

Paper of

Coalition to Repeal the Eighth Amendment

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Coalition to Repeal the Eighth Amendment

Respect and Protect Women's Lives, Health and Choices



Paper by

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The issue which the Citizens' Assembly has been asked to consider is much more than a constitutional issue; it is a medical issue, a human rights issue, an equality issue, a social class issue and a feminist issue. Our [submission to the Citizens' Assembly](#)ⁱ presented a detailed examination of each of these areas, but today we will focus primarily on the impact of the Eighth Amendment on women's equality. We begin by placing the Irish prohibition of abortion in a historical context and consider how Ireland has changed over the past several decades. In our conclusion, we outline what we as a Coalition of over 80 diverse organisations believe needs to change to ensure respect for women's lives, health and choices. A number of our member organisations are also briefing you today on their areas of expertise, while many more have made detailed evidence-based submissionsⁱⁱ.

Historical treatment of Women

Our historical treatment of women is not a record that most Irish people are proud of. From the Magdalene Laundries to the Mother and Baby Homes, women's reproductive lives were viewed as a source of societal shame, to be hidden away, controlled or managed. Women and girls were routinely and severely punished for becoming pregnant outside marriage, even when a pregnancy was the result of sexual violence. Until 1990, rape in marriage was legal, and so-called 'fallen women' were incarcerated and abused in State and religious-run institutions until as late as 1996 when the last Magdalene Laundry closed its doors.

While the days of such brutality against pregnant womenⁱⁱⁱ are largely behind us, our laws continue to coerce, restrict and control pregnant women and to treat them as potential criminals. From Ms X^{iv}, to Ms Y^v, from Savita Halappanavar^{vi} to keeping P.P.^{vii} on life support after she died, from rape victims to couples who receive a diagnosis of a fatal foetal abnormality, we are still turning our backs on women in pregnancy in so many instances. This is not because we are uncaring or because we think it's the right thing to do, it is because the process of freeing ourselves from a repressive national history takes time, and the legacy of controlling women's reproductive lives and decisions remains so deeply ingrained in our laws. Yet we cannot change those laws while the Eighth Amendment remains in the Constitution.

Ireland has Changed

Since the Eighth Amendment was inserted in the Constitution in 1983, Irish society has changed a great deal - in many ways, beyond recognition. The overwhelming decision of the electorate to say 'Yes' to equal marriage for lesbian and gay people in the 2015 referendum is a striking example of the depth and meaning of that change, particularly for younger generations. It showed not only the importance of equality as a central value in our society, but also how we want to do right by people and are willing to embrace change to do it.

Over the past two years and more, polls^{viii} have consistently shown that Irish people have a more open and sympathetic view of women seeking abortion. Although still stigmatised, attitudes are changing fast, and we no longer pretend that abortion never happens. Outsourcing the problem to the UK is no longer acceptable to the large majority of people who recognise that abortion is part of the reality of women's reproductive lives. We are shaking off the cruelties of a repressive past which blighted the lives of so many women and children, and looking for kinder and more compassionate ways of supporting people facing difficult situations.

"Today we live in a very different country with a very different consciousness and a very different awareness – an Ireland where we have more compassion, more empathy, more insight and more heart. We do because at last we are learning those terrible lessons. We do because at last we are giving up our secrets."

Taoiseach Enda Kenny, State apology to the Magdalene Women, 19th February 2013

We see this desire for change right across the board, with polls showing little difference between men and women or between urban and rural areas^{ix}. It is also clear that this is not a straightforward 'Left vs. Right' issue for voters. A recent Ipsos MRBI poll^x showed the large majority of those polled across the political

spectrum favour repeal of the Eighth Amendment – independent and smaller parties (79%), Labour (73%), Sinn Féin (72%), Fine Gael, (66%) and Fianna Fáil (63%).

For many years, we have relied on Britain to deal with the reality of abortion for women in Ireland.^{xi} Every day, at least ten women travel there to obtain an abortion. It has let us off the hook and effectively allowed successive Governments to disregard our international human rights obligations and the State's duty of care to ensure the health and well-being of women. We cannot go on indefinitely exporting our unresolved dilemmas. It is time and more than time for Ireland to face up to the reality of abortion, to assume its responsibilities to women's health care and to provide the services women require here in Ireland.

The Eighth Amendment – inequality and discrimination for many

The Eighth Amendment is a profound source of discrimination and inequality for the many women in Ireland for whom travel is not an option. The right to travel does not guarantee equal access to treatment as many women who need an abortion are unable to travel for a variety of reasons, while others are specifically prevented from doing so by the State. The abortion ban hits marginalised and vulnerable women the hardest, and below we outline the situation of some of those who suffer most blatantly and distressingly from the discriminatory impacts of the Eighth Amendment.

Women on Low Incomes

The thousands of women who travel abroad to avail of abortion services elsewhere do so at a very significant financial burden to themselves. Accessing abortion services in Britain costs between €800 and €3,000, sometimes more. For women on low incomes this cost is well beyond their means. CSO reports show that 50% of women working in Ireland earn €20,000 or less a year^{xii}, which means that the cost of travelling for an abortion is 15-20% of their annual income.

But high costs do not stop women on low incomes from having abortions – they simply seek alternative options. They may borrow money and shoulder the burden of crippling financial debt, or they may seek illegal and sometimes dangerous solutions. Although the abortion pill is the safest method of abortion in the first trimester, it remains illegal so women who cannot afford to travel risk criminalisation to obtain it.

For those who can neither travel nor access the abortion pill, their only option is to continue the pregnancy and face significant difficulties in raising their children. Poor childcare provision means that many women have to give up their jobs to look after their children. As a result, they can find themselves caught in a spiral of poverty, obliged to rely on social welfare. While some do escape the poverty trap, many more do not. Instead, they and their children remain consistently disadvantaged by the fact that they had no option but to continue a pregnancy they could not afford and did not want. As Justice Horner said in his Belfast High Court judgement '*That smacks of one law for the rich and one law for the poor*'.^{xiii}

Asylum Seekers and Undocumented Women

Migrant women, particularly those in the direct provision system also suffer disproportionately as they are subject to strict travel restrictions while in this system. If asylum seekers leave the jurisdiction they can be arrested and returned to Ireland. The case of Ms Y in 2014 is just one example of this in practice. Ms Y was an asylum seeker who became pregnant as a result of rape. On arriving in Ireland, she discovered she was pregnant and immediately sought an abortion which was refused. She then travelled to the UK but was arrested on arrival for illegal entry and sent back. She continued to seek an abortion through the HSE and was confirmed as suicidal by two panel psychiatrists but was still refused an abortion. Desperate to end the pregnancy, she went on hunger strike. Instead of granting an abortion on grounds of the risk of suicide, as permitted under the Protection of Life During Pregnancy Act 2013^{xiv}, the HSE obtained a High Court order to forcibly hydrate her until her baby was delivered via caesarean section at 25 weeks.

Girls and Adolescents

Occasionally, children need access to abortion services, typically in cases of rape or incest. Last year 18 girls under the age of 16 travelled to the UK for an abortion^{xv}. A girl who becomes pregnant as a result of rape or incest and seeks an abortion in Ireland, including medical abortion (i.e. abortion pills) can be subject to up to 14 years imprisonment.

Girls and adolescents are a particularly vulnerable group and pregnancy for them carries heightened risks due to their physical immaturity. They cannot travel independently and so their ability to access services is entirely dependent on parental consent and assistance. Children in state care are dependent on the state to act in their best interest, and court orders must be obtained by the state to allow children to travel for abortion services. The UN Committee on the Rights of the Child recommended unequivocally that the government must ensure that pregnant girls have safe access to abortion.^{xvi}

Women as Workers

A crisis pregnancy can be acutely problematic for women in the workforce. They are unlikely to tell their employers why they need time off work and take sick leave or use their annual leave to travel to the UK for an abortion. For the large number of women who work in low paid or precarious employment, including part-time workers and women on zero hour contracts, an abortion is not only a huge financial burden, it may be impossible for them to take leave without fear of losing their job.

Women Living with a Disability or Illness

Women with disabilities face particular barriers in accessing reproductive healthcare including abortion. The right to travel for an abortion is meaningless for people who physically cannot travel due to severe illness or disability. Even those who physically can travel may be reliant on family or a carer to assist them. In order to travel they must forego their privacy and tell others why they need to travel. Some will be fully supported in their decision but others may be blocked by family members or carers who refuse help and support.

Victims of Domestic Violence

Women who are victims of domestic violence can find it very difficult to access any form of care or services as every aspect of their lives may be controlled by an abusive partner. An abusive partner may control where a woman goes, what she does, who she sees and who she talks to. Control can be exerted by denying a woman access to money, to a phone and even to contraception. Domestic abuse can increase during pregnancy and pregnancy itself can be used as a means of control. In the eyes of her abuser, forcing a woman to remain pregnant against her will and give birth is the ultimate act of control apart from taking her life. The right to travel is exceptionally difficult and may be impossible for a woman in an abusive relationship.

Fatal Foetal Abnormality

Women and couples who receive the devastating diagnosis of a fatal foetal abnormality are severely impacted by the Eighth Amendment. For women who choose to continue their pregnancies, their decision is respected and they rightly receive the best support possible including palliative care. However, women and couples who feel they cannot continue the pregnancy are discriminated against. Denying people options in such very sad circumstances cannot be regarded as support. To require a woman to travel for the medical care she needs or be forced to continue her pregnancy against her will - wondering every day if her baby has died inside her - is a violation of her right to freedom from cruel and degrading treatment.^{xvii} It is also completely at odds with public opinion - a Red C poll^{xviii} in January 2016 showed that 76% of those polled support the right to terminations in instances of fatal foetal abnormality.

All Women Who Use Our Maternity Services

Consent and informed decision-making are cornerstones of modern medicine, yet a woman's right to make informed decisions about her own health continues to be restricted in pregnancy. From the moment a woman becomes pregnant, the presence of the Eighth Amendment in the Constitution means that her capacity for informed decision-making can be disregarded and her consent to medical treatment can be ignored. It is not uncommon for the State to take women who refuse treatment to court to force compliance. The denial of the right to consent as it applies de facto to pregnant women is clearly discriminatory.

Autonomy and Choice

Reproductive autonomy is a cornerstone of women's struggle to achieve independence and equality worldwide. Denial of a woman's right to decide if or when to have children is a grave denial of her human right to freedom and wellbeing. Not only has the Eighth Amendment been a profound source of discrimination against women in Ireland, it has been a major obstacle to the achievement of full equality. Article 40.3.3 treats women unequivocally as second-class citizens and thus disrespects the value and meaning of their lives.

Only a tiny proportion of women have abortions for what most people see as 'exceptional circumstances'. A legislative model for abortion based on restrictions rather than on what women actually need is entirely ineffective, as it takes no account of the complexity of women's lives and of the wide range of reasons why they decide to have an abortion. We must in our laws acknowledge the totality and complexity of women's lives including their health and well-being, their relationships and family life, their responsibilities and social circumstances, their working lives and their financial situation, their ability to cope, and – not least – their wishes and plans, hopes and dreams. It is not enough to provide treatment only in medical emergencies and only then where there's a "real and substantial risk" to a woman's life as opposed to her health. This very narrow value we subscribe to women's lives is a damning indictment of our laws and not at all reflective of the caring society we are.

To genuinely respect and vindicate a woman's right to autonomy we must first acknowledge that women are the experts in their own lives and bodies. Women's capacity for informed decision-making must be fully recognised, and it must be accepted in law that the decision to continue a pregnancy or not is a decision primarily for the person who is most impacted by the pregnancy – i.e. the pregnant woman. IHREC, the Irish Human Rights and Equality Commission, recently raised its concerns in relation to the impact of the Eighth Amendment on women's right to bodily autonomy.^{xix}

'Ireland's legal framework regulating access to reproductive health care services stems from Article 40.3.3 of the Constitution of Ireland. The Commission remains concerned that the current legal position in relation to abortion puts in place barriers which impede a woman's right to bodily autonomy and has a disproportionate negative impact on certain groups of women'.

The Way Forward

The Coalition unanimously agrees that a referendum to repeal the Eighth Amendment should be called without delay so as to end once and for all the extreme hardship and distress it causes women; the harmful effects of the amendment on women's health and wellbeing; the especially discriminatory impacts of the amendment on so many disadvantaged groups of women; and the denial of women's fundamental human rights to autonomy and equality.

In the three decades and more since the Eighth Amendment was inserted in the Constitution it has become patently clear that the Constitution is no place to address the complexity of women's reproductive health needs. If, following a referendum, the Eighth Amendment was repealed, what would happen? The short answer is: nothing new. Abortion would still be highly restricted and illegal in all circumstances except those outlined by the Protection of Life During Pregnancy Act 2013, that is, when there's a real and substantial risk to a pregnant woman's life. Women living in Ireland would still be obliged to travel abroad to access abortion services. If they were unable or could not afford to travel, they could attempt to access the abortion pill online (which is illegal), or they would be forced to continue with the pregnancy, against their wishes.

In our view, the future regulation of reproductive health must first and foremost meet women's real needs. Abortion is a factual reality of women's reproductive lives, and provision for it should be integrated in reproductive health services as a matter of course. Not to do so is to endanger women's health and wellbeing, and to ignore their right to equality and autonomy.

For these reasons, it is our considered view that:

- The Eighth Amendment should be repealed in its entirety from the Constitution
- No further amendment should be proposed to replace it
- Abortion, including medical abortion (i.e. the abortion pill), should be decriminalised
- Current abortion laws (i.e. the Protection of Life During Pregnancy Act 2013 and the Abortion Information Act 1995) should be repealed
- New regulatory frameworks should be put in place to ensure women's equal and unimpeded access to the highest attainable standards of reproductive health care, including abortion
- Women's right to autonomy and agency – to make our own decisions - should be recognised throughout reproductive healthcare regulation and provision, including access to abortion services in Ireland
- Reproductive healthcare policy should be directed at integrating abortion services within wider maternal and reproductive health services.

This is not a case of reinventing the wheel. In drafting a regulatory and/or legislative framework, the Coalition recommends that the State should take note of the World Health Organisation guidelines^{xx} in this regard, and should also look to other jurisdictions - beyond the UK - for examples of how best to provide for the full range of women's reproductive health needs, including abortion. While the specifics of legislation vary from country to country, the European norm is generally to allow for abortion at a woman's request without restriction in the first trimester and thereafter on medical grounds.

Restrictive, exceptions-based legislative models (e.g. legislating for abortion in only a limited range of circumstances, such as rape, incest or in the event of a fatal foetal anomaly) do not respond to the real-life needs of women, and such an approach in Ireland would do nothing to address a problem we have failed to resolve for many decades. It would not stop women seeking abortion abroad, it would not stop women taking the abortion pill without formal medical supervision, it would not end the discrimination against marginalised and vulnerable women. The numbers of women seeking abortion in 'exceptional' circumstances are a very small proportion of the overall numbers of women in Ireland seeking abortion. The fact is that the vast majority of women are having abortions for a very wide range of other reasons, all of them valid.

Conclusion

It is time for us in Ireland to face reality. We must recognise the fact of abortion in women's reproductive lives, and respect women's autonomy and agency. Regardless of any personal views we may hold, we should trust women to make the right decisions for themselves and their families and support them in whatever decision they make. We do not believe that prohibition and coercion have any legitimate role in women's reproductive lives.

Women in Ireland deserve to have access to the highest standards of reproductive health care, and that they are entitled to have their dignity, autonomy and equality upheld and respected by our laws and policies. We believe therefore that the Irish people must be given the opportunity to repeal the Eighth Amendment in a referendum.

ⁱ Coalition to Repeal the Eighth Amendment's Submission to the Citizens' Assembly, 5th Dec., 2016, Available at: <http://www.repealeight.ie>, [Accessed 22nd Feb., 2017]

ⁱⁱ See Coalition's members and supporters submissions our website, Available at: <http://www.repealeight.ie/memberssupporters-submissions/>

ⁱⁱⁱ While we use 'woman' in this paper, the Coalition to Repeal the Eighth Amendment recognises that not everyone who needs an abortion is a woman and we support access to abortion for everyone who needs it be they cis, trans, non-binary or gender fluid

^{iv} Attorney General v X, [1992] IESC 1; [1992] 1 IR 1

^v Holland, K., (2014), '[Timeline of Ms Y Case](#)', Irish Times, [online], 4th October, 2014

^{vi} Holland, K., (2012), '[Woman 'denied a termination' dies in hospital](#)', Irish Times, [online], 14th November, 2012

^{vii} Carolan, M., (2014), '[Court clears way for clinically dead pregnant woman to be taken off life support](#)', Irish Times, [online], 26th December, 2014

^{viii} Two Years of Polling – Available at: <http://www.repealeight.ie/public-opinion-what-the-polls-revealed/>, [Accessed 22nd Feb., 2017]

^{ix} Consistent pattern over 2 years of polling. Available at: <http://www.repealeight.ie/public-opinion-what-the-polls-revealed/>, [Accessed 22nd Feb., 2017]

^x Collins, S., (2016), ‘[Irish Times Poll – Majority want Repeal of Eighth Amendment](#)’, Irish Times, [online], 7th October, 2016

^{xi} How Brexit will impact travel arrangements between our two countries remains to be seen but any restrictions on travel which might result from it would place an additional burden on women seeking to travel to access abortion services in Britain.

^{xii} CSO Men and Women in Ireland Report 2013, Available at: <http://www.cso.ie/en/statistics/womenandmeninireland/womenandmeninireland2013/> [Accessed 27th November, 2016]

^{xiii} Mr. Justice Horner - Summary Judgement, [Court declares abortion law in Northern Ireland breaches European Convention on Human Rights by failing to provide exceptions to ban](#), 30th November, 2015, [Accessed 22nd Feb., 2017]

^{xiv} Protection of Life During Pregnancy Act 2013 - <http://www.irishstatutebook.ie/eli/2013/act/35/enacted/en/print.html>

^{xv} Source UK Dept. of Health Annual Report: [Abortion Statistics, England and Wales: 2015](#)

^{xvi} In January 2016, the UN Committee on the Rights of the Child expressed concern about Ireland’s implementation of the UN Convention on the Rights of the Child (UNCRC) and of the impact of Ireland’s abortion laws on girl’s human rights. In its concluding observations^{xvi}, the Committee recommended unequivocally that the government must ensure that pregnant girls have safe access to abortion. See - UN Convention on the Rights of the Child (UNCRC) [Concluding Observations](#), Recommendation on Adolescent Health, P13.

^{xvii} Mellet v. Ireland Ruling, (2016), UN Human Rights Committee – ‘Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2324/2013’ International Covenant on Civil and Political Rights, 9th June 2016, Available at: <https://static.rasset.ie/documents/news/un-human-rights-committee-report.pdf>, [Accessed 22nd Feb., 2017].

^{xviii} RedC Poll Conducted for Newstalk, 21st January 2016, Available at: <http://www.redcresearch.ie/abortion-support-seen-in-certain-circumstances/> [Accessed 27th Nov. 2016]

^{xix} IHREC Report to UN CEDAW Committee, January 2017, [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women: Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland’s combined sixth and seventh periodic reports](#) [accessed 22nd Feb, 2017]

^{xx} World Health Organisation, [Safe Abortion: Technical and Policy Guidance for Health Systems](#), 2nd Edition, 2012, [Accessed 22nd Feb., 2017]