



**Submission to the Oireachtas Joint Committee on Health and Children  
in respect of its consideration of the Outline Heads of the Protection of  
Life during Pregnancy Bill 2013**

**May 2013**

## 1. Introduction

The Irish Feminist Network (IFN) is a members-based organisation working toward increased gender equality in Ireland. With over 4,000 supporters, it is Ireland's fastest-growing feminist organisation. The protection and advancement of women's reproductive rights forms a key strategic areas of the IFN's work as detailed in its Strategic Plan.<sup>1</sup> The IFN is run entirely by volunteers, and seeks to advance its goal of eliminating or reducing gender inequality through membership engagement, education and training, and media work.

## 2. Executive Summary

The Irish Feminist Network welcomes the Irish Government's publication of the Outline Heads of the Protection of Life During Pregnancy Bill, and appreciates the opportunity to make a submission to the Oireachtas Joint Committee on Health and Children.

While the decision to live up to legal obligations incurred through the European Court of Human Rights' ruling on A, B, and C, as well as the High Court's ruling on the X-Case, is broadly to be welcomed, we are alarmed at some of the omissions and some of the inclusions of the proposed Protection of Life During Pregnancy Bill.

While understanding that the planned bill simply seeks to codify the X-Case ruling in law, and to implement recommendations of the Expert Group Report on the Judgement of A, B, and C, we believe that a significant opportunity has been missed here for more thoroughgoing reform of Ireland's abortion laws – a desire for which the Irish public have consistently expressed in opinion polls and referenda.<sup>2</sup>

We are particularly disappointed at the omission of cases of fatal foetal abnormalities and cases of rape and incest from this legislation. The wider constitutional context within which the Bill is framed is also problematic, as it results in this legislation replicating the dangerous distinction between 'risk to life of the woman' compared to 'risk to health'. Several medical professionals have stated that it is not always practically possible to distinguish clearly between when a woman's life as opposed to her health is at risk.<sup>3</sup> In effect, this distinction has resulted in women's wellbeing being deprioritised, as treatment

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<sup>1</sup> Irish Feminist Network, *Strategic Plan 2011 – 2013*, available online at <http://www.irishtimes.com/news/health/i-do-not-want-to-wait-until-she-s-dying-before-i-intervene-1.557537> (1992 and 2002) attempts to limit abortion rights in Ireland by removing suicidality as grounds for legal abortion, were rejected. However increased liberalization (the right to travel and the right to information) have been supported. Furthermore, there have been successive opinion polls detailing widespread support for a liberalization of Ireland's abortion laws, even beyond the X-case ruling. For details, see Royal College of Surgeons 2004 survey for the Crisis Pregnancy Agency; January 2010 Irish Examiner/Red C poll; November 2012 Sunday Business Post/Red C poll; January 2013 Sunday Times/Behaviour and Attitudes poll; February 2013 Irish Times/Ipsos MRBI poll.

<sup>3</sup> Sheila Wayman, "I do not want to wait until she's dying before I intervene", interview with Dr. Rhona Mahony (Master of the National Maternity Hospital), Irish Times, 27<sup>th</sup> November 2012, available online at <http://www.irishtimes.com/news/health/i-do-not-want-to-wait-until-she-s-dying-before-i-intervene-1.557537>

to preserve her life has been delayed until a woman is at death's door. The proposed legislation does nothing to change that fact, as it maintains the – globally unique - distinction of women's life as opposed to women's health, owing to the 8<sup>th</sup> Amendment to the Constitution. Ultimately, the Irish Government therefore needs to repeal Article 40.3.3 of the Constitution to remove this distinction.

Even within the confines of Article 40.3.3, however, there are several aspects of this proposed bill, which could pose an even greater risk to women's lives and wellbeing than the status quo. These include the onerously high number of medical professionals required to confirm suicidality (3 medics, including the GP 4). Women will not wish to subject themselves to this, particularly if they are suicidal, hence the bill will effectively not allow women to exercise their constitutional right to life in Ireland. Further, the unanimity in decision-making required will give a veto power to just one dissenting medical practitioner. Given that there is no onus on medical professionals to declare anti-choice views, but only a right to conscientious objection, this confers the power on anti-choice medical professionals to deny life-saving treatment to women. This is further complicated by the fact that only two medical professionals are required – under the 2001 Mental Health Act – to forcibly detain somebody in a psychiatric facility. Not only, then, can a woman be denied life-saving treatment, but she can be forced to carry to full term in an institution (if she happens to encounter two anti-choice, and non-absenting medical professionals in her assessment, or indeed in her review). This much has been confirmed by Minister Reilly in the media, and must be mitigated within the Bill as a matter of urgency.<sup>4</sup>

Replacing relevant sections of the Offences Against the Person Act with similarly stringent and punitive law to criminalise women who have terminations, and people who provide them, is fundamentally misled. There is no corollary between numbers of abortions and law, as the reasons for crisis pregnancies are complex, and do not depend on abortion legislation. Criminalising people therefore has no impact on the number of abortions sought by women in Ireland every year. Also, criminalisation means that women who have had abortions elsewhere or who have taken abortion pills themselves will be afraid to come forward, and will therefore possibly not receive the requisite aftercare. The IFN also notes that the potential 14-year sentence for obtaining or facilitating an abortion is even more punitive than the 12-year sentence proposed by the 2002 referendum, which was defeated.<sup>5</sup>

The definition of 'unborn' in the first section of the Bill is too wide-ranging and vague.

### 3. List of Recommendations

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<sup>4</sup> Shaun Connolly, "Women could face spending pregnancy in psychiatric unit", Irish Examiner, 2<sup>nd</sup> May 2013, available online at <http://www.irishexaminer.com/ireland/women-could-face-spending-pregnancy-in-psychiatric-unit-230085.html>

<sup>5</sup> *Report of the Expert Group on the Judgment in A, B, and C v Ireland*, November 2012, p. 19

Head 1:  
Definition of the ‘unborn’ to be omitted/amended

Head 2:  
(1)(b) to be amended to one medical practitioner (as the involvement of the GP already constitutes two medical practitioners in total)

Head 3:  
(b) to be amended to include risk of loss of life from self-destruction in a medical emergency

Head 4:  
(1)(b) to be amended to one obstetrician/gynaecologist and one psychiatrist

Head 6:  
(2) the explanatory notes for this subhead state that “any person who believes they may have a right to take action will be free to exercise their right of access to the courts to challenge a decision which they believe to be wrong.” If this confers a right to third parties to challenge medical decisions concerning a woman, this should be explicitly ruled out in this bill to avoid interference in medical decisions by third parties.

Head 8:  
(1) to be amended to one obstetrician/gynaecologist and one psychiatrist

Head 11:  
(4) Although it is vital that women’s privacy is protected, it is also in the public interest to know not the general numbers of women availing of abortion in Ireland under the proposed legislation. Such information should be made available to the public.

Head 12:  
Although this head sets out a right to conscientious objection, it does not set out a duty for medical professionals to declare anti-choice views. Especially in the case of suicidality, this could result in personal, anti-choice views of just one medical practitioner – given the requirement for unanimity – resulting in the denial of life-saving treatment for a suicidal pregnant woman. If there are two such medical professionals, it could result in forced detention in a psychiatric facility. A duty to declare conscientious objection, and to absent oneself from the first assessment panel for suicidality and the review panel is therefore essential. Failure to do so should be reprimanded. To formalise this, a panel consisting only of non-conscientious objectors should be drawn upon to assess suicidality and to review such cases.

Head 19:  
This head to be removed.

Head 20:

This head to be amended to state that the Act should come into force in its entirety on enactment.

#### 4. Main Body of the Submission

The Irish Feminist Network welcomes the Irish Government's publication of the Outline Heads of the Protection of Life During Pregnancy Bill, and appreciates the opportunity to make a submission to the Oireachtas Joint Committee on Health and Children.

While the decision to live up to legal obligations incurred through the European Court of Human Rights' ruling on A, B, and C, as well as the High Court's ruling on the X-Case, is broadly to be welcomed, we are alarmed at some of the omissions and some of the inclusions of the proposed Protection of Life During Pregnancy Bill.

While understanding that the planned bill simply seeks to codify the X-Case ruling in law, and to implement recommendations of the Expert Group Report on the Judgement of A, B, and C, we believe that a significant opportunity has been missed here for more thoroughgoing reform of Ireland's abortion laws – a desire for which the Irish public have consistently expressed in opinion polls and referenda.<sup>6</sup>

We are particularly disappointed at the omission of cases of fatal foetal abnormalities and cases of rape and incest from this legislation. The wider constitutional context within which the Bill is framed, is also problematic, as it results in this legislation replicating the dangerous distinction between 'risk to life of the woman' compared to 'risk to health'. Several medical professionals have stated that it is not always practically possible to distinguish clearly between when a woman's life as opposed to her health is at risk.<sup>7</sup> In effect, this distinction has resulted in women's wellbeing being deprioritised, as treatment to preserve her life has been delayed until a woman is at death's door. The proposed legislation does nothing to change that fact, as it maintains the – globally unique - distinction of women's life as opposed to women's health, owing to the 8<sup>th</sup> Amendment to the Constitution. Ultimately, the Irish Government therefore needs to repeal Article 40.3.3 of the Constitution to remove this distinction.

Even within the confines of Article 40.3.3, however, there are several aspects of this proposed bill, which could pose an even greater risk to women's lives and wellbeing than the status quo.

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<sup>6</sup> In two referenda (1992 and 2002), attempts to limit abortion rights in Ireland by removing suicidality as grounds for legal abortion, were rejected. However increased liberalization (the right to travel and the right to information) have been supported. Furthermore, there have been successive opinion polls detailing widespread support for a liberalization of Ireland's abortion laws, even beyond the X-case ruling. For details, see Royal College of Surgeons 2004 survey for the Crisis Pregnancy Agency; January 2010 Irish Examiner/Red C poll; November 2012 Sunday Business Post/Red C poll; January 2013 Sunday Times/Behaviour and Attitudes poll; February 2013 Irish Times/Ipsos MRBI poll.

<sup>7</sup> Sheila Wayman, "I do not want to wait until she's dying before I intervene", interview with Dr. Rhona Mahony (Master of the National Maternity Hospital), Irish Times, 27<sup>th</sup> November 2012, available online at <http://www.irishtimes.com/news/health/i-do-not-want-to-wait-until-she-s-dying-before-i-intervene-1.557537>

The Irish Feminist Network finds the number of doctors required in cases of suicidality excessive. It is reminiscent of a deeply misogynistic attitude toward women, who are deemed to be in need of ‘control’. The requirement for unanimity (to establish cases of suicidality) is additionally onerous, given the lack of requirement by anti-choice medics to declare their views. Indeed, the bill only states that medical professionals have a right to declare their conscientious objection, not, however, a duty to do so. Given unanimity, and given the onerous number of medics involved in certifying suicidality – 3 doctors, 4 including the GP, in the first instance and in case of appeal another 3 medics – it is unlikely a woman will submit to such excessive intrusion, particularly if she is vulnerable.

Also, in light of the lack of duty to absent oneself if one holds personal anti-choice views, there is a risk here that women can be denied vital and life-saving treatment owing to the undeclared, ideological stance of just one medic in the assessment panel of 3 medics (again, owing to the unanimity proposed in the legislation). That same risk holds for the review panel. Medical professionals should therefore be asked to declare their anti-choice views and conscientious objection status. Furthermore, a panel of willing, non-conscientious objectors should be established from which medics assessing suicidality will be chosen (as well as medical professionals for the respective review panel).

The IFN is additionally concerned about the implications of the 2001 Mental Health Act in the assessment of suicidality. As it stands, only two medical professionals are required to forcibly detain somebody in a psychiatric institution. If two non-abstaining, anti-choice medical professionals object to a woman’s claim to suicidality, not only will a potentially vulnerable woman in need of life-saving treatment not receive such treatment, but she can – under the Mental Health Act – be detained in a psychiatric institution against her will and be forced to carry the pregnancy to full term. Indeed, Minister Reilly seems to have confirmed this.<sup>8</sup> Given Ireland’s history of the institutionalisation of women, this is extremely worrying and needs to be addressed as a matter of urgency.

The IFN also rejects the notion that there can be a distinction between medical and psychiatric emergencies, and that provision should only be made for the former.

Replacing relevant sections of the Offences Against the Person Act with similarly stringent and punitive law to criminalise women who have terminations, and people who provide them, is fundamentally misled. There is no corollary between numbers of abortions and law, as the reasons for crisis pregnancies are complex, and do not depend on abortion legislation. Criminalising people therefore has no impact on the number of abortions sought by women in Ireland every year. Also, criminalisation means that women who have had abortions elsewhere or who have taken abortion pills themselves will be afraid to come forward, and will therefore possibly not receive the requisite

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<sup>8</sup> Shaun Connolly, “Women could face spending pregnancy in psychiatric unit”, Irish Examiner, 2<sup>nd</sup> May 2013, available online at <http://www.irishexaminer.com/ireland/women-could-face-spending-pregnancy-in-psychiatric-unit-230085.html>

aftercare. The IFN also notes that the potential 14-year sentence for obtaining or facilitating an abortion is even more punitive than the 12-year sentence proposed by the 2002 referendum, which was defeated.<sup>9</sup>

The definition of ‘unborn’ in the first section of the Bill is too wide-ranging and vague.

For the above reasons, we make the following recommendations under the heads of bill:

Head 1:

Definition of the ‘unborn’ to be omitted/amended

Head 2:

(1)(b) to be amended to one medical practitioner (as the involvement of the GP already constitutes two medical practitioners in total)

Head 3:

(b) to be amended to include risk of loss of life from self-destruction in a medical emergency

Head 4:

(1)(b) to be amended to one obstetrician/gynaecologist and one psychiatrist

Head 6:

(2) the explanatory notes for this subhead state that “any person who believes they may have a right to take action will be free to exercise their right of access to the courts to challenge a decision which they believe to be wrong.” If this confers a right to third parties to challenge medical decisions concerning a woman, this should be explicitly ruled out in this bill to avoid interference in medical decisions by third parties.

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Head 11:

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Head 12:

Although this head sets out a right to conscientious objection, it does not set out a duty for medical professionals to declare anti-choice views. Especially in the case of suicidality, this could result in personal, anti-choice views of just one medical practitioner – given the requirement for unanimity – resulting in the denial of life-saving treatment for a suicidal pregnant woman. If there are two such medical professionals, it could result in forced detention in a psychiatric facility. A duty to declare conscientious objection, and

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<sup>9</sup> *Report of the Expert Group on the Judgment in A, B, and C v Ireland*, November 2012, p. 19

to absent oneself from the first assessment panel for suicidality and the review panel is therefore essential. Failure to do so should be reprimanded. To formalise this, a panel consisting only of non-conscientious objectors should be drawn upon to assess suicidality and to review such cases.

Head 19:

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This head to be amended to state that the Act should come into force in its entirety on enactment.