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Amnesty International is a global membership-based human rights organisation. In Ireland we have 20,000 members. We are independent of any political, religious or other ideology.

As part of our global My Body, My Rights campaign, Amnesty International conducted research across the globe where states control and criminalise sexual and reproductive freedom and choice. This included research on the negative impact of criminalisation of abortion on women's and girls' human rights and on the ability of medical professionals to provide adequate medical care. In this campaign, Ireland and El Salvador were the key countries of focus on abortion due to the harshness of their laws.

In our 2015 report, *She is Not a Criminal: the impact of Ireland's abortion law*, Amnesty International documented the harrowing experiences that women and girls in Ireland have endured because of the restrictive laws on abortion. Our report concludes that Irish law restricting access to abortion causes multiple violations of women's and girls' human rights, including their rights to health, equality and non-discrimination, privacy, and freedom from torture or other ill-treatment. The withholding and denial of abortion-related information to women as a result of the 1995 Regulation of Information Act further violates their human rights, including the rights to information and freedom of expression. It can also impact women's right to health by causing delays in their identifying and accessing services.

Our submission to the Assembly summarises the harm and human rights violations caused by Ireland's criminalisation and prohibition of abortion, so I will not go into detail on that here. Our 2015 report concluded that the Eighth Amendment is the main obstacle to decriminalisation of abortion and a human rights compliant abortion framework, and recommended that it be repealed in its entirety. Our research also found that the Eighth Amendment causes harm to pregnant women far beyond denying them access to abortion, as it causes a woman's right to informed consent and bodily autonomy to be severely limited at all stages of pregnancy and childbirth.

While the Government could have scheduled a referendum on repealing the Eighth Amendment without your deliberations, one of the reasons we welcomed this process was that it would be useful to have a meaningful national conversation about abortion. This is long overdue. Independent polling we commissioned from Red C Research & Markets in 2016¹, which is summarised in our submission, shows that people in Ireland are very aware of the violations and harm caused by the Eighth Amendment. It shows that abortion is not as controversial or divisive as it is painted. The overwhelming majority of people in Ireland – across all regions of the country, and all age groups and demographics – are in favour of expanding access to abortion. Eighty per cent said they would vote to repeal the Eighth Amendment, either outright or if legislation placing reasonable restrictions on abortion were enacted.

However, our independent polling also shows that there is much confusion among the public around the Eighth Amendment and its impacts. This Assembly process is an important means to get information out there, dispel myths and allow a discourse based on evidence and truth.

We have heard the Assembly say they want to hear about solutions. Instead of detailing what is wrong with Irish law, I will focus on solutions to help end the human rights violations caused by the current law. These solutions, which we ask the Assembly to recommend, are: a full repeal of the Eighth Amendment; full decriminalisation of abortion; and the introduction of a human rights compliant framework for access to and information about abortion.

I will begin though by setting out how abortion is a human rights issue.

Firstly, the international human rights legal framework was created by states, including Ireland.

Human rights are the cornerstone of the international rule of law, and an essential framework with which states can ensure that all people are able to live in dignity and freedom. They are not just about treaties, laws or abstract concepts. They are an internationally agreed set of basic rights and freedoms to which all people are entitled. Human rights transcend political boundaries, and overarch religious or other ideology.

Human rights are not ‘imposed’ on Ireland by the UN or Amnesty International or anyone else. Ireland helped create the UN’s binding treaties, and voluntarily agreed to be legally bound by the treaties it ratified. Ireland elects the UN treaty monitoring bodies that guide states in implementing the treaties.

Women and girls have a human right to access safe and legal abortions.

Women’s and girls’ sexual and reproductive rights are a core part of the international human rights legal framework. Women have a right to control their own fertility, to determine the number and spacing of their children, and to not be forced to continue with a pregnancy against their wishes.ⁱⁱ States must enable women to prevent unintended pregnancies insofar as possible; and further, when such pregnancies occur, ensure that women and girls can make decisions based on a full suite of healthcare options and information. This must include the availability of safe and legal abortion services and information.

Human rights treaty bodies have made it clear that women and girls seeking abortions should not be criminalised, and that they have a right to access abortion, at a minimum where their health is at risk, where they are pregnant as a result of sexual crime, or where there is a diagnosis of a severe or fatal foetal impairment.ⁱⁱⁱ These are often called ‘minimum grounds’. To deny women and girls access in these circumstances results in grave violations of their human rights. Additionally, governments have an obligation to ensure that where abortion is legal, services must be accessible in practice without any unnecessary barriers. Therefore states have been urged by treaty bodies to legislate for access to abortion beyond these ‘minimum grounds’ to fully realise and fulfil women and girls’ sexual and reproductive rights. UN human rights experts have come to recognise that states should ensure access to safe abortion on request in early pregnancy, in order to fulfil their obligations under international human rights law.^{iv}

International human rights law does not apply before birth - but states are entitled to protect foetal interests.

We understand that some people oppose, or wish to limit, abortion based on deeply held principled positions. But international human rights law cannot be hijacked or misrepresented to serve that aim. Some opponents of abortion claim that right to life protections in international human rights treaties are accorded before birth, and prohibit states from allowing abortions. The history of the development of UN human rights treaties, including the Convention on the Rights of the Child, and the subsequent interpretation of their right to life provisions by their treaty bodies, shows that the right to life treaty provisions only apply after birth.

Of course states are entitled to protect foetal interests, in the same way as they govern other areas not addressed by international human rights law. But they must do so without violating women’s and girls’ rights. In fact it is a state obligation under international human rights law to protect women’s rights, not simply avoid violating them.^v Also, UN bodies have noted that prenatal interests can be best protected through promoting the health and well-being of pregnant women.^{vi}

Abortions will always be needed – abortion bans do not actually stop abortions.

The World Health Organisation 2012 guidelines on abortion, developed on the basis of public health evidence, confirm that despite the increased use of contraceptives, there will always be a need for abortion services. The WHO also notes that restricting legal access to abortion does not decrease the need for abortion, but it is likely to increase the number of women seeking illegal and unsafe abortions which can lead to injuries or even death. The Guttmacher Institute explained at your last session that highly restrictive abortion laws are not associated with lower abortion rates. In the case of Ireland, thousands of women and girls travel to the UK and elsewhere instead. Countless numbers resort to unsafe abortions in Ireland illegally – commonly, abortion medication – putting their lives and health at risk. But there are also women and girls who lack the financial means, ability or legal permission to travel. Some of them may not be able to access abortion medication. This forces these women and girls to remain pregnant, depriving them of reproductive choice and rights, and further violating their right to be free from discrimination.

There is no conflict between women’s rights and others’ freedom of religious belief or conscience.

The international human rights framework itself was intended to ensure that all individuals’ rights were protected in spite of tensions arising from differences over political or religious ideologies, and social or moral norms. It provides guidance on how states can balance competing sets of rights. But one person or group’s freedom of religious belief or conscience cannot be allowed by the State to erode or violate the right of women and girls.

In fact, our polling found that attitudes around abortion in Ireland varied little depending on whether or not people are religious. It also found that 82 per cent of people who consider themselves religious do not want their religious views imposed on others.

We need to start trusting – and empowering – women to make decisions about their own reproduction and sexuality.

Human rights standards put women’s individual autonomy and decision-making at the centre of sexual and reproductive health. It is heartening that, in our independent Red C polling, 68 per cent of respondents felt we need to trust women when they say they need an abortion; and 62 per cent say they trust women who have had an abortion as a source of information when deciding their own position on abortion.

So, to move to solutions, what is a human rights compliant abortion framework?

A human rights compliant legal framework on abortion is one that ensures safe and timely access to abortion services in both law and practice, and to all women. We believe legislation is necessary in Ireland to not only permit expanded access to abortion, but to also ensure and compel the delivery and availability of abortion services.

Abortion should be decriminalised.

Worryingly, few people in Ireland (only 14 per cent according to our independent poll) are aware that women face a possible 14-year prison sentence for having an unlawful abortion in Ireland. As a matter of international human rights law, no woman or girl should ever face criminal sanction for having or seeking an abortion regardless of the circumstances. Health providers should not face criminal charges for providing essential abortion services - abortion should be regulated as any other medical service. Criminal law and the threat of punitive sanctions should never be used to control or remove women’s reproductive choices. Some say this is not a problem in Ireland as women are not going to jail. Firstly, they could – for instance, Northern Ireland is prosecuting women who have used abortion medication. Secondly, criminal laws against abortion also contribute to severe stigma

against women seeking abortions. Many of the women that we interviewed said that the criminalisation of abortion stigmatised them. Criminalisation can also deter women and girls from seeking post-abortion care, due to fear of punishment. It can also deter healthcare providers from providing abortion services even when legal – what is called the “chilling effect”.

Legislation framed around ‘minimum grounds’ for abortion will not guarantee effective access.

The 2013 Protection of Life During Pregnancy Act illustrates this important point. The approach taken in the Act and in the Department of Health Guidance that followed, was narrow and restrictive. By permitting abortion only in life-threatening situations (and criminalising it in all other circumstances), the Act endangers women’s health. In the words of Dr Rhona Mahony at the launch of our report, the Act forces doctors to play medical roulette with women’s health and lives. The Act and Guidance also fail to provide practical assistance to medical professionals in grappling with how exactly they are to assess when a pregnancy poses a “real and substantial” risk to the life of a woman or girl.

The Guidance established burdensome procedures for determining a right to access abortion, particularly on the lawful risk of suicide (“self-destruction”) ground. Miss Y’s case is a notable example of how such procedures are unworkable and add to women’s distress. Miss Y was a young asylum-seeker pregnant as a result of rape who, despite being suicidal, was denied an abortion under the 2013 Act, and instead was later forced to undergo a major surgical procedure and early delivery against her will. Such mandatory assessment procedures that require women and girls to “prove” they are deserving of care are also inherently degrading, and may act as a deterrent to the effective and timely provision of abortion.

It is unlikely therefore that adding further limited ‘grounds’ to Irish law will facilitate meaningful access for those women and girls who qualify on those grounds. It is likely that, as in other states, measures will be adopted in Ireland that will instead limit access and impose procedures which will cause harm to pregnant women and girls. As abortions in later stages of pregnancy may involve more health risks, procedural barriers that delay women’s or girls’ access to safe and legal abortion essentially increase potential risks to their health. And if Ireland does not go as far as fully decriminalising abortion, but rather opts for legislation that only permits legal abortion on limited grounds as exceptions to the criminal law, there will be little to no impact on the climate of fear and stigma surrounding access to abortion in Ireland.

There is also little evidence internationally that restrictive abortion laws, which provide only for narrow, minimum grounds, can ever realise the human rights of women and girls, even for the women and girls to whom they supposedly create a legal entitlement. Countries such as Poland, Zimbabwe and New Zealand have legalised abortion on the ‘minimum grounds’ expressly demanded by international treaty monitoring bodies, but have been repeatedly called upon by those bodies to ‘liberalise’ their ‘restrictive’ and ‘convoluted’ laws.^{vii} In other words, these laws simply do not go far enough to ensure the rights of women and girls.

The Assembly must look to the emerging consensus among public health and human rights experts on best practice models for human rights compliant abortion provision.

International human rights standards are evolving. UN treaty bodies and experts are indicating that in order to ensure access to abortion in line with human rights law, states permit abortion ‘on request’ at least in the early stages of pregnancy. For example, in September 2016, a joint statement from four UN experts on Health, Torture, and Discrimination against Women recommended “the good practice found in many countries which provide women’s access to safe abortion services, on request during the first trimester of pregnancy”. This is common sense. A right should provide an

entitlement. Access must be practical, not an obstacle course. Unworkable legislation that makes women jump through hoops cannot offer a real solution. Therefore, providing access to abortion on request in early pregnancy is the best way to avoid violating the rights of women and girls.

Beyond early pregnancy, UN experts and treaty bodies affirm that abortion must be later in pregnancy provided in certain circumstances, such as where the woman's health is at risk, she is pregnant as a result of sexual crime, or where there is a severe or fatal foetal impairment. However, abortion 'on request' should be available without limits for adolescents, guaranteeing their best interests, and ensuring in law and practice that their views are always heard and respected in abortion decisions.

States may regulate abortion in later stages of pregnancy

States are not prohibited from applying reasonable restrictions on abortion services, such as gestational limits. However, such restrictions may not be absolute. There must be some flexibility in regulations to ensure that women and girls' human rights can be protected at later stages in pregnancy. In many countries no gestational limits are imposed for abortions that avert a risk to health or life, in cases of severe or fatal foetal impairment, or where the pregnancy is the result of rape or incest. However, if legislating for these circumstances later in pregnancy, it remains crucial to avoid the type of restrictions which create barriers to access, such as mandatory assessment procedures like those in Ireland's 2013 Act, that violate the human rights of women and girls.

There are distinct risks in legislating for a ground of sexual violence

As the Assembly heard at its last session, this is a complex issue. International experience indicates that legislating for an independent ground for abortion in cases of sexual violence, including rape and incest, is often accompanied by onerous authorisation requirements to verify that a woman or girl has been raped. These procedural requirements are unnecessary and may violate women's and girls' right to health by denying or delaying their access to abortion. The WHO recommends that women and girls should be provided safe, legal abortion services based on their complaint of the rape, and should not be compelled to undergo unnecessary administrative or judicial procedures such as pressing charges against the perpetrator or identifying the rapist.^{viii} Access on general health grounds avoids such risks.

Conscience-based refusal must be regulated so it does not jeopardise women's and girls' rights.

Individual healthcare professionals (not institutions) may be able to decline to provide or participate in any health service to which they have a conscientious objection, including abortion services. They have a duty to make a timely referral to another health care provider who will offer the services. However, conscience-based refusal is not unlimited and specifically cannot be exercised in emergency situations. Additionally, those not directly participating, such as those responsible for preparing patients for the procedure or providing aftercare, are not entitled to conscience-based refusal.

In conclusion, to properly understand the Eighth Amendment, we need to view it and Ireland's abortion laws in the context of the historical suppression and control of women's sexuality and reproduction. The Eighth Amendment was part of a broader social and political context in which the state and religious institutions have subjected women and girls to strict, punitive social controls around their sexuality and reproduction. Stereotypes about women's roles in society and their sexual conduct were also violently enforced by the State and religious institutions through the Magdalene Laundries and Mother and Baby Homes. We need to be truly free to look at abortion by today's standards, which is in terms of women's and girls' human rights. We need to trust women to make the decisions about their bodies, health and lives. Amnesty International Ireland urges the

Assembly to recommend the Eighth Amendment be repealed, not amended. We also urge the Assembly to call for the full decriminalisation of abortion and the introduction of a human rights compliant framework for access to, and information, about abortion, as one essential element of a healthcare service that respects, protects and fulfils women's and girls' human rights.

ⁱ A summary of the 2016 poll results is at <https://www.amnesty.ie/wp-content/uploads/2016/03/Amnesty-International-Ireland-February-2016-Polling-Background-Doc.pdf>. Full polling results are at the bottom of <https://www.amnesty.ie/amnesty-internationalred-c-poll-reveals-irish-public-want-expanded-access-abortion-political-priority-incoming-government/>.

ⁱⁱ Article 16 of the UN Convention on the Elimination of Discrimination Against Women, which Ireland has ratified, guarantees women equal rights in deciding “freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights”. Article 10 also specifies that women's right to education includes “access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.”

The 1995 Beijing Platform for Action adopted unanimously by 189 countries, including Ireland, is considered the key global policy document on gender equality, and states that “the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence”.

In 2016 the UN Committee on Economic, Social and Cultural Rights adopted General Comment No. 22 (2016) on the right to sexual and reproductive health, clarifying the content of Article 12 (right to health) of the International Covenant on Economic, Social and Cultural Rights, also ratified by Ireland. It advises:

“The right to sexual and reproductive health entails a set of freedoms and entitlements. The freedoms include the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, regarding matters concerning one's body and sexual and reproductive health. The entitlements include unhindered access to a whole range of health facilities, goods, services and information, which ensure all people full enjoyment of the right to sexual and reproductive health under article 12 of the Covenant.” (Paragraph 5)

“States parties are under immediate obligation to eliminate discrimination against individuals and groups and to guarantee their equal right to sexual and reproductive health. This requires States to repeal or reform laws and policies that nullify or impair the ability of certain individuals and groups to realize their right to sexual and reproductive health. There exists a wide range of laws, policies and practices that undermine autonomy and right to equality and non-discrimination in the full enjoyment of the right to sexual and reproductive health, for example criminalization of abortion or restrictive abortion laws. States parties should also ensure that all individuals and groups have equal access to the full range of sexual and reproductive health information, goods and services, including by removing all barriers that particular groups may face.” (Paragraph 34)

A brief overview of sexual and reproductive rights is at <http://www.ohchr.org/EN/Issues/Women/WRGS/Pages/HealthRights.aspx>. See also the following document by the Center for Reproductive Rights, with financial support and technical input from UNFPA: https://www.unfpa.org/sites/default/files/pub-pdf/icpd_and_human_rights_20_years.pdf.

On the foundations of reproductive rights more generally see <http://www.un.org/en/development/desa/population/theme/rights/>.

ⁱⁱⁱ Ireland has been specifically advised to decriminalise abortion and provide access to safe and legal abortion in these minimum circumstances by treaty bodies responsible for monitoring Ireland's compliance with the International Convention on Civil and Political Rights (in 2014), International Covenant on Economic Social and Cultural Rights (in 2015) and UN Convention on the Rights of the Child (in 2016). (Human Rights Committee, Concluding Observations on the fourth periodic report of Ireland, CCPR/C/IRL/CO/4, para. 9 at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/IRL/CO/4&Lang=En; Committee on Economic, Social and Cultural Rights, Concluding Observations on the third periodic report of Ireland, E/C.12/IRL/CO/3, para. 30 at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FIRL%2FCO%2F3) and Committee on the Rights of the Child, Concluding Observations on the combined third and fourth periodic reports of Ireland, CRC/C/IRL/CO/3-4, para. 57 at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/IRL/CO/3-4&Lang=En.)

See also the abovementioned 2016 General Comment No. (ibid) from the UN Committee on Economic, Social and Cultural Rights, which states that “[e]xamples of violations of the obligation to respect include the establishment of legal barriers impeding access by individuals to sexual and reproductive health services, such as the criminalization of women undergoing abortions” (para. 57).

^{iv} In April 2016, the UN Working Group on Discrimination Against Women in its report to the UN Human Rights Council stated: “*Noting that many countries where women have the right to abortion on request supported by affordable and effective family planning measures have the lowest abortion rates in the world, States should allow women to terminate a pregnancy on request during the first trimester or later in the specific cases listed above.*” (UN Working Group on Discrimination against Women in Law and Practice, UN Doc. A/HRC/32/44, at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/072/19/PDF/G1607219.pdf?OpenElement>)

In a September 2016 joint statement, four UN Experts recommended “the good practice found in many countries which provide women’s access to safe abortion services, on request during the first trimester of pregnancy”, as well as abortion in exceptional cases later in pregnancy, and abortion ‘on request’ without limits for adolescents. (“Unsafe abortion is still killing tens of thousands women around the world’ – UN rights experts warn” by Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on violence against women, at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20600&LangID=E>.)

See also the abovementioned 2016 General Comment No. (ibid) from the UN Committee on Economic, Social and Cultural Rights which goes beyond recommending access to abortion on the ‘minimum grounds’ and calls on states to “liberalize restrictive abortion laws [and] to guarantee women and girls access to safe abortion services and quality post-abortion care” in order to prevent maternal mortality and morbidity (para. 28).

^v State obligations to respect, protect and fulfil human rights are briefly explained at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>. The respect/protect/fulfil obligations specifically in respect of the right to health are explained in General Comment No. 14 issued by the UN Committee on Economic, Social and Cultural Rights in 2000 and

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

(http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en)

^{vi} UNFPA, *MDG Linkages to UNFPA's Work on Population, Reproductive Health and Women's Empowerment* (2011); WHO, *Countdown to 2015 Decade Report (2000-2010) with Country Profiles: Taking Stock of Maternal, Newborn and Child Survival* (2010); WHO, *Nutrition for Health and Development: A Global Agenda for Combating Malnutrition* (2000); WHO, *PMTCT Strategic Vision 2010-2015: Preventing Mother-to-Child Transmission of HIV to Reach the UNGASS and Millennium Development Goal 6* (2010); WHO, *Intimate Partner Violence During Pregnancy: Information Sheet 2* (2011).

See also the UN Committee on the Elimination of Discrimination Against Women's General Recommendation No. 24: Article 12 of the Convention (Women and Health), UN Doc. A/54/38/Rev.1 (1999), para. 31(c) at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_47_38_E.pdf.

^{vii} UN Human Rights Committee concluding observations on Poland, 2016, UN Doc. CCPR/C/POL/CO/7, paras. 23 & 24 at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fPOL%2fCO%2f7&Lang=en; UN Committee on Economic, Social and Cultural Rights concluding observations on Poland, 2002, UN Doc. E/C.12/POL/CO/6 (2016), para. 47 at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fPOL%2fCO%2f6&Lang=en; UN Committee on the Rights of the Child concluding observations on Zimbabwe, 2016, UN Doc. CRC/C/ZWE/CO/2 (2016), para. 60(c) at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/ZWE/CO/2&Lang=En; UN Committee on the Elimination of Discrimination against Women concluding observation on New Zealand, 2012, UN Doc. CEDAW-C-NZL-CO-7 (2012), paras. 33-34 at <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-NZL-CO-7.pdf>. Each of these treaty bodies' statements are outlined in our submission to the Assembly.

^{viii} Page 84, WHO, *Safe Abortion: Technical and Policy Guidance for Health Systems*, 2nd ed. (2012).