



Amnesty International UK and Informing Choices NI response to The Severe Fetal Impairment Abortion (Amendment) Bill

Introduction

Amnesty International UK (AIUK) is a national section of a global movement of over seven million supporters, members and activists. We represent more than 500,000 members, supporters, activists, and active groups across the United Kingdom, including thousands in Northern Ireland. Collectively, our 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. AIUK plays a leading role in campaigning for sexual and reproductive rights in Northern Ireland, including access to abortion and a human rights compliant framework for access.

Informing Choices NI (ICNI) is a sexual and reproductive health charity. It provides a sexual health helpline, which offers information and support across a range of sexual health issues and which acts as the central access point into local abortion care in Northern Ireland. The charity offers both pregnancy choices and post pregnancy counselling and provides Relationships and Sexuality Education (RSE) programmes to parents and individuals with a learning disability, difficulty or autism spectrum disorder.

Background

On 18th July 2019, the Northern Ireland (Executive Formation etc) Bill was passed by the UK Parliament. This legislation repealed sections 58 and 59 of the Offences Against the Person Act (1861), and abortion was decriminalised on 22 October 2020. The Abortion (Northern Ireland) Regulations 2020 came into force from 31 March 2020. These provide for:

- Abortion on request until the 12th week of pregnancy;
- Abortion until the 24th week if the continuation of the pregnancy would involve a risk to the pregnant person's physical or mental health greater than that of termination;
- Abortion with no upper gestational limit if there is a risk of death or grave permanent injury to the pregnant person; and
- Abortion with no upper gestational limit in cases of severe or fatal fetal impairment;

The legislation passed at Westminster and subsequent Regulations produced incorporate into law the findings of an inquiry report undertaken by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) into access to abortion in Northern Ireland. This inquiry found that women and girls in Northern Ireland were being subjected to grave and systematic violations of rights.

It concluded that restrictions affecting only women and girls from exercising reproductive choice, and resulting in them being forced to carry almost every pregnancy to full term, involves mental and physical suffering constituting violence against women. The report



made thirteen recommendations including the provision of abortion in cases of severe fetal impairment.

The Reality

Despite the new abortion framework taking effect from the 31 March 2020 the Department of Health has failed to commission and fund abortion services, including the provision of information regarding these services and wider counselling support. In the absence of a formal commissioning process, an interim early medical abortion (EMA) service (up to 9 weeks and 6 days) has been established by local Health and Social Care (HSC) Trusts working in partnership with ICNI who provide the central access point. However, without proper funding in place we have seen services struggle to cope.

Three of the five Trusts have already suspended EMA services to date due to staffing and resource issues, with one area, the Western Trust, currently without a service. As a result of the previous suspensions within the Northern and South Eastern Trusts 113 people living within these areas who self-referred into the central access point and requested access to abortion had their options limited to traveling to England during a global health pandemic; travelling to the south of Ireland and paying privately at a cost of around €450; or accessing medication outside of NHS/HSE provision through independent online telemedicine providers. These are the options which women living within the Western Trust are currently faced with if wishing to end an unplanned or crisis pregnancy despite now being legally entitled to access local healthcare services in Northern Ireland.

A lack of commissioning has also meant the existing services are being undertaken by a threadbare medical staff, the central access point into services is unfunded, counselling provision is not adequately resourced, surgical abortion is currently not available in Northern Ireland for those who would prefer this method, or require it for medical reasons and in the absence of commissioned, resourced services availability of full abortion services in line with the Regulations is not being met.

Severe Fetal Impairment Abortion (Amendment) Bill

This Bill seeks to remove abortion in cases of severe fetal impairment from the 24th week of pregnancy.

In some cases, women and girls may decide to terminate their pregnancies following a diagnosis of fetal impairment. As with all abortions, their decisions may be based on myriad factors including, their physical or mental health and wellbeing, the fetus' chance of survival and the options to treat and care for a child born with the anticipated health conditions. The decision whether to continue a pregnancy following a diagnosis of fetal impairment must lie with the pregnant person.

In October 2019, Sarah Ewart, supported by Amnesty International, won her legal challenge to Northern Ireland's abortion law. The Belfast High Court ruled that laws prohibiting abortion in cases of fatal fetal impairment are incompatible with the UK's human rights obligations under the European Convention on Human Rights. It is important to note that UN human rights treaty bodies have not limited their calls for access to abortion to cases in which fetal impairments are such that stillbirth or death immediately after birth is a virtual certainty. The

UN CEDAW Committee has called on the Irish government to legalise access to abortion in cases of “severe impairment of the foetus”¹, as it had in its concluding observations on other countries.² This has also been raised during the review of Ireland’s human rights record by the UN Committee on the Rights of the Child which criticised Ireland’s criminalisation of abortion including in cases of “severe foetal impairment”.³ Severe fetal impairments can lead to a high degree of suffering after birth, and many women and couples opt for an abortion for altruistic reasons.⁴

91% of all abortions provided in England and Wales in 2019 occurred within the first 12 weeks of pregnancy whereas, abortions performed after 24 weeks account for 0.1% of the total figure. While this number is very small all cases involve very complex clinical and personal decision making.

We strongly urge that access to abortion is available in circumstances where there are severe or fatal fetal impairment diagnoses. A pregnant person’s right to health must always be at the centre of and inform medical decisions on terminating a pregnancy.

It should be noted that laws or regulations that allow for abortion on grounds of fetal impairment do not implicate a violation of Convention on Rights of Persons with Disabilities (CRPD) article 10 on the right to life, given that the fetus is not a rights-holder under international human rights law. Rights enshrined in the CRPD and general international human rights law apply from birth.

States must also take comprehensive measures to address the underlying structural and social causes of stigma and discrimination against persons with disabilities. However, it is essential that states do so in a manner that does not violate women’s human rights by removing or limiting access to abortion in cases of severe and fatal fetal impairments, exposing women, including women with disabilities, to risks to their life and physical, mental, social and emotional health and wellbeing.

We take this opportunity to highlight important steps that States should take to address the underlying structural and social barriers to realizing the rights of people with disabilities without jeopardizing women’s rights, and these steps will have a direct impact on combating disability-related stigma. To this end, Governments should:

- Ensure that children with disabilities and their families have access to appropriate information, support, and services within their local community, in line with State obligations under the CRPD, to ensure that people with disabilities can live with dignity and exercise their rights. States also must allocate sufficient funding to support services;
- Train medical providers and support staff on the rights of people with disabilities and on how to provide them with human-rights based medical care and support;

¹ Concluding observations on the combined sixth and seventh periodic reports of Ireland, UN Doc. CEDAW/C/IRL/CO/6-7 (2017) para. 43.

² In its July 2014 concluding observations on Peru, for example, the CEDAW Committee recommended that the state “[e]xtend the grounds for legalization of abortion to cases of rape, incest and severe foetal impairment.” CEDAW Concluding Observations: Peru, UN Doc. CEDAW/C/PER/CO/7-8 (2014) para. 36(a); CEDAW Concluding Observations: Chile, UN Doc. CEDAW/C/CHL/CO/5-6 (2012) para. 34.

³ UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland UN Doc. CRC/C/IRL/CO/3-4 (2016) para. 57.

⁴ See the story of Laoise’s mother in Amnesty International, She is not a criminal: The impact of Ireland’s abortion law (EUR 29/1597/2015) 58-59.

- Develop and promote enabling legislation and policy frameworks to address root causes of inequalities of people with disabilities; and
Raise public awareness about the rights of people with disabilities to eliminate stigma associated with disability and to promote an inclusive society.

States must ensure that pregnant people are offered voluntary access to non-directive, evidence-based information, including from medical providers who have been trained to discuss pregnancy-related diagnoses in a disability-sensitive manner that also respects women's autonomous decision-making and in a format that is accessible to them. This includes voluntary access to:

- Unbiased information and non-directive counselling about their pregnancies and what the diagnosis means for their health, including prenatal diagnostic tests to ensure access to all information about their pregnancy;
- Referrals upon request to professional organizations who could provide unbiased information and non-directive counselling about what the diagnosis could mean if the pregnancy were carried to term, including information about available support services in the local community for children who are born with disabilities and their families and access to networks and other resources;
- Information about access to abortion, including its legal status and where to access safe and legal abortions; and
- Referrals upon request for counselling and other supports to process the information received, including referrals to support groups for women who have received similar prenatal diagnoses.

It is not always possible to distinguish between a severe fetal impairment and one which could prove fatal. A recent study in Ireland looked at coronial inquests into stillbirths and neonatal deaths and concluded that "less than half of the anomalies could be classified as fatal fetal abnormalities, yet all were fatal."⁵

Denying abortions within Northern Ireland after 24 weeks will not stop them from happening. It will, however, force women and their families who are already facing trauma or distress to travel to access essential healthcare which should be locally available.

UK Government Response

Commenting on the Severe Fetal Impairment Abortion (Amendment) Bill the UK Government released the following statement:

"...we are legally bound to implement the CEDAW recommendations which includes providing access to abortions in cases of severe fetal impairment, not only fatal fetal abnormalities. While abortion remains a devolved issue, the Assembly can only legislate in a way that remains compatible with Convention rights. We remain of the firm view that the 2020 Abortion Regulations are compatible with our international obligations, including under the Convention on the Rights of Persons with Disabilities."

⁵ Power S, Meaney S, O'Donoghue K. [The incidence of fatal fetal anomalies associated with perinatal mortality in Ireland](#). Prenat Diagn. 2020 Apr;40(5):549-556. doi: 10.1002/pd.5642. Epub 2020 Feb 7. PMID: 31913532.



This Bill, if passed, would breach the human rights of women in Northern Ireland and would conflict with primary legislation enacted by the UK Parliament by a significant majority.

Conclusion

This Bill, if enacted, would breach the human rights of women in Northern Ireland, and is a diversion from the real issue: the ongoing failure to commission and fund abortion and wider contraception and education services in Northern Ireland which the Secretary of State for Northern Ireland has now taken additional powers to enact.

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