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INTRODUCTION

Amnesty International submits this briefing to the United Nations (UN) Human Rights Committee (the Human Rights Committee or the Committee) ahead of its examination in July 2014 of Ireland's fourth periodic report on the implementation of the International Covenant on Civil and Political Rights (the Covenant or ICCPR).

Amnesty International recognizes that significant changes and reforms have taken place in Ireland since it was last reviewed by the Human Rights Committee in 2008. For instance, there have been notable advances in prison conditions and some improvements in prisoner complaints mechanisms. However, the organization would like to highlight a number of human rights concerns in Ireland in relation to several questions on the Committee's list of issues from November 2013,[1] in particular:

- The criminalization of abortion in all cases except where there is a real and substantial risk to the life of the pregnant woman or girl; the lack of clarity around how and when women may access legal and safe abortion in risk to life cases; the lack of access to abortion in any other circumstances including in cases when there is a risk to health of the pregnant woman or girl, in cases of rape, incest and unviable pregnancies; the law restricting referrals for women seeking abortions abroad and information on abortion services. (Question 12).

- The two separate definitions of human rights in sections 2 and 29 of the 2014 Bill establishing the Irish Human Rights and Equality Commission, with an overly broad application of the narrower definition to some of the Commission's functions; and the need for greater IHREC financial independence from the executive arm of government (Question 3(a)).

- Truth, justice and reparation have still not been provided to victims of human rights violations in the Magdalene Laundries (Question 9).

- Ireland has still not established an independent and effective investigation into the past use of its territory for renditions, nor taken specific and concrete steps to ensure non-repetition (Question 18).

- Ireland lacks a procedure to ensure legal gender recognition of transgender people, and initial legislative proposals may restrict the availability of legal gender recognition to persons aged 18 years and over, require applicants to have a single status, and require a physician's statement as evidence of transition (Question 24).

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[1] List of issues in relation to the fourth periodic report of Ireland, CCPR/C/IRL/Q/4, 22 November 2013.

OBSTACLES TO ACCESSING SAFE ABORTION (QUESTION 12 – ARTICLES 2, 3, 6, 7, 17, 19, 26)

Amnesty International is concerned that Ireland continues to have abortion legislation that is not compliant with the ICCPR. The Protection of Life during Pregnancy Act (PLDPA 2013) enacted in 2013 takes an overly restrictive approach to providing access to abortion in cases of risk to the life of the pregnant woman or girl. It re-criminalized abortion in all other cases, and did nothing to address the lack of access to safe and legal abortion in cases where the pregnant woman or girl' s health is in danger, where pregnancy is as a result of rape, sexual assault or incest, or where there are indications of serious malformations incompatible with life.

In its list of issues, the Committee sought information on "[w]hether the State party intends to introduce measures to broaden access to abortion to guarantee women's rights under the Covenant, including when the pregnancy poses a risk to the health of the pregnant woman, where the pregnancy is the result of a crime, such as rape or incest, cases of fatal foetal abnormalities, or when it is established that the foetus will not survive outside the womb". The Government's reply is simply that "[t]here are currently no proposals to amend Article 40.3.3 of the Constitution".[2] Ireland's constitutional protection of foetal life cannot justify its non-compliance with the ICCPR. The Human Rights Committee has very clearly noted that, where constitutional provisions impede the full protection of human rights, international human rights obligations must be prioritized. For example, in its General Comment 31 on the general legal obligations of States Parties to the International Covenant on Civil and Political Rights, the Committee notes that "although [the Covenant] allows States Parties to give effect to Covenant rights in accordance with domestic constitutional processes, the same principle operates so as to prevent States Parties from invoking provisions of the constitutional law or other aspects of domestic law to justify a failure to perform or give effect

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[2] Article 40.3.3°, Bunreacht na hÉireann states:

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

This subsection shall not limit freedom to travel between the State and another state.

This subsection shall not limit freedom to obtain or make available, in the State, subject to such conditions as may be laid down by law, information relating to services lawfully available in another state."

to obligations under the treaty."[3]

CRIMINALIZATION

Amnesty International notes that the creation of offences in the PLDPA 2013 with possible sentences of 14 years imprisonment is in conflict with the ICCPR. While sections 58 and 59 of the Offences against the Person Act 1861 have been repealed, the PLDPA continues to criminalize the procurement of an abortion and in fact recasts the offence in more prohibitive language and imposes an unlimited fine and/or a sentence of imprisonment for up to 14 years for the intentional "destruction of an unborn human life". This reinforces the "chilling" effect that criminalization of abortion has regarding access to lawful services, as identified by the European Court of Human Rights *in A, B and C v Ireland*.[4]

Criminal regulation is recognized to impede women's access to lawful abortion and post-abortion care. Rather than restricting access to abortion, the law in effect restricts women's access to safe abortion. This is especially true when severely restrictive laws are in place, such as those in Ireland which permit abortion only where necessary to preserve life of the pregnant woman or girl. Health-care providers and women are reluctant to respectively deliver or seek services and information under any circumstances, including those permitted by law, where there is a risk of prosecution and imprisonment. Yet, in enacting legislation purporting to give effect to the European Court of Human Rights decision, the State has not mitigated the chilling effect felt by health care professionals.

There can be no doubt that the criminalization of abortion causes severe pain and suffering to those girls and women whose unwanted or non-viable pregnancies fall outside the narrow scope of the law. Apart from denial of access to abortion services, the effect of criminalization includes the mental anguish of affected women and girls' being confronted with – and living with the consequences of – a stark choice between two options within the state: to continue the pregnancy against their wishes and/or at a cost to their health or risk to their lives, or to commit a criminal offence and risk criminal investigation, prosecution and punishment.

Criminalization also potentially affects the decision doctors may make under the PLDPA, since the consequences of making or being perceived as making a wrong decision could be imprisonment. As mentioned earlier, in *A, B and C v Ireland*, the European Court of Human Rights expressed its concern at the "the chilling factor" of the criminal sanctions imposed by the Offences against the Person Act 1861.[5]

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[3] UN Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 29 March 2004, para. 4.

[4] *A, B and C v Ireland* [2010] ECHR 2032, Application no 25579/05, para 254.

[5] *A, B and C v Ireland* [2010] ECHR 2032, Application no 25579/05 para 254

The Committee has repeatedly raised concerns about the criminalization of abortion.[6] As abortion is a procedure that is only required by women, criminal laws on abortion disproportionately impact upon women, preventing their full enjoyment of protections offered under Articles 2 and 3 of the ICCPR.[7] In addition to this, the Special Rapporteur on the Right to Health has stated that the "[c]reation or maintenance of criminal laws with respect to abortion may amount to violations of obligations of States to respect, protect and fulfil the right to health."[8]

RIGHT TO LIFE (ARTICLE 6)

In its list of issues, the Committee sought information on the degree to which the PLDPA 2013 is in compliance with Articles 6 and 7 of the ICCPR and the Committee's previous recommendations. While the Government's reply describes the PLDPA 2013, it does not comment on its compliance with Articles 6 and 7 of the ICCPR.

The enactment of the PLDPA 2013 was, in part, in response to the 2010 European Court of Human Rights decision in *A, B and C v Ireland*.[9] In this case, the Court ruled that Ireland was in breach of its obligations under Article 8 of the European Convention on Human Rights, for failing to adopt legislation implementing 40.3.3 of the constitution, providing an effective and accessible domestic procedure to establish whether a pregnancy poses a real and substantial medical risk to the life of the pregnant woman or girl, and therefore whether

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[6] Human Rights Committee, Concluding Observations: Argentina, para. 13, U.N. Doc. CCPR/C/ARG/CO/4 (2010); El Salvador, para. 10, U.N. Doc. CCPR/C/SLV/CO/6 (2010); Mexico, para. 10, U.N. Doc. CCPR/C/MEX/CO/5 (2010); Monaco, para. 10, U.N. Doc. CCPR/C/MCO/CO/2 (2008); Nicaragua, para.13, U.N. Doc. CCPR/C/NIC/CO/3 (2008).

[7] In its General Recommendation 24, the UN Committee on the Elimination of Discrimination against Women (CEDAW) called on states to "refrain from obstructing action taken by women in pursuit of their health goals". (CEDAW, General Recommendation No. 24 (20th session, 1999) (article 12: Women and health)", contained in document A/54/38/Rev.1, chapter I.1999, para. 14.) The Committee explains that barriers that obstruct women's access to appropriate health care "include laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures". (CEDAW General Recommendation No. 24, para. 14). Abortion is a procedure only required by women. The Committee recommends that "when possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion". (CEDAW General Recommendation No. 24, para. 14. This same Committee has consistently urged the State to decriminalize abortion in cases of rape, incest or threats to the health or life of the pregnant woman and to gather statistical data on illegal and unsafe abortion.

[8] UNGA 'Report of the Special Rapporteur of the Human Rights Council on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, in accordance with the Human Rights Council resolutions 15/22 and 6/29", A/66/150 (2011) at para 21.

[9] *A, B and C v Ireland* [2010] ECHR 2032, (Application no. 25579/05).

she is entitled to exercise her constitutional right to an abortion.

The PLDPA 2013 is limited to endeavoring to meet the European Court's decision; it only allows access to legal abortion where there is a risk to the life of the woman or girl, including the risk of suicide, as was found to be a constitutional right in the 1992 Supreme Court decision in *Attorney General v X and Others.*[10] According to that decision, the risk to life, as distinct from health, of the pregnant woman must be "real and substantial". However, even within the narrow construction of legislation allowing for access to abortion where there is a "real and substantial" risk to the life of the pregnant woman or girl, Amnesty International considers the PLDPA 2013 to be inadequate. The PLDPA 2013, in effect, repeats the wording of the Supreme Court decision. It provides no clarification or guidance in how "real and substantial" risk should be applied in practice. A guidance document was to have been published by the Government to assist health professionals in the implementation of the PLDPA 2013, but this has not yet happened. In its reply to the Committee's list of issues, the Government says this guidance document is "to be finalized in early 2014". It has still not emerged.

Amnesty International is concerned at the overly restrictive approach taken in the PLDPA 2013 given that it is not possible in medical science to definitely distinguish between risk to health and risk to life. The health risks arising from a relatively minor infection, for example, can quickly become threatening to a person's life, depending on the overall health of the patient, contextual issues such as access to medicine and trained care, and many other factors.

It is uncontested that denial of access to abortion on health grounds can put women's lives at risk. The PLDPA 2013 does not reflect this reality, as it draws a false distinction between risk to life and risk to health of the pregnant woman or girl, potentially forcing doctors to separate patients into those who are "close enough" to death to receive full attention and care, and those whose health must deteriorate before they can be treated. The PLDPA 2013 further fails to weigh longer-term risks, such as deteriorating health leading to early demise, which might be associated with carrying a pregnancy to term despite serious health complications.

FREEDOM FROM TORTURE AND CRUEL INHUMAN OR DEGRADING TREATMENT (ARTICLE 7)

This Committee has expressed concern with national laws that prohibit abortion in all cases except where necessary to save the woman's life. In *K.L. v. Peru*, this Committee found that state failure to enable the complainant to benefit from a therapeutic abortion caused the depression and emotional distress she experienced, and thus constituted a violation of Article 7 (freedom from torture or cruel, inhuman or degrading treatment or punishment).[11]This finding

[10] *Attorney General v X and Others* [1992] 1 I.R. 1 (S.C.) (Ir.) [1992 No. 8469].

[11] Human Rights Committee, Communication No, 1153/2003, *K.L. v Peru*, U.N. Doc. CCPR/C/85/D/1153/2003 (2005).

did not depend on the lawfulness of therapeutic abortion. Article 7 of the ICCPR may therefore be interpreted as requiring a state guarantee of lawful abortion where necessary to protect the woman's physical or mental health and in cases of severe foetal impairment [12], and when pregnancy is a result of rape or incest.[13] (See below for more details)

RAPE, SEXUAL ASSAULT AND INCEST

Amnesty International is concerned that there is no exception to the prohibition and criminalization of abortion in Ireland in cases where pregnancy occurs as a result of rape, sexual assault or incest. Survivors of sexual violence are forced to travel, undergo an unsafe and clandestine abortion or continue with the pregnancy.

UN treaty monitoring bodies widely agree that abortion should be legal when a pregnancy results from rape and have repeatedly urged countries to amend their laws to this effect.[14] They have also urged states to take measures to provide for implementation mechanisms to ensure availability and accessibility of abortion on rape and incest grounds and to also adopt

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[12] Id.; See also Committee Against Torture, Concluding Observation on Paraguay U.N. Doc CAT/C/PRY/CO/4-6, para. 22 (2011); Committee Against Torture, Concluding Observations on Peru, CAT/C/PER/CO/6, para. 15 (2012).

[13] Human Rights Committee, *LMR v Argentina,* Communication 1608/2007, UN Doc. CCPR/C/101/D/1608/2007; See also Committee Against Torture, Concluding Observation to Paraguay U.N. Doc CAT/C/PRY/CO/4-6, para. 22 (2011); Committee against Torture, Concluding Observations to Peru, CAT/C/PER/CO/6, para. 15 (2012)

[14] Committee on the Rights of the Child, *Concluding Observations: Argentina*, para. 59, U.N. Doc. CRC/C/ARG/CO/3-4 (2010) ("The Committee recommends that the State party... Take urgent measures to reduce maternal deaths related to abortions, in particular ensuring that the provision on non-punishable abortion, especially for girls and women victims of rape, is known and enforced by the medical profession without intervention by the courts and at their own request."); Committee on Economic, Social and Cultural Rights, *Concluding Observations: Peru*, para. 21, U.N. Doc. E/C.12/PER/CO/2-4 (2012) ("The Committee... recommends that the criminal code be amended so that consensual sexual relations between adolescents are no longer considered as a criminal offence and that abortion in case of pregnancy as a result of rape is not penalized."); Committee on Economic, Social and Cultural Rights, *Concluding Observations: Kenya*, para. 33, U.N. Doc. E/C.12/KEN/CO/1 (2008) ("The Committee recommends that the State party ensure affordable access for everyone, including adolescents, to comprehensive family planning services, contraceptives and safe abortion services, especially in rural and deprived urban areas, by ... decriminalizing abortion in certain situations, including rape and incest."); Human Rights Committee, *Concluding Observations: Guatemala*, para. 20, U.N. Doc. CCPR/C/GTM/CO/3 (2012) ("The State party should, pursuant to article 3 of its Constitution, include additional exceptions to the prohibition of abortion so as to save women from having to resort to clandestine abortion services that endanger their lives or health in cases such as pregnancy resulting from rape or incest."); CEDAW, *LC v. Peru*, 2005, para. 9(b)(iii); Human Rights Committee, Concluding Observations to Guatemala, para. 20.

relevant medical standards.[15]

This was specifically highlighted in the Committee's 2000 review of Ireland, which stated:

> "The Committee is concerned that the circumstances in which women may lawfully obtain an abortion are restricted to when the life of the mother is in danger and do not include, for example, situations where the pregnancy is the result of rape. The State party should ensure that women are not compelled to continue with pregnancies where that is incompatible with obligations arising under the Covenant (art. 7) and General Comment No. 28."[16]

This has been reiterated by the Committee in the case of *LMR v Argentina*,[17] yet Ireland has continued to ignore international standards on this issue. Women and girls are denied access to abortion in cases of rape, sexual assault or incest in Ireland. As a consequence Ireland may be in violation of women's right to be free from torture or cruel, inhuman or degrading treatment under Article 7 of the ICCPR. Ireland has not taken steps to allow access to abortion services in order to comply with its non-derogable obligations under the Covenant.

FATAL FOETAL IMPAIRMENT

Access to abortion is not available in cases of fatal foetal impairment although there is substantial uncertainty as to whether abortion in such circumstances is lawful. The State argued before the European Court of Human Rights in the case of *D v Ireland* that Article 40.3.3° of the Irish Constitution could potentially be interpreted by courts in Ireland as permitting abortion in cases of fatal foetal impairment.[18] The PLDPA 2013 has however not incorporated this approach. During the passage of the Act through the Dáil, the Minister for Justice and Equality stated that "it is a great cruelty that a woman, where there is a fatal foetal abnormality, cannot have her pregnancy terminated".[19] The Minister went on to state that this could not happen without a referendum to alter Article 40.3.3°.

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[15] CEDAW Committee, Concluding Observations: Kuwait, para. 43(d), U.N. Doc. CEDAW/C/KWT/CO/3-4 (2011).

[16] Concluding Observations of the Human Rights Committee, Ireland, U.N. Doc. A/55/40, paras. 23 and 24.

[17] *LMR v Argentina* (UN Doc. CCPR/C/101/D/1608/2007)

[18] *D v Ireland* (2006) (Application no. 26499/02).

[19] Speech by the Minister for Justice, Equality and Defence, Alan Shatter, TD, during the debate on the Protection of Life During Pregnancy Bill 2013: Report Stage - 10/11 July 2013. Available at: http://justice.ie/en/JELR/Pages/SP13000294 Date accessed: 5 June 2014.

The Committee has acknowledged in the case of *KL v Peru*[20] that forcing a minor to continue a pregnancy when a scan had demonstrated that she was carrying an anencephalic foetus violated her right to be free from cruel, inhuman and degrading treatment, her right to privacy and the special protections for minors. The failure to guarantee access to abortion in cases of fatal foetal impairment could therefore cause Ireland to breach Articles 7, 17 and 24 of the ICCPR.

ABORTIFACIENTS

The lack of access to legal and safe abortions has led to an increase in self-induced abortions, where women and girls purchase abortion-inducing pills (medication abortion) online in the hope of terminating a pregnancy without the high cost or need to leave the country. However, despite being on the WHO list of essential medicines mifepristone remains illegal in Ireland and misoprostol is tightly controlled (the two drugs in the regiment). Statistics on how many women and girls are taking the drugs is hard to obtain, however, reports suggest that almost 2,000 pills have been seized in recent years and many more are likely to arrive undetected.[21] According to the Health Service Executive's Crisis Pregnancy Programme, the Irish Medicines Board detained 487 abortifacient tablets in 2012 alone, of which 471 contained Misoprostal and 16 contained Mifepristone.[22] Anecdotal evidence also suggests that women and girls are using addresses in Northern Ireland (where the drugs are not illegal) to get the pills into the country.[23]

In a technical guidance paper on the reduction of maternal mortality, the Human Rights Council has acknowledged that "among adolescents, there might be a disproportionally high rate of self-induced abortion and fear of criminal sanctions."[24] This fear of criminal sanction often prevents women and particularly minors from seeking post-abortion care, increasing the

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[20] *KL v Peru* (UN Doc. CCPR/C/85/D/1153/2003)

[21] Reports of abortion pill seizures- Available at: http://www.independent.ie/lifestyle/health/women-warned-of-dangers-from-illegal-abortion-pills-sold-online-26896287.html

[22] Health Service Executive's Crisis Pregnancy Programme'', fn. 4. Available at http://www.crisispregnancy.ie/news/number-of-women-giving-irish-addresses-at-uk-abortion-clinics-decreases-for-eleventh-year-in-a-row-according-to-uk-department-of-health/

[23] E.g. "Claire ordered drugs online and had an abortion at home. This is her story...", *Irish Examiner,* 30 January 2013. Available at http://www.irishexaminer.com/viewpoints/claire-ordered-drugs-online-and-had-an-abortion-at-home-this-is-her-story-221087.html. Date accessed: 1 May 2014 and 'Women warned of dangers from illegal abortion pills sold online', *Irish Independent*, 2nd December, 2013. Available at http://www.independent.ie/lifestyle/health/women-warned-of-dangers-from-illegal-abortion-pills-sold-online-26896287.html. Date accessed: 2 May 2014.

[24] Human Rights Council "Technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality" A/HRC/21/22 at para 59

risk of untreated infections which can have serious consequences for their lives and health.

Ireland is again putting the lives of women and girls at risk or subjecting them to cruel, inhuman and degrading treatment. While medication abortion is a very safe, as recognized by the World Health Organization, many women may not receive accurate information on the procedures and timing of taking the pills or may not seek aftercare due to the fear of prosecution. Thus, some women who use abortion pills may risk unsafe terminations and those whose tablets are seized face forced pregnancy.

In its Concluding Observations on Ireland in 2008, the Committee stated: "The State party should bring its abortion laws into line with the Covenant. It should take measures to help women avoid unwanted pregnancies so that they do not have to resort to illegal or unsafe abortions that could put their lives at risk (article 6) or to abortions abroad (articles 26 and 6)." Amnesty International is concerned that Ireland has not taken measures to prevent illegal or unsafe abortions, in violation of its obligations under the Covenant.

CONSCIENTIOUS OBJECTION

The PLDPA 2013 does not define conscientious objection in a manner that ensures women and girls will be able to obtain lawful abortions. For example, the regulation is very broad in that it allows for conscientious objection to be invoked not only by those healthcare professionals who carry out a termination but also those who assist with carrying one out. The PLDPA does not provide any clear definitions of the meaning of assistance, nor does it ensure the availability and accessibility of health care professionals who are willing and able to provide such services. Additionally, the PLDPA 2013 also does not explicitly debar medical practitioners who object to abortion in principle from serving on the review panel. The lack of regulation could have considerable impact on women and girls living in rural areas, for example.[25]

UN treaty bodies have specifically recognized that conscientious objection is a barrier to accessing reproductive health services, especially lawful abortion and have generally stated that governments have an obligation to ensure that the application of legislation that provides for conscientious objection does not violate women's right to access quality, affordable and acceptable sexual and reproductive health care services, including abortion.[26]

In monitoring Poland's compliance with the ICCPR, this Committee raised concerns "that, in practice, many women are denied access to reproductive health services, including … lawful

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[25] 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.

[26] *See, e.g.,* Committee on the Elimination of Discrimination against Women, *Concluding Observations: Slovakia*, paras. 42-43, U.N. Doc. A/63/38 (2008); Human Rights Committee, Concluding Observations to (2004), para. 8.

interruption of pregnancy" and recommended that Poland "introduce regulations to prohibit the improper use and performance of the 'conscience clause' by the medical profession."[27]

The growing recognition of the problem is evidenced by the Committee against Torture addressing this issue for the first time in its concluding observations on Poland in December 2013, in which it noted that:

> "In accordance with the 2012 World Health Organization technical and policy guidance on safe abortion, the State party should ensure that the exercise of conscientious objection does not prevent individuals from accessing services to which they are legally entitled. The State party should also implement a legal and/or policy framework that enables women to access abortion where the medical procedure is permitted under the law."[28]

TRAVEL

Under the Constitution, Irish women have the right to travel to another jurisdiction to access abortion services.[29] However, Ireland cannot rely on the fact that some women seek and get access to needed care outside Ireland to declare its human rights obligations discharged. Rather, Ireland's compliance with its human rights obligations must be assessed by the laws, policies and practices, which govern the lives of women within Ireland.

In 2012, according to abortion statistics gathered by the UK Department of Health, 3,982 women gave Irish addresses when obtaining abortion services in England and Wales.[30] They accounted for 68% of the women who obtained abortions who were not residents of England and Wales.[31] This figure does not include the women who chose not to provide their address in Ireland or women who travelled to another country. The number of women travelling to access abortion services is likely to be higher. The Health Service Executive's Crisis Pregnancy Programme has stated that at least a further 1,503 women have travelled to the Netherlands between 2006 and 2011.[32]

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[27] Human Rights Committee, Concluding Observations to Poland (2010), para. 12.

[28] UN Committee Against Torture, Concluding Observations to Poland, CAT/C/POL/CO/5-6 (Dec. 2013).

[29] Article 40.3.3˚, Bunreacht na hÉireann, para. 2.

[30] Department of Health, Abortion Statistics, England and Wales 2012, p. 52. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211790/2012_Abortion_Statistics.pdf, Date accessed: 5 May 2014.

[31] Ibid, table 12.a.

[32] Available at http://www.crisispregnancy.ie/news/number-of-women-giving-irish-addresses-at-uk-abortion-clinics-decreases-for-eleventh-year-in-a-row-according-to-uk-department-of-health/ Statistics for

The failure of the State to ensure access to safe and legal abortion, as described above, in Ireland has a disproportionate impact on poorer women and other women unable to travel outside Ireland. Travelling to access abortion services is costly. It is estimated that the average cost of travelling to the UK for first trimester abortion services is €1,000, including clinic fees, flights and accommodation.[33] Later gestational abortions are more costly placing greater burdens on women with non-viable foetuses, as testing for these conditions is carried out at the 20th week of pregnancy. In addition, travelling for abortion services is stigmatizing and often traumatic, as women may continue to feel the effects of the criminal status of abortion in their home country. Women who have travelled to other jurisdictions are therefore less likely to avail themselves of post-abortion care, when needed, on their return to Ireland, for fear of stigmatization. This can have negative health consequences. In this sense Ireland is subjecting women to unsafe abortions in violation of Articles 6 and 7 of the ICCPR.

Travel is often not possible for many women and girls. The high cost of travel is often prohibitive, particularly for minors, women from socio-economically marginalized groups such as Travellers or Roma, or undocumented migrants and asylum seekers. For asylum seekers whose only income is €19.10 per week, they must apply for an emergency re-entry visa which can take up to 8 weeks to process and costs €60 irrespective of whether or not the visa is granted.[34] A visa for the destination country such as the UK (£83/€99)[35] or the Netherlands (€60)[36] is also required. Language barriers may also prevent girls and women from travelling to access abortion services. The costly, difficult and time-consuming process has been held to be in conflict with Article 17 of the ICCPR.[37]

THE REGULATION OF INFORMATION ACT OF 1995 (ARTICLE 19)

The Regulation of Information (Services outside the State for the Termination of Pregnancies) Act of 1995 prohibits health-care providers from fulfilling their duty to ensure that their patients receive, at a minimum, full referrals for the care they need. Provisions in the Act

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2012 and 2013 are not yet available. Date accessed: 1 May 2014.

[33] IFPA, available at http://www.ifpa.ie/node/506

[34] Irish Naturalisation and Immigration Service, "Re-entry Visa Information". Available at: http://www.inis.gov.ie/en/INIS/Pages/Re-entry%20visas. Date accessed: 2 May 2014.

[35]Gov.uk, "Private Medical Treatment Visitor visa", https://www.gov.uk/private-medical-treatment-visa Date accessed: 2 May 2014.

[36] Government of the Netherlands, "Applying for a Schengen visa" http://www.government.nl/issues/visa-for-the-netherlands-and-the-caribbean-parts-of-the-kingdom/short-stay-visas-for-the-netherlands/applying-for-a-schengen-visa. Date accessed: 2 May 2014.

[37] Citizens Information on Travel Documents for Refugees. Available at http://www.citizensinformation.ie/en/moving_country/asylum_seekers_and_refugees/refugee_status_and_leave_to_remain/travel_documents_for_refugees.html Date accessed: 2 May 2014.

make it unlawful for providers to "make an appointment or any other arrangement for or on behalf of a woman with a person who provides services outside the State for the termination of pregnancies."[38] The Act imposes a criminal sanction on healthcare providers who make such a referral.[39] Legal restrictions on the ability of providers to fulfill this obligation in the context of abortion services undermine women's access to reproductive health care and time-sensitive services, with potentially grave consequences for their lives and health and is potentially in violation of the right to seek, receive and impart information protected by Article 19 of the Covenant.

In addition, the ability of Irish healthcare professionals to provide information on abortion services provided abroad is strictly limited by the Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995.In *Open Door Counselling and Dublin Well Woman v Ireland*,[40] the European Court of Human Rights found that an injunction preventing two women's health clinics from disseminating information to women in Ireland on legal abortion services in England violated Article 10 of the European Convention.[41] The Court recognized that restrictions on such information could cause some women to seek or obtain abortion at a later stage in their pregnancy, thereby threatening their health.[42] This finding reflects the Court's understanding of the need for timely access to abortion services, which is undermined when providers are restricted from providing full referrals, including making arrangements. While this restriction on information no longer exists, in part, as a result of this decision, the Regulation of Information Act still prohibits referrals, which continues to undermine women's health and rights. Importantly, the European Court of Human Rights recognized in this case that the injunction at issue "may have had more adverse effects on women who were not sufficiently resourceful or had not the necessary level of education to have access to alternative sources of information."[43] Similarly, the impact of Ireland's restrictions on referrals will fall most heavily on women who face literacy, language or other barriers to accessing abortion information and services, and for whom a provider's assistance in making arrangements for abortion may be critical to ensuring their health and well-being.

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[38] Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995, section 8(1).

[39] section 10(1).

[40] *Open Door and Dublin Well Woman v. Ireland*, 246 Eur. Ct. H.R. (ser. A) (1992).

[41] Id. para. 80.

[42] *Id.* para. 77.

[43] *Id.* para 77.

RECOMMENDATIONS

Amnesty International calls on the Irish government:

- To repeal any existing legislation including the relevant sections of the PLDPA 2013 and any antecedent legislation which criminalizes abortion in any circumstance.

- To ensure access to the full range of safe abortion services, including medical abortion, to all women as guaranteed under the ICCPR, including when the pregnancy poses a risk to the physical or mental health of the pregnant woman, where the pregnancy is the result of a crime, such as rape or incest, in cases of fatal foetal impairment, or when it is established that the foetus will not survive outside the womb. In the interim, take measures to ensure that *all* women, regardless of status, are able to travel abroad to receive safe abortion services.

- To ensure that the application of legislation that provides for conscientious objection does not violate women's right to access quality, affordable and acceptable sexual and reproductive health care services, including abortion.

- To remove restrictions contained in the Regulation of Information Act 1995 on referrals and on information regarding abortion services provided abroad.

IRISH HUMAN RIGHTS AND EQUALITY COMMISSION (QUESTION 3(A))

In March 2014, the Irish Human Rights and Equality Commission Bill (the IHREC Bill) was published, proposing the legislative basis for the merge of the Irish Human Rights Commission, and its equality body, the Equality Authority, into a new National Human Rights Institution (NHRI), the Irish Human Rights and Equality Commission (IHREC).[44]

Amnesty International notes certain improvements in the current version of the IHREC Bill as compared with the proposals made in the 2012 Heads of the Bill.[45] For instance, the organization welcomes the application of the wider definition of "human rights" to the IHREC's amicus curiae function provided for in section 10(2)(e), as opposed to its coming under the narrower definition as had been proposed under Head 30 of the 2012 Heads of Bill. However, the organization believes that there remain certain aspects of the Bill that should be improved in order to ensure that IHREC can operate as an effective and

[44] Available at http://www.oireachtas.ie/documents/bills28/bills/2014/2014/b2014d.pdf

[45] Available at http://www.justice.ie/en/JELR/20120605HeadsOfIHRECBill.pdf/Files/20120605HeadsOfIHRECBill.pdf

independent NHRI.

Amnesty International has particular concerns relating to the restricted definition of human rights which is applied to some of the functions of the IHREC and the assurance of the IHREC's financial and administrative independence which will be addressed in this submission. It also has concerns regarding the lack of provision for broad consultation with civil society throughout the process of selection and appointments of IHREC members, and the lack of clarity on the number of government secondees, the possibility that senior posts could be filled by government secondees, and the establishment of a fair and transparent process for appointing Directors beyond the first Director. These latter concerns will not be addressed in this submission.

MANDATE OF THE IHREC – HUMAN RIGHTS STANDARDS OVER WHICH IT HAS COMPETENCE

Article 2 of the Paris Principles states: "A national institution shall be given as broad a mandate as possible."[46] The Sub-Committee on Accreditation (SCA) of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), has held that

> "[a] National Institution's mandate should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights which includes all rights set out in international, regional and domestic instruments".[47]

Amnesty International is therefore concerned that the two definitions of human rights proposed in the 2012 Heads of the Bill remain within the IHREC Bill. Section 2 of the Bill, which applies to the general protection and promotional functions of the IHREC, provides a broad definition of "human rights"[48] in line with Article 2 of the Paris Principles. However the definition of "human rights" in section 29, which applies to Part 3 of the IHREC Bill (described as the IHREC's enforcement functions and powers), is limited to human rights

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[46] Principles relating to the Status of National Institutions, adopted by General Assembly 48/134, 20 December 1993

[47] SCA, ICC, General Observations of the Sub-Committee on Accreditation, adopted in May 2013, general observation 1.2.

[48] It states, "'human rights', other than in *Part 3*, means - (a) the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Constitution, (b) the rights, liberties or freedoms conferred on, or guaranteed to, persons by any agreement, treaty or convention to which the State is a party, and (c) without prejudice to the generality of *paragraphs (a)* and *(b)*, the rights, liberties and freedoms that may reasonably be inferred as being - (i) inherent in persons as human beings, and (ii) necessary to enable each person to live with dignity and participate in the economic, social or cultural life in the State".

that have "been given the force of law in the State".[49]

This would preclude the IHREC from applying the broad range of human rights instruments to which Ireland is a party when exercising many of the functions under its mandate. Limiting the IHREC's enforcement powers to human rights standards that are incorporated into national legislation or otherwise have force of law in the state, does not allow the IHREC to fully meet the standard set by the SCA in relation to the mandate of NHRIs. Several of the functions in Part 3 of the Bill are not in fact related to enforcement, so the restricted definition would apply outside of the IHREC's role in bringing legal proceedings against public bodies. Furthermore, this restricted definition also applies to Section 42 of the IHREC Bill, which sets out the public sector equality and human rights duty.[50]

AI is therefore concerned at the wide application of this restricted definition of human rights to the IHREC's functions as proposed in the Bill, and does not see that a substantive case has been made for this approach, in the context of either the 2012 Heads or the 2014 Bill.

INQUIRIES BY THE IHREC

In July 2012, the Human Rights Council reaffirmed the importance of the investigative role that NHRIs can play, and the need for States to enhance this role.[51] Despite this clear guidance, the IHREC Bill may not enhance the investigative role of the IHREC. Indeed, due to the limitation on its jurisdiction that comes from the restrictive definition of human rights referred to above, it may in fact reduce this investigative role.

First, Section 35 of the IHREC Bill operates under the restricted definition of human rights, thus potentially precluding the IHREC from examining an issue in the course of an inquiry by reference to the full panoply of the State's international human rights obligations. Secondly, Section 35 of the Bill sets out a very high threshold for triggering the IHREC's inquiry function. According to the Bill, there must be evidence of either a serious violation of human rights or equality of treatment obligations or a systemic failure to comply with human rights or equality of treatment obligations, and the matter must be of grave public concern, before

[49] It states, " 'human rights' means (a) the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Constitution, (b) the rights, liberties or freedoms conferred on, or guaranteed to, persons by any agreement, treaty or convention to which the State is a party and which has been given the force of law in the State or by a provision of any such agreement, treaty or convention which has been given such force, and (c) the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Convention provisions within the meaning of the European Convention on Human Rights Act 2003".

[50] Requiring all public bodies "to have due regard to the need to eliminate prohibited discrimination; promote equality of opportunity and treatment its staff and the persons to whom it provides services; and protect the human rights of its members, staff and the persons to whom it provides services ."

[51] Human Rights Council, Resolution 20/14, National institutions for the promotion and protection of human rights, A/HRC/RES/20/14, para. 17

the IHREC may decide to conduct an inquiry.

INDEPENDENCE – LEGAL FRAMEWORK AND FINANCIAL MEANS

The UN General Assembly has repeatedly stressed "the importance of the financial and administrative independence and stability of national human rights institutions".[52] The General Assembly has also encouraged member States

> "to endow ombudsman, mediator and other national human rights institutions, where they exist, with an adequate legislative framework and financial means in order to ensure the efficient and independent exercise of their mandate".[53]

The SCA of the ICC has also stated that NHRIs "must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities".[54]

The Belgrade Principles on the relationship between NHRIs and parliaments, state:

> "[p]arliaments should develop a legal framework for the NHRI which secures its independence and its direct accountability to parliament, in compliance with the [Paris Principles], and taking into account the General Observations of the [ICC] and best practices".[55]

The Bill does contain some provisions that will ensure the accountability of the IHREC to parliament.[56] Nevertheless, this independence is put at risk by Section 26 of the Bill, which sets out that the IHREC's funding is to be determined by the Minister for Justice and Equality in consultation with the IHREC.[57]

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[52] General Assembly, Resolution 68/171, National institutions for the promotion and protection of human rights, adopted on 18/12/2013, A/RES/68/171, para. 17

[53] General Assembly, Resolution 67/163, The role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights, adopted on 20/12/2012, A/RES/67/163, para. 2(b).

[54] SCA, ICC, general observation 1.10.

[55] The Belgrade Principles, Belgrade, Serbia 22-23 February 2012), http://nhri.ohchr.org/EN/Themes/Portuguese/DocumentsPage/Belgrade20Principles20Final.pdf, Principle I(A)(1)

[56] Section 28 of the IHREC Bill provides for the IHREC's annual reports to be laid before each house of the Oireachtas (parliament)

[57] And with the consent of the Minister for Public Expenditure and Reform, which is a standard clause in

Such close links to a government department in respect of its finances not only jeopardises the independence of the IHREC, but would leave the IHREC vulnerable to funding cuts that were experienced by the IHRC (and the Equality Authority) since 2008.[58]

RECOMMENDATIONS

Amnesty International urges the Irish government to guarantee the effectiveness and independence of the new IHREC by ensuring that the IHREC Bill:

- Applies one unified definition of human rights which incorporates all of Ireland's international and domestic human rights obligations to all sections in the IHREC Bill except section 41 (on the institution of legal proceedings by the IHREC) and sections 36 to 39 (on compliance notices); and

- Guarantees the functional independence of the IHREC from any government department, through clearly setting out the financial and administrative accountability of the IHREC to the Oireachtas, and ensuring that it will be adequately resourced.

MAGDALENE LAUNDRIES (QUESTION 9)

The Committee, in its List of Issues, asked when Ireland would establish "a prompt, thorough and independent investigation into the abuse perpetrated in the Magdalene Laundries as recommended by the Irish Human Rights Commission in its follow-up report on State involvement with Magdalene Laundries". In its reply, the Government states:

> "While isolated incidents of criminal behavior cannot be ruled out, in light of facts uncovered by the McAleese Committee and in the absence of any credible evidence of systematic torture or criminal abuse being committed in the Magdalen laundries, the Irish Government does not propose to set up a specific Magdalen inquiry or investigation. It is satisfied that the existing mechanisms for the investigation and, where appropriate, prosecution of criminal offences can address individual complaints

Irish legislation.

[58] See for example the Concluding Observations of the Committee against Torture, CAT/C/IRL/CO/1, June 2011, para. 8, *"The Committee recommends that the State party should ensure that the current budget cuts to human rights institutions particularly the Irish Human Rights Commission do not result in the crippling of its activities and render its mandate ineffective."*

of criminal behavior if any such complaints are made."[59]

The government's reference to the possibility for any individual to make a complaint of criminal behavior is not sufficient to address its obligation to ensure a remedy and reparation for the broad range of abuses suffered by large numbers of women in the Magdalene Laundries, where in many instances it is unlikely to be possible to attribute individual responsibility for criminal acts.

The government's reply to the List of Issues refers to the Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries (the McAleese Report) published in February 2013 as "a comprehensive and objective report of the factual position prepared under the supervision of an independent chairperson".[60] While this committee was chaired by a member of the upper house of the Irish legislature, who as such was independent of the Executive government, its members were senior representatives from six centrally relevant Government Departments. In view of the close involvement of the state in the Magdalene Laundries, including referrals from the criminal justice system and the health and social services sector, and financial interactions between state bodies and the laundries, such an investigation and report cannot meet the criteria for an independent inquiry. The focus of its inquiries was to establish the facts of state involvement in the Laundries – it did not examine the abuses within the framework of a human rights analysis, which is key to ensuring redress and reparation for victims, nor did it make recommendations to the government or other bodies.

The government's reply to the List of Issues further asserts that "[n]o factual evidence to support allegations of systematic torture or ill treatment of a criminal nature in these institutions was found" in the course of compiling the McAleese Report; and "[t]he facts uncovered by the [McAleese] Committee did not support the allegations that women were systematically detained unlawfully in these institutions or kept for long periods against their will".[61] AI believes these assertions speak not to the absence of such evidence, but the fact that the McAleese Report is not – and was not intended to be – a comprehensive investigation of all allegations/facts in all cases; its focus was to identify the extent of State involvement. Firstly, it is quite clear from the testimonies of survivors that the women and girls in these laundry institutions experienced a range of abuses including inhuman and degrading treatment, arbitrary deprivation of liberty and forced labor.[62] In addition, the

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[59] List of issues in relation to the fourth periodic report of Ireland, Addendum, Replies of Ireland to the list of issues, 27 February 2014.

[60] Ibid.

[61] Ibid.

[62] See for example Justice for Magdalenes, "Principal Submission to the Inter-departmental Committee to establish the facts of state involvement with the Magdalene Laundries", 16 February 2013, http://www.magdalenelaundries.com/State_Involvement_in_the_Magdalene_Laundries_public.pdf. Complaints of these types of abuse in the Magdalene laundries were also described in the 2009 report of the Commission to Inquire into Child Abuse ("the Ryan Report") – while it did not investigate these

McAleese Report acknowledges it found that records for admission to these institutions are unavailable or incomplete, so it could not accurately report on how long women spent in these institutions.[63]

In relation to reparation for survivors of the Magdalene Laundries, the financial payments under the Restorative Justice Scheme proposed by Justice Quirke and accepted by the Government are not provided on the explicit basis of reparation for harm done, but on an ex gratia and non-statutory basis.[64] Furthermore, Amnesty International notes with concern reports from the organization, Justice for Magdalenes, that many of the survivors are not receiving just and adequate compensation.[65] For instance, the organization has stated:

> "We are deeply concerned that some women are being offered compensation payments reflecting much shorter lengths of stay than the women endured. Moreover, the women have been told that records no longer exist to support their claims of longer durations of stay. The women in question (all of whom were minors when they were incarcerated in the laundries) should not be penalized because of the failures of church and State to maintain adequate records."[66]

It has also stated that it is "gravely concerned that, as outlined in the 'Government's agreed details of implementation of Quirke Scheme' …, women are being asked to sign a waiver of

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institutions, id did make some comment on the treatment of women in Magdalene laundries.

[63] The duration of stay is known only for 6,151 admissions of a total 14,607 admissions cited in the Report (42 per cent), and the figures in the Report for average duration of stay (3.22 years) and median duration of stay (27.6 weeks), where those durations are known, do not appear to collate the durations of repeat entries of women or transfers of women from one laundry to another. In addition, the McAleese Report did not cover the so-called 'legacy cases' – women who entered the institutions while Ireland was still under the United Kingdom's administration, but who remained in the laundries for months, years and, in some cases, decades afterwards.

[64] A retired High Court judge, Justice Quirke, was charged by the government with developing recommendations for an ex gratia scheme for the benefit of those who were admitted to and worked in the Magdalene laundries, and in June 2013 all his recommendations were accepted by the government (see press release, "Restorative Justice Scheme for former Magdalen Residents announced - Government accepts all recommendations of Quirke Report", Department of Justice and Equality, 26 June 2013 at http://www.justice.ie/en/JELR/Pages/PR13000256). Regarding the financial payment, his recommendation, accepted by the government, was that the women should each receive cash payments in the range €11,500 (duration of stay 3 months or less) to €100,000 (duration of stay of 10 years or more).

[65] Now reconstituted and renamed Justice for Magdalenes Research.

[66] Press Release, "JFM Research welcomes UNCAT list of issues, citing grave concerns about Magdalene Scheme", 28 November 2013, at http://www.magdalenelaundries.com/press/JFM%20PR%2028-11-13.pdf

their legal rightsin advance of the government offering detailed information on health care, pensions, and other provisions of the scheme"[67]. It appears that many of the women have yet to receive their financial payment,[68] and that the healthcare and pension entitlements promised under the scheme have yet to be granted.[69] In addition, Justice for Magdalenes reports that some survivors have "continued to express confusion and distress in navigating the Scheme".[70]

The assertion by the Government that the McAleese Report and the possibility to bring complaints of criminal behaviour are an adequate response to a call for a prompt, thorough and independent investigation sets a very unfortunate precedent for its possible response to other past human rights violations and abuses. The 2009 report of the government-established Commission to Inquire into Child Abuse (CICA) (Ryan Commission), which investigated all forms of child abuse in reformatories and industrial schools and other institutions for children, and the statutory compensation scheme[71] established in connection with that inquiry, went a long way towards ensuring accountability for past human rights abuses and ensuring that victims could obtain justice and are provided with some form of reparation. Allegations of ill-treatment in other institutions not covered by the Ryan Commission underscore the absence of effective, independent investigations to ensure a remedy and reparation, entailing restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, for other victims of institutional abuse. The recent media reporting of the 'Tuam babies'[72] prompted a renewed focus on the absence of a formal

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[67] This refers to the waiver of the right to seek redress through the courts that must be signed in order to avail of the ex gratia scheme.

[68] Maeve O'Rourke and Prof James Smith (Justice for Magdalenes Research), "Broken Promises and Delays for Magdalenes: A Response to Minister Alan Shatter", *Human Rights in Ireland,* 26 February 2014, at http://humanrights.ie/uncategorized/broken-promises-and-delays-for-magdalenes-a-response-to-minister-alan-shatter, which states that "none of the women have received their healthcare or pension entitlements yet".

[69] Ibid, which states: "Over half of the women are still waiting for their lump sum offer." This is the situation at the time of writing, and Justice for Magdalenes Research has informed Amnesty International that the first pension payment is due very shortly.

[70] Press Release, "JFM Research publishes Supplementary Guide to Magdalene Restorative Justice Scheme", 19 February 2014, at http://www.magdalenelaundries.com/press/JFMR%20PR%2019-02-14.pdf

[71] Established under the Residential Institutions Redress Act 2002.

[72] In June 2014, there was extensive domestic and international media coverage of rrevelations about an unmarked grave of up to 800 babies and children found in Tuam, a town in the west of Ireland on the grounds of a former 'mother and baby home' operated by a religious order, reportedly between 1925 and 1961, for 'unmarried mothers' to give birth at a time when bearing a child outside marriage carried significant social stigma. These reports prompt calls for answers from the Irish Government about how these children died, why they were not buried in a more dignified manner, and on the wider issue of past

investigation into allegations of ill-treatment of women and children in so-called mother and baby homes.[73] In this connection Amnesty International welcomes the government's decision announced on 10 June 2014 to initiate a statutory Commission of Investigation into all mother and baby homes that operated across the State.[74]

The formal apology made by the Taoiseach (Prime Minister) in Dáil Éireann (lower house of parliament) in February 2013 on behalf of the government to all the women who had been in the Magdalene laundries was a step in the right direction, as was his commitment to include all women who spent time in the laundries in the Government's response and not just those placed there directly by the state.[75]

RECOMMENDATIONS

Amnesty International calls on Ireland:

- to establish an independent and thorough investigation into the broad range of human rights abuses suffered by large numbers of women and girls in the Magdalene laundries, which should critically analyze contextual factors such as institutional structures, policies

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child abuse in other similar religious-run institutions. See https://www.amnesty.org/en/news/ireland-tuam-babies-mass-grave-allegations-must-spark-urgent-investigation-2014-06-05. An estimated 35,000 'unmarried mothers' spent time in these institutions (see e.g. *Irish Times*, "Inquiry faces daunting task unravelling the truth behind mother and baby homes: As many as 35,000 unmarried mothers spent time in homes run by religious orders", 11 June 2014 at https://www.irishtimes.com/news/social-affairs/religion-and-beliefs/inquiry-faces-daunting-task-unravelling-the-truth-behind-mother-and-baby-homes-1.1827598

[73] A number of concerns have been expressed about how children and women were treated in these institutions. For instance, the mortality rates for children in these institutions were substantially higher than the general child mortality rates at the time. Other concerns include alleged illegal adoption practices and reports that women were denied adequate medical care. In addition, the Ryan Commission to Inquire into Child Abuse had begun to examine allegations of vaccine trials conducted without consent on children in institutions, including these homes, but this was suspended in 2003 due to legal action. (See e.g. *Irish Times*, "Member of child abuse commission says documents from vaccine trials inquiry still available", 10 June 2014 at https://www.irishtimes.com/news/social-affairs/religion-and-beliefs/member-of-child-abuse-commission-says-documents-from-vaccine-trials-inquiry-still-available-1.1826341)

[74] *Irish Times*, "Babies scandal 'an abomination', says Kenny: Commission of investigation will look at all mother and baby homes including Bethany", 11 June 2014 at https://www.irishtimes.com/news/politics/oireachtas/babies-scandal-an-abomination-says-kenny-1.1827481. The official Dail report of the Taoiseach's announcement had not yet been made available on the Oireachtas website at the time of completing this submission.

[75] Amnesty International Ireland, Press Release, 19 February 2013, "Amnesty welcomes Taoiseach's Magdalene apology", http://www.amnesty.ie/news/amnesty-welcomes-taoiseachs-magdalene-apology

and practices, and the role of the state and other institutions. It should be mandated to issue a public report and to make recommendations to the government and other bodies, including for measures to ensure reparation for victims beyond those provided via the existing ex gratia scheme, and for policy measures to ensure non-repetition. The investigation must be independent of the institutions or agencies under investigation and of the executive functions of government, and investigators must be appointed on the basis of their recognized impartiality, competence, integrity and independence. It should have powers to compel attendance of witnesses, including officials, and should seek input from victims, who should be entitled to present evidence. Any information obtained by the investigation or otherwise which indicates that identified individuals were responsible for criminal acts, including torture or other ill-treatment, should be passed to the relevant law enforcement bodies for criminal investigation with a view to prosecution.

- to ensure that a scheme for remedy and reparations for abuses suffered in the Magdalene laundries, beyond the existing ex gratia scheme, is established and administered fairly and with transparency, and is accessible to all victims.

- To ensure that the recently announced Commission of Investigation into the treatment of women and children in 'mother and baby homes' has proper regard to the human rights framework in its methodology, findings and recommendations.

RENDITIONS (QUESTION 18)

In its List of Issues, the Committee sought information on "specific and concrete steps taken, beyond official assurances, to ensure that aircrafts used for the purpose of extraordinary rendition, whether they carry prisoners on board or not, do not pass through the territory of the State party"; and on "[w]hat measures are taken to investigate past allegations concerning the use of the State party's territory for the purpose of extraordinary rendition flights". It is disappointing that the Government's reply merely refers to the possibility of "anyone with evidence which suggests that any person has transited an Irish airport as part of an extraordinary rendition operation to make this evidence available to An Garda Síochána, so that an investigation can take place". It is beyond question that Shannon airport was used as a stopover and/or re-fuelling point by CIA-contracted aircraft en route to or returning from rendition missions between 2001 and 2005.[76] A 2007 diplomatic cable from the US Embassy in Ireland was released by WikiLeaks in 2010 describing a December 2007 meeting between the then US Ambassador to Ireland and the then Minister for Foreign Affairs, which stated that the latter "seemed quite convinced that at least three flights involving renditions had refuelled at Shannon airport before or after conducting renditions elsewhere".[77] The

[76] In 2005, Amnesty International presented flight logs to the Irish Government showing that in at least five instances involving four known individuals, US planes, which were not carrying the victims of rendition at the time of entry, used Ireland as a refueling stop en route to or returning from rendition missions.

[77] http://213.251.145.96/cable/2007/12/07DUBLIN916.html (accessed December 18 2010). Also see

cable also stated that the US Ambassador thanked the Minister for his "staunch rejection" of the Irish Human Rights Commission's recommendation that the government inspect aircraft suspected to have been involved in rendition flights.

CIA-led rendition operations involved the international transfer of individuals in a manner that avoided established procedural safeguards, and resulted in human rights abuses, including torture and other cruel, inhuman or degrading treatment or punishment, and, in some cases, enforced disappearance. It is wholly inadequate that the Government continues to respond in this manner to calls - from what is by now a large number of human rights bodies and the European Parliament, most recently in resolutions in 2012 and 2013 - for an independent investigation into how Irish territory could have been so used by the USA to facilitate its rendition programme , which was characterized by CIA-contracted planes masquerading as civilian aircraft and benefitting from the automatic landing and overflight clearances available to civilian aircraft.

It is also clear that the so-called assurances Ireland received from the US Government applied only to aircraft physically carrying rendition victims – no assurance has ever been given that the USA would not use Ireland as a staging post for rendition circuits.[78] The Government in its reply to the List of Issues has claimed that "no consent would be granted by the Irish authorities for the transit of an aircraft for the purposes of extraordinary rendition under any circumstances". However, it is clear that the US aircraft that used Shannon for rendition purposes did not seek such consent, so this is of very limited assistance.

Ireland has not discharged its obligation to independently and effectively investigate what happened, and to take measures to prevent the further use of its territory or airspace for such purposes. Victims of renditions have had neither their right to truth and justice vindicated, nor have they received other forms of effective redress.

Furthermore, the precise measures the State should put in place to ensure that aircraft linked to 'extraordinary rendition' do not transit Ireland again, can only be determined through the State's effectively investigating how this happened in the first place. What precise gaps in Irish law, policy and practice that enabled those aircraft to circumvent Irish law can only be revealed by an investigation will full powers and resources to compel data that might otherwise be sensitive or hidden.[79]

The Irish Times, "Ahern was 'convinced' of Shannon rendition", 18 December 2010, http://www.irishtimes.com/newspaper/ireland/2010/1218/1224285836937.html (accessed 5 June 2014)

[78] These assurances are described in the State's first report to the UN Committee Against Torture [insert date and citation], and also in the Irish Human Rights Commission's 2007 report, '*Extraordinary Rendition': A Review of Ireland's Human Rights Obligations*.

[79] For details of concerns and recommendations, see Amnesty International Ireland, *Breaking the Chain: Ending Ireland's role in renditions* (2009).

For example, the Air Navigation (Foreign Military Aircraft) Order 1952 prohibits foreign "military" aircraft from flying over or landing in the state without express permission from the Irish Government. This Order covers aircraft engaging in "military service".[80] It is not clear if this covers aircraft owned, operated or commanded by foreign secret services, such as the CIA.[81] If, as is likely, this Order does not include secret services, such services may freely abuse the automatic overflight and landing clearances available to civilian aircraft. It is not clear on what basis the Irish aviation authorities could demand information from civilian aircraft making unscheduled stopovers. Without this power, the aviation authorities would not be able to request the sort of information - such as full past and future itinerary, or full details of crew or passengers - that would trigger suspicion of illegal activity or of foreign secret services availing themselves of overflight and landing clearances for civilian aircraft.

In 2009, the then government established a Cabinet Committee on Aspects of International Human Rights, part of which remit was to review and strengthen police and civil authorities' statutory powers regarding the search and inspection of aircraft potentially engaged in renditions. However, by the time the then government was dissolved in February 2011 the Committee had met just three times and had not published conclusions or legislative or other proposals. This committee could not in any event have fulfilled the criteria for a full, effective, independent and impartial investigation into Ireland's role in the US-led rendition programme. The current Government, in its 2011 Programme for Government, promised to "enforce the prohibition on the use of Irish airspace, airports and related facilities for purposes not in line with the dictates of international law", but no concrete actions have yet emerged from this commitment in respect of renditions.

RECOMMENDATION

Amnesty International calls on the Irish authorities to promptly, thoroughly, independently and effectively investigate all allegations concerning the use of Irish territory for the purpose of CIA operated renditions, in a human rights compliant manner.

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[80] Defined as including "naval, military and air force aircraft, and every aircraft commanded by a person in a naval, military or air force service detailed for the purpose".

[81] Amnesty International Ireland has on several occasions sought clarification from the Department of Transport, which is responsible for law and practice in civil aviation, but has not been able to secure satisfactory responses to its questions in this regard. During Ireland's review in 2011 by the UN Committee against Torture, on 24 May 2011 the Committee's Rapporteur on Ireland, Mr Gallegos Chiriboga, asked the Irish delegation whether or not Irish law, and its provisions regarding "military" aircraft, covers secret services. On 25 May, the Irish delegation in its verbal and written responses to the committee's wider list of questions did not answer that exact question. The written response instead merely stated that there is no evidence that Ireland was used by rendition aircraft.

GENDER RECOGNITION (QUESTION 24 IN THE LIST OF ISSUES)

In its List of Issues, the Committee sought information on "steps taken to issue birth certificates to transgendered persons and how transgender organizations have been included in such process, including in relation to the Gender Recognition Bill". The State's reply to the List of issues refers to the General Scheme of the Gender Recognition Bill published on 17 July 2013, and the January 2014 report of the Joint Oireachtas Committee on Education and Social Protection on that Scheme. The Government's reply does not specify what improvements will be made to what was outlined in the Scheme when the Bill is published.

Amnesty International has identified Ireland as one of the states lacking a procedure to ensure legal gender recognition of transgender people[82] The lack of such a procedure violates the rights to private and family life and to equal recognition before the law of transgender individuals. It also results in discrimination against transgender individuals on grounds of their gender identity and expression in several areas of life including employment, education and access to goods and services.

Therefore Amnesty International welcomes the Government's legislative proposal aimed at introducing a framework allowing transgender individuals to obtain legal recognition of their gender identity. However, the organization has some concerns with regards to some of the provisions included in the Scheme of the Bill.

Amongst Amnesty International's priority concerns is that the Bill does not reflect the Scheme's proposal that there be a minimum age requirement of 18 years for legal recognition of gender identity, as this will have adverse consequences for the human rights of transgender children and adolescents. The Oireachtas Committee recommended that legal gender recognition be open to children aged 16 years and over with parental consent. Amnesty International recognizes the rationale of lowering the age criterion to 16, given that Irish law provides that adolescents between 16 and 18 can consent to medical, surgical and dental treatment without the consent of their parents or guardian.[83] While a welcome first step, Amnesty International believes that establishing a blanket age restriction is not in line with international standards on the rights of the child and in particular the best interests of the child and the right of children to freely express their views and to have these views taken into account. Amnesty International therefore recommends a case-by-case approach in which the child's views can, as highlighted by the Committee on the Rights of the Child, be "given

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[82] T*he state decides who I am: Lack of legal gender recognition for transgender people in Europe*, AI Index: EUR 01/001/2014, February 2014, http://www.amnesty.org/en/library/info/EUR01/001/2014/en

[83] Section 23.1 of the Non-fatal Offences Against the Person Act 1997.

due weight, whenever the child is capable of forming her or his own views".[84]

Amnesty International is concerned at the Scheme's requirement of a statement by a physician as evidence of transition, as this suggests that the application procedure for a gender recognition certificate (and thus legal recognition of their gender identity) may not meet the standard as laid out in the Yogyakarta Principles that such procedures should be "efficient, fair and non-discriminatory, and respect the dignity and privacy of the person concerned".[85] The Oireachtas Committee report also recommends that the current wording in the Bill with respect to evidence of transition should be reconsidered to address the concerns raised at the hearings that people not be stigmatized as a result of the requirement to provide a statement by a physician in order to obtain a gender recognition certificate.

Amnesty International urges the removal of this requirement as it can . result not only in the stigmatization of transgender people but also in the need to undergo specific health treatments, including hormone treatments and surgeries, which only some transgender individuals wish to undergo. Generally, transgender people should be able to access health treatments on the basis of their informed consent. Medical treatments should not be a prerequisite to obtain legal gender recognition. It follows that while psychological counselling and support should be made available to transgender people, legal gender recognition must not be made dependent upon undergoing psychiatric assessment or obtaining a specific psychiatric diagnosis.

Of further concern is that the Scheme proposes that those who are in a marriage or civil partnership are explicitly excluded from the possibility of obtaining recognition of their preferred gender. In practice, they will have to either divorce or dissolve their civil partnership in order for their requests not to be rejected. We note the Government's position that constitutional provision for marriage equality for same-sex couples will be a requirement in order that this exclusion is removed. However there is some legal debate on this matter in Ireland, and it is not at all clear that the Constitution as it stands is an impediment to marriage equality. In any case, any provision, or its interpretation, limiting the access to marriage to different sex couples is discriminatory under international human rights law and should be amended.

The Oireachtas Committee in its report acknowledges that there is a difference of opinion between the Attorney General and others on the legal issues regarding gender recognition for persons who are married or in a civil partnership. It stated that it believes that the fact that a person is in an existing marriage or a civil partnership should not prevent her or him from qualifying for a Gender Recognition Certificate, and urged the Minister to revisit this issue.

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[84] General Comment No. 12, para. 85.

[85] Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, Principle 3(d), Available from http://www.yogyakartaprinciples.org/principles

Amnesty International endorses this suggestion.[86]

RECOMMENDATIONS

Amnesty International calls on the Irish government:

- to enact legislation to ensure that transgender people can obtain legal recognition of their gender without further delays and through a quick, transparent and accessible procedure;

- to ensure that the legislation will not require transgender people to be single or to have undergone any specific health treatment in order to obtain legal gender recognition. Moreover, ensure that children will be given the possibility to obtain legal gender recognition taking into account their best interests and their evolving capacities.

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[86] The government has committed to holding a constitutional referendum in 2015 to allow for marriage equality. In July 2012, the Government established the Constitutional Convention, a participatory forum involving members of the public and parliament with a mandate to develop recommendations in specific areas of constitutional reform, including marriage equality. In July 2013, the Convention recommended that the government to provide for marriage equality and amend the Constitution accordingly. (Third Report of the Constitutional Convention, Amending the Constitution to provide for same-sex marriage, July 2013.) According to Article 46 of the Constitution, every amendment should be submitted to referendum. On 5 November 2013, the government formally accepted this recommendation and committed to holding a referendum on the matter in 2015.

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