



Amnesty International UK

Briefing: Amendments related to access to abortion

Northern Ireland Assembly - Justice (No. 2) Bill Amendments tabled on 2 February 2016 for Consideration Stage

Introduction

Amnesty International (AI) is a global movement of over 3 million supporters, members and activists. We have thousands of supporters in Northern Ireland. AI's vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. Our mission is to undertake research and action focused on preventing and ending grave abuses of these rights. We are independent of any government, political ideology, economic interest or religion.

International human rights standards provide for abortion in cases of severe and fatal foetal abnormalities and where a pregnancy is a result of sexual crime.

We note that in December 2015 the High Court in Belfast made a 'declaration of incompatibility' with regard to Northern Ireland law in cases of fatal malformation of the foetus, rape and incest and Article 8 of the European Convention on Human Rights.

Abortion in criminal law

International human rights bodies have repeatedly criticized the criminalization of abortion. They have recognized that the criminal regulation of abortion impedes 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 when severely restrictive laws are in place, such as in Northern Ireland. Health-care providers and women are reluctant to respectively deliver or seek services and information under any circumstance, including those permitted by law, where there is a risk of prosecution and imprisonment.

Restrictive abortion laws are gender-discriminatory, denying women and girls treatment only they need. AI urges full decriminalization of voluntary abortion in all cases, subject only to such limitations as would be reasonable for any other type of medical intervention, and further demands that states ensure access to safe and legal abortions in at a minimum, cases of risk to mental and physical health, or in circumstances where pregnancy is a result of sexual violence, rape or incest. This would be a critical step to ensure that women in Northern Ireland can access the most appropriate health care, without threat of prosecution.

Public opinion

An October 2014 opinion poll (full details available) commissioned by Amnesty International and carried out by Millward Brown Ulster, found:

- 60% of people think the law in Northern Ireland should make access to abortion available where the foetus has a fatal abnormality;
- 69% of people think the law in Northern Ireland should make access to abortion available where the pregnancy is the result of rape;
- 68% of people think the law in Northern Ireland should make access to abortion available where the pregnancy is the result of incest.

Marginalised groups

UN treaty bodies have recognized the discriminatory effects of criminal regulation on women's access to lawful abortion on the compounded basis of sex, race, age and income. Women belonging to socio-economically advantaged groups circumvent the law in Northern Ireland by travelling. 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 aforementioned.

Severe / fatal foetal abnormality

International and regional human rights treaty provisions protecting the right to life and the official bodies that interpret articles protecting life and other human rights guarantees do not extend such protections prenatally. No international or regional human rights body has ever recognized the foetus as a subject of protection under international human rights treaties. International and European standards, do however, support numerous state measures that support the development of prenatal life through the protection of the pregnant woman. Moreover, international human rights bodies have found restrictions on access to abortion in law or in practice to be a violation of state obligations.

Governments have been held accountable for not ensuring that abortion is available in cases when the life or health of women and girls is in danger, in cases of fatal foetal impairment and in cases of rape or incest.

The UN treaty bodies have not limited their calls for access to abortion to cases in which foetal impairments are such that stillbirth or death immediately after birth is a virtual certainty. The CEDAW has called for access to abortion in cases of "severe" (rather than "fatal") foetal impairment in recent concluding observations. In its July 2014 concluding observations on Peru, for example, the committee recommended that the state "[e]xtend the grounds for legalization of abortion to cases of rape, incest and severe foetal impairment."

Similarly, the committee noted in its 2012 concluding observations on Chile:

[T]he Committee deeply regrets that all the recent parliamentary initiatives aimed at decriminalizing abortion have failed in the State party, including those where the health or life of the mother are at risk, in cases of serious foetus malformation or rape.

Amnesty refers legislators to the fact that in all the individual complaints filed to the UN human rights bodies on failure to ensure access to abortions, the Committees found human rights violations, including the rights to equality and non-discrimination, the right to privacy and the right to be free from torture and other cruel, inhuman and degrading treatment. These cases involved denial of access to abortion in cases of rape and in a case of fatal foetal abnormality. The Children's Rights Committee has also called on at least one state to adopt guidelines making it clear to doctors that they can legally perform abortions on grounds of severe foetal malformation under the existing health exception of a law, where no explicit foetal impairment exception exists.

Recommendation: Amnesty recommends that the Assembly changes the law to allow for abortion in cases of severe or fatal foetal abnormality. In order to permit the medical practitioner to decide whether a condition could be defined as severe / fatal, no statutory definition should be provided.

Sexual Crime

UN treaty monitoring bodies widely agree that abortion should be legal when a pregnancy results from rape and have repeatedly urged countries to amend their laws to this effect. They have also urged states to take measures to provide for implementation mechanisms to ensure availability and accessibility of abortion on rape and incest grounds and to also adopt relevant medical standards.

The World Health Organization (WHO) has clearly indicated that women who become pregnant as a result of rape should have access to safe abortion services. To facilitate access to abortion services in such cases, the WHO advises that states should elaborate standards and guidelines for both police and healthcare providers, including referrals to abortion services.

Women should be provided safe, legal abortion services based on their complaint of the rape, and should not be compelled to undergo unnecessary administrative or judicial procedures, such as pressing charges against the perpetrator, identifying the rapist or providing forensic evidence of the rape.

The WHO has noted that such requirements can delay access to abortion services, or may prevent access to services altogether, such as where there are gestational limits for the abortion and women cannot meet the requirements in time and in instances when women do not want to report the rape due to fear of stigma.

Recommendation: Amnesty recommends that the Assembly legislates to make abortion services available where pregnancy is result of a 'sexual crime'. This service should be offered to any woman presenting herself to medical staff requesting a termination of pregnancy on these grounds, without being compelled to undergo unnecessary administrative or judicial procedures, such as pressing charges against the perpetrator or identifying the rapist.

Conscientious objection

Amnesty would view it as vitally important that it is made clear in law, and accompanying guidance, that a right to conscientious objection is not absolute and would not apply in cases where there is a risk to the woman's life or an immediate risk to her health. A woman's right to life, health and dignity must always take precedence over the right of a health care professional to exercise conscientious objection to participation in an abortion procedure. Conscientious objection should only be permitted insofar as the person seeking care can still be guaranteed timely and appropriate quality care.

Recommendation: Amnesty recommends that the Assembly makes clear in law and accompanying guidance that:

- The right to conscientious objection is not absolute and would not apply in cases where there is a risk to the woman's life or an immediate risk to her health;
- A woman's right to life, health and dignity must always take precedence over the right of a health care professional to exercise conscientious objection to participation in an abortion procedure;
- Conscientious objection should only be permitted insofar as the woman seeking care can still be guaranteed timely and appropriate quality care;
- The right to conscientious objection must also only apply to the abortion procedure itself – not pre and post care.

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