

**IN THE EUROPEAN COURT OF HUMAN RIGHTS**

(APPLICATION NO. 25579/05)

**A., B. AND C**

**APPLICANT**

AGAINST

**IRELAND**

**RESPONDENT**

WRITTEN COMMENTS SUBMITTED JOINTLY

BY

**CENTER FOR REPRODUCTIVE RIGHTS**

AND

**INTERNATIONAL REPRODUCTIVE AND SEXUAL HEALTH LAW PROGRAMME,  
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## I. INTRODUCTION

1. The Center for Reproductive Rights and the International Reproductive and Sexual Health Law Programme, Faculty of Law, University of Toronto, submit these written comments pursuant to leave granted by the President of the Chamber in accordance with Rule 44 § 2 and § 4 of the Rules of the Court.
2. These comments address the regulation of abortion under international and comparative law, with a particular emphasis on the member states of the Council of Europe. These comments demonstrate that national law in Ireland is inconsistent with international and comparative standards on abortion regulation.
3. We respectfully submit that standards on abortion regulation under international human rights law and comparative law, in particular the laws of member states of the Council of Europe, should inform the interpretation of Article 2 (the right to life), Article 3 (freedom from torture, or inhuman or degrading treatment or punishment), Article 8 (right to respect for private life) and Article 14 (right to non-discrimination in the enjoyment of protected rights and freedoms) under the *European Convention* for the following reasons.
  - The *Vienna Convention on the Law of Treaties* (the *Vienna Convention*)<sup>1</sup> expressly recognizes that the relevant rules of international law applicable in relations between the parties may inform the interpretation of treaty provisions.<sup>2</sup> The interpretive principle of coherence suggests that the *European Convention* should be interpreted in a manner consistent with other regional and international instruments of human rights protection.<sup>3</sup>
  - The margin of appreciation doctrine allows for different approaches in the application of the *European Convention* in different member States, and is applied in considering the proportionality of an interference with a Convention right. Under this doctrine, state authorities are, in principle, in a better position to decide on the measures necessary in a particular area.<sup>4</sup> The scope of the margin of appreciation varies, however, according to a number of criteria, including the degree of consensus among member states. Where there is a substantial degree of consensus, the margin of appreciation is narrowed.<sup>5</sup> There is a substantial consensus among Council of Europe member states on standards of abortion regulation necessary to balance the rights of pregnant women against state interests, such as protection morals and prenatal life. This consensus suggests a narrow margin of appreciation should be accorded to Ireland.

## II. INTEREST OF THE INTERVENERS

4. The Center for Reproductive Rights (“Center”) is a non-profit legal advocacy organization dedicated to defending and promoting women’s reproductive health and rights worldwide. The Center’s International Legal Program, in collaboration with human rights advocates around the world, documents violations of reproductive rights, monitors and comments on laws concerning reproductive health care, and advocates

before the United Nations and regional human rights fora, including the Council of Europe. The Center has previously served as a third party intervener in cases before the European Court of Human Rights, including *Vo v. France* (application no. 53924/00), *Tysi c v. Poland* (application no. 5410/03) and *D v. Ireland* (application no. 26499/02).

5. The *International Reproductive and Sexual Health Law Programme* (“Programme”), Faculty of Law, University of Toronto, is an academic programme dedicated to improving the legal protection and promotion of reproductive and sexual health. The Programme has particular expertise in the application of equality and non-discrimination rights in the regulation of reproductive health care. It has collaborated with government and international agencies, non-government organizations, and academic institutions to develop policies and scholarship on this subject. The *Programme* has acted as a third-party intervener in constitutional and human rights cases regarding abortion law and policy before domestic, regional and international tribunals.

### **III. SUMMARY OF THE ARGUMENT**

6. National law in Ireland is inconsistent with standards on abortion regulation under international human rights law and comparative law, in particular the laws of member states of the Council of Europe, for the following reasons:
  - The state denies lawful abortion where necessary to protect women’s physical and mental health
  - The state pursues the interest in protection of prenatal interests through disproportionate means

### **IV. THE STATE DENIES LAWFUL ABORTION WHERE NECESSARY TO PROTECT WOMEN’S PHYSICAL AND MENTAL HEALTH**

7. Ireland denies lawful abortion in cases where necessary to protect the health of the pregnant woman. This position is inconsistent with international and comparative law standards. These standards further recognize that the human rights of women require abortion be lawful where necessary to protect both physical and mental health.

#### **A. International and Comparative Standards on Lawful Abortion where Necessary to Protect Health**

##### International Standards

8. The United Nations Human Rights Treaty Monitoring Bodies interpret the human rights to life, health and non-discrimination, and the freedom from cruel, inhuman and degrading treatment or punishment, as requiring state parties to lawfully permit abortion where necessary to protect the woman’s health. These bodies have consistently advised state parties to amend national laws on abortion, which prohibit abortion without exception, or permit abortion only where necessary to protect the woman’s life.

9. The Committee on Economic, Social and Cultural Rights (CERC), which monitors state compliance with the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), has expressly advised state parties to permit or consider permitting abortion for therapeutic reasons.<sup>6</sup>
10. The Human Rights Committee (HRC), which monitors state compliance with the *International Covenant on Civil and Political Rights* (ICCPR), has expressed concern that national laws prohibit abortion in all cases, except where necessary to save the woman's life. In *K.L. v. Peru*, the HRC reasoned that state failure to enable the applicant to benefit from a therapeutic abortion caused the depression and emotional distress she experienced, and thus constituted a violation of Article 7 (freedom from torture or cruel, inhuman or degrading treatment or punishment).<sup>7</sup> This finding did not depend on the lawfulness of therapeutic abortion. Article 7 under the ICCPR may therefore be interpreted as requiring a state guarantee of lawful abortion where necessary to protect the woman's physical or mental health.
11. Under the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), the refusal of a state party "to provide legally for the performance of certain reproductive health services for women" is discrimination.<sup>8</sup> Abortion where necessary to protect a woman's health is by definition a health service. The right to non-discrimination thus requires a health-based exception as a measure "to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services."<sup>9</sup>
12. The *Protocol on the Rights of Women in Africa* under the *African Charter on Human and Peoples' Rights 1981* explicitly provides that "State Parties shall take all appropriate measures to . . . protect the reproductive rights of women by authorising medical abortion in cases . . . where the continued pregnancy endangers the mental and physical health of the mother . . ."<sup>10</sup>

### Comparative Standards

13. Laws permitting abortion to protect health constitute the norm for member states of the Council of Europe.<sup>11</sup> All but five (including Ireland) of the total forty-seven member states permit abortion both to save the life and to protect the health of the pregnant woman.<sup>12</sup> Almost all of these member states also allow lawful abortion for broader socioeconomic reasons or upon request within gestational limits.<sup>13</sup>
14. In evaluating the constitutionality of national abortion laws, constitutional courts in Europe consistently recognize lawful abortion where necessary to protect women's health as required by women's rights to protection for physical and mental health and enjoyment of personal autonomy.<sup>14</sup> Statutory recognition and judicial affirmation of health-based exceptions thus reflects an emphasis in Europe on the need to protect women's basic human rights in state regulation of abortion. Approaches to abortion regulation

worldwide underscore women's health as of central concern. Almost 75% of the world's population lives in countries where abortion is permitted for health reasons.<sup>15</sup>

## **B. International and Comparative Standards do not Support any Rational Justification to Distinguish between Life and Health Protection in Abortion Regulation**

15. Ireland is the only member state that permits lawful abortion to save the life but not protect the health of the pregnant woman.<sup>16</sup> Andorra, Malta, Monaco, and San Marino prohibit abortion without any express exception.<sup>17</sup>

16. International and comparative law suggest a distinction between life and health, as drawn in the national law of Ireland, is unreasonable for two reasons:

- no formal hierarchy can be drawn between life and health as interests equally deserving of state protection
- practical distinctions between life and health protection cannot be meaningfully drawn in the clinical context.

Death may be a foreseeable outcome, depending on the individual woman and the constraints of the health system, of a health-related risk. An abortion necessary to protect the health of a woman may therefore be broadly understood as life-saving.

### International Standards

17. The principle of indivisibility and interdependence, a basic principle in international human rights law, affirms there is no hierarchy of rights. Rights that protect life, health, non-discrimination and freedom from cruel, inhuman and degrading treatment are equal in status and importance. They are to be treated in a "fair and equal manner, on the same footing, and with the same emphasis."<sup>18</sup> For this reason, under international human rights law, it would be unreasonable for state parties to permit lawful abortion to protect women's right to life, but not to protect women's rights to health, non-discrimination, and freedom from cruel, inhuman and degrading treatment or punishment. The principle of indivisibility and interdependence is reflected in the HRC's comments on health-related violations under numerous other articles of the ICCPR, including the rights to life, privacy and the right to be free from cruel, inhumane and degrading treatment, in the abortion context.<sup>19</sup>

18. International human rights law further reflects an understanding of life protection as practically indistinguishable from considerations of health protection in the abortion context. The HRC consistently references health protection in consideration of women's right to life as applied to safe abortion.<sup>20</sup> In 2004 Concluding Observations, the HRC reiterated concern about restrictive abortion laws in Poland, "which may incite women to seek unsafe, illegal abortions, with attendant risks to their life and health" under Article 6, the right to life.<sup>21</sup> In 2005, the HRC noted that penal code in Mauritius "penalizes abortion even when the mother's life is in danger, and thus may encourage women to

resort to unreliable and illegal abortion, with inherent risks for their life and health (Covenant, art. 6).”<sup>22</sup>

### Comparative Standards

19. All Council of Europe member states that permit lawful abortion where necessary to preserve life also permit lawful abortion to protect health, with the exception of Ireland. This uniformity suggests that the distinction between life and health protection is both formally and practically unreasonable.
20. Most member states treat health and life exceptions identically under abortion regulation. Life and health risks are phrased as indistinguishable in the legislation.<sup>23</sup> Sweden, for example, permits abortion if “the pregnancy entails a serious danger to [the woman’s] life or health.”<sup>24</sup> Germany permits abortion “to prevent danger to the life or danger of a serious harm to the physical or psychic health of the pregnant woman.”<sup>25</sup> Thirty-nine member states also extend both life and health exceptions to the same gestational limit.<sup>26</sup> Only Italy, Bulgaria, and Hungary distinguish between life and health protection in terms of gestational limitations.<sup>27</sup>
21. The recognition that a distinction between risks to life and health cannot be meaningfully drawn in the clinical context is reflected in the laws of many member states that subsume risks to life under more general assessments of risks to health in abortion regulation.<sup>28</sup> France, for example, permits abortion “at any time” if the continuation of pregnancy “will seriously endanger the woman’s health.”<sup>29</sup> Spain permits abortion “to avert a serious risk to the physical or mental health of the pregnant woman”.<sup>30</sup>

### **C. International and Comparative Standards Recognize that Protection of Women’s Health Encompasses Both Physical and Mental Health**

#### International Standards

22. “Health,” as defined by the World Health Organization (WHO), is “a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity.”<sup>31</sup> This standard is also reflected in international human rights law. Article 12.1, under the ICESCR, states parties are required to recognize “the right of everyone to the enjoyment of the highest attainable standard of *physical and mental health*.”<sup>32</sup>
23. This conception of health has been applied in the abortion context. In *K.L. v. Peru*, the HRC relied on a holistic interpretation of health, encompassing mental and psychological trauma, to find a violation of the right to be free from cruel, inhuman and degrading treatment as a consequence of state failure to ensure access to therapeutic abortion.<sup>33</sup>

#### Comparative Standards

24. Most Council of Europe member states encompass and give equal weight to physical and mental health under broad health protection in abortion regulation. Member states

recognize that individuals cannot be reduced to mere physical existence under systems of human rights protection. This recognition is reflected in case law under the *European Convention*:

Mental health must also be regarded as a crucial part of private life associated with the aspect of moral integrity. Article 8 protects a right to identity and personal development, and the right to establish and develop relationships with other human beings and the outside world...The preservation of mental stability is in that context an indispensable precondition to effective enjoyment of the right to respect for private life.<sup>34</sup>

25. At least sixteen member states expressly permit lawful abortion to protect mental health.<sup>35</sup> A further twelve member states also permit lawful abortion for “social” or “special” reasons that relate to or impact on mental health (e.g., fetal impairment, rape, low income, homelessness, loss of husband, or already having many children).<sup>36</sup> In member states that do not expressly permit lawful abortion to protect mental health, general health exceptions are often interpreted to encompass lawful abortion for this purpose.

## **V. THE STATE PURSUES THE INTEREST IN PROTECTION OF PRENATAL LIFE THROUGH DISPROPORTIONATE MEANS**

26. International and comparative standards recognize that the state interest in protection of prenatal life as a legitimate interest. This interest, however, must be pursued through proportionate means that give due consideration for the human rights of pregnant women. Criminal abortion laws that are severely restrictive or impose harsh penalties on women who undergo unlawful abortion fail this standard. International and comparative standards moreover support the adoption of procedural and other measures within abortion regulation as a means to balance state interests in the protection of prenatal life and women’s human rights.

### **A. International and Comparative Standards Recognize that Protection of Prenatal Life is a Legitimate State Interest that Must be Pursued through Proportionate Means**

#### International Standards

27. The principle of proportionality, that a reasonable relationship exists between the means and the objective of the law, is a basic principle of international human rights law. The means employed to pursue a legitimate objective cannot be excessively burdensome. International human rights law thus recognizes the state interest in the protection of prenatal life as a legitimate interest. This interest must be pursued, however, in a proportionate manner.
28. The principle of proportionality respecting protection of prenatal life requires due regard for the rights of women. The European Court of Human Rights’ decision in *Vo v France*,



reflects this principle: "...if the unborn do have a "right" to "life", it is implicitly limited by the mother's rights and interests".<sup>37</sup>

### Comparative Standards

29. Both the legislatures and courts of Council of Europe member states recognize that the interest in prenatal life must be protected consistently with women's human rights and fundamental freedoms. Georgia's abortion law, for example, clearly states that its purpose is to "defend[] on one side women's autonomy, health and life, and on the other hand, the life of the fetus."<sup>38</sup> Constitutional courts have also affirmed that state interests in protection of prenatal life are legitimate but not absolute.<sup>39</sup>
30. *Germany*. The Constitutional Court of Germany has for three decades emphasized the constitutional right to pre-natal life and the state duty to protect this right.<sup>40</sup> The Court has declared that fetuses fall within the meaning of Article 2 of the Basic Law, which guarantees that "[e]veryone has the right to life and bodily integrity," and held that the right to life of the fetus was therefore constitutionally protected.<sup>41</sup> The Court has nevertheless recognized that the right to pre-natal life must be weighed against the rights of pregnant woman. In 1975, the Court affirmed the authority of the legislature to permit lawful abortion where necessary to protect a woman's right to life and health. In such cases, the Court reasoned that a woman's "'right to life and bodily inviolability' [] is at stake, the sacrifice of which cannot be expected of her for the unborn life."<sup>42</sup> The Court emphasized that in these cases "another interest equally worthy of protection, from the standpoint of the constitution, asserts its validity with such urgency that the state's legal order cannot require that the pregnant woman must, under all circumstances, grant precedence to the right of the unborn."<sup>43</sup> In 1993, the Court recognized that the legislature could permit lawful abortion during the first 12 weeks of pregnancy upon request provided the woman participate in counseling services and be subject to a waiting period.<sup>44</sup> In 1995, the legislature enacted a law decriminalizes abortions during the first trimester with these procedural requirements.<sup>45</sup>
31. *Italy*. In 1975, the Constitutional Court of Italy held that a complete prohibition ban on abortion was unconstitutional. Women had a constitutional right to abortion where pregnancy posed a serious and medically certifiable health risk.<sup>46</sup> While acknowledging that the fetus had "a constitutional right to protection," the Court found that a categorical ban on abortion violated woman's constitutionally guaranteed right to health. The Court reasoned that fetal rights cannot be absolutely prioritized over the rights of woman. Rather, these rights must be balanced: "[T]he constitutionally protected interest in the conceived one can collide with other interests that enjoy constitutional protection. Consequently, the law cannot give the first interest complete and absolute prevalence, denying the second interest an adapted protection."<sup>47</sup>
32. *Portugal*. The Constitutional Court of Portugal has consistently upheld laws permitting abortions under limited circumstances. While the fetus has a constitutional right to protection, the Court recognizes this right as limited. It cannot outweigh the fundamental rights of woman to life, health and dignity. In 1984, the Portuguese General Assembly

enacted a law waiving prosecution for abortion in cases of fetal impairment, danger to life or serious and irreversible damage to physical or mental health; and (3) pregnancy resulting from rape.<sup>48</sup> The Court declared and reaffirmed the new law as constitutional.<sup>49</sup> The Court emphasized that: “While it is difficult to imagine that there could be another right, which when in collision with the right to life may justify sacrificing this right to life, we can picture situations where the constitutionally protected good, which is prenatal life, has to give way where it conflicts, not only with other constitutional values or goods, but above all with certain fundamental rights (specifically the rights of a woman to life, health, good name and reputation, dignity, voluntary maternity, etc.).<sup>50</sup> In a subsequent case, the Court ruled that the constitution does not require the criminalization of abortion in the first ten weeks of pregnancy.<sup>51</sup>

33. *Slovakia*. In 2007, the Constitutional Court of Slovakia declared the law permitting abortion on request in the first 12 weeks of pregnancy constitutional. The Court found that while the fetus has constitutional value and may be worthy of some state protection, granting the right to life of the fetus would be in direct contradiction to women’s constitutional rights to the health and privacy. It held that “[t]he constitutional value of unborn human life can therefore be protected only to such extent, that this protection did not cause an interference with the essence of woman’s freedom and her right to privacy and consequently did not mean entailing an obligation that is exceeding the ambit of the Constitution.”<sup>52</sup>
34. *Spain*. In 1983, a bill liberalizing abortion in Spain was challenged as a violation of the fetus’s constitutional right to life and physical and moral integrity. The Spanish Constitutional Court found that the fetus, although not a person, is a “legal good protected by ... our constitution.”<sup>53</sup> The Court reasoned, however, that “the protection [of the fetal good] is [not] absolute, because as happens in the case of all the goods and rights recognized constitutionally, in certain situations they can and should be subject to limitations ... .” The Court emphasized that “[the fetus’s] rights cannot prevail unconditionally over the rights of the woman, nor can her rights take absolute primacy over the life of the “one to be born.”<sup>54</sup> The Court found that an exception in abortion regulation based on a grave threat to a woman’s physical and mental health was a justifiable protection of the woman’s rights to life and physical integrity: “[T]hat the mother’s health takes precedence is not unconstitutional either, especially when taking into consideration that the requirement that she make such an important and difficult sacrifice to her health under the threat of penal sanction can be considered inadequate [to motivate such a sacrifice].”<sup>55</sup>
35. The Irish Constitution reflects the comparative standard of constitutional courts across Europe, by providing that the rights of the “unborn” cannot deprive women of their equal right to life.<sup>56</sup>

## **B. International and Comparative Standards on the Criminal Law Require Proportionate Means to Pursue the State Interest in Protection of Prenatal Life**

36. International and comparative standards recognize that severely restrictive criminal laws and the imposition of harsh criminal penalties on women who undergo unlawful abortion are excessively burdensome and thus constitute a disproportionate means of pursuing the state interest in protection of prenatal life.
37. Under national law in Ireland, women and providers may be subject to “penal servitude for life.” Ireland imposes the harshest criminal penalty in abortion regulation across Europe.<sup>57</sup> The adverse effects of the severely restrictive criminal law on women’s access to lawful abortion in Ireland are well documented.

### International Standards

38. The United Nations Human Rights Treaty Monitoring Bodies consistently call on state parties to amend, when possible, legislation criminalizing abortion in order to withdraw punitive measures imposed on women who undergo abortion.<sup>58</sup> *General Recommendation No. 24* under CEDAW advises that “[w]hen possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion.”<sup>59</sup> Article 2(g) of the Convention establishes states obligations to repeal all national penal provisions which constitute discrimination against women.<sup>60</sup> The United Nations Human Rights Treaty Monitoring Bodies have also more broadly called on states parties to liberalize restrictive criminal regulation laws and to ensure access to lawful abortion.<sup>61</sup>
39. Criminal regulation is recognized to impede women’s access to lawful abortion and post-abortion care. Rather than restricting access to abortion, the law in effect restricts women’s access to *safe* abortion. This is especially true respecting severely restrictive laws, such as those that prohibit abortion or permit abortion only where necessary to preserve life. Medical providers and women are reluctant to respectively deliver or seek service and information under any circumstance, including those permitted by law, where there is a risk of prosecution and imprisonment.
40. Women who qualify for lawful abortion under life and health exceptions are forced to resort to unsafe services,<sup>62</sup> with consequent risks to their lives and health,<sup>63</sup> and are further deterred from seeking care for abortion-related complications.<sup>64</sup> This effect of criminal regulation is broadly termed the “chilling effect.” The HRC described the effect in 2000 Concluding Observations respecting Argentina: “[T]he Committee is concerned that the criminalization of abortion deters medical professionals from providing this procedure without judicial order, even when they are permitted to do so by law.”<sup>65</sup> Based on these adverse effects,<sup>66,67</sup> the HRC has referred to such criminal laws as a violation of the right to life.<sup>68</sup> CEDAW has also framed laws that criminalize, penalize and/or impose punishment for abortion as violations of the rights to life and health.<sup>69</sup>

41. State failure to positively ensure effective access to lawful abortion and post-abortion care is also interpreted as a violation of women's rights to life and health. Article 6, the right to life, under the ICCPR is interpreted as requiring states parties to take positive measure to ensure the right life,<sup>70</sup> including measures to ensure women "do not have to undergo life-threatening clandestine abortions."<sup>71</sup> In 2004 Concluding Observations, the HRC focused on the lack of accessible abortion in Poland to the extent permitted by law due to lack of information and use of conscientious objection. The HRC urged Poland to consider liberalizing its abortion legislation.<sup>72</sup> In 2006 Concluding Observations, CEDAW expressed concern that abortion remained one of the leading causes of maternal mortality in Mexico, despite legalization of abortion in some contexts, and urged Mexico to implement a comprehensive strategy to provide effective access to safe abortion in situations provided for under the law.<sup>73</sup>
42. The European Court of Human Rights reflected this standard in *Tysiack v. Poland*, by requiring the state under Article 8 to establish effective procedures to facilitate women's exercise of their right to lawful abortion. The Court held that the:
- legal prohibition on abortion, taken together with risk of incurring criminal responsibility, can well have chilling effect on doctors when deciding whether requirements of legal abortion are met in an individual case. Provisions regulating availability of lawful abortion should be formulated in such a way as to alleviate effect. Once legislature decides to allow abortion, it must not structure its legal framework in a way which would limit real possibilities to obtain it.<sup>74</sup>
43. The United Nations Human Rights Treaty Monitoring Bodies have further recognized the discriminatory effects of criminal regulation on women's access to lawful abortion on the compounded basis of sex, race, age and income.<sup>75</sup> Women belonging to socio-economically advantaged groups circumvent the law by travel abroad or through private providers and hospitals more likely to grant approval. Women belonging to vulnerable and disadvantaged groups, including those unable to travel abroad, are required to access care through the public system and in practice disproportionately suffer the harms of the chilling effect. In its Concluding Observations on Argentina, the HRC expressed "concern over discriminatory aspects of the laws and policies in force, which result in disproportionate resort to illegal, unsafe abortions by poor and rural women."<sup>76</sup> International human rights law requires that state parties ensure abortion is accessible to all women without discrimination to the extent permitted by law.

### Comparative Standards

44. While most Council of Europe member states regulate abortion under criminal law, penalties for unlawful abortion are relatively moderate and the laws are liberal, permitting lawful abortion in a broad set of circumstances.<sup>77</sup> No member state save Ireland imposes life imprisonment for women who undergo unlawful abortion.<sup>78</sup> Rather, the laws of the majority of member states do not have criminal punishment provisions for women. Six member states moreover explicitly disclaim criminal punishment for women

who obtain illegal abortions.<sup>79</sup> The laws of some member states also contain specific provisions that mitigate or waive punishment of the woman based on an evaluation of her circumstances.<sup>80</sup>

45. National courts have also recognized the chilling effect of restrictive criminal laws on women's access to lawful abortion and post-abortion care, and the obligation of the state to ensure women's effective access to lawful abortion. In 2004, the Court of Appeal of Northern Ireland held that the state had acted unlawfully in failing to ensure that women received satisfactory integrated health services in relation to abortion.<sup>81</sup> The Court recognized that medical providers are not clear as to the law, and that the state failure to clarify the exceptions for lawful abortion leaves providers open to criminal prosecution. This risk results in women being denied access to abortion services to which they are legally entitled.<sup>82</sup> The Court required that the state investigate whether guidelines on the lawfulness of abortion should be issued to mitigate the chilling effect of the criminal law.<sup>83</sup>

### **C. International and Comparative Standards Support Procedural and Other Measures to Balance State Interests in the Protection of Prenatal Life and Women's Human Rights**

46. International and comparative standards support numerous state measures that both protect state interests in prenatal life and guarantee women's human rights. International standards support prenatal life through ensuring safe pregnancies and supporting family planning and most Council of Europe member state have procedural measures in abortion regulation which balance state interest in protection of prenatal life with women's human rights.<sup>84</sup>

#### International Standards

47. CEDAW recognizes that measures to protect prenatal life must be pursued consistently with the human rights of women.<sup>85</sup> These measures include state provision of safe motherhood services and prenatal assistance, the reduction of spontaneous miscarriages, including recurrent miscarriages,<sup>86</sup> and welfare provisions to ease the social and economic burdens of pregnant women.<sup>87</sup>
48. States may also enact measures to reduce the need for abortion by ensuring the appropriate family planning and contraceptive services are available and accessible.<sup>88</sup> The United Nations Human Rights Treaty Monitoring Bodies consistently reference achieving reductions in the rate of abortion through increased access to family planning services and education.<sup>89</sup>

#### Comparative Standards

49. Most Council of Europe member states have enacted procedural and other measures to balance state interest in protection of prenatal life and women's human rights in abortion regulation.<sup>90</sup> The following measures, while nevertheless burdening women's access to

lawful abortion, offer a less burdensome means to pursue a state interest in the protection of prenatal life than restrictive laws or harsh criminal penalties.

50. In 2007, the Slovak Constitutional Court recounted how even where abortion is permitted on request, procedural mechanisms in the regulation of abortion can provide a measure of protection for prenatal life. The Court reasoned:

For the Act preferentially sets a mechanism (procedure), based on which an interruption of pregnancy can be performed, while such mechanism also considers the interests of the unborn human life ... the mechanism formulated mainly in Section 7 of the Act effects also against the woman's ill-considered or premature decision on artificial interruption of pregnancy ... the woman has to request artificial interruption of pregnancy in writing. Then she undergoes a medical examination and consults a physician ... The valid regulation hence ensures that the woman's will outweighs the protection of the unborn human life only after a due deliberation based also on relevant medical information provided in an accessible form.<sup>91</sup>

51. Authorization or approval from qualified commissions or health professionals are common procedures among Council of Europe member states. These procedures are intended to ensure that abortion decision-making is undertaken in a serious manner, reflecting due regard for the interests of prenatal life. Approximately twenty-six member states require that a woman receive formal certification of medical need for pregnancy termination from health professionals to qualify for health based exceptions beyond a certain week of gestation.<sup>92</sup>
52. The nature of authorizing commissions varies. They are generally composed of physicians, but may include sociologists, psychologists or lawyers. Bulgaria, for example, requires robust "special medical committees" at each institution that performs abortions comprising the head of the institution's obstetric department, an obstetrician, a doctor specializing in the abortion-indicating illness, and a secretary, among others.<sup>93</sup> Some countries have dedicated commissions on the national level, such as Serbia's Commission for the Termination of Pregnancy in Serbia<sup>94</sup> and Sweden's National Board of Health and Welfare.<sup>95</sup> Other countries assemble *ad hoc* committees on a case-by-case basis, such as France, where the woman is allowed to choose one member of the three-person panel to reviews her petition.<sup>96</sup>
53. The United Kingdom requires only that two registered medical practitioners agree and certify in good faith that abortion is indicated for health reasons.<sup>97</sup> In countries that permit individual providers to perform lawful abortion without further approval, states have issued regulations or guidelines to instruct providers on the circumstances warranting lawful termination, thereby ensuring that abortions are performed in accordance with the law.<sup>98</sup> Almost all member states also require written records detailing the circumstances warranting the abortion except in cases of life-threatening emergencies (in which case the record is created after the procedure).<sup>99</sup>

## VI. CONCLUSION

54. The national law in Ireland is inconsistent with international and comparative legal standards, in particular, the laws of Council of Europe member states, on abortion regulation. These standards recognize that:

- the human rights of women require abortion be lawful where necessary to protect women's physical and mental health;
- the state interest in protection of prenatal life must be pursued through proportionate means that give due consideration to the human rights of women. Laws that are severely restrictive or impose harsh penalties fail this standard; and
- procedural and other measures are employed to balance state interests in the protection of prenatal life and women's human rights.

The degree of conformity among member states in relation to these issues does not support according Ireland a margin of appreciation.

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<sup>1</sup>Vienna Convention on the Law of the Treaties, 23 May 1969, 1155 U.N.T.S. 331, 8 I.L.M. 679 (entered into force January 27, 1980 [hereinafter Vienna Convention]).

<sup>2</sup>*Id.*, Art. 31(3).

<sup>3</sup>In the "Other Treaties" case, the Inter-American Court perceived in the American Convention "[a] certain tendency to integrate the regional and universal systems for the protection of human rights." "Other Treaties" Subject to the Consultative Jurisdiction of the Court (Art. 64 of the American Convention on Human Rights) (1982), Advisory Opinion OC-1/82, Inter-Am. Ct. H.R. (Ser. A) No. 1. at para. 41.

<sup>4</sup>*Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24.

<sup>5</sup>*Sunday Times v. the United Kingdom (no. 1)*, 26 April 1979, pages 36-37, Series A no. 30.

<sup>6</sup>*Concluding Observations of the Committee on Economic, Social and Cultural Rights: Chile*, para. 53, E/C.12/1/Add.105 (2004); *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Malta*, para. 41, E/C.12/1/Add.101 (2004); *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Monaco*, para. 23, E/C.12/MCO/CO/1 (2006).

<sup>7</sup>Human Rights Committee, Communication No. 1153/2003, *K.L. v Peru*, U.N. Doc. CCPR/C/85/D/1153/2003 (2005) [hereinafter *K.L. v Peru*].

<sup>8</sup>Committee on the Elimination of Discrimination Against Women (CEDAW Committee), *General Recommendation 24: Women and Health*, para. 11, U.N. Doc. A/54/38 (1999) [hereinafter CEDAW Gen. Rec. 24].

<sup>9</sup>Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* Dec. 18, 1979, G.A. Res. 34/189, UN GAOR, 34th Sess., Supp. No. 46, at 193, Art. 12(1), U.N. Doc. A/34/46, U.N.T.S 13 (*entered into force* Sept 3, 1981) [hereinafter CEDAW].

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<sup>10</sup>African Charter on Human and Peoples' Rights, *adopted* June 27 1981, OAU Doc. CAB/LEG/67/3, rev. 5, 21 I.L.M.58 (1982) (*entered into force* Oct. 21, 1986), Art. 14.2(c).

<sup>11</sup>CENTER FOR REPRODUCTIVE RIGHTS, THE WORLD'S ABORTION LAWS (2007).

<sup>12</sup>*Id.* Only Andorra, Malta, Monaco, and San Marino maintain absolute prohibitions on abortion, without express exceptions for risk to the woman's health or life. Though Ireland's Supreme Court has created an explicit exception to the country's abortion prohibition if the pregnant woman's life is endangered, Ireland's law lacks any explicit exception to preserve the pregnant woman's health. *See* Offenses against the Person Act § 58 (1861) (banning abortion outright) (England & Ireland); Eighth Amendment of the Constitution Act, 1983, 1983 Acts of the Oireachtas, 7 Oct 1983 (Ireland) (amending Ir. Const., art. 40, sec. 3) (guaranteeing Irish law will "respect . . . , defend, and vindicate" the "right to life of the unborn"); Attorney General v. X, [1992] I.L.R.M. 401 (5 March 1992) (Ireland) (finding judicial exception to abortion ban in case of "real and substantial risk to the life of the mother").

<sup>13</sup> Thirty-nine out of a total 47 member states allow abortions without restriction or for broad socioeconomic reasons. *See* CENTER FOR REPRODUCTIVE RIGHTS, THE WORLD'S ABORTION LAWS (2007), *supra* note 11.

<sup>14</sup>*See* Section V. A. below. Entscheidungen des Bundesverfassungsgerichts [BverfGE] [Fed. Constitutional Court] 39, 1 (F.R.G.) translated in Robert E. Jonas & John D. Gorby, trans., West German Abortion Decision: A Contrast to Roe v. Wade, 9 John Marshall J. Prac. & Proc. 605, 624 (1976); Corte Costituzionale, Repubblica Italiana, n.27, 1975 (Italy); Constitutional Court, Art. 47, 1985 (Port.).

<sup>15</sup>Reed Boland and Laura Katzive, *Developments in Laws on Induced Abortion: 1998–2007* 34(3) INTERNATIONAL FAMILY PLANNING PERSPECTIVES (2008), *available at* <http://www.guttmacher.org/pubs/journals/3411008.html> (last visited Oct. 30, 2008).

<sup>16</sup>Attorney General v. X, [1992] I.L.R.M. 401 (5 March 1992) (Ireland) (creating a judicial exception to the abortion ban in cases of "real and substantial risk to the life of the mother" (emphasis added), but not in case of risk to her health). Ireland is the only state that relies solely on a judicial exception to its abortion ban; the life and health exceptions of all other Member States are enshrined in legislation, implementing regulations, and/or ministerial decrees.

<sup>17</sup>However, in these countries, it is presumed that the criminal defense of necessity would apply in cases where an abortion was performed to save a woman's life. Population Div., United Nations, Abortion Policies: A Global Review, vol. 1, at 25, vol. 2, at 126, 142, vol. 3, at 72 (2001), *available at* <http://www.un.org/esa/population/publications/abortion/index.htm> (summarizing abortion laws in Andorra, Malta, Monaco, and San Marino) (last visited Oct. 30, 2008). However, in 1981, Malta removed from its Criminal Code specific provisions allowing life-saving abortions, possibly eliminating the grounds of a necessity defense in that country. *Id.*, vol. 2, at 126. The Center for Reproductive Rights is unaware of any abortion prosecution in any of these countries in which the criminal defense of necessity has been invoked and/or how the courts would respond to this defense.

<sup>18</sup>*Vienna Declaration and Programme of Action, World Conference on Human Rights*, para. 5, Vienna, Austria, June 14-25, 1993 U.N. Doc. A/CONF.157/23 (1993).

<sup>19</sup>*See e.g., K.L. v Peru*, *supra* note 7.

<sup>20</sup>*See also, Concluding Observations of the Human Rights Committee: El Salvador*, para. 14, U.N. Doc. CCPR/CO/78/SLV (2003); *Concluding Observations of the Human Rights Committee: Mali*, para. 14, CCPR/CO/77/MLI (2003); *Concluding Observations of the Human Rights Committee: Poland*, para. 8, CCPR/CO/82/POL (2004).

<sup>21</sup>*Concluding Observations of the Human Rights Committee: Poland*, para. 8, U.N. Doc. CCPR/CO/82/POL (2004).



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<sup>22</sup>*Concluding Observations of the Human Rights Committee: Mauritius*, para. 9, U.N. Doc. CCPR/CO/83/MUS (2005).

<sup>23</sup>*See, e.g.*, Law No. 8045 of Dec. 7, 1995 on the Interruption of Pregnancy, Art. 9 (abortion permitted if “pregnancy and/or childbirth would put woman’s life or health at risk”) (Albania); Penal Code, sec. 97(2) (abortion permitted in case of “serious danger . . . to the life or to the physical or mental health of the pregnant woman”) (Austria); Law No. 1252-1978 of April 21, 1978, Art. 22 (abortion permitted “to save her life or prevent damage to her health”) (Croatia); Penal Code, sec. 169A(b) (abortion permitted if pregnancy “would endanger the life of the pregnant woman, or that physical, mental, or psychological injury would be suffered by her”) (Cyprus); Law No. 66/1986 on Abortion, Oct. 20, 1986, sec. 5 (abortion permitted if woman’s “life or health . . . are endangered.”) (Czech Republic); Law No. 239 of March 24, 1970 on the interruption of pregnancy, sec. 1(1) (abortion allowed “if continuation of the pregnancy or delivery of a child would endanger her life or health”) (Finland); Law about Artificial Termination of Pregnancy 2000, paras. 13, 15 (abortion permitted if “continuation and/or delivery creates a danger to woman’s life and/or health”) (Georgia); Penal Code, sec. 218a(2) (abortion permitted “to prevent danger to the life or danger of a serious harm to the physical or psychic health of the pregnant woman”) (Germany); Penal Code, sec. 304(4)(3) (abortion permitted if “there is an unavoidable risk to the life of the pregnant woman and of serious and permanent harm to her physical or mental health”) (Greece); Law No. 25 of May 1975, Art. 10 (abortion permitted if “life and health of the woman are grossly endangered by continued pregnancy or childbirth”) (Iceland); Penal Code, sec. 96(4)(1) (abortion permitted if “necessary to prevent serious danger to the life of the pregnant woman or serious harm to her health”) (Liechtenstein); Law Concerning Sexual Education, Prevention of Clandestine Abortion, and the Regulation of Voluntary Interruption of Pregnancy of Nov. 15, 1978, Art. 353(3) (abortion permitted in case of “very serious threat to the health or life of the pregnant woman”) (Luxembourg); Ministry of Health Order No. 313 of Jul. 25, 2006, Annex 2, para. 9 (abortion permitted if “diseases or pathological conditions . . . endanger the health and life of the pregnant woman”) (Moldova); Termination of Pregnancy Act, Law No. 50 of June 13, 1975, as amended by Law No. 44, of June 16, 1978, art. 10 (abortion permitted if “pregnancy constitutes an impending risk to the woman’s life or health”) (Norway); Law on Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion of Jan. 7, 1993, Art. 4a(1)(1), 4a(2) (abortion permitted if “pregnancy is a threat for life or health of pregnant woman”) (Poland); Penal Code, sec. 142(1)(a) (abortion permitted if necessary to eliminate “risk of death or of serious and irreversible injury to the body or physical or mental health of the pregnant woman”) (Portugal); Penal Code, Art. 185 (abortion permitted to “save the pregnant woman’s life, health or bodily integrity from serious danger”) (Romania); Act Concerning Conditions of and Procedures for the Termination of Pregnancy, Law of June 29, 1977, Art. 9(1) (abortion permitted if “life or health of the pregnant woman is seriously endangered”) (Serbia); Law on Abortion, Law No. 73, Oct. 23, 1986, sec. 5 (abortion permitted if the woman’s “life or health . . . are endangered”) (Slovakia); Law of 20 Apr. 1977, Part III, sec. 18 (abortion permitted in case of “risk to the woman’s life, health, or future motherhood”) (Slovenia); Abortion Act of 1974, as amended May 18, 1995, sec. 6 (abortion permitted if “the pregnancy entails a serious danger to [the woman’s] life or health”) (Sweden); Abortion Act of 1967, sec. 1(1)(b)–(c) (abortion permitted to prevent “grave permanent injury to the physical or mental health of the pregnant woman, . . . or risk to the life of the pregnant woman”) (United Kingdom). *See also* Turkey’s abortion law, which clarifies through regulations that its legislated life exception encompasses a health exception; Population Planning Law, Law No. 2827 of May 24, 1983, sec. 5 (Turkey); Regulations concerning the administration and control of womb evacuation and sterilization, Dec. 18, 1983, Art. 5, para.2 (Turkey). *See also* Armenia, Azerbaijan, Estonia, Macedonia, and Ukraine abortion laws.

<sup>24</sup>Abortion Act of 1974, as amended May 18, 1995, sec. 6 (Sweden).

<sup>25</sup>Penal Code, sec. 218a(2) (Germany).

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<sup>26</sup>This assessment is based on the language of the Member States' laws, as well as country summaries prepared by the UNFPA. See POPULATION DIV., UNITED NATIONS, ABORTION POLICIES: A GLOBAL REVIEW (2001), available at <http://www.un.org/esa/population/publications/abortion/index.htm> (last visited Oct. 30, 2008) [hereinafter ABORTION POLICIES: A GLOBAL REVIEW].

<sup>27</sup>Decree No. 2, of Feb. 1, 1990, Art. 12(2) (Bulgaria); Law on the Protection of the Life of the Fetus, No. 79 of Dec. 17, 1992, Art. 6 (Hungary); Law on the Social Protection of Motherhood and the Voluntary Termination of Pregnancy, No. 194 of May 22, 1978, Art. 6(a) (Italy).

<sup>28</sup>See e.g., Law on Termination of Pregnancy of Apr. 3, 1990 (amending Penal Code), Penal Code, sec. 350(4) (abortion permitted if "continuation of the pregnancy would gravely endanger the health of the woman") (Belgium); Law on the termination of pregnancy No. 350 of June 13, 1973, sec. 3(1)(1) (abortion permitted if "pregnancy, childbirth or care of the child entail a risk of deterioration of the woman's health") (Denmark); Law on Voluntary Interruption of Pregnancy and on Contraception, No. 2001-588 of July 4, 2001, Art. 11 (abortion permitted "at any time" if continuing the pregnancy "will seriously endanger the woman's health") (France); Law on Termination of Pregnancy of May 1, 1981, sec. 5(1) (abortion permitted if woman is "in distress") (Netherlands); Law on Fundamental Legislation on Public Health Care, No. 5487-1 of July 22, 1993, Art. 36 (abortion permitted "at any stage of pregnancy whenever medically indicated") (Russian Federation); Organic Law No. 9 of July 5, 1985 (amending Penal Code, sec. 417 bis.), Art. 1(1) (abortion permitted "to avert a serious risk to the physical or mental health of the pregnant woman") (Spain); Penal Code, Art. 119 (abortion permitted if pregnancy poses "danger of causing serious harm to the bodily integrity or a state of deep distress to the pregnant woman") (Switzerland).

<sup>29</sup>Law on Voluntary Interruption of Pregnancy and on Contraception, No. 2001-588 of July 4, 2001, Art. 11 (France).

<sup>30</sup>Organic Law No. 9 of July 5, 1985, Penal Code, sec. 417 bis., Art. 1(1) (Spain).

<sup>31</sup>*Constitution of the World Health Organization*, at preamble, *International Health Conference*, New York, U.S., July 19–22, 1946, signed 22 July 1946, WHO Official Record, 2, 100 (entered into force 7 April 1948), available at [http://www.who.int/governance/eb/who\\_constitution\\_en.pdf](http://www.who.int/governance/eb/who_constitution_en.pdf) (last visited Oct. 30, 2008).

<sup>32</sup>International Covenant on Economic, Social and Cultural Rights, adopted Dec, 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at XX, Art. 12.1, U.N. Doc. A/6316 (1966), 993 U.N.T.S.3 (entered into force Jan. 3, 1976) [hereinafter Economic, Social and Cultural Rights Covenant].

<sup>33</sup>See *KL v. Peru*, supra note 7, para. 6.3.

<sup>34</sup> *Bensaid v. the United Kingdom*, no. 44599/98, § 47, ECHR 2001-I. Reaffirmed in *Odièvre v. France* [GC], no. 42326/98, § 29, ECHR 2003-III; *E.B. v. France* [GC], n°/no. 43546/02, § 43, ECHR 2008-....

<sup>35</sup>Austria, Cyprus, Denmark, Germany, Greece, Iceland, Italy, Lithuania, Moldova, Netherlands, Portugal, Spain, Switzerland, and United Kingdom all explicitly approve of abortion for mental health grounds for the full duration of the pregnancy or until fetal viability. See e.g., Penal Code, sec. 97(2) (Austria); Penal Code, sec. 169A(b) (Cyprus); Law on the termination of pregnancy, No. 350 of June 13, 1973, secs. 2, 3(6) (Denmark); Penal Code, sec. 218a(2) (Germany); Penal Code, sec. 304(4)(3) (Greece); Law No. 25 of May 1975, Arts. 9–10 (Iceland); Law on the Social Protection of Motherhood and the Voluntary Termination of Pregnancy, No. 194 of May 22, 1978, Art. 6(b) (Italy); International Planned Parenthood Federation, *Abortion Legislation in Europe 38–39* (2007) (summarizing content of Decree of Lithuanian Minister of Health (1994)); Ministry of Health Order No. 313 of Jul. 25, 2006, Annex 2, para. 9 (Moldova); Law on Termination of Pregnancy of May 1, 1981, secs. 5(1), 11(6) (Netherlands); Penal Code, sec. 82a (Netherlands); Penal Code, sec. 142(1)(a) (Portugal); Organic Law No. 9 of July 5, 1985 (amending Penal Code, sec. 417 bis.), Art. 1(1) (Spain); Penal Code, Art. 119 (Switzerland); Abortion Act of 1967, sec. 1(1)(b) (United Kingdom). In addition, Hungary explicitly permits abortion on mental

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health grounds until the twelfth week. Law on the Protection of the Life of the Fetus, No. 79 of Dec. 17, 1992, Art. 6(1)–(2) (Hungary); Law No. 87 of June 22, 2000, Art. 5 (Hungary). Norway explicitly permits abortion on mental health grounds at least until the eighteenth week. Law No. 50 of June 13, 1975 as amended by Law No.44, of June 16, 1978 (Norway).

<sup>36</sup>The twelve states are Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Finland, Georgia, Macedonia, Poland, Russian Federation, Serbia, Sweden, and Ukraine. *See e.g.*, Law on the interruption of pregnancy, No. 8045 of Dec. 7, 1995, Art. 11 (permitting abortion for “social reasons” until 22nd week) (Albania); Law of Oct. 7, 1977 (Sluzbeni List, No. 29 of Oct. 31, 1977) (permitting abortion for social indications until 20th week) (Bosnia and Herzegovina); Law on the interruption of pregnancy, No. 239 of March 24, 1970, secs. 5, 5a (permitting abortion for “special reasons” up to 20th week, and up to 24th week for fetal defect) (Finland); Law about artificial termination of pregnancy 2000, para. 13 (establishing broad grounds for abortion until 22nd week, including where pregnancy results from rape or incest; or where pregnant woman is homeless, a low-income mother of multiple children, older than 40 or younger than 16, arrested, imprisoned, infected with HIV/AIDS, or suffers from mental retardation; and beyond 22nd week in case of fetal impairment) (Georgia); Law on Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion of Jan. 7, 1993, Art. 4a(2)–(3) (permitting abortion for fetal handicap until point of viability, and in case of rape until 12th week) (Poland); Law on Fundamental Legislation on Public Health Care, No. 5487-1 of July 22, 1993, Art. 36 (Russian Federation); Decree No. 485, of Aug. 11, 2003 (permitting abortion until 22nd week on “social indications,” including rape, detention of pregnant woman, death or disability of husband, and a court ruling restricting parental rights) (Russian Federation); Abortion Act of 1974 (permitting abortion for “special reasons” without gestational limit, as approved by Health Board) (Sweden); Ministry of Health & Social Affairs (Sweden), The Swedish Abortion Act 6 (1995) (explaining that most approved problems after 18th week are of “psychosocial nature”); Population Div., United Nations, Abortion Policies: A Global Review (2001), *available at* <http://www.un.org/esa/population/publications/abortion/index.htm> (last visited Oct. 30, 2008) (summarizing U.S.S.R. Decree of Dec. 31, 1987, applicable in Armenia, Azerbaijan, and Ukraine, establishing a range of non-medical indications for abortions, including death of husband during pregnancy; imprisonment of pregnant woman or husband; deprivation of maternity rights; multiparity (number of children exceeds five); divorce during pregnancy; pregnancy following rape; and child disability in the family).

<sup>37</sup>*Vo v France* [GC], no. 53924/00, § 80, ECHR 2004-VIII.

<sup>38</sup> Law about artificial termination of pregnancy, para. 1, 2000 (Georgia).

<sup>39</sup>Some of the information provided below on European Constitutional Court decisions was compiled and presented to the Colombian Constitutional Court in an amicus brief presented by the Center for Reproductive Rights, the Lowenstein International Human Rights Law Clinic at Yale Law School, Red Alas, Gomez-Pinzon, Linares, Samper, Suárez, Villamil Abogados, , May 2005, in support of a case challenging the constitutionality of Colombia’s abortion law, which categorically prohibited abortion. In 2006, in a landmark decision, the Constitutional Court ruled that abortion must be permitted when a pregnancy threatens a woman’s life or health, in cases of rape, incest and in cases where the fetus has malformations incompatible with life outside the womb, *available at* [http://www.reproductiverights.org/pdf/BriefColombia\\_English\\_0505\\_FINAL.pdf](http://www.reproductiverights.org/pdf/BriefColombia_English_0505_FINAL.pdf) (last visited Oct. 28, 2008).

<sup>40</sup>Entscheidungen des Bundesverfassungsgerichts [BverfGE] 39, 1 (F.R.G.) (explaining that life exists “in any case, from the 14th day of conception”) translated in Robert E. Jonas & John D. Gorby, trans., West German Abortion Decision: A Contrast to *Roe v. Wade*, 9 John Marshall J. Prac. & Proc. 605, 637 (1976).

<sup>41</sup>*Id.*, at 638 (Court citing the Basic Law).

<sup>42</sup>*Id.*, at 648.

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<sup>43</sup>*Id.*

<sup>44</sup>*Id.*, at 282–283, 285.

<sup>45</sup>Penal Code, art. 218 (C.H. Beck, 1997) (unofficial translation,). Nanette Funk, Abortion Counseling and the 1995 German Abortion Law, 12 Conn. J. Int'l L. 51–52 (1996); (Grosse Mehrheit für das neue Abtreibungsrecht. Fristenregulung mit Beratungspflicht beschlossen, Frankfurter Allgemeine Zeitung, June 30, 1995).

<sup>46</sup>Corte costituzionale [Corte cost.] [Constitutional Court], 18 feb. 1975, n.27, 1762, Racc. uff. corte cost., 201, Giur. It. I, 1, 1416 (Italy). (All translations from Italian by Heloisa Griggs).

<sup>47</sup>*Id.*, at 204

<sup>48</sup>Eclusão da Ilícitude em Alguns Casos de Interrupção Voluntária da Gravidez, Lei no. 6/84 (1984, 6) (Italy).

<sup>49</sup>Tribunal Constitucional Portugal (TCP), May 29, 1985 (D.R., No. 85, p. 58442) (Port.).

<sup>50</sup>*Id.*

<sup>51</sup>Tribunal Constitucional Portugal (TCP) Apr. 18, 1998, (D.R., No. 288, ¶ 47), *available at* <http://www.tribunalconstitucional.pt/tc/acordaos/19980288.html> (last visited October 22, 2008).

<sup>52</sup>Nález Ústavného súdu Slovenskej republiky, sp. zn. (Decision of the Constitutional Court of the Slovak Republic, No.) PL. ÚS 12/01-297, December 4, 2007.

<sup>53</sup>Sentencia del Tribunal Constitucional [STC] [Constitutional Court], Apr. 11, 1985 (B.O.E., No. 53) (Spain), *available at* [http://www.boe.es/g/es/bases\\_datos\\_tc/doc.php?coleccion=tc&id=SENTENCIA-1985-0053](http://www.boe.es/g/es/bases_datos_tc/doc.php?coleccion=tc&id=SENTENCIA-1985-0053) (last visited October 22, 2008). (All translations from Spanish done by Frances Mejía).

<sup>54</sup>*Id.*

<sup>55</sup>*Id.*; in addition, where a pregnancy threatened a woman's life, the Court found that her right to life precluded forcing her to carry the fetus to term: “[I]f the life of the ‘one to be born’ were protected unconditionally, the life of the unborn would be more protected than the life of the already born [the mother], and the mother would be penalized for defending her right to life. . . . [T]hus, the prevalence of the mother's life is constitutional. In the case of fetal impairment, the Court framed its analysis in terms of the burden imposed on the woman and her existing family, and held that such a burden would “exceed what normally can be asked of a mother and a family. This statement takes into account the exceptional situation is made worse in many cases because of the insufficiency of state and social welfare . . . .” The Court further found that the exception based on conception through rape affirmed the woman's constitutional right to dignity, which the Court described as “intimately linked” with the constitutional provisions protecting the free development of the personality (art. 10); the right to physical and moral integrity (art. 15); the right to liberty of ideas and beliefs (art. 16); and the right to honor, personal and family privacy and the right to one's own self-image (art. 18.1). The Court emphasized the need to ensure that the woman not be forced to suffer the consequences of a violent act that had already profoundly offended her personal dignity: “It is enough to consider that the gestation has its origin in the commission of an act not only contrary to the woman's will, but realized by overcoming her resistance through violence, damaging in a major way her personal dignity and the free development of her personality . . . . It is manifest that to obligate her to put up with the consequences of an act of such nature is not something that can be asked of her.”

<sup>56</sup>The Eighth Amendment of the Constitution guarantees to defend and vindicate the “right to life of the unborn [...] with due regard to the equal right to life of the mother.” Ireland, Eighth Amendment of the Constitution Act, 1983, 1983 Acts of the Oireachtas, 7 Oct. 1983 (amending Ir. Const., art. 40, sec. 3).

<sup>57</sup>Offenses Against the Person Act § 58 (1861) (Eng. & Ir.).

<sup>58</sup>CEDAW Gen. Rec. No. 24, *supra* note 8, para. 31(c). *See also Concluding Observations of the CEDAW Committee: Andorra*, para. 48, U.N. Doc. A/56/38 (2001); *Concluding Observations of the CEDAW*

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*Committee: Belize*, para. 57, U.N. Doc. A/54/38 (1999); *Concluding Observations of the CEDAW Committee: Burkina Faso*, para. 276, U.N. Doc. A/55/38 (2000); *Concluding Observations of the CEDAW Committee: Cameroon*, para. 60, U.N. Doc. A/55/38 (2000); *Concluding Observations of the CEDAW Committee: Ireland*, para. 186, U.N. Doc. A/54/38 (1999); *Concluding Observations of the CEDAW Committee: Jordan*, para. 181, U.N. Doc. A/55/38 (2000); *Concluding Observations of the CEDAW Committee: Namibia*, Part II para. 127, U.N. Doc. A/52/38/Rev.1 (1997); *Concluding Observations of the CEDAW Committee: Nepal*, paras. 139 and 148, U.N. Doc. A/54/38 (1999); *Concluding Observations of the CEDAW Committee: United Kingdom*, para. 310, U.N. Doc. A/55/38 (1999). See e.g., *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Bolivia*, para. 43, U.N. Doc. E/C.12/1/Add.60 (2001); *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Mauritius*, para. 15, U.N. Doc. E/C.12/1994/8 (1994); *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Nepal*, paras. 32 and 55, U.N. Doc. E/C.12/1/Add.66 (2001); *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Poland*, para. 29, U.N. Doc. E/C.12/1/Add.82 (2002); *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Senegal*, paras. 26 and 47, U.N. Doc. E/C.12/1/Add.62 (2001).

<sup>59</sup>CEDAW Gen. Rec. No. 24, *supra* note 8, para. 31(c).

<sup>60</sup>CEDAW *supra* note 9, Article 2.(g).

<sup>61</sup>See e.g., *Concluding Observations of the Human Rights Committee: Ecuador*, para. 11, U.N. Doc. CCPR/C/79/Add.92 (1998); *Concluding Observations of the Human Rights Committee: Kenya*, para. 14, U.N. Doc. CCPR/CO/83/KEN (2005); *Concluding Observations of the Human Rights Committee: Paraguay*, para. 10, U.N. Doc. CCPR/C/PRY/CO/2 (2006); *Concluding Observations of the Human Rights Committee: Poland*, para. 8, U.N. Doc. CCPR/CO/82/POL (2004); *Concluding Observations of the Human Rights Committee: Trinidad and Tobago*, para. 18, U.N. Doc. CCPR/CO/70/TTO (2000).

<sup>62</sup>See e.g., *Concluding Observations of the Human Rights Committee: Poland*, para. 8, U.N. Doc. CCPR/CO/82/POL (2004).

<sup>63</sup>David A. Grimes et al, *Unsafe Abortion: The Preventable Pandemic*, 368(9550) THE LANCET at 1908-1919 (2006) (discussion regarding Romania at 1913).

<sup>64</sup>See e.g., *Concluding Observations of the CEDAW Committee: Brazil*, para. 29, UN Doc. CEDAW/C/BRA/CO/6 (2007): "The Committee is further concerned at the high number of unsafe abortions, the punitive provisions imposed on women who undergo abortions and the difficulties in accessing care for the management of complications arising as a result."

<sup>65</sup>*Concluding Observations of the Human Rights Committee: Argentina*, para. 14, U.N. Doc. CCPR/CO/70/ARG (2000). See also *Concluding Observations of the Human Rights Committee: Venezuela*, para. 19, CCPR/CO/71/VEN (2001).

<sup>66</sup>*Concluding Observations of the Human Rights Committee: Guatemala*, para. 19, U.N. Doc. CCPR/CO/72/GTM (2001).

<sup>67</sup>*Concluding Observations of the Human Rights Committee: Mauritius*, para. 9, U.N. Doc. CCPR/CO/83/MUS (2005).

<sup>68</sup>*Concluding Observations of the Human Rights Committee: Guatemala*, para. 19, U.N. Doc. CCPR/CO/72/GTM (2001); *Concluding Observations of the Human Rights Committee: Kuwait*, para. 16, U.N. Doc. CCPR/CO/69/KWT, A/55/40 (2000); *Concluding Observations of the Human Rights Committee: Lesotho*, para. 11, U.N. Doc. CCPR/C/79/Add.106 (1999); *Concluding Observations of the Human Rights Committee: Trinidad and Tobago*, para. 18, U.N. Doc. CCPR/CO/70/TTO (2000); *Concluding Observations of the Human Rights Committee: United Republic of Tanzania*, para. 15, CCPR/C/79/Add.97 (1998).

<sup>69</sup>*Concluding Observations of the CEDAW Committee: Andorra*, para. 48, U.N. Doc. A/56/38 (2001); *Concluding Observations of the CEDAW Committee: Chile*, para. 228, U.N. Doc. A/54/38 (1999);

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*Concluding Observations of the CEDAW Committee: Cyprus*, para. 55, U.N. Doc. A/51/38 (1996); *Concluding Observations of the CEDAW Committee: Ireland*, para. 185, U.N. Doc. A/54/38 (1999); *Concluding Observations of the CEDAW Committee: Jordan*, para. 180, U.N. Doc. A/55/38 (2000); *Concluding Observations of the CEDAW Committee: Liechtenstein*, para. 169, U.N. Doc. A/54/38 (1999); *Concluding Observations of the CEDAW Committee: Luxembourg*, Part II para. 210, U.N. Doc. A/52/38/Rev.1 (1997); *Concluding Observations of the CEDAW Committee: Nepal*, paras. 139 and 147, U.N. Doc. A/54/38 (1999); *Concluding Observations of the CEDAW Committee: United Kingdom*, para. 309, U.N. Doc. A/55/38 (1999); *Concluding Observations of the CEDAW Committee: Zimbabwe*, para. 159, U.N. Doc. A/53/38 (1998); *Concluding Observations of the CEDAW Committee: Belize*, para. 56, U.N. Doc. A/54/38 (1999); *Concluding Observations of the CEDAW Committee: Chile*, para. 19, U.N. Doc. CEDAW/C/CHI/CO/4 (2006).

<sup>70</sup>Human Rights Committee, *General Comment 6: The right to life (Article 6) (Sixteenth session, 1982)*, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 127, para. 5, U.N. Doc. HRI/GEN/1/Rev.6 (2003).

<sup>71</sup>Human Rights Committee, *General Comment 28: Equality of Rights Between Men and Women (Art. 3)*, (Sixty-eighth session, 2000), U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 179, para. 10, U.N. Doc. HRI/GEN/1/Rev.6 (2003).

<sup>72</sup>*Concluding Observations of the Human Rights Committee: Poland*, para. 8, U.N. Doc. CCPR/CO/82/POL (2004). For additional information on the consequences of the punishment of providers in Poland has on access to lawful abortion services in Poland, see *Reproductive Rights in Poland: the effects of the anti abortion law*, Federation for Women and Family Planning, pages 45-55 (2008), [http://www.federa.org.pl/publikacje/report%20Federa\\_eng\\_NET.PDF](http://www.federa.org.pl/publikacje/report%20Federa_eng_NET.PDF) (last visited October 22, 2008).

<sup>73</sup>*Concluding Observations of the CEDAW Committee: Mexico*, paras. 32-33, U.N. Doc. CEDAW/C/MEX/CO/6 (2006).

<sup>74</sup>*Tysiąc v. Poland*, no. 5410/03, § 116, ECHR 2007-....

<sup>75</sup>*Concluding Observations of the CEDAW Committee: Ireland*, para. 185, U.N. Doc. A/54/38 (1999).

<sup>76</sup>*Concluding Observations of the Human Rights Committee: Argentina*, para. 14, U.N. Doc. CCPR/CO/70/ARG (2000); The Human Rights Committee has also recently acknowledged the discriminatory, disproportionate impact of restrictive abortion laws on poor, rural women. See *Concluding Observations of the Human Rights Committee: Argentina*, para. 14, U.N. Doc. CCPR/CO/70/ARG (2000).

<sup>77</sup>See laws of Austria, Belgium, Cyprus, Finland, France, Germany, Greece, Hungary, Italy, Liechtenstein, Luxembourg, Portugal, Spain, Switzerland, Turkey, United Kingdom.

<sup>78</sup>Andorra prescribes up to two and a half years' imprisonment. Penal Code, Art. 185 (Andorra). Malta prescribes eighteen months' to three years' imprisonment. Criminal Code, Art. 241 (Malta). Monaco prescribes six months' to three years' imprisonment and payment of a fine. Population Div., United Nations, *Abortion Policies: A Global Review (2001)*, available at <http://www.un.org/esa/population/publications/abortion/index.htm> (summarizing content of Criminal Code, Law No. 829 of Sept. 28, 1967 (Monaco)) (last visited October 30, 2008); San Marino imposes imprisonment of the second degree, but reduces it to imprisonment of the first degree if the woman consents to the abortion because of her honor. Population Div., United Nations, *Abortion Policies: A Global Review (2001)*, available at <http://www.un.org/esa/population/publications/abortion/index.htm> (summarizing content of Penal Code, Arts. 153-54 (San Marino)) (last visited October 30, 2008).

<sup>79</sup>Bulgaria, Czech Republic, Norway, Poland, and Slovakia have all clarified that a woman who obtains an illegal abortion is not subject to punishment. See e.g., Penal Code, Art. 126(4) (Bulgaria); Population

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Div., United Nations, *Abortion Policies: A Global Review* (2001), available at <http://www.un.org/esa/population/publications/abortion/index.htm> (summarizing content of Law No. 68 of December 19, 1957 (Czech Republic and Slovakia)) (last visited October 30, 2008); Termination of Pregnancy Act, Law No. 50 of June 13, 1975, Art. 13 (Norway); Penal Code, Art. 149a(2) (Poland). Albania, Armenia, Azerbaijan, Bosnia-Herzegovina, Croatia, Denmark, Estonia, Georgia, Iceland, Latvia, Lithuania, Macedonia, Moldova, Montenegro, the Netherlands, Romania, Russian Federation, Serbia, Slovenia, Sweden, and Ukraine all lack provisions specifically criminalizing the woman's behavior. See Population Div., United Nations, *Abortion Policies: A Global Review* (2001), available at <http://www.un.org/esa/population/publications/abortion/index.htm> (last visited October 30, 2008).

<sup>80</sup>Finland allows for up to four years imprisonment, but "if circumstances are very mitigating, punishment may be waived." Penal Code, ch. 22, sec. 5 (Finland). Luxembourg waives any offense for the woman "if she acted under the influence of a situation of great distress." Law of 1978, Art. 351 (Luxembourg). Even San Marino reduces the punishment if the woman consented because of her honor. Population Div., United Nations, *Abortion Policies: A Global Review* (2001), available at <http://www.un.org/esa/population/publications/abortion/index.htm> (summarizing content of Penal Code, Arts. 153–54 (San Marino)) (last visited October 30, 2008). Spain's abortion law provides an explicit safe harbor for women from criminal sanctions for failing to obtain the necessary medical opinions or performing the abortion at an unlicensed facility, guaranteeing that in such cases, "the conduct of the pregnant woman shall not be punishable." Organic Law No. 9 of July 5, 1985, amending Penal Code, sec. 417 bis., Art. 2 (Spain).

<sup>81</sup>Family Planning Ass'n of N. Ir. v Minister for Health, Soc. Services and Pub. Safety, [2004] NICA 27-39, [2005] N. Ir. L.R. 188.

<sup>82</sup>*Id.*

<sup>83</sup>*Id.*, paras. 42, 44 and 115.

<sup>84</sup>Albin Eser and Hans-Georg Koch, *Abortion and the Law-From International Comparison to Legal Policy* 259-267 (The Hague Asser Press 2005).

<sup>85</sup>See e.g., CEDAW Gen. Rec. No. 24, *supra* note 8, para. 31(c).

<sup>86</sup>See Raj Rai and Lesley Regan, Recurrent Miscarriage, 368 LANCET 601 (2006); R.J. Cook & S. Howard, "Accommodating Women's Differences under the Women's Anti-Discrimination Convention" (2007) 56 Emory L.J. 1039, 1050.

<sup>87</sup>Véronique Filippi et al., Maternal Health in Poor Countries: The Broader Context and a Call for Action, 368 LANCET 1535 (2006).

<sup>88</sup>See e.g., *Concluding Observations of the CEDAW Committee: Ireland*, para. 186, U.N. Doc. A/54/38 (1999).

<sup>89</sup>See e.g., *Concluding Observations of the Human Rights Committee: Ecuador*, para. 11, U.N. Doc. CCPR/C/79/Add.92 (1998); *Concluding Observations of the CEDAW Committee: Burundi*, para. 62, U.N. Doc. A/56/38 (2001); *Concluding Observations of the CEDAW Committee: Chile*, para. 229, U.N. Doc. A/54/38 (1999); *Concluding Observations of the CEDAW Committee: Chile*, para. 20, U.N. Doc. CEDAW/C/CHI/CO/ (2006); *Concluding Observations of the CEDAW Committee: Georgia*, para. 112, U.N. Doc. A/54/38 (1999); *Concluding Observations of the CEDAW Committee: Greece*, para. 208, U.N. Doc. A/54/38 (1999); *Concluding Observations of the CEDAW Committee: Ireland*, para. 186, U.N. Doc. A/54/38 (1999); *Concluding Observations of the CEDAW Committee: Kazakhstan*, paras. 76 and 106, U.N. Doc. A/56/38 (2001); *Concluding Observations of the CEDAW Committee: Lithuania*, para. 159, U.N. Doc. A/55/38 (2000); *Concluding Observations of the CEDAW Committee: Mongolia*, para. 274, U.N. Doc. A/56/38 (2001); *Concluding Observations of the CEDAW Committee: Nicaragua*, para. 301, U.N. Doc. A/56/38 (2001); *Concluding Observations of the CEDAW Committee: Slovenia*, para. 119, U.N. Doc. A/52/38/Rev.1 (1997).

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<sup>90</sup>Albin Eser and Hans-Georg Koch, *Abortion and the Law-From International Comparison to Legal Policy* 259-267 (The Hague Asser Press 2005).

<sup>91</sup>Nález Ústavného súdu Slovenskej republiky, sp. zn. (Decision of the Constitutional Court of the Slovak Republic, No.) PL. ÚS 12/01-297, December 4, 2007.

<sup>92</sup>Albania, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, Finland, France, Georgia, Hungary, Iceland, Luxembourg, Macedonia, Moldova, Montenegro, Norway, Poland, Portugal, Romania, Serbia, Slovenia, Spain, Sweden, Turkey, and United Kingdom all require the approval of two or more medical professionals before a woman may undergo a therapeutic abortion, in many countries it is once her pregnancy has progressed to a certain point. The point at which this condition is imposed generally marks the end of the “abortion of demand” period and varies by country. For example, Albania, Belgium, Bulgaria, Denmark, Finland, Georgia, Luxembourg, Moldova, and Norway all require approval after the twelfth week; Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, Serbia, Slovenia, and Turkey require approval after the tenth week; France and Romania require approval after the fourteenth week; Iceland the sixteenth week; Sweden the eighteenth week; and Cyprus, Hungary, Poland, Portugal, Spain, and the United Kingdom require such certification at all times. *See e.g.*, Law No. 8045 of Dec. 7, 1995 on the interruption of pregnancy, Arts. 9, 11 (Albania); Law on termination of pregnancy of Apr. 3, 1990, sec. 350(4) (amending Penal Code, secs. 348, 350-352) (Belgium); Population Div., United Nations, *Abortion Policies: A Global Review*, vol. 1, at 65 (2001), *available at* <http://www.un.org/esa/population/publications/abortion/index.htm> (summarizing Law of Oct. 7, 1977 (Bosnia-Herzegovina)) (last visited October 30, 2008); Decree No. 2 of Feb. 1, 1990, Art. 14 (Bulgaria); Law No. 1252-1978 of April 21, 1978, Arts. 15, 24, 35–37 (Croatia); Penal Code, sec. 169A(b) (Cyprus); Law on the termination of pregnancy, No. 350 of June 13, 1973, sec. 4 (Denmark); Law on the interruption of pregnancy, No. 239 of March 24, 1970, sec. 6 (Finland); Law on Voluntary Interruption of Pregnancy and on Contraception, No. 2001-588 of July 4, 2001, Art. 11 (France); Law about artificial termination of pregnancy 2000, paras. 14(1), 15(4), 8(3) (Georgia); Law on the Protection of the Life of the Fetus, No. 79, of Dec. 17, 1992, Art. 12 (Hungary); Law No. 25, of May 1975, Arts. 10–11 (Iceland); Law Concerning Sexual Education, Prevention of Clandestine Abortion, and the Regulation of Voluntary Interruption of Pregnancy, of Nov. 15, 1978, Art. 353(3) (Luxembourg); Population Div., United Nations, *Abortion Policies: A Global Review*, vol. 3, at 184 (2001), *available at* <http://www.un.org/esa/population/publications/abortion/index.htm> (summarizing content of Law of April 22, 1977 (Macedonia), and Law of July 31, 1979 (Montenegro)) (last visited October 30, 2008); Law on Health Care, No. 411-XIII, of Mar. 28, 1995, Art. 32(2), (3) (Moldova); Termination of Pregnancy Act, Law No. 50 of June 13, 1975, Art. 7–8 (Norway); Royal Decree, Dec. 1, 1978, (laying down regulations for implementation of act dated 13 June 13, 1975), secs. 12, 17 (Norway); Law on Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion of Jan. 7, 1993, Art. 4a(5) (Poland); Penal Code, sec. 142(2) (Portugal); Penal Code, art. 185(c) (Romania); Act Concerning Conditions of and Procedures for the Termination of Pregnancy, Law of June 29, 1977, Arts. 12, 20, 25 (Serbia); Law on medical measures to implement the right to a free decision regarding the birth of children of 20 April 1977, sec. 25 (Slovenia); Organic Law No. 9, July 5, 1985 (amending Penal Code, sec. 417 bis.), Art. 1(1) (Spain); Act of May 18, 1995 (amending Abortion Act of 1974), sec. 3 (Sweden); Regulations concerning the administration and control of womb evacuation and sterilization, Dec. 18, 1983, Art. 5 (Turkey); Abortion Act of 1967, sec. 1(1) (United Kingdom).

<sup>93</sup> Decree No. 2 of Feb. 1, 1990, Art. 14 (Bulgaria).

<sup>94</sup> Act Concerning Conditions of and Procedures for the Termination of Pregnancy, Law of June 29, 1977, Art. 12 (Serbia).

<sup>95</sup> Abortion Act of 1974, as amended May 18, 1995, sec. 3 (Sweden).

<sup>96</sup> Law on Voluntary Interruption of Pregnancy and on Contraception, No. 2001-588 of July 4, 2001, Art. 11 (France).



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<sup>97</sup>Abortion Act of 1967, sec. 1(1) (United Kingdom).

<sup>98</sup>*See e.g.*, Decree No. 2 of Feb. 1, 1990, Addendum 2 (listing the illnesses considered endangering of health to woman) (Bulgaria); Notification of Ministry of Health of Czech Socialist Republic of Nov. 7, 1986, on implementation of Law No. 66/1986, Annex (listing illnesses, syndromes, and conditions that constitute health grounds for the performance of an abortion) (Czech Republic); Ministry of Health Order No. 313 of July 25, 2006, Annex 2, para. 9 (listing diseases or pathological conditions warranting abortion) (Moldova); Law No. 5487-1 of July 22, 1993 on Fundamental Legislation on Public Health Care, Art. 36 (directing Ministry of Health to determine medical indications for abortion) (Russian Federation); Regulations concerning the administration and control of womb evacuation and sterilization of Dec. 18, 1983, appendix 2 (listing illnesses warranting abortion after tenth week) (Turkey).

<sup>99</sup>*See e.g.*, Penal Code, sec. 218b(1) (requiring written statement of medical findings necessitating therapeutic abortion) (Germany); Penal Code, sec. 304(4)(3) (requiring medical certificate attesting to health indications for therapeutic abortion) (Greece); Law on the Social Protection of Motherhood and the Voluntary Termination of Pregnancy, No. 194 of May 22, 1978, Art. 7 (requiring that pathological processes be diagnosed and certified by physician in obstetrics/gynecology department at hospital where abortion will take place, then documentation forwarded to medical director of hospital, before procedure takes place) (Italy); Law on Termination of Pregnancy of May 1, 1981, secs. 5(1)(4), 11(6) (requiring physician, prior to abortion, or as soon as possible after it, to record findings and ensure they justify treatment) (Netherlands); Penal Code, sec. 142(2) (requiring certificate attesting to medical circumstances necessitating the abortion, written and signed prior to procedure) (Portugal); Act Concerning Conditions of and Procedures for the Termination of Pregnancy, Law of 29 June 1977, Art. 20 (requiring written opinion of medical specialist to accompany woman's abortion request) (Serbia).