THE CRIMINAL LAW ON ABORTION

LETHAL FOETAL ABNORMALITY

AND SEXUAL CRIME

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Introduction

The Women's Regional Consortium, Northern Ireland consists of seven women's sector organisations who have come together to provide a voice for women from disadvantaged and rural areas and support efforts to tackle disadvantage and social exclusion. We work in partnership with each other, statutory and governmental organisations, and local women's organisations, centres and groups to further the rights, visibility and participation of women at all levels of Northern Irish society. The seven organisations are: The Northern Ireland Rural Women's Network, Women's Support Network, Women's Resource and Development Agency, Training for Women Network, WOMEN'STEC, The Women's Centre Derry and Foyle Women's Information Network.

General Comment

We would note from the offset that we welcome the recent legal challenge from the Northern Ireland Human Rights Commission against the Department of Justice consultation on abortion provision in Northern Ireland. We would like to make it clear that we feel consulting on the provision of abortion with a view to possibly restricting free and equal access to this essential medical procedure is tantamount to consulting on torture under European and International Human Rights Standards[1].

We would make note of our abhorrence of the fact that this consultation comes from a Department whose committee hosts not a single female member. To consult on a specifically female issue without the input of women is a failure in justice and equality and we would hold that the Department of Justice Committee's lack of female representation is testimony of how women are being repeatedly left out of the equation on issues affecting their own lives, health, bodies and rights.

It was also questioned, during focus groups we held, why this consultation has been put forward by the Dept. of Justice alone and it was noted that the Department of Health has declined to be part of it. Women felt that this is absolutely a health issue for them and the lack of input from the DHSSPS was seen as making the consultation somewhat redundant. It was noted that this may be because of the current Minister for Health's stance on the matter and as such it was felt by many focus group attendees that to be consulted on this issue as a matter of justice only was not only not good enough but a violation of their right to appropriate health care.

Furthermore whilst we welcome the consultation and any change it may bring to the current legislation on Abortion in Northern Ireland we would like to make it clear that the Department's decision to shut down the wider debate around bodily autonomy for women is not conducive to a robust consultation. It is extremely short sighted of the Department to

[1] International Covenant on Civil and Political Rights
http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

expect the public to consider such a highly contentious subject with such a narrow focus and we maintain that this approach does not have the best interests of women at its core.

Part I – Lethal Foetal Abnormality

Criticism was raised of the nature of this section of the consultation document and we feel that it was unnecessarily complicated and not at all accessible to the general public. We feel that in not presenting the consultation in such a way that all members of the public could read and understand it the Department of Justice has made an already difficult and emotional issue even more complicated and we believe this will have served to deter members of the public from responding. We would remind the Department that accessibility in consultation documents should be paramount in order to make the consultation process as robust as possible.

Out of the options put forward we feel that option 1 was the least suitable option and it received the most criticism since it was felt the option of creating a list of abnormalities was not only severely restrictive and left no room for medical advancement or new conditions but was also highly disrespectful to medical professionals who are already tasked with ascertaining at a certain time during pregnancy what the viability of the foetus is like.

It was also noticed that there was no mention whatsoever throughout the consultation document of guidance being issued for medical professionals. We feel this was a huge oversight by the Department and that if medical professionals are to have the freedom of clinical judgment without the fear of legal action looming over them that clear guidance should be developed in consultation with relevant medical professionals and with the full support of the DHSSPS. This guidance should be in line with existing GMC guidance issued in the rest of the UK.

Our favoured option was Option 4, we felt that medical professionals should continue to be trusted with this decision and that since their clinical judgment is already offered to pregnant women. However it was felt that the protocol for two medical opinions on the diagnosis was not necessary and it was suggested that this could leave the door open for those who would opt to conscientiously object to being involved in abortion processes to sabotage a case where a lethal foetal abnormality was present in order to prevent the choice of abortion being offered.

Recommendation:

We would recommend that option 4 be used with the amendment that only one medical professional needs to diagnose the lethal foetal abnormality and that a second opinion need only be sought where questions were raised. Formal guidance should also be issued that is in line with the GMC in the rest of the UK.

Part II – Sexual Crime

We feel it is crucial to mention as a first remark around this section of the consultation that it is impossible to consult on the issue of abortion as a result of sexual crime without putting into context and taking into account the social landscape of such crimes. We feel it is not appropriate to consult on sexual crime without first acknowledging how our society deals with and views sex crimes. The appalling track record of the PPS at issuing convictions and the overwhelming rape culture in Northern Ireland absolutely needs to be taken into account.

Whilst we feel that the PSNI have made massive leaps over the past number of years in their handling of rape reports and they were commended on the work they've done to improve services, and whilst there was still work needing to be done, we are satisfied that this was continuing to improve. However, when cases reach PPS stage it was felt that there was a very poor record and that the PPS needed to do more around rape cases to ensure that women in society can restore their faith in the justice system. By way of an example in 2010 there were a total of 380 reported sex crimes, of these only 212 were put forward for consideration by the PPS and of those 212 only 88 convictions were issued. The following year the number of reported cases rose by an astonishing 60 cases to 440. Only 218, a miniscule rise of 6, were put forward to the PPS and of them only 78 were convicted, a fall of 10 from the previous year.

This is particularly pertinent since the necessity for legal certainty for rape was suggested in this consultation document. We feel this is completely and utterly offensive to women given what has just been noted around the appalling rate of prosecution in rape cases and would serve only as a barrier to access.

Questions arose such as: How can you prove rape in order to access abortion when the legacy of rape crime convictions in Northern Ireland is so poor despite massive increases in reports? Would you need a legal sign off that the rape had happened? There would be huge issues in getting this in reference to the time it takes to get a conviction, never mind the hugely invasive and traumatic process that's involved as well as the fact that most women who are raped are not attacked by strangers in dark allys (estimated only 8% of all rapes are stranger rapes) and that most rapes are perpetrated by someone the victim knows, is already involved with and who they are less likely to report.

There was also no provision for situations of domestic violence where some feel consent is implied and with marital rape only being made illegal in 1991 there is a legacy of entitlement to sex when it comes to marriage and some intimate relationships.

The issue of the legacy of the conflict in NI was also raised and in cases where rape or sexual crime is perpetrated by paramilitary groups/supporters that women would have to take considerable risks to their personal safety in order to report rapes and that accessing PSNI or support services may not be possible from a community perspective.

The wider issue of consent also needs to be addressed as does the definition of rape. We feel that a definition of rape that goes further than just the legal definition needs to be established.

It was again noted that this section of the consultation document had been made overly complicated and that the use of language in certain sections, particularly that around mental capacity. We would again condemn the Departments use of inaccessible language throughout this document and suggest that where public consultations are being developed that members of the public or at least key stakeholder groups are involved in this process to ensure the best volume of responses possible.

Rape and sex crimes are an infringement of basic human rights and various international bodies such as the World Health Organisation (WHO) and the CEDAW committee both recommend that women should be given access to abortion based on their complaint of rape and that they should not be compelled to undergo unnecessary administrative procedures, such as reporting to police, naming perpetrators or providing forensic evidence of rape, before access is granted[2].

Recommendation

Access to safe legal abortion should be granted on complaint of rape and request for abortion, in line with the World Health Organisations recommendations set out in their Safe Abortion Guidance.

PART III – Conscientious Objection

Whilst it was felt that conscientious objection was something that medical professionals should have access to, it should be written clearly in law and any issued guidance that conscientious objection was in no way absolute and that it cannot be accessed where there is a risk to the woman's life or where there is a direct risk to her health in any capacity.

Conscientious objection should not trump duty of care for patients and guidance needs to be made clear about who exactly has access to it. If all health and social care staff are to have access to it, including those providing after care for abortion patients, it is paramount that guidance is very strict and clear that the highest standard of care should be given to all patients and that neglect of patients would be taken extremely seriously. Freedom of conscience should never restrict access of patients to available services.

We also feel that it could be seen as hypocritical of the Department of Justice to advocate for legislation for freedom of conscience on such a matter when women are still not being provided, in law, with full bodily autonomy. Freedom of conscience, in this case, is being given more precedence than full bodily autonomy for women and it is telling of the state of affairs in Northern Irish society when conscience is given more legal framework than the rights of women to decide what happens with their own bodies. If we are to give medical professionals the right not to perform certain procedures out of conscience, should we not then be able to provide for women to have full legal access to their own bodies and all that happens with

[2] WHO Safe Abortion Guidance, at 69; WHO Safe Abortion Guidance, at 92-93.

them? Denying women access to full bodily autonomy by way of law is a direct infringement on their human rights.

Recommendation

Conscientious objection should be granted only in cases where there is no direct risk to the life of the woman or her health. There should be robust guidance developed that ensures duty of care is paramount and safe guards need to be put in place to ensure women to not fall victim of conscientious objection to the point that it denies their access to the services available. A woman's right to life, health and dignity should always take precedence over the right of medical professionals to conscientiously object. Finally, conscientious objection should only apply to the direct procedure of abortion and should not encompass pre and post care of patients undergoing termination of a pregnancy.

Concluding Remarks

We feel that this consultation from the outset is too foetus centric when it should be woman centric. There is not a single state in the world that offers human rights to a foetus by law and as such the woman should always be paramount in any consideration in the law.

Throughout this entire consultation document the foetus is given more precedence than the right to life and bodily autonomy of the woman. This serves to give more basic human rights to a non-living entity than to a woman and this is in contravention of legislation.