



Coalition to Repeal the Eighth Amendment

Respect and protect women's lives, health and choices

Abortion Rights Campaign; Action for Choice; AIMS; Akidwa; Amnesty Ireland; Anti-Austerity Alliance; Anti-Racism Network; Atheist Ireland; Choice Ireland; Cork Women's Right to Choose; Doctors for Choice; Galway Pro-Choice; Irish Council for Civil Liberties; ICTU Youth; Lawyers for Choice; Mandate; National Women's Council of Ireland; Northern Ireland Alliance for Choice; Parents for Choice; People Before Profit Alliance; Rape Crisis Network Ireland; Re(al) Reproductive Health ROSA; School of Social Justice, UCD; Socialist Party; Socialist Workers Party; TCDSU Repeal the 8th Campaign; TENI; TFMR Ireland; Trade Union Campaign to Repeal the 8th Amendment; The Workers Party; Union of Students in Ireland; United Left; UNITE the Union.

Dear Committee members,

The Coalition to Repeal the Eighth Amendment has prepared this short submission to the Committee on the Elimination of Discrimination Against Women (CEDAW) in order to assist the Committee in its preparation for the 64th session. We wish to highlight the discrimination against women living in Ireland created by the presence of the Article 40.3.3 or the Eighth Amendment in the Irish Constitution.

Coalition to Repeal the Eighth Amendment Credentials

The Coalition to Repeal the Eighth Amendment (hereafter the Coalition), a growing broad alliance, involving over 40 different organisations, was established in September 2013 following the passing of the Protection of Life During Pregnancy Act. The Coalition is a campaigning organisation that is working for a referendum to repeal article 40.3.3 (known as the eighth amendment) ¹ from the Irish constitution in order to respect and protect the lives, health and choices of women living in Ireland.

¹ Article 40.3.3, known as the Eighth Amendment, was voted by referendum into the Irish Constitution in 1983. It equates the life of a pregnant woman with that of an embryo or foetus. It states: "The State

We contend that barriers that interfere with women's access to health services, education and information, including in the area of sexual and reproductive health, are a profound source of discrimination.

We submit that the failure of the Irish State to ensure that women living in Ireland have adequate and equal access to abortion is a violation of a woman's right to exercise her human rights and is also a fundamental violation of women's right to mental and physical health.

We maintain that is not enough to ensure that women have a right to travel abroad to access abortion if there are no measures in place to ensure that women, regardless of race, nationality, economic means and ability to travel have equal access to that right.

Finally, we contend that Ireland's current prohibition on abortion fails to reflect public opinion in Ireland as opinion polls have consistently shown increasing support for abortion on broader grounds.

Why the Article 40.3.3 is a source of discrimination for women living in Ireland

Abortion is prohibited in Ireland in all cases except where doctors believe a woman's life is at risk, including the risk of suicide. Abortion is banned in all other situations including cases of rape, incest, or fatal foetal abnormality. The current prohibition forces at least 10 women and girls a day to leave Ireland for a medical procedure they should be able to access here. The threshold encapsulated in the current legal structure means that doctors are forced to wait until a woman's life is endangered before being able to provide appropriate health care. The Irish constitution makes an unworkable and dangerous distinction between a pregnant woman's life and her health, and may prevent doctors from acting in the best interests of their patients. It creates an unequal

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."

and discriminatory health system: a pregnant woman has only a qualified right to health care, and her right to make informed decisions about her health is restricted.

Instead of giving full expression to a woman's constitutional right to have an abortion where her life is at risk, the Protection of Life during Pregnancy Act 2013, introduces new legal barriers that require complicated certification and review by up to six doctors. The result of this law is to restrict a woman's constitutional right to a life-saving abortion rather than to give legal effect to it.

The presence of Article 40.3.3 in the Irish Constitution, which gives priority to the protection of the "right to life of the unborn", requires that in a crisis pregnancy priority is always given to life of the foetus regardless of the impact that this may have on the physical or mental health of the pregnant woman.

The lack of legal abortion in Ireland is a profound source of discrimination against women and girls. It means that women who cannot travel, including women on low incomes, asylum-seeking or undocumented women, women with disabilities, and all those unable to travel for whatever reason, are clearly discriminated against and do not have access to same rights as women who can.

The recent 2014 case of Ms Y is illustrative of this. Ms Y was an asylum seeker who became pregnant as a consequence of rape. Ms Y was not permitted to have an abortion, but instead was required to continue with the pregnancy until a caesarean section was performed on her at 25 weeks. Furthermore, women who are unable to travel and are forced to use the abortion pill are subject to criminalisation and liable to be punished with up to 14 years in prison. It is not enough to ensure that women have a right to travel abroad to access abortion without putting in place measures to ensure that women, regardless of race, nationality, economic means and ability to travel have equal access to that right.

The recent 2014 PP v HSE case illustrates how the Eighth amendment impacts negatively on maternal health care in general. P., who was 15 weeks pregnant, died on December 3rd 2014, but her body was subjected to medical processes to 'facilitate the continuation of maternal organ supportive measures in an attempt to attain foetal

viability' for several more weeks. The family was forced to obtain an order from the High Court in order for medical treatment to be discontinued.

Public Opinion

The Coalition contends that current government policy is out of step with public opinion. The Irish government's delegation argued before the Human Rights Committee in July 2014 that Irish law reflects an evolution of attitudes on abortion; that its development has involved substantial public discussion and that there is a general consensus in Ireland that is represented by the 2013 Act. None of these assertions is accurate.

In fact two referendums (1992 and 2002) were held by which the state aimed to further restrict the right in the X case by excluding suicide. One of these proposals (2002) would have included specific reference to criminal provisions by referring in the proposed amendment to a proposed legislation which included a maximum term of 12 years (lower than the maximum term in the 2013 Act). Both failed. Referendums to ensure the rights to travel for and to receive information about abortion passed. The people have *never* been given the opportunity to vote on an amendment to make Article 40.3.3 less restrictive.

The dysfunctional way that Irish policy makers have dealt with women's need for abortion in Ireland can give the impression that the abortion issue is somehow different in Ireland and perpetuates the myth that it is too sensitive and too controversial a topic for discussion. This is not the case. In fact there has been a significant shift in public attitudes towards abortion in Ireland.

The will of the people is best indicated by opinion polls (see below). Consistently, over 70% of Irish people support abortion in cases of foetal anomaly, risk to a woman's health and where pregnancy results from rape/child abuse, and between 36% and 45% are in favour of a woman's right to choose in other circumstances. Those in younger age groups show higher levels of support.

- In **September 2015**, an Irish Examiner/ICMSA national opinion poll found that 64% of farmers were in favour of repeal of the eighth amendment to the Constitution.
- In **July 2015**, a Red C poll commissioned by Amnesty International Ireland found that 67% of people believed the Government should decriminalise abortion; 81% were in favour of widening the grounds for abortion; 45% were in favour of access to abortion as women choose. Only 7% were opposed to abortion in all circumstances.
- In **June 2015**, a Sunday Times Poll found that 76% of people were in favour of abortion in cases of fatal foetal anomaly while 70% supported abortion in cases of rape or incest.
- In **April 2015**, a *Sunday Independent*/ Millward Brown poll found that 70% of people surveyed supported abortion where there is a medical risk to a woman's life other than suicide. 63% of people supported abortion in cases of fatal foetal anomaly, while 60% were in favour of abortion in cases where a woman is suicidal.
- In **October 2014**, an *Irish Times*/Ipsos MRBI poll found that 68% of people surveyed were in favour of a referendum to be held on whether or not to allow for abortion in cases of rape and fatal foetal anomaly.
- In **September 2014**, a *Sunday Independent*/ Millward Brown poll found that of those who expressed an opinion, over 75% of people surveyed were in favour of holding a referendum to repeal the Eighth Amendment of the Constitution. 69% of respondents believed abortion should be allowed in cases of rape, while 68% were in favour of abortion where there is a threat to the long-term health of a woman.

Questions

We respectfully suggest that the CEDAW ask the following questions of the Irish Government:

- What measures is the Irish State taking to bring Irish law into line with international medical best-practice and international human right norms?
- What measures does the state plan to put in place to ensure equal access to the right to travel abroad for an abortion?

- Is the Irish State content to allow women who have received a diagnosis of fatal foetal abnormality or women who are pregnant as a result of rape or incest no access to abortion in Ireland?
- Under what circumstances would the Irish government allow a referendum to repeal the eighth amendment?

Finally, we would respectfully suggest that the Committee urge the Government to repeal and amend its abortion laws, including the article 40.3.3 of the Constitution and allow women equal access to the highest attainable standard of reproductive health.

Yours sincerely,

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Sinéad Kennedy

Secretary, Coalition to Repeal the Eighth Amendment