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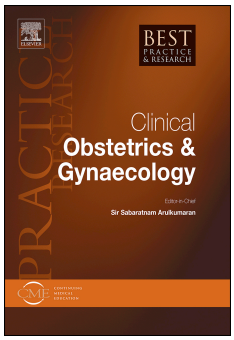

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The Irish Journey: Removing the shackles of abortion restrictions in Ireland

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Abortion
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Abstract

In May 2018, the Irish electorate voted to remove from the Constitution one of the most restrictive abortion bans in the world. This referendum followed 35 years of legal cases, human rights advocacy, feminist activism and governmental and parliamentary processes. The reframing of abortion as an issue of women's health rather than foetal rights was crucial to the success of law reform efforts. The new law, enacted in 2018, provides for access to abortion on a woman's request up to 12 weeks of pregnancy and in situations of risk to the life or of serious harm to the health of the pregnant woman and fatal foetal anomaly thereafter. Abortion is now broadly accessible in Ireland, however continued advocacy is needed to ensure the state meets international human rights standards and that access to abortion care and abortion rights is fully secured into the law.

Introduction

On the 25th of May 2018—a monumental day for reproductive rights in Ireland—the Irish electorate voted to repeal the Eighth Amendment to the Constitution, paving the way for the reform of one of the most restrictive abortion bans in the world.

Prior to this vote, abortion was permitted only in cases where there was a risk to the woman's life, as distinct from her health. In all other cases abortion was criminalised, with a maximum sentence on conviction of 14 years' imprisonment. As a result, regardless of their personal circumstances or their financial means, women and girls who were unable for any reason to go through with a full pregnancy had no option but to leave Ireland to access services in countries where abortion is legal, or, from the late 2000s, to risk prosecution by accessing abortion pills from online suppliers in order to self-administer abortion. Or to parent against their will. This changed profoundly with the repeal of the Eighth Amendment. Decision-making in relation to pregnancy in general, and termination of pregnancy in particular, no longer engages foetal rights under the Constitution in ways that ignore the health and silence the views of the pregnant woman. Under legislation enacted in December 2018, the Health (Regulation of Termination of Pregnancy Act) 2018, most—but not all—women in Ireland who need abortion care should be able to access it from a local, community-based provider or hospital. Abortion care is free of charge, however this does not yet include post-abortion contraceptive services. The state's abortion services are now advertised on public transport.

The process of reform of Ireland's abortion laws has been lengthy, complex and difficult, and is still incomplete. An exhaustive account is beyond the scope of this article. However, as an organisation that has supported women and girls who could not access abortion in Ireland, and also worked for change in the law for decades, the Irish Family Planning Association (IFPA) is well-placed to provide a perspective, albeit a subjective one, on these processes. Formed in the 1960s by a group of doctors and nurses motivated by the suffering caused to low income women and families by the blanket ban on contraception that was in force at the time, the organisation has worked for 50 years from a social justice and human rights perspective, with the aim of bringing sexual and reproductive healthcare in Ireland into line with best international practice and with human rights standards.

Rather than focusing on the 2018 referendum, our purpose in this article is to identify a number of key events in the long campaign to reform the Constitution and provide legal abortion care and to highlight the changing ways that abortion has been framed in political discourse over time. While there are elements of chronology in this process, it cannot be captured in a neatly chronological account and it is not possible to trace a simple linear evolution, either normatively or temporally. Rather, we identify key moments leading to the normative shift from a dominant moral frame of foetal rights grounded in particular stereotypes of women and characterised by claims of national, Irish specificity, to a moral frame centred on women's health and discuss the extent to which the new legal framework is compliant with norms of international human rights law. We begin by looking at the initial framing of foetal rights as constitutional and how this impeded Irish reproductive healthcare for 35 years. We then consider some of the key processes that led to abortion being reframed as an issue of health and discuss how this reframing facilitated reform of the law. Finally we consider some of the limitations of this approach to law reform as evidenced in the new legal framework for entitlement to abortion in Ireland.

Framing Foetal Rights as Constitutional Rights

Ireland is a constitutional democracy with a written constitutional bill of rights. Until 1983, abortion was governed by statute, the Offences against the Person Act 1861, which criminalised abortion in all circumstances, with a maximum sentence on conviction of life imprisonment. The Eighth Amendment was inserted into the Constitution following a campaign by conservative Catholic anti-abortion activists who aimed to guard against the possibility that the Irish courts would follow the example of the United States Supreme Court and recognise a right to abortion, as it had with regard to the liberalisation of contraception [1]. Remote as that possibility was at the time [1], Ireland was changing rapidly and the architects of the Eighth Amendment mobilised to secure the country's draconian abortion laws against any change in the future [2]. This was not a grassroots campaign, rather anti-abortion activists engaged in a focused and strategic campaign to influence the leadership of the major political parties and successfully played them off against each other to advance their goal [3]. The referendum on the Eighth Amendment of the Constitution (Article 40.3.3) was passed after a bitterly

contested campaign, with 67% voting in favour to 33% voting against—percentages that were to be mirrored in favour of its repeal 35 years later. Article 40.3.3 stated that: “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] The pregnant woman was “the mother”, recognised only in terms of her relationship to the foetus and no longer an autonomous person with existing constitutional rights beyond her bare right to life [5]. The constitutional elevation of foetal rights meant that the anti-abortion policy could subsequently be changed only by a referendum, rather than by the courts or the legislature. Locking the abortion ban into the constitution also conferred a degree of moral force: abortion could now be presented as counter to the cultural values and moral position of the Irish as a nation. The State subsequently went to great lengths to ensure that the Amendment could not be overridden by treaties of the European Union and would argue before the European Court of Human Rights that it reflected the profound moral values deeply embedded in the fabric of Irish society [6]. And yet the supposed moral position did not deter women from seeking access to abortion services in England and Wales: indeed the rate increased after the insertion of the Eighth Amendment: between 1980 and 2017, at least 171,795 women and girls, denied care by a state whose constitution privileged the pregnancy over the pregnant woman, gave Irish addresses at UK abortion clinics [7].

The Eighth Amendment was not tested in the courts until the 1992 ‘X case’, which involved a 14-year-old who had been raped and threatened to kill herself if forced to continue with the pregnancy. The Supreme Court held that not only did the Constitution not require the state to prevent her from leaving Ireland to have an abortion, but that abortion was lawful if there was a risk to a pregnant woman’s life, including through suicide [8]. The question of suicide as a ground for abortion and an associated characterisation of women and girl seeking an abortion on grounds of suicide as untrustworthy, manipulative, hysterical and deceitful would dominate political and public discussion of abortion for many years and would be repeatedly asserted in attempts to generate fears of “opening the floodgates” [9].

Following the X case, two further constitutional amendments were introduced clarifying that the Eighth Amendment did not limit the freedom to travel to obtain an abortion or to obtain information about services lawfully available in another state. Governments twice introduced referendums to exclude risk of suicide so that abortion would be permissible on grounds of physical risk to life only. Held in 1992 and 2002, both were unsuccessful. The clear disparity between the supposed nationally agreed moral position on abortion and women's increasing recourse to abortion services could not be entirely ignored: three political processes were initiated to examine issues relating to the Eighth Amendment and reproductive health, but these were limited in scope and failed to seriously engage with liberalisation of abortion as a possible course of action [6]. Instead, a Crisis Pregnancy Agency was established with a mandate to reduce the number of women who choose abortion [10]. Despite its problematic association with anti-abortion activism in the US context, the term "crisis pregnancy" has been used in Irish state policy since the early 2000s in reference to the various circumstances that lead women to opt not to continue pregnancies. Indeed, the programme within the Health Service Executive of the Department of Health that funds pregnancy counselling services, including rights based non-directive counselling such as the IFPA provides, and that now oversees abortion services, is called the Sexual Health and Crisis Pregnancy Programme.

The X case introduced an unworkable distinction into medical practice, so that doctors could not intervene to end a pregnancy that caused serious risk to the pregnant woman's health, but were required to wait until a threat to a woman's health deteriorated sufficiently to be considered a risk to life before a lawful termination could be carried out. The failure of parliament to legislate following the Supreme Court ruling made this problem all the more acute, as there was no legal framework for decision-making in cases that potentially fell within the X case test. Cases that emerged into the public domain highlighted the central harm of the Eighth Amendment: when the right to life of the foetus was at issue, the state was constitutionally obliged to take any action practicable to preserve it: the suffering of the pregnant woman would not make the intervention unconstitutional [11]. The amendment also had consequences for women's health, dignity and autonomy in pregnancy more generally. It constructed the pregnant woman and her foetus in an adversarial relationship as separate

constitutional persons with potentially opposing interests, and this played out in court cases where counsel was appointed to represent the unborn in cases involving pregnant women's health. The 2016 Health Service Executive National Consent Policy and the 2017 National Maternity Strategy, for example, both place limits on a woman's right to refuse treatment in pregnancy, such that her decisions could be overridden by the view of her medical team as to what was required to preserve foetal life or health [11].

Framing Reproductive Health as a Human Rights Issue

The years following the 2002 referendum saw abortion effectively shelved as a political issue. In the context of political inertia in the face of continuing harms, the Irish Family Planning Association took a strategic decision to focus on human rights advocacy with the aim of bringing external pressure from international human rights bodies to bear in Ireland. In the IFPA's view, bringing public health evidence from our pregnancy counselling and post-abortion care services to the attention of expert human rights bodies would support the framing of abortion in terms of women's right to health, autonomy and dignity. It would also force the state to engage with abortion in the context of Ireland's obligations under international human rights law, rather than as an issue that could be addressed within the terms of Irish law alone. The aim was also to disrupt the deference of international bodies to the official presentation of abortion as a uniquely sensitive national issue and focus attention on Ireland's failure to adhere to human rights norms. This advocacy ultimately involved strategic litigation to the European Court of Human Rights (ECtHR), engagement with the United Nations (UN) Human Rights Council, and advocacy before the UN expert treaty bodies that monitor states' fulfilment of their obligations under international human rights covenants and conventions.

In 2005, the IFPA supported three women to take a case to the ECtHR challenging the Irish abortion laws. The applicants in *A, B and C v Ireland* [12] had each terminated an unintended pregnancy in the UK, Applicants A and B for reasons of health and wellbeing, and Applicant C on the basis of risk to life. Applicant C had discovered that she was pregnant while undergoing treatment for cancer, and was entitled to an abortion in Ireland as her life was at risk. However, due to the absence of a statutory

framework regulating access to abortion, she had been unable in practice to exercise her right. The Court issued its judgment in December 2010. In respect of Applicants A and B, the majority of the ECtHR deferred to the state's framing of the Eighth Amendment as reflective of the "profound moral values" of the Irish people, holding that the state was therefore not obliged to extend the limited grounds for abortion. In the case of Applicant C, however, the Court held that the failure to enact legislation to give effect to the ruling in the X case resulted in a "striking discordance between the theoretical right to a lawful abortion in Ireland…and the reality of its practical implementation." [12] Rulings of the ECtHR are legally binding: the state was therefore required to introduce "legislative criteria or procedures" that allowed for a practical assessment of risk to the life of the pregnant woman. And although the Court's finding that the criminalisation of abortion interfered with the right to private life of Applicants A and B did not require the state to take any action, it was a significant step in reframing abortion as human rights issue.

Ireland's first Universal Periodic Review by the UN Human Rights Council in 2011 provided a further opportunity to bring the abortion laws under scrutiny and to challenge the framing of abortion as so uniquely sensitive that international human rights law somehow did not apply within the borders of the state. Six European member states made recommendations in relation to abortion. They were motivated to do so by evidence of the ways the laws harmed women, by opinion polls showing support for reform and by the criticisms of Ireland by human rights expert bodies—including the trenchant criticisms by the UN Committee Against Torture earlier that year [13]. These states were perhaps also influenced by the dissonance between Ireland's failure to bring its abortion laws into compliance international human rights law and its active cultivation in the intergovernmental sphere of a reputation as a champion of gender equality. The state rejected all six recommendations [14]. However, embarrassed in Europe once again less than a year after the judgment in *A, B and C v Ireland*, the government undertook to convene an Expert Group, which was tasked to provide a series of options as to how the ECtHR decision should be implemented [15].

When the Expert Group convened in January 2012, therefore, it was working in the context of criticisms from an intergovernmental human rights body and was subject to the scrutiny of the Council of Europe, which monitors implementation of ECtHR judgments. In a notable departure from the trend of framing abortion in ideological terms, the report prepared by the Expert Group outlined the practical implications of implementing the ruling largely in terms of healthcare management. Assessment of suicide risk, for example, was normalised as "a routine process for psychiatrists" and one that should not be treated differently in pregnancy than otherwise [15]. The group expressed doubt that any option short of legislation would give effect to the ruling of the ECtHR [15].

The report was published towards the end of 2012, a year that brought Ireland's abortion laws into unprecedented national and international scrutiny. Several significant steps were taken. A group of left-wing parliamentarians introduced a Bill to give effect to the Supreme Court decision in the X case: although it did not pass, the formal procedure of legislative debate on abortion was a significant step. A group of women and their partners who had been forced to travel to the UK to access services after diagnoses of fatal foetal anomaly emerged and introduced a new framing of abortion as good motherhood, rather than a rejection of the maternal role [16]. Media interest in women's stories of travelling to the UK for abortion was rekindled [17]. These factors contributed to a markedly calmer and more questioning tone in public discourse, and for the growing focus on women's rights to health, autonomy and dignity [18]. A new generation of feminist activists was beginning to galvanise around the issue of reproductive rights and in October the death of a young pregnant woman led to immense public outcry as thousands took to the streets to protest against the law [19].

Recognising the Risk to Women's Health

Savita Halappanavar presented at a hospital with back pain and was found to be miscarrying. Although the pregnancy was not viable, her requests for termination were refused because there was a foetal heartbeat and because her life was not deemed to be at risk. She contracted sepsis and died of multi-organ failure and septic shock six days after admission. Critically, when the government

announced an enquiry into the case, for the first time in a case involving the Eighth Amendment, an international expert, Professor Sir Sabaratnam Arulkumaran, was asked to chair the inquiry. The report of the inquiry was significant for reframing the larger debate on abortion in Ireland. It established a causative link between Savita Halappanavar's death and the criminal law. Critically, in addition to naming the inadequacies of medical and health systems, it framed the problem as one of injustice [20]. The report clearly identified the abortion laws in Ireland as causing adverse impacts on health outcomes and denying healthcare providers the enabling legal environment they needed to provide medical services in a way that complied with professional and ethical standards of care. The report recommended urgent guidance for such cases, noting that "guidance so urged may require legal change." [21]

Unprecedented international attention followed and after years of political inertia, a parliamentary process finally began: two parliamentary hearings were held by the Joint Oireachtas (Parliamentary) Committee on Health over three days in each of January and May 2013. In recognition, perhaps, that abortion was coming out of the political shadows, the hearings were held in the upper house chamber, rather than the basement committee rooms, and attracted wider engagement by politicians who were not members of the Committee than is usual for such proceedings [22].

To some degree, the parliamentary debate covered familiar ground: there was much repetition by anti-abortion parliamentarians of the assertion that women and girls would make dishonest claims of suicide risk in order to access abortion so that even such restrictive legislation as was being proposed would "open the floodgates". However, the process was characterised at least as much by the serious engagement on the part of members of the Health Committee with public health evidence: notably, the Chair's introduction framed the process in these terms, rather than in the foetocentric language of the Constitution [23]. All of the experts called to give evidence were Irish; none of the doctors called spoke of direct experience as a provider of abortion care. However, a number of doctors spoke eloquently of the impact on them as healthcare professionals and on the health of their pregnant patients of implementing the law, focusing particularly on the chilling effect of the criminal

provisions of the Offences Against the Person Act 1861 [24]. For the IFPA, as the only primary healthcare provider invited to address the Committee, the hearings were an opportunity to present evidence from our services of the harms to women's health of the denial of abortion and to highlight the need to reform the law beyond the terms of the X case. But the only women invited to give direct testimony of the experience of choosing abortion were those with experience of fatal foetal anomaly.

The government's legislative response was to replace one restrictive, punitive and stigmatising criminal abortion law—the 1861 Act—with another, the Protection of Life During Pregnancy Act 2013. The 2013 Act demonstrated an extraordinary degree of legislative caution and a deference to the most restrictive possible reading of the law. Indeed the Act included a new offence of "destruction of unborn human life" with a maximum sentence of 14 years on conviction. And it reinforced the stereotype of the hysterical pregnant woman, making it more onerous to access abortion if the risk to life was a risk of suicide than a risk to life which was physical.

But in its very restrictiveness, the legislation arguably made the need for constitutional change unavoidable. The Act and the extensive debates in the Oireachtas made both the extreme narrowness of access to abortion and the severely limited scope of the legislature to regulate termination of pregnancy visible. It also allowed many politicians to frame the Eighth Amendment as a legal mechanism that placed limitations on the power of the legislature, rather than as an expression of an agreed national position. The enactment of a bad law, therefore, provided a framework for discussion within civil society, the political establishment, and, critically, within the healthcare profession that had not existed before. And, following the enactment of the law, in 2014, for the first time, a UN body explicitly called for change to the Constitution.

Sustained Condemnation by Human Rights Bodies

Between 2011 and 2017 Ireland's abortion laws were reviewed by five United Nations treaty monitoring bodies. Each was an opportunity to bring public health evidence before human rights experts and to mobilise civil society in Ireland. Human rights bodies had previously been critical of

Ireland's abortion laws, but none specifically called for constitutional reform until 2014, when the UN Human Rights Committee examined Ireland. The Committee heard from the IFPA and other organisations about the harms to women of the abortion laws, but also heard from organisations representing women who had been harmed by punitive state policies in relation to sexuality, reproduction and childbirth [25]. The state admitted that it had "no solution" to the plight of women who were unable to travel for abortion [26]. The Chair, Sir Nigel Rodley, decried the State's policy of treating women as mere vessels for reproduction [27]. Under questioning by the human rights experts, the state admitted that none of the abortion referendums had offered the opportunity to vote for liberalisation. In this context, the state's portrayal of a ban on abortion as intrinsic to Irish nationhood failed to convince the Committee. The Committee recommended that both the 2013 Act and the Constitution be reformed.

The UN Human Rights Committee review in 2014 became the template both for trenchant criticisms of Ireland's abortion laws by international bodies and for intensive media focus. Similar recommendations were subsequently made by the UN Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, Committee Against Torture and the Committee on the Elimination of Discrimination Against Women [28]. In 2016, the Human Rights Committee issued its decision in the case of *Mellet v Ireland* [29], holding that a woman's rights to freedom from cruel, inhuman or degrading treatment, as well as to privacy, had been violated when she was forced to travel to the UK to terminate a pregnancy involving a fatal foetal anomaly. In May 2016, during Ireland's second Universal Periodic Review, abortion laws drew criticism from 15 UN member states.

The repeated criticisms from UN treaty monitoring bodies gave added impetus to the civil society mobilisation that had been growing since the death of Savita Halappanavar. Abortion reform moved from the margins to become a central focus of activism of national human rights, women's and grassroots organisations. From 2012 onwards, an annual March for Choice organised by the Abortion Rights Campaign and an expanding Coalition to Repeal the Eighth Amendment showed the growing support for change to the Constitution. Less publicly, the IFPA held seminars, workshops and private

meetings to provide opportunities for lawyers and healthcare practitioners and influencers to engage with abortion from the perspective of international human rights law and with the rights-based standards of the World Health Organisation. In parliament, a small number of pro-choice politicians elected in 2011 had been maintaining consistent pressure on government to reform the abortion law. By the time of the 2016 general election, however, all major political parties bar one had addressed the issue of the Eighth Amendment in their manifestos: Fine Gael, which ultimately formed a coalition government, promised to establish a Citizens' Assembly [30].

The Role of the Citizens' Assembly

In November 2016, the Citizens' Assembly began considering the Eighth Amendment of the Constitution. An "exercise in deliberative democracy" [31] the Assembly was composed of 99 members of the public and was chaired by a Supreme Court Judge, Ms Justice Mary Laffoy. Justice Laffoy's stated priority was to break with the past and facilitate an evidence-based approach to discussion and policymaking [31]. And indeed, from the outset the Assembly was characterised by its emphasis on data in relation to abortion in Ireland and globally.

Breaking with the insular tradition of decades, the Citizens' Assembly brought reproductive health expertise from outside Ireland into the heart of the discussions: two UK-based doctors spoke about the practice of providing abortion and the role of standard-setting bodies in informing care quality and professional competence. This kind of descriptive and clinical narrative had been virtually absent from discourse on abortion in Ireland until this point. The Assembly also addressed reproductive autonomy and ethics in the abortion context and paid considered attention to women's personal experiences of travelling outside the state to access abortion [32]. Civil society organisations also presented to the Assembly, ranging from national human rights and women's organisations, including the IFPA, all advocating for the recognition of abortion as a matter of women's health and human rights and for the fulfilment of Ireland's obligations under international human rights law. Anti-abortion organisations also made presentations.

Like other government processes, the proposal for a Citizens' Assembly reflected as much a desire to avoid the feared political fallout of decisive action as a recognition of the growing political imperative

for change [33]. It was by no means clear at the outset that the process would be allowed sufficient scope to consider reform options in a meaningful way. The citizen participants, however, ensured that it developed into a dynamic and genuinely deliberative forum. After five weekends of discussion and real engagement with the reality of unintended pregnancy and the many complex reasons why women choose to access abortion, members were not content to consider narrowly focused recommendations. They insisted that in addition to voting to recommend that abortion be legal in situations of rape and serious risk to health, they should have the option to vote for grounds of risk to the woman's health more generally and of socio-economics reasons and women's autonomy. In this framing of abortion in women-centred terms, the Citizens' Assembly was markedly different from previous state initiatives.

The citizens voted overwhelmingly (87%) in favour of replacing the Eighth Amendment with a provision giving parliament responsibility to legislate on abortion. In subsequent ballots, 64% voted that abortion should be lawful without restriction as to reason; 72% for access to abortion for socioeconomic reasons and 78% where the woman's health is at risk. Importantly, the Assembly understood unintended pregnancy and abortion as realities of women's reproductive lives that required a holistic approach as an aspect of reproductive health: a series of ancillary recommendations in the final report called for improvements to sexuality education, access to contraception and obstetric care.

The Citizens' Assembly recommendations initially sent shockwaves through the political establishment. Long used to considering abortion as an intractable issue, many government figures and political correspondents opined that abortion on request, in particular, was beyond "the limit of what is politically possible" [34]. It became clear that the political approach to a referendum on the Eighth Amendment would be more cautious than the proposals put forward by the Assembly. Yet the process had demonstrated to politicians not only the strength of support for constitutional change [35] but that it was possible to talk about abortion in an informed and respectful manner, and without bitter disagreement and divisiveness. Despite the Assembly's studied neutrality, the engagement by the citizens fostered significant change in the discourse on abortion: a reflective exercise published in the final report [31] showed that recognition of women as moral agents, understanding of abortion as a

matter of reproductive health and the reality that the Eighth Amendment has never prevented women from accessing abortion were persuasive. The construction of abortion as a harm from which the Irish nation had to be protected was displaced, and questions of the state's duty to introduce measures to protect pregnant women's rights and health were far more prominent. By the end of the Assembly's deliberations, the question was no longer whether Ireland's abortion laws would change, but what the nature of the change would be.

Legislating for Reform

The report of the Citizens' Assembly was referred to a parliamentary committee, the Joint Oireachtas Committee on the Eighth Amendment. The Committee was unusually large, comprising 21 members of the Dáil (lower house) and the Seanad (upper house). Its work programme was influenced by the evidence-based approach of the Assembly, and many of the same witnesses were invited to present. However, there was a greater emphasis on the international context and on Ireland's obligations under international human rights law, and clear discomfort that Ireland was such an outlier in terms of best practice in reproductive health. The Committee was addressed by experts from the World Health Organisation, the Guttmacher Institute, BPAS, and the Centre for Reproductive Rights and by a range of Irish medical, medico-legal and constitutional law experts. The Committee was also informed by a sense of pragmatism – its report explicitly acknowledged that abortion is a "practical reality" for thousands of Irish women every year and the state must respond accordingly [36].

The parliamentary approach was necessarily more adversarial than the Citizens' Assembly. But apart from a small and vocal group anti-abortion members who engaged with the process in terms of ideological debate, other members, regardless of their declared personal views, by and large echoed the Assembly's tone of evidence-based enquiry. The expert evidence of doctors framed the Eighth Amendment as an anomalous and harmful interference of the law in medical practice and focused discussion on the impact of the law on safety, risk management and the necessary trust between a pregnant woman and her doctors. Medical experts consistently drew on international best practice to underscore the moral and political wrongness of failing to reform a law that mandated poorer outcomes for women in Ireland than in other countries. Professor Arulkumaran, who had previously

made presentations to parliamentarians, joined representatives of the Irish Institute of Obstetricians and Gynaecologists to present evidence of the harms of the law to women's health. The impact of the evidence provided was profound: some members of the Committee openly acknowledged that they had moved from an anti-abortion to a pro-choice position as a result of the proceedings.

While the emphasis on technical expertise enabled the Committee to ground its recommendations in a strong evidence base, considerations of women's autonomy and agency as critical aspects of health, received less attention. Indeed, autonomy was largely discussed in the context of the doctor-patient relationship. With some exceptions, health was largely discussed in a medicalised context, and broader considerations of well-being were marginalised. The Committee expressly rejected proposals to enable access to abortion for socio-economic reasons and in situations of non-fatal foetal anomaly. Decriminalisation of abortion was not given in-depth consideration. Despite these shortcomings, the Committee achieved a cross-party consensus on a reproductive health model based on lawful abortion, free access to contraception and reform of sexuality education, which was unthinkable even months before.

The Committee issued its report in December 2017, recommending that the Eighth Amendment be repealed from the Constitution and abortion made lawful without restriction as to reason up to a gestational limit of 12 weeks [36]. This was an extraordinary outcome. In 2013, the government party, Fine Gael, lost seven anti-abortion parliamentarians who refused to support the Protection of Life During Pregnancy Act; in 2017, a majority of the Fine Gael Committee members voted in favour of access on request. The report further recommended that abortion be accessible when a woman's life or health is at risk and in situations of fatal foetal anomaly. While the recommendations were more conservative than those put forward by the Citizens' Assembly, they nonetheless represented huge progress at the parliamentary level.

The Referendum Campaign

The announcement of the referendum to repeal the Eighth Amendment marked a complete break with the foetocentric state discourse on abortion since 1983. The need to provide care and compassion for women experiencing unintended pregnancies and to end the harms caused by the denial of abortion

was at the heart of state discourse [37]. The proposal to legislate for abortion on request was supported by Cabinet members and opposition leaders who had previously identified as anti-abortion. However, some senior figures in government expressed unease with the prospect of such wide-ranging reforms. As a result, political compromises were struck that led to a more conservative approach than either the Citizens' Assembly or the parliamentary committee. In March 2018, when the Minister for Health published the outline of the law to be introduced if the Eighth Amendment was repealed, it included a mandatory 3-day waiting period for abortion on request in early pregnancy [38]. After 12 weeks, abortion would be permissible in cases of risk of "serious harm" to health, a higher threshold than that proposed by the Assembly or the Oireachtas Committee. Abortion outside the terms of the legislation would remain a criminal offence, although pregnant women would be exempt from prosecution.

The civil society campaign, led by Together for Yes, a broad grouping of social actors, began in March 2018. Medical voices were central to the campaign. The Institute of Obstetricians and Gynaecologists issued a statement supporting abortion law reform. Some of the country's most prominent obstetricians and general practitioners acted as campaign spokespeople while more than 1600 medical professionals signed a public statement in favour of a Yes vote. In the lead-up to the vote, politicians and prominent campaigners largely argued for reform as a necessary and pragmatic resolution to specific harms. Rather than a woman's right to choose, the proposal to introduce access to abortion on request in the event of a Yes vote was defended most commonly by reference to the need to provide compassionate access to women who were pregnant because of rape and the legal and medical risks to women who sourced abortion pills online and self-administered without medical supervision. The Together for Yes campaign was key in mobilising the public vote for change. And, on the 25th of May 2018, 66.4% of the Irish electorate voted Yes to repealing the Eighth Amendment.

Legislating for Abortion Care

The government claimed repeal as a major victory. The Minister for Health announced that abortion would be made available by the 1st January 2019. Following a landslide popular vote in a campaign that had cross-party support and was promoted by a wide cross section of civil society, it seemed that

the environment for the introduction of a progressive, rights-based abortion law could not have been better. And the law has many positive aspects. Abortion is now located within ordinary standards of certainty in medical decision-making, i.e. a doctor must make a reasonable opinion formed in good faith that the pregnancy falls within the grounds of the Act. In the case of early abortion, the only factor in determining eligibility for early medical abortion is the gestation stage: a woman has a right to care without having to justify her decision. A pregnancy can also be terminated on grounds of risk to life or of serious harm to a woman's health, so long as it is not deemed viable, and in cases of fatal (but not non-fatal) foetal anomaly.

The legislation permits healthcare professionals to refuse to provide care on grounds of conscience, but places limits on the exercise of this right. Only doctors, nurses or midwives may invoke this section. Except in cases of emergency, these professionals may refuse to directly participate in carrying out a termination of pregnancy. The Act places the onus on the objecting healthcare professional to make the necessary arrangements for the transfer of the pregnant woman's care. In other words, a doctor, nurse or midwife who exercises the right to object to participating in the procedure has a legal duty to facilitate her access to that care. She or he may not obstruct a woman in any way from exercising her right to care under the Act.

However, because the government prioritised service delivery within such a short timeframe and due to political decisions to hold fast to the legislative model drafted before the campaign, the process of legislative scrutiny was unusually compressed and pressurised, and the law falls short of the vanguard rights-based framework many hoped for.

The opportunity to follow the models of recently reformed laws such as those of South Africa and Spain and place an explicit duty on the state to guarantee access to care was not seized. Efforts to amend the Bill and shift its framing away from criminalisation and towards women's human rights and equitable access to care, in line with best international practice, were unsuccessful. The framing of the law in terms of criminal offences defines abortion as a harm in ways that perpetuate abortion stigma and put barriers in the way of people who make the decision to end a pregnancy. Doctors are again the gatekeepers of a restrictively drafted law that potentially criminalises them, albeit the

protections for doctors acting in good faith are very strong. Before 2019, the law imposed an impossible legal distinction between risk to health and risk to life. Doctors are now faced with applying the law and deciding if individual women's cases fall within 12 weeks as defined in the Act or meet the threshold for abortion on grounds of risk of serious harm to health and fatal foetal anomaly. And women whose pregnancies fall outside the grounds must still find ways to access care outside the state or outside the law.

Conclusion

The insertion of the Eighth Amendment in 1983 framed an anti-abortion standpoint as a national moral position. Law reform could not have been achieved without reframing abortion in a manner that demanded response from the state: showing that the denial of safe and legal abortion care caused significant harms to the health and wellbeing of women and girls—and that these amounted to violations of their human rights—created a moral and legal imperative to change the law. Human rights advocacy was critical in positioning abortion within an international context and highlighting that, at a time when Ireland was seeking a reputation internationally as a champion of human rights and gender equality [39], the state was failing to fulfil its obligations under international human rights law within its own borders. For the IFPA, at a time when political will to engage with the Eighth Amendment had eroded, human rights advocacy opened a space where the experiences of our clients were given deep consideration and the harms they experienced were taken seriously. The condemnations by successive human rights bodies garnered intensive media attention and illuminated the role of the Constitution in reproductive coercion: the ill-treatment of those who were denied abortion care, the stigma related to criminalisation of abortion and the complex ways in the Eighth Amendment caused discrimination against vulnerable women and girls. Civil society organisations and grassroots feminist activism were able to leverage Ireland's outlier status among progressive states to embarrass the government and maintain public pressure for change. Healthcare providers had a significant influence on both public opinion and the perspectives of legislators in situating abortion in a wider context of reproductive health. The evidence that healthcare providers—doctors and psychiatrists in particular—could bring into the public domain about the impact of the law on

women's lives and heath and the ethical dilemmas posed to doctors who were required to implement the law provoked a degree of moral outrage that policy makers could not ignore. Most importantly, healthcare providers pointed the way towards the only moral resolution of the harms caused by the Eighth Amendment, namely its repeal and the introduction of comprehensive reproductive healthcare, including abortion. Those who advocated for retention of the Eighth Amendment could offer no moral resolution, but only a status quo based on a narrative of national identify that no longer resonated with Irish citizens.

Mutually reinforcing health and human rights discourses, therefore, were critical over many years to building momentum towards reform of the law. The referendum campaign in the spring of 2018, however, drew on the former almost to the exclusion of the latter, and framed abortion as a private concern between a woman and her doctor, rather than as a matter of autonomy and agency. 1,429,981 people voted for repeal, but the subsequent legislative process has shown the limitations of health as a reforming discourse. We have achieved the provision of abortion services for most women who need them, but the women's health frame has not secured rights-based access to abortion care for all women within the law.

Huge changes have taken place with respect to abortion. A national conversation about abortion has taken place and had an unprecedented impact in terms of normalising abortion as part of healthcare. There is undeniable public and political support for the new law. Abortion care is no longer excluded from the norms that apply to healthcare generally. But continued advocacy is needed to hold laws, policies and the decision-makers behind them to the highest possible standards in order to vindicate the reproductive rights of all. The impact of the mandatory waiting period, the clinical workability of the decision-making structures in relation to abortion over 12 weeks, the impact of the criminal offences and the harms experienced by women who cannot access services will require ongoing monitoring. And it is imperative that implementation of commitments to free contraception and reform of sexuality education is accelerated on the one hand and, on the other, that women who need abortion care, including those who are not eligible under the law, do not lose the access they currently have to free, non-judgmental and non-directive pregnancy counselling if they wish to avail of it. The

new law includes a review mechanism which will provide a crucial opportunity to assess its impact on women's access to care and examine whether the state is meeting the standards set by international human rights law. Advocacy efforts must once again focus on the collection of robust public health data with the aim of continuing the reform effort so that all traces of the Eighth Amendment are removed and access to abortion care and abortion rights is fully secured into the law.

Practice Points

In countries where abortion is not permitted, collaboration and collective action by similarly minded bodies – such as professional bodies for healthcare providers and civil society organisations – can be an effective way of making the case for abortion law reform. A Citizens' Assembly, such as that established by the Irish government, can be a valuable mechanism for de-politicising the issue of abortion and ensuring public health evidence and information about human rights standards and women's experiences of unintended pregnancy and abortion is disseminated into the public domain.

Many citizens are reluctant to voice their views about abortion. A nationally representative survey asking under what conditions members of the public would support abortion access may be a useful way of collecting data on public opinion and building momentum for law reform.

Some healthcare providers may not participate in counselling, consenting and performing terminations although it is legally permissible. The issue of conscientious objection should be monitored and, if needed, alternate arrangements must be made to ensure women can access abortion services to which they are legally entitled.

In Ireland, abortion with no restriction as to reason is permitted only up to 12 weeks after a mandatory waiting period of three days. Hence consultation should be arranged within 24 to 48 hours if the request is made during the 11th week of pregnancy.

Post-termination contraception should be offered, including Long Acting Reversible Contraceptives (LARCs), to ensure women can choose the contraceptive method that is most appropriate for them in their circumstances and to reduce the number of unintended pregnancies year by year.

Research Agenda

The state, in collaboration with healthcare providers and other relevant organisations, should monitor the provision of abortion services after the law is reformed to gather public health data that can inform future service delivery. Data collection should include, for example, the total number of abortions, the gestation at which the procedure is performed, the type of method used and any complications of the procedures. This information can be used to identify factors that can be addressed to reduce unintended pregnancies. Whether post abortion contraception was provided and what methods and its impact on reducing the abortion rates should be studied. This would establish that legalising abortion reduces the numbers done because of effective post abortion contraception. Qualitative research should be carried out to ascertain whether women are treated with dignity and respect when accessing abortion services.

Conflicts of interest

None.

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Highlights

- Framing abortion as a women's health issue was important for successful law reform
- Human rights advocacy was critical in maintaining political pressure for law reform
- Healthcare providers had a significant influence on public opinion and politicians
- Abortion care is now broadly accessible in Ireland, although challenges remain
- Data collection will be crucial to inform further legal and policy reforms