



IRELAND

**SUBMISSION TO THE UNITED NATIONS COMMITTEE ON THE
ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION**

100TH SESSION, 25 NOV 2019 - 13 DEC 2019

**AMNESTY
INTERNATIONAL**



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First published in 2019

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street

London WC1X 0DW, UK

Index: EUR 29/1344/2019

Original language: English

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1. INTRODUCTION

Amnesty International presents this submission to the United Nations (UN) Committee on the Elimination of Racial Discrimination (the Committee) in advance of the review of the combined fifth to ninth periodic reports of Ireland.¹

In this document, Amnesty International sets out its concerns about the implementation of the Convention on the Elimination of Racial Discrimination (the Convention) by Ireland in relation to: the “direct provision” system for accommodating asylum seekers; the impact of criminalization of the purchase of sex and other forms of criminalisation of activities around sex work such as “brothel keeping” on migrant sex workers; and restrictions in access to abortion services which may put migrant and minority ethnic women and girls’ health at risk.

2. DIRECT PROVISION

Non-citizens, including refugees, asylum seekers and stateless persons, migrants: articles 2 and 5

While awaiting a decision on their protection claims, asylum-seekers are accommodated mainly in hostels, hotels and other accommodation leased by the government, where they receive food and other basic necessities. Responsibility for accommodation, called “direct provision”, lies with the Department of Justice and Equality, which contracts private companies to provide these services. The delays in the processing of claims for international protection cause many asylum-seekers to be in “direct provision” for lengthy periods of time. In a system initially designed for stays of no more than six months, in 2019 just 44 per cent people in “direct provision” have been there for less than a year, with 24 per cent between one and two years, 13 per cent between two and three years, and 18 per cent more than three years.²

Despite the introduction of the International Protection Act 2015 creating a single process for considering applications for asylum and other forms of international protection simultaneously, and reforms to the decision-making process,³ many of those seeking asylum or other forms of international protection continue to face long delays before their applications are fully considered. The Committee’s recommendations from 2011 that Ireland expedite the processing of asylum claims and improve the conditions in “direct provision” centres, have still not been implemented.⁴ While Amnesty International welcomes the efforts to reduce the length of time spent by asylum/protection seekers in the legal process, we are concerned at reports that sufficient resources are still not in place to make the single procedure system efficient.

Asylum seekers do not have access to full range of their economic, social and cultural rights while in “direct provision”, with reports of overcrowding and lack of privacy in many centres.⁵ A working group, established

¹ CERD/C/IRL/5-9, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fIRL%2f5-9&Lang=en

² Spending Review 2019 Direct Provision: Overview of current accommodation expenditure, Department of Justice and Equality, August 2019 (statistics for end-Q1 2019), p 32, available at http://justice.ie/en/JELR/Spending_Review.pdf/Files/Spending_Review.pdf

³ International Protection Act 2015.

⁴ Concluding observations of the Committee on the Elimination of Racial Discrimination 2011, CERD/C/IRL/CO/3-4, para 20.

⁵ Amnesty International, Submission to the Committee on Economic, Social and Cultural Rights, 2015, EUR 29/1629/2015, www.amnesty.org/en/documents/eur29/1629/2015/en/; Amnesty International,

by the government to review what improvements could be made, issued a report in June 2015 (McMahon Report) containing a large number of recommendations for reform.⁶ Many of these recommendations have been implemented, for instance with the extension of the statutory remit of the Ombudsman and Ombudsman for Children to consider complaints from “direct provision” residents. Also, the government now permits those waiting more than nine months for a first instance decision on their asylum/protection claim to seek access to employment or self-employment.⁷ Amnesty International further notes the increased weekly financial allowance for asylum/protection seekers to that recommended in the 2015 McMahon Report.⁸

However, despite these improvements, Amnesty International remains concerned about the living conditions and restricted, institutionalized regimes - especially for families, children, victims of torture and other vulnerable groups - in “direct provision” centres, including continuing reports of overcrowding, mental health impacts, isolation, and lack of dignity and privacy.

Amnesty International is particularly concerned about the potential for significant impact on children’s rights and wellbeing caused by living in such institutionalized environments for often lengthy periods of time, and the social exclusion that accompanies the financial and other limitations on their lives while in “direct provision”. Despite some improvements reported over the last years, such as the wider availability of children’s play and recreation facilities in centres,⁹ Amnesty International is concerned that Ireland’s particular obligations to children cannot be fulfilled in the “direct provision” system. The Ombudsman for Children has recently stated: “Direct provision’ is not a suitable long-term arrangement for anyone, particularly for children who are spending large proportions of their childhoods living in an institution.”¹⁰ He advised: “As the 20th anniversary of ‘direct provision’ approaches, it is now time to consider alternatives and bring an end to this emergency measure.”¹¹

The number of people living in “direct provision” centres grew through 2018, from 5,0967 on 1 January 2018 to 6,148 on 1 January 2019.¹² Even though seven new centres were opened in 2018, pressure remained on the limited capacity within the system, leading to instances where asylum seekers have been denied transfers to other centres, for example to be nearer to services.¹³ At one point, some people seeking protection were even denied accommodation due to lack of space.¹⁴ This capacity pressure on the “direct provision” system has increased, and led to an ongoing reliance on renting hotels and guesthouses as ad hoc emergency centres to cope with new arrivals, with the Irish Refugee Council reporting concerns about residents’ access to health, education and other services.¹⁵ In October 2019, there were 1,389 asylum seekers in 34 emergency accommodation centres around the country.¹⁶

There are growing numbers of public protests against the siting of “direct provision” centres in their communities, with many residents citing concerns that they had not been adequately consulted or made

“Ireland: Need to strengthen the national human rights framework, to lift restrictions on abortion, and to secure accountability for past abuses”, Submission to the UN Universal Periodic Review, May 2016, EUR 29/3504/2015, www.amnesty.org/en/documents/eur29/3504/2015/en/

⁶ The government’s press release and report are available at www.justice.ie/en/JELR/Pages/PR15000389.

⁷ The State party opted into and transposed the EU Reception Conditions Directive into domestic law in June 2018, via the European Communities (Reception Conditions) Regulations 2018. There remain concerns about barrier in practice to accessing employment.

⁸ Reception and Integration Agency, Social Welfare Payments, www.ria.gov.ie/en/RIA/Pages/Reception_Dispersal_Accommodation

⁹ The Ombudsman & Direct Provision: Update for 2018, March 2019, available at www.ombudsman.ie/downloads/Direct-Provision-2018.pdf

¹⁰ “20 years later Direct Provision, a temporary solution, continues – Ombudsman for Children”, press release, 13 March 2019, available at www.oco.ie/news/20-years-later-direct-provision-a-temporarysolution-continues-ombudsman-for-children/.

¹¹ “20 years later Direct Provision, a temporary solution, continues – Ombudsman for Children”.

¹² The Ombudsman & Direct Provision: Update for 2018, March 2019, available at <https://www.ombudsman.ie/downloads/Direct-Provision-2018.pdf>

¹³ The Ombudsman & Direct Provision: Update for 2018, March 2019.

¹⁴ “Irish Refugee Council calls for Government to urgently address issue of people seeking asylum being made homeless”, press release, 28 September 2018, available at www.irishrefugeecouncil.ie/news/irish-refugee-council-calls-for-government-to-urgently-address-issue-of-people-seeking-asylum-being-made-homeless/6697.

¹⁵ “Irish Refugee Council report warns that Ireland is in breach of EU law”, press release, 12 July 2019, available at www.irishrefugeecouncil.ie/news/irish-refugee-council-report-warns-that-ireland-is-in-breach-of-eu-law/7175

¹⁶ “Asylum applications up 53 per cent as direct provision centres reach capacity”, Irish Times newspaper, 3 October 2019, available at www.irishtimes.com/news/politics/oireachtas/asylum-applications-up-53-per-cent-as-direct-provision-centres-reach-capacity-1.4038919

aware of plans to create new centres.¹⁷ While it is important that the Government engage and sensitize local communities, and prevent racial discrimination against asylum seekers, this is a further illustration of how flawed the current “direct provision” system is for planning and providing accommodation for people seeking the state’s protection.

Amnesty International very much welcomes the Irish government’s commitment to and piloting of its Community Sponsorship Initiative for refugee families, developed in collaboration with civil society organizations;¹⁸ however, this throws into even sharper focus the urgent need for serious and meaningful reform in how asylum/protection seekers are accommodated by the state.

There are growing calls for the government to develop an alternative to “direct provision”; and an Oireachtas (parliamentary) committee conducted a public consultation and hearings reviewing “direct provision” in early 2019.¹⁹ Its report is due in the coming months.

2.1 RECOMMENDATIONS

Amnesty International calls on the Irish authorities to:

Develop an alternative to “direct provision” that respects, protects and fulfils the rights of asylum/protection seekers to adequate housing, and an adequate standard of living for themselves and their families; safeguards their right to physical and mental health, and their right to private and family life; and ensures that support services are available, acceptable and appropriate to the needs of all individuals, including children, families, survivors of sexual violence or torture, and other vulnerable persons.

3. MIGRANT SEX WORKERS

Non-citizens, including refugees, asylum seekers and stateless persons, migrants: articles 2 and 5

Amnesty International welcomes the stated aim of the State party in enacting Part 4 of Criminal Law (Sexual Offences) Act 2017 (The 2017 Act), of “addressing the very real and tragic crimes of trafficking and exploitation associated with prostitution”.²⁰ However, the organization is concerned at the unintended impact the criminalization of buyers of consensual adult sexual services in the 2017 Act has on the safety and human rights of sex workers, and the particular impacts on migrant or asylum-seeking sex workers.

In addition, Amnesty International is concerned at the 2017 Act’s retaining criminal measures and increasing penalties for third-party ‘offences’ that continue to be used against sex workers, and migrant sex workers in particular, rather than against those exploiting, abusing or coercing sex workers. The lack of data

¹⁷ See for instance “Achill residents insist they are not opposed to asylum seekers but have safety concerns”, Irish Times newspaper, 1 November 2019, available at www.irishtimes.com/news/social-affairs/achill-residents-insist-they-are-not-opposed-to-asylum-seekers-but-have-safety-concerns-1.4069207

¹⁸ “Minister Stanton calls on communities to sponsor a refugee family as he launches pilot Community Sponsorship Ireland initiative”, press release, 6 March 2019, at www.justice.ie/en/JELR/Pages/PR19000059.

¹⁹ “Justice Committee continues hearings on Direct Provision and the international protection application process”, 18 June 2019, available at

www.oireachtas.ie/en/press-centre/press-releases/20190618-justice-committee-continues-hearings-on-direct-provision-and-the-international-protection-application-process/

²⁰ “Minister Fitzgerald publishes the Criminal Law (Sexual Offences) Bill 2015”, Press Release, Department of Justice and Equality, 23 September 2015, available at <http://www.justice.ie/en/JELR/Pages/PR15000487>

and research on the circumstances of sex workers and the impact of this new law on their human rights, disaggregated including on the basis of immigration status and ethnicity, is a key concern.

3.1 PURCHASE OF SEXUAL SERVICES

The 2017 Act criminalizes the buyers of consensual adult sexual services by amending the Criminal Law (Sexual Offences) Act 1993. In 2013, the Oireachtas (parliamentary) Joint Committee on Justice, Defence and Equality, at the request of the then Minister for Justice and Equality, produced its 'Report on hearings and submissions on the Review of Legislation on Prostitution' recommending inter alia the criminalization of the purchase of sexual services.²¹ However, international evidence increasingly demonstrates that criminalization of the purchase of sexual services puts sex workers at greater harm of human rights violations and abuses, including at the hands of clients.²² There are some reports of increased violence in Ireland too.²³ In other states there is also a lack of compelling evidence that buyer criminalization has reduced trafficking and exploitation. For example, the recent review of Northern Ireland's 2015 law criminalizing the purchase of sexual services found that it "has had minimal effect on the demand for sexual services; and due to the absence of any evidence that demand had decreased, it was unable to determine how the offence could have impacted on human trafficking".²⁴ Indeed, some research indicates that decriminalization of adult consensual sex work may in fact help victims of trafficking, and lead to more effective anti-trafficking efforts.²⁵

3.2 RETENTION OF PRE-EXISTING OFFENCES

It is welcome that the 2017 Act decriminalized the offering of sexual services from the pre-existing offence of soliciting for the purposes of prostitution under the Criminal Law (Sexual Offences) Act 1993. Also welcome was the then Minister for Justice and Equality's assurance that the existing offence of loitering for the purposes of prostitution would not apply to sex workers,²⁶ and Amnesty International urges that this is how it is interpreted by the police and judiciary in practice. However, other provisions in the 1993 Act have been retained that may directly or indirectly criminalize sex workers and potentially their families. Section 10 of that Act continues to make it a criminal offence if a person "knowingly lives in whole or in part on the earnings of the prostitution of another person and aids and abets that prostitution". Section 11 on 'brothel-keeping' continues to make it an offence to keep or manage or act or assist in the management of; to be a tenant, lessee, occupier or person in charge of; or to be a lessor or landlord of, any premises deemed a 'brothel'. Under the 2017 Act, increased penalties now apply.

²¹ Available at <https://www.oireachtas.ie/parliament/media/committees/justice/1.Part-1-final.pdf>

²² For information on existing research, see Amnesty International policy on state obligations to respect, protect and fulfil the human rights of sex workers, 26 May 2016, Index number: POL 30/4062/2016, at <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>; and the accompanying Explanatory Note, 6 May 2016, Index number: POL 30/4063/2016, at <https://www.amnesty.org/en/documents/pol30/4063/2016/en/>

²³ In Ireland, for instance, Ugly Mugs, an application where sex workers can confidentially report incidents of violence, has stated that comparing totals for the two years before and the two years after the offence of buying sexual services was introduced, reports of crime against sex workers increased by 90 per cent, and violent crime by 92 per cent. However, these figures are for the whole of the island of Ireland, including Northern Ireland. <https://uglymugs.ie/wp-content/uploads/um-statement-26-mar-2019.pdf>

²⁴ "Report published on impact of sex purchase offence", Department of Justice press release, 18 September 2019, available at

www.justice-ni.gov.uk/news/report-published-impact-sex-purchase-offence. The report of the review commissioned from Queen's University Belfast and the Department's own assessment report are available at www.justice-ni.gov.uk/publications/assessment-impact-criminalisation-purchasing-sexual-services

²⁵ R. Weitzer, "The mythology of prostitution: Advocacy research and public policy", *Sexuality Research and Social Policy*, 2010, pp. 23-25. 239. When not threatened with criminalization, sex worker organizations have collaborated with law enforcement to identify women and children who have been trafficked, and to refer them to the necessary services. See, for example, Durbar Mahila Samanwaya Committee, Innovative approaches to combat trafficking of women in sex trade by Durbar Mahila Samanwaya Committee (Kolkata), available at www.sexwork-europe.org/sites/default/files/resource-pdfs/dmsc_innovative_approaches_trafficking.pdf; Open Society Foundations, 10 reasons to decriminalize sex work: A reference brief, p. 6, available at www.opensocietyfoundations.org/sites/default/files/decriminalize-sex-work-20120713.pdf; UNAIDS, Guidance note on HIV and sex work, 2012.

²⁶ At committee stage of the Bill in Dáil Éireann (Lower House of Parliament) on 7 December 2016, the Minister for Justice and Equality clarified that the existing offence of loitering for the purposes of prostitution, to retained, is not directed at sex workers but "only applies to those who loiter for the purpose of soliciting another person for the purpose of obtaining that person's services as a prostitute where a person ultimately is seeking to purchase sexual services".

No distinction is made in these provisions between exploitation, abuse and coercion by third parties involved in sex work, and third-party involvement that does not cause harm, especially where it is practical, supportive or for the purposes of safety. They can also be used to target those who lease or rent accommodation to sex workers. Furthermore, Section 11 of the 1993 Act on 'brothel-keeping' had been and continues to be used to directly criminalize sex workers themselves, as the definition applies to two or more sex workers selling sexual services from the same premises; and can thus prevent sex workers from working together or with others, even for safety reasons.

3.3 DATA AND RESEARCH

Amnesty International remains concerned at the lack of comprehensive data and research on the experiences of sex workers, and on exploitation of sex workers and trafficking for the purposes of sexual exploitation.²⁷ When the new law was being enacted, the organization had recommended that the State party first conduct research, including through consultation with sex workers, on the circumstances, needs and views of sex workers and how best to safeguard their safety and human rights.

The organization is also concerned at the lack of data and information on the implementation and impact of laws and other measures aimed at identifying, investigating and prosecuting human trafficking or forced labour for sexual exploitation purposes; child sexual exploitation; and violence, abuse or exploitation of sex workers by third parties or buyers.²⁸ In 2017, the UN Committee on the Elimination of Discrimination Against Women noted that the objective of the new criminal offence "is to reduce the demand for sexual services, which allegedly drives trafficking and the exploitation of women and girls for purposes of prostitution", and stated concern at "the lack of information on the impact of existing laws in addressing the exploitation of prostitution in the State party".²⁹ It recommended that the State party provide information in its next periodic report on its impact in addressing the exploitation of prostitution. It also stated concern that the State party remains a source and destination country for the trafficking of women and girls for purposes of sexual exploitation, noting its particular concern at the low prosecution and conviction rates in cases of trafficking in persons.³⁰

3.4 DISPROPORTIONATE IMPACT ON MIGRANT SEX WORKERS

Concerns were expressed at the time of the new law's enactment that these new and retained offences would continue to be used against sex workers, and these have been borne out. There is anecdotal information from Sex Workers Alliance Ireland that the 'brothel-keeping' offence has been primarily used against migrant sex workers, reportedly resulting in their being deported, prosecuted or ordered to leave the country to avoid prosecution.³¹ However, the particular impact on migrant sex workers is not clear because of the lack of publicly available data on the operation of the law. In one case given widespread media

²⁷ Amnesty International notes the following recommendation made by the Oireachtas Joint Committee on Justice, Defence and Equality in its 2013 Report: "The State should commission appropriate independent studies to increase its understanding of prostitution and trafficking. Further such studies should be undertaken at regular intervals to independently evaluate the effectiveness of legal and policy measures concerning prostitution and trafficking and to recommend changes where required."

²⁸ Amnesty International considers that recognizing gender and intersectional concerns around sex work; tackling human trafficking, coercion, exploitation, forced labour and gender-based violence; and addressing human rights abuses against sex workers through decriminalization of sex work are not mutually exclusive. Human trafficking, forced labour, the involvement of children in commercial sexual activity, and violence, abuse or exploitation of sex workers by third parties or buyers should be/remain criminalized in line with their gravity, and those criminal laws should be effectively implemented. Amnesty International recommends against laws criminalizing consensual sex work between adults, i.e. buying and selling of consensual sex, and related activities, on the basis of the often harmful impact on sex workers.

²⁹ Concluding observations on the combined sixth and seventh periodic reports of Ireland, CEDAW/C/IRL/CO/6-7, paras 32, 33.

³⁰ Concluding observations on the combined sixth and seventh periodic reports of Ireland, CEDAW/C/IRL/CO/6-7, para 30.

³¹ "But we know from figures gleaned from Ugly Mugs, an app sex workers use to keep ourselves safe, that over the past 2 years the laws have seen sex workers being deported, arrested or forced to leave the country to avoid prosecution for working together for safety. [...] As far as we know everyone who has been prosecuted of so-call brothel-keeping in Ireland has been a migrant." "Today's actions will decrease trust in Gardaí for already marginalised sex workers", press release, 27 September 2019, available at <http://sexworkersallianceireland.org/press-release/todays-actions-will-decrease-trust-in-gardai-for-already-marginalised-sex-workers/>

coverage, two young migrant women, one of whom who was pregnant, were sentenced to nine months imprisonment for ‘brothel-keeping’ when found by the police to be working together in an apartment.³² To avoid the risk that third party laws will continue to be used to target or prejudice the safety of sex workers, such provisions should be amended so they clearly and unambiguously apply only to exploitation, coercion or abuse by third parties.

3.5 REVIEW OF THE LAW

The 2017 Act provides for a review of its operation within three years of coming into force, to include information on the number of arrests and convictions in respect of the new offences, and “an assessment of the impact of the operation of that section on the safety and well-being of persons who engage in sexual activity for payment”.³³ However, it is important that this review addresses not only the impact on sex workers of the new offence of purchasing sexual services, but also of the related offences in the Criminal Law (Sexual Offences) Act 1993 and Public Order Act 1994. This will require detailed data and information on the implementation and impact of this law, and it will be particularly critical that such data is disaggregated, including on the basis of immigration status and ethnicity, and that it includes male and transgender sex workers. Also, this new legislation should be comprehensively reviewed on a periodic basis.

3.6 RECOMMENDATIONS

Amnesty International recommends that the State party:

- Repeal section 27 of Part 4 (Purchase of Sexual Services) of the Criminal Law (Sexual Offences) Act 2017, which criminalizes the purchase of consensual adult sex.
- Ensure that research has been conducted, including through consultation with sex workers, on the circumstances, needs and views of sex workers, including the particular situation of migrant sex workers, and how best to safeguard their safety and human rights.
- Amend the retained pre-existing offences relating to organizing sex work so they clearly apply only to exploitation, coercion or abuse by third parties, in order to avoid the risk of such laws being used to target or criminalize sex workers; and ensure the current law is implemented to prevent, investigate and punish exploitation, coercion and/or abuse of sex workers.
- Ensure that the three-year review of Part 4 of the Criminal Law (Sexual Offences) Act 2017 is not limited to the new provisions criminalizing the purchase of sexual services, but that the related provisions in the Criminal Law (Sexual Offences) Act 1993 and Public Order Act 1994 are also comprehensively reviewed to assess the impact on the human rights of sex workers (including male and transgender sex workers), and the particular impacts on migrant sex workers .
- Ensure that existing legislation on trafficking of persons for sexual exploitation, and the sexual exploitation of children, is enforced, so that victims are identified and provided with protection and all appropriate supports, cases are thoroughly investigated, and perpetrators are prosecuted and punished.

³² “Jailing of sex workers keeping brothel shows law ‘not fit for purpose’”, Irish Times newspaper, 10 June 2019 available at <https://www.irishtimes.com/news/social-affairs/jailing-of-sex-workers-keeping-brothel-shows-law-not-fit-for-purpose-1.3921149>

³³ Section 27.

4. MIGRANTS' AND MINORITY ETHNIC BACKGROUND PEOPLE'S ACCESS TO ABORTION

Situation of Travellers and Roma, and other minorities, non-citizens, including refugees, asylum seekers and stateless persons, migrants: articles 2 and 5

Amnesty International welcomes the State party's ending of the criminalization and prohibition of access to abortion in almost all circumstances. Amnesty International further welcomes the legislation enacted in 2018, the Health (Regulation of Termination of Pregnancy) Act,³⁴ which came into force in January 2019, to provide for expanded access to abortion services for pregnant people.

However, significant barriers remain in this new abortion law which may particularly impact marginalized groups covered by the Convention. Some individuals and groups tend to be differently or disproportionately affected by restrictive abortion legislation, policies, guidelines and practices due to the discrimination and barriers they face in society. These include members of the Traveller community, and other ethnic minorities, as well as migrants (documented and undocumented) and asylum seekers. Those particularly impacted are people experiencing intersectional discrimination, including young people and adolescents, people living with disabilities, lesbian, gay, bisexual and intersex people, gender non-conforming individuals, those living in rural areas, and those living in poverty.

The 2018 Act provides for a review of its operation after three years of it being in force. Those implementing and reviewing the legislation must take into account the experiences of marginalized groups and individuals, and the impact of intersectional discrimination on abortion access; and remove the specific barriers such groups may face in accessing abortion services. Where necessary, the new law must be amended so as to respect, protect and fulfil the reproductive rights of all pregnant people, and guarantee that abortion services are available and accessible in a manner that ensures their autonomy and decision-making is respected, in line with international human rights standards and best international health practice.

The significant gaps in the new law already identified by Amnesty International³⁵ include the potentially high and ambiguous threshold created by the language on 'serious harm' to women's health,³⁶ the lack of

³⁴ Available at <http://www.irishstatutebook.ie/eli/2018/act/31/enacted/en/html>

³⁵ See Submission on the Health (Regulation of Termination of Pregnancy) Bill 2018, Amnesty International Ireland, 16 November 2018, available at <https://www.amnesty.ie/wp-content/uploads/2018/11/Amnesty-submission-on-Health-Regulation-of-Termination-of-Pregnancy-Bi....pdf>

³⁶ The risk to health ground to access abortion services provided for in the new law includes a qualifier that the risk must be "immediate" and of "serious harm to the health" of the pregnant woman before a termination of pregnancy can be provided. This is a worryingly high threshold of harm required, and should be removed. The right to the enjoyment of the highest attainable standard of physical and mental health in international human rights law is not qualified in any way by reference to the potential harm to the health of the rightsholder. The right to health applies to health in the most holistic sense, and not simply the absence of serious harm to health.

provision of access in cases of pregnancies with severe rather than fatal foetal impairments,³⁷ and the continued criminalization of health professionals.³⁸ Any lack of clarity in the law around whether an abortion may be provided or not, including in the above-named circumstances, will inevitably result in a chilling effect, particularly given that the new law continues to make it a specific criminal offence for medical professionals to perform abortion procedures outside legal grounds. Again, there is a risk that this chilling effect may particularly impact pregnant people protected under the Convention.

One example of a barrier identified as having a disproportionate impact on certain groups is the mandatory three-day waiting period for access on request. The new law permits access abortion on request up to 12 weeks of pregnancy. In practice, this is provided in primary care up to nine weeks of pregnancy, and in hospitals between 10 and 12 weeks. However, the new law requires a waiting period of “not less than 3 days” between when a medical practitioner certifies the date of a woman or girl’s pregnancy and when the pregnancy can be terminated. Mandatory waiting periods cause delays in access to services, which may result in denial of services due to gestational limits on legal grounds. This is especially problematic for people seeking access near the 12-week limit, as they must attend a hospital rather than their local General Practice. This can pose particular challenges for some, as just ten of the 19 hospitals with maternity units around the country are currently providing full abortion services. Therefore, geographical distance from services, or difficulties in travelling, can have a significant impact on certain groups, such as asylum-seekers. For instance, the Irish Family Planning Association (IFPA) has noted:

“The remote location of many direct provision centres may make travel to these hospitals challenging for women. For women seeking abortion between 10 and 12 weeks of pregnancy, the pathway can be particularly cumbersome and involve significant travel between different service providers (e.g. initial consultation with community provider, referral to ultrasound scanning provider, second consultation with hospital-based provider).”³⁹

Indeed, the IFPA has made the following observation about access to the new abortion services more generally: “Asylum-seeking women are among a cohort of vulnerable people who will face the most challenges in navigating the abortion service due to issues such as geographical isolation, language barriers and lack of familiarity with the Irish health system.”⁴⁰

Therefore, gaps or barriers created by the new law can impact more severely on groups protected by the Convention. Indeed, they may prove insurmountable for some people, and may manifest in the numbers of women and girls who have to travel outside the country to access abortion services. Since the coming into force of the new law and abortion care services in 2019, these numbers are unknown as of yet. Travelling to access abortion services can have both financial and health impacts. However, travel is not possible for many women and girls due to its high cost, and legal or social limits on travelling. This is particularly true for girls and women from socio-economically marginalized groups such as Travellers, or those without legal permission to travel such as undocumented migrants and asylum seekers.

As was the case before the almost complete ban on abortion in the Constitution was repealed in 2018, those who are unable to afford travel - predominantly those with limited economic resources, including migrants or refugees – may have to resort to clandestine abortions without medical support, and therefore experience additional human rights violations related to their lack of access to safe and legal abortion services.

³⁷ The new law permits access to abortion without gestational limits where the pregnancy involves “a condition affecting the foetus that is likely to lead to the death of the foetus either before or within 28 days after birth”. Firstly, including this level of specificity in legislation is inappropriate, and can lead to delays in accessing vital services. Secondly, UN human rights 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. For instance, the UN Committee on the Elimination of Discrimination against Women has called on the Irish government to legalise access to abortion in cases of “severe impairment of the foetus” (Concluding observations on the combined sixth and seventh periodic reports of Ireland, UN Doc. CEDAW/C/IRL/CO/6-7 (2017) para 43). Severe foetal impairments can lead to a high degree of suffering after birth, and many women and couples opt for an abortion for altruistic reasons.

³⁸ International human rights standards require abortion to be fully decriminalised, in order to eliminate the chilling factor that hinders health providers from providing abortion services. It is vital that no health provider should be dissuaded from acting in the best interests of their patient because of the fear of prosecution. However, the new law makes it a criminal offence for anyone other than the pregnant person to “intentionally end the life of a foetus otherwise than in accordance with the provisions of this Act”, carrying a possible prison sentence of 14 years. Unlike in the previous law, the Protection of Life During Pregnancy Act 2013, there is no constitutional requirement for such a provision. Regard therefore should be had to international public health evidence that criminalising medical professionals creates a chilling effect that can lead to delay or even denial in providing lawful abortion services to pregnant people.

³⁹ “Irish Family Planning Association submission on direct provision to the Oireachtas Committee on Justice and Equality”, May 2019, p3, available at <https://www.ifpa.ie/app/uploads/2019/06/Direct-Provision.pdf>

⁴⁰ Ibid.

4.1 RECOMMENDATIONS

Amnesty International calls on the Irish authorities:

- During the ongoing monitoring, and the formal three-year review, of the operation of the Health (Regulation of Termination of Pregnancy) Act 2018, to ensure particular attention to the need to identify and eliminate specific access barriers impacting minority groups, including asylum-seekers and those living in 'direct provision', undocumented migrants, members of the Traveller community, and those at risk of intersectional discrimination such as women or girls with disabilities.

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SUBMISSION TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

100TH SESSION, 25 NOV 2019 - 13 DEC 2019

Amnesty International presents this submission to the United Nations (UN) Committee on the Elimination of Racial Discrimination (the Committee) in advance of the review of the combined fifth to ninth periodic reports of Ireland.

In this document, Amnesty International sets out its concerns about the implementation of the Convention on the Elimination of Racial Discrimination (the Convention) by Ireland in relation to: the “direct provision” system for accommodating asylum seekers; the impact of criminalization of the purchase of sex and other forms of criminalisation of activities around sex work such as “brothel keeping” on migrant sex workers; and restrictions in access to abortion services which may put migrant and minority ethnic women and girls’ health at risk.