

EXECUTIVE SUMMARY

SHE IS NOT A CRIMINAL

THE IMPACT OF IRELAND'S ABORTION LAW

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INTERNATIONAL**



First published in 2015 by
Amnesty International Ltd
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom

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Index: EUR 29/1598/2015
Original language: English
Printed by Amnesty International,
International Secretariat, United Kingdom

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Every day, between 10 and 12 women and girls living in Ireland travel to England¹ for an abortion. The majority of the women are aged between 20 and 34. Their reasons for terminating their pregnancies vary; however, their reason for travelling is the same. They cannot access safe and legal abortion services in Ireland, as procuring an abortion there is a criminal offence except where the pregnancy poses a “real and substantial” risk to their life.

Human rights bodies have repeatedly held that restrictive abortion laws, including those that exist in Ireland, violate women's and girls' rights to life, health, privacy, non-discrimination and freedom from torture and other ill-treatment. The withholding and denial of abortion-related information to women, as Ireland's Regulation of Information Act requires, also violates fundamental human rights, including the rights to information and freedom of expression. The findings of this report reveal violations of these human rights and demonstrate that Ireland is not implementing its international obligations to respect, protect and fulfil these rights.

Human rights obligations require the decriminalization of abortion² and that states ensure access to abortion, at a minimum, when a woman's life and physical and mental health is in danger, in cases of rape or incest and in cases of severe and fatal foetal impairment. International human rights laws and standards are clear that women should not face criminal penalties for undergoing abortions. Health care providers should also not be criminally sanctioned for providing safe abortion services to women. Again, Ireland's abortion law fails to comply with these human rights obligations.

Ireland's abortion law must be understood in context. The long history of the criminalization of abortion in Ireland is part of a broader social and political environment in which women and girls have been subject to strict, punitive social controls around their sexuality, in law, policy and practice. This history of institutionalized violence has produced a strong sense of stigma surrounding abortion in Ireland.

¹ These statistics, based on data collected by the UK Department of Health Statistics, refer to women resident in Ireland who travelled to both England and Wales to access safe abortion services. These numbers are underestimates, however, as they do not include women who travel to Scotland or to other countries in Europe. They also fail to include women who do not provide their Irish address to clinics or hospitals in England and Wales, often in order to protect their confidentiality.

² Decriminalization means that abortion is no longer regulated by criminal legislation, and is not a criminal offence in itself.

Ireland has long had one of the world's most restrictive abortion laws. For over 20 years, Ireland refused to engage in abortion law reform, despite repeated criticisms and calls for action from international and regional human rights bodies. Instead, the government has relied on the "safety valve" of women travelling to England and other jurisdictions, abdicating its responsibility to address the issue. "Out of sight, out of mind," is how one woman described the Irish government's approach. Recently, however, the Irish legislature was finally forced to act in order to comply with a decision by the European Court of Human Rights and to respond to the shocking, preventable and highly publicized death of Savita Halappanavar, a woman who was denied a medically-indicated abortion in an Irish hospital following a miscarriage.

Yet, this recent reform has left Ireland's legal framework on abortion largely unchanged. The Protection of Life During Pregnancy Act 2013 (PLDPA) criminalizes abortion on all but one ground. A woman may only obtain a legal abortion in Ireland if her life is at risk, including through suicide.

Although ostensibly an effort to clarify Ireland's legal framework and ensure access to abortion under the law, the PLDPA and its accompanying guidance are instead unclear, highly restrictive and provide little meaningful guidance. They offer little clarity into the circumstances in which women and girls may lawfully access an abortion, failing to define what constitutes a risk to life, as opposed to health. At the same time, the law and guidance introduce numerous barriers that must be overcome before a woman or girl may hope to qualify for a legal abortion. Women, health care providers and anyone who assists them face up to 14 years in prison for violating the PLDPA.

Many health care providers interviewed by Amnesty International consistently underscored their lack of faith in the workability of the law and accompanying guidance, and their concerns with its burdensome requirements. Dr Mark Murphy, a General Practitioner and member of Doctors for Choice, put it succinctly:

*"I have huge concerns. [The current framework] is not excellent practice, it is dangerous for women, there is criminalization of 14 years if we get it wrong... And then you have all these other restrictions. Guidelines are meant to facilitate and expedite evidence-based care. These guidelines are doublespeak. They are not guidelines; they are anti-guidelines. And it is the same with the PLDPA, it does not protect women. It actively harms them and puts their lives in danger... It is like an Orwellian nightmare at the moment in Ireland."*³

The on-going lack of clarity in the law, and the threat of professional sanction and criminal prosecution for health care providers, means that pregnant women and girls in need of an abortion for health reasons are essentially forced to wait until their condition deteriorates sufficiently in order to justify a medical intervention. The narrow construction of Ireland's life exception means that longer-term risks to the life of a pregnant girl or woman, such as cancer or heart disease, are entirely disregarded.

³ Interview with Dr. Mark Murphy, General Practitioner, Doctors for Choice, 2 October 2014.

Further, the PLDPA and its accompanying guidance appear to have been designed to severely limit access to abortion services under the exception for cases of risk to life from suicide. In the first publicly documented case of the denial of a lawful abortion under the PLDPA, health care providers coerced a young, suicidal woman, pregnant as a result of rape, who qualified for a lawful abortion on suicide grounds, to continue with her pregnancy to viability and then deliver by caesarean section. The concern for the protection of the foetus trumped any consideration of the woman's mental health and the consequent risk to her life.

As this case also illustrates, the role of Ireland's Eighth Amendment to the Constitution, which protects the foetus' right to life on an equal footing with a woman's, in shaping the health care that pregnant women receive cannot be underestimated. Deeply rooted in religious doctrine, the Eighth Amendment has resulted in a concern for foetal life taking precedence over the potential risks to the woman's life and health. This reality is inconsistent with international human rights law, which does not recognize a foetal right to life and is clear that human rights apply after birth.

Not only has the Eighth Amendment's protection for a prenatal right to life fundamentally shaped the restrictive scope and content of Ireland's abortion law, it has also had a negative impact on the quality of care that all pregnant women in Ireland receive, in the context of childbirth and even end-of-life care. Women that Amnesty International interviewed repeatedly expressed their distrust of the Irish maternity care system for this reason, and one noted that "I would fear for my life to have another child in Ireland."

Ireland's abortion law continues to criminalize abortion in cases of rape, incest and fatal or severe foetal impairment, perpetuating the suffering of survivors of sexual violence and of women and their partners already grappling with a devastating loss. Amnesty International spoke with many women, health care professionals and advocates who expressed their frustration and anger that abortion services were not legally available on these grounds.

Nicola, for example, was 19 weeks into her second pregnancy, in 2009, when a routine scan revealed a problem with the foetus. After a more detailed follow-up scan medical staff told her that the impairment was fatal and there was no chance of survival. Nicola told Amnesty International: "I thought straight away that they would induce me but the nurse explained they couldn't do that because it's classed as a termination and wasn't allowed in this country." She remembers thinking: "You just can't leave me carrying the baby when the baby's going to die. I can't do it, I can't do it. I just couldn't comprehend, I just thought I was going to pass out..." She says, "You're alone from the diagnosis until the baby's heart stops. Between that, there's just a void."⁴

In addition to criminalizing access to abortion services in Ireland, the Irish state also heavily restricts information about abortion services abroad, criminalizing the provision of information by health care providers and pregnancy counsellors that "advocates or promotes" the option of abortion. The underlying rationale for this censorship, as with Ireland's abortion law, is the Eighth Amendment; the law aims to protect the foetus' life by limiting women's access to information on abortion. The combined chilling effect of Ireland's Regulation of

⁴ Interview with Nicola, 22 October 2014.

Information Act (1995), which prohibits 'advocacy or promotion' of abortion, and the criminalization of abortion means that even basic information about abortion and the abortion procedure might not be provided to women, either by her doctor or in a counselling session.

Health care providers and pregnancy counsellors expressed concern at the way Regulation of Information Act can act to compromise the counsellor-client relationship. Niall Behan, CEO of the Irish Family Planning Association said:

*"[T]here is a right to information in the Constitution, but the Act isn't rights-based. It treats 'Act information' as toxic or hazardous, and treats women as if they are incapable of making their own decisions and [as being] so susceptible to influence that criminal provisions are required to regulate the way information is given. IFPA counsellors see the client who opts for abortion as a woman who has made a rational decision based on her own particular circumstances and give her non-judgemental, nondirective support and information."*⁵

Similarly, Linda Wilson Long, Head of Counselling at Dublin Well Woman, explains that quality counselling "is about upholding the autonomy of the client; it is their world, it is their journey. The law doesn't take that into account. The law dismisses me in my work; it doesn't matter if you are there for your client, you have to do it this way."⁶

The impact of these information restrictions is far-reaching: in the context of the interview process for this report, Amnesty International noted that interviewees were cautious about how they expressed themselves, citing the restrictions in the Regulation of Information Act, including when they expressed views on changes needed to improve the law.

Despite these informational barriers, and other considerable financial and logistical challenges to travelling abroad for abortion, every year approximately 4,000 women and girls from Ireland travel to the UK and other countries in Europe for this health care service. These women and girls travel for a host of reasons: they may be carrying a foetus with a fatal or severe impairment, they may be rape survivors, have health conditions or be struggling with economic or social challenges that mean parenting is not an option for them, or they may have chosen not to continue with a pregnancy for other personal reasons. What they share is the sense of exclusion from their health care system, the stigma of travelling, and the burden of secrecy and fear that comes with knowing they are doing something that is a criminal offence in Ireland. Orla, whose 15-year-old daughter was faced with an unwanted pregnancy in February 2015, was given no information about her options, and misinformation about Ireland's abortion law. Orla travelled with her daughter to the UK for an abortion the same month. She recalls the experience: "This has really made me feel like an outcast, that we've done something wrong [even though] we did the best we could in horrible circumstances for our daughter. The Church would hate me and the state shuns me."

Some women interviewed by Amnesty International noted the harmful implications that travel had for their continuity of care and their physical and mental health. Forcing women to travel

⁵ Interview with Niall Behan, CEO, IFPA, 3 October 2014.

⁶ Interview with Linda Wilson Long, Head of Counselling, Dublin Well Woman, 2 October 2014.

abroad for abortion care is not only discriminatory, it can also be an extremely traumatic experience, violating their right to health and, in some contexts, the right to be free from torture and other ill-treatment. Some health care providers voiced concerns that some women needing post-abortion care may be afraid to seek it upon returning to Ireland because they fear being reported to the police by health care workers. Alison Begas of Dublin Well Woman said:

*"There was an instance about seven years ago, a woman came into one of our clinics who had had a termination in the UK... and she began to haemorrhage in the clinic. We called an ambulance to ensure she was taken to hospital. As she was being carried out of our clinic, her abiding concern was 'please don't report me to the Gardaí [police], don't report me'. I think that people also fear going to the GP because someone they know might work as the GP's receptionist and might see the file. There is this corrosive fear that is very damaging."*⁷

Not all women and girls are able to exercise the freedom to travel. Marginalized women and girls, such as asylum-seekers, migrants and those living in poverty, may be trapped in Ireland, without access to necessary health care. Unable to afford the significant financial burden of travelling, or prohibited from travelling due to their immigration or dependent status, or simply too ill to travel, these women and girls are forced to carry their pregnancies to term, or to resort to dangerous or clandestine measures to terminate their pregnancies. This may result in violations of a number of their human rights, including their rights to life, health and in some cases, the right to be free from torture and other ill-treatment.

Those who can't travel become desperate. Some consider suicide or potentially life-threatening methods of self-induced unsafe abortion to be their only options. Other women and girls illegally purchase mifepristone or misoprostol, pills they use to unlawfully self-induce a medication abortion. Attempts to import these drugs through the mail will result in seizure by the Irish customs authorities; women must instead find ways to smuggle them into the country if they wish to use them for abortion. Medication abortion is a safe and internationally recommended option for terminating a pregnancy in the first trimester; however, the criminalization of abortion in Ireland means that women and girls may be taking these pills without effective medical supervision, potentially resulting in serious health complications.

Across the many testimonies from women, health care providers and civil society organizations about the impact of Ireland's restrictive abortion regime, there are significant recurrent themes that bear emphasizing. First, regardless of the law, women living in Ireland have – and will continue to have – abortions. World Health Organization estimates confirm that restrictive abortion laws do not reduce the number of induced abortions, as women will undergo abortions regardless of its legal status and lawful availability.⁸ Restricting access to safe and legal abortion in Ireland instead invariably leads to rights violations and disproportionately impacts those who are already marginalized or vulnerable, compounding the rights violations they experience. Without exception, every woman that Amnesty

⁷ Interview with Alison Begas, Chief Executive, Dublin Well Woman, 2 October 2014.

⁸ World Health Organization, *Unsafe abortion incidence and mortality: Global and regional levels in 2008, and trends during 1995–2008*, 2011.

International spoke with, whether she travelled abroad for abortion care or remained in Ireland, experienced a violation of her right to physical and/or mental health.

Further, in speaking of their choices to travel or to procure an illegal medication abortion in Ireland, women made repeated reference to the death of Savita Halappanavar and the impact it had on them, some fearing for their lives should they need to undergo a lawful abortion in Ireland.

For Lupe⁹, Savita Halappanavar's experience also hit very close to home, as she experienced a similar situation at the same hospital, a mere three months after Savita Halappanavar's death

LUPE'S EXPERIENCE

Lupe, originally from Spain, moved to Ireland in 2011 with her husband. About a year later, she found out she was pregnant. Eleven weeks into her pregnancy, she experienced some bleeding and became concerned. When she went to the hospital they told her everything seemed fine and booked her for a scan in two weeks.

Worried that something more serious was wrong, a week later Lupe paid €100 for a scan at a private facility, which revealed that there was no heartbeat. Lupe was devastated. The doctor referred her for follow-up care at the University Hospital Galway, where another week later they did a detailed scan and determined that the embryo, only 3mm in size, had likely died four to five weeks into Lupe's pregnancy. At this point, she had been carrying the foetus for 14 weeks – "it had been dead for two months inside my womb," says Lupe.

"This is the saddest thing in my whole life... After two months with a dead embryo in my womb – you can have an infection or something and only three months before this, this was the hospital where Savita had died. You know Savita Halappanavar – they just let her die with septicaemia – she was having a miscarriage. So I was worried and afraid and wanted to put an end to this. So when the doctor asked me what I would like to do I told her that I wanted to put an end to the pregnancy, obviously. She told me they couldn't help me that the only thing they could do for me was to book another scan in a week... It was absolutely clear – they had the private scan with no heartbeat and the vaginal scan, from a week later, with no heartbeat and I was 14 weeks pregnant with a 3mm embryo. There was no doubt [that the foetus had died]. The doctor herself told me she was sorry for my loss. She told me they only could book me for another scan in a week just to make sure the embryo was not growing. How could it be growing if it was dead?"

Lupe and her husband waited to speak to another doctor. She remembers, "During that time I was feeling really scared since it had become clear to me that, if any complication raised, these people would let me die, just as they did with Savita . . ."

Lupe eventually left Ireland to receive emergency treatment in Spain.

Women also consistently emphasized that having to travel abroad for an abortion made them feel like a criminal; many underscored that they hoped for increased access to lawful abortion in Ireland in their lifetime. Roisin, one of the women interviewed for this report, captured the

⁹ Interview with Lupe [her name has been changed], 1 December 2014, and subsequent e-mail communication.

sentiments of many others interviewed: "I'm hoping [access to safe and legal abortion in Ireland] will happen in my lifetime. So my daughter, when she is older and she needs to have an abortion, doesn't need to travel to the UK in secret, in silence."¹⁰

Most health care providers and counsellors similarly expressed frustration over Ireland's restrictive abortion-related laws and emphasized how these laws severely hampered their ability to provide quality, ethical care and support to their patients and clients. Many called for Ireland's Eighth Amendment and abortion-related laws to be repealed and for a constitutional and legal framework that upholds women's and girls' human rights.

Amnesty International calls on the Irish authorities to take immediate steps to comply with their human rights obligations concerning abortion, including by:

- Repealing Article 40.3.3 (the Eighth Amendment) of Bunreacht na hÉireann, the Irish Constitution, to enable the provision of a human rights-compliant framework for abortion and information, in law and in practice;
- Decriminalizing abortion;
- Repealing the PLDPA and replacing it with a legislative framework that ensures access to abortion both in law and in practice, at a minimum, in cases where the pregnancy poses a risk to the life or to the physical or mental health of a pregnant woman or girl, in cases of severe and fatal foetal impairment, and in cases where the pregnancy is the result of rape or incest; and
- Repealing the Regulation of Information Act.

¹⁰ Interview with Roisin [her name has been changed], 5 February 2015.

WHETHER IN A HIGH-PROFILE CONFLICT OR A FORGOTTEN CORNER OF THE GLOBE, **AMNESTY INTERNATIONAL** CAMPAIGNS FOR JUSTICE, FREEDOM AND DIGNITY FOR ALL AND SEEKS TO GALVANIZE PUBLIC SUPPORT TO BUILD A BETTER WORLD

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I WANT TO HELP

SHE IS NOT A CRIMINAL

THE IMPACT OF IRELAND'S ABORTION LAW

Ireland's Constitution and abortion legislation result in violations of the fundamental human rights of women and girls, including their rights to life, health, equality, non-discrimination, privacy, information and freedom from torture and other ill-treatment.

Ireland has one of the world's most restrictive abortion laws. Women and girls cannot legally have an abortion in Ireland unless there is a risk to their life. And even where that is the case, access is difficult. Having an abortion under any other circumstances is a criminal offence, carrying a possible 14-year prison sentence both for the woman and the abortion provider. In addition, Ireland's restrictive Regulation of Information Act makes the provision of routine information by doctors, counsellors and nurses a crime as it bans "promoting or advocating" abortion.

The Republic of Ireland forces around 4,000 women each year to travel abroad in order to obtain an abortion. Those who cannot travel are forced to continue with a pregnancy or to resort to an illegal and unsafe abortion. This includes women and girls whose health is at risk, rape survivors, those faced with fatal or severe foetal impairment pregnancies, and women for whom parenting is not an option.

This executive summary outlines the impact of Ireland's restrictive abortion laws on women and girls, and provides key recommendations to the government of Ireland.

June 2015
Index: EUR 29/1598/2015
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