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**Opening Statement**

**Joint Committee on the Eighth Amendment**

**Wednesday, 18 October, 2017**

Thank you for your invitation to appear today. The content of this statement is rooted in over four decades of practice as an Obstetrician Gynaecologist caring for women in Ireland, London, and the United States. I hope to assist you in your deliberations.

I am currently Chairman of the Institute of Obstetricians and Gynaecologists of Ireland. I was Master of the National Maternity Hospital from 1991-1997, and Clinical Director from 2008-2014.

In 2012-13 I served as a member of the committee of independent experts which advised the Government on the implementation of the European Court of Human Rights judgment in respect of the X Case. The outcome was The Protection of Life During Pregnancy Act (2013).

In 2013 I was the independent expert witness for the coroner in the inquest into the death of Savita Halappanavar.

In 2014 I was an expert witness for the family in the case of PP v HSE in the High Court.

The Institute of Obstetricians and Gynaecologists of Ireland has not been asked to provide a position paper. However, in preparation for this hearing, I canvassed the opinions of members and have incorporated feedback received into this statement.

**Background:**

When put to the vote the majority of the Citizens' Assembly voted against maintaining the status quo of the 8<sup>th</sup> Amendment.

By a substantial majority the Assembly voted in favour of legalising termination when a woman's life or health is at risk, when pregnancy follows rape, in cases of fetal abnormality, for socio-economic reasons, or without restriction.

The Assembly also made five ancillary recommendations relating to improvements in sexual health and relationship education, access to early scanning and testing in pregnancy, and counselling services, and that consideration should be given to who will fund and carry out terminations.

I support the ancillary recommendations without reservation.

In relation to the fifth ancillary recommendation, it is my opinion that if termination is legalised it should be funded by the state, rather than delegated to private providers.

All terminations should be medically supervised. Medical personnel with a conscientious objection should be excused from involvement.

### **Article 40.33 and current obstetric practice in Ireland**

Article 40.3.3 gives rise to significant difficulties for doctors practicing in Ireland and has caused grave harm to women, including death. The two outstanding examples of which I have direct experience are the death of Savita Halappanavar in 2012 and the case of Miss P in PP v HSE in December 2014.

These are only two examples of cases where doctors in Ireland continue to be put in the inappropriate position of having to interpret the Constitution in the course of caring for sick women. Medical personnel have no difficulties in obeying clear legislation and medical regulations, but we are not trained for the complexities of constitutional interpretation, nor should we reasonably be expected to be.

The Eighth Amendment has given rise to legal cases including the X case (1992), the C case A & B v EHB & C, 1997), D v Ireland (2002), the Miss D case (2007), A, B, and C v Ireland (2009), Miss Y (2014), Mellet v Ireland (2016), and Whelan v Ireland (2017). These are the difficult and painful cases of Irish women and girls who have had to resort to stressful legal processes in the absence of comprehensive legislation on abortion. If the Eighth Amendment is not repealed, this list will continue to grow and Ireland will continue to be censured by international bodies such as the European Court of Human Rights and the United Nations.

Currently, termination of pregnancy on grounds other than risk to the life of the woman is subject to criminal prosecution with the penalty of imprisonment for up to 14 years for women and their doctors, while simultaneously the 13<sup>th</sup> Amendment provides constitutional protection for women to travel to obtain a termination outside the state, and the 14<sup>th</sup> Amendment protects the right to access information necessary to achieve this. This is profoundly hypocritical. Our constitution enshrines a woman's right to commit an act which is a criminal offence in her own country, as long as it is committed outside the state. By any yardstick this is a bizarre situation. Testimony from numerous Irish women demonstrates the

pain and stress they have undergone and continue to experience as a result of Ireland's ongoing failure to legislate comprehensively.

### **Termination of Pregnancy in the 28 Countries of the European Union:**

In my longer position paper, I have included an analysis of EU legislation. Ninety-nine per cent of women in the EU live in countries where their legislatures have grasped the nettle of legislating for termination of pregnancy. No doubt many other EU countries have had difficulties with the subject too, given their own religious, political and social histories, but it is a fact that their legislators have had the will to deal with the issue. The Irish position remains deeply anomalous and obviously politically contentious. In the matter of women's reproductive health, we remain outliers in a tiny minority in Europe.

### **Legal Provision in the EU for termination of pregnancy is provided in the case of:**

- **Risk to the life of the mother:** all countries except Malta
- **Risk to the health of the mother:** all except Malta and Ireland
- **Rape:** all except Malta and Ireland
- **Fetal abnormality:** all except Malta and Ireland
- **Medical reasons beyond 12 weeks** (varying by country): all except Malta, Ireland and Poland

I suggest that in 2017 the Eighth Amendment is unworkable. When it was enacted thirty-four years ago, neither the World Wide Web nor the abortion pill had been invented. You heard evidence last week that the rate of women accessing the pill from online service providers is increasing. Importation of the pills into Ireland is illegal, in reality though, there are many services that facilitate people living here with a means of securing delivery to a designated address, which means they can legitimately use a virtual address to access these type of items.

The genie is therefore out of the bottle in respect of online access to the abortion pill. The grave concern that doctors have as a consequence of this reality is the potential for harm caused by the use of unregulated medication by Irish women and girls. I believe it is a matter of priority for the Oireachtas to address the reality of this situation.

The Citizens' Assembly vote result clearly recommends that the Oireachtas deal with the question of termination by legislation rather than through the constitution. I entirely concur with this conclusion, but I would add that legislation needs to be supported by regulation with regard to clinics and hospitals, and by the Medical Council and An Bord Altranais.

## **Practical Implementation of the Recommendations of the Citizens' Assembly**

### **Viability and Gestational Limits:**

I turn now to the question of practical implementation of the recommendations of the Citizens' Assembly. In Ireland, viability is currently considered to occur at approximately 24 weeks gestation. When obstetricians deliver a baby at the margins of viability, it is standard practice in this country to have a full neonatal team present at the birth to make an immediate assessment about viability and institute intensive care in every case where appropriate. I cannot envisage a scenario whereby any doctor in Ireland would support any proposal that termination of pregnancy would be contemplated beyond 23 weeks. I hope this is reassuring to the committee in respect of the uninformed discussion that regrettably occurs in respect of so-called 'late term abortion'.

### **Methods of termination:**

Medical termination is performed by the administration of two medications. Mifepristone blocks the action of progesterone, a hormone necessary to support pregnancy before the placenta develops, and misoprostol makes the uterus contract. Taken in combination, two or three days apart, these tablets have a success rate greater than ninety per cent if taken in the first trimester, preferably before ten weeks. The first tablet is taken in a clinic or doctors surgery and the second is taken at home. The woman then experiences symptoms the same as a miscarriage. The rate of side effects is very low.

For pregnancies of later gestation the procedure needs to take place in the hospital setting and will require more medication over a longer period of time. If the Oireachtas legislates to allow termination it is likely that later terminations will only be legalised for reasons other than socio-economic or without restriction.

Surgical termination is where the contents of the uterus are removed either by suction or curettage following dilatation of the cervix.

### **Grounds on which the Citizens' Assembly**

I turn now to the votes of the Citizens' Assembly

- 1. 99% voted in favour of termination being legal where there is a risk of life to the mother.**

The Protection of Life in Pregnancy Act 2013 deals with the question of termination of pregnancy in circumstances where there is a threat to the life of the mother, including by suicide. In the years in which it has been in force there have been approximately 25 terminations each year.

A major difficulty with this Act is that it is entirely the responsibility of doctors to determine how close to death, or how sick, a woman must be before legal termination can be performed. The woman herself has no input into the decision, other than the option of refusing termination and placing her life at risk. Doctors are subject to criminal prosecution if it can be established that they acted in bad faith in recommending a termination, even if the woman herself is happy with the decision.

**2. 90% voted in favour of termination being legal where there is a serious risk to the health of the mother.**

Serious risk to the physical or mental health of the woman overlaps with threat to the life of the mother insofar as a risk to health may develop into a risk to life. Under current legislation doctors have to make judgment calls as to when a risk to health becomes a risk to life. If the judgment is wrong either the mother will die or the doctor will be guilty of committing a criminal offence.

**3. 78% voted in favour of legal termination where there is a risk to the health of the mother.**

Risk to the health of the mother, either physical or mental, raises the important question of how different people deal with risk.

Some women (perhaps those expecting a much longed-for first baby) are willing to accept any risk in order to have a baby, while for others (perhaps those with small children at home) the deterioration in their health represents an unacceptable risk. In these complex circumstances, a decision to terminate is best left to the woman and her doctor.

**4. 89% voted in favour of termination being legal in the case of pregnancy as a result of rape.**

Pregnancy as a result of rape could be dealt with in a straightforward way by legislating for the legal prescription of the 'abortion pill' which I have previously described. Pregnancy tests are now so sensitive that they are positive just before a missed period and so the pills would be 99% successful if taken within the first 8 weeks. There is no diagnostic test to confirm rape and so I would strongly recommend that a woman who has undergone the trauma of

rape should not be forced to 'prove' rape if she chooses to terminate a resulting pregnancy. Women should be taken at their word, hardly a revolutionary concept.

**5. 89% voted in favour of legal termination where there is a fetal abnormality likely to result in death either before or soon after birth.**

Fetal abnormality likely to result in death either before or soon after birth was covered in detail in evidence last week from the Masters of the Rotunda and National Maternity Hospital. They both outlined the clinical risks associated with current legislation.

For those who continue, hospice care for the newborn with little or no chance of survival outside the womb has, in my experience, been a long-standing practice in this country in our hospitals. It is simply incorrect to state that this care is not available.

I have considerable experience of couples who have had the misfortune of receiving diagnoses of fetal abnormalities. In some cases, the parents have chosen to continue with the pregnancy and have been much comforted by having some time, however brief, with their baby. In other cases, couples have been unable to continue with the pregnancy, and have travelled abroad for termination. However, what is not so well understood is that some couples experience a diagnosis of fetal abnormality on subsequent pregnancies. My experience has been that in the vast majority of these sad cases, on the second or subsequent occasions the couples choose termination.

I also have experience of couples who, prior to screening for an abnormality declare confidently that they would not seek termination in the event of a serious abnormality being diagnosed, only to change their minds when confronted with the reality of serious fetal abnormality. I think most people in Ireland would sympathise with this.

**6. 80% voted in favour of legal termination where there is significant fetal abnormality unlikely to result in death either before or after birth.**

Significant fetal abnormality unlikely to result in death before or shortly after birth raises more difficult questions. In particular, how can we define 'significant' abnormality. Antenatal diagnosis, including ultrasound, genetic testing, and MRI, is now much more sophisticated than in the past. When the Eighth Amendment was enacted, this level of diagnostic capability was not available.

The 'significance' of the abnormality may depend on the extent of the disability and/or parents' ability to cope with the consequences. In some conditions, particularly genetic, there is a wide spectrum of severity. Parents, in consultation with their doctor, are the people best able to make decisions in their individual circumstances.

Diagnosis of genetic abnormalities can now be made before 12 weeks gestation by a blood test, confirmed by either amniocentesis or chorion villus sampling.

**7. 72% of voted in favour of legal termination for socio-economic reasons and 64% voted for access with no restriction.**

Throughout the European Union, 99% of women have access to termination of pregnancy without restriction up to 10 weeks of pregnancy. The remaining 1% are those who live in either Ireland or Malta. The method used in these cases is by using medication, which as we know is increasingly used by women in Ireland.

Of the Citizens who voted for termination without restriction, 92% voted to limit gestation to 12 weeks.

**International Context:**

It is well-documented that in countries where abortion is banned, the rate of women dying remains high. Approximately 70,000 women die each year from complications relating to unsafe abortion. You heard testimony last week that Irish women today are attempting self-abortion with potentially fatal consequences.

It is equally well-documented that countries with liberal laws, and easy access to contraception, have lower rates of abortion than those with restrictive laws. Women in Ireland with financial resources have access to termination of pregnancy, primarily in the UK. However, women who are poor, in the care of the state, or refugees for example do not have such access. The Thirteenth and Fourteenth Amendments to the Constitution are of no assistance to these women.

Without access to abortion in the UK it is inevitable that Ireland would have an epidemic of illegal abortions and a massive increase in maternal mortality.

If Ireland were to enact legislation in line with EU consensus, including termination without restriction up to 10 weeks, our law would be among the most conservative in Europe but would deal with the vast majority of circumstances in which women currently access services outside the State.

I believe that the forthcoming referendum on the Eighth Amendment should put a simple binary question to the electorate for or against repeal. Legislation is the responsibility of the Oireachtas, not the people. On repeal of the Eighth Amendment, Irish law on termination of pregnancy would continue to be governed by the Protection of Life in Pregnancy Act (2013) and there would be no legislative vacuum pending further legislation. In the

meantime, women in Ireland will continue to access services in the UK or elsewhere in Europe, or access the abortion pills illegally.

Ends.