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IRELAND

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Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, the Fundamental Rights Agency of the European Union, the Organization for Security and Co-operation in Europe, and the Organization of American States.
2. This report details the legal status of abortion in Ireland as well as the consequences of recent changes to the abortion law. It outlines how international law does not create a right to abortion and recommends that abortion be prohibited in Ireland. It also details how the religious freedom of faith-based institutions and parents must be protected.

(a) Abortion

Legal Background

3. The Constitution of Ireland protects the right to life of the unborn. Article 40.3.3, approved by the people of Ireland in 1983 through the Eighth Amendment to the Constitution, states, “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.”
4. This provision clearly means that in cases where the mother’s right to life is not in danger, abortion is unconstitutional.
5. The Protection of Life During Pregnancy Act 2013 defines when abortion can be legally performed in Ireland. It allows for abortion when “there is a real and substantial risk of loss of the woman’s life from a physical illness,” “there is an immediate loss of risk of the woman’s life from a physical illness” (medical emergency), or “there is a real and substantial risk of loss of the woman’s life by way of suicide.” In the first case, two doctors must certify that an abortion is the only way to avert the risk, and in the second, one doctor must certify and must be the doctor who performs the abortion. In the case of suicidal intent, three doctors, including two psychiatrists, are required to certify that an abortion is the only way to avert the risk of suicide.
6. In 2014, the first year the law was in effect, 26 abortions took place, including three on the grounds of suicidal ideation, 14 due to risk from physical illness, and nine due to an emergency situation from physical illness.¹ It is unclear to what extent, if any, doctors tried to save the lives of the unborn children, or whether the abortions were done with no attempt to save them.

Problems with the Law

7. First, the possibility of abuse under the suicide provision is clear. For example, in one 2014 case, hospital staff were concerned that a woman visited a pro-abortion psychologist specifically so he would sign off on her abortion, when she had no

¹ DEP’T OF HEALTH, NOTIFICATIONS IN ACCORDANCE WITH SECTION 20 OF THE PROTECTION OF LIFE PREGNANCY ACT 2013, ANNUAL REPORT 2014 3 (2015), *available at* <http://health.gov.ie/wp-content/uploads/2015/06/annual-report-2014-Protection-of-Life-During-Pregnancy.pdf>.

documented history of mental health problems or suicidal tendencies.²

8. There is no evidence that abortion does anything to treat suicide ideation, and, in fact, it can cause greater harm to the woman undergoing the abortion.³
9. Second, the focus in an emergency threatening the life of a pregnant woman should be on treating her with necessary life-saving interventions. There is a fundamental difference between these interventions, which may result in the loss of her unborn child, and directly taking the life of the unborn child through abortion.

No Expansion of the Law

10. Pro-abortion activists argue that Ireland must legalize abortion on any grounds, or at the minimum in cases of rape, incest, and fatal fetal abnormality.
11. Liberalizing the abortion law would violate the will of the Irish people, who voted to enshrine the right to life of the unborn in the Constitution, and to balance it only against the right to life of the mother. To liberalize the abortion law would make this protection of the unborn meaningless. A recent Amnesty International poll that purports to show that the Irish people want abortion to be legal in more circumstances is disingenuous, as it asked misleading questions and made it appear that women who undergo abortions would be put in prison for up to 14 years, when in fact the law aims to penalize abortion providers.⁴ These data should be ignored.
12. Further, claims that abortion must be provided under international law are baseless.⁵ There is no right to abortion in international law. In fact, provisions in international human rights treaties indicate the contrary, that States may and should protect the right to life of the unborn.
13. Article 6 (1) of the ICCPR states, "Every human being has the inherent right to life." The ICCPR's prohibition of the death penalty for pregnant women implicitly recognizes the right to life of the unborn. Although the ICCPR allows for the death penalty to be imposed on both adult men and women, it explicitly prohibits applying the death penalty to pregnant women. Article 6(5) states, "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and *shall not be carried out on pregnant women.*" Under the ICCPR, all other adult women may be subject to the death penalty, therefore this clause must be understood as recognizing the unborn's distinct identity from the mother and protecting the unborn's right to life.
14. As the *travaux préparatoires*⁶ of the ICCPR state, "The principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should

² *HSE Refuses to Act on Medical Staff Concerns Over Abortion*, 18 June 2015, <http://www.prolife.ie/news/2015/06/18/hse-refuses-act-medical-staff-concerns-over-abortion>.

³ See, e.g., FAMILY & LIFE, *CARING FOR PREGNANT WOMEN AND UNBORN CHILDREN IN IRELAND IN THE LIGHT OF THE ABC CASE 35-39 (2012)*, available at http://www.familyandlife.org/downloads/Family_And_Live_Response_to_the_Expert_Group_Report.pdf.

⁴ Niamh Uí Bhriain, *Amnesty's campaign is dishonest and seeks to protect abortionists*, LIFESITENEWS, 9 July 2015, <https://www.lifesitenews.com/opinion/amnestys-campaign-is-dishonest-and-seeks-to-protect-abortionists>.

⁵ Even the Irish Times asserts that international law does not recognize a right to abortion. See Editorial, *Amnesty report and the case for repeal of the Eighth Amendment of the Constitution*, IRISH TIMES, 11 June 2015, <http://www.irishtimes.com/opinion/editorial/amnesty-report-and-the-case-for-repeal-of-the-eighth-amendment-of-the-constitution-1.2244636>.

⁶ In accordance with the Article 32 of the Vienna Convention, the *travaux préparatoires* are considered to be a "supplementary means of interpretation."

not be carried out on pregnant women was to *save the life of an innocent unborn child*.⁷ Similarly, the Secretary General report of 1955 notes that the intention of the paragraph “was inspired by humanitarian considerations and by *consideration for the interests of the unborn child*[.]”⁸

15. The protection of unborn life is also found through an ordinary reading of the language in the preamble of the Convention on the Rights of the Child (CRC). The preamble states, “[T]he child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, *before as well as after birth*.”
16. Article 1 of the CRC defines a child as “every human being below the age of eighteen years.” This provides an upper limit as to who is a child, but does not provide a lower limit on when the status of “child” attaches. Moreover, Article 6 of the CRC holds, “States Parties recognize that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child.” Viewed in the context of the preamble, both Articles 1 and 6 of the CRC indicate recognition of, and protection for, unborn life.
17. Accordingly, Ireland should protect the right to life of all unborn, regardless of the circumstances.

Maternal Health in Ireland

18. The prohibition on abortion in Ireland has no effect on the availability of good maternal health care there. Ireland has been, and remains, one of the safest places in the world for an expectant mother to give birth. In 2005, the maternal mortality ratio (MMR) was the lowest in the world at 2.⁹
19. The Confidential Maternal Death Enquiry (CMDE) in Ireland found that for the years 2009 to 2011, the MMR in Ireland was 8.6, and for 2010 to 2012 it was 10.5.¹⁰ The increase “does not represent a statistically significant increase.”¹¹ The WHO estimated that the MMR in 2013 was 9.¹² Although the maternal mortality rate has increased recently, the CMDE states that “the relatively small number of maternal deaths in Ireland” means that “wide fluctuation in annual maternal mortality rate (MMR) is inevitable and must be interpreted with caution.”¹³
20. Ireland’s MMR is within the range of normal MMRs in Western Europe, especially considering that the small number of deaths means the MMR may change significantly from year to year. For example, the MMRs for the following Western European countries are as follows: France: 9; the UK 8; Germany 7; Belgium, the Netherlands, and Switzerland 6. Ireland’s MMR is also lower than those of many developed countries where abortion is widely available, including in the United States (28) and Canada (11).

⁷ A/3764 § 18. Report of the Third Committee to the 12th Session of the General Assembly, 5 December 1957.

⁸ A/2929, Chapter VI, §10. Report of the Secretary-General to the 10th Session of the General Assembly, 1 July 1955.

⁹ See WHO ET AL., TRENDS IN MATERNAL MORTALITY 1990-2013 32, *available at* http://apps.who.int/iris/bitstream/10665/112682/2/9789241507226_eng.pdf?ua=1.

¹⁰ M.F. O’HARE ET AL., CONFIDENTIAL MATERNAL DEATH ENQUIRY IN IRELAND: REPORT FOR 2009-2012 15 (2015), *available at* <http://www.ucc.ie/en/media/research/maternaldeathenquiryireland/ConfidentialMaternalDeathEnquiryReport2009-12.pdf>.

¹¹ *Id.*

¹² WHO ET AL., *supra* note 9, at 32.

¹³ O’HARE ET AL., *supra* note 10, at 15.

21. Some evidence suggests that the recent increase in maternal mortality may be due to, or at least is associated with, cuts in government spending on health care.¹⁴
22. Direct maternal deaths have decreased yearly, which “is evidence of commitment to and success in improving the care of women with obstetric complications in pregnancy throughout the health service.”¹⁵ The CMDE report emphasizes preconception counseling for women of reproductive age who have preexisting medical and mental health disorders, as well as documentation of complete medical history at the first prenatal visit.¹⁶ It does not mention a need for legal abortion to help pregnant women with preexisting conditions.
23. There is no evidence suggesting that doctors in Ireland will not do everything they can to save the life of a pregnant woman in a life-threatening emergency, while also doing everything they can to save the life of the unborn baby.¹⁷

(b) Religious Freedom for Parents and Faith-Based Schools

Legal Background

24. Section 37 of the Employment Equality Act, which guarantees religious institutions the freedom to employ only those people who uphold the institutions’ religious ethos. Subsection (1), the part of the law in question, states,

A religious, educational or medical institution which is under the direction or control of a body established for religious purposes or whose objectives include the provision of services in an environment which promotes certain religious values shall not be taken to discriminate against a person for the purposes of this Part or Part II if—(a) it gives more favourable treatment, on the religion ground, to an employee or a prospective employee over that person where it is reasonable to do so in order to maintain the religious ethos of the institution, or (b) it takes action which is reasonably necessary to prevent an employee or a prospective employee from undermining the religious ethos of the institution.

25. There has been a call to amend section 37(1) of the Act. Suggested amendments include exempting an employee or potential employee’s private life from being considered capable of undermining the ethos of an institution, or not allowing educational and medical faith-based institutions to avail themselves of section 37(1).
26. Article 44(2) of the Constitution of Ireland guarantees “[f]reedom of conscience and the free profession and practice of religion[.]” ICCPR article 18(1) guarantees freedom of thought, conscience, and religion, which includes the freedom to manifest one’s religion “in worship, observance, practice and teaching,” individually or with others. This freedom allows a person to establish a faith-based institution that maintains a religious ethos.

¹⁴ See, e.g., Niall Hunter, *Cuts could up maternal deaths – consultant*, IRISHHEALTH.COM, 18 Jan. 2012, <http://www.irishhealth.com/article.html?id=20248>.

¹⁵ MBRRACE-UK, SAVING LIVES, IMPROVING MOTHERS’ CARE: LESSONS LEARNED TO INFORM FUTURE MATERNITY CARE FROM THE UK AND IRELAND CONFIDENTIAL ENQUIRIES INTO MATERNAL DEATHS AND MORBIDITY 2009-2012 i (2014), *available at* <http://www.ucc.ie/en/media/research/maternaldeathenquiryireland/SavingLives,ImprovingMothersCare.pdf>.

¹⁶ See O’HARE ET AL., *supra* note 10, at 7.

¹⁷ See, e.g., MEDICAL COUNCIL, GUIDE TO PROFESSIONAL CONDUCT AND ETHICS FOR REGISTERED MEDICAL PRACTITIONERS 20 (2009), *available at* <https://www.medicalcouncil.ie/News-and-Publications/Publications/Professional-Conduct-Ethics/Guide-to-Professional-Conduct-and-Behaviour-for-Registered-Medical-Practitioners-pdf.pdf>.

27. Article 42(2)(5) of the Constitution also guarantees the right of every religious denomination “to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes.” This includes maintaining schools and hospitals.
28. Article 42(1) of the Constitution “acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.” Article 14(2) guarantees the right of parents to provide this education in schools.
29. ICCPR article 18(4) requires States to respect the liberty of parents “to ensure the religious and moral education of their children in conformity with their own convictions.” ICESCR article 13(3) also requires States to respect this liberty of parents, as well as the liberty to choose schools for their children. Article 2 of Protocol No. 1 of the European Convention of Human Rights echoes this protection of parents’ right to ensure their children are taught in conformity with the parents’ religious convictions.

Analysis

30. People are free to establish religious organizations that serve others, and when those organizations are not able to uphold the religious principles on which they are founded, religious freedom is violated.
31. When parents choose to send their children to denominational schools, they may consider several factors, including the religious ethos of the school and the religious instruction their children will receive. Many parents expect the school to uphold a certain ethos, and entrust their children to the school because their children will be in an environment that respects and promotes their religious beliefs and moral values. If a school is not allowed to hire only teachers and staff who uphold the religious ethos of the school, and if the school is therefore forced to hire or retain staff whose lifestyles are counter to the school’s religious ethos, the resulting undermining of the religious ethos may violate parents’ liberty to ensure their children are taught in conformity with their own convictions.
32. Accordingly, Section 37(1) should remain as it is. A religious employer must be able to protect its religious ethos, which includes hiring people who uphold that ethos and removing those who do not. This ensures the religious freedom of institutions as well as parents’ rights to choose their children’s education.

(c) Recommendations

33. Accordingly, ADF International recommends:
 - Repeal the Protection of Life in Pregnancy Act 2013;
 - Reaffirm the legal duty of care to protect the right to life of the unborn in all circumstances;
 - Ensure pregnant women with suicidal ideation receive psychiatric care developed specifically for pregnant women;
 - Reject any amendments to Section 37 of the Employment Equality Act; and
 - Reaffirm the right to freedom of religion for faith-based institutions and for parents.



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