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Tuarascáil ón gComhchoiste um an Ochtú Leasú ar an mBunreacht

Nollaig 2017

Report of the Joint Committee on the Eighth Amendment of the Constitution

December 2017



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Chairperson's Foreword



I welcome the publication of the Report of the Joint Committee arising from its examination of the First Report and Recommendations of the Citizens' Assembly on the Eighth Amendment.

The job of the Joint Committee was to review thoroughly the recommendations of the Assembly. For most of us on the Committee this involved a learning process that enabled us to make judgements that are reflected in this Report. The Committee was never about reaching a consensus as the issue is too divisive. Our Report reflects the fact that the majority of the Committee's views on this very difficult and divisive issue lie somewhere between the two traditional polar positions. This is also, in my opinion, a reflection of the opinion of Irish society. Many Members of the Committee travelled a journey during the process and have stated on the record that the evidence helped them come to a position, which shows the value of our work.

The main conclusion of our work is that we need some change and in order to effect that we need to amend the Constitution to remove article 40.3.3. After many years of public and political debate on the issue, the people will have their say. Those under 52 years of age in this country have never had the opportunity to have a say on this matter.

The key change we want to make is to modernise healthcare by placing the woman at the centre of it. What I have learnt over the last 3 months is that every situation is unique and the evidence has shown that medical practitioners do not feel supported by the law in providing necessary care for the women of Ireland. Women have felt the need to look into different options - travel and more recently the availability of illegal abortion pills has come into focus and we cannot continue to ignore this.

I believe that this Oireachtas Committee has provided leadership and an all party pathway for constitutional and legislative change. I admire the commitment shown by Committee Members in tackling this complex issue after many years of avoidance. As our terms of reference dictated, our Report now goes to the wider Oireachtas and will also guide the Government in drafting a proposal that will go to the people.

I want to thank all of the witnesses who gave expert testimony and to the parents who told us their personal stories, they have done the State some service.

Finally, I want to acknowledge the work of the Citizens Assembly for its constructive input into the debate.

I commend this report to Dáil Éireann and to Seanad Éireann.

Senator Catherine Noone

Chairperson of the Joint Committee

20th December 2017



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Chapter One – Constitutional reform

Introduction

- 1.1. The Citizens' Assembly's substantive recommendation as regards constitutional change was that Article 40.3.3 should be "replaced with a constitutional provision that explicitly authorises the Oireachtas to legislate to address termination of pregnancy, any rights of the unborn and any rights of the pregnant woman."
- 1.2. This recommendation and related decisions of the Assembly were considered during Module 1 of the Committee's deliberations. Details of the meetings and the witnesses examined and links to the debates for Module 1 are contained in Appendix 2 to this Report.
- 1.3. The Committee interprets the Assembly's substantive recommendation as rejecting simple repeal in favour of replacing Article 40.3.3 with a constitutional provision giving exclusive authority to the Oireachtas to legislate on the issue of termination of pregnancy, free from the legal uncertainty of constitutional challenge and judicial intervention.

The current legal framework

- 1.4. The Eighth Amendment was passed on 7 September, 1983, after a bitterly contested referendum. Article 40.3.3 was inserted in to the Constitution and reads as follows:
"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."
- 1.5. The legal framework for abortion in Ireland derives constitutionally from this provision and its interpretation in *Attorney General v. X* [1992] 1 I.R. 1 ('the X case'). Here, the Supreme Court held that Article 40.3.3 permits termination of pregnancy where there is a real and substantial risk to the life, as opposed to the health, of the mother, which risk includes the risk of suicide. That decision has now been put on a statutory footing by way of the Protection of Life During Pregnancy Act 2013, which was passed in July 2013 and commenced in January 2014¹. The Act retains the criminalisation of abortion in Ireland and permits abortion only where there is a risk to the life of a pregnant woman. A Guidance Document for Health Professionals on the Implementation of the 2013 Act was published in September 2014.

¹ Please see Appendix 5 for a historical legal timeline of the law relating to abortion in Ireland over the course of the last 35 years.

The necessity for constitutional change

- 1.6. The Committee understands that the Protection of Life During Pregnancy Act 2013 currently represents the height of the Oireachtas' legislative power in relation to the provision of pregnancy termination services in Ireland; to provide for any further grounds for the provision of such services in Ireland therefore requires constitutional change.
- 1.7. The Joint Committee agreed, in principle, at its meeting on 18 October 2017, that Article 40.3.3 should not be retained in full. This decision represented an acknowledgement by the Joint Committee that the current regime for the termination of pregnancy in Ireland is unfit for purpose and that constitutional reform is necessary.
- 1.8. In arriving at this decision, the Joint Committee took into consideration expert legal and medical evidence provided to the Committee relating to the following critical factors:
 - (1) The impact of Article 40.3.3 in the provision of health and medical services to pregnant women, particularly relating to the timing of critical clinical decision-making in saving a woman's life;
 - (2) The continuing and ongoing breach of Ireland's international human rights obligations as evidenced in the cases of *Mellet v. Ireland*² and *Whelan v. Ireland*³, in which the United Nations Human Rights Committee found Ireland to be in violation of the International Covenant on Civil and Political Rights (ICCPR). As well as directing compensation and counselling for the women concerned, the Human Rights Committee has called for Ireland to change its laws to allow for termination in cases of fatal foetal abnormality;
 - (3) The practical reality that thousands of Irish women are already accessing abortion services each year:
 - (a) Legally, by way of travel to the UK and, to a lesser extent, the Netherlands and other jurisdictions, and
 - (b) illegally, by way of online telemedicine services and the abortion pill.
- 1.9. No evidence adduced throughout the remainder of its deliberations has caused the Joint Committee to change its opinion with regard to the necessity for constitutional reform.

Form of constitutional change

- 1.10. The Citizens' Assembly rejected simple repeal in favour of replacing Article 40.3.3 with a constitutional provision giving exclusive authority to the Oireachtas to legislate on the issue of abortion, free from the legal uncertainty of constitutional challenge.
- 1.11. The Committee understands this recommendation to represent an effort to remove the complex and divisive issue of abortion from the narrow and inflexible confines of a constitutional provision, in favour of empowering the Oireachtas to legislate unconstrained by potential judicial intervention. Whilst the Joint Committee agrees with the substantive basis for this recommendation, it disagrees with the Citizens' Assembly as regards the manner in which this purpose can best be achieved.

² 9th June 2016, UN Doc CCPR/C/116/D/2324/2013.

³ 12th June 2017, UN Doc CCPR/C/119/D/2425/2014.

- 1.12. In determining the type and nature of constitutional reform it deemed necessary, the Joint Committee has considered the balance to be struck between certainty and flexibility in law-making and the need to comply with Ireland's obligations under international human rights law.
- 1.13. Having regard to the profound, and relatively unprecedented, effect a provision such as that recommended by the Citizens' Assembly would have on the separation of powers as it is traditionally understood under the Irish Constitution, the Committee is unwilling to recommend the removal of this important supervisory jurisdiction of the Courts in an area which, without such a constitutional amendment, would so clearly fall within their jurisdiction.
- 1.14. Taking all of the above factors in to consideration, the Joint Committee is of the opinion that the Citizens' Assembly recommendation arising out of ballot 3 would be more adequately addressed by way of simple repeal.⁴

1.15. The Joint Committee recommends that Article 40.3.3 be repealed simpliciter.⁵

⁴ See Appendix 4 for details of the decisions taken by the Committee, including the voting records.

⁵ Repeal simpliciter or simple repeal means the straightforward removal of Article 40.3.3 from the Constitution without the introduction of any replacement or amendment text.

Chapter Two – Legislative reform

Introduction

- 2.1. In Chapter One, the Committee recommended the repeal of Article 40.3.3 in order to give greater scope to the Oireachtas to legislate for the termination of pregnancy.
- 2.2. The thirteen recommendations of the Citizens Assembly in relation to the grounds on which termination of pregnancy might be lawful, set out in Appendix 3, are the basis for the Committee's consideration of the broad shape of the legislation that should be enacted if a referendum to repeal Article 40.3.3 passes.
- 2.3. These recommendations were considered during Module 2 of the Committee's deliberations. Details of the meetings and the witnesses examined and links to the debates for Module 2 are contained in Appendix 2 to this Report.
- 2.4. As part of Module 2, the Committee:
 - (i) explored the issues arising from these Citizens' Assembly recommendations;
 - (ii) reviewed the operation of the Protection of Life During Pregnancy Act, 2013 which regulates the provision of services at present and, in this context, considered whether the procurement of termination services should be decriminalised and this matter is dealt with in Chapter Three of this Report.
- 2.5. The Committee's conclusions and recommendations in relation to these matters are set out later in this chapter.
- 2.6. At this point, however the Committee wishes to state its conclusion that any legislation must be accompanied by measures and policies that address and seek to minimise the instances of crisis pregnancies. These issues will be examined in Chapter Three.

The Protection of Life During Pregnancy Act 2013

- 2.7. The first two grounds for the provision of lawful termination recommended by the Citizens Assembly are contained in the Protection of Life During Pregnancy Act 2013.
- 2.8. The evidence given to the Committee was that the operation of that Act has created significant difficulties, some of which can only be addressed if the recommendations contained in this Report are adopted.

Risks to the life and health of the woman

- 2.9. The Citizens Assembly made recommendations as to health related grounds upon which the termination of pregnancy should be lawful. Two of these recommendations related to circumstances in which there was a real and substantial risk to the life of the mother and six to health grounds more generally.
- 2.10. In relation to the majority of these recommendations, the Assembly further recommended that no gestational limit should apply. However a 22 week gestational limit was recommended in relation to two of the grounds.

- 2.11. The Committee is of the view that no differentiation should be made between the life and the health of the woman. This is consistent with the evidence from medical experts made available to the Committee regarding the difficulty medical professionals have in defining where a threat to health becomes a threat to life.

Definition of Risk

- 2.12. The Committee notes that, in some European countries where a health exception permits a termination beyond the time limits for termination on request, the law does not define risk. Having regard to the expert evidence made available, the Committee accepts that risk depends to a large extent on individual circumstances. The Committee is therefore of the opinion that it is difficult to define in legislation the circumstances in which a risk to the health of the mother might arise.
- 2.13. The advice to the Committee is that the assessment of that risk is best considered in a clinical setting rather than being fixed in legislation. The Committee accepts this advice. The Committee also accepts that, in the case of women presenting with mental health issues, the grading of risk is particularly difficult.

Application of gestational limits

- 2.14. The Committee was given comparative evidence about the law on termination of pregnancy in a number of European countries. Arising from that evidence, the Committee notes that in a number of these countries the health exception does not have a gestational limit.
- 2.15. The Committee is of the opinion that the decision as to when a termination can take place is dependent on a range of factors; and that, in cases involving risk to health, medical practitioners, acting in good faith, and in consultation with the woman, are best placed to make such a decision, subject to any statutory requirements which should underpin guidelines drawn up by the Minister for Health in consultation with the Medical Council and the Nursing and Midwifery Board of Ireland.

Difficulties with the current assessment process in the area of mental health

- 2.16. Evidence was given to the Committee of an under-resourced psychiatric service for pregnant women and the fact that, in cases where an application was made under the 2013 Act, psychiatrists with minimal experience of dealing with women in pregnancy could be required to assess cases. The evidence highlights the need for far greater investment in the mental health of pregnant women and the Committee will return to this issue when dealing with the ancillary recommendations of the Citizens Assembly.
- 2.17. The Committee also heard evidence that the certification and review process provided in the 2013 Act had the potential for such delay that women in a position to do so are likely to by-pass the process and go abroad to have a termination. This is an issue to be addressed when new legislation is being considered.

2.18. The Committee recommends that

- (a) termination of pregnancy should be lawful where the life or health of the woman is at risk and that a distinction should not be drawn between the physical and mental health of the woman,
- (b) provision for gestational limits for termination of pregnancy should be guided by the best available medical evidence and be provided for in legislation, and
- (c) any assessments in relation to the termination of pregnancy where the life or the health of the woman is at risk should be made by no fewer than two specialist physicians

and the law should be amended to provide accordingly.

Pregnancy as a result of rape or other sexual assault

- 2.19. The Citizens Assembly recommended that the termination of pregnancy that is the result of rape be lawful up to a 22 week gestational limit.
- 2.20. While the Committee accepts that it should be lawful to terminate a pregnancy that is the result of a rape or other sexual assault, it has concerns about whether the recommendation of the Citizens Assembly can be implemented in practice. These concerns arise from:
- (a) the difficulty presented in the verification of a rape or sexual assault, and
 - (b) the opinion of the Committee that:
 - (i) there is a need to avoid the further traumatising of a victim of rape or sexual assault that would arise if some form of verification was required;
 - (ii) a requirement for a verification process is likely to be complex or even unworkable in practice.
- 2.21. The Committee also heard evidence in relation to the underreporting of rape and sexual offences to An Garda Síochána and the authorities generally in Ireland. The Committee understands why some women find it difficult or impossible to report rape or sexual assault and is accordingly of the opinion that it would be unreasonable to insist on reporting as a precondition for exercising any right to terminate a pregnancy that has resulted from rape or sexual assault.
- 2.22. The Committee is further of the view that where a woman is concerned that she may be pregnant as a result of a rape or sexual assault, she should have immediate access to appropriate services.
- 2.23. In view of the complexities inherent in legislating for the termination of pregnancy for reasons of rape or other sexual assault, the Committee is of the opinion that it would be more appropriate to deal with this issue by permitting termination of pregnancy with no restriction as to reason provided that it is availed of through a GP-led service delivered in a clinical context as determined by law and licencing practice in Ireland with a gestational limit of 12 weeks.
- 2.24. The Committee's specific recommendation in this regard is set out in paragraph 2.40 under the heading **Socio-economic grounds and No restriction as to reason.**

Foetal abnormality that is likely to result in death before or shortly after birth

- 2.25. The Citizens Assembly recommended that termination of pregnancy should be lawful without gestational limit in cases where the unborn child has a foetal abnormality that is likely to result in death before or shortly after birth.
- 2.26. The Committee accepts that a medical diagnosis of fatal foetal abnormality⁶ made by a doctor acting in good faith requires a compassionate approach to the family affected and that termination of pregnancy services should be available in such circumstances⁷.
- 2.27. The Committee is of the view that the health care pathway for a woman who decides to terminate a much-wanted pregnancy, having received the devastating diagnosis of a fatal foetal abnormality, should be the same as the health care pathway provided to a woman who decides not to terminate her pregnancy. The Committee notes the need to prevent added physical and mental distress and the need to address the issue of a split to the continuity of care caused to women by the necessity of having to travel to another jurisdiction.
- 2.28. The Committee is of the opinion that it is not appropriate to provide a list of specific foetal diagnoses that are deemed fatal as in many cases such a prognosis arises from a combination of multiple complex abnormalities.
- 2.29. The Committee is furthermore strongly of the view that:
- (a) a post-mortem should be made available in all such cases, irrespective of whether a termination takes place; and
 - (b) anomaly scans should be available to all pregnant women between the 18th and 22nd week of gestation.
- 2.30. The Committee accepts that a gestational limit is not appropriate given that ultrasound anomaly scans are generally not provided before the 20th week of pregnancy and further scanning and testing may be necessary when a diagnosis is made.
- 2.31. The Committee recommends that it shall be lawful to terminate a pregnancy without gestational limit where the unborn child has a foetal abnormality that is likely to result in death before or shortly after birth.

⁶ The Committee uses the term *fatal foetal abnormality* as a term that is widely understood, however it recognises that other terms are in use, including in official use.

⁷ See ancillary recommendation at paragraph 3.22

Foetal abnormality that is not likely to result in death before or shortly after birth

- 2.32. The Citizens Assembly recommended that termination of pregnancy should be lawful, up to 22 weeks gestation, in cases of foetal abnormality that is not likely to result in death before or shortly after birth without gestational limit.
- 2.33. The Committee, while noting the burden placed on the woman and the family in such situations, does not accept that these are sufficient grounds for termination.
- 2.34. The Committee therefore does not accept this recommendation of the Citizens Assembly.
- 2.35. The Committee recommends that the law should not provide for the termination of pregnancy on the ground that the unborn child has a significant foetal abnormality where such abnormality is not likely to result in death before or shortly after birth.
- 2.36. The Committee believes that the State should provide specific resources so that there are social supports for carers and better facilities for people whose children have special needs.

Socio-economic grounds *and* No restriction as to reason

- 2.37. The Citizens Assembly recommended that termination of pregnancy should be lawful, up to 22 weeks gestation, on socio-economic grounds. The Assembly also recommended that termination of pregnancy should be lawful, up to 12 weeks gestation, without restriction as to reason.
- 2.38. In considering these grounds, the Committee cannot ignore the extent to which Ireland has an underlying rate of terminations, the majority of which are carried out either in medical clinics in the United Kingdom, or in Ireland through unsupervised use of abortion pills procured through the internet. What became clear during evidence is that the majority of terminations are for socio-economic reasons that are unrelated to foetal abnormality or to rape. In addition, the Committee is mindful of that group of women who, for financial, domestic reasons or immigration status cannot travel or procure abortion pills over the internet.
- 2.39. Notwithstanding the difficult and varied circumstances in which pregnant women may find themselves, the Committee is of the opinion that termination of pregnancy after 12 weeks for socio-economic reasons should not be provided for and considers that the distinction drawn by the Citizens' Assembly as regards gestational limits is therefore unnecessary.

- 2.40. The Committee recommends that the law should be amended to permit termination of pregnancy with no restriction as to reason provided that it is availed of through a GP-led service delivered in a clinical context as determined by law and licencing practice in Ireland with a gestational limit of 12 weeks.

Chapter 3 – Ancillary recommendations

Introduction

3.1. The Citizens Assembly made five ancillary recommendations that try to address the need for better services for pregnant women and also seek more effective ways to avoid crisis pregnancies. The Committee, in seeking to procure better outcomes in these ancillary areas, accepts the recommendations, reproduced in the Committee recommendation following.

3.2. The Committee recommends that

- (a) Improvements should be made in sexual health and relationship education, including the areas of contraception and consent, in primary and post-primary schools, colleges, youth clubs and other organisations involved in education and interactions with young people.
- (b) Improved access to reproductive healthcare services should be available to all women – to include family planning services, contraception, perinatal hospice care and termination of pregnancy, if required.
- (c) All women should have access to the same standard of obstetrical care, including early scanning and testing. Services should be available to all women throughout the country irrespective of geographic location or socio-economic circumstances.
- (d) Improvements should be made to counselling and support facilities for pregnant women both during pregnancy and, if necessary, following a termination of pregnancy, throughout the country. Further consideration should be given as to who will fund and carry out termination of pregnancy in Ireland.

3.3. In addition the Committee makes a number of specific recommendations arising from its consideration of the Assembly's ancillary recommendations and its own deliberations. These are set out in the paragraphs following.

Decriminalisation

3.4. The Committee notes that the Protection of Life During Pregnancy Act 2013 provides that “it shall be an offence to intentionally destroy unborn human life” and provides for punishment on indictment to a fine or imprisonment for a term of up to 14 years, or both, for those found guilty of the offence (s. 22(1)). The Committee has been advised that s.22(1) applies to a medical practitioner involved in the carrying out of a medical termination and, most likely, to a person sourcing and taking an abortion pill.

3.5. Evidence was given to the Committee of the growing trend of Irish women using online telemedicine services to procure abortion pills which are then taken at home. The Committee is concerned that the criminalisation of the use of abortion pills in these circumstances has the potential to create a chill factor on women in seeking post-abortion medical care and support, thereby significantly impacting their health.

- 3.6. The Committee notes that, arising from a case brought by Ms. Amanda Mellet⁸ the United Nations Human Rights Committee, in ruling that Ireland had subjected Ms. Mellet to “discrimination and cruel, inhuman or degrading treatment’ because of its laws against abortion in circumstances of fatal foetal impairment, found her suffering was aggravated by the shame and stigma associated with criminalisation.
- 3.7. The criminal provision also has the potential to create a chill factor for doctors and clinical risk by distorting clinical decision-making.
- 3.8. The Committee, while noting that no prosecutions have yet been taken under the 2013 Act, is of the view that Section 22 of the Act should be repealed. It accepts that the criminalising provisions do not affect the overall incidence of abortions and that there are other legal provisions for the regulation of doctors including criminal sanctions where procedures are performed by unregistered doctors.⁹

- 3.9. The Committee recommends that the law be amended to provide that
- (a) surgical terminations may only be legally carried out in a hospital setting
 - (b) medical terminations may only be provided for through the licencing of medications for that purpose and prescribed by a qualified practitioner acting in good faith.
- 3.10. The Committee further recommends that where terminations occur in such circumstances
- (a) no criminal sanctions should apply, and
 - (b) in cases where a woman procures or seeks to procure an abortion for herself, the law should provide that, regardless of circumstances, she is not guilty of an offence.

Contraception

- 3.11. The issue of contraception and the link between greater use of contraception and lower pregnancy termination rates featured in the deliberations of the Committee on a frequent basis.
- 3.12. It is important to note that evidence was presented to the Committee of findings by the World Health Organisation to the effect that the introduction or liberalising of abortion in France, Italy and Turkey had reduced the number of terminations, mainly because of post-abortion contraception.
- 3.13. The Committee also heard evidence that Irish women availing of termination services in the United Kingdom do not benefit from contraceptive services provided as a matter of policy to UK citizens immediately post termination.
- 3.14. Also potentially significant is evidence to the Committee in relation to the outcome of a survey of Irish women who contacted online telemedicine services. The research indicated that 44% of those surveyed were not using a contraceptive method when they became pregnant. It is also concerning that 56% of these women were using a contraceptive method that presumably failed.

⁸ *Amanda Mellet, an Irish woman who after being told that her foetus would not survive her pregnancy, traveled to the United Kingdom for an abortion, because of Ireland’s laws prohibiting abortions in all cases except in which the mother’s life is in danger*

⁹ *See sections 37 and 40 of the Medical Practitioners Act 2007 as amended.*

3.15. The Committee has a particular concern about the cost of contraception and notes that, while it is free for those with a medical card, for those on the cusp of qualifying for a medical card, the costs can be prohibitive. According to a CSO general population survey in 2010, 18% of respondents found the cost of contraceptives to be an issue. Evidence to the Committee was that this can result in women not taking long-acting reversible contraceptive methods, even where this is the most suitable option for them, when the costs of these are outlined.

3.16. The Committee recommends the introduction of a scheme for the provision of the most effective method of contraception, free of charge and having regard to personal circumstances, to all people who wish to avail of them within the State.

Sex Education

3.17. The Committee is of the opinion that there is a clear link between effective sex education and lower levels of crisis pregnancies.

3.18. In that regard the Committee echoes the call from the Citizens Assembly for improvements in sexual health and relationship education in our schools and youth clubs. However the Committee was not, in the time available to it, in a position to delve deeply into the issue of sex education in our schools.

3.19. While the Committee notes the ongoing developments that are taking place in respect of relationship and sexuality education (RSE) and social, personal and health education (SPHE) in our schools, it has a specific concern in relation to what is happening at second level. The Committee's concerns can be summarised as follows.

- (a) For many schools, sex education is delivered as part of religious education and furthermore it is delivered on an ad-hoc basis, for example not being covered until late in the education cycle.
- (b) Many teachers are not comfortable teaching RSE and therefore it is left to a minority of teachers or it is outsourced to an agency.
- (c) As the Committee understands matters, such agencies and their use by schools are not regulated and those delivering the course are not required to have a teaching qualification. It therefore appears to the Committee that any person can set up as an agency to deliver sex education.
- (d) The ethos of the school can influence how RSE course content is delivered.

3.20. The Committee recommends a thorough review of sexual health and relationship education, including the areas of contraception and consent, in primary and post-primary schools, colleges, youth clubs and other organisations involved in education and interactions with young people. Sufficient time must be provided in the school's curriculum for such education and it should be taught by suitably qualified personnel. The information should be provided in an impartial and factual manner that is independent of school ethos.

Obstetric Care and Counselling

- 3.21. The Citizens Assembly ancillary recommendation in regard to a uniform standard of obstetrical care across the State arises from the regional inconsistency in service provision. Evidence to the Committee was that
- (a) approximately 64% of women are offered the 20 week anomaly scans and that only seven of our nineteen maternity hospitals have 100% cover. The contrast with the UK and Holland, where there is almost 100% coverage for anomaly scans, is quite startling.
 - (b) the number of consultants in the area of obstetrics and gynaecology should be increased from 120 to 220 but it is proving difficult to fill positions in Ireland.
 - (c) there are significant gaps in perinatal mental health services in the State, viz.:
 - (i) There are only three perinatal psychiatrists operating in the State and all are attached to the maternity hospitals in Dublin.
 - (ii) There is no mother and baby unit in any hospital to cater for mothers who are depressed or who suffer from mental illness.
 - (iii) six of the State's 19 maternity hospitals do not have a clinical midwife specialising in bereavement.
 - (d) there are deficiencies in the area of antenatal and post-natal counselling and support services in the State. Of particular concern to the Committee is the operation of agencies which are not transparent as to the directive nature of their services.

3.22. The Committee recommends that

- (a) all women should have access to the same standard of obstetrical care, including early scanning, testing and anomaly scans, irrespective of geographic location and having regard to socio-economic status,
- (b) improvements should be made to counselling and support facilities for women during and after pregnancy, including post-termination, and
- (c) perinatal hospice services be made available to women who require them.

General

- 3.23. The Committee recommends that the appropriate sectoral committee or committees be explicitly charged with ensuring that early and ongoing visible progress is made in implementing the Committee's ancillary recommendations.

Appendix 1

Relevant extract of terms of reference of the Committee

“D’ainneoin aon ní sna Buan-Orduithe—

- (a) go ndéantar leis seo Coiste Speisialta (dá ngairtear ‘an Coiste’ anseo feasta) a cheapadh, atá le comhcheangal le Coiste Speisialta atá le ceapadh ag Seanad Éireann, chun bheith ina Chomhchoiste um an Ochtú Leasú ar an mBunreacht chun na nithe seo a leanas a dhéanamh—
 - (i) an tuarascáil agus na moltaí ón Tionól Saoránach i ndáil leis an Ochtú Leasú ar an mBunreacht a bhreithniú; agus
 - (ii) tuarascáil a thabhairt do dhá Theach an Oireachtais, de réir mhír (i);
- (b) go ndéanfaidh an Tionól Saoránach, a luaithe is indéanta tar éis dó a thuarascáil a ghlacadh, an céanna a chur ar aghaidh chuig Cléirigh an dá Theach, agus déanfaidh na Cléirigh socrú go leagfar an tuarascáil faoi bhráid an dá Theach, agus air sin beidh an tuarascáil arna tarchur chuig an gComhchoiste;
- (c) gur ochtar is córam don Chomhchoiste, a mbeidh duine acu ar a laghad ina chomhalta nó ina comhalta den Dáil agus a mbeidh duine acu ar a laghad ina chomhalta nó ina comhalta den Seanad;
- (d) go ndéanfaidh an Comhchoiste duine dá chomhaltaí a thoghadh chun bheith ina Chathaoirleach nó ina Cathaoirleach;
- (e) go bhféadfaidh an Comhchoiste teacht le chéile sula bhfaighfear an tuarascáil ón Tionól Saoránach chun a Chathaoirleach a thoghadh agus chun ullmhúcháin phraiticiúla a dhéanamh (amhail a chlár oibre a chomhaontú agus comhaontú a dhéanamh maidir leis an saineolas sainiúil nó teicniúil is gá chun cuidiú leis an gComhchoiste a chuid oibre a dhéanamh): Ar choinníoll nach dtosóidh an Comhchoiste a bhreithniú ar na moltaí ón Tionól Saoránach go dtí go dtarchuirfear an tuarascáil chuige faoi mhír (b); agus
- (f) go dtabharfaidh an Comhchoiste tuarascáil ar a thátail agus a mholtaí do dhá Theach an Oireachtais laistigh de thrí mhí ón gcéad chruinniú poiblí a bheidh aige.

That, notwithstanding anything in Standing Orders—

- (a) a Special Committee (hereinafter referred to as ‘the Committee’) is hereby appointed, to be joined with a Special Committee to be appointed by Seanad Éireann, to form the Joint Committee on the Eighth Amendment of the Constitution to—
 - (i) consider the Citizens’ Assembly report and recommendations on the Eighth Amendment of the Constitution; and
 - (ii) report to both Houses of the Oireachtas, in accordance with paragraph (i);
- (b) the Citizens’ Assembly shall, as soon as is practicable after it adopts its report, forward same to the Clerks of both Houses, who shall arrange for it to be laid before both Houses, whereupon the report shall stand referred to the Joint Committee;
- (e) the quorum of the Joint Committee shall be eight, at least one of whom shall be a member of the Dáil, and one a member of the Seanad;
- (f) the Joint Committee shall elect one of its members to be Chairman;
- (g) the Joint Committee may meet in advance of receipt of the report from the Citizens’ Assembly for the purposes of electing its Chairman and making practical preparations (such as agreeing its work programme and agreeing on the specialist or technical expertise required to assist it in its work): Provided that the Joint Committee shall not embark on its consideration of the recommendations of the Citizens’ Assembly until the report has been referred to it under paragraph (b); and
- (i) the Joint Committee shall report its conclusions and recommendations to both Houses of the Oireachtas within three months of its first public meeting.”

Appendix 2

Public meeting list of witnesses

Date	Witnesses	Debate
20 September	Ms. Justice Mary Laffoy, Chair, Citizens' Assembly Ms. Sharon Finegan, Secretary, Citizens' Assembly	See transcript
27 September	Dr. David Kenny, Assistant Professor of Law, Trinity College Dublin Professor Fiona De Londras, Chair of Global Legal Studies & Deputy Head of School, Birmingham Law School, University of Birmingham Ms. Mary O'Toole S.C.	See transcript
04 October	Ms. Emily Logan, Chief Commissioner, and Professor Siobhan Mullally Irish Human Rights and Equality Commission Ms. Christina Zampas, Human Rights Lawyer with experience working in the UN and European Court of Human Rights Professor William Binchy, Adjunct Professor/Fellow Emeritus, Law, TCD	See transcript
11 October	Dr. Abigail R.A. Aiken, Assistant Professor, LBJ School of Public Affairs, Texas Dr. Ronald Johnson, Scientist, Dept of Reproductive Health and Research, World Health Organisation Dr. Bela Ganatra, World Health Organisation Dr. Rhona Mahony, Master, National Maternity Hospital, Holles Street Professor Fergal Malone, Master, Rotunda Maternity Hospital	See transcript
12 October	Dr. Brendan O'Shea, Director, Post Graduate Resource Centre (PRC), Irish College of General Practitioners Dr. Karena Hanley, MICGP, as National Director of GP Training	See transcript
18 October	Dr. Peter Boylan, Chair, Institute of Obstetricians and Gynaecologists Dr. Meabh Ni Bhuinneain, Obs and Gynae, Mayo University Hospital Professor Sir Sabaratnam Arulkumaran, President-elect of the International Federation of Obstetrics & Gynaecology & author of report on death of Savita Hallappanavar	See transcript
25 October	Dr. Veronica O'Keane, Professor of Psychiatry, TCD Mr. Tom O'Malley BL, Senior Lecturer in Law, NUIG Ms. Noeline Blackwell, Chief Executive Officer, Dublin Rape Crisis Centre Dr. Maeve Eogan, Consultant Obstetrician and Gynaecologist, Rotunda Hospital Mr. Gerry Edwards, Chairperson, Termination for Medical Reasons Ireland (TFMR) Ms. Claire Cullen-Delsol, TFMR	See transcript

Date	Witnesses	Debate
8 November	Dr. Gilda Sedgh, The Guttmacher Institute Ms. Leah Hoctor, Regional Director, Europe Centre for Reproductive Rights Dr. Ruth Fletcher Senior Lecturer in Medical Law from Queen Mary University in London Professor Anthony Mc Carthy, Consultant Perinatal Psychiatrist, National Maternity Hospital, Holles Street	<i>See transcript</i>
15 November	Dr. Caitriona Henchion, Medical Director, Irish Family Planning Association Ms. Janice Donlon, HSE, Sexual Health and Crisis Pregnancy Programme	<i>See transcript</i>
22 November	Dr. Patricia Lohr, British Pregnancy Advisory Service Ms. Liz Mc Dermott, from the Support Group, One Day More	<i>See transcript</i>
23 November	Professor Eva Pajkrt and Professor JKM Gevers, University of Amsterdam	<i>See transcript</i>
29 November	Dr. Peter Thompson, Consultant Fetal Medicine, Birmingham Women's NHS Foundation Trust Dept. of Education and Skills Dept. of Children and Youth Affairs	<i>See transcript</i>
30 November	HSE Department of Health	<i>See transcript</i>

Appendix 3

The thirteen recommendations of the Citizens' Assembly

Reason 1: Real and substantial physical risk to the life of the woman

Reason 2: Real and Substantial risk to the life of the woman by suicide

Reason 3: Serious risk to the physical health of the woman

Reason 4: Serious risk to the mental health of the woman

Reason 5: Serious risk to the health of the woman

Reason 6: Risk to the physical health of the woman

Reason 7: Risk to the mental health of the woman

Reason 8: Risk to the health of the woman

Reason 9: Pregnancy as a result of rape

Reason 10: The unborn child has a foetal abnormality that is likely to result in death before or shortly after birth

Reason 11: The unborn child has a significant foetal abnormality that is not likely to result in death before or shortly after birth

Reason 12: Socio-economic reasons

Reason 13: No restriction as to reasons

See link to the Report of the Citizens' Assembly.

Appendix 4

Decisions of meeting of Wednesday, 13 December 2017

Joint Committee on the Eighth Amendment of the Constitution

1. The Joint Committee met in Public Session at 2.08 p.m. in Committee Room 3, LH 2000.

2. **Members Present**

The following Members were present:

Deputies James Browne Lisa Chambers, Clare Daly, Bernard Durkan, Peter Fitzpatrick, Billy Kelleher, Mattie McGrath, Catherine Murphy, Hildegard Naughton, Jonathan O'Brien, Kate O'Connell, Louise O'Reilly, Jan O'Sullivan, Anne Rabbitte and Bríd Smith.

Senators Jerry Buttimer, Paul Gavan, Rónán Mullen, Catherine Noone (in the Chair), Ned O'Sullivan and Lynn Ruane.

3. **Proposals preliminary to the preparation of a draft report**

Module 1 – Constitutional Implications

The Committee proceeded to consider proposals preliminary to the preparation of a draft report.

(i) Deputy Jan O'Sullivan moved:

“That, having regard to the decision of the Committee not to retain Article 40.3.3 in full, the Committee recommend its repeal simpliciter.”

Question put.

The Committee divided: Tá, 14; Níl, 6.

For: Deputies Lisa Chambers, Clare Daly, Bernard Durkan, Billy Kelleher, Catherine Murphy, Jonathan O'Brien, Kate O'Connell, Louise O'Reilly, Jan O'Sullivan and Bríd Smith.

Senators Jerry Buttimer, Paul Gavan, Ned O'Sullivan and Lynn Ruane.

Against: Deputies James Browne, Peter Fitzpatrick, Mattie McGrath, Hildegard Naughton, and Anne Rabbitte. Senator Rónán Mullen.

The question was declared carried accordingly.¹⁰

¹⁰ Senator Catherine Noone abstained.

Module 2 – Citizens’ Assembly Recommendations

Reason 1 – Real and substantial physical risk to the life of the woman

(ii) Deputy Kate O’Connell moved:

“That the Committee recommend that termination of pregnancy be lawful, where the life or health of the woman is at risk and that a distinction should not be drawn between the physical and mental health of the woman. Provision for gestational time limits for termination of pregnancy be guided by the best available medical evidence and provided for in legislation. Any assessments in relation to the termination of pregnancy where the life or the health of the woman is at risk be made by no fewer than two specialist physicians”

Question put.

The Committee divided: Tá, 14; Níl, 6.

For: Deputies Lisa Chambers, Clare Daly, Bernard Durkan, Billy Kelleher, Catherine Murphy, Jonathan O’Brien, Kate O’Connell, Louise O’Reilly, Jan O’Sullivan, and Bríd Smith.

Senators Jerry Buttimer, Paul Gavan, Ned O’Sullivan and Lynn Ruane.

Against: Deputies James Browne, Peter Fitzpatrick, Mattie McGrath, Hildegard Naughton and Anne Rabbitte. Senator Rónán Mullen.

The question was declared carried accordingly.¹¹

(iii) **Resolved:** That the Committee recommend that termination of pregnancy be lawful where there is real and substantial physical risk to the life of the woman [*Chairman*].

Reason 2 – Real and substantial risk to the life of the woman by suicide

(iv) Deputy Mattie McGrath moved:

“That the Committee reject risk to the life of the woman by suicide as a ground for the lawful termination of pregnancy.”

Question put.

The Committee divided. Tá, 3; Níl, 17;

For: Deputies Peter Fitzpatrick and Mattie McGrath

Senator Rónán Mullen

Against: Deputies James Browne, Lisa Chambers, Clare Daly, Bernard Durkan, Billy Kelleher, Catherine Murphy, Hildegard Naughton, Jonathan O’Brien, Kate O’Connell, Louise O’Reilly, Jan O’Sullivan, Anne Rabbitte and Bríd Smith.

Senators Jerry Buttimer, Paul Gavan, Ned O’Sullivan and Lynn Ruane

The question was declared negated accordingly.¹²

(v) **Resolved:** That the Committee recommend that termination of pregnancy be lawful where there is a real and substantial risk to the life of the woman by suicide [*Chairman*].

¹¹ Senator Catherine Noone abstained.

¹² Senator Catherine Noone abstained.

Reason 3 – serious risk to the physical health of the woman.

- (vi) **Resolved:** That the Committee recommend that termination of pregnancy be lawful where there is a serious risk to the physical health of the woman. [*Chairman*].

Reason 4 – Serious risk to the mental health of the woman

- (vii) **Question:** That the Committee recommend that termination of pregnancy be lawful where there is a serious risk to the mental health of the woman

The Committee divided. Tá, 16; Níl, 4;

For: Deputies James Browne, Lisa Chambers, Clare Daly, Bernard Durkan, Billy Kelleher, Catherine Murphy, Jonathan O’Brien, Kate O’Connell, Louise O’Reilly, Jan O’Sullivan, Anne Rabbitte and Bríd Smith; Senators Jerry Buttimer, Paul Gavan, Ned O’Sullivan and Lynn Ruane.

Against: Deputies Peter Fitzpatrick, Mattie McGrath; Hildegard Naughton and Senator Rónán Mullen.

The question was declared carried accordingly.¹³

Reason 5: Serious risk to the health of the woman

- (viii) **Resolved:** That the Committee recommend that a termination of pregnancy be lawful where there is a serious risk to the health of the woman.[*Chairman*]

*Reason 6 – Risk to the physical health of the woman***Senator Lynn Ruane moved:**

- (ix) *“That the Committee recommend the termination of pregnancy be lawful where there is a risk to the physical health of the woman and that socio-economic considerations be taken into consideration in this regard.”*

Question put.**The Committee divided. Tá, 9; Níl, 10;**

For: Deputies Clare Daly, Catherine Murphy, Jonathan O’Brien, Kate O’Connell, Louise O’Reilly, Jan O’Sullivan and Bríd Smith.

Senators Paul Gavan and Lynn Ruane.

Against: Deputies James Browne, Lisa Chambers, Bernard Durkan, Peter Fitzpatrick, Billy Kelleher, Mattie McGrath, Hildegard Naughton and Anne Rabbitte.

Senators Jerry Buttimer and Rónán Mullen.

The question was declared negated accordingly.¹⁴

- (x) **Resolved:** That the Committee recommend that termination of pregnancy be lawful where there is risk to the physical health of the woman [*Chairman*].

¹³ **Senator Catherine Noone abstained.**

¹⁴ **Senators Catherine Noone and Ned O’Sullivan abstained.**

Reason 7 – Risk to the mental health of the woman

- (xi) **Resolved:** That the Committee recommend that termination of pregnancy be lawful where there is a risk to the mental health of the woman [*Chairman*].

Reason 8 risk to the health of the woman

- (xii) **Question:** “*That the Committee recommend that termination of pregnancy be lawful where there is a serious risk to the health of the woman.*” **put.**

The Committee divided. Tá, 14; Níl, 6.

For: Deputies Lisa Chambers, Clare Daly, Bernard Durkan, Billy Kelleher, Catherine Murphy, Jonathan O’Brien, Kate O’Connell, Louise O’Reilly, Jan O’Sullivan, and Bríd Smith; Senators Jerry Buttimer, Paul Gavan, Ned O’Sullivan and Lynn Ruane.

Against: Deputies James Browne, Peter Fitzpatrick, Mattie McGrath; Hildegard Naughton and Anne Rabbitte; Senator Rónán Mullen.

The question was declared carried accordingly.¹⁵

Reason 9 – Pregnancy as a result of rape

Deputy Billy Kelleher moved:

- (xiii) “*That the Committee recommend, in view of the complexities of legislating for the termination of pregnancy for reasons of rape and incest, that it be more appropriate to deal with this issue by making the termination of pregnancy lawful with no restriction as to reason up to a gestational limit of up to 12 weeks, through a GP-led service or delivered in a clinical context and determined by law and licencing practice in Ireland.*”

The Committee divided: Tá, 12; Níl, 5.

For: Deputies Lisa Chambers, Clare Daly, Bernard Durkan, Billy Kelleher, Catherine Murphy, Hildegard Naughton, Kate O’Connell, Jan O’Sullivan and Bríd Smith; Senators Jerry Buttimer, Ned O’Sullivan and Lynn Ruane.

Against: Deputies James Browne, Peter Fitzpatrick, Mattie McGrath, and Anne Rabbitte; Senator Rónán Mullen.

The question was declared carried accordingly¹⁶.

- (xiv) **Resolved:** That the Committee recommend that termination of pregnancy be lawful where there is a pregnancy as a result of rape. [*Chairman*].

¹⁵ Senator Catherine Noone abstained.

¹⁶ Deputies Jonathan O’Brien and Louise O’Reilly and Senator Catherine Noone and Paul Gavan abstained.

Reason 10 – The unborn child has a foetal abnormality that is likely to result in death before or shortly after birth

Deputy Lisa Chambers moved:

- (xv) *“That the Committee accept that a medical diagnosis of fatal fetal abnormality made by a doctor acting in good faith requires a compassionate approach to the family affected and that termination of pregnancy services should be available in such circumstances.”*

Question put.

The Committee divided: Tá, 18; Níl, 3.

For: Deputies James Browne, Lisa Chambers, Clare Daly, Bernard Durkan, Billy Kelleher, Catherine Murphy, Hildegard Naughton, Jonathan O’Brien, Kate O’Connell, Louise O’Reilly, Jan O’Sullivan, Anne Rabbitte and Bríd Smith; Senators Jerry Buttimer, Paul Gavan, Catherine Noone, Ned O’Sullivan and Lynn Ruane.

Against: Deputies Peter Fitzpatrick, Mattie McGrath; Senator Rónán Mullen.

The question was declared carried accordingly.

- (xvi) **Resolved:** That the Committee recommend that termination of pregnancy be lawful where the unborn child has a foetal abnormality that is likely to result in death before or shortly after birth [*Chairman*]

Reason 11 – The unborn child has a significant foetal abnormality that is not likely to result in death before or shortly after birth

Deputy Bríd Smith moved:

- (xvii) *“That the committee recommend that the termination of pregnancy should be lawful without gestational limits in cases of significant foetal abnormality.”*

Question put.

The Committee divided. Tá, 5; Níl, 15.

For: Deputies Clare Daly, Catherine Murphy, Kate O’Connell, Bríd Smith; Senator Lynn Ruane.

Against: Deputies James Browne, Lisa Chambers, Bernard Durkan, Peter Fitzpatrick, Billy Kelleher, Mattie McGrath, Hildegard Naughton, Jonathan O’Brien, Louise O’Reilly, Jan O’Sullivan, Anne Rabbitte; Senators Jerry Buttimer, Paul Gavan, Rónán Mullen, Ned O’Sullivan.

The question was declared negated accordingly.¹⁷

- (xviii) **Question:** *“That the Committee recommend that the termination of pregnancy should be lawful when the unborn child has a significant foetal abnormality that is not likely to result in death before or shortly after birth.” put.*

The Committee divided. Tá, 5; Níl, 15;

For: Deputies Clare Daly, Catherine Murphy, Kate O’Connell, Bríd Smith; Senator Lynn Ruane.

Against: Deputies James Browne, Lisa Chambers, Bernard Durkan, Peter Fitzpatrick, Billy Kelleher, Mattie McGrath, Hildegard Naughton, Jonathan O’Brien, Louise O’Reilly, Jan O’Sullivan, Anne Rabbitte; Senators Jerry Buttimer, Paul Gavan, Rónán Mullen, Ned O’Sullivan.

The question was declared negated accordingly.¹⁸

¹⁷ Senator Catherine Noone abstained.

¹⁸ Senator Catherine Noone abstained.

*Reason 12 – Socio-economic reasons***Senator Lynn Ruane moved:**

(xix) *“That the Committee recommend that the termination of pregnancy should be lawful on socio-economic grounds determined by the woman in consultation with a doctor in accordance with best practice.”*

Question put.

The Committee divided: Tá, 3; Níl, 11.

For: Deputies Clare Daly, Bríd Smith and Senator Lynn Ruane.

Against: Deputies James Browne, Lisa Chambers, Bernard Durkan, Peter Fitzpatrick, Billy Kelleher, Mattie McGrath, Catherine Murphy, Hildegard Naughton, Anne Rabbitte; Senators Rónán Mullen, Ned O’Sullivan.

The question was declared negatived accordingly.¹⁹

(xx) **Question:** *“That the Committee recommend that the termination of pregnancy be lawful for socio-economic reasons.” put.*

The Committee divided. Tá, 5; Níl, 11;

For: Deputies Clare Daly, Catherine Murphy, Kate O’Connell, Bríd Smith; Senator Lynn Ruane.

Against: Deputies James Browne, Bernard Durkan, Peter Fitzpatrick, Mattie McGrath, Hildegard Naughton, Jonathan O’Brien, Louise O’Reilly, Anne Rabbitte; Senators Jerry Buttimer, Paul Gavan and Rónán Mullen.

The question was declared negatived accordingly.²⁰

*Reason 13 – No restriction as to reasons***Senator Lynn Ruane moved:**

(xxi) *“That the Committee recommend that the termination of pregnancy be lawful with no restriction as to reason, up to a gestational limit of up to 22 weeks.”*

Question put.

The Committee divided: Tá, 4; Níl, 17.

For: Deputies Clare Daly, Kate O’Connell, Bríd Smith; Senator Lynn Ruane.

Against: Deputies James Browne, Lisa Chambers, Bernard Durkan, Peter Fitzpatrick, Billy Kelleher, Mattie McGrath, Catherine Murphy, Hildegard Naughton, Jonathan O’Brien, Louise O’Reilly, Jan O’Sullivan, Anne Rabbitte; Senators Jerry Buttimer, Paul Gavan, Rónán Mullen, Catherine Noone, Ned O’Sullivan.

The question was declared negatived accordingly.

¹⁹ Deputies Jonathan O’Brien, Kate O’Connell, Louise O’Reilly, Jan O’Sullivan and Senators Jerry Buttimer, Paul Gavan and Catherine Noone abstained.

²⁰ Deputies Lisa Chambers, Billy Kelleher, Jan O’Sullivan and Senators Catherine Noone and Ned O’Sullivan abstained.

Module 3 – Ancillary Recommendations

Decriminalisation

Deputy Catherine Murphy moved:

- (xxii) *“That the Committee recommends that surgical terminations may only legally be carried out in a hospital or licensed clinic and that medical terminations should be provided for through the licensing of medications for that purpose and prescribed for by a qualified practitioner acting in good faith where terminations occur in such settings no criminal sanctions should apply and in cases where a woman procures or seeks to procure abortion for herself, regardless of the circumstances, that she be not guilty of an offence and that legislation to that end should be put in place.”*

Question put.

The Committee divided: Tá, 18; Níl, 3.

For: Deputies James Brown, Lisa Chambers, Clare Daly, Bernard Durkan, Billy Kelleher, Catherine Murphy, Hildegard Naughton, Jonathan O’Brien, Kate O’Connell, Louise O’Reilly, Jan O’Sullivan, Anne Rabbitte and Bríd Smith; Senators Jerry Buttimer, Paul Gavan, Catherine Noone, Ned O’Sullivan and Lynn Ruane.

Against: Deputies Peter Fitzpatrick, Mattie McGrath; Senator Rónán Mullen.

The question was declared carried accordingly.

Contraception

- (xxiii) **Resolved:** That the Committee recommend that the Minister for Health introduces a scheme for the provision of contraceptives, free of charge, to all people that wish to avail of them within the State. [Chairman]

Sex Education

- (xxiv) **Resolved:** That the Committee recommend a thorough review of sexual health and relationship education, including the areas of contraception and consent, in primary and post-primary schools, colleges, youth clubs and other organisations involved in education and interactions with young people. Sufficient time must be provided in the school’s curriculum for such education and it should be taught by suitably qualified personnel. The information should be provided in an impartial and factual manner that is independent of school ethos. [Chairman]

Obstetric Care/Counselling

- (xxv) **Resolved:** That the Committee recommend
- (a) that all women should have access to the same standard of obstetrical care, including early scanning, testing and anomaly scans, irrespective of geographic location and
 - (b) having regard to socio-economic status, improvements should be made to counselling and support facilities for women during and after pregnancy, including post-termination, and
 - (c) perinatal hospice services be made available to women who require them. [Chairman]

Appendix 5

Decisions of meeting of Thursday, 14 December 2017

Joint Committee on the Eighth Amendment of the Constitution

1. The Joint Committee met in private Session at 5.07 p.m. in Committee Room 4, LH 2000.

2. **Members Present**

The following Members were present:

Deputies James Browne Lisa Chambers, Clare Daly, Bernard Durkan, Catherine Murphy, Hildegard Naughton, Jonathan O'Brien, Kate O'Connell, Louise O'Reilly, Jan O'Sullivan, Anne Rabbitte and Bríd Smith.

Senators Jerry Buttimer, Paul Gavan, Catherine Noone (in the Chair), Ned O'Sullivan and Lynn Ruane.

3. **Consideration of Draft report**

The Committee proceeded to consider a draft report brought forward by the Chairman.

(i) Paragraphs 1.4 to 2.8, inclusive, *agreed to*.

(ii) Paragraph 2.9 *deleted*.

(iii) Paragraphs 2.10 to 2.14, inclusive, *agreed to*.

(iv) Paragraph 2.15

Paragraph amended, by leave, by the substitution of 'a number' for 'the majority'.

Paragraph, as amended, *agreed to*.

(v) Paragraph 2.16

Paragraph amended, by leave, by the addition of 'which should underpin guidelines drawn up by the Minister for Health in consultation with the Medical Council and the Nursing and Midwifery Board of Ireland.'

Paragraph 2.16, as amended, *agreed to*.

(vi) Paragraphs 2.17 and 2.18 *agreed to*.

(vii) Paragraph 2.19

Paragraph amended, by leave, by the deletion of "primary".

Paragraph, as amended, *agreed to*.

(viii) Paragraphs 2.20 to 2.29, inclusive, *agreed to*.

(ix) Paragraph 2.30

Paragraph amended, by leave, by the substitution of "strongly of the view" for "of the opinion" and, in subparagraph (b), by the substitution of "made available" for "conducted".

Paragraph, as amended, *agreed to*.

(x) Paragraphs 2.31 to 2.33, inclusive, *agreed to*.

(xi) Paragraph 2.34

Amendment proposed (Senator Gavan):

To replace 2.34 with the following: “The Committee, while noting the burden placed on the woman and the family in such situations, does not accept that these are sufficient grounds for termination.”

Amendment *agreed to*.

Paragraph 2.34, as amended, *agreed to*.

(xii) Paragraphs 2.35 and 2.36, *agreed to*.

(xiii) Paragraph 2.37

Paragraph amended, by leave, by the substitution of “believe” for “is of the view”.

Amendment, *agreed to*.

Paragraph 2.37, as amended, *agreed to*.

(xiv) Paragraph 2.38, *agreed to*.

(xv) Paragraph 2.39

Paragraph amended, by leave, by the deletion of “involving Irish women”.

Amendment, *agreed to*.

Paragraph 2.39, as amended, *agreed to*.

(xvi) Paragraph 2.40, *agreed to*.

(xvii) Paragraph 2.41, *deleted*.

(xviii) Paragraphs 2.42 to 3.3, inclusive, *agreed to*.

(xix) Paragraph 3.4

Paragraph amended, by leave, by the deletion of “pregnant”.

Paragraph, as amended, *agreed to*.

(xx) Paragraph 3.5 to 3.8, *agreed to*.

(xxi) Paragraph 3.9

Paragraph amended, by leave, by the substitution of “setting” for “licensed clinic”.

Amendment, *agreed to*.

Paragraph 3.9, as amended, *agreed to*.

(xxii) Paragraphs 3.10 and 3.11, *agreed to*.

(xxiii) Paragraph 3.12

Paragraph amended, by leave, by the insertion of “It is important to note that from the” before “evidence”.

Amendment, *agreed to*.

Paragraph 3.12, as amended, *agreed to*.

(xxiv) Paragraphs 3.13 to 3.18, inclusive, *agreed to*.

(xxv) Paragraph 3.19

Paragraph amended, by leave, by the insertion of “and furthermore it is delivered on an ad-hoc basis, for example not being covered until late in the education cycle.” after “education”.

Amendment, *agreed to*.

Paragraph 3.19, as amended, *agreed to*.

(xxvi) Paragraphs 3.20 to 3.23, inclusive, *agreed to*.

- (i) **Resolved:** That the draft report be the report of the Committee, subject to
- (ii) such further drafting changes as may be made by the Clerk under the direction of the Chairman and the additional appropriate Appendices [*Chairman*].

4. **Adjournment**

The Committee adjourned at 6.30p.m.

Appendix 6

Historical Timeline of the Law Relating to Abortion in Ireland

Prior to the Eighth Amendment

Prior to 1983, abortion was unlawful in Ireland by virtue of ss. 58 and 50 of the Offences Against the State Act 1861 and s. 10 of the Health (Family Planning Act) 1979. Distribution of material that advocated abortion was also illegal under the Censorship of Publications Act 1946, although this concerned written information rather than the verbal counselling of pregnant women.

The passage of the Abortion Act in the United Kingdom in 1967 made abortion before viability lawful in England under certain, broadly-interpreted conditions. This relative ease in the accessibility of information, together with concerns about the adequacy of existing provisions in Ireland and the possibility of abortion being deemed lawful in Ireland by judicial interpretation²¹, led in 1983 to a referendum on the issue of abortion, and the adoption of the provision which became Article 40.3.3 of the Constitution; the Eighth Amendment.

In his submission to the Joint Committee, Professor Anthony McCarthy, Consultant Psychologist at the National Maternity Hospital, referred to the illegal abortions which took place in Ireland prior to them becoming legally available in the UK, and further he went on to discuss the prevalence of infanticide in Ireland in the early half of the 20th century²².

The Eighth Amendment and its Interpretation in Irish Courts

Article 40.3.3, being the Eighth Amendment reads as follows:

“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.”

A number of cases came before the courts concerning the interpretation of the Eighth Amendment and the provision of information or referral to abortion services available in other countries. In 1986, the High Court granted, and the Supreme Court upheld, an application for an injunction restraining two counselling agencies from informing women of the contact details and methods of communication with abortion clinics in the UK and from assisting women to travel abroad to obtain abortions²³. The matter was appealed to the European Court of Human Rights which, using a careful scrutiny test, found that the ban on information violated Article 10 of the European Convention because it prevented clinics from providing information and was disproportionate to the aims pursued by the injunction²⁴. The Court also held that the injunction disproportionately harmed women who did not have the resources to find out how to get information, and only served to prolong the amount of time that women would have to wait before having an abortion, which could be detrimental to their health²⁵.

²¹ There was some debate as to whether the Supreme Court would follow the course adopted in the United States in the case of *Roe v. Wade* 410 US 113 (1973).

²² See p. 54 of transcript of the 8th November 2017. Professor McCarthy went on to refer to Cliona Rattigan’s seminal historical study: “What Else Could I Do?” a detailed study of hundreds of cases of infanticide in Ireland between 1900 and 1950, and the work of Dr. Elaine Farrell, who studied 4645 infanticides in Ireland between 1850 and 1900 and published her work entitled “A Most Diabolical Deed”.

²³ *AG (SPUC) v Open Door Counselling Ltd. and Dublin Wellwoman Centre Ltd.* [1988] IR 593

²⁴ *Open Door Counselling* 15 EHRR at 268.

²⁵ *Ibid* at 267.

But it was the landmark case of *Attorney General v. X*²⁶ in 1992 which truly catapulted the interpretation of the Eighth Amendment to the forefront of public and political discourse. The case concerned a 14 year old victim of rape. Her parents intended to bring her to the United Kingdom for a termination and sought the advice of An Garda Síochána in relation to scientific testing on retrieved foetal tissue with a view to determining paternity. Having been consulted on the case, the Attorney General sought an injunction to restrain the girl from leaving the jurisdiction or from arranging or carrying out a termination of the pregnancy. The High Court granted the injunction, but on appeal to the Supreme Court, the injunction was lifted with the majority of the Court holding that Article 40.3.3 permitted abortion where there was a real and substantial risk to the life, as opposed to the health, of the mother, and which risk included suicide. Three members of the Court also took the view that a woman's right to travel had to be read subject to the right to life of the unborn. Some of the *obiter dicta* of the majority in the Supreme Court also indicated that the constitutional right to travel could be restrained so as to prevent an abortion taking place in circumstances in which there was no threat to the life of the mother: the right to life simpliciter could not take precedence over the right to life of the unborn. The decision in *Attorney General v. X* also had implications for the existing constitutional ban on the dissemination of information about abortion services abroad as it followed from the Supreme Court ruling that women whose lives were at risk could not lawfully be denied such information.

The 1992 Referendum and the Thirteenth and Fourteenth Amendments

Prompted by judgment of the European Court of Justice relating to the right to information in *Open Door Counselling*, the controversy surrounding the *X* case, and as part of a commitment to secure approval for the Treaty on European Union, the Government resolved to address the constitutional issues surrounding abortion, the right to travel and the right to information by way of referendum. This took place in November 1992.

Three proposals were put forward, the substantive issue being to remove the ground relating to risk to life of the mother, where such risk was one of self-destruction. This proposed Twelfth Amendment of the Constitution was rejected. The second proposal or Thirteenth Amendment, concerned the issue of travelling abroad to obtain an abortion, and the third proposal of Fourteenth Amendment concerned the provision of information relating to services lawfully available in another State. Both of these amendments were passed by the electorate.

The Regulation of Information (Services Outside the State for the Termination of Pregnancies) Bill 1995 was subsequently enacted. The Act allows doctors, advisory agencies and individual counsellors to give information on abortions services abroad should a woman request it. However, the Act requires any information on abortion services be provided together with all other options relevant to the woman's circumstances and prohibits service providers (including doctors) from making an appointment for an abortion in another state on behalf of their client. Those services which are not providing information on abortion services abroad but do engage in pregnancy counselling are not subject to the provisions of the Act.

²⁶ [1992] 1 IR 1

The Constitution Review Group Report 1996

In 1996 the Constitution Review Group concluded that whilst in principle the issue of abortion should be approached by way of constitutional amendment, given the lack of public consensus surrounding constitutional change, legislative reform was the only practical way forward. It recommended the introduction of legislation to regulate the provision of abortion in Ireland within the circumstances contemplated by the *X* case, incorporating such matters as the definition of “unborn”, protection for appropriate medical intervention, certification of “real and substantial risk to life of the mother”, and a time limit for lawful abortion²⁷.

The ‘C’ Case

A 13 year old girl in the care of the Eastern Health Board became pregnant following a rape. The Eastern Health Board, in accordance with the girl’s wishes, applied to the District Court to make all necessary arrangement to bring her abroad for an abortion. The girl, C’s, parents sought to challenge these orders by way of judicial review. The High Court held that, where evidence had been given that the girl might commit suicide unless allowed to terminate her pregnancy, there was a real and substantial risk to her life and she was therefore entitled to an abortion in Ireland.

The Interdepartmental Working Group Green Paper on Abortion September 1999 (“Green Paper on Abortion”)

In 1999, the Interdepartmental Green Paper on Abortion²⁸ outlined seven possible constitutional and legislative solutions: an absolute constitutional ban on abortion; an amendment of the Constitution so as to restrict the application of the *X* case; the retention of the then current position; the retention of the constitutional *status quo* with a legislative restatement of the prohibition on abortion; legislation to regulate abortion as defined in the *X* case; a reversion to the pre-1983 position; and permitting abortion beyond the grounds specified in the *X* case.

The All-Party Oireachtas Committee on the Constitution

The Green Paper was referred by the Government to the All-Party Oireachtas Committee on the Constitution for consideration, which began a process of consultations with interested parties, including a series of public hearings, before publishing its own report in 2000²⁹. The Committee could not reach consensus on the substantive legal issue of abortion, finding that none of the seven options canvassed in the Green Paper commanded unanimous support.

Instead, three approaches were found to command substantial but not majority support in the Committee. The first approach was a retention of the legal *status quo* focusing instead on a strategy to reduce the numbers of crisis pregnancies; the second was to support the plan to reduce the number of crisis pregnancies, accompanied by legislation which would protect medical intervention to safeguard the life of the mother within the existing constitutional framework; and the third was to amend the Constitution to prohibit the limited grounds for lawful abortion permitted by the *X* case, whilst also supporting the plan to reduce crisis pregnancies. The Report was sent to a Cabinet subcommittee, chaired by the Minister for Health, for consideration.

²⁷ See *Report of the Constitution Review Group (1996, Pn 2632) at pp. 273 to 279.*

²⁸ (1999 Pn 7596).

²⁹ See *The All-Party Oireachtas Committee on the Constitution Fifth Progress Report: Abortion (Pn 9183, 2000).*

Proposed Twenty-fifth Amendment to the Constitution

The Government opted to amend the Constitution by removing the threat of suicide as a ground for lawful abortion. In 2002 a third referendum on abortion was called: the proposed Twenty-fifth Amendment to the Constitution. The proposal was put to the people by way of draft legislation and was ultimately defeated, albeit by a narrow margin.

D v. Ireland

In 2006, the applicant, who was pregnant with twins travelled to the U.K. for a termination after learning that one foetus had died in the womb and the other had developed a fatal anomaly. She later brought a case against Ireland before the European Court of Human Rights, arguing that Ireland's ban on abortion in the case of fatal foetal anomalies violated her rights under Articles 1, 3, 8, 20, 13 and 14 of the European Convention on Human Rights³⁰. In response, Ireland argued that, in the Applicant's particular circumstances, she could have been legally entitled to an abortion in Ireland should she have gone through the Irish courts. The European Court of Human Rights ruled the case inadmissible as the Applicant had failed to exhaust domestic remedies before the Irish courts.

Miss 'D' Case

In 2007, a 17-year old girl in the care of the State discovered she had an anencephalic pregnancy and sought the permission of the HSE to travel to obtain a termination³¹. The girl was adamant that she was not suicidal. The High Court ultimately ruled that she had a constitutional right to travel.

A, B, and C v. Ireland

Three women, all of whom had been living in Ireland when they became pregnant and had been obliged to travel to the U.K. to terminate their pregnancies, argued that Ireland had breached their human rights under Article 2 (right to Life), Article 3 (Prohibition of Torture), Article 8 (Right to Respect for Family and Private Life), and Article 14 (Prohibition of Discrimination) of the European Convention on Human Rights³². The Grand Chamber of the European Court of Human Rights unanimously held that Ireland's failure to implement the existing constitutional right to a lawful abortion in Ireland when a woman's life was at risk violated Applicant C's rights under Article 8 of the European Convention on Human Rights because of a failure to provide any implementing legislative or regulatory regime by which C could have established whether she qualified for a lawful abortion in Ireland in accordance with Article 40.3.3. of the Constitution. C had a rare form of cancer and when she discovered she was pregnant, feared the pregnancy could increase the risk of her cancer returning. There was no mechanism available to her in Ireland to assess such a risk.

³⁰ *D v. Ireland*, App. No. 26499/02, ECtHR.

³¹ *D v. District Judge Brennan, HSE and Ireland (Unrep., High Court, McKechnie J., 9/5/2007)*

³² *A, B, and C v. Ireland (2011) 53 EHRR 13.*

Protection of Life During Pregnancy Act 2013

In June 2011, the Government submitted an Action Plan to the Council of Europe stating that an expert group would be established to advise on the implementation of the ECHR judgement in *A, B and C v. Ireland*. The Expert Group ultimately reported to the Government in November 2012, setting out the framework for legislation to clarify the criteria under which terminations of pregnancy could be carried out in order to save a woman's life³³.

Just before the publication of the report, in October 2012, Savita Halappanavar died whilst undergoing a miscarriage at Galway University Hospital. The report into her death found over-emphasis on the need not to intervene until the foetal heartbeat stopped, together with under-emphasis on managing the risk of infection and sepsis³⁴.

In the aftermath of the significant public outcry, and in light of the Expert Group report, the Government announced an intention to legislate for the *X* case in order to comply with the European Court of Human Rights judgment in *A, B and C v. Ireland*. Extensive hearings were held by the Oireachtas Joint Committee on Health in January 2013. The General Scheme of a Bill was published in April 2013 with a further set of hearings before the Joint Committee on Health in May 2013.

The Protection of Life During Pregnancy Act 2013 was passed in July 2013, commencing in January 2014. The Act retained the criminalisation of abortion in Ireland and permitted abortion only where there is a risk to the life of a pregnant woman. A Guidance Document for Health Professionals on the Implementation of the 2013 Act was published in September 2014.

The Mellett and Whelan Cases

In June 2016, the United Nations Human Rights Committee found in *Mellet v. Ireland*³⁵ that Ireland violated Article 7 (right against torture, inhumane or degrading treatment), Article 17 (right to privacy) and Article 26 (right to non-discrimination) of the International Covenant on Civil and Political Rights (ICCPR) for not providing the Applicant with access to an abortion in circumstances in which the child was suffering from a fatal foetal abnormality. The Committee stated that, in addition to the shame and stigma associated with the criminalisation of abortion in the Applicant's circumstances, her suffering was also aggravated by the obstacles she faced in getting information about the appropriate medical options. The Committee called for the Government to offer the Applicant compensation, counselling and to change its laws to allow for abortion in cases of fatal foetal abnormality.

This judgment was almost entirely replicated in a similar case a year later in the case of *Whelan v. Ireland*³⁶ in 2017, in which the Human Rights Committee came to similar findings.

³³ See Report of the Expert Group on Judgment in *A, B, and C v. Ireland* (Department of Health and Children, 2012).

³⁴ See Investigation of Incident 50278 from time of patient's self referral to hospital on the 21st of October 2012 to the patient's death on the 28th of October, 2012 (HSE, June 2013).

³⁵ ICCPR Human Rights Committee, *Amanda Mellet v Ireland*, 9 June 2016, UN Doc CCPR/C/116/D/2324/2013.

³⁶ ICCPR Human Rights Committee, *Siobhán Whelan v Ireland*, 12 June 2017, UN Doc CCPR/C/119/D/2425/2014.

The Citizens' Assembly

In November 2015, the Taoiseach, Enda Kenny, proposed that the question and issues surrounding abortion be considered by “a Citizens’ Convention on the constitution, or whatever title would be appropriate”. A motion to establish the Citizens’ Assembly was debated and passed by both Houses of the Oireachtas in July 2016, to consider and make recommendations on the Eighth Amendment.

The Assembly considered Article 40.3.3 over the course of five weekends from November 2016 to April 2017. The Assembly’s recommendations were determined through four distinct ballot papers, which were sequential in nature. In summary, the Assembly recommended by a majority vote that Article 40.3.3 should be replaced with a constitutional provision that explicitly authorises the Oireachtas to legislate to address termination of pregnancy, any rights of the unborn, and any rights of the pregnant woman.

The Assembly then made further recommendations about what should be included in this legislation. Specifically, the reasons, if any, for which termination of pregnancy should be lawful in Ireland, which recommendations included risk to the health of the woman, fatal foetal abnormality, significant foetal abnormality, pregnancy as a result of rape and socio-economic reasons. Separately the Assembly voted to recommend that a distinction should not be drawn between the physical and mental health of the woman, and that termination of pregnancy should be lawful without restriction up to 12 weeks. Recommendations were also made as to gestational limits, and five further ancillary recommendations were made relating to the wider policy context related to the topic of the Eighth Amendment. On 29 June 2017, the Assembly’s official report was *laid before* the Oireachtas and published.

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