

# Committee on the Elimination of All Forms of Discrimination against Women

## 66th session

### Review of Ireland's Combined 6<sup>th</sup> and 7<sup>th</sup> Periodic Report under the Convention on the Elimination of All Forms of Discrimination against Women

23 January 2017

#### INTRODUCTION

The Center for Reproductive Rights is pleased to present this submission to the Committee on the Elimination of All Forms of Discrimination against Women (the Committee) for its consideration in the context of its examination of Ireland's combined sixth and seventh periodic report on compliance with the Convention on the Elimination of All Forms of Discrimination against Women (the Convention). This submission addresses Ireland's laws and practices on abortion and is focused on concerns regarding compliance with Articles 12 and 2(d)-(g) of the Convention.

Ireland's abortion laws are among the most restrictive in the world and entirely out of step with the standard approach of European jurisdictions to the regulation of abortion.<sup>1</sup> Under Irish law abortion is only permitted when deemed necessary to prevent a "real and substantial" risk to a pregnant woman's life, as distinct from her health.<sup>2</sup> Outside of these circumstances, women who undergo unlawful abortion in Ireland, and anyone who assists them, commit serious criminal offences.<sup>3</sup> Irish law does not prohibit women from traveling out of Ireland to access abortion services in another country and every year thousands of women leave Ireland to have abortions.<sup>4</sup> Evidence also indicates that increasing numbers of women in Ireland are ordering the medical abortion pill online and taking it in a clandestine manner, often without the benefit of appropriate clinical oversight.<sup>5</sup>

In June 2016 the Human Rights Committee (HRC) issued its decision on *Mellet v. Ireland*, in which it held that by virtue of its prohibition and criminalization of abortion Ireland had subjected Ms. Mellet to cruel, inhuman or degrading treatment and to violations of her rights to privacy and to equality before the law, under the International Covenant and Civil and Political Rights (ICCPR).<sup>6</sup>

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<sup>1</sup> Almost every country in Europe allows women to access abortion either on request or on broad socio-economic grounds, at least in early pregnancy, and later in pregnancy on exceptional grounds such as risk to a woman's health or situations where a pregnancy involves a severe or fatal fetal impairment or is the result of sexual assault. This is the case in every European jurisdiction except for: Andorra, Liechtenstein, Malta, Monaco, Northern Ireland, Poland and San Marino. For an overview of abortion laws, see Center for Reproductive Rights, *The World's Abortion Laws 2017*, at <http://worldabortionlaws.com/>.

<sup>2</sup> IR. CONST. art. 40.3.3°; Protection of Life During Pregnancy Act 2013, §§ 7–9 (Act No. 35/2013) (Ir.); *Attorney General v. X & Others* (1992) IESC 1; (1992) 1 IR 1 (Ir.).

<sup>3</sup> Protection of Life During Pregnancy Act 2013, §§ 7–9 (Act No. 35/2013) (Ir.).

<sup>4</sup> See IR. CONST. art. 40.3.3°; Irish Family Planning Ass'n, *Abortion in Ireland: Statistics*, <https://www.ifpa.ie/Hot-Topics/Abortion/Statistics> (last visited Jan. 23, 2017).

<sup>5</sup> ARA Aiken, R. Gomperts & J. Trussell, *Experiences and Characteristics of Women Seeking and Completing At-home Medical Termination of Pregnancy Through Online Telemedicine in Ireland and Northern Ireland: A Population-based Analysis*, 123 BRITISH J. OBSTETRICS & GYNECOLOGY (Oct. 2016).

<sup>6</sup> *Mellet v. Ireland*, Human Rts. Comm., Communication No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013 (2016).

In addition for many years serious concerns regarding Ireland's laws and practices on abortion have repeatedly been raised by this Committee and other human rights treaty monitoring bodies in Concluding Observations and repeated calls for reform and liberalization of the law have been issued.<sup>7</sup>

However despite clear evidence of the harmful impact that the abortion law is having on women's human rights, health and wellbeing, legal change has not taken place.<sup>8</sup> The position of the Irish Government is that in order for abortion to be made legal in Ireland in broader circumstances, Article 40.3.3 of the Irish Constitution (the 8<sup>th</sup> Amendment), which was introduced into the Constitution in 1983, and which protects the right to life of the 'unborn,' must be changed.<sup>9</sup> The only way in which the Constitution of Ireland can lawfully be changed is through a referendum of the electorate.<sup>10</sup> However the Government has made no commitment to hold any such referendum or to establish a timeframe within which one might be held in the future. In July 2016 a "Citizens' Assembly" was established, comprised of 99 Irish citizens and chaired by a Supreme Court Justice, to consider the question of Constitutional reform and make recommendations to Parliament and Government.<sup>11</sup> However there is no obligation on either the Government or Parliament to accept, or act on, the recommendations.

The purpose of this submission is twofold. First, Section I provides the Committee with a brief overview of the recent Human Rights Committee (HRC) decision in *Mellet v. Ireland*, in which the Center for Reproductive Rights represented the applicant, and describes the State's response thus far. More information on the content of the decision can be found in the enclosed **Fact Sheet**.

Second, the submission also briefly sets out a number of critical considerations that must guide law-reform if Ireland is to put in place a legal framework on abortion that complies with Article 2 and 12 of the Convention. To this end Section II summarizes the broader situation regarding abortion in Ireland and considers relevant international human rights standards and international public health guidelines and best practices. Section III outlines a number of recommendations.

## **I. MELLET V. IRELAND – THE HRC DECISION AND THE IRISH GOVERNMENT'S RESPONSE**

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<sup>7</sup> See, e.g., Comm. for the Elimination of All Forms of Discrimination Against Women [CEDAW Comm.], *Concluding Observations: Ireland*, paras. 180, 186, U.N. Doc. A/54/38/REV.1(SUPP) (1999); CEDAW Comm., *Concluding Observations: Ireland*, paras. 396-397, U.N. Doc. A/60/38(SUPP) (2005); Comm. on the Rts. of the Child [CRC], *Concluding Observations: Ireland*, para. 58(a), U.N. Doc. CRC/C/IRL/CO/3-4 (2016); Human Rts. Comm., *Concluding Observations: Ireland*, para. 9, UN Doc CCPR/C/IRL/CO/4 (2014); Human Rts. Comm., *Concluding Observations: Ireland*, UN Doc CCPR/C/IRL/CO/330 (2008); Human Rts. Comm., *Concluding Observations: Ireland*, UN Doc. A/55/40 (2000); Comm. Against Torture, *Concluding Observations: Ireland*, para. 26, U.N. Doc. CAT/C/IRL/CO/1 (2011); Comm. on Economic, Social & Cultural Rts. [CESCR], *Concluding Observations: Ireland*, para. 30, UN Doc. E/C.12/IRL/CO/3 (2015).

<sup>8</sup> In 2013 the Protection of Life During Pregnancy Act was adopted. However, this legislation in no way changed or broadened the grounds on which abortion is legal in Ireland. Instead, the Act merely outlines very strict and onerous procedures by which doctors can establish whether or not a woman's life is subject to a "real and substantial" risk, and thus whether or not she qualifies for a legal abortion in Ireland by virtue of a risk to her life. Protection of Life During Pregnancy Act 2013 (Act No. 35/2013) (Ir.).

<sup>9</sup> *Response of Ireland to the View of the Human Rights Committee in the case of Mellet v Ireland*, Submitted by the Government of Ireland to the Human Rights Committee [hereinafter *Response of Ireland in the case of Mellet v Ireland*], 30 November 2016.

<sup>10</sup> IR. CONST. art. 46.2.

<sup>11</sup> *Response of Ireland in the case of Mellet v Ireland*, supra note 9; see also Dáil Debates Wednesday, 13 July 2016, <https://www.kildarestreet.com/debates/?id=2016-07-13a.472> (last visited Jan. 23, 2017).

In November 2013, the Center for Reproductive Rights filed an individual complaint to the HRC, on behalf of Amanda Mellet, under the Optional Protocol to the ICCPR alleging that by virtue of its legal prohibition on abortion, Ireland had violated Ms. Mellet's rights under the ICCPR. On 9 June 2016 the HRC published its decision in the case. It held that as a result of its legal prohibition on abortion Ireland had violated Ms. Mellet's rights under the ICCPR, including:

- Her right to freedom from cruel, inhuman or degrading treatment [Article 7 ICCPR].
- Her right to privacy [Article 17 ICCPR].
- Her right to equality before the law [Article 26 ICCPR].

The HRC held that under Article 2(3) of the ICCPR the Irish state is obliged to make full remedy and reparation to Ms. Mellet, and it explicitly specified the range of remedial measures required of the Government in Ms. Mellet's case.<sup>12</sup>

(i) **The Human Rights Committee's Findings**

In 2011 Amanda Mellet was informed by her doctors in Dublin that her pregnancy involved a fatal impairment and that the foetus would most likely die in utero or not survive long after birth. The prospect of continuing the pregnancy became unbearable for her and she requested an abortion. However she was informed that because of Irish law on abortion in order to end the pregnancy she would have to travel to another country where the procedure is legal. In Ireland her only option would be to continue the pregnancy to term. As a result, Ms. Mellet and her husband made arrangements and travelled at their own expense to the United Kingdom where she had an abortion. They flew home to Dublin only 12 hours later, although she was still weak and bleeding, as they could not afford to stay longer.

As outlined above the HRC held by prohibiting Ms. Mellet from obtaining an abortion in Ireland the Irish state had violated her rights under Articles 7, 17 and 26 of the ICCPR.<sup>13</sup>

**Article 7:** The HRC held that Ireland had subjected Ms. Mellet to cruel, inhuman or degrading treatment because, by virtue of Ireland's prohibition and criminalization of abortion, Ms. Mellet had been subjected to "intense physical and mental suffering."<sup>14</sup> In reaching this finding the HRC considered that:

- **A breach in the normal continuum of health care occurred.** As a result of the legal prohibition on abortion Ms. Mellet was not able to undergo an abortion within the Irish health care system and under the supervision of doctors and nurses she knew and trusted. Instead, the continuum of health care was severed, and Ms. Mellet had to leave the country in order to obtain abortion services. The HRC held that this exacerbated Ms. Mellet's anguish and determined that many of the negative experiences she endured, "could have been avoided if ... [she] had not been prohibited from terminating her pregnancy in the familiar environment of her own country and under the care of health professionals whom she knew and trusted."<sup>15</sup>
- **The requirement to travel for services imposed psychological, physical and financial burdens.** The HRC held that because Irish laws forced Ms. Mellet to choose between continuing

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<sup>12</sup> *Mellet v. Ireland*, para. 9, Human Rts. Comm., Communication No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013 (2016).

<sup>13</sup> *Id.* para. 8.

<sup>14</sup> *Id.* paras. 7.4, 7.6.

<sup>15</sup> *Id.* para. 7.4.

her pregnancy or travelling to another country to access abortion care a range of financial, social and health-related burdens and hardships were placed on her. It found that her suffering was increased because she was separated from family and support networks, because she was not fully recovered when traveling home and because she had to bear the financial costs of traveling.<sup>16</sup>

- **The criminalization of abortion generated painful shame and stigma.** The HRC found that criminalizing abortion can generate painful stigma for women and in Ms. Mellet’s case it held that “the shame and stigma associated with the criminalization of abortion” had exacerbated her suffering.<sup>17</sup>
- **The criminal law had a chilling effect on medical practitioners and gave rise to information deficits.** The HRC also held that Ms. Mellet’s suffering was “further aggravated by the obstacles she faced in receiving needed information about her appropriate medical options from known and trusted medical providers.”<sup>18</sup>

**Article 17:** The HRC held that by prohibiting abortion Ireland violated Ms. Mellet’s right to privacy. In this regard it reaffirmed that a woman’s decision to have an abortion falls within the scope of her right to privacy as enshrined in Article 17 of the ICCPR and thus Ireland’s prohibition and criminalization of abortion interfered with Ms. Mellet’s decision not to continue her pregnancy. The HRC reiterated that only proportional interferences with the exercise of the right to privacy can be tolerated and that the interference with Ms. Mellet’s right to privacy was unreasonable because it was not proportionate. In the words of the HRC: “the balance that the State party has chosen to strike between protection of the fetus and the rights of the woman in this case cannot be justified.”<sup>19</sup>

**Article 26:** The HRC held that Ireland subjected Ms. Mellet to discrimination and inequality before the law. It considered that women in similar situations to Ms. Mellet who decided to carry their pregnancies to term continued to receive the full protection of the Irish health care system, to benefit from the care and advice of known medical professionals at all stages of pregnancy and to have their medical needs covered by health insurance. In contrast, the HRC found that Ireland’s laws placed Ms. Mellet entirely outside of the Irish public health system. As a result, it held that Irish laws “failed to adequately take into account her medical needs and socio-economic circumstances,” and thus discriminated against her and denied her equal protection of the law.<sup>20</sup>

#### (ii) **The Remedial Measures Required and the State’s Response**

In its decision the HRC outlined that pursuant to its obligations under the ICCPR Ireland is obliged to provide Ms. Mellet with an effective remedy for these violations. The HRC detailed that this obligation requires Ireland to make full reparation to Ms. Mellet and it specified three specific obligations regarding individual and general measures in this regard:<sup>21</sup>

- (i) Provide adequate compensation to Ms. Mellet.
- (ii) Make available any psychological treatment she needs.

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<sup>16</sup> *Id.* para. 7.4.

<sup>17</sup> *Id.* para. 7.4.

<sup>18</sup> *Id.* para. 7.5.

<sup>19</sup> *Id.* para. 7.8.

<sup>20</sup> *Id.* paras. 7.10, 7.11.

<sup>21</sup> *Id.* paras. 9, 10.

- (iii) Undertake law reform and take other steps to prevent similar violations from occurring in the future.

In regard to third requirement the Committee stated that Ireland is obliged to:

*“amend its law on the voluntary termination of pregnancy, including if necessary its Constitution, to ensure compliance with the Covenant, ensuring effective, timely and accessible procedures for pregnancy termination in Ireland, and take measures to ensure that health-care providers are in a position to supply full information on safe abortion services without fearing they will be subjected to criminal sanctions.”*<sup>22</sup>

In December 2016 Ms. Mellet was provided with an *ex gratia* payment of 30,000 Euro in compensation and the State also informed her it would provide access to psychological support and counselling through the national health service.

However, despite these individual remedial measures, none of the law reform measures outlined by the Committee in its decision have been taken and thus far the State party has made no commitment to do so.<sup>23</sup>

In its response to the HRC on 30 November 2016 the State specified that it is currently precluded from legalizing access to abortion in any circumstances other than where the life of a pregnant woman is subject to a real and substantial risk, because of Article 40.3.3 of the Irish Constitution. It made no commitment to hold a referendum on repeal of Article 40.3.3 and ensure subsequent legislative change. It pointed instead to its establishment of the ‘Citizens’ Assembly’ to consider the matter and make recommendations. However it made no commitment to follow those recommendations or to call a Constitutional referendum if that is what is recommended.<sup>24</sup>

Until legal change is adopted that ensures that similar violations do not reoccur in the future Ireland will remain in violation of its remedial obligations under international law.<sup>25</sup>

## **II. LAW REFORM CONSIDERATIONS TO ENSURE COMPLIANCE WITH ARTICLES 2 AND 12 OF THE CONVENTION**

Every year thousands of women and girls living in Ireland travel to another country in Europe to have an abortion.<sup>26</sup> The circumstances behind Ms. Mellet’s decision to end her pregnancy involved a diagnosis of a fatal foetal impairment. However most of the women and girls who leave Ireland to access abortion services in another country do not do so because of exceptional circumstances, such as where a pregnancy is the result of sexual assault or involves a serious risk to a woman’s health or life or a severe or fatal fetal impairment. Instead they decide to have an abortion because their pregnancy is unwanted or because they decide having a child is not in their best interests at the time.

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<sup>22</sup> *Id.* para. 9.

<sup>23</sup> Center for Reproductive Rights, *Submission to the Human Rights Committee, Follow-Up to Views in Mellet v. Ireland (Communication No. 2324/2013)* [hereinafter *Follow-Up to Mellet v. Ireland*], Applicant Assessment of State Party Measures, 22 Dec. 2016; *Response of Ireland in the case of Mellet v Ireland*, *supra* note 9.

<sup>24</sup> *Id.*

<sup>25</sup> Center for Reproductive Rights, *Follow-Up to Mellet v. Ireland*, *supra* note 23.

<sup>26</sup> Irish Family Planning Ass’n, *supra* note 4.

Despite prohibiting and criminalizing abortion in Ireland, Irish law explicitly allows women to travel to have an abortion.<sup>27</sup> Additionally, evidence increasingly indicates that ever-growing numbers of women and girls, who may not be able to or cannot afford to travel, are illegally taking the abortion pill in Ireland, in a clandestine manner and outside of a care-pathway overseen by trained medical professionals.<sup>28</sup>

Meanwhile, women who for a range of reasons cannot travel or do not have access to the abortion pill may continue unwanted pregnancies to term. Women living in poverty, women with disabilities, undocumented migrant women, asylum seekers, women at risk of domestic and intimate partner violence and adolescents may face particular barriers in travelling for abortion services.

Ensuring that Ireland's laws on abortion are changed in a manner that takes account of, and guarantees, the rights to health, equality and reproductive autonomy of all women and girls in Ireland and ensures their ability to enjoy their full range of human rights on a basis of equality and non-discrimination is critical in order for Ireland to move into compliance with, and implement, Articles 2 and 12 of the Convention.

As the Committee has repeatedly stated Article 2 of the Convention obligates States parties to ensure that laws and policies do not discriminate against women and to modify or abolish existing laws and policies which constitute discrimination.<sup>29</sup> Article 12 requires States parties to ensure that all women have equal access to health care.<sup>30</sup> As the Committee has repeatedly held this means that it is discriminatory for a State party to refuse to legally provide for the performance of reproductive health services needed by women or to criminalize reproductive health services only needed by women.<sup>31</sup> As the Committee has outlined, in order to comply with the Convention States parties must decriminalize abortion and "ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services."<sup>32</sup> The Committee has stressed that "decisions to have children or not, ... must not ... be limited by spouse, parent, partner or Government."<sup>33</sup>

Not only has the Committee held that States parties are obliged to make abortion available in law and practice, at a minimum in situations when continuing a pregnancy would threaten a woman's life or health, when there is a risk of severe fetal impairment, and where the pregnancy results from sexual assault,<sup>34</sup> it has also repeatedly expressed serious concern about restrictive laws which do not allow for

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<sup>27</sup> IR. CONST. art. 40.3.3°.

<sup>28</sup> ARA Aiken et. al., *supra* note 5.

<sup>29</sup> Convention on the Elimination of All Forms of Discrimination Against Women art. 2, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW Convention]; CEDAW Comm., *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, paras. 31, 35, U.N. Doc. CEDAW/C/GC/28.

<sup>30</sup> CEDAW Convention, *supra* note 29, art. 12(1) ("States Parties shall take all appropriate measures to eliminate 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."); CEDAW Comm., *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, para. 1, U.N. Doc. A/54/38/Rev.1, Chpt. 1 (5 Feb. 1999).

<sup>31</sup> CEDAW Comm., *General Recommendation No. 24*, *supra* note 30 at para. 11.

<sup>32</sup> CEDAW Comm., *General Recommendation No. 19: Violence Against Women*, para. 24(m), U.N. Doc. A/47/38 (1992).

<sup>33</sup> CEDAW Comm., *General Recommendation No. 21: Equality in Marriage and Family Relations*, para. 22, U.N. Doc. A/49/38 (1994).

<sup>34</sup> See CEDAW Comm., *General Recommendation No. 24*, *supra* note 30 at paras. 14 and 31(c); CEDAW Comm., *Concluding Observations: Ireland*, paras. 180, 186, U.N. Doc. A/54/38/REV.1(SUPP) (1999); CEDAW Comm.,

women's access to abortion on request or broad socio-economic grounds, at least in early pregnancy, and has called for reform of restrictive abortion laws so as to "ensure women's autonomy to choose."<sup>35</sup>

Other treaty monitoring bodies has reached similar conclusions. For example in its General Comment on the Right to Sexual and Reproductive Health the Committee on Economic, Social and Cultural Rights outlines that the criminalization of abortion and restrictive abortion laws "undermine autonomy and the equal right to non-discrimination in the full enjoyment of sexual and reproductive health."<sup>36</sup> It specifies that "preventing unplanned pregnancies and unsafe abortions requires States to adopt legal and policy measures to ... liberalize restrictive abortion laws, guarantee women and girls access to safe abortion services and quality post-abortion care... and respect women's right to make autonomous decisions about their sexual and reproductive health."<sup>37</sup> It also specifies that, "States should aim to ensure universal access without discrimination for all individuals, including those from disadvantaged and marginalized groups, to a full range of quality sexual and reproductive health care, including ... safe abortion care."<sup>38</sup>

Additionally, the Committee on the Rights of the Child has repeatedly called on States to "decriminalize abortion in all circumstances and review its legislation with a view to ensuring access by children 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>39</sup>

Special Procedures have also reiterated serious concerns regarding the harmful impact on women of restrictive abortion laws and have called on States to liberalize restrictive laws and legalize abortion. In its Report on Eliminating Discrimination against Women in the area of Health and Safety the Working Group on Discrimination Against Women outlined that in order to end discrimination against women, "States should allow women to terminate a pregnancy on request during the first trimester or later in the specific cases listed above."<sup>40</sup> Similarly the Special Rapporteur on Health, the Special Rapporteur on Torture and the Working Group on Discrimination Against Women have jointly recommended that states follow "the good practice found in many countries which provide women's access to safe abortion services, on request during the first trimester of pregnancy."<sup>41</sup>

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*Concluding Observations: Ireland*, paras. 396–97, U.N. Doc. A/60/38(SUPP) (2005); CEDAW Comm., *Summary of the inquiry concerning the Philippines under Article 8 of the Optional Protocol to Convention on the Elimination of All Forms of Discrimination against Women*, para. 51(v), U.N. Doc. CEDAW/C/OP.8/PHL/1 (2013); *see also* CEDAW Comm., *Concluding Observations: Belize*, para. 28, U.N. Doc. CEDAW/C/BLZ/CO/4 (2007); CEDAW Comm., *Concluding Observations: Dominican Republic*, para. 37(c), U.N. Doc. CEDAW/C/DOM/CO/6-7 (2014); CEDAW Comm., *Concluding Observations: Burkina Faso*, para. 40(b), U.N. Doc. CEDAW/C/BFA/CO/6 (2010); CEDAW Comm., *Concluding Observations: Chile*, para. 19, U.N. Doc. CEDAW/C/CHI/CO/4 (2006); CEDAW Comm., *Concluding Observations: Liechtenstein*, para. 39(a), U.N. Doc. CEDAW/C/LIE/CO/4 (2011); CEDAW Comm., *Concluding Observations: Mauritius*, para. 33(a), U.N. Doc. CEDAW/C/MUS/CO/6-7 (2011); CEDAW Comm., *Concluding Observations: Pakistan*, para. 40, U.N. Doc. CEDAW/C/PAK/CO/3 (2007); CEDAW Comm., *Concluding Observations: Republic of Korea*, para. 35, U.N. Doc. CEDAW/C/KOR/CO/7 (2011).

<sup>35</sup> CEDAW Comm., *Concluding Observations: New Zealand*, para. 34(a), U.N. Doc. CEDAW/C/NZL/CO/7 (2012).

<sup>36</sup> CESCR, *General Comment No. 22*, para. 34.

<sup>37</sup> *Id.* para. 28.

<sup>38</sup> *Id.* para. 45.

<sup>39</sup> CRC, *Concluding Observations: Ireland*, para. 58(a), U.N. Doc. CRC/C/IRL/CO/3-4 (2016).

<sup>40</sup> Report of the Working Group on the Issue of Discrimination Against Women in Law and in Practice, para. 107 (c), U.N. Doc. A/HRC/32/44 (2016).

<sup>41</sup> Statement by Alda Facio et al., *Unsafe Abortion Is Still Killing Tens of Thousands Women Around the World*, for International Safe Abortion Day (Sept. 28, 2016), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20600&LangID=E>.

These recommendations align with international public health and clinical guidelines. For example the 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>42</sup> It outlines that public health data and evidence demonstrate 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 are reduced.<sup>43</sup>

### **III. RECOMMENDATIONS**

In order to ensure its laws on abortion comply with the Convention, and particularly Articles 2 and 12, Ireland should:

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

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<sup>42</sup> WORLD HEALTH ORGANIZATION (WHO), SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS 9 (2012), [http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf).

<sup>43</sup> *Id.* at 90.