Family & Life

26 Mountjoy Square Dublin 1, Ireland

Human Rights Committee,
Office of the High Commissioner for Human Rights,
8-14 Avenue de la Paix,
CH-1211 Geneva 10.
Switzerland.

Attention: Kate Fox Principi

12th June, 2014

Information on State Party: Ireland

Dear Members of the Human Rights Committee,

Family & Life has prepared this report to assist the Committee in its examination of Ireland's compliance with the International Covenant on Civil and Political Rights at its 111th Session in Geneva.

Family & Life is a well-established pro-life and pro-family organisation based in Dublin, with a large network of supporters throughout Ireland. It promotes respect for the value and dignity of human life from conception to natural death. Family & Life was granted ECOSOC special consultative status in 2013.

Family & Life welcomes the opportunity to engage with the Human Rights Committee as it prepares for the fourth periodic examination of Ireland to assess its performance in protecting and vindicating human rights.

Family & Life notes that among the issues that the Committee intends to raise with the Irish representatives is:

> "Whether the State party intends to introduce measures to broaden access to abortion to guarantee women's rights under the Covenant, including when the pregnancy poses a risk to the health of the pregnant woman, where the pregnancy is the result of crime, such as rape or incest, cases of fatal foetal abnormalities, or when it is established that the foetus will not survive outside the womb".

In its written reply in advance of the examination, Ireland states *inter alia* that:

> "The [Protection of Life During Pregnancy] Act upholds the right to life of the unborn where practicable, and the right to life of a pregnant woman whose life is threatened by her pregnancy, as required by Article 40.3.3."
>
> "There are currently no proposals to amend Article 40.3.3 of the Constitution."
>
> "The Health Service Executive, through its Crisis Pregnancy Programme, supports the provision of counseling services, medical services and such other health services for the purpose of providing support during and after any type of crisis pregnancy. The Programme is due to meet a group representing women who have received a diagnosis of fatal foetal abnormality in relation to relevant crisis pregnancy counseling and post-abortion counseling options currently available and ways to improve the standard of service nationwide."

To assist the members of the Committee in their discussions with the Irish representatives, Family & Life makes the following observations:

Right to Life of the Unborn

The right to life of the unborn is guaranteed by the Irish Constitution (Article 40.3.3). The provision for abortion in the Protection of Life During Pregnancy Act is based only on the assumption that there are situations in which the right to life of the unborn may conflict directly with the equal right to life of the mother. Where the right to life of the mother is not engaged, it is clear that any assault on the right to life of the unborn would be quite unconstitutional.

The preamble of the International Covenant on Civil and Political Rights (ICCPR), like the Universal Declaration on Human Rights (UDHR), speaks of the "rights of all members of the human family" and states that "these rights derive from the inherent dignity of the human person". The relevant article to this discussion is Article 6 - The Right to Life, and two paragraphs of that article bear mentioning:

> Article 6 (1): Every human being has the inherent right to life
>
> Article 6 (5): Sentence of death shall not be imposed for crimes committed by persons below the age of eighteen years of age and *shall not be carried out on pregnant women*. (Emphasis added).

That Article 6 provides for human rights for the unborn child is confirmed by the good faith reading of the following commentator:

> "The ICCPR not only protects human beings during the pre-natal period of life under paragraph (5), it protects them as *holders* of human rights. The provision must be read in context… paragraph (5) is a particularized

> application of that right [to life] to children in the pre-natal period when the mother is facing the death penalty. ICCPR article 6 (5) implicitly recognizes that the right-holder is the new being that has come into existence at conception. Paragraph (5) recognizes a human right, and the right is held by the child."[1]

Using the ordinary meaning rule (Vienna Convention on the Law of Treaties, Article 31 (1)) to interpret the ICCPR, unborn children are members of the human family as provided in the preamble, a conclusion that is supported by the implicit right to life of the unborn child under paragraph 5 of Article 6. There is no ambiguity in the article on the right to life; it simply states that every human being is entitled to that right. Further confirmation of this interpretation is found in the fact that a majority of States Parties to the ICCPR at the time of its adoption in 1971 had laws that prohibited abortion in all cases, thereby affirming an unqualified right to life for the unborn child.

Pregnancies Resulting from Rape or Incest

In relation to pregnancies resulting from crimes such as rape or incest, the Committee should be aware that most Irish women who become pregnant in such circumstances choose freely to continue with their pregnancies and to keep their babies or to have them adopted or fostered, despite the easy availability of abortion in Britain. Figures from the Dublin Rape Crisis Centre, for example, show that in 2012 (the most recent year for which figures have been provided), of 19 clients who became pregnant as a result of rape or incest, nine kept their babies, two had their babies fostered and one had her baby adopted. Seven (36.8%) opted for abortion.[2] In 2011, four out of 18 (22.2%) chose abortion.[3]

There are those who would assume that any woman who becomes pregnant as a result of a sexual assault would wish to abort the baby. The figures given above show clearly that such an assumption is unwarranted. To enshrine such an assumption in Irish law could not be seen other than as an attack on the constitutionally guaranteed right to life of the unborn.

"Fatal Foetal Abnormalities"

In relation to Ireland's statement that the Crisis Pregnancy Programme (CPP) is due to meet with "a group representing women who have received a diagnosis of fatal foetal abnormality", the Committee should be aware that there are at least four such groups, and it would be important that the CPP, and the Irish Government generally, would take account of all of their different perspectives on this difficult issue. The groups of which Family & Life are aware are Every Life Counts, One Day More, S.O.F.T. Ireland (Support Organisation for Trisomy 13/18 (Patau's/Edward's Syndrome)), and

---

[1] Ambramson, B., "Violence Against Babies: Protection of Pre- and Post-Natal Children Under the Framework of the Convention on the Rights of the Child", p. 78-79, World Family Policy Center, 2006

[2] The Dublin Rape Crisis Centre, Annual Report and Statistics, 2012, http://www.drcc.ie/wp-content/uploads/2013/07/DRCC.AR_.2012.pdf

[3] The Dublin Rape Crisis Centre, Annual Report and Statistics, 2011, http://www.drcc.ie/wp-content/uploads/2011/03/DRCC-Annual-Report-20111.pdf

T.F.M.R. (Terminations For Medical Reasons). One of the only studies in the area suggests that up to 90% of Irish parents who learn of the diagnosis opt against abortion.[4] It would be a grave injustice if their views were to be accorded less weight and value than those of the minority who made a different choice.

The Committee should be aware that there is currently no dedicated peri-natal hospice in Ireland and such peri-natal hospice facilities that exist are inadequate and under-resourced.

In the debate on this issue within Ireland, vastly inflated statistics have been thrown about. According to one often-repeated claim, roughly 1,200 women travel to Britain each year to abort a terminally ill unborn child. The actual number of abortions obtained by Irish women in the UK in 2011 on medical grounds was 51, not 1,200, according to official statistics from the UK Department of Health.[5] Of these, only 36 had illnesses that could plausibly fit under the heading "fatal foetal abnormality".[6]

The term "fatal foetal abnormality" is vague and misleading. It is used to group together a number of life-limiting terminal illnesses in one simple category. The most commonly referred to illnesses are anencephaly, Edward's syndrome and Patau's syndrome. Yet each of these terminal foetal illnesses carries a different life expectancy. Although prenatal and delivery-related death rates are high for Patau syndrome and Edward's syndrome, at 95%[7] and 75%[8] respectively, the rate for anencephaly is considerably lower at 28%[9]. So none of these conditions is necessarily fatal at or before birth. It is doubtful that it can ever be predicted with absolute certainty that "the foetus will not survive outside the womb", even briefly.[10]

Children born with Patau's syndrome (Trisomy 13) have a median life expectancy of a week, while almost a third live for over a month and 8% live for over a year.[11]

---

[4] The research of Prof. Joan Lalor of Trinity College Dublin was cited in Kathy Sheridan, "Although we have a pro-life identity, we do not have the healthcare that supports parents and newborn babies who have complex needs", *The Irish Times*, 21 April, 2012. Definitive figures are impossible to obtain since no comprehensive official record exists of the number of Irish pregnancies diagnosed with such conditions.

[5] Department of Health, "Total Abortions to Women Resident in Irish Republic, Having Abortions Under Ground E, in England and Wales, by Principal Medical Condition, 2007-2011".

[6] The most commonly occurring conditions were anencephaly (8), Edward's syndrome (7) and Patau syndrome (7). It is to these conditions that public debates on the issue of "fatal foetal abnormalities" usually refer. See also Niamh Ui Bhrian, "Parents Deserve Truth about Fatal Foetal Abnormalities", *Irish Independent* (25 November, 2013).

[7] See http://miscarriage.about.com/od/onetimemiscarriages/p/patau.htm and http://www.geneticseducation.nhs.uk/genetic-conditions-54/691-patau-syndrome-new

[8] See http://www.nhs.uk/conditions/edwards-syndrome/Pages/Introduction.aspx

[9] See M. Jaquier et al., "Spontaneous Pregnancy Outcome after Prenatal Diagnosis of Anencephaly", *BJOG An International Journal of Obstetrics and Gynaecology* 113 (2006) 8, 951.

[10] This is particularly relevant in light of claims that an unborn child with *no* possibility of life outside the womb may not be an "unborn" within the meaning of Article 40.3.3. Counsel for the Irish State argued that there was "at least a tenable argument" to this effect in *D v Ireland* (ECtHR, Application No. 26499/02, Decision, June 27, 2006). This highly speculative suggestion has never been tested in the Irish courts.

[11] M. Zoler, "Trisomy 13 Survival Can Exceed 1 Year", *OB/GYN News* (1 March, 2003).

Children born with Edward's syndrome (Trisomy 18) have a median life expectancy of almost two weeks, while over a third live for more than a month and 8% live for over a year.[12] In rare cases children can survive into adulthood.[13]
Of the children born with anencephaly, 67% will die within the first day yet almost 30% will live for between 2 and 28 days.[14] In very rare cases anencephalic children live for two or three years.[15]

It is therefore misleading to claim that these conditions are necessarily "fatal" for the child in the womb or immediately after birth. Since none of the relevant conditions are necessarily fatal for the child while in the womb or immediately after birth, the term "terminal foetal illness" is more appropriate, as well as less dehumanising to the child.

Children with terminal illnesses are no less human than other children. The equal right to life, which all human beings possess, is not contingent upon life expectancy or good health or absence of disability.

Those who support the legalised abortion of terminally ill children sometimes argue that these babies will experience severe pain when born. The truth is that babies born with anencephaly are usually unable to feel any pain at all, while there is no evidence to indicate that children with Patau's syndrome or Edward's syndrome are more likely to experience pain than healthier children.

There is nothing new in attempts to legalise the abortion of disabled infants. In the UK, roughly 92% of children with Down syndrome (Trisomy 21) are aborted. This rate is only marginally lower than the UK abortion rate for children with terminal foetal illnesses. Thanks largely to our constitutional protection of the unborn child, the Irish rates are much lower.

The Parliamentary Inquiry into Abortion on the Grounds of Disability, which was published in the UK in July 2013, noted that of its 299 contributors, "The vast majority… believe that allowing abortion up to birth on the grounds of disability is discriminatory, contrary to the spirit of the Equality Act, and does affect wider public attitudes towards discrimination.'"[16]

Prejudice against disabled persons, including the terminally disabled, is no basis for a humane and compassionate law.

Family & Life believes that the enclosed extract from the transcript of the hearings conducted by the All-Party Oireachtas Committee on the Constitution in 2000 may be helpful to the Committee in informing it in relation to this issue in the Irish context. It is part of the testimony of Consultant Obstetrician Dr P.J.K. Conway, in which he describes his approach to cases where an unborn baby is diagnosed with anencephaly.

---

[12] Ibid.
[13] http://www.nhs.uk/conditions/edwards-syndrome/Pages/Introduction.aspx
[14] M. Jaquier et al., "Spontaneous Pregnancy Outcome after Prenatal Diagnosis of Anencephaly", *BJOG An International Journal of Obstetrics and Gynaecology* 113 (2006) 8, 951.
[15] See, for example, http://www.belovedvitoria.blogspot.co.uk/2012/07/our-beloved-vitoria-is-now-with-christ.html (retrieved 7 Feb, 2014).
[16] "Parliamentary Inquiry into Abortion on the Grounds of Disability", July 2013, p. 3

Conclusion

In conclusion, Family & Life strongly rejects the suggestion that any "measures to broaden access to abortion" are necessary "to guarantee women's rights under the Covenant".

We hope that the information provided will be helpful to the Committee as it prepares for Ireland's fourth periodic review and we look forward to engaging further with members during the Session. Should you have any questions in the meantime, please do not hesitate to contact us.

Yours sincerely,

Patrick Carr

The All-Party Oireachtas Committee on the Constitution, Public Hearings – Verbatim Transcripts (Medical), May 4, 2000.

Senator Kathleen O'Meara: Thank you Chairman. I extend a welcome to Dr Conway. You mentioned the masters of the hospitals. There was something we discussed yesterday with the masters which I want to raise with you, the question of foetal abnormality, specifically very severe foetal abnormality where no chance exists of the foetus actually having an independent life, in others words where it has encephalitis. It was put to us that in a number of cases, because of amniocentesis and the diagnosis of encephalitis during the pregnancy, that a number of parents are taking the option of having those pregnancies terminated in England. The view was put to us that there is a case to be made for having a facility to terminate those pregnancies in this country, in other words in the maternity hospitals, the justification being that these pregnancies, these foetuses have no independent life and that the parents should be given the choice and in many cases are already taking the choice of ending those pregnancies. What's your view on that?

Dr PJK Conway: I'll answer it with a recent lady of my own that I have managed. A 34 year old expecting her first baby, she booked at 18 weeks and the scan showed she had an anencephalic baby.

Senator O'Meara: No brain.

Dr Conway: That is no brain and no head. I explained to both parents that there was no prospect of life and so on and I explained also that the safest way for the mother ... the safest way for her physical and mental health, to manage her, was to let the pregnancy continue until she went into labour and delivered and that's what happened. She delivered and her baby lived for a couple of minutes, was baptised and she and her husband held the baby afterwards, after the nurses had put towels and so on, and they took photographs of the baby. They have a baby that is theirs, that has a name, that is buried and they can visit the grave. They would have no guilt. The people who are more likely to become depressed after an abortion ... one of the groups that is at high risk of depression after an abortion is people who have induced abortions because they have an abnormal baby.

Senator O'Meara: Is there evidence to support that?

Dr Conway: There is, yes.

Senator O'Meara: Would you ....

Dr Conway: Secondly, it is more dangerous. Most of these abnormal babies that won't survive after birth are picked up after 16 weeks, at a time when it is quite dangerous to induce abortion physically. There is a paper from America, reported in the *New England Journal of Medicine* in 1996 which states categorically that the maternal mortality is higher in those who are induced to get rid – I am using the term

of people who do not want the baby – to get rid of a baby who is abnormal than if they are allowed to go and have a natural pregnancy and a natural delivery.

Senator O'Meara: It was put to us yesterday that the situation you have outlined does happen where a number of parents would choose to continue the pregnancy for all the reasons you have outlined but some don't. The point was put to us, quite strongly, that where a parent chooses to terminate a pregnancy which has no end viability that there are medical reasons for post mortems and so on to be carried out which would be important for the future medical treatment of any future pregnancies that woman might have. Can I put it to you again, what is your view on a choice which would be taken by parents where a pregnancy has no viability?

Dr Conway: I think I gave you my view already, that in my view it would be far healthier for her to carry on her pregnancy both physically and mentally than to go to England and have an abortion and I would give her that strong advice ....

Senator O'Meara: Right.

Dr Conway: .... and I would have no doubt most of them would accept that advice.