COMMISSION ON REPEAL OF THE EIGHTH AMENDMENT

REPORT

20TH FEBRUARY 2015
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1. EXECUTIVE SUMMARY

- While Article 40.3.3 of the Constitution remains in place, it is not effectively possible to legislate for termination of pregnancy on any grounds other than a risk to a woman’s life.
- Because of the restrictive language of Article 40.3.3, the Protection of Life During Pregnancy Act 2013 (PLDPA) cannot provide for terminations of pregnancy in any other situation, such as situations of fatal foetal abnormality, or serious risk to a woman’s health.
- Each year, thousands of women travel abroad to access terminations of pregnancy.
- For women who have difficulty in travelling abroad, due to legal status, youth, or poverty, termination of pregnancy is much more difficult to access, and likely to be carried out later in the term of the pregnancy.
- Recent reports suggest that British clinics may in future restrict access to termination for some Irish women, and other reports suggest that some women are now returning to Ireland having partially completed a termination of pregnancy on grounds of fatal foetal abnormality.
- There is evidence that women are increasingly ordering pills over the internet in order to terminate pregnancies.
- All of these developments have potentially adverse consequences for women’s health.
- The current legal situation does not address the health needs of Irish women and has had the effect of putting lives at risk, as in the case of Savita Halappanavar in October 2012.¹

- The language of Article 40.3.3 has given rise to immense legal difficulties and human tragedies in a series of hard cases involving vulnerable women over the 31 years since its enactment. It should be repealed in its entirety.
- The Labour Party supports access to termination of pregnancy services on the following limited range of medically certified grounds:
  a. Risk to life, as is the position under the existing PLDPA legislation;
  b. Fatal foetal abnormality;
  c. A real and substantial risk to the health of the woman (physical or mental) in the early stages of pregnancy. In the later stages of pregnancy a more stringent test would apply and a termination would only be available in cases where there was a risk of severe or disabling damage to the woman’s health;
  d. Where the effect of a pregnancy arising out of rape, incest or serious sexual assault has been to create a risk to the physical or mental health of the woman, a termination may be sought under ground c.
- Sustaining embryonic and foetal life in pregnancy should be recognised as an important social role which should be voluntary and consensual.
- Labour Women will develop the policy further both within the Party and among wider civil society and as part of this process, it is envisaged that Labour Women will publish draft legislation.

2. TERMS OF REFERENCE

This Report is produced by the Labour Women Commission on Repeal of the Eighth Amendment, which was established in November 2014 with the task of examining the best legal and political strategies to accomplish:
- Repeal of Article 40.3.3 of the Constitution in its entirety;
- The Introduction of detailed legislation providing for the circumstances in which terminations of pregnancy may legally take place.

The membership of the Commission is set out at Appendix 1 of this Report.

3. **LEGAL CONTEXT FOR REPORT — TERMINATION OF PREGNANCY AND THE LAW IN IRELAND**

Article 40.3.3 of the Constitution provides that:

"The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right. This subsection shall not limit freedom to travel between the State and another state. This subsection shall not limit freedom to obtain or make available, in the State, subject to such conditions as may be laid down by law, information relating to services lawfully available in another state." 

In 1992, the Supreme Court ruled in Attorney General v X that a 14 year old girl, pregnant as a result of rape, could obtain a termination because she faced a real and substantial risk to her life due to the threat of suicide; and this risk could only be averted by the termination of her pregnancy.  

In 1997, the C case involved a health board seeking a termination for a 13 year old girl in their care who had been raped and become pregnant. The High Court ruled that, as C was likely to take her own life if forced to continue with the pregnancy, she was entitled to a termination in Ireland under the X Case test.

In 2006, the European Court of Human Rights ruled a case taken by a woman identified as D inadmissible because she had not exhausted domestic legal remedies by taking her case through the Irish courts. The Irish Government relied successfully on the argument that in her particular circumstances (involving fatal foetal abnormality), D could have been legally entitled to a termination in Ireland had she applied through the Irish courts.

In 2007, a 17-year-old also known as D, in the care of the State, discovered that she had an anencephalic pregnancy and sought to terminate the pregnancy. The High Court ruled that she had a right to travel for this purpose.

In 2010, in the case of A, B and C v Ireland, the Grand Chamber of the European Court of Human Rights unanimously ruled that Ireland’s failure to implement the existing constitutional right to a lawful termination when a woman’s life is at risk had violated Applicant C’s rights under Article 8 of the European Convention on Human Rights. C had cancer, and the continuation of her pregnancy had posed a potential risk to her life. The Court also ruled that the three women challenging Ireland’s ban on termination did not have an effective remedy available to them under the Irish legal system.

In 2013, after extensive consultation and long parliamentary debates, the Protection of Life During Pregnancy Act (PLDPA) was passed. The Act retains the criminalisation of abortion and permit terminations only where there is a risk to the life of a pregnant woman, in accordance with the X case test. The Act provides that two doctors must confirm that there is a physical threat to the life of the pregnant woman. In medical emergencies, one doctor alone may make the decision. Where the threat arises because of risk of suicide, three doctors—a woman’s obstetrician and two psychiatrists—must agree that her life is at risk.

The Act includes a review procedure to cover situations where there is disagreement as to whether a risk to life exists. Provision is made for a right to conscientious objection, which does not override the duty to provide care in emergency cases. The Act states that “it shall be an offence to intentionally destroy unborn human life”, replacing the pre-existing criminal prohibition on abortion in the 1861 Offences Against the Person Act. A person found guilty is liable to a maximum 14-year prison sentence. The Act defines “unborn” as “commencing after implantation in the womb of a woman”.

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2 Inserted by referendum as the Eighth Amendment to the Constitution in 1983, with the last two sentences added by way of referendum in 1992.

3 [1992] 1 IR 1

4 The 2013 Act was brought into force on 1st January 2014
4. MEDICAL CONTEXT FOR REPORT – WOMEN’S HEALTH NEEDS

Termination of pregnancy is a common feature in the reproductive lives of women around the world, and it is regarded as a very safe medical procedure, with no long-term physical or mental health effects⁵. However, restricting termination harms women’s health. Globally, over 40,000 women die and 8 million women are harmed, because of unsafe termination services due to lack of access to safe legal termination⁶. If performed by trained professionals, abortion is one of the safest medical procedures, with minimal - less than 0.05% - risk of major complications⁷. Removal of restrictions to abortion services internationally is recommended by UN human rights bodies ⁸.

In 2013 alone, 3,679 women travelled from Ireland to access terminations in England and Wales – over 70 women per week⁹. Between January 1980 and December 2013, over 150,000 women travelled from Ireland to access termination services to another country¹⁰. However, the health of Irish women is jeopardised by the process of travelling. Later termination can be associated with higher complication rates and Irish women typically have later terminations than women in the UK. Department of Health statistics from the UK show that in 2013, 32% of women travelling from Ireland had pregnancies terminated after 9 weeks gestation; compared with only 20% of residents of England and Wales¹¹. The requirement to travel can cause physical and psychological ill-health to women¹².

The associated cost of travelling abroad also has clear implications for women in lower socio-economic groups, for whom access to termination is restricted more severely. Concerns also exist about adequacy of protections for women’s health under the PLDPA.

In particular, the Guidance Document for the PLDPA appears to be more restrictive than the Act; even a woman with cancer, in similar circumstances to C, might be unable to obtain a legal termination in Ireland under these guidelines¹³.

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⁷ BMJ Jan 2014 http://www.bmj.com/content/348/bmj.f7553

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5. POLITICAL CONTEXT FOR REPORT — CHANGES IN PUBLIC OPINION

Over the last ten years, a series of opinion polls have consistently found strong public support for less restrictive laws on termination, with particularly significant majorities in favour of permitting termination in cases of fatal foetal abnormality, rape and serious risk to a woman’s health. The findings of these polls are outlined below.

In October 2014, 68% of respondents to an Irish Times/Ipsos MRBI poll of 1200 people supported holding a referendum on whether or not to permit termination in cases of rape or where a foetus will not be born alive.

In the same month, October 2014, a study on the attitudes towards termination of medical students in Ireland found that 55% are pro-choice, with 91% agreeing that termination should be available in limited situations. In September 2014, a Sunday Independent/ Millward Brown poll found that of those who expressed an opinion, over 75% of people surveyed were in favour of holding a referendum to repeal the Eighth Amendment of the Constitution; 69% of respondents believed termination should be allowed in cases of rape, while 68% were in favour of termination where there is a threat to the long-term health of a woman.

In 2013, a Sunday Times Behaviour & Attitudes Poll found that 74% of people support access to termination where pregnancy results from rape. A greater majority of 80% believe that a woman should have access to abortion in cases of fatal foetal abnormality.

In 2012, a study of 500 established GPs and almost 250 GPs in training revealed that 75% of Irish GPs believe that there are situations in which termination should be available in Ireland, with 52% believing that termination should be available to any woman who chooses it.

In 2010, an Irish Examiner/Red C Poll found that 60% of people supported legal termination and three in five people aged 18-35 believed termination should be legalised. In March 2010, a YouGov poll commissioned by Marie Stopes indicated that 79% of those questioned were in favour of liberalisation of Irish termination laws in certain circumstances.

More than three quarters (79%) agreed that termination of pregnancy should be permitted if the woman’s health is at risk; 78% agreed that termination of pregnancy should be permitted if the pregnancy is the result of sexual abuse, rape or incest; and 62% agreed that termination of pregnancy should be permitted if there is evidence of a profound foetal abnormality.

6. RATES OF TERMINATION AND LAWS IN OTHER EU COUNTRIES

A 2004 Crisis Pregnancy Agency study found that 90% of 18-45 year olds support termination in certain circumstances, with 51% stating that women should always have to right to choose.

According to the World Health Organisation (WHO), the average rate of abortion across the EU is 30 per 1000 live births. The WHO provide the following summary of EU abortion laws:

- “the availability of abortion varies across the European Region: almost all countries allow abortion to save a woman’s life and 90% to preserve mental or physical health; 88% of them allow abortion if the foetus is thought to be impaired, or in case of rape or incest. Nearly 80% allow abortion for economic and social reasons, and slightly fewer offer abortion on request. In Malta and Andorra abortion is illegal on any grounds. In Poland and Ireland, legal abortion is
severely limited in availability. Legal restrictions on abortion do not affect its incidence; women seek desperate measures if they cannot obtain safe abortions. Data from Romania revealed that, when termination of pregnancy was banned by the Ceausescu regime, maternal mortality was more than 20 times higher than today.

Another measure used to compare termination rates in different countries is that of terminations per 1000 women of reproductive age. Using this measure, the Guttmacher Institute estimates that the termination rate for 2003 in Belgium and Germany (at the lowest end of EU countries) is 7 per 1000; and that the rates in Denmark, England and Wales, and Sweden ranged from 11 to 20 per 1000 women. The Institute estimates the rate of terminations in Ireland (based on numbers of women having terminations in England who provide Irish addresses) is 5 per 1000 women.

The 1999 Irish Government Green Paper on Abortion provides a detailed comparative analysis of termination laws in other EU jurisdictions.

7. CONCLUSIONS

The current constitutional position on termination in Ireland means that it is impossible for the Oireachtas to pass legislation that sufficiently protects the rights of women in pregnancy; in particular their rights to life and to health. Article 40.3.3 must be removed to facilitate the passing of such legislation. Irish termination law is comparatively restrictive in a European context. This Report aims to bring Ireland into line with the majority of its European counterparts and with changing public opinion, while also recognising the importance of sustaining embryonic and foetal life in pregnancy.

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21 Source: http://www.guttmacher.org/pubs/journals/3310607.html

APPENDIX
MEMBERSHIP OF THE COMMISSION

Chairperson
Dr. Mary Henry

Parliamentary Labour Party members
Senator Ivana Bacik (Rapporteur), Ciara Conway TD, Anne Ferris TD, Aodhan O Riordain TD, Emmet Stagg TD

Commission Membership (continued)
Chairperson of Labour Women
Sinead Ahern
Labour Councillor
Cllr Rebecca Moynihan
Labour Lawyers
Jane Horgan Jones BL

Independent Advisory Panel

Medical Experts
Dr Peter Boylan, consultant obstetrician, Dublin; Dr Mary Favier, GP, Cork; Dr Joan Lalor, TCD lecturer in School of Nursing and Midwifery, Dublin; Mary Higgins, midwife; Dr Mark Murphy, GP, Dublin; Prof Veronica O’Keane, consultant psychiatrist, Dublin

Legal Experts
Dr Vicky Conway, University of Kent; Prof Fiona De Londras, Durham University; Dr Mary Donnelly, UCC, Mairead Enright, University of Kent; Dr Ruth Fletcher, Queen Mary University, London; Natalie McDonnell BL, Law Library; Dr Sheelagh McGuinness, Birmingham University; Dr Sinead Ring, University of Kent; Dr Sorcha Ui Chonnachtaigh, Keele University; Dr Clare Murray UCC.