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# Irish voters repealed the eighth: now it's time to ensure access to abortion care in law and in practice

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**Abstract:** *This commentary discusses Ireland's 25 May 2018 Referendum result to repeal the Eighth Amendment and has two key aims. Firstly, it encourages policy-makers to grasp the full potential of legislative reform by enabling and protecting women's access to abortion care within a continuum of sexual and reproductive healthcare options. Secondly, it calls for urgent clarity about access to abortion care in the interim period of legislative transition.* DOI: 10.1080/09688080.2018.1513271

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Article 40.3.3 inserted into the Irish Constitution by its Eighth Amendment has, since 1983, placed a foetus' right to life in direct tension with a pregnant woman's right to bodily autonomy and integrity.<sup>1</sup> Healthcare providers in Ireland have consequently been tasked with the responsibility to interpret 'Catholic health policies'<sup>2</sup> (whether and when a termination of pregnancy could occur) and have risked prosecution for making the 'wrong' clinical judgement. For this reason the European Court of Human Rights previously ruled that Irish abortion legislation has a 'significant chilling'<sup>3</sup> effect on healthcare providers *and* women. Since 1983 women in Ireland have been denied access to lawful abortion care in virtually all situations, including rape, fatal-foetal abnormalities and non-viable pregnancies, and even when a pregnant woman's physical or mental health is at risk. Consequently the majority of women requiring terminations of pregnancy have resorted to extra-state abortion care, either by seeking care abroad at considerable expense or risking a fourteen-year jail term by self-sourcing safe, affordable and compassionate medical abortion from recognised telemedicine services. Women on Web (WOW) and Women Help Women are two examples of telemedicine services that have given thousands of eligible women in Ireland a lifeline by providing highly effective medical abortion and counselling.<sup>4</sup> Attempting dangerous abortions is a stark reality, and one woman has described 'trying to figure out how to crash my car to cause a miscarriage but not

permanently injure myself or die'.<sup>5</sup> The case for removing criminal sanctions around women's access to safe abortion care, without exceptions, could not be clearer or more urgent.

On 25 May 2018 a landslide Referendum result shook Ireland as women and men across the country, and those travelling 'home to vote,' overwhelmingly decided to repeal the Eighth Amendment. In so doing, policy-makers can infer that voters expect abortion care to be available in practice and be permitted by law. The Irish Referendum result offers broader momentum to inspire and influence shifts in countries with restrictive abortion legislation, like Northern Ireland as well as other Catholic countries such as Argentina, where on-going social movements and activist groups are engaged in tense struggles to overturn repressive reproductive regimes by legalising access to abortion. This commentary has two aims. Firstly, it aims to encourage policy-makers to grasp the full potential of legislative reform by enabling and protecting women's access to abortion care within a continuum of sexual and reproductive healthcare (SRH) options. Secondly it calls for urgent clarity about access to abortion care in the interim period of legislative transition.

## *Access to abortion care in law and in practice*

Of primary concern is that lawful provision of abortion care may not mean access for *all* women in

reality. Ireland's Health Minister, Simon Harris TD, has indicated that any revised abortion legislation would safeguard the right for healthcare professionals to practice denial of care (what is otherwise and problematically termed 'conscientious objection').<sup>6</sup> GPs practicing denial of care would be required to refer any request for abortion care onwards, though worryingly some GPs have claimed they would refuse to comply with this professional obligation.<sup>6</sup> It is likely that refusal on the part of GPs to comply with professional obligations will be more pronounced in rural, isolated, and close-knit communities in Ireland, which could force women to migrate internally for access to abortion care. Women in such areas may also feel unable to access abortion-related consultations from their GPs due to perceived shame or lack of confidentiality. Maintaining a complementary route of referral is important to counter-balance both scenarios. Women would be empowered to make genuine decisions about the most appropriate mode of abortion care to meet their specific needs if forthcoming legislation is inclusive of recognised telemedicine services.<sup>7</sup> WoW have been providing women in Ireland with medical abortion in line with the protocols and outcomes of formal healthcare systems,<sup>4</sup> so there is already a "tried and trusted" complementary method through which women could benefit from lawful access to WHO essential medicines.<sup>8</sup>

The Europe Access Abortion research project is exposing the dissonance that occurs when abortion care is, in theory, made available in law, but is often inaccessible in practice.<sup>9</sup> Italy is an example of a Catholic country with legal provision for abortion care up to ninety days of gestation to protect a pregnant woman's physical or mental health; economic, social and familial issues; as well as foetal abnormality (the latter of which has provision for second trimester abortion).<sup>8</sup> Yet a considerable number of healthcare providers in Italy practice denial of care causing internal migration (often to Rome) or international migration. In this situation denial of care places unjustifiable strain on abortion services, because fewer numbers of healthcare professionals are able and willing to provide woman-centred SRH services (or *choose* not to engage in discriminative practices against women requesting termination of pregnancy).<sup>10</sup> A sizeable number of healthcare institutions in Ireland operate along lines of religious, usually Catholic, order. Nationwide strategies of monitoring and evaluating consultations and care pertaining to

abortion will therefore be necessary to ensure healthcare providers and institutions manage referrals and care to the highest standard of sensitivity and professional practice.

### ***Protecting the right to access abortion care from harassment***

An individual's right to access abortion care without harassment will need to be protected in law. Whilst activists against safe abortion care have the right to protest against Ireland's forthcoming abortion laws (e.g. outside the Houses of Oireachtas), this does not mean they have the right to employ intimidation and harassment tactics against pregnant women attempting to access SRH services. Harassment activities outside abortion care providers have escalated in the UK in recent years, and have involved Christian vigils, exhibiting images of dismembered foetal tissues, providing misleading information on abortion, confronting women inappropriately as well as using highly emotive language such as 'mum' when women approach or exit abortion care providers.<sup>11</sup> Ealing Council recently sought to enforce a 150 meter protective 'buffer' or 'access' zone around a local abortion care provider to prevent harassment of individual women seeking to terminate unwanted, unintended, or non-viable pregnancies. It is also important to note that activist groups against safe abortion care in the UK (such as 'Abort67') and in Ireland ('Youth Defence') have links with US-based organisations, signalling how activism against abortion is embedded in international networks of influence, funding, and agendas.<sup>12</sup> The Irish government should commit to its intentions of including protection zones around SRH care providers as part of forthcoming abortion legislation, which would offer a precedent and inspiration for woman-centred global abortion care governance.

### ***The interim period of legal transition***

To avoid putting women's health and lives at undue risk during the interim period of legal transition, the Irish State must firstly address whether women requiring abortion care abroad will have their expenses covered. Secondly there is an urgent need to clarify whether Irish customs officers will cease interception of deliveries of medical abortion from recognised telemedicine healthcare providers (specifically Women on Web; Women

Help Women), which also constitutes a form of harassment against women requiring abortion care. The State should offer continued and explicit reassurance that women who have procured medical abortion via these telemedicine services will not face the threat of law enforcement when/if they access post-abortion care.

To sum up, Ireland's 25 May Referendum result signals how restrictive abortion laws are often at odds with the perspectives and SRH needs of

citizens. Enabling and protecting women's access to legal and safe abortion in Ireland will likely require referral through multiple point of cares, which reputable telemedicine services are well placed to do. Forthcoming legislation will require a continuous process of scrutiny and accountability to deliver comprehensive SRH services developed with the needs and expectations of women – who for so long have been fighting for reproductive justice.

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## Résumé

Ce commentaire s'intéresse au résultat du référendum du 25 mai 2018 en Irlande qui a rejeté le huitième amendement, avec deux objectifs principaux. Premièrement, il encourage les décideurs à saisir tout le potentiel de la réforme législative en permettant et protégeant l'accès des femmes aux soins en cas d'avortement dans le cadre d'un continuum d'options de santé sexuelle et reproductive. Deuxièmement, il préconise de préciser rapidement l'accès aux soins en cas d'avortement pendant la période de transition législative.

## Resumen

Este comentario discute el resultado del Referendum del 25 de mayo de 2018 en Irlanda para derogar la Octava Enmienda, y tiene dos objetivos clave. En primer lugar, invita a los formuladores de políticas a que capten todo el potencial de la reforma legislativa y que permitan y protejan el acceso de las mujeres a los servicios de aborto en un continuum de opciones de servicios de salud sexual y reproductiva (SSR). En segundo lugar, hace un llamado a que proporcionen claridad urgente respecto al acceso a los servicios de aborto en el período interino de la transición legislativa.