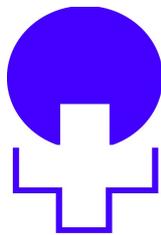


**Submission to the Convention on the  
Irish Constitution by:**



**Doctors for Choice**  
Ireland

Title of submission:

**Request for the Convention on the Irish Constitution to  
recommend a repeal of the 8<sup>th</sup> Amendment of the  
Constitution of Ireland by referendum and a  
removal of the associated legal and constitutional  
elements which support this amendment**

12<sup>th</sup> November 2013

## Executive Summary

- Doctors for Choice (DFC) advocates for comprehensive reproductive health services in Ireland including the provision of safe and legal abortion for women that choose it.
- Doctors for Choice requests that the Convention on the Irish Constitution recommends a referendum to repeal the 8<sup>th</sup> Amendment, represented by Article 40.3.3, which states: *“The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right. “*
- Article 40.3.3 is at odds with public opinion on abortion and for this reason alone a referendum should be held to align the Irish constitution with public opinion.
- Article 40.3.3 is at odds with medical professional opinion on abortion.
- Women with fatal fetal abnormalities and those that are victims of rape must travel abroad for abortion services, as a direct result of Article 40.3.3.
- Irish women, in a vulnerable situation, in an effort to access abortion services, as it their right, are increasingly taking ‘illegal’ abortifacient tablets within the Republic of Ireland. This can place their health in danger and is directly attributable to Article 40.3.3.
- Many vulnerable groups cannot travel for abortion services abroad, as is their right. Examples include women that cannot afford to travel, women too young to travel, women with disabilities and asylum seekers. Their health suffers and many

must continue with an unwanted pregnancy against their wishes. This is directly attributable to Article 40.3.3.

- The health of all Irish women suffers on account of the requirement to travel abroad for abortion services; physically, psychologically and socially. This is directly attributable to Article 40.3.3.

- Article 40.3.3 infringes upon Irish women's human rights and it usurps their individual rights at the expense of the fetus they are carrying. This is grossly wrong.

- Article 40.3.3 represents an orthodox religious health policy, to be imposed on all society, regardless if one does not abide by such beliefs.

- The Protection of Life During Pregnancy Act 2013 has serious shortfalls in the care of pregnant women and this is attributable to Article 40.3.3.

- We recommend that the Convention on the Irish Constitution debates the merits of holding a referendum to repeal the 8<sup>th</sup> Amendment. In that regard, Doctors for Choice would like to make an oral submission to the Convention, if possible.

## **Submission to the Convention on the Irish Constitution**

Recommending a repeal of the 8<sup>th</sup> Amendment of the Constitution of Ireland by referendum and a removal of the associated legal and constitutional elements, which support this amendment.

### **1. Doctors for Choice:**

Doctors for Choice (DFC) is an alliance of independent medical professionals that advocate for comprehensive reproductive health services in Ireland, including the provision of safe and legal abortion for women who choose it. We believe that women should be supported to make their own decision regarding their sexual and reproductive health and to manage their own fertility, with doctors and nurses providing expert advice and care without judgment, recourse to the law or fear of criminal sanction.

### **2. Submission:**

Under the Terms of Reference for The Convention of the Constitution, approved by Dáil Eireann, acknowledging that the Convention “*may invite and accept submissions from interested bodies and will seek such expert advice as it considers desirable*”, Doctors for Choice requests that the Convention considers a referendum on a repeal of the 8<sup>th</sup> Amendment of the Constitution of Ireland and a removal of the associated legal and constitutional elements which support this amendment. We would also request the opportunity to make an oral submission to the Convention if possible.

### **3. Article 40.3.3:**

The 8<sup>th</sup> Amendment of the Constitution of Ireland inserted a new sub-section after Section 3 of Article 40. It was approved by referendum on 7<sup>th</sup> September 1983 and signed into law on the 7<sup>th</sup> October 1983. It was passed by 67% voting in favour and 33% voting against (with a 54% electoral turnout). The resulting Article 40.3.3 states:

*“The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right. “*

**4. DFC believes that the 8<sup>th</sup> Amendment of the Irish Constitution:**

- a) Does not represent the opinion of the public at large.
- b) Is harmful to the health of Irish women.
- c) Infringes on their human rights.
- d) Should be repealed by referendum.

**5. Associated legislative and constitutional changes:**

Since 1983, the 8<sup>th</sup> Amendment of the Irish Constitution has been complemented by many subsequent constitutional and legislative changes, each directly related to the 8<sup>th</sup> Amendment and necessary for the interpretation of this amendment. Thus, we will argue in our submission that these changes, since they are necessarily and directly related to the 8<sup>th</sup> Amendment would also need to be repealed/ amended in turn. An example of such a legislative change includes the Protection of Life During Pregnancy Act 2013.

**6. Reasons to Repeal the 8<sup>th</sup> Amendment:**

DFC will now outline the reasons why we believe the 8<sup>th</sup> Amendment should be repealed.

## **7. Article 40.3.3 is at odds with public and medical professional opinion:**

### **7. (a) Public opinion:**

The MRBI Ipsos poll in February 2013 highlighted public opinion with abortion which is incompatible with the 8<sup>th</sup> Amendment:

- 84% agree with abortion if a woman's life is at risk.
- 79% agree that abortion is permissible in cases of fatal fetal abnormalities (FFAs).
- 78% agree with abortion in cases of rape/ incest.
- 70% agree with abortion where a woman deems it in her best interest.

It is clear that the 8<sup>th</sup> Amendment, by preventing abortion in cases of FFAs, rape or when a woman's health is in danger, is at odds with public opinion. For this reason alone a referendum should be put to the Irish people to repeal this amendment.

### **7 (b) Irish GP opinion:**

A paper published in September 2012 by Murphy et al., in the European Journal of General Practice (EJGP) entitled, "*Termination of pregnancy: Attitudes and clinical experiences of Irish GPs and GPs-in-training*" highlighted GP opinions with abortion. The research surveyed 500 GPs throughout Ireland from the national database of GPs supplied by the Irish College of General Practitioners. There was a 44% response rate, which is high for an observational survey and the respondent demographics were similar to those of GPs nationally. Over 88% of GPs agree with abortion if there is a "real and substantial risk" to a woman's life. Between 51-59% of GPs are pro-choice and

would agree that all women should be able to have access to abortion services in Ireland.

7 (c) Medical student opinion:

55% of medical students are pro-choice and 91% agree with abortion being available in limited situations, such as fatal fetal abnormalities (Fitzgerald et al. J Med Ethics 2013).

That public and medical professional opinion is at odds with Article 40.3.3 highlights that a referendum should be held to provide the public with an opportunity to align the constitution with its opinions on abortion.

**8. Article 40.3.3 harms Irish women's health:**

8. (a) Fatal fetal abnormalities:

As a result of Article 40.3.3, abortion services for women with fatal fetal abnormalities (FFAs) in Ireland, if they choose, is not possible. In the midst of the tragic reality of a devastating diagnosis of an erstwhile happy and wanted pregnancy, such women are forced to travel abroad for a treatment, which they should be able to access within the Irish State.

Four sources have exposed the difficulty of women (and men) that are pregnant with a FFA. The first was Deirdre Conroy (known as D), who in 2005 took a case against the Irish State, to the European Court of Human Rights, arguing that her rights had been violated as she was unable to access an abortion in Ireland for an anencephalic pregnancy. She lost the case as the court argued that she did not exhaust all domestic avenues. The second was a

17 year-old (known as Miss D), who was pregnant with an anencephalic fetus. She took a case to the High Court as the HSE attempted to stop her leaving the country. The third were the many brave women that highlighted their clinical situations in Irish media throughout 2012. The fourth is the advocacy group Terminations for Medical Reasons (TFMRs) that has exposed the State's failure to protect their health, as a result of the 8<sup>th</sup> Amendment. Three women, through TMFR and the Centre for Reproductive Rights have taken a case to the United Nations in November 2013.

It is worth restating that 79% of the public would support abortion services for fatal fetal abnormalities if a woman were to choose. Also, 87% of GPs would support the provision of abortion services in cases of fatal fetal abnormalities (EJGP 2013). Detrimental experiences of these women were highlighted by several GPs in this study, including:

- *"A woman had a major congenital anomaly detected at 23 weeks, incompatible with life- she already had a child and was a carer for her husband with a major chronic disease. It caused chaos that she had to leave the country and made a mockery of the law in this state."*
- *"A woman with two children who travelled to France to have a Termination of Pregnancy (ToP) because of severe deformities to her fetus- was quite late in pregnancy and patient very traumatised after it and bleeding a lot."*
- *'I had a lady who was diagnosed with an anencephalic fetus, she could not afford to travel to UK for a ToP.'*
- *'Woman carrying an anencephalic baby had to travel to UK at 20/40. Should have been allowed here as pregnancy was non-viable.'*
- *"A colleague in practice had a patient who had to travel to England for ToP with a fetal anomaly incompatible with life- very wrong that she had to do this, does not demonstrate a caring attitude of Irish state."*

Doctors for Choice believes that the 8<sup>th</sup> Amendment, equating the life of the unborn to that of a woman, has imposed major health ill-effects for women pregnant with fatal fetal abnormalities, by forcing them to travel abroad.

8 (b) Illegal Abortifacients:

In 2011, Irish Customs Authorities seized 635 abortifacients (15 mifepristone and 620 misoprostol tablets) representing 28 attempted supplies, addressed to 20 females and 8 males. In most developed countries, early medical abortion before 9 weeks with these tablets is a standard and safe treatment of medical abortion in primary care- if taken under medical supervision. Anecdotally, hundreds of Irish women are procuring medical abortifacients over the internet and taking them in Ireland. Such women, particularly those unable to travel (e.g. those with disabilities, asylum seekers, those too young to travel) or those attempting to escape the health and social ill-effects of having to travel for abortion services abroad, are taking such illegal abortifacients in Ireland. Such women are doing this without appropriate medical supervision, which places their health in danger.

The use of illegal abortifacients by women was brought to the attention of 11% of GPs (Murphy et al. EJGP 2012). The cases involved medical abortifacients, the majority of which were sourced on the internet or bought illegally in Ireland.

The recent Protection of Life During Pregnancy Bill (2013) has further imposed a fourteen-year prison sentence for any woman that illegally procures an abortion in Ireland. This is a severe and completely incongruent sentence, given women can avail of the same treatment in the UK. Doctors for Choice fears that women will now be frightened, because of the possibility of a lengthy prison sentence, into delaying presentation to their doctor after they take an (illegal) medical abortifacient, if a complication arises. Again this is directly

related to Article 40.3.3 and we would recommend a repeal of the 8<sup>th</sup> Amendment.

8 (c) Vulnerable groups:

Many vulnerable groups, are unable to travel abroad for abortion services, though it is their right, and the health ill-effects which they are exposed to are directly related to the 8<sup>th</sup> Amendment of the Irish Constitution. Asylum seekers cannot travel outside the Irish state and are unable to access abortion services. One GP commented (EJGP 2012); I saw an *“asylum seeker who was pregnant as a result of rape in her home country who came to Ireland believing she would be able to have an abortion. Her status as Asylum Seeker precluded her from travelling abroad without permission of the Minister for Justice. She felt let down by doctors in Ireland, believing they refused to help her”*.

Women with disabilities that choose to have an abortion are unable to easily access normal routes of travel and the option of travel may not be practical. Women without the financial means can be unable to pay for the abortion procedure, unable to afford the travel and accommodation costs, or arrange childcare at home (secretly). This has been heightened in the past five years with the economic recession. The 8<sup>th</sup> Amendment again prevents such women from accessing abortion services abroad and forces unwanted pregnancies on countless women, as they do not have a choice.

8. (d) Negative health effects on all Irish women because of having to travel to the UK and mainland Europe for abortion services:

Abortion is a very common and very safe gynaecological procedure. 35% of women and 21% of men have experienced a crisis pregnancy- this is defined as a pregnancy which is neither planned nor desired by the woman concerned which represents a personal crisis for her. 13% of all pregnancies are crisis pregnancies. 21% of Irish crisis pregnancies end in abortion (McBride et al. 2012). 4,000 Irish women travel to the UK annually to access abortion services.

DFC would argue that all Irish women's health suffers as a result of the 8<sup>th</sup> Amendment of the Irish Constitution. Forcing women to travel abroad, for one of the most common gynaecological procedures a woman will undergo, harms women's health.

8. (d) (i) Physical ill-health effects:

Though routine medical follow up after an abortion in the UK is not necessarily indicated, many women would need to attend a doctor after an abortion if they have a minor side effect or complication. On returning to Ireland such women do not know where to present and due to Article 40.3.3 feel that they have performed something illegal in the eyes of the law and often present late. GPs have provided examples of how physical health can be compromised (Murphy et al. EJGP 2012). Examples include:

*- "Patient came back from UK- saw her and transferred her to hospital with septicaemia- she died. No follow up. This occurred over 20 years ago."*

*- "Many women do not attend for aftercare with their Irish GP as they are ashamed or embarrassed and often present too late with infection/bleeding etc."*

*- "Poor aftercare leading to anaemia and persistent vaginal discharge."*

Irish women have later abortions than women in the UK, as they are forced to travel. This is associated with higher complication rates, again a negative health effect directly related to Article 40.3.3.

8. (d) (ii) Psychological ill-health effects:

As women are forced to travel abroad to access safe and legal abortion services, in the middle of a crisis pregnancy, this imposes severe stress on Irish women. They often travel in secret, with a need to arrange expedient travel arrangements, usually in isolation, feeling they are doing something illegal in the eyes of Irish law, with punitive attitudes ingrained within the Irish Constitution.

Abortion is a safe procedure for UK women, but for Irish women, they suffer excess emotional responses as a result of Article 40.3.3 and the requirement to travel.

8. (d) (iii) Social ill-health effects:

1 Financial pressures and the isolation from health services and family, when a woman travels to the UK for safe abortion services, negatively affects women's health.

**9. Article 40.3.3 infringes upon the human rights of pregnant women:**

By equating the life of the unborn as equal with that of the mother within our constitution, Article 40.3.3 infringes upon Irish women's human rights.

This was exemplified by a case in March 2013 when a woman was about to be forced to undergo a cesarean section in Waterford Regional Hospital, despite that fact that she did not consent to such a procedure. She had full capacity to consent to the procedure or refuse it, yet on account of the perceived risk to the unborn, her right to determine and make a choice as to how she would deliver was usurped by the Irish Constitution. The woman was 13 days

overdue. The case was brought to the High Court and evidence was given that the baby could die or have severe brain damage and the mother would be at serious risk of haemorrhage if the procedure were not carried out. Under Article 40.3.3 they wanted to force her to have a caesarian section. It was later reported that when the case was called, the woman reconsidered and consented to the procedure.

This is a grave encroachment into the rights of this individual woman and DFC would argue that the 8<sup>th</sup> Amendment invariably makes a woman less equal than the fetus with which they carry.

#### **10. The secular argument:**

DFC notes that the Convention has already received many submissions about the need for a secularisation of both Irish society and its Constitution. However the 8<sup>th</sup> Amendment represents an orthodox religious amendment. The 8<sup>th</sup> Amendment's inception, and insertion into the constitution represents a specific religious movement's desire to impose their belief upon society as a whole, despite the fact that not everyone in society holds a similar belief. DFC would argue that orthodox religious views of certain sections within society should not affect the health of others that do not share such views. A referendum on a repeal of the 8<sup>th</sup> Amendment should therefore be offered.

#### **11. Protection of Life During Pregnancy Act (PLDPA) 2013:**

There are problems with the recent PLDPA 2013, which was signed into law on the 30<sup>th</sup> July 2013, which Doctors for Choice has repeatedly articulated. As mentioned in Paragraph 5 above, this is directly related to Article 40.3.3.

Examples of our main concerns are:

11. (a) Fear of prosecution has been a definite chilling factor for physicians in Ireland. It is unacceptable that doctors fear criminal prosecution when they are trying to act in the best interests of a patient. The inclusion of a 14-year prison sentence for women who have an abortion outside of these guidelines and describing that as due to the 'gravity of the crime' is particularly offensive. The prospect of prosecuting children and/or their parents or those carrying out a home abortion with medication bought on the Internet is also very concerning. This will encourage secrecy, terror and desperation and increase risk in vulnerable patients.
11. (b) The Act did not legislate to allow women pregnant with a fatal fetal abnormality to access abortion services if they choose. That this Bill does not provide for this is a serious limitation, especially given that approximately 90% of both doctors and the Irish public support such a position (EJGP 2012, MRBI Ipsos Poll 2013).
11. (c) Women and children in situations of rape and child sexual abuse will similarly have to wait for further legislation to allow for the option of abortion in those cases.
11. (d) The Act did not clarify whether pregnant women that are unwell with severe heart disease or maternal cancer (requiring teratogenic treatment) will be entitled to access abortion services.
11. (e) Practically, this Act did not appreciate the reality of crisis pregnancy management in primary care and it has marginalised GPs. GPs manage early pregnancy, crisis pregnancy and most mental health problems in the Irish state. They alone manage uncomplicated pregnancies until 16 weeks gestation. If a woman presents in early pregnancy with a crisis it will be GPs in liaison with psychiatrists who will be managing her care. Obstetricians will not and need not be involved, as the pertinent issue will be mental health rather than obstetric health. GPs will not be "consulted" in clinical reality but will be the key clinician involved in the crisis pregnancy. That one certifying doctor should be an obstetrician, with no expertise at assessing suicidal risk, is entirely inappropriate. The Act therefore is at odds with the clinical reality and what would happen in an X-case scenario.

11. (f) As it stands in the case of the risk of suicide, a woman will have to be seen by at least 4 doctors before being 'certified' as being eligible for an abortion. Only one Psychiatrist or GP is required to certify eligibility for an abortion. A GP and a Consultant Psychiatrist would be the most relevant combination if two doctors were required. Needless barriers are in place for such women, who would already be under considerable stress.

For these reasons DFC would again recommend a repeal of the 8<sup>th</sup> Amendment.

**12. The X Case is not medical best practice:**

Can the PLDP Act 2013 provide obstetricians and other doctors with adequate guidance and at what point does an illness become sufficiently serious to warrant its categorisation as a "real and substantial risk"? DFC would argue that the recent Act will not lead to clarity for women or doctors where the illness is not yet life-threatening. If a pregnant woman's health is deteriorating and deliver of the fetus is necessary, yet the fetus is still 'alive' (a fetal heart beat is still present), under current Irish law doctors cannot terminate this pregnancy, unless they deem "a real and substantial risk" to the life of the mother to be present. To define a clinical situation, under our legislation based on Article 40.3.3, on each side of that nebulous line between ill-health and life threatening illness, is not practical in the world of medicine. Such grey areas of medicine are fraught with subjectivity and no amount of guidance will help every situation. The concept that an exact moment in time will arrive necessitating doctors to terminate a pregnancy is unhelpful.

It is very problematic for doctors on the ground when legalistic common law terminology is being applied to medical practice. We have allowed orthodox religious health policy (through the 1983 8<sup>th</sup> Amendment) to dictate our medical management of pregnant women, instead of allowing best medical practice guidelines to do so.

Recommendation 4b of Professor Sabaratnam Arulkumaran's report to the HSE, on the death of Savita Halappanavar, stated:

*"There is immediate and urgent requirement for a clear statement of the legal context in which clinical judgment can be exercised in the best medical welfare interests of patients....We recommend that the clinical professional community, health and social regulators and the Oireachtas [the Irish parliament] consider the law including any necessary constitutional change and related administrative, legal and clinical guidelines in relation to the management of inevitable miscarriage in the early second trimester."*

Similarly, Professor Peter Boylan, a former Master of the National Maternity Hospital, Holles Street, who was an expert witness at the coroner's inquiry into Savita Halappanavar's death, claimed that it was restrictive abortion laws that cost Ms. Halappanavar her life.

### **13. Conclusion**

For these reasons, Doctors for Choice would implore the Convention on the Irish Constitution to advise a referendum to give the Irish public the choice to repeal the 8<sup>th</sup> Amendment. This would be beneficial to Irish women's health, would protect their human rights and would align public opinion with the Irish Constitution.

Thank you for reading our submission.

**Doctors for Choice, 4<sup>th</sup> Floor, 2/3 Parnell Street East, Dublin 1.**

**[doctorsforchoice@gmail.com](mailto:doctorsforchoice@gmail.com)**

**markmurphy@rcsi.ie**