An Tionól Saoránach The Citizens' Assembly

Paper of

Irish Family Planning Association

delivered to

The Citizens' Assembly

on

05 March 2017

Citizens' Assembly 2017

SEXUALITY, INFORMATION
REPRODUCTIVE HEALTH & RIGHTS

Irish Family Planning Association

Presentation to the Citizens' Assembly 5 March 2017

Advance Paper February 23rd 2017

This document summarises the key points of the IFPA submission to the Citizens' Assembly, which includes case vignettes based on the experiences of clients of IFPA services, and more detailed information on the points raised. The full submission is available for download at www.ifpa.ie/Citizens-Assembly

Overview

The Irish Family Planning Association (IFPA) believes that the Eighth Amendment of the Constitution prevents the State from providing its citizens with the highest standard of reproductive healthcare. Because of this, we believe that it must be removed from the Constitution.

From our services, we know that the Eighth Amendment has caused serious harms to women and girls. The standard of treatment of women and girls in Ireland who opt to end a pregnancy is utterly at odds with the norm in the vast majority of other European countries.

Repeal of the Eighth Amendment must be followed by the introduction of a legal and policy framework that guarantees that women in Ireland have the right to abortion services. These services must be accessible, affordable, of high quality and respectful of women's dignity and right to confidentiality.

Provision of abortion services should be part of a holistic approach to reproductive health that also includes high-quality comprehensive sexuality education, access to contraceptive options, provision of optional pregnancy counselling services and post-abortion contraception advice.

Any policy reform in relation to abortion must have the healthcare needs of women and girls at its core. Policy responses that address abortion only in restricted categories will leave the healthcare needs of the vast majority of women who need abortion services unmet.

Policy reform that goes no further than adding some additional narrowly defined categories to the current restrictive legal model—such as in cases of severe or fatal foetal anomaly, risk to the pregnant woman's life or health, or where the pregnancy is the result of rape—would utterly fail to meet the needs of most women and girls in Ireland who seek to end a pregnancy. And international evidence and the experience of the current law in Ireland shows that such laws result in inequitable access to services.

This paper is not an exhaustive overview, but aims to provide members of the Citizens' Assembly with some guidance in making their recommendations. More detail is provided in the IFPA's submission to the Citizens' Assembly (see www.ifpa.ie/Citizens-Assembly)..

Outline

1. Harms to women caused by the Eighth Amendment
2. A health systems approach to abortion law and policy
3. Policy considerations
4. Recommendations

1. Harms to women caused by the Eighth Amendment

1.1 The unmet need for abortion services

Women's and girls' need for abortion services in Ireland is not being met: in 2015, the year for which the most recent UK Department of Health figures are available, at least 3,451 women and girls whose pregnancy was unplanned, unwanted or had become a crisis, travelled from Ireland to the UK to access a termination. This figure does not account for the women who do not give their Irish addresses at UK clinics, or who travel to other European countries to access the procedure. Nor does it consider the growing numbers of women who are now ordering medication online to self-induce abortion. The women who make this journey do so because they are denied access to a safe and legal healthcare service in Ireland.

The women who have abortions come from all stages and walks of life. In 2015, women from every county in Ireland travelled to the UK to access safe and legal abortion services. The statistics

gathered by the UK Department of Health (see IFPA submission to the Citizens' Assembly, December 2016, Appendix 2) show that the majority of women from Ireland who have abortions at clinics in the UK are between 20 and 39 years of age (84% in 2015); teenagers account for only 7.5%. In 2015, 92% of abortions were carried out at under 13 weeks' gestation and 80% under 10 weeks. There has been a clear a trend towards earlier abortions for the last number of years.

Those women who need to access later abortions, the statistics show, are those who find themselves in especially difficult and distressing circumstances. Women who need later-term abortions are often those who have received diagnoses of fatal foetal anomaly, women who face multiple disadvantages, teenagers and women who did not suspect that they were pregnant.

Each woman's reasons for choosing to end a pregnancy are intensely personal and complex. It might be the case that the pregnant woman knows that continuation of the pregnancy is not in her or her family's best interests; it could be that a girl or young woman feels that she is not ready to be a parent; she may have serious concerns about the impact of the pregnancy on her health or well-being; she may have financial problems or concerns about her relationship; she may not have used contraception, or her contraceptive method failed; she may have received a diagnosis of severe or fatal foetal anomaly. A combination of these reasons might apply. Many of these women already have children: they know what it means to be a mother. For them, the need to care for their children is the main reason they decide not to continue with another pregnancy.

The IFPA knows from our services that the women who choose abortion make an informed and conscientious decision based on their own personal circumstances. Whatever her reasons, no woman takes the decision to have an abortion lightly. However, regardless of their circumstances, every woman in Ireland who comes to a decision that continuing a pregnancy is not the right option is refused care by the State, unless there is a direct risk to her life.

We know from our services that this abandonment by the healthcare system causes women additional distress, anxiety, financial cost and risks to their health. Women and girls find themselves in a situation where they must decide to seek lawful services in another state, to parent against their wishes; or to risk prosecution and access abortion medication, usually from an online provider.

1.2 Abortion is located outside mainstream healthcare

One result of the criminalisation of abortion in Ireland is that abortion is treated differently from all other types of healthcare and women's experiences of accessing abortion services are treated as though they are entirely outside of the realm of healthcare standards. Yet the experience of IFPA counsellors and doctors is that women's experience falls unacceptably below the Irish healthcare standards that all other areas of health are expected to meet.

There are no clearly defined referral pathways, women experience unwarranted delays in accessing services. The requirements of the law unacceptably interfere with the relationships between women and their doctors and pregnancy counsellors. There is a lack of accountability to women on the part of the state for the implementation of reproductive health rights.

For example, the provision of information on abortion services is regulated by the *Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995*. This requires that information about abortion services must be given directly to the woman, and only if they are given information, counselling and advice about parenting and adoption, whether they request it or not. The Act prohibits service providers, such as doctors and counsellors, from making an appointment for an abortion in another state on behalf of their client. Infringement of the legislation is subject to criminal sanctions. The Act locates abortion counselling and post-abortion medical care outside mainstream healthcare. This reinforces stigma and harmful gender stereotypes,

further marginalising and deterring women from accessing services, including post-abortion medical care.

Recent research by Dr Deirdre Duffy and Dr Claire Pierson corroborates this and concludes that the Eighth Amendment is an inherent clinical risk to patient safety.[1] It highlights the need to ensure that the future regulation of abortion complies with national and international guidance on health and safety assessment of health systems.

1.3 Flawed legislation: The *Protection of Life During Pregnancy Act 2013*

The *Protection of Life During Pregnancy Act 2013* (PLDPA) allows for abortion in cases of risk to life only. It is entirely inadequate to the needs of women in Ireland. Only 26 women accessed a lawful termination of pregnancy under the PLDPA in each of the years for which records have been published. This represents less than 1% of the number of women who accessed abortion in the UK in the same years.

The terms of the PLDPA are complicated and its onerous procedures prevent even women who are theoretically eligible from having timely access to safe abortion. In 2015, three IFPA clients who believed that their pregnancy put their lives at risk chose to travel abroad for safe abortion services, rather than subject themselves to the complex and difficult certification process under the Act.

The PLDPA was not designed to meet healthcare standards. It was drafted to give effect to a very limited constitutional right. This poor model of law-making must not be repeated: future law and policy-making on abortion must take be designed to meet the needs of all women who opt to end a pregnancy and ensure that they have timely access to affordable and quality services.

1.4 Inequalities caused by the need to access abortion services outside the State

Women who opt to travel for legal abortion services experience financial, physical and emotional burdens. In addition to the significant funds required, women must organise child care, negotiate time off work and make travel and accommodation plans.

The fact that the state criminalises a healthcare service that only women and girls need is, in itself, inherently discriminatory. The denial of abortion in Ireland has a disproportionate impact on disadvantaged groups of women, such as women in poverty or living on low income, asylum-seeking and undocumented women who cannot travel freely to other states, women with disabilities, minors and other women who, for whatever reason, cannot travel abroad. Rural women who live at a distance from airports incur additional costs and experience additional barriers to timely access to services. Women who are disadvantaged are more likely to be forced to resort to unsafe, clandestine abortion.

1.5 The growing healthcare crisis of access to online medication

The IFPA knows from our services that women who cannot travel or who do not have access to the funds to do so are increasingly obtaining potentially unsafe medication online to self-induce an abortion.

When women access the abortion pill, or medication purporting to be an abortion pill, online, they do so without medical supervision. There are numerous risks associated with buying medications online. Firstly, there is no reliable way of knowing that the medication they receive is what it purports to be. Inaccurate estimation of gestation can result in the medication failing. Sometimes the only support available from websites selling the abortion pill is by email. If a woman is experiencing bleeding, pain or other complications, this level of support is inadequate. Moreover, women often delay seeking help for fear of prosecution under *the Protection of Life During Pregnancy Act 2013*, thereby risking damage to their health.

2. A health systems approach to abortion law and policy

Repeal of the Eighth Amendment and the enactment of enabling legislation to ensure lawful access to abortion services are critical. However, law alone is not sufficient to ensure equitable access to safe abortion services. Nor are safe abortion services alone sufficient to meet the reproductive healthcare needs of women and girls, or to address the central issues of unplanned pregnancy and lack of reproductive choice.

A health systems approach to abortion, based on international best practice, means that abortion services form one part of a holistic approach to sexual and reproductive health. Safe abortion services are part of a system that also includes comprehensive sexuality education and access to contraceptive information and services.

2.1 Sources of good practice guidelines

As with reform of any area of healthcare, policy makers should begin by looking to the wealth of up-to-date, evidence based guidance that has been developed by the leading international expert standard setting bodies.

The World Health Organization (WHO) has drawn on the research and technical knowledge of medical, legal and health policy experts from across the world to develop best practice guidelines on the provision of abortion services.

The International Federation of Gynecology and Obstetrics (FIGO)[2] and the Royal College of Obstetrics and Gynaecology in the UK[3] have also developed ethical and technical guidelines on all aspects of abortion. In addition, the issue of abortion is settled in virtually all other European states. The Irish Government therefore, can draw on the regulatory models of other countries that have found appropriate ways to strike a balance between regulation of abortion and access to services.

2.2 Requirements of international human rights law

International human rights law is another vital source of healthcare standards. The European Committee of Social Rights holds that the provision of abortion services must be organised so as to ensure that the needs of women seeking these services are met.[4] Measures must be taken to ensure that adequate numbers of medical practitioners are available to provide abortion services and that arrangements for access to care must not lead to unnecessary delays in its provision. The European Court of Human Rights has held that the exercise of rights once guaranteed by law must be practical and effective, rather than theoretical and illusory. The expert human rights bodies of the United Nations have also developed clear standards and requirements for rights-compliant reproductive health systems. All include access to comprehensive sexuality education and accessible and affordable choice of modern forms of contraception.

Ireland should ensure that its future legal and policy approaches to abortion fulfil the requirements of human rights norms and meet national and international healthcare standards. Restrictive abortion laws will fail on both counts and inevitably become the subject of both domestic litigation and cases before international courts and human rights complaints bodies.

2.3. Practice in other European Countries

Nearly every country in Europe ensures timely and affordable access to good-quality abortion services. Thirty-two out of 44 European countries allow abortion upon the request of a pregnant woman. Abortion on a woman's request entitles women to make the decision, in consultation with her doctor, about whether to continue with a pregnancy. This approach respects the woman's autonomy and her informed decision-making. It guarantees her confidentiality and is sensitive to her needs and perspectives.

A further four European countries allow access to abortion under broad social and economic grounds. While access can be problematic in some states, countries such as Portugal, France and the Netherlands offer useful examples of how other countries have resolved the complex issue of abortion and addressed women's health needs.

3. Policy considerations

3.1 Focus on unplanned pregnancy and lack of reproductive choice

All reliable country level and comparative data shows that abortion rates are similar regardless of the legal position.[5] Laws and policies that facilitate access to safe abortion do not increase the rate or number of abortions.[6] Rather than focusing on reducing abortion, states should instead concentrate on reducing the rates of unintended pregnancy. This is best achieved through the provision of contraceptive information and services, including emergency contraception and a broad range of contraceptive methods, and comprehensive evidence-based sexuality education.

3.2 Ensure timely access to safe abortion care for every woman who is legally eligible

Laws and policies must promote and protect the health of women, as a state of complete physical, mental and social well-being. They must prevent and address stigma and discrimination against women who seek abortion services or treatment for abortion complications. They must meet the particular needs of women belonging to vulnerable and disadvantaged groups, such as poor women, adolescents, refugee and asylum-seeking women.

3.3 Avoid administrative or procedural barriers to access

The WHO cautions against the introduction of procedural and administrative barriers that lack any health rationale, but can delay women's access to care.[7] Such barriers include mandatory waiting periods, inadequate regulation of conscientious objection and failure to guarantee women's confidentiality and privacy.

4. Recommendations

The IFPA urges the Citizens' Assembly to recommend to the Oireachtas:

- Repeal the Eighth Amendment of the Constitution; the *Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995*; the *Protection of Life During Pregnancy Act 2013*.
- Review legislative models in European and other jurisdictions where abortion services are safe, legal and accessible.
- Implement the best international practice and standards of the World Health Organization, the International Federation of Gynaecology and Obstetrics (FIGO) and the Royal College of Obstetricians and Gynaecologists to ensure a women-centred and rights-based legislative and policy framework for abortion in Ireland.
- Implement the recommendations of UN expert treaty monitoring bodies in relation to the provision of accessible safe and legal abortion services.
- Ensure that the future regulation of abortion complies with international guidance on health and safety assessment of health systems.
- Ensure access to safe and legal abortion services in law and in practice for any woman who needs them.

References

[1] Dr Deirdre Duffy & Dr Claire Pierson (2016) *Submission to the Citizens' Assembly on Repealing the 8th Amendment*, Manchester Metropolitan University

[2] FIGO Committee for the Study of Ethical Aspects of Human Reproduction and Women's Health (2015*)* Section F: Issues in Contraception and Abortion in *Ethical Issues in Obstetrics and Gynecology*. Available at: http://www.figo.org/sites/default/files/uploads/wg-publications/ethics/FIGO%20Ethical%20Issues%202015.pdf4893.pdf

[3] Royal College of Obstetricians and Gynaecologists (2011) *The Care of Women Requesting Induced Abortion: Evidence-based Clinical Guideline Number 7*, RCOG. Available at: https://www.rcog.org.uk/globalassets/documents/guidelines/abortion-guideline_web_1.pdf

[4] *International Planned Parenthood Federation – European Network (IPPR EN) v Italy* (Complaint No. 87/2012), paragraph 163. Available at: http://hudoc.esc.coe.int/eng/#{"ESCDcIdentifier":["cc-87-2012-dmerits-en"]}

[5] Dr Gilda Sedgh et al (2016) *Abortion incidence between 1990 and 2014: global, regional, and subregional levels and trends*, Lancet 2016; 388: 258–67. Available at: http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(16)30380-4.pdf

[6] World Health Organization (2012) *Safe abortion: technical and policy guidance for health systems* (Second edition), p. 90. Available at: http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf

[7] Ibid, p. 94.