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**Amicus Curiae from  
the Center for Reproductive Rights**

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**I. INTRODUCTION AND SUMMARY**

1. This amicus brief is submitted by the Center for Reproductive Rights (‘the Center’). The Center is a global non-governmental human rights organization dedicated to advancing women’s human rights in the sphere of reproductive health. The Center has extensive expertise on international human rights law and comparative European law on reproductive rights, including on the regulation of abortion. The Center regularly submits amicus briefs and third party interventions in national and international judicial proceedings concerning abortion which are useful to national courts and international bodies in their determinations.<sup>1</sup> The Center has also represented the applicants in cases concerning abortion filed before the European Court of Human Rights and United Nations treaty monitoring bodies.<sup>2</sup> The Center’s expertise is regularly sought by international and regional human rights institutions.<sup>3</sup> Furthermore, the Center is regularly asked to provide information and advice to national policy makers in the context of legislative and policy reform processes.<sup>4</sup>
2. This amicus brief describes the standard approach to abortion in laws and policies across 47 European countries. It also sets out the World Health Organization Guidance on abortion and outlines the obligations on states under international human rights law

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<sup>1</sup> For example, the Center provided expert opinions to the Constitutional Court of the Slovak Republic on the constitutionality of Slovak laws allowing abortion on request (PL. ÚS 12/01-297), to the Constitutional Court of the Republic of Macedonia for its assessment of the constitutionality of the Law on Termination of Pregnancy (U. br. 137/2013), and to the Constitutional Court of the Republic of Croatia for its review of the constitutionality of the Act on Health Measures for the Realization of the Right to Freely Decide on the Childbirth (U-I-60/1991 i dr.). The Center was also granted leave to intervene as a third party by the Supreme Court of the United Kingdom in *Re Northern Ireland Human Rights Commission’s Application for Judicial Review* [2018] UKSC 27, and by the High Court of Northern Ireland in the *Matter of an Application by Sarah Jane Ewart for Judicial Review* [2018] NIQB.

<sup>2</sup> For example, the Center was an advisor to the applicants’ representatives in cases *R.R. v. Poland* (App. no. 27617/04) and *P. and S. v. Poland* (App. no. 57375/08) before the European Court of Human Rights and represented or co-represented the applicants in a series of complaints concerning access to abortion care before the Human Rights Committee and the Committee on the Elimination of Discrimination Against Women: *K.L. v. Peru* (HRC, CCPR/C/85/D/1153/2003), *Mellet v. Ireland* (HRC, CCPR/C/116/D/2324/2013), *Whelan v. Ireland* (HRC, CCPR/C/119/D/2425/2014), and *L.C. v. Peru* (CEDAW, CEDAW/C/50/D/22/2009).

<sup>3</sup> For example, the Center was commissioned by the Council of Europe Commissioner for Human Rights to draft the Council of Europe Issue Paper on Women’s Sexual and Reproductive Health and Rights in Europe (2017). See Commissioner for Human Rights of the Council of Europe, *Women’s Sexual and Reproductive Health and Rights in Europe* (2017), available at <https://bit.ly/3LicVZI>. For more information about the Center for Reproductive Rights see: <https://reproductiverights.org>.

<sup>4</sup> For example, the Center was asked to provide expertise on comparative European law on abortion to both the Irish Parliamentary Committee charged with considering options for law reform on abortion in Ireland (2017) and to the North Macedonian Ministry of Health Working Group mandated to provide options for reform of the Law on Termination of Pregnancy in North Macedonia (2018).

to decriminalize and legalize abortion and to refrain from punishing or sanctioning those who assist women to obtain abortions.<sup>5</sup>

3. In summary, the amicus seeks to assist the court by providing an overview of:
  - a. The standard approach among 47 European countries to the legalization of abortion.
  - b. International public health standards on the legalization and decriminalization of abortion, including self-administration of abortion.
  - c. The obligations of states under international human rights law to respect and ensure access to abortion, including under:
    - i. The right to life
    - ii. The right to freedom from torture and other ill-treatment
    - iii. The right to health
    - iv. The right to privacy
    - v. The right to non-discrimination and equality.

## **II. Standard European approach to the legalization of abortion**

4. For the last 80 years, the overwhelming trend among European countries has been to legalize access to abortion on request and other grounds.<sup>6</sup> Almost all European countries (42 of 47 countries) now allow abortion on request or on broad social grounds. Only 5 countries, Andorra, Liechtenstein, Malta, Monaco and Poland do not allow abortion on either of these grounds.
5. Since 2018, Belgium, Cyprus, France, Germany, Iceland, Ireland, the Netherlands, North Macedonia, San Marino, Spain, and many parts of the United Kingdom (Northern Ireland, Gibraltar, the Isle of Man) have all undertaken or are in the process of law reform designed to remove barriers in access to safe abortion care and repeal criminal provisions on abortion.
6. Within the European Union the practice of the vast majority of Member States has been to undertake legislative and policy reform to safeguard and protect women's access to safe abortion care, and to legalize abortion on request. 25 of 27 European Union member states allow abortion on a woman's request or on broad social grounds.<sup>7</sup>
7. Poland and Malta are the only EU member states that have not yet reformed their highly restrictive laws. 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.

## **III. International public health and clinical guidelines**

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<sup>5</sup> This amicus addresses the international human rights standards and does not provide a comprehensive overview of regional jurisprudence on this issue.

<sup>6</sup> 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/>

<sup>7</sup> Abortion on request in the EU: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden. Abortion on broad social grounds in the EU: Finland.

8. International public health and clinical guidelines from the World Health Organization (WHO) and International Federation of Gynecology and Obstetrics (FIGO) underline the importance of the removal of barriers in access to safe abortion care.<sup>8</sup> The WHO guidance provides that criminal laws concerning abortion constitute harmful barriers that impede access to care. The WHO specifies that abortion should not be criminalized, other laws within the criminal law or penal codes should not be used to punish those who assist with abortion and that self-management of abortion should not be criminalized.<sup>9</sup>
9. The WHO has recognized that criminal laws and criminal frameworks regarding abortion often lead to people experiencing “significant barriers in accessing abortion and post-abortion care.”<sup>10</sup> As a result, WHO advises the full decriminalization of abortion. It explains that decriminalization means ‘removing abortion from all penal/criminal laws, not applying other criminal offences (e.g. murder, manslaughter) to abortion, and ensuring there are no criminal penalties for having, assisting with, providing information about, or providing abortion, for all relevant actors’.<sup>11</sup> Following an evidence review, the WHO has concluded that ‘criminalization limits access to safe and legal abortion, and increased recourse to unlawful and unsafe abortion.’<sup>12</sup>
10. The WHO guidance clearly provides that ‘self-management of abortion should not be criminalized’.<sup>13</sup> Specifically in relation to self-management of abortion care, the WHO makes it clear that this option of self-administration includes the ‘self-administration of abortion medicines outside of a health-care facility and without the direct supervision of a trained health worker, and management of the abortion process’.<sup>14</sup>
11. The WHO also provides important guidance on telemedicine for abortion care which it defines as ‘A mode of health service delivery where providers and clients, or providers and consultants, are separated by distance’.<sup>15</sup> The guidance explains that allowing self-management of abortion care through telemedicine is part of good quality health care services.<sup>16</sup>

#### **IV. International Human Rights Law Requires States to Respect and Ensure Access to Abortion Care**

12. International human rights treaties guarantee the rights to life, to the highest attainable standard of physical and mental health, to freedom from torture and other ill-treatment, to privacy, the right to civil society participation and to non-discrimination in the enjoyment of these rights.<sup>17</sup> International human rights mechanisms, such as the United

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<sup>8</sup> International Federation Gynecology and Obstetrics (FIGO), COMMITTEE FOR THE STUDY OF ETHICAL ASPECTS OF HUMAN REPRODUCTION AND WOMEN’S HEALTH, ETHICAL ISSUES IN OBSTETRICS AND GYNECOLOGY 154-55 (2015); World Health Organization (WHO), Abortion care guideline (2022), <https://bit.ly/3NlmgBu>.

<sup>9</sup> WHO, Abortion care guideline (2022), p. 22.

<sup>10</sup> WHO, Abortion care guideline (2022), p. 22.

<sup>11</sup> WHO, Abortion care guidelines (2022), p. 24.

<sup>12</sup> WHO, Abortion care guidelines (2022), p.24.

<sup>13</sup> WHO, Abortion care guideline (2022), p. 102.

<sup>14</sup> WHO, Abortion care guideline (2022), p. 98.

<sup>15</sup> WHO, Abortion care guideline (2022), p. 95.

<sup>16</sup> WHO, Abortion care guideline (2022), p. 13.

<sup>17</sup> International Covenant on Civil and Political Rights, General Assembly resolution 2200A (XXI), (1966), Articles 2, 3, 6, 7, 17, and 23; International Covenant on Economic, Social and Cultural Rights, General Assembly

Nations treaty bodies and United Nations special procedures, have underlined that restrictions on access to abortion contravene these rights.<sup>18</sup> International treaty bodies like the Human Rights Committees are independent bodies established specifically to supervise the interpretation of the human rights treaty.

13. Specifically, as outlined in the sections below, these treaties require the repeal of highly restrictive legal and policy prohibitions on abortion, including laws that criminalize and heavily circumscribe access to abortion and also oblige states parties to take effective measures to guarantee the accessibility and availability of good quality abortion care in practice. Human rights treaty bodies have repeatedly called upon Poland to decriminalize abortion in all circumstances and to ensure access to safe abortion and post-abortion care.<sup>19</sup>

**(i) The Right to Life**

14. The right to life as enshrined in Article 6 of the International Covenant on Civil and Political Rights ('ICCPR') places robust obligations on States to ensure that abortion is legal, accessible and available.<sup>20</sup> Notably, the right to life requires the decriminalization of abortion. In General Comment No 36, the Human Rights Committee has provided authoritative interpretation of the obligations regarding access to abortion that derive from the right to life as enshrined in Article 6:

*8. Although States parties may adopt measures designed to regulate voluntary termination of pregnancy, those measures must not result in violation of the right to life of a pregnant woman or girl, or her other rights under the Covenant. Thus, 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*

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resolution 2200A (XXI), (1966), Articles 2, 3, 5, 7(c) 12 and 16; Convention on the Elimination of All Forms of Discrimination against Women (1979); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly resolution 39/46, (1984); Convention on the Rights of the Child, General Assembly resolution 44/25, (1989), Articles 2, 6, 16 and 24. Poland has signed and ratified all of these treaties and conventions.

<sup>18</sup> HRC, *Mellet v. Ireland* (2016), CCPR/C/116/D/2324/2013; *Whelan v. Ireland* (2017), CCPR/C/119/D/2425/2014; CEDAW, *L.C. v. Peru* (2011), CEDAW/C/50/D/22/2009; 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). See, e.g., CESCR, General Comment No. 22, paras. 10, 13, 28, 34, 40, 41, 45, 49(a), E/C.12/GC/22 (2016); HRC, General Comment No. 36, para. 8, CCPR/C/GC/36 (2018); CRC, General Comment No. 20, para. 60, CRC/C/GC/20 (2016); General Comment No. 15, CRC/C/GC/15 (2013); CEDAW, General Recommendation No. 35, paras. 18, 29(c)(i), CEDAW/C/GC/35 (2018); General Recommendation 33 (2015) on women's access to justice, para. 51(I), CEDAW/C/GC/33 (2015). 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, 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); Council of Europe, Commissioner for Human Rights, Women's sexual and reproductive health and rights in Europe (2017). See, e.g., CRC, Concluding Observations: Poland, para. 35, CRC/C/POL/CO/5-6 (2021).

<sup>19</sup> See for example the Committee on the Rights of the Child, Concluding Observations on the combined fifth and sixth periodic reports of Poland, CRC/C/Pol/CO/5-6, 6 December 2021, para 36 (d). Committee against Torture, Concluding Observations on the seventh periodic report of Poland, CAT/C/POL/C/7, 29 August 2019, para34(e).

<sup>20</sup> Poland ratified the ICCPR on 18 March 1977.

*arbitrarily interfere with their privacy. States parties must provide safe, legal and effective access to abortion where the life and health of the pregnant woman or girl is at risk, or where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or where the pregnancy is not viable. 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. **For example, they should not take measures such as criminalizing pregnancy of unmarried women or applying criminal sanctions to women and girls who undergo abortion or to medical service providers who assist them in doing so, since taking such measures compels women and girls to resort to unsafe abortion.** States parties should remove existing barriers to effective access by women and girls to safe and legal abortion, including barriers caused as a result of the exercise of conscientious objection by individual medical providers, and should not introduce new barriers. States parties should also effectively protect the lives of women and girls against the mental and physical health risks associated with unsafe abortions. In particular, they should ensure access for women and men, and especially girls and boys, to quality and evidence-based information and education on sexual and reproductive health and to a wide range of affordable contraceptive methods, and prevent the stigmatization of women and girls who seek abortion. States parties should ensure the availability of, and effective access to, quality prenatal and post-abortion health care for women and girls, in all circumstances and on a confidential basis. [emphasis added].*

15. General Comment 36 cited above makes it clear that states have an obligation to ensure that criminal sanctions do not apply to women seeking abortions or those who assist them.
16. In addition to articulating the obligations on States to respect and ensure the right to life of pregnant woman, human rights mechanisms have also adjudicated upon counterclaims that restrictions on abortion constitute legitimate measures designed to protect a ‘prenatal’ right to life under international human rights law. They have dismissed such arguments and have consistently refused to find that the right to life applies prior to birth or that the foetus or embryo are rights holders under international human rights law.<sup>21</sup>

**(ii) Right to freedom from torture and other ill-treatment**

17. A number of international treaty bodies have held that the criminalisation of abortion and the denial of access to abortion constitutes cruel, inhumane and degrading treatment.<sup>22</sup> The Human Rights Committee has established that international human rights law requires the repeal of laws which criminalise abortion and held that states must legalise abortion in a range of circumstances, including in situations of risk to a

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<sup>21</sup> 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 68.

<sup>22</sup> *Mellet v. Ireland* (2016), CCPR/C/116/D/2324/2013 para 7.4; *Whelan v. Ireland* (2017), CCPR/C/119/D/2425/2014 para 7.5; *K.L. v. Peru* (2005), CCPR/C/85/D/1153/2003, para. 6.3).

woman's physical or mental health, so as to ensure that pregnant women are not subject to substantial pain or suffering.<sup>23</sup>

18. In the cases of *Mellet v. Ireland* and *Whelan v. Ireland*, the Human Rights Committee found Ireland in violation of its international human rights obligations 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 her right to be free from torture and ill treatment.<sup>24</sup> The HRC found that 'the shame and stigma' associated with the criminalization of abortion in Ireland exacerbated the women's suffering.<sup>25</sup> The Committee held that Ireland was obliged to amend its laws to ensure that abortion was made available and to take measures 'to ensure health-care providers are in a position to supply full information on safe abortion services without fearing being subjected to criminal sanctions'.<sup>26</sup>
19. The CEDAW Committee has also clearly articulated that the denial of abortion or criminalisation of abortion may amount to torture, or cruel, inhuman and degrading treatment.<sup>27</sup>

*Violations of women's sexual and reproductive health rights, such as forced sterilizations, forced abortion, forced pregnancy, criminalisation of abortion, denial or delay of safe abortion and post-abortion care, forced continuation of pregnancy, abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture, or cruel, inhuman or degrading treatment.*<sup>28</sup>

20. In its inquiry into the lack of availability of abortion in Northern Ireland, the CEDAW Committee found grave and systematic violations of the CEDAW Convention. The 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.'<sup>29</sup>
21. It made a clear recommendation for the United Kingdom to repeal its criminal laws on abortion:

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<sup>23</sup> *K.L. v. Peru* (HRC, CCPR/C/85/D/1153/2003), *Mellet v. Ireland* (HRC, CCPR/C/116/D/2324/2013), *Whelan v. Ireland* (HRC, CCPR/C/119/D/2425/2014), *LMR v Argentina* (HRC, Doc CCPR/C/101/D/1608/2007).

<sup>24</sup> HRC, *Mellet v. Ireland* (2016), CCPR/C/116/D/2324/2013, para. 7.4; *Whelan v. Ireland* (2017), CCPR/C/119/D/2425/2014, para. 7.5

<sup>25</sup> *Ibid.*

<sup>26</sup> *Mellet v. Ireland* (2016), CCPR/C/116/D/2324/ para 9.

<sup>27</sup> *L.C. v. Peru* (CEDAW, CEDAW/C/50/D/22/2009). General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, 14 July 2017, CEDAW/C/GC/35.

<sup>28</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, Doc. A/HRC/31/57, 2016, A/HRC/31/57; CEDAW Committee, *L.C. v. Peru*, CEDAW/C/50/D/22/2009, para 8.18; Human Rights Committee, *Whelan v. Ireland*, CCPR/C/119/D/2425/2014 (2017); *Mellet v. Ireland*, CCPR/C/116/D/2324/2013 (2016), paras. 7.4

<sup>29</sup> 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.

‘...so that no criminal charges can be brought against women and girls who undergo abortion or against qualified health care professionals and all others who provide and assist in the abortion’.<sup>30</sup>

22. The case law of the European Court of Human Rights also makes it clear that denial of access to abortion can contribute to violations of Article 3 of the ECHR.<sup>31</sup> This is also supported by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, who has explained that the ‘criminalization of abortion is a violation of international human rights law’.<sup>32</sup>

### (iii) The right to health

23. The right to health obliges states to guarantee the accessibility and availability of good quality abortion services. Article 12(1) of the ICESCR enshrines ‘the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’. The freedoms protected by Article 12 include ‘the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, regarding matters concerning one’s body and sexual and reproductive health’.<sup>33</sup>

24. The Committee on Economic, Social and Cultural Rights has underlined that Article 12 requires the liberalization of ‘restrictive abortion laws; to guarantee women and girls access to safe abortion services and quality post-abortion care’.<sup>34</sup> The Committee makes it clear that states parties should avoid retrogressive measures which include ‘enacting laws criminalizing certain sexual and reproductive health conduct and decisions’.<sup>35</sup>

25. Further the Committee makes it clear that states should not criminalize abortion and ‘must not limit or deny anyone access to sexual and reproductive health including through laws criminalizing sexual and reproductive health services and information...’<sup>36</sup> To give effect to these obligations the Committee recommends that states parties must, ‘repeal or eliminate laws, policies and practices that criminalize, obstruct or undermine access by individuals or a particular group to sexual and reproductive health facilities, services, goods and information’.<sup>37</sup>

26. The Committee on the Rights of the Child and the CEDAW Committee have reached similar findings. The CEDAW Committee has repeatedly held that access to health care, including reproductive health care, is a basic right under Article 12 of the CEDAW Convention<sup>38</sup>, and that criminalisation of reproductive healthcare services, such as abortion, is discriminatory.<sup>39</sup>

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<sup>30</sup> Ibid. para 85(a).

<sup>31</sup> *R.R. v. Poland* (App. no. 27617/04) and *P. and S. v. Poland* (App. no. 57375/08).

<sup>32</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, Doc. A/HRC/31/57, 2016, A/HRC/31/57.

<sup>33</sup> CESCR, General Comment No. 22 para 5.

<sup>34</sup> CESCR, General Comment No. 22 para 28.

<sup>35</sup> CESCR, General Comment No. 22 para 38.

<sup>36</sup> CESCR, General Comment No. 22 para 40-41.

<sup>37</sup> CESCR, General Comment No. 22 para 49(a).

<sup>38</sup> See e.g. General Recommendation No. 24, para 1.

<sup>39</sup> See e.g. General Recommendation No. 24, 14, 26, 31(c). 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

27. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health ('the Special Rapporteur') has also called on all states to decriminalise abortion.<sup>40</sup> The Special Rapporteur has made it clear that decriminalisation coupled with provision of safe and accessible abortion is vital for the protection of the right to health and has emphasised that criminalising and restricting abortion are impermissible restrictions on women's right to health. The right to health also places special obligations on states to guarantee physical and mental health care to victims of sexual and domestic violence, including through the provision of abortion care.<sup>41</sup>

**(iv) The right to privacy**

28. The right to privacy prohibits arbitrary or disproportionate restrictions on personal and bodily integrity and protects the freedom of individuals to make decisions about whether to start a family and whether or not to continue a pregnancy. Any restrictions on the right to privacy must be necessary and proportionate. International treaty bodies such as the Human Rights Committee have consistently found violations of Article 17 of the ICCPR in circumstances where women have been denied abortions due to restrictive legal frameworks, including the criminalization of abortion, and their rights to self-fulfillment and bodily integrity have been breached.<sup>42</sup>

**(v) The right to non-discrimination and equality**

29. The refusal to guarantee access to safe and legal abortion constitutes a violation of the right to equality and non-discrimination under international human rights law. The CEDAW Committee has established that the right to reproductive autonomy is infringed by obstacles on women's ability to control their fertility and has made it clear that a woman has a right to choose freely the number and spacing of children.<sup>43</sup> In 2018, the CEDAW Committee concluded that abortion restrictions in Northern Ireland constituted discrimination because they affect only women 'preventing them from exercising reproductive choice'.<sup>44</sup>

30. CEDAW's most recent guidance on gender-based violence against women makes it clear that denial of abortion or criminalisation of abortion amounts to a form of gender-based violence, which in turn is recognised as a form of discrimination under international human rights law.<sup>45</sup> States have due diligence obligations to prevent

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of All Forms of Discrimination against Women, CEDAW/C/OP.8/GBR/1 (2018), *L.C. v. Peru* (2011), CEDAW/C/50/D/22/2009, para. 8.18.

<sup>40</sup> Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Interim Report to the General Assembly (2011) UN Doc. A/66/254.

<sup>41</sup> Special Rapporteur on the Right of everyone to the enjoyment of the highest standard of physical and mental health, Sexual and Reproductive health rights: challenges and opportunities during the COVID-19 pandemic (2021) Un Doc. A/76/172.

<sup>42</sup> Human Rights Committee, *Whelan v. Ireland*, CCPR/C/119/D/2425/2014 (2017); *Mellet v. Ireland*, CCPR/C/116/D/2324/2013 (2016), paras. 7.4

<sup>43</sup> The CEDAW Committee's General Recommendation 24 recommends that States prioritize the "prevention of unwanted pregnancy through family planning and sex education."

<sup>44</sup> 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.

<sup>45</sup> *Opuz v Turkey* (ECtHR, Application no. 33401/02), 9 June 2009.



gender-based violence and such obligations have reached the levels of customary international law.<sup>46</sup>

31. The Committee has explained that criminalization ‘affronts women’s freedom of choice and autonomy, and the right to self-determination’.<sup>47</sup> Further it states that ‘[S]ervices should provide... safe abortion and high quality post abortion care, regardless of whether abortion is legal’<sup>48</sup> and has emphasised again and again that ‘criminalizing behaviours that can only be performed by women such as abortion’ discriminates against women.<sup>49</sup>
32. The Human Rights Committee has found violations of the right to privacy, the prohibition on inhuman or degrading treatment and the right to equality and non-discrimination in its decisions on individual communications. In *Mellet v Ireland*, the Committee noted

*7.11 The Committee considers that the differential treatment to which the author was subjected in relation to other similarly situated women failed to adequately take into account her medical needs and socioeconomic circumstances and did not meet the requirements of reasonableness, objectivity and legitimacy of purpose. Accordingly, the Committee concludes that the failure of the State party to provide the author with the services that she required constituted discrimination and violated her rights under article 26 of the Covenant.*

33. The UN Working Group on Discrimination Against Women and Girls has emphasized women’s rights to equal access to health care services, including state obligations to eliminate all forms of discrimination against women with respect to their health and safety. International human rights standards require respect of women’s autonomous decision making about their own bodies.<sup>50</sup> The Working Group is extremely clear that criminalizing behaviours only attributable and accessed by women ‘is discriminatory per se’.<sup>51</sup> The Working Group explains that: ‘Criminalization of termination of pregnancy is one of the most damaging ways of instrumentalizing and politicizing women’s bodies and lives, subjecting them to risks to their lives of health in order to preserve their function as reproductive agents and depriving them of autonomy in decision-making about their own bodies.’<sup>52</sup>

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<sup>46</sup> CEDAW General Recommendation No. 35 on Gender-Based Violence against Women, Updating General Recommendation No. 19, CEDAW/C/GC/35, 2017, footnote 2.

<sup>47</sup> 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.

<sup>48</sup> CEDAW, General Recommendation No. 34: The Rights of Rural Women, 2016, CEDAW/C/GC/34 para 39(c).

<sup>49</sup> CEDAW General Recommendation No. 33: on Women’s Access to Justice, para 47.

<sup>50</sup> Report of the UN Working Group on the issue of discrimination against women in law and practice (2016) Un Doc. A/HRC/32/44, para 14 – 18.

<sup>51</sup> Report of the UN Working Group on the issue of discrimination against women in law and practice (2016) Un Doc. A/HRC/32/44 para 78.

<sup>52</sup> Report of the UN Working Group on the issue of discrimination against women in law and practice (2016) Un Doc. A/HRC/32/44 para 79.

34. It has further expressed its concern regarding the over-medicalisation of certain services that women need to preserve their health, making it clear that this includes ‘requirements that only doctors can perform certain services, such as the pharmaceutical termination of pregnancy or obstetric care’. They explain that this may result in reduced access or affordability of services.<sup>53</sup>

## **V. Conclusion**

35. The criminalization of abortion, both as it relates to individuals who undergo abortion and those who assist them, contravenes international human rights law and standards, and runs counter to both World Health Organization Guidance.

36. In order to comply with international legal obligations and World Health Organization standards, states must repeal laws and sanctions which criminalize or sanction those who assist with abortion provision and should not prosecute such individuals.

37. The WHO clearly states that such decriminalization should extend to self-administered abortion.

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<sup>53</sup> Report of the UN Working Group on the issue of discrimination against women in law and practice (2016) Un Doc. A/HRC/32/44, para 74.