To HM Government of Gibraltar: Response to Command paper No 3 of 2018

The Abortion Rights Campaign (ARC) is a grassroots movement for choice and change in Ireland. Since 2012, we have been raising awareness and advocating for change to abortion laws across the island of Ireland. ARC was a founding member of the campaign which secured a resounding Yes vote in the referendum to repeal the 8th Amendment, the constitutional provision which made abortion illegal in all circumstances except where the pregnant person's life was at risk. Since the referendum we have been continuing our work for progressive, patient-centred abortion legislation and change in Northern Ireland, and standing in solidarity with all affected by anti-choice laws around the world.

In Ireland, we understand the suffering and trauma caused by living under a regime which actively restricts the rights of pregnant people. The Abortion Rights Campaign (ARC) has produced this paper in order to share our experiences and insights on abortion law reform, and to stand in solidarity with Choice Gibraltar and all those who may need or want an abortion in Gibraltar.

Context

Abortion is illegal in Gibraltar under the 2011 Crimes Act, with a potential punishment of life in prison. Gibraltar residents who need abortion care are forced to travel to Spain or the UK, or seek abortions outside the law. The only exception in the Gibraltar law is when the pregnant person's life is at risk, which mirrors the situation that has existed in Ireland for many years. As the Command Paper acknowledges, this situation is incompatible with the European Convention of Human Rights. Ireland's severe lack of abortion access was raised repeatedly by several international human rights authorities, including the UN Human Rights Committee, UN Committee on Economic Social and Cultural Rights, UN Committee on the Elimination of Discrimination Against Women, UN Committee on the Rights of the Child, UN Committee Against Torture, and the European Court of Human Rights. It must also be acknowledged that being forced to go to another jurisdiction for abortion is not an acceptable solution. In the heartbreaking cases of Amanda Mellet and Siobhan Whelan - who, like many others in Ireland, had to travel to the UK after diagnosis of fatal foetal anomaly - the UNHRC found that the State had violated both women's rights and made clear that traveling abroad was not an adequate substitute for healthcare at home.

Based on experience in Ireland and international best practice, ARC makes the following key recommendations to the government of Gibraltar:

- Base the law on autonomy and choice - not restrictions
- Provide abortion on request
- Decriminalise abortion

- Remove time limits that create barriers to care
- Make abortion truly accessible

Base the law on autonomy and choice - not restrictions
The aim of the legislative changes in Gibraltar should be to improve the human rights and health of all who can become pregnant. Abortion is an extremely safe and important medical procedure - the World Health Organisation (WHO) even puts the abortion pills (mifepristone and misoprostol) on its list of Essential Medicines. ARC believe that healthcare models that respect human rights include access to free, safe and legal abortion services. Central to the legal framework should be the principle of bodily autonomy. Bodily autonomy means being able to control your own body, being able to consent to, or to refuse, physical contact or medical treatment. Individuals must have the freedom to choose or refuse all medical treatments during pregnancy, including abortion care, antenatal care and birth care.

An exceptions-based model of abortion provision is very dangerous. Although abortion to save a pregnant person's life was technically legal in Ireland, this did not prevent the tragic case of Savita Halappanaver, who died during a miscarriage when she contracted sepsis in an Irish hospital in 2012. Medical experts later testified to an Irish parliamentary committee that had doctors intervened to complete the miscarriage when she requested it, she would not have died.[1] Numerous other medical experts have testified in Ireland that rigidity in the law prevents them from using their clinical judgement and providing the best care for pregnant people. Therefore, an exceptions-based model is far from best practice.

Provide abortion on request
ARC recommend that there be no specific criteria for access to legal abortion. Abortion should be available to any pregnant person who requests it. The reasons, be they health concerns, rape, fatal foetal abnormality, or simply not wanting to become a parent or have more children, should be an issue only for the pregnant person, her doctor and anyone she wishes to tell.

Pregnant people should not have to prove hard conditions in order to access abortion as is currently proposed. Gibraltar needs to trust the decision-making capabilities of pregnant people rather than restricting their healthcare choices. Abortion on request in the early stage of pregnancy is the standard across most European states. A barrier-free model would provide access to abortion in a safe and legal context in accordance with international reproductive health guidelines.

International experts have acknowledged that access to reproductive health care is paramount to ending discrimination against women.[2] An on-request model enables the pregnant person to make clear, informed choices about their own reproductive health.

[1] Joint Oireachtas Committee on the Eighth Amendment of the Constituition, 18th October 2017, https://www.oireachtas.ie/en/debates/debate/joint_committee_on_the_eighth_amendment_of_the_constitution/2017-10-18/3/
[2] UN Working Group on Discrimination Against Women (2016) p.5

Restricting access to abortion provokes feelings of depression and anxiety and increases the risk of suicide in pregnancy.[3][4] This burden is exacerbated by the isolation and stigma felt by those compelled to travel to another jurisdiction (for example, Spain) for access to safe, legal abortion services. Providing healthcare at home makes it possible for a pregnant person is able to make clear, informed choices about their reproductive health without these burdens.

Governments sometimes limit abortion to specific grounds with the stated objective of reducing the overall abortion rate. However, this is misguided, because evidence shows countries where abortion is illegal have similar rates of abortion as countries where it is legal, but *much higher rates of unsafe* abortion.[5] Dr. Bela Ganatra of the World Health Organisation testified to an Irish parliamentary Committee in 2017 saying: "Our information shows that rates of abortion do not vary owing to the degree of restrictiveness of the law. The statistics show that the level of safety changes as the restrictiveness of the law increases." While legal barriers do not stop women from accessing abortion, they make it more difficult and less safe, and subject women to financial and logistical challenges they would never face to access any other kind of healthcare.

At a population as well as individual level, accessible abortion is good for public health: A WHO report found that where countries impose few restrictions to abortion, maternal deaths and illnesses were dramatically reduced.[6] The report concludes that abortion on request recognises "a woman's free choice and that the ultimate decision on whether to continue or terminate her pregnancy belongs to the woman alone." During Ireland's recent referendum to repeal the 8th amendment, 62% of voters said they voted to repeal based on a 'woman's right to choose'.[7]

Decriminalise abortion

We recommend that abortion be fully decriminalised for pregnant people and health care providers. The principal effect of decriminalisation is to replace previously unsafe and stigmatised procedures with safe and legal ones. The World Health Organisation recommends that: "to the full extent of the law, safe abortion services should be readily available and affordable to all [pregnant people]".[8] WHO states that laws and policies on abortion should protect the health and human rights of pregnant people, rather than

[3] Kendell, R.E. (1991). "Suicide in Pregnancy and the Puerperium (letter)," BMJ, vol. 302, http://europepmc.org/backend/ptpmcrender.fcgi?accid=PMC1668796&blobtype=pdf

[4] Guttmacher Institute (2017). Flouting the Facts: State Abortion Restrictions Flying in the Face of Science, https://www.guttmacher.org/gpr/2017/05/flouting-facts-state-abortion-restrictions-flying-face-science

[5] Guttmacher Institute (2018). Abortion Worldwide 2017: Uneven Progress and Unequal Access, https://www.guttmacher.org/report/abortion-worldwide-2017

[6] World Health Organisation (2012). "Safe abortion: technical and policy guidance for health systems." Legal and policy considerations – Key messages. Geneva: World Health Organisation, p.2.

[7] RTE and Behavior & Attitudes Exit Poll, Thirty-sixth Amendment to the Constitution Exit Poll, 25th May 2018, https://static.rasset.ie/documents/news/2018/05/rte-exit-poll-final-11pm.pdf.

[8] World Health Organisation (2012). 'Safe abortion: technical and policy guidance for health systems.' Second edition. Geneva: World Health Organisation, p.8. The WHO document further states: "This means services should be available at primary-care level, with referral systems in place for all required higher-level care."

constraining them through the possibility of prosecution. International treaty monitoring bodies and committees have echoed these statements, repeatedly and explicitly emphasising that abortion must be decriminalised for people seeking abortions and healthcare personnel who provide abortion care[9].

The impact of criminalising abortion reaches further than abortion alone and affects the whole spectrum of maternal health. Laws which restrict access to abortion services create a chilling effect, whereby health professionals may be afraid to act in the best interests of the pregnant person for fear of prosecution, or be afraid to provide any abortion care at all. Of course, this chilling effect may also deter women and other pregnant people who have accessed abortion illegally from seeking medical advice if they experience confusing or adverse side effects (which, although extremely rare, can occur, as with all medical interventions). Recent prosecutions in Northern Ireland have demonstrated that criminalising abortion has more than just symbolic relevance, and the fact of these cases being brought to court may deter pregnant people from seeking help if they need it.[10] Evidence has increasingly demonstrated that where abortion is legal on request or on broad socio-economic grounds, countries see a reduction in levels of unsafe abortion and women being put at risk of serious injury or death[11].

On October 23rd, 2018, the UK parliament will vote on whether to repeal Sections 58 and 59 of the Offences Against the Person Act, thereby decriminalising abortion across the UK. If passed, this would be a long overdue step forward to bring the UK in line with international best practice and standards. While Gibraltar's law was originally modelled on the UK Offences Against the Person Act, the 2011 Crimes Act is even more restrictive in practice. It is imperative that this punitive law is removed and that abortion is decriminalised across Gibraltar.

Remove time limits that create barriers to care

ARC oppose gestational limits on abortion access because we do not believe there should ever be a time limit on accessing healthcare. When given the opportunity, pregnant people access abortion services as early as possible. However, sometimes the need for an abortion does not become apparent until later in pregnancy. For example, a diagnosis of foetal impairment is often only given after the 22 week scan. These cases are extremely rare but they do happen. Research from the Centers for Disease Control in the U.S. found that only 1.3 percent of abortions occur at or after twenty-one weeks gestation.[12]

[9] Abortion Rights Campaign (2016) Submission to the Citizen's Assembly, https://www.abortionrightscampaign.ie/2016/12/24/abortion-rights-campaign-submission-to-the-citizens-assembly/, p.13

[10] Amnesty International (2018). 'Northern Ireland: woman who bought abortion pills for daughter in court to challenge prosecution' Press release, 20th September 2018: https://www.amnesty.org.uk/press-releases/northern-ireland-abortion-pills

[11] World Health Organisation (2012). "Safe abortion: technical and policy guidance for health systems." Legal and policy considerations – Key messages. Geneva: World Health Organisation, p.2.

[12] Centers for Disease Control and Prevention (2017). "Abortion Surveillance — United States, 2014." Morbidity and Mortality Weekly Report, 66(No. SS-24).

There is no right or wrong time to have an abortion, just as no one reason for accessing abortion services outweighs another.[13] Studies have shown that there are a variety of reasons that women access later abortions. A study conducted by the British Pregnancy Advisory Service (BPAS) which looked at abortion after 22 weeks, found reasons just as diverse, including delays in detecting pregnancy and commitments to the needs of existing family.[14] Similarly Planned Parenthood in the U.S. have cited changes in pregnant people's circumstances among the factors influencing the decision to seek later abortions.[15][16] These include, amongst others, changes in financial circumstance, including homelessness, incidence of intimate partner violence, abandonment or changes in emotional support offered by partners, changes in mental health and detection of a foetal abnormality.

Attempts to enforce legal time limits for abortion are often enacted with a view to lower the number of abortions. However, this suggests that there is a 'correct' number of abortions, further separating the procedure from routine medical care. Indeed 'late-term' abortions are subject to intensified stigma. Overall, arbitrary limitations compound stigma and prevent pregnant people from accessing the highest possible standards of care.

Make abortion truly accessible

Reproductive choices should be available to all equally. Government Should put in place all necessary measures to ensure real abortion access for marginalised groups, including minors, transgender people, members of minority ethnic communities, people with disabilities, people living in abusive relationships, asylum seekers, undocumented migrants, people who require translation services, sex workers and prisoners. Regular proactive engagement with marginalised groups is imperative to ensure that their voices are heard and their needs are met by the health service.

The Government must ensure that safe access zones are in place around medical practices and clinics to prevent individuals from being harassed by anti-choice campaigners.[17] Safe access zones are needed for both patients and healthcare professionals. The lack of safe access zones (or "buffer" zones) around abortion clinics in countries like the US and the UK has been shown to have a detrimental effect on people seeking abortions, on the staff working at clinics and also on local residents. In a large survey conducted in the UK, people going into clinics felt that anti-choice protesters were invading their privacy and stigmatising their healthcare decisions.[18] In April 2018, Ealing Council became the first local authority in

[13] BPAS Reproductive Review (2008). '24 Reasons for 24 Weeks,' available at: http://www.reproductivereview.org/index.php/rr/article/340/

[14] British Pregnancy Advisory Service (2008). 'Audit of Abortion Requests Above 22-weeks' Gestation in 2008,' available at:https://www.bpas.org/.../32-reasons-not-to-lower-the-abortion-time-limit-briefing.do

[15] Finer, L. B., et al. (2005)."Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives." Perspectives on Sexual and Reproductive Health, 37(3), 110–8.

[16] Jones, R. K., and Finer, L.B. (2012). "Who has second-trimester abortions in the United States?" Contraception, 85(6), 544-51.

[17] Sister Supporter (no date). "Evidence Pack: calling for a Public Spaces Protection Order on Mattock Lane". http://www.lag.org.uk/?fileid=-17475

[18] Hayes, G. and Lowe, P. (2015). "'A Hard Enough Decision to Make': Anti Abortion Activism outside Clinics in the Eyes of Clinic Users" Aston University Research Gateway, http://www.aston.ac.uk/EasySiteWeb/GatewayLink.aspx?alId=256682

the UK to introduce a Public Spaces Protection Order outside of an abortion clinic. Anyone who violates this order is liable to criminal prosecution.[19]

The Government also has a responsibility to ensure that abortion care is properly funded under the public healthcare system with dedicated lines of funding – so that it is not vulnerable to arbitrary cutbacks – and to ensure that healthcare professionals receive appropriate ongoing training to equip them with the knowledge and skills needed to support patients who decide to end their pregnancy. In Canada, where abortion pills are dispensed in a primary care setting, a community of practice forum has been established. The forum is a space for providers from across the world who are involved in abortion provision to ask questions and gain access to robust and accurate information.[20] We would encourage medical practitioners to take advantage of these resources. We would also encourage the provision of values clarification training to all workers involved in abortion care, to give them opportunity to voice their concerns, learn from international best practice and address their own values and perceptions.

Abortion legislation and regulation must be evidence-based, as is the case for laws concerning any other medical procedure. Research from around the world demonstrates that abortion restrictions are often arbitrary or ideologically motivated.[21] [22] We recommend that Gibraltar avoids this problem from the start by utilising international experiences and best medical evidence as it extends abortion access.

Conclusion

In conclusion, we urge the Gibraltar government to learn from the experience of Ireland and many other countries. At a population as well as individual level, accessible abortion is good for public health: A WHO report found that where countries impose few restrictions to abortion, maternal deaths and illnesses were dramatically reduced.[23] The report concludes that abortion on request recognises “a woman’s free choice and that the ultimate decision on whether to continue or terminate her pregnancy belongs to the woman alone.” In Ireland’s recent referendum to repeal the 8th amendment, 66% of voters voted Yes and in an exit poll 62% said they voted based on a ‘woman’s right to choose’.[24]

We recommend a system of free, safe and legal abortion which is decriminalised, accessible on request, and available as early as possible and as late as necessary. We recommend

[19] “Ealing Council’s cabinet members have taken the decision to implement a Public Spaces Protection Order (PSPO) around the Marie Stopes clinic on Mattock Lane, Ealing”, Ealing Council, 10th April 2018, https://www.ealing.gov.uk/news/article/1760/ealing_introduces_first_uk_safe_zone_outside_abortion_clinic

[20] CAPS CPCA Forum (2018). “Canadian Abortion Providers Support.” https://www.caps-cpca.ubc.ca/index.php/Main_Page

[21] World Health Organisation (2012). “Safe abortion: technical and policy guidance for health systems. Second edition.” Geneva: World Health Organisation.

[22] Guttmacher Institute (2013). “TRAP Laws Gain Political Traction while Abortion Clinics - and the Women they Serve - Pay the Price”. https://www.guttmacher.org/gpr/2013/06/trap-laws-gain-political-traction-while-abortion-clinics-and-women-they-serve-pay-price

[23] World Health Organisation (2012). “Safe abortion: technical and policy guidance for health systems.” Legal and policy considerations – Key messages. Geneva: World Health Organisation, p.2.

[24] RTE and Behavior & Attitudes Exit Poll, Thirty-sixth Amendment to the Constitution Exit Poll, 25th May 2018, https://static.rasset.ie/documents/news/2018/05/rte-exit-poll-final-11pm.pdf.

basing abortion law reform on the principle of bodily autonomy and the rights of the person who needs or wants an abortion.

For further information, please contact:

Abortion Rights Campaign,

105 Capel Street, Dublin 1.

Tel: 01 662 4325.

Email: policy@abortionrights.ie