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Amnesty International Ireland

**HUMAN RIGHTS COMPLIANT  
FRAMEWORK FOR ABORTION  
IN IRELAND**

*Submission to the Citizens'  
Assembly*

**AMNESTY**  
INTERNATIONAL



# DEFINITIONS

**International human rights treaty:** also sometimes called a Covenant or a Convention, is adopted by the international community of States, normally at the United Nations General Assembly. Each treaty sets out a range of human rights, and corresponding obligations which are legally binding on States that have ratified the treaty.

**Treaty monitoring body:** each of the international human rights treaties is monitored by a designated treaty monitoring body. The treaty monitoring bodies are committees composed of independent experts. Their main function is to monitor the States' compliance with the treaty in question, including through the examination of State reports.

**General comments/recommendations:** a treaty monitoring body's interpretation of the content of human rights provisions on thematic issues or its methods of work. General comments seek to clarify the reporting duties of State parties with respect to certain provisions and suggest approaches to implementing treaty provisions.

**Concluding observations:** following submission of a State report and a constructive dialogue with the State party to the particular convention, treaty monitoring bodies issue concluding observations to the reporting State, which are compiled in an annual report and sent to the United Nations General Assembly.

**Human rights standards:** the meaning and scope of human rights as interpreted and applied by the human rights bodies tasked with this work, e.g. international, regional and national courts, and human rights committees.

Drawn from the World Health Organisation's *Safe abortion: technical and policy guidance for health systems, second edition* (2012)

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# INTRODUCTION

## 1. About this submission

Since the announcement of the government's plan to convene a Citizens' Assembly to examine, among other issues, the Eighth Amendment to Ireland's Constitution, *Bunreacht na hÉireann*, Amnesty International Ireland has consistently called on the Government to ensure that human rights be one of the Assembly's key benchmarks. This submission is intended to provide guidance to the Assembly as to how its conclusions can ensure that women's and girls'<sup>1</sup> health and human rights are respected, protected and fulfilled, in line with Ireland's legal obligations under international human rights treaties it has ratified.

This submission outlines Ireland's international human rights obligations related to women's and girls' access to sexual and reproductive health information and services, including abortion. It discusses the elements of a legal framework for access to abortion and service provision that align with international human rights law and legal standards. It begins with an overview of the basis for State obligations to provide access to abortion services. It then moves to specific legal, policy and regulatory concerns States must consider, as well as some practical concerns for health systems.

This submission also provides guidance on the international human rights standards - and how they are evolving - that the Assembly should take into account as it prepares to review the current constitutional and legal framework for abortion in Ireland. These include references to international human rights treaties to which Ireland is a party and guidance from expert UN treaty monitoring bodies and other UN experts.

Annex 1 includes personal stories documenting the experiences of women in Ireland who have been compelled to access abortion services abroad. These stories were collected in the process of researching Amnesty International's 2015 report, *She is Not a Criminal: the impact of Ireland's abortion law*.<sup>2</sup> In Annex 2 is a summary of findings from independent polling Amnesty International Ireland commissioned from Red C Research & Marketing in 2015 and 2016.

Amnesty International Ireland would welcome the opportunity to present oral evidence to the Assembly at an appropriate point, and would like to address the following: the impact of Ireland's current law on and criminalisation of abortion on the human rights of women and girls; international human rights standards related to access to and information on abortion services; and the key requirements of a legal framework for access to abortion that is human rights compliant in

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<sup>1</sup> Throughout this submission, Amnesty International Ireland refers to women and girls. However, we recognise that not everyone who requires access to abortion services identifies as female.

Amnesty International Ireland advocates for the sexual and reproductive rights of all people, recognising that people of all genders and none will benefit from a repeal of the Eighth Amendment.

<sup>2</sup> Amnesty International, *She is not a criminal: The impact of Ireland's abortion law* (EUR 29/1597/2015), available at [www.amnesty.ie](http://www.amnesty.ie).

law and practice.

Should the Assembly require further clarification or information on the content of this submission, or other aspects of international human rights law and standards that would support its deliberations, Amnesty International Ireland is ready to assist in any way it can.

## 2. The Eighth Amendment

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:

*The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.*

This constitutional provision was adopted by popular referendum in 1983, with severe consequences for access to abortion and also the care of women and girls in pregnancy more generally. In 1992, in *Attorney General v X* (the X case), a 15-year-old girl 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 is at risk, including a risk of suicide. Due to a 2010 ruling by the European Court of Human Rights in *A, B & C v Ireland*,<sup>3</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>4</sup> This Act also reintroduced the criminal offence of having or performing an abortion, with a possible 14-year prison term for women and healthcare workers. Also, as a result of the Eighth Amendment, information on abortion is very restricted, via the Regulation of Information (Services outside the State for the Termination of Pregnancies) Act 1995. Women and girls are, paradoxically, legally free to travel to other countries for abortion: in 1992, another referendum approved the insertion of this freedom into the Constitution.<sup>5</sup> Ireland’s legal framework on abortion has been repeatedly criticised by United Nations’ human rights treaty bodies, which have made it clear that human rights compliant law reform is not possible without repealing the Eighth Amendment.

## 3. What is international human rights law?

**Human rights are basic rights and freedoms to which all people are entitled, regardless of nationality, sex, national or ethnic origin, ‘race’, religion, language, or other status. Human rights are the cornerstone of the rule of law and an essential instrument with which states**

<sup>3</sup> X v. Attorney General and Others (1992) ILRM 401.

<sup>4</sup> <https://www.oireachtas.ie/documents/bills28/acts/2013/a3513.pdf>.

<sup>5</sup> Article 40.3.3, Bunreacht na hÉireann, para 2.

**can ensure that all people are able to live in dignity and freedom.**

Human rights include civil and political rights, such as the right to life, freedom from torture and other ill-treatment, and freedom of expression; and social, cultural and economic rights including the right to health, or to receive an education. Human rights are set out in international treaties. These international human rights treaties are negotiated and adopted by the member States of the United Nations (UN), including Ireland. States may decide to sign and ratify these treaties, whereupon they become legally bound by these treaties under international law.

The Universal Declaration of Human Rights (UDHR) is the foundation of the international system of protection for human rights. It was adopted by the UN General Assembly on 10 December 1948. The 30 articles of the UDHR establish the civil, political, economic, social, and cultural rights of all people. It is a vision for human dignity that transcends political boundaries and authority, committing governments to uphold the fundamental rights of each person.

Legally binding human rights treaties were subsequently adopted by the UN. The International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights were adopted in 1966, and both ratified by Ireland in 1989. These, together with the UDHR, form the core basis of international human rights law – together they are known as the International Bill of Rights. Treaties setting out the particular rights of specific groups were later adopted, such as the UN Convention on the Elimination of Discrimination Against Women or the UN Convention on the Rights of the Child.

International human rights law lays down obligations which States are legally bound to respect. By acceding to these treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights, and undertake to ensure that their domestic laws are compatible with their treaty obligations and duties.

The implementation of these human rights treaties is monitored by UN treaty monitoring bodies, made up of independent Experts nominated and elected by States (including Ireland). States undertake to report periodically to these treaty bodies on their implementation of the relevant treaty, and the treaty body issues 'concluding observations' setting out concerns and recommendations. States may agree to permit treaty bodies to receive and give opinions on complaints by individuals alleging their rights were violated. Treaty bodies also have a mandate from States to provide interpretative guidance to States – usually in the form of 'General Comments' or 'General Recommendations' - clarifying their specific human rights obligations under each of the treaties they have ratified.

**As a human rights organisation, Amnesty International takes its mandate solely from international human rights law, and is independent of any political, religious or other ideology.**

# EXECUTIVE SUMMARY

**Ireland's current laws on abortion violate women's and girls' rights including their rights to health, equality and non-discrimination, information, privacy, and freedom from torture or other ill-treatment.** The Irish Government has not denied this. In November 2016, the Government accepted the findings of the UN Human Rights Committee in the *Mellet v Ireland* case that it violated the human rights of one woman, when effectively forcing her to travel to the United Kingdom for an abortion in 2013.

Amnesty International documented the harrowing experiences and multiple human rights violations women and girls in Ireland have endured due to the existing abortion laws, in its 2015 report *She is Not a Criminal: the impact of Ireland's abortion law*.<sup>6</sup> The report is based on interviews with women who had abortions, healthcare providers and other stakeholders. It also clearly demonstrates how Ireland's abortion laws disproportionately affect marginalised and disadvantaged groups, including women and girls living in poverty, asylum seekers and undocumented migrants, or those with health problems. It also shows how the Eighth Amendment impacts on women's access to healthcare and freedom to exercise autonomous decision-making during pregnancy beyond the issue of access to abortion.

Ireland is one of a few countries in Europe with highly restrictive abortion laws that prohibit and criminalise abortion except in limited circumstances (in Ireland, only when the pregnancy poses a "real and substantial" risk to the woman or girl's life), and do not allow abortion on request or on broad socio-economic grounds.<sup>7</sup> All other European countries ensure access to abortion on a woman's request, at least in early pregnancy. All of these European countries' laws also provide that once the timeframe for access to abortion on request passes, abortion can be provided later in pregnancy on certain grounds, namely where necessary to avert a risk to a woman or girl's life, to safeguard her physical and mental health, or in cases of serious/severe or fatal foetal impairment. Permitting access to abortion only in very limited circumstances - i.e. when a woman or girl might die - puts Ireland at the extreme end of the legal spectrum, in stark contrast to its international legal obligations to respect, protect and fulfil women's and girl's human rights including their right to access healthcare services without discrimination, fear or coercion.

The World Health Organisation (WHO) guidelines on abortion, developed on the basis of public health evidence, specify that despite the increased use of contraceptives, women's need for abortion cannot be eliminated.<sup>8</sup> WHO also notes that restricting legal access to abortion does not decrease the need for abortion, but it is likely to increase the number of women seeking illegal and unsafe abortions which can lead to injuries or even death. In contrast, the public

<sup>6</sup> Amnesty International, *She is not a criminal: The impact of Ireland's abortion law* (EUR 29/1597/2015)

<sup>7</sup> The others are Andorra, Cyprus, Lichtenstein, Malta, Monaco, Northern Ireland, Poland and San Marino.

<sup>8</sup> See World Health Organisation, 2012. *Safe abortion: technical and policy guidance for health systems*, second edition, Geneva: WHO, p. 23..

health evidence clearly shows that access to safe and legal abortion services improves health outcomes for women and girls, and contributes to the full realisation of their human rights.<sup>9</sup> On the basis of this evidence, WHO recommends that “laws and policies on abortion should protect women’s health and their human rights”, and that “regulatory, policy and programmatic barriers that hinder access to and timely provision of safe abortion care should be removed”.<sup>10</sup>

Amnesty International Ireland urges the Assembly to take a comprehensive approach to any proposals it makes on legislation on access to abortion, with the view of ensuring the safeguarding and fulfilment of women’s and girls’ health and human rights. This will require consideration how laws and policies around abortion can work to prevent unintended pregnancies insofar as possible; and further, that when such pregnancies happen, women and girls are enabled to make decisions based on a full suite of healthcare options and information. We also urge the Assembly to consider that, in addition to a full range of sexual and reproductive healthcare services and goods including contraceptives, States have an obligation to ensure women and girls<sup>11</sup> can access sexual and reproductive health information and comprehensive sexuality education in order to fulfil their right to health. Such access should be guaranteed to everybody, including adolescents and young people which is currently not the case in Ireland.<sup>12</sup>

As a matter of international law, the Irish Government is required to bring the State’s legislative and constitutional provisions into line with its international human rights obligations, as set out in international human rights treaties that Ireland has signed and ratified. This includes, among other things, reforming existing laws and policies, and potentially adopting additional laws, policies and programmes to align with Ireland’s international legal obligations.

Multiple human rights treaty monitoring bodies have clarified that women and girls have a right to access abortion, at a minimum in certain circumstances (or on certain minimum grounds).<sup>13</sup> To deny women and girls access in these circumstances results in grave violations of their human rights.<sup>14</sup> Additionally, governments have an obligation to ensure access to abortion where it is legal, and remove all legal, policy and regulatory barriers to access; the right to access abortion services cannot be a theoretical one, but must be practical and effective.

States can also legislate for access to abortion beyond these minimum grounds in order to further realise and fulfil women and girls’ sexual and reproductive rights. In fact, UN human rights experts have articulated a view that states should ensure access to safe abortion on request<sup>15</sup> or broad socio-economic grounds in early pregnancy in order to fulfil their obligations under international human rights law and standards. For example, in recent years UN treaty

9 Grimes, David A., et al. “Unsafe abortion: the preventable pandemic.” *The Lancet* 368.9550 (2006): 1908-1919.

10 See World Health Organization, 2012. *Safe abortion: technical and policy guidance for health systems*, second edition, Geneva: WHO, p. 9.

11 Boys and men too.

12 UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Ireland* (2016). The Committee 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.

13 The implementation of international human rights treaties is monitored by UN treaty monitoring bodies. These treaty bodies also have a mandate to provide interpretative guidance to states on fulfilling their specific human rights obligations under each of the treaties they have ratified.

14 See, e.g., *K.L. v Peru*, Human Rights Committee, Communication No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005); *L.C. v Peru*, CEDAW Committee, Communication No. 22/2009, para. 8.15, U.N. Doc. CEDAW/C/50/D/22/2009 (2011); *Mellet v Ireland*, Human Rights Committee, Communication No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013 (2016).

15 “*Unsafe abortion is still killing tens of thousands women around the world*” – *UN rights experts warn*. [online] Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20600&LangID=E> [Accessed 15 Dec. 2016]



bodies have called on States which have already legalised abortion on certain grounds (such as risk to life, health, sexual assault and foetal impairment) to liberalise their restrictive laws.<sup>16</sup>

In addition, international treaty bodies have found that criminalisation of abortion violates human rights law.<sup>17</sup> This means that governments have an international human rights obligation to decriminalise abortion (including women seeking, and healthcare workers<sup>18</sup> providing, abortion) under all circumstances. Just this year, the UN Human Rights Committee (the body tasked with overseeing implementation of the International Covenant on Civil and Political Rights) found in the *Mellet v Ireland* case 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 abortion services.

Women and girls need to be trusted - and empowered - to make autonomous decisions around their own reproductive health and lives. Criminal law and the threat of punitive sanctions should never be used to control or remove such choices. Criminal laws against abortion also contribute to severe stigma against women seeking abortions and can deter healthcare providers from providing abortion service even when legal. Moreover, forcing women and girls to travel to access essential medical care to which they have a human right, exacerbates the shame and stigma around abortion and increases women's physical and psychological suffering. Ireland's Constitution is profoundly contradictory in granting women and girls a freedom to travel abroad to do something that carries a possible 14-year prison term if done in Ireland.

As a matter of international law, a State's Constitution cannot be relied upon to excuse human rights violations and its provisions cannot circumvent a state's human rights obligations. Therefore, the Eighth Amendment as currently framed, clearly contravenes Ireland's international legal obligations, particularly with regard to its obligation to respect, protect and fulfil the full range of human rights for all women and girls. As such, the Eighth Amendment should be repealed in its entirety.

This is particularly the case because, contrary to the language of the Eighth Amendment, international human rights treaties and experts tasked with interpreting those treaties are clear that human rights protections apply from birth. In fact, no human rights body has ever found allowing termination of pregnancy to be incompatible with human rights, including the right to life. United Nations bodies, however, have recognised that prenatal interests can be protected through promoting the health and wellbeing of pregnant women and girls, such as providing good health care to pregnant women, access to information, effective pre-natal services and support.

Some say the issue of abortion is too controversial and divisive for Ireland to resolve. Amnesty International Ireland does not believe this to be the case. Women's and girls' sexual and reproductive rights – including their right to control their own fertility, to determine the number and

<sup>16</sup> See UN CEDAW, Concluding Observations: New Zealand, UN Doc. CEDAW/C/NZL/CO/7 (2012), paras. 34-35; Human Rights Committee Concluding Observations on Poland (Advance Unedited Version) (2016), paras. 23-24; CRC Concluding Observations: Zimbabwe UN Doc. CRC/C/ZWE/CO/2 (2016), para. 60 (c).

<sup>17</sup> See *Mellet v Ireland*, Human Rights Committee, Communication No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013 (2016).

<sup>18</sup> Decriminalisation means that abortion is no longer regulated by specific abortion-related criminal legislation, and is not a criminal offence in itself. It means women and girls would never be subject to a criminal sanction, and healthcare providers' practice would be regulated – and any malpractice penalised - in the same way as any other medical procedure.

spacing of their children, to not be forced to continue with a pregnancy against their wishes – are equally as important as other human rights such as the right to a fair trial. The international human rights framework itself was intended to ensure that all individuals' rights were protected in spite of tensions arising from differences over political or religious ideologies, and social or moral norms. International law is not something 'imposed' on Ireland – but rather that Ireland has helped establish and agreed to comply with. Furthermore, the overwhelming majority of people in Ireland – across all regions of the country, and all age groups and demographics - are in favour of expanding access to abortion (see Annex 2 for details of polling).<sup>19</sup> Eighty per cent believe that women's health must be the priority in any reform of Ireland's abortion law.<sup>20</sup>

Amnesty International's view is that repealing the Eighth Amendment is a necessary step for the introduction of a human rights compliant legal framework on abortion, which can ensure safe and timely access to abortion services both in law and practice. Legislation will be needed not only to permit expanded access to abortion, but also to ensure and compel the delivery and availability of abortion services. Ireland also has the obligation to decriminalise abortion – no women or girls should ever face criminal sanction for having or seeking an abortion regardless of the circumstances, nor should health providers face criminal charges for providing essential abortion services.<sup>21</sup>

In sum, Amnesty International Ireland calls on the Citizens' Assembly to take into consideration Ireland's human rights obligations when engaging in its deliberations and issuing its recommendations. To support the Citizens' Assembly in this effort, this submission provides guidance on the elements of a human rights compliant legal framework on abortion. It further explains why legislating for abortion only on specific minimum grounds would not guarantee effective and timely access to safe and legal abortion in Ireland, including for those who require access under those minimum grounds.

**At the conclusion of its deliberations, Amnesty International Ireland urges the Assembly to recommend a full repeal of the Eighth Amendment, decriminalisation of abortion, and introduction of a human rights complaint framework for access to and information about abortion as one essential element of a healthcare service that respects, protects and fulfils women's and girls' human rights.**

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<sup>19</sup> Annex 2 of this submission set out key findings from a February 2016 independent Red C Research & Marketing nationally representative opinion poll commissioned by Amnesty International Ireland on public attitudes to abortion.

<sup>20</sup> Ibid.

<sup>21</sup> See note 18 above..

# CURRENT IRISH LAW

Ireland's laws on access to, and information about, abortion services are among the most restrictive in the world. Women and girls cannot legally have an abortion in Ireland unless there is a "real and substantial" risk to their life. Outside this narrow ground, women who can afford it and have the necessary travel visas, can access safe or relatively safe abortion services in the United Kingdom and neighbouring European countries. Others illegally import and self-administer the medical abortion pills, misoprostol or mifepristone, but without the recommended medical supervision.

## 1. Establishing risk to life

The Protection of Life during Pregnancy Act was enacted in 2013 to respond to the European Court of Human Rights decision in *A, B and C v Ireland*<sup>22</sup> with the stated goal of ensuring that women and girls have a meaningful pathway to abortion within Ireland where their lives are at risk. However, because of the Eighth Amendment, the Act draws a false distinction between health and life. Also, the Act and its accompanying guidelines<sup>23</sup> fail to provide practical assistance to medical professionals in grappling with how exactly they are to assess when a pregnancy poses a "real and substantial" risk to the life of a woman or girl.<sup>24</sup> They also fail to deliver effective procedural rights to women eligible for legal abortion within the state.

Restrictive abortion laws most often operate as a barrier blocking access to services generally, even for those 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". Such mandatory assessment procedures that require women and girls to "prove" they are deserving of care are also inherently degrading, and may act as a deterrent to the effective and timely provision of abortion.<sup>25</sup> Ultimately, certification processes such as these are often unworkable, both for wom-

<sup>22</sup> *A, B and C v Ireland* (2010) ECHR 2032, Application no 25579/05.

<sup>23</sup> a February 2016 independent Red C Research & Marketing nationally representative opinion poll commissioned by Amnesty International Ireland on public attitudes to abortion.

<sup>24</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>25</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>26</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. Ring, E. (2016). *53% of unplanned pregnancy cases intended to abort*. [online] Irishexaminer.com. Available at: <http://www.irishexaminer.com/ireland/53-of-unplanned-pregnancy-cas->

en and medical professionals, because they are focused on limiting access, rather than ensuring women and girls can realise their human right to healthcare.<sup>26</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.

## 2. Freedom to travel

Under the Constitution, women living in Ireland have the freedom to travel to another jurisdiction to access abortion services.<sup>27</sup> While data collected on the number of women who access abortion services abroad is patchy and figures underestimate the actual number of women who travel, we know that 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>28</sup> In 2015 alone, 3,451 women travelled to access abortion services in the United Kingdom, averaging to roughly 10 women a day;<sup>29</sup> in the past six years, more than 5,000 women in Ireland and Northern Ireland sought access to medical abortion pills through the website Women on Web, averaging a further two women a day.<sup>30</sup>

However, 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>31</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. In addition, many of the women that Amnesty International interviewed expressed that the criminalisation of abortion stigmatised them and made them feel like criminals. Furthermore, criminalisation can make women and girls fearful of obtaining post-abortion care in Ireland. Travel is not possible for many women and girls due to the 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.

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es-intended-to-abort-432031.html [Accessed 1 Dec. 2016].

26 This would appear to be affirmed 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].

27 Article 40.3.3°, Bunreacht na hÉireann, para 2.

28 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].

29 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].

30 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].

31 IFPA, “Psychological, Physical and Financial Costs of Travel”, available at <http://www.ifpa.ie/node/506>.

*At the moment it is like 'mission impossible', that is making light of it, but it is a covert operation, the flights, the times, who can you tell, who can you trust? ...thinking about child care and the money of flying... you feel like a criminal. I am a law-abiding citizen and I felt like I was committing a crime, like I was smuggling drugs across the border. That feeling was horrible."*

Cerys, who travelled to England for an abortion after receiving a diagnosis of fatal foetal impairment, October 2014, interviewed in Amnesty International's 2015 *She is not a criminal report*

### 3. Information on abortion

In addition, information about abortion services is extremely restricted under the 1995 Regulation of Information 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 fundamental 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>32</sup> However, 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>33</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>34</sup> Under the Regulation of Information 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>35</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>36</sup>

<sup>32</sup> See Amnesty International’s report, *She is not a criminal: the impact of Ireland’s abortion law* (2015).

<sup>33</sup> Regulation of Information Act, section 5.

<sup>34</sup> The World Health Organisation guidelines are clear 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>35</sup> Regulation of Information Act, section 8.

<sup>36</sup> Regulation of Information Act, section 10; Fines Act 2010.

## 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>37</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>38</sup> The overly broad provision allows for conscientious objection to be invoked not only by healthcare professionals who carry out a termination but also those who assist with carrying one out. The Act does not clearly define “assistance”, nor does it ensure the availability and accessibility of healthcare professionals who are willing and able to provide such services. Additionally, the Act also does not explicitly debar medical practitioners who object to abortion in principle from serving on a review panel.<sup>39</sup>

## 5. Lessons for the Assembly's work

Should the deliberations of the Citizens' Assembly look beyond the Eighth Amendment, and potentially towards framing a legislative solution to the human rights violations stemming from Ireland's restrictive abortion laws, it is important that lessons be drawn from how vaguely and narrowly framed current Irish law is. It should be recognised that, 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 minimum grounds on which international human rights law says abortion must be guaranteed.

There is little evidence internationally to support the 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.

<sup>37</sup> Section 17.

<sup>38</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.

<sup>39</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.

# THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK

Despite decades of jurisprudence and standards providing clarity and insight, pervasive myths about what the human rights framework does and does not say in relation to abortion persist, fuelling a debate in Ireland that can be challenging to understand. This section lays out some of the basis for the right to access legal abortion as it is framed in the context of international human rights law and standards.

The right of women and girls to access sexual and reproductive health information and services (including with regard to abortion), is firmly grounded in international human rights law. Specific health services that States are required to provide are not specifically enumerated in human rights treaties, and the same is true with abortion services. Nevertheless, the right of women and girls to have access to safe and legal abortion services is based on the interpretation and application of a wide range of human rights (enshrined in human rights treaties and national Constitutions and laws).

The UN Human Rights Committee, which monitors the International Covenant on Civil and Political Rights (ICCPR), in its General Comment no. 28 on the Equality of Rights Between Men and Women states that regulation of abortion implicates pregnant women's right to life; the right to privacy; and freedom from cruel, inhuman and degrading treatment.<sup>40</sup> In economic, social and cultural rights terms, many aspects of reproductive rights, including access to abortion information and services, stem directly from the right to the highest attainable standard of physical and mental health.

## 1. The right to health: abortion services and information

**The right to reproductive health is well established as an integral part of the international human right to health. Abortion is a core element of this right.** The right to access abortion services is explicitly detailed by UN treaty monitoring bodies tasked with interpreting the content and meaning of rights enshrined in the core human rights treaties.<sup>41</sup>

Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the core provision on the right to health, and provides for “[t]he right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.<sup>42</sup> Articles 2(2) and 3 of the ICESCR provide that all rights, including the right to health, must be provided in way that

<sup>40</sup> Para 20.

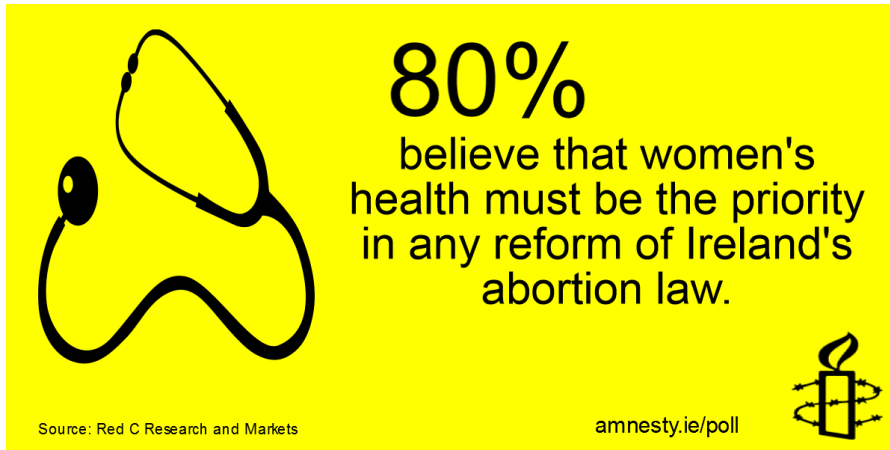
<sup>41</sup> A comprehensive account of these bodies' pronouncements and other standards is contained in the Annex to Amnesty International's 2015 report, *She is not a criminal: the impact of Ireland's abortion law*, available at [www.amnesty.ie](http://www.amnesty.ie).

<sup>42</sup> ICESCR, art.12 (1). This echoes the 1946 Constitution of the WHO, which defines the right to health as “the enjoyment of the highest attainable standard of health” and defines ‘health’ as: “A state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” WHO Constitution, ‘Basic Documents’ (1948) Geneva: WHO.

does not result in discrimination. The UN Committee on Economic, Social and Cultural Rights' General Comment No. 14 further states:

*"The right to health contains both freedoms and entitlements. The freedoms include the right to control one's own health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to a system of health protection, which provides equality of opportunity for people to enjoy the highest attainable level of health."*<sup>43</sup>

It also outlines the basic requirements of health services provided as part of the right to health.



General Comment 14 of the Committee on Economic, Social and Cultural Rights (CESCR) outlines key government's obligations in achieving the full realisation of the right to health, which includes reproductive health. It explains that the right to health as it applied to the delivery of health services has four essential and interrelated elements:

- Availability - achieved by integrating health services into the existing health system
- Accessibility - includes economic accessibility but also guarantees of non-discrimination
- Acceptability - requires respect for medical ethics, as well as requirements that services must be delivered in a manner that is respectful of culture and gender-sensitive
- Quality - indicates that services should be delivered to the highest quality that available resources can facilitate

States must respect, protect and fulfil the right to health, i.e.:

- Respect: refrain from denying or limiting access to health services
- Protect: ensure equal access to health care and facilities provided by third parties and ensure that service providers meet standards and codes of conduct
- Fulfil: enable individuals to realise their right to health

<sup>43</sup> Para 8.



The right to health is also outlined in Article 12 of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW)<sup>44</sup>, which commits States parties to “[e]liminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning”.<sup>45</sup> The UN Committee on the Elimination of Discrimination Against Women monitors the CEDAW Convention. This Committee’s General Recommendation 24 on Article 12 of the Convention (Women and Health) clarifies that “access to health care, including reproductive health, is a basic right under the [CEDAW] Convention”.<sup>46</sup>

The right to health includes access to health information, education and other means to enable women and girls to exercise their equal right to decide freely and responsibly on whether and when to have children, and the number and spacing of their children.<sup>47</sup> The UN CEDAW Committee also frames denial of access to abortion services as not only a violation of the right to health, but a denial of the principle of equality and non-discrimination as prohibition or criminalisation of abortion denies access to a health service which only women need.<sup>48</sup>

In 2016, the UN Committee on Economic, Social and Cultural Rights adopted General Comment No. 22 on the right to sexual and reproductive health. This important new General Comment reinforces how intertwined the right to reproductive health, including access to abortion services, is with a range of other human rights:

*“The right to sexual and reproductive health is also indivisible from and interdependent with other human rights. It is intimately linked to civil and political rights underpinning the physical and mental integrity of individuals and their autonomy, such as the rights to life; liberty and security of person; freedom from torture and other cruel, inhuman or degrading treatment; privacy and respect for family life; and non-discrimination and equality. For example, lack of emergency obstetric care services or denial of abortion often leads to maternal mortality and morbidity, which in turn constitutes a violation of the right to life or security, and in certain circumstances can amount to torture or cruel, inhuman or degrading treatment.”*<sup>49</sup>

## 2. UN Treaty Bodies’ Criticisms of Ireland’s Abortion Laws

In recent years, UN treaty monitoring bodies have made it explicitly clear to Ireland that it is failing to meet its international legal obligations in refusing to reform its abortion laws. In 2014, following Ireland’s review under the ICCPR, the UN Human Rights Committee called on the State to revise its constitutional provisions and legislation regulating abortion access. It expressed concern at core flaws in the current framework for abortion access, including:

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44 Other treaties provide the right to health, including: Article 5(e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination; Article 24 of the UN Convention on the Rights of the Child; Article 25 of the Convention on the Rights of Persons with Disabilities. Ireland has ratified the first two treaties, and is soon to ratify the third.

45 Art.12 (1).

46 Para 1.

47 CEDAW, arts. 10(h), 14(2)(b), 16(e); CEDAW Committee General Recommendation 24, para 22.

48 CEDAW General Recommendation 24.

49 CESCR General Comment No. 22, para 10.

- The lack of legal and procedural clarity concerning what constitutes “real and substantive risk” to the life, as opposed to the health, of the pregnant woman
- The requirement of [an] excessive degree of scrutiny by medical professionals for pregnant and suicidal women leading to further mental distress
- The discriminatory impact of the Act on women who are unable to travel abroad to seek abortions
- The strict restrictions on the channels via which information on crisis pregnancy options may be provided to women and the imposition of criminal sanctions on health-care providers who refer women to abortion services outside the State party under the Regulation of Information (Services Outside the State For Termination of Pregnancies) Act, 1995

In 2015, the UN Committee on Economic Social and Cultural Rights stated its concern at “the discriminatory impact on women who cannot afford to get an abortion abroad or access to the necessary information”.<sup>50</sup> It criticised Ireland’s “highly restrictive” abortion laws and “the criminalisation of abortion, including in the cases of rape and incest and of risk to the health of a pregnant woman”. It too called on Ireland to revise its constitutional and legislative provisions relating to abortion in order to comply with its international human rights obligations:

*“The Committee recommends that the State party take all necessary steps, including a referendum on abortion, to revise its legislation on abortion, including the Constitution and the Protection of Life During Pregnancy Act, in line with international human rights standards; adopt guidelines to clarify what constitutes a real substantive risk to the life of a pregnant woman; publicize information on crisis pregnancy options through effective channels of communication; and ensure the accessibility and availability of information on sexual and reproductive health.”*

In 2016, the UN Committee on the Rights of the Child reinforced the calls of the two previous committees and highlighted Ireland’s obligation to decriminalise abortion in all circumstances. The Committee advised the State that it should:

*“Decriminalise abortion in all circumstances and review its legislation with a view to ensuring children’s access to safe abortion and post-abortion care services; and ensure that the views of the pregnant girl are always heard and respected in abortion decisions.”<sup>51</sup>*

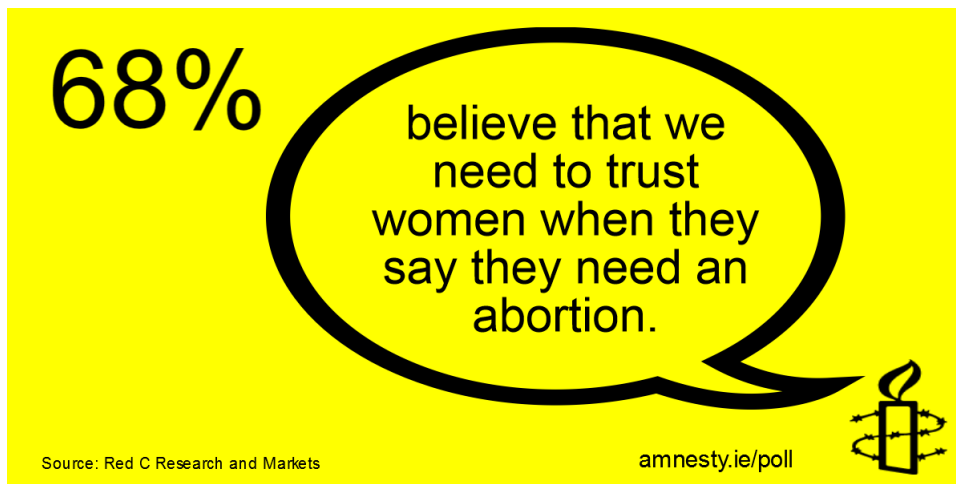
It further criticised the “inability of doctors to provide [abortion] services in accordance with objective medical practice”. On a related and important point, it also noted the “severe lack of access to sexual and reproductive health education and emergency contraception for adolescents”. It urged 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.

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<sup>50</sup> UN Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Ireland (2015).

<sup>51</sup> UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland (2016).

# A HUMAN RIGHTS COMPLIANT FRAMEWORK FOR ABORTION: INTERNATIONAL GOOD PRACTICE



WHO guidelines on abortion,<sup>52</sup> developed on the basis of public health evidence, specify that contraceptive use cannot completely eliminate women's recourse to and need for abortion services. The guidelines highlight that restricting legal access to abortion does not decrease the need for abortion, but it is likely to increase the number of women seeking illegal and unsafe abortions<sup>53</sup>.

On this basis, WHO recommends that "laws and policies on abortion should protect women's health and their human rights", that "regulatory, policy and programmatic barriers that hinder access to and timely provision of safe abortion care should be removed," and that where abortion is legal on broad socio-economic grounds or on a woman's request, and where safe services are accessible in practice, both unsafe abortion and abortion-related mortality and morbidity (injury or disability resulting from unsafe procedures) are reduced.

It is now evident that international human rights mechanisms are explicitly articulating a view that states should ensure access to safe abortion 'on request' or broad socio-economic grounds in early pregnancy in order to fulfil their obligations under international human rights law and standards. Countries such as Poland, Zimbabwe and New Zealand, which are examples of countries that have legalised abortion only on the 'minimum grounds' expressly demanded by international treaty monitoring bodies, have been repeatedly called upon by those bodies to 'liberalize' their 'restrictive' and 'convoluted' laws.

<sup>52</sup> World Health Organisation, 2012. *Safe abortion: technical and policy guidance for health systems*, second edition, Geneva: WHO.

<sup>53</sup> 'Unsafe abortion' is defined by the WHO as "a procedure for terminating a pregnancy performed by persons lacking the necessary skills or in an environment not in conformity with minimal medical standards, or both." See World Health Organization, 2004. *WHO Global Strategy on Reproductive Health*, Geneva: WHO, p. 18.

- *“The Committee is...concerned about significant procedural and practical obstacles faced by women to access safe legal abortion, which prompt women to travel long distances or abroad to access safe legal abortion... [and that] the conscientious clause in article 39 of the Act on Medical Profession has often been inappropriately claimed in practice with the result that access to legal abortion is unavailable in entire institutions and a region of the country...The Committee is further concerned by recent initiatives to further restrict voluntary termination of pregnancy...”The Committee called on Poland to ensure that “legislation does not prompt women to resort to clandestine abortions that put their lives and health at risk . . . . [and to r]efrain from adopting any legislative reform that would amount to a retrogression of already restrictive legislation on women’s access to safe and legal abortion”. UN Human Rights Committee 2016 Poland<sup>54</sup>*
- *“The Committee reiterates its deep concern about restrictive abortion laws in Poland...the State party should liberalize its legislation and practice on abortion.” UN Human Rights Committee 2004 Poland<sup>55</sup>*
- *“The Committee is concerned about the restrictive abortion laws, which have resulted in a large number of women risking their health.” UN Committee on Economic, Social and Cultural Rights 2002 Poland<sup>56</sup>*
- *“The Committee notes with concern, however, the convoluted abortion laws which require women to get certificates from two certified consultants before an abortion can be performed, thus making women dependent on the benevolent interpretation of a rule which nullifies their autonomy.” [The Committee calls on the state] (a) To review the abortion law and practice with a view to simplifying it and to ensure women’s autonomy to choose.” UN Committee on the Elimination of Discrimination against Women 2014 New Zealand<sup>57</sup>*
- *The Committee is ... “Extremely concerned about ... the restrictive abortion law and the lengthy procedures for authorizing abortions, which result in illegal and unsafe abortions.” UN Committee on the Rights of the Child 2016 Zimbabwe<sup>58</sup>*

In addition, the UN Human Rights Committee and the UN CEDAW Committee have raised concerns regarding the discriminatory impact of restrictive abortion laws on marginalised women and girls and their access to legal abortion services. Furthermore, several international treaty monitoring bodies have specified that States must ensure that marginalised women and girls are able to access safe abortion and that States must address discrimination and inequality which may impede their access.<sup>59</sup>

<sup>54</sup> UN Doc CCPR/C/POL/CO/7, paras 23 & 24

<sup>55</sup> UN Doc. CCPR/CO/82/POL2 (2004), para. 8.

<sup>56</sup> UN Doc. E/C.12/1/Add.82 (2002), para. 29.

<sup>57</sup> UN Doc. CEDAW-C-NZL-CO-7 (2012), paras. 33-34.

<sup>58</sup> UN Doc. CRC/C/ZWE/CO/2 (2016), para. 60 (c).

<sup>59</sup> Morocco, U.N. Doc. CRC/C/MAR/CO/3-4 (2014), para. 57 (b);

In a 2016 report the UN Working Group on Discrimination Against Women recommended that in order to end discrimination against women, States should:

“Recognize women’s right to be free from unwanted pregnancies and ensure access to affordable and effective family planning measures. Noting that many countries where women have the right to abortion on request supported by affordable and effective family planning measures have the lowest abortion rates in the world, States should allow women to terminate a pregnancy on request during the first trimester or later in the specific cases listed above.”<sup>60</sup>

A September 2016 joint statement<sup>61</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; 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 recently confirmed in its important new 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>62</sup>

Therefore, it is becoming clear that international human rights standards are evolving, and that the UN treaty monitoring 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.

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Kuwait, U.N. Doc. CRC/C/KWT/CO/2 (2013), para.60;

Sierra Leone, U.N. Doc. CRC/C/SLE/CO/3-5 (2016), paras. 32 (c);

United Kingdom of Great Britain and Northern Ireland, U.N. Doc. CRC/C/GBR/CO/5, para. 65 (c).

Kenya, U.N. Doc. E/C.12/KEN/CO/1 (2008), para. 33

Kosovo (UNMIK), U.N. Doc. E/C.12/UNK/CO/1 (2008), para. 30

60 See UN Working Group on Discrimination against Women in Law and Practice, UN Doc. A/HRC/32/44 (2016).

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

62 Para. 28

## **Considerations if regulating abortion in later stages of pregnancy**

While states are not prohibited from imposing reasonable restrictions on abortion services, such as gestational limits in certain circumstances, such restrictions may not be absolute. There must be some flexibility in regulations in order to ensure that women and girls' human rights can be protected at later stages in pregnancy, and in many countries no gestational limits are imposed for abortions that avert a risk to health or life, in cases of severe or fatal foetal impairment, or where the pregnancy is the result of rape or incest.

However, if legislating for these circumstances later in pregnancy, it remains crucial to avoid the type of restrictions which create barriers to access such as mandatory assessment procedures (like those currently in place under Ireland's Protection of Life During Pregnancy Act) that violate the human rights of women and girls.

## **Risks in legislating for separate ground of sexual violence**

The experience of countries worldwide indicates that legislating for an independent ground for abortion in cases of sexual violence, including rape and incest, is often accompanied by onerous authorisation requirements to verify that a woman or girl has been raped. These procedural requirements essentially act as a barrier to women's and girls' access to the health and social support services that they require. These requirements also violate human rights by hinging women's and girls' access to safe and legal abortion services on compliance with a series of onerous and unworkable assessments and authorisation requirements

These procedural requirements are unnecessary and may violate women's right to health by denying or delaying their access to essential health services, as referenced above. As terminating a pregnancy in later stages of pregnancy may involve more health risks, procedural barriers that delay women's or girls' access to safe and legal abortion essentially increase potential risks to their health. In terms of what is considered good practice, in countries including Ethiopia and Ghana, if a woman simply states to her healthcare provider that she has been raped, this is considered adequate to establish her entitlement to a legal abortion, and the provider cannot query her claim.<sup>63</sup>

The WHO recommends that women and girls should be provided safe, legal abortion services based on their complaint of the rape, and should not be compelled to undergo unnecessary administrative or judicial procedures such as pressing charges against the perpetrator or identifying the rapist.<sup>64</sup> The UN Committee on the Rights of the Child has also called upon one State to ensure "that the provision on non-punishable abortion, especially for girls and wom-

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<sup>63</sup> *International and Comparative Analysis on Abortion Legislation* as part of the Background Information for Policy Roundtable on "Law, Regulation & Abortion: Assuring Basic Human Rights Norms and Ethical Standards", November 24-25, 2015.

<sup>64</sup> See WHO, *Safe Abortion: Technical and Policy Guidance for health Systems*, 2012, second edition, p.92-93

en victims of rape, is known and enforced by the medical profession without intervention by the courts and at their own request”.<sup>65</sup> In addition, the UN Committee Against Torture (CAT) has argued that delaying or denying access to abortion for survivors of rape “entails constant exposure to the violation committed against her and causes serious traumatic stress and a risk of long-lasting psychological problems such as anxiety and depression.”<sup>66</sup>

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<sup>65</sup> See CRC Concluding Observations on Argentina, UN Doc. CRC/C/ARG/CO/3-4 (2010), para. 59.

<sup>66</sup> U.N. Doc CAT/C/NIC/CO/1. See also: “*The denial of safe abortions and subjecting women and girls to humiliating and judgmental attitudes in such contexts of extreme vulnerability and where timely healthcare is essential amount to torture or ill-treatment.*” Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/31/57, 2016, para. 44 (referencing European Court of Human Rights, Application No. 57375/08, *P and S v Poland*, 2012).

# KEY CONSIDERATIONS IN LEGISLATING FOR ABORTION ACCESS

## Right to Life protections do not apply before birth

Some opponents of abortion claim that right to life protections set forth in international and regional human rights treaties are accorded before birth, thereby prohibiting states from allowing abortions. The history of the development of UN human rights treaties, including the Convention on the Rights of the Child, and the subsequent interpretation of their right to life provisions by their treaty monitoring bodies, shows that the right to life treaty provisions only apply after birth.<sup>67</sup> In fact, no human rights body has ever found allowing termination of pregnancy to be incompatible with human rights.<sup>68</sup> UN bodies, however, have recognised that prenatal interests can be protected through promoting the health and well-being of pregnant women.<sup>69</sup> Moreover, international human rights bodies have found restrictions on access to abortion in law or in practice to be a violation of state obligations, including obligations to protect pregnant women's and girls' rights to life and health.

## Barriers to access must be identified and removed

Not only does the State have an obligation to make abortion services legal, but they have an obligation under international human rights law to ensure that where abortion is legal, it is also available and accessible to women. This requires States to establish a clear legal and policy framework on abortion that provides guidance on the circumstances in which abortion should

<sup>67</sup> Rhonda Copelon et. al. 'Human Rights Begin at Birth: International Law and the Claim of Fetal Rights', in *Reproductive Health Matters* Vol. 13, No. 26, November 2005, pp. 120-129. An argument to the contrary is erroneously built upon Paragraph 9 of the UN Convention on the Rights of the Child Preamble, which provides: "Bearing in mind that, as indicated in the Declaration of the Rights of the Child, 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.'" The history of negotiations by states on the treaty clarify that these safeguards "before birth," must not affect a woman's choice to terminate an unwanted pregnancy. As originally drafted, the Preamble did not contain the reference to protection "before as well as after birth," although this language had been used in the earlier Declaration on the Rights of the Child. The Holy See led a proposal to add this phrase, at the same time as it "stated that the purpose of the amendment was not to preclude the possibility of an abortion" (UN Commission on Human Rights, Question of a Convention on the Rights of a Child: Report of the Working Group, 36th Session, UN Doc. E/CN.4/L/1542 (1980)). Although the words "before or after birth" were accepted, their limited purpose was reinforced by the statement that "the Working Group does not intend to prejudice the interpretation of Article 1 or any other provision of the Convention by States Parties." UN Commission on Human Rights, Report of the Working Group on a Draft Convention on the Rights of the Child, 45th Session, UN Doc. E/CN.4/1989/48 (1989), p. 10.

<sup>68</sup> The European Court of Human Rights, in *A, B, and C v Ireland*, left the issue of when life begins for the purposes of abortion for states to determine, invoking their margin of appreciation doctrine. (The margin of appreciation is a doctrine with a wide scope in international human rights law. It was developed by the European Court of Human Rights, which sets that States are in the best position to interpret the implementation of a human right set in the European Convention of Human Rights). Although the Court declined to address the explicit question of the extent to which Convention protection applies prenatally for the purposes of abortion, the Court has consistently found state failure to implement existing abortion laws and barriers to accessing abortion as violations of the Convention, including in the case of *A, B, and C v Ireland*.

<sup>69</sup> See for example, CEDAW Article 12; CEDAW General Recommendation 24 on Women and Health, UN Doc. A/54/38/Rev.1 (1999), para. 31(c).



be legally provided,<sup>70</sup> and ensures timely remedy and redress for women and girls who are denied access to legal abortion services.<sup>71</sup> In addition, states must also provide post-abortion care to women, regardless of whether abortion is legal.<sup>72</sup>

Criminal laws against abortion create a “chilling effect” which may deter medical professionals from providing abortion even in cases when it is legal, and contribute to severe stigma against women, which can be a very real barrier to access in practice.<sup>73</sup> Additional barriers stemming from the fact abortion is treated as a criminal law matter rather than a health service include mandatory waiting periods, biased counselling, a requirement for authorization by multiple providers, criminalization of provision of abortion related information and stigma related to abortion.

## **Abortion should be decriminalised**

Criminal law and the threat of punitive sanctions should never be used to control or remove women’s and girls’ ability to make autonomous decisions around their own reproductive health and lives. The result of criminalisation is that women and girls can be reluctant to seek abortion information or services, and healthcare providers can be reluctant to provide them even in circumstances permitted by law. The effect of criminal regulation – the threat of prosecution and the interference with quality healthcare – is known as the “chilling effect”. Another consequence is the stigmatisation of women or girls who do travel for abortions, who, despite the constitutional freedom to do so, may feel like they are effectively criminals when they return. That women have not been prosecuted for having abortions is no valid excuse for having such criminal offences in Irish law.

As noted earlier, several UN treaty monitoring bodies have stated concern at Ireland’s criminalisation of abortion. Most recently, the UN Committee on the Rights of the Child (the body monitoring implementation of the Convention on the Rights of the Child) called Ireland to “[d]ecriminalise abortion in all circumstances and review its legislation with a view to ensuring children’s access to safe abortion and post-abortion care services; and ensure that the views of the pregnant girl are always heard and respected in abortion decisions”.<sup>74</sup>

Decriminalisation means that abortion is no longer regulated by criminal legislation, and is not a criminal offence in itself. It means women and girls would never be subject to a criminal

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70 See *K.L. v. Peru*, Human Rights Committee, Commc’n No. 1153/2003, paras. 6.2 & 7, U.N. Doc. CCPR/C/85/D/1153/2003 (2005); *L.C. v. Peru*, CEDAW Committee, Communication No. 22/2009, para. 8.16, U.N. Doc. CEDAW/C/50/D/22/2009 (2011).

71 See e.g. CAT Committee, Concluding Observations: Paraguay, para. 22, U.N. Doc. CAT/C/PRY/CO/4-6 (2011).

72 See, e.g., Brazil, paras. 29-30, U.N. Doc. CEDAW/C/BRA/6 (2007); Chile, para. 20, U.N. Doc. CEDAW/C/CHI/CO/4 (2006); Honduras, para. 25, U.N. Doc. CEDAW/C/HON/CO/6 (2007); Mauritius, para. 31, CEDAW/C/MAR/CO/5 (2006); Nicaragua, para.18, U.N. Doc. CEDAW/C/NIC/CO/6 (2007); Pakistan, para. 41, U.N. Doc. CEDAW/C/PAK/CO/3 (2007); Peru, para. 482, U.N. Doc. A/57/38 (2002); Philippines, para.28, U.N. Doc. CEDAW/C/PHI/CO/6 (2006).

73 See Amnesty International, “The total abortion ban in Nicaragua: Women’s lives and health endangered, medical professionals criminalized” (AMR 43/001/2009); Amnesty International, “On the brink of death: Violence against Women and the abortion ban on El Salvador” (AMR 29/003/2014); Amnesty International, “She is not a criminal: The impact of Ireland’s abortion law” (EUR 29/1597/2015); Amnesty International, “Northern Ireland: Barriers to accessing abortion services” (EUR 45/0157/2015).

74 UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Ireland* (2016).

sanction, and healthcare providers' practice would be regulated in the same way as any other medical procedure. We urge the Assembly to consider recommending the decriminalisation of abortion in all circumstances (for women seeking services and healthcare workers providing abortion services), while still enabling incidents of malpractice to be addressed, as with any other health service, through general criminal law or medical disciplinary procedures.

## **Abortion services must be provided without discrimination**

Governments are prohibited from engaging in discrimination of any kind in their health-related laws, policies and practices. In addition to constituting gender discrimination in themselves, restrictive abortion laws have a disproportionate impact on women and girls from disadvantaged and marginalised groups who do not have the means to seek a safe and legal abortion in another country.<sup>75</sup> Thus the gender discrimination inherent in restrictive abortion laws is often compounded by discrimination on other grounds such as age, socio-economic status, minority, migrant or refugee status.

Ireland's current constitutional provision for a "freedom to travel" to another jurisdiction to access abortion services abroad shirks the State's positive duties, which require it to ensure women and girls can access their human rights on a basis of equality. Moreover, multiple forms of discrimination intersect to make the "freedom" to travel entirely unrealisable for women and girls without the means to take this route. This has been highlighted by multiple UN Committees in their Concluding Observations on Ireland, including the Human Rights Committee, CEDAW, CESCRC and CRC Committees.

The CESCRC Committee's General Comment 22 on the right to sexual and reproductive health is an important new normative document on abortion adopted in 2016, and clarifies the obligation for States to adopt positive measures to address inequalities:

*In all countries, patterns of sexual and reproductive health generally reflect social inequalities in society and unequal distributions of power based on gender, ethnic origin, age, disability and other factors. Poverty and income inequality, systemic discrimination, and marginalisation based on grounds identified by the Committee are all social determinants of sexual and reproductive health, which also have impacts on the enjoyment of an array of other rights as well... Therefore, to realise the right to sexual and reproductive health, States parties must address the social determinants as manifested in laws, institutional arrangements and social practices that prevent individuals from effectively enjoying in practice their sexual and reproductive health.*

**As with the denial of any basic health service, when abortion is made inaccessible, marginalised women and girls are effectively denied a procedure that is safe and effective, and to which they have a right.**

<sup>75</sup> See Amnesty International, "The total abortion ban in Nicaragua: Women's lives and health endangered, medical professionals criminalized" (AMR 43/001/2009); Amnesty International [insert url], "On the brink of death: Violence against Women and the abortion ban on El Salvador" (AMR 29/003/2014) [url]; Amnesty International, "She is not a criminal: The impact of Ireland's abortion law" (EUR 29/1597/2015).

## **Abortion access for adolescent girls and young women must be guaranteed**

Even where abortion is legal, girls and young women often face particular legal, policy and regulatory barriers to access. In Ireland, many of the seminal individual cases that spurred legislative or social change in relation to abortion, have involved adolescent girls and young women. “X”, “Miss D” and “Ms Y” are just some of the cases that have come to light. Two of these girls were survivors of sexual violence.

For marginalised girls and young women, the barriers to accessing abortion can be insurmountable, so some may be forced to remain pregnant. Where parental support is lacking, where family finances are limited, or where the pregnancy is the result of incest, pregnant girls may have little to no recourse to access abortion services. There have been reports of some vulnerable girls, particularly those in care of the state and asylum seekers, receiving support from the Health Service Executive (HSE) in accessing abortion services abroad; however, in the absence of a transparent state policy, the effectiveness of this system and the question of whether there is equal access to support cannot be confirmed and is doubtful.

In its General Comment No. 15 on the right of the child to the highest attainable standard of health, the UN Committee on the Rights of the Child (CRC Committee) recognises the high rates of pregnancy among adolescents globally and the additional risks young women and girls face in terms of morbidity and mortality.<sup>76</sup> It lists safe abortion services and post-abortion care among its list of essential health prevention and promotion and curative care interventions.<sup>77</sup>

The CRC Committee further indicates that children should have access to sexual and reproductive health services without the requirement of parental consent, where the professionals working with the child have carried out an assessment to ascertain that this is in the child’s best interests:

*In accordance with their evolving capacities, children should have access to confidential counselling and advice without parental or legal guardian consent, where this is assessed by the professionals working with the child to be in the child’s best interests...States should review and consider allowing children to consent to certain medical treatments and interventions without the permission of a parent, caregiver, or guardian, such as HIV testing and sexual and reproductive health services, including education and guidance on sexual health, contraception and safe abortion.*<sup>78</sup>

While abortion access for adolescent girls and young women is sometimes seen as a “controversial” issue, they too have rights and it is important to consider the specific sexual and reproductive health needs of young people, and the unique barriers to access that they face.

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<sup>76</sup> Para 56.

<sup>77</sup> Para 54.

<sup>78</sup> Para 31.

## **Conscientious objection must be regulated**

International human rights law requires the regulation of conscientious objection to the provision of healthcare in order to prevent violations of human rights. UN treaty monitoring bodies have repeatedly recommended that the practice of conscientious objection be well defined and regulated.<sup>79</sup>

Individual health service providers may be permitted to decline to provide or participate in any health service to which they have a conscientious objection, including abortion services. However, this right is not unlimited and specifically cannot be exercised in emergency situations. Additionally, it does not extend to those not directly participating, such as those responsible for preparing patients for the procedure or providing aftercare. The right to conscientious objection does not extend to institutions providing health services that are regulated and funded by the state, as it is through these institutions that the state implements its obligations.

The World Health Organisation too is clear that permission to conscientiously object to providing abortion does not entitle service providers to obstruct or deny access to abortion services, as this would prevent individuals from accessing services to which they are legally entitled, and delay care for women and girls, putting their health and lives at risk.<sup>80</sup> Where an individual health service provider objects to providing abortion services, they must refer the woman or girl to a trained and willing provider in the same, or another easily accessible health facility.<sup>81</sup> An adequate referral system is essential. Where referral to another health service provider is not possible, or where there is no reasonable access to an alternative provider, a medical professional is not allowed to refuse care.

Health professionals are not obliged to perform or participate in an abortion procedure to which they have a conscientious objection, but they still have a duty to participate in treatment that is necessary to save the life of or to prevent grave or permanent injury to a woman or girl. Where the patient is in an emergency or serious condition, the conscientious objector has no legal right to refuse services.

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<sup>79</sup> See particularly CESCR General Comment No. 22, para 43.

<sup>80</sup> WHO Safe Abortion Guidelines, p. 69.

<sup>81</sup> WHO Safe Abortion Guidelines, p.69.

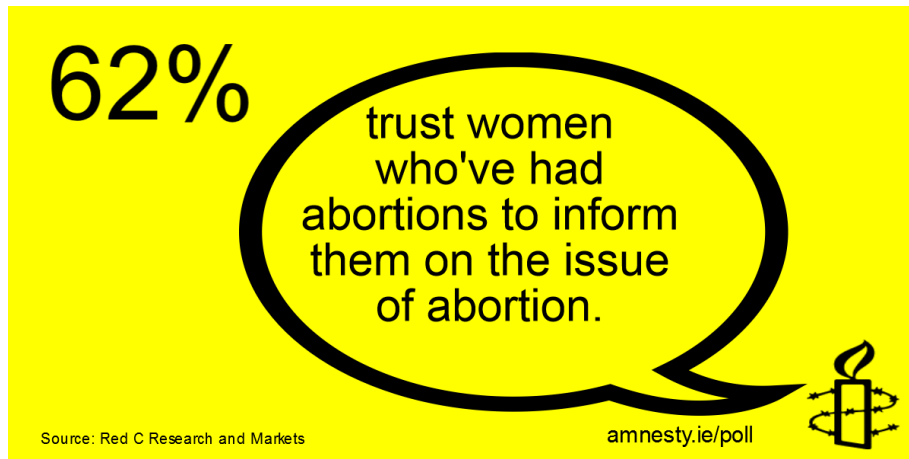
# RECOMMENDATIONS

Amnesty International Ireland has repeatedly called on the Government to repeal the Eighth Amendment to the Irish Constitution, so as to enable the provision of a human rights compliant framework for abortion and information, in law and in practice. We have also called on the Government to:

- Decriminalize abortion in all circumstances (for women seeking services and health care workers providing abortion services), while still enabling incidents of malpractice to be handled through general criminal law, as is done with any other health service.
- Repeal the Protection of Life During Pregnancy Act and replace it with a human rights compliant legislative framework that ensures access to abortion both in law and in practice, so women and girls can access abortion services in a timely manner and through processes that respect their autonomy.
- Repeal the Regulation of Information Act 1995 and ensure full provision of information on abortion services
- Regulate conscientious objection in a way that does not jeopardise women's and girls' human rights. Make 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.
- Eliminate unnecessary barriers to accessing abortion services, which are unsupported by evidence, such as requirements that a provider consult with one or more other health care practitioners before performing an abortion or that abortions must always be performed in tertiary care facilities.
- Eliminate specific access barriers impacting marginalised groups including young women, asylum-seekers, undocumented migrants, women or girls with limited financial means, and members of the Traveller community.

Amnesty International urges the Citizen's Assembly to consider supporting these calls in its recommendations to the Oireachtas.

# ANNEX I – WOMEN’S VOICES FROM THE ‘SHE IS NOT A CRIMINAL’ REPORT



At the Citizens Assembly’s second meeting to determine its plan of work, several members of the Assembly requested to hear the perspectives of women in Ireland who have accessed safe and legal abortion services abroad. Amnesty believes this should be accommodated not only because it has been requested in order to support the Assembly in its deliberations, but also because it is a human rights imperative.

People have a right to participate in the design, development, implementation and review and reform of the laws, policies and programmes that impact their lives. The Assembly must provide a platform for the voices and experiences of women and girls who have been and will continue to be impacted by Ireland’s restrictive abortion regime, in order for its recommendations to be fully informed and legitimate.

While Amnesty is not best placed to put the Assembly in contact with women and girls who can provide testimony in person, we can share the following accounts of women and girls who accessed abortion services in the context of Ireland’s restrictive laws. This selection of women’s stories was originally collected for the report *She is Not a Criminal: the impact of Ireland’s abortion law*, in order to document the myriad human rights violations stemming from Ireland’s restrictive abortion laws.

## ROISIN’S STORY

Roisin’s experience of a miscarriage occurred seven years before the death of Savita Halappanavar—but it was only because of the media attention around Savita Halappanavar’s death that she realized quite how dangerous her situation had been. In 2003, Roisin was six weeks

pregnant with her third child when she began to experience complications and bleeding. She was referred to the hospital by her doctor for a scan. Told she was probably having a miscarriage, the hospital doctors told her: “we can’t really see a heartbeat but there is a lot of blood.” She thought they would then give her a dilation and curettage (D&C) – a surgical abortion – but instead they gave her a leaflet about miscarriage and told her that she would need to come back in two weeks for another scan.

When she returned two weeks later, Roisin asked for a D&C. However, she was told she needed to wait nearly a month longer, until she was 11 or 12 weeks pregnant, so that they could absolutely confirm there was no heartbeat.

“I suppose that it was the first time it dawned on me that they don’t do what the woman wants. They are not there to treat the woman, I didn’t want to be pregnant. I was terrified there was something wrong with it and I really didn’t feel good about it... [In the end,] I had gone from six weeks to 11 weeks carrying what I thought was probably a dead baby, although my body had all the symptoms of being pregnant. It was horrible.”<sup>82</sup>

By the time Roisin’s doctors had definitively confirmed that there was no foetal heartbeat, the abortion procedure was more invasive than an earlier term abortion would have been.

## REBECCA H’S STORY

Rebecca H. suffered from hyperemesis gravidarum throughout her pregnancy. This condition is characterized by a permanent feeling of nausea, severe vomiting – sometimes up to 50 times a day, and dehydration. She recalls: “the nausea was incredibly debilitating and even the motion of taking a few steps would cause me to vomit.” She struggled with “frequent hospital admissions for dehydration and becoming depressed.”

At 14 weeks, she could no longer care for herself and moved in with family. She says she asked for mental health support to help her cope but was never provided with any counselling. “The longer my pregnancy went on the more despondent I became.” She “began losing hope” and was finally admitted to the hospital in order to manage her condition. She recalls, “I truly believed I was dying and I wanted to... I couldn’t live another day in this hell... At 36 weeks... I spent most days lying in my hospital bed with my fists clenched and my eyes shut tight begging for the world to stop spinning, the nausea was so crippling it was worse than the constant vomiting... I could barely walk to the end of the hall most days.”

Although her health care team told her that she could have an early delivery, it was repeatedly denied to her. “They would lie to me about when [delivery] would be, first it would be next Tuesday and then it would be next Thursday, then it would be comments about ‘well you say you love your baby, but you can’t love your baby if you want to deliver him early... You are putting your baby’s life at risk...’ all these sort of things. It was completely insane. They said they would induce at 35 weeks then it was 36 and then 37 and then 38... it was just always next week.”

<sup>82</sup> Interview with Roisin (her name has been changed), 5 February 2015.

Finally, “I said to them just let me go home, if you can’t help me I will find another way. And then they said ‘well that’s it you can’t go anywhere.’ They said ‘it’s our job to look after the baby, the baby comes first.’ I told them that his safety was the utmost priority to me but at the same time, this is torture. Absolute torture.” The hospital staff denied her request to be discharged and go home.

Eventually, the doctors agreed to induce Rebecca at 38 weeks. However, they “then started pressuring me to have a natural birth. I was so weak and despondent and I asked them for a [caesarean] section and they said ‘absolutely not, you would be putting the life of your baby in danger.’” Rebecca expressed that she didn’t feel physically capable of labour and natural delivery, but the doctors refused her request for a planned caesarean section. Instead, Rebecca was induced and forced to labour for over 36 hours. Ultimately, Rebecca received an emergency caesarean section as the baby was having a stress response to labour. Her son spent his first few days recovering in the neo-natal unit.

Rebecca concludes: “The Eighth amendment is currently being abused. It is being used to treat women as objects and not as human beings anymore. I would fear for my life to have another child in Ireland.”<sup>83</sup>

## NICOLA’S STORY

“You’re alone from the diagnosis until the baby’s heart stops. Between that, there’s just a void.”  
– Nicola

In 2009, Nicola was 19 weeks into her second pregnancy when a routine scan revealed a problem with the foetus. After a more detailed follow-up scan medical staff told her that the impairment was fatal and there was no chance of survival. Nicola told Amnesty International: “I thought straight away that they would induce me but the nurse explained they couldn’t do that because it’s classed as a termination and wasn’t allowed in this country.” She remembers thinking:

“You just can’t leave me carrying the baby when the baby’s going to die. I can’t do it, I can’t do it. I just couldn’t comprehend, I just thought I was going to pass out... I think I cracked when I asked them when they would induce me. I was just so naïve. I just thought automatically that they’d induce me if the baby was that sick.”

Unable to afford the cost of travelling outside of Ireland in order to procure an abortion, and unwilling to “put myself and my family under the [financial] pressure” in order to do so, Nicola says she was forced to remain in Ireland and to continue with her pregnancy.

“I was conforming to what they do in Ireland. So a woman makes that decision, surely then there should be support for her once she’s made the decision to carry her baby – not to have a termination as they call it. There was nothing, no support for me whatsoever, nothing.”

Nicola went to the hospital every week for a scan. “Most women are getting scans to make

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<sup>83</sup> Interview with Rebecca H, 28 October 2014.



sure their baby is alive. I was getting a scan to see if my baby had died,” recalls Nicola. After five weeks the medical staff confirmed that the foetus had died. “Straight away the doctor came in, we can take you in tomorrow, this evening, now to induce you.” Following her induction and delivery, Nicola developed an infection due to a retained placenta, which required further hospitalisation and care.

“If I had been offered the induction from the start, I could have been saved this whole trauma, I strongly believe. I would have been saved the trauma of our friends offering us money, feeling under pressure to make this decision, facing the trauma of all these infections and having to spend time in the hospital, reliving my story every night because people were coming in. When I think about it, I just feel nothingness, there was no care.”<sup>84</sup>

## **LAOISE’S MOTHER’S EXPERIENCE**

“In February 2015 I wrote in *The Irish Times* regarding my experience of terminating a much wanted pregnancy due to a severe foetal abnormality. The following is a brief account of that experience.

Our baby, Laoise, due to a genetic mutation, had a number of very serious abnormalities. There was a possibility that these abnormalities, though severe, were not necessarily fatal. We felt however that due to the severity and combination of her health issues that she would have an extremely poor quality of life if she lived. We did not want her to have to endure a prolonged death and we struggled to see how her life could be a happy one if she survived. In addition we knew that the medical intervention that would have been needed to keep her alive would have caused her substantial physical pain over a long period.

We travelled to France (my husband being French) to seek a further diagnosis once our baby’s health problems were detected in Ireland. We desperately wanted our baby to live and we desperately wanted to care for her. However, following a more complete diagnosis in France, we reached a realization that letting our baby go gently and peacefully was the most loving thing we could do for her. After our baby died we learned that had she been born alive we would have been strongly advised to consider declining life-saving surgeries (this would have been the case in both Ireland and France).

The doctors overseeing our baby’s care (in a maternity and paediatric hospital) unanimously supported our decision. The staff who accompanied us through our baby’s death and birth in that hospital made the experience very dignified and serene. Our daughter fell asleep in the comfort of my womb and died peacefully.

In our grief in France we were supported by sympathetic, understanding staff. On our return to Ireland the maternity staff here gave us tremendous support that we valued enormously. This contrasted with the varied support and inconsistent information we received prior to travelling abroad with one obstetrician advising that late term abortion was not possible in any country.

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<sup>84</sup> Interview with Nicola, 22 October 2014.

The process of obtaining and considering a diagnosis in France, our baby's death and birth, and our baby's funeral necessitated being away from home and from our two other children for over two and a half weeks. Over a two day period, before I left Ireland, I had to break the news to my four- and six-year-old that their baby sister was very sick, I had to prepare them for the possibility that she might die, and then, when they most needed our support, I had to leave them with their grandparents without even being able to tell them when I would be home.

Our baby was beautiful. She weighed 5lbs. and she had lots of dark chestnut hair. She bore a strong resemblance to both of her siblings. Our baby was loved and very much wanted from the moment I was aware of her existence. Now we cherish happy memories of when we were planning for her arrival. We will always love her.”<sup>85</sup>

## ORLA'S STORY

Orla, whose 15-year-old daughter was faced with an unwanted pregnancy in 2015, was given no information about her options, and misinformation about Ireland's abortion law. She remembers:

“The GP's attitude was ‘I am so sorry, did you not know she was sexually active? I've seen this before.’ That was it. My daughter was crying. It was all ‘there, there, there’; they provided no information. He did not offer crisis pregnancy counselling... I took it upon myself to call the IFPA.”

Orla was concerned that her daughter, already bullied at school, might be at risk of suicide if she did not obtain an abortion. She asked her daughter's GP for a letter stating that she qualified for an abortion under the PLDPA, which had been in effect for over a year. “He said no, that legislation is not brought in yet. I told him that the new law was in place. He said that he cannot help me with that.”<sup>86</sup>

Orla, who urgently needed to book an appointment for her teenage daughter, remembers:

“We had an appointment on 27-28 February 2015. Because there was a football match in Liverpool, the flights were astronomical, and no hotels. I tried ferries, trains, and literally could not afford it. They moved our dates to the 3-4 March, which made flights €250 compared to €550 on football match day, but they were concerned about the gestational time. The most I could borrow was €400 and with the flight and the hotel it would not be possible. I asked ASN [the Abortion Support Network] for support. My daughter was upset about the cost, she was aware of our financial situation. She was sorry about that... On top of everything else, she should not have to think about this. I was angry that a 15-year-old child would worry about how we are going to pay for this.”

“This has really made me feel like an outcast, that we've done something wrong [even though]

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<sup>85</sup> This experience of undergoing an abortion was relayed to us by Laoise's mother in an interview on 19 November 2014 and also sent to us, afterwards, in writing. This testimony is a verbatim copy of her written testimony, as submitted to Amnesty International. Her full story can be found in this article, published in the Irish Times: “Severe foetal abnormality: “Her short life was a burst of sunshine” (27 February 2015), available at [www.irishtimes.com/life-and-style/people/severe-foetal-abnormality-her-short-life-was-a-burst-of-sunshine1.2113963](http://www.irishtimes.com/life-and-style/people/severe-foetal-abnormality-her-short-life-was-a-burst-of-sunshine1.2113963)

<sup>86</sup> Interview with Orla (her name has been changed), 10 March 2015.

we did the best we could in horrible circumstances for our daughter. The Church would hate me and the state shuns me.”

## **AF'S STORY**

“It's the human rights aspect, the fact that we all know that some women can afford this and we all know that some women can't and we're just happy to see some of our citizens live out a life of poverty... And that is not OK, that's not how modern democracy should operate.”

In late 1997, A.F. found herself with an unplanned pregnancy. She was working several part-time jobs and leading a “very hand-to-mouth existence”. She told Amnesty International that she started thinking about suicide: “I was literally wandering around Galway, walking down a really busy street, past lots of traffic thinking if I just fell into this traffic I wouldn't have to worry or if I walked over a bridge – there's a bridge in Galway over a really busy part of the river – and if I just fell into that river, then I wouldn't have to worry... I didn't have money, I didn't feel I could tell my parents... I felt very alone.”

Ultimately, A.F. received financial help from her sister to travel abroad and was able to terminate her pregnancy. She says, “There was no doubt in my mind that what I was doing was the right thing”.

If her sister hadn't helped her, she told Amnesty International: “I don't doubt I would have tried something.”<sup>87</sup>

## **FRANCES' STORY**

Frances, who travelled to London for an abortion, struggled to pull together the funds she needed. She was married with two daughters, living in a rural area, when she found out she was pregnant. She told Amnesty International that as the family's sole breadwinner, she “would have been plunged into absolute poverty, misery and isolation living in the middle of nowhere with very little [if she had another child]... I had so little money but I had some savings – I did have enough to cover [the abortion], just about. I spent every penny I had at the time on that.”<sup>88</sup>

Shortly after returning to rural Ireland after having an abortion in London, Frances started bleeding. In shock and far from any health care services, she called a clinic in Dublin that offered post-abortion care. As she later told Amnesty International: “I just remember that the way the nurse or whoever it was treated me on the phone was absolutely awful. She was so dismissive and cruel. It made me feel terrible and I didn't seek any more help after that. But I did get a really bad uterine infection and I was on serious antibiotics for weeks and weeks afterwards.” She ultimately went to a consultant in Limerick after weeks of bleeding and ex-

<sup>87</sup> Interview with AF, 8 January 2015.

<sup>88</sup> Interview with Frances (her name has been changed), 2 December 2014.

plained that she had terminated a pregnancy. He prescribed antibiotics but was rude and dismissive, barely communicating with her. She said: "It made me feel terrible." If abortion was not criminalized and Frances had not been required to travel, Frances says: "it would have been... so much less stressful and I would have been looked after properly".

## **AOIFE'S STORY**

Aoife terminated an unplanned pregnancy in 2012 when she was in her mid-30s. She found the decision extremely difficult. The man she had gotten pregnant with lived abroad and did not want the baby. "That was hard to hear, but I heard it" she recalls. Aoife was also unable to afford to pay rent at the time and was living in a temporary house-sitting situation. "I work in the arts and it was the beginning of all the cutbacks and a lot of work had gone down the pipeline so I wasn't earning. So these were my considerations at the time. After the death [of a childhood friend] I was depressed and not working or earning and I just didn't feel strong enough to do it [raise a child] on my own."<sup>89</sup>

Aoife borrowed money from her sister to pay for the abortion, which she paid back over the following year. She travelled to a clinic in Manchester that she had found online and which was the "easiest and cheapest to get to". She thought that she was less than 12 weeks pregnant, but the clinic said she was more than 14 weeks pregnant, which made the procedure much more expensive. Overall, she estimates that she spent a total of €1,000; about €700 or €800 for the procedure, and another €200 for travel.

## **SANDRA'S STORY**

"I read online about self-induced abortions, about some Chinese herbs. I was probably six or seven weeks along, apparently it needed to be earlier. I tried them and they didn't work, while I was still waiting for an appointment [with the clinic in England] because you try everything when you are desperate.

Sandra is a young, single mother who told Amnesty International that she used medication obtained through Women on Web to end an unplanned and unwanted pregnancy in 2014. "Two children would be a catastrophe for me, I can't afford that. I have just finished school and I am getting my career going, I don't know how that would be possible with two kids."

Immediately after discovering she was pregnant, Sandra tried to schedule an appointment with a clinic in England but found it difficult and costly. She attempted to induce an abortion using high doses of vitamins and some "Chinese herbs" she had read about on the internet. She told her mother she was trying these methods because, "You don't want something happening to you and people not knowing what happened to you. Just in case you collapse."

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<sup>89</sup> Interview with Aoife (her name has been changed), 18 December 2014.

Sandra's mother had read about Women on Web in an Irish Independent article about women who were travelling to Belfast [in Northern Ireland] to collect the pills for medical abortion. Sandra made a €90 donation, set up a postal box in Belfast, and made a six-hour round trip to pick up the pills. "It was very easy; all they did was ask for my ID, they didn't photocopy it or do anything. I took off the packaging that it was in, because when you are carrying something like that, you have this fear. I just took the pills and the instructions and hid them in my bra, because you never know. I was paranoid... I got home and I think that is when the fear starts, before I was just getting through but when you have to take it... I took the pills. The next day I took the second one and it was very bad, it was really painful. Then the following day it was done... You have this bleeding but it is done. I got my period again about a week and a half ago and I am very happy."<sup>90</sup>

## ANNEX 2 – RED C RESEARCH & MARKETING POLLING



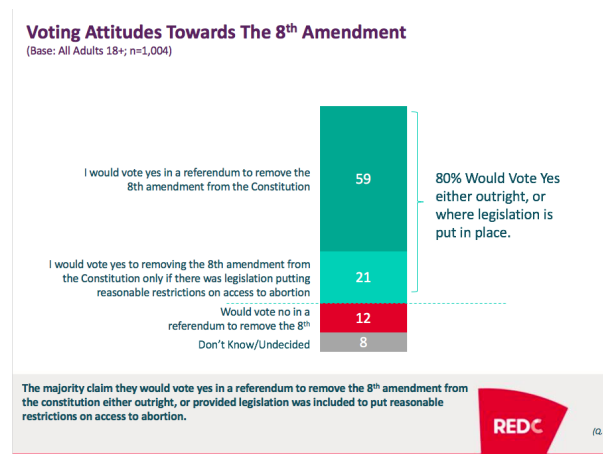
In February 2016, an independent Red C Research & Marketing nationally representative opinion poll was conducted for Amnesty International Ireland on public attitudes to abortion, just before the General Election.

The poll's complete results are available at <http://bit.ly/NotACriminalPoll>. The following is a summary of its key findings. There was a marked level of consistency in responses across all regions of the country, age groups and demographics. (Reference is also made here to a previous set of national polling we commissioned from Red C in May 2015.)

<sup>90</sup> Interview with Sandra (her name has been changed), 17 October 2014.

**73% of those polled wanted a referendum on the Eighth Amendment. 80% said they would vote yes in a referendum to remove the Eighth Amendment, either outright or only if legislation placing reasonable restrictions on access to abortion were enacted.**

- 73% of people thought the government should hold a referendum to allow the people to vote on whether or not to remove the 8th amendment. Interestingly, this view was widely shared across all regions from 65% in Connaught/Ulster to 75% in Dublin.
- 59% of respondents said they would vote yes to a referendum to remove the Eighth Amendment
- 54% would vote yes only if legislation placing reasonable restrictions on access to abortion were enacted.
- RED C analysed these last two sets of data and found a combined 80% of respondents who said they would vote yes, either unconditionally or if reasonable restrictions were legislated for, as follows:



- Even among the 5% of respondents personally opposed to abortion in all circumstances (i.e. even where the woman or girl's life is at risk), 34% said they would vote to repeal the Eighth Amendment, rising to a half (50%) if there was legislation placing “reasonable restrictions” on access to abortion.

**Those polled believe that reforming Ireland’s abortion law, which is one of the most restrictive in the world, should be one of the priority issues for the government.**

- 55% agreed that expanding access to abortion should be one of the priority issues for the next government, with only 25% disagreeing. When the ‘don’t knows’ and those who are neutral are excluded, this figure rose to 69%. This view was spread relatively evenly across the regions with 61% support in Dublin, 51% in the rest of Leinster, 55% in Connaught/Ulster and 54% in Munster.
- About two-thirds of people agreed that Irish politicians should show leadership and deal proactively with the issue of widening access to abortion.
- 87% of respondents were in favour of expanding access to abortion in Ireland:

- 42% were in favour of allowing abortion in Ireland only where the woman's life is at risk, where there is diagnosis of a "fatal foetal abnormality", where the pregnancy is a result of rape or incest, or where the woman's health is at risk.
- A further 38% were in favour of allowing women to access abortion as they choose.
- Just 7% were in favour of extending abortion in Ireland only to cases of "fatal foetal abnormality".
- Only 7% were in favour of the current legal position, where abortion is allowed only when the woman's life is at risk.
- Only 5% of people were opposed to abortion in all circumstances.
- This was an increase in support from the last poll Amnesty International/Red C poll published in July 2015 where 81% of respondents were in favour of expanding access to abortion in certain circumstances. The number of people opposed to abortion in all circumstances had also decreased from 7% in the May 2015 poll to 5% in the February 2016 poll.
- Of the 5% opposed to abortion in all circumstances, 77% were not aware of the possible 14 year criminal penalty for women who have abortions.

While opinions vary on the issue of when abortion should be allowed, there is overwhelming support for the expansion of access to abortion beyond the current legislation and the majority think that it should be a priority for the incoming government.

**80% believe that women's health must be the priority in any reform of Ireland's abortion law.**

- When the 'don't knows' and those who are neutral are excluded, this figure rose to 90% agreeing that women's health must be the priority in any reform with just 10% disagreeing.
- This figure was highest among farmers (90%) and in Connaught/Ulster where 85% of respondents agreed with this statement. All regions of the country broadly supported this view

**The Irish public have strong views on Ireland's current abortion law. The majority consider it to be hypocritical, cruel and inhumane. They believe that it unfairly discriminates against women and girls who cannot afford to or are unable to travel abroad for an abortion. Broadly speaking, these views are shared to the same extent by both male and female respondents.**

- 55% said they believe that Ireland's abortion ban is cruel and inhumane, with only 26% disagreeing. (When the 'don't knows' and those who are neutral are excluded, this figure rises to 68% agreeing that the current law is cruel and inhumane.)

- 65% agreed that classifying abortion as a crime adds to the distress of the woman involved. Interestingly, more men (68%) than women (62%) believe that classifying abortion as a crime adds to the distress of the woman involved.
- Almost three quarters (72%) agreed that the fact that women must travel abroad to access abortion unfairly discriminates against women who are unable to or cannot afford to travel. This view was highest among farmers of whom 84% of those polled described the current law as discriminatory.
- Two-thirds agreed that it is hypocritical that Ireland's Constitution bans abortion in Ireland but allows women to travel abroad for abortions.
- 65% agreed that travelling abroad for an abortion is traumatic. This figure was highest among women and those aged 25-34 (73%) and 35-44 (70%).

### **Public knowledge, awareness and trust:**

Respondents were asked whom they trust when deciding their position on abortion. The most trusted sources of information were medical professionals (69%) and women who have had abortions (62%). Those polled least trusted politicians (7%), media outlets (14%), anti-abortion groups (16%) and church leaders (16%) as a source of information when deciding their position on this issue. Levels of trust in other sources polled were: human rights groups (49%), women's rights groups (47%), Amnesty International (45%) and legal professionals (31%).

- 52% of respondents agreed that they do not know enough about the 8th amendment to know how they would vote and think the media should give better information on it. This view is particularly noteworthy outside of Dublin (47%), in Leinster (57%), Connaught/ Ulster (54%) and Munster (51%).
- Only 38% of those who are opposed to abortion in any circumstances said they trust anti-abortion groups as a source of information on this issue.
- Of those describing themselves as religious, just 19% trust church leaders to inform them on this issue.
- There was also substantial agreement (68%) that we need to trust women when they say they need an abortion. This view is shared across the regions with a low of 64% in Connaught/Ulster and a high of 70% in Dublin. Both women (69%) and men (67%) agreed with this view.
- 60% agreed that men have a responsibility to be a part of the discussion on this issue too, with more than two-thirds of men (65%) agreeing with this view. This opinion was highest among farmers (65%) and is regionally balanced with the lowest figure in Munster (58%) and the highest figure in Leinster (63%).
- Only 14% were aware that having an abortion when the woman's life is not in danger is a criminal offence which carries a potential 14-year prison sentence. Interestingly, of those opposed to abortion in all circumstances, 72% were not aware that this penalty exists.



75% of farmers were not aware that having an abortion when the woman's life is not in danger is a criminal offence. In fact, more than half of all respondents believed it is not a criminal offence at all.

- 80% of people were aware that women have a right to access abortion in Ireland in certain circumstances under international human rights law. (This had increased from 70% in the Amnesty International/Red C Poll from May 2015.) This awareness was highest in Munster (84%). More men (82%) than women (78%) were aware that access to abortion is a human right under certain circumstances.
- Interestingly, the poll finds that religion does not appear to strongly determine views on abortion.
- 82% of people who described themselves as religious in the poll did not believe that their religious views should not be imposed on others. This view was most strongly held by those aged 55-64 of whom 88% agreed. Interestingly, the figure was lowest in Dublin where 80% agreed. In Connaught/Ulster, 84% of religious people agreed with this statement, with 81% in Leinster and 83% in Munster.
- 56% of religious people thought that looking at abortion from a human rights viewpoint is useful because it balances one's right to freedom of religion with the rights of women who decide to have abortions. Younger religious people aged 25-34 held this view most strongly (63%).
- Just one in five religious people said that they have very conflicted views on abortion because of their religion, with 70% disagreeing with this statement. Of those who agreed with this statement, the highest percentage was in Dublin (23%), and the lowest in Connaught/Ulster with just 12% of religious people feeling conflicted in their views. 13% of those who are opposed to abortion in any circumstances described themselves as having conflicted views.
- Interestingly, 28% of religious people who support abortion in some circumstances said they hide their view because of their perception of how people who share their religion would feel about them.