National Women's Council of Ireland
Comhairle Náisiúnta na mBan in Éirinn

Submission to the Citizens' Assembly on its consideration of the Eighth Amendment to the Constitution

December 2016

TO THE MEMBERS OF THE CITIZENS' ASSEMBLY

Orla O'Connor, Director

Dear Members of the Citizens Assembly,

The decision before you on the future of the 8th Amendment is a critical one for women now and for our daughters into the future.

All our lives are complex. Our decisions are based on a whole variety of circumstances, our backgrounds, our future aspirations for ourselves and the people we love around us. The decision to have a child is one of the most significant decisions a woman will make. It will affect everything about her future thereafter. I want women to be able to make that decision with the fullest range of choices and supports possible and I firmly believe that abortion, the choice not to proceed with a pregnancy, to be one of those choices which should be available in Ireland.

As Director of National Women's Council of Ireland, a position that I feel proud and privileged to hold, I have listened and participated in many discussions on abortion in Ireland. I fully understand the complexity of the issue and how women's and men's views change in different circumstances. I have heard women talk, for the first time, of how they felt having to travel to the UK and how they cannot talk to families and friends about the experience because of the shame and stigma they feel and how they might be judged. That is not an Ireland I want for young women and it's not an Ireland I believe that the majority of people in Ireland want for themselves and their children.

The Constitution is our nations overarching statement of our values and of the ideals for Irish society. It should be a cornerstone in the protection of women's rights in Ireland. The 8th Amendment is a clear statement of how - currently - we do not value women and the choices they make. It reduces women to being incapable of making the best decisions for themselves and those around them. It harks back to an Ireland that kept women hidden, locked them away, that took their children from them, all because they wouldn't fit in with the societal norms of what was the ideal woman and mother. Women, men and children are living with the consequences ever since and we can see the trauma unfold, inquiry after inquiry.

At the heart of this debate are the following questions: Do we as a nation want to maintain the 8th Amendment, meaning that women will continue to have abortions, continue to suffer trauma, shame and stigma and continue to be isolated from family friends at a very difficult period in their lives? Or do we as a

nation trust women to make the best decisions for themselves in pregnancy? And do we want to offer all of the choices and supports to women to make those decisions?

If we believe the latter is true, we must remove the 8th Amendment from the Constitution and introduce legislation to facilitate those choices and provide those supports. NWCI would appreciate the opportunity to present our position to you at one of your upcoming meetings.

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Orla O'Connor
Director,
National Women's Council of Ireland

INTRODUCTION

About National Women's Council of Ireland

Founded in 1973, the National Women's Council of Ireland (NWCI) is the leading national women's membership organisation. We represent and derive our mandate from our membership, which includes over 180 groups and organisations from a diversity of backgrounds, sectors and locations across Ireland. We also have a growing number of individual members who support the campaign for women's equality in Ireland. Our mission is to lead and to be a catalyst for change in the achievement of equality for women. Our vision is of an Ireland and of a world where women can achieve their full potential and there is full equality for women.

NWCI is the chair of the National Observatory on Violence against Women, convenor of the Women's Human Rights Alliance and a member of a broad range of networks including the Coalition to Repeal the Eighth Amendment, the Community Platform and Community and Voluntary Pillar. At a European level, NWCI sits on the Executive Committee of the European Women's Lobby.

NWCI's expertise in informing the development of government policy and legislation has been widely recognised. We currently sit by invitation on the Monitoring Group of the Second National Strategy on Domestic, Sexual and Gender Based Violence and the Oversight Group of the Second National Action Plan on Women, Peace and Security. Our role in contributing to government's task of addressing all areas of concern for women in Ireland has been explicitly recognised in the National Women's Strategy 2007–2016, prepared by the Department of Justice, Equality and Law Reform. The Strategy acknowledged, in particular, the value our organisation can provide 'by identifying the needs of [our] member organisations and their members'. Indeed, NWCI was invited to present to the Joint Oireachtas Committee on Health and Children on the Protection of Life During Pregnancy Bill 2013. We were also invited to inform the Constitutional Convention in its consideration of Articles 41.2 – the 'women in the home' clause – and other areas of the Convention's deliberations impacting on women.

We operate specific policy programmes in relation to women in politics, gender and health, gender and local development, and young women and feminism. We also focus on economic equality for women, reducing the gender pay and pensions gap and tackling low pay and precarious work.

One of NWCI's core values and beliefs[1], as stated in our Strategic Plan 2016-2020 *Driving Women's Equality,* is the "protect[ion] and respect for the bodily integrity and security of women and girls. NWCI believes that bodily integrity is a human right and the right to make one's own choices about one's body for oneself is a basic personal freedom. The violation of this right is at the heart of every act of gender based violence, it is at the core of the prohibition of abortion. It is essential that the rights of women and girls to bodily integrity worldwide are protected and vindicated within every state provided legal system."

NWCI has worked on the issue of abortion for over thirty years with women and women's organisations throughout Ireland. Our position on abortion has developed over time in recognition of the diversity of views and perspectives which women have on the issue. There has been a considerable shift in public attitudes to abortion over the past ten years in particular and our position directly reflects this[2]. We have been mandated by our membership since 2009 to support free, safe and legal abortion as a choice in pregnancy. This position is rooted in an analysis of gender equality, women's human rights and social inclusion. Our role is to give voice to the experiences of women in Ireland who remain largely voiceless in this debate due to the stigma that surrounds abortion in Ireland and to support women's access to reproductive health services.

Having control over if, when and how women have children is fundamental to achieving equality between women and men and an integral element of a woman's right to self-determination. To deny a woman that control impinges directly on her right to fully participate and her ability to prosper in society by accessing education and training, entering and progressing in the workplace, managing her health and wellbeing, and engaging in civic life.

This submission sets out for the consideration of the members of the Citizens' Assembly:

- Why the Constitution is not the appropriate place to regulate for women's reproductive health
- The impact on the women of Ireland of the Eighth Amendment
- How other European jurisdictions legislate for abortion

Social context of the Eighth Amendment to the Constitution

The Eighth Amendment is reflective of Irish society at the time of its enactment to the Constitution in 1983: an Ireland in which women were incarcerated in workhouses for bearing children out of wedlock or leaving abusive husbands; in which contraceptives could only be dispensed by a pharmacist on the presentation of a

[1] *Driving Women's Equality NWCI Strategic Plan 2016 - 2020 - Summary* (2016) Available at: http://www.nwci.ie/images/uploads/NWCI_Strategic_Plan_2016-2020_Summary_final.pdf (Accessed: 15 December 2016).
[2] Irish Family Planning Association *Abortion in Ireland: Public opinion*. Available at: https://www.ifpa.ie/Hot-Topics/Abortion/Public-Opinion (Accessed: 15 December 2016).

valid medical prescription from a practising doctor; and in which divorce and homosexuality were illegal, but marital rape was not. It reflects a society which didn't trust women to make choices about their own lives.

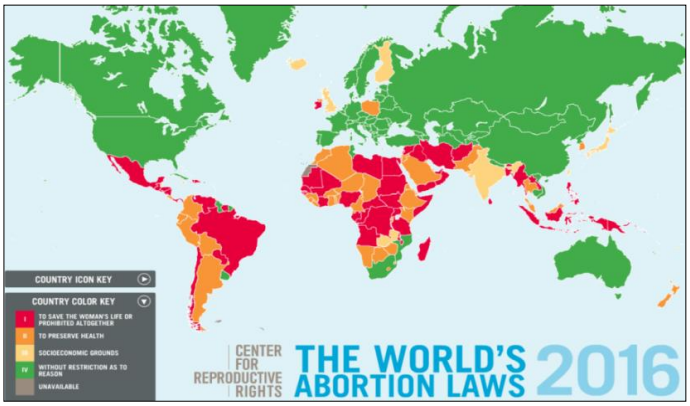
A country's laws and its Constitution should act as a reflection and protection of the values of its society. Irish society has changed significantly since 1983 and, while we now live with the legacy of that past society, we have an opportunity to remove the most significant obstacle to women in Ireland making decisions about, and taking responsibility for, their own reproductive health, including if and when they want to have children. It is unthinkable, and yet it is the case in Ireland, that our society maintains that a woman should be penalised for ending a pregnancy – wanted or unwanted – either with criminalisation and detention, or with being forced to carry that pregnancy to term and experience childbirth against her will.

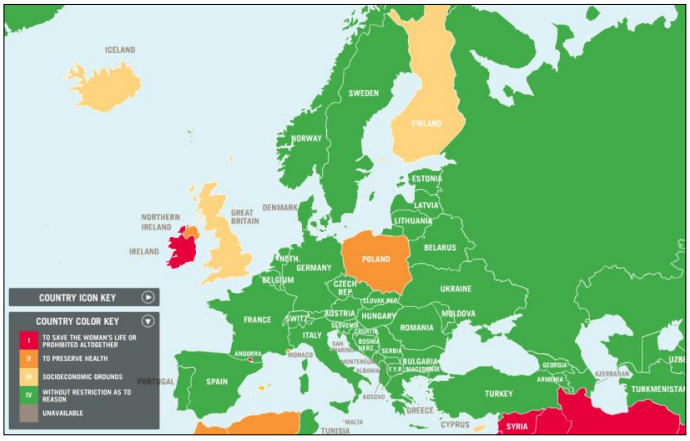
NWCI trusts that the 99 citizens of the assembly, if provided with reliable, accurate and comprehensive information, will recognise the need for and recommend:

- A referendum to repeal the Eighth Amendment to the Constitution, without replacement or amendment;
- The removal of all criminal sanctions on women seeking and accessing abortion services in Ireland;
- The removal of criminal sanctions on provision and performance of abortion in the Republic of Ireland;
- The regulation of abortion services and medical professionals performing abortions through customary medical disciplinary procedures and general criminal law;
- The introduction of legislation providing for access to abortion on a woman's request, combined with abortion in certain circumstances, in line with good practice in other European countries.

THE CONSITUTION: NO PLACE TO REGULATE REPRODUCTIVE HEALTH

Ireland has one of the most restrictive regimes in the world and the most restrictive regime in Europe. In the maps to the right, countries coloured reds either prohibit abortion entirely or permit it only to save a woman's life. Countries coloured green permit abortion without restriction as to reason, and the woman makes the decision about whether to terminate a pregnancy[3].





The law relating to abortion in Ireland comprises Article 40.3.3 of the Constitution, the Protection of Life During Pregnancy Act 2013 and the Abortion Information Act 1995. Article 40.3.3 is formed by the Eighth (1983), Thirteenth and Fourteenth (both 1992) Amendments.

The Eighth Amendment to the Constitution

In 1983, a referendum to insert the Eighth Amendment into the Constitution was passed. It equates the right to life of a foetus with that of a pregnant woman. It states, 'The State acknowledges the right to life of the unborn and, with due regard to the equal right of the life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right'[4]. Legislation criminalising abortion has been in place in Ireland since 1861 under sections 58 and 59 of the Offences against the Person Act, which remained in force until repealed by the Protection of Life During Pregnancy Act 2013; the introduction of a constitutional ban was intended to preclude the legislature from liberalising access to abortion without a referendum.

[3] Images sourced from the Centre for Reproductive Rights. For more information, please see website.
[4] Ireland. (2003) *Bunreacht na hEireann= constitution of Ireland*. Dublin: Government Publications Sale Office.

The Thirteenth and Fourteenth Amendments to the Constitution

In 1992, in what became known as the X case[5], the Supreme Court interpreted Article 40.3.3 as guaranteeing the right to terminate a pregnancy lawfully and within the State where there is a real and substantial risk to the life – as opposed to the health – of the pregnant woman, including the threat of self-destruction. In response to the X case, referenda were held which saw the introduction of the Thirteenth and Fourteenth Amendments to the Constitution. The Thirteenth Amendment states that nothing can limit the freedom to travel to another State to procure an abortion[6] while the Fourteenth Amendment governs the availability of information regarding abortion services[7].

The Effect of Regulating Reproductive Health in the Constitution

Former Attorney General Peter Sutherland predicted at the time of the referendum on the Eighth Amendment that, if passed, would introduce an uncertain and practically unusable position to Irish law[8]. It is as a result of this 'unliveable'[9] restriction that Irish women and medical professionals are faced with criminal sanctions, including imprisonment, provided for in the Protection of Life During Pregnancy Act 2013. Dr. Brendan O'Shea, council member of the Irish College of General Practitioners, described the Act's provisions to be "cumbersome, intensely stressful and difficult by both GPs , and far more importantly , by the women concerned , and their partners"[10]. It is clear that as long as reproductive health is regulated through the Constitution, Ireland will continue to grapple with unworkable legislative restrictions. If the Eighth Amendment was designed as a measure to prevent women from Ireland having abortions then it has failed, and its continued presence in our Constitution and in the lives of women only serves as an impediment to their health and wellbeing.

Protection of Life During Pregnancy Act 2013

Almost twenty years after the X case ruling, in 2010 A, B & C v. Ireland case, the European Court of Human Rights unanimously found that Ireland's failure to implement the existing constitutional right to a lawful abortion in Ireland when a woman's life is at risk violated Article 8 of the European Convention on Human

[5] A.G. v. X [1992] IESC 1; [1992] 1 IR 1 (5th March, 1992) URL: http://www.bailii.org/ie/cases/IESC/1992/1.html (Accessed: 15 December 2016)
[6] Ireland. (2003) *Bunreacht na hEireann= constitution of Ireland*. Dublin: Government Publications Sale Office.
[7] ibid
[8] See memoranda of Attorney General Peter Sutherland to Government of 15 February 1983 and 1 March 1983 (National Archives Ref 2013/100/557-569).
[9] R Fletcher, *Making Law Liveable: Bringing Feminist Knowledge of Care into the Curriculum*'(Revaluing Care Research Network, 25 February 2015) <http://revaluingcare.net/making-law-liveable-bringing-feminist-knowledge-of-care-into-the-curriculum/> accessed 22 March 2015.
[10] O'Shea, B. (2016) *ICGP Submission to the Citizen's Assembly*. Available at: http://citizensassembly.ie/en/Meetings/Brendan-O-Shea-ICGP.pdf (Accessed: 15 December 2016).

Rights[11]. The Protection of Life During Pregnancy Act 2013 was introduced to regulate access to lawful termination of pregnancy in accordance with the X Case and the 2010 judgement. While the 2013 Act gives legal effect to the limited constitutional right to abortion when a pregnant woman's life is at risk, in practice this does nothing to ensure the actual and effective exercise of this right. Procedures under the Protection of Life During Pregnancy Act 2013 are cumbersome and discriminatory.

In 2014, it was widely reported in the media that a woman seeking asylum in Ireland and pregnant through rape, who was confirmed as suicidal by two panel psychiatrists, was subjected to an unwanted Caesarean section, rather than a termination. Therefore, access to abortion in constitutionally protected circumstances (i.e. access to a constitutional right) is determined by a medical decision related to the foetus and not to the health, well-being or life of the pregnant woman.

The Act introduces an onerous and unworkable test into clinical practice, and the accompanying guidelines for the medical profession, meant to be read in conjunction with the Act, make no reference to international best practice standards,[12] are restrictively drafted and essentially provide no assistance to medical professionals as to how they are to determine that a risk to health involves a risk to life. The result, according to Master of the National Maternity Hospital Dr. Rhona Mahony, is the distortion of clinical decision-making[13] and resultant delays to a woman's access to the healthcare she requires, risking her health or her life.

The impact of the Eighth Amendment on Women's Physical and Mental Health

During 2013 hearings before the Joint Oireachtas Committee on Health and Children on the Protection of Life During Pregnancy Bill, Master of the Rotunda Hospital Dr. Sam Coulter Smyth reported that the incidence of potentially life-threatening complications in pregnancy was rising due to increased number of women having children later in life and a higher incidence of health risks such as obesity, and that he was aware of six situations in the previous year where a pregnant woman would have died without intervention[14].

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[11] Case of A , B and C v. IRELAND (Application no. 25579/05) (European Court of Human Rights, Judgment Strasbourg 16 December 2010

[12] Implementation of the Protection of Life During Pregnancy Act 2013: Guidance Document for Health Professionals. Available at http://health.gov.ie/wp-content/uploads/2014/09/Guidance-Document-Final-September-2014.pdf.

[13] Schiller, R. (2016) *Regulation of abortion law 'not appropriate' - Savita inquiry expert*. Available at: http://www.independent.ie/irish-news/politics/regulation-of-abortion-law-not-appropriate-savita-inquiry-expert-35277686.html (Accessed: 15 December 2016).

[14] Joint Oireachtas Committee on Health and Children (2013) *Implementation of Government Decision Following Expert Group Report into Matters Relating to A, B and C v. Ireland,* Available at:

"Is termination of pregnancy ever necessary? I would say yes. In our hospital last year we had six situations where I can absolutely tell you for sure, that if intervention had not been made, if that mother had not died soon after the event, she would have died subsequently."

Dr. Sam Coulter Smyth, Master of the Rotunda Hospital, January 2013

Irish law, however, does not permit abortion in cases where carrying a pregnancy to term puts the physical or mental health or wellbeing of the woman in danger. No other country in Europe makes the unworkable distinction made in Irish law, which permits abortion to save a woman's life, but not to preserve her health. A legally induced abortion under UK law must be certified under one of seven grounds. Of the 3,451 women resident in Ireland who underwent an abortion in England and Wales in 2015, 3,316 did so under Ground C, that 'the pregnancy has not exceeded its twenty-fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman'[15]. 85% of these abortions take place in the first 12 weeks[16].

A health risk can turn into a risk to a woman's life in particular circumstances, and it can be difficult in practice for doctors to judge when intervention is legally justified. In the context of fear of criminal prosecution, medical services providers are effectively prevented from exercising clinical discretion in their patients' best interests and applying best clinical practice by intervening when a serious health risk presents. A Health Services Executive report into the tragic death of Savita Halappanavar while in receipt of maternity care in Galway University Hospital in 2012, found that the uncertainty created by Ireland's abortion laws was a "material contributory factor" in her death[17].

Women with pre-existing health problems who require access to abortion services are forced to travel without a proper referral from their doctor so that the attending clinic may not be in receipt of proper or full medical records. Women with a diagnosis of fatal foetal abnormality and those who decide to terminate a pregnancy because of risk to their health are effectively abandoned by the Irish health services and made to feel like criminals.

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http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/committeetakes/HEJ2013010800002?opendocument#Z00075 (Accessed: 15 December 2016).

[15] United Kingdom, D. of H. (2016) *Abortion Statistics, England and Wales: 2015 Summary information from the abortion notification forms returned to the Chief Medical Officers of England and Wales.* Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/570040/Updated_Abortion_Statistics_2015.pdf (Accessed: 15 December 2016).

[16] ibid

[17] Health Service Executive (2016) *HSE publishes report of the investigation into the death of Ms. Savita Halappanavar*. Available at: http://www.hse.ie/eng/services/news/media/pressrel/newsarchive/2013archive/jun13/savitareport.html (Accessed: 15 December 2016).

Women who are victims of domestic violence are at higher risk during pregnancy[18]. Women in this situation may decide that terminating the pregnancy is their best or only option. Many women experiencing violence may not have the resources or be able to leave their partner for long enough to access an abortion abroad. The Eighth Amendment is putting these women's lives at risk.

Women who have become pregnancy as a result of rape and consider the pregnancy a crisis pregnancy are also forced to travel. The suggestion that Ireland should legislate for abortion in instances of rape as an exceptional circumstance is unworkable. Due to feelings of shame, fear and a belief that the justice system would not be able to assist them, 79% of women surveyed in Ireland who had experienced physical or sexual violence had not reported it[19]. Legislators must consider if and how the woman might be required to prove she had been raped – would she have had to foresee the pregnancy, attend a doctor immediately after the assault, undergo an examination, ensure she received certification from the correct authority, who would the certifying authority be, etc.?

By situating women's reproductive decision making in the context of criminality, the law infringes on women's dignity and autonomy. The 2011 interim report of the UN Special Rapporteur on the Right to Health[20] highlighted the way in which criminal law shifts the burden of realising the right to health away from the State and onto pregnant women, some of whom may be seriously ill. The woman must seek treatment and an individual doctor must make a legal determination in a context where a medical decision could become the subject of a criminal enquiry, a prosecution and potentially result in a criminal conviction.

The failure to provide services in Ireland creates considerable psychological, physical and emotional hardship for those who are either forced to travel outside the country for abortion or forced to carry an unwanted pregnancy to term and to parent because of restrictions imposed on them. Many women report feelings of fear, stigma, secrecy, isolation and lack of support.

The United Nations states that the right of women to enjoy the highest attainable standard of physical and mental health includes the right to control one's health and body, including sexual and reproductive

[18] Krug, E.G. (2002) *World report on violence and health*. Geneva: World Health Organization.
[19] European Union Fundamental Rights Agency (2014) *Violence against women: An EU-wide survey. Main results report*. Available at: http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14_en.pdf (Accessed: 15 December 2016).
[20]Anand Grover. (2011) *Report to the General Assembly (main focus: Criminalisation of sexual and reproductive health)*. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf?OpenElement (Accessed: 15 December 2016).

freedom. Where a barrier to health is created by a criminal law or other legal restrictions, it is the obligation of the State to remove it.

In June 2016, the United Nations Human Rights Committee issued its views in the case of Amanda Mellet v. Ireland[21] and found that Ireland's abortion laws violated Ms. Mellet's right to freedom from cruel, inhuman or degrading treatment and her right to privacy. It also concluded that Ms. Mellet, as a pregnant woman in a highly vulnerable position after learning that her pregnancy was not viable, had her physical and mental anguish exacerbated by not being able to continue receiving medical care and health insurance coverage for her treatment from the Irish health care system.

The Committee's view outlined the ordeal experienced by Ms. Mellet when faced with the choice of continuing with her non-viable pregnancy or travelling to another country while carrying a dying foetus, at personal expense and separated from the support of her family and to return while not fully recovered[22]. The Committee noted the shame and stigma she experienced, which was associated with the criminalisation of abortion and the fact of having to leave her baby's remains behind and later having them unexpectedly delivered to her by courier[23].

It highlighted Ireland's refusal to provide her with necessary and appropriate post abortion and bereavement care. The Committee further noted that the options available to Ms. Mellet were a source of intense suffering and that her travel abroad to terminate her pregnancy had significant negative consequences for her that could have been avoided if she had been allowed to terminate her pregnancy in Ireland[24]. The Committee ruled that Ireland violated Article 7 of the International Covenant on Civil and Political Rights by subjecting Ms. Mellet to conditions of intense physical and mental suffering. This case highlights the stark mental health implications of being unable to access reproductive health services in Ireland[25].

This very distressing case brings home the detrimental impact our current abortion laws have on women's mental health and wellbeing. The case also highlights how our laws perpetuate shame and stigma and restricts women's ability to make full use of available reproductive health-care services and information.

[21] United Nations Human Rights Committee. CCPR/C/116/D/2324/2013, (2016)*Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2324/2013*.
[22] ibid
[23] ibid
[24] ibid
[25] ibid

The inability to access abortion services in Ireland can lead to intense psychological distress for a woman. The secrecy, the stigma, the isolation, the lack of support services, the silence around women and abortion in Ireland, the 'shame factor', being forced to travel to another country, the criminalization of abortion all cause trauma to varying degrees for a woman with a crisis pregnancy in Ireland.

Furthermore the current abortion regime in Ireland impacts disproportionately on the mental health and wellbeing of certain groups of women in Ireland. Women and girls who can experience the most barriers to accessing abortion services are those already marginalised and disadvantaged: those with little or no income, women with care responsibilities, minors in state care, women with disabilities, women with a pre-existing illness, women experiencing domestic or sexual violence, asylum seekers and women who are undocumented.

The 'Abortion Pill'

It can be assumed that some women who cannot travel to access abortion services do not have access to the abortion pill are continuing pregnancies to term. More than 5,600 women in Ireland tried to buy abortion pills online over a five-year period between 1 January 2010 and 31 December 2015 using a leading web supplier based in the Netherlands[26]. Pills were shipped by the Women on Web site to 1,642 women in Ireland between 2010 and 201[27]2.

Though considered relatively safe if purchased from a reputable source, a significant risk to the woman's health arises where women fearing prosecution may delay or avoid seeking medical assistance should they require it. Others may assume the pregnancy has been terminated when it has not. Women – and medical professionals – can often miscalculate the gestational stage of a woman in early pregnancy and pregnancy tests will continue to show positive results for a number of weeks following successful termination of a pregnancy using the pill. There is some risk to the health of the foetus if the abortion pill has been consumed but was not effective.

Regulation of Information Act 1995

The provision of information regarding abortion remains strictly regulated and criminalised in certain circumstances by the Regulation of Information (Services Outside the State For Termination of Pregnancies)

[26] Aiken ARA, Gomperts R, Trussell J. Experiences and characteristics of women seeking and completing at-home medical termination of pregnancy through online telemedicine in Ireland and Northern Ireland: a population-based analysis. BJOG 2016; DOI: 10.1111/1471-0528.14401.
[27] Ibid.

Act 1995[28]. The Act stipulates that women who seek information on abortion can only obtain it if they are also given information and counselling on "all the options available to the woman in her particular circumstances". This information must be provided directly to the woman, thus imposing additional barriers for those who are less likely to access healthcare services in the first instance, such as Traveller women, and/or who do not speak English. The regulation of women's right to information on abortion is an unwarranted interference with women's right to make autonomous decisions about their own healthcare. It also impacts on doctors' ability to act in their patients' best interests, because although they or their patient believe it is in her best interests to receive an abortion they are precluded from recommending a suitable clinic, directly referring them to a clinic, or assisting with the transfer of their medical files to the appropriate clinic.

In the context of strict regulation of information, the emergence of 'rogue agencies'—unregulated agencies that actively provide misleading or inaccurate information about abortion and abortion services in order to prevent women from accessing abortion is of concern. These 'rogue agencies' present themselves as legitimate crisis pregnancy centres that provide impartial information on options for women who have an unplanned pregnancy. However, women who have unwittingly used these services have reported that they were shown videos of ultrasounds and a late-term abortion procedure. A 2016 investigation by the Ireland edition of The Times newspaper found that an agency in Dublin is misinforming women about abortion and distributing literature containing unfounded and inaccurate information about the negative repercussions of terminating a pregnancy.

The provisions under Article 40.3.3 allowing travel to and access to information on abortion service, in particular, highlight the stark inconsistencies between Ireland's attitude towards and regulation of abortion. They indicate our acceptance, as a society, that women will choose to and will require access to abortion services.

This is borne out in the World Health Organisation guidelines[29], which specifically state:

- Legal restrictions on abortion do not result in fewer abortions nor do they result in significant increases in birth rates.

[28] Ireland. (1995) *Regulation of information (services outside the state for termination of pregnancies) act, 1995 permanent page URL* (1995) Available at: http://www.irishstatutebook.ie/eli/1995/act/5/enacted/en/html (Accessed: 15 December 2016).
[29] Organization, W.H. and Health, W. (2012) *Safe abortion: Technical and policy guidance for health systems*. 2nd edn. Geneva: World Health Organization.

- Conversely, laws and policies that facilitate access to safe abortion do not increase the rate or number of abortions. The principal effect is to shift previously clandestine, unsafe procedures to legal and safe ones.
- Restricting legal access to abortion does not decrease the need for abortion, but it is likely to increase the number of women seeking illegal and often unsafe abortions.

This evidence-base is the foundation for the WHO recommendation that, "laws and policies on abortion should protect women's health and their human rights,"[30] that "regulatory, policy and programmatic barriers that hinder access to and timely provision of safe abortion care should be removed,"[31] and for its conclusion that where abortion is legal on broad socio-economic grounds or on a woman's request, and where safe services are accessible in practice, both unsafe abortion and abortion-related mortality and morbidity are reduced. Yet we have been unwilling or unable to reconcile this fact with our responsibility as a society to provide women with what is recognised across most of Europe and America as a common, safe and necessary healthcare procedure.

At the foundation of this deeply flawed criminal legislative system is the Eighth Amendment, a constitutional ban demonstrably ineffective in lowering crisis pregnancies or stopping the majority of women from having abortions.

According to the United Nations Human Rights Committee, the current criminal ban on abortion reduces women to a 'reproductive instrument'[32]. Indeed former Chair of the United Nations Human Rights Committee and Special Rapporteur on Torture Nigel Rodley, in his concluding remarks in fourth periodic review of Ireland's implementation of the International Covenant on Civil and Political Rights, expressed his view that, "the law clearly treated [pregnant women] as a vessel and nothing more"[33].

It is by recognising the complexity of women's lives, in all their diversity, that we can understand the need for abortion services in Ireland. It is inconceivable, immoral and utterly unrealistic to place the burden of overcoming systemic inequalities in the hands of individual women, especially those in crisis.

[30] ibid
[31] ibid
[32] Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication, No. 2324/2013, United Nations Human Rights Committee , CCPR/C/116/D/2324/2013
[33] Newsworthy. ie (2016) *Sir Nigel Rodley questions the Irish delegation on discrimination against Irish women on abortion*. Available at: https://www.youtube.com/watch?v=uhb4goFU-6o (Accessed: 15 December 2016).

Article 40.3.3 does not stop women from terminating pregnancies

Abortion is a reality in Ireland. Every year thousands of women and girls living in Ireland travel to another country, usually in Europe, to have an abortion because they make a decision that continuing a pregnancy is not in their best interest or in the best interests of the child should they continue with the pregnancy.[34] Between January 1980 and December 2015, at least 166,951 women and girls travelled from the Republic of Ireland to access abortion services in another country. According to the United Kingdom Department of Health's *Report on abortion statistics in England and Wales for 2015*,[35] 3,451 women resident in the Republic of Ireland – over 10 women a day – travelled to clinics in these areas of the UK to undergo an abortion[36].

Table 12d: Legal abortions: residents of Irish Republic by county, 2015

Irish Republic residents

County of residence	total	percentages [1]
	3,451	*100%*
Carlow	35	*1*
Cavan	32	*1*
Clare	81	*3*
Cork	280	*9*
Donegal	67	*2*
Dublin	1,311	*41*
Galway	156	*5*
Kerry	56	*2*
Kildare	147	*5*
Kilkenny	42	*1*
Laois	35	*1*
Leitrim	17	*1*
Limerick	111	*3*
Longford	23	*1*
Louth	94	*3*
Mayo	60	*2*
Meath	141	*4*
Monaghan	19	*1*
Offaly	39	*1*
Roscommon	25	*1*
Sligo	38	*1*
Tipperary	70	*2*
Waterford	68	*2*
Westmeath	56	*2*
Wexford	114	*4*
Wicklow	103	*3*
County not stated	231	

Hyperlinked to source

Women decide to seek and have an abortion due to a range - and a complex combination - circumstances, including her access to contraception; her economic status; her immigration or asylum status; her physical and mental health; her age; her civil status; her housing status. Each of these elements can act to inform whether she requires access to abortion services and determine her ability to access those services. Equally, obstacles to accessing abortion services, such as those posed by the Ireland's restrictive regime, can have decisive, disproportionate and detrimental impacts on women.

Her economic status

Women's experience of poverty and employment can often influence whether a pregnancy is or becomes a crisis. An Irish Crisis Pregnancy Programme (ICPP) report[37] defines a crisis pregnancy as one that represents a

[34] According to research published in The Lancet, 70 million abortions occurred in 2014. See Volume 388, No. 10041, p258–267, 16 July 2016

[35] United Kingdom, D. of H. (2016) *Abortion Statistics, England and Wales: 2015 Summary information from the abortion notification forms returned to the Chief Medical Officers of England and Wales.* Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/570040/Updated_Abortion_Statistics_2015.pdf (Accessed: 15 December 2016).

[36] These figures do include any women who did not provide any or an accurate place of residence.

[37] Orla McBride, Karen Morgan and Hannah McGee. Crisis Pregnancy Programme Report No. 24, Irish Contraception and Crisis Pregnancy Study 2010, (ICCP-2010), A Survey of the General Population

personal crisis or an emotional trauma in either of the following circumstances: (a) a pregnancy that began as a crisis or (b) a pregnancy that develops into a crisis before the birth due to a change in circumstances. A literature review of research on pregnancy and employment carried out for the ICPP in 2011[38] cited a nationally representative survey of the population that found that 5% of women surveyed cited 'financial reasons/unemployment' as reasons for the pregnancy becoming a crisis. Women in general are far less likely to be in the labour force than men. Of those who are, access to resources is often restricted: 50% of women in Ireland are earning €20,000 or less per annum[39] and over 60% of those on low pay are women[40]. Women with children are often considered less 'employable' than women without children and men with children[41]. Women hoping to enter the labour market or to progress in their workplace will assess whether having a child will have a detrimental effect on their career and their earning potential. This can have very real and lasting implications, particularly for lone parents, the majority of whom are women and are experiencing deprivation.

The research also suggests that the likelihood of a pregnancy being a crisis pregnancy is strongly related to work-life balance policies adopted by employers, workplace culture and maternity arrangements. Many private sector companies do not offer paid maternity leave[42]. Women on low pay, particularly those with children, must consider whether they can afford to take the necessary time off work on a reduced rate of pay and to take the risk of lower pay or even living deprivation in the long term should they need to reduce their hours to care for the child, should she continue with the pregnancy.

Women assess whether having a child will have a detrimental effect on their career trajectories and assess how they will cope with parenthood in their current education or employment circumstances. It is estimated that travelling to and paying privately for an abortion in the UK costs an individual woman approximately €1000, a significant proportion of many women's salaries and a very real obstacle to accessing abortions for women in Ireland.

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[38] Banks, J. and Russell, H. (2011) *Pregnancy and Employment: A Literature Review*. Available at: http://www.hse.ie/eng/services/publications/corporate/PregnancyEmploymentLiteratureReview.pdf (Accessed: 15 December 2016).

[39] *Women and men in Ireland 2013 - CSO - central statistics office* (2014) Available at: http://www.cso.ie/en/releasesandpublications/ep/p-wamii/womenandmeninireland2013/ (Accessed: 15 December 2016).

[40] The Nevin Economic Research Institute (2016) *Quarterly Economic Observer - Spring 2016*. Available at: http://www.nerinstitute.net/download/pdf/qeo_spring_2016_compressed.pdf (Accessed: 15 December 2016).

[41] European Commission (2015) *Labour Market Participation of Women*. Available at: http://ec.europa.eu/europe2020/pdf/themes/2015/labour_market_participation_of_women.pdf (Accessed: 15 December 2016).

[42] Banks, J. and Russell, H. (2011) *Pregnancy and Employment: A Literature Review*. Available at: http://www.hse.ie/eng/services/publications/corporate/PregnancyEmploymentLiteratureReview.pdf (Accessed: 15 December 2016).

Her age

In the previously cited 2011 CPP report[43], the authors found that while crisis pregnancies occur among child-bearing women of all ages, women in their early twenties are more likely to experience one. This coincides with the age at which most women enter a critical phase in their education or working life. Young women's assessment of how they will cope with parenthood in their current education or employment circumstances will inform their reproductive decisions.

While the data published in the UK Department of Health's *Report on Abortion Statistics in England and Wales for 2015* (see table below) broadly correlate with the CPP data, i.e. they indicate that the majority women resident in Ireland who have an abortion in English and Welsh clinics are in their twenties, it is evident that women are continuing to access these services at throughout their thirties and into their forties. There is no data to suggest whether women in this dataset already have children, though BPAS reported in 2016 that 54% of women resident in the UK accessing their abortion services already had children.

i) Age		
Under 16	18	*1*
16 - 17	58	*2*
18 - 19	187	*5*
20 - 24	832	*24*
25 - 29	768	*22*
30 - 34	693	*20*
35 - 39	603	*17*
40 & over	292	*8*

Column on the right indicate total number and percentage. Hyperlinked to source

Particularly concerning are the reported number of girls resident in Ireland under the age of 16 – by legal definition, victims of statutory rape – who are accessing abortion. Some of these girls may be in the care of the State. The difficulties involved in travelling to access and paying for abortion services abroad are undoubtedly compounded for young girls by feelings of fear and stigma, by secrecy, by a sense of isolation or by lack of support. Added to this, is the absence of specialised supports on their return to Ireland.

[43] ibid

Her immigration status

Approximately 305,200 women residing in the State do not hold Irish citizenship[44]; this represents 51.4% of the overall foreign population residing in Ireland. Among them, 109,100 or 35.75% [45] hold citizenship from a country outside the European Union. Depending on their legal status migrant women might not be able to secure a visa to travel abroad to access abortion services, or a subsequent re-entry visa to Ireland.

Migrant women who are dependent on their partner for residency face particular difficulties – they hold no statutory entitlement to apply for an independent residence permit. If experiencing an unplanned pregnancy, particularly one that may put her safety or her marriage at risk, she faces a significant and difficult decision. Should her civil status change, her residency status would be decided on a discretionary, case-by-case basis. Migrant women holding such visas are often unaware of this option. She may also be dependent on her partner's financial support to travel abroad and pay for the procedure.

Undocumented migrant women are left with almost no choice but to carry a pregnancy to term – regardless of their circumstances – or to risk being separated from their family and/or losing their homes and their livelihoods should they leave the country.

Her asylum status

Women living in direct provision face significant and multiple barriers to accessing abortion services. The United Nations High Commissioner for Refugees has stated that "Many refugee and migrant women and girls have already been exposed to various forms of [sexual and gender-based violence] either in their country of origin, first asylum or along the journey to and in Europe."[46] The trauma and insecurity experienced by these women may inform their reproductive decisions.

On their arrival in Ireland, women seeking asylum or refuge are accommodated in direct provision centres, where their rights are severely restricted, in a state of often prolonged legal limbo until her status is granted. Women awaiting a finding on their application for refuge or asylum in Ireland who wish to access abortion services must apply and pay for an emergency visa from the Department of Justice and Equality, as well as a visa to enter another jurisdiction in which abortion is legal. They will often wait up to eight weeks for the

[44] Central Statistics Office (2016) *Population and migration estimates April 2016*. Available at: http://www.cso.ie/en/releasesandpublications/er/pme/populationandmigrationestimatesapril2016/ (Accessed: 15 December 2016).
[45] ibid
[46] United Nations Populatin Fund (2016) *Report warns refugee women on the move in Europe are at risk of sexual and gender-based violence*. Available at: http://www.unfpa.org/press/report-warns-refugee-women-move-europe-are-risk-sexual-and-gender-based-violence (Accessed: 15 December 2016).

paperwork, imposing a delay which results in a later term abortion or making the procedure preclusive. Some will not be granted a visa and will not be able to travel at all and so will be forced to carry the pregnancy to term and to parent. Many more women, given the legal prohibition on employment imposed on asylum seekers, will not have access to the financial resources required to travel and pay for an abortion abroad.

Her housing status

Women may experience a crisis pregnancy if they are homeless or at risk of homelessness. Exposure to domestic violence is closely associated with a woman's housing status. Housing organisation Sonas, in its May 2016 presentation to the Oireachtas Committee on Housing and Homelessness[47], reported that, in a survey of 70 families that became newly homeless in March, one in six reported domestic violence was the main cause of their homelessness. The overwhelming majority of these newly homeless families are female headed households. Women who are forced into homelessness are at a higher risk of violence and sexual assault and are in a position of particular deprivation; they are likely to assess a pregnancy in light of these circumstances. A lack of financial resources may hinder their ability to access an abortion abroad.

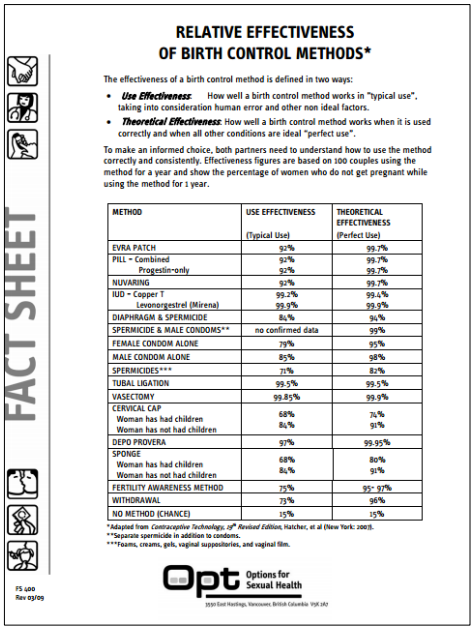
The Eighth Amendment is creating unnecessary and disproportionate hardship on women. It is failing in its intent, which is to prevent women accessing abortions. If the State is to prioritise the health and wellbeing of pregnant women and women of childbearing age, resources are better focused towards ensuring access to comprehensive sexual education and reproductive health information, socio-economic policies and efforts that lift women out of poverty, deprivation and marginalisation, further improvement of maternity services and access to contraception.

A note on access to contraception

Arguments in support of an abortion ban have at times vilified women who are having sex for pleasure rather than procreation and condemned those who are considered not to have taken sufficient precautions to protect themselves against crisis pregnancy through effective use of contraception. The reality is that physical and sexual intimacy can be an important element of human wellbeing. Though access to contraception has greatly improved in Ireland over the past thirty years, World Health Organization (WHO) guidelines on abortion specify that contraceptive prevalence cannot completely eliminate women's recourse to and need for abortion services. Gains in contraceptive use have resulted in reducing the number of

[47] Sonas Domestic Violence Charity (2016) *Sonas Address to Housing and Homeless Committee-Submission-2016*. Available at: https://www.oireachtas.ie/parliament/media/committees/32housingandhomelessness/Address-to-Housing-and-Homeless-Committee-Submission-2016.docx (Accessed: 15 December 2016).

unintended pregnancies, but cannot eliminate women's need for access to safe abortion services as no contraceptive method is 100% effective in preventing pregnancy. And contraceptive use can be ineffective for a variety of reasons, including lack of financial resources to maintain use – in Ireland women's access to medical contraceptives can be hindered by the cost of the GP visit and prescription costs for - and negative side effects on physical or mental health which limit use. Canada's largest non-profit provider of sexual health services Options for Sexual Health, published this chart showing the relative effectiveness of birth control methods, illustrating that no contraceptive is 100% effective theoretically, and is even less when set in the daily lives of women.



FACT SHEET

FS 100
Rev 03/09

RELATIVE EFFECTIVENESS OF BIRTH CONTROL METHODS*

The effectiveness of a birth control method is defined in two ways:

- ***Use Effectiveness***: How well a birth control method works in "typical use", taking into consideration human error and other non ideal factors.
- ***Theoretical Effectiveness***: How well a birth control method works when it is used correctly and when all other conditions are ideal "perfect use".

To make an informed choice, both partners need to understand how to use the method correctly and consistently. Effectiveness figures are based on 100 couples using the method for a year and show the percentage of women who do not get pregnant while using the method for 1 year.

METHOD	USE EFFECTIVENESS (Typical Use)	THEORETICAL EFFECTIVENESS (Perfect Use)
EVRA PATCH	92%	99.7%
PILL – Combined	92%	99.7%
Progestin-only	92%	99.7%
NUVARING	92%	99.7%
IUD – Copper T	99.2%	99.4%
Levonorgestrel (Mirena)	99.8%	99.9%
DIAPHRAGM & SPERMICIDE	84%	94%
SPERMICIDE & MALE CONDOMS**	no confirmed data	99%
FEMALE CONDOM ALONE	79%	95%
MALE CONDOM ALONE	85%	98%
SPERMICIDES***	71%	82%
TUBAL LIGATION	99.5%	99.5%
VASECTOMY	99.85%	99.9%
CERVICAL CAP		
Woman has had children	68%	74%
Woman has not had children	84%	91%
DEPO PROVERA	97%	99.95%
SPONGE		
Woman has had children	68%	80%
Woman has not had children	84%	91%
FERTILITY AWARENESS METHOD	75%	95- 97%
WITHDRAWAL	73%	96%
NO METHOD (CHANCE)	15%	15%

*Adapted from *Contraceptive Technology, 19th Revised Edition*, Hatcher, et al (New York: 2007).
**Separate spermicide in addition to condoms.
***Foams, creams, gels, vaginal suppositories, and vaginal film.

Opt Options for Sexual Health

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Free, safe, legal

The World Health Organisation highlights the importance of an enabling regulatory and policy environment to ensure that every woman who is legally eligible has ready access to good-quality abortion services. In order to ensure this 'enabling' environment, a woman's access to financial resources must not be a factor in her ability to access services, she must not be criminally sanctioned for doing so and the provision of abortion services should be regulated to ensure the highest attainable standard of care.

When performed by skilled providers using correct medical techniques and drugs, and under hygienic conditions, induced abortion is an extremely safe medical procedure. In fact evidenced-based research shows that legal, induced abortion is markedly safer than childbirth[48]. This is particularly true where the pregnancy is considered to be at high risk of complications.

UK data indicates that the vast majority of women resident in Ireland accessing abortion services in England and Wales, as is the case globally, do so in early pregnancy[49].

(iii) Gestation weeks		
3 - 9	2,374	*69*
10 - 12	564	*16*
13 -19	401	*12*
20 and over	112	*3*

Column on the right indicate total number and percentage. Hyperlinked to source.

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Providing for a broad on-request regime that situates abortion services within the context of the full range of reproductive health services needed by a woman and removing all criminal sanctions will ensure that the majority of abortions – due to any of the reasons outlined above – will happen in the early stages of pregnancy.

[48] See, for example, Raymond, E.G. and Grimes, D.A. (2012) 'The comparative safety of legal induced abortion and childbirth in the United States', *Obstetrics & Gynecology*, 119(2, Part 1), pp. 215–219. doi: 10.1097/aog.0b013e31823fe923.

[49] Having to pay for and travel for an abortion, however, creates barriers that result in women resident in Ireland having abortions later in the gestational period relative to women resident in the UK. 81% of abortions carried out in England and Wales in 2015 were between 3-9 weeks gestation.

Early abortion at a woman's request

In almost every European country women are legally allowed to access abortion in early pregnancy when they request it. In these circumstances, what is considered to be an 'early pregnancy' can vary between 10 and 24 weeks, with the majority of countries imposing a timeframe of 12 weeks. Within this context, the requirements and procedures that must be met in order to facilitate access to an abortion also vary. In general these laws outline whether a woman has to give a reason for seeking an abortion, whether a minimum mandatory time delay must elapse between the day on which a woman requests an early abortion and the day on which the procedure can be performed, and whether a woman must undergo mandatory counselling prior to abortion or the provision of mandatory information.

1) Reasons: A large number of countries do not require a woman to give a reason for her decision[50], and in the countries that do, the reasoning varies. For example, in Belgium, the Netherlands and Switzerland, a woman must specify that she is 'distressed' regarding the continuation of her pregnancy. In Italy, she must specify that continuing her pregnancy would have serious consequences for her health or her economic, social or family circumstances. In Hungary she must indicate that she is in a 'severe crisis' situation.

2) Waiting periods: Many European countries do not require that a minimum mandatory time delay must elapse between the day on which a woman requests an early abortion and the day on which the procedure can be performed. However, where countries do impose such a requirement, these can vary between 48 hours to 7 days.

3) Counselling requirements. Most European countries do not specify that prior to undergoing abortion a woman must undergo counselling. However, some countries' do or they require the provision of mandatory information.

In the countries that do not explicitly provide for early access to abortion at a women's request, (Finland, Iceland and the United Kingdom), they instead specify that this access can be grated with the opinion of two medical professionals. In practice, however, the laws in these countries are interpreted and applied in a manner that means that when a woman believes that ending a pregnancy is the best decision for her, with reference to their personal, social and economic circumstances, they are usually able to legally access services within the specified time-limits.

[50] Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, France, Germany, Greece, Latvia, Lithuania, Luxembourg, Macedonia, Norway, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain and Sweden.

Once the legal time period for access to abortion at a women's request has passed

All of the European, and other, countries that allow abortion on request also permit medical professionals to perform abortions later in pregnancy within the context of certain specified exceptional circumstances, these include risks to the women's life or health and situations of serious or fatal foetal impairment. The manner in which laws deal with these exceptional grounds differs across jurisdictions.

Abortion in situations of risk to health or life

In this context the laws vary with countries distinguishing between life and health, extremity of risk, the nature of the risk and gestational limits. Some countries' laws distinguish between life and health and explicitly specify that both are exceptional grounds for abortion later in pregnancy. Other countries explicitly legalise abortion for general 'therapeutic' purposes or on grounds of risk to health, and implicitly incorporate abortion on grounds of risk to life within that exception. Some countries choose to quantify the risk, requiring that it be 'serious' or 'grave'. The way in which countries' laws address or define the nature of the risk also differs, with some distinguishing between mental and physical health and others choosing not to so distinguish. Spain is the only country in Europe to define health in its abortion law. They do so in accordance with the WHO definition, as, "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity'. Many countries do not impose any gestational limits in either situation of risk to life or to health. Others impose term limits for risk to health but not in situations of risk to life. Some impose limits in both cases.

Abortion in situations of foetal impairment

A large number of European countries explicitly permit abortion in situations of foetal impairment. The laws differ in a number of respects, including in relation to: (a) the terminology used to describe the foetal impairment and the level of severity they specify must be at issue; (b) applicable gestational limits; and (c) the process for certification/attestation of the foetal impairment. In a smaller number of countries (Latvia, Lithuania, Germany, Romania, Slovenia, Sweden and Switzerland) the laws do not explicitly state foetal impairment as a ground but instead encompass its implicitly within provisions allowing access to 'therapeutic' abortion, or abortion in situations of risk to a woman's physical or mental health.

Abortion in situations of sexual assault

A number of European countries do not explicitly list sexual assault as a ground for allowing access to abortion preferring instead to rely on the more general terms - 'therapeutic abortion' or abortion in situations of risk to health. Countries that list it as a specific ground have to grapple with the complex areas

governing proof of sexual assault. For example the laws in Macedonia and Finland require a certificate from a prosecutor to certify the sexual assault.

Conclusion

At least 70 women a week are travelling from Ireland to other jurisdictions for to access abortion services. For some it will be an incredibly traumatic experience, for others a necessary procedure that will allow them to have control over their life, health and wellbeing. By situating the full range of women's reproductive healthcare services, including abortion, within an enabling regulatory and policy environment in Ireland, we can ensure that women in Ireland are met with compassion and guided through a difficult process. We can ensure women will have access to high-quality healthcare that puts their wellbeing front and centre and the care and support they need to ensure their full recovery.

NWCI therefore is calling on the Citizens' Assembly to make the following recommendations in its report:

- A referendum to repeal the Eighth Amendment to the Constitution, without replacement or amendment
- The removal of all criminal sanctions on women seeking and accessing abortion services in Ireland
- The removal of criminal sanctions on provision and performance of abortion in the Republic of Ireland
- The regulation of abortion services and medical professionals performing abortions through customary medical disciplinary procedures and general criminal law
- The enactment of legislation providing for access to abortion on a woman's request, combined with abortion in certain circumstances, in line with good practice in other European countries.

Thank you.