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Introduction

Abortion is a reality in Ireland. Every year thousands of women and girls living in Ireland travel to another country, usually in Europe, to have an abortion because they make a decision that continuing a pregnancy is not in their best interest or in the best interests of the child should they continue with the pregnancy.[i] Between January 1980 and December 2015, at least 166,951 women and girls travelled from the Republic of Ireland to access abortion services in another country. In 2015, 3,451 women resident in the Republic of Ireland travelled to clinics in England and Wales to undergo an abortion[ii]. However, Ireland's abortion statistics are widely accepted to be an underestimation. The number of women who choose not to give their addresses to UK abortion clinics or travel to countries such as the Netherlands or Spain is unknown.[iii] Increasing numbers of women risk prosecution by accessing medication online to self-induce abortion. More than 5,600 women in Ireland tried to buy abortion pills online over a five-year period between 1 January 2010 and 31 December 2015 using a leading web supplier based in the Netherlands[iv]. Pills were shipped by the Women on Web site to 1,642 women in Ireland between 2010 and 2012[v].

Women have always risked detention, extreme hardship, isolation, and risk of injury and death to end an unwanted pregnancy. 25 per cent of pregnancies globally ended in abortion between 2010 and 2014.[vi] The failure to provide abortion services in Ireland creates considerable psychological, physical and emotional hardship for those who are either forced to travel outside the country for abortion, purchase medication illegally, or forced to continue with an unwanted pregnancy and to parent because of restrictions imposed on them. Many women report feelings of fear, stigma, secrecy, isolation and lack of support.

The Eighth Amendment is reflective of Irish society at the time of its enactment to the Constitution in 1983: an Ireland in which women were incarcerated in workhouses for bearing children out of wedlock or leaving abusive husbands; in which contraceptives could only be dispensed by a pharmacist on the presentation of a valid medical prescription from a practising doctor; and in which divorce and homosexuality were illegal, but marital rape was not. It reflects a society which didn't trust women to make choices about their own lives.

A country's laws and its Constitution should act as a reflection and protection of the values of its society. Irish society has changed significantly since 1983 and, while we now live with the legacy of that past society, we have an opportunity to remove the most significant obstacle in Ireland to women making decisions about, and taking responsibility for, their own reproductive health, including if and when they want to have children. It is unthinkable, and yet it is the case in Ireland, that our society maintains that a woman should be penalised for ending a pregnancy – wanted or unwanted – either with criminalisation and detention, or with being forced to carry that pregnancy to term and experience childbirth against her will.

Women in Ireland make the decision to have an abortion for a variety and combination of reasons

Women's lived experiences are multi-faceted, inherently personal and they change over the course of their lifetime. All of our lives are complex. Our decisions are based on a whole variety of circumstances, our backgrounds, our future aspirations for ourselves and the people we love around us. The decision to parent is one of the most significant decisions a woman will make. It will affect everything about her future thereafter.

Women also make the decision to parent or not in the context of the persistent inequalities they experience. Women in Ireland remain more likely to parent alone[vii], to be in low-paid precarious work[viii], to be the victim of physical or sexual abuse[ix] and to be the main provider of unpaid care work[x]. Having control over if, when and how often women have children is an integral element of a woman's right to self-determination and is fundamental to achieving equality for women. To deny a woman that control impinges directly on her ability to flourish as an individual and her ability to prosper and participate in society. It can prevent her managing her relationships, her family life, her care responsibilities, her security and her physical and mental health. Women decide to seek and have an abortion due to a range - and a combination - of circumstances, including her family situation; her socio-economic position; her physical and mental health; the experience of a wanted pregnancy developing into a crisis pregnancy[xi]; or the experience of physical or sexual violence.

While almost half (46 per cent) of the women resident in Ireland who have an abortion in English and Welsh clinics are in their twenties, an almost equal rate (45 per cent) of women accessing these services are 30 years of age and over[xii]. There is no data to suggest whether women in this dataset already have children, though BPAS reported in 2016 that 54% of women resident in the UK accessing their abortion services already had children[xiii]. Married women account for the majority of abortions globally. The Guttmacher Institute finds that, of the 56 million induced abortions that occurred worldwide between 2010 and 2014, 15 million occurred among unmarried women[xiv].

Women's experience of poverty and employment can often influence whether a pregnancy is or becomes a crisis. Despite the rate of consistent poverty falling for men in Ireland in 2015, the numbers of women living in consistent poverty continues to rise[xv]. Over 60% of those on low pay are women[xvi]. Women with children are often considered less 'employable' than women without children and men with children[xvii]. Women hoping to enter the labour market or to progress in their workplace know that they must consider whether having a child will have a detrimental effect on their chance of escaping poverty, or on their career aspirations and their earning potential. Becoming a parent has very real and lasting implications, particularly for lone parents, the majority of whom are women and many of whom experience deprivation[xviii].

Pre-existing health problems in a woman or other complications can, during pregnancy, turn into a risk to her long-term health or to her life. During 2013 hearings before the Joint Oireachtas Committee on Health and Children on the Protection of Life During Pregnancy Bill, Master of the Rotunda Hospital Dr. Sam Coulter Smyth reported that the incidence of potentially life-threatening complications in pregnancy was rising due to increased number of women having children later in life and a higher incidence of health risks such as obesity[xix]. Dr. Coulter Smyth explicitly stated his view that abortion can be a necessary outcome of a pregnancy.

Women who are victims of domestic violence[xx] are at higher risk of escalated physical, sexual, mental and emotional abuse during pregnancy[xxi]. Domestic violence is not rare. One in five women in Ireland who have been in a relationship have been abused by a current or former partner[xxii]. Women in this situation may decide that terminating a pregnancy is the best or only option for them and/or their children. Yet many women experiencing violence may not have the resources or be able to leave their partner for long enough travel abroad to access abortion services. The restrictions imposed by the Eighth Amendment are putting these women's lives at unnecessary additional risk.
Due to feelings of shame, fear and a belief that the justice system would not be able to assist them, 79% of women surveyed in Ireland who had experienced physical or sexual violence had not reported it[xxiii]. Many women wish never to have to reveal their experience to anyone. A woman who has become pregnant as a result of rape may be further traumatised by being forced to carry that pregnancy to term and experience childbirth against her will, further violating her bodily integrity and autonomy.

Lack of access to abortion puts women's lives, health and wellbeing at risk
In the context of fear of criminal prosecution, medical professionals are effectively prevented from exercising clinical discretion in their patients' best interests and applying best clinical practice by intervening when a health risk presents. A Health Services Executive report into the tragic death of Savita Halappanavar while in receipt of maternity care in Galway University Hospital in 2012, found that the uncertainty created by Ireland's abortion laws was a "material contributory factor" in her death[xxiv]. Women diagnosed with such health risks due to a pregnancy who require access to abortion services are forced to travel without a proper referral from their doctor so that the attending clinic may not be in receipt of proper or full medical records; they are effectively abandoned by the Irish health service and made to feel like criminals.

The current abortion regime in Ireland impacts disproportionately on the most marginalised and disadvantaged women in Ireland. Women living in poverty, women with care responsibilities, minors in state care, women with disabilities, asylum seekers and undocumented migrant women face often unsurmountable barriers to accessing abortion abroad. The law is thus a profound source of discrimination. Where a barrier to health is created by a criminal law or other legal restrictions, it is the obligation of the State to remove it. It is the responsibility of the Irish government to ensure Ireland's laws are in line with international human rights law. This includes access to safe and legal abortions. Increasingly this is understood to providing women to access to abortion at a women's request[xxv].

The provisions under Article 40.3.3 allowing travel to and access to information on abortion service highlight the stark inconsistencies between Ireland's attitude towards and regulation of abortion. They indicate our acceptance that women will require access to abortion services. The Eighth Amendment has proven demonstrably ineffective at lowering crisis pregnancies or stopping abortion in Ireland. This result is mirrored globally. The World Health Organisation guidelines[xxvi] state that:

- Restricting legal access to abortion does not decrease the need for abortion, but it is likely to increase the number of women seeking illegal and often unsafe abortions.
- Conversely, laws and policies that facilitate access to safe abortion do not increase the rate or number of abortions. The principal effect is to shift previously clandestine, unsafe procedures to legal and safe ones.

Repealing the Eighth Amendment means bringing Ireland's laws in line with International best practice

These findings are the foundation for the WHO recommendation that, "laws and policies on abortion should protect women's health and their human rights,"[xxvii] that "regulatory, policy and programmatic barriers that hinder access to and timely provision of safe abortion care should be removed,"[xxviii] and for its conclusion that where abortion is legal on broad socio-economic grounds or on a woman's request, and where safe services are accessible in practice, both unsafe abortion and abortion-related mortality and morbidity are reduced.

Ireland has one of the most restrictive abortion regimes in the world and the most restrictive regime in Europe. Ireland has historically, along with many other countries, taken the legal position of criminalising women who undergo or seek abortions within its domestic jurisdiction. Many of those countries, such as the United Kingdom, that have since liberalised their laws have maintained a criminal element simply by virtue of the straightforward process of amending existing legislation. There are alternatives. Ireland is in the fortunate position, once it repeals the eighth amendment from the Constitution, of reimagining a legal and policy approach to abortion services that is premised on providing women access to the best supports and treatment possible in a time of crisis. Ireland should look to provide women with the services they need through healthcare laws and policies that guarantee safe, compassionate, professional, high quality services.

In almost every other European country women are legally allowed to access abortion in early pregnancy when they request it. In these circumstances, what is considered to be 'early pregnancy' can vary between 10 and 24 weeks. In the countries that do not explicitly provide for early access to abortion at a women's request (Finland, Iceland and the United Kingdom), they specify that this access can be granted with the opinion of two medical professionals. In practice, the laws in these countries are interpreted and applied in a manner that means that when a woman believes that ending a pregnancy is the best decision for her, with reference to their personal, social and economic circumstances, they are usually able to legally access services within the specified time-limits. Best practice, however, would prescribe legal clarity.

All of the European, and other, countries that allow abortion on request also permit medical professionals to perform abortions later in pregnancy within the context of certain specified exceptional circumstances, these include risks to the women's health or life and situations of serious or fatal foetal impairment. The manner in which laws deal with these exceptional grounds differs across jurisdictions.

Variations include the manner in which countries distinguish between life and health, extremity of risk, the nature of the risk and gestational limits. Some countries' laws distinguish between life and health and explicitly specify that both are exceptional grounds for abortion later in pregnancy. Spain defines health in its abortion law in accordance with the WHO definition, as, "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity'. This is a very positive development in abortion legislating. Many countries do not impose any gestational limits in either situation of risk to life or to health. Others impose term limits for risk to health but not in situations of risk to life. Some impose limits in both cases.

A large number of European countries explicitly permit abortion in situations of foetal impairment. The laws differ in a number of respects, including in relation to: (a) the terminology used to describe the foetal impairment and the level of severity they specify must be at issue; (b) applicable gestational limits; and (c) the process for certification/attestation of the foetal impairment. In a smaller number of countries (Latvia, Lithuania, Germany, Romania, Slovenia, Sweden and Switzerland) the laws do not explicitly state foetal impairment as a ground, but instead encompass its implicitly within provisions allowing access to 'therapeutic' abortion, or abortion in situations of risk to a woman's physical or mental health. Whether Ireland specifies or not, it must provide for parents to make the decision they believe to be right for their baby, their family and themselves.

Equally, a number of European countries do not explicitly list sexual assault as a ground for allowing access to abortion, preferring instead to rely on the more general terms, e.g. abortion in situations of risk to health. We would recommend a similar approach. It would be both unworkable and unethical to legislate in a manner that would force a woman to either involuntarily report – or indeed prove – a rape or continue with a crisis pregnancy resulting from the assault.

The vast majority (81 per cent) of abortions carried out in England and Wales in 2015 were between 3-9 weeks gestation. Providing for early medical abortion on request in Ireland is a means of responding to the evident needs of women, removing the stigma, shame and other burdens of the current system and would removing cumbersome and unwieldy criminal sanctions against women and medical professionals. It would provide for access to abortion to women in particularly vulnerable positions in a manner that protects their dignity, privacy and bodily autonomy. Where a wanted pregnancy becomes a crisis pregnancy by becoming a risk to her health, or due to a diagnosis of fatal foetal anomaly, provisions should be made for later-term terminations.

For some women having an abortion will be an incredibly traumatic experience, for others a necessary procedure that will allow them to have control over their life, health and wellbeing. We can end the stigma attached to women making the choice not to continue with an unwanted or crisis pregnancy. By situating the full range of women's reproductive healthcare services, including abortion, within an enabling regulatory and policy environment in Ireland, we can ensure that women in Ireland are met with compassion and guided through a difficult process. We can ensure women will have access to high-quality healthcare that puts their wellbeing front and centre and provides the care and support they need to ensure their full recovery.

NWCI therefore is calling on the Citizens' Assembly to make the following recommendations in its report:

- A referendum in support of repealing the Eighth Amendment to the Constitution, without replacement or amendment, and the removal of all criminal sanctions on women seeking and accessing abortion services in Ireland.
- The enactment of legislation providing access to abortion on a woman's request in line with good practice in other European countries, combined with later-term abortion in certain circumstances as necessary.
- The removal of criminal sanctions on provision and performance of abortion in the Republic of Ireland and regulate abortion services and medical professionals performing abortions through customary medical disciplinary procedures and general criminal law.

[i] According to research published in The Lancet, 70 million abortions occurred in 2014. See Volume 388, No. 10041, p258–267, 16 July 2016

[ii] These figures do include any women who did not provide any or an accurate place of residence.

[iii] According to statistics compiled by the HSE Crisis Pregnancy Programme, 1,470 women travelled from Ireland to the Netherlands from 2005-2009 to access safe abortion services. See further: http://www.crisispregnancy.ie/news/number-of-women-giving-irish-addresses-at-uk-abortion-clinics-decreases-for-tenth-year-in-a-row-according-to-department-of-health-uk/

[iv] Aiken ARA, Gomperts R, Trussell J. Experiences and characteristics of women seeking and completing at-home medical termination of pregnancy through online telemedicine in Ireland and Northern Ireland: a population-based analysis. BJOG 2016; DOI: 10.1111/1471-0528.14401.

[v] Ibid.

[vi] Guttmacher Institute: https://www.guttmacher.org/fact-sheet/induced-abortion-worldwide

[vii] 87 per cent of lone parents are women, according to advocacy organisation One Parent: https://onefamily.ie/policy-campaigns/facts-figures/ (Accessed: 24 February 2017)

[viii] Low Pay Commission (2016), *The preponderance of women on the National Minimum Wage*, Available at: www.lowpaycomissions.ie/Publications/ThepreponderanceofwomenontheNationalMinimumWage/ (Accessed: 24 February 22017)

[ix] National Crime Council and the Economic and Social Research Institute, *Domestic Abuse of Women and Men in Ireland*, 2005: Women are over twice as likely as men to have experienced severe physical abuse and seven times more likely to have experienced sexual abuse. 1 in 7 women in Ireland compared to 1 in 17 men experience severe domestic violence. National Crime Council and the Economic and Social Research Institute, *Domestic Abuse of Women and Men in Ireland*, 2005.

[x] Samman, E., Presler-Marshall, E. & Jones, N. (2016) Women's Work: Mothers, children and the global childcare crisis. Report from The Overseas Development Institute. Available from: http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/10331.pdf (Accessed: 27 February 2017)

[xi] McBride, O., Morgan, K. and McGee, H. Crisis Pregnancy Programme Report No. 24, Irish Contraception and Crisis Pregnancy Study 2010, (ICCP-2010), *A Survey of the General Population* defines a crisis pregnancy as one that represents a personal crisis or an emotional trauma in either of the following circumstances: (a) a pregnancy that began as a crisis or (b) a pregnancy that develops into a crisis before the birth due to a change in circumstances.

[xii] UK Department of Health's *Report on Abortion Statistics in England and Wales for 2015*

[xiii] British Pregnancy Advisory Service (2016), Press Release, *Abortion statistics show increase in abortions to older women, mothers, and those in relationships*. Available at: https://www.bpas.org/about-our-charity/press-office/press-releases/abortion-statistics-show-increase-in-abortions-to-older-women-mothers-and-those-in-relationships/ (Accessed: 27 February 2017)

[xiv] Guttmacher Institute (2016), Fact Sheet *Induced Abortion Worldwide* https://www.guttmacher.org/fact-sheet/induced-abortion-worldwide (Accessed 27 February 2017)

[xv] Central Statistics Office, Survey of Income and Living Conditions 2015. Available: http://www.cso.ie/en/releasesandpublications/er/silc/surveyonincomeandlivingconditions2015/ (Accessed: 24 February 2017)

[xvi] The Nevin Economic Research Institute (2016) *Quarterly Economic Observer - Spring 2016*. Available at: http://www.nerinstitute.net/download/pdf/qeo_spring_2016_compressed.pdf (Accessed: 15 December 2016).

[xvii] European Commission (2015) *Labour Market Participation of Women*. Available at: http://ec.europa.eu/europe2020/pdf/themes/2015/labour_market_participation_of_women.pdf (Accessed: 15 December 2016).

[xviii] Central Statistics Office, Survey of Income and Living Conditions 2015. Available: http://www.cso.ie/en/releasesandpublications/er/silc/surveyonincomeandlivingconditions2015/

(Accessed: 24 February 2017). The survey shows that the rate of consistent poverty for lone parents rose from 25.2% in 2014 to 26.2% in 2015.

[xix] Joint Oireachtas Committee on Health and Children (2013) *Implementation of Government Decision Following Expert Group Report into Matters Relating to A, B and C v. Ireland,* Available at: http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/committeetakes/HEJ2013010800002?opendocument#Z00075 (Accessed: 15 December 2016).

[xx] A 2014 study, entitles 'Violence against women: an EU-wide survey' by the European Union Fundamental Rights Agency (FRA) reported that 14 per cent of women in Ireland have experienced physical violence by a partner since the age of 15. 6 per cent of women have experienced sexual violence by a current partner and 31 per cent have experienced psychological violence by a partner.

[xxi] Krug, E.G. (2002) *World report on violence and health*. Geneva: World Health Organization.

[xxii] O'Connor, m, & Kelleher Associates, Making the Links, Women's Aid, 1995

[xxiii] European Union Fundamental Rights Agency (2014) *Violence against women: An EU-wide survey. Main results report*. Available at: http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14_en.pdf (Accessed: 15 December 2016).

[xxiv] Health Service Executive (2016) *HSE publishes report of the investigation into the death of Ms. Savita Halappanavar*. Available at: http://www.hse.ie/eng/services/news/media/pressrel/newsarchive/2013archive/jun13/savitareport.html (Accessed: 15 December 2016).

[xxv] See Expert Statement on the Global Day of Action for Access to Safe and Legal Abortion, 28 September 2016: *"We recommend the good practice found in many countries which provide women's access to safe abortion services, on request during the first trimester of pregnancy. We insist on international legal requirements that women can access abortion at the very least in cases of risk to their life or health, including mental health, rape, incest and fatal impairment of the foetus during the first trimester and later."* Available at: https://www.awid.org/news-and-analysis/statement-three-un-experts-28-september (Accessed 27 February 2017)

[xxvi] Organization, W.H. and Health, W. (2012) *Safe abortion: Technical and policy guidance for health systems*. 2nd edn. Geneva: World Health Organization.

[xxvii] ibid

[xxviii] ibid