

DÁIL ÉIREANN

AN COMHCHOISTE UM AN OCHTÚ LEASÚ AR AN MBUNREACTH

JOINT COMMITTEE ON THE EIGHTH AMENDMENT OF THE CONSTITUTION

Dé Céadaoin, 4 Deireadh Fómhair 2017

Wednesday, 4 October 2017

Tháinig an Comhchoiste le chéile ag 1.30 p.m.

The Joint Committee met at 1.30 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
James Browne,	Paul Gavan,
Ruth Coppinger,	Rónán Mullen,
Clare Daly,	Ned O'Sullivan,
Bernard J. Durkan,	Lynn Ruane.
Peter Fitzpatrick,	
Billy Kelleher,	
Mattie McGrath,	
Catherine Murphy,	
Hildegarde Naughton,	
Jonathan O'Brien,	
Kate O'Connell,	
Louise O'Reilly,	
Jan O'Sullivan,	
Anne Rabbitte.	

Seanadóir / Senator Catherine Noone sa Chathaoir / in the Chair.

The joint committee met in private session until 2.02 p.m.

Eighth Amendment of the Constitution: Constitutional Issues Arising from the Citizens Assembly Recommendations

Chairman: I welcome members and viewers who may be watching our proceedings on Oireachtas TV. This is our third public session of the Oireachtas Joint Committee on the Eighth Amendment of the Constitution. Under the terms of reference of the joint committee, it is obliged to report to the Dáil and the Seanad within three months of its first public meeting.

Before I introduce our witnesses today, at the request of the broadcasting and recording services, members and visitors in the Public Gallery are requested to ensure that for the duration of the meeting their mobile phones are turned off completely or switched to airplane mode.

I now extend, on behalf of the committee, a warm welcome to our witnesses from the Irish Human Rights and Equality Commission, IHREC, Ms Emily Logan, chief commissioner; Professor Siobhán Mullally, a member of the commission; and Ms Ruth Gallagher, head of policy at the commission, who is seated behind the witnesses. They are all very welcome to this afternoon's meeting.

Before we commence formal proceedings I must first begin with some formalities and advise our witnesses on the matter of privilege. I wish to advise the witnesses that by virtue of section 17(2)(l) of the Defamation Act 2009, they are protected by absolute privilege in respect of their evidence to this committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable. I now call on Ms Logan to make her presentation. She and Professor Mullally will share speaking time in their opening presentation.

Ms Emily Logan: Thank you very much, Chair. I also thank the members of the committee. On behalf of the Irish Human Rights and Equality Commission, I thank the committee for the opportunity to meet in this module of its deliberations. I would like to briefly outline the institutional structure and legislative basis of the commission for members of the committee and members of the public who may be less acquainted with our work. The commission is Ireland's independent national human rights and equality institution. It was established in primary legislation in the Irish Human Rights and Equality Commission Act 2014 following the merger of the precursor bodies of the Equality Authority and the Human Rights Commission and it has been in operation since November 2014.

Professor Siobhán Mullally and I are two of 15 members of the commission, appointed by

the Head of State, the President, following an open competition and resolution by both Houses of the Oireachtas. We have no reporting relationship to Government and account directly to the Oireachtas for our statutory functions. We appear today to represent the views of the commission, which, for the record, are contained in our recent policy statement on a new legal and regulatory framework on abortion in Ireland, in light of its international human rights obligations. The statement was submitted to the committee on Monday. It will come as no surprise to the committee that we do not have consensus at the commission on this matter but, procedurally, section 16 of the Act facilitates majority decision-making. In practice, that means that when we meet in plenary we take a vote on matters that are contested, and this matter has been put to the commission on ten occasions since its inception in 2014. What we bring before the committee today represents the views of 13 out of 15 members of the commission. Two members of the commission do not support the document in its entirety. The commission's independence has been recognised internationally and we have been awarded A status accreditation at the United Nations, under the UN Paris Principles. Those principles set out the necessary guarantees required to ensure that a national human rights institution can carry out its functions in full independence, free from any form of political or other pressure. Through a range of legal powers determined by the Oireachtas, we are mandated to promote and protect human rights and equality in the State.

Of most relevance to today's discussion is section 10(2) of the 2014 Act, which is to "keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality". Under section 10 of the Act the commission is also mandated "to consult with such national, European Union or international bodies or agencies having a knowledge or expertise in the field of human rights or equality as it sees fit". Ireland has ratified six of the nine core UN human rights treaties and is bound by those obligations as a matter of international law. For each treaty, there is an expert independent monitoring committee that oversees compliance. Ireland's compliance with the treaties is examined on a periodic basis and under our legislative mandate, the commission formally participates as the national independent monitor of human rights in this process and monitors the State's compliance with the recommendations.

UN treaty monitoring committees have regularly raised concerns regarding the current legal position in Ireland in respect of abortion. Most notably, in 2016 and 2017 the UN Human Rights Committee found that Ireland had violated a number of rights of the International Covenant on Civil and Political Rights, following complaints taken by Amanda Mellet and Siobhán Whelan, both of whom experienced pregnancies with fatal foetal abnormalities. I use that term as it is well understood. I know it offends some but it is important that we all know what we are talking about. In Amanda Mellet's case the UN Human Rights Committee found a violation of Article 7, namely, the prohibition on cruel, inhuman and degrading treatment. The committee took the view that many of the negative experiences could have been avoided if Ms Mellet had not been prohibited from terminating her pregnancy in the familiar environment of her own country and under the care of the health professionals whom she knew and trusted.

The committee also found a violation of Article 17, namely, protecting the right to privacy, stating that "the interference in [Ms Mellet]'s decision as to how best to cope with her non-viable pregnancy was unreasonable and arbitrary". The committee also found a violation of Article 26, namely, equality before the law, taking into account the financial cost of travelling to the UK. The facts of the 2017 Siobhán Whelan case were similar to those in the Mellet communication and, relying on the same reasoning, the committee also found a violation of Articles 7, 17 and 26, namely, the prohibition against cruel, inhuman or degrading treatment, protecting

the right to privacy and equality before the law. The State's response to the UN Human Rights Committee's views in the Mellet case, which included an acknowledgment by the Minister for Health, Deputy Simon Harris, of its views, an *ex gratia* sum of €30,000 and a detailed itemisation of the steps being taken by the State on foot of the case, further demonstrate the significance of Ireland's international legal obligations for domestic law and policy.

UN treaty monitoring bodies are the pre-eminent interpreter of Ireland's binding obligations in international law under the human rights treaties it has ratified. Their views on Ireland are, therefore, authoritative and have a significant role in the interpretation, application and development of Irish law.

Professor Siobhán Mullally: It is the view of the Irish Human Rights and Equality Commission that the State should approach reforms on access to abortion in Ireland primarily as a matter of health care policy. To do so would be in keeping with its obligations under international human rights law.

As the committee is aware, the Protection of Life During Pregnancy Act 2013 allows for terminations of pregnancy where there is a real and substantial risk to the life of the mother. This limited access does not meet the requirements of international human rights law. Concerns about the barriers placed by the existing legal framework on women's right to the highest attainable standard of health, the right to privacy, to equality before the law, to non-discrimination and to freedom from inhuman and degrading treatment, as well as the State's special obligations towards minors, in particular the girl child, have been raised by several international human rights bodies.

The position taken by UN human rights treaty bodies differs from the position taken by the European Court of Human Rights. In the case of *A, B and C v. Ireland*, the court concluded that abortion law in Ireland struck a fair balance between the competing interests presented. The court relied in particular on the right to travel abroad for abortion as being significant in applying the fair balance test and in assessing the proportionality of the interference with a woman's right to private life. A wide margin of appreciation was applied by the court. Ultimately, the court concluded that the constitutional prohibition on abortion in situations where a woman's health or well-being was at risk pursued the legitimate aim of the protection of morals, and reflected the profound moral values of the Irish people. The court did not accept that sufficient evidence had been presented of a change in those values since the adoption of the eighth amendment. I would be happy to expand on this judgment and subsequent case law from the court in our discussion.

The UN Committee on Economic, Social and Cultural Rights has made clear the "realisation of women's right to health requires the removal of all barriers interfering with access to health services ... including in the area of sexual and reproductive health". It has identified the criminalisation of abortion and restrictive abortion laws as among these barriers. The committee has also specifically expressed its concern about the discriminatory impact on women who cannot afford to travel abroad to access abortion services or access the necessary information.

These concerns were reiterated in the views of the UN Human Rights Committee. In her concurring opinion in the Mellet case, Professor Cleveland stated "the committee's finding of a violation of Article 26 in the author's case ... is fully justified on grounds of discrimination arising from gender stereotyping".

The Irish Human Rights and Equality Commission is of the view that the key areas that re-

quire attention by this committee include the development of a legislative and regulatory framework that provides for access to abortion for reasons of risk to life and health; socio-economic or family circumstances; pregnancy as a result of rape or incest; and fatal foetal abnormality.

The commission has in the past raised concerns about the number of examinations a girl or woman may be subjected to where she seeks treatment under the current legislation, as well as the effect this may have on a woman's right to respect for her private and family life. The commission has also raised concerns about the barriers that assessment and certification requirements place before women with restricted access to medical practitioners or health information, such as women from poorer socio-economic backgrounds, from ethnic minority groups, or with intellectual disabilities.

A reformed framework for access to abortion services under a wider set of circumstances should avoid the creation of new processes where vulnerable women and girls may be subject to trauma, re-victimisation, delays in treatment or other harms. The commission is of the view that a new framework for access to abortion should place the decision-making process primarily in the hands of the pregnant woman in consultation with her physician. The commission stresses the importance of ensuring that constitutional reform avoids replicating the barriers to human rights and equality that are in place.

Given these considerations, the commission recommends the referendum announced should allow for the development of a framework governing access to abortion that has a basis in primary legislation and regulation.

As has been highlighted at the Citizens' Assembly and in other fora, the criminalisation of abortion constitutes a potentially serious chilling factor for women seeking medical care, as well as for health care staff providing such care. The commission, therefore, is of the view that, notwithstanding limitations that may be placed on access to abortion by legislation and regulation, the State should decriminalise abortion in all circumstances, as required by the UN Committee on the Rights of the Child in its concluding observations on Ireland adopted in 2016.

The commission and others have highlighted serious shortcomings in Ireland's sexual and reproductive health education system. In parallel to a reformed legislative and regulatory framework for access to abortion, it is crucial the State develop a comprehensive, scientifically objective sexual and reproductive health education policy.

I thank the committee for its attention and we welcome questions and further discussion.

Chairman: Thank you, Professor Mullally. I call on Senator Gavan.

Senator Paul Gavan: I thank both Ms Logan and Professor Mullally for their presentations. I found them extremely helpful and informative.

In what way is the criminalisation of abortion a barrier to achieving adequate human rights standards?

Professor Siobhán Mullally: It has been commented on repeatedly by various UN human rights bodies that criminalisation may impose barriers to women seeking access to health care. In and of itself, it creates a barrier to the achievement of the right to the highest attainable standard of health in that access to abortion is seen as part of that right for women, which includes reproductive and sexual health. Criminalisation directly impedes that.

Senator Paul Gavan: Have other countries been before the European Court of Human Rights on access to abortion? If so, can the commission discuss the findings and the reasoning behind them?

Professor Siobhán Mullally: Yes, there have been a number of other cases, in particular the legislative framework in Poland. After the ABC case, there were two further significant judgments of the court on Poland where it found violations not only of Article 8, the right to private life and family life, but also of Article 3, the prohibition on inhuman and degrading treatment. In that context, the court took the view that the Polish authorities had not provided for an effective and accessible procedure to access abortion, which was lawful under domestic law in Poland. The particular circumstances of the cases included what the court described as deplorable treatment of an adult woman in one case. In another case a 14 year old girl, who had been a victim of rape, was described as being humiliated and not being given access to abortion that was lawful under domestic law in that context.

Chairman: The Senator has two and a half minutes left.

Senator Paul Gavan: This is my last question. Given what the IHREC representatives have said to us today, can they sum up what they believe to be Ireland's legal obligations now under human rights law with regard to this issue?

Professor Siobhán Mullally: I wish to add that at the European Court of Human Rights a margin of appreciation was allowed for in the A, B and C v. Ireland case. The court specifically said that margin was not unlimited and that the court must supervise compliance by contracting states in line with their obligations under the convention. That specifically includes regard to Article 8, but in other cases relating to Article 3 there is no margin of appreciation because the article provides for an absolute prohibition on inhuman and degrading treatment.

Senator Gavan asked about the position under international human rights law. The positions of human rights treaty bodies are documented in our policy statement. The UN Committee on the Rights of the Child has called for decriminalisation. We have noted in the policy document how various UN human rights treaty bodies have called for Ireland to ensure access to abortion in situations where there is risk to life or health. Socio-economic circumstances have also been referred to by the European Committee of Social Rights as have pregnancy due to rape or incest and fatal foetal abnormalities. Committee members will find greater detail on the views and the various concluding observations from UN human rights treaty bodies in our policy document.

Chairman: We have a little over five minutes for the next section.

Ms Emily Logan: I wish to add to that comment in terms of clarity around the threshold of "life". I wish to make it clear that we are suggesting that threshold be lowered to "health" rather than "life".

Chairman: Our next questioner is Deputy Rabbitte. The Deputy has ten minutes in total to use as she wishes.

Deputy Anne Rabbitte: I thank the witnesses for their presentation this afternoon. Before I start my questioning, I want to talk about human rights and the right to life. I am talking about the right to life of the child in the womb. Ms Logan has qualified something and seems to be putting more of a weighting on the existing life rather than pre-life. I am referring to where Ms Logan finished off on the last statement. Can she expand on exactly what she has said? It will bring me to further questions about the right of human life.

Ms Emily Logan: I just want to check what I said.

Deputy Anne Rabbitte: I am referring to what Ms Logan finished up on.

Ms Emily Logan: I was referring to the threshold of “life” of the woman as against the right to “health”. In international human rights law, there is a strong link between health and access to health as against waiting until someone is at the threshold of almost losing her life to make a decision.

Deputy Anne Rabbitte: I thank Ms Logan. I just wanted clarification before I move on. Given that Article 2 of the European Convention on Human Rights states that everyone’s right to life is protected by law, what rights does the unborn child have under the convention?

Ms Emily Logan: We are not suggesting that the unborn does not have any rights. It is a matter of when we get to the point of competing rights. There is well established medical practice in this country, dating prior to the 1983 referendum, of *in utero* surgery and prenatal care, for example. That is well-established and there is nothing in international law to prohibit that. We are only referring to a situation of competing rights. This was referenced by Mary O’Toole last week - we are talking about a life and life situation.

Professor Siobhán Mullally: I wish to comment specifically on that. In the case law of the European Court of Human Rights, it has been stated repeatedly by the court that there is no consensus among contracting states to the convention on the moment human life begins. In that context, the reasoning in Article 8 suggests a significant margin of appreciation has been allowed. In the practice of international human rights law, there is nothing that prevents protection for prenatal life. However, in terms of what the UN human rights treaty bodies have said, for example, the draft general comment on the right to life from the UN Human Rights Committee suggests this should not preclude the protection of a woman’s rights to have access to abortion, which is seen as part of the right to life, the right to health, the right to be free from inhuman and degrading treatment and as part of the right to privacy and non-discrimination. That is the context.

Deputy Anne Rabbitte: My next question is for Professor Mullally. The Irish Human Rights and Equality Commission has said that access to abortion should primarily be a health care issue, and I totally agree with that. Page 10 of the IHREC document refers to the UN special rapporteur referring to health, rape and fatal foetal impairment. Does Professor Mullally believe that the IHREC is in compliance? If so, there is a big step in talking about socio-economic and family circumstances and the grounds for abortion, while giving the indirect link to health. That is another step. Can Professor Mullally expand on that and explain it? One of the recommendations from the Citizens’ Assembly was to look at the socio-economic and family circumstances. It is one of the issues we have to debate as well. I am keen to hear the IHREC explanation and understanding of it.

Professor Siobhán Mullally: As Deputy Rabbitte has noted, this was discussed at the Citizens’ Assembly, but it has also come up repeatedly before UN human rights treaty bodies. Let us consider the Mellet and Whelan decisions. In particular, Professor Sarah Cleveland concurred with the Mellet decision. She highlighted in particular the discriminatory impact on women who may not be able to afford to travel due to socio-economic circumstances. This has come up before several UN human rights treaty bodies. It is also something that was commented on and found by the committee on social rights under the revised European Social Charter in the context of the collective complaint against Italy. In that case, there was a finding

of a violation of the right to health, read in conjunction with what were deemed to be multiple grounds of discrimination, including in particular socio-economic situations and location. This related to difficulties in accessing an abortion in the Italian context. It can come within that and it is one element of the non-discrimination requirements. It may also be relevant to health and mental health.

Ms Emily Logan: I wish to add to that. In terms of human rights we have a particular responsibility to look at those who are on the margins and those who are vulnerable. We know, however uncomfortable it may be, that most of the case law we have relates to children. We also know that women who have reduced capacity or who rely heavily on the State are certainly disproportionately affected. These women are not in positions of autonomy. I have in mind women who are refugees and who do not have documentation. They do not have a choice to make a decision about whether to travel outside the jurisdiction to access health care. As Professor Mullally has outlined, this applies to women who are materially deprived or who cannot afford to make that choice. There are groups of women who are not in the mainstream debate or conversation but who rely heavily on the State for access to health care in this context.

Deputy Anne Rabbitte: I assume the witnesses were watching last week and read the transcript of the meeting. Mary O’Toole, a senior counsel, said that most of the cases that come before her related to children. She specifically referenced children in care. To me, nothing is going to change for them, the simple reason being that they will still have to come before the courts for a decision to be made on access if their life is at risk or anything like that. Do the witnesses agree with me?

Ms Emily Logan: I suppose the question there is whether a child’s case should be brought into the adversarial system of a court. If we provide primary legislation and regulate, then that decision can be made in consultation with the physician. Obviously, the HSE and health and social services are *in loco parentis* so normal decision-making processes would ensue.

Deputy Anne Rabbitte: How much time do I have?

Chairman: The Deputy has approximately three minutes left.

Deputy Anne Rabbitte: Sex education is dealt with on page 30 of the policy statement. This issue is also covered by the ancillary recommendations of the Citizens’ Assembly. What interactions does the commission have with the relevant Government bodies on the implementation of these recommendations?

Ms Emily Logan: While a lot of the focus in the public debate has been on abortion, for a long time in Ireland we have had a fairly poor history of educating girls about sexual health. The child safety and protection policy was only placed on a mandatory footing in 2011 despite the fact that it was introduced as a public policy in the 1990s. As such, we have been very slow to recognise the importance of educating girls. Ultimately, we are saying that we should look at prevention. While we are looking at the hard edge of abortion here, we must also wake up to the fact that we need to properly educate young people, not just girls, who may be sexually active, however uncomfortable that may be for some people. We must move into the 21st century on sexual health for young people.

Chairman: I thank Deputy Rabbitte and the witnesses and call Deputy Peter Fitzpatrick.

Deputy Peter Fitzpatrick: I thank the witnesses for their submissions. There is no doubt that this is an emotive topic which divides opinion in all areas of society. Indeed, opinion is

divided in many households. Both sides of the debate have very different views and it is important to listen to all views before we make a decision. Not only that, we must respect each other's views and opinions. Personally, I am against abortion on demand. My fear is that if abortion on demand is introduced, it could become another form of contraception. We all know that it is not simply a case of either introducing abortion or not introducing it. My personal view is that we need to look at cases where a pregnancy is the result of incest or rape, where it could place the life of the mother at risk or where it could result in fatal foetal abnormalities. I have specific questions for the witnesses and I address them also to all members.

We all know friends and family who have family members with Down's syndrome. Statistics show that 90% of babies diagnosed with Down's syndrome have their lives terminated by abortion. Even more alarming is the fact that 100% of babies diagnosed with Down's syndrome in Iceland are aborted. I would be very interested to hear people's views on this and on whether they accept that we could have the same situation here should abortion on demand be introduced.

I listened very closely to each of the opening statements and was shocked that no one mentioned the rights of the unborn. I would be very interested to hear people's views on the rights of the unborn and whether they believe they have any. What measures can we take to ensure that the rights of the unborn, along with those of the mother, are protected? I said last week here that a baby's heart beats 21 days after conception. Facial features start to form at week 4, internal lungs begin to form at week 6, the nervous system is responsive at week 8, babies are swallowing, yawning and sucking at week 9 and the baby stretches and jumps at week 11.

Professor Mullally stated that the commission is of the view that a new framework on access to abortion in Ireland should place the decision-making process primarily in the hands of the pregnant woman in consultation with a doctor. What would happen if both parties had a different view? For example, what if the woman wanted to terminate the pregnancy but her doctor was against it?

Ms Emily Logan: I thank Deputy Fitzpatrick. I will start with his opening comments on deeply held views. What I tried to capture in my opening statement was that - no more than in this committee or in Irish society - I am very well aware that people have very strong and deeply held opinions on this. This does not mean that we do not listen to those opinions. In less than three years, the commission has had ten very serious submissions whereby it has commented on this issue. That has meant we have had to listen to everybody's views. It is contested but that does not mean we can set aside our respect for each other as human beings. As such, we do our level best to try to do it within the commission. I respect, of course, that the Deputy does not share our views. I respect him as an individual human being who holds his views very strongly.

The Deputy mentioned rape and incest. One of the things that was called for in the past was a review of the SAVI report of 2002, which looked at sexual violence in Ireland. The survey has never been repeated but while the data is old, it indicates that 22% of people experience familial abuse or violence in the home. That is something we should not ignore. I think Deputy Fitzpatrick had a specific question for Professor Mullally.

Professor Siobhán Mullally: Where the views of a pregnant woman differed from those of her physician, our position, which we have set out, is that the legislative and regulatory framework should provide for the circumstances in which there is a right to access to abortion. In that context, there would be an obligation to ensure that health care services were organised in such a way as to provide effective access to abortion in accordance with that legislative and regula-

tory framework. It should be possible to ensure that decisions are made in a timely way and that access is not theoretical but is practical and available to all without discrimination on grounds of socioeconomic circumstance or location. Going back to the question on socioeconomic circumstances, we have quoted from the UN Committee on Economic, Social and Cultural Rights on ensuring universal access to health care and the right to the highest attainable standard of health as part of that reform.

Deputy Peter Fitzpatrick: I have reservations. I am afraid that if we go the way we are going, abortion will be available on demand. I would not like people to use it as a contraceptive and I would not like to think that it would facilitate a person who discovered from a scan that the baby was a boy, but they wanted a girl, or *vice versa*. That is my biggest fear of all. I am conscious of it and I have set out my reservations. The last thing I want to happen in this country is for abortion to be available on demand. In America, over 55 million abortions have been carried out. As I said in my statement, there are 100,000 people alive in Ireland today because of the eighth amendment. I have come here and I am trying to be honest in expressing my opinion. While I accept the witnesses' opinions, I am very disappointed. We had a meeting here beforehand to discuss whether we will have a referendum now or in May or June. The bottom line is that nothing should be done until everything is finalised. I am here, I am open-minded and I have expressed my concerns. However, I am a little bit afraid that things have been done before we have even had a chance to speak up. I am really worried that we are going to make a major mistake and have abortion on demand in this country.

Chairman: We will move on to questioners. They will have three minutes approximately to pose questions and there will be three minutes for the responses. The first person to indicate was Deputy Jan O'Sullivan.

Deputy Jan O'Sullivan: I want to comment briefly on the previous speaker's comments. While we all want to respect each other's views, the statement that abortion will be used as a method of contraception needs to be counteracted. I do not believe that is true. We are not really here to express opinions, we are here to ask questions.

I want to follow up with Ms Logan on her statement to the effect that the Minister for Health provided an *ex gratia* payment on behalf of the State in the Mellet case. Does that mean the State has accepted responsibility for the harm experienced by Amanda Mellet and Ms Whelan and must, therefore, take steps to reform law, policy and practice accordingly? Would that be Ms Logan's view?

Assuming that there will be a referendum, and that will be something to discuss in the future with regard to our own position, does Ms Logan have a view on whether we should propose the removal of Article 40.3.3° or replace it with other wording, with the possibility of legislation or medical regulation?

Ms Emily Logan: I will start with the Deputy's first question about the Minister for Health's response to the Amanda Mellet case. There are two parts to that question, the first being the possible challenge to the UN's competence. That is not uncommon in jurisdictions. Certainly in the past 14 years I have been involved a lot with and been in front of UN bodies. I know it is a political response, so it is not uncommon that politically a government may seek to undermine the competence of the UN Human Rights Committee. The committee has said that it is well aware of this and recognises it. The UN Human Rights Committee prints what are called general comments that are thematic elaborations on its thinking on things. The committee has said in individual communications that it recognises that while it is not a judicial body, it arrives

at its decisions in a judicial spirit, which undermines the principles of impartiality and independence. The second part of that question relates to the legal basis for those decisions, which speaks to the Deputy's question about the response of the Minister, Deputy Harris. In linking this with the international law principles of the Vienna Convention, there is something called the "good faith principle". If a government ratifies a treaty, it creates a legitimate expectation that it is going to comply with the terms of that treaty. I would say that the Minister for Health's actions indicated a good faith response to the views of the UN Human Rights Committee in the Mellet case.

Will the Deputy please repeat the second question?

Deputy Jan O'Sullivan: Should Article 40.3.3° be replaced or deleted?

Ms Emily Logan: The simplest answer is that it should be provided for in legislation and regulation and, essentially, the current provision should be removed or deleted from the Constitution.

Deputy Mattie McGrath: I thank our guests for attending here today to give their perspective on the issue. My first question is for Ms Logan. I have read the new position paper released today, Human Rights and Equality Considerations in the Development of a New Legislative and Regulatory Framework on Abortion. I respectfully put it to Ms Logan that it is very noticeable that there is not a single mention in the entire document that recognises or speaks up for the rights of the unborn child. Am I correct in concluding that the Irish Human Rights and Equality Commission believes that unborn babies are unworthy of any meaningful protections in law?

It is a fact that the eighth amendment has saved countless lives. I am privileged to know personally families who were considering abortion but changed their minds at the last minute before travelling abroad. These families openly admit that had abortion been legal in Ireland and had there been abortion clinics close to where they lived, their son or daughter would most likely not be alive today and enjoying the same chance of life as Ms Logan, me and everyone else present here today and all those in the wider community. Has the Irish Human Rights and Equality Commission spent any time considering all the good that has been done by the eighth amendment? Why is there not as much of a mention in the document published today of all that is positive about the eighth amendment?

I wish to address a question to Christina. I thank the witness for her paper and I listened very carefully to what she had to say. In all her work as an international human rights lawyer, she never raised concerns about barbaric practices such as the treatment of babies born after botched abortions and who are left to die alone without receiving any medical attention or loving care as they breathe their last breath. I present a harrowing image but sadly it is a very real one.

Chairman: I think that Deputy McGrath might have intended to ask this of one of the witnesses due into the committee later on.

Deputy Mattie McGrath: Fine.

Chairman: I believe the Deputy intends to ask this of Ms Christina Zampas. The Deputy may have thought it was for this witness.

Deputy Mattie McGrath: Ms Logan might answer the question so.

Ms Emily Logan: I am conscious that Deputy McGrath may have missed the earlier part of my statement when I spoke about the Irish Human Rights and Equality Commission. With regard to the Deputy's question on whether the commission considered the right to life of the unborn, it is important for the Deputy to know that there are mixed views around the table in the same way that there are mixed views here on the committee. Since the inception of the commission in November 2014, we have had ten occasions to debate this issue; three regarding domestic legislation and seven around international treaty obligations. We do not all agree. I would say with confidence, and I assure the Deputy, that we are absolutely certain that we will never agree and will never reach consensus. It is important that the commission reflects Irish society and the kind of dissonance we see now in the context of this debate. It is a contested area, but as the chief commissioner, I want to assure the Deputy that of course this voice has to be heard around the commission table. Today we do not represent all the views of members of the commission. We represent the views of 13 of the 15 members of the commission. Two members of the commission oppose the presentation this committee is hearing today. I wish to assure the Deputy that with regard to the process, this is an integral part of our consideration.

Chairman: Is there any further question that Deputy McGrath wishes to ask?

Deputy Mattie McGrath: It is some clarity that there are two members out of 15. It is important that Ms Logan has said it and that some recognition is given to what I have asked. I appreciate that. It tells its own story, however, when the two members of the commission are in the minority of 15.

Ms Emily Logan: It might also be helpful to understand that we are not there as individuals representing our own personal view. We must sign a contract when we are appointed by Ireland's Head of State, the President, to say that we will - in a non-prejudicial way - sign up to the definition of human rights in the legislation to which we operate and which not only obliges us to consider the rights enumerated in the Constitution but also obliges us to look at human rights identified in any international human rights treaty to which Ireland is a party.

Deputy Mattie McGrath: I accept that but, as I have said, I asked about the rights of unborn children. I know the witness was asked earlier about the rights of the mother, for which we have provision under the eighth amendment.

Ms Emily Logan: If we can be of any help to the Deputy, we could elaborate at another stage and I would be very happy to meet him on a one-to-one basis. It could give the Deputy time to talk to us about the deliberations we have had. It is important for the Deputy to understand that in terms of procedure, we are not presenting one view, we are representing the majority view of the commission. It is important to understand that we are mandated under the legislation to look specifically not only at the legislation in Ireland but also at international human rights law.

Deputy Mattie McGrath: I will take Ms Logan up on the offer to discuss it further.

Deputy Clare Daly: I believe the module is really important because it deals with the impact of Ireland's international legal obligations in terms of our domestic law. In that respect, some people might present international law as a sort of optional extra. Will the witnesses give a little bit more detail and explain why Ireland is bound by these obligations when we talk of violation and the State being sued? Will the witnesses explain this a little bit more?

Last week at this committee there was a lot of discussion around the issue of legal uncer-

tainty in the context of the constitutional dimensions of abortion law. Have international bodies been concerned by the uncertainty in Ireland's current abortion law? Could this topic be teased out a little bit?

Decriminalisation is not covered in the report of the Citizens' Assembly, despite the fact that many citizens asked that it would be. We raised this with Ms Justice Laffoy who seemed to be of the opinion that it did not really need to be included in the report because if the law is changed, it will automatically follow. Will the witnesses please expand on this? They are very clearly saying that from an international human rights legal perspective, abortion must be decriminalised in all circumstances, regardless of what legislation might follow a referendum.

I turn now to the commission's view that we need to develop a health care approach to this matter. Traditionally, in this State, Irish maternity care was dominated by the Catholic hospitals, with Catholic doctors developing the medical ethics that exist. Will the witnesses explain how international human rights law requires us to balance women's rights against institutional and personal religious freedom, and how that is balanced in other states?

Ms Emily Logan: Professor Mullally will deal with that.

Professor Siobhán Mullally: I thank Deputy Daly for the questions. First, with regard to our international legal obligations and the status of international law, which is the core of the question, when Ireland ratifies an international treaty it accepts a legal obligation in good faith to implement that treaty, so it is a sovereign decision taken by the State to ratify a treaty and thereby to comply with it and give effect to it. That is part of international treaty law. We have a good faith obligation - that is the terminology used - to give effect to our obligations under international treaties and to ensure effective remedies in any case of a violation of those treaties.

With regard to the decisions of a UN human rights treaty body, as in Mellet or Whelan, those are authoritative interpretations of the bodies that are competent as a matter of law under the relevant treaty, such as the International Covenant on Civil and Political Rights, to interpret those. Not only have we ratified the International Covenant on Civil and Political Rights, but we have also recognised the competence of treaty bodies to receive and consider decisions and to give their views on these. That was an additional step we took in ratifying the first optional protocol to the International Covenant on Civil and Political Rights. As a State, we have accepted those obligations as a matter of law.

The second question was with regard to uncertainty. As was also said last week, while it is not possible, as a matter of law, to achieve absolute certainty with any legal text, the protections that are afforded should ensure that a woman has effective access to a lawful abortion, that timely decisions are made and that procedures are accessible. That was precisely the problem in the A, B and C case with regard to the third applicant, C, where there was a finding of a violation of Article 8 of the European Convention on Human Rights where, the court found, there had been no access to an abortion that was lawful. This has also come up in the cases before the European Court of Human Rights in regard to Poland. Again, there was such a lack of clarity that women and girls had been subject to humiliating situations, and moved around from one place to another, because of the absence of timely and effective access to lawful abortions. That level of uncertainty has been referred to as a chilling factor both for medical practitioners and for women and girls with regard to their lawful rights to abortion.

On the third question in regard to criminalisation and decriminalisation, we referred in the policy document and also in our statement specifically to the views of the UN Committee on the

Rights of the Child in 2016, where it called for decriminalisation in all circumstances. Again, this goes directly to the point around access to a safe and legal abortion being part of the right to the highest attainable standard of health and the need to ensure that the criminal law does not act as barrier to access to health services.

The final question was in regard to conscientious objection and religious freedom. In the extended policy document and in the submission we had made earlier to the Citizens' Assembly, we referred to the relevant provisions of international European human rights law and, with regard to the Polish decisions from the European Court of Human Rights, to the collective complaint from the European social rights committee on how health care services are organised. While there must be recognition of the right to conscientious objection, health services must be organised in such a way that there is effective access so that a health service provider, a medical practitioner, must ensure onward referral to a non-objecting practitioner, and any right to conscientious objection, of course, should not impede the right to life of a woman and to their lawful rights under an abortion regime. Therefore, there is an obligation of onward referral. Reference has also been made in the Polish context to decisions being given in writing to be justified to a greater level of transparency and clarity to avoid that kind of confusion and uncertainty for any woman or girl seeking access to a lawful abortion.

Deputy Kate O'Connell: I thank the witnesses for attending. The terminology "abortion on demand" has been used here today a couple of times. I want to tease that out a bit from the perspective of the Irish Human Rights and Equality Commission. When it is spoken about, as it has been here today, I suppose the question is: on demand by whom? I would see it as being the woman who may potentially be "demanding" the abortion. Would the witnesses have an issue with that sort of terminology in the sense of it then being a question of who has a right to block that woman's right? Do they understand where I am coming from? If we are using terminology which suggests a woman can demand an abortion if she feels like it, has the Irish Human Rights and Equality Commission any view on who might be the judge and jury in such a situation? While I may not be explaining myself well, the witnesses might be able to give me some answer on how they feel about that.

Another point raised here today is that the eighth amendment has saved so many lives. If somebody is prohibited from travelling for either financial or other reasons to another country, would the Irish Human Rights and Equality Commission see it as a good thing that women are prevented from travelling abroad to seek abortion and, therefore, we have all these children who, allegedly, are alive as a result?

The witnesses referred to the question of health versus life. I know neither of the witnesses are medical professionals, or perhaps they are, but they are not here in that capacity. Have they heard any evidence, when coming up with their documents, about what sort of health issues we are talking about? What springs to my mind is high blood pressure, pre-eclampsia, the risk of stroke and the risk, therefore, of permanent disability to the woman as opposed to death. Perhaps the witnesses could elaborate on that sort of terminology.

Finally, to give my own view, and I do not expect the witnesses to agree or disagree, as public representatives in a public forum such as this, we have to be very careful of listing out the gestational progression of the foetus within the womb. Untruths have been put out here today, things that are not factually correct. I am very concerned about the public looking on and putting a certain weight or gravity to comments of elected members who are just putting out lies. It is very serious for this committee's work. Reference was also made to these botched abortions which I hear being spoken about. Again, there is evidence to suggest this. I know Deputy Mc-

Grath has left the room. I think it is very concerning and not helpful to the committee's work if people are somehow, wherever they are getting this information from, not checking it before they put it into the public domain. I would like to put that on the record today.

Ms Emily Logan: I thank Deputy O'Connell. On her first question about the term "abortion on demand", we suggest the most appropriate term is a woman "requesting health care". With due respect, we certainly do not ever hear men demanding health care so why that term should be applied to women, I do not know.

In regard to the eighth amendment and saving lives, and whether we think it is a good thing that women cannot travel, no, we do not. We believe the existing system is a two-tier system whereby women who cannot afford to travel are put in a situation where their autonomy is diminished and their ability to make their own decisions about their own health care has been limited by the State, so we do not see that as a good thing.

It is probably better that the health matter be referred elsewhere, as we might be stepping beyond our level of competence. I suggest that it be left to a medical practitioner. The committee may be hearing from some medical practitioners, so if the Deputy does not mind, I do not feel that we have the-----

Deputy Kate O'Connell: It was mentioned in Ms Logan's presentation, which is why I raised it.

Ms Emily Logan: Yes. It is more health than life. The threshold of life is so high and we believe that it should be lowered to health, but that is a decision that is determined by a woman in consultation with her medical physician.

Deputy Kate O'Connell: I thank Ms Logan.

Chairman: Does Professor Mullally wish to add to that?

Professor Siobhán Mullally: There was a point on who should be making the decision. In our statement, the expanded policy document and previous submissions, we have expressed concern that barriers to accessing health care services might be put in place because of onerous certification procedures and requirements. We also expressed that concern with the 2013 legislation. Therefore, we recommend that any legislative or regulatory framework that may be put in place not repeat those barriers, which can cause unnecessary delays, trauma and, potentially, revictimisation for a woman or girl seeking access to abortion services. Therefore, it is essential that there be clarity in any legislative and regulatory framework regarding the decision-making process without the imposition of those onerous barriers.

Chairman: I thank Professor Mullally.

Deputy Ruth Coppinger: I also believe that this is a public Dáil committee. Therefore, if comments are made at this committee, people should be entitled, and have a responsibility, to comment.

This links with the point that was made about the lack of sexual and reproductive health education in Ireland. Regarding the comment "a baby's heart beats at 21 days", an embryo does not even have a four-chamber heart at 21 days. People are throwing these claims out, so they should be commented on and challenged.

Do the witnesses agree that the opposite of abortion on demand is forced pregnancy? Is that

not the alternative? If we put restrictions in the way of someone who is seeking an abortion, we are forcing her to stay pregnant.

The witnesses might comment on a point that was made about the idea of abortion being another form of contraception. It is highly insulting. Abortion involves pain, expense - no matter what way it is procured - and a significant amount of difficulty, particularly for someone in Ireland, so it is belittling to suggest that. Do the facts from various countries that the witnesses have put forward not speak to Ireland's abortion rate being no less than any other country's where abortion is available? The idea about saving lives seems to be a myth.

Regarding sexual health, or the lack of it, Professor Mullally called for a scientifically objective policy. This committee should use scientifically objective terms. Last week and this, a number of members used the word "child". The scientific terms are "morula", "blastocyst", "zygote", "embryo" and "foetus". There are stages, and most people see the difference between them. It is not the case that everyone in Ireland is undivided on this. A minority of people may believe that the stages are equal, but most see the difference. I just wanted to challenge some points.

Do the witnesses agree that it is significant that a State-sponsored body such as the IHREC has proposed at a public forum like the Citizens' Assembly the idea that there needs to be abortion provision for socioeconomic reasons if people's human rights are to be upheld?

On the issue of rape, the witnesses stated that they opposed intrusive medical examinations for pregnant women. Do they agree that, if a rape provision is included in any abortion legislation, it would run counter to that, given that there would have to be some element of examination or the person would have to meet a certain threshold?

Professor Mullally stated: "The commission is of the view that a new framework for access to abortion should place the decision-making process primarily in the hands of the pregnant woman in consultation with her physician." Does she agree that the Citizens' Assembly's recommendation of abortion on request or without restriction up to 12 weeks would fit in with the idea of a pregnant woman being able to attend her own general practitioner, GP, and being prescribed the abortion pill, which is used in many abortions in Europe, or surgical abortion?

Chairman: The Deputy spoke for approximately four minutes, so she might let the witnesses respond, if that is okay.

Ms Emily Logan: If Deputy Coppinger does not mind, I will answer some of her questions in reverse order. She referred to the gestational term. I am conscious that we are not giving personal views - we are representing the view of the commission. In our policy statement, we have pointed out how gestational term limits in other jurisdictions are applied. The commission has not gone so far in our paper as to give the committee an answer on what that should be, but we have stated that any gestational term limit included in a reformed framework for access to abortion service should be devised in keeping with best medical practice and with the health of the pregnant woman as the primary focus. It should be necessary and proportionate and have due regard to a woman's right to bodily autonomy and her right to the highest attainable standard of physical and mental health.

We agree with the Deputy's comment on sexual education. Some of the terminology used about one of the reasons for an abortion being contraception is probably an unhelpful narrative. Sexual education has been an important part of our considerations and it should not be forgot-

ten about in the broader consideration of sexual health and health rights for girls and women.

Professor Siobhán Mullally: As was heard at the Citizens' Assembly and elsewhere, a situation can arise where rape as a specific indication or ground can impose an onerous burden on a woman or girl, given the additional procedures or requirements and questions as to who makes that decision, on whom does the burden of proof lie and at what point can the decision be made. In any framework that is developed, we are concerned to ensure that there should not be any revictimisation - any repeat of trauma - for a woman or girl and there should be effective access to a timely procedure. It can take up to two years for rape proceedings to come to court, which needs to be borne in mind in the context of reflecting on the legislative and regulatory framework that may be put in place.

Deputy Bernard J. Durkan: I thank the witnesses for appearing before us. I will mention in passing that not all countries have equal provisions on the availability of abortion, as we heard during the assembly's discussions. Regarding the acceptability to our society, we would be foolish to reach a conclusion just because there has been general acceptance so far and the Citizens' Assembly discovered A, B and C in the various responses to it. There were many indications ahead of previous referenda that they would receive considerable support until the time came and they did not. We must operate on the basis at all times that, whatever we do and say, nothing is as clear as it may appear at this stage. I would be of the opinion - perhaps I am naïve in this - that it would be absolutely essential for a rape victim to seek medical assistance immediately. There are no circumstances in which that should be avoided, including for general health reasons. This has come to my attention in cases where young children who were the victims of rape were frightened, unsure of what to do and were afraid to tell their parents or guardians. In those circumstances there is a serious void in what the witnesses have correctly drawn attention to in terms of the quality and availability of sex education in schools, but there is also a serious void in terms of what parents should know about what happens to their children. It is hugely important that the situation would be clarified. Regardless of the debate we are having in this situation, that is of fundamental importance to the rights of the child, who is the victim.

I have gotten myself into difficulty in the past by suggesting that in rape situations there should be a quick intervention. The counter-argument has been that the child who is not yet born is an innocent victim as well and that is a reason to allow the pregnancy to continue. I do not accept that. Apart altogether from the legal procedures taken against the perpetrator of a violent criminal act, there needs also to be a recognition that to allow the victim to become a victim again, as it were, and to have to continue to live with that, is unfair, unjustified and to my mind illegal in terms of an act against the person going unchallenged in that regard, apart from the-----

Chairman: Deputy Durkan is now over three minutes. Does he have a question to ask?

Deputy Bernard J. Durkan: I am over two minutes.

Chairman: No, the Deputy is over three minutes. I do not know whether he has asked a question yet.

Deputy Bernard J. Durkan: I wanted to ask a question about the Mellet and Whelan cases and the extent to which medical advice and objective counselling, which were clear and unambiguous, were available to them that might have been to their advantage.

My last point is a legal issue. There could come about a situation whereby the right to life

of an unborn child may come into focus. For instance, the European Charter of Fundamental Rights did not deal with the issue but the very first article states everyone has the right to life. I just wonder if there is recognition of the fact that a legal challenge may come from some quarter. Are the witnesses aware that might happen? I know the supposition is that it would be outside of the reach of the courts to challenge it if the legislation is passed but I have my doubts about that one as well because I think that will be challenged too.

Chairman: I thank Deputy Durkan. We will let the witnesses respond.

Ms Emily Logan: There were two questions, one about the medical advice available to Amanda Mellet and Siobhán Whelan. My understanding from the public comments made by the Minister for Health at the time was an acceptance that there was not the kind of medical support that should have been provided to either of the women.

I think Deputy Durkan's reference might have been to the preamble of the UN Convention on the Rights of the Child. Looking at the preparatory documents it is very clear that this is a really contentious issue. Any of the international treaties are subject to the vicissitudes of politics, if one likes, and they are a set of minimum standards. In the context of the UN Convention on the Rights of the Child such was the debate that it was not included in the main text of the document but was placed in the preamble to enable jurisdictions to ratify the convention but to also accept that different jurisdictions, as Deputy Durkan indicated in his earlier comments, have different regimes.

Chairman: Could I remind all members, in an effort to receive as much information as we can from the witnesses, to refrain from making statements and speeches - a lot of speakers are doing that today - and that we would seek to ask precise and concise questions in so far as that is possible? That would serve our work very well. I am not picking on Deputy Durkan.

Deputy Bernard J. Durkan: Sometimes it is important to qualify what the purpose of the question is, for everyone's sake.

Chairman: Within reason. I call Deputy Catherine Murphy. She has six minutes.

Deputy Catherine Murphy: I will be briefer than that, because Deputy Clare Daly has asked the question I intended to ask about decriminalisation. Last week we had Mary O'Toole, SC, before the committee and she reminded us that the Supreme Court had set the bar regarding the balance of rights and there was an equal right to life and that was only called into question in the case of a real and substantial risk to the life of the woman. The Protection of Life During Pregnancy legislation followed on to give effect to that. She made it very clear that it did not include the right to health. I picked up on the point Professor Mullally made, namely: "The commission is of the view that a new framework for access to abortion in Ireland should place the decision-making process primarily in the hands of the pregnant woman in consultation with her physician." I completely agree with that. In arriving at the decision on how to frame it - presumably there was consultation within the organisation - were there examples of other countries where she saw such an approach was in practical use?

Ms Emily Logan: We have included some information and I should preface my comments by saying they are not necessarily endorsements or recommendations but in the policy statement we look briefly at five other jurisdictions. There are other jurisdictions where that happens but we have not gone so far as to say that we are endorsing or making that recommendation; it is just a consideration for members, as legislators, but it does exist in other jurisdictions. Perhaps

Professor Mullally wishes to add to that.

Professor Siobhán Mullally: The European Court of Human Rights at the time of the ABC judgment noted that 40 contracting states to the European Convention on Human Rights allowed for access to abortion on health grounds. That was part of what it was looking at. In terms of our mandate to look at international human rights law, that has been repeatedly found to be a part of the right to health to ensure that there is access to a lawful abortion on health grounds. In the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women this is part of the development of international human rights law. That is what we are drawing on in terms of the nature of our mandate as a national human rights institution. In terms of what was described as being the European position at the time of the ABC judgment, the court noted that 40 contracting states to the European Convention on Human Rights at that time allowed for access to a lawful abortion on health grounds.

Senator Lynn Ruane: I thank both witnesses for their presentations today which I found very informative and useful. I join with my colleagues in commenting on some of the language that has been used here today. One comment in particular I found very offensive as a woman and as a mother; it was to make the assertion that a woman would practically arrive for her 20-week scan, find out the gender and say: “Ah no, it’s a girl. I wanted a boy.” It is a ridiculous and absurd view to have of women. I found it very offensive. I would just like to put that on the record. Members should research and come in here educated on the reasons women have abortions before they make comments like that.

I have two questions. One of them is based on the conversations today about rights of the unborn and of the child. Could the witnesses make a distinction and provide a little background on the right to life of a foetus, if there is any, and how they do or do not equate to a woman as a holder of human rights? We may as a society place value on the foetus, and place value on access to foetal development, care and health if a woman is to proceed with a pregnancy, but that does not translate into human rights and equate to the same rights as the woman’s. Perhaps the witnesses will elaborate on that.

Professor Mullally said the committee needs to include the development of a legislative and regulatory framework that provides for access to abortion for a list of reasons but, in practice, we are all aware of the many practical issues that arise when trying to allow for abortion in certain limited circumstances. How would she respond to the assertion that the only way for Ireland to fulfil its international obligations in this respect is to allow for terminations in early pregnancy on request? To meet our obligations, we would have to allow not only for these circumstances, but for abortion up to 12 weeks on request.

Professor Siobhán Mullally: The first question relates to the scope of the right to life. We have said previously that nothing prohibits protections of prenatal life and, in fact, the commission, in various submissions to UN bodies, has spoken about the importance of the State strengthening prenatal care, maternal health policy, and providing better supports for pregnant women. That has been part of various policy documents we have produced and submissions we have made to UN bodies. The position under international human rights law is that a woman’s rights under, for example, the International Covenant on Civil and Political Rights to be free from inhuman and degrading treatment, her own right to life, right to privacy and right to non-discrimination cannot be undermined by priority given to the protection of prenatal life. That has been the position of the UN Human Rights Committee, for example. It is limited and a woman’s rights must also be respected. The European Court of Human Rights in the RR and P & S cases involving Poland made findings of violations of both Article 8 on the right to private

life and Article 3, in particular, on the prohibition on inhuman and degrading treatment. The court was clear that, although there was no European consensus in its view on the moment when human life began, the court had an obligation in respect of supervision, and states had obligations to comply with the requirements of the European Convention on Human Rights.

What was the second question?

Senator Lynn Ruane: It was about access to abortion up to 12 weeks without restriction.

Professor Siobhán Mullally: In our submission, we set out the legislative and regulatory framework we believe should be put in place and that a number of areas that should be addressed, including life, health, socio-economic circumstances and family circumstances. It is up to the Legislature then to deliberate further and arrive at a decision with regard to gestational limits, and we have set out approaches taken in different jurisdiction, how those have developed and the consideration that should be taken into account. The certification requirements should not put in place further barriers to women and girls having access to abortions and should not put in place conditions or situations where decisions cannot be made in a timely way, and there must be effective access to abortion services. It is within that context.

Deputy Jonathan O'Brien: I have one question relating to the terminology and the revised legislative framework and the definition of “serious risk” or “substantial risk”. I presume that will be left in the hands of the medical practitioner. Do any UN conventions or other international laws define “serious risk” or “substantial risk”?

Ms Emily Logan: To my knowledge, they do not. The assessment of that risk is left to a medical practitioner and, obviously, individual cases are different.

Professor Siobhán Mullally: The term “real and substantial risk” comes from Irish law. It has been said in many contexts that this can create serious difficulties for medical practitioners in providing health care in a timely way and assessing whether there is a risk to life when complying with the requirements of the 2013 legislation.

With regard to international human rights law, the language used by UN treaty bodies is “risk”.

Deputy Billy Kelleher: I refer to the constitutional framework we have, which refers to the real and substantial risk to the life of the mother and underpinning that is the Protection of Life During Pregnancy Act 2013, which effectively allows for a termination when the life of the mother is at “real and substantial risk”. From a medical point of view, that is a high threshold to attain. One has to assume that the life of the woman is at a real and substantial risk. Medical practitioners can make a decision based on that assessment but when we get into the health of the woman, socio-economic reasons, etc., where does the issue of the conscience of clinicians to abdicate from that decision come into being in the context of human rights? Is there a conscience clause in other countries? Is there an obligation on a clinician, if legislation is in place that obliges him or her to deal with it, or is there an entitlement through a conscientious objection to withdraw from the process in the context of human rights?

Ms Emily Logan: We have included in our document information on conscientious objection. Other jurisdictions provide clear guidance to medical practitioners, those objecting and those non-objecting, and we have mentioned in extreme circumstances that this needs to be considered. It is highly unusual but it is certainly provided for in other jurisdictions. Pages 27 and 28 of our submission contain a number of references to the articulation of this, including

the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

Professor Siobhán Mullally: It is the norm that there would be provision for a conscientious objection and that is included in the 2013 legislation. That allows for recognition of the right to religious freedom and manifestation of one's religious beliefs but there are limits on that and, therefore, in terms of compliance with European human rights law, including the provisions of the revised European Social Charter and the European Convention on Human Rights, the position has been that where a practitioner has a conscientious objection, there is an obligation to ensure there is effective referral and access to a non-objecting practitioners, and that procedures are in place to ensure that obligation is met in a timely and transparent way.

Deputy Billy Kelleher: I have received questions from time to time from various groupings and individuals who have opinions on these issues. In the context of a pregnancy where it is identified that there is a foetal anomaly, which is not necessarily fatal, and a decision is taken to terminate the pregnancy but the woman's partner decides that there should not be a termination of the pregnancy, has there ever been an adjudication on these cases in the European or other international court?

Professor Siobhán Mullally: It has been accepted that pregnancy is something that is intimately connected to the woman, that it is an aspect of her private life, and that it must be considered as such. There is no right of veto by any partner or third party.

Deputy Billy Kelleher: Has that been established in the courts, in the European courts, for example? Is it also the case that it has been internationally recognised?

Professor Siobhán Mullally: The position is that it is an aspect of the woman's right to private life to be able to make that decision. In terms of European human rights law, this is in the context of where there is a lawful abortion regime at domestic level, so where abortion is already part of the domestic law framework in terms of European Court of Human Rights law.

Deputy Billy Kelleher: What if it is not part of national law? Has this ever been adjudicated upon?

Professor Siobhán Mullally: It differs depending on the European Convention of Human Rights, ECHR, laws or international human rights laws. When it comes to the latter, it is very clear that domestic law is no reason for non-compliance with international human rights law. There is, then, a right to lawful abortion as a matter of international human rights law. There is no possibility of veto as this is an aspect of a woman's right to private life, her right not to be discriminated against, and her right to health.

Deputy Billy Kelleher: Does Professor Mullally believe that this protects the woman in the context of, for example, conservative opinion in some states? I do not necessarily mean Ireland but rather any state where there might be religious input into the political discourse. Is it also well established across all countries that have lawful abortion but might sometimes also have very conservative political values? Is that the case?

Professor Siobhán Mullally: Yes. Let us look for example at how the European Court of Human Rights dealt with the *RR v. Poland* and *P and S v. Poland* cases, both of which were very tragic. The latter concerned a 14 year old victim of rape who was moved around from one place to another because she was given neither the correct information nor access to an abortion that would in fact have been lawful under domestic law. Her mother was also unable to get access

to the services she wanted for her daughter. The European Court of Human Rights, ECHR, was very strong in its condemnation of what had happened and found a violation of Article 3 of the European Convention on Human Rights, which prohibits inhuman and degrading treatment, in how forces had come together to put in place so many barriers to this 14 year old girl getting access to a lawful abortion, and also with regard to the mother's right to support her daughter.

Chairman: That concludes this session of today's meeting. I thank Ms Logan, Professor Mullally and Ms Gallagher for their attendance and for their very helpful contributions to this afternoon's discussion. We will take a short break to allow our next witnesses to take their seats.

Sitting suspended at 3.33 p.m. and resumed at 3.45 p.m.

Chairman: I thank Ms Zampas and Professor Binchy for attending the first session, during which they heard my comments on privilege and defamation which, therefore, I will not repeat. Members are very glad to have the witnesses here to assist us with our work.

Ms Christina Zampas: I thank members and offer my congratulations on the important work they are embarking upon and the transparent and open process through which they are deliberating on the challenging and important issue of abortion law reform. I am an international human rights lawyer with almost 20 years' experience of working on sexual and reproductive rights issues. I have done consultancy work for UN agencies such as the World Health Organization and the Office of the High Commissioner for Human Rights and have worked for international NGOs. I am here in my capacity as legal fellow in the faculty of law at the University of Toronto. My first job involved working for a Senator from New Jersey in the US Senate and I have also worked with parliamentary organisations since then and, therefore, have first-hand experience of the work of parliamentarians and its challenges and the very important contribution they make to the realisation of human rights in their countries. My presentation will primarily focus on human rights standards in respect of abortion and state obligations in that regard, which is what the committee has asked me to present upon. I hope it can be helpful to members as they address the recommendations of the Citizens' Assembly.

States create international human rights law and it is based on humankind's common understanding of the inherent dignity and rights of every human being, which is a notion shared across religious and non-religious ethical frameworks. Ireland has been an important player in the development of the human rights system through helping to create binding treaties and voluntarily ratifying them and by nominating and electing members to UN treaty bodies, which are comprised of independent experts that monitor state compliance with such treaties. Ireland has also sat on the Human Rights Council, which is the UN's most important intergovernmental body on human rights. Ireland has time and again respected its human rights obligations in many ways. It has done so not just because those treaties are legally binding under international law but because they provide guidance on how to address complex and sometimes competing interests in light of what people are experiencing.

Reproductive rights have long been recognised as human rights and are enshrined in international treaty provisions. International human rights bodies have long recognised that a wide range of human rights guarantees are undermined when women and girls do not have access to safe abortion services, particularly if abortion is restricted and-or criminalised. Those rights include the rights to life, health and privacy and the right to be free from discrimination, torture and other ill-treatment and gender-based violence. The right to health requires states to take legal and policy measures to prevent unintended pregnancies and unsafe abortions. Such measures include respecting the right of women to make autonomous decisions about their

sexual and reproductive health and also the liberalisation of restrictive abortion laws to guarantee women and girls access to safe abortion services and quality post-abortion care. Human rights bodies have considered such failures to ensure women's and girls' access to abortion to be forms of discrimination and inequality in the enjoyment of rights. The UN Committee on the Elimination of Discrimination against Women, CEDAW, has confirmed that measures to eliminate discrimination against women and girls are inappropriate if a health care system lacks services to prevent, detect and treat health concerns specific to women and girls, noting that it is "discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women".

The urgency of the human rights concerns in Ireland is reflected in serious human rights violations amounting to cruel, inhuman and degrading treatment, as found in the Mellet and Whelan cases. The UN Human Rights Committee held in these two cases that prohibiting and criminalising abortion in situations of fatal foetal impairment subjected these women to conditions of intense physical and mental suffering, and that no justification could be invoked nor were there extenuating circumstances to excuse such harm.

Human rights bodies have also held that a woman's decision to continue or terminate a pregnancy falls within the sphere of private life, which includes bodily integrity, holding that restrictive laws and practices interfere with a woman's decision, violating this right. Human rights bodies have long stated that to comply with human rights obligations, states should decriminalise abortion, liberalise restrictive laws and remove barriers that hinder access to legal abortion. While they have noted that states must ensure access at a minimum in cases of threat to the woman's life or health, in cases of rape or incest and in cases of severe or fatal foetal impairment, they have also called on states which allow abortion only on such minimum grounds to liberalise their laws. This is because human rights bodies are recognising the problem of narrow laws framed around minimum grounds in that, first, they do not guarantee effective access to lawful abortion and, second, women and adolescent girls seek abortions for various reasons, many of which do not fall under these grounds, and that there are harms and human rights implications in these cases as well, especially for marginalised women. Last year four UN experts issued a joint global statement recommending the good practice found in many countries that provide women access to safe abortion services on request during the first trimester.

UN human rights treaty bodies have also recognised this reality by directing states to address abortion in a more general manner without delineating grounds. For example, the UN Committee on the Rights of the Child recommends that states should ensure access to safe abortion and post-abortion care. It also recently made this recommendation to Ireland. Another expert body, the UN Working Group on Discrimination against Women recommends that states should recognise women's right to be free from unwanted pregnancies, noting that many countries where women have the right to abortion on request supported by affordable and effective family planning measures have the lowest abortion rates in the world, and that states should allow women to terminate a pregnancy on request during the first trimester or later, on minimum grounds.

The World Health Organization also recognises that restrictive legal grounds for abortion and other legal, regulatory and administrative barriers contribute to unsafe abortion because they deter women from seeking care, cause delay in access to services which may result in denial of services due to gestational limits on the legal grounds, and create complex and burdensome administrative procedures. The Citizens' Assembly recommendation on access to abortion without restriction as to reason is in line with these human rights and health standards.

Although a wide range of laws and policies ultimately determine whether women's and girls' equality and right to be free from discrimination are a priority for states, trusting women and adolescents to make autonomous decisions about their sexuality and reproduction is central, including deciding whether to carry a pregnancy to term. The UN Committee on Economic, Social and Cultural Rights has explicitly articulated increased access to abortion, as well as other sexual and reproductive health services, within states' obligation to respect the right of women to make autonomous decisions about their health.

The UN Committee on the Rights of the Child has called on countries, including Ireland, to ensure that the views of the pregnant girl are always heard and respected in abortion decisions. The Committee on the Elimination of Discrimination against Women has expressed concerns about one country's convoluted abortion law, which makes women dependent on the benevolent interpretation of a rule which nullifies their autonomy, and noted that the state party should review the abortion law and practice with a view to simplifying it and to ensuring women's autonomy to choose.

Having respect for women's and girl's decision-making agency reflected in the law is a key indicator of the degree to which women's equality is respected. The achievement of substantive equality requires states to understand how women, and subgroups of women, are disadvantaged in practice by laws, policies and institutions. Laws which do not place women at the centre of care and do not respect their decision-making, wherever those laws are, undoubtedly cause harm to all women, but particularly to marginalised women.

I have observed in my almost two decades of work on this issue that undoubtedly in every country with a restrictive law, the most impacted are vulnerable populations, such as women migrants, women with low economic status, women with disabilities, and adolescents. Ireland is no exception. The United Nations human rights bodies have time and again, including in findings against Ireland, recognised the discriminatory effects of restrictive and criminal regulation on women's access to lawful abortion on the basis of sex, age, geographical location and income. The World Health Organization has underlined that restricting legal access to abortion leads to illegal and often unsafe abortions, and to social inequities, including because of the burden of travel. It does not result in fewer abortions or in significant increases in birth rates.

Women and girls encounter many barriers to abortion, one of which is its criminalisation. Human rights bodies have called on states to decriminalise abortion, which means that abortion is no longer regulated by criminal legislation and is not a criminal offence. The Children's Rights Committee has urged states, including Ireland, to decriminalise abortion in all circumstances. CEDAW has also stated that criminalisation, as well as denial or the delay of safe abortion and post-abortion care, are forms of gender-based violence that may amount to torture or cruel, inhuman or degrading treatment and that countries should repeal criminal legislation.

Human rights bodies recognise that criminalisation of abortion contributes to stigmatisation and creates a chilling effect on access to lawful services. In the Mellet case, the UN Human Rights Committee recognised how the criminalisation of abortion degraded and stigmatised Ms Mellet through separating her from the standard way of treating patients and forcing her to travel, and that the shame and stigma associated with the criminalisation of abortion had exacerbated her suffering.

Human rights bodies have also recognised the chilling effect of criminal law on the exercise of professional judgment in providing women and girls with care and have called on states to alleviate its effects. In *A, B and C v. Ireland*, the European Court of Human Rights noted that it

“considered it evident that the criminal provisions of the 1861 Act would constitute a significant chilling factor for both women and doctors in the medical consultation process, regardless of whether or not prosecutions have in fact been pursued under that Act”.

Criminal provisions present barriers not only in the context of abortion, but also to other reproductive health services, impacting the quality of care that women receive in pregnancy and childbirth, including in the context of miscarriage. Some national courts understand that the criminal law, as well as other ways of restricting abortion, cause harm and are not a proportionate means to achieve a state’s objective to protect prenatal life. For example, European constitutional court decisions across Europe have upheld abortion-on-request laws when faced with challenges due to claims of constitutional protection for prenatal life. While these courts acknowledge that the state has a legitimate interest in protecting prenatal life, the select means of protecting it must be consistent with women’s rights. In doing so, these courts have referenced their countries’ respective obligations under international human rights treaties. Placing women at the centre of care does not mean that states should ignore foetal interests. The objective of protecting prenatal life is legitimate but this can be achieved in ways that are consistent with women’s rights and which support women. In addition, the evidence is clear that criminal abortion laws are not effective in meeting the state’s objective of protecting prenatal life. They do not affect the overall incidence of abortion; they just make it unsafe and burdensome.

This approach is in line with international and European regional human rights norms. No international or European human rights treaty or treaty monitoring body or court has provided that right-to-life treaty provisions apply before birth. This was confirmed by the Council of Europe Commissioner for Human Rights in his report on his visit to Ireland last year. That report states, “The Commissioner stresses that the Eighth Amendment of the Irish Constitution [...] departs from the position consistently held by human rights bodies that the right to life, as enshrined in relevant international treaties, does not apply to prenatal life.” In addition, in a landmark case against Peru in which a sexually assaulted child was not provided with an abortion, in part because of state measures to protect prenatal life, the UN Committee on the Elimination of Discrimination against Women found violations of the convention, confirming that foetal interests cannot trump the human rights of women and girls.

Human rights bodies have long referenced achieving reductions in the rate of abortion, not through restrictive abortion laws or mandating recognition of “the right to life of the unborn” but by means of increased access to family planning services and comprehensive sexuality education, to safe motherhood services and prenatal assistance, including to reduce spontaneous miscarriage, and to social and economic protection to ease the burdens of having children. Human rights bodies have also recognised that any procedural or other barriers to abortion can impact the ability to access legal services in practice. Human rights require that “in cases where abortion procedures may lawfully be performed, all obstacles to obtaining them should be removed”.

Human rights bodies have recommended that states remove barriers such as mandatory parental consent requirements and financial barriers to abortion services. They have also specified that where, under domestic law, health practitioners are allowed to refuse to provide abortion services on grounds of conscience, states must adopt regulatory frameworks that guarantee access to abortion is not hindered by such practices. They have never mandated a state to recognise conscientious objection in the context of provision of abortion services. They have also raised concerns over judicial or prosecutorial authorisation prior to obtaining an abortion on grounds of rape, and multiple provider authorisation requirements, including in recommenda-

tions to Ireland regarding the Protection of Life During Pregnancy Act. They have also urged states to eliminate and refrain from adopting mandatory counselling and medically unnecessary waiting periods prior to abortion and to “[e]nsure that health care professionals provide medically accurate and non-stigmatizing information on abortion”. The World Health Organization has also confirmed these as “barriers [to] abortion [that] should be removed”.

Access to information is critical to the realisation of all human rights. In the context of health care, including sexual and reproductive health care, states have an obligation not to censor, withhold, misrepresent or criminalise information to the public in general or to individuals. The European Court of Human Rights, in two cases concerning lack of access to lawful abortion, found Poland in violation of the European Convention on Human Rights for lack of proper counselling and information on abortion. Human rights bodies have criticised Ireland’s Regulation of Information (Services Outside the State For Termination of Pregnancies) Act 1995 as not being compliant with human rights. The World Health Organization also emphasises that the information given to women seeking abortion services must be unbiased, non-directive and provided only on the basis of informed consent.

These human rights standards show that narrow exceptions to abortion bans are inadequate to eliminate the harms that such laws impose on women and girls. The Protection of Life During Pregnancy Act is an unfortunate testament to how grounds-based laws can hinder women’s and girls’ rights and harm their health. The urgency of the problem is reflected in the recent decisions of the UN Human Rights Committee against Ireland. Well-functioning abortion laws are guided by and directed at protecting women’s and girls’ health and human rights. The human rights framework and its obligations provide a common-sense, evidence-based, practical approach, not only to permit expanded access to abortion but also to ensure the delivery and availability of quality abortion services. Combined with guidance from the public health field, including the World Health Organization, human rights enable states to help realise women’s equality, regardless of their age, income or background.

Chairman: I thank Ms Zampas for her presentation. I now ask Professor Binchy to make his presentation.

Professor William Binchy: I am very grateful and honoured to have been invited to appear before this very important committee. It is doing excellent work for Ireland, for the good of Ireland and for the people who live in Ireland. I have prepared an opening statement but I will not inflict it upon the committee. I thought it might be useful, in light of the good, long, two-hour discussion the committee had with the members of the Irish Human Rights and Equality Commission earlier this afternoon, to telegraph the debate a little in discussion. I wish to make three substantive points to the committee in my opening remarks.

Before doing so, I will state my value position, which is one that is at the core of human rights philosophy. We are not simply talking about rules and regulations here; what we are talking about is an insight, a value judgment, as to the human condition. What human rights philosophy is about is a very simple value. One may accept it or reject it - some people do reject it - but the value is the equal, inherent worth of every human being - his or her equal value. That is it. Whether rich or poor, old or young, early developmental stage or late developmental stage, no matter his or her mental capacity - you name it - it does not matter. That value says all human beings, by virtue of their humanity, are entitled to protection and respect. They have inherent dignity. It is not given to them by human rights committees, by members of this committee, as legislators, or by courts; neither is it taken away from them by courts or by legislators. It is their inherent value by virtue of being human beings. Can I prove that statement to

the committee? Can anyone who subscribes to this essential core philosophy of human rights prove that statement to the committee? Absolutely not. It is not provable empirically, but one either accepts or rejects it. If one accepts the principle of equal human rights, it has implications in the area the committee is dealing with, namely, the protection of unborn human beings. We can describe them scientifically as blastocysts, fetuses and embryos and then, when we get to the post-birth stage, we can describe that little entity, which is utterly limited in its relational capacity and absolutely dependent on other human beings, as a neonate but, frankly, that is not very human language. Young little babies who have recently been born are human beings and small unborn children are human beings. My essential argument presented to the committee is this: let us stay real, let us keep our eyes open and let us recognise the genuine humanity and equal worth of every human being. That is the premise on which my remarks are based. That is my value position.

As I said, I wish to talk about three matters: the Citizens' Assembly's recommendations to the committee, which are totally familiar and which form the subject matter of the committee's establishment; human rights treaties and monitoring bodies; and the recommendations of the Irish Human Rights and Equality Commission. I will speak briefly; I do not believe I will speak for longer than the ten minutes allocated.

The committee is so familiar with the first matter, the recommendations of the Citizens' Assembly, that we can shorten that discussion. I think members will agree that it is notable that the Citizens' Assembly recommends, among a range of other measures, that abortion should be available for no stated reason, on request, and on grounds of disability. The recommendations do not use the word "disability", but that is how it translates in any meaningful sense if we stay real. When one talks about foetal anomaly, one is talking about disability. Let us think about both of these grounds. The first is abortion in wide-ranging circumstances, without control. We have the discussion about the expression, "abortion on demand". I do not particularly want to use it necessarily to stigmatise the phenomenon but merely to describe it. Let us take another expression which is used by those who are enthusiastic for legalised abortion, which is "abortion based on the right to choose". I have always been struck, and perhaps the committee has too, that nobody ever finishes the sentence, "the right to choose". If the sentence is finished, it becomes not so self-evidently obvious but highly disturbing to any person of humane sensibility: "the right to choose to take the life of another person". As a general proposition in our understanding of ethical relationships between human beings, do we accept that anyone has the right to choose to hurt another person or take the life of another person? It is a proposition which is absolutely contentious, yet in the context of abortion, the half sentence, "the right to choose", is articulated as though it were a self-evident, obvious good.

It is worth probing this a little and examining precisely what this means. I say that because the Citizens' Assembly's clearly is a right-to-choose proposal, the right to choose to have abortion on request. If one goes back to the basic premise of the humanity of every human being and the equal right to life of every human being, I would respectfully say this is an unacceptable proposition. The assembly also recommended abortion for disability. If one is in favour of the right to choose, why would one be against abortion for disability? What are the moral, justice and human rights objections to it if one embraces the principle that one can have abortion for any reason unstated and not even mention the reason? Clearly, an unmentioned reason might in some circumstances be abortion for disability. Regarding those who say they are against abortion for disability but are in favour of the right to choose, frankly, further reflection has to be given in this area. If the committee thinks about the right to abortion based on disability, I was a member of the UN Human Rights Commission for 11 years and I was in New York

deputising for Professor Gerard Quinn, who is the Irish world expert in the area of the rights of human beings with disability. It was interesting to listen to the discussion on the formulation of the UN Convention on the Rights of Persons with Disabilities and especially the area of the right to life of persons with disabilities. Article 10 of the convention says essentially that state parties recognise the right to life of every human being and guarantee to protect that right without discrimination on the basis of disability. If the committee is going to address the question of human rights, it is important for it to address that consideration of recognising the rights of every human being without discrimination and specifically without discrimination on the basis of disability. Manifestly, the Citizens' Assembly violates that human rights protection.

I refer to international human rights treaties and their monitoring bodies. States can agree or not agree to ratify a convention. They are perfectly free not to. They are involved in the UN in the formulation of treaty negotiations in this area. As chief commissioner Logan correctly said, most of those treaties, if not all, when it comes to the area of the right to life and dealing with areas which could impact on the area of protection of unborn children or abortion, have been discreet in the sense of banning abortion because to do so would mean many countries would not, and could not, ratify the convention. They leave it open, as she said, in order that each state can make its own mind up to ratify the convention on the basis of its interpretation of what that particular provision means. Let us assume Ireland is against the idea of abortion. Ireland can ratify all those various conventions and covenants and has done so. Another state with wide-ranging abortion can equally do so on the basis that its interpretation will not ultimately yield an outcome which says that what it is doing is contrary to the convention in question. Its support and ratification is solicited specifically on that basis. Ireland ratified many of these conventions and covenants before and after 1983. This is a consistent State policy of Ireland at all stages, and nobody has suggested, nor could they suggest, for a second that Ireland, in doing so, was agreeing to undertake to change its Constitution to introduce abortion. That is clearly contrary to the good faith basis on which its support and ratification were sought. None of those treaties provides for a right to abortion. I outline that proposition with full certainty.

We then move to the monitoring committees. Each of the treaties has a monitoring committee to police and support its implementation in individual countries, and they do excellent work as a general proposition in encouraging states to adhere to their human rights obligations, which they have undertaken by ratifying the treaties in question, but let us stay real. I implore committee members that if they stay real, they will have to accept the value system, in the past decade or so especially, of the monitoring body members, some of whom are judges and lawyers and very many of whom are enthusiastic proponents of what might be called a right-to-choose philosophy. That is their value system, they are perfectly entitled to it, they hold it conscientiously and those are their views. The monitoring bodies do not articulate law, judgments or obligations that are based on the treaty, which incorporate a treaty obligation. The relationship between states in international law and the relationship between international law and domestic law is a subtle system, but given the manner in which it is structured, the treaty is the obligation. The monitoring committees have certain functions with certain implications, but it does not matter what they say. Ireland is not required to act in a manner which is contrary to the obligations it took on when it ratified the relevant treaties in question. If one stays real, one will say, if one is speaking as a legal analyst and not a partisan, the manner in which the monitoring committees have simply wiped off the stage any consideration of the right to life or, indeed, any rights of the unborn child is striking. If members read the various decisions they have taken and recommendations they have made, the unborn child just is not there. That is a striking critique that can be made. One Irish commentator has suggested that the manner in which the committees have operated is so manifestly at variance with what is sound international law that their

findings in this area should be regarded as *ultra vires*. That is the situation about the monitoring committees. I greatly respect Ms Zampas. I have had an opportunity to chat with her and I like her very much. We disagree on this particular issue. She has articulated in her very coherent paper many findings of monitoring committees. These findings represent the values of those committees, do not penetrate domestic law, and are inconsistent with the values which Ireland understood it was importing when it ratified the conventions in question.

I refer to the Irish Human Rights and Equality Commission, IHREC, recommendations. The committee has had a long discussion about those recommendations, but if it was contemplating adhering to the commission's proposals, I will spell out in more real terms what they mean. They mean a right-to-choose philosophy or abortion on demand. It does not matter how it is described, it means essentially abortion without any meaningful restrictions. Abortion based on the test of well-being, which is proposed by the commission, would not be a ground that would constitute a limited ground, and I think the committee would agree. Abortion based on socio-economic or familial status or circumstance equally would not constitute a limiting ground. The commission says that the scrutinising process whereby these grounds would be implemented should be as minimalist as possible. The committee and the commission had some discussion about late-term abortions and there is some discussion about that in the commission's submission, but there is no indication whatsoever on the part of the commission that it had any concern with late-term abortions from a human rights perspective. From a human rights perspective, the commission did not think it appropriate to mention any human rights concerns about an unborn child in the seventh month of a pregnancy. It talked about the issue but it did not talk about it from a value perspective in regard to the protection of the unborn child. If one goes through the text of the paper, as with so many of those decisions and recommendations by the monitoring committee of the various treaties and covenants, one will be searching almost in vain for a reference to the unborn child, foetus, blastocyst or embryo - let us not worry about the terminology. One will search in vain for a reference to that flesh-and-blood human being who constitutes a human being whose life is worthy of protection. I think the committee has caught my drift and I hope I have not overstated it.

If the committee believes, which it may not, that every human being has an inherent worth and dignity and is worthy of respect, the idea it would contemplate the Citizens' Assembly recommendations to the effect there should be wide-ranging abortion or that it should contemplate implementing the proposals by the Irish Human Rights and Equality Commission, which are effectively wide-ranging abortion, then I strongly recommend it not to take that course of action.

I will say one last thing, which might seem to be a slight tangent but which nonetheless might be important for future discussion, about the European Convention on Human Rights, which is a regional convention as opposed to global ones from the UN, and the European Court of Human Rights. My invitation to the committee is to get real and stay real. The European Court of Human Rights has a problem - I think the committee will agree - and always had a problem with the right to life provision in Article 2 of the European Convention, which recognises the right to life. How will it, as a political body that has to maintain the support of countries throughout Europe, deal with the right to life? It is one thing to create a treaty such as the Convention on the Rights of the Child or the International Covenant on Civil and Political Rights and let each state ratify it with its own interpretation of rights holders and the right to life. It is another thing when there is a European convention that actually has teeth, real sanctions and practical political implications.

What the European Court of Human Rights has done will come as no surprise. It is not a

criticism of it but a comment and I defy anybody to say otherwise. Over the past 30 years, the court has adopted a political interpretation of Article 2 and a strategy of margin of appreciation by not saying Article 2 has any particular meaning. Each state has the entitlement to interpret it as it wishes in terms of how it understands rights holders under Article 2. That is just about okay from a political-pragmatic point of view. When one then throws in a consensus doctrine, which is the idea that when a number of states move in a particular direction, the court follows them once they have reached a certain critical mass, then human rights have been moved into the area of majoritarian head-counting. That is the way the court operates. It has not done so yet in the context of abortion but there are apprehensions and concerns that it might do so in the medium future. If a human right depends on whether 30 or 40 countries have adopted a particular strategy, I think the committee will agree it is a form of positivist law. We have moved well away from the value that there is respect attributable to a human being by virtue of their very humanity.

The European Court of Human Rights is a political animal. It operates in a political context and will behave in a manner which it sees as politically, pragmatically appropriate. In the medium term, that presents challenges to Ireland. What the committee and Ireland should not do is simply roll over and wait for the consensus doctrine to apply in Europe or simply say we will go along with the “right to choose” philosophy of the individual members of so many of the monitoring committees. If Ireland believes the unborn child is worthy of protection, it should absolutely assert that right. When we do get a referendum, as we most likely will next year, that will be the issue. It will be whether we recognise that unborn children are entitled to respect for their dignity and worth or not. It is a stark issue.

Having promised to finish, I will now finish and say I think it was clear from the discussion that lasted two hours with the Irish Human Rights and Equality Commission that it is a stark choice. Those so-called halfway-house grounds are not in practice or intended to be limiting grounds; rather they are grounds that open the door to wide-ranging access to abortion. They are intended by those who propose them to be so. That is not in any sense to make a bad faith accusation - they are actually intended to be wide-ranging grounds. The choice is a stark one however it is described in language. It is a choice on one side between protection of unborn children based on their equality, equal respect for their mother, the right to life of the mother and absolute assurance in those circumstances that the mother’s life is not imperilled in any way and, on the other side, wide-ranging abortion. I do not believe there is a halfway house in practice, if we stay real.

Chairman: I thank Professor Binchy and Ms Zampas for their presentations. We will now move on to the question and answer part of the debate. There are two speakers left. Deputy Daly opted to have ten minutes in this session. Senator Gavan has given his remaining five minutes to Deputy O’Reilly.

Deputy Louise O’Reilly: I thank the Chair and the witnesses for their presentations. I am struggling with the presentation. I do not mean this to be in any way disrespectful to Professor Binchy. The purpose of this committee is to discuss the potential legal implications of the recommendations of the Citizens’ Assembly. We sought information and evidence from those who presented to us. Regrettably what we have received from Professor Binchy is opinion and the use of what I would describe as highly emotive language. I do not think it adds much to our debate or is in any way helpful. Perhaps we did not make it clear that we sought evidence. When we hear various decisions but no quotes it does not in any way help us to arrive at conclusions. The statement Professor Binchy gave us contained a reference to his own personal experience.

That is opinion; it is neither evidence nor information, which is what we sought.

We asked previous presenters to detail for us the grades of risk in terms of health and whether it is possible to define in law terms such as “serious risk” and “grave risk”. Will Ms Zampas address that? I understand it is difficult but she might be able to give us some information in that regard from her experience. For the benefit of the committee, will she comment on Professor Binchy’s statement that the monitoring bodies have a particular value system and that it somehow influences the decisions they come to or that in some way they are biased? There was no evidence given as to what the value system is or to how it manifests itself. Will Ms Zampas give us her view on what that is?

Chairman: I call on Professor Binchy to respond first.

Professor William Binchy: I thought it was a criticism rather than a question.

Deputy Louise O’Reilly: I did not ask Professor Binchy a question.

Professor William Binchy: The Deputy is perfectly entitled to her view but I think there was legal analysis in my presentation. This session is on human rights. From a human rights point of view - if I summarise without imposing all that material on the committee again - the point I am making is there is a stark choice for the committee, because in practice when the proposed shopping list of grounds are analysed, they amount in intent and effect to wide-ranging abortion. That is a legal point, not an opinion. It may be right or wrong but it is a legal point. The point that monitoring committees have a certain function but that the treaty obligations of the State are somewhat distinct is also a legal point which may be right or wrong. There was legal analysis buried in the presentation.

Ms Christina Zampas: On the question as to whether human rights bodies have defined what “risk to health” is, they have not done so precisely because they are human rights bodies. They are not medical institutions with medical knowledge. In Europe, in countries where a health exception extends beyond the time limits for abortion on request, the laws do not define it because it really depends on the woman’s individual situation. That assessment is best made in a clinical setting as opposed to by the legislature or, worse yet, in a courtroom. I think the treaty bodies have viewed it in the same way.

Deputy Louise O’Reilly: Does the World Health Organization, WHO, have a definition that might be used?

Ms Christina Zampas: I am not sure but I think someone from the WHO is coming before the committee. It might be best to ask him.

There was a question on the value systems and a suggestion that they are biased. I mentioned this briefly in my opening statement. When Ireland ratifies treaties, for example the International Convention on Civil and Political Rights, ICCPR, the Human Rights Committee monitors Ireland’s adherence to the treaty. That is the committee that issued the decision in the Whelan and Mellet cases. Article 2 of the ICCPR clearly states that the State will fulfil its obligations under the provisions of the treaty to all persons within its territory without discrimination. One of the treaty’s provisions actually creates the human rights body that monitors State compliance. When Ireland ratified that, it ratified itself to come before a committee that has an interpretive mandate. By way of example, on its own the right to privacy means nothing - it is just a phrase. There must be interpretive bodies to define what it means. Ireland has ratified the treaty which creates this interpretive body and also the optional protocol which Ms Mellet and

Ms Whelan used when they filed cases against Ireland. Ireland agreed to provide that individuals within its territory can file individual complaints against Ireland. If Ireland were to ignore that, it would ignore the essence of ratification of the optional protocol to begin with.

Chairman: I will move on to Deputy Clare Daly, who has ten minutes in total.

Deputy Clare Daly: I thank both contributors. I will direct more of my questions to Ms Zampas because I think her contribution was very evidence-based. We are dealing with changing our laws here. Professor Binchy is obviously entitled to his opinion. He explained very well how that opinion may be at odds with practically every human rights body on the planet, including with our own Irish Human Rights and Equality Commission, and indeed that he is at variance with the Citizens' Assembly. I do think he should correct his assertion that the Citizens' Assembly recommended abortion for disability. That is not in any of the recommendations. He may need to read them again.

Professor Binchy has repeatedly referred to the fact that abortion is a violation of the unborn's right to life. If that was the case, why does he think that no international or regional human rights body has ever found a country to be in violation of human rights by providing broad abortion?

Professor William Binchy: I think the reason is the one I gave already, which is that these treaties are inherently political. They are negotiated politically in New York or in Europe as the case may be, or in whatever region we are talking about, and they have this conscious diplomatic, ambiguous language which is used. It is precisely to allow for ratification by states that have had wide-ranging abortion going back many years and states that are against legalised abortion and that protect the unborn child. That is the whole strategy that is used by those who are formulating the treaties. Believe me, that is absolutely on record. It is not an opinion but an absolute acknowledged fact by everybody who is involved in the negotiation of treaties. The Deputy can read it and see it for herself. When it comes to the area of abortion, there is high alert in the discussions and tiptoeing. Those who are formulating these treaties want them to be implemented. If they were to have what might be regarded as a pro-life treaty, they would have relatively few ratifiers in the present international climate. The Deputy is absolutely correct to say that in the international climate, particularly in certain quarters, there is wide-ranging support for legalised abortion. That is obvious. We would not dispute that.

I think the Deputy said I misdescribed the Citizens' Assembly recommendations. I actually said there were recommendations based on disability. I did explain at the time that they did not use that word at all but they used the words "foetal anomaly" and "serious anomaly". Are we going to be discussing whether Down's syndrome, spina bifida, blindness, or cleft palate are serious enough? Would some doctors say "Yes" and some "No" in those circumstances?

Deputy Clare Daly: I ask Professor Binchy to try to be a bit brief. I am not being rude but we have a time limit. One could view it as an international political conspiracy whereby everybody is trying to orchestrate a position towards broad-ranging abortion provision, or one could interpret it that Professor Binchy's views are very much out of kilter with established norms in terms of international human rights protocol. Nowhere, actually, is there a defined right to life before birth, which does not mean that prenatal interests cannot be protected.

Professor William Binchy: I do not think the Deputy necessarily wants me to play this tennis match much more but if I were to do so, I would simply send the ball back to her and say the treaties are drafted in such a way as to actually solicit the support of countries that are opposed

to legalised abortion-----

Deputy Clare Daly: I know what Professor Binchy is saying. There is no recognised right to life before birth in international treaties.

Professor William Binchy: I disagree with that proposition entirely. The support of those who ratify was sought specifically on the basis that the protection afforded to the right to life was entirely consistent with protection for unborn life, so it would be absolutely wrong to suggest that none of these treaties contains protection for the right to life of the unborn. It is absolutely the reverse of that. These treaties were drafted in such a manner that countries which are against legalised abortion and do protect unborn children should be invited to support them precisely on the basis that they do protect unborn life.

Deputy Clare Daly: In that context, Professor Binchy said the stark choice facing this committee amounted to the option of wide-ranging abortion. Would he not agree that Ireland has an abortion rate pretty much the same as other countries in which abortion is freely available? In actual fact, the question is whether people can access an abortion service at home or, as is the case under the present *status quo* which Professor Binchy seems to be defending, the only people who cannot avail of abortion are those who cannot travel - vulnerable women, women with disabilities, women who are refugees or asylum seekers and so on. Do we allow people to access health care at home? Do we allow those who can travel somewhere else to do so? What is the answer to that issue? Do we detain women as they do in El Salvador? I am not sure how we would do that.

Professor William Binchy: Staying real, I think I am correct in saying that in so far as one can actually assess these matters - one has to be tentative about the empirical evidence here - there is strong evidence that the abortion rate of those Irish people who have abortions outside the country is actually lower than England, for example, by a considerable multiple. However, that does not matter for the purposes of Deputy Daly's argument. Are abortions taking place abroad? Yes, they are taking place, manifestly, if we stay real. Are there any proposals to introduce limitations in that area? No, is the short answer.

Sociologically, the Deputy is right in what she says and I am sure she is right also in saying that there are disparities in certain circumstances, which by no means explain the entire phenomenon between rich and poor. Her point is an entirely correct one. If the protection of the right to life of the unborn child is not important, then that point has huge validity. If it is important, however, the distinction that the Deputy identified would not be a reason for actually introducing a facility in this country for taking the life of the unborn.

Deputy Clare Daly: I find that interesting. I do not want to engage too much with Professor Binchy but I have one last question and I would appreciate if he dealt with it quickly. The Professor talked about equality earlier. When he was campaigning for a "No" vote in the marriage equality referendum, he stated: "True equality never requires the pretence that two relationships with different capacity are the same when they are not. It never justifies the imposition of a false uniformity." Does Professor Binchy not think that the equal right to life of the woman and the unborn is in fact a pretence that their capacities are the same, when they clearly are not? One is a born, living human being and one is not.

Professor William Binchy: I am a little puzzled. Unless I am getting very old and very forgetful, I do not believe I said that.

Deputy Clare Daly: It is attributed to Professor Binchy, but on his point on-----

Professor William Binchy: The Deputy does not have the quote there, does she?

Deputy Clare Daly: I do, but on Professor Binchy's substantial point-----

Professor William Binchy: I apologise to the Deputy. Does it say that I said it? I know that I did not.

Deputy Clare Daly: It does say that, yes.

Professor William Binchy: What is the relevant citation?

Deputy Clare Daly: It is quoted in an article on marriage equality, but I think Professor Binchy is trying to deflect.

Professor William Binchy: No, hold on a second. If I were to tell Deputy Daly that she said something specific and gave a quotation-----

Deputy Clare Daly: Okay.

Professor William Binchy: May I speak please?

Deputy Clare Daly: For the purposes of today I will say that Professor Binchy did not say that. I will say that it was my mistake, even though I know it was not. Will the witness answer the question I asked him?

Professor William Binchy: I will first of all answer the question the Deputy asked me.

Deputy Clare Daly: In Professor Binchy's opinion, is the life of a born woman equal to that of a foetus when there is a conflict of rights?

Professor William Binchy: I believe that every single human being has an equal dignity and an inherent right to live. In parliamentary dialogue at a meeting of an Oireachtas committee, the questioner has to have some responsibility. A questioner should not attribute a specific quotation to a person he or she is questioning if it is not actually what he or she said. I hope I am not having a memory block but I am fully confident that I did not say what the Deputy has attributed to me. In those circumstances, if I am seen as being a bit fussy for objecting and refusing to accept an entire quotation which was falsely attributed to me, I would, with respect, encourage the Deputy to accept that I am entirely entitled to defend myself.

Chairman: It might be an idea for the Deputy to retract the statement in the short term. Perhaps she can interact further after the committee meeting.

Deputy Clare Daly: If Professor Binchy wishes we can certainly do that. We can exchange quotes later on. I notice that none of his contribution was referenced but we can deal with that now. We are trying to develop guidance for changing our legislation. I would like to ask a question of Ms Zampas. International human rights law is evolving all the time. Our challenge here is to change our law to be in compliance with that. Ms Zampas spent a lot of time dealing with the difficulties of bringing about a restrictive regime or a reasons-based regime. Will she expand on that? Would introducing legislation which permitted abortion in cases of, for example, rape, fatal foetal abnormality or serious risk to health satisfy our obligations under international human rights law? Under international human rights law, when is it permissible to delay or withhold a pregnant woman's access to health-preserving medical care in order to pre-

serve the life of the foetus? Is it more acceptable if the risk to her health is less severe? How are those issues dealt with? Ms Zampas has had experience in El Salvador. She may like to look at the area of when it is permissible under international human rights law to detain a pregnant person in a hospital or psychiatric facility in order to prolong her pregnancy.

It may also be important to touch on the point which Ms Zampas made in her submission, which was that placing women at the centre does not mean that states should ignore foetal interests. That is a very important point. Will Ms Zampas elaborate on it? How could a state like Ireland protect both women and foetuses in the context of abortion law? What is the best way of doing that?

Ms Christina Zampas: I will begin with the Deputy's first question on grounds-based regimes and how they function. The only one of the 47 member states of the Council of Europe that has a minimum grounds-based regime which international human rights law speaks to is Poland. Ireland has the second most restrictive law in Europe. Malta has a total ban, Ireland has a life exception and Poland has these four grounds. As was referenced earlier by the Irish Human Rights and Equality Commission, there have been three cases before the European Court of Human Rights in respect of Poland's abortion law. Those cases did not seek an expansion of the grounds but challenged the fact that these two women and one girl, in separate cases, did not get access to lawful abortion services in Poland.

One case concerned a woman's health, one was a case concerning rape and the other case was a foetal impairment case. These are essentially the grounds in Poland. In each of those cases, women were not allowed to access abortion and in each of those cases the women who experienced those violations were vulnerable women. One woman had a disability, another was a child, and another was on a low income. These are the people whom restrictive laws impact. In each of these three cases, the court found violations of the European Convention on Human Rights in Poland's failure to actually implement its law. The court said that a right cannot be theoretical or illusory. It must be real and practical and the state must implement practical measures so that women can access lawful services. It found that, in these cases, it did not. In two of the cases, the court also found a violation of the prohibition on inhuman and degrading treatment in not allowing the women access to lawful abortion.

It is very difficult to regulate a grounds-based abortion regime, first of all because there are usually exceptions in the criminal code. There is criminal liability, which creates a chilling factor. It is also very difficult for the legislature to define a health risk specifically. Human rights bodies have not done that, and neither has the European Court of Human Rights. These bodies tend not to go into a medical analysis of whether or not there is a health risk. They just do not like to do that because most of them are lawyers and not doctors or health care providers.

New Zealand also has a minimum grounds-based approach and human rights bodies have heavily criticised New Zealand for its multiple provider authorisation. New Zealand has something like the Protection of Life During Pregnancy Act 2013 in that the approval of multiple doctors is required. It is far less restrictive than Ireland but there is still a requirement for numerous doctors to approve. It really impacts rural areas where doctors are just not available to give approval. The UN Committee on the Elimination of Discrimination against Women, CEDAW, has called it a convoluted law which strips away women's autonomy and does not really grant them the right to abortion in the cases provided for in New Zealand's law.

Deputy Clare Daly: Would it be fair to say that reasons-based legislation is increasingly out of kilter with international best practice from the point of view of complicating access?

Would it be fair to say that the starting point is the issue of accessing health care services? I believe that the Irish Human Rights and Equality Commission was of the view that this should be looked at from a health point of view.

Ms Christina Zampas: Human rights bodies increasingly recognise that grounds-based laws actually do harm to women. The recommendations I mentioned in my paper and which are outlined in the detailed paper which the Deputy received call for first-trimester abortion on request. That is clear. The UN Committee on the Rights of the Child does not delineate the grounds. It just calls for access to safe abortion to be ensured. We are increasingly seeing a recognition of the problems with the minimum grounds approach.

Deputy Clare Daly: In the context of access to safe abortion in Ireland, the option of travel, which was used before, is clearly insufficient.

Ms Christina Zampas: Human rights are supposed to be implemented in the country.

Deputy Clare Daly: It is insufficient from the point of view of vindicating women's rights.

Ms Christina Zampas: Absolutely.

Deputy Clare Daly: The option to travel is insufficient. That only some women have the option to travel introduces an extra discriminatory provision.

Ms Christina Zampas: Absolutely.

Chairman: Once we hear this response we will need to bring in the next speaker. I have given the Deputy considerable latitude.

Ms Christina Zampas: The UN Human Rights Committee was very clear on that in the Mellet and Whelan cases. Travel actually caused further harm in that the women were not treated equally to any other patient in any other health care situation in the country and that they were stigmatised and forced to leave because of their condition.

Deputy Peter Fitzpatrick: I thank the witnesses for coming in this afternoon. My question is for Ms Zampas. When she criticises Ireland for not having wider access to abortion, she seems to paint the picture that Ireland routinely puts women's lives at risk because of our laws. It is only fair that the true position be stated and acknowledged more often, namely, that Ireland has consistently been one of the safest countries in the world in which to be pregnant. Ireland is as safe as England, for example, and considerably safer than the US for pregnant women. Nobody can dispute that those two countries have abortion on demand. Can Ms Zampas comment on Ireland being one of the safest places in the world to be pregnant?

Ms Christina Zampas: Ireland is unique in the sense that there is a safety valve for women. Most women go to the UK to get abortions but they also go to other places in Europe. Some even go as far as the United States to get abortions. They have that safety valve. It is not a situation like that in El Salvador where women are dying because they do not have the safety valve of travelling to a country where the practice is legal. However, the case of Savita was known around the world. She died. According to some of the reports produced, at least one of the factors that caused the decision not to give her proper care was the criminal legislation and, potentially, the eighth amendment. To say that there has been no death, that was an unfortunate case-----

Deputy Peter Fitzpatrick: I did not say that; I said Ireland is one of the safest countries

in the world for pregnant women. What happened to Savita was an awful tragedy. I know of people outside Ireland who think Ireland is not a safe place for women to be pregnant. It is one of the safest places in the world for pregnant women and has been over the past 30 years. The picture the witness is painting is that because of our laws and restrictions, Ireland is not a safe place for pregnant women. That is the impression I am getting, but consistently over the past 30 years Ireland has been one of the safest places in the world for women to be pregnant. Does the witness have the same perception as I have? No country is perfect. For me and for women who are pregnant, Ireland is one of the safest countries in the world in which to have babies.

Ms Christina Zampas: I was referring to pregnant women seeking abortions. I also understand that there have been reports indicating that the eighth amendment has impacted upon the treatment of pregnant women during childbirth. For women with wanted pregnancies who wish to continue their pregnancy, there have been reports that the eighth amendment has impacted on health care providers' decisions on the quality of care those women receive. I have read reports of that.

Deputy Peter Fitzpatrick: There are 100,000 people alive in this country because of the introduction of the eighth amendment. That is how I look at it. I want people to realise that Ireland is one of the safest countries in the world for pregnant women.

Ms Christina Zampas: I have noticed, in countries in which I have worked around the world, that where there is a restrictive abortion regime, it is very difficult to determine how many illegal abortions are happening because the practice is criminalised. It is difficult to gather that data. In Ireland, it is also very difficult to determine how many women are travelling. It is said that approximately 4,000 women travel to England and Wales per year, but probably many more women travel all over Europe and there are reports of women going to the US. There are also women having illegal abortions in the country through use of the abortion pill. The figure is probably much higher than 4,000 if the situation in every other country that has a very restrictive law is similar.

Deputy Peter Fitzpatrick: The UK and America do not have restrictive laws. As far as they are concerned, they have abortion on demand. As I said, Ireland is much safer for pregnant women than the UK and America.

Ms Christina Zampas: In terms of maternal health care.

Deputy Peter Fitzpatrick: Yes.

Ms Christina Zampas: I am speaking specifically about pregnant women seeking abortions.

Deputy Peter Fitzpatrick: We differ.

Deputy Clare Daly: I wish to clarify something Professor Binchy said. We must be evidence-based. The quote is attributed to Professor Binchy. It is attributed to two of his colleagues as well. It was a press statement for the group of senior lawyers, including Professor Binchy, Patrick Treacy and Shane Murphy, in the Lawyers for No group campaign in the marriage referendum. It is a direct quote which was covered in CatholicIreland.net. I point that out for the purpose of clarity.

Professor William Binchy: I confess that I had forgotten about that statement because it was a corporate statement. I must say that.

Deputy Clare Daly: That is no problem.

Professor William Binchy: I signed it but I did not write it. However, that makes no difference.

Deputy Kate O’Connell: Perhaps members would like copies for clarification.

Chairman: Deputy O’Connell has six minutes.

Deputy Kate O’Connell: I thank both of the witnesses for attending. Does Professor Binchy agree with democracy? In his language, he appears to disregard the recommendations of the Citizens’ Assembly. We heard at great length the week before last that it was a very scientific process and we can stand over the fact that it was a representative sample of people in Ireland. I take issue with the very deliberate language Professor Binchy used. He used the word “disability” where it was not used. He clarified the position but the use of that word is particularly inflammatory. He used the words “enthusiastic for legalised abortion”. Again, I have an issue with that. I do not believe a woman is ever enthusiastic about having a termination. He is quite dismissive of the right to choose and I take issue with that. Professor Binchy said that Ireland does not roll over. The women of Ireland have rolled over for long enough under comments from the witness and various other commentators over the years. It is high time that we stop rolling over and state that we do not accept the language that we have heard today from Professor Binchy.

I catch his drift, and very much so. I am staying real. We had the case of Savita Halappanavar, which is a real case. Some 12 women leave this country every day. The witness has absolutely no basis for the strong evidence that our abortion rate is lower than anywhere else in the UK, because those data are not available. We probably have a higher rate because of our poor sex education and the preventative measures in place to avoid unwanted pregnancy in the first instance. There are no data for the use of early-term abortion pills. While I respect the fact that the committee invited Professor Binchy to appear before it, some of his evidence is just his own view. However, having listened to his evidence, does Professor Binchy think that the provision inserted into Article 40.3.3° in 1992, allowing women the right to travel, should be repealed?

Professor William Binchy: I-----

Deputy Kate O’Connell: I am not finished. Would the witness agree that a born woman’s right is at any time superior to that of the unborn child? I am sure the witness is also familiar with the PP case. Does he think the court decided incorrectly and struck the wrong balance on the clinically brain-dead pregnant woman’s rights? I am conscious that this woman has a family who might be listening to this today so I will have to be sensitive. How does the witness feel about the rights of the clinically brain-dead woman who was pregnant over the rights of the child? She was approximately 16 weeks pregnant. Does he think the court should have forced life support for this woman to be continued against her partner’s, parents’ and family’s wishes until such time as the foetus could be surgically extracted from her body?

Professor William Binchy: I will take the last question first. Of course, I do not. That is the short answer.

Deputy Kate O’Connell: The witness does not what?

Professor William Binchy: I do not put forward the proposal the Deputy thought I might. I agree entirely with the court’s analysis in that area.

Deputy Kate O’Connell: I do not believe the witness is in my head.

Professor William Binchy: Pardon?

Chairman: Allow the witness to respond.

Deputy Kate O’Connell: I do not believe the witness knows what I thought he would say.

Professor William Binchy: I thought the premise of the question was that it was possible that I would disagree with the courts.

Deputy Kate O’Connell: The witness thought incorrectly.

Professor William Binchy: If there was no such premise, there was no point in asking the question. Of course I agree with the court’s outcome in that area. The Deputy said I made emotive comments on the matter of disability in the context of the Citizens’ Assembly’s recommendations. With respect, I did not do so in the sense that it does not matter how one describes it. The concept of “significant anomaly” means that certain children who have got what used to be called “defects” but are sometimes called “disabilities” should have their lives terminated. That is not hyping or misrepresenting what the Citizens’ Assembly said.

Deputy Kate O’Connell: I think it was-----

Professor William Binchy: Hold on a second, we are just about to-----

Deputy Kate O’Connell: Excuse me, now.

Professor William Binchy: I am speaking.

Deputy Kate O’Connell: The term was “fatal and incompatible with life”, and Professor Binchy listed issues like cleft palate, spina bifida and various things which do not fall into that category.

Professor William Binchy: No, there is another ground.

Deputy Kate O’Connell: Cleft palate most certainly does not fall into the category of “incompatible with life”.

Chairman: We have to allow the witness to answer. He does not have much time left.

Professor William Binchy: I ask the Deputy to check out the grounds. One of them is entirely separate from that ground and is “significant anomaly”, which is disability. With respect, she is mistaken on that particular point. It is not a question of hyping, it is a question of correctly describing.

Deputy Kate O’Connell: Is cleft palate significant? The other question was whether Professor Binchy thinks we should get rid of the right to travel.

Professor William Binchy: No, is the short answer.

Deputy Kate O’Connell: He stated that abortion was a violation of the unborn’s right to life. Does he agree that a born woman’s right to life is superior?

Professor William Binchy: Of course, there should be no circumstance in which a born woman’s right to life is imperilled by the pregnancy. That is what the eighth amendment actu-

ally provides for. Do I believe an unborn child should have their life taken intentionally? No, is the short answer. However, on the point the Deputy raises, the right to life of the woman should be totally protected. There is no dispute about that.

Deputy Catherine Murphy: I will divide my time between the two witnesses and I will try to keep to questions. Ms Zampas said abortion laws framed in terms of the four minimum grounds required by international human rights law did not provide effective access. Are there any countries in Europe that list these grounds in their laws and how effective, or not, are they?

Ms Christina Zampas: Poland is the only country in Europe which lists the grounds and it is ineffective as per the cases brought before the European Court of Human Rights. In a case where a woman's health was in danger, she was unable to access a lawful abortion. In a case where a 14 year old girl was raped, she was not able to access an abortion. In another case, a woman was unable to access proper prenatal diagnosis to determine the extent of a foetal impairment. In all of those cases, the European Court of Human Rights found violations of the right to privacy and in two of those cases it also found that the state's failure to ensure access to abortion violated the prohibition on cruel, inhuman and degrading treatment. That is the only country in Europe which has the four grounds.

Deputy Catherine Murphy: Does Professor Binchy regard health as a human right?

Professor William Binchy: Yes.

Deputy Catherine Murphy: The Supreme Court has set the bar regarding the eighth amendment as the right to life. It is only where there is a real and substantive risk to the life of the woman that an intervention can happen. It does not protect her health in pregnancy. How does Professor Binchy square that circle regarding her human right to health when it is not protected in Irish law?

Professor William Binchy: Everybody's right to health is protected under the Constitution and under human rights. The issue is whether the right to health should translate into the entitlement to take the life of another human being. I think the Deputy will agree that it is fair of me to say that in the discussion which has taken place this afternoon and against the background of what we heard from the Irish Human Rights Commission and what we hear from Ms Zampas, it is clear that once a ground is introduced, including the health-based ground, which would be physical and mental health, one assumes, there is no question that it is likely to translate into a substantial, wide-ranging ground.

Deputy Catherine Murphy: We have a very short period of time. In essence, Professor Binchy does not accept the right to health of a woman in a situation where she is pregnant and there is a risk to her health.

Professor William Binchy: Everybody's health should, of course, be protected.

Deputy Catherine Murphy: The witness cannot square that circle.

Professor William Binchy: To put it this way, I am saying that everybody's right to health should be protected, but if we were to introduce a ground such as the Deputy is perhaps recommending, it is fair to say, on the "get real" test which we have been attempting to apply today, that it would translate in practice, as it has in Britain for example, into wide-ranging abortion. That is the way it translates. That is the stark choice.

Deputy Catherine Murphy: I do not see how the witness can say, “Let us stay real”, when he accepts that health is a human right but, at the same time, he cannot square that with the right to health in the context of an abortion where a woman’s health is at risk.

Professor William Binchy: As I say, the squaring is whether the right to health actually involves the entitlement to take the right to life of another human being. That is the question. If one believes in the equal right to life of every human being, there is only one answer in those circumstances.

Deputy Catherine Murphy: That just confirms that the witness does not actually agree that the right to health is there as a human right for a woman in a specific set of circumstances.

Professor William Binchy: I absolutely agree with it. That is totally and completely-----

Deputy Catherine Murphy: He is not squaring that circle. Does Professor Binchy accept that abortion is justified where there is a fatal abnormality which is inconsistent with life?

Professor William Binchy: The situation at the moment is that in those circumstances abortions will not take place in Ireland. Again, we are back to this question. That is an extremely challenging and difficult-----

Deputy Catherine Murphy: I will leave that because, as the witness knows, I have a very short period.

Professor William Binchy: I would like the opportunity to answer. I am quite happy to let the Deputy talk, but if she wants to hear me talk, she might let me.

Chairman: If the Deputy wants to clarify the question, I will allow the witness answer.

Deputy Catherine Murphy: Where there is a fatal abnormality that is inconsistent with life, does Professor Binchy agree that abortions should be available in this country?

Professor William Binchy: I would say a number of things, if the Deputy will allow me.

Deputy Catherine Murphy: I ask the witness to be very concise.

Professor William Binchy: I will speak as quickly as I can. First, the expression has been contested in medical journals on the basis that it is not an accurate medical term. In these circumstances, it is a question of life-limiting conditions where a number of children are born and live for a short period after birth, or for a considerable period in a very much smaller number of cases. As such, we are talking about life-limiting conditions. On the basis of a life-limiting condition, is it right from the standpoint of human rights intentionally to take that life, however short its life prospects are, before he or she has had an opportunity to live his or her life? If one believes in the equal right to life of every human being, one says “No” in those circumstances. One says that in those circumstances, it is appropriate to protect the life of the unborn child.

Chairman: The Deputy is over time. I will allow her one more question.

Deputy Catherine Murphy: The witness talked about the half statement of the right to choose. I believe the right to choose means one would have bodily autonomy. It is not a half term; it is a very descriptive one. It is the right to have a baby and it is the right to control fertility. It is quite a wide-ranging term and it is very cheap to refer to it as a half statement. It is about women having bodily autonomy. Does the witness think there should be anything differ-

ent about women and men having bodily autonomy?

Professor William Binchy: Of the nature of things, of course there are the inherent differences that exist. It is correct to say that if one finishes the sentence, bodily integrity is crucially important. Unless one is dodging and weaving, the relevant part of the right to choose in those circumstances means the right to take the life of the unborn child. That is what it is about. If we are talking about medical care outside that context, we are in entire agreement. However, if the proposal is that the right to choose is the right to take the life of the unborn child, it is a proposition that needs justification.

Chairman: We will have to move on to the next questioner, who is Senator Ruane. She has six minutes altogether.

Senator Lynn Ruane: I had some planned questions, but I am the most confused I have ever been in terms of trying to understand some of the comments from Professor Binchy. I am struggling to understand how the witness can ask this committee to get real about the inherent right to life that foetal life or the unborn child has but then say he does not think the right to travel should be taken out of the Constitution. What does the witness see as an unborn child having an inherent right to life? Which one should be protected? He replied to Deputy O’Connell that he does not believe the right to travel should be taken out. He is saying some people should be able to travel. In reality it is quite an elitist view of an inherent right to life. Is it only those in minority groups? What unborn children actually have that right if it will not be protected at all costs? This inherent right to life makes the whole argument incoherent.

The presentation started with a list of premises and a conclusion. As a philosophy graduate of logic, premise No. 1 fell down when it said that foetal life and human life have an equal right to life. Everything else fell from thereafter for me.

I agree with the presentation on disability down to the last sentence. While I agree with the first part, what about the right to life of people, the child or young girl with a disability who needs to access abortion but cannot travel in some situations due to a disability? When one talks about the rights of someone with a disability, one is not talking about foetal life and a possible disability they will have, one is talking about a person in the world. Will Ms Zampas elaborate on that in a human rights context? If the unborn child has a significant foetal abnormality that is not likely to result in death before or shortly after birth, how can the State’s duty to combat discrimination against disabled people be balanced against its duty to ensure women have access to abortion? Are they comparable in the sense that when we talk about discrimination against disabled people, we are in fact not talking about foetal life?

Ms Christina Zampas: Human rights bodies, as I said in my presentation, have recommended that countries ensure access to abortion in cases of severe or fatal foetal impairment. They go back and forth and are not always consistent. Looking back at the recommendations over time, they have always been severe. Lately, they use the term “fatal” and sometimes they use “severe or fatal”. It is hard for a legislator or a committee member to decide for a woman how it will impact them. These are very difficult decisions. These are always wanted pregnancies. They get the determination very late and it is a difficult decision to make. Women make those decisions, oftentimes with a heavy heart. We have to keep that real and see that those are not easy decisions for women to make. They are very individual decisions.

The treaty bodies have never said the foetal impairment grounds should be eliminated in a law. The Convention on the Rights of Persons with Disabilities recently issued a general com-

ment on women and girls with disabilities. It recommended states should ensure access to sexual and reproductive health services, the same as any other women, taking into consideration their disability and their needs. It never addressed the issue of abortion on the grounds of foetal impairment. That says a lot in its first general recommendation on women with disabilities.

The best way to address the problem of discrimination against persons with disabilities is to address the underlying discrimination. Why is this happening? Society needs to take steps to make the individual's life, but also the family life of the parents, easy. There should be benefits, social and educational supports. It is about time Ireland ratified the Convention on the Rights of Persons with Disabilities because it would really help setting its policies straight on helping persons with disabilities. That is the best way to address this. Restricting abortion on impairment grounds is not going to limit access to abortion. Some countries do not have explicit foetal impairment exceptions, but they read health exceptions very broadly to include any sort of health issue.

Professor William Binchy: What Ms Zampas said is important because it does provide corroborative evidence of what I said to the committee generally about the enthusiasm of the members of monitoring bodies for a particular value system. It is astounding that in an area such as a convention on the rights of persons with a disability, an impairment ground does not interest the committee. They fail to be sensitive to the fact that there is a ground for abortion based on disability and in terms of a disability convention one would have thought they would have some interest in that. However, as Ms Zampas rightly said, they do not. Why? The reason is that is their value system. They are perfectly entitled to their value system. There is no question of conspiracy or bias. These are words I would not use. Their value system, however, means that the way they understand human rights in a convention on disability means that they do not see that abortion for disability presents problems.

Senator Paul Gavan: I thank the witnesses for their presentations. In the spirit of keeping it real, will Ms Zampas discuss the 12 women who go to Britain each day for abortions? I am conscious that no aftercare services are provided in Ireland for those women. Will she speak to us about this topic and the implications for those women who travel each day?

With respect, I find Professor Binchy's views quite extreme. In cases of rape and incest, does he believe the victims should be forced to continue with their pregnancies? Women are told under pain of criminal sanction that if they take an autonomous decision as to how their own bodies are to be used and opt to abort a foetus, they are then criminalised. Will Professor Binchy list any other area of Irish law where somebody is required to use their body as subsistence for another person under pain of criminal sanction?

Senator Lynn Ruane took the Chair.

Professor William Binchy: In immediate answer to the last question first, manifestly not. It is the nature of pregnancy. In pregnancy there are two lives intimately related to each other. That is the short and rather obvious answer to the first point.

Again, the Senator mentioned it is an extreme position to take the view that every human being has inherent worth that needs equal protection. It is a position worth considering and one I am sure the Senator accepts in every other area of life. I am sure he accepts it about ethnic background, mental and physical capacity and in terms of developmental stages. We do not say that an old person loses their human rights status simply because they are very old. This is a proposition which we should accept as axiomatic.

Senator Ruane said she did not accept the premise. She may disagree with the premise. That is anybody's entitlement. However, to argue for inequality, one has to say it in clear terms that there are inequalities between people. It is an argument that needs justification.

Senator Paul Gavan: To be fair, most people would disagree with Professor Binchy's definition that human life effectively begins at conception. That is not something with which most people with common sense would agree. For Professor Binchy to equate that with people who have been born, it frankly does not make sense on common sense grounds. It is an extreme position.

Professor Binchy did not answer my other question. Does he believe victims of rape and incest should be forced to continue with their pregnancies?

Professor William Binchy: That is the way the Senator characterised the question. Do I believe it would be right that we should have a ground for abortion based on rape and incest? I do not, first, on the principle I stated there, namely, in those circumstances one has an innocent human being absolutely innocent of the horror of the circumstances of his or her conception. If one maintains the position of simple respect for human life, then one does not actually countenance the taking of that human life.

I would add a pragmatic supplement. This is something that has emerged in the discussion through the afternoon today. If grounds were introduced, those grounds would in fact be wide-ranging grounds. Whatever about the theoretical appeal they might have, in practice those grounds would be interpreted broadly. Indeed, I believe I am correct in saying honestly that the advocates for those grounds believe they should be interpreted broadly. As a result, they would be likely to result in wide-ranging access to abortion.

Senator Paul Gavan: I hear the answer. I wanted to get that answer to demonstrate that, frankly, Professor Binchy's views do appear to be extreme.

Professor William Binchy: It is a stark choice. What emerged from the discussion today – it would be clear to anyone who has witnessed the three and a half or four hours of the meeting – is that a stark choice is going to face the people. Are we going to continue to have the present situation, which does protect mother and child, or are we going to have a situation of wide-ranging legal abortion?

Senator Paul Gavan: There are stark choices facing women every day, unfortunately, because of the laws as they are.

Professor William Binchy: There are.

Senator Paul Gavan: I am conscious of time. Will Ms Zampas answer the other question on aftercare and the impacts on women?

Ms Christina Zampas: By aftercare I presume Senator Gavan means post-abortion care, after women return to Ireland. Is that correct?

Senator Paul Gavan: Yes, exactly.

Ms Christina Zampas: It is lawful in Ireland, as far as I understand it, that women should have access to post-abortion care regardless of where they have procured the abortion, whether in the UK or by illegal abortion in the country. That is a clear long-standing human rights obligation.

Senator Paul Gavan: I suspect that because women have to go abroad, in reality, many of them do not receive aftercare.

Ms Christina Zampas: From what I understand of it, that is the case. The criminal law plays a major role in creating a chilling factor for women in getting post-abortion care. Women are scared. If a 14-year sentence is looming over a woman who has had an illegal abortion at home in Ireland or abroad and she needs post-abortion care for a complication, she would ask questions.

Many people simply do not know what the law is or what the requirements are. Human rights bodies are clear. Post-abortion care should always be available and doctors should not report women to the police for having illegal abortions when they come in for post-abortion care. Some countries have done that and there has been heavy criticism by the UN Committee against Torture against Chile, where women were seeking post-abortion care and doctors were calling the police, who came to the medical centre.

Senator Paul Gavan: My God.

Chairman: I thank the Senator for his brevity. Deputy McGrath has six minutes.

Deputy Mattie McGrath: I wish to clarify one point. I was called out earlier to make a quorum for the Joint Committee on European Union Affairs, of which I am a member, and I had to stay for some time. That is why there may have been confusion. I apologise to Ms Zampas regarding the misunderstanding and I thank her for coming. I have listened and read carefully what she has said. In all her work as an international human rights lawyer has she ever raised concerns about barbaric practices, like the treatment of babies born alive after botched abortions and left to die alone without receiving any medical attention or loving care as they breathe their last breaths? It is a harrowing image I present, but, sadly, it is a real one. Is Ms Zampas aware – she probably is – that England and Canada are two countries where such abuses routinely arise and have been well documented? Has Ms Zampas ever taken a stand against such horrific abuses? Is it the singular goal of Ms Zampas in this area to push for wider access to abortion? I am deeply concerned at the complete absence of reference to infants born alive after abortions. What exactly are the views of the guests on that? It cannot simply be ignored.

When I was out, people on social media and elsewhere made comments. I got permission from the Chairman to go to a Topical Issue debate. The Dáil is sitting and other committees are sitting. If we leave the room, there are only 12 or 13 present most of the time. People on social media are attacking me for not staying. I got permission from the Chairman to leave. She allowed me in before my time, in fairness to her. That is pretty pedantic and ridiculous.

The guests may be aware of the developments in the United States today, in particular, the passing of the pain-capable unborn child protection law, which would limit abortion to 20 weeks. It is clear that the international situation is not as clear as some would like to make it.

I take offence at Deputy O’Connell – she is back now – for accusing some of us of telling lies. I am sure it is directed at me and some others. If that happened in the Dáil Chamber, it would not be tolerated and would have to be withdrawn. I appeal to her to withdraw that scurrilous remark.

Chairman: Deputy McGrath should direct his questions to the witnesses. That is a matter we can discuss another time, perhaps.

Deputy Mattie McGrath: If a lie is mentioned, it is the Chairman's duty to make sure that word is not used in a committee of the House. I did not tell any lies and I do not intend telling any lies. I intend to try to speak about what I feel. I want to speak like others without fear of intimidation and bullying and being called a liar. It is profoundly disturbing that this is going on and it is not easy. If we leave, we are being watched by people and we cannot leave. That is ridiculous. Either we are going to discuss the issues here, as Professor Binchy has said, or we are not.

I am shocked at some of the treatment Professor Binchy has got today. He is well able to speak for himself, and I appreciate that, but that is not the way to treat a guest. It is not a hanging that is going on here. It is crazy stuff.

Chairman: Let us try to keep it to questions for the witnesses.

Deputy Mattie McGrath: I have done that, but I want to clarify the remarks of Deputy O'Connell. Is she going to accuse me of telling lies?

Chairman: The Deputy has made his point and he has responded to those remarks.

Deputy Mattie McGrath: No, I want them withdrawn, please.

Chairman: I do not think Deputy O'Connell accused anyone of being a liar.

Deputy Mattie McGrath: I think she did.

Chairman: I do not think so. I do not believe she did so.

Deputy Mattie McGrath: Are we going to have decorum or not?

Chairman: I want everyone to have a voice here, no matter how much they disagree.

Deputy Mattie McGrath: Of course. I appreciate that.

Chairman: We can have that discussion another time.

Deputy Mattie McGrath: No, it is a matter for the record of the committee to be corrected.

Chairman: It is on the record now. Deputy McGrath has responded to what the Deputy has said. I do not think, in fairness to the Deputy, that she described him as a liar.

Deputy Mattie McGrath: The blacks will confirm it.

Chairman: Let us leave it there. We have guests here, who are giving us their time to help our process.

Deputy Mattie McGrath: Yes, I respect that totally.

Chairman: Thank you. We will move on. We will ask our witnesses to address the question that the Deputy actually asked. I think that would be the best way to proceed.

Ms Christina Zampas: Deputy McGrath referenced botched abortions. I am not familiar exactly with the references Deputy McGrath is making or how well documented they are. If something like that does occur, I would hope that the state would actually step in and investigate it. The state has an obligation to investigate something if it rises to the level of potential criminal liability. The state should investigate, prosecute and punish any perpetrators who have

created any harm that rises to that level. In potential malpractice cases, the health care laws would kick in and cases would be filed against the doctors or any of the providers responsible. Also, administrative law would kick in for such cases and doctors would have their licences removed. I am not familiar with the precise cases Deputy McGrath is talking about, but if they did occur, I would hope that the law in those countries, in Canada and the UK, would be strong enough to address any harm.

Chairman: I will allow Professor Binchy to come in as the time is short now.

Professor William Binchy: I do not think Deputy McGrath asked me a question.

Chairman: I thought Professor Binchy was indicating to me. Deputy McGrath has another opportunity.

Deputy Mattie McGrath: I would not expect the professor to know the exact details, but I had a lady in the audiovisual room in this House, and I invited the other members opposite along. She was the victim of an aborted abortion and was left on a window sill or ledge to die. Thankfully, she survived. A caring nurse passing by picked her up. She came in to tell her story. There are many cases and there is evidence of it all over the world. Where is the monitoring committee in those cases? All this adds to what Professor Binchy said about the role and the status of the monitoring committee. The committee does not have any real function in dealing with individual countries. The committee has to be careful in the language it uses because it has no legal standing, as such, other than the treaties that are enacted.

Chairman: I will allow Ms Zampas to come in briefly on that because we are over time.

Ms Christina Zampas: I am sorry. I am unsure what the question was.

Chairman: It is only if Ms Zampas has any comment in respect of what the Deputy said. I gather she does not. The next questioner is Deputy Durkan who has six minutes in total.

Deputy Bernard J. Durkan: I thank our witnesses for attending and giving us of their time. Professor Binchy said that the 1983 amendment of the Constitution gave equal right to life to the unborn and the mother. That was the theory at the time, but it was not what happened in actual practice. We could quote instances, but I do not want to go into them at the moment. The problem arose when a decision had to be made on how to determine “the equal right to life”. It was found that it was not possible to do this in practice. The medical practitioners were very quick to admit that it was not possible. Then a number of amendments or attempted amendments took place. I refer, for example, to the right to travel. The Protection of Life During Pregnancy Act 2013 was introduced to protect the right to life of the mother. Does Professor Binchy accept there are conditions from which a pregnant woman may suffer that affect her health, in the first instance, and can lead to a threat to her life? Does he accept that if such conditions are not arrested in time, they can become serious?

Professor William Binchy: Yes, I do.

Deputy Bernard J. Durkan: That is the first question.

Professor William Binchy: Are there more, or will I answer this question immediately?

Deputy Bernard J. Durkan: There will be more as well.

Professor William Binchy: Okay.

Deputy Bernard J. Durkan: Professor Binchy accepts that a pregnant woman may have a medical condition that affects her health in a way that can lead to a threat to her life.

Professor William Binchy: Yes.

Deputy Bernard J. Durkan: Does he accept that a condition affecting the health of a pregnant woman needs to be dealt with? I refer, for example, to a woman whose previous medical history shows she has a tendency to have high blood pressure. What happens in a case where extending the pregnancy without any condition could cause the woman to contract sepsis, for example?

Professor William Binchy: I think this matter was dealt with in the decision on the X case. The judgment of Mr. Justice O’Flaherty, in particular, covered the precise point the Deputy is making. The Attorney General’s argument was that the threat had to be imminent. The court rejected that argument. That is essentially what that case decided. It was dealt with subsequently in the 2013 legislation as well. It is already covered under existing law.

Deputy Bernard J. Durkan: It is. Professor Binchy mentioned previously that this was well covered in the eighth amendment. Does he accept that there has been a change? If so, is the change acceptable to him?

Professor William Binchy: There has not been a change in the sense that the eighth amendment is still in the Constitution. If one were proposing that the eighth amendment should be repealed or modified because it does not protect women in the circumstances described by the Deputy, I would respond by saying that it does.

Deputy Bernard J. Durkan: Yes. That is not my question. Does Professor Binchy accept that the 2013 legislation clarified what was meant by “the equal right to life”?

Professor William Binchy: I would accept that there was no need to have introduced that clarity because it was already there. If we were to have a long historical discussion, I would say that the decision in the A, B and C case was mistaken because its factual premises, on the basis of which certain legal conclusions were made, were quite cloudy. I accept that the 2013 Act reiterated exactly that a woman’s life should be protected. I would have concerns, however. I opposed the 2013 legislation not on that basis, but on the basis of the suicidal ideation ground, which is an entirely separate issue that I am more than happy to discuss with the committee. Deputy Durkan has asked me about cases in which clear physical conditions are affecting the mother. As I have said, that matter was dealt with quite clearly by the decision in the X case.

Chairman: The Deputy has two minutes left.

Deputy Bernard J. Durkan: Yes. I will try to get all the information I can.

Chairman: I did not want to intervene.

Deputy Bernard J. Durkan: I will do my best. The first ground provided for in the 2013 Act relates to medical conditions and the second ground relates to mental conditions which can ultimately lead to a serious health condition and, consequently, a threat to the life of the mother. My presumption is that Professor Binchy conditionally accepts what the 2013 Act says.

Professor William Binchy: I fully and entirely accept what it says in its redundant reiteration that the eighth amendment protects women and protects the lives of women. I have no difficulty whatsoever with that. If legislation chooses to say that, there is absolutely no difficulty

with it. The aspect of the 2013 legislation which I found objectionable was that it provided for the new ground of suicidal ideation, as introduced in the decision in the X case. I opposed that on the basis of the injustice it involves and also on the basis of the empirical non-justification for that ground from the standpoint of actual empirical evidence in the health area. That is an issue for then. The committee is now looking forward to the question of whether the eighth amendment, as interpreted in the X case and as applied in the 2013 legislation, should be repealed or modified. I understand that is what the committee is dealing with at the moment.

Chairman: The Deputy is on his last question.

Deputy Bernard J. Durkan: I have one more question for Professor Binchy and I have a question for Ms Zampas as well. It will be a quick one. Does Professor Binchy believe the lives of any pregnant women were lost during the period in which the balance on which “the equal right to life” was judged was not too clearly defined? Does he accept that-----

Professor William Binchy: No.

Deputy Bernard J. Durkan: -----some women who were pregnant may have lost their lives due to-----

Professor William Binchy: Absolutely not. I completely disagree with that proposition. The amendment made it absolutely plain at all stages that necessary medical treatment should be given to mothers.

Deputy Bernard J. Durkan: I wonder why they died so. However, I will put my last question to Ms Zampas.

Chairman: This is overtime. It will have to be the Deputy’s final question.

Deputy Bernard J. Durkan: Does Ms Zampas accept the necessity for adequate medical and psychological counselling before and after abortion, in the event of abortion?

Ms Christina Zampas: Is the Deputy asking whether it should be mandatory?

Deputy Bernard J. Durkan: Yes.

Ms Christina Zampas: I do not think psychological counselling should be mandatory. If women would like to have such counselling, of course it should be treated like any other health care service and any other decision regarding women’s health. If a woman has a problem with the decision she has made, or with any aspect of her life, the State should be able to provide psychological services to her to help her realise her right to health, including her right to mental health. I refer to decisions relating to abortion or to any other decisions made by a woman, or a man for that matter. I think the State should provide appropriate psychological care in such circumstances if that is what the person wants.

Chairman: I will have to move on to Deputy Coppinger, who has six minutes.

Deputy Ruth Coppinger: Professor Binchy posed his paper as if this is a question of Ireland versus Europe and the world as it holds onto its so-called protection of the unborn. Is this not a question of the pregnant individual’s autonomy rather than the country’s autonomy?

Does Professor Binchy accept that if the aim of Ireland’s abortion ban was to save so-called unborn lives, it is not doing a very good job? Given that ten women a day are leaving the coun-

try and at least three others are having abortions in their own bedrooms in this country, the ban is certainly not working.

I have a third question for Professor Binchy. Does he favour forced pregnancy? Does he favour forcing a pregnant woman who does not want to be pregnant to continue with that pregnancy? He said earlier that he does not favour injunctions to prevent women from travelling. It seems to me that he did at one point, when he served as legal adviser to the Pro-Life Amendment Campaign, but he just will not get away with it now. He has said he wants the sources of all claims that are made. During a lecture Professor Binchy gave in the Coombe in 1980, he said:

If we are to allow sympathy for the woman to stop us from regarding abortion as criminal... why should that sympathy simply stop at our shorelines? ... A strong argument can be made that our law should give such effect as it can to the principle that unborn life is entitled to be protected.

He accepted that this would cause a lot of criticism, but he felt there was a strong argument to be made for it. He seems to have changed his mind since then. Is that fair enough?

My fourth question relates to a claim Professor Binchy has made about the Citizens' Assembly's proposal that abortion should be available up to birth. He has suggested that this would lead to abortion with little or no restrictions in place. Has he not been scaremongering like this for a long time? He made similar comments in 1992 in response to the ruling in the X case. He claimed in *The Irish Times* of 6 March 1992 that the ruling had "introduced an abortion regime of wide-ranging dimensions, beyond any effective control or practical limitation". He went on to say that as a result of the Supreme Court judgment, "those who authorise and carry out abortions in Ireland [will be placed] beyond the reach of criminal law". Nothing could be further from the truth regarding the X case. We have seen how it is practically impossible for a woman to access an abortion by claiming she is suicidal.

In 1992, around the time of the X case, Professor Binchy was asked whether he thinks suicidal women should be allowed to have abortions. He was asked if a woman went on to commit suicide after being refused an abortion, what would he say? He said that it would be very regrettable. He also said that there should not be any legal sanctions attaching to travel abroad, which was a change from his previous position.

Professor Binchy is asking politicians to listen to him but did they not listen to him in 1983 and is that not why we are here today? He says he favours the equal right to life of the unborn child and the woman, which is practically impossible to adjudicate over in any case. Was it not his original proposal in the Pro-Life Amendment Campaign, PLAC, that "The State recognises the absolute right to life of every unborn child from conception, and accordingly guarantees to respect and protect such a law"? I believe that is stated in Marital Privacy and Family Law on page 63 of a volume of the journal studies, but I can check that. Is Professor Binchy not in favour of a lot more than he has said here today?

Ms Christina Zampas said that if restrictions are put in place on abortion law, it effectively means that people's human rights cannot be guaranteed. The witnesses in the previous session said something similar. Would Ms Zampas be concerned that politicians outside this committee are saying that the type of proposals from the Citizens' Assembly would not be passed by the people and, therefore, they are talking about quite restrictive legislation? Would that not lead to a continuation of Ireland contravening best practice in human rights laws?

Chairman: There is a limited time for the witnesses to respond.

Professor William Binchy: I will respond briefly. The Deputy may be relieved to hear that I do remember those particular citations.

Deputy Ruth Coppinger: I am very relieved as I have them all here.

Professor William Binchy: That is fine. If the Deputy reads the full article to which she referred in the ethical reproduction book, it does not actually constitute a final advocacy position at all. I very much support the eight amendment, the outcome of the 1983 referendum, and those who favour legalised abortion oppose it very much. It has been around for 34 years and it has saved many lives in these circumstances. I completely accept the international realities. The thing that is wrong with the eight amendment, as far as those who are seeking to repeal it are concerned, is that it does its job, not that it does not do its job. It has done its job quite effectively, as effectively as we could imagine an amendment, a constitutional protection, would do, in the circumstances of international realities in which we find ourselves. That is precisely why there is such an attack on it at the moment.

Deputy Ruth Coppinger: With 13 women in Ireland a day having abortions.

Professor William Binchy: That is a reality which is there. The amendment is under international assault at the moment not because it has been a failure, but because it has been a success.

Deputy Ruth Coppinger: Does Professor Binchy call that a success, the abortion rate-----

Professor William Binchy: A success against the background of international realities. It has been a very considerable success and there are many children alive in Ireland who would not be alive if we had had wide-ranging legalised abortion for the past 34 years. That is getting real.

Chairman: We will move on. I call Ms Zampas to reply.

Deputy Ruth Coppinger: Professor Binchy did not answer about injunctions against women. Did he stop favouring that recently?

Professor William Binchy: No. As I told the Deputy, I never did put that forward as an unambiguous proposal. I said that to the Deputy by way of my reply.

Deputy Ruth Coppinger: Professor Binchy said there was a strong case for it though.

Professor William Binchy: I also said there was a strong case against it, which the Deputy did not choose to read out.

Chairman: I call Ms Zampas to respond.

Ms Christina Zampas: I would like to briefly clarify something I said earlier. I was not sure I understood Deputy Durkan's question regarding psychological care for women before and after having abortions. I want to be clear there are no studies that indicate that women who have abortions have psychological problems afterwards because of the abortion. There are no definitive studies showing that. I am not sure if that is what he was referring to, and I note he is not present.

Chairman: I believe he is now in the Chair in the Dáil. He came to apologise for having to

leave, but he was here from the beginning of the meeting. I will certainly pass on those remarks to him.

Ms Christina Zampas: It implies a certain idea that women are unable to make decisions on their own. It questions women's decision-making agency when states impose mandatory psychological counselling beforehand or waiting periods. A woman has already usually made a very clear decision on what she wants by the time she seeks an abortion. I just wanted to make that clear.

Chairman: Ms Zampas might also address Deputy Coppinger's last question.

Ms Christina Zampas: An abortion law that allows the decision to be made by the woman in consultation with her doctor is probably the best way to protect against human rights violations, not to say that it will even do that. I believe it is far better than a grounds-based approach. We are seeing human rights bodies starting to recognise that. In terms of the Citizens' Assembly recommendations, serious consideration should be given towards having a proposal which calls for abortion on request.

Chairman: I have to conclude the response to those questions and move on. I call Deputy Rabbitte.

Deputy Anne Rabbitte: I wish to state, and should have done so earlier, that the speakers this afternoon have been very informative and that is very much appreciated. I want to direct my question to Ms Zampas. She referred to the first trimester when we were discussing abortion. The Citizens' Assembly has discussed it and made a recommendation providing for the delivery of certainty. Ms Justice Laffoy, who chaired the Citizens' Assembly, has appeared before the joint committee. The recommendations from it are clear. Some 64% said that, to deliver certainty, there should be abortion right to the very end. Ms Zampas has mentioned the first trimester. Given her specialty in human rights law, is she saying it fits better within the first trimester or with what the Citizens' Assembly has recommended? I am looking for evidence from her to back up what the Citizens' Assembly has suggested.

Deputy Ruth Coppinger: On a factual point, the Citizens' Assembly said the first trimester. It said upon request, up to 12 weeks.

Deputy Anne Rabbitte: All right.

Deputy Ruth Coppinger: It is very important that it does not go out-----

Deputy Anne Rabbitte: I thank the Deputy for that clarification. Some 65% said-----

Deputy Ruth Coppinger: They did not say up to birth.

Deputy Anne Rabbitte: They did not say up to birth.

Deputy Ruth Coppinger: It is up to 12 weeks without reason having to be given.

Deputy Anne Rabbitte: All right. I take it that would also be Ms Zampas's view, from a human rights perspective, that she would be recommending up to the first trimester, is that correct?

Ms Christina Zampas: I am not here to make specific recommendations on gestational limits. Human rights bodies have not done that. That has primarily been left up to the states

and there has not been much challenge to gestational limit laws. It is an area where there is not much jurisprudence from human rights bodies. The committee could consider examining how other European countries handle it. Most of the 40 member states of the Council of Europe that allow abortion on request range from having a period of 12 to 18 weeks on request. They allow from ten to a maximum of 18 weeks on request and afterwards they allow for abortion on other minimum grounds. In almost every country in Europe, the life and health exception does not have a limit. It is very hard to distinguish between health and life. When does a health risk become a life risk? That decision has to be made depending upon the individual situation. The health care provider and the woman are in the best position to do that. In almost all countries in Europe, there is no gestational limit for when a woman's life is in danger or when her health is in danger.

Chairman: I want to interject and I will allow Ms Zampas and Deputy Rabbitte back in.

Ms Christina Zampas: I also think the Deputy should talk to medical doctors about that specific question.

Chairman: With regard to the time period, for the sake of clarity, I will read from the report. It states:

64% of the Members recommended that the termination of pregnancy without restriction should be lawful. Of the Members who voted on that Ballot:

- 48% have recommended that the termination of pregnancy without restriction should be lawful up to 12 weeks gestation age only.
- 44% have recommended that the termination of pregnancy without restriction should be lawful up to 22 weeks gestation age only.
- 8% have recommended that the termination of pregnancy should be lawful with no restriction to gestational age.

I apologise for interjecting but I wanted to clarify that.

Deputy Anne Rabbitte: No problem. That is fantastic. One of the reasons I asked that question relates to children in care. Last week, Ms Mary O'Toole, senior counsel, appeared before the committee. She clearly said that a lot of the cases that come before the courts relate to children in care. That is the reason I ask the question about the gestational period because sometimes it might not be possible to work within the timeframe given that there are courts and care workers involved. I wonder about the human rights of adolescents and their points of view. I would welcome the perspective of Ms Zampas on that.

Ms Christina Zampas: The UN Committee on the Rights of the Child has been very clear that adolescents should be involved in the decision-making process regarding abortion and has called for the removal of parental consent requirements. The latter would include guardian consent requirements. Adolescents are an especially vulnerable group because of the stigma not just around abortion but also around adolescent sexuality and what that could mean in terms of the relationship with the family and the parents. There is also the question of their vulnerability in carrying a pregnancy - their physiological vulnerability. Adolescents are at a much higher risk of having something go wrong with the pregnancy and risking serious disability because of it because their bodies are not formed enough to carry a pregnancy. That is a medical fact. I think it is 15 times more likely - I am not sure of the exact number - that something would go

wrong.

In light of that, I want to make a comment about Professor Binchy's remark in terms of there being no evidence that adolescents are suicidal when they are pregnant. Actually, it is the opposite. There is evidence to show that adolescents who are pregnant and who do not have access to abortion are suicidal and it is one of the causes of death of pregnant young girls especially in countries with really restrictive abortion laws because of the stigma attached, because of their sexuality and their pregnancy. I just wanted to clarify that.

Professor William Binchy: Perhaps I should respond, very briefly. Members might already have seen the evidence that was given in 2013 by the psychiatrists, whose number included a range of people of entirely different value systems, and they were not of the view that this ground was an appropriate one. I think that is a fair summary of the thrust of the evidence that was given. They are the professionals in the area.

Senator Rónán Mullen: I repeat my apologies. As a result of a family bereavement, I was unable to be here earlier. Professor Binchy is very welcome. I congratulate him on being a voice of sanity and compassion over the years in an increasingly uncaring world. His activity on behalf of people with disabilities, his great work promoting the rule of law and helping the rule of law in Africa stands in perfect consistency with his vision of a society that includes everybody. He has always spoken in terms that really appeal to people of goodwill of all faiths and none and from a purely human rights perspective.

There are two aspects to the question I want to put to Professor Binchy. First, does he agree that truth and fact are increasingly casualties in this debate? Perhaps even here today it might be no harm to pick up on some points that were made when I was listening in to the debate. I think Deputy O'Connell is mistaken. Professor Binchy might clarify but it is my understanding that the Citizens' Assembly made separate recommendations in respect of abortion on the grounds of disability; so-called fatal foetal abnormality was one recommendation but there was an entirely separate recommendation relating to foetal abnormality or foetal anomaly. From her question, I do not think Deputy O'Connell appears to realise that is the case. Clarity is important. My belief is that the Citizens' Assembly put forward separate recommendations. Is that also Professor Binchy's understanding?

Professor William Binchy: It is. The Chair has got the grounds there so perhaps she could advise us.

Chairman: Senator Mullen can continue and I will clarify shortly.

Senator Rónán Mullen: Second, in terms of figures, there appears to have been an attempt to put in issue the idea that Ireland's abortion rates are lower than those in other countries. Let us take Deputy Coppinger's figures in terms of the proportion of drug-induced abortions, and there was reference to at least three others – compared with ten women travelling. That is a tragic situation. Everybody agrees that some abortions have taken place notwithstanding the eighth amendment, but it is a matter of fact that, even allowing for imported drugs, Ireland's abortion rates are very low. The evidence shows, as a matter of fact when one compares it with other countries, particularly our nearest neighbour, that something has caused people not to opt for abortion in circumstances where individuals in other countries do. Is that not really a matter of fact rather than opinion?

Professor William Binchy: I believe it to be a matter of fact. I am not a sociologist. I have

not carried out the empirical tests. That is a matter for somebody who is not, as it were, coming to this issue from a value position to go and do the count. The wider sociological question of the impact of the amendment on a society - the impact of any legal framework on a society - is a highly difficult and subtle thing to actually work out. I would have to say that. Broadly speaking, however, I agree with Senator Mullen, as I think he would agree with me, that the issues do not depend on that fact one way or another.

Chairman: I will interject to clarify the point regarding the two recommendations to which Senator Mullen referred. They relate to circumstances where:

The unborn child has a foetal abnormality that is likely to result in death before or shortly after birth (89%)

The unborn child has a significant foetal abnormality that is not likely to result in death before or shortly after birth (80%)

Those are the two.

Senator Rónán Mullen: That is as I understood it to be. Those issues are important because rather than being so fast and loose about facts in respect of an issue that is life-and-death in nature, it is really important that we strive for clarity. That means telling the full story. Going back to the question of abortions having been prevented, it is the case, is it not, that in Northern Ireland it was claimed that 100,000 lives had been preserved by the operation of the law there and that the Advertising Standards Authority upheld the right to state that? The notion of it being false advertising was dismissed. I understand it is also the case that an actuarial study in Ireland estimated conservatively that a similar figure of lives, 100,000, had been saved on the assumption that, had there not been the eighth amendment, legislation would have followed at some stage, gradually, to legalise abortion on increasingly wide grounds. Is that correct?

Professor William Binchy: I believe that to be correct. However, a simpler test is if the amendment was useless, if it was not actually protecting unborn lives from abortion, I do not believe the campaign to repeal it would be so strong.

Senator Rónán Mullen: On the question of human rights, I have heard the Commissioner for Human Rights of the Council of Europe say human rights do not apply before birth. Professor Binchy was a member of the Irish Human Rights Commission at one point. I note with concern that the Convention on the Rights of the Child refers, in its preamble, to the right of the child before as well as after birth but this appears to be completely negated by what appears to be a clique of people who adopt the cloak of human rights but who, increasingly, are interpreting it to exclude one whole human being at the heart of this debate. In other words, they see only one life worthy of being accorded respect for human dignity and human rights whereas Professor Binchy and those of his ilk on the human rights scene have always seen two people. Is it of concern to him that, effectively, human rights are losing their way and are being hijacked by people who do not want to see any rights? I note Ms Zampas's reluctance to get into the business of gestational limits but surely that very reluctance of the human rights community to talk about gestational limits shows that they really do not give a damn about any unborn child's rights.

Deputy Ruth Coppinger: That is outrageous.

Professor William Binchy: I would not use that language and I have not used it in my

presentation to the committee because one can use absolutely non-emotive, factual, descriptive language. It is true to say that the monitoring committees are in favour of legalised abortion in the wide-ranging circumstances that have been described. That is not a question of a false assertion; that is very definitely what they propose. If one were to suggest that they did otherwise, their members would be grossly offended. It is not to vilify them, to allege that they are biased or have an agenda - that is their approach. That is their value system. They attach it then to the human rights treaties and, as Senator Mullen rightly said, the Convention on the Rights of the Child includes in its preamble the reference to the protection of children before birth. Why was that there? It was there to attract the support of countries with a protection of unborn life in terms of their laws so that they would ratify the Convention on the Rights of the Child, which of course they did.

Senator Rónán Mullen: I apologise for using the term “not give a damn”. That phrase does not normally attract censure in these Houses but I accept Professor Binchy’s correction.

Deputy Ruth Coppinger: Especially since the person who said it was not here when Ms Zampas spoke, so he could not know what she said.

Senator Rónán Mullen: Could I ask Professor Binchy and Ms Zampas whether either of them is aware of a situation where any human rights body has ever deprecated an abortion law on the grounds that it cut across the rights of unborn children in some way? I would welcome a response.

Chairman: I think we need to let Ms Zampas respond.

Senator Rónán Mullen: Is there any example of a human rights intervention against an abortion law on the grounds that it impacts the rights of the unborn?

Ms Christina Zampas: As I said in my presentation earlier, of which I think the Senator will have a hard copy, no human rights body has ever found a liberal law to be in violation of a treaty provision. No cases are being brought in this regard, and this is because such bodies recognise that the right to life, the right to health, the right to non-discrimination and the right to be free from torture and other ill-treatment are rights that pregnant women have and that if one takes away the right of a woman to decide, those rights could potentially be implicated. No human rights body has ever criticised a liberal abortion law or asked a country to restrict its abortion-on-request law. That is clear. It is not of late that human rights bodies have not interpreted the right to life to apply to prenatal life; this position goes back to the development of the human rights treaties to begin with, just like with the Convention on the Rights of the Child, CRC. In every case, including the CRC, the International Covenant on Civil and Political Rights, ICCPR, and the Universal Declaration of Human Rights, there were attempts to include in the text a right to life from conception or later foetal rights and they were rejected by the states that were in committee and adopted the treaty. There were votes on these matters; they were not just recently decided by all these committees due to their having a certain value base. States decided this.

Senator Rónán Mullen: Is it Ms Zampas’s contention that the preamble-----

Chairman: This will be the final clarification because Senator Mullen is well over time.

Senator Rónán Mullen: I will roll my comments together for Ms Zampas then. Does she think that the preamble to the Convention on the Rights of the Child, in which reference is made to the right of the child before as well as after birth to care, etc., would still be there were it to be

drawn up today, given that she has accepted my point that there is no human rights intervention in favour of the unborn against any overly liberal law that she can speak of?

Second, given her association with Canada, how can she not be aware of botched abortions there? Is this just an omission on her part? She says in very general terms that if the criminal law were to apply, it should apply, but how can she not be aware of - or does she deny - the fact that official Canadian figures showed that over a ten-year period starting in 2000, 491 babies who survived botched abortions were abandoned by medical staff and left to die alone in the corners of hospitals? Again, I draw her attention to this because I am aware that the question of late-term abortions and babies surviving such abortions has been-----

Chairman: I must ask Senator Mullen to come to a conclusion.

Senator Rónán Mullen: I am coming to a conclusion but I am contextualising my question. I am the last speaker and I am not holding anyone else up. It appears to be the case that the figures are there yet Ms Zampas does not seem to be aware of them. Can she shed any light on that for me?

Ms Christina Zampas: I answered that question earlier. I will not answer it again. Senator Mullen's other question about the Convention on the Rights of the Child and its preamble is a very important one, and the convention does a very good job of protecting prenatal interests. It says that the best way to protect prenatal interests is to make sure unwanted pregnancies decline and, therefore, that states should have comprehensive sexuality education programmes in and out of schools that are mandatory, evidence-based and age-appropriate throughout schooling, that all forms of contraception should be fully available and affordable to all women, that there should be strong safe motherhood programmes so women who are pregnant with wanted pregnancies can have safe and healthy pregnancies and that issues concerning, for example, spontaneous miscarriages are addressed. That is how the Committee on the Rights of the Child and many other human rights bodies have addressed the interests of prenatal life, not by calling for bans on abortion or protection of the unborn, because we know that such measures do not reduce the number of abortions but only increase illegal abortions and force women to travel. The WHO is very clear that criminalisation of abortion does not lead to a decrease in the number of abortions. Ireland would be an exception among the world if its criminalisation of abortion did so.

Senator Rónán Mullen: Ireland's figures show the opposite. I thank Ms Zampas for answering the question she wanted to answer, but could she please answer the other question I asked her?

Chairman: Senator-----

Senator Rónán Mullen: Is she aware of the figure of 491?

Deputy Ruth Coppinger: Chairman-----

Chairman: Senator, honestly-----

Senator Rónán Mullen: This is a life and death issue.

Chairman: I have to be fair to everyone. I know it is a life and death issue.

Senator Rónán Mullen: I will give way to anyone else who has questions.

Chairman: I will allow one final remark, literally.

Ms Christina Zampas: Like I said, if there were medical malpractice concerns, by all means cases should be brought against the doctors involved and professional boards should review the conduct of doctors, as in every other case. If the case rises to the level of criminal liability, Canada has an obligation under international human rights law to investigate, prosecute and punish any perpetrators. If what Senator Mullen says is happening is in fact happening and his figure is accurate-----

Senator Rónán Mullen: My question is whether Ms Zampas is aware of the figure.

Chairman: Sorry-----

Senator Rónán Mullen: Is she aware of the 491 from-----

Ms Christina Zampas: I am saying-----

Senator Rónán Mullen: She is Canadian.

Deputy Ruth Coppinger: She answered this earlier, Chairman. Why should she be made answer it again?

Chairman: We will have to leave it there.

Deputy Ruth Coppinger: Seriously.

Chairman: Deputy Coppinger is right. I have given considerable latitude to a number of speakers today. That is all we have time for as regards questions and answers with our witnesses. I thank-----

Deputy Clare Daly: On a point of accuracy, because when inaccuracies are said, they should be-----

Chairman: Challenged.

Deputy Clare Daly: -----corrected, Senator Mullen mentioned the figure of 100,000 from Northern Ireland and said the Advertising Standards Authority had upheld it as accurate. What it actually said was that it upheld the ad on the basis that people would realise it was an estimate and not a statistically accurate fact, so it was actually making the opposite point to the Senator's.

Senator Rónán Mullen: If the Deputy had listened carefully, she would know that is a different point from that which I made.

Deputy Clare Daly: It is the opposite point to the one Senator Mullen made.

Chairman: I thank Deputy Daly for the clarification. I thank Ms Zampas and Professor Binchy for their attendance. They have been most helpful to our deliberations. As there is no other business, this meeting of the joint committee is adjourned until 1 p.m. next Wednesday, as discussed earlier. We will meet in private session at 1 p.m. and in public session at 2 p.m. We will address the Citizens' Assembly's recommendation regarding the health of the woman, including that no distinction be drawn between physical and mental health. I thank members and witnesses for their attendance.

The joint committee adjourned at 6.05 p.m. until 1 p.m. on Wednesday, 11 October 2017.