Opening Statement to the Oireachtas Joint Committee on the

Eight Amendment to the Constitution

Christina Zampas, J.D.

Reproductive and Sexual Health Law Fellow
International Reproductive and Sexual Health Law Program, Faculty of Law,
University of Toronto
4 October 2017

1. Introduction

Thank you and congratulations on this important work you are embarking on and the transparent and open process with which you are deliberating this challenging and important issue of abortion law reform. It is a testament to the country's commitment to an open and democratic process, the foundation for the realization of human rights for all.

I would like to briefly begin by introducing myself. I am an international human rights lawyer with almost 20 years' experience working on sexual and reproductive rights issues, including abortion. I have done consultancy work for UN agencies, such as World Health Organization (WHO); UNAIDS; Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Population Fund (UNFPA) and have worked for international NGOs. I began my working life in the US Senate for my Senator from New Jersey and have also worked with parliamentary organizations since then. I have first-hand experience of your work as parliamentarians and its challenges, and the very important contribution you can make to the realization of human rights in your country.

This varied experience has enabled me to look at the issue of abortion from various perspectives and in many parts of the world, from El Salvador to Poland to Ghana. I have analyzed laws from a human rights perspective for WHO and other UN agencies, conducted litigation in this area for NGOs, and have talked to women and adolescents, and doctors and family members about the impact abortion regulation has on women's and girls' health and human rights.

While this range of experience will be brought into my statement before this Joint Committee, as an international human rights lawyer, the scope of my presentation will be primarily focused on human rights standards, which is what this Committee has asked me to present.

The purpose of my statement today is to outline human rights standards in relation to abortion and state obligations thereof. I hope it can be helpful as you proceed in addressing the recommendations of the Citizens Assembly.

2. Human Rights Law and Ireland

I want to first begin by saying that States themselves create international human rights law, which is based on humankind's common understanding about the inherent dignity and rights of every human being—a notion which is shared across religious and non-religious ethical frameworks alike. States create this law, through drafting and adopting treaties, then voluntarily ratifying them and thereby agreeing to be legally bound by their provisions; through creating the UN human rights bodies and then

electing their members; and then deliberating with them through their processes and respecting their outcomes. Ireland has been an important player in the development of the human rights system: helping create binding treaties, and voluntarily ratifying them; and by nominating and electing members to the UN treaty bodies, which are comprised of independent experts that monitor state compliance with human rights treaties. Ireland has also sat on the Human Rights Council, the UN's most important inter-governmental body on human rights, responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations.

Importantly, Ireland, has time and again, in many areas, respected its human rights obligations. And it has done so, not just because these treaties are legally binding under international law, but because they provide guidance on how to address complex and sometimes competing interests in light of the reality of what people are experiencing; because they are practical and because they are grounded in evidence.

In the area of gender equality, of which sexual and reproductive health and rights is an integral part, Ireland has been a global leader. It is a foreign policy priority for Ireland. I have seen first-hand how your government officials at the UN have played an important role in advancing gender equality globally, including on sexual and reproductive health and rights issues.

3. Human Rights Obligations Regarding Addressing Unwanted Pregnancy and Abortion

Reproductive rights have long been recognized as human rights and are enshrined in international treaty provisions.[1]

These human rights standards are based on evidence--public health evidence and evidence of individual's experiences in accessing reproductive and sexual health services. The World Health Organization has generated decades of authoritative public health evidence around abortion and why access to abortion is essential to safeguarding and promoting women's and girls' health and their human rights.[2]

International human rights bodies have long recognized that a wide range of human rights guarantees are undermined when women and girls do not have access to safe abortion services, particularly where abortion is restricted and/or criminalized. These include the right to life, health and right to privacy, which includes bodily integrity, the right to be free from discrimination and from torture and other ill-treatment and the right to be free from gender-based violence.

The right to health requires states to take legal and policy measures to prevent unintended pregnancies and unsafe abortions, including to '... liberalize restrictive abortion laws; to guarantee women and girls access to safe abortion services and quality post-abortion care... and to respect the right of women to make autonomous decisions about their sexual and reproductive health."[3]

Human rights bodies have considered such failures to ensure women's and girls' access to abortion to be forms of discrimination and inequality in the enjoyment of rights. The UN Committee on the Elimination of Discrimination against Women (CEDAW) has confirmed that measures to eliminate discrimination against women and girls are inappropriate if a health-care system lacks services to prevent, detect and treat health concerns specific to women and girls, noting that it is "discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women."[4]

The urgency of the human rights concerns in Ireland is reflected in serious human rights violations amounting to cruel, inhuman and degrading treatment, as found in the *Mellet* and *Whelan* cases against Ireland. The UN Human Right Committee held in these two cases that prohibiting and criminalizing abortion in situations of fatal fetal impairment, subjected these women to 'conditions of intense physical and mental suffering', and that no justification can be invoked or extenuating circumstance to excuse such harm.[5] This assessment of the suffering inflicted by Ireland's abortion law was confirmed by the UN Committee against Torture in August.[6]

Human rights bodies have also long recognized the causative link between maternal deaths and restrictive and/or criminal abortion laws articulating them as a violating the right to life of pregnant women and girls.[7] Human rights bodies have also held that a woman's decision to continue or terminate a pregnancy falls within the sphere of the right to privacy--which includes bodily integrity, holding that restrictive laws and practices interfere with a woman's decision, and violate the right to privacy.[8] They consider failures to ensure women and girls' access to reproductive health services, including safe and legal abortion, to be forms of discrimination and inequality in the enjoyment of rights.[9]

Human rights bodies have long stated that to comply with human rights obligations, states should decriminalize abortion, liberalize restrictive laws and remove barriers that hinder access to safe abortion.[10] While they have noted that states must ensure access to abortion in cases of threat to the woman's life or health, in cases of rape or incest and in cases of severe or fatal fetal impairment,[11] they have also called on states which allow abortion only on such minimum grounds, to liberalize their laws.[12]

This is because human rights bodies are recognizing the problems of narrow laws framed around 'minimum grounds' in that they 1-do not guarantee effective access to lawful abortion and 2-that women and adolescent girls seek abortions for various reasons, many of which do not fall under these grounds,[13] and that there are harms and human rights implications in these cases as well, especially for marginalized women.[14] Last year four UN experts issued a joint global statement where they recommended 'the good practice found in many countries which provide women's access to safe abortion services, on request during the first trimester.'[15] Just last week, three UN experts called on states to ensure access to safe abortion for *all* women who need them, recognizing the impact restrictive laws can have on particularly vulnerable groups, such as adolescents and poor women, and called on states to decriminalize abortion.[16]

UN human rights treaty bodies have also recognized this reality by directing states to address abortion in a more general manner. The Committee on Economic, Social and Cultural Rights (CESCR) calls on states to "liberalize restrictive abortion laws" and "guarantee access to safe abortion services and quality post-abortion care."[17] The Committee on the Rights of the Child (CRC) recognizes that a continuum of care is essential during pregnancy, including "safe abortion services and post-abortion care" and recommended that "states ensure access to safe abortion and post-abortion care services."[18] Furthermore, CEDAW advises states to "ensure that sexual and reproductive health care includes access to… safe abortion services."[19]

Another expert body, the UN Working Group on Discrimination against Women recommends that States should "recognize women's right to be free from unwanted pregnancies" 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, and that states should "allow women to terminate a pregnancy on request during the first trimester" or later, on minimum grounds.[20]

The World Health Organization too recognizes that restrictive legal grounds for abortion and other legal, regulatory and administrative barriers in access to abortion contribute to unsafe abortion because they "deter women from seeking care… cause delay in access to services, which may result in denial of services due to gestational limits on the legal grounds…create complex and burdensome administrative procedures."[21]

The Citizens Assembly recommendation on access to abortion without restriction as to reason, is in line with these human rights norms.

4. Elimination of Discrimination Against Women and Achievement of Equality

Although a wide range of laws and policies ultimately determine whether women's and girls' equality and right to be free from discrimination and other fundamental human rights, are a priority for states, trusting women and adolescents to make autonomous decisions about their sexuality and reproduction is central, including the to decide whether to carry a pregnancy to term. The UN Committee on Economic, Social and Cultural Rights has explicitly articulated increased access to abortion, as well as other sexual and reproductive health services, within states' obligation to "respect the right of women to make autonomous decisions" about their health.[22] UN experts have noted that restrictive laws and policies on abortion not only contravene human rights law, but also "negate [women's] autonomy in decision-making about their own bodies." [23] The UN Committee on the Rights of the Child has called on countries, including Ireland, to ensure that that the views of the pregnant girl are always heard and respected in abortion decisions.[24] The Committee on the Elimination of Discrimination against Women has expressed concerns about a convoluted abortion law, "making women dependent on the benevolent interpretation of a rule which nullifies their autonomy", and noted that the State party should "review the abortion law and practice with a view to simplifying it and to ensure women's autonomy to choose."[25]

Having respect for women and girls decision-making agency reflected in the law, is a key indicator of the degree to which women's equality is respected.[26] The achievement of substantive equality requires states to understand how women, and subgroups of women, are disadvantaged in practice by laws, policies and institutions. The Committee on the Elimination of Discrimination against Women has long recognized that neglecting, overlooking or failing to accommodate women's specific health needs, including in relation to pregnancy, is a form of discrimination against women.[27]

Over the past few decades, many countries have liberalized their abortions laws, allowing for expanded access to legal abortion.[28] Several of these countries adopted permissive laws that go beyond stating grounds.[29] These countries have grounded their laws on protecting the health and human rights of women and girls, including on principles of equality and the right to non-discrimination.

Laws which do not place women at the center of care, and not respect their decision-making, wherever those laws are, from to Poland, to El Salvador to Kenya and the Philippines, undoubtedly cause harm to all women, but particularly marginalized women.

I have observed in my almost two decades of work on this issue, that undoubtedly, in every country with a restrictive law, the most impacted are vulnerable populations, such as women migrants, women with low economic status, women with disabilities, and adolescents. And Ireland is no exception. The United Nations human rights bodies have time and again, including against Ireland, recognized the

discriminatory effects of restrictive and criminal regulation on women's access to lawful abortion on the basis of sex, race, age, geographical location and income.[30]

The World Health Organization has underlined that restricting legal access to abortion leads to illegal and often unsafe abortions, and *to social inequities*--including because of the burden of travel-- it does not result in fewer abortions or in significant increases in birth rates. [31] The WHO has explained that: "[r]estricting 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," and that in some countries with restrictive abortion laws women seek safe abortions from neighboring countries where abortion services are legal, "which is costly, delays access and creates social inequities." [32] At the same time, it has outlined that, "laws and policies that facilitate access to safe abortion do not increase the rate or number of abortions. The principal effect is to shift previously clandestine, unsafe procedures to legal and safe ones." [33]

5. Barriers to achieving substantive equality for women in the protection of their reproductive health

Barriers to achieving equality in the context of reproductive and sexual health are numerous and can act in ways that negatively impact access to health services beyond abortion, including in the context of wanted pregnancies.[34] One of these barriers is the criminalization of abortion.

Human rights bodies have called on states to decriminalize abortion, which means that abortion is no longer regulated by criminal legislation, and is not a criminal offense.

In addressing the impact of the harm of criminal law has on the particularly vulnerable group of adolescents, the Children's Rights Committee has urged states, including Ireland, to decriminalize abortion [35] in "all circumstances."[36] It has urged states "to ensure that girls have access to safe abortion and post-abortion services."[37] The UN Committee on the Elimination of Discrimination against Women (CEDAW) has also said that laws that criminalize medical procedures only needed by women are barriers to health care and that criminalization, as well as denial or delay of safe abortion and post abortion care, are "forms of gender-based violence that…may amount to torture or cruel, in human or degrading treatment" and that countries should repeal this criminal legislation.[38] It explains that legislation that criminalizes abortion enshrines, encourages, facilitates, justifies or tolerates a form of gender-based violence, and has recommended that countries repeal legislation that criminalizes abortion.[39]

Human Rights bodies recognize that criminalization of abortion contributes to stigmatization and creates a chilling effect on access to lawful services. In the *Mellet* case, the UN Human Rights Committee recognized how the criminalization of abortion degraded and stigmatized Ms. Mellet through separating her from the standard way of treating patients and forcing her to travel, and that 'the shame and stigma associated with the criminalization of abortion' had exacerbated her suffering.[40]

Human rights bodies have also recognized the negative impact of the chilling effect of criminal law on the exercise of professional judgment in providing women and girls with care and have called on states to alleviate its effects, including by decriminalizing abortion.[41] In *ABC v Ireland* the European Court of Human Rights noted that it 'considers it evident that the criminal provisions of the 1861 Act would constitute a significant chilling factor for both women and doctors in the medical consultation process, regardless of whether or not prosecutions have in fact been pursued under that Act.¨ [42]

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions in her report on gender also recognizes that restrictive abortion laws and barriers to abortion can create a chilling effect which could be harmful to women's health and may constitute a gender-based arbitrary deprivation of life. [43] She specifically notes that where States have a 'conditional ban', or create barriers to accessing abortion where it is legal **'**the uncertainty surrounding the process of establishing whether a woman's pregnancy poses a risk to her life, the medical profession's reticence in the absence of transparent and clearly defined procedures to determine whether the legal conditions for a therapeutic abortion are met, along with the threat of criminal prosecution – all of these have a "significant chilling" effect both on doctors and the women concerned and altogether greatly increase the likelihood of women seeking unsafe abortion, and the likelihood that a substantive proportion of them will suffer lasting injuries or die. Depending on the individual circumstances of each case, one may be able to conclude that these deaths constitute an arbitrary deprivation of life.' [44]

Criminal provisions present barriers to not only abortion, but also to other reproductive health services, impacting the quality of care that women receive in pregnancy and childbirth, including in the context of miscarriages.[45]

Some national courts understand that the criminal law, as well as other ways of restricting abortion, cause harm and are not a proportionate means to achieve a state's objective to protect prenatal life.[46] For example, European Constitutional Court decisions across Europe, including in Croatia, Germany, Portugal, and Slovakia have upheld abortion on request laws when faced with challenges due to claims of constitutional protection for prenatal life.[47] While these Courts acknowledge that the state has a legitimate interest in protecting prenatal life, the select means of protecting prenatal life must be consistent with women's rights. In doing so, these Courts have referenced their countries' respective obligations under international human rights treaties, including principles which requires states to select choice-supporting means of protecting prenatal life over choice-restricting means. [48]

Placing women and girls at the center of care, does not mean that states should ignore fetal interests, certainly the objective of protecting prenatal life is legitimate, but that this can be achieved in ways that are consistent with women's rights and that support women.[49] In addition, the evidence is clear that criminal abortion laws are not effective in meeting the states objective of protecting prenatal life, as they do not affect the overall incidence of abortion, they just make it unsafe and burdensome.[50]

This approach is line with international and European regional human rights norms. No international or European human rights treaty or treaty monitoring body or Court has provided that right to life treaty provisions apply before birth. This includes the European Court of Human Rights and UN human rights treaty bodies.[51] This was confirmed by the Council of Europe Commissioner for Human Rights in his report on his visit to Ireland last year: 'The Commissioner stresses that the Eighth Amendment of the Irish Constitution, protecting the right to life of the unborn on an equal basis with the right to life of the pregnant woman, departs from the position consistently held by human rights bodies that the right to life, as enshrined in relevant international treaties, does not apply to prenatal life. Given the crucial role the Amendment plays in preventing a comprehensive reform of the legal regime governing the termination of pregnancy in Ireland, he strongly hopes that it will be removed soon.'[52] In addition, in a landmark case against Peru where a sexually assaulted child was not provided with an abortion, in part because of state measures to protect prenatal life, the UN Committee on the Elimination of Discrimination against Women found violations of the Convention confirming that fetal interests cannot trump the human rights of women and girls.[53]

UN human rights bodies, including the Committee on the Rights of the Child, which interprets and monitors compliance with the Convention on the Rights of the Child, have repeatedly specified that access to safe abortion services is an important part of ensuring women and girls human rights, including their right to life, to the highest attainable standard of health, to privacy, to be free from ill-treatment and discrimination, and the best interests of the child principle in cases of pregnant adolescents. They have long referenced achieving reductions in the rate of abortion, not through restrictive abortion laws or mandating recognition of 'the right to life of the unborn', but through increased access to family planning services and comprehensive sexuality education, to safe motherhood services and prenatal assistance, including to reduce spontaneous miscarriage, and to social and economic protection to ease burdens of having children.[54]

6. Procedural and Other Barriers

Before concluding, I would like to reinforce that taking a human rights approach to efforts to reform abortion requires putting women and girls at the center of care, so that regulation of abortion is consistent with their human rights. This includes any procedural or other barriers to abortion, which can impact the ability to access safe and legal abortion services in practice. Human rights require that, "in cases where abortion procedures may lawfully be performed, all obstacles to obtaining them should be removed."[55]

Human rights bodies have recommended to states to remove barriers such as **parental consent** requirements for girls and **financial barriers** to abortion services.[56] They have also specified that where health practitioners are allowed under domestic law to refuse to provide abortion services on **grounds of conscience**, States must adopt a regulatory framework that guarantees that women's and girls' access to abortion services is not undermined by such practices.[57] They have raised concern over **judicial or prosecutorial authorization prior to obtaining an abortion on grounds of rape**, and **multiple provider authorization** requirements, including to Ireland in relation to the Protection of Life During Pregnancy Act.[58] They have also urged State parties to eliminate and refrain from adopting **mandatory counselling and medically unnecessary waiting periods** requirements prior to abortion,[59] and to ensure that "health care professionals provide **medically accurate and non-stigmatizing information** on abortion."[60] The WHO has also recommended that "regulatory, policy and programmatic barriers that hinder access to and timely provision of safe abortion care should be removed."[61]

Access to information is critical to the realization of all human rights, and in the context health care, including sexual and reproductive health care, states have an obligation, not to censor, withhold, misrepresent information or criminalize information to the public in general and to individuals.[62] The UN Special Rapporteur on Torture has affirmed that 'access to information about reproductive health is imperative to a woman's ability to exercise reproductive autonomy, and the right to health and to physical integrity.'[63] The European Court of Human Rights, in two cases concerning lack of access to lawful abortion, found Poland in violation of the European Convention on Human Rights for lack of proper counseling and information on abortion.[64] Human rights bodies have time and again provided criticism to Ireland on its restrictions on access to information provided in the Regulation of Information (Services Outside the State For Termination of Pregnancies) Act of 1995, noting that they should be repealed or amended to ensure access to sexual and reproductive health information that is human rights compliant.[65] The WHO also emphasizes that the information given to women who are seeking abortion services must be unbiased, non-directive, and provided only on the basis of informed consent.[66]

7. Conclusion

These human rights standards show that narrow exceptions to abortion bans are inadequate to eliminate harms that such laws impose on women and girls. The Protection of Life During Pregnancy Act, is an unfortunate testament to how grounds based laws can hinder women's and girls' rights and harm their health. The urgency of the problem is reflected in the recent decisions of the UN Human Rights Committee against Ireland.

Well-functioning abortion laws are guided by and directed at protecting women's and girls' health and human rights. The human rights framework and its obligations provides a common sense, evidence – based, practical approach to not only permit expanded access to abortion but also to ensure the delivery and availability of quality abortion services. Combined with guidance from the public health field (WHO), human rights enable states to help realize women's equality, regardless of their age, income or background.

---

[1] See Convention on the Elimination of All Forms of Discrimination against Women, Articles 12, 16; the Committee on Economic, Social and Cultural Rights, General Comment No. 22 (2016) on the right to sexual and reproductive health; the Committee on the Rights of Persons with Disabilities, General Comment 3 on Article 6 women and girls with disabilities (2016); Children's Rights Committee General Comments No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (2013) and General Comment 20 on the implementation of the rights of the child during adolescence (2016); the Committee on the Elimination of Discrimination against Women (CEDAW) General Recommendation 24 on women and health (1999); see also Programme of Action of the ICPD, para. 7.3, Cairo, Egypt, September 5-13, 1994.

[2] Johnson, R., et al., A global database of abortion laws, policies, health standards and guidelines *Bulletin of the World Health Organization* 2017;95:542-544. doi: http://dx.doi.org/10.2471/BLT.17.197442; World Health Organization, Safe abortion: technical and policy guidance for health systems (2012); World Health Organization, Safe abortion: technical and policy guidance for health systems (2003) Health worker roles in providing safe abortion care and post-abortion contraception. Geneva: World Health Organization (2015).

[3] The Committee on Economic, Social and Cultural Rights, General Comment No. 22 on the right to sexual and reproductive health, para 28 (2016); see also, *L.C. v. Peru*, CEDAW Committee, Communication No. 22/2009, para. 9(b)(i), (2011); CESCR Committee, Concluding Observations Ireland, para. 30, U.N. Doc. E/C.12/IRL/Co/3 (2015); CEDAW Committee, General Recommendation No. 24: Article 12 of the Convention (Women and Health), para. 14, (1999); CEDAW Committee, Concluding Observations: Poland, paras. 36, 37(a)-(c), (2014); CEDAW Committee, Concluding Observations: Andorra, paras. 31(a)-(c), 32(a), (2013); CEDAW Committee, Concluding Observations: Liechtenstein, paras. 38-39 (2011); CEDAW Committee, Concluding Observations: The United Kingdom of Great Britain and Northern Ireland, paras. 50-51, (2013); CEDAW Committee, Concluding Observations: Malta, paras. 34-35, (2010); CEDAW Committee, Concluding Observations: New Zealand, paras. 33-34, (2012), CESCR Committee, Concluding Observations: Poland, paras. 46-47, (2016); CESCR Committee, Concluding Observations: Nicaragua, para. 26, (2008); CRC Committee, Concluding Observations: Poland, paras. 38-39, (2015); CRC Committee, Concluding Observations: Costa Rica, para. 64(d) (2011).

[4] CEDAW Committee, General Recommendation No. 24, (1999) paras. 11-12; CESCR, General Comment No. 22, paras. 9-10, 28 and 34; Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, paras. 16, 34, U.N. Doc. A/66/254 (Aug. 3, 2011); UN. Working Group on the Issue of Discrimination against Women in Law and Practice, *Report of the Working Group*, Human Rights Council, para. 23 (2016); *Alyne da Silva Pimentel Teixeira (deceased) v. Brazil*. CEDAW Communication No. 17/2008 (2011); See also *Mellet v Ireland*, Human Rights Committee, Communication no. 2324/2013 (2016), concurring opinions of members: Cleveland, Ben Achour, and Rodríguez Rescia, de Frouville and Salvioli.

[5] *Mellet v Ireland*, Human Rights Committee, Communication no. 2324/2013, para 7.4, and 7.6 (2016); *Whelan v Ireland*, Human Rights Committee Communication No. 2425/2014 (2017), para. 7.7; See also, *P. and S. v. Poland*, No. 57375/0 Eur. Ct. H.R. (2012); *R.R. v. Poland*, No. 27617/04 Eur. Ct. H.R., paras. 159-160 (2011); *Mellet v. Ireland*, Human Rights Committee, Communication No. 2324/201, para 7.4 (2016); *L.M.R. v. Argentina*, Human Rights Committee, Communication No. 1608/2007, (2011), *K.L. v. Peru*, Human Rights Committee, Communication No. 1153/2003, (2005); Human Rights Committee, Concluding

Observations: Ireland, para. 9, (2014); Human Rights Committee, Concluding Observations: Malta, para. 13, (2014); Human Rights Committee, Concluding Observations: Nicaragua (2008); CAT Committee, Concluding Observations: Poland, para. 23, (2013); CAT Committee, Concluding Observations*: Peru,* para. 15, (2013); CAT Committee, Concluding Observations*: Nicaragua*, para. 16, (2009); CAT Committee, Concluding Observations*: El Salvador*, para. 23, (2009);

[6] Committee against Torture, Concluding Observations: Ireland, para. 31, (2017).

[7] See Human Rights Committee, Concluding Observations: Ireland, para. 9 (2014); Human Rights Committee, Concluding Observations: San Marino, paras 14-15 (2015); Human Rights Committee, Concluding Observations: El Salvador, para. 14 (2004); Human Rights Committee, General Comment 28; Article 3, the Equality of Rights Between Men and Women, para 10 (2000).

[8] Human Rights Committee, Concluding Observations: Ireland, para. 9, (2014); *Mellet v. Ireland*, Human Rights Committee (2016) para. 7.8; *Tysiaç v. Poland*, No. 5410/03 Eur. Ct. H.R. (2007); *R.R. v. Poland*, No. 27617/04 Eur. Ct. H.R. (2011); *P. and S. v. Poland*, No. 57375/0 Eur. Ct. H.R. (2012); *A, B and C v. Ireland*, No. 25579/05 Eur. Ct. H.R (2010); Human Rights Committee, *L.M.R. v. Argentina*, Communication No. 1608/2007 (2011); Human Rights Committee, *K.L. v. Peru*, Communication No. 1153/2003, para 6.4 (2005).

[9] CEDAW Committee, General Recommendation No. 24, (1999) paras. 11-12; CESCR, General Comment No. 22, paras. 9-10, 28 and 34; Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, paras. 16, 34, U.N. Doc. A/66/254 (Aug. 3, 2011); UN. Working Group on the Issue of Discrimination against Women in Law and Practice, *Report of the Working Group*, Human Rights Council, para. 23 (2016).

[10] See, e.g., Human Rights Committee, Concluding Observations: Jamaica, para. 14, U.N. Doc. CCPR/C/JAM/CO/3 (2011) (urging the state to "amend its abortion laws to help women avoid unwanted pregnancies and not to resort to illegal abortions that could put their lives at risk. The State party should take concrete measures in this regard, including a review of its laws in line with the Covenant."); Human Rights Committee, Concluding Observations: Mali, para. 14, U.N. Doc. CCPR/CO/77/MLI (2003); Human Rights Committee, Concluding Observations: Djibouti, para. 9, (2013); Human Rights Committee, Concluding Observations: Ireland, para. 13, (2008). See also Human Rights Committee, General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women), (68th Sess., 2000), para. 10, (2000).

[11] See, for example, Human Rights Committee Concluding Observations: Ireland, para 9 (2014); CEDAW Committee Concluding Observations: Ireland, para. 43, (2017); *Mellet v. Ireland*, Human Rights Committee, Communication no. 2324/2013, (2016); Human Rights Committee, *K.L. v. Peru*, Communication No. 1153/2003 (2005); *L.C. v Peru,* CEDAW Committee, Communication No.22/2009 (2011).

[12] Human Rights Committee, Concluding Observations: Poland, para. 8, (2004); CESCR Committee, Concluding Observations: Poland, para. 29 (2002); CEDAW Committee, Concluding Observations: New Zealand, para. 34, (2012); CRC Committee, Concluding Observations: Zimbabwe, para. 60(c) (2016); CRC Committee: Poland, para. 39(b) (2015).

[13] Chae, S. Desai, S, Crowell, M. Sedgh, G. Reasons why women have induced abortions: a synthesis of findings from 14 countries. Contraception

[14] Human Rights Committee, Concluding Observations: Poland, para. 8, (2004); CESCR Committee, Concluding Observations: Poland, para. 29 (2002); CEDAW Committee, Concluding Observations: New Zealand, para. 34, (2012); CRC Committee, Concluding Observations: Zimbabwe, para. 60(c) (2016); CRC Committee: Poland, para. 39(b) (2015); CESCR Committee: Concluding Observations: Poland, paras 46-47 (2016).

[15] UN Office of the High Commissioner for Human Rights, **'**Unsafe abortion is still killing tens of thousands of women around the world' – UN rights experts warn, 28 Sept 2016. Alda Facio, Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; Dainius Pūras, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Juan E. Méndez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Dubravka Šimonović, Special Rapporteur on violence against women. http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20600&LangID=E

[16] UN Office of the High Commissioner for Human Rights, ' International Safe Abortion Day-Thursday 28 September 2017. *Safe abortions for all women who need them - not just the rich, say UN experts'* 27 Sept. 2017. The UN experts: Kamala

Chandrakirana, Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; Dubravka Simonovic, Special Rapporteur on violence against women, its causes and consequences; Dainius Pûras, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Ms. Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions. http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22167&LangID=E

[17] The Committee on Economic, Social and Cultural Rights, General Comment No. 22 on the right to sexual and reproductive health, para 28 (2016).

[18] Committee on the Rights of the Child, General Comment No. 15, Right of the Child to the Enjoyment of the Highest Attainable Standard of Health, 7-8, paras. 54, 70 (2013).

[19] CEDAW General Recommendation No. 30: on women in conflict prevention, conflict and post-conflict situations, para 52 (c) (2013); See also CEDAW Committee, Concluding Observations: New Zealand, para. 35(a), (2012) (permitting abortion where pregnancy poses a risk to the woman's physical or mental health and in instances of rape or incest to amend its abortion law "to ensure women's autonomy to choose."); CEDAW Committee, Concluding Observations: Sierra Leone, para. 32 (2014).

[20] Report of the U.N. Working Group on Discrimination against Women in Law and Practice, para. 107(b and c) (2016).

[21] World Health Organization, Safe Abortion Guidance, page 94 (2013).

[22] The Committee on Economic, Social and Cultural Rights, General Comment No. 22 on the right to sexual and reproductive health, para 28 (2016).

[23] UN Office of the High Commissioner for Human Rights, 'Unsafe abortion is still killing tens of thousands women around the world' – UN rights experts warn, 28 Sept 2016. Alda Facio, Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; Dainius Pūras, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Juan E. Méndez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Dubravka Šimonović, Special Rapporteur on violence against women. http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20600&LangID=E

[24] Committee on the Rights of the Child Concluding Observations: Ireland, (2016), para. 58(a); Committee on the Rights of the Child Concluding Observations: Morocco (2014), para. 57 (b); Committee on the Rights of the Child Concluding Observations: Kuwait (2013), para.60; Committee on the Rights of the Child Concluding Observations: Sierra Leone (2016), para. 32 (c); Committee on the Rights of the Child Concluding Observations: United Kingdom of Great Britain and Northern Ireland (2016), para. 65 (c).

[25] CEDAW Concluding Observation: New Zealand (2012), paras. 34-35.

[26] R.J. Cook & S. Howard. "Accommodating Women's Differences under the Women's Anti-Discrimination Convention" (2007) 56 Emory L.J. 1039, 1050.

[27] CEDAW General Recommendation 24, paras, 6, 11, 12 (1999); *Alyne da Silva Pimentel Teixeira (deceased) v. Brazil*. CEDAW Communication No. 17/2008 (2011); Cook, R.J. & V. Undurraga, "Article 12 [Health]" in M. Freeman, C. Chinkin and B. Rudolf (eds.), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Comm*entary (Oxford University Press, 2012) 311-333. 326-7; *see also* CESCR, General Comment No. 22, paras. 9-10, 28 and 34; Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, paras. 16, 34, U.N. Doc. A/66/254 (Aug. 3, 2011); UN. Working Group on the Issue of Discrimination against Women in Law and Practice, *Report of the Working Group*, Human Rights Council, para. 23 (2016); *Mellet v Ireland*, Human Rights Committee, Communication no. 2324/2013 (2016), concurring opinions of members: Cleveland, Ben Achour, and Rodríguez Rescia, de Frouville and Salvioli.

[28]Marge Berer, Abortion Law and Policy Around the World, Health and Human Rights Journal, 2017 June; 19(1): 13-27, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5473035/#r31

[29] Marge Berer, Abortion Law and Policy Around the World, Health and Human Rights Journal, 2017 June; 19(1): 13-27, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5473035/#r3; See liberalizations in Albania, Cambodia, Fiji, Guyana,

Luxembourg, Nepal, Portugal, South Africa, Spain, Switzerland, Uruguay; Abortion Worldwide: 20 years of reform, Center for Reproductive Rights, 2014
https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/20Years_Reform_Report.pdf

[30] *Mellet v Ireland*, Human Rights Committee, Communication no. 2324/2013 (2016); Human Rights Committee Concluding Observation: Ireland, para. 9 (2016); CESCR Committee Concluding Observations: Ireland, para 30 (2015); Committee against Torture Concluding Observation: Ireland, para 26 (2011)Working Group on Discrimination Against Women Report on Health and Safety, para 107 (2016); CESCR General Comment 22 (2016); see also CEDAW General Recommendation 24,para 6 (1999); See also, Cook, R.J. & V. Undurraga, "Article 12 [Health]" in M. Freeman, C. Chinkin and B. Rudolf (eds.), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Comm*entary (Oxford University Press, 2012) 311-333. 326-7.

[31] World Health Organization, Safe Abortion: Technical and Policy Guidance for Health Systems, page 90 (2012).

[32] World Health Organization, Safe Abortion: Technical and Policy Guidance for Health Systems, page 90 (2012).

[33] World Health Organization, Safe Abortion: Technical and Policy Guidance for Health Systems, page 90 (2012).

[34] See, for example, Report of the UN Working Group on the issue of discrimination against women in law and in practice, UN Doc. A/HRC/32/44 (2016), para. 79; Human Rights Committee Concluding Observation: Argentina, paras 11-12 (2016).

[35] CRC Concluding Observations: Gambia, (2015), para. 63(b); CRC Concluding Observations: Dominican Republic, (2015), para. 52(d); and CRC Concluding Observations: Morocco (2014), para. 57(b).

[36] Committee on the Rights of the Child concluding Observations: Ireland, (2016), para. 58(a); Committee on the Rights of the Child concluding Observations: Peru, (2016), para. 56(b); Committee on the Rights of the Child concluding Observations: Kenya, (2016), para. 50(b); Committee on the Rights of the Child concluding Observations: Haiti, (2016), para. 51(c); Committee on the Rights of the Child concluding Observations: Senegal, para. 54(d).

[37] CRC General Comment 20 on the implementation of the rights of the child during adolescence (2016), para 60.

[38] CEDAW General Recommendation 24 on women and health, (1999) para 31(c); CEDAW General Recommendation 35 on violence against women (2017), paras. 18 and 31 (a).

[39] CEDAW General Recommendation 35 on gender based violence against women, updating general recommendation 19, (2017), para 31 (a).

[40] *Mellet v Ireland*, Human Rights Committee, Communication no. 2324/2013 (2016), para. 7.4

[41] See, for example, *A, B and C v. Ireland*, No. 25579/05 Eur. Ct. H.R. (2010), para 254; *Tysiac v. Poland* No. 5410/03, Eur. Ct. H. R. (2007), para 116; *RR v. Poland No*. 27617/04, Eur. Ct. H. R. (2011), para 193; CRC Concluding Observations: Gambia, (2015), para. 63(b); CRC Concluding Observations: Dominican Republic, (2015), para. 52(d); CRC Concluding Observations: Morocco, (2014), para. 57(b); CEDAW General Recommendation 35, (2017) para. 18, 31 (a); CRC Concluding Observations: Ireland, para 58 (a) (2016); CEDAW Concluding Observations: Ireland, para. 43 (2017)

[42] *A, B and C v. Ireland*, No. 25579/05 Eur. Ct. H.R. (2010), para 254; see also Commissioner for Human Rights of the Council of Europe, Report by Nils Muižnieks, Following His Visit to Ireland from 22 to 25 November 2016 (29 March 2017), paras 82 and 92.

[43] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings, (2017), paras 94-95 http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/23

[44] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings, (2017), para 95 http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/23

[45] *Report of the UN Working Group on the issue of discrimination against women in law and in practice*, UN Doc. A/HRC/32/44 (2016), para. 79; CEDAW Concluding Observations: El Salvador (2017), para 36(a); See also

[46] Veronica Undurraga, Proportionality in the Constitutional Review of Abortion Law, in *Abortion Law in Transnational Perspective* (Cook, Erdman and Dickens eds.) 2014 University of Penn Press, page 77.

[47] See, for example, Ustavni sud Republike Hrvatske, Constitutional Court of the Republic of Croatia (21 February 2017); Portuguese Constitutional Court, Acórdão n.o 75/2010 (2010); Ústavný súd Slovenskej republiky, Constitutional Court of the Slovak Republic, PL. ÚS 12/01 (Dec. 4, 2007).

[48] See, Portuguese Constitutional Court, Acórdão n.o 75/2010 (2010); Ústavný súd Slovenskej republiky, Constitutional Court of the Slovak Republic, PL. ÚS 12/01 (4 December2007).

[49] See Reva B. Siegel, ProChoice Life: Asking Who Protects Life and How- and Why it Matters in Law and Politics, 93 Indiana Law Journal (forthcoming 2018) at 1.

[50] Gilda Sedgh, Susheela Singh, Iqbal H. Shah, Elizabeth Ahman, Stanley Henshaw and Akinrinola Bankole, Induced Abortion: Incidence and Trends Worldwide From 1995 to 2008," *The Lancet* 379, No. 9816 (2012): 625-632; World Health Organization, Safe Abortion: Technical and Policy Guidance for Health Systems (2012), p. 23.

[51] *See, e.g.,* Vo v. France, No. 53924/00 Eur. Ct. H. R., para. 82 (2004); X v. the United Kingdom, No. 7215/75 Eur. Ct. H. R. (1981); H. v. Norway, No. 17004/90 Eur. Ct. H. R. (1992); Boso v. Italy, No. 50490/99, Eur. Ct. H. R. (2002-VII); A, B and C v. Ireland, No. 25579/05 Eur. Ct. H. R., para. 227-228 (2010); Open Door and Dublin Well Woman v. Ireland, No. 14235/88 Eur. Ct. H.R., para. 68 (1992)

[52] Commissioner for Human Rights of the Council of Europe, Report by Nils Muižnieks, Following His Visit to Ireland from 22 to 25 November 2016 (29 March 2017), para 93.

[53] *L.C. v. Peru*, CEDAW Committee, Communication No. 22/2009 (2011), paras. 8.8, 8.12, 8.15; See also CEDAW Concluding Observation to Hungary (2013), paras 30-31.

[54] See, for example, CRC Concluding Observations: Ireland (2016), para 58; CESCR General Comment 22 (2016), paras. 28, 63; Human Rights Committee Concluding Observations: Ecuador, para. 11 (1998); CEDAW Committee Concluding Observations: Burundi, para. 62, (2001); Concluding Observations of the CEDAW Committee: Chile, para. 229, U.N. Doc. A/54/38 (1999); CEDAW Committee Concluding Observations: Chile, para. 20, (2006); CEDAW Committee Concluding Observations Georgia, para. 112, (1999); CEDAW Committee Concluding Observations: Greece, para. 208, U.N. Doc. A/54/38 (1999); CEDAW Committee: Concluding Observations: Ireland, para. 186, (1999); CEDAW Committee Concluding Observations: Kazakhstan, paras. 76 and 106 (2001); CEDAW Committee Concluding Observations: Lithuania, para. 159, (2000); CEDAW Committee Concluding Observations: Mongolia, para. 274 (2001); CEDAW Committee Concluding Observations: Nicaragua, para. 301 (2001); CEDAW Committee Concluding Observations: Slovenia, para. 119 (1997).

[55] Human Rights Committee, Concluding Observations: Argentina, para. 14, U.N. Doc. CCPR/CO/70/ARG (2000); see also CESCR, Concluding Observations: Argentina, para. 22, (2011); CESCR, Concluding Observations: Poland, para. 28, (2009); CEDAW, Concluding Observations: India, para. 41, (2007); CEDAW, Concluding Observations: Poland, para. 25 (2007); see also Tysiac v. Poland No. 5410/03, Eur. Ct. H. R. (2007); RR v. Poland No. 27617/04, Eur. Ct. H. R. (2011); See also, Commissioner for Human Rights of the Council of Europe, Report by Nils Muižnieks, Following His Visit to Ireland from 22 to 25 November 2016 (29 March 2017), para 95.

[56] See, for example, CRC Concluding Observations: Latvia, paras 50 and 51 (2016); CESCR Concluding Observations: Slovakia (2012), para.24; CEDAW Concluding Observations: Slovakia (2015), paras 30 and 31; CESCR Concluding Observations: Kyrgyzstan (2015), para 22. UN Special Rapporteur on Health, report on Ghana, para 40; CESCR Concluding Observations; Kenya (2008); CRC Committee, General Comment No. 15: The right of the child to the enjoyment of the highest attainable standard of health, paras. 21, 31, (2013); Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Rep. of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, para. 60, U.N. Doc. A/HRC/32/32 (2016).

[57] See, for example*, CESCR, General Comment 22, para 43 (2016);* Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*,* Interim rep. of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, U.N. Doc. A/66/254 (Aug. 3, 2011), para. 24*;* Human Rights Committee Concluding Observations: Argentina*, para. 14, (2000);* see also *CESCR,* Concluding Observations:

Argentina*, para. 22, (2011);* CESCR*,* Concluding Observations: Poland*, para. 28,* (2009); CEDAW, Concluding Observations: India*,* para. 41, (2007*);* CEDAW, Concluding Observations: Poland*, para. 25,* (2007); *CEDAW,* Concluding Observations: Hungary*, para. 31(d), (2013);* CRC, Concluding Observations: Slovakia*,* para. 41(f); CEDAW General Recommendation No. 24: Article 12 (2009) para. 11*;* See also, Commissioner for Human Rights of the Council of Europe, Report by Nils Muižnieks, Following His Visit to Ireland from 22 to 25 November 2016 (29 March 2017), para. 95.

[58] Children's Rights Committee Concluding Observations: Cameroon, para 35 (2017); Human Rights Concluding Observations: Bolivia, para 9 (2013); Human Rights Concluding Observations: Rwanda, paras 17 and 18 (2016), Human Rights Concluding Observations: Ireland (2014), para 9; CEDAW Concluding Observations: New Zealand, (2012), paras 33-34: CEDAW CO on Timor-Leste (2015) paras. 30- 31; Commissioner for Human Rights of the Council of Europe, Report by Nils Muižnieks, Following His Visit to Ireland from 22 to 25 November 2016 (29 March 2017), para 77.

[59] CEDAW, Concluding Observations: Hungary, para. 31(c), (2013); CEDAW, Concluding Observations Russian Federation, paras. 35(b), (2015); CEDAW, Concluding Observations: Slovakia, para. 31(c) (2015); CESCR, General Comment No. 22: on the right to sexual and reproductive health, para. 41 (2016).

[60] See for example, CRC Concluding Observations: Slovakia, para. 41(e) (2016); see also, CEDAW Committee, Concluding Observations: Costa Rica, paras. 32, 33 (2011); CEDAW Concluding Observations, Kuwait, paras. 42-43, (2011).

[61] World Health Organization, Safe Abortion Guidance, pages 9 and 94 (2013).

[62]The Committee on Economic, Social and Cultural Rights, General Comment No. 22 (2016) on the right to sexual and reproductive health, para 41; the Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) on the right to the highest attainable standards of health, para 34.

[63] Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, (2013), para. 47.

[64] *R.R. v Poland,* European Court of Human Rights, App. No. 27617/04 (2011), paras. 159-160, 197-198; *P and S v Poland*, European Court of Human Rights, App. No. 5735/08 (2012), paras. 108, 167-169.

[65] Human Rights Committee Concluding Observations: Ireland (2014), para. 9; CEDAW Concluding Observations: Ireland, (2017), para. 43 (c); CESCR Concluding Observations: Ireland, (2015), para 30.

[66] World Health Organization, Safe abortion: technical and policy guidance for health systems, pages 36, 97 (2012).