



Amnesty International UK

Justice Act – Jim Wells’ amendment

Submission to the Northern Ireland Assembly

Justice Committee

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Amnesty International NI – UK Section

1. Amnesty International UK (AIUK) is a national section of a global movement of over three million supporters, members and activists. We represent over 250,000 supporters in the United Kingdom. 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.

Introduction

2. AIUK welcomes this opportunity to contribute to the evidence gathering of the Justice Committee on the Justice Bill and its proposed amendments. Our evidence focuses on Jim Wells' amendment which seeks to 'restrict lawful abortions to National Health Services premises, except in cases of urgency when access to National Health Service premises is not possible and where no fee is paid. The amendment also provides an additional option to the existing legislation for a period of up to 10 years imprisonment and a fine.

At the outset, AIUK takes this opportunity to remind the Justice Committee that restrictive abortion laws and practices and barriers to access safe abortion are gender-discriminatory, denying women and girls treatment only they need.¹

AIUK demands the full decriminalisation 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 at a minimum in cases of risk to mental and physical health, or in circumstances where pregnancy is a result of sexual violence, rape, incest or in cases of fatal foetal impairment.

¹ See UN Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation No. 24: Article 12 Of the Convention (women and health), paras. 14 and 31 (c)

This is in line with international human rights standards, and would be a critical step to ensure that women in Northern Ireland can access a full range of health care, and that health professionals can provide such care, without the threat of prosecution.

Oral evidence Amnesty International would welcome the opportunity to discuss this paper at an oral evidence session with the Northern Ireland Assembly Justice Committee. Please refer to the cover for contact details.

Comments

3. Amnesty International is deeply concerned with the proposal to introduce further barriers to women and girls accessing abortion services in Northern Ireland in an already highly restrictive environment where abortion is regulated by gender discriminatory legislation² and in the context of the continuing failure of DHSSPS to publish guidelines on the termination of pregnancy in NI which has hindered access to / provision of lawful abortions.

This proposed amendment also seeks to introduce an additional option to the existing legislation for a period of up to 10 years imprisonment and a fine on conviction on indictment which, as currently drafted, would apply to both health professionals and women. International human rights standards are clear on the criminalisation of abortion - UN Treaty bodies have consistently called on state parties to amend legislation criminalising abortion in order to withdraw punitive measures imposed on women who undergo abortion³.

² The Offences against the Person Act 1861, sections 58&59.

<http://www.legislation.gov.uk/ukpga/Vict/24-25/100/crossheading/attempts-to-procure-abortion>. The Criminal Justice Act (Northern Ireland) 1945, specifically sections 25

<http://www.legislation.gov.uk/apni/1945/15/section/25>

³ (CEDAW Gen. Rec. No. 24, para. 31(c)). See also *Concluding Observations of the CEDAW Committee: Andorra*, para. 48, U.N. Doc. A/56/38 (2001); *Concluding Observations of the CEDAW Committee: Belize*, para. 57, U.N. Doc. A/54/38 (1999); *Concluding Observations of the CEDAW Committee: Burkina Faso*, para. 276, U.N. Doc. A/55/38 (2000); *Concluding Observations of the CEDAW Committee: Cameroon*, para. 60, U.N. Doc. A/55/38 (2000); *Concluding Observations of the CEDAW Committee: Ireland*, para. 186, U.N. Doc. A/54/38 (1999); *Concluding Observations of the CEDAW Committee: Jordan*, para. 181, U.N. Doc. A/55/38 (2000); *Concluding Observations of the CEDAW Committee: Namibia*, Part II para. 127, U.N. Doc. A/52/38/Rev.1 (1997); *Concluding Observations of the CEDAW Committee: Nepal*, paras. 139 and 148, U.N. Doc. A/54/38 (1999); *Concluding Observations of the CEDAW Committee: United Kingdom*, para. 310, U.N. Doc. A/55/38 (1999). See e.g., *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Bolivia*, para. 43, U.N. Doc. E/C.12/1/Add.60 (2001); *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Mauritius*, para. 15, U.N. Doc. E/C.12/1994/8 (1994); *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Nepal*, paras. 32 and 55, U.N. Doc. E/C.12/1/Add.66 (2001); *Concluding Observations of the Committee on*

This amendment fails to do this.

Criminal penalties are recognised by these UN bodies, as by the European Court of Human Rights, to impede women's access to lawful abortion and post-abortion care⁴. This is especially the case where there are severely restrictive laws, such as those in Northern Ireland. Medical providers and women are reluctant to deliver or seek service and information under any circumstance, including those permitted by law, where there is a risk of prosecution and imprisonment.

The UN Special Rapporteur on the right to the highest attainable standard of health has also recently recommended that states 'decriminalize abortion, including related laws, such as those concerning abetment of abortion'⁵

The proposed amendment, therefore, is in direct contravention of these standards.

Amnesty International research on access to abortion has shown that a climate of fear can hinder the provision of care with serious health consequences for women.⁶ In circumstances where abortion is subject to criminal law, such as in Northern Ireland, health care providers are often compelled to make decisions regarding available health care interventions, with a view to avoiding potential prosecution, rather than a view to providing quality care.⁷

Detailed comments

4. Barriers to abortion

AIUK is concerned that the proposed amendment seeks to structure the legal framework in NI in a way which would further limit a woman obtaining an abortion.

Economic, Social and Cultural Rights: Poland, para. 29, U.N. Doc. E/C.12/1/Add.82 (2002); *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Senegal*, paras. 26 and 47, U.N. Doc. E/C.12/1/Add.62 (2001).)

⁴ (*ABC v. Ireland; Tysiac v. Poland* No.o. 5410/03, para. 116, ECHR 2007).

⁵ (UN Special Rapporteur on the right to the highest attainable standard of health, 3 August 2011, A/66/254), para. 65(h)).

⁶ Amnesty International, The total abortion ban in Nicaragua: Women's lives and health endangered, medical professionals criminalized, AI Index AMR 43/001/2009

⁷ Amnesty International, Briefing to the UN Committee on Economic, Social and Cultural Rights: Poland, 43rd session, November 2009, AI Index EUR 37/002/2009

Human rights standards are clear that access to abortion should not be hindered, should be easily accessible and of good quality and that states should eliminate, not introduce, barriers which prejudice access to abortion services, such as conditioning access to hospital authorities.

The European Court of Human Rights has said where states allow abortion they must ensure its access. The Court, in the case of *Tysi c v. Poland*⁸, held that Poland has an obligation to ensure effective access to abortion where it is legal, '[O]nce the legislature decides to allow abortion, it must not structure its legal framework in a way which would limit real possibilities to obtain it.'⁹ The Court found a violation of Article 8. The Court reaffirmed this position and found violations of numerous other rights in the Convention in two subsequent cases related to abortion, including the right to be free from inhuman and degrading treatment and the right to private life. These cases dealt with failings to ensure lawful and timely access to abortion and abortion-related information¹⁰.

Furthermore, the 2008 Parliamentary Assembly of the Council of Europe Resolution on Access to Safe and Legal Abortion, called on member states of the Council of Europe to ensure access to abortion, including to 'lift restrictions which hinder, *de jure* or *de facto*, access to safe abortion...'.¹¹

Amnesty International also refers the Justice Committee to United Nations standards, in particular The Committee on Economic Social and Cultural Rights' General Comment 14 (2000)¹² on the right to the highest attainable standard of health which notes that the right to health requires that health care services, including sexual and reproductive health care services, are available, accessible, acceptable, of good quality and designed to improve the health of those concerned - in this case women (para 12). The Comment specifically states:

⁸ [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{"dmdocnumber":\["814538"\],"itemid":\["001-79812"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{)

⁹ *Tysi c v. Poland* (2007), ECtHR, Appl. No. 5410/03, para. 116

¹⁰ *RR v Poland* (2011) [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-104911#{"itemid":\["001-104911"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-104911#{) and *P&S v Poland* (2012) [http://hudoc.echr.coe.int/sites/fra/Pages/search.aspx?i=001-114098#{"itemid":\["001-114098"\]}](http://hudoc.echr.coe.int/sites/fra/Pages/search.aspx?i=001-114098#{).

¹¹ <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=11855&Language=EN>

¹² http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11

'The right to health in all its forms and at all levels contains the following interrelated and essential elements, the precise application of which will depend on the conditions prevailing in a particular State party:

- (a) *Availability*. Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party...
- (b) *Accessibility*. Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party.
- (c) *Acceptability*. All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.¹³

Amnesty does not find the amendment and current legislative framework in NI to fulfil these standards and protect and promote women's reproductive rights.

In addition to this, CEDAW General Recommendation 24 on Women and Health (1999)¹⁴ makes clear state responsibility to remove barriers that women face in accessing required medical care; this includes conditioning such care to hospital authorities as quoted below.

'States parties should report on measures taken to eliminate barriers that women face in gaining *access to health care services* ...Barriers include requirements or conditions that prejudice women's access such as ... hospital authorities'¹⁵

This CEDAW recommendation goes on to call for and advocate Government action on women's rights and legislative reform needed to ensure women's rights are protected and promoted. Specifically, point 31 maintains;

'States parties should also, in particular:

- (a) Place a gender perspective at the centre of all policies and programmes affecting women's s health and should involve women in the planning, implementation and

¹³ Para 12
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11

¹⁴ <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>

¹⁵ <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>, point 21.

monitoring of such policies and programmes and in the provision of health services to women;

(b) Ensure the removal of all barriers to women's access to health services, education and information, including in the area of sexual and reproductive health...;

(c) Prioritize the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance. When possible, legislation criminalizing abortion could be amended to remove punitive provisions imposed on women who undergo abortion;

(e) Require all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice.¹⁶

5. Criminalisation of abortion

In addition to the human rights impact of barriers to accessing healthcare, we object to the criminalisation of women and medical professionals and the implications this has on abortion services being provided. The United Nations' independent expert body charged with overseeing the implementation of the Convention on the Elimination of all Forms of Discrimination Against Women, the Committee on the Elimination of Discrimination Against Women (CEDAW Committee), has issued guidelines on the implementation of the Convention provisions. In its General Recommendation 24 (Women and Health), the CEDAW Committee makes recommendations for government action to uphold Article 12 of the Convention. It identifies barriers to women's access to appropriate health care, and states that "laws that criminalise medical procedures only needed by women punish women who undergo those procedures"¹⁷ and therefore are counter to the Convention. It includes a recommendation instructing States that "When possible, legislation criminalising abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion."¹⁸

¹⁶ <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>

¹⁷ CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health) para.14

¹⁸ CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health) para.31 (c)

Several studies on access to abortion in countries with partial decriminalisation – such as in Northern Ireland - have concluded that as long as abortion is generally criminalised, medical service providers will be deterred even from providing care that is legal.¹⁹ In its ruling in the case of *A, B, and C v Ireland*, the European Court of Human Rights said it considered it evident that the criminal provisions on abortion “would constitute a significant chilling factor for both women and doctors in the medical consultation process” and that women would be deterred from seeking legal and necessary care, and doctors from providing it, because of this chilling effect.²⁰

Furthermore, affirming “the right of all human beings, in particular women, to respect for their physical integrity and to freedom to control their own bodies”, the Parliamentary Assembly of the Council of Europe has stated that “the ultimate decision on whether or not to have an abortion should be a matter for the woman concerned, who should have the means of exercising this right in an effective way.”²¹ It has invited member states of the Council of Europe to “allow women freedom of choice and offer the conditions for a free and enlightened choice without specifically promoting abortion.”²²

The World Health Organisation’s (WHO) ‘Safe abortion: technical and policy guidance for health systems’ (second edition) reinforces human rights standards and details measures states should take to ensure access to abortion.²³

‘Policies should aim to:

- respect, protect and fulfil the human rights of women, including women’s dignity, autonomy and equality;
- ...
- prevent and address stigma and discrimination against women who seek abortion services or treatment for abortion complications;
- ...

¹⁹ Human Rights Watch, *A State of Isolation: Access to Abortion for Women in Ireland*, January 2010; Human Rights Watch, *The Second Assault: Obstruction Access to Abortion after Rape in Mexico*, March 2006.

²⁰ European Court of Human Rights, *Case of A,B, and C v. Ireland*, Judgement of 16 December 2010, para 254.

²¹ Parliamentary Assembly of the Council of Europe Resolution 1607 (2008) *Access to safe and legal abortion in Europe*, para.6

²² Parliamentary Assembly of the Council of Europe Resolution 1607 (2008) *Access to safe and legal abortion in Europe*. Para. 7.3

²³ http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf

While countries differ in prevailing national health system conditions and constraints on available resources, all countries can take immediate and targeted steps to elaborate comprehensive policies that expand access to sexual and reproductive health services, including safe abortion care.’²⁴

The WHO also comments on the negative effects of legislative restrictions on abortion, which Amnesty International finds to be particularly relevant in limiting environments such as Northern Ireland.

‘Legal restrictions on abortion do not result in fewer abortions nor do they result in significant increases in birth rates... Conversely, laws and policies that facilitate access to safe abortion do not increase the rate or number of abortions. The principle effect is to shift previously clandestine, unsafe procedures to legal and safe ones... 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 unsafe abortions, leading to increased morbidity and mortality.’²⁵

Recommendations

1. Amnesty International recommends this amendment is rejected in its entirety, including the proposed limitation of abortion provision to NHS services alone, and that the NI Assembly and Executive act to ensure that existing barriers to women accessing safe abortion services, including a lack of guidance on the termination of pregnancy for medical professionals, are removed.
2. Amnesty International further recommends that the NI Assembly and Executive place a gender perspective at the centre of all legislation, policies and programmes affecting women’s health and involve women in the planning, implementation and monitoring of such legislation, policies and programmes and in the provision of health services to women.
3. Ensure the removal of all barriers to women's access to health services, education and information, including in the area of sexual and reproductive health.

²⁴ P98 http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf

²⁵ P90 http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf

4. Prioritise the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and pre-natal assistance. When possible, legislation criminalising abortion could be amended to remove punitive provisions imposed on women who undergo abortion.

5. Require all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice.²⁶

For enquiries about this submission, please contact:
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²⁶ <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>