Universal Periodic Review Ireland

Joint Submission from Abortion Rights Campaign (ARC), Abortion Support Network (ASN) and Termination for Medical Reasons (TFMR) for the 39th Session of the UPR Working Group

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Abortion Rights Campaign (ARC), founded in 2013, is a grassroots all-volunteer group dedicated to achieving free, safe, legal and local abortion care across the island of Ireland for everyone who wants or needs it. ARC is one of the three core groups that formed the civil society organisation Together for Yes, which successfully campaigned for a Yes vote in the referendum to repeal the 8th Amendment to the Irish Constitution in May 2018. ARC is founded on principles of individual bodily autonomy and decision-making, equality and non-discrimination, with a strong commitment to health and human rights. ARC recognises that many people, including girls, women, transgender people and non-binary people, can become pregnant and need an abortion. ARC is committed to vindicating the rights of all people who need abortion care and holding the State accountable for its obligation to affirm and vindicate abortion rights as human rights.

Abortion Support Network (ASN) is a charity founded in 2009 that provides information, financial assistance and, where needed, accommodation in volunteer homes to those forced to travel for abortion care from Ireland, Northern Ireland, the Isle of Man, Malta, Gibraltar and Poland. The cost of this support ranges from £500 to £2,500 or more, depending on circumstances and stage of pregnancy. ASN was founded with the understanding that making abortion against the law does not stop abortion but only stops safe abortion, and is especially punitive to women and pregnant people who are living in poverty or otherwise marginalised. ASN opened in 2009 to Ireland, Northern Ireland and the Isle of Man, expanding its service to those resident in Malta and Gibraltar in February 2019 and to Poland in December 2019 (as part of the Abortion Without Borders initiative). ASN continues to assist people in Ireland and Northern Ireland who fall through the cracks of legal provision and still need to access care abroad.

Termination for Medical Reasons (TFMR) Ireland is a campaign and advocacy group that represents women, people and couples that have received a foetal diagnosis in pregnancy and wish to have the option of a termination of pregnancy. TFMR was established in early 2012 by four women who had all travelled for termination after diagnosis of fatal foetal anomaly. One of the founders, Amanda Jane Mellet, went on to take a case against Ireland to the UN Human Rights Committee (UN HRC) and, in 2016, the HRC found that the Irish State had subjected Amanda Jane Mellet to cruel, inhuman and degrading treatment, to discrimination, and to an arbitrary (and therefore unlawful) interference with her right to privacy. This ruling against the Irish State was one of the internationally recognised events which precipitated the decision to hold a Citizens' Assembly in 2017 which recommended a referendum on the 8th Amendment in 2018. Since the repeal of the 8th Amendment and the implementation of Health (Regulation of Termination of Pregnancy) Act 2018, TFMR has changed in structure to become the campaign department of the support charity Leanbh Mo Chroi. TFMR continues to campaign, lobby and advocate for terminations for medical reasons in Ireland. Even if properly implemented, the current legislation is too restrictive to effectively care for all parents who receive a foetal diagnosis; however, their experience is that the law in its current form is not being applied consistently and people continue to travel for conditions that should fall under the current restrictions. Leanbh Mo Chroi, which provides support to women following a foetal diagnosis, has also found that since the legislative change, the vast majority of those contacting the service for support are still being told that they fall outside the legislation and must seek abortion care abroad.

I. Introduction

1. This submission was prepared by representatives of ARC, ASN and TFMR.
2. This submission aims to evaluate the Irish State's progress in implementing the recommendations it accepted from the second Universal Periodic Review (UPR) in 2016, and to raise issues with human rights compliance which have arisen since then, specifically the ways that Ireland's abortion law and provision fall short of human rights standards.

II. Access to abortion: Vindicating the rights to life, health, privacy and equality and non-discrimination

3. During the 2016 UPR process, Ireland supported two recommendations[1] relevant to abortion as a human right: 1) to "conduct consultations involving all stakeholders, including civil society organisations, in order to examine whether article 40.3.3 of the Constitution could be revised and the legal framework related to abortion broadened" (135.136, Switzerland), and 2) to "make sure all women and young girls have easy access to information on crisis pregnancy options by health-providers" (135.137, Sweden). The Irish Government provided updates in its interim report.

4. State parties made a number of additional recommendations pertaining to the constitutional prohibition on abortion that were due to be further examined by Ireland (136). Ireland did not accept numerous recommendations to decriminalise abortion and remove all punitive measures (136.15 - 136.19).

III. Updated context and new issues arising since 2016

5. After holding a Citizens' Assembly to meet the recommendation on consulting stakeholders and then establishing the Joint Oireachtas Committee on the 8th Amendment, the Government called a referendum for citizens to determine whether to amend Article 40.3.3. of the Irish Constitution to allow for legislation on "the termination of pregnancy". The referendum took place in May 2018 and the Irish people voted resoundingly for change, with 66.4% voting to amend the Constitution to allow for legal abortion.

6. The Oireachtas provided the legislative framework for legal abortion in the Health (Regulation of Termination of Pregnancy) Act 2018, which took effect from 1st January 2019.[2] The Act provides for abortion on request up to 12 weeks[3] (defined as 84 days since the start of the last menstrual period), subject to a mandatory three-day waiting period. The Act allows abortion only in extremely limited circumstances after 12 weeks: emergencies, when pregnancy poses a "risk to the life, or of serious harm to the health" of the pregnant person, or when a "condition [is] likely to lead to death of foetus" before or within 28 days of birth.[4]

IV. Provisions of the Act fall short of human rights standards

7. The Act falls short of human rights standards. The Act is neither patient-centred nor rights-centred. There is no explicit duty on the State to guarantee abortion care.

8. The current law is framed in terms of criminal offences, rather than through the lens of human rights and access to healthcare. The Act continues Ireland's history of criminalising abortion,[5] contrary to recommendations by the World Health Organization (WHO) and the UN Committee on the Rights of the Child (CRC), the Committee on Economic, Social and Cultural Rights,[6] the Human Rights Committee, and the Committee Against Torture.[7] Criminalisation creates a "chilling effect" for medical practitioners and perpetuates the idea of abortion as harmful and shameful.

9. The Committee on the Elimination of Discrimination Against Women (CEDAW) has observed that: "criminal regulation of abortion serves no known deterrent value. When faced with restricted access women often engage in clandestine abortions including self-administering abortifacients, at risk to their life and health. Additionally, criminalisation has a stigmatising impact on women, and deprives women of their privacy, self-determination and autonomy of decision, offending women's equal status, constituting discrimination."[8] The UN CRC also recommended in 2016 that the Irish State decriminalise abortion in all circumstances.[9]

10. The mandatory 72-hour waiting period[10] contradicts WHO advice, which cautions that, "mandatory waiting periods can have the effect of delaying care, which can jeopardise women's ability to access safe, legal abortion services and demeans women as competent decision-makers."[11] The Council of Europe's Commissioner for Human Rights has called for Ireland to remove this barrier.[12] In 2019 and 2020, ASN supported more than 50 people who were within three days of the legal 12-week limit to access abortion care. This means that the mandatory, medically unnecessary three-day waiting period prohibited them from accessing care in Ireland.

11. Transgender people face ongoing concerns that they could be denied access to abortion care. As the Act exclusively uses the word "woman", defined as "a female person of any age", it excludes transgender, intersex and non-binary people who may not be legally "women" but are nonetheless capable of becoming pregnant.[13] Despite widespread support among civil society organisations and members of the Oireachtas for a more inclusive definition, the Minister of Health, citing confidential advice from the Attorney General, rejected all such proposals.[14] As a result of this legislative wording, the State is failing to protect transgender people from discrimination.[15]

V. Implementation of the Act falls short of human rights standards

12. In 2019, 6,542 abortions were performed up to 12 weeks of pregnancy, according to Irish government statistics.[16] Also in 2019, at least 375 people travelled to the UK to obtain an abortion, a significant drop from the 2,879 people who made the journey the previous year.[17] We acknowledge the fact that the majority of those who need an abortion can now receive this essential healthcare at home. However, the fact that hundreds are still travelling demonstrates that problems with the legal framework and implementation have left too many people behind.

13. Patients in Ireland contend with: poor geographic distribution of services; insufficient access to surgical abortion; insufficient access to abortion care between 10-12 weeks because patients must obtain care in a hospital, contrary to medical evidence and best practice, and also because of doctors' fear of providing an abortion too close to the 12-week cut-off; poor distribution of ultrasound scanning services to date pregnancies and problems arising from inaccurate scanning results; and inadequate access to hospital-based care, as 9 of 19 maternity hospitals refuse to provide services, and three of the hospitals that do are in Dublin. The above factors contribute to delay as people are forced to navigate a complex system and can result in care being blocked by the barrier of the 12-week cut-off.

14. Four weeks after the WHO declared COVID-19 to be a pandemic, Ireland's Department of Health issued a revised model of care permitting telemedicine or "remote" provision of medications for early abortion.[18] This innovation serves the needs of patients and the entire public by reducing travel and in-person visits to General Practitioners (GPs), Ireland's primary care doctors. It significantly improves the availability and accessibility of abortion care provision. Telemedicine is currently permitted until the COVID-19 emergency ends. ARC, ASN and other organisations have advocated that the current system should be maintained into the future.[19]

15. The Act allows doctors to refuse care by claiming conscientious objection, and requires doctors to transfer the patient's care to an appropriate provider "as soon as may be."[20] Given the poor geographic distribution of services and failure to specify a timeframe for the transfer of the patient's care, allowing doctors to refuse care creates a barrier to people obtaining an abortion within the 12-week limit. Furthermore, at least one maternity hospital has asserted that it will not provide any abortion care, violating the Act's prohibition on institutions (as opposed to individuals) refusing to provide care.[21] The Government's inability or failure to ensure adequate, timely, local abortion services is a further reason why telemedicine abortion should be maintained as standard practice.

16. ASN is aware of at least 25 people who have been forced to travel to England to complete failed medical abortions (abortions induced by pills) commenced prior to 12 weeks and in full compliance with the Act since the introduction of abortion services in Ireland in 2019. At least one person has had to continue their pregnancy because of three failed early medical abortions administered by the Health Service Executive (HSE). No surgical option was offered, and the patient was unable to travel outside the country due to COVID-19 travel restrictions and caring responsibilities.[22] (The Irish Government does not compile this kind of data, and ASN do not ask; these figures reflect only those clients who volunteered the information.)

17. While abortion medications are very safe and effective, they fail around 2% of the time. Despite this, HSE clinical guidance states that even if a medical abortion does not work, people cannot access abortion care in Ireland after 12 weeks unless other grounds apply. If a patient and doctor initiate a medical abortion within the 12-week time limit, then the resolution of any failure of that treatment, either through a second round of treatment or an abortion procedure, should be recognised as legal under the Act. By wilfully misinterpreting the Act and denying appropriate continuity of care for abortion, the Irish Government is abridging the right to health enshrined in numerous UN treaties.

18. Abortion statistics for England and Wales recorded 64 people who travelled from Ireland after a diagnosis of severe or fatal foetal anomalies in 2019.[23] That means that for every three people obtaining an abortion for a fatal foetal anomaly in Ireland, two were still forced to go to England; an unknown number may have gone to other countries.[24] In addition to all those who contacted Irish organisations TFMR and Leanbh Mo Chroi, 17 people in this situation contacted ASN in 2019 and 34 in 2020. While these diagnoses were dire, the patients receiving them could not obtain written certification from the required two doctors in Ireland that the foetus would die before or within 28 days of birth (the definition of “fatal” under the Act). If a complex or unique syndrome is diagnosed, abortion is refused due to lack of precedent, despite best medical knowledge suggesting the foetus has no prospect of life. For example, Trisomy 21 is not on the list of potentially fatal conditions and no one in Ireland has been able to access an abortion after a T21 diagnosis, despite the fact that it can be fatal. Maternity hospitals have similarly refused to provide abortions in almost all cases of structural defects.

19. Patients who receive a diagnosis of severe or life-threatening foetal complications in Ireland encounter numerous barriers to realising their rights to abortion, including arbitrary treatment, delays that jeopardise access to care, and stigmatising treatment.[25]

20. TFMR is aware of arbitrary treatment, including inconsistent decision-making across maternity hospitals, some of which offer abortions for conditions that others tell patients they must travel for; patients not receiving written decisions explaining why they were refused an abortion, nor being informed of their rights to seek another opinion, nor of the appeals procedure available in the Act; refusal to consider patients' cases on the ground of risk of serious harm to their health under s. 9 of the Act, despite the ongoing pandemic and risks associated with travel; and infrequent referrals to a hospital in another jurisdiction - at most, they are given phone numbers to call themselves.

21. TMFR has heard multiple reports of delays that jeopardise access to care: delayed diagnosis, with patients being referred for several unnecessary tests, only to be told the outcome would not change regardless of the test result; and delayed procedures and results (e.g., six weeks for amniocentesis) with Brexit or COVID-19 given as the excuse, combined with advice not to wait if they need to travel because of the 24-week limit on abortion in the UK, compounded by the fact that many English hospitals have shut their doors to Irish patients, making delays even more problematic.

22. TMFR is also compiling reports of stigmatising treatment arising from the negative impact of doctors' refusal of care in maternity hospitals and the lack of acknowledgment and bereavement support from maternity hospitals for people who choose abortion after a non-fatal diagnosis, leaving them with guilt and stigma despite being just as bereaved as those who lose pregnancies or babies in other ways.

23. One of the women supported by TFMR and Leanbh Mo Chroi explained the severity of her foetal diagnosis: "Oeis complex/Cloacal exstrophy is what our baby had - giant omphalocele - which means all organs outside the body - stomach, liver, spleen, intestines, bladder split in two and connected to the colon, no anus, no phallus or reproductive organs and spine split in two. We were told there was little hope he would survive a birth but he might survive longer than 28 days and therefore we were told, 'You have options in the UK but our hands are tied here,' and 'We hate seeing you have to go to the UK but we can't help you here because of the legislation.'"

24. By forcing patients like the one quoted above to travel in these circumstances, the Irish State is in breach of the UN HRC decisions in *Mellet* and *Whelan*. In the *Mellet* case, the HRC found in 2016 that the Irish State had subjected Amanda Jane Mellet to cruel, inhuman and degrading treatment, to discrimination, and to an arbitrary (and therefore unlawful) interference with her right to privacy by forcing her to travel to England to obtain an abortion for a non-viable pregnancy.

25. During the first year of legal abortion provision in Ireland:

- 21 abortions were provided in instances where there was a risk to the life or health of the pregnant person
- 3 abortions were provided in instances where there was a risk to the life or health of the pregnant person in an emergency

The miniscule number of abortions for risk to life or health is on par or smaller than the number of abortions for life-saving reasons prior to the constitutional and legislative changes of 2018, under the exceedingly restrictive Protection of Life During Pregnancy Act 2013. This situation reflects the vague terminology in the Health Act, which is not standard in medical practice and was cautioned against by medical experts during the drafting stage, as well as in the Joint Oireachtas Committee hearings.

26. The State's failures to affirm the rights of Irish residents to access safe abortion care at home are directly related to the ongoing criminalisation of doctors, who work under the risk of arrest and 14 years in prison if they inadvertently step outside the narrow parameters of legal abortion.[26]

27. These failures also inflict especially acute rights violations by forcing people to risk their health and lives to travel during a global pandemic to access abortion care. In addition, people forced to travel abroad for abortion care need to arrange childcare for any children they have, which presents additional costs and logistical burdens if they do not have family to rely on for informal care, or if such informal care is not tenable because of COVID-19. Potential violations of the right to privacy must also be acknowledged in light of controversy over social welfare inspectors gathering information at ports and airports in Ireland about people's reasons for traveling.[27]

28. In 2019, 67 residents of Northern Ireland received abortions in Ireland. The number could be higher as 525 people obtaining abortion care had no recorded place of residence. Despite promises by Ireland's then-Minister of Health to ensure access for residents of the North, all such residents have to pay out of pocket, with typical charges of €450.[28] This disparity persists despite the fact that there is a provision for reciprocal healthcare between the UK and Ireland under the Common Travel Area, something which both the UK and Irish governments reaffirmed their commitment to in May 2019.[29] Under Strand Two of the Good Friday Agreement, healthcare is listed as an area for cooperation and has been highlighted as one of the success stories of the Agreement.[30] The Irish Government is reneging on its commitment to reciprocal healthcare by not providing this service for free to people residing in Northern Ireland when it is free to people in Ireland. Westminster decriminalised abortion in Northern Ireland in October 2019 and introduced regulations in March 2020, but the Health Minister has yet to commission services; therefore residents of the North are still forced to travel to obtain

abortion care, including to England during the pandemic if they want free care, violating their rights.

VI. Equality of access for ethnic and racial minorities, migrants and disabled people

29. Many of the barriers outlined above are compounded for ethnic and racial minorities such as Travellers and migrants, particularly migrants seeking international protection.[31] As Ireland's indigenous ethnic minorities, members of the Traveller community are specifically protected by the Convention on the Elimination of All Forms of Racial Discrimination (CERD) as well as the treaties referenced above. Stark health disparities exist for Traveller and Roma women in Ireland. For example, recent research has shown that 31.5% of Roma women did not have a GP, 44.6% did not have a medical card, and as many as 86% experienced discrimination in health services.[32] Levels of complete trust by Travellers in healthcare professionals are half what they are for the general population, 41% compared to 82%. Two-thirds of service providers agree that Travellers sometimes experience discrimination when using health services.[33]

30. These disparities raise concerns with respect to the human right to dignity and indicate that members of these ethnic minorities will face increased barriers in their pursuit of free, safe, legal and local abortion care. Such barriers will likely be compounded by the failure of the State to address social determinants of health for these groups, including poor accommodation, poverty, illiteracy and discrimination.[34] Poor accommodation, in particular overcrowded accommodation and lack of privacy, points to the need for women in these communities to have a choice between an abortion that can be completed in the doctor's office and a more time-consuming and unpredictable abortion that will be completed at home.[35]

31. CERD also protects the rights of migrants. Ireland's system to accommodate international protection applicants, known as Direct Provision, creates especially onerous barriers to abortion. Direct Provision centres tend to be located on the outskirts of cities or in rural areas, where abortion providers are scarce. People in Direct Provision must use their meagre weekly allowance to pay for transportation to medical appointments, or risk having to divulge personal information if they request funding for transportation to the doctor, violating their rights to medical care and privacy. Medical abortion, which involves taking medication that induces a miscarriage 'at home', is the norm in Ireland. This process is painful, can last more than a day, and can involve a good deal of bleeding, depending on the individual. In almost all cases, a person in Direct Provision or emergency accommodation shares a room with other people, be they family members or complete strangers.

32. Some applicants for international protection are diverted to emergency accommodation before they get the documents they need to access medical care.[36] Protection applicants who live with friends or family in private accommodation do not automatically qualify for a medical card,[37] and may face additional barriers because of their immigration status.[38] Even in cases of rape — a form of persecution experienced by many protection applicants[39] — there is no exception to the 12-week limit on abortion on request.

33. Requiring persons who need an abortion to travel outside of the State has a disproportionate impact on migrants and international protection applicants. Every person travelling needs a passport or travel document; migrants need to have an up-to-date immigration card (Irish Residence Permit or IRP card) to be able to re-enter the State. International protection applicants may not have a passport or travel document in their possession, so would need to request that the International Protection Office return their documents or request that the Department of Justice issues them with a temporary travel document. In addition, international protection applicants must formally obtain consent from the Minister for Justice to leave the State,[40] for which they would be required to disclose a compelling reason. These requirements delay travel and access to timely healthcare. In 2019 and 2020, ASN assisted 31 migrants, including six who were refugees or international protection applicants, to access abortion services in the UK or the Netherlands. Fourteen clients needed a visa to travel outside Ireland for abortion care; obtaining a visa for an international protection applicant is very complicated. Undocumented migrants do not hold an IRP card, so are likely deterred from travelling as they would not be able to re-enter the State on their return.

34. Even before the onset of the COVID-19 pandemic, international students and all non-EU residents who required visas were being advised to travel to the Netherlands for abortion care because of difficulty getting timely visas for travel to the UK. Individuals can often obtain an abortion in the UK and return to Ireland in one day, but going to the Netherlands requires more travel time, with additional financial and practical concerns.[41] While the visa problems arise primarily in the UK, if the Irish State did not impose needless barriers, non-EU residents would not need visas to obtain abortion care in the first place.

35. A patient who is a migrant may attempt to access abortion care early in the 12-week ‘on request’ period, only to encounter barriers. The Act states that people “ordinarily resident” in Ireland can avail of free abortion care. The State’s My Options information website states: “An abortion is available free through the HSE if you live in the Republic of Ireland.” However, the My Options website also says: “Your doctor will need to share a personal ID number with us. This could be your PPS number [Personal Public Service Number or PPSN] or medical card number. This is so we can pay your GP or

doctor for any abortion services they give you." Many people, including international students enrolled in educational programmes, people with employment permits and their family members, and Syrian nationals granted residence under the Humanitarian Admission Programme, as well as undocumented migrants living in Ireland, are ineligible for State-issued medical cards.[42] Most individuals living in Ireland would have a PPSN; however, undocumented migrants and persons who recently arrived in the State may not have one. Concerns have been raised that undocumented migrants may fear approaching the Department of Social Protection to obtain a PPSN or engage with other government departments out of fear of risking deportation.[43] Individuals without a PPSN cannot effectively access free abortion care, and would either have to pay for the service or rely on the goodwill of doctors who will provide the care for free and try to get reimbursed later.

36. In 2018, Ireland ratified the Convention on the Rights of Persons with Disabilities (CRPD). Disabled patients experience all of the barriers to abortion that are built into the Act, and experience some barriers even more acutely than nondisabled patients, such as overcoming the logistical and transportation challenges of finding a doctor's office that is wheelchair-accessible, equipped with hoists and accessible examination tables, or otherwise sufficiently accessible to meet individual needs. The scant availability of aspiration abortion is another compounding barrier for disabled people, especially for those who live with family carers or in residential settings that do not afford privacy to undergo a medical abortion.

37. Disabled people are more likely to identify that they are pregnant at a later stage for reasons ranging from increased likelihood of irregular periods to missing symptoms of fatigue and nausea because they already experience these daily from a chronic illness. They are also more likely to need to make additional arrangements which result in delayed access to abortion care. For example, wheelchair users must give at least 24 hours notice to book public transportation and people requiring Irish Sign Language or other interpretation must wait until an interpreter becomes available. The rigid requirement to complete the abortion process within 12 weeks — including attending a minimum of two medical appointments with a mandatory 72-hour wait in between — is highly likely to result in a disproportionate numberof disabled people being denied abortion care in Ireland. This situation undermines disabled people's right to equal access to reproductive healthcare as established under Article 25 of CRPD.

38. People forced to travel abroad for abortion care incur additional costs and logistical burdens, especially if they have to arrange care for children while they are away. The cost of travel has a disproportionate impact on those who live in poverty, including those in Direct Provision, Travellers and disabled

people.[44]

VI. Right to information on healthcare

39. A rights-based approach to healthcare must also uphold the right to accurate and appropriate information on how to access legally available healthcare. In the case of abortion, timely and accessible information is particularly vital, especially when there are arbitrary gestational limits in law. The Irish Government has provided information on abortion access through the My Options service, which details the pathways for continuing or ending a pregnancy within the Irish state. This information is available online, via telephone and through a printed leaflet.[45] Although we welcome the provision of this information, its form raises serious concerns regarding accessibility and timeliness, particularly for disabled people and speakers of languages other than English.

40. The HSE states that a translation service is available for 240 languages, including Irish Sign Language (ISL), and that printed information is available in six languages. However, in order to access a translation, pregnant people are required to telephone and provide their contact details and language needs in English. For many, this will require someone calling on their behalf, which impinges on their right to privacy. Additionally, ISL interpretation is only available by appointment through the Irish Remote Interpreting Services (IRIS), which recommends booking at least a week in advance - presenting a significant barrier given the strict gestational limits and mandatory waiting periods in Irish law.[46] As abortion is still stigmatised in many communities, these limitations undermine the right to privacy and autonomy of those requiring translation services. Additionally, GPs do not have ready access to this interpretation service; if a person presents who speaks a language other than English, doctors should be able to access a prompt translation service in order to best care for their patients.

41. Although there is a My Options webchat feature, it is limited in scope, and the only way to get the details of the nearest abortion providers or medical advice is by using the telephone helpline. This is a significant barrier for Deaf and hard of hearing people — not all of whom will use ISL — and also autistic people, those with auditory or language processing issues, and non-speaking, partially speaking and mute people, among others. As there is no independent support for these individuals, their right to privacy and autonomy is also at risk as they may need to enlist the assistance of a family member, friend or carer to access healthcare information. Furthermore, there is no Easy-to-Read information available on abortion provision. The absence of Easy-to-Read information constitutes a failure to support disabled people's access to information under the CRPD.[47]

42. Finally, a service such as My Options should be a resource for abortion care and provision, not a barrier. As refusal of care, criminalisation of doctors, and

abortion stigma has limited the full roll-out of abortion services across Ireland, My Options is often used to acquire the details of the closest abortion providers. However, the service does not have a complete listing of all abortion providers, as some doctors have opted out of publicly indicating that they provide abortion, and has no information about the physical accessibility of individual providers' offices. Although pregnant people are entitled to present to their GP in the first instance to access abortion, GPs are also entitled to refuse to care for them — leading many to turn to My Options, even though their GP may be providing abortion services and indeed may be unlisted. Coupled with the numerous accessibility issues, these factors may lead to the My Options service acting as an additional barrier rather than facilitating services. Only by addressing the underlying issues of criminalisation, abortion stigma and refusal of care can an information service guarantee it is supporting access and not unduly delaying care.

VII. Legislative review

43. Ireland is due to "carry out a review of the operation of" the Health (Regulation of Termination of Pregnancy) Act 2018 within three years; that is, sometime in 2021.[48] In order to uphold the human rights of pregnant people who need abortion care, this review process must be open, transparent and patient-centred. It must focus on how the operation of the law can be improved, and not re-run the consultations that took place prior to changing the Constitution and enacting legislation.

44. A number of organisations, including ARC, TFMR, and WHO, are conducting research on the implementation of Ireland's abortion law and patients' experiences with the abortion care system in preparation for the review. The Government itself collects very little information to inform planning and provision, let alone human rights obligations. Instead, it requires doctors to notify the Minister of Health each month about the number of abortions they provided, the section of the Act under which the abortion was provided (on request or under the enumerated criteria for abortion after 12 weeks), the place of residence of the patient, the date of the abortion, and the Medical Council registration numbers of the doctors who certified and provided the abortion. This is largely the same information that doctors were required to submit when abortion was illegal in almost all circumstances and serves to police abortion providers more than to gain useful public health data.

45. The Government has promised safe access zones to protect patients, doctors and the public from anti-abortion activity outside of healthcare facilities since at least 2018. No legislation has been introduced to date.[49]

46. The Government has promised to regulate rogue agencies that intentionally mislead people seeking access to abortion since at least 2016. These rogue agencies compete with the My Options service, going so far as to create a fake My Options website. No legislation has been enacted to date.[50]

47. The Government promised to introduce a universal scheme of free contraception for all people living in Ireland, but has not done so. Ireland is one of the few countries in the world that charges people for contraception.[51]

VIII. Recommendations

48. In light of the above, ARC respectfully recommends that the Government of Ireland:

- Hold an open, transparent, patient-centred review process focused on how the operation of the law can be improved, including by changing current provisions of the law itself that are deficient in safeguarding human rights
- Improve the availability, accessibility, acceptability, and quality of abortion care in line with WHO best practice by taking the following steps:
- Decriminalise abortion in all circumstances
- Improve the geographic distribution of primary care and hospital providers
- Increase access to abortion by authorising nurses, midwives, and other medics to provide abortion care, in line with international best practice
- Maintain telemedicine as a permanent feature of abortion care
- Increase access to aspiration abortion to give patients access to the method they prefer, especially to ensure the privacy rights of people who live in shared accommodation
- Make abortion between 10-12 weeks available in non-hospital settings
- Increase the number of ultrasound providers and the accuracy of scans
- Repeal the arbitrary 12-week limit for abortion on request
- Repeal the mandatory three-day waiting period
- Repeal ambiguous wording regarding abortions for health risks and ‘fatal’ foetal diagnoses
- Provide legal avenues for abortion in all cases where foetal anomalies are diagnosed
- Repeal refusal of care (‘conscientious objection’)
- Make explicit the right of transgender people to access abortion care

- Update the Government's My Options abortion information service with information on the physical accessibility of each abortion provider

- Provide Easy-to-Read information on abortion access

- Provide an adequately resourced and staffed language interpretation service including ISL to facilitate independent access regardless of first language or disability and facilitate access to the interpretation service by GP's

- Create clear procedures for international protection applicants' access to abortion care, which should be provided to all asylum applicants, in a language they can understand, as well as to General Practitioners, maternity hospitals, employees of Direct Provision centres and emergency accommodation, and other relevant contractors

- Provide services to assist Travellers, people in Direct Provision, disabled people and others who must travel outside their county to access an abortion, including free transportation and child care; coordinate this direct support through the State's abortion referral service to protect individuals' privacy

- Fully implement the guarantee of free abortion care for all who live in Ireland, regardless of Personal Public Services Number or medical card

- Provide access to free abortion for residents of Northern Ireland

- Legislate for and fully implement safe access zones so that health care practitioners can provide and patients can access abortion care without harassment

- Legislate for and fully implement an end to deceptive rogue agencies that deliberately misinform patients about abortion

- Provide at no cost all methods of contraception approved by Irish regulatory agencies to all who wish to avail of it

- Collect data that will facilitate improvements in abortion care provision without policing doctors, and safeguard all such data with robust privacy protections

- Collect data that can be disaggregated by gender, race/ethnicity, migration status, and disability to increase understanding of how membership in particular groups affects access to abortion, and safeguard all such data with robust privacy protections

References

[1] Human Rights Council, Report of the Working Group on the Universal Periodic Review Ireland, 2016, GE.16-12337.
[2] Health (Regulation of Termination of Pregnancy) Act 2018.
[3] Section 12(1), Health (Regulation of Termination of Pregnancy) Act 2018.
[4] Sections 9-11, Health (Regulation of Termination of Pregnancy) Act 2018.
[5] Section 23, Health (Regulation of Termination of Pregnancy) Act 2018.
[6] Committee on Economic, Social and Cultural Rights, *Concluding observations on the third periodic report of Ireland* (2015), para. 30.
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