

IN THE EUROPEAN COURT OF HUMAN RIGHTS

***I.Z. v. Poland* and 4 other applications**

Application Nos.

57338/21, 60699/21, 646/22, 1255/22, 8179/22

Written Submission

on behalf of Amnesty International, the Center for Reproductive Rights, Human Rights Watch, the International Commission of Jurists , the International Federation for Human Rights, the International Planned Parenthood Federation European Network, Women Enabled International, Women’s Link Worldwide and the World Organisation against Torture

2 December 2022

I. Introduction

1. These submissions are presented on behalf of Amnesty International, the Center for Reproductive Rights, Human Rights Watch, the International Commission of Jurists, the International Federation for Human Rights, the International Planned Parenthood Federation European Network, Women Enabled International, Women's Link Worldwide and the World Organisation against Torture pursuant to the leave to intervene granted by the President of the First Section of the European Court of Human Rights (the Court) as notified in a letter dated 14 October 2022 from the Section Registrar. Please see the annex below for a brief description of each organisation.
2. In the last 15 years, there have been very significant developments in international human rights law and standards, which clearly affirm that human rights obligations require the repeal of prohibitions on abortion,¹ and the enactment of legal frameworks that enable individuals to obtain safe abortion care.² International and European human rights bodies and experts have issued numerous landmark decisions,³ findings,⁴ General Comments/Recommendations,⁵ Concluding Observations,⁶ and reports⁷ that recognise that

¹ The term 'prohibitions on abortion' is used throughout to refer to highly restrictive abortion laws that broadly ban or strictly limit legal abortion and only allow abortion in certain exceptional and limited circumstances.

² Prohibitions on abortion can affect all persons who can become pregnant, including all women, girls, non-binary persons, transgender men. The term women and girls is used in these written comments in an inclusive and non-exclusionary manner.

³ United Nations Human Rights Committee (HRC), *Mellet v. Ireland* (2016), CCPR/C/116/D/2324/2013; *Whelan v. Ireland* (2017), CCPR/C/119/D/2425/2014.

⁴ Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/OP.8/GBR/1 (2018).

⁵ HRC, General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, para. 8, CCPR/C/GC/36 (2018); Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 22: on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), paras. 10, 13, 28, 34, 40, 41, 45, 49(a), E/C.12/GC/22 (2016); Committee on the Rights of the Child (CRC), General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, para. 60, CRC/C/GC/20 (2016); General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), CRC/C/GC/15 (2013); CEDAW, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, paras. 18, 29(c)(i), CEDAW/C/GC/35 (2018); General Recommendation 33 (2015) on women's access to justice, CEDAW/C/GC/33 (2015), para. 51(I).

⁶ See, e.g., CRC, Concluding Observations: Poland, para. 35, CRC/C/POL/CO/5-6 (2021); Malta, para. 33, CRC/C/MLT/CO/3-6 (2019); Committee against Torture, Concluding Observations: Poland, paras. 33-34, CAT/C/POL/CO/7 (2019); United Kingdom of Great Britain and Northern Ireland, paras. 46-47, CAT/C/GBR/CO/6 (2019); HRC, Concluding Observations: Poland, paras. 23-24, CCPR/C/POL/CO/7 (2016); United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/7 (2015); San Marino, paras. 14- 15, CCPR/C/SMR/CO/3 (2015); Italy, paras. 16-17, CCPR/C/ITA/CO/6 (2017); Ireland, CCPR/C/IRL/CO/4 (2014); CEDAW, Concluding Observations: Andorra, paras. 35-36, CEDAW/C/AND/CO/4 (2019); Macedonia, paras. 37(d), 38(d), CEDAW/C/MKD/CO/6 (2018); Germany, paras. 37(b), 38(b), CEDAW/C/DEU/CO/7-8 (2017); CESCR, Concluding Observations: Spain, paras. 43-44, E/C.12/ESP/CO/6 (2018); Poland, paras. 46-47, E/C.12/POL/CO/6 (2016). HRC, Concluding Observations: Poland, para. 24(b), CCPR/C/POL/CO/7 (2016); CESCR, Concluding Observations: Slovakia, para. 42(e), E/C.12/SVK/CO/3 (2019).

⁷ See, e.g., Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Sexual and reproductive health rights: challenges and opportunities during the COVID-19 pandemic, paras. 22, 40-41, A/76/172; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, para. 46, A/HRC/22/53 (2013); Report of the Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment, A/HRC/31/57 (2016); Council of Europe, Commissioner for Human Rights, Women's sexual and reproductive health and rights in Europe (2017).

in order to comply with their obligations under international human rights law, States should a) decriminalise abortion in all circumstances, b) repeal prohibitions on abortion, including specifically in situations of risk to health or life, severe foetal impairment and non-viable pregnancies, pregnancies resulting from sexual assault, and in all other cases where women would have to resort to unsafe abortions, and c) remove other legal and policy barriers that hinder access to legal abortion care.

3. They have also called on States to refrain from adopting any retrogressive legislative reforms that would restrict access to safe abortion.⁸
4. Drawing on international and European human rights law and standards, and European comparative law, these submissions address the following:
 - a. Prohibitions on abortion as a violation of Article 3 of the European Convention on Human Rights (the Convention),
 - b. Prohibitions on abortion as a violation of Article 8 of the Convention.
5. These submissions rely on two well-established and interrelated principles of Convention interpretation developed by the Court. First, as the Court has observed on many occasions, the Convention cannot be interpreted in a vacuum and should as far as possible be interpreted in harmony with other rules of international law of which it forms part.⁹ As a result, the Court has repeatedly taken into account the content of other relevant international legal rules and principles applicable to the Contracting Parties, as well as the interpretation of such elements by competent organs, including the decisions and jurisprudence of other international legal bodies on similar questions.¹⁰ Second, that the Convention is a living instrument which must be interpreted in light of present-day conditions,¹¹ and thus the Court has recognised that the exact content of the rights that the Convention guarantees is not fixed or immutable, but instead evolves over time in response to social developments in the Contracting Parties, in international law and jurisprudence and in comparative European law.¹²

II. Prohibitions on abortion as a violation of Article 3 of the Convention

6. International human rights bodies have unambiguously and repeatedly affirmed that women and girls who are denied access to abortion care due to prohibitions on abortion may endure severe anguish, and mental and physical suffering reaching the minimum level of severity necessary to engage the absolute prohibition of torture or other ill-treatment.¹³

⁸ HRC, Concluding Observations: Poland, para. 24(b), CCPR/C/POL/CO/7 (2016); CESCR, Concluding Observations: Slovakia, para. 42(e), E/C.12/SVK/CO/3 (2019). Council of Europe, Commissioner for Human Rights, Women's sexual and reproductive health and rights in Europe (2017) p. 11.

⁹ *Hassan v. The United Kingdom* (2014), Application no. 29750/09 Eur. Ct. H.R. [G.C] para. 77.

¹⁰ *Demir & Baykara v. Turkey* (2008), App. No 34503/97 Eur. Ct. H.R. [G.C] paras 65-67; *Opuz v. Turkey* (2009) App. no. 33401/02 Eur. Ct. H.R. para. 185, holding that the Court shall refer to "the decisions of international legal bodies."

¹¹ *Tyrer v. The United Kingdom*, App. no. 5856/72 Eur. Ct. H.R. para. 31.

¹² *Demir & Baykara v. Turkey* (2008), App. No 34503/97 Eur. Ct. H.R. [G.C] paras. 141-142.

¹³ See, e.g., HRC, *Mellet v. Ireland* (2016), CCPR/C/116/D/2324/2013; *Whelan v. Ireland* (2017), CCPR/C/119/D/2425/2014; HRC, *K.L. v. Peru* (2005), para. 6.3, CCPR/C/85/D/1153/2003; General Comment

Since the Grand Chamber’s decision in *A, B and C. v. Ireland*, international jurisprudence has clearly recognised that certain prohibitions on abortion predictably expose women to severe suffering, including severe mental anguish and painful stigma, by denying them the ability to end their pregnancies safely and legally in their country of residence thereby compelling them to continue pregnancies against their will, or to travel abroad to seek health care, or to seek an unsafe abortion.¹⁴

7. The United Nations Human Rights Committee decided two seminal cases in 2016 and 2017, which involved applicants who were prohibited from accessing abortion care in Ireland following diagnoses of fatal foetal impairment. In the cases of *Mellet v. Ireland* and *Whelan v. Ireland*, the Human Rights Committee found Ireland in violation of the international prohibition on torture, cruel, inhuman and degrading treatment or punishment and recognised that “[b]y virtue of the existing legislative framework which prohibited abortion, the State party subjected the author to conditions of intense physical and mental suffering,” which violated their rights under Article 7 of the International Covenant on Civil and Political Rights.¹⁵ The Human Rights Committee held, in the context of examining the harm caused by a prohibition on abortion that, “[t]he legality of a particular conduct or action under domestic law does not mean that it cannot infringe article 7 of the Covenant.”¹⁶ The Human Rights Committee recognised that the physical and mental anguish and suffering caused to both applicants by virtue of Ireland’s legal prohibition on abortion was compounded by the resulting break-down in the continuum of care and the conditions under which the applicants had to travel abroad to obtain abortion care.¹⁷
8. In both cases, the Human Rights Committee recognised that when women decide to end a pregnancy, and as a result of laws prohibiting abortion are denied the ability to do so in their home country and are instead forced to travel to another country to obtain safe and legal abortion care, they endure significant hardship and distress. The Human Rights Committee’s reasoning clearly identifies the unlawfulness of denying access to abortion care, and the resulting need to travel, as determinative factors that increased the level of suffering. The Committee noted that the degree of anguish and torment the applicants in *Whelan* and *Mellet* suffered was made no less acute or tolerable by the knowledge that the medical care they sought was illegal in their home jurisdiction, or by the fact that they could legally travel to another jurisdiction to obtain care. The Committee held that “many of the negative experiences described ... could have been avoided if the author had not been

No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, para. 8, CCPR/C/GC/36 (2018); CEDAW, Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/OP.8/GBR/1 (2018), para. 65; General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35 (2017), para. 18; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/22/53 (2013), para. 46; Report of the Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment, A/HRC/31/57 (2016), paras. 42-44.

¹⁴ *Ibid.*, *A, B and C v. Ireland* (2010), App. no. 25579/05, Eur. Ct. H.R. [GC], para 160-165.

¹⁵ HRC, *Mellet v. Ireland* (2016), para. 7.4 and 7.6, CCPR/C/116/D/2324/2013; *Whelan v. Ireland* (2017), para. 7.5, CCPR/C/119/D/2425/2014.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

prohibited from terminating her pregnancy in the familiar environment of her own country and under the care of the health professionals whom she knew and trusted."¹⁸

9. The Human Rights Committee in its General Comment No 36 has provided authoritative guidance regarding States' international human rights obligations when regulating access to abortion finding that, "*restrictions on the ability of women or girls to seek abortion must not, inter alia, jeopardize their lives, subject them to physical or mental pain or suffering that violates article 7 of the Covenant, discriminate against them or arbitrarily interfere with their privacy. ... In addition, States parties may not regulate pregnancy or abortion in all other cases in a manner that runs contrary to their duty to ensure that women and girls do not have to resort to unsafe abortions, and they should revise their abortion laws accordingly.*"¹⁹

10. The Committee on the Elimination of Discrimination against Women (CEDAW Committee) has also clearly articulated that laws prohibiting abortion may give rise to torture or other ill-treatment.²⁰ It has held that the deliberate "*maintenance of criminal laws disproportionately affecting women and girls, subjecting them to severe physical and mental anguish that may amount to cruel, inhuman and degrading treatment,*"²¹ violates the CEDAW Convention. In its inquiry into the legal prohibition on abortion in Northern Ireland, the CEDAW Committee found that the prohibition resulted in grave and systematic violations of the CEDAW Convention. The CEDAW Committee held that "[A] *restriction affecting only women from exercising reproductive choice, and resulting in women being forced to carry almost every pregnancy to full term, involves mental or physical suffering constituting violence against women and potentially amounting to torture or cruel, inhuman and degrading treatment.*"²²

11. Prohibitions on abortion predictably cause women and girls suffering that breach the absolute prohibition on torture or other ill-treatment, in particular where they affect individuals who are especially at risk or marginalised.²³ Recent jurisprudence makes it clear that prohibitions on abortion will often be found to have caused pain and suffering sufficient to amount to ill-treatment.²⁴ In *Mellet and Whelan*, the Human Rights Committee recognised the ways in which the applicants were predictably harmed by the prohibition on abortion.²⁵ It found that they faced little access to information and a breach in the continuum

¹⁸ HRC, *Whelan v. Ireland* (2017), para. 7, CCPR/C/119/D/2425/20145.

¹⁹ HRC, General Comment No. 36, para 8, CCPR/C/GC/36 (2018).

²⁰ CEDAW, *L.C. v. Peru*, (2009), CEDAW/C/50/D/22/2009. General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35 (2017).

²¹ CEDAW, Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (2018), para. 72(a), CEDAW/C/OP.8/GBR/1.

²² *Ibid.* para 65.

²³ HRC, *Mellet v. Ireland* (2016), para. 7.4, CCPR/C/116/D/2324/2013; *Whelan v. Ireland* (2017), para. 7.5, CCPR/C/119/D/2425/2014; *K.L. v. Peru* (2005), para 6.2, CCPR/C/85/D/1153/2003.

²⁴ HRC, *Mellet v. Ireland* (2016), CCPR/C/116/D/2324/2013; *Whelan v. Ireland* (2017), CCPR/C/119/D/2425/2014; CEDAW Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/OP.8/GBR/1 (2018) para 29.

²⁵ HRC, *Mellet v. Ireland* (2016), CCPR/C/116/D/2324/2013; *Whelan v. Ireland* (2017), CCPR/C/119/D/2425/2014.

of medical care and feelings of abandonment by their own health system. The applicants were also separated from family and emotional support due to having to travel to another jurisdiction. They had to travel back home while not fully recovered. They had to also endure the shame and stigma associated with the criminalisation of abortion. Often those that travel out of their own country to obtain abortion care also experience delays in care that can result in increased health risks and inability to access care within legal time limits.

12. Under international law, States have positive obligations to take measures to ensure that individuals are not subject to torture or other ill-treatment.²⁶ In particular, they must take steps to ensure effective protection against torture or other ill-treatment for individuals at increased risk of the same, particularly when it could reasonably be expected.²⁷ International human rights bodies have affirmed that, as a result of these positive obligations, States may not regulate abortion care in a manner that could subject individuals to physical or mental pain or suffering amounting to torture or other ill-treatment.²⁸ This Court has also acknowledged that acts and omissions on the part of State authorities in the field of health care policy may reach the required threshold to engage Article 3 due to the failure to provide appropriate medical care.²⁹
13. Similarly, the World Health Organization (WHO) has recognised that criminalisation and denial of abortion may amount to torture and ill-treatment and recommended that States must ensure that regulation of abortion does not expose individuals to substantial pain and suffering that could amount to ill-treatment.³⁰

III. Prohibitions on abortion as a violation of Article 8 of the Convention

14. It is well-established under the Court's jurisprudence that laws which restrict women's exercise of autonomous decision-making regarding reproductive health, including whether to continue a pregnancy, engage Article 8 of the Convention.³¹ The question for this Court is whether legal prohibitions and restrictions on abortion are permissible under Article 8(2) of the Convention. In order to comply with the strict requirements of Article 8(2), the Court has repeatedly confirmed that limitations on the right to respect for private life must be prescribed by law, serve a legitimate aim, be necessary in a democratic society and be proportionate.³² Recent developments in international human rights jurisprudence make it clear that prohibitions on abortion do not meet these criteria, and international human rights

²⁶ *Z and Others v. the United Kingdom* (2001), App. no. 29392/95, Eur. Ct. H.R. [GC], para. 73; *A. and Others v. the United Kingdom* (2009), App. no. 3455/05, Eur. Ct. H.R. [GC], para. 22; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (2006), App. no. 13178/03, Eur. Ct. H.R., paras. 53-54.

²⁷ *Osman v. the United Kingdom* (1998), App. no. 23452/94, Eur. Ct. H.R. [GC], para. 116; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (2006), App. no. 13178/03, Eur. Ct. H.R., paras. 53-54

²⁸ HRC, General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, para. 8, CCPR/C/GC/36 (2018); Council of Europe, Commissioner for Human Rights, Women's sexual and reproductive health and rights in Europe (2017), at 52-53.

²⁹ See, e.g., *R.R. v. Poland* (2011), App. No. 27617/04, Eur. Ct. H.R., para. 152; *P. and S. v. Poland* (2013), App. no. 57375/08, Eur. Ct. H.R., para. 160; *V.C. v. Slovakia* (2012), App. no. 18968/07, Eur. Ct. H.R., paras. 106-120.

³⁰ World Health Organization (WHO), Abortion care guideline (2022), <https://bit.ly/3NlmgBu> p. 9.

³¹ *R.R. v. Poland* (2011), App. no. 27617/04, Eur. Ct. H.R., paras. 180-181; *P. and S. v. Poland* (2013), App. no. 57375/08, Eur. Ct. H.R., para. 96; *Tysi c v. Poland* (2007), App. no. 5410/03, Eur. Ct. H.R., paras. 106-107;

³² *Berrehab v. Netherlands*, Application no. 10730/84, 11 EHRR 322, 21 June 1988, at [22 – 29].

bodies have repeatedly held that prohibitions on abortion violate the right to respect for private life, among other human rights.³³

a) Interferences arising from rulings by a court that is not independent and impartial do not meet the requirement of “in accordance with the law”

15. For an interference with the right to respect for private life to meet the “in accordance with law” requirement, the interference must not only comply with national law and be clear, foreseeable and adequately accessible, it must also be compatible with the rule of law.³⁴ The concept of the rule of law requires “*a measure of legal protection in domestic law against arbitrary interferences by public authorities.*”³⁵ The independence and impartiality of the judiciary is a prerequisite and core requirement of the rule of law. Where an interference with the right to respect for private life arises from the ruling of a national judicial body, the assessment of the quality of the law and compliance with the rule of law test in Article 8(2) requires an examination of the judicial body’s independence and impartiality. Where the national judicial body does not meet the standards of independence and impartiality required for a “tribunal established by law”,³⁶ the quality, character and legality of its rulings may be compromised and vitiated so as to fall short of what the rule of law requires, and thus may not be “in accordance with the law” as required by the Convention.³⁷

b) Prohibitions on abortion cannot be considered “necessary in a democratic society”

16. To satisfy the test under the Convention, any interference with the right to respect for private life must serve a legitimate aim, be proportionate and not give rise to discrimination on prohibited grounds.³⁸ As such, the interference must be appropriate and relevant to achieving the aim, the least intrusive possible, proportionate to the interest to be protected, and consistent with other human rights.³⁹ Prohibitions on abortion cannot be considered “necessary in a democratic society.” Such interferences negatively affect core aspects of the existence, dignity, and identity of women and girls, as such they constitute discrimination on prohibited grounds and harm women’s right to equality before the law. They do not advance a legitimate aim and are not capable of achieving any pressing social need.

³³ HRC, *Mellet v. Ireland* (2016), para. 7.8, CCPR/C/116/D/2324/2013; *Whelan v. Ireland* (2017), para. 7.9, CCPR/C/119/D/2425/2014; *Tysiaç v. Poland* (2007), App. no. 5410/03 Eur. Ct. H.R.; *R.R. v. Poland* (2011), App. no. 27617/04, Eur. Ct. H.R.; *P. and S. v. Poland* (2013), App. no. 57375/0 Eur. Ct. H.R.; *A, B and C v. Ireland* (2010), App. no. 25579/05, Eur. Ct. H.R. [GC]; HRC, *K.L. v. Peru* (2005), para. 6.4, CCPR/C/85/D/1153/2003; *L.M.R. v. Argentina* (2011), CCPR/C/101/D/1608/2007.

³⁴ *Halford v. the United Kingdom* (1997), App. no. 20605/92, Eur. Ct. H.R., para. 49.

³⁵ *Malone v. the United Kingdom* (1985), App. no. 8691/79, Eur. Ct. H.R., para. 67.

³⁶ *Guðmundur Andri Ástráðsson v. Iceland* (2020), App. no. 26374/18, Eur. Ct. H.R.; *Xero Flor v. Poland* (2021), App. no. 4907/18, Eur. Ct. H.R., paras. 287, 289-91.

³⁷ *Dolinska-Ficek and Ozimek v. Poland* (2021), App. nos. 49868/19, 57511/19, Eur. Ct. H.R., para. 319.

³⁸ *Dudgeon v. the United Kingdom* (1981), App. no. 7525/76, Eur. Ct. H.R., para. 43

³⁹ *Dudgeon v. the United Kingdom* (1981), App. no. 7525/76, Eur. Ct. H.R., paras. 43, 54; *Olsson v. Sweden* (no. 1) (1988), App. no. 10465/83, Eur. Ct. H.R., para. 68; *K. and T. v. Finland* (2001), App. no. 25702/94, Eur. Ct. H.R. [GC], para. 154.

17. Retrogressively introduced prohibitions on abortion are inherently suspect. The introduction of retrogressive measures will almost never be permissible.⁴⁰ As such, new legal restrictions on access to abortion will immediately call into question compliance with international human rights law and standards.⁴¹

18. The assessment of whether an interference is necessary in a democratic society should also take account of the basis of that interference. As discussed above, where an interference with the right to respect for private life results from a decision of a court that cannot be considered “a tribunal established by law” and where such a ruling constitutes a retrogressive measure that removes existing rights protections, it cannot be considered “necessary in a democratic society” as it is contrary to fundamental rule of law principles.

c) Prohibitions on abortion affect core elements of the existence and identity of women and girls, cause them grave harm and discriminate on prohibited grounds

19. Interferences with the right to respect for private life that detrimentally interfere with particularly important aspects of an individual’s existence or identity will rarely be permissible.⁴² Individual decisions regarding pregnancy and whether or not to have a child necessarily concern particularly important aspects of a person’s existence and identity. Prohibitions on abortion restrict a form of health care that women and girls require and prevent them from making fundamental decisions about their bodies, health, lives, families and futures with far reaching consequences for their existence and identity. Such prohibitions often cause individuals grave harm, including physical and mental suffering and anguish, by forcing them to choose between carrying a pregnancy to term against their will, traveling abroad to obtain a legal abortion or seeking an unsafe abortion. For many individuals travel may not be a viable option due to financial and other constraints. By denying individuals the ability to end a pregnancy legally and safely in their country of residence, prohibitions on abortion expose individuals to significant risks to their physical and mental health and well-being. Prohibitions on abortion do not take account of the right to respect for private life of women and girls who need access to abortion care to preserve and protect their autonomy, dignity and personal, bodily and psychological integrity.

20. Furthermore, where an interference with the right to respect for private life gives rise to discrimination on prohibited grounds, such as on the basis of sex or gender, very weighty reasons have to be advanced for that interference to be compatible with the Convention.⁴³

⁴⁰ See CESCR, General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, para. 1), para. 9, E/1991/23 (1990); HRC, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, para. 8, CCPR/C/GC/36 (2018); International Commission of Jurists, Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Guideline 14(e): Violations through Acts of Commission (1997); Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, Principle 72, E/CN.4/1987/17 (1987).

⁴¹ See CESCR, General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, para. 1), para. 9, E/1991/23 (1990); General Comment 14: The Right to the Highest Attainable Standard of Health (Art. 12), paras. 32, 48, 50, E/C.12/2000/4 (2000); General Comment No. 22: on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), para. 38, E/C.12/GC/22 (2016).

⁴² *Parrillo v. Italy* (2015), App. no. 46470/11, Eur. Ct. H.R. [GC], para. 169; *Fedotova and Others v. Russia* (2021), App. nos. 40792/10, 30538/14, 43439/14, Eur. Ct. H.R., para. 47.

⁴³ *Abdulaziz, Cabales and Balkandali v. the United Kingdom* (1985), App. nos. 9214/80; 9473/81; 9474/81, Eur. Ct. H.R., para. 78; *Burghartz v. Switzerland* (1994), App. no. 16213/90, Eur. Ct. H.R., para. 27.

Women and girls have historically suffered overwhelming gender-based discrimination. Prohibitions on abortion have been found to be discriminatory as they affect health care that women and girls need and prevent them from exercising reproductive choices, affront their autonomy and their right to self-determination, and offend their equal status.⁴⁴

d) The overwhelming majority of Contracting Parties have legalised abortion on request

21. Today, almost all Contracting Parties have removed prohibitions on abortion and have legalised abortion on request or on broad grounds.⁴⁵ Only five countries, Andorra, Liechtenstein, Malta, Monaco and Poland maintain highly restrictive abortion laws. In the past decade, prohibitions on abortion have been removed in Cyprus, Gibraltar, Iceland, Ireland, Isle of Man, Northern Ireland and San Marino, demonstrating clear social developments towards the broad legalisation of abortion. Poland and Malta are the only EU member States that have not yet reformed their highly restrictive laws; legal reform is now underway to remove the total prohibition of abortion in Malta. Poland is the only EU member State to have removed a legal ground for abortion from its law in recent history, following the 2020 decision of the Constitutional Tribunal. As outlined above, over the past decade, significant developments in international law and jurisprudence have repeatedly confirmed the impermissible nature of interferences with the right to respect for private life caused by prohibitions on abortion, and almost all Contracting Parties to the Convention have now repealed prohibitions on abortion and legalised abortion on request or on broad grounds.

e) Prohibitions on abortion do not advance a legitimate aim or pressing social need and are not proportionate

22. Prohibitions on abortion are unsuitable and detrimental measures which cannot be considered appropriate or justified interferences under Article 8. Public health evidence demonstrates that “*the legal status of abortion makes no difference to a woman’s need for an abortion, but it dramatically affects her access to safe abortion.*”⁴⁶ As such, prohibitions on abortion only lead to increased health risks for those who need abortion care, including by delaying their access to care.

23. Where interferences with the right to respect for private life are purportedly justified with reference to the ‘protection of morals,’ such justification should be particularly carefully scrutinised given the vague and ill-defined concept of morals. Careful scrutiny of prohibitions on abortion reveals the grave forms of harm they inflict, without any regard for the right to respect for private life. Given the severity of the harm caused, prohibitions

⁴⁴ CEDAW, Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (2018), paras. 59, 65, CEDAW/C/OP.8/GBR/1.

⁴⁵ Center for Reproductive Rights World Abortion Map. <https://reproductiverights.org/maps/worlds-abortion-laws/> Center for Reproduction Rights, European Abortion Law Factsheet. <https://reproductiverights.org/european-abortion-law-fact-sheet/>.

⁴⁶ World Health Organization (WHO), Abortion care guideline (2022), <https://bit.ly/3NlmgBu>.

on abortion cannot be considered a proportionate interference with the right to respect for private life.

f) Positive obligations under Article 8 to respect and protect the rights of women and girls and their access to abortion care

24. In *Tysi c v. Poland*, *R.R. v. Poland* and *P. and S. v. Poland*, this Court reiterated that Contracting Parties have positive obligations under Article 8 to adopt measures designed to secure respect for private life.⁴⁷ It underscored that Contracting Parties have, “a positive obligation to create a procedural framework enabling a pregnant woman to exercise her right of access to lawful abortion.”⁴⁸ In those three cases this Court found that Poland’s failure to ensure practical and enforceable access to legal abortion and prenatal diagnostic testing amounted to violations of the State’s positive obligations under Article 8 of the Convention.⁴⁹
25. Article 8 further entails positive obligations on States to ensure effective respect for the right to private life, including by establishing a legal framework guaranteeing the effective protection of rights guaranteed by Article 8.⁵⁰ The national legal framework should ensure respect for the right to personal autonomy, personal development and self-fulfilment, including with respect to individual decisions to have or not to have children. The right to respect for private life further protects a person’s physical and psychological integrity and States are under a positive obligation to secure the right to effective respect for this integrity.⁵¹
26. Prohibitions on abortion affect the fundamental life choices and decisions of women and girls in a myriad of significant ways. These include decisions about if and when to engage in sexual intercourse, to use contraception, the choice of contraceptive method, to become pregnant or to have a child.⁵² Prohibitions prevent women and girls from exercising personal autonomy and decision making about their bodies, health, families and lives and thus violate States’ positive obligations to guarantee respect for personal autonomy.⁵³ Such prohibitions have a profound impact on the physical and psychological integrity of women

⁴⁷ *R.R. v. Poland* (2011), App. no. 27617/04, Eur. Ct. H.R., paras. 185; *P. and S. v. Poland* (2013), App. no. 57375/08, Eur. Ct. H.R., para. 96; *Tysi c v. Poland* (2007), App. no. 5410/03, Eur. Ct. H.R., paras. 106-107; 110. *A, B and C v. Ireland* (2010), App. no. 25579/05, Eur. Ct. H.R. [GC] paras 244-246.

⁴⁸ *R.R. v. Poland* (2011), App. No. 27617/04, Eur. Ct. H.R., para. 200.

⁴⁹ *R.R. v. Poland* (2011), App. no. 27617/04, Eur. Ct. H.R., paras.241; *P. and S. v. Poland* (2013), App. no. 57375/08, Eur. Ct. H.R., para. 100; *Tysi c v. Poland* (2007), App. no. 5410/03, Eur. Ct. H.R., paras. 130.

⁵⁰ *P. and S. v. Poland* (2013), App. no. 57375/08, Eur. Ct. H.R., para. 95; *R.R. v. Poland* (2011), App. no. 27617/04, Eur. Ct. H.R., para. 184; *Tysi c v. Poland* (2007), App. no. 5410/03, Eur. Ct. H.R., para. 110; *Fedotova and Others v. Russia* (2021), App. nos. 40792/10, 30538/14, 43439/14, Eur. Ct. H.R., para. 44.

⁵¹ *Glass v. the United Kingdom* (2004), App. no. 61827/00, Eur. Ct. H.R., ECHR 2004-II, paras. 74-83; *Pentiacova and Others v. Moldova* (2005), App. no. 14462/03, Eur. Ct. H.R., ECHR 2005-I; *Odi vre v. France* [GC, 2003], App. no. 42326/98, Eur. Ct. H.R., ECHR 2003-III.

⁵² Report of the UN Working Group on the issue of discrimination against women in law and practice (2016), paras. 14 – 18, A/HRC/32/44.

⁵³ HRC, *Mellet v. Ireland* (2016), para. 7.4, CCPR/C/116/D/2324/2013; *Whelan v. Ireland* (2017), para. 7.5, CCPR/C/119/D/2425/2014; General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life (2018), para. 8, CCPR/C/GC/36; CEDAW, Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (2018), para. 72(a), CEDAW/C/OP.8/GBR/1.

and girls seeking abortion care. The most recent WHO guideline on abortion recognises that *“as a standard approach to human rights based health care, all norms, standards and clinical practice related to abortion should promote and protect: individuals’ health and human rights; informed and voluntary decision making; autonomy in decision-making; non-discrimination (including intersectional discrimination) and equality; confidentiality and privacy; adequate referral mechanisms; the continuum of care.”*⁵⁴ The WHO has included comprehensive abortion care in the list of essential health services and has outlined how disrupting or disempowering individuals’ right to reproductive autonomy, can expose them to preventable health risks.⁵⁵ The WHO guideline makes it clear that to fulfil the right to reproductive autonomy, States should make abortion care available on the request of women, girls or other pregnant persons.⁵⁶

⁵⁴ World Health Organization (WHO), Abortion care guideline (2022), <https://bit.ly/3NlmgBu>; Center for Reproductive Rights, WHO’s New Abortion Guideline: Highlights of Its Law and Policy Recommendation, (March 2022) at [CRR-Fact-sheet-on-WHO-Guidelines.pdf \(reproductiverights.org\)](https://reproductiverights.org/CRR-Fact-sheet-on-WHO-Guidelines.pdf).

⁵⁵ World Health Organization (WHO), Abortion care guideline (2022),. 13–14, 22.

⁵⁶ World Health Organization (WHO), Abortion care guideline (2022), pp. 26–27.

Annex – Submitting Organisations

Amnesty International is an international non-governmental, non-profit organization representing the largest grassroots human rights movement in the world with more than ten million members and supporters. Amnesty International's mission is to advocate for global compliance with international human rights law, the development of human rights norms, and the effective enjoyment of human rights by all persons. It monitors state compliance with international human rights law and engages in advocacy, litigation, and education to prevent and end human rights violations and to demand justice for those whose rights have been violated. Amnesty International has researched, documented and campaigned on the human rights violations due to criminalisation of abortion and restrictive abortion laws in different countries, and engaged in strategic litigation before international and regional human rights bodies in cases challenging restrictive abortion laws and their application. Amnesty International has also long-standing experience of research work on the situation of the independence of the judiciary in Poland in 2017, 2018, 2019, and 2020 and continues to monitor the issue.

The **Center for Reproductive Rights** is a global non-governmental human rights organisation dedicated to ensuring respect and legal protection for women's human rights in the sphere of reproductive health. The Center works across Europe to advance women's sexual and reproductive health and rights and its expertise on comparative European law on reproductive rights and the harmful impact of highly restrictive abortion laws is regularly requested by the Council of Europe Commissioner for Human Rights and the United Nations human rights mechanisms. It has represented the applicants or intervened as a third party in many of the seminal legal proceedings regarding abortion laws in Europe. The Center was an advisor to the applicants' representatives in *R.R. v. Poland* (2011) and *P. and S. v. Poland* (2013) and was granted leave by the Court to submit third party interventions in *MB v Poland and 4 other applications* (Application no. 5014-21), *A.L. - B. against Poland and 3 other applications* (App. no. 3801/21), *K.B. against Poland and 3 other applications* (App. no. 1819/21), and *K.C. against Poland and 3 other applications* (App. no. 3639/21), *B.B. v. Poland* (App. no. 67171/17), *A, B and C v. Ireland* (2010), *Tysic v. Poland* (2007), *D. v. Ireland* (2006), and *Vo v. France* (2004). The Center also represented the applicants in the seminal cases of *Mellet v. Ireland* (2016) and *Whelan v. Ireland* (2017) before the United Nations Human Rights Committee and has recently intervened in relevant domestic proceedings before the Supreme Court of the United Kingdom, the High Court of Northern Ireland, and the Constitutional Court of the Republic of Croatia.

Human Rights Watch is a non-profit, non-governmental human rights organization that advocates around the globe in defense of human rights. Founded in 1978, we now work in over 100 countries conducting human rights fact-finding and publishing our findings and recommendations in a variety of formats. Human Rights Watch has been granted permission to intervene in many cases before the European Court of Human Rights, as well as other regional human rights courts, international courts, international human rights bodies, and domestic courts. In cases in which Human Rights Watch has not sought to intervene as a third party, applicants before the European Court of Human Rights, and the Court itself, have drawn on Human Rights Watch reporting in deliberating the issues.

The **International Commission of Jurists** is a non-governmental organization working to advance understanding and respect for Rule of Law as well as the protection of human rights throughout the world. It was set up in 1952 and has its headquarters in Geneva, Switzerland. It

is made up of some 60 eminent jurists representing different justice systems worldwide and has 90 national sections and affiliated justice organizations. The ICJ has consultative Status at the United Nations Economic and Social Council, the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Council of Europe and the African Union. The organization also cooperates with various bodies of the Organization of American States and the Inter-Parliamentary Union. Since its founding, the ICJ has maintained a focus on the rights to equality and non-discrimination, including through its thematic program of work on women's human rights.

The **International Federation for Human Rights (FIDH)** is an international human rights non-governmental organisation founded in 1922 and headquartered in Paris, France. It brings together 192 national human rights organisations from 117 countries across the world. FIDH's mandate is to defend all human rights enshrined in the UDHR. FIDH is involved in strategic litigation before domestic, regional and international/ised courts and bodies. FIDH's mission is to document and expose human rights abuse, seek accountability for perpetrators and contribute to further developing human rights norms and standards at the regional and international level, through research, advocacy and strategic litigation, and to build its members' capacity in those areas. FIDH has documented sexual and reproductive rights' violations, including abortion, in Poland, Senegal, Chile, Nicaragua and other countries in Europe, Africa, MENA and the Americas. It engaged in strategic litigation before national and regional courts in cases challenging restrictive abortion laws and their application. FIDH has extensively researched rule of law violations in Europe, including in Poland, and advocated for State accountability before regional courts and bodies, while attempting to expose the interlinkages between rule of law and human rights, including women's rights violations.

The **International Planned Parenthood Federation European Network (IPPF EN)** is one of the regional networks of the International Planned Parenthood Federation (IPPF), an international, non-governmental, membership-led organisation, championing sexual and reproductive health and rights for all. IPPF EN and its national members and partners work in over 40 countries across Europe and Central Asia to empower everyone, especially the most socially excluded, to lead safe and dignified reproductive lives, free from harm and discrimination. IPPF EN advocates towards the EU and the Council of Europe to ensure all women, men, children, and young people have access to sexual and reproductive health and rights. In 2014, IPPF EN won a collective complaint against the Italian government in front of the European Committee of Social Rights. In 2017, following a joint report by IPPF EN, its Italian partners and the Center for Reproductive Rights, the U.N. Human Rights Committee expressed serious concerns about the difficulties women face in accessing abortion care across Italy, due to the government's failures. IPPF EN is working since many years in Poland to support its partners on the ground, who are leading the fight for access to abortion care for Polish women, and respect for the rule of law in Poland.

Women Enabled International (WEI) is an international, non-governmental organization that works to advance rights at the intersection of gender and disability to respond to the lived experiences of women and girls with disabilities, promote inclusion and participation, and achieve transformative equality. WEI works with organizations of persons with disabilities led by women and gender non-conforming persons--including through long-standing partnerships with organizations of women with disabilities in Poland--to document systemic human rights violations and seek redress through U.N. human rights experts and bodies. To this end, WEI has engaged in cutting-edge international human rights legal analysis on abortion and legal advocacy to ensure that the rights and perspectives of women and gender non-conforming

persons with disabilities are considered and included in all discussions around sexual and reproductive health and rights.

Women's Link Worldwide (WLW) is an international non-governmental organization working to advance women's rights, especially those facing multiple inequalities through the domestic implementation of international human rights law and the use of comparative law and strategic litigation. As an organization dedicated to eliminating discrimination and violence against women and girls, WLW works to remove barriers to access sexual and reproductive health services, including abortion with an intersectional lens. WLW has extensive expertise engaging in litigation in countries with restrictive abortion laws such as Uganda, Dominican Republic, El Salvador or Honduras and in legal proceedings regarding abortion laws in Spain, Chile or Colombia. WLW's amicus briefs have been accepted into national courts (High Court of Kenya at Bungoma (obstetric violence and lack of maternal health services); High Court of Kenya at Nairobi (unprocedural closure of clinics providing safe and legal abortion services); Supreme Court of Rwanda (life imprisonment for infanticide); Constitutional Court of Dominican Republic (therapeutic abortion); Constitutional Court of Colombia (discrimination in accessing IVF services) and regional courts (cases *Gonzalez and Others v. Mexico*, *López Sotos and Others vs. Venezuela*, or *Manuela vs. El Salvador* at the Inter-American Court of Human Rights and *M. vs. the United Kingdom* at the European Court of Human Rights).

The **World Organisation Against Torture (OMCT)**, established 1986 in Geneva, is the world's largest Network of NGOs fighting against torture, summary executions, enforced disappearances and all other cruel inhuman or degrading treatment or punishment. It operates the SOS-Torture network composed of more than 200 affiliated organisations and maintains working relations with a large number of local and regional NGOs. It ensures the daily dissemination of urgent interventions across the world in order to prevent serious human rights violations, to protect individuals and to fight against impunity, and provides victims of torture with medical, social and/or legal assistance. Furthermore, the OMCT frequently represents torture victims seeking redress before national and international courts and has filed numerous amicus briefs in international and domestic courts. OMCT has documented violence against women and girls around the globe since 1996 and has integrated a gender perspective in its anti-torture work. In particular, the OMCT provides legal and material support to women and girls who are victims of torture or threatened with torture and other forms of ill-treatment taking into account the specific nature of the violence used against them and the availability of remedies.