



July 2016

**Amnesty International's submission to the Taoiseach on the terms of reference for the  
Citizens' Assembly on repealing the Eighth Amendment**

**Introduction**

Amnesty International Ireland (AI) issues this submission to the Taoiseach on how the forthcoming Citizens' Assembly (hereafter the Assembly) should examine the Eighth Amendment to Ireland's Constitution, Bunreacht na hÉireann, following the adoption by Seanad Éireann of the Assembly's Terms of Reference.

**In order for Ireland to comply with its international human rights obligations, the Eighth Amendment must be repealed and abortion must be decriminalised. The duty on the part of the Government is to schedule a referendum.**

Access to safe abortion is a human right because women and girls have a legally recognised right to life, right to health, and right to live free from violence, discrimination, torture and cruel, inhuman and degrading treatment. The denial of abortion leads to violations of those human rights. International human rights law and standards require the decriminalisation of abortion and that states ensure access to abortion when a woman's life and physical or mental health in danger, in cases of rape and incest and in cases of severe or fatal foetal impairment. Criminal laws penalising women and restricting access to abortion create barriers to the realisation of women's right to health and must be removed. These laws not only violate women and girls' human rights, but they also generate poor physical health outcomes.

In the past two years, three human rights treaties bodies have called on Ireland to comply with its human rights obligations on accessing abortion in their concluding observations on Ireland's periodic reports. The *Mellet v Ireland* decision by the UN Human Rights Committee published on 9 June further reinforces the position that, until our laws are brought into line with international human rights standards, women and girls in Ireland will continue to have their rights violated. It called on Ireland to prevent similar violations in the future by amending its laws, including the Constitution if necessary, in order to ensure effective, timely and accessible procedures for pregnancy termination. Ireland must report to the UN Human Rights Committee within 180 days of the decision, 6 December 2016, outlining the concrete steps which it will take to remedy the identified human rights violations, and to prevent future similar harm to other women.

A number of independent opinion polls conducted over the last year, including an independent Red C poll commissioned by AI in February 2016,<sup>1</sup> have found that a large majority of people in Ireland want the Eighth Amendment repealed. However, it has been decided by the Government that the issue requires further deliberation by an Assembly. In the Programme for Government 2016, a commitment was made to establish this Assembly.

**“We will establish a Citizens’ Assembly, within six months, and without participation by politicians, and with a mandate to look at a limited number of key issues over an extended time period. These issues will not be limited to those directly pertaining to the constitution and may include issues such as, for example how we, as a nation, best respond to the challenges and opportunities of an ageing population. That said, we will ask the Citizens’ Assembly to make recommendations to the Dáil on further constitutional changes, including on the Eighth Amendment, on fixed term parliaments and on the manner in which referenda are held (e.g. should ‘super referendum days’, whereby a significant number of referenda take place on the same day, be held).”(Programme for Government, May 2016)**

On 11 July 2016, the Terms of Reference (TOR) were approved by Seanad Éireann. The TOR state that a Citizens’ Assembly will be established to consider the following matters and make such recommendations as it sees fit and report to the Houses of the Oireachtas. The Eighth Amendment of the Constitution is one of the matters that the Assembly will consider.

The motion approved by Seanad Éireann stated that membership of the Assembly will consist of 100 persons: a Chairperson to be appointed by Government; and 99 citizens entitled to vote at a referendum, randomly selected so as to be broadly representative of Irish society.

It stated that the Assembly will agree its own rules of procedure for the effective conduct of its business in as economical a manner as possible; the Assembly will first make a report to the Houses of the Oireachtas, which on receipt will refer the report for consideration to a Committee of both houses which will in turn bring its conclusions to the House for debate. The Assembly will report and make recommendations to the Houses of the Oireachtas on each remaining matter as soon as it has completed its deliberations, but in any event not later than one year from the date of the first meeting.

It stated that an Expert Advisory Group will be established to assist the work of the Assembly in terms of preparing information and advice. The Assembly may invite and accept submissions from interested bodies and will seek such expert advice as it considers desirable. All matters before the Assembly will be determined by a majority of the votes, other than the Chairperson who will have a casting vote in the case of an equality of votes. The Government will provide in the Houses of the Oireachtas a response to each recommendation of the Assembly and, if

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<sup>1</sup> February 2016 64 per cent in favour of repeal, 59 per cent in favour of repeal without reasonable restrictions, 80% in favour of repeal with reasonable restrictions, Amnesty International Red C poll, <https://www.amnesty.ie/latest/news/2016/03/04/amnesty-internationalred-c-poll-reveals-irish-public-want-expanded-access-abortion-political-priority-incoming-government/>

accepting the recommendation, will indicate the timeframe it envisages for the holding of any related referendum.

It is the responsibility of the Irish Government to ensure that Ireland's laws are in line with international human rights law. Therefore the Assembly should not be charged with deciding whether or not the Eighth Amendment should be repealed. The Government cannot abdicate this responsibility to the 99 members of the Assembly and its Chairperson. **The Government must commit to scheduling a referendum on the Eighth Amendment regardless of the outcome of the Assembly.** Under the UN Charter, Ireland's Constitution is no excuse for its committing violations of international human rights law. However, the only way to amend the Constitution is by holding a referendum and securing a majority vote. **According to the Red C poll commissioned in February 2016 by AI, 52 per cent of people felt that they did not know enough of the Eighth Amendment to know how they would vote in a referendum.** There is a clear lack of awareness on the Eighth Amendment of the Constitution. The Assembly could play an important role in educating people on the impact of the Eighth Amendment on women and girls. This will only happen if the Assembly is briefed by recognised international and national experts. The Assembly needs to be resourced with **comprehensive – but accurate, factual and truthful – information and discussion on the Eighth Amendment** and its harmful effects on women and girls. This could be a critical opportunity to separate out myths and misrepresentations in advance of any referendum. Its reports could serve as an important public information resource (see above re polling).

In the same Red C poll from February 2016 we found that public support for a general repeal of the Eighth Amendment was at 59 per cent. However, it found a combined total of 80% would vote yes (see graph below) if the option of legislation with “reasonable restrictions on access to abortion” were added. Therefore we understand that the Government will want to propose a **legislative or regulatory framework to fill the void left by a repeal of the Eighth Amendment that will maximise the chances of a successful referendum.** However, public opinion may not dictate whether or not the state will comply with international human rights law, so the Assembly must not propose **restrictions on or regulation of access to abortion that would violate rights of women and girls.** Women's and girls' human rights, health and medical best practice must be among the Assembly's guiding principles

**AI is not convinced that an Assembly is necessary – the Government has a legislature and legislative drafters at its disposal. It is AI's position that a referendum to repeal the Eighth Amendment is required and must be scheduled at the earliest opportunity.** However, if the Government deems the Assembly necessary in order to run a successful referendum, it must ensure that the human rights of women and girls are the Assembly's key objective and guiding principles.

This submission details key principles by which the Expert Advisory Group and the Assembly should be guided, if it is to be a forum for comprehensive and meaningful constitutional reform.

The Assembly process is only acceptable if an effective and timely step towards that end. **Therefore AI will consider the Citizens' Assembly a step forward only if the following parameters are guaranteed:**

1. **The only way to vindicate the rights of women and girls when accessing abortion is by repealing the Eighth Amendment to the Constitution.** Therefore the Assembly should

not be charged with deciding whether or not the Eight Amendment should be repealed. The Government cannot abdicate this responsibility to the 99 members of the Assembly and its Chairperson.

2. According to the terms of reference 99 of the 100 (the 100th member, Judge Mary Laffoy, will be the chair of the Assembly and was appointed by the Government) members of the Assembly will be selected at random. The Assembly needs to reflect not just the demographic make-up of the state, but must also reflect where public opinion is at on this issue. Regard must be had to the fact that public support for expanding access to abortion is high where 87% (according to Red C poll commissioned by AI February 2016) support expanding access to abortion beyond the current law and only 5% stated that they oppose abortion in all circumstances. Even of the 5 per cent of people who personally oppose abortion in all circumstances, half said they would still vote to repeal the Eighth Amendment. Steps must be taken to avoid deliberate or unintended skewing of its make-up resulting in a disproportionate number holding extreme views, whether based on religious or other ideology or personal moral positions;
3. Recent Red C polling commissioned by Amnesty International found that 52 per cent feel they do not know enough about the Eighth Amendment to know how they would vote in a referendum. Therefore the Assembly needs to be resourced with **comprehensive – but accurate, factual and truthful – information and discussion on the Eighth Amendment** and its harmful effects on women and girls. Critically, **Ireland's obligations to women and girls under international human rights law must be one of the Assembly's key benchmarks and guiding principles.** This must begin with a general commitment on the part of the government to respecting women's and girls' human rights, based on a good faith acknowledgement and acceptance of the recommendations of the most recent three treaty bodies' concluding observations on Ireland that access to abortion is required at a minimum when a pregnant woman or girl's life or health is at risk, the pregnancy is a result of rape, sexual violence or incest, or there is a diagnosis of a severe or fatal foetal impairment. The health ground requires much interrogation and exploration; and in this regard, the guidance offered by the World Health Organisation<sup>2</sup> must be a key resource and benchmark for the Assembly. It must be noted that these are the minimum grounds required to be provided for in a state's law, and international human rights law permits the Irish state and Assembly to decide to go further. International human rights law also recognises that reasonable restrictions, such as gestational limits (e.g. viability), are permitted, so long as they do not violate the human rights of pregnant women or girls. It must be recognised that no woman or girl, no matter what the circumstances, should be criminalised for seeking or having an abortion;
4. Critically, **Ireland's obligations to women and girls under international human rights law must be one of the Assembly's key benchmarks and guiding principles.** This must begin with a general commitment on the part of the government to respecting women's and girls' human rights, based on a good faith acknowledgement and acceptance of the recommendations of the most recent three treaty bodies' concluding observations on Ireland that access to abortion is required at a minimum when a pregnant woman or

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<sup>2</sup> [http://www.who.int/reproductivehealth/publications/unsafe\\_abortion/9789241548434/en/](http://www.who.int/reproductivehealth/publications/unsafe_abortion/9789241548434/en/)

girl's life or health is at risk, the pregnancy is a result of rape, sexual violence or incest, or there is a diagnosis of a severe or fatal foetal impairment;

5. The UN's human rights treaties were created by states, including Ireland. These treaties are not imposed on states – but once states ratify them, they are legally binding. The rights set out in the treaties are expressed in broad terms, leaving it to expert treaty bodies (also created and elected by states like Ireland) to interpret their precise meaning on an evolving basis. Treaty bodies are very clear that women and girls have a human right to abortion in certain circumstances. Government commentary, when engaging with the Assembly, must respect the treaty bodies' mandate and authority;<sup>3</sup>
6. The Expert Advisory Group and the Assembly members must be mandated and resourced to consult with experts, including from civil society and academia - from Ireland and internationally. Medical expertise should include inputs from professionals who have experience of providing for abortion within their healthcare system. It must provide for a process that is open, inclusive and transparent. There must be a process for assisting the Assembly and Expert Advisory Group to source factual data, information and analyses, and identify those which are, intentionally or unintentionally, misleading or incorrect; which will require it to be provided with expertise and research resources. The Assembly must be assisted in screening out inaccurate or misleading information or analyses in contributions from advocacy groups or experts to the Assembly, so its deliberations are grounded in empirical evidence. Its reports could serve as an important public information resource (see above re polling). This could be a critical opportunity to separate out myths and misrepresentations in advance of any referendum;
7. The impact of the Eighth Amendment is felt far beyond the context of abortion, in the provision of health care services to all pregnant women. The constitutional protection of the foetus can result results in the poor treatment of pregnant women, impinging on their human rights. The Assembly must be allowed and enabled to gather and consider evidence of the impact of the Eighth Amendment beyond limiting access to abortion, on maternal and foetal health and wellbeing more generally;
8. Recent Red C polling commissioned by AI found that when deciding on how they stand on abortion 62% of those polled stated that women who had abortions were their most trusted source of information. It is key that the Assembly hears from women who have had abortions under the current system. The Assembly must also hear from migrant women and girls who suffer disproportionately from Ireland's ban on abortion, and others who may lack resources or the ability to travel and are more vulnerable to criminalisation for accessing an abortion in Ireland illegally;

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<sup>3</sup> See for instance Sarah Cleveland, UN Human Rights Committee member, answers questions regarding the Committee's findings in *Mellet v Ireland* accessed at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20083&LangID=E>

"The Committee is an independent expert body, established by the Covenant specifically to supervise application of that treaty. It is thus the internationally appointed guardian of the Covenant with unique and authoritative legal expertise. It does not have an enforcement arm, and securing compliance is left to others. That said, by ratifying the Covenant and its Optional Protocol, Ireland has committed to comply in good faith with its human rights obligations."

9. We welcome the fact that the first issue the Assembly is to consider will be the Eighth Amendment to the Constitution. However, we call for clear timeframes for when the Assembly will furnish its report to the Houses of the Oireachtas and to the relevant Committee of both houses;
10. The Government must commit to scheduling a referendum on the Eighth Amendment. Note must be taken by the Government at how few recommendations from the Constitutional Convention process established by the last government were acted upon. Having taken 22 months to consider that Convention's report recommending constitutional status for economic, social and cultural rights, there was no clear acceptance of its recommendations and very little of substance in that government's statement to Dáil Éireann on 14 January 2016. The Programme for Government commits to placing only the right to housing before an Oireachtas committee, without any transparency in how that outcome was arrived at. We call for a commitment to be made by the Government to act quickly and to schedule a referendum once the Assembly process is concluded. The timeframe for arriving at a referendum must be prompt. The proposal to follow the Assembly process with an Oireachtas committee process is a concern, given the length of time this could take before legislative drafting even commences. A prompt timeline will be required, with key milestones and expected outputs clearly set out.

**ENDS//**

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