An unacceptably flawed process has led inevitably to cruel and unjust recommendations.

Minority Report/Joint Assessment of Peter Fitzpatrick TD, Mattie McGrath TD and Senator Ronan Mullen on the work of the Committee on the Eighth Amendment and its conclusions.

20th December, 2017

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Section 1: The Committee and its process

From the outset, it was clear that the preference among the majority of Committee members for the repeal of the Eighth Amendment and the legalization of abortion in the State had the potential to obstruct the proper fulfilment by the Committee of the mandate given it by the Dáil and the Seanad.

It was stressed to the Committee that the mandate given to it by the Dáil and Seanad was to 'consider the report and recommendations of the Citizens' Assembly', and that there should therefore be an opportunity to consider in detail the approach taken by the Citizens' Assembly to its work and the strengths and weaknesses in that regard.

There was little support for this among the Committee members. In our view, the majority wished only to examine how the main thrust of the Citizens' Assembly recommendations should be implemented.

In our view, the Chairperson had a duty to remind the Committee, notwithstanding the various personal views of members, of the need to ensure a thorough consideration of issues given that vital issues of justice, human rights and personal welfare were at stake. We are disappointed that this did not happen at any stage.

Instead, much was made by the Chairperson and other members of the need to avoid 'repeating the work of the Citizens' Assembly'. We believe that this revealed a troubling mindset. It was more of a priority to deliver a report by 20th December, without too much inconvenience to members, than to thoroughly consider questions on which lives would depend in future.

Yet, despite this desire to avoid repeating the work of the Citizens' Assembly, the Committee later saw fit to embark on a question which was, at most, only tangentially dealt with by the Citizens' Assembly, namely the question of whether abortion should be decriminalised.

On the basis of 'not wanting to repeat the work of the Assembly', the consensus was that the Committee would not hear from advocacy groups, but mainly from 'experts'. We opposed this exclusion but, to our surprise and disappointment, the Committee went on to invite numerous well-funded international pro-abortion advocacy groups and an abortion provider. The only pro-life group invited was One Day More and this was to present the other side of arguments presented by the group Termination for Medical Reasons.

The extraordinary imbalance in the list of invited guests in favour of abortion was a problem from the start which was pointed out by pro-life members. This problem arose because the abortion-supporting majority on the Committee did not see it as necessary or desirable to hear expert testimony on issues such as:

- the human rights case for the Eighth Amendment, seen from the perspective of the Irish State having regard to the current provisions of Bunreacht na hÉireann.
- whether, as has been claimed, the Eighth Amendment has contributed to Ireland having a significantly lower than average abortion rate compared to abortion jurisdictions and to the saving of thousands of lives as a result;
- the experiences of families who believed that the lives of some of their loved ones had been saved by the Eighth Amendment;
- the evolution of an 'abortion culture' in countries where abortion had been legalised.

Having regard to the manifest majority in favour of legalised abortion among Committee members, pro-life members made it clear at all times that it was not the job of the pro-life minority to secure a list of experts who would ensure that all issues were examined thoroughly. That was the responsibility of the Chairperson, supported by the Secretariat, and we believe this responsibility was not met. Nonetheless, several names were proposed by pro-life members. Some of these were rejected, contributing further to the imbalance in the perspectives presented.

An analysis of the invited speakers and the recommendations that they made shows a clear ideological preference for legalised abortion among the vast majority. This applies also in the case of some invited speakers who spoke from a position of medical expertise but who did not confine themselves to providing expert evidence and instead offered personal opinions that went far beyond the scope of their expertise.

Despite concerns expressed repeatedly by pro-life members, there was not sufficient time allowed to properly examine invited speakers/committee witnesses. This concern was never accepted by the Chairperson and there was never any proposal to extend the time available for questioning. This was all the more of a problem because of the strong tendency of invited witnesses to support legalised abortion. The allocation of extra minutes occasionally and on a grace-and-favour basis cannot be considered as an acceptable resolution of the problem given the profound importance of the issues at stake.

When the Committee preemptively voted to recommend that the Eighth Amendment be removed or changed, without waiting to hear from all invited speakers, much less to hear from a balanced ticket of speakers, this confirmed that the link between the evidence being heard and the conclusions that the Committee would reach would be, at best, loose.

The Committee's decision to vote preemptively has been defended repeatedly by the Chairperson despite its being an objectively hasty, ill-considered and prejudicial move. We believe that this is unfortunate.

It was only when pro-life members drew public attention to the biased attitudes and processes within the Committee that the Chair, backed by the Secretariat, made belated

attempts to invite a small number of pro-life voices. It should be noted that the number of such people by then proposed was small and tokenistic and would in no way rectify the imbalance complained of. It is significant that one of the speakers that the Committee now invited was a person who had earlier been proposed but rejected. The Committee did not choose to hear from him at first. But, in the light of criticisms of the lack of balance, an effort to secure his participation was now underway. We believe this is revealing. A second belated invitee, the group Both Lives Matter, had previously offered to come before the Committee after its work in highlighting the number of abortions prevented as a result of Northern Ireland's more restrictive laws had been discussed briefly at the Committee. This group's offer was declined on the basis that advocacy groups were supposedly not being invited (despite pro-abortion advocacy groups like the Irish Family Planning Association, the New York based Center for Reproductive Rights, and the largest abortion provider in the UK, the British Pregnancy Advisory Service, being invited). However the group was later invited after public attention was drawn to the imbalance among invitees.

It is not surprising that the small number of pro-life groups invited belatedly to give evidence declined to do so. From their correspondence with the Committee, it was clear that they felt that they were being used to give token respectability to a process which had already jumped ahead to decide on critical issues. We cannot disagree with their view of the situation.

In view of the failure of the Committee to consider certain issues and the partial nature of the evidence heard on other issues, we have chosen to give a fuller treatment to issues not fully considered by the Committee.

We recommend the retention of the Eighth Amendment on the grounds that it protects both mother and unborn child, does not endanger top quality medical care for women and unborn children in pregnancy and is consistent with the best standards in the protection of human rights and human dignity.

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Mattie McGrath T.D.

Senator Rónán Mullen

Section 2: Ireland, Human Rights and the Right to Life

The Committee's selective international law arguments

The Committee has based its reasoning regarding the "necessity for constitutional change" on the assertion that Article 40.3.3 of the Constitution causes a "continuing and ongoing breach of Ireland's international human rights obligations".[1]

Reference has been made to "recommendations and findings" of the United Nations Human Rights Committee which found Ireland to be in violation of the International Covenant on Civil and Political Rights (ICCPR).

But scant attention was paid to the more significant fact of the jurisprudence of the European Court of Human Rights, in particular to the leading international case on abortion and the European Convention on Human Rights, *A., B. and C. v. Ireland.*[2]

Standing of the United Nations Committees

Despite the prominence given to the "views"[3] of the United Nations' Human Rights Committee, it should be noted that these "views" are of no direct legal effect in Ireland; there are no statutory, or other, provisions in Irish law which make any recommendation of a UN Committee enforceable in the Irish Courts. The UN Human Rights Committee does not have the status of an international court and its decisions are not binding on the Irish State.

Moreover, the International Covenant on Civil and Political Rights (ICCPR), the treaty on which the UN Committee has based its "views" has not been incorporated into Irish domestic law and therefore has no domestic legal standing.

This is in stark contrast to the European Convention on Human Rights and its associated Court, the European Court of Human Rights which is an international court (not a committee) and the rulings of which are admissible in Irish Courts under the provisions of the Human Rights Act 2003.[4]

Content of Human Rights Law

The ICCPR was intended to implement the aspirations of the Universal Declaration of Human Rights. Article 6 of the ICCPR encompasses the aim of protecting human life.

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[1] Joint Committee on the Eighth Amendment of the Constitution Report, at paragraph 1.8(2).
[2] A., B. and C. v. Ireland, [GC], Application no. 25579/05, 16 December 2010.
[3] *Mellet v. Ireland*, 9th June 2016, UN Doc CCPR/C/116/D/2324/2013, at para 10, the committee's recommendation is formally described as the "Committee's Views", clearly distinguishing it from court issuing a 'judgment', a function which is beyond the scope of the UN Human Rights Committee remit.
[4] Section 4, European Convention on Human Rights Act 2003.

Crucially, there is no attempt to exclude any developmental phase of human life from the protections set out at Article 6; there is no mention of abortion or of the exclusion of the unborn from the protection of right to life in this Article.

Furthermore it should be noted that Article 6 (5) states that a death sentence "shall not be carried out on pregnant women". As the *travaux préparatoires*[5] of the ICCPR state, "The principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was to *save the life of an innocent unborn child*."[6] Similarly, the Secretary General Report of 1955 notes that the intention of the paragraph "was inspired by humanitarian considerations and by *consideration for the interests of the unborn child*[.]"[7] The inclusion of a provision that a death sentence shall not be carried out on a pregnant woman is an implicit recognition that the life of the unborn child has value and is worthy of protection by international human rights law.[8]

Decisions of the European Court of Human Rights

In A., B. and C. v. Ireland[9] the Grand Chamber of the European Court of Human Rights reviewed the application of the International Covenant on Civil and Political Rights (ICCPR) and the European Convention of Human Rights (ECHR) to Ireland's Constitution and reiterated its consistent jurisprudence that the question of the legal protection of the right to life of the unborn child fell within the States' margin of appreciation under the ECHR as follows:

> "Of central importance is the finding in the above-cited Vo case that the question of when the right to life begins came within the States' margin of appreciation because there was no European consensus on the scientific and legal definition of the beginning of life, so that it was impossible to answer the question whether the unborn was a person to be protected for the purposes of Article 2. Since the rights claimed on behalf of the foetus and those of the mother are inextricably interconnected the margin of appreciation accorded to a State's protection of the unborn necessarily translates into a margin of

[5] In accordance with the Article 32 of the Vienna Convention, the *travaux préparatoires* are considered to be a "supplementary means of interpretation".
[6] A/3764 § 18. Report of the Third Committee to the 12th Session of the General Assembly, 5 December 1957.
[7] A/2929, Chapter VI, §10. Report of the Secretary-General to the 10th Session of the General Assembly, 1 July 1955.
[8] Additionally, the Preamble of the 1989 Convention on the Rights of the Child (CRC) reiterated a provision of the Declaration of the Rights of the Child of 1959, stating that "[T]he child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth".
[9] A., B. and C. v. Ireland, [GC], Application no. 25579/05, 16 December 2010.

appreciation for that State as to how it balances the conflicting rights of the mother."[10]

Therefore, the consistent pressure to expand abortion in Ireland lacks a basis in international law as the Grand Chamber of the European Court of Human Rights (a leading international Court, whose jurisprudence is admissible in Irish Courts, in contrast to United Nations Committees) has held that the Eighth Amendment is not in breach of human rights law. The Committee paid unaccountably little attention to the European Court of Human Rights' leading judgment in 'A., B. and C. v. Ireland', which does not find the Eighth Amendment to be in breach of international human rights law.[11]

Bunreacht na hÉireann's protection of the Right to Life

Bunreacht na hÉireann is the basic legal text of the Irish State, within which all fundamental rights are protected, such as the freedom of speech,[12] freedom of association and peaceful assembly,[13] the right to private property,[14] the right to a fair trial etc.[15]

Constitutions are the correct place to secure and protect fundamental rights. The purpose of Constitutional protection of rights is to create an additional protection for the individual against the power of the State and the legislature.

By securing the right to life of the mother and unborn child at Article 40.3.3., the Irish people ensured that preborn human beings, among the most vulnerable human beings, would be afforded social and legal protection.

The consistent trajectory of legal reform in Western Europe since the end of the Second World War has been to enshrine fundamental rights in Constitutions. While the Western world has witnessed the widespread distortion of notions of human rights so as to permit legalised abortion, there remains no example of a Western European Constitution removing pre-existing rights from a whole group of protected individuals. The proposal to repeal the provisions of Article 40.3.3 has profound implications for how we guarantee fundamental rights for vulnerable groups of individuals in our society. We believe their removal from the Constitution would be a major step backwards for human

[10] Ibid, at 237. See also paragraph 241: "…the Court does not consider that the prohibition in Ireland of abortion for health and well-being reasons, based as it is on the profound moral views of the Irish people as to the nature of life (see paragraphs 222-27 above) and as to the consequent protection to be accorded to the right to life of the unborn, exceeds the margin of appreciation accorded in that respect to the Irish State."

[11] Further, the European Court has respected and recognized the profound moral values associated with the right to life of the unborn child in relation to Article 2 of the Convention at paras 222-223 of A., B. and C. v. Ireland, [GC], no. 25579/05, 16 December 2010.

[12] Article 40.6.1°.

[13] Article 40.6.1°.

[14] Article 43.

[15] Article 38.1.

rights protection in Ireland. Apart from the implications for women and their unborn children, we believe that the repeal of the Eighth Amendment would lay the philosophical justification for other abusive reinterpretations of human rights in the future.

We reject, with particular emphasis, any attempt to provide for abortion on any particular ground of disability. We believe that the disability ground for abortion, so prevalent in the Western World, makes a mockery of nations' aspirations to champion the rights of people with disability.

Although Ireland has some way to travel in the championing of the rights of persons with disabilities, it can be said that Article 40.3.3., in this way also, has been a shining light.

Section 3: What 'Repeal' would mean

If the Eighth Amendment were repealed, legal protection for unborn babies would be removed and the Constitution would become silent when it comes to vindicating the right to life of babies during the entire nine months of pregnancy.

Any so-called restrictive legislation introduced on foot of deleting Article 40.3.3 from the Constitution could be changed at any time in the future to further erode protections for unborn babies.

After repeal, there would be nothing stopping a future Dáil, for example, from introducing Canadian style legislation where no meaningful protections at all currently exist for unborn babies.

As Professor Gerry Whyte, leading expert on Constitutional Law, explained in his article in the Irish Times on 28 September 2016 ("Abortion on Demand the Legal Outcome of the Repeal of the Eighth Amendment"), "[t]he most obvious interpretation of any decision to delete article 40.3.3 is that the people will have decided to completely withdraw constitutional protection from the unborn. In this situation, the only constitutional factor at play will be the constitutional rights of the mother and clearly these would support a much more liberal regime of abortion."

The Eighth Amendment has been a beacon of hope at a time when other countries legalised wide-ranging abortion. Ireland has demonstrated that it's possible to prohibit abortion and still be a world leader in protecting the lives of pregnant women.

The Eighth Amendment has saved tens of thousands of lives. Repealing it would lead to the loss of countless lives in the future. This is the stark reality of what repeal would mean in practice.

The fact that the consequences of what repeal would lead to in the future was never scrutinised by the Oireachtas Committee is inexcusable and highlights another glaring flaw in the entire process.

Section 4: The Unexplored Case for the Eighth Amendment

In investigating and reporting on any matter, an Oireachtas Committee is obliged to be impartial and act in the public interest by considering all aspects of any matter of public policy. Astonishingly, the Oireachtas Committee on the Eighth Amendment chose not to hear any evidence regarding the beneficial aspects of the Eighth Amendment.

(a) Ireland's Maternal Mortality Rate – consistently among the lowest in the world

No witness was invited to discuss the contribution the Eighth Amendment has made to medical care in Ireland for both women and their unborn child. Nor was there much consideration given to the fact that Ireland, without abortion, is a world leader in maternal healthcare. Recent figures released by the Maternal Death Enquiry show that Ireland is one of the world's safest places to have a baby, safer than the U.K. and significantly safer than the U.S.[16]

(b) The Eighth Amendment saves lives

Pro-life members of the Committee repeatedly claimed that, while the Eighth Amendment had not deterred some Irish women seeking abortions from travelling to Britain or elsewhere for abortions, the reported rates of Irish women having abortions were much lower than the rates of abortion where abortion is legal, and that this indicated that the law has a protective effect. Since the adoption into the Constitution of the Pro-Life Amendment in 1983 Ireland has consistently had one of the lowest rates of termination of pregnancy in Europe. It is difficult to arrive at a precise figure for the number of lives saved by the Amendment. However, one analysis by consulting actuary Mr Brendan Lynch has estimated that, taking 1994 as a starting point, over 100,000 people are alive due to the Eighth Amendment.[17]

By way of side comment, the figure of 100,000 has also been estimated as the number of lives saved in Northern Ireland because of the non-extension of British abortion legislation to the North. The fact of a similar estimated figure in these cases is coincidental. However the reasonableness of the later estimate was upheld by the advertising authorities in the North, and the Committee's attention was drawn to this fact.

Regarding figures for lives saved in the South, the Lynch actuarial report indicates that if Ireland had the same abortion rate as England & Wales from 1994–2014, 196,000 Irish citizens would not have been born (which is the same population as Cork city and

[16] Maternal death rate of 6.5 per 100,000 or 1 in every 15,301 is extremely low compared with a rate of 8.8 per 100,000 in the UK 26.7 per 100,000 in the US. See Institute of Obstetricians and Gynaecologist: https://www.rcpi.ie/news/releases/institute-of-obstetricians-and-gynaecologists-welcomes-new-figures-that-show-ireland-is-one-of-the-safest-places-to-have-a-baby/ (accessed on 19th December 2017).

[17] Available at: http://prolifecampaign.ie/main/wp-content/uploads/2016/09/ProLifeCampaign_Actuarial_Report_and_Commentary_7September2016.pdf (accessed on 19th December 2017)

suburbs). Similarly, if Ireland had the same abortion rate as Spain from 1994–2014, 121,000 Irish citizens would not have been born (approximately the same population as County Clare). If Ireland had the same abortion rate as Belgium from 1994–2014, 75,000 Irish citizens would not have been born (roughly the same population as Galway city and suburbs).

Comparing Ireland with Portugal, a Western European country that recently began permitting abortion (2007), if Ireland had the same abortion rate as Portugal between 2007–2014, 58,000 Irish citizens would not have been born (the same population as all of County Carlow).

It is a startling fact that, not only did the Oireachtas Committee show no interest in hearing from the Pro Life Campaign (despite the presence of advocacy groups like the Irish Family Planning Association), the Committee showed no interest in exploring whether the Irish Constitutional and legislative position has operated to save lives. Its attention having been drawn to the existence of an actuarial report, the Committee showed no interest in obtaining, scrutinizing, analysing or criticising its content and findings.

It is of course impossible to predict with absolute accuracy what the abortion rate in Ireland would have been without the Eighth Amendment. However, considering what has happened among our Western European neighbours, it can be reasonably suggested that without the constitutional protection afforded by the Eighth Amendment, Ireland's abortion rate would be considerably higher than the current rate of 5.2%[18]. As most Western European countries have rates that are three, four or five times higher than that of Ireland and there is no credible reason to believe that Ireland's rate would not evolve in ways similar to other EU countries in the event that abortion is legalised, it is extraordinary that no expert was invited to the Committee to address these issues.

The Committee was also asked to consider, in the light of the current law, whether it is appropriate for State-funded counsellors to effectively adopt a neutral stance on abortion. Given that the State in other areas of healthcare is willing to promote options and choices designed to protect a person's safety and health, and that of others, it seems to follow, given the Constitutional rights of the unborn, that pregnancy counselling would also be delivered in a manner that seeks, without coercion or deception, to promote the protection of life by treating the unborn baby at all times as a human being and by promoting adoption as a positive outcome.

We regret the lack of engagement by the Committee with this issue.

[18] A similar methodology undertaken in Northern Ireland was found to be accurate by the independent advertising watchdog in the UK, the ASA. See https://www.asa.org.uk/rulings/both-lives-matter-a17-370344.html (accessed on 19th December 2017).

In the light of the failure of the Committee to consider the positive achievements of the Eighth Amendment, and of the potential for the Eighth Amendment to ground measures that could reduce further the rate of Irish women opting to have abortions elsewhere, we recommend that a new Citizens' Assembly be convened to examine how positive alternatives to abortion can be promoted so as to fully respect and defend the rights of both unborn children and their mothers.

Section 5: The 'Hard Cases'

The Committee voted to recommend abortions on undefined risks to life and health grounds and for cases of 'fatal foetal abnormality'. To avoid navigating the complexities consequent on its desire to legalise abortion for cases of rape or incest, the Committee effectively proposed that abortion should be available on demand up to the first 12 weeks of pregnancy.

It should be noted that the provisions of the Eighth Amendment and of the Protection of Life During Pregnancy Act 2013 provide that all necessary life-saving treatment is available to women in pregnancy.

The thrust of the medical evidence sought by the Committee from leading obstetricians was to the effect that there is a lack of clarity in what clinicians may do in treating women's health complications in pregnancy. They also raised the doctors feeling the 'chilling effect' of potential criminalisation for practices that might unnecessarily compromise the life of the unborn child in the eyes of the law.

The medical experts themselves, however, were slow to make distinctions between which interventions would be ethical and which interventions would not be. The thrust of their evidence was that these matters should be left to doctors and their patients to decide.

The facts of their evidence at the Committee, however, is that they were unable to give any instance of where they were constrained by the law in their delivery of healthcare to women and where a woman's life or health was affected as a result. Equally, they gave not a single instance of where a doctor was targeted by the criminal law because of his or her treatment of a woman in pregnancy.

We submit that the terms of the Eighth Amendment and the Protection of Life During Pregnancy legislation, making clear as they do that the threat to a woman's life is not required to be imminent, in fact provides the satisfactory balance allowing medical professionals to treat both patients to a high standard — to protect the unborn child but also to ensure that a woman's life or health or not compromised.

The language of the 'unquantifiability of risk' was canvassed at the Committee. Such language ignores the fact that all medical processes involve risk at some level and that the idea of allowing any risk, however small, to justify the abortion of a child would effectively amount to abortion on demand and make a nonsense of any notion of legal respect for unborn life.

The generalised nature of the 'health' ground for abortion supported by the Committee showed no willingness to engage with the stark reality of the British abortion experience in which abortion on a 'health' ground, including mental health, became the basis for

widespread abortion on demand. In 2016, more than 180,000 abortions were performed on residents of England and Wales on mental health grounds alone.[19]

It was pointed out to the Committee and to experts appearing at the Committee that the ground had shifted around the claim that there is a mental health ground for abortion.

The attention of the Committee was drawn to the studies by Dr Fergusson et al in the *Australian and New Zealand Journal of Psychiatry*, which showed that there is no evidence linking abortion with improved mental health outcomes for women and that in certain cases abortion can be linked with a low to moderate increased risk of adverse mental health sequelae.[20] This led Fergusson and his colleagues to question the continued basing of laws permitting abortion on a mental health ground. It would also be fair to say that the general thrust of most evidence to the Committee tended to deprecate the idea of psychiatrists querying women's mental health in the context of assessing whether the grounds for abortion were met.

In the light of the admittedly all-too-short attention given to the changing situation around alleged mental health grounds for abortion, it is strange and yet strangely revealing that the Committee went on to support abortion on mental health grounds (and, indeed, with no suggestion of any gestational limits).

It was suggested to the Committee that the question of whether possible negative mental health consequences of abortion for some women raised the issue of ensuring informed consent and the need for State-funded counselling agencies to advise women of the possible negative mental health consequences of abortion in some cases. We are dissatisfied by the lack of interest shown by the Committee in this question.

Diagnosis of foetal abnormality

The Oireachtas Committee heard clear evidence regarding the use of the term "fatal foetal abnormality" and that attempting to distinguish between concepts of 'serious' or 'fatal' foetal abnormality is complex and artificial.[21] Current medical practice refers rather to life-limiting conditions (where there is no reasonable hope of cure and from which children will die).

There is a wide spectrum in the clinical outcomes and life expectancies of children diagnosed with life-limiting conditions. Unborn children with severe conditions such as

[19] *Abortion Statistics, England and Wales: 2016*. U.K. Department of Health. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/652083/Abortion_stats_England_Wales_2016.pdf

[20] Fergusson DM, Horwood LJ, Boden JM. 'Does abortion reduce mental health risks of unwanted or unintended pregnancy? A reappraisal of the evidence'. *Australian and New Zealand Journal of Psychiatry*. 2013; 47(9).

[21] Evidence of Mr. Peter Thompson, Consultant in Fetal Medicine, Oireachtas Committee 29 November 2017.

anencephaly, spina bifida or Edwards' syndrome will often be born alive, and life expectancy with one of these conditions can range from minutes and hours to months and years. Medical studies on Edwards' Syndrome – often cited as an example of a 'fatal foetal abnormality' – reveal that the vast majority of children are born alive; that approximately 50% of babies with the condition live longer than 1 week; and 5-10% of children survive beyond the first year.

If a moderate degree of medical support is provided, infants who would previously have died within minutes of birth may now survive for months or years. The label 'fatal' may result in doctors treating a child with inadequate and inappropriate care after delivery, and hence becomes a self-fulfilling prophecy. To make a distinction between 'fatal' and 'serious' foetal abnormalities is highly artificial and is not consonant with the scientific and medical realities of practice in 2017.

The Oireachtas Committee paid little attention to the question of palliative care for newborn children with severe life limiting conditions under this section (there is a brief ancillary recommendation). There is anecdotal evidence in Ireland today from parents who have returned home after aborting their baby with a terminal illness only to learn for the first time about the existence of perinatal hospice care as an alternative to abortion.

Over the last 15 years there have been very significant developments in the provision of palliative care to newborn children who have life-limiting conditions or abnormalities. These developments mirror those in the provision of palliative care provided to adults and children with terminal illnesses. This has transformed the experience of parents and families who have a baby with a life-limiting condition.

The groups 'Termination for Medical Reasons' and 'One Day More' gave contrasting evidence and perspectives to the Committee. What all can agree on is that families who have been through the tragedy of receiving the news that their unborn child has a severe abnormality and may not live long after birth, deserve support and respect and not judgment.

That is not to say however that whatever families decide in this vulnerable situation is the 'right thing' for them.

We do not believe sufficient attention was given at the Committee to:

- whether medical personnel in recommending that they be allowed to provide termination are in fact, abandoning parents in a vulnerable situation to the cold comfort of having 'a choice' instead of helping them and ensuring that they have the support that they need to accompany their child to his or her natural end and to begin the grieving process.

- whether there is potential for diagnoses to be overly severe in certain cases and that the provision of abortion might see the procured death of children who would otherwise live, perhaps with a condition more mild than was predicted;
- whether at the level of public administration and funding of medical care, there could be a vested interest in the provision of abortion in such cases;
- whether the provision of abortion in such cases would lead to a culture where parents would feel there was little choice but to choose abortion in such cases, as the 'natural' or 'obvious' thing.

In relation to the last point, we found it chilling that one Irish medical expert mentioned that families in these situations tended to choose to terminate in about 50% of cases and that this was, in some way, evidence that medical professionals were getting it right.

If this is the conclusion to be drawn where abortion is not yet legal in these cases, one can only wonder at what the attitude of hospital personnel could be should abortion on these grounds be legalised in the future.

We recommend that the appropriate path here is a boosting of perinatal and palliative care supports.[22] Palliative care for newborn children focuses on the enhancement of quality of life for the child and support for the family. It provides the opportunity for parents to meet their baby who is named, loved and incorporated into their family. Any pain or distressing symptoms are effectively managed with skilled medical and nursing care. Palliative care commencing from before birth provides a compassionate, realistic, effective and philosophically coherent response to the diagnosis of a life-limiting condition, which enables family, community and professional support from before delivery through to the death of the child and many months beyond.[23]

[22] Passing reference is made to "perinatal hospice services" in the ancillary recommendations at paragraph 3.22

[23] See for example, the recent Association for Children's Palliative Care (ACT)/Together for Short Lives (TfSL) document, '*A Perinatal Pathway for Babies with Palliative Care Needs*' 2017, available at: http://www.londonneonatalnetwork.org.uk/wp-content/uploads/2015/09/TfSL_A_Perinatal_Pathway_for_Babies_with_Palliative_Care_Needs__SOFT_.pdf

Section 6: Should Abortion be Decriminalised?

The Committee Report is critical of abortion being "criminalised" in the law of Ireland. The Committee calls for the decriminalisation of abortion in circumstances where so-called abortion pills are self-administered or administered by a registered doctor. However, the Committee fails to recognise the difference between an offence in law and the prosecution of that offence.

There have been no prosecutions prior to or under the Protection of Life During Pregnancy Act 2013, for either women or doctors, yet the Committee fear that the "criminalisation of the use of abortion pills in these circumstances has the potential to create a chill factor on women in seeking post-abortion medical care and support".[24]

There has been no evidence, other than speculation, that women are not seeking medical help as a result of the provisions of the Protection of Life During Pregnancy Act 2013 or the prior legislative situation proscribing abortion.[25] The proposed removal of an offence at Section 22 of the Protection of Life During Pregnancy Act 2013 is part of an agenda to decriminalise abortion, rather than an evidence-based concern regarding healthcare for women.

The offence at Section 22 of the Protection of Life During Pregnancy Act 2013 exists not to target women, but to deter people from doing something — procuring dangerous medications — that can be harmful to themselves and others.

The Committee Report has recommended abortion be available, effectively on demand, for up to 12 weeks. In that context, the proposal that thereafter there would be no criminal sanction for any woman who would try at any stage of pregnancy to procure an abortion, or no breach of the criminal law, goes beyond the law in United Kingdom where there is still an offence in law.[26]

The retention of a criminal offence in the context of abortion is necessary to deter actions which can hurt individuals and end the life of the unborn child.

The assertion that the decriminalisation of abortion is the only way to assist a woman who needs medical assistance because of complications after taking an abortion pill is unfounded. The Committee Report did not consider other options such as a law that guarantees that a person who seeks medical assistance will not be criminalised by reason of any prior offence which the person discloses to have committed in the course of seeking subsequent medical care.

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[24] Joint Committee on the Eighth Amendment of the Constitution Report, at paragraph 3.5.
[25] The Committee Report refers to *Mellet v Ireland* (9th June 2016, UN Doc CCPR/C/116/D/2324/2013) to support its claim that a criminal offence in relation to abortion has a "chilling factor", however so statistical or medical evidence supporting this contention was produced.
[26] Section 5, Abortion Act 1967.

The Committee, by recommending that abortion be decriminalised, has proposed a policy which is more radical than that in the United Kingdom and has the potential to cause harm to women.

Section 7: Recommendations

We recommend that:

1. The Eighth Amendment be retained and that this fundamental issue of human rights not be put to the vote.

2. That a Citizens' Assembly be convened to explore the means whereby positive alternatives to abortion can be explored so as to fully respect and defend the rights of unborn children and their mothers and partners.

3. That the provision of appropriate perinatal and palliative care be provided in a consistent, high-quality manner across the country and that great public attention be drawn to this.

4. That under a retained Constitutional provision, attention be paid to the provision of pregnancy counselling, in particular State-funded pregnancy counselling, so as to provide appropriate care to women in crisis pregnancy while seeking to prevent abortion by way of encouraging positive alternatives wherever possible.