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**AMNESTY
INTERNATIONAL**



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**AMNESTY INTERNATIONAL'S SUBMISSION TO THE COUNCIL OF EUROPE COMMITTEE OF
MINISTERS: A. B. and C. v. IRELAND, APPLICATION NO 25579/05**

Dear Ms Mayer,

Please find enclosed a briefing submitted in accordance with Rule 9 (2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and with the terms of friendly settlements with a view to assisting the Committee of Ministers in its evaluation of the general measures taken to date by the Irish Government to fulfil its obligations to implement the Grand Chamber's judgment in the case of *A. B. and C. v. Ireland*.

Yours sincerely,

Dr Nicolas J Beger
Director

AMNESTY INTERNATIONAL'S SUBMISSION TO THE COUNCIL OF EUROPE COMMITTEE OF MINISTERS: A. B. and C. v. IRELAND, APPLICATION NO 25579/05

This briefing is submitted in accordance with Rule 9(2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and with the terms of friendly settlements adopted by the Committee of Ministers on 10 May 2006.

In the light of Ireland's obligations under international human rights law, Amnesty International seeks to assist the Committee of Ministers in its evaluation of the general measures that the Irish Government has taken to date to comply with the judgment of the Grand Chamber of the European Court of Human Rights in the case of *A. B. and C. v Ireland*.

On 16 December 2010, the Grand Chamber of the European Court of Human Rights (the Court) delivered its judgment in the case of *A. B. and C. v. Ireland*, ordering Ireland to give effect to existing Irish law regarding abortion, particularly Article 40.3.3 of the Irish Constitution. It also asked the Government to address the lack of effective and accessible procedures to give effect to a right to an abortion in cases that fall under that Article.

The Court also commented on the "*chilling effect*" of Ireland's criminal law provisions on abortion, which provide a significant disincentive for women to seek the medical care they need and for doctors to provide it.

In January 2012, the Irish Government announced the creation of an expert group to lay out options on how to implement the Court judgment. This expert group issued its report on 27 November 2012, including various options for implementation.

At its 1157th meeting in December 2012, the Committee of Ministers Deputies¹:

- "highlighted that the report submitted by the expert group noted that "Ireland is under a legal obligation to put in place and implement a legislative or regulatory regime providing effective and accessible procedures whereby pregnant women can establish whether or not they are entitled to a lawful abortion in accordance with Article 40.3.3° of the Constitution as interpreted by the Supreme Court in the X case" and considered that this would address the concerns raised by the Court (see §§264-267 of the judgment);
- recalled also in this context that the European Court found the general prohibition on abortion in criminal law constituted a significant chilling factor for women and doctors because of the risk of criminal conviction and imprisonment, and noted the view of the expert group that only the implementation of a statutory framework would provide a defence from criminal prosecution;

¹Official website of the Council of Europe: Pending cases: current state of execution:
http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=&StateCode=IRL&SectionCode=ENHANCED+SUPERVISION

- underlined again their concern regarding the situation of women who are of the opinion that their life may be at risk due to their pregnancy in circumstances similar to those experienced by the third applicant and invited the Irish authorities to take all necessary measures in that respect;
- urged the Irish authorities to expedite the implementation of the judgment both in that regard and generally, and invited them to inform the Committee of the option to be pursued to implement the judgment as soon as possible;”

On 18 December 2012, the Irish Government announced it would implement the judgment by way of new legislation with regulations. In the Updated Action Plan submitted to the Committee of Ministers by the Irish Government on 8 February 2013², the Government indicates its intention to publish the Heads of a Bill in a few months, though there is **no clear timeline** for when new legislation might be passed and implemented. The Action Plan indicates that, until the passing of legislation and implementation of guidelines, the Government intends to depend on the current regulatory framework to discharge its human rights obligations, while explicitly acknowledging that the Court had found this framework inadequate. The Government bases this plan on the assumption that the awareness raised by the A. B. and C. judgment would overcome the chilling effect identified by the Court as a key barrier to accessing legal abortions.

In this connection, Amnesty International wishes to bring three key human rights concerns to the Committee of Ministers’ attention:

1. How can the Irish Government guarantee that its **immediate obligation** to provide lawful abortion for women and girls whose lives may be threatened by their pregnancies will be adequately discharged by a regulatory framework that has been deemed inadequate by the Court?
2. How does the Irish Government’s Action Plan respect the **indivisibility and interdependence of the rights to life, privacy and health** of all women in Ireland?
3. How does the Irish Government plan to ensure access to abortion and attendant medical care in the context of **conscientious objection** for medical service providers?

In the following submission, we provide further detail on these concerns, questions the Committee may wish to ask to the Irish Government and recommendations that might discharge those concerns.

Immediate Human Rights Obligation

The Irish Government has an **immediate obligation** to give effect to its current legal framework on abortion, by facilitating access to abortion for women and girls whose lives may be threatened by their pregnancies. Abortion has been legal in Ireland where the pregnant woman’s life is in danger for more

² DH-DD(2013)129.

than two decades, since the 1992 judgment of Ireland's Supreme Court in *Attorney General v X*. This obligation is not discharged by debating legislation or regulations or by announcing reviews.

The Committee of Ministers may wish to **ask** the Irish Government the following question:

- How does the Irish Government plan to guarantee access to potentially life-saving abortions in Ireland while new legislation and regulation are under debate, given the fact that the Court has already deemed its current regulatory framework inadequate?
- What indication does the Government have that the situation now is substantially different from when Ms. C was denied a legal abortion, so that another woman or girl in a similar situation would not be denied care?

The Committee of Ministers may further wish to **recommend** to the Irish Government:

- That it publicly clarifies the legality of abortion in Ireland and the availability of lawful abortion services in all public hospitals, with immediate effect.
- That it issues clear guidelines to medical providers, emphasising their obligation to offer and provide any and all medically indicated and relevant interventions to their patients, including voluntary abortion where a pregnancy constitutes a real and substantial risk to a pregnant woman's life.

Amnesty International also urges the Committee of Ministers to take into account the fact that Ireland, for over 20 years, has refused to enact legislation that would guarantee women and girls access to those abortion services which are in fact legal. In the light of such clear lack of political will, we urge the Committee **to continue to monitor the implementation of A. B. and C. v. Ireland until the judgment is fully implemented.**

The Right to Life and the Rights to Private Life and Health

The Irish Government's approach to abortion must acknowledge that the right to life and the rights to private life and health, like all human rights, are **indivisible and interdependent**. Current Irish law allows abortions where there is a "real and substantial" risk to the life of the pregnant woman or girl. This language should be read in light of the status and scope of the right to life under international law, as explained by UN and regional bodies' jurisprudence. For example, the UN Human Rights Committee has explained that the right to life should not be understood in a restrictive manner, and that states must adopt positive measures to protect this right. Law and practice must incentivise swift decision-making and access to services and must not punish medical service providers for prioritising the health and life of their patient over seeking to intervene only where all medical providers everywhere would agree the risk to life was real and substantial.

It will be important for any guidelines and legislation developed on access to legal abortion in Ireland to reflect the fact that medical assistance should be provided promptly and that any delay in providing abortion services may in fact contribute to deterioration in the health of the pregnant woman or girl.

There cannot be any justification for allowing a situation of real and substantial risk to the pregnant women's life to deteriorate to a situation of imminent and inevitable risk, if an effective course of medical action is known and can be taken.

In its judgment the Court noted that it considered it evident that both women and doctors in Ireland would be affected negatively by the existence of criminal provisions on abortion, whether implemented or not, creating a "*chilling effect*." The existence of this chilling effect, the Court found, contributed to an environment in which a woman whose life may be threatened by her pregnancy is not able to fully exercise her right to private life as protected under the European Convention on Human Rights. The chilling effect also affects pregnant women and girls whose health is seriously affected by their pregnancies but whose lives are not imminent in danger. These women may be afraid to seek, and doctors may be afraid to provide, full and accurate information about the risks associated with continuing a pregnancy. This indivisibility of rights must be recognized in the Irish government's implementation of the Court's ruling.

The Committee of Ministers may wish to **ask** the Irish Government the following questions:

- How does the Government plan to overcome the chilling effect of its current legislation criminalising abortion, which was recognised by the European Court to affect the right to private life in the context of life-threatening pregnancies? Does the Government have any plans, other than legislation and regulation, to overcome this chilling effect, for example through public awareness campaigns?
- How far will the Government's decriminalisation extend? How will the limits of decriminalisation be sufficiently widely drawn to not force doctors or women to await the point of grave risk to life before deciding that an abortion will not lead to criminal sanction?
- How will the Government ensure that medical service providers are not penalised for providing what they believe to be a necessary emergency abortion, even where other medical service providers may not agree that the care was life-saving?
- How will the Government ensure that all pregnant women are given the information they need about risks associated with the continuation of their pregnancies, even if they are not, when they start medical consultations, at the point of real and substantial risk to their lives? How will the Government guard against delays in such deliberations and decision-making leading to a deterioration of the woman's conditions?

The Committee of Ministers may further wish to **recommend** to the Irish Government to:

- Clarify the expectation, by the state, that all medical service providers prioritise the health and lives of their patients, and provide full and accurate information to all pregnant women and girls regarding the risks associated. This clarification must be made immediately.

Conscientious Objection

The Irish Government's regulation must carefully weigh the possibility of **conscientious objection for medical service providers** against the human rights of patients needing urgent care. While the right to express one's freedom of thought, conscience, religion or belief potentially includes the right to object to personally providing certain care, this right is not unlimited.

The Committee of Ministers may wish to ask the Irish Government the following questions:

- How does the Government plan to ensure that women and girls' access to potentially life-saving abortion is not imperilled by the possibility of attending medical service providers objecting to providing this care on conscientious grounds?
- How does the Government plan to ensure that those women and girls who are entitled, by law, to a legal abortion always have access to swift, adequate, quality medical care attendant to abortion?
- How does the Government plan to guarantee that those medical providers who do provide abortions are not subjected to punitive actions in their workplace, including, for example, being overlooked for promotion?

The Committee may also wish to recommend to the Irish Government that any guidelines on conscientious objection at the very least:

- Preclude medical providers who object to abortion from involvement in review boards in cases where abortion may be warranted to save a patient's life
- Prioritize life-saving abortion over conscientious objection, so that, in emergency situations where no timely referral or alternative service is available, accessible, or adequate, there can be no room for medical service providers to opt out of providing abortion and attendant medical care
- Balance and protect both the health practitioner's rights and the rights of her/his patients to life, health, non-discrimination, and other rights of those potentially denied services