



# IRELAND

SUBMISSION TO THE COMMITTEE ON THE ELIMINATION OF  
DISCRIMINATION AGAINST WOMEN

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# 1. INTRODUCTION

Amnesty International presents this submission to the United Nations (UN) Committee on the Elimination of Discrimination against Women (the Committee) in advance of the review of the combined sixth and seventh periodic reports of Ireland<sup>1</sup>. In this document, Amnesty International sets out its concerns about the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (the Convention) by Ireland in relation to: violence against women and girls; the criminalisation of sex work and sex workers, restrictive abortion laws which put women and girls' lives and health at risk and violate their human rights; and inadequate investigation into the abuses committed in the "Magdalene Laundries".

# 2. VIOLENCE AGAINST WOMEN

Despite efforts on part of the State party including the adoption of various legislative and other measures, the level of gender-based violence against women and girls in Ireland remains a concern.<sup>2</sup> Important support services provided by civil society organisations are underfunded. Women's Aid reports a budget cut of 20% in 2015,<sup>3</sup> and Rape Crisis Network Ireland, which provides policy and guidance to voluntary rape crisis services, reported in December 2016: "RCNI has received no funding from the Child and Family Agency Tusla for two years. Last year, a cumulative 70 per cent cut to our funding took effect and our core funding from Tusla was completely withdrawn. Because of this, we were unable to continue to provide the support we used to the sector in relation to policy and guidance."<sup>4</sup> As the Committee has advised, in fulfilling their obligations under the treaty, "States parties should establish or support services for victims of family violence, rape, sexual assault and other forms of gender-based violence"<sup>5</sup>. Where such services are provided by non-governmental organisations, not the State, it is important that they be adequately resourced by the State party.

Ireland has signed, but not ratified, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). On 5 November 2015, when signing the Convention, the State party published an Action Plan setting out the measures required for ratification, including additional legislation.<sup>6</sup> Ratifying this Convention would provide important oversight and guidance for the state in implementing its obligation to prevent violence against women, punish perpetrators, and provide adequate assistance, support, protection, redress and reparation to women subjected to gender-based violence.

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<sup>1</sup> CEDAW/C/IRL/6-7, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fIRL%2f6-7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fIRL%2f6-7&Lang=en)

<sup>2</sup> In 2014, a Europe-wide survey on violence against women found that 26% of women in Ireland have experienced physical and/or sexual violence by a partner or non-partner since the age of 15; 31% have experienced some form of psychological violence by a partner, and 15% have experienced physical or sexual violence by a partner; 5% had experienced sexual violence by a non-partner since the age of 15, and 6% had experienced sexual violence by an intimate partner since the age of 15. (European Union Agency for Fundamental Rights, Survey data explorer: Violence against women survey, Ireland, available at <http://fra.europa.eu/DVS/DVT/vaw.php>; Violence against women: an EU-wide survey, Main results report, March 2014, available at <http://fra.europa.eu/en/publication/2014/vawsurvey-main-results>.) These statistics are considered underestimates, as only a minority of those who experience gender-based violence will report this to any authority. For instance, Rape Crisis Network Ireland's 2015 statistics reveal that 65% of those who experienced sexual violence did not report it to the police or other formal authority (*RCNI National Rape Crisis Statistics 2015*, (December 2016) p. 21, available <http://www.rcni.ie/wp-content/uploads/RCNI-RCC-StatsAR-2015.pdf>). Rape Crisis Network Ireland's 2015 statistics also found that the majority of survivors who filed a complaint with the police felt that the police treated them in a sensitive manner (69%), an increase from 63% in 2014 figures (p22). 23% felt that the police treated them in a neutral manner - business-like, and neither sensitive nor insensitive - a decrease from 26% in 2014 figures. 9% felt they were treated in an insensitive manner, a decrease from 11% in 2014 figures.

<sup>3</sup> [https://www.womensaid.ie/download/pdf/womens\\_aid\\_impact\\_report\\_2015.pdf](https://www.womensaid.ie/download/pdf/womens_aid_impact_report_2015.pdf)

<sup>4</sup> "RCNI launch 2015 rape crisis statistics report", 19 December 2016, available at <http://www.rcni.ie/category/press-releases/>.

<sup>5</sup> General Recommendation No. 19 on Violence against women (11th session, 1992), para 24(k).

<sup>6</sup> <http://www.justice.ie/en/JELR/ActionPlanIstanbulConNovember.pdf/Files/ActionPlanIstanbulConNovember.pdf>

## 2.2 SEX WORKERS

Amnesty International welcomes the stated aim of the State party in introducing Part 4 of Criminal Law (Sexual Offences) Bill 2015 of “addressing the very real and tragic crimes of trafficking and exploitation associated with prostitution”.<sup>7</sup> However, Amnesty International is concerned at the unintended impact the planned criminalisation of buyers of consensual adult sexual services in the Bill could have on the safety and human rights of sex workers. In addition, Amnesty International is concerned at the Bill’s retaining criminal measures and increasing penalties for ‘offences’ that have been used against sex workers to date.

The Bill proposes to criminalise the buyers of consensual adult sexual services by inserting a new Section 7A into the Criminal Law (Sexual Offences) Act 1993. Amnesty International is cognisant of the research and hearings engaged in by the Oireachtas (parliamentary) Joint Committee on Justice, Defence and Equality at the request of the then Minister for Justice and Equality, culminating in its 2013 ‘Report on hearings and submissions on the Review of Legislation on Prostitution’ recommending inter alia the criminalisation of the purchase of sexual services.<sup>8</sup> However, where such an approach has been found to have positive impacts, evidence increasingly demonstrates that criminalisation of consensual sex work, including the purchase of sexual services, puts sex workers at greater harm of human rights violations and abuses.<sup>9</sup> In addition, Amnesty International considers that insufficient consultation with sex workers was carried out in the course of the Oireachtas hearings, and the subsequent development and proposing of this approach.

It is welcome that the Bill proposes to decriminalise a person offering sexual services from the existing offences of soliciting for the purposes of prostitution under the Criminal Law (Sexual Offences) Act 1993. While also welcome the Minister’s assurance that the existing offence of loitering for the purposes of prostitution will not apply to sex workers<sup>10</sup>, measures should be taken to ensure that this is how it will be interpreted by the police and judiciary in practice. However, other provisions in the 1993 Act may directly or indirectly criminalise sex workers. Section 10 of that Act will continue to make it a criminal offence if a person “knowingly lives in whole or in part on the earnings of the prostitution of another person and aids and abets that prostitution”. Section 11 on ‘brothel-keeping’ continues to make it an offence to keep or manage or act or assist in the management of; to be a tenant, lessee, occupier or person in charge of; or to be a lessor or landlord of, any premises deemed a ‘brothel’. Under the 2015 Bill, increased penalties will apply. No distinction is made in these provisions between exploitation, abuse and coercion by third parties involved in sex work, and third party involvement that does not cause harm, especially where it is practical, supportive or for the purposes of safety. Furthermore, Section 11 of the 1993 Act on ‘brothel-keeping’ can be and is used to directly criminalise sex workers themselves, and can criminalise and thus prevent sex workers from working together or with others, even for safety reasons. To avoid the risk of third party laws targeting or prejudicing the safety of sex workers, such provisions should clearly and unambiguously apply only to exploitation, coercion or abuse by third parties.

While Amnesty International recommends against laws criminalising consensual sex work between adults, i.e. buying and selling of consensual sex, and related activities on the basis of their harmful impact on sex workers, at a very minimum, the operation of Ireland’s new legislation should be comprehensively reviewed on a periodic basis - and related provisions in the Criminal Law (Sexual Offences) Act 1993 and Public Order Act 1994 - to identify its impact on the human rights of sex workers. The Minister for Justice and Equality undertook to review the impact of the criminalisation of buyers of sex.<sup>11</sup> However, it is important that any review should focus not just on reduction in demand, but also on the impact the new and existing legislation has on the lives and human rights of sex workers.

Amnesty International considers that a report should be made public on the implementation of the new measures and continued operation of the existing law, and the human rights impact on sex workers including any unintended consequences. Amnesty International also urges that data collection and research be regularly undertaken on the circumstances and needs of sex workers.<sup>12</sup>

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<sup>7</sup> Amnesty International considers that recognising gender and intersectional concerns around sex work; tackling human trafficking, coercion, exploitation, forced labour and gender-based violence; and addressing human rights abuses against sex workers through decriminalisation of sex work are not mutually exclusive. Human trafficking, forced labour, the involvement of children in commercial sexual activity, and violence, abuse or exploitation of sex workers by third parties or buyers should be/remain criminalised in line with their gravity, and those criminal laws be effectively implemented.

<sup>8</sup> Available at <https://www.oireachtas.ie/parliament/media/committees/justice/1.Part-1-final.pdf>

<sup>9</sup> For more information on existing research, see Amnesty International policy on state obligations to respect, protect and fulfill the human rights of sex workers, 26 May 2016, Index number: POL 30/4062/2016, at <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>; and the accompanying Explanatory Note, 6 May 2016, Index number: POL 30/4063/2016, at <https://www.amnesty.org/en/documents/pol30/4063/2016/en/>

<sup>10</sup> At committee stage of the Bill in Dáil Éireann (Lower House of Parliament) on 7 December 2016, the Minister for Justice and Equality clarified that the existing offence of loitering for the purposes of prostitution, to retained, is not directed at sex workers but “only applies to those who loiter for the purpose of soliciting another person for the purpose of obtaining that person’s services as a prostitute where a person ultimately is seeking to purchase sexual services”.

<sup>11</sup> Ibid, where the Minister said: “I am happy to put into the Bill provision for a review of the legislation. I envisage a short period before reporting back on how it was working and what were the figures.”

<sup>12</sup> Amnesty International notes the following recommendation made by the Oireachtas Joint Committee on Justice, Defence and Equality in its 2013 Report: “The State should commission appropriate independent studies to increase its understanding of prostitution and trafficking. Further such studies should be undertaken at regular intervals to independently evaluate the effectiveness of legal and policy measures concerning prostitution and trafficking and to recommend changes where required.”

### **Amnesty International recommends that the State party:**

- Expedite ratification of the Istanbul Convention without reservations and put in place the necessary legislative and policy measures to ensure its adequate implementation.
- Ensure adequate and sustainable funding for support and information services for women and girls experiencing gender-based violence, including those provided by civil society and women's rights organisations.
- Refrain from criminalising the purchase of consensual adult sex until research has been conducted, including through consultation with sex workers, on the circumstances, needs and views of sex workers and how best to safeguard their safety and human rights.
- Amend existing offences relating to organising sex work so they clearly apply only to exploitation, coercion or abuse by third parties, in order to avoid the risk of such laws being used to target or criminalise sex workers.
- Should it be enacted as it stands, ensure that the provisions in Part 4 of the Criminal Law (Sexual Offences) Bill 2015 when enacted - and related provisions in the Criminal Law (Sexual Offences) Act 1993 and Public Order Act 1994 - are comprehensively reviewed to assess the impact on the human rights of sex workers (including male and transgender sex workers) including any unintended consequences of their introduction.

## **3. ABORTION**

Ireland's abortion laws are amongst the most restrictive in the world. Women and girls<sup>13</sup> cannot legally have an abortion in Ireland unless there is a "real and substantial" risk to their life.<sup>14</sup> The Eighth Amendment, or Article 40.3.3 of the Irish Constitution, *Bunreacht na hÉireann*, guarantees "the unborn" a right to life equal to that of a pregnant woman or girl<sup>15</sup>. This constitutional provision was adopted by popular referendum in 1983 and severely restricts access to abortion and also the healthcare of and women and girls in pregnancy more generally.

In 1992, in *Attorney General v X (the X case)*, a 15-year-old girl who was pregnant as a result of rape was prohibited from accessing an abortion in the United Kingdom and became suicidal as a result. The Supreme Court found that the Eighth Amendment should be interpreted to provide pregnant women and girls a right to abortion where their life, but not their health, is at risk, including a risk of suicide. Following a 2010 ruling by the European Court of Human Rights in *A, B & C v Ireland*,<sup>16</sup> legislation intended to give effect to this narrow constitutional right to access abortion where there is a risk to life was enacted in 2013, through the *Protection of Life During Pregnancy Act*.<sup>17</sup>

In a research report published in June 2015, for which Amnesty International interviewed women affected by Ireland's abortion laws, as well as service providers and medical professionals, the organisation documented multiple violations of women's and girls' rights related to Ireland's abortion laws that force the majority of women and girls to travel abroad in order to access basic healthcare services.<sup>18</sup> Those who are unable to afford travel - predominantly marginalized women and girls who have limited economic resources, young, minority, or migrants or refugees - must resort to clandestine abortions without medical support, and therefore experience additional human rights violations related to their lack of access to safe and legal abortion services.

In June 2016, in *Mellet v Ireland* the UN Human Rights Committee found that by prohibiting and criminalising abortion, Ireland violated a woman's rights to freedom from cruel, inhuman or degrading treatment, privacy, and equality by forcing her to travel abroad to obtain

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<sup>13</sup> Amnesty International Ireland refers here to women and girls. However, we recognise that not everyone who requires access to abortion services identifies as female. Amnesty International advocates for the sexual and reproductive rights of all people, of all genders and none.

<sup>14</sup> Amnesty International, *She is not a criminal: The impact of Ireland's abortion law* (Index: EUR 29/1597/2015).

<sup>15</sup> "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."

<sup>16</sup> *X v. Attorney General and Others* (1992) ILRM 401.

<sup>17</sup> <https://www.oireachtas.ie/documents/bills28/acts/2013/a3513.pdf>.

<sup>18</sup> See *Amnesty International, Ireland: She is not a criminal: the impact of Ireland's abortion law (EUR 29/1597/2015)*, <https://www.amnesty.org/en/documents/eur29/1597/2015/en/>

abortion services. Amnesty International welcomes the fact that in November 2016, the State party accepted the Human Rights Committee's findings that Ireland had violated the petitioner's covenant rights and offered her compensation and counselling.<sup>19</sup>

## 3.1 RISK TO LIFE

The Protection of Life during Pregnancy Act, because of the Eighth Amendment, draws a distinction between women's health and life, which leaves pregnant women in a precarious situation when accessing healthcare. Also, the Act and its accompanying guidelines<sup>20</sup> do not provide practical assistance to medical professionals grappling with how to assess when a pregnancy poses a "real and substantial" risk to the life of a woman or girl.<sup>21</sup> They also fail to deliver effective procedural rights to women eligible for legal abortion within the state.

Restrictive abortion laws often operate as a barrier to access to services generally, including women and girls who qualify for them. In Ireland in the Protection of Life During Pregnancy Act, those barriers include the burdensome procedures for establishing a right to access abortion on the lawful risk of suicide ("self-destruction") ground, which according to the UN Human Rights Committee in 2014, results in an "excessive degree of scrutiny by medical professionals for pregnant and suicidal women leading to further mental distress".<sup>22</sup> Such mandatory assessment procedures that require women and girls to "prove" they are eligible to access care are also inherently degrading, and may act as a deterrent to women seeking services and delay the effective and timely provision of abortion.<sup>23</sup> Ultimately, certification processes such as these are often unworkable, both for women and medical professionals, because they are focused on limiting access, rather than ensuring women and girls can realise their human right to healthcare.<sup>24</sup>

The Act also recriminalises abortion in all circumstances beyond a "real and substantial risk" to the life of the pregnant woman or girl, with a potential penalty of 14 years' imprisonment for women and health professionals. Criminalising a procedure that is only required by women and girls is discriminatory and violates women's and girls' human rights.

## 3.2 FREEDOM TO TRAVEL

Under the Constitution, inserted following a second popular referendum in 1992, women living in Ireland have the freedom to travel to another jurisdiction to access abortion services.<sup>25</sup> While data collected on the number of women who access abortion services abroad are patchy and figures underestimate the actual number of women who travel, since 1980 more than 160,000 abortions which took place in the United Kingdom and the Netherlands were performed on patients who gave Irish addresses.<sup>26</sup> In 2015 alone, 3,451

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<sup>19</sup> "Statement from Minister for Health, Simon Harris, TD, regarding the United Nations Human Rights Committee in the case of Ms Amanda Mellet", 30 November 2016, at <http://health.gov.ie/blog/press-release/statement-from-minister-for-health-simon-harris-td-regarding-the-united-nations-human-rights-committee-in-the-case-of-ms-amanda-mellet>

<sup>20</sup> A Guidance Document for the Protection of Life During Pregnancy Act 2013 was published by Department of Health in September 2014. It was developed by an independent committee of experts established in September 2013 to develop guidance for health professionals to assist them in implementing the Act. It is available at <http://health.gov.ie/blog/press-release/guidance-document-published-for-protection-of-life-during-pregnancy-act-2013/>

<sup>21</sup> See, for instance, interviews with Irish healthcare providers in Amnesty International's report, *She is not a criminal: the impact of Ireland's abortion law* (2015).

<sup>22</sup> Concluding observations on the fourth periodic report of Ireland, UN Doc. CCPR/C/IRL/CO/4, 19 August 2014.

<sup>23</sup> In 2015, the Irish Family Planning Association, which provides sexual and reproductive health services in Ireland, reported that three of the pregnant women who presented to their counselling services last year were considered eligible for access to abortion services in Ireland under the 2013 Protection of Life During Pregnancy Act because continuation of pregnancy posed a "real and substantial risk" to their lives. However, despite the urgency of their individual situations, none of the women wanted to undergo the Act's assessment procedures, opting instead to travel for an abortion. *53% of unplanned pregnancy cases intended to abort*. [online] Irishexaminer.com. Available at: <http://www.irishexaminer.com/ireland/53-of-unplanned-pregnancy-cases-intended-to-abort-432031.html> .

<sup>24</sup> This was underlined at the first substantive meeting of the Citizens' Assembly, which took place from 26 – 27 November 2016. According to Dr Brendan O'Shea, invited to address the Assembly as an expert and representative of the Irish College of General Practitioners (ICGP), the provisions of the Protection of Life During Pregnancy Act were found to be "cumbersome", "intensely stressful" and "difficult" by GPs and their patients. According to Dr O'Shea, most GPs and their patients dealing with unintended pregnancies "did not experience the Eighth Amendment, or the process required for the operation of the current legislative framework to be satisfactory or helpful in the context of the self-perceived needs of women experiencing unplanned and/or crisis pregnancy." Shannon, J. (2016). *Abortion law 'intensely stressful' for GPs*. [online] Irish Medical Times. Available at: <http://www.imt.ie/news/abortion-law-intensely-stressful-for-gps-01-12-2016/> [Accessed 1 Dec. 2016].

<sup>25</sup> Article 40.3.3°, Bunreacht na hÉireann, para 2.

<sup>26</sup> Ifpa.ie. (2016). *Abortion in Ireland: Statistics* / Irish Family Planning Association. [online] Available at: <https://www.ifpa.ie/Hot-Topics/Abortion/Statistics> [Accessed 1 Dec. 2016].

women from Ireland travelled to access abortion services in the United Kingdom, averaging to roughly 10 women a day;<sup>27</sup> and countless others access to medical abortion pills online, including through the website Women on Web.<sup>28</sup>

Travelling to access abortion services can have both a financial and a mental health impact. The estimated average direct cost of travelling to the UK for first trimester abortion services is €1,000-€1,500, including clinic fees, flights and accommodation.<sup>29</sup> Later gestational abortions are more costly, placing greater burdens on women with non-viable foetuses, as testing for these conditions is usually carried out at the 20th week of pregnancy. Travel is not possible for many women and girls due to its high cost and legal or social limits on travelling. This is particularly true for girls, women from socio-economically marginalised groups such as Travellers, or undocumented migrants and asylum seekers. In addition, many of the women that Amnesty International interviewed in its 2015 report expressed that the criminalisation of abortion stigmatised them and made them feel like criminals.<sup>30</sup> Furthermore, criminalisation can make women and girls fearful of obtaining post-abortion care in Ireland.

### 3.3 INFORMATION ON ABORTION

Information about abortion services is extremely restricted under the 1995 Regulation of Information (Services outside the State for Termination of Pregnancies) Act. This criminalises the provision of information by health care providers and pregnancy counsellors that “advocates or promotes” the option of abortion, meaning, for instance, that health professionals are prohibited from making referrals for abortions services in other countries. The withholding and denial of abortion-related information to women violates their human rights, including the rights to information and freedom of expression.

The Act does not define what constitutes “advocacy or promotion of” abortion, leading to confusion among doctors and counsellors as to what information they can provide and in what form.<sup>31</sup> Under the Act, they are permitted to advocate against abortion. In addition, any information given to a woman on abortion services abroad—such as the contact information for a clinic abroad that provides abortions—may only be provided where a woman first requests it and must be accompanied by information on “all the courses of action that are open to her”.<sup>32</sup>

Under the 1995 Act, if a woman chooses to travel for an abortion, healthcare providers and counsellors are prohibited from making “an appointment or any other arrangement” on her behalf with an abortion provider abroad. This means, among other things, that they cannot make a referral, which can cause delay and have serious implications for women’s health.<sup>33</sup> Under the Act, doctors and counsellors are only permitted to give a woman the names and addresses of abortion services abroad and to provide her with her medical records.<sup>34</sup> If a healthcare provider or counsellor violates any of the Act’s provisions, they face a criminal conviction and a fine of up to €4,000.<sup>35</sup>

### 3.4 CONSCIENTIOUS OBJECTION

The 2013 Protection of Life during Pregnancy Act permits doctors, nurses and midwives to decline to provide services based on conscientious objection;<sup>36</sup> however, the Act does not provide for any oversight mechanism to regulate this practice and ensure that it does not inhibit access to lawful services, as required under human rights laws and standards.<sup>37</sup> The provision allows for conscientious objection to be invoked not only by healthcare professionals who carry out a termination, but also those assisting. The Act does not clearly define “assistance”, nor does it ensure the availability and accessibility of healthcare professionals who are willing and able to

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<sup>27</sup> Ifpa.ie. (2016). *Abortion in Ireland: Statistics* / Irish Family Planning Association. [online] Available at: <https://www.ifpa.ie/Hot-Topics/Abortion/Statistics> [Accessed 1 Dec. 2016].

<sup>28</sup> Aiken, A., Gomperts, R. and Trussell, J. (2016). *Demand for abortion pills highlights need for change in the law*. [online] The Irish Times. Available at: <http://www.irishtimes.com/opinion/demand-for-abortion-pills-highlights-need-for-change-in-the-law-1.2831846> [Accessed 1 Dec. 2016].

<sup>29</sup> IFPA, “psychological, physical and financial costs of travel”, available at <http://www.ifpa.ie/node/506>.

<sup>30</sup> Amnesty International, *She is not a criminal: The impact of Ireland’s abortion law* (Index: EUR 29/1597/2015).

<sup>31</sup> See Amnesty International’s report, *She is not a criminal: the impact of Ireland’s abortion law* (2015).

<sup>32</sup> Regulation of Information Act, section 5.

<sup>33</sup> The World Health Organization guidelines state that “well-functioning referral systems are essential for the provision of safe abortion care. Timely referrals to appropriate facilities reduce delays in seeking care, enhance safety, and can mitigate the severity of abortion complications.”

<sup>34</sup> Regulation of Information Act, section 8.

<sup>35</sup> Regulation of Information Act, section 10; Fines Act 2010.

<sup>36</sup> Section 17.

<sup>37</sup> See European Court of Human Rights in *RR v Poland*, No. 27617/04 ECHR (2011) para. 206; *P and S v Poland*, No. 57375/08 ECHR (2008) para. 107.



provide such services. Neither does it require introducing a referral mechanisms to ensure timely access to other providers. Additionally, the Act also does not explicitly debar medical practitioners who object to abortion in principle from serving on a review panel.<sup>38</sup>

## 3.5 POSSIBLE LAW REFORM IN IRELAND

Even though Ireland's legal framework on abortion has been criticised by a number of UN human rights treaty bodies, the government has so far refused to schedule a referendum to propose a repeal of the Eighth Amendment – this is despite the fact that the majority of people in Ireland is in favour of access to abortion in line with international human rights law, and the decriminalisation of abortion.<sup>39</sup> The State party's replies to the Committee's List of Issues and Questions Prior to Reporting indicates that it has established a Citizen's Assembly to make recommendations to the Oireachtas (parliament) on constitutional changes, including to the Eighth Amendment.

While creation of the Assembly is a welcome step, Amnesty International is concerned at how the Assembly, especially in the absence of a clear mandate to ensure solutions that are human rights compliant, can make concrete proposals to end the human rights violations stemming from Ireland's restrictive abortion laws. For instance, women's rights groups are concerned that the Assembly might limit its recommendations to making abortion lawful in narrow circumstances such as fatal foetal impairment or sexual crime. Additionally it is proposed that a parliamentary committee will further review the matter after the Assembly has concluded, and the parameters and timeframe for this process are unclear.

It is important that lessons be drawn from how vaguely and narrowly framed and applied current Irish law purporting to protect against risks to women's lives is. Especially if there is not to be full decriminalisation of abortion, legislation setting out only limited grounds as an exception to what is otherwise a criminal act will do little to impact the climate of fear and stigma surrounding access to abortion in Ireland which is intimately linked to the threat of a possible 14-year prison sentence. On this basis, it is unlikely that adding further exceptions to the current criminal law will facilitate meaningful access for those women and girls who qualify even under the specific grounds on which international human rights standards says abortion must be guaranteed at a minimum.

There is little evidence internationally to support an assertion that restrictive abortion laws, which provide only for narrow, minimum grounds, can ever realise the human rights of women and girls, even for the women and girls to whom they supposedly create a legal entitlement. States that legislate only for exceptional grounds attract increasing criticism and condemnation from UN treaty monitoring bodies tasked with examining States' human rights records. The violations stemming from restrictive abortion laws have been apparent for some time and the failures of restrictive legal models confirmed repeatedly; however, both have pointed the way towards emerging consensus among public health and human rights experts on best practice models for human rights compliant abortion provision.

As the Committee will know, a September 2016 joint statement<sup>40</sup> from three UN experts - the UN Special Rapporteurs on Health and Torture, and the Chair-Rapporteur of the Working Group on Discrimination Against Women in Law and in Practice - noted that restrictive laws and prohibition of abortion do not reduce either the need for or number of abortions as established by the World Health Organization<sup>41</sup>; they merely increase the risks to the health and lives of women and girls who resort to unsafe and illegal abortion. In their joint statement, these UN experts recommended "the good practice found in many countries which provide women's access to safe abortion services, on request during the first trimester of pregnancy", as well as abortion in exceptional cases later in pregnancy, and abortion 'on request' without limits for adolescents.

Along similar lines, the UN Committee on Economic, Social and Cultural Rights states in its General Comment 22 adopted in 2016, that:

*"Preventing unintended pregnancies and unsafe abortions requires States to adopt legal and policy measures to guarantee all individuals access to affordable, safe and effective contraceptives and comprehensive sexuality education, including for adolescents, liberalize restrictive abortion laws, guarantee women and girls access to safe abortion services and quality post-abortion care including by training health care providers, and respect women's right to make autonomous decisions about their sexual and reproductive health."*<sup>42</sup>

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<sup>38</sup> See *International Planned Parenthood Federation v Italy*, European Social Committee, Council of Europe (2014), finding Italy in violation of the right to non-discrimination, including on grounds of residence and income, for failure to regulate the practice of conscientious objection and ensure availability of doctors willing to provide abortion services within reasonable geographical distances.

<sup>39</sup> See Amnesty International press release "*Two-thirds majority in Ireland want abortion decriminalized*", 8 July 2015, and polling data at <https://www.amnesty.org/en/latest/news/2015/07/two-thirds-majority-in-ireland-want-abortion-decriminalized>. See also <https://www.amnesty.ie/poll/> for result of February 2016 polling commissioned by Amnesty International Ireland.

<sup>40</sup> See <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20600&LangID=E>

<sup>41</sup> World Health Organization, 2012. *Safe abortion: technical and policy guidance for health systems*, second edition, Geneva: WHO, p. 9.

<sup>42</sup> Para. 28.

The UN human rights treaty bodies and experts are indicating that in order to fully comply with their international human rights legal obligations to ensure human rights compliant access to abortion, states should move toward permitting abortion 'on request' at least in the early stages of pregnancy. Therefore, Amnesty International believes it vital that Ireland be encouraged by the Committee to have regard to how international human rights standards are evolving.

### **3.6 ADOLESCENTS' SEXUAL AND REPRODUCTIVE RIGHTS**

Even where abortion is legal, girls and young women often face particular legal, policy and regulatory barriers to access. In Ireland, many of the cases that spurred legislative or social change in relation to abortion have concerned adolescent girls and young women. Ireland must recognise the specific sexual and reproductive health needs of adolescent girls, including in respect to abortion services, and the unique barriers to access that they face.

The State party's replies to the Committee's LOIPR state that "there is good availability of, and access to, contraception methods to people of all ages in Ireland" and "the National Sexual Health Strategy places a particular focus on the provision of RSE to ensure that children and adolescents attain the knowledge, understanding, attitudes and skills required for healthy sexual expression throughout life".<sup>43</sup> However, the UN Committee on the Rights of the Child, in its February 2016 concluding observations on Ireland's combined third and fourth periodic reports, found a "severe lack of access to sexual and reproductive health education and emergency contraception for adolescents". It urged that a comprehensive sexual and reproductive health policy for adolescents be adopted, and that sexual and reproductive health education be part of the mandatory school curriculum.

#### **Amnesty International recommends that the State party:**

- Repeal Article 40.3.3 of the Constitution;
- Decriminalise abortion in all circumstances;
- Repeal the Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995 in order that women and girls can access information about abortion services in other states in a manner consistent with international human rights law and women's right to dignity in access to health services;
- Repeal the Protection of Life During Pregnancy Act 2013 and replace it with a legislative and policy framework that upholds the reproductive rights of women and girls and guarantees that abortion services are available and accessible in a manner that ensures their autonomy and decision-making is respected, in line with best international health practice;
- Eliminate specific access barriers impacting marginalised groups including girls and young women, asylum-seekers and those living in 'direct provision', undocumented migrants, women or girls with disabilities, women or girls with limited financial means, and members of the Traveller community;
- Ensure that conscience based refusals of abortion care do not jeopardise women and girls' access to abortion services, including by making clear that those who object to providing abortion services have a duty to make a timely referral to another health care provider who will offer the services, and to always provide care, regardless of their personal beliefs or objections, in emergency circumstances or where a referral or continuity of care is not possible;
- Allocate additional resources to the provision of comprehensive sexuality education to ensure that all young people receive high-quality, evidence-based sexuality education, and ensure that a school's ethos or value system does not compromise the quality and accuracy of the information students receive about sexual and reproductive health and rights;
- Ensure young people's access to contraception.

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<sup>43</sup> CEDAW/C/IRL/6-7, para. 217.

# 4. ACCOUNTABILITY FOR PAST INSTITUTIONAL ABUSES

Amnesty International considers that many women and girls who were detained or resided in the religious-run “Magdalene Laundries”, which operated with state funding and oversight between the 1930s and 1996, were subjected to a range of human rights abuses, including inhuman and degrading treatment, arbitrary deprivation of liberty and forced labour.<sup>44</sup>

As noted in Ireland’s replies to the List of issues prior to reporting (LOIPR), the government-established “Inter-Departmental Committee to establish the facts of state involvement with the Magdalene Laundries” issued its final report in February 2013.<sup>45</sup> It revealed, inter alia, information on referrals of women and girls from the criminal justice system and health and social services sector to the institutions, and financial interactions between state bodies and the Laundries. It was accompanied by an official apology by the *Taoiseach* (prime minister) to the former residents of these institutions, which Amnesty International welcomes.

However, the Inter-Departmental Committee was not mandated to conduct a comprehensive review of the abuses inflicted within these institutions, nor was it given a mandate to review any facts it uncovered within the framework of human rights law with a view to ensuring truth, redress and reparation for the victims. The State party’s replies state that the Committee “took the opportunity to record evidence that might throw light on allegations of systematic abuse”. However, the focus of the Committee’s inquiries was simply to establish the facts of state involvement in the Laundries, not the nature and extent of the abuses. The State party’s reply also relies on the experiences of the 118 women who provided testimony to the Inter-Departmental Committee rather than the wider research available, such as that collected by the Justice for Magdalenes Research group. Disappointingly, the State party asserts: “No factual evidence to support allegations of systematic torture or ill treatment of a criminal nature in these institutions was found”.<sup>46</sup>

In 2014, the State party also reported to the UN Human Rights Committee that “[t]he facts uncovered by the Committee did not support the allegations that women were systematically detained unlawfully in these institutions or kept for long periods against their will”.<sup>47</sup> Amnesty International believes these assertions speak not to the absence of such evidence, but to the fact that the Inter-Departmental Committee’s report is not – and was not intended to be – a comprehensive investigation.

Furthermore, Amnesty International considers that this investigation does not meet the criteria for an independent inquiry. The Inter-Departmental Committee was chaired by a member of the upper house of the Irish legislature, who as such was independent of the executive arms of the State, but its members were senior representatives from six government departments. Therefore, Amnesty International considers the report and the *ex-gratia* compensation scheme described in the State party’s replies as falling below adequate standards of truth, justice and reparations.

## **Amnesty International recommends that the State party:**

- Establish an independent and thorough investigation into the broad range of human rights abuses suffered by large numbers of women and girls in the “Magdalene Laundries”

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<sup>44</sup> Amnesty International, *Ireland: Submission to the United Nations Human Rights Committee: 111<sup>th</sup> Session of the Human Rights Committee (7-25<sup>th</sup> July 2015)*, (Index: EUR 29/001/2014), pp 21-26.

<sup>45</sup> Reply no. 5, p. 8.

<sup>46</sup> CEDAW/C/IRL/6-7, para. 4041.

<sup>47</sup> *List of issues in relation to the fourth periodic report of Ireland, Addendum, Replies of Ireland to the list of issues*, CCPR/C/IRL/Q/4/Add.1, 27 February 2014.

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# IRELAND

## SUBMISSION TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

Amnesty International presents this submission to the United Nations (UN) Committee on the Elimination of Discrimination against Women (the Committee) in advance of the review of the combined sixth and seventh periodic reports of Ireland. In this document, Amnesty International sets out its concerns about the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (the Convention) by Ireland in relation to: violence against women and girls; the criminalisation of sex work and sex workers, restrictive abortion laws which put women and girls' lives and health at risk and violate their human rights; and inadequate investigation into the abuses committed in the "Magdalene Laundries".

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