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Ms. Yoko Hayashi  
Chairperson  
Committee on the Elimination of Discrimination  
Against Women  
Office of the High Commissioner for Human  
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## IRELAND – LIST OF ISSUES PRIOR TO REPORTING (BEFORE THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN)

Dear Ms Hayashi,

Amnesty International is writing to you in advance of the 64<sup>th</sup> Pre-Sessional Working Group of the Committee on the Elimination of Discrimination Against Women (the Committee), noting two issues of particular concern regarding Ireland for your consideration in advance of the adoption of the list of issues prior to reporting: abortion and accountability for past institutional abuse of women and girls.

### ABORTION

The Committee will be well aware Ireland has one of the world's most restrictive abortion laws. Women and girls cannot legally have an abortion in Ireland unless there is a "real and substantial" risk to their life. In June 2015, Amnesty International published research for which it conducted many interviews with women, health professionals and other stakeholders. It shows the severe human rights impact of Ireland's restrictive laws on access to, and information about, abortion services on women and girls in Ireland, and its effect on healthcare providers.<sup>1</sup>

In response to the 2010 European Court of Human Rights decision in *A, B and C v. Ireland*, Ireland passed the Protection of Life during Pregnancy Act in 2013 with the stated aim of ensuring pregnant women's or girls' access to abortion as is their constitutional right when there is a "real and substantial risk" to their life, including the risk of suicide.<sup>2</sup> Amnesty International is concerned that both the Act and its accompanying guidelines published in September 2014, retain the same narrow construction of the life exception and therefore do little to address the problems faced by medical professionals or adequately protect the rights of pregnant women and girls.<sup>3</sup> Permitting abortion only in life-threatening situations, and criminalizing abortion in health-threatening contexts, is dangerous in that it puts women's and girls' lives and health at risk, and inconsistent with human rights obligations. International human rights standards reflect an understanding of life protection as practically indistinguishable from considerations of health protection in the abortion context.<sup>4</sup>

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<sup>1</sup> See *She is not a criminal: The impact of Ireland's abortion law*, 9 June 2015, AI index number: EUR 29/1597/2015, at <https://www.amnesty.org/en/documents/eur29/1597/2015/en>. A copy of this report will be sent to the Committee.

<sup>2</sup> Abortion where there is a "real and substantial risk to the life as opposed to the health" of a pregnant woman or girl, including through risk of suicide, was found to be a constitutional right in the 1992 Supreme Court decision *Attorney General v X and Others* [1992] 1 I.R. 1 (S.C.) (Ir.) [1992 No. 8469].

<sup>3</sup> Amnesty International, *Ireland: Submission to the UN Committee on Economic, Social and Cultural Rights: Pre-sessional working group* (EUR 29/003/2014), [www.amnesty.org/en/library/info/EUR29/003/2014/en](http://www.amnesty.org/en/library/info/EUR29/003/2014/en).

<sup>4</sup> The Human Rights Committee consistently references health protection in consideration of women's right to life as applied to safe abortion. See Human Rights Committee Concluding Observations: El Salvador, CCPR/CO/78/SLV (2003) para. 14; Human

Furthermore, in direct contravention of human rights standards and jurisprudence, the Act did not extend the grounds for access to abortion beyond where a woman's or girl's life is at risk. UN treaty bodies have consistently condemned countries that have total abortion bans or very restrictive laws. They have consistently found that countries that criminalize abortion and do not allow abortion in law and practice on grounds where the pregnant woman or girl's health is at risk, where pregnancy is a result of rape, sexual assault or incest, or in cases of severe and fatal foetal impairment, violate numerous human rights, including the rights to life, health, privacy, freedom from discrimination and freedom from torture and other ill treatment.<sup>5</sup>

The Act also recriminalized abortion in all circumstances beyond a "real and substantial risk" to the life of the pregnant woman or girl, with a potential penalty of 14 years' imprisonment for women and health professionals. Criminalizing a procedure that is only required by women and girls disproportionately impacts them preventing their full enjoyment of human rights.<sup>6</sup>

In addition, information about abortion services is extremely restricted under the 1995 Regulation of Information Act,<sup>7</sup> which criminalizes the provision of information by health care providers and pregnancy counsellors that "advocates or promotes" the option of abortion. Therefore, for instance, health professionals are prohibited from making referrals for abortions services in other countries. The withholding and denial of abortion-related information to women violates their fundamental human rights, including the rights to information and freedom of expression.

The government has cited Article 40.3.3 of the Constitution (the Eighth Amendment, inserted in 1983 by popular referendum), which enshrines the "right to life of the unborn", as a primary reason for its restrictive legislation.<sup>8</sup> However, the protection that Ireland affords the foetus under its constitution cannot justify its non-compliance with the right to enjoyment of the highest attainable standard of physical and mental health and the equal right of men and women to the enjoyment of all human rights set forth in UN treaties. Moreover, even though Ireland's legal framework on abortion has been repeatedly criticized by human rights treaty monitoring bodies, the government has refused to schedule a referendum to propose a repeal of Article 40.3.3. This is despite it being clear that the majority of people in Ireland are in favour of access to abortion in at least the minimum circumstances required by international human rights law and the decriminalization of abortion.<sup>9</sup>

Despite the informational barriers, and other considerable financial and logistical challenges to travelling abroad for abortion, every year approximately 4,000 women and girls from Ireland travel to

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Rights Committee Concluding Observations: Mali, CCPR/CO/77/MLI (2003) para. 14. In its Concluding Observations on Poland (CCPR/CO/82/POL (2004) para. 8), the Human Rights Committee reiterated concern about restrictive abortion laws, "which may incite women to seek unsafe, illegal abortions, with attendant risks to their life and health" under Article 6 of the ICCPR (the right to life). In its Concluding Observations on Mauritius (CCPR/CO/83/MUS (2005) para. 9), the Human Rights Committee noted that the penal code in Mauritius "penalizes abortion even when the mother's life is in danger, and thus may encourage women to resort to unreliable and illegal abortion, with inherent risks for their life and health (Covenant, art. 6)."

<sup>5</sup> See for example, Committee on the Rights of the Child, Concluding Observations: Argentina, para. 59, CRC/C/ARG/CO/3-4 (2010); Committee on Economic Social and Cultural Rights, Concluding Observations: Peru, para. 21, E/C.12/PER/CO/2-4 (2012); Committee on Economic Social and Cultural Rights, Concluding Observations: Kenya, para. 33, E/C.12/KEN/CO/1 (2008); Human Rights Committee, Concluding Observations: Guatemala, para. 20, R/C/GTM/CO/3 (2012); CEDAW, LC v. Peru, 2005, para. 9(b)(iii); Human Rights Committee, Concluding Observations to Guatemala, para. 20, CCPR/C/GTM/CO/3 (2012); *K.L. v Peru*, final decision Human Rights Committee, CCPR/C/85/D/1153/2003, 22 November 2005.

<sup>6</sup> See Amnesty International, *Ireland: Submission to the UN Committee on Economic, Social and Cultural Rights: Pre-sessional working group* (EUR 29/003/2014), [www.amnesty.org/en/library/info/EUR29/003/2014/en](http://www.amnesty.org/en/library/info/EUR29/003/2014/en).

<sup>7</sup> Full title is Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995.

<sup>8</sup> For instance in its response to questions from members of the UN Committee on Economic, Social and Cultural Rights during its periodic review in June 2015, the Irish delegation acknowledged that the law on legal abortion in Ireland was "very limited", and stated: "With respect to abortion in other circumstances [aside from where the life of the pregnant woman or girl is at real and substantial risk], for example to protect the woman's right to health or in cases of rape and incest or fatal foetal abnormality, a further constitutional referendum would be needed in order to broaden the scope of the law." Committee on Economic, Social and Cultural Rights, Fifty-fifth session, Summary record of the 32nd meeting held at the Palais Wilson, Geneva, on Monday, 8 June 2015, at 3 pm, E/C.12/2015/SR.32, para 51, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/120/38/PDF/G1512038.pdf?OpenElement>.

<sup>9</sup> See Amnesty International press release "Two-thirds majority in Ireland want abortion decriminalized", 8 July 2015, and polling data at <https://www.amnesty.org/en/latest/news/2015/07/two-thirds-majority-in-ireland-want-abortion-decriminalized>.

the UK for this health care service. Countless others travel to other countries. This can be an extremely traumatic experience, violating their rights to health, equality, non-discrimination, privacy and, in some contexts, the right to be free from torture and other ill-treatment.<sup>10</sup> Many women and girls, especially those without the financial means to travel or those prohibited from travelling due to their immigration or dependent status, or simply too ill to travel, can be forced to carry their pregnancies to term, or to resort to clandestine measures to terminate their pregnancies without the necessary medical supervision.

## ACCOUNTABILITY FOR PAST INSTITUTIONAL ABUSE OF WOMEN AND GIRLS

Amnesty International considers that many women and girls who were detained or resided in religious-run “Magdalene Laundries”, which operated with state funding and oversight between the 1930s and 1996, were subjected to a range of human rights abuses, including inhuman and degrading treatment, arbitrary deprivation of liberty and forced labour.<sup>11</sup>

The government-established ‘Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries’ issued its final report February 2013. It revealed important information about, for instance, referrals of women and girls from the criminal justice system, and health and social services sector, into the institutions and the financial interactions between state bodies and the laundries. It was accompanied by a welcome official apology by the Taoiseach to the former residents of these institutions.

However, the government views this report a final and full discharge of its obligations to uncover the truth about the abuses these women and girls experienced.<sup>12</sup> In fact, the Inter-Departmental Committee was not mandated to conduct a comprehensive review of the abuses inflicted within these institutions, nor was it given a mandate to review any facts it did uncover against the framework of a human rights analysis, which is key to ensuring truth, redress and reparation for victims. Rather, the focus of its inquiries was simply to establish the facts of state involvement in the Laundries. The government has also asserted that “[t]he facts uncovered by the Committee did not support the allegations that women were systematically detained unlawfully in these institutions or kept for long periods against their will”.<sup>13</sup> Amnesty International believes these assertions speak not to the absence of such evidence, but the fact that the Committee’s report is not – and was not intended to be – a comprehensive investigation of all allegations/facts in all cases.

The Committee may have been chaired by a member of the upper house of the Irish legislature, who as such was independent of the executive arms of government, but its members were senior representatives from six centrally relevant Government Departments. Such an investigation and report cannot meet the criteria for an independent inquiry. Therefore, Amnesty International considers the report and the ex gratia compensation scheme announced thereafter as falling below adequate standards of truth, justice and reparations, and potentially setting a regrettable precedent for how the Irish State deals with other allegations of past abuses by, or with the acquiescence or complicity of, the State.

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<sup>10</sup> See *She is not a criminal: The impact of Ireland’s abortion law*, 9 June 2015, AI index number: EUR 29/1597/2015, at <https://www.amnesty.org/en/documents/eur29/1597/2015/en>.

<sup>11</sup> Amnesty International, *Ireland: Submission to the United Nations Human Rights Committee: 111<sup>th</sup> Session of the Human Rights Committee (7-25<sup>th</sup> July 2015)*, Index no. EUR 29/001/2014, pp 21-26.

<sup>12</sup> For instance, in its reply to the Human Rights Committee’s List of Issues in 2014, the Government referred to the Inter-Departmental Committee report as “a comprehensive and objective report of the factual position” regarding these institutions, and said: “While isolated incidents of criminal behaviour 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.” Human Rights Committee, List of issues in relation to the fourth periodic report of Ireland, Addendum, Replies of Ireland to the list of issues, CCPR/C/IRL/Q/4/Add.1, 27 February 2014.

<sup>13</sup> *Ibid.*

In June 2014, following international media coverage of longstanding allegations of past abuses of women and children in so-called "mother and baby homes",<sup>14</sup> the government committed to establishing an independent Commission of Investigation.<sup>15</sup> 'Mother and baby homes' were operated by religious orders with state funding for 'unmarried mothers' to give birth, from the 1920s to the 1990s, a time when bearing a child outside marriage carried significant social stigma. There were longstanding concerns about how children and women were reportedly treated in these institutions, including apparently high child mortality rates, alleged illegal adoption practices, vaccine trials conducted on children without consent, and denial of medical care to some women. The Commission of Investigation's terms of reference were published in January 2015, and were broadly welcomed by Amnesty International.<sup>16</sup> However, the government must ensure that the Commission of Investigation has proper regard to the human rights framework – in particular Ireland's obligation to ensure truth, justice and reparation for victims of past human rights violations - in its methodology, findings and recommendations. In addition, Amnesty International was and remains concerned that the government decided not to take this opportunity to ensure a fresh and full examination of Magdalene Laundries by adding this to the Commission's mandate.

I trust that this information is of use to you and to the members of the Committee.

Yours sincerely,

Anna-Karin Holmlund  
International Advocacy Program

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<sup>14</sup> In June 2014, there was extensive domestic and international media coverage of revelations 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, between the 1920s and 1960s, for 'unmarried mothers'. It has been reported that as many as 35,000 unmarried mothers spent time in these 'homes' - see for instance *Irish Times* newspaper, 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>).

<sup>15</sup> See Amnesty International, Ireland: 'Tuam babies' mass grave allegations must spark urgent investigation (Press Release), [www.amnesty.org/en/latest/news/2014/06/ireland-tuam-babies-mass-grave-allegations-must-spark-urgent-investigation/](http://www.amnesty.org/en/latest/news/2014/06/ireland-tuam-babies-mass-grave-allegations-must-spark-urgent-investigation/)

<sup>16</sup> For Amnesty International Ireland's comment on the terms of reference see <https://www.amnesty.ie/news/proposed-%E2%80%98mother-and-baby-homes%E2%80%99-investigation-welcome-missed-opportunity-address-magdalenes-0>