



# IRELAND

SUBMISSION TO THE UNITED NATIONS COMMITTEE AGAINST  
TORTURE

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# CONTENTS

1. INTRODUCTION	4
2. TORTURE IN IRISH LAW (ARTICLE 4)	4
3. DEPORTATIONS AND COUNTER-TERRORISM (ARTICLE 3)	4
4. “RENDITIONS” (ARTICLE 3)	6
5. ABORTION (ARTICLE 16)	7
5.1 RISK TO LIFE	8
5.2 CRIMINALISATION	9
5.3 FREEDOM TO TRAVEL	9
5.4 INFORMATION ON ABORTION	10
5.5 CONSCIENTIOUS OBJECTION	11
5.6 POSSIBLE LAW REFORM IN IRELAND	11
6. FEMALE GENITAL MUTILATION	12
7. ACCOUNTABILITY FOR PAST HUMAN RIGHTS ABUSES	13

# 1. INTRODUCTION

Amnesty International submits this briefing to the United Nations (UN) Committee against Torture (the Committee) ahead of its examination, in July 2017, of Ireland's second periodic report<sup>1</sup> on the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention or the Convention against Torture). This written submission highlights Amnesty International's concerns regarding torture in Irish law, deportations and counter-terrorism, 'renditions', Ireland's abortion laws, female genital mutilation, and accountability for alleged past abuses. As such, it is not an exhaustive account of Amnesty International's concerns regarding the implementation of the Convention by Ireland.

## 2. TORTURE IN IRISH LAW (ARTICLE 4)

The Convention was incorporated into Irish law via the Criminal Justice (United Nations Convention against Torture) Act 2000,<sup>2</sup> including a definition of torture<sup>3</sup> and introducing offences relating to the carrying out of an act of torture. Amnesty International generally welcomes the law and in particular the fact that the offences provided for encompass virtually all prohibited acts contained in Article 4 of the Convention, and the definition of torture is generally in line with Article 1.

However, the organization would like to make the following comments:

Firstly, the offences set out in the Criminal Justice (United Nations Convention against Torture) Act 2000 apply only to acts carried out after the Act came into force. Under general international law, reflected *inter alia* in Article 15(2) of the International Covenant on Civil and Political Rights (ICCPR), to which Ireland is a state party, legislation which appears to be retrospectively criminalizing "any act or omission which, at the time it was committed, was criminal according to the general principles of law recognized by the community of nations", including torture, is fully consistent with the *nullum crimen sine lege* principle. Therefore, Amnesty International considers it a significant omission that this Act does not provide for its retrospective application.<sup>4</sup>

In addition, given its relevance for the protection from and prevention of torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment), Amnesty International would also welcome the Committee encouraging Ireland to ratify the International Convention for the Protection of all Persons from Enforced Disappearance. While conscious that the Department of Justice and Law Reform has stated it must first consider and take any legislative steps necessary to implement the Convention domestically, Amnesty International is concerned at the slow pace of beginning the enactment of legislation Ireland considers necessary to ratify this Convention.

**Amnesty International recommends that the State party:**

- Amend the Criminal Justice (United Nations Convention against Torture) Act 2000 so the offences it provides for apply to acts carried out before the Act came into force
- Take necessary legislative measures to move towards ratification of the International Convention for the Protection of all Persons from Enforced Disappearance and the recognition of the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of victims and other states parties.

## 3. DEPORTATIONS AND COUNTER-TERRORISM (ARTICLE 3)

Amnesty International believes that two recent court cases reveal a lack of transparency in how the risk of torture and other ill-treatment is assessed when persons present in Ireland and suspected of involvement in

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<sup>1</sup> UN Doc. CAT/C/IRL/2, 20 January 2016 (State Report).

<sup>2</sup><http://www.irishstatutebook.ie/eli/2000/act/11/enacted/en/html>

<sup>3</sup> Section 1.

<sup>4</sup> Equally, Amnesty International regrets that Section 9(4) of the International Criminal Court Act prohibits, with the exception of acts of genocide covered by the Genocide Act 1973, investigations and prosecutions of crimes against humanity and war crimes which occurred before the enactment of the Act.

or support for terrorism in other states are being forcibly removed. While the Criminal Justice (United Nations Convention against Torture) Act 2000 contains a general prohibition on expulsion or return of a person to another state where he or she would be in danger of being subjected to torture in line with Article 3 of the Convention, the state's cursory determinations in these two cases that the persons in question were not at risk of torture are of concern.

On 6 July 2016, Ireland deported a Jordanian national of Palestinian descent to Jordan on the basis of allegations that he was a recruiter for the armed group calling itself Islamic State and as such posed a threat to Ireland's national security. Amnesty International opposed the deportation on the basis that he would be at real risk of torture and other ill-treatment upon return.<sup>5</sup> The Irish government successfully argued in the High Court that the man was not at such a risk because he was so low-profile that the Jordanian authorities would not even notice his return.<sup>6</sup> This was despite an Irish government expert's affidavit noting the utmost urgency of the deportation because the man was both a domestic and an international security threat.<sup>7</sup> In an 11 July letter to Amnesty International, however, the Irish government openly acknowledged that its assessment of the man's risk on return was governed by a "balancing" test expressly prohibited by the European Court of Human Rights<sup>8</sup>: "All such applications were fully considered and the rights of the individual concerned were weighed and balanced against the rights of the State to ensure the security and safety of the State."<sup>9</sup> Amnesty International and the man's lawyers remain concerned for his safety in Jordan.

In another case, lawyers currently are appealing before the Supreme Court an unsuccessful challenge before the High Court a deportation order issued by the government against an Algerian man on alleged national security grounds.<sup>10</sup> The deportation order was made even though Ireland's own protection appeal body, the Refugee Appeals Tribunal, had previously determined that the man faced a risk of torture in Algeria if returned there. The man had been granted refugee status in Ireland in 2000. He was subsequently convicted of offences in another European state<sup>11</sup> for activities considered to have provided support to a political grouping in his country of origin deemed to be a terrorist organization. After his release from prison in 2009 he returned to Ireland, where his refugee status was revoked. His 2012 application for "subsidiary protection" in Ireland was rejected in 2015. In February 2016, the Refugee Appeal Tribunal rejected his appeal against that decision on the basis that he was excluded from such protection due to the offences he had committed and because he was considered a threat to Ireland's national security.

Significantly, the Refugee Appeals Tribunal decided that there was "a personal, present, foreseeable and substantial risk of serious harm by the [country of origin's] authorities" if he were deported there. It added: "That is not to say that it is probable that he will be tortured... simply that there are substantial grounds for believing so."<sup>12</sup> The man applied to the Minister for Justice and Equality for discretionary "temporary leave to remain", the final recourse before deportation, which includes an assessment of the state's obligations under Article 3 of the Convention against Torture. The application was rejected; the Minister's decision did not full consider the risk of torture and did not address the finding of such a risk by Refugee Appeals Tribunal; and found that no Article 3 obligation to avoid deportation existed. In December 2016, after the man's lawyers had made another appeal to the Minister to halt the man's deportation on Article 3 grounds, the Minister declined and ordered the man deported. The High Court had agreed that the Minister validly

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<sup>5</sup> 337 Amnesty International, "Ireland: Deportation would risk backsliding on absolute ban on torture," 6 July 2016, <https://www.amnesty.org/en/latest/news/2016/07/ireland-deportation-to-jordan-would-risk-backsliding-on-absolute-ban-on-torture/> The man claimed previous torture in Jordan, a claim which was supported by an independent medical examination. His sons had also been apprehended and ill-treated in Jordan based on their father's alleged activities. Lawyers representing the man submitted detailed NGO and government reports (US Department of State, for example) noting the escalation in torture and other ill-treatment of suspected "Islamists" and those alleged to be associated with Islamic State by the Jordanian intelligence services.

<sup>6</sup> <http://www.irishtimes.com/news/crime-and-law/alleged-recruiter-for-isis-in-ireland-deported-to-jordan-1.2714275>; <https://www.amnesty.org/en/latest/news/2016/07/ireland-deportation-to-jordan-would-risk-backsliding-on-absolute-ban-on-torture/>

<sup>7</sup> Parties' written submissions in this case are on file with Amnesty International.

<sup>8</sup> See for instance *Chahal v. UK*, Application no. 22414/93, Judgment of 15 November 1996, para.81; *Saadi v. Italy*, Application no. 37201/06, Grand Chamber Judgment of 28 February 2008, para. 139.

<sup>9</sup> 338 Letter from Michael Kirrane, Acting Director General, Irish Naturalisation and Immigration Service (INIS), 11 July 2016, on file with Amnesty International.

<sup>10</sup> <http://www.irishtimes.com/news/crime-and-law/courts/supreme-court/court-bid-by-man-with-alleged-links-to-islamic-terrorism-to-prevent-deportation-1.3103189>.

<sup>11</sup> At the time of writing the name of that state is also subject to the High Court restriction on reporting.

<sup>12</sup> Written submissions on behalf of the man, of which Amnesty International has a copy on file.

found that no substantial grounds existed for believing this man to be at risk of torture. The appeal against the High Court's decision was heard by the Supreme Court and, at time of writing, judgement has not been issued; and the deportation order has not been executed.

**Amnesty International recommends that the State party:**

- Ensure that assessments of risk of torture in all deportation cases are made in an informed, effective and transparent manner, and that counterterrorism efforts do not expose people to the risk of being forcibly returned to a country where they would be at risk of torture. Decisions on deportation must not rely on a “balancing” exercise between national security considerations and risk of torture or other ill-treatment, as the prohibition on such acts is absolute.

## 4. “RENDITIONS” (ARTICLE 3)

Amnesty International is concerned at the State party's failures to investigate how its territory was used as a transit point by aircraft involved in the US renditions programme. In its report, the State Party states: “The Government has stated categorically that the use of Irish airspace and airports for extraordinary rendition operations has not been, and will not be, permitted under any circumstances.” While this statement is welcome, it is not accompanied by any acknowledgment of evidence that Shannon airport was used as a stopover and/or re-fuelling point by CIA operated aircraft en route to or returning from rendition missions between 2001 and 2005. In 2005, Amnesty International presented flight logs to the Irish government showing that in at least five instances involving four known individuals, US aircraft, while not carrying any of the four victims of rendition at the time of entry, used Ireland as a refuelling stop en route to or returning from rendition missions involving these men.<sup>13</sup> Those missions involved the international transfer of individuals in a manner that avoided established procedural safeguards, violated Article 3 of the Convention and resulted in further human rights violations, including torture and other ill-treatment. While there may not have been direct evidence of the physical transfer of detainees through Ireland, Ireland's stop-over and refuelling facilitated the USA's renditions programme, even if unintentionally.

The State party in its report states that it “sought and received assurances from the Government of the United States that the extraordinary rendition of prisoners had not and would not take place through Irish airports”.<sup>14</sup> These “assurances” clearly applied only to aircraft physically carrying rendition victims – not the use of Ireland as a staging post on US renditions circuits.<sup>15</sup> Therefore Amnesty International is concerned that the Irish Government may consider that its responsibility to prevent and investigate the use of its territory by foreign states for overflights or landings of aircraft on rendition circuits apply only when those aircraft are/were physically carrying rendition victims.

Regarding the investigatory measures taken by the State party, in 2009, the 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 that government was dissolved in February 2011 the Committee had met just three times and had not published conclusions or legislative or other proposals.<sup>16</sup> The subsequent 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”<sup>17</sup>, but no concrete actions emerged from that commitment.

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<sup>13</sup> For details of the use of Shannon airport by aircraft en route to or returning from the renditions of four known individuals, Abu Omar, Khaled al Maqtari, Khaled el Masri and Binyam Mohammed, each of whom reportedly suffered torture at the final destination, see AI Ireland, *Breaking the Chain: Ending Ireland's role in renditions* (2009).

<sup>14</sup> State Report, para. 69.

<sup>15</sup> These assurances are described in more detail in the State's first periodic report to the Committee [p CAT/C/IRL/1, 26 January 2010, para 341, and also in the Irish Human Rights Commission's 2007 report, 'Extraordinary Rendition': A Review of Ireland's Human Rights Obligations' at [https://www.ihrec.ie/download/pdf/ihrc\\_rendition\\_report\\_final.pdf](https://www.ihrec.ie/download/pdf/ihrc_rendition_report_final.pdf)

<sup>16</sup> For details of concerns and recommendations, see AI Ireland, *Breaking the Chain: Ending Ireland's role in renditions* (2009).

<sup>17</sup>

[http://www.taoiseach.gov.ie/eng/Work\\_Of\\_The\\_Department/Programme\\_for\\_Government/Programme\\_for\\_Government\\_2011-2016.pdf](http://www.taoiseach.gov.ie/eng/Work_Of_The_Department/Programme_for_Government/Programme_for_Government_2011-2016.pdf), p. 57.

Ireland has not discharged its obligation independently and effectively to investigate what happened, and take measures to prevent the further use of its territory or airspace for such purposes. Victims of renditions have had neither had their right to truth and justice fulfilled, nor received other forms of effective redress. Furthermore, the precise measures the State should put in place to ensure that aircraft linked to ‘extraordinary renditions’ 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 use Irish airspace and facilities in the service of the myriad violations involved in these renditions can only be revealed by an independent, adequately authorised and resourced investigation, including with powers to subpoena individuals as well as documents and data that might otherwise be sensitive or hidden.

**Amnesty International calls on the State party to:**

- 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.

## 5. ABORTION (ARTICLE 16)

Ireland’s abortion laws are amongst the most restrictive in the world. Women and girls<sup>18</sup> cannot legally have an abortion in Ireland unless there is a “real and substantial” risk to their life.<sup>19</sup> The Eighth Amendment, or Article 40.3.3 of the Irish Constitution, *Bunreacht na hÉireann*, guarantees “the unborn” a right to life equal to that of a pregnant woman or girl.<sup>20</sup> This constitutional provision was adopted by popular referendum in 1983 and severely restricts access to abortion, and also the healthcare of women and girls in pregnancy more generally.

In 2013, the Protection of Life During Pregnancy Act<sup>21</sup> was enacted to give a statutory basis to the constitutional right to abortion where a woman or girl’s life is at “real or substantial risk”.<sup>22</sup> This followed a 2010 finding by the European Court of Human Rights in *A, B & C v Ireland* of a lack of effective and accessible procedures for women to establish this constitutional right.<sup>23</sup>

In a research report published in June 2015, for which Amnesty International interviewed women affected by Ireland’s abortion laws, as well as service providers and medical professionals, the organisation documented multiple violations of women’s and girls’ rights, related to Ireland’s abortion laws, including violations of the right to be free from cruel, inhuman or degrading treatment or torture.<sup>24</sup> These laws force the majority of women and girls to travel abroad in order to access basic healthcare services. Those who are unable to afford travel - predominantly marginalized women and girls who have limited economic resources, young, minority, or migrants, asylum seekers or refugees – are forced to resort to clandestine abortions without medical supervision or are unable to access abortions at all, and therefore experience additional human rights violations.

In June 2016, in *Mellet v Ireland* the UN Human Rights Committee concluded: “By virtue of the existing legislative framework, the State party subjected [Ms Mellet] to conditions of intense physical and mental suffering.”<sup>25</sup> It found that by prohibiting and criminalising abortion, Ireland violated the petitioner’s right to freedom from cruel, inhuman or degrading treatment by forcing her to travel abroad to obtain abortion services.<sup>26</sup> It further found violations of her rights to privacy and equality. Amnesty International welcomes the fact that in November 2016, the State party publicly accepted the Human Rights Committee’s findings

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<sup>18</sup> Amnesty International Ireland refers here to women and girls. However, we recognise that not everyone who requires access to abortion services identifies as female. Amnesty International advocates for the sexual and reproductive rights of all people, of all genders and none.

<sup>19</sup> Amnesty International, *She is not a criminal: The impact of Ireland’s abortion law* (Index: EUR 29/1597/2015).

<sup>20</sup> “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.”

<sup>21</sup> <https://www.oireachtas.ie/documents/bills28/acts/2013/a3513.pdf>.

<sup>22</sup> In 1992, in *Attorney General v X* (the X case), a 15-year-old girl who was pregnant as a result of rape was prohibited from accessing an abortion in the United Kingdom and became suicidal as a result. The Supreme Court found that the Eighth Amendment should be interpreted to provide pregnant women and girls a right to abortion where their life, but not their health, is at risk, including a risk of suicide. (*X v. Attorney General and Others* (1992) ILRM 401)

<sup>23</sup> Application no. 25579/05.

<sup>24</sup> See *Amnesty International, Ireland: She is not a criminal: the impact of Ireland’s abortion law* (Index: EUR 29/1597/2015).

<sup>25</sup> UN Doc. CCPR/C/116/D/2324/2013, 6 June 2016, para 7.4.

<sup>26</sup> Para 7.6.

and offered Ms Mellet compensation and counselling.<sup>27</sup> The Human Rights Committee had also recommended that the State party amend its law on abortion to prevent further violations. To date, Ireland has not implemented the required constitutional and legislative changes, and in its response to the Human Rights Committee, it noted that the government had established a Citizens' Assembly<sup>28</sup> process to make recommendations to the Oireachtas (parliament) on constitutional changes, including to the Eighth Amendment (Article 40.3.3).<sup>29</sup>

In June 2017, the Human Rights Committee, in *Whelan v Ireland*, found that Ireland had subjected a second woman to a "high level of mental anguish" which amounted to cruel, inhuman and degrading treatment.<sup>30</sup> It found that the criminalisation of abortion in Ireland caused her shame and stigma, and this was one of the factors that exacerbated her "physical and mental situation". It found that her suffering was further aggravated by the obstacles she faced in receiving information she needed from her health professionals.

## 5.1 RISK TO LIFE

The Protection of Life during Pregnancy Act, because of the Eighth Amendment, provides for lawful abortion only where there is a real or substantial risk to the life of the pregnant woman or girl. This draws an impossible distinction between women's health and life, which leaves pregnant women and girls in a precarious situation when accessing healthcare. The State Party's report states: "A Guidance Document to assist health professionals in implementing the Act was published in 2014 and is available on the Department of Health's web site."<sup>31</sup> However, the Act and the guidance document for its implementation<sup>32</sup> do not provide practical assistance to medical professionals grappling with how to assess when a pregnancy poses a "real and substantial" risk to the life of a woman or girl.<sup>33</sup> Furthermore, even where a woman or girl may qualify for a 'termination of pregnancy' under the Act, the guidance document allows for the possibility of an early delivery, rather than a medical or surgical abortion, at the doctor's discretion.<sup>34</sup> Therefore, where the foetus is viable, an early induced delivery against the pregnant woman's wishes may be made available, rather than an abortion. This was the outcome in at least one case – annual reports published by the Department of Health on the operation of the 2013 Act do not give statistics on the number of 'terminations' that are in fact early deliveries.

Ms Y was a young asylum-seeker pregnant as a result of rape who was denied an abortion despite being suicidal and therefore entitled to a termination under the 2013 Act.<sup>35</sup> When she was 22 weeks' pregnant, she was referred for assessment of entitlement to a termination on grounds of suicide. In the end, it was decided that her pregnancy was too advanced and as the foetus was by then viable, she was required to undergo a caesarean section. The child was delivered at 26 weeks and has been in State care since then.

The Act and guidance document also fail to deliver effective procedural rights to women eligible for legal abortion in the country. One of the additional barriers created by the guidance document is the burdensome procedure for establishing a right to access abortion on the lawful risk of suicide ("self-destruction") ground.<sup>36</sup> According to the UN Human Rights Committee's 2014 Concluding Observations, this results in an

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<sup>27</sup> "Statement from Minister for Health, Simon Harris, TD, regarding the United Nations Human Rights Committee in the case of Ms Amanda Mellet", 30 November 2016, at <http://health.gov.ie/blog/press-release/statement-from-minister-for-health-simon-harris-td-regarding-the-united-nations-human-rights-committee-in-the-case-of-ms-amanda-mellet/>.

<sup>28</sup> Citizens' Assembly comprises 99 randomly chosen citizens and a Chair who was a Judge of the Supreme Court, see <http://www.citizensassembly.ie>.

<sup>29</sup> "Statement from Minister for Health, Simon Harris, TD, regarding the United Nations Human Rights Committee in the case of Ms Amanda Mellet".

<sup>30</sup> UN Doc. CCRP/C/119/D/2425/2014, 12 June 2017, paras 7.5, 7.6, 7.7.

<sup>31</sup> Para 37.

<sup>32</sup> A Guidance Document for the Protection of Life During Pregnancy Act 2013 was published by Department of Health in September 2014. It was developed by an independent committee of experts established in September 2013 to develop guidance for health professionals to assist them in implementing the Act. It is available at <http://health.gov.ie/blog/press-release/guidance-document-published-for-protection-of-life-during-pregnancy-act-2013/>

<sup>33</sup> See, for instance, interviews with Irish healthcare providers in Amnesty International's report, *She is not a criminal: the impact of Ireland's abortion law* (Index: EUR 29/1597/2015:).

<sup>34</sup> At para. 6.4: "The clinicians responsible for her care will need to use their clinical judgment as to the most appropriate procedure to be carried out, in cognisance of the constitutional protection afforded to the unborn, i.e. a medical or surgical termination or an early delivery by induction or Caesarean section."

<sup>35</sup> See account of Ms Y's experience as related to Amnesty International by her lawyer, Caoimhe Haughey, in Amnesty International's report, *She is not a criminal*, pp 40- 43

<sup>36</sup> This was underlined at the first substantive meeting of the Citizens' Assembly, which took place from 26 – 27 November 2016. According to Dr Brendan O'Shea, invited to address the Assembly as an expert and representative of the Irish



“excessive degree of scrutiny by medical professionals for pregnant and suicidal women leading to further mental distress”.<sup>37</sup>

Such mandatory assessment procedures that require women and girls to “prove” they are eligible to access care are also inherently degrading, and may act as a deterrent to women seeking services and delay the effective and timely provision of legal abortion.<sup>38</sup> Ultimately, certification processes such as these are often unworkable, both for women and medical professionals, because they are focused on limiting access, rather than ensuring women and girls can realise their human right to healthcare.

## 5.2 CRIMINALISATION

The 2013 Act also recriminalises abortion in all circumstances beyond a “real and substantial risk” to the life of the pregnant woman or girl, with a potential penalty of 14 years’ imprisonment for women and health professionals assisting them. Criminalising a procedure that is only required by women and girls is discriminatory and leads to violations of women and girls’ human rights.<sup>39</sup> In addition, many of the women that Amnesty International interviewed in its 2015 report expressed the view that the criminalisation of abortion stigmatised them and made them feel like criminals, adding to their trauma.<sup>40</sup> In *Mellet v Ireland*, the UN Human Rights Committee found that the petitioner “had her physical and mental anguish exacerbated” by, *inter alia*, “the shame and stigma associated with the criminalization of abortion of a fatally ill foetus”. Furthermore, as documented in our 2015 report, criminalisation can deter women and girls from seeking post-abortion care in Ireland for fear of prosecution. It can have a ‘chilling’ effect on medical professionals providing abortions. Indeed, while doctor-patient confidentiality should be paramount, a recent study carried out by Doctors for Choice found that 14 per cent of responding trainee doctors were unsure whether they would report a woman or girl to the police if they thought she had taken an abortifacient bought online or illegally in Ireland, where in fact they are not required by law to do so.<sup>41</sup>

## 5.3 FREEDOM TO TRAVEL

Under Article 40.3.3 of the Constitution, via a further amendment inserted following a second popular referendum in 1992, women living in Ireland have the freedom to travel to another jurisdiction to access abortion services.<sup>42</sup> While data collected on the number of women who access abortion services abroad are patchy and figures underestimate the actual number of women who travel, since 1980 more than 160,000 abortions which took place in the United Kingdom and the Netherlands were performed on patients who gave Irish addresses.<sup>43</sup> In 2016 alone, 3,265 women from Ireland travelled to access abortion services in the United Kingdom, averaging roughly 10 women a day.<sup>44</sup>

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College of General Practitioners (ICGP), the provisions of the Protection of Life During Pregnancy Act were found to be “cumbersome”, “intensely stressful” and “difficult” by GPs and their patients. According to Dr O’Shea, most GPs and their patients dealing with unintended pregnancies “did not experience the Eighth Amendment, or the process required for the operation of the current legislative framework to be satisfactory or helpful in the context of the self-perceived needs of women experiencing unplanned and/or crisis pregnancy.” Shannon, J. (2016). *Abortion law ‘intensely stressful’ for GPs*. [online] Irish Medical Times. Available at: <http://www.imt.ie/news/abortion-law-intensely-stressful-for-gps-01-12-2016/> [Accessed 29.05.2017].

<sup>37</sup> Concluding observations on the fourth periodic report of Ireland, UN Doc. CCPR/C/IRL/CO/4, 19 August 2014.

<sup>38</sup> In 2015, the Irish Family Planning Association, which provides sexual and reproductive health services in Ireland, reported that three of the pregnant women who presented to their counselling services during the previous year were considered eligible for access to abortion services in Ireland under the 2013 Protection of Life During Pregnancy Act because continuation of pregnancy posed a “real and substantial risk” to their lives. However, despite the urgency of their individual situations, none of the women wanted to undergo the Act’s assessment procedures, opting instead to travel for an abortion. *53% of unplanned pregnancy cases intended to abort*. [online] Irishexaminer.com. Available at: <http://www.irishexaminer.com/ireland/53-of-unplanned-pregnancy-cases-intended-to-abort-432031.html> .

<sup>39</sup> See, for instance, Committee on the Elimination of Discrimination against Women, General Recommendation 24, Women and Health (Twentieth session, 1999), U.N. Doc. A/54/38 at 5 (1999).

<sup>40</sup> Amnesty International, *She is not a criminal: The impact of Ireland’s abortion law* (Index: EUR 29/1597/2015).

<sup>41</sup> Aitken, Kara, Paul Patek, and Mark E. Murphy. “The opinions and experiences of Irish obstetric and gynaecology trainee doctors in relation to abortion services in Ireland.” *Journal of Medical Ethics* (2017): medethics-2015.

<sup>42</sup> Article 40.3.3°, Bunreacht na hÉireann, para 2.

<sup>43</sup> Ifpa.ie. (2016). *Abortion in Ireland: Statistics I Irish Family Planning Association*. [online] Available at: <https://www.ifpa.ie/Hot-Topics/Abortion/Statistics> [Accessed 1 Dec. 2016].

<sup>44</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/618533/Abortion\\_stats\\_2016\\_commentary\\_with\\_tables.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/618533/Abortion_stats_2016_commentary_with_tables.pdf)

Travelling to access abortion services can have physical health consequences, as in Ms Mellet's case, where she could not afford to remain in the UK and, in the words of the Human Rights Committee, had "to return while not fully recovered".<sup>45</sup> The stigma surrounding abortion services, which results from their prohibition and criminalization, can also negatively impact mental health of those who travel. Having to travel can also have a financial impact that adds to women's distress. Later term abortions are more costly, placing greater burdens on women diagnosed with severe or fatal foetal impairment, which can be tested usually at the 20th week of pregnancy. Travel is not possible for many women and girls due to its high cost<sup>46</sup>, and legal or social limitations. This is particularly true for girls, women from socio-economically marginalized groups, such as Travellers, people with disabilities, those experiencing homelessness, or undocumented migrants and asylum seekers.

For those who cannot travel, the only option beyond continuing the pregnancy is to resort to clandestine methods, thus risking prosecution and a potential 14-year prison sentence, as well as their health and lives, if medical complications occur. Countless women access medical abortion pills online, often in secrecy and shame which again add to distress and fear.<sup>47</sup> Medication abortion is a safe method of abortion but medical supervision should be available in case complications occur.<sup>48</sup> However, due to the 'chilling effect' of criminalisation, women and girls in Ireland are deterred from seeking medical care for such complications, which can cause additional anxiety and fear.<sup>49</sup>

## 5.4 INFORMATION ON ABORTION

Information about abortion services is extremely restricted under the 1995 Regulation of Information (Services outside the State for Termination of Pregnancies) Act, as a result of the Eighth Amendment. Provision of information by health care providers and pregnancy counsellors that "advocates or promotes" the option of abortion is criminalised, meaning, for instance, that health professionals are prohibited from making referrals for abortion services in other countries.

The Act does not define what constitutes "advocacy or promotion of" abortion, however, leading to confusion among doctors and counsellors as to what information they can provide and in what form.<sup>50</sup> In addition, any information given to a woman on abortion services abroad—such as the contact information for a clinic abroad that provides abortions—may only be provided where a woman first requests it and must be accompanied by information on "all the courses of action that are open to her".<sup>51</sup> The Act does not criminalise the provision of information that advocates against abortion however, so that even the provision of false or misleading information by so-called 'rogue agencies' is not covered.<sup>52</sup>

If a healthcare provider or counsellor violates any of the Act's provisions, they face a criminal conviction and a fine of up to €4,000.<sup>53</sup> The restrictions on information not also may have serious negative impact on the access to healthcare and thus put a woman's health or life at risk, but can cause distress. In *Mellet v Ireland*, the Human Rights Committee found that "the author's suffering was further aggravated by the obstacles she faced in receiving needed information about her appropriate medical options from known and trusted medical providers", with the denial of information "disrupting the provision of medical care and advice that the author needed and exacerbating her distress."<sup>54</sup>

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<sup>45</sup> Para 7.4.

<sup>46</sup> The estimated average direct cost of travelling to the UK for first trimester abortion services is €1,000-€1,500, including clinic fees, flights and accommodation. IFPA, "psychological, physical and financial costs of travel", available at <http://www.ifpa.ie/node/506>

<sup>47</sup> Aiken, A., Gomperts, R. and Trussell, J. (2016). *Demand for abortion pills highlights need for change in the law*. [online] The Irish Times. Available at: <http://www.irishtimes.com/opinion/demand-for-abortion-pills-highlights-need-for-change-in-the-law-1.2831846> [Accessed 1 Dec. 2016].

<sup>48</sup> World Health Organization, 2012. *Safe abortion: technical and policy guidance for health systems*, second edition, Geneva: WHO, p. 52.

<sup>49</sup> Amnesty International, *She is not a criminal: The impact of Ireland's abortion law* (Index: EUR 29/1597/2015).

<sup>50</sup> See Amnesty International's report, *She is not a criminal: the impact of Ireland's abortion law* (2015) (Index: EUR 29/1597/2015).

<sup>51</sup> Regulation of Information Act, section 5.

<sup>52</sup> For instance, an undercover investigation by *The Times* newspaper reportedly found two agencies giving misleading "advice" about the consequences of abortion – "Sex kills, anti-abortion clinic tells women", 3 April 2017, <https://www.thetimes.co.uk/article/sex-kills-anti-abortion-clinic-tells-women-6q6s8506t>

<sup>53</sup> Regulation of Information Act, section 10; Fines Act 2010.

<sup>54</sup> Para 7.5.

## 5.5 CONSCIENTIOUS OBJECTION

The 2013 Protection of Life during Pregnancy Act permits doctors, nurses and midwives to decline to provide services based on conscientious objection.<sup>55</sup> However, the Act does not provide for any oversight mechanism to regulate this practice and ensure that it does not inhibit access to lawful services, as required under human rights laws and standards.<sup>56</sup> The provision allows for conscientious objection to be invoked not only by healthcare professionals who carry out a termination, but also those assisting. The Act does not clearly define “assistance”, nor does it ensure the availability and accessibility of healthcare professionals who are willing and able to provide such services. Neither does it require introducing referral mechanisms to ensure timely access to alternative providers. Additionally, the Act also does not explicitly debar medical practitioners who object to abortion in principle from serving on a review panel.<sup>57</sup> The Committee against Torture has expressed concerns about denial of access to legal abortion services for victims of rape due to conscientious objection, and has recommended that State party implement the World Health Organization guidance on abortion and ensure that conscientious objection does not limit women’s access to abortion.<sup>58</sup>

## 5.6 POSSIBLE LAW REFORM IN IRELAND

Lawful access to abortion cannot be expanded unless the Eighth Amendment to the Constitution is removed. Ireland’s Constitution may only be amended by popular referendum. Rather than simply schedule a referendum on the Eighth Amendment, the government established a Citizens’ Assembly process in 2016. This was nevertheless a welcome first step. At the conclusion of its deliberations in April 2017, the Citizens’ Assembly recommended removal of the Eighth Amendment<sup>59</sup> and significant expansion of access to abortion. If implemented, its recommendations on constitutional and law reform on abortion access would broadly allow for the development of human rights compliant abortion framework, and women’s rights violations to be prevented in the future.<sup>60</sup> It is now proposed that a parliamentary committee will further review the matter based on the Assembly’s report on the Eighth Amendment, due to be published by end-June 2017; and this committee will make recommendations to the Oireachtas (parliament). However, the parameters and timeframe for this committee process, and what follows, are unclear.

The practice of application of the current Irish law shows that the ‘chilling effect’ created by the overall context of criminalisation results in women and girls often facing insurmountable barriers to access even when they are eligible to it.<sup>61</sup> This raises serious concerns about whether legislation setting out only limited grounds as an exception to what is otherwise a criminal act will do enough to impact the climate of fear and stigma surrounding access to abortion in Ireland which is intimately linked to the threat of a possible 14-year prison sentence. On this basis, there are serious concerns whether adding further exceptions to the current criminal law will facilitate meaningful access for those women and girls who qualify even under the specific grounds on which international human rights standards says abortion must be guaranteed at a minimum.<sup>62</sup> Furthermore, as the Committee will know, a September 2016 joint statement<sup>63</sup> from four UN

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<sup>55</sup> Section 17.

<sup>56</sup> See European Court of Human Rights in *RR v Poland*, No. 27617/04 ECHR (2011) para. 206; *P and S v Poland*, No. 57375/08 ECHR (2008) para. 107.

<sup>57</sup> See *International Planned Parenthood Federation v Italy*, European Social Committee, Council of Europe (2014). The Committee found 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 distance.

<sup>58</sup> U.N. Doc. CAT/C/POL/CO/5-6 (2013), para. 23.

<sup>59</sup> The Citizens’ Assembly recommended that Article 40.3.3. be removed and replaced with a constitutional provision that gives the Oireachtas exclusive power to legislate on abortion. It did so based on legal advice that a simple repeal of the Eighth Amendment could leave open a possibility that an implied foetal right to life could be found by the Irish courts to exist. However, this legal question of whether a repeal or replacement of the Eighth Amendment is the better solution is yet to be clarified.

<sup>60</sup> The Citizens’ Assembly voted by 64 per cent for access to abortion without restrictions as to reason in early pregnancy (12 weeks), and later gestational limits in specific circumstances. Full results for each of the grounds voted upon are at <https://www.citizensassembly.ie/en/Meetings/Ballot-4-Results-Tables.pdf>. The Citizens’ Assembly was not given an opportunity to vote on decriminalisation of abortion.

<sup>61</sup> Amnesty International’s report, *She is not a criminal: the impact of Ireland’s abortion law* (2015) (Index: EUR 29/1597/2015).

<sup>62</sup> Similar concerns have been raised by UN treaty monitoring bodies in their concluding observations on countries where legislation already provides for access to abortion on minimum grounds. The Human Rights Committee has expressed concerns on the restrictive abortion laws and recommended that one State party “liberalize its legislation and practice on abortion”. (UN Doc. CCPR/CO/82/POL2 (2004), para. 8). The Committee on the Elimination of Discrimination against Women expressed concerns about New Zealand’s convoluted abortion law, “making women dependent on the benevolent interpretation of a rule which nullifies their autonomy”, and recommended that the State party “review the abortion law

experts, including the Special Rapporteur on Torture,<sup>64</sup> noted that restrictive laws and prohibition of abortion do not reduce either the need for or number of abortions as established by the World Health Organization<sup>65</sup>; they merely increase the risks to the health and lives of women and girls who resort to unsafe and illegal abortion. In their joint statement, these UN experts recommended “the good practice found in many countries which provide women’s access to safe abortion services, on request during the first trimester of pregnancy”, as well as abortion in exceptional cases later in pregnancy, and abortion ‘on request’ without limits for adolescents.

Therefore Amnesty International believes it is vital that Ireland be encouraged by the Committee to decriminalise abortion in all circumstances and adopt legislation on abortion which protects women and girl’s human rights. In this regard, the recommendations made by the Citizens’ Assembly suggest an optimal pathway for a human rights complaint abortion framework for Ireland.

#### **Amnesty International recommends that the State party:**

- Repeal Article 40.3.3 from the Constitution; decriminalise abortion in all circumstances; and introduce a legislative and policy framework that upholds sexual and reproductive rights of women and girls and guarantees that abortion services and information are available and accessible in a manner that ensures women and girls’ autonomy and decision-making is respected, in line with international human rights law and standards, and best international health practice.
- Eliminate specific access barriers impacting marginalized groups including girls and young women, asylum-seekers and those living in 'direct provision', women and girls experiencing homelessness, undocumented migrants, women or girls with disabilities, women or girls with limited financial means, and members of the Traveller community;
- Clarify in law and practice that conscience based refusals of abortion care may not jeopardise women and girls’ access to abortion services, and those who object to providing abortion have a duty to make a timely referral to another health care provider who will offer the services, and to always provide care, regardless of their personal beliefs or objections, in emergency circumstances or where a referral or continuity of care is not possible.

## **6. FEMALE GENITAL MUTILATION**

Amnesty International welcomes the enactment of the Criminal Justice (Female Genital Mutilation) Act 2012,<sup>66</sup> and its expansive definition of the acts that amount to the criminal offence of female genital mutilation (FGM), the creation of the additional offence of removing a girl from the State for the purposes of undergoing FGM, precluding the defence of consent or culture, and explicit reference to FGM as a human rights violation and a form of gender-based violence. We further welcome provision for protection for victims during legal proceedings.

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and practice with a view to simplifying it and to ensure women’s autonomy to choose. (UN Doc. CEDAW-C-NZL-CO-7 (2012), paras. 33-34.) The UN Committee on the Rights of the Child in its concluding observations on multiple countries, including on Ireland in 2016, called on the State parties to “decriminalise abortion in all circumstances and review its legislation with a view to ensuring children’s access to safe abortion and post-abortion care services; and ensure that the views of the pregnant girl are always heard and respected in abortion decisions U.N. Doc. CRC/C/MAR/CO/3-4 (2014), para. 57 (b); U.N. Doc. CRC/C/KWT/CO/2 (2013), para.60; U.N. Doc. CRC/C/SLE/CO/3-5 (2016), paras. 32 (c); U.N. Doc. CRC/C/GBR/CO/5, para. 65 (c); U.N. Doc. E/C.12/KEN/CO/1 (2008), para. 33; (UNMIK), U.N. Doc. E/C.12/JNK/CO/1 (2008), para. 30; UN Doc. CRC/C/IRL/CO/3-4 (2016), para 58 (a).

<sup>63</sup> See <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20600&LangID=E>

<sup>64</sup> The others are the UN Special Rapporteur on Health, Special Rapporteur on Violence Against Women, and the Chair-Rapporteur of the Working Group on Discrimination Against Women in Law and in Practice.

<sup>65</sup> World Health Organization, 2012. Safe abortion: technical and policy guidance for health systems, second edition, Geneva: WHO, p. 9.

<sup>66</sup> <http://www.irishstatutebook.ie/eli/2012/act/11/enacted/en/html>

While Amnesty International welcomes the Act's allowing for the prosecution of anyone who performs FGM in another jurisdiction on a woman/girl usually resident in Ireland, it is of concern that the act must also be illegal in that jurisdiction in order to be prosecuted in Ireland.

Amnesty International is also concerned at the wording of section 2(2)(d) of the Act's exemption of any act performed on a woman of 18 years or more, where it does not cause "permanent bodily harm".<sup>67</sup> While conscious that the Minister for Health has explained that the purpose of this exemption is to protect adults' "freedom of choice over cosmetic and other procedures that do not violate their human rights"<sup>68</sup>, it is important that this not be exploited as a loophole by perpetrators of FGM, and that the state's pursuit of prosecutions and convictions more generally under the Act is not dependent on the likelihood of proving beyond a reasonable doubt that "permanent bodily harm" will result from any of the acts the Act considers to be FGM.<sup>69</sup>

#### **Amnesty International recommends that the State Party:**

- Removes from the Criminal Justice (Female Genital Mutilation) Act 2012 the provision that performing FGM in another jurisdiction on a woman/girl usually resident in Ireland may only be a prosecutable criminal offence if FGM is also illegal in that jurisdiction;
- Amend Act's exempting from the offence of FGM any act performed on a woman of 18 years or more where it does not cause "permanent bodily harm", and frame this instead around women's autonomous decision-making in cosmetic or other procedures based on their free and informed consent.

## **7. ACCOUNTABILITY FOR PAST HUMAN RIGHTS ABUSES**

In relation to the Magdalene Laundries, Amnesty International considers that the Committee's recommendation in its 2011 concluding observations on Ireland's first periodic report, that the State party "institute prompt, independent and thorough investigations into all complaints of torture and other cruel, inhuman or degrading treatment or punishment that were allegedly committed in the Magdalene Laundries", has not been met.<sup>70</sup>

Amnesty International considers that many women and girls who were detained or resided in the 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>71</sup>

As noted in the Committee's List of issues prior to reporting (LOIPR), the government-established "Inter-Departmental Committee to establish the facts of state involvement with the Magdalene Laundries" issued its final report in February 2013. It revealed, *inter alia*, information on referrals of women and girls from the criminal justice system and health and social services sector to the institutions, and financial interactions

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<sup>67</sup> Section 2(2) of the Act states that a person is not guilty of an offence if:

13(a) the act concerned is a surgical operation performed by a registered medical practitioner on the girl or woman concerned, which is necessary for the protection of her physical or mental health,

(b) the act concerned is a surgical operation performed by a registered medical practitioner or a midwife, or a person undergoing training to be a midwife, on the girl or woman concerned when she is in any stage of labour, or has just given birth, for purposes connected with the labour or birth,

(c) the person is the girl or woman on whom the act of female genital mutilation is done, or

(d) the act concerned is done to a woman who is not less than 18 years of age and there is no resultant permanent bodily harm."

<sup>68</sup> Oireachtas debate, Criminal Justice (Female Genital Mutilation) Bill 2011: Report and Final Stages, 14 March 2012, <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2012031400032>

<sup>69</sup> Legislation is important in setting standards to protect women and girls from this harmful practice, but it will not, by itself, end the practice of FGM. States must also implement a targeted programmes with a view to sensitising all segments of the population about the extremely harmful effects of FGM, provide adequate prevention measures (including human rights education and awareness raising campaigns involving practising communities), implement protection mechanisms (referral protocol, telephone helplines), including data collection on the practice in order to be able to adapt policies, and ensure access to medical and psychological support services for women and girls who have undergone FGM.

<sup>70</sup> CAT/C/IRL/CO/1, para 21

<sup>71</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: EUR 29/001/2014), pp 21-26.

between state bodies and the Laundries. It was accompanied by an official apology by the Taoiseach (Prime Minister) to the former residents of these institutions, which Amnesty International welcomes.

However, 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 uncovered within the framework of human rights law with a view to ensuring truth, redress and reparation for the victims. As the Committee's LOIPR notes, the State party has itself conceded that the Inter-Departmental Committee "had no remit to investigate or make determinations about allegations of torture or any other criminal offence". The focus of the Committee's inquiries was simply to establish the facts of state involvement in the Laundries, not the nature and extent of the abuses. The State party's report also relies on the experiences of the 118 women who came forward to provide testimony to the Inter-Departmental Committee rather than the wider research available, such as that collected by the Justice for Magdalenes Research group.

As the Committee points out in its LOIPR, the Inter-Departmental Committee did not have the power to compel evidence to be given and could only receive what was forwarded voluntarily. Therefore, regarding the treatment of women and girls in these institutions, it is of concern that the State party report relies on these testimonies and those of a few doctors.<sup>72</sup> However, even based on these limited sources, the report still cites reports of physical punishment, and that "working conditions were harsh and the work physically demanding", which underpins rather than negates calls for an investigation into alleged abuses in these institutions. Furthermore, the report later states that the Inter-Departmental Committee "Report does not purport to provide a comprehensive and accurate evaluation of the number of those who were subject to criminal acts or abuse".<sup>73</sup>

The State Party's report similarly refuses to concede that any ill treatment proscribed by the Convention Against Torture possibly occurred that would trigger a requirement of a State investigation. In 2016, the State Party made this same assertion to the UN Committee on the Elimination of Discrimination Against Women.<sup>74</sup> In 2014, the State Party also reported to the UN Human Rights Committee 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>75</sup> Amnesty International believes these assertions speak not to the absence of such evidence, but to the fact that the Inter-Departmental Committee's report is not – and was not intended to be – a comprehensive investigation.

Regarding the State Party's obligations under the Convention, the following statements in its report are troubling: "No factual evidence to support allegations of systematic torture or ill treatment of a criminal nature in these institutions was found. In the absence of systematic criminal behaviour, the normal arrangements for the investigation of allegations of criminal behaviour are considered adequate." The State party has an obligation to ensure that every alleged act of torture or ill treatment is thoroughly investigated, whether systematic or not – reasonable grounds for suspecting such is all that is required. The State Party's report goes on to say that "if any woman has been the victim of criminal behaviour, she should report it and it will be investigated", which does not discharge its obligation under Article 12 of the Convention.

Finally, Amnesty International considers that the inquiry conducted by the Inter-Departmental Committee does not meet the criteria for an independent inquiry. As the Committee notes in its LOIPR, the Inter-Departmental Committee was chaired by a member of the upper house of the Irish legislature, who as such was independent of the executive arms of the State; however, its members were senior representatives from six government departments.

In view of the close involvement of the state in the Magdalene Laundries in fact revealed in the Inter-Departmental Committee's report, including referrals from the criminal justice system and the health and social services sector, and financial interactions between state bodies and the laundries, such a process cannot meet the criteria for an independent inquiry.

Therefore, Amnesty International considers the report produced by the Inter-Departmental Committee and the *ex-gratia* compensation scheme described in the State party's report as falling below adequate standards of truth, justice and reparations.

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<sup>72</sup> Para 240.

<sup>73</sup> Para 244.

<sup>74</sup> "No factual evidence to support allegations of systematic torture or ill treatment of a criminal nature in these institutions was found". CEDAW/C/IRL/6-7, para. 40-41.

<sup>75</sup> *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.

Amnesty International is further concerned that the State Party's consistent refusal to conduct an independent, comprehensive investigation sets an unfortunate precedent for future inquiries into other past alleged abuses.

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'<sup>76</sup> that operated across the State.<sup>77</sup> The Committee will be aware of the concern stated by the UN Committee on the Elimination of Discrimination Against Women that that "the scope of the terms of reference for the Commission of Investigation into Mother and Baby Homes and Certain Related Matters is narrow such that it does not cover all homes and analogous institutions, and therefore may not address the whole spectrum of abuses perpetrated against women and girls".<sup>78</sup>

The State party has also failed to conduct an investigation into the past practice of symphysiotomies, despite the UN Human Rights Committee's recommending that it "should initiate a prompt, independent and thorough investigation into cases of symphysiotomy, prosecute and punish the perpetrators, including medical personnel".<sup>79</sup>

This is exacerbated by the government's denying the possibility of taking legal action to women who sought to avail of the *ex gratia* compensation awarded by the State. A 'Surgical Symphysiotomy Payment Scheme' was announced on 6 November 2014 for the receiving and making of *ex gratia* awards to victims of symphysiotomies, with a one-month deadline for receipt of applications. In order to accept any award made, women were required to irrevocably waive their right to take further legal action and to discontinue any legal action already in train. The "deed of waiver and indemnity" requires not only to irrevocably waive "all [their] rights and entitlements (if any) to claim or demand damages, interest, costs, expenses or any other remedy whatsoever (whether existing or otherwise) arising out of or relating to the carrying out of a surgical symphysiotomy or pubiotomy", but also to "indemnify and hold harmless" the individuals and bodies responsible for human rights abuses inflicted upon her.<sup>80</sup> This approach denies these women their rights to seek truth, justice and reparation from those who perpetrated human rights abuses against them, rights that are at the very core of the international human rights system.

#### **Amnesty International recommends that the State Party:**

- establishes an impartial, independent and efficient investigation into all human rights violations and abuses suffered by women and girls in the Magdalene Laundries. The investigation should have a broad mandate, including to analyse underlying and contextual factors and make recommendations for reparations to victims and survivors beyond the existing *ex gratia* scheme, including guarantees of non-repetition. The investigation should have powers to subpoena witnesses, including officials, as well as relevant documents, and should seek input from victims and survivors and be mandated to issue a public report. Any admissible indicating that identified individuals may have been responsible for criminal offences, including torture or other ill-treatment, should be passed to the relevant law enforcement agencies for criminal investigation.

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<sup>76</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, 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 alleged abuses of children and women in these institutions. 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>

<sup>77</sup> See <https://www.amnesty.org/en/news/ireland-tuam-babies-mass-grave-allegations-must-spark-urgent-investigation-2014-06-05>.

<sup>78</sup> Concluding observations on the combined sixth and seventh periodic reports of Ireland, UN Doc. [CEDAW/C/IRL/6-7](#), 9 March 2017, para. 14.

<sup>79</sup> Concluding observations on the fourth periodic report of Ireland, UN Doc. [CCPR/C/IRL/CO/4](#), 19 August 2014, para. 11. See also [CEDAW/C/IRL/6-7](#), 9 March 2017, para. 16.

<sup>80</sup> The list of those individuals and bodies a woman must "indemnify and hold harmless" includes "all doctors, consultants, obstetricians, surgeons, medical staff, midwives, nursing staff, administrative staff", any hospital, and the "Medical Missionaries of Mary and/or any Religious Order involved in the running of any hospital".

- ensures that the 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;
- conducts a prompt, independent and thorough investigation into cases of symphysiotomy; repeal the waiver and indemnity provisions in the *ex gratia* compensation scheme, and extend the timeframe for applying for payments to allow those women who have declined to accept its limitations on their human rights to reconsider applying.



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# IRELAND

## SUBMISSION TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE

Amnesty International submits this briefing to the United Nations (UN) Committee against Torture (the Committee) ahead of its examination, in July 2017, of Ireland's second periodic report<sup>1</sup> on the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention or the Convention against Torture). This written submission highlights Amnesty International's concerns regarding torture in Irish law, deportations and counter-terrorism, 'renditions', Ireland's abortion laws, female genital mutilation, and accountability for alleged past abuses. As such, it is not an exhaustive account of Amnesty International's concerns regarding the implementation of the Convention by Ireland.