sup>19</sup> Amnesty Ireland (2016) *Ms Y's case: denied a lawful abortion in Ireland*. Available at: <https://www.amnesty.ie/ms-ys-case/>

<sup>20</sup> Sheehan, M. (2019) "Solicitor claims religious influence in Ms Y baby case," Irish Independent, 16 May. Available at: <https://www.independent.ie/irish-news/solicitor-claims-religious-influence-in-ms-y-baby-case-35666670.html>

<sup>21</sup> Health (Regulation of Termination of Pregnancy) Act 2018. Available at: <https://www.oireachtas.ie/en/bills/bill/2018/105/?tab=bill-text>

preceded the current law) shows that even those who meet the extremely demanding threshold are not guaranteed access to abortions,<sup>22</sup> because of the subjectivity inherent in vague and non evidence-based provisions governing an individual's access to healthcare. The likelihood of unintended negative consequences is compounded by the continued criminalisation of abortion within the new law.

Migrants, particularly those living under Ireland's "Direct Provision" housing system for asylum-seekers, are at greater risk of harm from the problems in Ireland's abortion law. There are no publicly available guidelines setting out how an asylum seeker in State custody can avail of assistance to obtain abortion care.

### **Problems with the new abortion law**

The recently enacted Health (Termination of Pregnancy) Act 2018 has a number of serious flaws, including:

- 12 week LMP cut-off for access to abortion on request
- A medically unnecessary three-day mandatory waiting period
- Ambiguous language on risk to health
- Continued criminalisation of anyone who provides abortion, or assists someone to access abortion, outside the narrow provisions of the law
- No positive right to abortion care

Furthermore, we believe the new abortion law discriminates against people with disabilities. People with disabilities often receive poor sex education because of prejudiced assumptions made by the education system about their desire to participate in sexual or romantic relationships. People with disabilities may have difficulty identifying a pregnancy within the twelve-week cut off period. A disability or illness may contribute to irregular periods or mask the signs of pregnancy, or inadequate access to education may mean that someone does not recognise the signs of pregnancy. If a person with a disability has trouble identifying their pregnancy on time, they could be forced to continue with an unwanted pregnancy or forced to travel to England to obtain an abortion. For people with disabilities, travel poses its own particular challenges, including additional access and mobility requirements or needing a travel companion to accompany them, which imposes an additional cost burden. The twelve-week limit could also mean those whose access to abortion is governed by more than just the law on abortion, for example, the overlap between the assisted decision-making act and the abortion act, could miss out on access to abortion because they need a longer timeframe to negotiate multiple systems.

Although the three-day mandatory waiting period is an injustice to everyone, it disproportionately affects marginalised groups such as people with disabilities, pregnant people in abusive relationships, migrants and ethnic minorities (particularly those living in Direct Provision and undocumented migrants), young people and people with low incomes. These are all groups that may find it difficult to attend two doctors' appointments within one

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<sup>22</sup> Irish Family Planning Association (2017) *Irish Family Planning Association presentation to the Citizens Assembly, 5 March 2017*. Available at: <https://www.citizensassembly.ie/en/Meetings/IFPA-s-Paper.pdf>



week given financial or practical barriers such as cost, childcare or transportation or being unable to afford to take time off work or even unable to leave the house on their own. The three-day waiting period has no medical purpose. Its purpose is to undermine people's rights to health and decision-making.

The response of both legislators and the Irish Health Service Executive (HSE) to concerns about how people with disabilities can access legal abortion on an equal basis to people without disabilities has been inadequate. "MyOptions" is the HSE's abortion information and counselling service which was set up to help pregnant people find their nearest provider. It was launched as a phone line only, showing the Government did not even consider the needs of deaf or hard-of-hearing people. As of May 2019, a text or email version of the service still does not exist, despite repeated promises that one will be established.

There are additional problems regarding how people with disabilities living in congregated settings<sup>23</sup> such as group homes or institutions will be able to access a termination. At the end of 2016 2,579 people with disabilities lived in congregated settings.<sup>24</sup> It is particularly difficult for people living in these settings to access reproductive healthcare. People living in such settings lack privacy and control over their daily decisions and would find it exceedingly difficult to undergo a days-long medical abortion in their living situation. Medical abortion is the dominant abortion method used in Ireland.

The Convention on the Rights of Persons with Disabilities (UNCRPD) sets out clear obligations that Ireland must follow in order to respect the human rights and promote the equality of people with disabilities. The convention requires states to provide information in accessible formats (Article 21), to ensure that persons with disabilities have access to the "highest attainable standard of health" and access to health services on an equal basis to those without disabilities, including reproductive health and maternity services (Article 25). By refusing to provide information on abortion services in an accessible format in a timely manner for those who are deaf or hard of hearing, the state is violating its human rights obligations.

### **Dangerous ambiguities in the new abortion law**

As alluded to above, Ireland's new abortion law is unclear regarding what constitutes criminal conduct. The law uses vague phrases instead of standard medical terms. As a result, some physicians are nervous about making a mistake by providing abortion care to anyone whose situation appears to fall into a grey area, including those whose pregnancies put their health at risk or whose fetuses are diagnosed with severe and complex but not necessarily "fatal" anomalies.

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<sup>23</sup> "Congregated settings are where 10 or more people with a disability live together in a single living unit or are placed in accommodation that is campus based. In most cases, people are grouped together and often live isolated lives away from the community, family and friends. Many experience institutional living conditions where they lack basic privacy and dignity." Available from:

<https://www.hse.ie/eng/services/list/4/disability/congregatedsettings/>

<sup>24</sup> Health Service Executive (2016) *Progress report on the implementation of "Time to move on from community settings: a strategy for community inclusion": Annual report 2016*. Dublin: Health Service Executive.

One month after the introduction of legal abortion, Dr. Fergal Malone, Master and CEO of the Rotunda Maternity Hospital in Dublin, explained that the hospital was limiting its early abortion service to 11 weeks since last menstrual period (LMP) instead of 12, because, “the legislation is written with an upper limit of 12 weeks and zero days. But there is considerable ambiguity as to whether 12 weeks means the date at which the termination starts, or the date at which the termination ends.” He continued, “Given there is a potential 14-year jail term for getting this wrong, you can understand why doctors are seeking absolute certainty and clarity on this matter....I can’t put my staff in danger where if there is ambiguity.”<sup>25</sup> Although the situation at this hospital appears to have been resolved, there is little information about practices at other hospitals.

Within the first month of legal abortion in Ireland, at least one woman and her partner were forced to travel to England to access abortion care when their foetus was diagnosed with life-threatening anomalies<sup>26</sup>, precisely the situation the law should have prevented.

### **Negative impact of criminalisation**

Treating abortion as a crime has a chilling effect on medical practitioners that often prevents them from giving the best standard of care to their patients. When a doctor has to decide whether to provide an abortion, the fear of criminal sanctions might make them reluctant to provide an abortion in cases where the law is unclear. By denying care, they might endanger the health or even the life of the pregnant person. Indeed, this has happened in Ireland, most notoriously in 2012 when medical staff at University Hospital Galway denied Savita Halappanavar treatment for an incomplete miscarriage and she died of sepsis as a result, as well as in cases where women suffering from cancer<sup>27</sup> and suicidal ideation<sup>28</sup> were denied care.

The law in Ireland also criminalises third parties such as family members or friends who help loved ones to obtain abortion care outside the parameters of the law, for example, by ordering safe but illegal pills online or perhaps even advising someone of the availability of such an option. Despite abortion in early pregnancy being available in Ireland, it is not fully accessible to all who need it. Not everyone can easily reach a provider or make repeated trips to their doctor as required by the law’s mandatory waiting period. This is evident in the

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<sup>25</sup> Bray, Jennifer (2019) “Abortion in Ireland: Four weeks in, how’s it working?” *The Irish Times*, 26 January. Available at: <https://www.irishtimes.com/life-and-style/health-family/abortion-in-ireland-four-weeks-in-how-s-it-working-1.3770442>

<sup>26</sup> K. Holland, et al., “Woman refused abortion says she was told of fatal abnormality,” *The Irish Times* (January 19, 2019). Available at <https://www.irishtimes.com/news/social-affairs/woman-refused-abortion-says-she-was-told-of-fatal-abnormality-1.3763233> AND Bray, Jennifer and Cullen, Paul (2019) “Coombe hospital says board has no role in certifying terminations”, *Irish Times*, 18 January, Available at: <https://www.irishtimes.com/news/health/coombe-hospital-says-board-has-no-role-in-certifying-terminations-1.3762054>

<sup>27</sup> Irish Council for Civil Liberties. “Case in Focus: Michelle Harte,” available at <https://www.iccl.ie/her-rights/health/michelle-harte/>

<sup>28</sup> Coyne, E. (2017) “Abortions were Denied to Women at Suicide Risk”, *The Irish Times*, 20 June 2017. Available at: <https://www.thetimes.co.uk/article/abortions-refused-after-several-suicide-bids-1xq0k8r7>

news that abortion pills continue to be ordered — and seized — in spite of the new law.<sup>29</sup> Even under Ireland’s more liberal legal framework, those intending to help their pregnant loved ones obtain an abortion remain at risk of prosecution.

Abortion is illegal and criminalised in virtually all circumstances in the North. Prosecutions are a reality in Northern Ireland. In recent years both women seeking an abortion<sup>30</sup> and those assisting them have been prosecuted, including a mother who wanted to help her own daughter.<sup>31</sup> These individuals have been punished for obtaining abortion, a health service which is broadly available in the rest of the UK. Northern Irish citizens and residents are discriminated against when it comes to accessing reproductive healthcare. Those who lack financial or other resources to travel suffer the most from the extreme criminal sanctions imposed.<sup>32</sup>

In 2018, the UN Committee on the Elimination of Discrimination Against Women (CEDAW) found that the UK violates the rights of women and pregnant people in Northern Ireland and that the near total ban on abortion amounts to cruel, inhuman and degrading treatment.<sup>33</sup> The Committee also held that the issue of devolution did not absolve Westminster of the responsibility to rectify these wrongs for Northern Irish people. In that same year, the UK Supreme Court ruled that Northern Ireland’s current laws are incompatible with Article 8 of the European Convention on Human Rights — on respect for private and family life — in cases of fatal foetal abnormality, rape and incest.<sup>34</sup> This ruling has paved the way for individual lawsuits to be brought by women, putting mounting pressure on the system that may produce change. Under the Belfast Agreement 1998, people living in Northern Ireland are entitled to the same rights as people in other parts of the UK and Ireland. However, governments in both jurisdictions have ignored this fact in the context of abortion rights, and have let the North become the last region of either jurisdiction to remain without any local accessible abortion services.

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<sup>29</sup> Lynch, P. (2019) “HSE probes data leaks as abortion pills still ordered online despite new laws”, *Irish Independent*, 4 February 2019. Available at: <https://www.independent.ie/irish-news/health/hse-probes-data-leaks-as-abortion-pills-still-ordered-online-despite-new-laws-37777208.html>

<sup>30</sup> McDonald, H. (2016) “Northern Irish woman given suspended sentence over self-induced abortion”, *The Guardian*, 4 April 2016. Available at: <https://www.theguardian.com/uk-news/2016/apr/04/northern-irish-woman-suspended-sentence-self-induced-abortion>

<sup>31</sup> BBC News. (2018) “Abortion pills prosecution challenge by NI mother adjourned”, *BBC*, 20 September 2018. Available at: <https://www.bbc.co.uk/news/uk-northern-ireland-45550006>

<sup>32</sup> Alliance for Choice. (2018) “Written Submission from Alliance for Choice”, Abortion Law in Northern Ireland Inquiry. Available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/abortion-law-in-northern-ireland/written/93751.pdf>

<sup>33</sup> United Nations Convention on the Elimination of All forms of Discrimination against Women. (2018) “Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.” Geneva: United Nations.

<sup>34</sup> UK Supreme Court Judgement “In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (Northern Ireland) Reference by the Court of Appeal in Northern Ireland pursuant to Paragraph 33 of Schedule 10 to the Northern Ireland Act 1998 (Abortion) (Northern Ireland).” 7th June 2018.

## Conclusion

Ireland's long history of mistreating and disrespecting the needs of pregnant people did not disappear with the removal of the 8th Amendment from the Constitution. The failure of the health service to revise the National Consent Policy almost a year after the repeal of the 8th Amendment demonstrates an abject disregard for the autonomy, decision-making capacity and bodily integrity of pregnant people. The discrimination and violations people have suffered at the hands of the Irish maternity system need to be redressed as a matter of priority.

There remain significant dangers to the lives and wellbeing of pregnant people in both the Republic of Ireland and Northern Ireland. The ongoing criminalisation of abortion has a chilling effect on healthcare providers and can put pregnant people at risk. In Ireland, medics continue to practice under the threat of prosecution if they misinterpret or go outside of ill-defined statutory provisions. In Northern Ireland, abortion remains illegal in all but the most severe cases. The result is that people continue to be forced to travel to access care. Those who face the greatest barriers to access are usually the least able to overcome them, as outlined above (e.g., people with disabilities or lower income, migrants, Travellers).

We ask the Special Rapporteur to carefully review the cases of Ms. Y, Ms. P, the women who have been prosecuted in Northern Ireland, the people who have been brought to court over birth decisions and the disabled people and migrants who have died or been harmed during pregnancy because of the State failures we have outlined above.

We call upon the Special Rapporteur to make the following recommendations to the Irish State:

- Revise the National Consent Policy as a matter of urgency so that pregnant people are guaranteed their full rights to choose and refuse medical treatment.
- Decriminalise abortion and put an end to the dangerous chilling effect on health care providers which undermines pregnant people's quality of care.
- Urgently review other problematic areas of the new abortion law (such as the use of ambiguous terminology, the mandatory waiting period, the 12-week cut-off, and inadequate access to information for people with disabilities) with a view to rectifying these without delay, rather than in three years.
- Make provisions for people from Northern Ireland who need to access abortion care in the Republic.
- Take steps more broadly to ensure the full and equal access to safe reproductive healthcare to all in Ireland, particularly those from marginalised groups.

We call upon the Special Rapporteur to make the following recommendations to the United Kingdom:

- Immediately make the necessary changes to UK law to decriminalise abortion and provide full abortion services in Northern Ireland, so that the rights of Northern Irish people are protected equally to other people in the UK and Ireland in the absence of a devolved government in Northern Ireland.
- Take steps more broadly to ensure the full and equal access to safe reproductive healthcare to all in Northern Ireland, particularly those from marginalised groups.