
**SUBMISSION TO
HM GOVERNMENT OF
GIBRALTAR**

FROM

**THE CENTER FOR
REPRODUCTIVE RIGHTS**

23 NOVEMBER 2018

Contact details:

Center for Reproductive Rights

Chemin Louis Dunant 7

1202 Geneva

Switzerland

Email: geneva@reprorights.org

www.reprorights.org

The Center for Reproductive Rights respectfully submits this comment to the HM Government of Gibraltar in response to Command Paper No. 3 of 2018 to amend the Crimes Act 2011 to permit abortion.

The Center for Reproductive Rights is a legal human rights non-governmental organization that works across the world to advance laws and policies that promote women's reproductive health and rights, including quality maternity care, affordable contraception goods and services, freedom from coercive sterilization, the prevention of child marriage, and access to safe and legal abortion care. It works throughout Europe, Asia, Africa, Latin America and the United States of America and has offices in Geneva, Kathmandu, Nairobi, Bogota, New York and Washington.

The purpose of this submission is to present the HM Government of Gibraltar with legal and policy evidence that will inform its deliberations on reform of the abortion law. To this end the submission presents the following legal and policy evidence:

- Information on other European countries' laws on abortion, and an overview of the standard approach to the legalization across 47 European countries.
- Information on international public health and clinical guidelines on abortion.
- Information on applicable international human rights laws and standards.

Special attention is given to the questions posed in the Command Paper on the proposed time limits for the legality of abortion, the penalty for the provision of abortion care outside the scope of any legal reform, and medical professionals' refusals to provide abortion care based on grounds of conscience or religion (which the Command Paper refers to as "conscientious objection").

The submission is divided into three parts. Part I provides an overview of comparative European law on abortion. Part II addresses international public health and clinical guidelines on abortion. Part III outlines international and European human rights standards regarding women's access to safe abortion.

I. Comparative European Laws on Abortion

This section provides an overview of European laws on abortion and highlights the manner in which most European countries' laws regulate abortion, including the grounds on which abortion is legally permitted in most other European countries, the usual time limits for these grounds, and the most common approach to decriminalisation of women who induce or obtain an abortion that is not legally permitted.¹

a. Legally permitted grounds:

Of the current 28 European Union (EU) member states, 26 have legalised, or are in the process of legalizing, abortion on a woman's request, for reasons of distress or on broad

¹ See Appendix for a table summarizing the laws in all 47 Council of Europe member states.

social indications, usually with a time limit around the first trimester, and thereafter in exceptional circumstances later in pregnancy.²

Of these 26 countries, 24 have legalised or are legalising abortion on request or for reasons of distress,³ and the other 2 have legalised abortion on broad social or psychological grounds. Only Malta and Poland have not followed this approach.

- The countries that allow abortion on request are Austria, Belgium, Bulgaria, Croatia, Czech Republic, Cyprus, Denmark, Estonia, France, Germany, Greece, Hungary, Ireland*, Italy, Latvia, Lithuania, the Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.
- The two countries that allow abortion on broad socioeconomic grounds are Finland and the United Kingdom.

Of the 47 Council of Europe member states, which include all 28 EU member states, 41 states allow abortion on a woman's request or on broad social grounds, at least in early pregnancy, and thereafter in exceptional circumstances later in pregnancy.

- The countries that allow abortion on a woman's request are Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Cyprus, Denmark, Estonia, France, Georgia, Germany, Greece, Hungary, Ireland*, Italy, Latvia, Lithuania, Luxembourg, Macedonia, Moldova, Montenegro, the Netherlands, Norway, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, and Ukraine.
- The countries that allow abortion on broad socioeconomic grounds are Iceland, Finland, and the United Kingdom.
- As a result, the only exceptions are Andorra, Liechtenstein, Malta, Monaco, Poland, and San Marino.

After the time limit for access to abortion on request or on broad social grounds ends, all these 41 countries allow abortion later in pregnancy on at least one exceptional ground, such as to protect a woman's health or life or in a situation of severe or fatal fetal anomaly or where the pregnancy was the result of sexual assault.

As a result, for Gibraltar to bring its laws into line with the vast majority of EU and Council of Europe member states it would need to undertake reforms which would legalise abortion on a woman's request, at least in early pregnancy, and thereafter on exceptional grounds such as where necessary to protect a woman's health or life.

b. Time limits:

On request or social grounds: All of these European countries establish time frames within which access to abortion **on a woman's request** or broad social grounds is legal, with 12

² This number includes Ireland, which is currently undergoing legislative reform on abortion. We expect the government to pass a new law allowing abortion on request in the coming months.

³ Again, this figure includes Ireland in anticipation of the pending legal reform on abortion.

* Pending passage of legislation.

weeks being the most common time limit, however some countries, such as the UK, establish a longer time-limit⁴

Exceptional grounds: All 41 countries in the Council of Europe that allow abortions on request or broad social grounds also allow abortion with later time limits in exceptional circumstances, these exceptional grounds usually include situations where a woman's life or health is at risk or where there is a severe or fatal fetal impairment. For these circumstances, the most common approach is not to impose a time limit. Some countries impose a time limit of viability. Imposing a 10 to 14 week time limit on women's access to abortion in these exceptional circumstances would be wholly inconsistent with the approach of almost all European countries and would do little to protect women's health and lives during pregnancy.

c. Criminal penalties for women who obtain abortions outside permitted grounds:

The majority of Council of Europe and EU member states do not impose criminal penalties on women who induce an abortion not permitted by the law. The most common practice is to remove all criminal penalties for women. Removing the life imprisonment penalty for women who induce or obtain abortions not permitted by law would be consistent with the prevailing abortion law trends in both the EU and the Council of Europe.

II. International Public Health and Clinical Guidelines on Abortion

International public health guidelines issued by the World Health Organization highlight the need for women to be able to access safe abortion services and specify that laws on abortion that provide the most safeguards for women's health are those that legalise abortion on a woman's request or on broad social grounds.

The WHO has recognized the link between restrictive abortion laws, unsafe abortion, and maternal morbidity and mortality. Evidence shows that "[u]nsafe abortion is one of the four main causes of maternal mortality and morbidity", accounting for "13% of maternal deaths, and 20% of the total mortality and disability burden due to pregnancy and childbirth."⁵

⁴ Countries that allow abortion on request within 10 weeks: Bosnia and Herzegovina, Croatia, Macedonia, Portugal, Serbia and Slovenia. Countries that allow abortion on request within 12 weeks: Austria, Belgium, Bulgaria, Czech Republic, Cyprus, Denmark, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Norway, Slovakia and Switzerland. Countries that allow abortion on request within 14 weeks: Spain and Romania. Sweden allows it within 18 weeks, and the Netherlands within 22-24 weeks (viability). Of the three countries that permit abortion on broad socioeconomic grounds but not on request, the United Kingdom has a time limit of 24 weeks, Iceland has a time limit of 16 weeks, and Finland has a time limit of 12 weeks or 20 weeks for women under the age of 17. For countries that permit abortions on socioeconomic grounds in addition to abortion on request, the most common time limit is around 20 to 22 weeks. Albania, Armenia, Azerbaijan, Estonia, Georgia all permit abortions on broad socioeconomic grounds within 22 weeks. Moldova has a time limit of 21 weeks. Montenegro has time limit of 20 weeks. Norway has a time limit of 18 weeks. Cyprus and Denmark permit abortions for socioeconomic grounds until viability, and Bosnia and Herzegovina and Macedonia have no time limits.

⁵ WHO, 2012 SAFE ABORTION GUIDANCE, at 87.

The WHO has clearly underlined that restricting legal access to abortion leads only to illegal and often unsafe abortions, and to social inequities; it does not decrease the number of abortions or result in significant increases in birth rates.⁶ The WHO has explained that: “[r]estricting legal access to abortion does not decrease the need for abortion, but it is likely to increase the number of women seeking illegal and unsafe abortions.”⁷ The likelihood of seeking an abortion is about the same regardless of whether a country’s laws are restrictive or permissive. Strict abortion laws and legal barriers only push women to induce abortion themselves, to travel to another country for abortion services, or to seek abortion from unqualified providers.⁸ WHO evidence shows that the worldwide rates of abortion are the lowest in countries in which abortion is legally available on a woman’s request and where modern contraceptives are readily available and widely used.⁹

The WHO has made it clear that restrictive legal grounds for abortion and barriers in access to abortion, such as restrictive time limits, contribute to unsafe abortions. The WHO explains that “[l]aws and policies that impose time limits on the length of pregnancy for which abortion can be performed may have negative consequences for women who have exceeded the limit. Such policies/laws force some women to seek services from unsafe providers, or self-induce with misoprostol or a less-safe method, or force them to seek services in other countries, which is costly, delays access (thus increasing health risk), and creates social inequities.”¹⁰

The WHO has outlined that “[a]bortion services should be integrated into the health system [...] to acknowledge their status as legitimate health services and to protect against stigmatization and discrimination of women and health-care providers,” and that safe abortion should be “delivered in a way that respects a woman’s dignity, guarantees her right to privacy and is sensitive to her needs and perspectives.”¹¹ The International Federation of Obstetrics and Gynecology (FIGO) has similarly outlined that women should be able to access safe abortion services.¹²

The WHO recommends that “[l]aws and policies on abortion should protect women’s health and their human rights.”¹³ The WHO advises that States adopt comprehensive regulations and policies to ensure women can access safe abortion services.¹⁴ Such policies should aim, among others, to “respect, protect and fulfill the human rights of women, including women’s dignity, autonomy and equality [and to] promote and protect the health of women, as a state of complete physical, mental and social well-being.”¹⁵

⁶ WHO, 2012 SAFE ABORTION GUIDANCE, at 90.

⁷ WHO, 2012 SAFE ABORTION GUIDANCE, at 90

⁸ *Id.*

⁹ *Id.*

¹⁰ WHO, 2012 guidance, at 93.

¹¹ WORLD HEALTH ORGANIZATION (WHO), SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS 65 (2d ed. 2012) [hereinafter WHO, 2012 SAFE ABORTION GUIDANCE].

¹² FIGO COMMITTEE FOR THE STUDY OF ETHICAL ASPECTS OF HUMAN REPRODUCTION AND WOMEN’S HEALTH, ETHICAL ISSUES IN OBSTETRICS AND GYNECOLOGY 132 (2012)

¹³ WHO, 2012 SAFE ABORTION GUIDANCE, at 9.

¹⁴ WHO, 2012 SAFE ABORTION GUIDANCE, at 98.

¹⁵ *Id.*

Accordingly, in this context, reforms that limit legality of abortion to only a few highly exceptional grounds, while imposing severe administrative barriers, and retaining provisions that criminalise women for obtaining abortions, would not move Gibraltar's laws into line with international public health standards and best practices as outlined in WHO evidence.

III. International and European Human Rights Standards on Abortion

International human rights bodies have consistently and repeatedly expressed concerns over the criminalization of abortion, restrictive national laws and policies on abortion, and practical barriers that women face in their access to safe abortion care. They have specified that in order to comply with obligations under relevant human rights treaties States should decriminalise abortion, liberalize restrictive abortion laws and remove barriers that hinder women's access to safe abortion services.

International human rights bodies have repeatedly called upon States with restrictive abortion laws to reform them and they have outlined that failures to allow women's access to safe and legal abortion can jeopardize women's human rights to life, to freedom from torture and other forms of ill treatment, to health, privacy and to equality and non-discrimination in the enjoyment of rights.¹⁶

In particular, human rights mechanisms have emphasized that criminalization of abortion creates multiple forms of harm. It "generates and perpetuates stigma; restricts [women's and girls'] ability to make use of available sexual and reproductive health-care goods, services, and information; denies their full participation in society; and distorts perceptions among health-care professionals which, as a consequence, can hinder their access to health-care services. Criminal laws and other legal restrictions disempower women, who may be deterred from taking steps to protect their health, in order to avoid liability and out of fear of stigmatization."¹⁷

The Council of Europe Commissioner for Human Rights has called on all member states to ensure all women's access to safe and legal abortion care, which includes reforming restrictive abortion laws that prohibit abortion except in a small number of strictly defined circumstances, decriminalizing abortion and removing procedural and administrative barriers to access, and ensuring the availability and accessibility of legal abortion services in practice.¹⁸

Further, the Commissioner outlined that "states must also take concrete action to guarantee the quality of abortion care and ensure that it is available and accessible in practice...States

¹⁶ Sources are listed in detail in Abortion, Information Series on Sexual and Reproductive Health and Rights, Office of the High Commissioner for Human Rights: http://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB.pdf; Breaking Ground, Treaty Monitoring Bodies on Reproductive Rights, 2016: https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/GLP_TMB_Booklet_2016_Web.pdf.

¹⁷ Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, *Interim Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Anand Grover*, para. 17, U.N. Doc. A/66/254 (Aug. 3, 2011) [hereinafter 2011 Special Rapporteur on Health Report].

¹⁸ ²¹ Council of Europe Commissioner for Human Rights, *Women's sexual and reproductive health and rights in Europe: issue paper 11* (2017).

should ensure the availability and quality of safe abortion services in line with World Health Organization safe abortion guidelines, including by guaranteeing women's access to evidence-based and scientifically accurate information about abortion."¹⁹

In a series of recommendations he has specified that, to "[e]nsure all women's access to safe and legal abortion care," states should:

- "reform highly restrictive laws that prohibit abortion except in a small number of strictly defined, exceptional circumstances and bring them into line with international human rights standards and regional best practices by ensuring that abortion is legal on a woman's request in early pregnancy, and thereafter throughout pregnancy to protect women's health and lives and ensure freedom from ill-treatment;
- ensure that accessibility and availability of legal abortion services in practice, including by establishing effective procedures and processes by which women can enforce existing legal entitlements to abortion services;
- decriminalise abortion and remove residual procedural requirements applicable to legal abortion services that contravene public health guidelines, such as mandatory waiting periods or third party authorisation requirements;
- reform laws and policies requiring biased counselling prior to abortion and ensure that abortion counselling is never mandatory, biased or directive; ensure that the principle of non-retrogression is respected by repealing and rejecting laws and policy proposals that seek to introduce new barriers to women's access to safe abortion services."²⁰

Human rights mechanisms have also underlined that international human rights and standards do not require states to allow medical professionals to refuse to provide legal abortion care or other reproductive health care on grounds of conscience or religion.²¹ Instead they have outlined that when states choose as a matter of domestic policy to permit such refusals, they must ensure that such refusals of care do not undermine or hinder women's access to legal reproductive health care in practice.

Many international human rights mechanisms have underlined that states' failures to take such steps "may jeopardize women's health and well-being, hinder women's timely access to safe abortion services, reinforce stigma regarding abortion, and lead to discrimination against marginalized groups of women."²²

¹⁹ *Id.* at 59.

²⁰ *Id.* at 11.

²¹ Federation of Catholic Families in Europe (FAFCE) v. Sweden, Complaint No. 99/2013, para. 70, Eur. Comm. Soc. R. (2015); Pichon and Sajous v. France [English translation], App. No. 49853/99, Eur. Ct. H.R. (2001); see also R.R. v. Poland, App. No. 27617/04, Eur. Ct. H.R., para. 206 (2011); P. and S. v. Poland, App. No. 57375/08, Eur. Ct. H.R., para. 106 (2013); ESCR Committee, *General Comment No. 22 on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 43, U.N. Doc. E/C.12/GC/22 (2016).

²² See, e.g., SR Health, 2011 Interim Report, *supra* note 4, para. 22 Addressing Medical Professionals' Refusals to Provide Abortion Care on Grounds of Conscience or Religion 24; Human Rights Committee, Concluding Observations: Poland, para. 8, U.N. Doc. CCPR/CO/82/POL (2004); ESCR Committee, Concluding Observations:

Human rights mechanisms have outlined that at a minimum States international legal obligations require them to take the following measures to regulate such refusals of care:

- Ensure adequate numbers and dispersal of willing providers
- Prohibit institutional refusals of care
- Establish an effective referral system,
- Provide information on legal access to abortion care,
- Impose clear limits on the legality of refusals, and
- Implement adequate monitoring, oversight, and enforcement mechanisms.²³

To bring its abortion law into line with international and European human rights standards, Gibraltar should adopt reforms that legalize abortion on a woman's request, at least in early pregnancy, decriminalise abortion and at the very least remove criminal penalties for woman, and ensure that laws and policies ensure that refusals of care do not prevent women's access to safe and legal abortion.

Poland, para. 28, U.N. Doc. E/C.12/POL/CO/5 (2009); Romania, para. 22, U.N. Doc. E/C.12/ROU/CO/3-5 (2014); Human Rights Committee, *Concluding Observations: Romania*, paras. 25-26, U.N. Doc. CCPR/C/ROU/CO/5 (2005); Italy, paras. 16-17, U.N. Doc. CCPR/C/ITA/CO/6 (2017); P. and S. v. Poland, App. No. 57375/08, Eur. Ct. H.R., paras. 99, 108, 111-112, 157-169 (2013); International Planned Parenthood Federation – European Network (IPPF-EN) v. Italy, Complaint No. 87/2012, Eur. Comm. Soc. R., paras. 169, 174-177, 191-194 (2014); Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 91/2013, Eur. Comm. Soc. R., paras. 174, 190-193, 207-213 (2016).

²³ See Council of Europe Comm. for Human Rights, *Women's SRHR in Europe*, *supra* note 1, at 11-12; CEDAW Committee, *Concluding Observations: Hungary*, paras. 30-31, U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013); CRC Committee, *Concluding Observations: Slovakia*, para. 41(f), U.N. Doc. CRC/C/SVK/CO/3-5 (2016); CEDAW Committee, *Concluding Observations: Poland*, para. 37(b), U.N. Doc. CEDAW/C/POL/CO/7-8 (2014).

Appendix

COUNTRY	WOMAN'S REQUEST incl. DISTRESS	TIME LIMIT (ON REQUEST)	BROAD SOCIO- ECON. or PSYCHOLOGICAL GROUNDS	TIME LIMIT (SOCIOECON./ PSYCHOLOGICAL GROUNDS)	LATER TERM ACCESS ON SPECIFIC GROUNDS
Albania	√	12 weeks	√	22 weeks	√
Andorra	-	-	-	-	-
Armenia	√	12 weeks	√	22 weeks	√
Austria	√	3 months	-	-	√
Azerbaijan	√	12 weeks	√	22 weeks	√
Belgium	√	12 weeks	-	-	√
Bosnia and Herzegovina	√	10 weeks	√	-	√
Bulgaria	√	12 weeks	-	-	√
Croatia	√	10 weeks	-	-	√
Cyprus	√	12 weeks	√	Viability (in practice)	√
Czech Republic	√	12 weeks	-	-	√
Denmark	√	12 weeks	√	Viability	√
Estonia	√	12 weeks	√	22 weeks	√
Finland	-	-	√	12 weeks, 20 weeks <17	√
France	√	12 weeks	-	-	√
Georgia	√	12 weeks	√	22 weeks	√
Germany	√	12 weeks	-	-	√
Greece	√	12 weeks	-	-	√
Hungary	√	12 weeks	-	-	√
Iceland	-	-	√	16 weeks	√
Ireland	-	-	-	-	√
Italy	√	90 days	-	-	√
Latvia	√	12 weeks	-	-	√
Liechtenstein	-	-	-	-	√
Lithuania	√	12 weeks	-	-	√
Luxembourg	√	12 weeks	-	-	√
Malta	-	-	-	-	-
Macedonia	√	10 weeks	√	-	√

Moldova	✓	12 weeks	✓	21 weeks	✓
Monaco	-	-	-	-	✓
Montenegro	✓	10 weeks	✓	20 weeks	✓
Netherlands	✓	Viability	-	-	✓
Norway	✓	12 weeks	✓	18 weeks	✓
Poland	-	-	-	-	✓
Portugal	✓	10 weeks	-	-	✓
Romania	✓	14 weeks	-	-	✓
Russia	✓	12 weeks	-	-	✓
San Marino	-	-	-	-	*
Serbia	✓	10 weeks	-	-	✓
Slovakia	✓	12 weeks	-	-	✓
Slovenia	✓	10 weeks	-	-	✓
Spain	✓	14 weeks	-	-	✓
Sweden	✓	18 weeks	-	-	✓
Switzerland	✓	12 weeks	-	-	✓
Turkey	✓	10 weeks	-	-	✓
Ukraine	✓	12 weeks	-	-	✓
United Kingdom	-	-	✓	24 weeks	✓

✓ Ground in law

-Nothing in the law

